

TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 80

Tuesday, 5 October 2004

[10.04am]

MR LASRY: Good morning, your Worship. I had a
note to raise the question of Mr Nicholson's
5 report. Your Worship will remember that
Mr Nicholson was to be engaged to provide a report
in the sense of commentary on Mr Cheney's and
Mr Roche's material. In fact, a copy of the
report was faxed to the DPP's office at 6 minutes
10 to 5 on Friday last. I was unaware of it until
this morning. Obviously Mr Woodward and Mr Roche
and everyone else was unaware of it.

We have now been provided with an amended copy.
15 We will read it and consider it. The accompanying
correspondence doesn't tell us one thing that we
wanted to know, which is whether we are requested
to call Mr Nicholson. I raise that as one issue
that perhaps I can have a response to this
20 morning.

The other thing which has nothing to do with this
but I should say it now is that, from the time
that Mr Lucas-Smith gave evidence and indeed from
25 the time that he completed his evidence, I think I
said on several occasions that it would be
anticipated that he would be recalled. We have
rethought that. It is no longer our view that he
needs to be recalled by us. I have communicated
30 that to Mr Walker.

As I understand Mr Walker's position by return
email, there are matters that he would want to
raise with Mr Lucas-Smith. Of course we will
35 facilitate that. Subject to that, subject to
Mr Nicholson and also subject to what needs to be
done in relation to the recall of Mr Castle, whom
as I recall it was expected would be recalled on a
particular point, Mr Roche's evidence we hope will
40 be close to the last evidence that is put before
you.

THE CORONER: Is it for Mr Walker and Mr Whybrow
to let you know about Mr Nicholson primarily?
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MR LASRY: The original request was that I asked
to be informed as to whether or not they wanted

Mr Nicholson called. Now I assume because we have been given a report that probably the answer to that is yes. But the correspondence doesn't tell us whether that is what they want or not.

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THE CORONER: You will give that some thought, Mr Walker and Mr Whybrow?

MR PHILIP WALKER: The answer is yes.

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THE CORONER: That you do wish to have Mr Nicholson called.

MR PHILIP WALKER: Perhaps again, at the moment the answer is yes. I will hear what Mr Roche has got to say. There will be a number of things I will put to him and obviously, like all these things, it will be reviewed in the course of the evidence.

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THE CORONER: That is fine. Thank you, Mr Walker. Yes, Mr Craddock?

MR CRADDOCK: Your Worship, one other matter. If I could hand up a bundle of documents. There is the ongoing question of the production of documents relating to Mr Roche's report. Your Worship will see before you now a series of correspondence. A letter from me to counsel assisting of 22 September, then a series of emails. Firstly, at the bottom of the fourth page you have an email note from Mr Roche to Mr Lasry. Moving up the page a note from Mr Lasry to myself and then my reply. Then the second last page is a further letter from myself to Mr Lasry and Mr Woodward dated 30 September. The final document is a reply to that letter which appears undated but I am sure it was the day after the 30th.

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Your Worship, I tender those documents. I do so for the following reasons: obviously enough there has been a degree of attention paid to the provision of documents related to Mr Roche's report. For my part at least, I have regarded that as an ongoing matter - in the way of these things documents come to light. I indicated to

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counsel assisting in my letter of 22 September that I had inspected all of the documents that were provided but there were references in those documents to at least the possibility of there
5 being other documents that hadn't yet come to light.

If your Worship goes to the second page in the bundle, you will see a couple of quotes there
10 taken from emails concerning the production of the report that refer to what might be described as at least portions of drafts of the report. At the end of the first quote, for example, you will see a reference to what appeared in the email as a
15 "Roche report paste". There are a number of such references throughout the documents that have been provided. They suggest the likelihood there are further documents.

20 Hence, my letter to counsel assisting.
Mr Woodward was happily on one of his holidays. I don't think in Cuba, but somewhere out of chambers. Mr Lasry was having a break from Cuba and was able to make a search himself, and it
25 appears that Mr Roche has made a search. Obviously Ms Drew made a search at the behest of Mr Lasry. It appears as yet that not all documents are to hand. So I tender this series of correspondence to indicate the state of play with
30 respect to the documents.

I am not asking your Worship at this time to do anything about it but merely to see that the record is kept as to the state of production. As
35 I said earlier it is an ongoing situation as I see it. Naturally enough, Mr Lasry at least has indicated he doesn't have further documents. Obviously he doesn't if he says that, but that is not to say that further documents won't come to
40 light. If your Worship pleases.

THE CORONER: Thank you, Mr Craddock. Do you want to tender this to put this on the record?

45 MR CRADDOCK: I think it should go on. I do tender it.

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THE CORONER: It is on the record. I can mark it as an exhibit. However, I don't really want it to become an exhibit in the proceedings. But it is certainly before me.

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MR CRADDOCK: That certainly suits my aims, if your Worship pleases.

THE CORONER: I note that you brought it to my attention. I will certainly hold on to the documents. Presumably Mr Lasry and Mr Woodward have copies of the documents.

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MR WATTS: I have a couple of matters. This is something that may have been raised before and, if it has, I apologise. It is the question of the documents in the Roche folder released on 21 September - that is the long list - in which a number of those documents have been crossed out and have not been produced. I did inquire of learned senior counsel assisting about that. I haven't as yet had a reply. It is not clear to me from the material produced why those documents have been crossed out and where they are.

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THE CORONER: I can't assist. I don't have my folder at the moment.

MR JOHNSON: I have a copy of the schedule because I was going to raise this matter with your Worship as well. It is the schedule now dated 21 September 2004.

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MR WATTS: Your Worship, the first one missing seems to be document 20.

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THE CORONER: Yes, I have that. Thank you, Mr Johnson.

MR WATTS: Document 20, for example, and over the page documents 55-60 - yes, 34. Throughout the list there are numbers of documents which have been simply crossed out. Those documents clearly are in answer to the request and on their face appear to satisfy the description in the request for documents. Perhaps learned senior counsel would give us an explanation as to where they are

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and why they have not been produced.

I have two other matters to raise but I will come to them. They are different matters.

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MR JOHNSON: If I could just raise also on the document issue, there seems to be a bracket of procedural issues. I have handed up to your Worship a copy of the list of 21 September. For the purpose of raising this issue I hand up two documents: a copy of the decision of Justice Whitlam of 17 September.

THE CORONER: I have that.

MR JOHNSON: And a copy of the written submission provided to your Worship on behalf of the Territory during argument of 25 August.

THE CORONER: I have that as well, Mr Johnson. I have those documents here now.

MR JOHNSON: Perhaps if anyone needs spare copies to follow the argument, these are available.

The starting point for this issue seemed to be that Mr Craddock wrote a letter of 22 July that described six categories of documents with respect to Mr Roche. Thereafter on 9 August an order was made by your Worship with respect to the preparation of a schedule. That was done and was provided on 16 August by counsel assisting; it being clear that the documents referred to in the schedule fell within the description of the order made by your Worship on the 9th of August. And the order made by your Worship on 9 August was that the documents referred to in the schedule be produced, except those as to which objection was to be taken.

Thereafter argument took place before your Worship on the 25th. A judgment was given by your Worship on the 26th. Justice Whitlam heard argument and his Honour's decision was made on 17 September. In so far as the argument that occurred on 25 August with respect to Mr Roche, your Worship has the outline of submissions on behalf of the

Territory.

At page 5, paragraphs 16, 17 and 18 there were propositions raised, firstly a description of five
5 classes of documents. Then in paragraphs 17 and 18 the submission that:

10 "The primary role of an expert witness in legal proceedings is to provide expert opinion based upon ascertainable facts. In the usual case, an expert is provided with a given set of facts upon which the opinion is formed. From time to time, an expert is
15 called upon to himself/herself ascertain facts upon which an opinion is to be based. The later role is properly to be seen, not as a separate one, but merely a preliminary step in providing an expert opinion. It is part of a process culminating in the preparation
20 of an expert report.

25 "The principles discussed above compel the conclusion that documents relating to an expert's fact finding role are to be treated as documents used by the expert to provide an expert opinion. Accordingly, absent proper other objections, all such documents should be produced".

30 Justice Whitlam indicated that the written submission put on the part of the Territory summarised principles as described in paragraph 7 as being a model of clarity. I raise that only to
35 put in context the issue that occurs now.

The schedule as it stands now has a number of deletions. Mr Watts has taken you to a number of them. In approaching this submission, I would
40 point out that the documents that we have received since indicates that Mr Roche does appear to have worn several hats in the functions he has carried out for the purpose of this inquest. He clearly has prepared questions for the police to ask
45 during records of interview; he has in fact drafted specific questions that the police seem to have put; he has provided an advisory function; the emails describe him corresponding directly

with the police and at one stage in relation to document 40 on this list describing Mr Winter as being someone who may be, to use Mr Roche's words, "a good ally for us".

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All of that it is submitted points to the fact that Mr Roche has played what might be described as a somewhat unusual role for the purpose of this inquest. It emphasises in my submission the need that the documents relating to that role, which seems to be as part of a type of team, be available to the parties, and that nothing that has been said by Justice Whitlam would stand in the way of an order, if a further order is in fact needed, for the production of the documents which have been deleted from this list --

MR LASRY: If I could interrupt for a moment. A lot of time is being taken with this. As I understand it, the documents which have been deleted - I don't have them in front of me but I have some instructions about it - I think I should say now before we go into a long analysis of the history of this that, as I am instructed, they are documents which are, as it were, organisational documents, documents arranging meetings and things of that kind.

The documents to which, Mr Woodward pointed out to me, Mr Petty put in the course of his submissions did not require access to, as it were, the nuts and bolts documents which were obviously organisational and didn't go to the substance of the matter. Now, I don't quote him, but that was the effect of it.

Your Worship, if my learned friends want to see those documents, then they can have them. There is no issue about it. As I understand it, the only reason for the deletion of the documents in the list was because they were administrative and therefore not relevant. If it turns out that there is more to it than that, then of course I will be embarrassed by what I just said but those are my instructions.

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They have been deleted because they don't add to

the material in any relevant way, as I follow it. I will make arrangements to ensure that those documents can be provided.

5 THE CORONER: I just look at the headings on some of these. It says "email Roche to Woodward re team meeting, re team meeting". There is another one here "letter from Bayliss to Cronan re coronial inquiry". Now, surely the Territory and
10 indeed everybody else would have a letter form Bayliss to Cronan re coronial inquiry?

MR JOHNSON: It is not those ones I am talking about. I would certainly exclude any of these
15 which may include correspondence sent to legal representatives for other parties in this inquest. But the purpose of this is that Mr Roche it seems has formed part of a team. If there are messages to him about team meetings, there is a "to do"
20 list from Mr Woodward to Mr Roche. There is an email --

MR LASRY: There is no problem with having the documents. We could spend an hour or so
25 rehearsing what we did before the Supreme Court --

MR JOHNSON: I am only responding to your Worship. I was on my feet, thank you, Mr Lasry.

30 MR LASRY: I don't apologise for interrupting. I want to get to the point of it. If the point of it is my learned friend want the documents, you can have the documents.

35 MR JOHNSON: Could I raise a number of specific questions by reference to particular documents: document 22 - and document 26 is an email of 31 October which refers to "a copy of the questions for witnesses that we developed with
40 Mark Travis the other day". It is from Mr Roche to Ms Drew. Could I ask that those documents be produced. It is not clear that they are in the documents that have already been produced.

45 Document 11, there is a reference to "a meeting last week, which took place" - this is an email from Mr Woodward to Mr Roche and others - and as

to whether there are any notes of that meeting.

5 THE CORONER: Mr Johnson, do you have a list of those? What I would prefer is that, rather than taking up time now, Mr Roche is waiting and has been waiting for some time, if you have a list of bits and pieces that you see connected with these others, perhaps if you could hand that over to Mr Woodward sometime during the day and arrangements can be made to check into whatever else you might see flowing out of the issues you have raised and the documents that you have raised.

15 MR JOHNSON: It is clearly important that these issues be resolved, seeing that Mr Roche is about to enter the witness box, given the proceedings before Justice Whitlam and his Honour's comment.

20 The other matter is whether Mr Roche has any notes of the field trip that took place on 20 August. We will add that to the list. I don't think we have seen anything to date that falls into that category.

25 THE CORONER: Perhaps he can be asked that.

30 MR PIKE: Your Worship, just to add one small point to the debate: if I can just indicate my concern in relation to the documents produced concerning Mr Cheney which are now MFI 93. You will recall that some aspects of those documents were whited out and we were told that the whited-out portions contained administrative and organistional things that do not relate to the opinions being expressed. When we finally saw the documents, one of the whited-out comments in the notes was to the effect - I have just been trying to find it - "Mr Cheney not a fire suppression expert". That is the kind of comment that doesn't fall into the realm of administrative and is in fact directly relevant to some of the issues before your Worship.

45 That raises my concern that, although my friend says that things were not produced because they weren't relevant and weren't administrative, given that aspect of what we have already seen as

being described as administrative and not in fact being of that nature, at least in relation to that comment, I do have a concern about that being a reason for documents not being produced.

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I hear what my friend says that the documents will be produced. I am grateful for that. Could I also add to the list of things particularly to be looked for, and that is any notes of conference with Mr Roche akin to MFI 93 made by counsel assisting or by Ms Drew, because none have been produced. Frankly for us to be told effectively there were all these conferences but nerry a note was kept of any of them is a little bit hard to understand. If I could just add that to the list.

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MR WATTS: Your Worship --

MR LASRY: If I could just deal with that last point although it is simply put as an expression of concern. I have had a reasonably lengthy conference with Mr Roche last week. I used a document which is my document created for the purpose. It contains notes made by me in relation to Mr Roche's report and issues that I think need to be raised. I have worked my way through it. It is my document. It is created for my purpose. It is created from this report. I don't propose to hand that over. It is my working document. It is not a record of the conference. It is a document that I used for the purpose of having discussions with him. Beyond that, as far as I am aware, there are no other notes of conferences.

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MR WATTS: Your Worship, the second matter I wanted to raise related to the evidence of Mr Cheney. When I cross-examined him - your Worship may wish to deal with this at another time - I asked him about the intensity of the fires that reached Duffy and he indicated that he hadn't worked that out. I asked him if he would do the calculation, which he said he would. Mr Pike asked him the same question later and Mr Cheney had still not done that calculation.

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In my respectful submission, it is a significant matter and it is a matter which I would ask - I

don't wish Mr Cheney to come back into the witness
box - if it could be provided by way of letter
from him to your Worship. It is an important
matter because the fire intensity is significant
5 in terms of say the objective of the Fire Brigade
to fight the fire when it reached Duffy.

I would ask your Worship if counsel assisting
could arrange Mr Cheney to provide us with that
10 information. It was properly put by me, and in my
submission I am entitled to an answer from him
about that.

THE CORONER: I think Mr Cheney did say that he
15 would, given time, be prepared to work it out.

MR WATTS: Yes. I was not here. Mr Pike at my
request asked him the same question, and he said
he had not been able to do the calculation as yet.
20 Perhaps I could leave that up to counsel
assisting. They can advise me in due course.

The third matter relates to Mr Roche and the way
the report is to be handled. I just want to
25 indicate that I have in due course a significant
number of objections to parts of the report. I
have provided counsel assisting with a letter
setting out those objections and the basis of
those objections. I imagine that counsel
30 assisting proposes to tender the report at some
stage. But when it is, I would wish to be heard
on those objections.

THE CORONER: Thank you, Mr Watts.
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MR ARCHER: Could I just rise, sorry to add to
counsel assisting's woes, but we were served just
now at the Bar table with a report of
Mr Nicholson. That report on a very quick read,
40 and I realise people at the Bar table probably
haven't had a chance to read it, directly affects
my client. And it will certainly affect, if he
were to be called, the questions that I might want
to ask Mr Roche in cross-examination.

45 I would seek an indication from your Worship
perhaps at some later time before Mr Roche is

exposed to cross-examination what the intention is in relation to Mr Nicholson as to whether or not he is going to be called as a witness. There are matters central to his report, it seems, which
5 directly affect my client. In the interests of my client's fairness, I would need to know before cross-examining Mr Roche what the intention of you and I suppose counsel assisting is in relation to Mr Nicholson.

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THE CORONER: I haven't seen Mr Nicholson's report at all. I can't comment. As Mr Lasry said, he has like you, Mr Archer, had a very short opportunity to look at it.

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I am sure the situation will crystallise after Mr Roche has given his evidence. I certainly would like to know what the intention is with Mr Nicholson as well. I would like to have a look
20 at his report.

MR ERSKINE: We would be in the same position as my friend Mr Archer.

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THE CORONER: Have you seen the report?

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MR ERSKINE: This morning. While the report does not directly address any issue in relation to a New South Wales person, the types of issues he talks about do seem to have some effect upon how one would approach those issues. So we would be in a similar position to Mr Archer, perhaps not quite so directly but we would like to know whether the Nicholson report is going to be
35 tendered and whether he is going to be called, because his evidence would have an impact on the way in which we cross-examine Mr Roche.

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THE CORONER: Thank you, Mr Erskine.

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MR WOODWARD: Your Worship, on behalf of my learned friend Mr Stitt, can I hand to your Worship two copies of a report to your Worship in response to their submissions dated 20 July by Phillip Mazey and Janice Mazey, formerly of 50 Darwinia Terrace, Chapman. This is a report that has been prepared, as I understand

it, to answer the submission which your Worship I think provided or raised during the evidence of Mr Leonard, and Mr Stitt then indicated that his clients would take a look at it and provide a report to you.

I have reviewed the report. It seems to make it clear that to the extent that the Mazeys suffered a loss of water supply, it wasn't attributable to a seizing up of the actual water meter itself.

THE CORONER: This was in relation to the water meter on the nature strip.

MR WOODWARD: There is an explanation as to why it was outside their property. They have the water meter. It was subsequently replaced. The reading screen on top of it was damaged by fire and couldn't be read. They were able to examine it and conduct tests on the water meter. The tests appear to indicate there was no seizing up of the mechanism within the water meter which would have prevented water passing through the meter. They discuss other explanations for loss of supply. They don't come to any firm conclusion as to what the result was.

But it does seem to make it clear that it wasn't attributable to seizing up of the water meter. I provide this report to your Worship on behalf of Mr Stitt to go onto the system and become part of the material forming the brief - there are two copies - so parties will have access to it once it gets on the system. If your Worship were minded to do so, if a copy could be sent to the Mazeys in response to their submission.

THE CORONER: I will make arrangements for that to happen. So the report titled "In response to submissions dated 20 July 2004 by Phillip Mazey and Janice Mazey prepared on behalf of ACTEW AGL will become exhibit 0097.

EXHIBIT #0097 - REPORT IN RESPONSE TO SUBMISSIONS DATED 20/07/04 BY PHILLIP AND JANICE MAZEY PREPARED ON BEHALF OF ACTEW AGL TENDERED, ADMITTED WITHOUT OBJECTION

THE CORONER: I will arrange for a copy to be sent to Mr and Mrs Mazey. If there are no other matters we will start with the evidence of Mr Roche.

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MR LASRY: First of all, can I offer five copies of the documents that were referred to this morning. They have been assembled and copied. They can be distributed. These are the
10 crossed-out documents on the schedule in relation to Mr Roche.

THE CORONER: Thank you.

15 MR LASRY: So far as Mr Roche's report is concerned, I would propose to get him to identify it early in his evidence and then have it added to the database. Indeed it is already on the
20 database. It already has a number. Whether or not now is the appropriate time for Mr Watts to raise his objections or not, I'm not sure.

As I say, it is already on the system as [DPP.DPP.0009.0001]. I am content to take
25 Mr Roche through the document and then deal with the objection subsequently. It might be more convenient bearing in mind that Mr Roche is here. Ultimately the objections will come down to the manner in which the document can be used. It may
30 be easier to deal with the evidence and then deal with the objections to it at the end. I am not sure. It is a matter for Mr Watts to some extent. It would be my preferred course because the witness is here and ready to give evidence.

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THE CORONER: Does that suit you to start evidence and you can object to the portions you wish to object to, Mr Watts?

40 MR WATTS: I think it won't affect how long Mr Roche might be here because either we do it now or we do it at some stage while he was giving his evidence. I would have thought the neatest thing to do is to deal with it now. I have a document I
45 can hand to your Worship which deals with each of the objections. They are 12 in number.

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The simplest matter and the usual matter would be for them to be dealt with at the stage where the report is to be adduced and put into evidence. Therefore, if your Worship excludes them they will
5 be taken out of the report and they would not be relied upon. My submission would be that I would ask your Worship to deal with the matter now.

10 THE CORONER: I will deal with it now then. It might be just as easy to deal with it now rather than stopping when Mr Roche starts his evidence. These are objections in relation to the body of the report?

15 MR WATTS: Yes, they are. Could I hand your Worship a letter to senior counsel assisting dated 26 July 2004. Your Worship, I am not pressing the objection to numbered paragraph 1. That is a general objection which I do not now
20 pursue.

Perhaps if I could deal firstly with objection number 2 and address your Worship in relation to that. I would be content, I would imagine - just
25 to ask your Worship - that what I would have to say in relation to that objection will be true for the subsequent objections.

Does your Worship have the report?

30 THE CORONER: I do, yes.

MR WATTS: Turn to page 52 of the report at about point 5. The paragraph commencing "however in my
35 opinion the evidence also reveals". Your Worship, I have taken you on heaps of occasions and it has been referred to by Mr Justice Whitlam to the decision in Makita v Sprowles. It is particularly important in a case like this where an expert
40 provides a report: firstly, he must have the relevant expertise to comment on matters before he can give an opinion; secondly, the facts upon which he bases his opinion must be apparent from the report. Those facts might be facts which he
45 himself knows of, or facts which he has been told or read about, or they may be simply assumptions he has been asked to make.

It is certainly not part of the expert's role to decide in proceedings like this what the evidence establishes. That is your Worship's role and only your Worship's role. In using those words he has
5 gone beyond his expertise because he is taking upon himself the role which is your Worship's role and function.

More importantly when you look at say
10 paragraph 52, it is impossible to know what factual evidence he is relying upon to come to that conclusion. He does not, as one would expect an expert to do in this paragraph and elsewhere, set out "these are the facts as I know them or as
15 I understand them, or I have been told about (a), (b), (c); secondly, these is the source of the facts on which I base my opinion; and, thirdly, "my opinion is based on those facts".

20 This is a good example of the problem with a number of the paragraphs in this report. It is a very broad sweeping statement and it makes it impossible for anybody reading it to understand the basis of his conclusion, the basis of his
25 opinion and how he has come to that opinion.

For example, when he refers to a number of key personnel to make decisions - now, we don't know who those key personnel were, when these decisions
30 were made, what the decisions were, the source of his knowledge about those decisions, and so on. Nowhere in this paragraph does he define the factual basis for his opinion.

35 In those circumstances, your Worship, it breaches almost everything was said in Makita v Sprowles on how an expert report should be prepared and put before the Court.

40 In my submission, whilst your Worship is not bound by the rules of evidence, the report in this paragraph, for example, has no probative value whatsoever and your Worship could not possibly, in my respectful submission, come to any conclusion
45 based upon that kind of generalised assertion.

Can I take your Worship to the bottom of the page,

the last paragraph, which is objection number 3.
He says:

"Having identified this threat."

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Well, what threat we don't know. He is really asserting again what the evidence establishes. But when we go into the top of page 53 he says:

10 "This could have involved the sourcing of substantial additional resources."

15 With great respect, anybody could say that. He doesn't tell us what resources were available, which jurisdiction. If he says "resources were available" how does he know it? Has he made inquiries? He should specifically tell us so that we know when we are looking at the report the basis of his knowledge and therefore the factual
20 basis for his opinion.

I don't wish to address in any more detail the subsequent objections. I have set out the basis of those objections in my letter, and the general
25 tenor of them is the same as I have addressed your Worship in relation to page 52.

Perhaps if I could take your Worship to another example on the last page of my letter, objection
30 11, which relates to page 123. He says in the sentence commencing "from my observations" - second paragraph, halfway down:

35 "From my observations, particularly of television news footage."

Now, with great respect, your Worship, what television news footage. He should identify it, which program, what it was, so we can see it. How
40 can your Worship draw a conclusion as to whether his interpretation of that news footage is consistent with his opinion? More importantly, how can we know in reading the report whether his opinion is properly based upon what he has seen.
45

That is the kind of thing which this report suffers from. I would ask your Worship to rule

upon each of those objections which I have raised in my letter; if your Worship please.

THE CORONER: Thank you.

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MR LASRY: Your Worship, the problem with the objections in my submission is that they take an approach which is to analyse particular passages. For example, the first one to which my learned
10 friend referred to on page 52 appears to me to be a summary of what follows.

In that context, let me put the broad proposition that in my submission is appropriate: to analyse
15 lawyer style this report and to pick out passages which refer to things in the general, those particular parts of the report in my submission can only be impugned if the report as a whole doesn't answer the questions that my learned
20 friend is raising; in other words, on a reading of the total of the material that is put before your Worship in this report, it isn't clear, not from particular sentences but from an analysis of the whole document where Mr Roche's information
25 was coming from, the factual basis on which he was coming to the conclusions that he came to.

For example, in relation to page 53 at the top of the page where my learned friend raises the
30 question of the availability of additional resources, that is dealt with specifically at page 111 under the heading "available resources":

"My inquiries have indicated that had the SMT
35 acted from about 13 January to seek support from inter-state, at a minimum, the following resources could have been obtained."

Then he identifies each state from which resources
40 might have been obtained, footnoted to the basis on which those facts were concluded by him.

The other aspect of it, your Worship, in the submissions which have been made from the Bar
45 table, is that it has been apparent throughout that part of Mr Roche's process in formulating this report has been to sit and listen to the

evidence. Indeed, in exactly the same way that Mr Cheney did. He offers an opinion, as it were, on what the evidence reveals to him.

5 That doesn't mean for a moment that your Worship
is bound by it. In any case where an expert is
called, tribunals of fact, whether they be judges
or juries or coroners or Magistrates, they are
entitled to look at the way in which an expert
10 witness presents their material and reject it;
either because they reject the factual basis of
the expert evidence or because they reject the
opinion because for one reason or another on
analysis in the opinion of the tribunal of fact
15 the opinion is not something that tribunal is
prepared to act on. That is open to your Worship.
That is under the rules of evidence.

Now, these objections are - I was going to say
20 pedantic but I don't mean pedantic - an attempt to
analyse literally word for word particular
passages of the report without an indication as to
whether or not the criticisms are in fact answered
by the report as a whole.

25 In my submission, these objections are really
putting to your Worship arguments as to why you
shouldn't act on Mr Roche's evidence. They are
not a reason not to take this report in its
30 present form and then come to that conclusion.
Your Worship is entitled to look at the report, to
hear what Mr Roche says in answer to questions
about where particular information comes from and
the basis on which he comes to the conclusion he
35 does and then to make a judgment about it.

Inevitably any expert report is going to be
crafted in a way that suits the non-legally
qualified expert. Unless it can be said that
40 nowhere in the report are the factual bases of
Mr Roche's opinions apparent on analysis, then in
my submission these objections are, in a sense,
small and at the edges of what is otherwise a very
substantial document.

45 In my submission, the appropriate course for
your Worship to take is to, in a sense, not

finally deal with these objections at this stage but to take the report and to hear Mr Roche's evidence and to use the objections and your Worship's view of the objections to determine
5 whether you are prepared to act or not act on Mr Roche's evidence. Rather than as a preliminary argument at which your Worship be asked to excise particular portions of a report, the appropriate course is to take the report as a whole and to
10 take these objections as a submission and as a criticism of the report which you will either accept or reject.

THE CORONER: Thank you, Mr Lasry. Mr Watts, in
15 my view, the appropriate time for you to raise this and the concerns that you have about the report is in your cross-examination of Mr Roche. And then if indeed you are not satisfied with the questions or the concerns that you have, then so
20 be it, it will be on the record and that will be part of the evidence.

Likewise, you will undoubtedly make submissions as to what part of the report I can or cannot or
25 should or should not accept, what part I should reject and what weight I can give to various parts of this report, as indeed to all of the evidence that has been called in the inquiry. Just because the report is here before me doesn't mean that I
30 will necessarily accept it in total or I will reject it in total. It will depend on the evidence that Mr Roche gives and the cross-examination by yourself and other counsel of Mr Roche to test the opinions and the conclusions
35 that he has come to in his report.

MR WATTS: With respect, your Worship, I hear what your Worship has to say. In my submission your Worship will need to deal with each of the
40 objections as they stand. It is just simply not the fact, in my submission, that these paragraphs to which I have objected are generalised conclusions based on other parts of the report.

45 Can I simply take your Worship to the paragraph on page 53 commencing with the words "of particular concern" where Mr Roche ends up - part of my

objection is the last word - where he used the word "negligence". Frankly it is not his function to make an assertion. He couldn't make it in a civil case; he shouldn't make it here.

5

That paragraph, one can look in vain throughout the report for any particular evidence upon which that paragraph has been based in his general assertion. In my submission these do not go to weight; they go to admissibility; and they should be excised because they are of no probative value. I have heard what your Worship has to say, and there is nothing else that I can add.

15 THE CORONER: Thank you, Mr Watts.

MR PIKE: One final aspect on that, given the exchange we have just heard between yourself and counsel assisting and Mr Watts, I will not advance the argument any further. But there is a passage in Mr Roche's report where it appears he has stepped, at least in my submission, outside of the role of an expert and into the role of an investigator and had done things in his investigations things that we were not privy to. In due course I will be taking your Worship to that and be asking you to excise that as well.

MR LASRY: I call Trevor Roche.

30

<TREVOR MICHAEL ROCHE, SWORN

<EXAMINATION IN CHIEF BY MR LASRY

MR LASRY: Q. Mr Roche, would you tell the court your full name, please?

35

A. Trevor Michael Roche.

Q. Mr Roche, in August of last year - perhaps I should also ask you your occupation?

40

A. Present occupation is consultant.

Q. In August of last year, were you requested to become involved in this inquest proceeding and, as part of that involvement, to commence the process of preparing an expert report for the assistance of the coroner?

45

A. That's correct.

Q. On 13 July of this year, did you finalise that report?

A. That's correct.

5 Q. Insofar as the report stands as your statement in this matter, so far as you are aware are its contents true and correct?

A. Yes. There are three minor alterations, if I could submit those.

10

Q. Yes, certainly.

A. On page 54, the footnote number 65 should read [ESB.AFP.0110.0770]. On page 107, the beginning of the second paragraph the date should read

15

"16 January" not "15 January".

Page 163, the beginning of the second paragraph regarding "fire at Longwood in Victoria" the date of 1962 is, I believe, incorrect. It should read either "'64" or "65".

20

Q. Thank you. Apart from those amendments, as far as you are aware is the document true and correct to the best of your knowledge?

25

A. That's correct.

MR LASRY: As I have already said, I think it is unnecessary to tender it, although we discussed it for the purpose of Mr Watts's submission. But the document is [DPP.DPP.0009.0001].

30

Q. Mr Roche, let me just ask you generally in relation to the process by which this report was compiled from August of 2003 once you became involved in this matter. Just give us a broad overview in the way you conducted yourself for the purpose of obtaining information and applying yourself to the task of eventually completing this report?

35

A. The majority of my process was to review the evidence that formed a part of the brief, including witness statements and other material. I visited a number of sites that were the subject of material in the brief and that I considered would be of interest to me in forming a view. They were the primary ways. And of course my attendance in court, listening to the evidence as

40

it was presented.

Q. As far as that last thing is concerned, how
much of the evidence do you believe you've heard?
5 Perhaps I will ask you it in two parts: first of
all, were you here for most of the time that
evidence was given?

A. That's correct.

10 Q. Were there days that you missed?

A. Yes, there were.

Q. Were they a fairly small minority?

15 A. I suspect so.

Q. Have you also had access to the transcript?

A. Yes, I have.

20 Q. Have you perused the transcript for the
purpose of your report?

A. Yes, sir.

25 Q. Again, to establish what happened factually;
was that the purpose of your examination of the
evidence in the transcript?

A. That's correct.

30 Q. And broadly what other activities have you
been involved in? You have been in court, you
have heard the discussion about whether or not you
were involved in what might be described as
"investigative activities" but did you have
contact with the police investigation team from
time to time?

35 A. Yes, I did. I worked closely with the police
investigation team on a number of occasions,
particularly in relation to providing them advice
in relation to lines of questioning that they may
take in terms of ascertaining the facts, and also
40 to provide me with the information that would
assist me in ascertaining what occurred for the
purposes of my report.

45 Q. In relation to counsel assisting the coroner -
myself, Mr Woodward and Ms Cronan - have you also
worked with us?

A. Yes, I have, primarily in keeping abreast of

the evidence and also providing advice from time to time going on the line of questioning that would be of assistance to her Worship in making a final determination.

5

Q. In the preparation of your report, apart from the work that you did in preparing it, who else participated in the preparation of the document?

10 A. Only Mr Woodward, to the extent of - because of the time-frames, the difficulty I had, your Worship, was I had to listen to the evidence before I could begin to prepare the report. So it wasn't necessarily a sequential process. I had to wait for the evidence to finish. Then I had a
15 very short time frame, of which you are aware, in which to compile a report. It became clear to me that the dimension or the issues that had been raised, understandably, meant that the report was going to be more complex.

20

I sought Mr Woodward's assistance in terms of me submitting parts of the report to him and then him assembling the final report, rather than me having to waste considerable time in putting the report
25 together. So I did chapters or parts one at a time and I sent them off to Mr Woodward. He put them into a single document.

30 Q. Insofar as it was necessary to locate evidence and refer to it in the course of your report, did you have assistance to do that?

35 A. In some instances where, again, time was of the essence, I sought again Mr Woodward's assistance in providing me with the references to evidence where I had made certain submissions or assertions of fact where they were present in either the brief or in transcript. I was supported by Mr Woodward in that manner.

40 Q. Insofar as you formulated conclusions represented in the report as your conclusions or your opinions, whose conclusions and opinions are they?

45 A. They are mine.

Q. Has anyone else participated in that process?

A. No.

Q. Have you been given at any stage any direction as to conclusions or opinions that you are to express?

A. No, sir.

5

Q. On page 6 of the document you set out your experience. I don't want to go through it in detail because it is there in detail. But in summary, am I right in saying that what is laid out in those pages is a career in firefighting which began in 1963 when you joined the CFA in Victoria?

10

A. That's correct.

15

Q. And you rose through the ranks in that organisation, as you describe, to a position of chief officer?

A. That's correct.

20

Q. You held that position from 1995 until 26 June 2002; is that correct?

A. That's correct.

25

Q. Your involvement in the CFA I take it was operational - let me go through some of the aspects of your involvement: operational involvement?

A. Yes, sir.

30

Q. As a firefighter?

A. Yes, sir.

Q. As a fire ground commander or officer?

A. Yes.

35

Q. You also obviously have been an administrator within the CFA?

A. Yes.

40

Q. Manager?

A. Yes.

Q. And the ultimate person who took responsibility of the CFA in Victoria as the chief officer?

45

A. That's correct.

47

Q. Has that experience in all its facets involved obviously a broad range of fire activity and fire suppression effort?

A. Yes, sir.

5

Q. Has it also involved over the years numerous regular liaison with government?

A. Yes.

10 Q. Particularly in your more senior positions you were required to liaise with government?

A. Yes.

Q. And with the community?

15 A. Absolutely.

Q. Is it right to say, and we will perhaps come to this in more detail later, that in Victoria over the years and certainly under your participation in the CFA and as chief officer, you have been involved in a development in the relationship between the CFA and the community in various parts of Victoria?

20 A. Yes.

25

Q. It is right, isn't it, to say that the Country Fire Authority in Victoria is both a Rural Fire Service in the sense that it is made up of fire brigades in country towns and country centres, essentially staffed by volunteers; that's part of it, isn't it?

30 A. Yes.

Q. But it also has a full-time or professional firefighter element to it?

35 A. Yes.

Q. And in that latter category the CFA is responsible for - you might be able to be more precise than I can be - as it were the fire suppression effort in the outer parts of the metropolitan area of Melbourne and larger cities like Bendigo, Ballarat and places like that?

40 A. That's correct. Your Worship, the CFA manages fire management in more than 50 per cent of the metropolitan area of Melbourne and all of the large regional centres across Victoria. The three

fire services in Victoria: the metropolitan Fire Brigade which looks after central Melbourne and approximately a radius of 10 kilometres outside the central business district of Melbourne; the
5 CFA which looks after the remainder of Victoria with the exception of public land, that public land being managed by what is now the Department of Sustainability and Environment.

10 Q. I will make it clear to you, Mr Roche, I am not going to ask you step-by-step about every part of this report. I will go to parts of it.

MR LASRY: Your Worship, I make it clear that my
15 selection of things to ask Mr Roche about doesn't represent any list of priorities, it is just simply matters that I considered might benefit from some clarification.

20 Q. On page 9 of your report, and I will come back to this later, you refer to your tenure as chief officer. You note during the period that you were chief officer the CFA was a lead agency in the development and introduction of the AFAC policy on
25 evacuation. As you know, evacuations achieved some significance in the course of this inquest. Just describe for us, if you would, what that AFAC policy is and how it developed?

A. The underpinning principle of the policy is
30 that able-bodied people who are prepared should be encouraged to take responsibility for their own safety and the defence of their property. This came out of a recognition a number of years ago - the obvious recognition - that firefighters and
35 firefighting appliances could, where urban interface fires were involved, never be in a position to defend every property that was at risk from a broad fire front. The only way in which additional properties could be defended was by the
40 owners or the occupiers themselves.

So over a number of years that principle was recognised. The community was involved in consultation, as were all agencies eventually
45 across Australia, to the extent that that particular policy evolved.

47

Q. Just to complete your CV as it appears in the document, on page 10 you refer to your retirement from the CFA and taking up a position with Emergency Management Australia. I think you gave your occupation as consultant when I asked you the question a bit earlier. Are you in fact a consultant with Emergency Management Australia?
A. No, I no longer work for Emergency Management Australia.

10

Q. Sorry. So you are a private consultant?
A. Yes.

Q. On page 10 you set out the activities that you were involved in with Emergency Management Australia.

15

Now, jumping quite a bit forward, if I could take you to page 38 in part 6 of your report - part 6 being the analysis of issues preceding the response to the fires of January 2003. B at about halfway down the page --
A. Is that part 5?

20

Q. Page 38?
A. Yes, part 5.

25

Q. I see there is a confusion here. I withdraw that. Yes, part 5, Mr Roche. Page 38, point 5 on the page you say this:

30

"Despite this recognition of the expected severity of the 2002/03 fire season, the evidence suggests that little if anything was done in the lead-up to the season by either ESB or the DUS over and above the normal pre-season preparations.

35

"In my opinion, had the ESB risk management unit undertaken even a cursory assessment ie risk analysis, of the emerging conditions and applied the methodology outlined in AS/NZS 4360:1999 (discussed further in part 10 of this report) and the associated emergency risk management process --

40

45

Then certain things would have been evident. Am I

right in saying that the methodology for that analysis is referred to at page 151 of your report?

5 A. That's a framework of the methodology, that's correct, sir.

10 Q. In fact, that section of report starts with "Risk management and the AIIMS - ICS". On page 151 you have set out the framework for the methodology?

A. That's correct.

15 Q. If I could just ask you to explain the way in which that methodology or that framework is applied to a situation such as was prevailing here.

20 A. The first part of the process is establishing the context. In a broad sense, of course, that relates to the context of wildfire in those areas of the ACT where that wildfire might be expected to occur and spread and have some impact on the environment or communities or property.

25 The process then goes on about identifying the risks of describing that environment and in particular in this case of identifying what parts of the community or the environment might be at risk and then scoping those and describing that risk in more detail.

30

Q. Yes.

35 A. The next part of the process is analysing those risks and, more importantly, determining what is the likelihood of the risk emerging and what the consequences of that might be and taking as broad a view as is reasonably practical to encompass not only the area that might be directly affected but what might occur in a broader area of interest.

40

45 Then evaluating those risks and proposing treatments to ameliorate the risk or, where that is not possible, to deal with it in such a way that the community participates in dealing with the risks should it emerge. The whole process, of course, is subject to constant monitoring and review and particularly communication and

consultation with those that are likely to be most affected, including government, other key stakeholders, other agencies and particularly the community.

5

Q. You say in your report at page 38 that an application of that framework would have indicated three particular things: "firstly, the likelihood of a significant fire or fires occurring was almost certain; secondly, the consequences of such an occurrence would be classified as moderate, major or catastrophic dependent on weather location and exposures; and, thirdly, these factors generally give rise to an extreme level of risk". I take it in coming to that view you are identifying the 2002/03 season as an unusually dangerous season; is that correct?

A. That's correct. There are two ways in which the assessment can be conducted, either through a quantitative process or a qualitative process. In my view, the inputs of a quantitative process that some people might prefer are too complex and there are likely to be significant variations across the landscape and within areas that are most likely to be impacted. So a qualitative analysis is a far more practical way to go.

Q. On page 39 you then refer to examples of the actions which should have occurred and you list them in a number of dot points. Can I ask you about those in this context: one of the criticisms you make in your report is in effect a lack of pre-season community education and information; am I right about that, just generalising that overall criticism?

A. That is generally correct. I'm not suggesting that there wasn't any; what I am suggesting is there were more appropriate ways of concentrating that education so that the public were better informed.

Q. Does the appropriateness of what you would suggest could or should have been done go to the effectiveness of the information that is being provided to the community?

A. That's correct, yes.

47

Q. Given that that was the situation, these dot points set out on page 39 are all things that, notwithstanding that situation, could have been done in the lead-up to this particular fire season, 2002/03?

A. I believe so.

Q. Just to ask you about some of them as we go through them: the first one is "concentrated initial and ongoing community education and awareness campaigns". What does that mean in practical terms in the sense of the sorts of things that might have been done?

I am sorry, if I can ask you this question beforehand: can you give us a time frame for the doing of these kinds of things? What portion of the 2002/03 season are we talking about when we are looking at these dot point actions?

A. I don't want to be too specific about dates because I am not directly aware of when a fire season normally emerges within the ACT - I don't want to be specific about dates. But certainly once it became evident, and there was some evidence that the ACT was coming off the back of what had already been a very dry period in the period prior to the 2003 fire season, and that's a time when community attention was being turned to perhaps how dry it was, that's the time that education should have commenced and continued with increasing concentration toward the peak period of the season.

Q. In practical terms what does that first dot point really mean? What sorts of activities are you there referring to?

A. They are highlighting the unique nature of the season that was emerging, on the back of the information that had been provided by the Bureau of Meteorology and the National Climate Centre, beginning a process of alerting the community to those conditions and the consequences of those conditions continue.

Q. And how could that have been done? What is the most effective way of doing that in these circumstances?

A. The most effective way is face-to-face briefings with sections of the community. Whether that would occur then or later, that's the most effective way of getting the message across.
5 There are a number of mechanisms that can be utilised and have been utilised in other jurisdictions without reinventing the wheel, which is to go to community service organisations, to go to various community meetings. It is quite
10 surprising when you look into a community at the number of forums that are available that whilst they are probably in some cases specific to the interests of the people who make up that forum, nevertheless they can be used as a carriage for
15 other messages.

MR LASRY: Is that a convenient time, your Worship?

20 THE CORONER: Yes. We will take the morning adjournment.

SHORT ADJOURNMENT

[11.20am]

25 **RESUMED**

[11.45am]

MR LASRY: Q. Mr Roche, before the break we were on page 39. I think I had asked you about the first dot point on that page. Can I ask you about
30 the third dot point in relation to examples of actions that should have occurred. Your third dot point says:

35 "Possible adjustments to the weight of attack criteria for individual and multiple incidents."

I would like you to explain what you mean by that, by what "weight of attack criteria" are used and
40 what kind of adjustments would be in the range of things that you would have expected at that stage?

A. The Bushfire Service standing orders and the Rural Fire Control Manual prescribe the initial response that should occur to wildfires within the
45 ACT. I am not aware of the basis of how that response was designed but I assume that it was for average incidents in an average year.

There were special conditions related to fire season 2003 that was predominantly due to the drought. As a result of that, it could be expected that fires first of all would probably commence more easily and certainly spread quicker and with greater intensity. Therefore it may have been appropriate for the factors which led to the initial response criteria being developed to be reviewed and, where necessary, the weight of attack, the number of appliances or number of firefighting vehicles and crews that were responded to fires under certain weather conditions to be increased to give greater initial suppression capability.

Q. You deal with weight of response over on page 50, am I right? In relation to code orange day on page 50 you set out a table there for the stand-up arrangements. Then you deal with the ACT Bushfire Service standing operating procedure No. 7 in relation to the weight of response. Is that what you are referring to? Is it an adjustment of that which you are referring to in that third dot point?

A. That's correct.

Q. A couple of dot points down you refer to "hire of heavy plant and pre-positioning options". As far as you understood it, was the heavy plant which was immediately available in the ACT and the circumstances that prevailed in January 2003 adequate?

A. My understanding is that the agencies in the ACT don't own heavy plant and rely on the hire of heavy plant. My understanding from the evidence was also that there were some machines - two, I believe - that were under hire at the time to the forest service --

MR WATTS: Can I interrupt: can we have a definition of what is meant by "heavy plant"?

THE CORONER: Q. And the agencies you are referring to. When you refer to the agencies, are you talking the ESB?

A. The forest service, the Department of Urban Services embracing those land management agencies

and the land management agencies.

MR LASRY: Q. Does heavy plant mean any more than bulldozers?

5 A. Bulldozers would be the key item of equipment that I believe I am referring to there.

10 What I am suggesting there is that, in a year such as was experienced in 2003, to rely on what I believe from the evidence to be the ad hoc availability of that plant - in other words, it would be available at the time that the fire service had it on hire - is insufficient in terms of guaranteeing availability. What I believe
15 should have happened is that the Bureau should have ensured that they had guaranteed access to that machinery through hire to the Bureau.

20 Q. I suppose the difficulty in an exercise such as you are suggesting should have occurred here is quantifying the amount of plant that they were likely to need? How do you do that? How do you make those arrangements without knowing what your needs are going to be?

25 A. It is always a difficult question. The fact of the matter though is that, given the weather conditions and given the conditions that existed in the mountains to the west of Canberra, as I have indicated later in the report and we have
30 just discussed, a risk assessment would have indicated there was a high probability of fires occurring in that area and proving difficult to contain and therefore a minimum of bulldozers, heavy plant should have been available.

35 Now, I'm not suggesting a number. What I am suggesting is that the process should have indicated that requirement and, based on a more specific and focused analysis, the Bureau
40 determine what they believed was appropriate to have.

45 Looking at the evidence my suggestion, as I have made later on, is that there should have been the availability of two D6 or bigger machines.

Q. And prepositioning options, which is the other

half of that dot point. Can I take it that means options in relation to locating heavy equipment in particular strategic spots; is that what you mean to convey by that?

5 A. My belief is it would have been appropriate as part of the analysis for the Bureau to look at the advantages of having some of that machinery at certain times of the day under certain forecast conditions to be closer to where the high risk was
10 likely to be and where the utilisation of that machinery would have materially assisted in bringing about earlier containment.

15 Q. What happens if you are wrong in your assessment about the likely location of the highest risk and in fact you preposition for that risk and something happens somewhere else?

A. It is no different with any equipment that you utilise. Whether it be aircraft, whether it be
20 heavy equipment, whether it be personnel, Murphy's law indicates that they are never quite in the right place where you need them at the right time. But you can always make a calculated assessment based on past experiences and the current
25 environment. I'm not suggesting that you put it in a position where it is well removed from other lesser risks, but you may have it in a position where at least it is closer to areas of high risk.

30 Q. Do you have particular locations in mind?

A. No, I don't.

35 Q. The next dot point - I am not going to go through all of these - is:

"Inspection and familiarisation of primary and secondary access routes throughout high risk or vulnerable areas, fuel loads and combat scenarios."

40 Just explain if you would what that means in practical terms - what are the things that would be done pursuant to a suggested inspection or familiarisation of primary and secondary access
45 routes?

A. All of the people at any time could have been required to respond to fires in national park and

should have been aware in a year like 2003 of what the conditions were out there, the access that they may have been experiencing, the difficulties that may have confronted them, the fuel loads that were evident and the condition of fuel on the ground that might affect access or the implementation of various tactics and strategies.

I mean in terms of all of the people, all of the people from the Department of Urban Services, including commanders; all of the people from the Bushfire Service, including their volunteer brigades; and anybody else who may have been required to support into those areas. It is better to have an idea of what you are going into before it occurs than it is to be confronted with it and have those circumstances perhaps delay the decision-making process while there is a process of familiarisation.

20

Q. So it means regularly driving into the areas, driving around the roads, inspecting the roads?

A. That's correct.

25 Q. Checking for gates that are closed or locked?

A. That's correct.

Q. Or roads that are blocked; is it those kinds of practical things?

30 A. That's correct.

Q. How often should that kind of reconnaissance, if that is the right word for it, be carried out? Is it something - perhaps I can ask you, rather than ask you to be that specific: is it a regular thing that is done as part of training exercises or preparation for a season?

35 A. It should be. Where people have a responsibility to respond to a risk, then the more knowledge they have about that risk before they respond to it the better.

40 Q. And the location of the risk which is perhaps what you are dealing with specifically in that case?

45 A. That's correct.

47

Q. The things that you have set out on page 39 as actions which should have occurred - we will come to issues of command and control and responsibility later - whose job is it to do the sorts of things that you are suggesting on that page; or whose job was it as at January or as at the 2002/03 season?

5
A. I think it was the responsibility of the Bushfire Service collectively, and supported of course by the Bureau, to ensure that all of the preparation that could have been done was done in recognition of somewhat different circumstances that were going to prevail.

10
Q. If we can go across to page 42 and deal with the two recommendations which you make on that page, they are recommendations concerning initial response; is that correct?

15
A. That's correct.

20
Q. Do I understand correctly that the recommendations you are making effectively suggest that the Emergency Services Authority have overall management of the interagency response or, if you like, the multiple agency response; is that right?

25
A. That's correct.

Q. But do your recommendations also mean that, for example, the Department of Urban Services have responsibility for an initial response?

30
A. That's correct.

Q. So how would that work in practice? Just describe broadly how you think that would work? A fire starts, what happens?

35
A. I think the agency that has the principal responsibility for management of the land should have the greatest amount of knowledge concerning what fire might do on their land and the consequences of that fire spreading on and from their land, and so should therefore be in a position to best make an initial assessment of the resources that should be responded in order to bring about rapid control of that fire. Once that response has occurred and it becomes evident that more than one independent agency, such as State Forests or the Parks Service, are likely to be

involved then it becomes the responsibility of the authority to co-ordinate the activities and ensure that resources are applied effectively and efficiently across all of the agencies.

5

Q. Do those recommendations signify your agreement to the propositions that were put by Mr Cheney - or if only partly, to what extent - in relation to his proposition that the land managers should have the responsibility for the fire suppression? He described in detail the benefits of that. Do these recommendations represent an agreement by you to his propositions?

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A. I certainly agree with the proposition that the land managers should have the responsibility to respond to fire on their land and determine the resources that they believe are appropriate to bring about early containment. I'm not quite sure what Mr Cheney's proposition or position was in relation to ongoing management of the incident once it moves beyond an individual land manager's responsibility.

25
What I am saying is in those circumstances my position is that the ESA should then assume overall responsibility for control and coordination of a whole-of-government approach.

30
Q. And they would then probably be controlling a number of agencies taking part in the fire suppression effort; wouldn't they? Is that likely?

35
A. Yes, absolutely. If there is only one agency involved, then the command and control rests with that agency.

40
45
Q. Another issue which has arisen from time to time in the course of this inquest, and you deal with in various parts of your report starting at page 44, is the liaison with New South Wales agencies. At page 45 in particular - we will come back to this - just above the heading "resources available in the ACT", you refer to the memorandum of understanding which has been executed now between the New South Wales and the ACT governments.

47

Can I summarise generally what I understand to be the position that you take in relation to this and just ask you how it would work. Am I right that your view is that when a fire is proximate to either New South Wales when it is in the ACT or the converse if it is in New South Wales but proximate to the ACT or in the ACT proximate to New South Wales that the border between New South Wales and the ACT for the purpose of fire suppression should have no effect?

5
10
A. That's correct.

Q. And the way to achieve that, as I understand your position, is to have a process of unified control?

15
A. That's correct.

Q. You deal with that by reference in this part of your report and subsequently at page 168 - I will perhaps come back to that a bit later - can I ask you a question about how it would have worked in these circumstances. If the memorandum of understanding and a concept of unified control had been working in January 2003, then on the 8th of January when fire started in both the Territory and the State of New South Wales how would, under that process, you anticipate that the incident would be dealt with that is different from the way that it was dealt with?

20
25
30
A. I think I would like to move a day later than 8th January. But certainly --

Q. Pick a date that suits you for the purpose of giving your explanation.

35
40
45
A. Not so much a the date as the escalation of command and control arrangements and structures that were necessary to management the incident. As soon as those structures were contemplated and developed then the principles of one incident controller, one plan and one response should be the overriding considerations. I recognise that there are always going to be difficulties when you have got two jurisdictions involved. I have experienced that myself. Even when two agencies are involved it can be complex.

I would like to change the constitution, but I am

not in a position to do that in relation to that
at the moment. So we are stuck with what we have
got. My thrust is or my view is that all that
needs to happen is that we need to recognise that
5 there are two jurisdictions involved but ignore
that from the point of view of managing the
incident through cooperative pre-agreed and
pre-determined arrangements. That in my view
doesn't compromise jurisdictional responsibility
10 at all. Information and policy can still be
applied by the incident controller to that part of
the fire which happens to remain in a particular
jurisdiction. But the overall management of the
incident, the utilisation of resources and
15 communication to key stakeholders in the community
is done under a single entity.

Q. Does that mean in this case the major fires,
the three or four major fires in the ACT - the
20 McIntyre's Hut fire, possibly the Broken Cart fire
and any other ancillary fires - would for those
purposes be seen as a single incident and be under
that unified control, subject, as you say, to
local input essentially under unified control?

25 A. I am suggesting that each of the incidents
would be managed under a structure of unified
control whether in fact it was a single
structure - and I'm not suggesting that. There
may well have been a need assessed by the agencies
30 to have a number of incident management teams but,
regardless of how many there were, each one of
those would have been constructed along the lines
of a unified approach.

35 Q. Can I take you across to page 53. You might
recall it was raised in the course of a submission
made before you started your evidence. In the
second paragraph on page 53 you say:

40 "Of particular concern is the number of
apparent instances in which personnel were
required to undertake last minute action to
avoid rapid fire development or arrived at a
point at which they were 'burnt over' by
45 advancing fire. My experience is that the
margin between survival and death in these
events is so narrow, that to contemplate

these incidents as arising from anything but inadequate training and situational analysis and poor command, is tantamount to negligence."

5

Now, in relation to the apparent instances, it is submitted that you didn't particularise the particular instances to which you were referring when you wrote that paragraph. What instances did you have in mind?

10

A. There was the number of incidences involving ACT Fire Brigade appliances on Eucumbene Drive and Warragamba Avenue; Mr McNamara's quite graphic description of what occurred to him during his evidence; the dozer driver that was down at Blundells gate on 18 January, which is referred to in Mr Cooper's statement; Mr Cooper's experience himself down at, I think from memory, the Uriarra Crossing area; and I think the Rivers 1 tanker or the Rivers 1 vehicle that was with Mr Cooper at that time. That's just three or four that come to mind whereby people were trapped, were burnt over and in my view were fortunate to survive.

15

20

Q. I passed over one thing I should ask you about on page 50 - you have already referred to this once in the course of your evidence - where you refer to resources available. You are still talking about resources available for initial response and you set out by way of table what is available.

30

A. Yes.

Q. And then in the last paragraph you say:

35

"Had the 'weight of response' according to ACT BFS standard operating procedure No. 7 been dispatched to the fires that were confirmed within the ACT by the late afternoon on 8 January 2003, it would have required the deployment of 9 tankers and 6 light units ie, 3 tankers and 2 light units to each fire. As a result, excluding the resources of the ACT Fire Brigade, 11 tankers and 14 light units would have remained uncommitted."

40

45

47

Now, what do you suggest should be made of that as far as those statistics? The point you are making is there were still uncommitted resources. Are you saying those resources therefore should have
5 been used and weren't? Is that the point of those figures and that table?

A. There are two points there: firstly, that the response was not in accordance with the weight of response; and, secondly, there were additional
10 significant additional resources available which could have been deployed, and in some cases perhaps should have been deployed given the circumstances, the time of the day, and the impacts of the drought and the weather at the
15 time.

Q. In relation to the Stockyard fire, for example - we will come to this in a bit more detail - two tankers and a light unit went to the
20 Ginini carpark. There were some difficulties about locating that fire; is that right?

A. That's correct.

Q. In relation to the Gingera fire no ground
25 crews attended on 8 January and the following day two light units attended. Are you saying, therefore, that there were more resources for example available to be applied to the Bendora fire in those circumstances than were applied?

30 A. Yes.

Q. Do you make that comment pursuant to some criteria or some approach that derives from your own experience in the CFA in Victoria?

35 A. Only to the extent that it is my view that the resources that responded to an incident go there for the purposes of containing that incident and, where possible, suppressing it. That ought to be taken into consideration when the response is
40 made. It seems to be from the evidence, particularly Ms Arman's evidence, that more could have been done if more resources had been available.

45 Q. At the Bendora fire?

A. At the Bendora fire.

47

Q. On the night of the 8th of January?

A. On the night of the 8th.

Q. At page 54 you refer to fire control
5 objectives or considered and approved control
objectives, and in particular I think you
corrected footnote 65 on that page. The relevant
paragraph notes:

10 "For instance, on 12 January 2003 the IMT
considered and approved control objectives
for the Bendora fire where the estimated
probability of success of the three
15 alternatives ranged from 15-50 per cent.
However, there is no evidence that this
assessment of the approved strategies
prompted further detailed analysis and the
development of alternative options to deal
20 with the 50 per cent probability of failure."

20 What are you saying about those kinds of
percentages? Is there a problem with
acceptability options which at best only have a 50
per cent chance of success?

25 A. The options analysis and the probability of
success gives a one-in-one chance that you are
going to get it right or you are going to get it
wrong. It is usual when constructing alternatives
that the three alternatives, which is the
30 recommended number, all should have some degree, a
high degree of success associated with them, and
hopefully somewhere along the line getting close
to 100 per cent. The probability of success is a
factor. This analysis indicated that there was
35 only at best a 50 per cent chance of being
successful, and therefore there was then quite
clearly a 50 per cent chance that the strategy or
the objective was going to fail. Therefore, it
would be my view that the analysis of the
40 consequences of that failure should then have been
carefully considered and steps initiated to deal
with the consequences of that failure.

45 Now that may have meant some other alternative
strategies. It could have meant changes to
deployment, more heavy equipment, et cetera, more
people; or it could have meant that the key issue

was to increase the community's knowledge of what was occurring so that they were better prepared in case that failure led to the likelihood of a greater impact on the community.

5

Q. So that if there is not a viable option that is better than 50 per cent, it is time to start telling people; is that right?

10 A. Yes, that's correct. In my view, community education and community involvement is the last option that is available; in other words, when everything else has been used and has not achieved the outcomes, then the community are the ones that need to be fully informed so that they can take
15 actions to look after themselves and their property.

Q. If we can go across to pages 58 and 59. You are dealing with the initial response and in this particular case McIntyre's Hut initial response on
20 the 8th and 9th of January.

A. Yes.

Q. In the course of your report on page 59 you refer to the report that Mr Cooper received from Mr Bretherton and Mr Mennen while they were at the Queanbeyan meeting. You refer to the time of that phone call - I think the evidence indicates that it was about 25 past 8 at night. As you say
25 there:
30

35 "According to the evidence of Neil Cooper, Mr Bretherton informed Mr Cooper while the latter was at the meeting with NSW personnel in Queanbeyan referred to below, that the spot fire - this is the Baldy Range spot fire - was containable with ground crews at that stage although the country was steep and he could not get all the way around the fire.

40

45 "There was nothing in Mr Cooper's evidence to suggest that the crew left him with the impression that they withdrew for reasons other than they had no capability to undertake any fire suppression activity and the purpose of their attendance (reconnaissance), was completed."

Assuming all that to be correct, are you saying at 25 past 8 at night it would have been feasible for fire suppression crews to drive out to that fire and commence suppression at the fire edge?

5 A. Yes.

Q. Time of day or darkness or anything else wouldn't prevent that or wouldn't inhibit that as far as you were concerned?

10 A. There is no doubt that operating in the dark without having seen the ground at the time increases the steps that need to be taken by a commander to ensure the safety of his or her crew, but it doesn't preclude the operation occurring.

15

Q. The effect of Mr Cheney's evidence has been, among other things, that night-time, particularly the first night of a fire, is probably the time at which fire suppression can be most effective. Do you agree with that?

20

A. I mean it is just commonsense. The fire has just started. It is the smallest it is going to be and, particularly after a change, it is probably the coolest it is going to be. So, yes, 25 the first night is always considered to be by far the easiest.

25

Q. At pages 60 and following you deal in some detail with a strategy that was developed on the night of the 8th of January, which effectively meant an area of containment of something of the order of 10,000 hectares - I think that is common ground - with the containment lines identified as they were at that meeting, which included the Goodradigbee River as the western containment line.

30

35

A. Yes.

Q. Mr Cheney, I think, was critical of the use of the river as the western containment line in this case. Do I take it from your report that you are also critical of the selection of that containment line?

40

A. That's correct.

45

Q. What is the operation or practical problem in having something like the Goodradigbee River as a

containment line?

5 A. My understanding is that there were parts of the river that were not readily accessible for crews and vehicles to patrol once the fire reached the river. My understanding also on the evidence was that there was quite some heavy fuel along the river. That is outlined in the National Parks and Rural Fire Service submission to the New South Wales coroner.

10

The New South Wales strategy, as I understand it, relied on the use of aircraft to contain any spot-overs or hop-overs of the line. My understanding is that the country to the west of the river was quite steep, leading down into the valley where the river was located. So any hop-over had the potential to rapidly run uphill. And of course the use of aircraft to contain hop-overs of the river was not a strategy that could be used at night.

20

Q. Is that in part because the effectiveness of aircraft depends on coordination with ground crews?

25 A. You can't fly helicopters, helicopter water bombers and aircraft at night.

Q. Mr Cheney has given evidence that one of the factors which was important in making the decision for the overall area of indirect attack in relation to this fire was to do whatever could be done to reduce its size. I take it as a matter of general principle you agree with that, the smaller area you have to burn the better?

30

35 A. Absolutely.

Q. Did you attend the field trip more recently that visited the Lowells trail area with a number of people? Were you part of that visit?

40

A. I was part of a visit which looked at the Lowells trail area and the point of origin of the McIntyre's fire.

Q. In relation to that trail and dealing with the fire at the point of origin, what do you say about the viability of Lowells trail as a western containment line based on what you saw and your

45

experience?

5 A. My belief is that the fire west of the trail
could have been contained quite readily that
night. As I understand, there would only have
been perhaps 500 or 600 metres or thereabouts of
10 trail. It wasn't overly steep as a point of
origin. It was a backing fire. The FDI, as I
recall it, had fallen significantly and was in the
low category. There wasn't a problem with getting
15 access to that part of the fire at Lowells fire
trail.

15 Q. You mentioned earlier the desirability of
inspections prior to the fire season or
reconnaissance travelling through the area prior
to the fire season. Would this be an area that
would obviously be part of the process if the
process was going on?

20 A. I would assume so.

Q. There was no actual inspection, I don't think,
on the night of the 8th of January of the ignition
point of the McIntyre's Hut fire or that area in
its vicinity. Was such an inspection viable? Was
25 it possible to be done?

A. Yes.

Q. Was there a time at which it became possible?

30 A. I think immediately after the change went
through and it was recognised that the FDI was
rapidly falling and the wind was abating, there
was ample time then to proceed to have a look at.
I also base that view on Mr Gould's evidence I
think it was - from CSIRO - who visited other
35 parts of the fire in close proximity in similar
terrain, and the CSIRO video that was shown to her
Worship, which suggested to me that that was a
very viable option.

40 Q. On page 64, going to a slightly different
topic, although related, you say:

45 "In the circumstances - you are describing
the circumstances as at the night of the 8th
of January - I consider that the interests of
the ACT should have been represented in a
more prominent manner in the formation of the

IMT than through a liaison officer.
Assessments undertaken and decisions adopted
by the New South Wales IMT were clearly aimed
(or should have been) at preventing the
5 spread of this fire under adverse weather
conditions. The jurisdiction most likely to
be affected by the onset of adverse weather
was the ACT. Under these circumstances, it
would have been appropriate for at least one
10 senior experienced firefighter from the ACT
to be integrated into the New South Wales IMT
with appropriate levels of authority (for
example, in the role of deputy IC)."

15 What in fact happened was there was a liaison
officer?

A. That's correct.

Q. What is the practical benefit or the practical
20 difference between having a liaison officer and
having, as you suggested, integrated a member from
the ACT who is performing the role of deputy
incident controller?

A. I think the impact that that person can have
25 in influencing decisions of the IMT is for, I
guess, more social and political reasons, more
acceptable than perhaps, in my experience, the
status one has as a liaison officer compared to
being a member of the Incident Management Team. I
30 say that on the basis that, as I have indicated
there, the ACT were the ones that were going to be
most impacted; therefore the interests of the ACT
or the decisions or the views of the ACT were the
more significant views in terms of ongoing
35 strategy for containing that fire.

Q. Does the difference in status between liaison
officer and deputy incident controller really make
a substantial difference in the actual result?

40 A. It shouldn't but in my experience it does.

Q. One of the particular criticisms that you make
in relation to this early period appears on
page 65 in the middle of the page. It relates to
45 the possible eastern containment line in relation
to McIntyre's. You say:

47

5 "More particularly, the failure to deploy
adequate resources to the task of containing
the Baldy fire during the afternoon and
overnight on 9 January when it was determined
that the Baldy Range trail should be
substituted as the eastern containment line
was, in my opinion, a significant strategic
error. It made what had already become a
difficult task by the morning of the 9th of
10 January far more problematic as the fire
continued to move downhill in an easterly
direction, into increasingly steep and
difficult terrain."

15 How important in the end was that error, as you
categorise it, in the overall scheme of things?
A. On the evidence that I have seen, and
including the inspection that I made, it seemed to
me that had that Baldy Range trail been adopted as
20 the eastern containment line, it would have
significantly reduced the area that had to be
burnt out and therefore should have contributed to
an earlier establishment of containment lines
around the eastern side of the fire.

25 Q. But in the end the answer may be that it is
not possible to say. But is it possible to say -
from an operational fireman's point of view which
is the way you were looking at it - if the eastern
30 containment line had been the Baldy trail and the
western containment line had been the Lowells
trail, what difference in the end would that have
made to the overall result? What is the most
practical way in which those alternative
35 containment lines would have contributed to the
fire suppression method?

A. Time taken to implement the containment
strategy should have been reduced.

40 Q. And when the extreme weather hit on the 17th
and 18th of January, why wouldn't the result have
been similar, even if those containment lines had
of been established?

A. If those containment lines had been
45 established early enough and the burning out and
consolidation of the containment lines occurred
two or three days before the 17th and 18th, then

the chances of that fire escaping the containment lines would have been significantly reduced.

5 Q. If we go over to page 66 and deal with the Bendora fire. In relation to the initial response to the Bendora fire, am I right there are at least in your opinion, two main issues: one is the weight of response issue, if you like, that we have already dealt with and which you deal with at 10 page 50 of your report; and the other is the withdrawal of firefighting personnel on the night of the 8th of January?

A. That's correct.

15 Q. Are they the two main issues in your view?

A. That's correct.

20 Q. As I understand your opinion, having analysed the evidence as you understand it from the material available to you, am I right to summarise the conclusion that you came to as being that the decision to withdraw objectively was a wrong decision?

A. That's correct.

25

Q. The other issue which arises in relation to that is whether the decision to withdraw is validated by safety concerns that Odile Arman was referred to. I just want to ask you briefly about 30 those. I don't mean to go through them in detail again, because we all know what they were and the way they were articulated. But is it your view that those safety concerns could have been dealt with?

35 A. Yes.

Q. How would they have been dealt with?

A. I think there are a number of ways in which the risk could have been minimised: The 40 positioning of look-outs; the fact that working right on the fire edge, as has already been indicated by Mr Cheney, the ignition of large trees, stags, et cetera is not going to occur until some time after the fire edge has passed. 45 So therefore in the position of working then the risk is significantly different to where you might be standing in the centre of burnt ground that has

had some time to ignite large trees and other fuel components.

5 Fire ground supervision, adequate crew supervision of keeping a look out - look out and look up by the people on the fire ground at all times - and adequate briefings of people. But the main thing is to work on the fire edge.

10 If those steps are taken then in my view - and I can only go on my own experience where crews do this all of the time - it is not a unique situation. And also for the remaining period of the fires in the ACT past the 10th of January, as
15 I understand it crews were deployed at night, crews were deployed in circumstances which were probably far more difficult than what was being experienced off Wombat Road.

20 To my knowledge there were no injuries and no incidents occurred. I think that is not associated with good luck. That's associated with some experience and taking care of safety issues on the fire ground - safety issues that can't be
25 completely eliminated but can be managed by good practice.

Q. Am I right that you don't criticise Odile Arman for being concerned about those matters?

30 A. Not personally I don't, no.

Q. They are appropriate safety concerns, I take it, that you would accept?

A. That's correct.

35

Q. So for someone in her position, what is the effective way to deal with attention between her apprehension about safety risks to her firefighters on the one hand and the desirability
40 of containing - and can I add controlling or is it simply containing the fire on that night or keeping it contained on that night?

A. I think on the night we are talking about containment, or certainly making appreciable
45 inroads to containment strategy.

Q. How is someone in her position to make

obviously what varies from time to time but will often be a difficult judgment?

5 A. My understanding is she had a lot of experienced people with her. There is no problem or shame or anything in commanders consulting with their crews and the people on the ground to get second or other opinions and to weigh those opinions up and in consultation with a more senior officer perhaps in the Incident Management Team.

10

Q. Who would be an example of a more senior officer in the IMT?

15 A. Well, in this case it would have been someone back in the ESB Headquarters who had knowledge of forest firefighting in that environment.

Q. On page 71 of your report you refer to the fact on that page that guidance was requested by her from the IMT. You say:

20

25 "I note that despite her request for guidance on the issue, the field IC was given none, and nor was she provided with any planning support from the SMT at Curtin. Further, she was influenced approximate in her decisions by comments made by COMCEN during her transmissions and considered, probably correctly, that if the duty coordinator or any other senior personnel at Curtin had a different view to hers, she would have been so instructed."

30

35 You in that narrative, I take it, are being critical of the value or the effectiveness of the advice that she was given from COMCEN from the SMT; am I right about that?

A. Yes.

40 Q. First of all, who would have been an appropriate person to give her the guidance; and what would the guidance have sounded like?

45 A. The guidance should have come from someone who had experience in forest firefighting. If that wasn't immediately available within the SMT, then there are avenues to be able to deal with that, whether it took a phone call to someone the likes of Mr Bartlett or someone else to say, "Look I am

in this position" or "we have an officer in the field who is in this position and these are the circumstances they are confronted with". Particularly in Mr Bartlett's case with his level
5 of experience, it would be a matter of just discussing those with him and getting a second opinion on what course of action ought to be taken.

10 Q. How important a decision was this, Mr Roche, in your opinion?

A. In my experience withdrawing from a fire is a very, very significant decision to make. In general terms fires don't get any smaller
15 overnight. I think the evidence indicates on this particular fire that that was the case.

Q. Can I ask you this then: it is often - with some validity, I suspect - put that we are all
20 assembled in this courtroom looking back at this decision knowing what occurred from the 8th onwards. How significant, doing the best you can to assess it, how significant a decision are you able to say it would have been obvious it was at
25 the time? What is it about that decision that is made that at the time makes it clear it is a significant tactical decision?

MR CRADDOCK: I object. He can't answer that. He
30 wasn't there. He has only got hindsight. To the extent that it can be answered by anyone, it isn't by him. He can't put himself in the shoes of the incident controller on the evening with the fire there in that terrain and determine now to tell
35 you how significant a person, not him, would have seen that decision on the night in those circumstances. It is just simply impossible.

THE CORONER: That is not what he is being asked,
40 as I understand it.

MR LASRY: I am not trying to put Mr Roche in Ms Odile Arman's position. I am trying to eliminate to the extent possible the effect of
45 hindsight by asking the witness to identify the features of the decision which would make it clear at the time that it was significant - not to Odile

Arman particularly, but what is it about that particular decision that makes it clear that it is a significant decision rather than a decision in passing that doesn't require too much thought.
5 That is the effect of what I am asking.

THE CORONER: Not necessarily in relation to Ms Arman.

10 MR LASRY: No. Really I am asking the question in perhaps a more hypothetical context about a first night withdrawal and what makes that decision an important decision.

15 MR PIKE: If it is not being asked about Ms Arman, then who for goodness sake is it being asked about. We are dealing with real people, faced with real situations; we are dealing with them prospectively not in retrospect. When he is asked
20 questions like:

"How significant a decision are you able to say it would have been obvious --

25 Obvious to whom?

THE CORONER: I will allow Mr Roche to answer the question.

30 MR LASRY: Q. Do you want me to repeat the question, Mr Roche?

A. If you wouldn't mind, please.

35 Q. The point I am trying to get to is to ask you this: a decision like this at the time that it was being made, does it have features about it which make it obvious that it is a significant decision to be making for any incident controller. What is it about this judgment that was made on the 8th of
40 January that demonstrates that it is an important decision?

A. I think the primary factors were the drought conditions, withdrawing from a fire in the environmental conditions that existed at the time
45 of the drought and particularly that there were multiple fires. There had been, as I understand it, significant lightning activity across the ACT,

New South Wales and Victoria and therefore, as a result of that, there is a possibility that the next day - very strong possibility - additional fires may have shown up. Therefore the more you
5 can deal with the ones that you know about, the better you can deal with those, the more flexibility it gives you later on if additional fires do show up in subsequent days.

10 Q. Mr Roche, you are familiar, I take it, with the telephone conversation recording which has been played to the Court between Mr Lucas-Smith and Mr Tony Graham. You refer to it at page 71 of your report. Indeed, a bit halfway down the page:

15 "Indeed, I also note that the withdrawal of resources from the Bendora fire had already been discussed in a telephone conversation between the Chief Fire Control Officer and
20 the duty co-ordinator at 7.42 that evening."

The transcript there referred to is [DPP.DPP.0003.0207]. In the course of that conversation Mr Graham was reporting to
25 Mr Lucas-Smith on the state of the Bendora fire, you will recall, and among other things said to him at that stage the fire was about 500 square metres and burning very slowly. Mr Lucas-Smith then asked a question whether Odile was on it.
30 Then Mr Graham said:

"Tony Graham: Dunno. We can't - we've just spoken to Parks, Forest 15 and they are going to grab Odile. She's in the scrub at the
35 moment. That's the message we've got.

"Peter Lucas-Smith: OK. So, what are they going to be able to do anything tonight, do you think?

40 "Tony Graham: I would be very doubtful that they could."

I take it from the evidence you have given already
45 that you obviously disagree with that?

A. That's correct.

47

Q. And the particular things that could have been done from 7.42 or later on that evening at the Bendora fire would have been what exactly in practical terms?

5 A. Well, as I understand it there had already been hose lines extended from at least one firefighting vehicle. I think there could have been a lot of work done on the lower portions of that fire down towards Wombat Road to contain the
10 southern and northern flanks of the fire and commence a hand trail up around the higher elevations where the ground tended to flatten out more. That would have given them a head start for the resources that were going to be deployed the
15 following morning and certainly limited the growth of the fire overnight.

Q. One of the comments that Mr Lucas-Smith makes during this conversation after they've talked
20 about whether anything could be done that night and were doubtful about it and crews would be going back in the morning is this observation:

25 "Peter Lucas-Smith: We need to make sure that we don't commit ourselves beyond what we might end up needing to commit to the McIntyre fire."

30 Suggesting obviously that equipment and personnel need to be available to commit to the McIntyre fire. Is that, in your opinion, a relevant consideration to take into account in dealing with the initial response to the Bendora fire?

35 A. I'm not aware of the discussion or communication that occurred between New South Wales and the ACT at that early stage of the event. But I would suggest that at that stage the assumption would be that New South Wales were --

40 MR PHILIP WALKER: I object. If the gentleman doesn't know, then assumptions and speculation don't help anybody.

45 MR LASRY: I think that is probably right, your Worship.

Q. My question simply was whether or not the

expression by Mr Lucas-Smith - I will read it again:

5 "We need to make sure we don't commit ourselves beyond what we might end up needing to commit to the McIntyre fire."

10 Assuming that he held that view or that concern, is that a legitimate matter to take into account in the initial response to Bendora in your opinion? If you can't answer because you don't know enough about the detail of the arrangements with New South Wales, then by all means say so.
15 A. I can't answer that.

15 Q. When I asked you in relation to the terminology a short while ago about whether containment or control was the appropriate way to describe the possible outcome if personnel had
20 been left at Bendora overnight, I think you said, "Containment". If personnel had been left there overnight and that fire had been contained in the way that you have described as a possibility, what does that say about the next step of control and
25 proper suppression?

30 MR PIKE: I just rise to object. I believe the witness's evidence was not that it would have been contained but words to the effect "positive progress towards containment would have been
35 made".

35 MR LASRY: Whatever - I don't have that particular part in front of me. I accept that is probably
40 right.

40 Q. Mr Roche, positive progress towards containment would have been made if personnel had have been left there overnight; I think that's
45 your position?

45 A. That's correct.

45 Q. The question I was asking you was: in the immediate term what difference would that have made to the short-term or middle-term prospects of actually controlling the fire?

45 A. Significant. I believe, as I have indicated

later on, that had those activities occurred overnight, then there is a good chance that that fire could have been contained and not spread once the adverse weather impacted some number of days later.

Q. You say, in fact, on page 72 under the CSIRO map:

"In my opinion the Bendora fire could have been contained in 24 hours and secured prior to the deterioration in weather conditions."

"Secured" means what?

A. A containment line around it and the area between the containment line and the main fire burnt out.

Q. You go on:

"The primary factor in achieving this objective was adequate first response resources and overnight fire suppression activity."

Is that right?

A. That's correct.

Q. On page 73 and indeed in various other parts of your report you refer, among other things, to the use of retardant. You say in relation to that:

"A further option, which must be a serious consideration for the future, was the utilisation of aerial retardant support. I understand that this capability was available in New South Wales and was already being applied to assist in containment of the fires in the Kosciusko National Park. There is no evidence that this strategy was considered either by the field incident controller or the SMT and therefore it is not known if the resource could have been made available to the ACT, if only for a limited period. As previously indicated, the ACT should develop this capability for the future."

What's the particular value of retardant particularly in an initial response as was occurring on the night of the 8th of January? What is the benefit of using it and how does it work?

5
A. Proper application of retardant can, under conditions of low to moderate fire behaviour and intensity, hold a fire pending the ability of the organisation or the agency to escalate its
10 resources to the extent that it can to put in a mineral earth fire break. It is not a substitute for a mineral earth fire break; it is more or less a strategy to give the agency time and space
15 until they get a mineral earth fire break established.

Q. Is retardant something which needs to be targeted at the head fire or is that the obvious
20 place to drop it?

A. It should be dropped where the risk is greatest of the fire spreading. Whether that is the head fire or whether it is flanks in
25 anticipation of a wind change or some other area, that is a matter for an incident controller to determine in conjunction with their supervisor.

Q. It is a chemical. Can you just describe briefly how it works?

30 A. It is a chemical that interrupts the combustion process and compared with water and foam has a capability of lasting longer when it is applied.

35 Q. And for completeness, is there an environmental consequence in using the retardant, particularly in the widespread use of retardant, as far as you are aware?

A. Well there is to the extent that it is
40 believed that it increases - it is fundamentally a fertiliser. It has a fertiliser base. So it has a propensity to increase growth of both native and introduced species and, from that point of view, some ecologists and environmentalists don't like
45 it. But it is not a toxic product nor has a lasting negative impact on flora and fauna at all.

47

Q. By way of conclusion, I suspect, at the bottom of page 73 and over on to page 74 you say:

5 "The ongoing deficiencies in the allocation
of resources allowed the Bendora fire to
grow, continually requiring additional
resources similar to "the cat chasing its
tail". The SMT and the planning unit in
particular never reached a position of being
10 ahead of this fire."

I just want you to describe the way you would define that phrase "being ahead of the fire"; what does it actually mean operationally?

15 A. It seems to me they never got to a position of being able to conduct an options analysis, an alternative analysis where they had some high degree of confidence that they would be able to contain it 80, 90 per cent, 100 per cent, and that
20 the analysis that was conducted ensured that the resources that were applied to the fire had that opportunity to contain it within an operational period.

25 Q. You go on to say:

"Under these circumstances, it is not difficult to understand why fire growth continued and, despite their best efforts,
30 field controllers were unable to achieve secure containment of the fire. This must have been a considerable source of frustration to them.

35 "The resources allocated to the fire on 9 January, comprising 1 tanker, one light unit and a total of eight crew, plus the field incident controller (Rick Hayes) was
40 totally inadequate."

Why do you make that comment? Why was that number of appliances and personnel totally inadequate?

45 A. Whatever the strategy was that was adopted was about containing that fire. I would have to go back in my records to look at the perimeter of the fire at this stage. But the principal attack strategy at that time, as I understand it, was

still direct attack. The extent of perimeter that
needed to be dealt with, even with good rake hoe
teams, their ability was probably going to be
somewhere between 80 and 100 metres per hour for
5 fire line construction and they just weren't going
to get around it.

MR LASRY: I am going on to the Stockyard Fire; is
that a convenient time to stop?
10

THE CORONER: Yes. We will adjourn for lunch
then. We will resume at 2.

LUNCHEON ADJOURNMENT [12.56pm]
15

RESUMED [2.00pm]

MR WATTS: The objections that I raised this
morning, I think I should tender the letter that I
20 gave to your Worship of 26 July 2004 from me to
Mr Lasry. I didn't go through that in detail
orally and so it is on the record I would ask that
it become part of the record.

25 THE CORONER: That letter from you, Mr Watts,
dated 26 July 2004 to Mr Lasry will become exhibit
0098.

**EXHIBIT #0098 - LETTER FROM MR WATTS TO MR LASRY
30 DATED 26/07/04 TENDERED, ADMITTED WITHOUT
OBJECTION**

MR PIKE: Did Mr Craddock's bundle get a marking?
I know he tendered it but I don't recall that it
35 got a number.

THE CORONER: It wasn't tendered, Mr Pike.

MR CRADDOCK: I did tender it. But your Worship
40 said it didn't need to have an exhibit number, and
I accepted that.

MR ARCHER: Can I just raise one matter: it was
the matter I raised this morning. Can I indicate
45 that I have a commitment that will not allow me to
be here tomorrow, Thursday and perhaps even
Friday. I rise in relation to the report that was

provided to us this morning. I don't expect my friends to respond to me now, but I need to put on record what the position of the AFP is.

5 My submission to your Worship is that this document not be received as evidence in these proceedings and Mr Nicholson not be called. I have talked about the procedural unfairness that may be involved in this process before. But to
10 reiterate what has been said, the process adopted by counsel assisting has been that the issues that were to be addressed in this inquiry were identified very early on, and the witnesses called were questioned in relation to those issues that
15 were identified as relevant.

So far as the expert reports of Cheney and Roche are concerned, although everyone at the Bar table may not be completely satisfied with what is
20 contained in those reports, sufficient forecast of their contents has been given by the way that various witnesses who make up the facts or are the providers of the facts that make up those reports were questioned.

25 So they were put on notice as to what the contents of those reports may have been and decisions were made, certainly by me and by other counsel as well, as to what questions would be asked of
30 witnesses, knowing first of all what the identified issues were and on top of that how counsel assisting then examined various witnesses that were called. Assumptions were made that certain witnesses need not be cross-examined at
35 length, for example, because it was perceived, both explicitly and implicitly, that counsel assisting would not be putting that particular point of view on a particular issue.

40 In relation to the report that has been forwarded to parties this morning, I note that it falls largely into two parts: one is in relation to the Odile Arman issue - obviously that is an issue that does not concern my client - but in relation
45 to the community warning aspects of it, that report most clearly does concern my client. In fact, my client seems to be the central focus of

that particular aspect of the report.

Now it is unclear from the document that has been provided what Mr Nicholson has had a chance to
5 read. I don't want this to be taken as a personal criticism of him, because he has been briefed at a very late stage. The amount of information that is available in this inquest is absolutely huge. It is understandable that he would not have had
10 the time, within the time that he had been briefed, to peruse that material.

But in the community warning section there seems to be only one footnote, outside Mr Roche's report
15 itself, in relation to evidence that is before the inquiry. I am not sure - I don't think the text "how did the fire know we lived here" which is another one of the footnoted references, I don't know if that is before this inquest or not. I
20 don't think it is. So --

THE CORONER: That is the book.

MR ARCHER: Yes, that is the book. I don't think
25 that is before the inquest at all. Reference is made to a particular point of view there. It is done in such a way, a very prejudicial way, puts a particular point of view in relation to an issue that is absolutely central to this inquiry, and
30 that is the question of evacuations.

In my submission, had it been the case that the parties were given advance notice that this type of material was going to be tendered and relied upon,
35 the approach taken certainly by me and perhaps by other counsel to various witnesses may be different. In relation to Mr Leonard, for example, I asked him a few questions but not many. But an opinion is expressed under this heading of
40 "community warnings" in relation to whether or not more houses may have been destroyed had not the evacuations taken place. Mr Nicholson expressed a very strong view in relation to that or a significantly definite view in relation to that
45 where Mr Leonard had analysed the issue in a more scientific way. Not knowing this was coming, no questions were asked of Mr Leonard that may have

enabled the interest that I represent to refute particular suggestions made under this heading.

5 Now, it may be that the problem can be addressed by the material contained under the subheading "community warnings" being completely excised from the report. It would then be up to other parties to indicate a view in relation to whether or not the Odile Arman material is objectionable or
10 otherwise. My clients have a very strongly held view that the reception of this report in these circumstances is going to lead to quite significant procedural unfairness to their interests.

15 It may be the submission will be made that it is all a question of weight and your Worship won't have to receive the material. But some of the opinions expressed under that heading are so
20 prejudicial in themselves that, in my submission, it would be unfair to receive this document simply on the basis that it would become, by its reporting, part of the folk lore associated with this inquiry. The conclusions are not footnoted.
25 I note by way of contrast Mr Roche's report contains about 500 footnotes and has made some sort of attempt to reference the source and the facts upon which he bases his opinion.

30 In relation to this document it ranges far and wide but without referring to any of the evidence as far as I can see - with perhaps one exception - in these proceedings. Although Mr Nicholson would come to the inquiry as a well-qualified person,
35 even the well qualified can be un-informed. On its face the documents suggest - through no fault of his own, no doubt - that he simply hasn't had the opportunity to review all of the material that is available in this inquest.

40 In light of that, the weight that could be given to this document is so small and so marginal that, in my submission, it would be unfair for your Worship to receive it at all. Regardless of
45 the disclosure of on what terms it was sought and what material was briefed to him, it simply is so marginally relevant and of such marginal probative

value that it just simply should not be received.

5 THE CORONER: Yes, Mr Archer. I can't make any
comment on that at this stage because I haven't
seen the document at all.

10 MR ARCHER: I had to say my piece now because I
won't be here at a later time and I needed to put
that on the record.

THE CORONER: You won't be here tomorrow, Thursday
and perhaps Friday?

15 MR ARCHER: I suspect I will be back probably late
Thursday and here probably Friday, but I can't
guarantee that.

20 THE CORONER: I note your grounds of objection to
the document, Mr Archer.

MR CRADDOCK: Could I be heard briefly in relation
to that because my position would be, though it
isn't my report and I won't be tendering --

25 THE CORONER: Which one are you talking about?

30 MR CRADDOCK: Mr Nicholson's report. It seems to
me having regard to the matters that Mr Archer
raises that it may be necessary for your Worship
to deal with the matter it raises one way or the
other now because I am in the same position as he
is. I have only just got it. But there are
matters there which are of significance. They are
opinions by somebody, apparently well qualified.
35 Whether or not ultimately your Worship would
accept them is another matter entirely, but they
are apparently opinions of someone well qualified.

40 I may wish to cross-examine Mr Roche in relation
to some of the matters that are put by
Mr Nicholson in this report. I would want, before
I did so, to know if I could, whether the
Nicholson report was going to be received as an
exhibit or not. It might save considerable time
45 one way or the other if we know that.

All that Mr Archer has really said, putting it in

a nutshell, is that he may have conducted his cross-examination of a witness, Mr Leonard, differently had he had the benefit of Mr Nicholson's report prior in time. That doesn't
5 seem to me to be a sound basis for submitting that this document oughtn't be received, having regard to the fact that it presents opinions by an apparently well-qualified person.

10 Rather, that seems to me to be a reason for Mr Archer examining what is said by Mr Nicholson and then, if he thinks it is necessary, putting a submission to your Worship that Mr Leonard give some further evidence or that he be permitted to
15 have some questions put to Mr Leonard and answers received perhaps in writing; or some course such as that. But it seems to me to be a rather large step to submit that the report is inadmissible and especially if the basis of its alleged
20 inadmissibility is the fact that he might have cross-examined differently had he had it prior in time.

THE CORONER: I think there was probably a bit
25 more to it than just that, to be fair to Mr Archer.

MR ARCHER: It is definitely not one witness. It is the whole way this litigation has been
30 conducted. It was the witnesses called from the AFP.

THE CORONER: I think it is just more than
35 Mr Leonard.

MR ARCHER: It was everybody.

MR CRADDOCK: I apologise for boiling it down to the barer bones than it needed to be boiled down
40 to. But that doesn't change very much in my submission.

The fact of the matter is that when witnesses from the AFP, for example, were giving their evidence
45 we had no idea what Mr Roche was going to say. I mean, it is just the nature of this beast. It seems to me that what Mr Archer has put, with

respect, is no basis whatsoever for refusing admission of this report as an exhibit. But the reason I rise now to put this matter is that we probably really need to know one way or the other
5 now so that we can get on with dealing with Mr Roche on a firm footing.

MR ARCHER: Just so it is clear, your Worship, it was the whole of the litigation. It goes further
10 than that. In fact, one could have anticipated reasonably accurately what Mr Roche was going to say because of the questions that were being asked as each witness got to the witness box, questions that indicated that Mr Roche was likely to say a
15 particular thing, because it was clear the relationship between Mr Roche and counsel assisting was - not directive, but he was obviously informing the process of examination.

20 One could have reasonably, with some certainty, anticipated what Mr Cheney was going to say and what Mr Roche was going to say in reports.

As I said before, you may not agree with what they
25 say, what they have said does not come as a surprise for that reason.

THE CORONER: The reason being that Mr Roche has sat through the bulk of the evidence in this
30 inquiry. I took it that was your other concern. You are not sure from Mr Nicholson, from the footnoting or from his bibliography or whatever, what material and what information he has had access to in order to form the basis of the
35 opinions that he makes.

MR ARCHER: That is right. That ultimately is a secondary submission. The primary one is relying on the information flow coming from this side of
40 the Bar table rather than the other, which is the normal course in relation to coronial proceedings, one makes central decisions about how the litigation is going to be conducted. When at the last moment something comes the other way which is
45 not forecast, the contents of which cannot be predicted, throws the system into some sort of turmoil and has the great potential to create

great unfairness in my submission.

THE CORONER: I understand what you are saying,
Mr Archer, and how you are putting that.

5

MR PIKE: Your Worship, might I --

THE CORONER: I really don't want to spend a lot
of time today talking about Mr Nicholson's report.
10 I will hear you briefly. I haven't seen
Mr Nicholson's report so I don't intend to make a
decision on it one way or another at this stage.

MR PIKE: I primarily rise to take the very simply
15 point in support of Mr Craddock's position. The
report was provided in accordance with the
timetable, a timetable with which, as I understand
it, no-one objected. It was clearly foreseen with
such a timetable that any expert report, if it was
20 going to be utilised, would probably have in it
expressions of different opinions than those to
which it was replying. It was always envisaged
that this sort of report would come up in
accordance with the timetable. That is precisely
25 what has happened. If there is a problem it can
be remedied by an adjournment.

THE CORONER: I am not very much enthused by that
suggestion, Mr Pike.

30

MR PIKE: Nor am I. All I am saying is, there was
a timetable and it was accorded with.

MR PHILIP WALKER: I heard what you said about not
35 wishing to discuss this, but to expedite the
decision which your Worship might ultimately have
to make on it, whilst one can anticipate some
passages that might concern Mr Archer, at least
insofar as I heard what he said, it was expressed
40 in fairly general terms, the decision that he
calls upon you to make even now or at a later time
would be expedited if he could indicate the
particular passages of the report which are of
concern to him.

45

THE CORONER: To you, Mr Walker?

47

MR PHILIP WALKER: To me or to Mr Whybrow.

MR WHYBROW: On a different issue entirely, like
Mr Archer, can I indicate that I have difficulty
5 with another matter that has been listed since
13 April. I am endeavouring to make sure that my
availability to cross-examine Mr Roche as my turn
falls due is not going to, in any way, impact upon
the smooth running. However, if there are times
10 when I am here and not here, if your Worship would
allow that based on a pre-existing commitment.

THE CORONER: Do you know when that is at this
stage, Mr Whybrow?

15 MR WHYBROW: It is a criminal trial that is
already running. I am junior counsel. I can
hopefully be here as and when it is necessary. I
just wanted to put on the record that that is
20 something that has been pre-existing since April.
It is a three-week trial. There was no prospect
it was going to be re-listed.

THE CORONER: I understand. But this inquiry has
25 been pre-existing since well and truly before
April.

MR WHYBROW: This week hasn't been, your Worship.

30 THE CORONER: I know. That's the difficulty we
all have with these matters. As I say, I don't
intend to make any comment at all, except to note
the concerns, what Mr Archer, Mr Pike and
Mr Craddock have said, and Mr Walker's suggestion.

35 MR LASRY: Can I simply say, once it was made
clear that Mr Nicholson was wanted to be called,
our prima facie position, without having read the
report in any detail, is that we would call him -
40 subject to this: we will be wanting in relation to
Mr Nicholson all of the same documentation that
was sought in relation to Mr Cheney and Mr Roche.

THE CORONER: I think that is only fair.

45 MR LASRY: Every note, every email, every draft.
So don't destroy anything. We want everything

that has been used to compile this report. A letter of request for that material will be with my learned friends later on this afternoon.

5 Then we will, as has previously been said, be able to understand how this report has been put together.

10 THE CORONER: How Mr Nicholson crafted his report.

MR LASRY: Yes. I am sure it will all be very helpful.

15 THE CORONER: You are on notice, Mr Walker and Mr Whybrow.

MR LASRY: It is not said in jest. We really want the material.

20 MR PHILIP WALKER: I would be tempted to say that it sounds like a fishing expedition. But I dare say such a submission would be calculated to lead you into error.

25 MR WATTS: Your Worship, Mr Craddock and I have copyright on the original letter, so we wouldn't want it copied.

30 MR LASRY: That was word for word the precise letter that we are proposing to prepare this afternoon, your Worship. So Mr Archer needs to proceed on the basis that unless there is a clear reason, at least from our point of view, why Mr Nicholson shouldn't be called, but on the face of it at least we would call him. I haven't analysed the report, neither has Mr Woodward. We don't have the documentation to which I have just referred.

40 THE CORONER: Mr Archer, if you have an opportunity, perhaps you can go through and just highlight the parts of the report that you have particular concerns with as well.

45 We will continue with Mr Roche, thank you.

MR LASRY: Q. Mr Roche, I want to take you to

page 83 and just deal briefly with your heading "general comments on the operational period of 8 and 9 January". At the top of the page you say in the opening comments:

5

"For the reasons discussed under part 6 above of this report, the initial response to the fires in the ACT and the McIntyre's Hut fire in New South Wales was inadequate. The reasons of severe drought then prevailing and known to all affected agencies, renders the lack of a genuine aggressive initial response to all the fires deserving of criticism, particularly in the case of the Bendora and Mt Gingera fires. While conditions ahead of a front will produce extreme fire danger indices, in my experience, the passage of the front such as occurred on 8 January is usually rapid, with conditions abating quite quickly behind the front. More often than not, this provides a window of opportunity, that with an aggressive response can result in the fires being contained within 24 hours."

25

Now, in the course of that quote that I have just read you insert a footnote 163 to the evidence of Mr Koperberg. I just wanted to ask you about that evidence. You refer to a passage of his evidence at page 2284 where he was being asked questions at that page by me, I think. Perhaps I will just read this to you. He was asked this question.

30

"Q. Knowing what you know now about the tactics employed for the McIntyre's Hut fire, very aggressive attack would not be the words that you would describe the approach to McIntyre's Hut with; would you?"

35

"A. It is a relative term, and I accept that aggressive attack may well include a very active planning regime to decide upon one tactic or strategy or another. What I meant to impart by that was there was no lethargy associated with coming to any decisions on how to tackle the fire."

40

45

"Q. But someone who was not a fire expert

5 listening to you answering that question
might have thought what you were describing
in 'very aggressive attack' was large number
of people engaged in an instantaneous direct
attack on the fire line?

"A. Yes.

"Q. That is not what happened?

10 "A. No, that is not what happened, and I may
well have chosen other words. But
certainly - and I need to reiterate Mr Lasry,
if I may - what I meant to impart was there
was that there was absolutely no foundation
15 for any suggestion that these fires were
treated with apathy."

Now, I just wanted to ask you, is that the portion
of Mr Koperberg's evidence that you were referring
to?

20 A. That's correct, sir.

Q. What's the significance to you of that piece
of evidence quoted as it is in the context of that
first paragraph of your report?

25 A. Oh, look, I have no doubt that from the
planning perspective there was considerable
activity and a significant focus. The same can't
be said for the on-ground response though.

30 Q. Is it a case of being simplistic in a
situation like this and saying you just throw
everything at a fire that you have got? I mean
are you for example saying - I am not suggesting
necessarily that you are - is one interpretation
35 of your opinion that perhaps less planning and
more actual direct attack was what was called for?
How would you put all that in the appropriate
context?

40 A. I am not suggesting that there should have
been less planning but I am suggesting there
should have been more response on the ground.

Q. And obviously the two things aren't mutually
exclusive, you can have both?

45 A. That's correct.

Q. We have been over this before but while we are

talking about terminology, is it correct to describe a containment line - I will start again. There is a difference between a containment line and a contained fire, obviously?

5 A. Yes, there is.

Q. I think there has been some evidence given about that. Is it right to say that the existence of a containment line itself is really of little
10 consequence obviously if the fire jumps the containment line? The fact that a fire is burning within a containment line doesn't say any more than that; does it?

A. That's correct. And perhaps to take that one
15 step further. The purpose of the containment line is to put a line in the sand, if you like, as to where you then advance containment of the fire. There is a significant difference between having a containment line around a fire and having the fire
20 contained. The fire that is contained means that the majority of the area between the containment line and the fire itself has been removed. Whilst a contained fire still may be burning aggressively within that perimeter, the majority of the
25 material as such within the containment line has been removed. Just putting a containment line around a fire is just one step of the overall containment strategy and doesn't necessarily lead any confidence to the fact that the fire is
30 contained.

Q. Going over to page 85, in the last paragraph of part 6 you appear to be comparing the New South
35 Wales arrangements in relation to their Incident Management Team and the ACT agencies. You say on that page:

"When multiple fires occur, early
40 establishment of an IMT and a comprehensive and continuous intelligence gathering and planning capability are critical success factors in keeping ahead of a fire and anticipating resource requirements. Apart from the failure to arrange on-ground
45 reconnaissance by agency personnel of the McIntyre's fire and the Baldy Range fire on the afternoon and evening of the 8th of

January as discussed above, the New South Wales agencies were effective in this regard. In my opinion, the ACT agencies were not."

5 Now, what's the distinction that you are referring to there at least at this stage of the fires between the effectiveness of New South Wales on the one hand and the ACT on the other?

10 A. I think the New South Wales agencies had begun to establish a significant incident management capability and were actively engaged in planning for future response. The evidence that was available to me didn't suggest that same rigour was being applied in the ACT.

15

Q. On page 86 you start part 7 which is the "mid-fire operations period between 9 and 16 January". You deal with an issue which was raised in the course of evidence of Ms Crawford and Mr Arthur, among other things, and refer to the lack of the timetable for the process or for the tactics which were applied to the McIntyre's Hut fire. You say in relation to that:

25 "The objectives and the strategies established for containment of the fire were not subjected to time constraints."

30 Mr Arthur's evidence I think, to summarise it - and I will refer to it in particular if necessary - was that these plans for McIntyre's Hut fire were effectively objective driven rather than time driven; do you recall him giving evidence to that effect?

35 A. Yes, I do.

Q. What do you say about, in effect, the absence of even an estimated timetable for this burning out process?

40 A. Well, my view is you can't have an objective without an associated time frame, because otherwise you are not able to monitor your performance and gains towards achieving that objective. If you have an objective that hasn't a
45 time frame, it is open-ended. You could say, "I am going to do A, B and C and I have got to the end of the world to be able to achieve it" rather

than putting it in the context of what were the other factors that are likely to interrupt or cause that objective to fail.

5 Q. There are difficulties though, aren't there, about imposing strict time limits on, for example, the construction of a containment line, particularly a containment line around a large
10 area, such as in this case, where there are all sorts of variables. Things can go wrong. It might be weather; it might be manpower available; it might be those sorts of things. How do you incorporate some kind of timetable into a project like this at an operational level?

15 A. I think the factors that might cause the time frame to be inappropriate or inaccurate are just the things that need to be considered in terms of establishing a time frame associated with an objective. If you set an objective to contain a
20 fire in a certain period of time based on the best available information, the best available performance criteria and the resources that you have committed, and for whatever reason that time frame is not being achieved, then that's the very
25 thing that the time frame is designed to do; that is, to cause you to re-evaluate the objective, re-establish whether in fact you need to alter some of the strategies and tactics or resources or in fact change the objective. The fact is that,
30 without that time frame, there is no way of measuring whether the objective is going to be successful or not.

35 Q. Is it right that the fundamental time frame that we are concerned about is the time it is going to take for the weather to change to extremely adverse?

A. That's the foundation time frame, yes.

40 Q. The other issue that you raise in relation to this particular section is that on page 88 you in broad terms say that you agree with the views expressed by Mr Cooper and Mr Bartlett:

45 "... on the need to commence the burning operation from the earliest opportunity, and possibly as early as the night of 9 January.

5 There were parts of the containment lines,
(for example, the eastern end of the southern
containment line) that comprised well
established trails, requiring little, if any,
upgrading."

You go on to note:

10 "The routine fire weather forecast provided
by the Bureau of Meteorology and the special
fire weather forecasts issued with respect to
the McIntyre's fire indicated that the wind
would be predominantly in the south to
15 easterly quarter until about 13 January."

In relation to these delays, I take it you have
had a look at the evidence of both Julie Crawford
and Bruce Arthur; have you?

20 A. Yes, I have.

Q. Julie Crawford to start with, she says at
page 4460 - this is a section only of her
evidence:

25 "It was the southern containment line - she
was making the point that it was the southern
containment line they were concerned about -
the fire was also heading to the southern
containment lines. The northern containment
30 lines were not under as much pressure of the
fire reaching them. We had to get the
southern containment line in. The biggest
issue of the southern containment line was
the far western part of it and pushing that
35 dozer line down to the river. We had to get
the southern containment line in before we
started burning that fire."

40 Now, in agreeing with that, Mr Arthur at 4573
said:

45 "... the 07 Powerline Trail was a high risk
strategy. It always was. I stated at the
meeting and I stated it several times
thereafter that, unless we had sufficient
aircraft, we were placing a lot of people in
jeopardy. We really had no option than to

use that 07 access trail. But to place men
along that trail, it is a serpentine trail or
an extremely steep set of hills. Any fire
above them or below them could be tantamount
5 to a death sentence to them. Unless I had the
resources to support and back those men, I
was not prepared to start any burning
whatsoever along that trail."

10 Specifically in relation to that evidence, and
Mr Arthur's reasons for delaying the start of the
burning for the reasons that he gave in his
evidence, what do you say about that?

A. I don't agree with the assessment. As I
15 understand the evidence, the Powerline Trail was
available as a containment line with the exception
of a steep section of the track in the
south-western corner which ran between ostensibly
the end of that Powerline Trail down to the
20 Goodradigbee River. That was a short section. I
agree to commence burning out of that section was
not appropriate until that section was completed.

There were other substantial areas of that line
25 where burning out could have been undertaken,
albeit not perhaps continuous. But to have
commenced the process of taking out the unburnt
country, that is the objective. You get a
containment line in. Once you get the containment
30 line in, you have to move very quickly to take out
that unburnt ground. The quicker you can move by
using whatever opportunity or windows there are,
you should take it.

35 Q. Mr Cheney has given some evidence, perhaps
others have as well, and mentioned burnt ground
and the use of anchor points. That is a theory or
approach to firefighting that you obviously are
clearly familiar with?

40 A. Absolutely.

Q. And was there a difficulty that you could see
about applying those sorts of approaches to
firefighting in this region? Was it possible to
45 establish anchor points from which burning could
have started and that kind of thing?

A. Yes. I believe there were burnt portions of

the track already existing or, where there weren't, the fact of burning under mild conditions would in itself establish the appropriate anchor points from which further work could be undertaken
5 under higher FDI.

Q. I will jump forward a few pages, if I might, Mr Roche to the section starting on page 104, the general comments related to the operational period
10 10-16 January. You deal under that main heading with "sourcing additional resources" and you refer to aerial resources and a significant mish-mash, as you call it, between the target and aircraft capability in the course of utilisation of that
15 resource.

In particular at the top of page 105 under the heading of "role confusion" you say:

20 "During this operational period - that is the 10-16th and we are now dealing with the ACT SMT - there was significant evidence to suggest that confusion regarding the functions and roles of the SMT and that of
25 personnel in the field led to a number of things."

You then refer to inadequate planning; lack of input by field controllers; ad hoc allocation of
30 personnel; and so on. There are a number of dot points on that page. Where you use the word "significant evidence", what are you referring to there?

A. I think there are a number of instances, and
35 they are recorded later on in the report, of where commanders in the field understood that tasks were being undertaken in the service management or by the Service Management Team in ESB Headquarters and at a similar time or the same time the SMT
40 were of the view that those tasks should have been undertaken by people in the field.

On the analysis of the resources that were available to commanders in the field, it was not
45 possible for those functions to be performed in the field. There just weren't the people out there to be able to do it. So it was an

expectation on both sides that the other were performing functions particularly relating to planning and prediction.

5 Q. You say later in the report that you deal with this. When you say that, are you referring to the material appearing at page 154?

A. That's correct.

10 Q. You say under the heading "The application of the SMT concept during the 2003 fires" dealing with the same subject matter:

15 "However, when agencies operate using this framework, there must be clear and unambiguous delineation between what are the responsibilities of the headquarters team and those of the IMT. Although the concept of a SMT appears to have been well-intentioned, I
20 am firmly of the belief that the manner in which the concept was applied in January 2003 caused significant confusion among personnel, poor planning and inadequate information to the community.

25 "Numerous witnesses gave evidence suggesting that personnel assigned to key positions had conflicting opinions on the role of the incident controller in the field and the SMT
30 at the ESB Headquarters. This was not confined to personnel in the field, but applied also to officers attached to various sections of the SMT."

35 There you include footnote 338 and set out a large number of transcript references. That is the material you are referring to?

A. That's correct, sir.

40 Q. On page 106, a little over halfway down the page under the heading "media releases and interviews" and you are dealing with the situation as at 16 January, you say in the third paragraph on that page:

45 "Of particular significance, as at 16 January 2003, the community was not

provided with any indication that the threat associated with all the fires had materially increased and that the agencies were experiencing considerable difficulty in
5 containing the fires in accordance with their containment strategy."

10 Could I just ask you a simple question: why as at 16 January did the community need to be aware of that?

15 A. I formed the view from the analysis of the material that was available to me that beyond around the 14th-15th January it should have been clearly evident that, with the strategies that
20 were being applied and the resources that were being available, the agencies would have extreme difficulty in both achieving containment and maintaining containment of those fires, given that the forecasts of the Bureau of Meteorology were
25 providing at that point in time was clearly indicating deteriorating weather, toward extreme fire danger at the weekend and early in the following week.

30 Q. Any information that was given to the community as at that stage, is it appropriate that they be given some idea as to how the material increase in the threat, which you refer to in that paragraph, is likely to affect them? In other
35 words, at that time is it appropriate to start identifying what the actual risk to them is, rather than just saying, "These fires have expanded. They are not contained. They are obviously a threat." At that point should the information become more specific and more personal to the people who are likely to be affected?

A. Absolutely.

40 Q. How would that have been done broadly on the 16th?

45 A. Again, on the basis that the fires were, whilst they were within containment lines some of them were not contained. The fact that the forecasts that were available indicated the deteriorating weather would have given rise to quite detailed risk assessments, one of the outcomes of which should have naturally been that

the fires would escape containment. And the consequences of that were that they would threaten private property and the environment to the east of the existing fire lines and quite possibly impinging in one way or another into the suburbs of Canberra. That's the information in my view which should have been provided to the community as, if you like, a late preliminary indication of the risks that they were likely to increasingly face.

Q. Is there a problem with generating panic by providing too much information?

A. Not in my experience.

Q. On page 108 you deal in the middle of the page with the fact that the ACT Fire Brigade, the urban Fire Brigade, established its own Incident Management Team separate from the Service Management Team which had been dealing with the fires to that point. As I read your report, you appear to place responsibility on Mr Castle for in effect not ensuring a whole of agency approach; is that a correct interpretation of your view?

A. That is correct, based on my analysis of the administrative managerial structures that were in place within ESB, the only person that sat above the CFCO of the Bushfire Service and the Commissioner of the ACT Fire Brigade was the executive director of ESB.

Q. Isn't though the establishment of an Incident Management Team in effect an operational matter? Mr Castle in his executive role wasn't an operational member of the ESB; was he?

A. That's correct. But, by the same token, I think in my experience the executive heads of organisations, CEOs et cetera, usually have the responsibility to ensure that the resources of the agency for which they are responsible are applied in a coordinated way dealing with any incident that is faced by that agency.

Q. Mr Roche, if we perhaps come back to this liaison point between the ACT Bushfire Service in particular or the ESB and the New South Wales Rural Fire Service, you say on page 110 in the

last paragraph on that page:

5 "What is clearly apparent is that,
notwithstanding jurisdictional
responsibility, there was a systemic failure
by both agencies to ensure that the level of
co-operation between them extended to a
shared understanding of the likelihood and
consequences of the McIntyre's Hut fire
10 breaking containment lines. There was no
joint or individual agency risk analysis and
planning for what was, in my opinion, the
inevitable outbreak of the McIntyre's Hut
fire from containment, its subsequent passage
15 in the ACT and the probable impacts. Nor was
there any discussion on the need to develop
contingency plans to protect the urban edge
of Canberra, the resources that would be
required to limit urban damage and the
20 sources of those resources. I discuss this
issue further later in my report in the
context of my recommendations on future
structures and service delivery arrangements
between the ACT and New South Wales."

25 I think in fact that reference is a reference to
what appears at page 167 - you might just want to
check. I think that is the material that you are
referring to under the heading "liaison with New
30 South Wales agencies".

A. That's correct.

35 Q. Is the failure to which you are referring
evidenced in effect by New South Wales looking
after its jurisdiction, the ACT looking after its
and an unsatisfactory liaison between the two; is
that what you are describing in that part of your
report?

40 A. I think that was the culminating outcome. The
evidence as I heard it presented to her Worship
was that there was an assumption by the IMT New
South Wales that the ACT were planning and had a
handle on what might occur if the fire crossed the
border; and that the SMT planning section, as I
45 understand the evidence, assumed two things (a)
that the planning was being done in New South
Wales or it was being done by the forest's agency,

for which the SMT did not have a coordination with
at the time. So the evidence on balance suggested
to me or gave me the impression that in fact one
agency was assuming the other one was doing it,
5 and it just wasn't being done.

Q. Is part of the solution to a problem like that
the evidence you gave before lunch about having,
for example, an ACT ESB officer as a deputy
10 incident controller in New South Wales; could that
have been a solution to that failure as you
described it?

A. That's an option, but it's not the only
option, sir. I think more appropriate, as I
15 mentioned before lunch, is the seamless operation,
transparency between the two jurisdictions when it
comes down to wildfire management and the adoption
of a process of unified command and control. Just
how that is actually physically structured in
20 terms of the roles of people and which individual
is appointed to which position, I wouldn't like to
comment on. I think that is a matter for the
agencies to determine at the time, given the
weight of information that comes out of a risk
25 assessment as to the impacts of any particular
fire.

THE CORONER: Q. Mr Roche, does that happen in
other jurisdictions where you have border issues
30 that you are aware of that an officer from one is
in a position of some authority in another
jurisdiction?

A. To my knowledge it doesn't happen
significantly in other jurisdictions. Certainly
35 there is potential for it to happen on, for
instance, the borders between Victoria and South
Australia, for which I am familiar with. There
are similar arrangements, memorandums of
understanding in place to ensure that there is
40 seamless operation.

But it does in fact happen within jurisdictions.
Again, I can quote particularly in Victoria where
there is quite definite and significant
45 responsibilities divided in rural Victoria between
the Country Fire Authority and the Department of
Sustainability and Environment who are responsible

for public land management. Conceptually there is really no difference. So those agencies have to come to an agreement as to the manner in which they will manage the fire.

5

The principles are: one Incident Management Team, one incident control centre, one incident controller, and one planning operation and logistics for that matter as well.

10

MR LASRY: Q. Mr Roche, one of the issues in this inquest which I think is probably most affected by the perils of hindsight is endeavouring to come to a conclusion as to the point at which there was an identifiable threat to the suburban area of Canberra where eventually so much of the damage was done. One thing that would be common ground amongst people at the Bar table, although there aren't many things, would that be that that opinion would be coloured by knowing what happens afterwards.

But one of the difficult situations that arose in this case at the time presumably was trying to work out at what point people in suburban Canberra were entitled to be warned that there was some kind of realistic risk to them; would that be a fair statement?

A. Yes, yes.

30

Q. On page 111 of your report you say in the paragraph in the middle of the page:

"The Service Management Team were in possession of sufficient information that, when aggregated and adequately scrutinised, should have resulted in a realisation that there was a potential for the fires to impact the ACT on a wide front and, subsequently, the urban areas. In my opinion, this position should have been seen as a clearly identifiable risk on the 13th of January and as probable by the 15th of January. More particularly, by the 15th of January it should have been clear that the prospect of the fires to the west of Canberra remaining contained in the event of very high to

45

extreme fire weather had diminished to the extent that the outcome was inevitable."

5 From an operational point of view, from your point
of view as an expert and a career firefighter
among other things, how do you judge the issue of
obviously concerning information to the populace
in a place like urban Canberra as being
10 appropriate? How do you, in effect, judge the
identifiable risk as having reached a point where
it is appropriate to issue those sorts of
warnings?

15 A. I think it is set out in the last sentence of
that paragraph some of the clear factors that
would have led me to a conclusion that the risk
had escalated quite significantly.

Q. Which is the failure to achieve secure
containment?

20 A. The continual failure to achieve secure
containment, extensive unburnt areas within the
perimeters of a number of those fires and the
forecast of the deteriorating weather. I guess
I'm a pessimist and I always look at the worst
25 case scenario. I think if you identify the worst
case scenario and work back from there, it becomes
fairly evident the extent to which the community
ought to be engaged and involved.

30 My worst case scenario under those circumstances
would have been that the fire, one or more of
those fires, was going to run into a populated
area. It had four fires or at that stage by the
15th three fires potentially stretching right down
35 the western border of a highly populated area,
looking at the map I think some 10 or
15 kilometres only to the west. Under extreme
weather it is not going to take long.

40 I would have expected that the spread of fire
would have been significantly aided by the
spotting activity. So you are not necessarily
looking at 10 or 15 kilometres; you might only be
looking at 5 or 6 kilometres before you have got a
45 major fire run into the populated area. So the
worst case was that there was an extended area of
the western boundary exposed at that particular

point in time, no guarantee that fire wouldn't run into that area, and therefore the community in my view has a right to know.

5 Q. In general terms, very much paraphrasing the response particularly I think from Mr Lucas-Smith and Mr McRae on this topic, their concern as expressed during the evidence is that if you start
10 telling the community that they are at risk the first thing they are going to do is ask about when and to what extent. Given that that information at that stage, certainly at the 15th of January for example, wasn't available, everyone says for example the magnitude of these fires couldn't have
15 been predicted, it was more than anyone had ever experienced before. Why isn't, if you take this view, it fair enough to say, well, until we know the precise time and nature of the impact it is not appropriate to issue general warnings because
20 they are not useful; what do you say about that?
A. I disagree.

Q. Why?

A. It depends what definition you put on
25 "precise". I mean is precise 100 metres, is it a kilometre, is it 10 or 15 kilometres? In my view, if you wait until you are able to estimate or be sure of the precise impact of any emergency, you are never going to reach that position where you
30 have that knowledge and therefore are able to pass it on, as in fact happened in January of 2003. Again, in my experience I have never found the community has been disturbed by the fact of giving them early warning of an emergency over a
35 significant area that they can see may be likely to be impacted.

These fires were quite visible from the western boundary, as I understand it, of Canberra.
40 Therefore it wasn't coming as a surprise to the community that, given the time of the year and the deteriorating weather, there could well be significant movement toward the urban edge of Canberra. So my experience in similar
45 circumstances has been that people aren't disturbed by the fact that you can't be specific. They have a preference for earlier warning rather

than late warning and would prefer to know that they may be impacted and then not be impacted than they would not to know they would be impacted and then suffer the consequences of what occurred.

5

Q. One point that you make on page 112 in the middle of the page you say:

10 "One matter that stands out during this period and that should not go unrecorded is the dedication and perseverance of the personnel in the field. They faced significant difficulties in their attempts to contain the fires in the ACT without the support they needed to be able to achieve their objectives. They continually faced the frustration of building containment lines only to witness these lines breached, primarily due to the absence of adequate resources and of course, the vagaries of the weather.

15
20
25 "The absence of adequate briefings, IAPs - incident action plans - and even basic tools such as up-to-date maps of the area and fire perimeters made their task more difficult than it should have been. Yet they continued to oversee and implement strategies and tactics with dedication, professionalism and sheer determination. I can find little to criticise in regard to their efforts and persistence in these circumstances."

30
35 I take it you hold by that passage, Mr Roche, that I just read. I take it you stand by that passage of course?

A. I certainly do, sir.

40 MR LASRY: If your Worship is having a short mid-afternoon break, now is as good a time as any.

THE CORONER: We will adjourn.

SHORT ADJOURNMENT

[3.05pm]

45

RESUMED

[3.16pm]

47

MR LASRY: Q. Mr Roche, I just ask you to go to page 118 dealing with the McIntyre's Hut fire and dealing with it in the context of the period between 17 and 18 January. Among other things on that page you deal with the aerial incendiary activity by New South Wales on the morning of the 17th of January. The question is whether or not on the material you have seen there is any basis to know whether that activity on that morning made the situation, as it were, any worse?

As I see your report, you seem to be suggesting that it was a difficult decision but nonetheless the decision had to be made - it was either right or wrong or perhaps in the end the consequence didn't matter. What is your overall view about that particular activity on the 17th?

A. There is no doubt that it was an extremely difficult decision to make on that particular day and at that particular time, bearing in mind that it is my view that the time period in which they had to safely implement that strategy had passed. The window of opportunity was closed. So they were left with a decision as to whether they made an attempt to take out that unburnt ground, with the chance that the fire would escape; or whether they would let the fire take its natural course, in which case it might have escaped.

I thought long and hard about that decision. I can only come to the conclusion that I would have made the decision not to use the aerial incendiaries, because by the time the decision was made the forecast was very clear and in fact the fire danger index was already increasing rapidly so the chances of containing the fire or containing the aerial incendiary operation were very, very remote.

Q. Is it fair to say that, even without the aerial incendiary activities, the possibility that the fire would escape its containment lines was still a very strong possibility?

A. I can't say that that wouldn't have occurred.

Q. Perhaps I should ask you the question again: even without the aerial incendiary activity there

was still a strong possibility that it would escape the containment lines; is that a fair statement?

A. Yes.

5

Q. It is?

A. Yes.

Q. Again, looking back at it, as we all are, your evidence is that in that situation you wouldn't have done it?

10 A. That's correct.

Q. At page 120 you deal with the lack of information provided to the Australian Federal Police. I will read the second main paragraph on that page:

20 "Consistent with the overall failure of the SMT to recognise the impending threat to substantial assets in the ACT and the urban area of Canberra, I believe that the AFP was not adequately informed. The Chief Police Officer had been briefed on the extent of the fires and actions being taken at a meeting on 25 16 January. At this time, he was not provided with any information or assessment that would have caused him to consider that there was a threat to the suburbs of 30 Canberra."

At that point you refer to Mr Murray's evidence at page 4295:

35 "Other than the appointment of a liaison officer and activities consistent with the position of the fires at that time, the police took no further action. Given the circumstances and the lack of a more relevant 40 assessment, I would not expect any other reaction."

From the point of view particularly of someone like yourself as a very senior officer in the CFA, just tell us, if you would, why it is so important to ensure that police are properly informed? Perhaps I will ask you that question first and

then I have a second part to the question. Why is it so important to make sure they are properly informed?

5 A. My understanding of the emergency management arrangements in the ACT is that police have two responsibilities: one was their normal policing function and in any emergency such as a fire they would have significant responsibilities in support of the agency, traffic management, people
10 management, road closures, et cetera, et cetera. And even from that point alone, it is important that they understand the implications of what might transpire because it takes them beyond their normal modus operandi. They also need to plan for
15 what actions they may take and the resources that they may need to implement support to the fire services.

As I also understand it, the second function of
20 police was more directly focused on the Chief Police Officer as the Territory Controller. Again, ostensibly his responsibilities were to manage the whole of the response to the incident. I am using that, your Worship, in a theoretical
25 sense prior to the decision being made by the Chief Police Officer to separate the response to the fire from the support activities that was made on the 18th. Before that occurred, had a state of emergency been declared then he had the
30 responsibility to manage the incident, as I read the emergency plan in the legislation.

Again, those things just don't occur overnight. They require substantial notice. They require
35 substantial planning to ensure that the right resources are available, that the right people are available, that plans are put into place to man, as it was, the Police Operations Centre, that people are allocated delegated tasks in field
40 command and certainly headquarters command in the police meeting their responsibilities. The more that can be done before it becomes necessary to implement that process, then the smoother the transition will be. And as I said, the primary
45 responsibility of the police to conduct themselves in accordance with their policing responsibilities required notice.

Q. On page 122, in the last complete paragraph on that page you refer in part to the absence of a well-reasoned and detailed incident action plan. In the context in which you make that statement in talking about this particular period you say,
5 dealing with Mr Lucas-Smith issuing instructions:

10 "... that once the fire entered the Uriarra pine plantation, direct attack was not to be pursued. With the rapid development of the fire and associated rate of spread, firefighting resources were quickly overwhelmed. With the exception of property protection, no direct fire suppression was
15 undertaken. This was an appropriate course of action to follow.

20 "However, I have been unable to ascertain the level of command and control that was exercised over resources to ensure that tasks were prioritised and firefighter welfare and safety accorded the highest priority during this phase of the fire. This is symptomatic of the absence of a well reasoned and
25 detailed incident action plan."

Why do you say that? How should the incident action plan have looked and how should that prioritisation have occurred?

30 A. I think the issue that I was attempting to convey there is the importance of having an identified command and control structure on the ground to ensure that resources are able to react rapidly to changing situations, whether they be
35 positive or whether they be negative. From the evidence that was available to me I was not able to detect there was a command and control structure in place that affected adequate supervision of the resources, adequate mobility of
40 the resources to change strategy and tactical intent once the fire made its rapid run. It appeared that there were a number of resources that seemed to act semi-independently.

45 The overriding consideration in those circumstances is a cohesive approach to the safety of firefighters which needs firm command and

control. In the documentation that was available to me I was not able to ascertain what that structure was or whether in fact it existed.

5 Q. On page 123 on the same topic, you refer in
the first main paragraph on that page to what you
say is the absence of effective planning by the
SMT and the ACTFB in recognition of the
consequence of the impact of the fires on the
10 suburbs. You go on to say in the course of that
paragraph:

15 "From my observations, particularly of
television news footage, firefighters were
exposed to unnecessary risk."

Just pausing there, I think one of the criticisms
made of your report by Mr Watts was that you don't
identify what television news footage. Can you
20 recall what you are there referring to?

A. From memory it was the unedited Channel 9
footage.

25 Q. Have you seen any other television news
footage in relation to these fires apart from that
which you remember?

A. Not that comes to mind immediately. I am not
sure whether there was any other news footage in
the aggregate video that we witnessed here. I am
30 unaware of that. But the single footage that I
saw was the Channel 9 unedited video - or should I
say WIN news probably more than Channel 9.

35 Q. Were you in court when that footage was played
to the coroner in the early stage of this inquest
in October of last year?

A. I believe so. I did obtain a copy of it for
my personal review.

40 MR PIKE: I rise not to interrupt my friend but
because there may be a confusion on my part. I am
not sure what "unedited" means in this context.
If it is the same as we have all seen, I am quite
happy, but if that could be clarified.

45

THE CORONER: I think there is only the one.

47

MR LASRY: Your Worship will recall that I played the video compilation - I think it might have been in the course of opening actually, or Mr Cheney's evidence. The difference between the two, for my
5 learned friend's benefit, is in effect the news items that went to air and then there was an extended portion of WIN news footage.

10 THE CORONER: Mr Thornthwaite was the driver.

MR LASRY: Yes, with Mr Thornthwaite that went on for some considerable length. That is the unedited version.

15 THE CORONER: You have probably seen that one, Mr Pike?

MR PIKE: I have; I am grateful to my learned
20 friend.

MR LASRY: Q. Perhaps the only other question I want to ask you about is this: I must say for myself looking at that videotape it looked like an extremely frightening and confusing situation. I
25 am sure a lot of other people felt the same way when they saw it. When resources and manpower and the approach to firefighters to that kind of situation is organised and prioritised in the way that you have been talking about in your report, what does it look like? What would you see if you
30 were an onlooker to that process in a situation such as was occurring around the precincts of Duffy on the afternoon of 18 January?

A. In normal circumstances had an incident
35 control system structure been put in place, then I would envisage that there would have been divisions established, at least one, and sectors established under the control of senior commanders whose responsibility it was from a semi-static
40 position where they could ensure proper management oversight from the safety perspective of their resources that those things were put in place, and deployment was determined by those people with an adequate span of control that ensured that safety
45 was a paramount consideration by the commander.

A roving commander over a wide area doesn't

necessarily have the level of control over resources that ensures there is some consideration of safety when a fire is impacting to that extent, particularly when resources were deployed on the very front line where the fire was likely to impact the urban area.

5
10 Q. Still in this section but dealing with the Bendora fire in this 17 and 18 January period on page 125, you say at about point 3 on page 125:

15 "Despite the rapidly deteriorating situation, there was no SMT rostered overnight. Accordingly, no detailed planning based on the latest intelligence emerging during the night could have occurred in preparation of the conditions that were forecast to occur on Saturday the 8th of January. In my opinion the ongoing failure to provide for a comprehensive overnight management team, and in particular a planning and intelligence cell, significantly contributed to the continued absence of any meaningful community information and public warning strategy."

20
25 Just to deal with a few parts of that, why is the overnight SMT and the overnight planning section important compared with, for example, the efforts in the early morning to create plans or to make plans for that particular day? Why is it so important to have a team functioning 24 hours a day?

30
35 A. The major changes that occur or are likely to occur in the extent of the fire are going to occur during the day obviously under hotter temperatures and low air humidity. So it is the day shift, if you like, that is the critical shift in terms of the extension of the fire.

40 On the 17th of January the weather conditions overnight, as I understand it, were such that there was significant constant change in the circumstances on the fire ground and in the appearance and extent of the fire. It would be my belief that it is necessary for a planning and information cell to be across those changes as they are occurring to be able to accurately and

decisively construct a plan to deal with what are going to be worse conditions on the next day.

5 Early in the morning is the time when shift changes ought to be occurring and briefings conducted with people in place to be able to deal with the deteriorating situation for that day. So I think that, given the importance of a plan for the day shift and the changing circumstances in
10 the intelligence gathering mechanism that should have been available, having an overnight planning cell is critical.

15 Q. Planning, as we know, includes as part of its functioning community warning or community education or liaising with the community; is that right?

20 A. That's part of the planning function under ICS.

25 Q. On a night like the 17th of January, in the ordinary course of events how many people would you anticipate would be required to carry out the sort of planning that you have just been describing? That's operational planning as opposed to, for example, the need to plan community warning, if in fact that was appropriate at that stage?

30 A. I don't think you separate the two.

35 Q. You don't separate them?

A. No. Because the processes and functions being carried out by both units within the planning section are totally inter-related -
35 interconnected. As far as numbers go from my experience in large fire management and total IMT structures - I can't, to be quite honest, separate any closer than that - you would be looking at 20 or 30 people performing the functions of an
40 Incident Management Team including planning.

45 Once, of course, the decision was made to commence the distribution of community information warnings, then obviously the extent to which you want that penetration to occur and the methods that you are going to use to bring about that penetration very much dictate the number of people

that you need.

Q. The availability of resources in the ACT from
time to time has been an issue and has been
5 referred to during the course of evidence. What
is the answer to that? If you need an overnight
planning team with numbers like 20 or 30 people,
where are they going to come from; they are not
going to come from the ACT?

10 A. Yes, they are.

Q. They are?

A. The Emergency Services shouldn't see
themselves as a unique discrete component of the
15 community that is isolated from the involvement of
other people. If the ACT, in my view, has one
advantage, it's the personnel base of human
resources that exist within the Territory, most of
whom - I need to be careful about this,
20 your Worship - are relatively intelligent people
occupying fairly complex and significant tasks and
responsibilities in the context of the management
of this country. And there are hundreds of them.

25 The process of acquiring assistance from the civil
community to the Emergency Services, in my view,
is not confined to the military in terms of hard
resources - bulldozers, tankers and aeroplanes,
et cetera. The military also have significant
30 human resources which are quite capable of
performing a whole raft of functions and
responsibilities, as are the operatives in
numerous other government departments who happen
to be domiciled within the Territory.

35 So with appropriate planning, I think the
Territory has an enormous resource in which you
can tap - could have tapped at the time and could
tap into the future - in terms of supporting the
40 Emergency Services with any extent of expertise
that they needed, unlike perhaps other
jurisdictions.

Q. In addition to that, and we will come to this
45 later when we deal with the ICS, part of the
purpose of AIIMS - ICS is to have IMTs which can
in effect be transplanted from one jurisdiction to

another; am I right about that? You can actually bring an IMT from outside of the ACT or outside Victoria when you need to and put them into a situation and they can function because of the cohesiveness of the process; is that the idea?

5 A. That's correct. The national curriculum for incident management training is national curriculum, as I have already said. The competencies are nationally recognised. Someone
10 who has been trained in the planning function can significantly assist another jurisdiction, albeit there will still be the need for local knowledge to support that.

15 But in terms of bringing in people who have expertise in planning, whether it be wildfire planning or hazardous materials or a building collapse et cetera, there are hundreds of people around Australia who are qualified and competent,
20 nationally recognised to perform those tasks. Provided they are integrated with local people who have the local knowledge then the function can be executed quite professionally and quite
adequately.

25 Q. At page 128, in the last two paragraphs you are dealing with what you describe as the failure of the Service Management Team and other personnel, including the AFP, to heed the warning
30 given by Mr Bartlett at 9.30 on the 17th. You go on to say what makes this even more difficult to comprehend is that he had just returned from the aerial reconnaissance of the fire and so on. At the bottom of the page you say:

35 "In my opinion, upon receipt of this information, the remainder of the meeting should have been devoted to the rapid development of a communication strategy,
40 delegations to personnel to ensure that the appropriate warnings and information was provided to the community without further delay. I have made further comments and recommendations in relation to these matters
45 later in this report."

The communication strategy to which you were

referring would, I take it, as part of its functioning announce the risk to the suburbs; is that essentially what it would be set up to do?

A. That's correct.

5

Q. And the medium by which that would be done, given the time constraints here?

A. I think in general terms the primary medium that they had was the radio stations. There are issues there, I know, with networking usually out of Sydney, but with pre-arrangement that can be overcome. And of course the utilisation of whatever resources the Australian Federal Police could have provided; along with, as I understand it there were a number of resources available from the Emergency Services, which I think is the title in the ACT - State Emergency Service as it is described in other jurisdictions - to conduct some more localised transfer of information.

20

Q. Does localised transfer of information convert in part to police or SES personnel driving through the streets of the suburbs identified as being at risk using public address systems?

A. I am a bit nervous about public address systems and police charging down the road with PAs. I think there were still some opportunities early in the morning to conduct house-to-house notifications. The last resort would be the use of PAs.

30

Q. What's the problem with those? Is it the risk of panic or what is the problem with it?

A. I don't think you convey adequately the reasons and the message. My experience in those sorts of things is that there is a tendency to move too quickly through the community, and the community doesn't necessarily get the full extent of the message that is being conveyed. It shouldn't be just a simple message of "you are at risk"; there should be some added advice on the steps people should take at that late stage and on the decisions that they need to be taking.

40

Q. In Victoria, at least in recent years, at an equivalent time of Friday the 17th of January, with a big fire in Victoria where the fire was

45

threatening a populated area, you have described
in some detail in your report the way the various
processes have worked in Victoria and the way
community education has developed, as it has in
5 New South Wales and other states. With that
background of education and information in the
off-seasons, in an equivalent situation to
17 January what are people to be told?

A. Basically that they should put their bushfire
10 plan into place.

Q. And that is it?

A. That's it - that they are being threatened by
a fire from such and such a direction, general
15 information about the passage of that fire and how
they might be threatened. But in terms of the
actions they should take, basically, as I said, to
put their bushfire plan into place.

Q. In Victoria, which is your centre of
experience, are there people in suburban areas the
equivalent to Duffy or similar to Duffy in other
suburbs on the western side of Canberra who would
be given that advice? In other words, are there
25 urban dwellers in Victoria who would have a
bushfire plan which they would simply activate
upon being given that warning? I ask you that
question because it may be perceived that a
bushfire plan is something that is usually had by
30 rural dwellers and not suburban dwellers. I want
to know if there is a difference.

A. Yes, there is. There are three distinct
areas, as I see it, of urban rural interface in
Australia that are at risk from wildfire and they
35 each have to be treated differently because of
their environment and understanding. The first of
those is the rural dwellers - the farming
community or the agricultural community that live
and work in the country areas.

40
Second, there are then those more common urban
rural interface areas such as the Dandenong
ranges, the Blue Mountains, the Adelaide Hills or
the escarpment north of Perth where there is
45 significant residential development interspersed
in a bush environment.

47

The third class is where there is quite a defined boundary between the urban development and the rural lands as perhaps --

5 Q. As in this case?

A. --is more representative of Canberra. Each of those have to be treated in a specific way. I think the latter is a more difficult environment to deal with because people certainly see
10 themselves as part of the urban environment as distinct from the rural environment and therefore not impacted by whatever might happen in the rural environment.

15 But nevertheless our experience and our precedent shows that those people, whilst they are not at risk with the same frequency as the latter categories, certainly still remain at risk in the event of a coming together of environmental
20 conditions such as occurred during the drought of 2003. So the education process with those people still needs to be constructed on the basis that they are at risk from a bushfire.

25 Q. Does that mean in circumstances such as the western edge of Canberra it is appropriate for suburban dwellers to be put in a situation where they can respond to a message that says, "You should now put your bushfire plan into operation"?

30 A. Yes, sir.

Q. While we are talking about this period of the 17th and 18th, can I ask you a couple of questions about Project Vesta and the McArthur meter. You
35 were, I think, in court when Mr Cheney has given evidence about Project Vesta from time to time during his evidence and more recently when he was asked a number of questions about it?

A. Yes, I was, sir.

40

Q. As an operational firefighter, what operational knowledge, if I can put it that way, did you have - and from when - about Project Vesta and what work it was doing and what the
45 consequences were for errors in relation to the McArthur fire danger meter? First of all, were you aware of it as an operational fireman?

A. Yes, I was.

Q. What was your understanding in, say, the last 10 or 12 years of the accuracy of the McArthur meter and how Project Vesta was inquiring into it?

5 A. For the majority of my career, in fact as far back as I can recall, I have always been aware that there were issues associated with the low end and the high end of the McArthur meter in that at
10 the lower values the meter tended to overpredict, and at the very high to extreme scales the meter tended to underpredict. Therefore, in an operational sense when the meter was in use it was always made on the basis of using the outcomes
15 from calculations as conservative figures one way or the other. It really didn't matter down the lower end of course, but certainly at the higher end it did.

20 What was not known to me at the time was the extent to which the meters or the tables and the supporting formula did underpredict. So in practical application it was used on the basis of:
25 "This meter will give you this guide but you need to recognise that it is a conservative guide and it is more likely to err on the lower side of rates of spread than the higher side." That has always been our understanding.

30 Project Vesta, as part of its outcome, was primarily designed to quantify what those errors were. So when the work of Project Vesta in Western Australia was proceeding to the extent where it became evident that those inaccuracies
35 were in fact inherent in the formula and in the meter, then I believe that the CSIRO had no choice but to go out and say, "We are reconfirming that these things are inaccurate; here are the reasons why; and here are the adjustments that ought to be
40 made."

Like the majority of bushfire or wildfire fighting organisations, in CFA the action I took was to notify all of my operational people of the
45 findings of Vesta. The brochures were circulated to all of my senior operational managers. Mr Cheney attended a conference of those people

and briefed them on the inaccuracies and the type of adjustments and the range of adjustments that ought to be made. I issued instructions to people when they were planning, when they were using
5 those predictions in an operational sense, that they were to take into account the fact that the meter was underpredicting.

Q. If you treat the meter as a guide and indeed
10 treat all of the information about this matter as a guide, then presumably there needs to be a process of validation on the particular fire ground and I assume the level of inaccuracy is subject to the particular circumstances. You can
15 use the meter, you can get some indication as to rate of spread but in the end it depends, apart from anything else, on the particular circumstances prevailing; is that right?

A. To some extent that is correct. I mean, we
20 have to recognise fundamentally what the meter is for and I don't think, your Worship, that has been quite clear. Certainly in the evidence that I have heard, it hasn't been clear to me in this forum.

25 The meter is about making predictions about what might occur across a landscape where fire might travel under certain conditions of weather and fuel, what exposures might be at risk as the fire
30 travelled across the landscape, and what resources might be needed to affect the travel of fire across the landscape. And when we are talking about what exposures, to what extent the community, as people and private property, might
35 be impacted.

In my view, we don't need specific results to be able to utilise those outputs effectively in our
40 planning and information to the community in some cases within a day; in other cases within half a day; and as the risk increases within two or three hours is more than adequate, in my view, from an operational sense and to provide information broadly to the community.

45 When you look at the parameters which go into providing the outcomes and the outputs from those

tools, there are a thousand variables: No one square inch of ground is the same; no one square inch of fuel is the same; no one square inch of topography is the same; and so on and so forth.
5 The wind is never constant. The temperature is never constant. The humidity is never constant.

10 So we are never going to be able to get to a stage where we have a tool that we punch buttons on a computer and it says, "If the fire escapes from this point, it will be here at this time". That's just pie in the sky stuff. In my view, the tolerances of hours are all that is necessary for
15 experienced fire managers to be able to utilise that information to the benefit of suppressing that fire and the benefit of advising the community.

20 MR LASRY: Is that a convenient time? I ask that because I had said to several of my learned friends that I was going to do whatever I had to to finish Mr Roche's evidence-in-chief today. But due to circumstances which have included several
25 debates, I don't think that is really feasible, so for their guidance I would expect to be another hour or so in the morning but not much more than that.

30 THE CORONER: We will adjourn until tomorrow morning at 10 o'clock.

**MATTER ADJOURNED AT 3.58PM UNTIL WEDNESDAY
6 OCTOBER 2004.**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 81

Wednesday, 6 October 2004

[10.04am]

MR WOODWARD: Your Worship, as briefly as I can, I will need to deal with two matters, firstly the
5 request for documents on behalf of the Territory that was made yesterday. At your Worship's suggestion we received a letter at lunchtime with the specific requests. I had hoped to deal with it by letter in response. There is one aspect of
10 the request which I think will require some consideration by your Worship. Unfortunately that has not been possible. If I can deal with the matters in the request as briefly as possible.

15 Before dealing with the specific requests, it may be appropriate to make this general observation based on some of the remarks that were made yesterday. On the part of counsel assisting and solicitors assisting your Worship, it is important
20 to make it clear that, despite some suggestion to the contrary, we have certainly not sought to take fine points in relation to the interpretation of either the request for documents or the judgment by his Honour Justice Whitlam. We have made
25 thorough searches for documents and have produced every document we have been able to locate that comes within the classes of documents identified and that is consistent with the spirit of the decision by his Honour Justice Whitlam. In that
30 sense we have attempted to genuinely respond to each of the requests that have come in.

In our submission, the documents that were crossed out yesterday and referred to in the list did not
35 meet that criteria. With one exception, the documents I have produced today also do not meet that criteria, but in order to avoid any further delay, we will produce again what we can in order to speed things up.

40 Beyond that and what I propose to say, we don't propose to be answering interrogatories in relation to documents. For Mr Roche's part, we understand he is in the same position. He is in
45 the witness box. If parties wish to question him further about documents then, certainly subject to the usual rules, they will be able to do so.

The one exception that I referred to,
your Worship, was the list of questions that
Mr Roche prepared for the purposes of the
examination by the AFP of Odile Arman. That was
5 omitted from the original list inadvertently.
Mr Craddock who, as your Worship is aware, acts
for Ms Arman, noticed that omission a week or so
ago and made a request for that document. He was
provided with it at that time. We hadn't
10 appreciated that other parties would also be
interested in it. However, we have that document
and can produce it today.

The other documents that we can produce in
15 response to the request, I will run through those
quickly: the request refers to document 54 in the
list. That is the Odile Arman questions which we
will provide and, as I have indicated, we have
provided to Mr Craddock over a week ago.

20 Document 97 is a request for an attached letter.
We can provide that today.

Document 90 and 89, these are emails which I sent
25 to Mr Roche attaching chronologies which I
prepared. There are two chronologies that are
referred to and attached to the emails. They are
simply chronological lists of documents in the
brief, your Worship. I have produced those today
30 for the benefit of the Territory, to the extent
that they are of any assistance to them.

I should point out in that regard that what I sent
to Mr Roche, among many others, was two versions
35 of those lists. One was a Word document, the
other was an identical document but as an Excel
document. I am only proposing to produce one
version because they are identical.

40 Document 122 I will return to in a moment.
Document 6 relates to a fax that I sent to
Mr Roche attaching a draft of a document that
Mr Leonard had emailed to me. The background to
this, when I first contacted Mr Leonard about
45 retaining him for the purposes of the inquest, as
part of an exchange he sent to me some preliminary
draft reports that he was preparing on questions

of house loss and I think one of them may have been a completed report that he had done a little while earlier. I passed one of those to Mr Roche and others for information. I can't now recall
5 which of the three documents I got I sent on to Mr Roche. It was just one of the three. Mr Roche thinks it was the second one but isn't sure. I am proposing to produce all three, so there is no question about that.

10

Document 17 refers to the first phase plan. I produce that, but it is a document that I understand was distributed as an index to the first phase brief at the beginning of the inquest.
15 So I think all the parties already have it.

Finally, documents 37 and 38 in the list are referred to. Those are emails which attach drafts of the issues list which was ultimately sent to
20 the parties with a memorandum setting out what we determined to be the issues to be discussed and has been the subject of much discussion before your Worship.

The document that was attached to those emails, they are documents 37 and 38 in the list. I have looked for that document and have not been able to locate it as an attachment to those two emails. However, document I think it is 32 and 33 in the
30 list is an email from Mr Roche to me in which he provides some suggested changes to the first phase issues list. That has attached to it a draft of that issues list with some marked-up amendments.

Having reviewed those documents, I can indicate that the amendments that are shown on that marked-up document are in fact the amendments made by me, not by Mr Roche. So as best I can, the attachments to documents 37 or 38 is in fact
40 already in the material and is attached to the emails which are documents 32 and 33 in the list.

I am not able to provide any further information about the original attachments to documents 32 and
45 33. We have not located that.

So those are the specific requests. I have a set

of documents for the Territory. I will hand those over.

MR JOHNSON: Thank you.

5

MR WOODWARD: I have one other set. Because they do include documents that most of the parties will either not be interested in or already have got, rather than copy a full set for the parties I have a set available here. In order to save paper, I have encouraged the parties to review this bundle. If any of them want any of the documents in the list they are welcome to request it, and we will provide it during the course of the day. They can put a note on the yellow tag.

10

15

Returning to document 122. Your Worship has the list of documents there. You will see that is in a sense a generic description. It says:

20

"Extracts from transcripts of evidence, witness statements, TROCs and documents forming part of the brief and evidence in the inquiry including such witness statements, TROCs and documents as are referred to in footnotes to and in the body of the Roche report."

25

That has been annotated. It says "available for inspection at the DPP".

30

The background to that category of documents: it has always been our understanding based on discussions that occurred at the time of the application before his Honour Justice Whitlam that the only documents for which there was any interest were the extracts of transcript. I understand the suggestion was made, and I don't make any criticism of this, that there may be something about the way in which the extracts were selected that may have affected Mr Roche's review. The fact that they were extracts that seemed to be of significance rather than the transcript themselves, which of course everybody has.

35

40

45

At no stage had I understood certainly that there was any interest on behalf of any parties in

producing documents which are essentially the complete documents which form the evidence before this inquiry; namely, witness statements, taped records of conversation and the documents in the
5 brief which of course are available to all parties.

It is the case, I have spoken to Mr Roche, that he has at his home, some distance from Bendigo,
10 bundles of witness statements and TROCs that he reviewed for the purposes of producing his report. I am informed by him that those include some tabs that have been put on them and some highlighting. He doesn't recall having annotated any of them.
15 It is not his practice to do so. He would be surprised if he had, but it is possible. Those have not been made available for inspection, on the basis of our understanding, that there was no interest in people being given again the evidence
20 that is already before the inquest. Particularly as Mr Roche is so extensively referenced the statements on which he relies in his report.

The difficulty, of course, your Worship, at this
25 late stage is a logistical one. I understand the quantity of documents involved could run to the equivalent of some 6 or 7 lever arch files.

THE CORONER: They are documents that are already
30 before the inquiry; are they not?

MR WOODWARD: They are.

THE CORONER: If counsel have questions about
35 information that is contained in Mr Roche's report that is sourced from other evidence that is already before the inquiry, they can ask and that information will be available on the system.

MR WOODWARD: That is my understanding of why
40 there hadn't previously been any interest expressed in that material. I am not sure what the answer is. If that request is pressed, it is one that would be very difficult to comply with in
45 any sort of time frame that would ensure that Mr Roche's evidence can progress in a meaningful way.

THE CORONER: I think it is now a matter for
counsel. If they do have a particular interest,
as I say, in an issue or a source document that
Mr Roche has made reference to, it is a matter for
5 counsel to identify that document and that
document will be made available. It will be made
available because presumably it is already
available in the brief.

10 MR WOODWARD: To make it clear, what we are
talking about is the witness statements that have
been the subject of evidence, the taped records of
conversation that formed the evidence in the
brief. As I say, my understanding had been that
15 there had not, apart from the extracts which were
the subject of specific discussions, been any
interest expressed in seeing Mr Roche's version of
this evidence which everyone has got -
particularly, as I say, your Worship, as it is so
20 extensively footnoted in his report.

I should also add, your Worship, that he has
indicated in his report what documents he has had
available to him so that, by a process of
25 elimination, it is possible to identify what he
may have had the opportunity to look at but chose
not to rely on in his report. Again, that was why
I understood there wasn't any interest in that
material.

30 That is as far as we can take the matter at this
stage on documents, your Worship.

35 There is just one other matter relating to the
request by Mr Watts in respect of the information
from Mr Cheney about the intensity of the fire
that hit Duffy. At the risk of, to some extent,
giving evidence from the Bar table but in order to
explain the position, I was able to speak to
40 Mr Cheney yesterday. I understand he is leaving
for Western Australia today.

He has had difficulty responding to that request
because essentially, as I understand it from what
45 he has told me, there are so many variables to
feed into the equation which could significantly
affect the ultimate result. It may be

self-evident. But the request from Mr Watts, as I understand it, was for an estimate of the intensity of the fire that hit Duffy. The difficulty, as Mr Cheney has explained it to me,
5 is that in calculating intensity it depends on the point in that travel that you undertake the measurement.

If you were to say we will measure it as at the road, Warragamba Avenue or Eucumbene Drive, then the intensity would be easy, as I understand it, it is zero because the road obviously doesn't carry fire. If you measure it on the main verge, you are going to get a different result than if
10 you measure it on the area between the main verge and the pines. Of course, if you measure it at the pines, you will get a significantly different result again. Similarly, if you measure it at the point of the pines where there was the crown
15 fire-free zone you are going to get a different result to where there were pines where there was no fuel reduction.

The difficulty that Mr Cheney is having is understanding and perhaps coming to some agreement with Mr Watts or any other counsel interested in this issue as to what variables he should feed into the calculation. That was why, when he was asked again about the matter by Mr Pike he said,
20 "Well I have a calculator here and we can go through the calculations" in the hope of getting that information. Mr Pike's response, and again I don't suggest any criticism because as I understand it he was just the messenger for
25 Mr Watts at that stage, was:

"Q. No, I am not going to have you take the advantage over me in that respect. I am just the messenger here, Mr Cheney. In any event,
30 you say you haven't conducted the calculation?"

"A. That's right."

So that leaves Mr Cheney, as I understand his position, in something of a quandary. He feels he can't give a figure without an accompanying explanation or some agreement on what the
35

variables should be. Given that he has now been
excused by your Worship, he is not sure what the
status of that information will be. He is very
reluctant just to give a figure without the
5 accompanying explanation.

So in a sense what he has asked me to do is to
indicate to your Worship the difficulty he is
having and put the matter in your Worship's hands
10 as to how he should address it. If Mr Watts were
able to provide some of the variables - I have
Mr Cheney's mobile number - it may be possible to
get something from him. He is certainly not
wanting to be obstructive but he does have that
15 difficulty. It is not simply providing a figure
in a letter for that reason.

So that's the position in relation to that matter,
your Worship. If I were to try to contact
20 Mr Cheney, it may not be something I could do
immediately because he is in transit, I believe.

THE CORONER: How long is that process of
calculation going to take if Mr Cheney was given
25 some information parameters?

MR WOODWARD: If he is given some more detail as
to what variables he should factor in and
providing his response was qualified by being
30 referred to those variables, it is really just a
matter, as I understand it, of conducting a
mathematical calculation, which he could do with a
calculator, which is what he had in mind to do
when Mr Pike raised it with him again. Mr Pike,
35 for obvious reasons, didn't want to take him up on
that offer.

It is not a time consuming exercise so much as it
is a matter of understanding what are the
40 variables to feed into the equation and then
explaining or qualifying the response by saying,
"If I say - I think he gave a figure to me -
"8,000 kilowatts per metre at the area of the
crown fire free zone it is a guess. I have to
45 explain that is if you measure it at the crown
fire free zone." He is not sure how that helps
assist in helping counsel understand what heat was

being experienced by people standing 50 to 100 metres away on Eucumbene Drive and Warragamba Avenue. It is a question whether that information is useful without the accompanying information.

5

THE CORONER: We will see what Mr Watts has to say.

MR WATTS: I am not trying to pin Mr Cheney down to a specific figure. I don't propose to try and cross-examine him that he may have been slightly out. I really want some sort of ballpark figure.

Your Worship might recall in his report there is a graph where he showed the fire intensity and the difficulty of fighting a fire. I think his evidence was above 3,500 kilowatts per metre it is impossible to fight a fire. I want some really general indication. I am prepared to put it in writing setting out what I really want. I am really not interested in what heat was generated across the other side of Eucumbene Drive.

THE CORONER: Once it got into the suburb rather, into the street.

MR WATTS: That's right. It is really what I was looking for, what it was as it approached Eucumbene Drive in that pine forest, in that area. That was what I was really looking for. As I say, I am not looking for a specific figure which I could cross-examine him about. I have no way of doing that anyway. I made it pretty clear that I am not much good on maths.

35

It was just a general indication because he has used fire intensity himself. He put figures in his report. So is it above 3,500, is it above 70,000? That is the range I am looking for. I will put it in a letter to counsel assisting today indicating what I am after and the area I am looking for.

THE CORONER: That might be useful. It might give some guidance to Mr Cheney as well.

45

MR WATTS: If it is qualified that is fine. I

understand.

MR WOODWARD: Can I just respond to that. I am
certainly happy to pursue that. Perhaps it is
5 something that Mr Watts and I can discuss so as to
not take up any more time. We could even perhaps
get on the phone together to Mr Cheney, if that
speeds up the process. The difficulty of course
is still going to be, though, knowing what the
10 intensity was at the edge of the forest. I don't
think anyone was suggesting the fire could be
fought at the edge of the forest. That isn't
going to tell you much about what could have been
done in the urban area. If we could have that
15 discussion it may assist the process. I am happy
to try to arrange that with Mr Watts and
Mr Cheney.

THE CORONER: Thank you, Mr Woodward.
20

MR JOHNSON: I was going to rise to say thank you
for the documents which we have been provided
with.

25 The letter yesterday did refer to a number of
other documents and they have not been referred to
by my friend. I just wanted to rise for
clarification as to whether there were any further
inquiries being undertaken and whether there might
30 be further documents to be provided or whether,
with respect to the other documents identified in
the letter, there is nothing to produce.
Essentially to know what is the position: Is
there likely to be more or is there no more?

35 I am conscious that the letter referred, amongst
others, to specified document numbers on
Mr Roche's list but also the question of whether
there are any notes of the 20 August 2003 field
40 trip. It would certainly assist us if we had an
indication as to whether the searches are
continuing or whether this is a final response,
effectively.

45 THE CORONER: Mr Woodward, are you able to say?

MR WOODWARD: I am reluctant to say that there is

no prospect of any other document coming to light because Murphy's law is things appear unexpectedly. However, as I indicated earlier, we have undertaken thorough searches. The formal
5 response to my friend's request is there is nothing to produce as at today. We have concluded all the searches that we think we can reasonably undertake.

10 In those circumstances, I can't really add to what I said earlier, subject only to qualification that everyone involved in any litigation knows that from time to time things appear unexpectedly. You
15 can't rule that out. I would be very surprised if that were to occur, because our searches have been, as I indicated, thorough and to the best of our knowledge there is nothing else to produce.

20 THE CORONER: I think that is the best that you can get, Mr Johnson.

MR JOHNSON: Thank you. I have heard what has been said.

25 THE CORONER: If there are no other matters, we will resume with Mr Roche.

<TREVOR MICHAEL ROCHE, RESWORN

30 **<EXAMINATION-IN-CHIEF BY MR LASRY CONTINUING**

30

MR LASRY: Q. Mr Roche, I want to take you, if I could, to page 136 of your report dealing with "warnings". The first paragraph under the heading
35 "warnings" reads:

35

"Of the greatest concern to me about the conduct of the agencies during this period was the failure of the SMT to promulgate adequate and timely warnings and advice to
40 the community. Under the AIIMS - ICS adopted in part by the ESB, the incident controller has the responsibility to manage the media."

45 Pausing there, that is a reference in this case to Mr Lucas-Smith, I take it?

A. Yes, that's correct.

47

Q. Continuing:

5 "During large incidents, he/she will normally
achieve this through media and information
personnel attached to the planning section.
The document promulgated by the ESB titled
'The SMT role in the ICS' re-emphasises the
role of the SMT as having the responsibility
to 'manage media participation'."

10

In a report dated 3 October of 2004 by Mr John
Nicholson, director of Community Safety Services
Pty Limited, he refers to that particular
paragraph. Have you had the opportunity to read
15 that report, Mr Roche?

A. Yes, I have.

Q. On page 16 in particular he quotes the
20 paragraph I have just read. I want to ask you a
couple of things about both the paragraph and some
of his comments. First of all, in relation to
Mr Nicholson, he says:

25 "In dealing with the preparation and issue of
warnings and advice to the community, it is
important to avoid instilling panic, which
may cause people to flee into certain danger.
On page 163 of his report, Mr Roche provides
some tragic examples of where people died as
30 a result of last-minute evacuation."

Just in relation to those examples - you may or
may not know but do those examples on page 163
represent circumstances where people panicked as a
35 result of being given a warning about a fire and
then got into the sort of difficulty that you
describe on that page, or you are unaware?

A. No, I am not aware that is directly related to
a receipt of the warning. What it is related to
40 is a last-minute evacuation in the face of a fire
front.

Q. In your experience in the Victorian CFA, have
you encountered situations where warnings from an
45 emergency service about an approaching fire have
in fact caused panic?

A. I'm not aware of any examples of that.

Q. On page 17 of Mr Nicholson's report in the third last paragraph - your Worship has a copy of this report, I take it?

5 THE CORONER: I do. I received my copy this morning.

MR LASRY: Q. In the third last paragraph Mr Nicholson says:

10

"Going back to Mr Roche's comment at the start of this section, he is wrong to refer to this deficiency as 'a failure of the SMT'. It is a far more long-term issue than a few hours before the arrival of the fires at the edge of Canberra. And, I must add here that the two comments from the broader community above - he refers to the particular comments he quoted - are not intended as criticism of the police on the ground, who would have been confronted with a very difficult task, without the benefit of prior education."

20

Now, my general question in relation to that paragraph is: he is saying in effect that in his opinion where you describe the deficiency as a failure of the Service Management Team, that's wrong; what do you say about that?

25

A. I don't agree with the analysis obviously. The SMT were the only body, the only agency, that was in a position to provide any advice or accurate advice at any time throughout the duration of these fires from their commencement on the 8th of January.

30

35

To suggest that it was someone else's responsibility or someone else's failure is quite bizarre to me.

Q. The strategy for the content of information being released to the public in the form of warnings and information about fires, that's the responsibility of the planning section generally speaking; is that right?

40

A. In general terms, yes. Initially by the planning section because it is the planning section that has all of the information and

45

intelligence and, through the information unit and media unit attached to that planning section, they are the ones that pull together that information and construct either media releases or information for the public that then goes to the incident controller for his approval before being disseminated.

10 Q. Is there an element in this process of endeavouring to ensure that the public have confidence in the person who is disseminating the information? Perhaps I can put that question slightly differently: does there need to be some effort to ensure that what the public are being
15 told and the way they are being told things inspires confidence - perhaps confidence in the fact that the situation, however severe, is under some level of control or at least under some level of management?

20 A. I think it helps for the public to gain some empathy and affinity with the organisation and the individual who is disseminating the information. I think a good example of that was Rudy Guiliani through September 11 where one person was seen to
25 be providing information and therefore seen as a credible source of information. So I think that helps instil confidence in the community about the source and the reliability of the information.

30 Q. Another thing in relation to warnings arises out of some of the evidence given by Mr McRae, in particular at pages 3362-3. Mr McRae was being questioned by Mr Woodward. At the bottom of page 3362 Mr Woodward asked him this question:

35 "Q. On your evidence yesterday it was the planning unit's responsibility, as I understand it, to provide the trigger for those messages. Is it your evidence that you
40 had provided sufficient information to identify that there was a trigger for at least that kind of general message?

45 "A. There are a number of triggers, as I've said already. Some of those triggers, as I have said already, had been activated. The final trigger that you seem to be referring to we never saw the need to activate. We

didn't see the need to activate it."

I want to ask you generally about the concept of triggers in relation to the issue of warnings. Is that a concept that you are familiar with?

A. No, not specifically.

Q. How would you describe the process as the situation develops of warnings to the community? If it is not a process of triggers then what is it?

A. A process of providing continual information, timely information to the community as rapidly as possible as the scenario unfolds.

Q. I think you have already given evidence yesterday that in order to issue these warnings it is not a prerequisite that you would be able to predict exactly when, where and to what extent and effect on an urban area might occur such as in this case; is that correct?

A. That's correct.

Q. Can I then take you over to part 9 commencing on page 138 in relation to command and control. In that part you generally set out with some level of detail the Australian Inter-Service Incident Management System. I ask you this question as an option, Mr Roche; if it is not possible to do it then say so. But particularly for the benefit of people who haven't had access to your report, is there a two- or three-sentence summary that you are able to give as to what AIIMS is essentially all about and in the broadest of terms how it is intended to work as set out in this report?

A. That's a fairly difficult question to distil the whole of that philosophy, culture and structure. But I think where I have talked about on page 138 the principles of the incident control system - being management by objectives, functional management and span of control - really are the essence of the structure of incident management that is used in Australia.

Those three principles are really commonsense in terms of people on the ground and managers having an objective to achieve, delegating responsibility

for key functions within a management or command and control structure, and structuring all of the levels of response into elements that are easily managed and monitored and secured on the ground.
5 That's a very brief but probably not all that inconsistent explanation.

Q. And designed ultimately to bring about effective joint operations - that's part of the purpose of it, isn't it, effective and cohesive joint operations? Is that part of the benefits of the system?
10

A. Certainly effective operations and where there are multiple agencies or multiple jurisdictions involved, then transparent operations regardless of any boundary, whether it be jurisdictional or inter-agency.
15

Q. Now on page 146 and following you deal with incident action planning, and in particular on page 147 you say in the second main paragraph on the page:
20

"A considerable amount of the planning officer's time at a large incident should be spent in the preparation of IAPs. The purpose of an IAP is to provide information to the IMT, commanders at the incident and other responsible personnel. The IAP acts as a focus enabling each recipient to identify the critical aspects of incident activity that will be affected by his/her decisions and actions.
25
30

"A comprehensive IAP is essential to the control of the incident and, if necessary, to the transfer of control to another incident controller or Incident Management Team."
35

Then you go on to describe in some detail what the incident action plan should contain. Now, in this case there have been from time to time pieces of the evidence which indicates that incident action plans were not available for various reasons at various handovers and were not available to various field incident controllers. What sort of a deficit does the absence of an incident action
40
45

plan cause so far as the personnel in the field are concerned?

A. I think it poses a number of problems to commanders in the field that will delay their
5 initial activities. I perhaps use an example, and I can't remember exactly who it was or where it was, where change-overs on the fire ground were significantly delayed because the incoming
10 commander didn't know - it was at Bulls Head, I think from memory - what resources he had and took some time to establish the resources and separate the incoming from the outgoing resources. As a result of that, there was a significant delay in committing the resources to active and productive
15 work.

The other issue is, of course, that people don't understand where their activities fit in with the overall plan for the fire and therefore the impact
20 that their activities and the achievement of their activities will have in a sequential sense of the next phase of the operation.

Q. Why is it important for them to know that?

A. Well, if they are given a task on which there is some dependency on the completion of that task before a further task can be undertaken - and I use the example I think in the report of achieving the establishment of a containment line prior to a
30 major burning out or aerial ignition operation - if people are not clear there are time lines associated with that, the next phase of the operation can't start until they have completed, then that of course can interrupt the flow of the
35 management of the incident and the completion of tasks.

The other and more important feature from my perspective is that, without clear advice on
40 objectives and timed objectives, there is no opportunity for the performance or the achievement of those objectives to be continually assessed, resources adjusted or tactics adjusted so that there can be a continuing movement down a road
45 toward the eventual and rapid containment of fire.

Q. On page 152 of your report you deal with, as

you describe it, the concept of the Service Management Team. You point out on page 153 under the diagram the concept of a SMT is not unique to the ACT. At page 154 you express the view at
5 about point 4 on the page:

10 "Although the concept of a SMT appears to have been well intentioned, I am firmly of the belief that the manner in which the concept was applied in January 2003 caused significant confusion among personnel, poor planning and inadequate information to the community."

15 Now, is it correct to summarise the way that a Service Management Team should work as in a sense a mirror, if you like, or at least a group of people who provide at each level of the incident control system a service to the Incident
20 Management Team or teams in the field? Is that the essential function of a Service Management Team; and is that what the diagram on page 153 is intended to reflect? Is it that kind of function?
A. The diagram on page 153 represents what I
25 understood to be the structure that the ACT had in place. My experience with the parallel operation of two teams in that concept is that the head of the organisation or the head office, if you like, or the primary operations centre for the
30 jurisdiction will replicate the functions of the Incident Management Team in the field purely for the purposes of ensuring that they are supported through the resources of the whole of the
jurisdiction, whole-of-government.

35 So an incident controller in the field has an incident controller to go through at the corporate headquarters. If a logistics officer in the field needs additional support, then he goes straight to
40 the logistics officer in the headquarters. but under normal circumstances the strategic and tactical decisions are being made and clearly understood as being made by the Incident Management Team in the field.

45 Q. As you point out on page 155 in the second paragraph on that page:

5 "... in my opinion, the Service Management Team must have been aware that there was no substantial IMT capability in the field and, accordingly, that the responsibility to conduct adequate incident assessment and prediction, planning and community consultation rested within the SMT."

A. That's correct.

10 Q. Does that mean in effect there was, for all intents and purposes, only one Incident Management Team which was effectively the Service Management Team at Curtin?

A. That's my view.

15 Q. Is it appropriate to make a comparison between what was occurring in the ACT and what was occurring in New South Wales? Is that a fair comparison? Perhaps I can ask you: as far as you understand it, was there a Service Management Team established at Queanbeyan for the Incident Management Teams in the field for New South Wales?

20 A. No. As I understand it, the Incident Management Team was at Queanbeyan and was the field Incident Management Team. I don't have any clear knowledge or clear information on how that Incident Management Team was supported by the Rural Fire Service headquarters in Rosehill. But I can only assume that there was a similar arrangement where, for resources that could be determined as state-wide resources, the Incident Management Team at Queanbeyan would go back to a contact, having a similar functional responsibility in Rosehill in Sydney.

35 Q. Page 156 you deal with the issue of maps which has achieved some notoriety during the course of the evidence and you make a recommendation on page 157 that a program be facilitated. The essential purpose of the recommendation is to ensure, isn't it, that maps of public and private land in the ACT are up to date and regularly reviewed?

40 A. That's correct, and that the Emergency Services Authority should have a capability or access to a GIS capability to be able to add information to those maps during an incident,

whether it be a fire or any other incident for that matter.

5 Q. As I understand it, although I don't understand the technology, the technology obviously exists to produce computerised and updated maps fairly promptly; doesn't it?

A. Yes, it does.

10 Q. They include the production of hard copy maps which are fire specific; that is, not only maps of the area but very recent, contemporary maps of the state of the particular incident?

A. That's correct.

15

Q. Is that expensive technology?

A. I can't tell you that, sir.

20 Q. At page 159 in your recommendations, one of the things you recommend is the abandonment of the concept of a Service Management Team. It is right to say, based on the evidence that you have been giving, isn't it, that if there had been well resourced, well organised incident management
25 teams in the field then the Service Management Team would have performed an important function?

A. That's correct.

30 Q. So why do you recommend, as you do on that page, the abandonment of the concept of the Service Management Team?

35 A. I believe that the concept that was outlined in the paper developed by the Bushfire Service of ESB was the key cause of confusion. What I'm recommending is that that concept which establishes a Service Management Team in that key role of managing the incident, as distinct from it being managed by another group, should be
40 abandoned. That may be abandonment for a period of time until there is clarity and very clear restructuring of command and control arrangements in the ACT.

45 Q. Does your recommendation have anything to do with in effect perceptions of the Service Management Team and the way it functioned in these fires?

A. Yes.

Q. One of the issues that arises in relation to the management of an incident like this is the
5 tasking of resources; is that correct? You deal with that to some extent in your report.

A. Yes, sir.

Q. There is obviously a distinction to be made
10 between resources which are being made available and which are then put to particular tasks by someone at the corporate headquarters of, in this case, ESB, as opposed to resources which are being
15 tasked by somebody in the field who is actively involved in the incident; is that the correct description of the distinction for a start?

A. From an organisational or corporate point of view it is normal that the resources are allocated to achieve objectives established by an Incident
20 Management Team. Therefore, they are allocated to the Incident Management Team. I can speak only from my experiences in Victoria where I allocated state-wide resources to a fire, an Incident
25 Management Team, then for all intents and purposes they were no longer under my control, they were under the control of the Incident Management Team. Resourced, tasked and looked after by the Incident
30 Management Team until such time when I was asked to provide additional support.

Q. At page 162 you deal with the police role in evacuation. The paragraph which I think is also referred to by Mr Nicholson that I want to refer you to appears in as the second last paragraph on
35 page 162 where you say:

"On the other hand, I remain unconvinced that the actions of the police on 18 January in carrying out evacuations saved lives."

40 And you refer to studies, particularly a study in relation to the February 1983 fires at Mt Macedon which, as I follow it, leads you to the view that the chances of survival for people remaining in
45 their house is very high and that, in 90 per cent of cases, the house in those circumstances might also be saved.

A. That's what the research and analysis of past incidents demonstrates.

5 Q. I think what everyone would probably agree with on all sides of the debate is that leaving the property late can be extremely dangerous?

A. That's correct.

10 Q. So the models in Victoria and New South Wales and other states where wildfires occur all urge people to make a decision and make it early so that their evacuation or their removal from their house is safe; is that right?

15 A. That's correct. The Australian Fire Authorities Council paper is predicated on that philosophy, that concept.

20 Q. In the paragraph dealing with the Mt Macedon study on page 163 you do, in referring to it, refer to the words "able bodied residents". Situations of course can occur, can't they, where people who are perhaps of very advanced age or infirmed or in some other way disabled or clearly unable physically to take any part in the defence
25 of their home, and indeed may be unable to get out of their house may need to be evacuated. That is a group of people that you would obviously countenance the evacuation of?

30 A. Absolutely.

35 Q. At page 164-5 you deal with the state of emergency declaration. At page 165 in particular you suggest just above the middle of the page that the Chief Minister was placed in an invidious position on whether to declare a state of emergency. You say it wouldn't have arisen had the AFP and the ESB adequately addressed the issue of the AFAC position paper through the Emergency Management Committee or other appropriate forums.
40 Do I take it what you are there referring to is, in this case, a need for much earlier planning between the ESB and the AFP as to how a declaration of a state of emergency would work rather than have the discussion that we have heard
45 described in evidence?

47 A. That's right.

Q. What sort of detail would have been discussed in that earlier planning, had it occurred?

A. As I understand the legislation that relates to a state of emergency, from my perspective I see
5 there are two key outcomes, apart from the appointment of the Territory Controller to manage the incident. They are the power to evacuate and certain other powers that relate to being able to utilise the resources of the Territory.

10

So putting aside the latter responsibility or function, it would seem to me and the evidence would seem to suggest to me that the decision was made on the basis of providing the power to
15 evacuate, albeit as I understand, there were some other reasons put forward.

As I have explained previously and as I have indicated previously in the report, if the
20 community education program and process is such that there is shared confidence between the police - I should take a step backward probably. If the police and the ESB, or the ESA in the future, clearly understand the intent and
25 operation of the policy proposed or supported by the Australasian Fire Authorities Council, then the only decision that remains really is whether the degree of understanding by the public or by the community is to the extent that they are able
30 to make informed decisions and they have that information.

So when a decision arises whether there should be a state of emergency declaration, in fact if those
35 other programs had been put into place and information has been provided, accurate and timely information has been provided to the community on the extent of the fires, the possible impacts and the likely timing, then I would not see the need
40 for a state of emergency declaration. So, what I am suggesting in that particular paragraph is that those arrangements - I am sure there is a better understanding now - in the future would negate the need for that debate between ESB or ESA and the
45 Chief Police Officer to occur.

Q. And you say on page 166 at the bottom of the

page that your overall view is that powers which at least at January 2003 were dependant on the declaration of a state of emergency to become operative should in any event be available to the Chief Fire Control Officer; is that right?

5 A. That's correct.

Q. He shouldn't need a state of emergency for him to have those powers?

10 A. That's correct - but could I just say that is in relation to a bushfire or a wildfire. There may be other emergencies which are identified in the risk assessment of the Territory that may call for a different approach. But in relation to
15 bushfires and wildfires, then those powers should be automatically available to the CFCO or chief officer.

Q. That perhaps leaves this question: that is, whether or not the public declaration of a state of emergency by someone like the Chief Minister in the ACT or other, in effect, leaders of government has some value as a PR exercise or a method of communicating to the community how serious the situation is. Is there any purpose to be served in having such a declaration simply to underline the seriousness of the situation as obviously applied in this case?

20 A. I think there may be some impact on the community that perhaps raises the level of confidence in the government and the agencies across the incident. But from an operational perspective, as I said, if the CFCO has those powers and the information is flowing accurately and timely, then it does little to contribute to
25 the overall operation.

Q. So you are dubious even about that benefit, if it is a real benefit?

40 A. Yes.

Q. Starting on page 171, Mr Roche, you deal with the issue of community safety. You start that section by reference to the aim of community education. We have dealt with this to some extent already, so I just deal briefly with those points. In the course of that paragraph you say:

"Therefore the ultimate aim of community education is to:

5 "Have the community understand the risks associated with a wildfire."

Now, having the community understand those risks I take it is an exercise that doesn't just occur in the fire season but is a year-round exercise of education and information?

10 A. Absolutely. It takes a long time for the community to generally understand the risks they face from wildfire and is an ongoing program, particularly in those communities where there is perhaps a transitory population.

Q. The second dot point is the personalisation of the risk, "have people personalise the risk". Just describe what you mean by that?

20 A. It is one thing to have people accept that their life varies from a wildfire. It is another thing to have them accept and understand what that means to them, their family and their property directly.

25 Q. So the information that enables them to personalise the risk, I take it that means for them to be in a position of saying, "I am at risk and, if this happens, this is what will happen to me or to my household"; is that right?

30 A. That's correct.

Q. Again, that is a long method of communication of information?

35 A. That's a long-term ongoing program.

Q. The next dot point similarly in relation to the provision of advice to the community as to what would be expected when a wildfire approaches or impacts their property. That of course will vary according to the magnitude of the fire, I take it. So what kind of advice would that usually be if it is being given out of season?

40 A. There have been a number of comments by people who were impacted in Canberra about the ferocity of the fire, the noise of the fire, the visual aspects associated with the fire which people need

to understand if they are to particularly commit
to the option of remaining and defending their
property. If they don't understand those things
then they are likely to commit to a defensive
5 strategy but yet when they see and hear what they
are being faced with, then to take last-minute
evacuation which, as I have already discussed, is
a very dangerous option.

10 So the intent of those programs is to try and have
people understand and be able to visualise what
they are going to be faced with, so when they are
faced with that and they have committed to a
defensive strategy they are able to withstand the
15 emotional side of the impact.

Q. It may be at least for the future that a great
deal of valuable information comes out of this
incident, perhaps even this inquest, as to the
20 kind of information that can be provided in the
future for people in the ACT so they know what a
large wildfire looks like for those who didn't
experience it on this occasion?

A. Absolutely.

25

Q. The last point on the page is:

"Provide advice on the options that the
community has to ameliorate the risk to
30 themselves and their property."

Are you there talking about the amelioration of
the risk to them and their property at the time of
the fire; or are you talking about pre-fire season
35 preparation, all those sorts of things?

A. Both.

Q. We have been, to some extent, through the way
in which the information can be disseminated to
40 the community. Obviously it can be done in
writing through the letter box; it can be done
through radio and television commercials; it can
be done as you suggested by face-to-face meetings
and that kind of communication. Do you have a
45 view on the effectiveness of the various options?
Perhaps starting first of all with the
distribution of written material, does your

experience tell you how much notice people take of written material?

5 A. I think as I indicated in my report, we are inundated with written material. Things pop in the letter box or are handed out at various forums or shopping centres. It is apparent, and the social research seems to indicate, that increasingly the impact of that material is becoming less and less.

10

So using that as a primary communication medium with the community is not successful and has less a significant impact.

15 Q. And radio and television?

A. Radio and television is, of course, a medium that gets to the majority of people and can cover a wide audience. Again, it can only be non-specific about the individual's environment and the individual's risk and again is tending to suffer, as the research indicates, from the same problems that hand-out material is. If I can use myself personally as an example here with the smoking ads. I was a smoker for 42 years until I had a bit of a hiccup in my life. Prior to that the ads on television didn't move me to give up smoking, mainly because I loved it. I still do, to be quite honest.

20
25
30 THE CORONER: Is this an advertisement for smoking?

THE WITNESS: I am sorry about that. Perhaps I am still in need of some counselling. So the visual impact of those ads which certainly in Victoria were quite, to some people, disturbing ads --

MR LASRY: Q. Graphic?

A. Graphic. The same thing happened with the transport accident commission ads. Increasingly over the years the graphic nature of those ads has increased and increased and increased. Whilst they have some impact on the number of people dying on our roads, there is still a propensity by people to speed or to partake of alcohol.

45
Again, the research indicates that the impact of

those quite graphic ads is lessening. A number of the fire services around Australia have conducted research. There is a lot of social research that has occurred on how you actually get the best
5 message across to people. There is no doubt that face-to-face communication and involving the people in identifying what they are at risk from and why they are at risk from that particular hazard is by far the best way of getting the
10 message across.

And certainly in the programs that have been implemented in Victoria through the community fire garden bushfire programs, similar programs in
15 South Australia and Western Australia and also in my understanding in New South Wales, is beginning to show benefit from that particular process.

Q. You recommend on page 185 that the
20 implementation of the New South Wales Rural Fire Service BushfireWise program be continued. I take it what you are describing is a process which is regular community meetings of various forums - we have already been through those; we don't need to
25 go through them again --

A. Yes.

Q. Regular face-to-face dealing with community groups to educate them about the risk and the
30 consequences of bushfire?

A. Yes. Primarily that is about empowering people to make their own decisions for their own safety and that of their property.

Q. Participating, for example, in joint fuel reduction programs and things of that kind?

A. Whatever it takes to make their community, from what they have identified, a safer place to
40 be.

Q. That involves, obviously, the stay or go approach that we have been discussing in the course of your evidence; getting people to understand which category they are in, or likely
45 to be in, in the event that a fire affects them?

A. That's correct. The other benefits of those particular programs are that, if it is not already

there, it infuses a greater community spirit within the community, a desire to look after each other. So when the event occurs or the impact is imminent, if there are people who need assistance with, for instance, evacuation - evacuation
5 doesn't mean you need to uproot people and take them 10 or 15 kilometres away. With age and infirmed people, it may just be a matter of their next-door neighbour who has made a decision to
10 stay taking them into their home. But the fact is that those programs do create a greater sense of community and sense of support for neighbours so that, in communicating the risk, in developing
15 strategies to ameliorate the risk and in dealing with the risk when it impacts, those forums appear now to have a far greater impact.

Q. The overall effect of that is summarised, I take it, by the diagram that appears on page 187
20 above which you say:

"To be effective, any emergency warning system should be the final phase in a continuum of overall community wildfire
25 education."

Then you set out the diagram which has three elements: the prevention and preparedness, information, and then finally the warning?

30 A. That's correct.

Q. Just one or two other matters I wanted to ask you about, Mr Roche. Again, not to reduce the value of what I don't refer to, but at page 199 in
35 your recommendation you say:

"The establishment of a senior position within the Chief Minister's Department to oversee and co-ordinate media releases and
40 information across agencies may add value to the dissemination of general and routine information during an incident."

The position is the director of government communications that you are there referring to; is that right?

A. That's my understanding of what has either

been proposed or has in fact been established within the ACT.

5 Q. Is it fair to say, without putting it in a pejorative sense, that this in a sense is another level of bureaucracy within the government departments here in the ACT?

A. That could occur.

10 Q. Is it also fair to say that as such there is always a risk in these positions that they are affected by issues of politics?

A. Absolutely.

15 Q. And, therefore, is the purpose of your recommendation to recommend that, in the end, it is the ESA who must be able to make decisions about the release of information to the community, not a member of a government bureaucracy?

20 A. Not quite. What I am recommending there is I have no real problem with the director of government communications co-ordinating or in fact issuing general information and routine information during the incident. But what I am
25 indicating is when it comes down to factual and timely warnings to the community when impact is perhaps becoming imminent or is imminent, that should be the role of the agency, the Emergency Services Authority, so that the information is
30 timely; it is accurate; and it is not interpreted for any other reason than providing information to the community to enable their safe survival.

35 Q. Just a few other brief matters. At page 200 you deal with the McLeod recommendation number 22. I take it in your discussion that one of the things that you are there dealing with and which you describe in some detail is the complications that arise from having a centralised Incident
40 Management Team operating at the same premises as the rest of the corporate function that is part of ESB, or ESA as it now is; is that right?

A. That's correct.

45 Q. At page 201 in the first main paragraph you suggest that really in a large incident those two functions ought to be separated. There is no

reason why the centralised IMT needs to be in the corporate headquarters, it can be somewhere else.
A. That's correct. My concern is the ESA, as I would see it, has specific responsibilities on behalf of government and on behalf of the community to manage at the highest strategic level. There should be clear separation between people attached to the organisation, senior managers, senior executives who are performing that role on behalf of government and then on behalf of the community.

The problem I see is when the two are integrated, as occurred to some extent in January 2003, then one or other of the roles can be diluted. Then it would seem to me it would be far better that the Incident Management Team itself is to some degree quite separate in locality and responsibility to that of the corporate level of the ESA.

Q. On page 203 and particularly on page 204 you set out a number of options that a government may consider for the purpose of securing:

"... a more flexible and integrated service delivery capability that has a capacity to grow to meet the needs of an expanding community and the continuing exposure to major wildfires."

Those steps include and I will refer to some of them but not all:

"2. Establishment of a single chief officer with operational and managerial responsibility for both arms of the fire service."

That is the Bushfire Service and the urban service; is that right?

A. That's correct.

Q. Why do you make that point, why do you refer to that?

A. I think the ACT is a small jurisdiction. It has a small number of resources and localities from which it delivers service to the community.

It just doesn't make sense to me, when in fact on a number of occasions there is a common purpose and a common objective, to have two quite distinct services when there are operational advantages in them coming closer together.
5

Q. You also in that same theme a few points down put as an option:

10 "Integration of the Fire Brigade and the Bushfire Service."

Not only is there a chief officer but they are the one service?

15 A. That is correct.

Q. The benefits of that as you see it are the same benefits you have just been describing?

A. Yes.
20

Q. Another one which you raise for discussion is the possibility of subcontracting the provision of Bushfire Services to the New South Wales Rural Fire Service. What are the advantages of such a step or what are the considerations of such a step; and how would that work practically?
25

A. Well, the ACT is a small island in the middle of New South Wales and, while no criticism of the ACT, has a finite capacity. That is obvious because of its size.
30

New South Wales has a large constituency of service delivery frameworks. It is in a far better position or could be in a far better position to supplement the resources of the ACT in times of high levels of activity and need.
35

By the way, I am not recommending any of these. I am putting them forward as options that ought to be considered.
40

Q. Indeed in your report you say each has their advantages and disadvantages and some may even be dismissed as unacceptable for a number of reasons. They are there for the purpose of discussion and consideration; is that right?
45

A. That's correct.

MR LASRY: I had hoped to finish by morning tea but I haven't quite made it. Is now a convenient time? I will take perhaps another 10 minutes after.

5

THE CORONER: Certainly. We will take the morning adjournment.

SHORT ADJOURNMENT

[11.20am]

10

RESUMED

[11.45am]

THE CORONER: Just before you start, Mr Lasry, just to indicate that it is proposed to call Mr Nicholson to give evidence, for those people who were querying that issue yesterday.

15

MR LASRY: I should add, our request for documents was predicated on the need to look at the documents to decide whether or not Mr Nicholson would be called. As that decision has been made, of course those documents are still required for the purpose of better understanding his report and his evidence.

25

MR WATTS: Could I inquire when he might be called, an indication of the timetable?

THE CORONER: It very much depends, I suppose, on how long counsel propose to cross-examine Mr Roche. It would be some time next week.

30

MR WATTS: It would be just after Mr Roche?

THE CORONER: I would think so, possibly before Mr Lucas-Smith and Mr Castle are recalled.

35

MR LASRY: I should say there is a high level of discussion going on at the Bar table between us and various interests as to who would be called when. Some has to do with the availability of witnesses and some has to do with the availability of counsel. I think the matter is in a state of flux. I suspect it would be next week.

45

As at yesterday, Mr Phillip Walker informed me that he thought there were difficulties in getting

Mr Nicholson here before next Tuesday. I am not sure if those difficulties still prevail.

5 MR PHILIP WALKER: I can amend that and say Mr Nicholson can be available next Monday and Tuesday. After that I am not absolutely sure.

10 THE CORONER: Thank you, Mr Walker. So I can't answer your question, Mr Watts. You probably know more about it than I do at this stage.

MR WATTS: I don't think so.

15 MR JOHNSON: If I could raise one matter: is it proposed that Mr Lucas-Smith and Mr Castle be re-called? I think your Worship just indicated that it was intended. As I understood it, there was a question about that. Just for our part, it would be useful to know what the current decision
20 is, if there is a decision.

THE CORONER: It was always the intention to recall Mr Lucas-Smith and Mr Castle. With Mr Lucas-Smith, it was whether or not his counsel,
25 Mr Walker, thought he should be recalled. It was more a view that he did not necessarily need to be recalled, unless there was some view that Mr Walker had that he wanted him to be recalled. I understand Mr Walker indicated that he wishes
30 Mr Lucas-Smith to be recalled, so on that basis it is planned to do so.

MR LASRY: That applies to Mr Castle as well.

35 THE CORONER: And Mr Castle as well, yes.

MR LASRY: Q. I just wanted to finish by asking you some questions about Mr Nicholson's report. Do you have that in front of you?

40 A. Yes, sir.

Q. At page 6, at the bottom of the page, Mr Nicholson says:

45 "Deliberately or unwittingly."

MR LASRY: Your Worship, I suppose it is

appropriate, seeing I am now referring to the document, that it at least have an exhibit number - I don't think it has to date - and it will of course go onto the system. For present purposes whilst I am on my feet, can I tender it and ask your Worship to give it a number.

THE CORONER: I note Mr Archer's objection to the report being tendered, but it is appropriate that it be tendered. There is no objection by other counsel presumably to that action? The report titled "Report on an expert examination of the reports prepared for the coroners inquiry into the January 2003 bushfires prepared by Mr Nicholson" Dated 3 October 2004 will become exhibit 0099.

EXHIBIT #99 - REPORT BY MR NICHOLSON DATED 03/10/04 TENDERED, ADMITTED WITHOUT OBJECTION

MR LASRY: Q. Mr Nicholson says at the bottom of page 6:

"Deliberately or unwittingly, Mr Cheney is inferring that the decisions of incident controller Odile Arman not to work the Bendora fire during the night of 8 January and the failure (in Cheney's opinion) of the Service Management Team to replace Ms Arman with someone having 'more experience' contributed significantly to the development of fire behaviour that caused so much loss and misery on the western side of Canberra on January 2003."

That criticism in a sense, Mr Roche, would apply to you because insofar as it is a comment on the criticisms of Ms Arman you have made a similar criticism; haven't you?

MR CRADDOCK: I object. Not criticisms of Ms Arman --

MR LASRY: Of the decision.

MR CRADDOCK: -- of a decision that has been made. I think there has been a tendency to refer to it, I think Mr Archer referred to it as the Arman

situation or the Odile Arman situation. The expert witnesses Mr Roche and Mr Cheney have been careful not to say that.

5 MR LASRY: I accept that, your Worship.

MR CRADDOCK: It is just an oversight and of no great consequence. But the more it is said, the more it will be said.

10

The other matter that I rise to object about is what my learned friend is doing now is, in my submission, impermissibly aligning the comments by Mr Roche and by Mr Cheney. In fact they are different. I have no difficulty with Mr Roche being asked to hear Mr Nicholson's comments upon his comments but not those of Mr Cheney.

20 THE CORONER: What do you say to that, Mr Lasry? You are aligning the comments that Mr Cheney and Mr Roche have made in relation to Ms Arman's decision.

25 MR LASRY: The point of the question really is the commentary of Mr Nicholson, at least seemed to me for the purpose of asking Mr Roche the question, to apply to a significant extent to Mr Roche as well. He has made it clear. I agree with the first part of my learned friend's objection. He has made it clear in his opinion the decision to withdraw on the night of the 8th of January was really a wrong decision.

35 What I am interested in is what the consequences of that decision were. This is really an introduction to the consequences of that decision. That is what I was about to ask.

40 Q. Mr Roche, you have, as you would obviously accept, given evidence and in the course of your report offered the opinion that, in your view, the decision to withdraw the personnel from the Bendora fire on the night of the 8th of January was a wrong decision. I think that's the way you described it.

45 A. That's correct.

47

Q. My question is what you can say as to the consequences of that decision; in other words, had the personnel remained and done the things that you have already described in the evidence you gave yesterday, what are the likely differences between the fire behaviour that would have flowed from that activity as opposed to the fire activity that flowed from not remaining with the fire overnight of the 8th?

10

MR CRADDOCK: I object to that question - firstly because that involves a degree of crystal ball gazing for which this witness is unqualified. In my submission, he cannot now say what the fire behaviour would have been without identifying a great many assumptions of fact that would have to be placed before the witness to presume as to what might have been done on the night of the 8th had water been put on the fire more than was done; where if rake hoe teams had commenced to build a rake hoe line; where considerations about where the head fire was moving, how it might have been affected by the conditions as they changed overnight. The matter is so complex that, in my submission, it does not admit of an answer that would be of any assistance to you whatsoever. That is, the question that was asked. That is one basis of the objection to the question.

30

The second is that this witness, whilst he has been established as an expert in operational matters generally, has not been established as an expert in fire behaviour. At least in part what Mr Lasry's question goes to is the question of, upon unstated assumptions, what the fire behaviour would have been overnight and who knows.

40

So for those reasons, in my submission, the question ought to be disallowed.

45

MR JOHNSON: Could I support the objection, your Worship, on the grounds that Mr Craddock has raised. One can push the envelope to a certain extent inviting opinions from persons such as Mr Roche, even allowing for the fact that your Worship is not bound by the rules of evidence. But, in my submission, to allow this

question to be put would involve an impermissible
pushing of the envelope in circumstances where the
witness would be given a combination of
speculation and reconstruction added to the
5 particular vices which have been identified by
Mr Craddock. I would support the objection.

MR LASRY: Your Worship, the answer may well be in
the portions of Mr Roche's report at page 72 to
10 which I referred him yesterday without objection:

"... the Bendora fire could have been
contained in 24 hours and secured prior to
the deterioration in weather conditions. The
15 primary fact in achieving this objective was
adequate first response resources and
overnight fire suppression activity."

I suppose I don't need to go back to that because
20 that evidence was given yesterday, but in a sense
it is an answer to a question that I just sought
to ask him. I am content to move on,
your Worship.

25 Q. Mr Roche, on page 8 of the report,
Mr Nicholson refers, in the context of discussing
overnight firefighting, to your assertion that
"withdrawal from overnight firefighting is not a
position that is commonly adopted within the
30 wildfire industry as a whole". He refers to that
passage at page 69. He accuses you of being
simplistic against the following position of the
CFA and then quotes an operations update from 2002
of the CFA. Have you had a read through that page
35 of Mr Nicholson's report?

A. Yes, I have, sir.

Q. The operations update outlines a number of
considerations to deal with firefighter safety;
40 does it not?

A. Yes, it does.

Q. Is there anything that you can see from your
experience of overnight firefighting and your
45 experience as an operational firefighter and as
chief officer of the CFA for a period of time that
is inconsistent between overnight firefighting as

a matter of principle and what is contained in that operational update?

A. No, there is not.

5 Q. The operations update doesn't specifically refer to overnight firefighting as quoted by Mr Nicholson?

A. No, it doesn't.

10 Q. Are there publications in the Victorian CFA in the form of updates or bulletins or other similar documents which deal specifically with the topic of overnight firefighting?

A. No, there are not.

15

Q. At page 14, in the third last complete paragraph on that page, Mr Nicholson says:

20 "Taking into account my findings from the visit to the site of the origin of the fire and what was known of the weather conditions predicted for the next few days and the fire behaviour that night, the incident controller made the right decision, the decision that
25 would not expose her firefighters to the risk of injury or possibly death, when there was no imperative to do so."

30 First of all, the question really I want to ask you was, having read that passage, in relation to whether there was an imperative to leave personnel at the Bendora fire overnight, what do you say about that?

35 A. As I have already indicated, I believe there is always an imperative to extinguish a fire as quickly as possible notwithstanding that there are safety considerations, but my view again is that they can be adequately dealt with. In these
40 circumstances I can only repeat what I said yesterday that there were a number of fires, there was some likelihood that additional fires might have shown up in the following days as a result of the passage of the lightning storm.

45 So the need to deal with the fires that were known as rapidly as possible to free up resources to deal with other ones that weren't extinguished

overnight or might have shown up is an imperative in my view. Whilst the immediate weather forecasts may not have indicated a change in the weather immediately or a deterioration in the weather immediately, our well concreted experience on the normal weather cycles is that within a period of some five to eight days there was going to be deterioration.

10 Q. If we could go to the section on community warnings at page 16 of Mr Nicholson's report. In the second paragraph on that page he says:

15 "In providing advice and warnings to the community, advance work needs to be done to identify what they are to be told and how advice to leave will be given."

20 Now, that is said in relation to the paragraph which I raised with you earlier today about your concerns about the failure of the SMT, as you described it, to promulgate adequate and timely warnings. Do you agree that in providing advice and warnings to the community advance work needs to be done to identify what they are to be told and how advice to leave would be given?

25 A. Yes, I do.

30 Q. What would you define "advance work" as including?

A. I think it recaptures my evidence immediately before the morning break of the continuum of community education well before the season and repetitive from year to year on the normal fire prevention activities that communities at risk should take, and that continuum extending through to general information about emergency and then more specific information.

40 I don't disagree with what Mr Nicholson proposes that that should occur well in advance and that what occurs when an incident occurs should also be planned.

45 Q. Indeed, on page 17 in the third last paragraph on that page, he refers back to your comment saying:

5 "Going back to Mr Roche's comment at the start of this section, he is wrong to refer to this deficiency as a failure of the SMT. It is a far more long-term issue than a few hours before the arrival of the fires at the edge of Canberra."

And I take it you would agree with that --

10 THE CORONER: Which part?

THE WITNESS: I am not agreeing that --

15 MR LASRY: Q. No, I am sorry, with the second sentence I am asking you. You would agree with "It is a far more long-term issue than a few hours before the fires appear at the edge of Canberra"?

A. That's correct.

20 Q. Sorry, I wasn't suggesting you would agree that you were wrong:

25 "And I must add here that two comments from the broader community above are not intended as criticism of the police"

30 And so on. In the circumstances which prevailed here where, at least according to the standards that you had been describing, that long-term provision of information and advice on how to react to the effect of a fire hadn't been given in the way that you would suggest was the appropriate way or the ideal way to obtain it over an extended period of time.

35 Given those circumstances, would it still have been appropriate in the week leading up to the 18th of January for definitive warnings to be issued about what was occurring and the risk of effect or impact on the suburbs?

40 A. Most certainly.

45 Q. You have said earlier in your evidence I think that that might justifiably started as early as 15 January?

A. That's correct.

47

Q. Is there any reason not to do that in the circumstances that prevailed here?

A. No.

5 Q. That you can see?

A. No.

Q. At page 18 near the top of the page Mr Nicholson refers to what he describes as a
10 "watershed fire" and says specifically:

"'Watershed' fires shock governments into fiscal largesse and the allocation of funds to upgrade firefighting equipment and
15 implement new programs."

Is the term "watershed fire" a term that you are familiar with?

A. It's a common term, but in the context that it
20 is used here, I don't agree with it. I think the ACT had previously experienced significant fires, including 2001 and before that, that should have provided a catalyst for a whole range of changes; and I am certain that in fact it did.

25 Mr Nicholson has used one example here of what actions the government took or didn't take on the basis that suggesting they should have taken it because of previous fires that hadn't occurred, and I don't agree with that assertion.

30

Q. Is it fair to suggest that the real watershed is the combination of circumstances leading to a fire season as much as the fire itself; that is, drought, high fuel loads and so on? Are they the
35 factors that should most affect the provision of resources for firefighting?

A. That's correct, but I don't believe that they are watershed issues.

40 MR LASRY: Yes, thank you, Mr Roche. Thank you, your Worship.

MR ERSKINE: Could I just check that the version of Mr Nicholson's report which your Worship has
45 taken into evidence is the same one that I think is around the Bar table? There are two prints of it; they have substantially different numberings.

Just to be absolutely clear about it, I am using a version which has 15 pages to his report. I was able to follow all of Mr Lasry's text without any difficulty at all. The text seems to be the same.
5 The version I am using I think was printed out for our convenience last Friday. It is a matter of making sure that what is on the record can be agreed to be a particular print and we all know how many pages it has.

10

THE CORONER: The one I have, the copy I received this morning, has 19 pages. This will be the version that is in evidence. I don't know what you have. If everybody else has a 15-page version
15 then maybe I have the wrong version.

MR ERSKINE: The 15-page version is the first one faxed to us last Friday.

20 THE CORONER: I think it has been updated, just from a comment yesterday that there was the version faxed on Friday and then there was an updated version that was distributed yesterday morning. Is that right, Mr Walker?

25

MR PHILIP WALKER: That is correct, your Worship. The narrative part of the signed version is signed 3 October and is the updated version on Monday. The narrative is 19 pages. The totality of the
30 report is 25 pages, the last six pages of which are constituted by photographs.

Now, as it happens, because the photographs were made at the time the report was distributed on
35 Friday, the numbering on the bottom of those has been taken off because it was bumped about by the inclusion of the additional material. There should be six pages of photographs constituting appendix - sorry I take that back. There should
40 be --

THE CORONER: Five pages of photographs and nine photographs.

45 MR PHILIP WALKER: Yes, 5 pages of photographs and a warning card as two appendices.

47

THE CORONER: Perhaps, Mr Walker, you can make sure that Mr Erskine has the right version, if you have a spare copy of that version.

5 MR ERSKINE: We do have it, your Worship,
somewhere; those behind me have it. I thought it
was necessary to clarify it, because this report
has come on us fairly quickly. If there are two
versions floating around, there is bound to be
10 confusion in some of the references.

MR PHILIP WALKER: The additional thing that
should be with that is a CV. I don't understand
whether that has been tendered or not as part of
15 the report. There is a professional resume at the
back.

THE CORONER: I take that as being part of the
report.
20

MR PHILIP WALKER: That is an additional four
pages.

THE CORONER: Thank you. Yes, now, gentlemen,
25 have you decided on a batting order?

MR CRADDOCK: We have.

<CROSS-EXAMINATION BY MR CRADDOCK

30 MR CRADDOCK: Q. Mr Roche, did you have some
typing assistance with the preparation of your
report?

A. No, I did not.

35 Q. You did it yourself?

A. That's correct.

Q. Using a word processing package?

A. That's correct.
40

Q. Commonly known as "Word"?

A. That's correct.

45 Q. Were you running that on a laptop or on a
personal computer?

A. On a PC.
47

Q. Were you saving the report from time to time by means other than the hard disk; that is, onto a DVD or a CD, something of that sort, or a zip drive?

5 A. No.

Q. Is that the same computer from which your email runs?

10 A. Yes.

Q. So documents that you receive by email you were able to simply save into your word processing package?

15 A. Not necessarily. I was able to do that but whether I did it or not depended on the material.

Q. But you did that from time to time?

A. That's correct.

20 Q. Especially in relation to documents that formed part of your report or ultimately formed part of your report?

25 A. I'm not sure - if you are saying that documents that came to me by way of email that formed part of my report, no.

Q. No, you didn't save them.

A. That's correct.

30 Q. What did you do with them?

A. I didn't save them; I printed them. In some cases I printed them and then, once I'd used them, I destroyed them.

35 Q. You destroyed them?

A. That's correct.

Q. Why did do you that?

40 A. I had a number of documents, iterations of the report that I did, and it is very easy to become confused over various editions and various iterations. Once I had made alterations and incorporated those into my report, I saw no reason to maintain them.

45

Q. But they weren't going to confuse you because your report in fact was stored electronically on

your hard disk; isn't that right?

A. That's correct.

5 Q. Did you delete the emails to which those documents were attached?

A. Many of them, yes. Some of them I kept in hard copy and I understand you have been provided with copies of those.

10 Q. But many of the others you deleted?

A. That's correct.

15 Q. Now even Luddites like myself know that when one deletes documents in the email system it goes to another folder called "deleted documents" or something like that and they are not really deleted. You can simply go to that file and look at them if you want to look at them. That's right; isn't it?

20 A. If you choose not to delete them out of that folder, that's right.

Q. Did you delete them out of that file as well?

25 A. That's correct.

Q. Why did you do that?

A. Why would I keep them?

Q. I am asking you why you deleted them.

30 A. Because I didn't see a need to retain them. I'd dealt with them. They were of no further interest to me for the future or anywhere else. I saw no reason to retain them.

35 Q. You did retain some versions of your report though, didn't you?

A. Some hard copy versions, yes.

40 Q. They were no more apt to confuse you than those that were attached to emails, surely?

A. A number of those were retained as purely scrap paper, which I used from time to time to print out various material for my review, used the other side of the paper. Maybe I'm a little bit
45 tight in that regard.

Q. For someone who has things to do generally

with trees, that is probably a smart move. Are you saying that those hard copies of versions of your report that you did retain were retained only for the purpose of forming note paper?

5 A. That's correct.

Q. So all of those pages of the versions that you kept in hard copy have your notes on the back?

A. No, not correct.

10

Q. Not correct?

A. Once I'd used them a second time, I destroyed them - with the exceptions of the ones that I provided to Mr Woodward.

15

Q. So those were the only ones that you didn't have notes on the back?

A. Perhaps to clarify - the material which I provided to Mr Woodward is all of the material that I have.

20

Q. Are you sure about that?

A. That's correct.

25 Q. Why did you bother to delete those documents from the deleted files folder in your email system?

A. If I've deleted something, I see no reason to retain it in any form on the computer. Whether it just moves it from one place to another, I've always been in the habit of regularly cleaning out both - putting into the deleted file and cleaning out the deleted file. I have always done it and always probably will continue to do it. I see no reason why I shouldn't do that.

30

35

Q. Could the witness be shown a document. (shown) Mr Roche, what you have before you is a photocopy of an email from Mr Woodward to you dated 21 June 2004 at 2.10pm. Do you see that?

40

A. Yes, I do, sir.

Q. It is a short email. It has a subject described as "report form template"; do you see that?

45

A. Yes, I do.

47

Q. It says:

5 "Attached the report form template as
discussed last Thursday. Let me know when
you are ready to start going back to earlier
parts of the report and I will deal with
the --

Then there is a hash sign; do you see that?

10 A. Yes, I do.

Q. It continues:

15 -- that I need to deal with and then forward
the parts to you (including the 'Roche report
pastes' that we discussed)."

That was an email received by you on the 21st of
June?

20 A. It was an email received by me. I can't say
it was the 21st of June.

Q. Around about that time?

25 A. Yes, sir.

Q. Can you tell us what the "report form
template" was that had been discussed?

30 A. As I recall, it was a template that was
developed by Mr Woodward of headings - I would
say, your Worship, I am not computer literate; in
fact, I am very computer illiterate. I was
provided with a template which utilised the
computer in some way - I don't know how - but to
use certain formats for headings, subheadings,
35 paragraphs, primary headings, et cetera, which I
didn't use.

Q. You didn't use it?

40 A. No, I didn't.

Q. Your report by this stage was obviously in
process because Mr Woodward said, "Let me know
when you are ready to start going back to earlier
parts of your report"?

45 A. That's correct.

Q. He went on to say, "And I will deal with the"

something or other that is a hash sign in this
email "that I need to deal with, then forward the
parts to you including the Roche report pastes
that we discussed". So you received this email at
5 a time when you had commenced writing your report?
A. That's correct.

Q. He was asking you to get in touch with him
when you were ready to what, start reviewing
10 aspects of your report; is that what you took that
to mean?

A. As I recall, I think that's correct.

Q. And that he would then deal with the something
15 or other that he needed to deal with?

A. That's correct.

Q. What did you take that to mean?

A. I didn't take it to mean anything. I knew
20 what it meant.

Q. What did it mean?

A. I indicated to you in my evidence I think it
was yesterday under examination from Mr Lasry
25 that, due to time constraints, on a number of
occasions I put text in the report without
footnoting the references because at the time I
didn't have the time to go and chase, research the
footnote. So those footnotes were marked with an
30 asterisk and, as I indicated to you yesterday,
Mr Woodward assisted me by inserting the reference
to that text, particularly the numbers, the
signature that is associated with the brief.

35 Q. In many cases the footnotes refer to a range
of evidence in your report. That is so, isn't it?

A. In some cases if you mean range of evidence,
more than one particular quote, that's correct.

40 Q. In many cases your footnoting sets out
reference to various portions of the evidence of a
number of witnesses apparently in support of the
proposition in the text; that's so, isn't it?

A. That's correct.

45

Q. The selection in some cases of those
references to put in the footnote in support of

various propositions was undertaken by Mr Woodward?

A. No.

5 Q. Then how was that achieved?

A. Mr Woodward didn't select the references. What Mr Woodward did was assign the particular signature to it, the code or whatever you call it - the [AFP.AFP.00] et cetera - that I didn't
10 have ready access to the same extent as he did through the Ringtail system.

Q. What did you send to him in documents that required footnoting?

15 A. On occasions they may have had an asterisk or they may have been identified by the title.

Q. So there was a proposition which formed part of your report followed by an asterisk; is that
20 what occurred?

A. No. In general terms there was a proposition or an opinion or a direct reference, and more likely the latter, a direct extract from evidence that I was aware of but without the supporting
25 information from the Court system. That was primarily because there was a range of documents that I received, particularly in the early piece, that were not marked with the Court system reference - particularly a number of statements.

30

Q. In that email Mr Woodward refers separately to something that he describes in quotes as "the Roche report pastes". What were they?

A. When I initially began the report I had
35 included a number of recommendations or statements that perhaps were inconsistent with their position in the text of the report. So in the early part of the report - parts of the report those were taken out and kept in a separate document until
40 such time as I re-inserted them in a more appropriate place in the report.

Q. I'm not sure that I understand that. You had an early draft of your report in which you put --

45 A. An early draft of part of the report.

Q. An early draft of part of the report in which

you detailed a number of recommendations?

A. Some recommendations, just some issues, statements.

5 Q. Some discussion of issues?

A. Some discussions.

Q. And what precisely happened to those portions of the report - of the draft report, I should say?

10 A. They were either incorporated into the next draft or rejected.

Q. Were they rejected after discussions with counsel assisting?

15 A. No, they weren't.

Q. Did you discuss them with counsel assisting?

A. No, I did not.

20 Q. When did you first discuss your report or your draft report with counsel assisting - at this stage either of them?

A. I'm sorry, would you repeat that, please?

25 Q. When did you first discuss your report or your draft report with either counsel assisting?

A. I can't give you a date. The only discussion I had with counsel assisting was probably in two areas: one was the framework of the report, which
30 is I understand set out in a document that was provided to the Court; and the second occasion where I had any discussion was when the report was finally assembled. Those discussions were about framework and layout, not content.

35

Q. See if we can narrow this down. Only two discussions with counsel assisting about your report before you signed it; is that right?

A. Two discussions in detail about it. Obviously
40 when I sent each part, as I explained the other day, it was done in parts and, as each part was completed, it was sent to Mr Woodward. Obviously I rang Mr Woodward and said, "Look, this part is sent. If you have any problems please let me
45 know".

Q. Something cursory like that?

A. That's correct.

Q. And not a discussion of the issues?

A. That's correct.

5

Q. So there was an early discussion, but that was really to do with the framing of the issues; is that right?

10 A. It was about the framing and the issues that I ought to cover in the report.

Q. Would it be fair to describe it as a discussion of the headings, topics that should be dealt with?

15 A. Well, it is in accordance with the document that I understand you have been provided. That was the context of the discussion, it was about how that might look.

20 Q. The production of that document setting out the issues that you would deal with in the report?

A. Yes, that's right.

25 Q. Rather than a discussion of the evidence for or against any particular proposition; would you distinguish --

30 A. The only time I had discussions with Mr Woodward about the evidence was where I had made statements or within text in the report where I could recall, for instance, that certain things had been put before her Worship and I couldn't recall exactly where that had occurred or what the reference was. And obviously for ease and to assist me time-wise, I made a number of phone
35 calls to Mr Woodward to say, "I've said this, can you help me with the reference in the transcript" or alternatively in other documents.

40 Q. So those discussions, they were just about getting some assistance as to, say, when a witness had given evidence or when a document had been tendered, something of that sort?

A. That's correct.

45 Q. The earlier discussion was just about what topics would go into that document that set out what things you would deal with in your report?

A. In general terms, that's right. But by the same token I was also advised by Mr Woodward that I wasn't bound by that guidance or those discussions.

5

Q. In other words, if you didn't see fit to deal with one of those topics, no-one was going to make you; is that the way you took that?

A. I'm sorry, would you say that again, please?

10

Q. You had a document which in effect set out topics to be dealt with.

A. That's right.

15

Q. It was indicated to you one way or another that, if you didn't feel the need or that you have the experience to pass opinion on some particular aspect, no-one would suggest that you should enter one; is that a fair summation of that?

20

A. That's correct.

Q. I think you have indicated that there was one other discussion with counsel assisting and that was when your report was finalised?

25

A. When it was assembled that discussion took place over a day and a half, where I attended Mr Woodward's office and assembled the various parts of the report, inserted photographs, et cetera.

30

Q. Well, was that discussion only about how this creature got put together on the computer or did it go beyond that?

35

A. It was primarily about how it was put together.

Q. Just the --

A. In effect, I don't want to demean him but I used Mr Woodward as my secretary.

40

Q. He can't criticise you for that because you are his witness, so you would probably get away with that. Are you saying that that exercise was a mechanical one in terms of how the various portions of the report ultimately got stuck together with photographs in them to create this 207-odd page thing that we now have?

45

A. That's correct.

Q. In saying that, are you implying, tell me if you are not, that it wasn't a matter of whether
5 you should say this or you should say that or you should say some other thing in your report?

A. I'm not implying anything. The import and the content of the report is by my design, by my input and the opinions expressed within it are mine.

10

Q. Yes I know. You have said that?

A. That's correct.

Q. I am asking you about the discussion that you
15 had with Mr Woodward that you said took place over a day and a half. I am just directing your attention to that meeting?

A. Yes.

Q. I am trying to determine whether that meeting
20 insofar as it dealt with your report at all really only dealt with the mechanical aspects of putting the various bits and pieces of your report together into this 207-odd page document?

25 A. I have no doubt that on occasions we may have discussed part of the content as it was being put together. But what was in there was already done and it was unaltered as a result of any discussion or any conversation that we may have had.

30

Q. So you are saying that the only conversation that you have had with counsel assisting about the content of your report occurred after it had been finalised and did not lead to any alteration in
35 your report?

A. That's correct.

Q. Can I ask you to go back to the email that you have before you. Where are your "Roche report
40 pastes" now?

A. Either in the report or they don't exist any longer, for the same reasons as I have just explained in relation to other material that were drafts.

45

Q. So, do I correctly understand from that that pastes, that is documents to go into your report,

were in fact sent to you and incorporated by you into the report, after which time you deleted all other records of them?

5 A. No. The material that formed the pastes, as were referred to, was my material which was originally scripted by me and included in that part of the report that was being sent off to Mr Woodward. At that time because it was a very early stage of the report and they may have seemed
10 inconsistent with other issues that may have been covered later on, it was discussed with Mr Woodward that we would draw them out at that particular time and keep them separate. That document was then sent back to me for reference
15 and inclusion as the rest of the report was developed.

Q. You had these portions in your early draft and you took them out?

20 A. That's right.

Q. You sent them to Mr Woodward?

A. No. That's not what I said. What I said, and I'll repeat it again: they were sections of text
25 that were in the draft parts of the report that I sent to Mr Woodward. Okay. Because they were very early parts of the report, in recognising the alignment between those parts of the report and what was to be said by me later on in accordance
30 with that framework, I had a discussion with Mr Woodward and for some of those parts we might have said, "Well that might fit better later on in your report when you cover this particular item". So they were taken out by Mr Woodward and sent
35 back to me as a separate document of, I think it was about two pages. It may have been half a dozen, six or eight paragraphs of text.

At a later stage in the development of the report
40 they were either inserted back into the report where there was consistency with the matter being dealt with and the text being dealt with at the time or, in hindsight, as the report was being developed in a couple of cases I thought "I am not
45 going to include those". I had covered them in a different way, so I didn't use them.

47

At the end of the report or where I covered those matters or decided they were no longer going to be relevant, I deleted them and destroyed the hard copy.

5

Q. So when you dealt with those pastes and you decided one of these portions of the early draft could go back in to an appropriate place, did you insert it in your report?

10 A. Yes, I did. And it may not have been inserted exactly as it was. But the context of that particular item that was in the paste I put back in where I thought it fitted, where its best fit was, but I may have altered the wording slightly.

15

Q. Stick it in the report and then you would read the report from time to time and alter it here and there as you went along?

A. Or I would alter it before I put it back in.

20

MR CRADDOCK: Your Worship, I tender the email just so that the evidence is understandable. That is one basis for the tender. The other is, if I succeed in the tender, it becomes exhibit 100.

25

THE CORONER: That is a very good reason to tender it!

MR CRADDOCK: It is the first century I have ever scored, if I get to score it?

30

THE CORONER: Anyone wish to deprive Mr Craddock of that goal? That is an email from - just describe it please, Mr Craddock.

35

MR CRADDOCK: It is an email from Mr Woodward, counsel, to Mr Roche dated 21 June 2004 at 2.10pm with the subject "report form template". I am not going to take it out of this bundle because there are a couple of other documents I want to take Mr Roche to. It is readily identifiable. It would be a lot easier if we --

40

THE CORONER: We will keep it there for the time being. At some stage before the end of the day we might take a photocopy of it and put it on to the system.

45

MR JOHNSON: If I can assist, it is document 115 in the schedule provided to the parties on 21 September 2004, being the Roche documents.

5 THE CORONER: Thank you, Mr Johnson, that might help to locate it without removing it from the folder.

That email from Mr Woodward to Mr Roche of
10 21 June 2004, report form template will become exhibit 0100, tendered by Mr Craddock.

EXHIBIT #0100 - EMAIL FROM MR WOODWARD TO MR ROCHE OF 21/06/04 'REPORT FORM TEMPLATE' TENDERED, ADMITTED WITHOUT OBJECTION
15

MR CRADDOCK: Q. Mr Roche, I wonder if you would be kind enough to move along in that bundle that you have in front of you two pages. That is,
20 towards the back.

A. Toward the back?

Q. Forward.

A. Yes.
25

Q. Do you have before you an email from Mr Woodward dated 28 June 2004 at 5pm?

A. No.

30 Q. Can I just find that for him, it might be easier.

I think you now have an email dated 28 June 2004 at 5pm?

35 A. Yes, sir.

Q. From Mr Woodward to yourself. Do you see the email purports to attach some transcript summaries and then goes on to talk about a discussion that
40 Mr Woodward has apparently had with Mr Lasry in relation to the time to be allocated to the preparation of the report?

A. Yes.

45 Q. After dealing with some matters of that kind, do you see in the middle of that second paragraph that the email says:

"I suggest that you aim for Friday 9 July as your deadline and plan to come to Melbourne early in the following week (probably the Tuesday) to discuss our comments, make any further changes and finalise the report by about the Thursday, with Friday 16 July as our absolute deadline."

5 A. Yes, I see that.

10 Q. That is an email that was received by you around about 28 June?

A. That's correct.

15 Q. Does that email pre-date the occasion that you have earlier told her Worship about when you went to Melbourne - I don't know if you said you went to Melbourne - you said you had a day and a half discussion with counsel? Perhaps if I could ask you this rather than have you go back and think about the chronology. Is the reference to a trip 20 to Melbourne a reference in prospect to that meeting with counsel that you earlier told her Worship about?

A. That's correct.

25

Q. I am not sure whether you indicated to her Worship whether on the occasion of that meeting over a day and a half you met with each of the counsel assisting or just with Mr Woodward?

30 A. As I recall it, it was just Mr Woodward. Mr Lasry may have been in chambers at the time and may have put his head in the door. But the meeting and the finalisation of the report was with Mr Woodward. There was no other discussion 35 about the report with Mr Lasry.

Q. You see in the email that what Mr Woodward is putting to you is that you should come to Melbourne at that time that is set out in the 40 email, to "discuss our comments and make any further changes"?

A. That's correct.

45 Q. You have indicated to her Worship that the meeting which you had with counsel assisting occupied a day and a half?

A. That's correct.

Q. Did the meeting involve counsel setting out before you, whether orally or in writing, comments about the report?

A. No.

5

Q. So do you say that whilst the email indicated that the meeting was to discuss "our comments, make any further changes and finalise the report", in fact ultimately that did not come to pass?

10 A. In those terms, that's correct.

Q. Do you say notwithstanding the terms of the emails that there weren't comments about the report but rather there was merely the mechanical exercise of gathering together the various parts of this report together with photographs and other things and putting it together in the one document?

15 A. I'm sure Mr Woodward would be at great pains to protect me from this but, because of my computer illiteracy, when I put the report together and transferred it electronically to Mr Woodward, it didn't look like what it should have when it left Bendigo, including to the extent of the size of the font, the layout of the font, the layout of paragraphs and various other things which I don't understand why they occurred or what occurred in the pipeline. Unfortunately, at probably significant expense, a lot of
20
25
30 Mr Woodward's time was taken in correcting my errors.

Q. I'm sure he will forgive you but do you say that that day and a half was spent in its entirety with putting your report back together after the gremlins that exist in telephone lines had disassembled your report?

A. Significantly, yes.

40 Q. And do you say there were not comments from Mr Woodward prior to the finalisation of your report as to the content of your report?

A. That's correct.

45 MR CRADDOCK: I tender that email on precisely the same basis - well the first basis only.

47

THE CORONER: I think that was the 28th of June,
was it not?

5 MR CRADDOCK: Yes. It could be described as email
Mr Woodward of counsel to Mr Roche, 28 June 2004,
5pm, subject "transcript summaries, day 68".

10 MR JOHNSON: That is document 117 from the
schedule.

THE CORONER: Thank you, Mr Johnson. That email
from Mr Woodward to Mr Roche dated 28 June 2004
will become exhibit 0101.

15 **EXHIBIT #0101 - EMAIL FROM MR WOODWARD TO MR ROCHE
DATED 28/6/2004 'TRANSCRIPT SUMMARIES DAY 68'
TENDERED, ADMITTED WITHOUT OBJECTION**

20 MR CRADDOCK: Is that a convenient time for lunch?

THE CORONER: Yes, we will adjourn until 2pm.

LUNCHEON ADJOURNMENT [1.00pm]

25 **RESUMED [2.02pm]**

MR CRADDOCK: Q. Mr Roche, you have indicated on
a couple of occasions that you are not computer
literate?

30 A. That's correct.

Q. Without wishing to embarrass you in any way,
may I take up some details to that. You may be
slightly relieved to know this comes from a
35 fellow-computer illiterate. You can consider this
as a meeting of fellow computer illiterates. You
have got basic typing skills, I suppose?

A. Two-fingers.

40 Q. So typing this 207-page report couldn't have
been easy?

A. That would perhaps be an indication of why it
was a bit late, sir.

45 Q. Am I correct in assuming that you haven't
undertaken a word processing course as such?

A. No, I have not.

Q. So the limit of your skills is the two-fingered typing with a bit of spelling correction, putting in the occasional asterisk?

5 A. One of the advantages of computers are that they spell for you. But I do have some other basic skills, particularly in developing - I am trying to think of the name of the program now that makes overhead slides et cetera.

10 Q. Powerpoint?

A. Powerpoint. I did use - perhaps an additional demonstration of my computer illiteracy - and draw on those skills to some extent to construct the diagrams that were in the report.

15

Q. You indicated to her Worship that you had a practice of regularly going through and deleting all irrelevant emails?

A. All irrelevant material.

20

Q. So it is not just emails but from within your word processing package as well?

25 A. Yes, that's correct. Perhaps by way of further explanation, I'm still a paper-based person. If I wanted to keep something, I generally would have kept it in hard copy. I still can't cope with the electronic world.

30 Q. You have my sympathy. May I approach to take the witness to a point in that folder?

THE CORONER: Yes.

35 MR CRADDOCK: Q. Do you have before you a photocopy of an email which has your name at the top which is addressed to Mr Woodward and dated 10 November 2003?

A. Yes, I do.

40 Q. At 12.35?

A. That's correct.

45 Q. I started off by identifying the document as being one that has your name at the top in bold print, top left-hand corner?

A. That's right.

47

Q. Does that indicate that that email was printed from your system?

A. I don't know.

5 Q. That email is obviously from 10 November 2003. In accordance with the practice that you have described, that email would be deleted from your system, wouldn't it?

A. That's correct - sorry, possibly.

10

Q. Why do you say "possibly"?

A. I can only assume that it was because --

Q. You said it was?

15

A. Yes.

Q. Let me go back to the email. If you have a quick look at the content of it, it appears to relate to some suggested changes to the issues document.

20

A. Yes, that's correct.

Q. In effect, it makes some suggestions as to issues that might be included in that document and therefore that might be the subject of examination by you for the purposes of your report; is that correct?

25

A. In part, yes.

30 Q. Is it incorrect in part?

A. It's correct that it may be used - might have been used by me for consideration for inclusion of matters in the report. It was also, as I understand, the issues in this matter that counsel assisting the coroner may want to have canvassed.

35

Q. That obviously is now an old email relating to matters that were very much water under the bridge; that's right, isn't it?

40

A. Certainly matters that were included in my report.

Q. There is no reason why you would keep this email?

45

A. No, not once - probably not once the issues list was agreed.

47

Q. So in accordance with the practice that you have indicated to her Worship a little earlier about deleting old materials, you expect that you would have deleted this email?

5 A. Definitely. That's not to say I didn't keep a hard copy of it, though.

Q. Do you think you did?

10 A. I don't know. If I kept a hard copy of it then it would have been provided to counsel assisting when there was a call made for my documents.

15 Q. Did you have an email or emails in hard copy that you handed over?

A. Yes.

Q. Was there one or a number?

20 A. I think there was a number.

Q. Any idea what number?

A. No, sir.

Q. Large quantity, a small quantity?

25 A. From memory, probably half an inch.

Q. Half an inch worth of emails?

A. That's correct.

30 MR CRADDOCK: Might I approach?

THE CORONER: Yes.

35 MR CRADDOCK: Q. Do you have before you an email which has Helen Drew's name typed in the top left-hand corner?

A. Yes, I have.

40 Q. Does it appear to be an email from Mr Woodward to yourself?

A. That's correct.

Q. Is it dated 30 June 2004 at 10.15am?

45 A. That's correct.

47 Q. It says:

"I won't get a chance to look at this before tomorrow so I'm happy to wait for the finished product. Ted."

5 Now, that would seem to be text written by Mr Woodward, and then do you see below that the words "original message" and then:

10 "G'day Ted. That's for the relief. Here is the next part. I haven't finished it yet but I thought you could go on a bit further your end. Talk to later this morning, Trevor."

Do you see that there?

15 A. Yes, I do.

Q. The subject of this email in the subject spot is "next edition"; do you see that?

20 A. Yes, I do.

Q. Obviously a reference to the next edition of your report?

A. I can't say that.

25 Q. Can you think of anything else that it could be the next edition of?

A. Yes. It could have been - it's most likely the next part.

30 Q. Of?

A. The report.

Q. Yes.

35 A. Not the report - the next part, the next section.

Q. In any event, it had to do with the drafting of your report, didn't it?

A. That's correct.

40

Q. Now the words that you wrote to Mr Woodward were:

45 "G'day Ted. Thanks for the relief. Here is the next part. I haven't finished it yet but I thought you would go on a bit further your end. Talk to you later this morning.

Trevor."

What you were doing was sending a portion of your report to Mr Woodward; is that right?

5 A. That's correct.

Q. What did you mean by "I thought you could go on a bit further your end"?

10 A. The insertion of reference material.

Q. So you were sending a portion of your report to Mr Woodward for the purpose of him putting in the reference material supporting the text of that part of your report; is that right?

15 A. As I indicated before, yes, the references.

Q. Do you know what part of the report this refers to?

20 A. No, I don't.

Q. The discussion that we've just had presupposes that there was an attachment to it?

A. That's correct.

25 Q. Do you know where the attachment is?

A. No, I don't.

MR CRADDOCK: Might I approach?

30 THE CORONER: Yes.

MR CRADDOCK: Before I go to that, so that the evidence is clear, I tender on the same basis the email dated 30 June. If there is no objection to it, may it be called email from Mr Woodward to Mr Roche, 30 June 2004, 10.15am, subject "next edition".

40 THE CORONER: That email dated 30 June 2004 from Mr Woodward to Mr Roche will become exhibit 0102.

EXHIBIT #0102 - EMAIL FROM MR WOODWARD TO MR ROCHE DATED 30/06/2004 SUBJECT 'NEXT EDITION' TENDERED, ADMITTED WITHOUT OBJECTION

45

MR CRADDOCK: Q. Mr Roche, the document you presently have before you is the front page of a

version of your report which says "submission to the Australian Capital Territory Coroner in the matter of the ACT bushfires of January 2003 by Trevor M Roche, ex-chief officer, Country Fire Authority Victoria"; correct?

5 A. That's correct.

Q. If you turn to the next page in the bundle, with any luck you have what appears to be a page with the words "table of contents" at the top?

10 A. That's correct.

Q. And apart from the notation "draft 1, 20/5/04" at the bottom, it is otherwise blank?

15 A. That's correct.

Q. Does the notation "draft 1, 20/5/04" at the bottom indicate that this is the first draft of the report?

20 A. No, I think it indicates that it is the first draft of this part.

Q. The numbering on the bottom right-hand corners of the pages appears to be page numbering. Could you scan through till you find the number "12" on the bottom right.

25 A. Yes.

Q. The third paragraph on that page is in bold and it commences:

"On January 18, 2003 at."

Do you have that?

35 A. Yes, I do.

Q. And then there is a set of four letter Xs with shading over the top?

A. That's correct.

40

Q. Obviously that was for the purpose of identifying a spot to put a time in?

A. That's correct.

45 Q. Is that one of the examples of the process that you were using to seek assistance from others as to references?

A. That's correct.

Q. Is that the style that you use? I ask you that because earlier on you said you would put in
5 an asterisk where you wanted somebody else to provide you with a reference.

A. It was an early arrangement. As time got on and the pressure became much greater, I think we had learned to work together a bit better. So it
10 wasn't always necessary for me to put that asterisk in.

Q. Was the shading yours?

A. Yes, it was.
15

Q. And then someone else would provide you the time to put in that spot?

A. Not necessarily. The shadings were a reminder to me that --
20

Q. Sorry, you might have misheard me. The shading was yours. In other words, you put the shading in the document?

A. That's correct.
25

Q. And then someone would give you the time that was meant to go in that spot?

A. Not necessarily.

Q. What would happen?
30

A. The shading was there as a reminder to me that I had to do something about that bit of the report. Now, who actually put it in the finish, that would have been either I or Mr Woodward. We
35 were the only two people that inserted references into the report.

Q. If you go to page 18, do you see there two further areas of shading?

A. No.
40

Q. Have you got page 18, bottom right-hand corner?

A. Page 18?
45

Q. Yes.

A. Yes, I have.

MR CRADDOCK: Might I approach?

Q. You have a document before you which calls
itself "draft 1, 20 May 2004" at the bottom
5 left-hand corner?

A. Yes, I do.

Q. On the right-hand corner you have the number
"19" where you expect a page number to be?

10 A. Yes.

Q. At the top you have text that reads:

15 "As a result of the events of 17 and
18 January 2003 the following measurable
impacts occurred."

And then footnote 23?

A. Yes.
20

Q. Under that you have a little square and beside
that "four persons deceased"?

A. Yes.

25 Q. Under that you have three Xs in shading and
then the words "persons required hospital
treatment"?

A. No. I had three Xs in shading and then "332
persons required hospital treatment."
30

Q. There is an oddity here, your Worship, which I
assume will be able to be clarified at some point.
I am working from the bundle that was given to me
by counsel assisting's team. I didn't prepare the
35 bundle that Mr Roche has but I thought it was
precisely the same bundle. It would appear that
the version of draft 1 that he has before him is
different to mine.

40 I don't know why that is and I don't know whether
that matters. I am not going to try and figure it
out just at the moment.

MR WOODWARD: Could I make a suggestion, obviously
45 the original source I know about. There are two
document numbers, referring to the list 102 and
103, which each have identical descriptions but

they do differ, from my recollection. It may be the one that you opened up in Mr Roche's folder is a different one. So there should be two together in the bundle.

5

MR CRADDOCK: That would make sense. I am indebted to counsel assisting for that. That certainly is a logical explanation that seems pretty likely.

10

Q. The page on the version that you have which is page 19 has shading and Xs or shading across Xs; is that right?

A. On the second dot point from the top, yes.

15

Q. A reminder to you or to someone else to find out the answer to that and to insert that material at that point?

A. That's correct.

20

Q. You don't know now, I take it, whether you found out the answer to that question and put the necessary figure in the report or whether somebody else did that?

25

A. No, I did that.

Q. You did that?

30

A. That's correct. In my document there are two figures, one is crossed out and another figure is substituted. When I originally put those figures in, I asked Ms Goldsmith from the Australian Federal Police for an update on the latest figures that related to those dot points. She provided me with that and I used that as the material to be included. I was subsequently advised by counsel assisting that, as the update I had been provided with wasn't part of the brief, I should use the original figures in Ms Goldsmith's statement that was part of the brief. Hence the first figure is crossed out and the second figure is included, which is an extract from her statement.

35

Q. Is that the number 491 crossed out and 507 substituted --

40

A. I think that's correct, yes.

Q. Is the next page in your bundle one that

includes the heading of "part 2 - analysis of issue affecting the response to the fires"?

A. Yes, it is.

5 Q. At about 7/10ths of the way down the page, do there appear figures for the tonnes per hectare fuel loadings of the believed points of origin of the fires?

A. Yes, sir.

10

Q. Is the figure for Bendora 40 tonnes per hectare?

A. Yes, it is.

15 Q. That series of fuel loadings in the report before her Worship appears at page 36?

A. Sorry what page?

Q. Page 36.

20 A. That's correct.

MR CRADDOCK: For the benefit of those using the screens, that is at [DPP.DPP.0009.0036].

25 THE CORONER: It is 0001 at 0036.

MR CRADDOCK: Q. You have page 36?

A. I hope so, yes.

30 Q. That is where you have set out in your final report the fuel loadings of points of origin of the four fires as you assessed them as likely to have been?

A. That's correct.

35

Q. In the document that I took you to in the black folder, you have got 40 tonnes a hectare at Bendora?

A. Yes, I have.

40

Q. And then it has somehow been shaved by 5 tonnes per hectare down to 35 tonnes per hectare in the report that has become an exhibit in these proceedings; do you see that?

45 A. Yes, I do.

Q. How did it come to be reduced?

A. I altered it.

Q. Why?

A. Why?

5

Q. Yes. It is a significant 12.5 per cent change?

A. In my view it is not significant in terms of the rate of spread or the intensity.

10

Q. Maybe not. You have assessed the fuel loading in the draft that bears a date 20 May 2004 at 40 tonnes per hectare and then that has become 35 tonnes per hectare in the final report?

15

A. That's correct.

Q. I presume you had some reason for downgrading it from 40 to 35?

20

A. I don't know why specifically but I can advance a number --

Q. Don't speculate --

A. Well, I can't tell you why.

25

Q. Going to the page before, that is the one in the black folder, the one with "19" in the bottom right-hand corner.

A. Yes.

30

Q. In some places on that page, text is underlined and placed in square brackets. Is that right?

A. That's correct.

35

Q. And in other places it has been ruled through; that is, a line drawn through the text.

A. That's correct.

40

Q. Can I take it that is something that the word processing system has done?

A. May well be.

Q. Was it done by you?

A. The first paragraph wasn't.

45

Q. I'm sorry?

A. The first paragraph at the top of the page was

not done by me. It was done by Mr Woodward.

Q. And what you are doing there is you are identifying material at the top of that page which
5 has "19" in the bottom right-hand corner --

A. I think that goes back to what I explained before that I had --

Q. Let me just explain this so that others can
10 follow before we get to the explanation of how it came about. In square brackets and underlined at the top of the page there appear the words:

15 "This evidence is found in the statement of Judy Goldsmith provided as part of the phase 1 brief ([AFP.AFP.0102.0001] and referred to in the opening. A copy will be provided)."

20 That's what appears on that page of the document towards the top; is that right?

A. That's correct.

Q. You say that that material underlined and in square brackets came from Mr Woodward?

25 A. Yes, as a result of my previous explanation that I had included data which I had obtained which wasn't part of the brief, and Mr Woodward advised me that I shouldn't use that.

30 Q. Because it wasn't evidence that the rest of the parties had?

A. That's right.

Q. And moving down that page, the next thing that
35 we have underlined is the number "332" being the persons who required hospital treatment?

A. That's correct.

Q. Now, the 332 figure, is that yours or
40 Mr Woodward's?

A. I don't know. I can't answer that, I'm sorry.

Q. The next line has the number "491" with this
45 line through it, not underlined but through the number itself. It is followed with the number "507" which is underlined.

A. Yes.

Q. Is that yours or Mr Woodward's, that crossing out of "491" and the insertion and underlining of "507"?

A. I don't know.

5

Q. On the next line in relation to domestic insurance claims there appears the number "3,017" and that has been ruled through, and then inserted thereafter is the number "3,016" and that has been underlined?

10

A. That's correct.

Q. Is it the case, likewise, that you don't know whose work that is?

15

A. That's correct.

Q. The next line has the number "151" ruled through. Do you see that?

A. Yes, I do.

20

Q. And then there is a section underlined which reads "152 claims relating to commercial, government and plantation assets"; do you see that?

25

A. Yes.

Q. And then the words "commercial insurance claims" and those words are ruled through?

A. Yes.

30

Q. Then the word "totalling" and a figure "146.5", and that figure has been ruled through and thereafter the number "206.5m" - which I assume stands for million - and that is underlined; is that right?

35

A. Yes, sir.

Q. And is it the case that you don't know whether that is your work or Mr Woodward's work?

40

A. That's correct.

Q. The next entry says:

45

"411 motor vehicle claims totalling 4.8m - I assume for million - [attachment G to Goldsmith's affidavit does not give a figure for motor vehicles so I am not sure where

this has come from]."

Do you see that?

A. Yes, I do.

5

Q. From the words there used would you infer, whether or not you are sure about it, that that is an entry made by Mr Woodward?

A. I would be fairly certain it was. In fact it is consistent with him drawing my attention to the fact that I had used the incorrect version of the loss assessment in my original draft.

Q. The figure available to you but not to us?

A. That's correct.

Q. Then there is a box with the total and then there is a paragraph in bold which commences with an asterisk and it reads:

20

"These figures exclude the significant losses to the ACT plantation estate (estimated 06 per cent) footnote 24."

25 And those words commencing "the significant losses" through to "estimated at 60 per cent" are crossed through; they are ruled through in the word processing print; is that right?

A. That's correct.

30

Q. Is it the case that you don't know whether that is your work or Mr Woodward's work?

A. No, I don't. I can't recall at that stage.

35 Q. The paragraph continues - again dealing with losses obviously:

"And the heritage value of the Stromlo Observatory."

40

And then the following words are underlined:

"And the significant environmental damage to national parks including catchment areas."

45

Those words all being underlined?

A. Yes.

Q. Is it the case that you are presently not able to say whether that is your work or Mr Woodward's work?

A. I am not able to be definitive.

5

Q. Now, if you go over the page, that is back to the page which has 20 at the bottom right-hand corner - do you have that?

A. Yes, I do.

10

Q. That's the page that I took you to before where you set out your estimates of the fuel loadings at the points of origin?

A. That's correct.

15

Q. The bottom paragraph reads:

20 "The New South Wales Rural Fire Service certainly understood the implications that the above factors presented in relation to 2002-2003 fire season as did key operational personnel from the ACT Bushfire Service."

25 And then "[examples of the evidence relevant to these paragraphs include]:". Is it the case that you are not able now to say whose work, yours or Mr Woodward's, is the words "examples of the evidence relevant to these paragraphs include"?

30 A. When it is coupled with the next page that work was inserted or those references was inserted by Mr Woodward at my request. I asked him to find those references for me.

35 Q. On the following page there are a series of dot points, as they are unfortunately called. They take up the entirety of that page, do they not?

A. With the exception of one paragraph at the bottom.

40

Q. They commence with the words:

"Bruce Arthur was aware of the conditions of drought and dryness"?

45 A. Yes.

Q. And the final line of that portion reads:

"Media that we would have been in contact with at the time [T2629]".

A. That's correct.

5 Q. All of that material between those two entries that I have just read out is underlined?

A. Yes.

10 Q. And it is the case, isn't it, that all of that underlined material on that page is Mr Woodward's work?

A. Information provided by Mr Woodward, yes.

15 Q. In fact, Mr Woodward typed that material, as you understand it?

A. I would assume so because I didn't type it.

20 Q. Can I ask you to go through that document to the point where it says "24" at the bottom right-hand corner.

A. Yes, I have got that page.

25 Q. Now, at the end of the third paragraph there is some underlining and some square brackets; do you see that?

A. Yes, I do.

30 Q. The words in the square brackets that are underlined are these:

"I assume you will be dealing with this training exercise in more detail either here or elsewhere now that you have the relevant documents."

35

Do you agree that that is what it says?

A. Yes, I do.

40 Q. Do you agree that that is material inserted in the document by Mr Woodward?

A. Yes, I do.

MR CRADDOCK: If I might approach.

45 I tender, again on the same basis - it is really by way of assistance for the understanding of the evidence - the document headed "Submission to the

Australian Capital Territory coroner in the matter of the ACT bushfires January 2003". It consists of 27 pages and it has the notation "draft 1, 20 May 2004" in the bottom left-hand corner.

5

For the purpose of making sure that I have got the correct document, Mr Woodward has kindly identified it as document 103 from the list. In the black folder that Mr Roche has in the witness box I have put a green tag on the side.

10

THE CORONER: That is document 103?

MR CRADDOCK: Yes.

15

THE CORONER: That document being submission to ACT coroner, 27 pages titled "draft 1, 20 May 2004" will become exhibit 0103.

20 **EXHIBIT #0103 - SUBMISSION TO ACT CORONER,
27 PAGES TITLED "DRAFT 1, 20/05/2004 TENDERED,
ADMITTED WITHOUT OBJECTION**

MR CRADDOCK: I am about to go to another topic, is it appropriate to have a short adjournment?

25

THE CORONER: Yes. We will take the short adjournment.

30 **SHORT ADJOURNMENT** [2.55pm]

RESUMED [3.05pm]

MR CRADDOCK: Q. I have taken you to a document which has "draft 1" at the bottom. I don't need you to go to it now.

35

A. Yes.

Q. Elsewhere in that bundle there is, I think, a document - in that folder do you have at the front a list of documents?

40

A. Yes, I do, sir.

Q. If you go to the end of the list the next page is a title page for your report, is it?

45

A. Yes, that's correct.

47

Q. It has at the bottom left-hand corner
"draft 3, 29 May 2004"?

A. Draft 3, 29 May 04", yes.

5 Q. I didn't find anywhere in this bundle of
documents anything that described itself as
"draft 2". Was there a discrete separate draft 2?

A. I can't recall.

10 Q. Was there a draft 4?

A. In practical terms there were a significant
number of drafts. Whether they were numbered,
toward the latter stages of the compilation of the
report they weren't. Nor were the parts numbered,
15 which is one reason that led me to continue to
delete and destroy copies, because I was becoming
confused myself with the number of iterations of
the report.

20 Q. So if there was in fact a draft 2, is it the
case that you no longer have a copy of it in any
form?

A. That's correct.

25 Q. Do you have your report there?

A. Yes, sir.

Q. Can I ask you to go to page 13. On that page
do you set out material under the heading
30 "investigations and sources of information"?

A. That's correct.

Q. Do you have an appointments diary?

A. No, I don't. I keep a diary that has
35 retrospective notes in it for taxation purposes in
terms of what I did.

Q. A time sheet in effect?

A. Virtually, yes.

40

Q. But not the details of what you did?

A. Not generally, no. Just for instance if I
came to Canberra, the fact that I was in court.

45 Q. So that you could ask someone for money but
they wouldn't need to know what you did the whole
of the day you were in Canberra?

A. That's correct.

Q. I am not talking just for your financial purposes but did you keep a diary in which you made notes?

A. No, I did not.

Q. Did you use a dictaphone?

A. No, I did not.

10

Q. Have you got a fantastic memory?

A. No, I have not.

Q. If I can take you back to page 13 of your report, you say under the heading "investigations and sources of information" that:

15

"The following sources of information have been used in the compilation of this report."

20

You first of all refer to "review of various witness statements and taped records of conversations"; you then refer to review of various documents in the brief; and you then refer to discussions with Mr Cheney.

25

A. Yes.

Q. Do you have any notes of those discussions?

A. No.

30

Q. Did you ever take any notes of those discussions?

A. No.

Q. You next refer to "discussions with officers of the AFP assigned from time to time to the coronial task force". Did you ever take any notes of those discussions?

35

A. No, I did not.

40

Q. Next you refer to attendance at court during most of the evidence. It is the case, isn't it, that you did take notes?

A. Yes, I did.

45

Q. As you sat in court you took a great many handwritten notes in relation to the evidence that

was given?

A. That's correct.

5 Q. Did you use those notes in two ways, at least:
firstly, to assist you in the course of preparing
your report?

A. To a limited extent, yes.

10 Q. And secondly, for the purpose of informing
your discussions with counsel assisting as to
matters that they might see fit to take up with
witnesses?

A. No. That was not the purpose of my notes.

15 Q. Were they used for that purpose?

A. Not that I recall.

Q. You did have day-to-day discussions with
counsel assisting, obviously enough?

20 A. On some days I may have raised some matters
with counsel assisting that they asked be pursued
to assist me understanding various circumstances,
various incidents, various occurrences. On
occasions I may have even passed a note to counsel
25 assisting during their examination or
cross-examination. That wasn't linked to the
notes that I took in those two books.

30 Q. The notes you took in the books were in these
discrete books that didn't have pages you could
just rip out and pass to counsel as things went
by; is that right?

A. No. I tended to use post-it notes.

35 Q. By from time to time you had discussions with
counsel and suggested lines of questioning that
they might like to consider taking up with various
witnesses?

A. That I wanted them to pursue to assist me.

40

Q. But naturally it was left to them as to
whether they did or not?

A. That's correct.

45 Q. Going back to your report, after the reference
to the attendance at the Court, you refer to
"discussions with representatives of various

agencies including" and then you detail a number of agencies. I want you to look at that list of agencies, if you would, and see if you can tell me whether the word "including" can be treated as not being there; in other words, is the list complete?
5 A. Yes, it is.

Q. So we can really delete the word "including" and it won't change the substance of your report one iota; is that right?
10 A. That's correct.

Q. The agencies are there listed and you have also included a reference to the persons at those agencies with whom you had discussions?
15 A. That's correct.

Q. When did you commence that process?
A. I can't recall exactly when I commenced it.
20

Q. Was it this year or last year?
A. Last year.

Q. Some time in 2003?
25 A. Ongoing.

Q. Yes, obviously. You couldn't speak to all these people --
A. I have spoken to them more than once. I generally contacted those people when an issue arose that I wanted some information on or had some other reason to contact them. Some of them I may have contacted more than once.
30

Q. Some of them you may have contacted more than once?
A. That's right.
35

Q. Are you unsure presently whether you did in fact contact any of the people on this list more than once?
A. I know I did contact some of them more than once.
40

Q. Did you take any notes of any of your discussions with any of the people on this list on page 13?
45

A. In some cases, yes.

Q. Who does that apply to?

5 A. The Country Fire Service, Mr Ferguson. I took notes, as I recall, regarding what support he may have been able to provide when I questioned him regarding that matter.

10 I also spoke to him on a separate occasion regarding a request for some information, which he forwarded to me. No notes were kept of that conversation.

Q. He forwarded you some document, did he?

15 A. Yes, he did.

Q. What document was that?

20 A. It was in relation to Marble Hill post-incident evaluation of community education.

Q. Of what hill?

A. Marble Hill, a location in South Australia.

Q. Where there was a fire?

25 A. Yes, that's correct.

Q. Did you keep that document?

A. Yes, I did.

30 Q. Who else did you speak with on that list and make notes?

35 A. The Country Fire Authority, Mr Rees; New South Wales Rural Fire Service, Mr Koperberg and I think Mr Taylor; and that's about the extent of the ones where I kept notes. The other ones were - as I recall, the majority of them were just requests for information which I received as a result of the request. I had no reason to keep notes of that.

40

Q. Where are the notes that you took with Mr Ferguson?

45 A. They have been provided as I understand. I think one of those was on the back of an envelope.

Q. I haven't come across the back of any envelope. Perhaps that has been photocopied on a

whole A4 sheet.

It might be easier if I approach. I have a folder
which has obviously come from the Australian
5 Capital Territory Government Solicitor's Office.
The first document in it has an identification
number [DPP.DPP.0007.0403]. It is this document
(shown). I wonder whether that is the --
A. I think that might be the back of the
10 envelope. That was a discussion I had with the
chief officer of the CFA, Mr Rees.

MR CRADDOCK: I should probably tender that.

15 MR LASRY: There is no need. It is already in the
brief.

THE CORONER: If it has a number I would think it
is probably in the brief, Mr Craddock.

20 MR CRADDOCK: Q. I think the next person you
identified was Mr Rees. You took notes --
A. I apologise. Sorry, that's right. Mr Rees.
That's the note that you see. That is the back of
25 the envelope.

Q. I thought that was the note of discussion with
Mr Ferguson?

A. No. Mr Rees, that one.
30

Q. I now show you a document identified as
[DPP.DPP.0007.0404]. It is on a Director of
Public Prosecutions file note paper. Is that one
of the sets of notes that you took in one of these
35 discussions?

A. That's correct. They are notes of the meeting
I had with Mr Koperberg.

Q. Now we have [DPP.DPP.0007.0406]. Again, it is
40 on Director of Public Prosecutions file note paper
and is a one-page document. Is that one of the
notes that you took with one of these people on
your list?

A. It is a record of the information I gained
45 from Mr Ferguson from the South Australian CFS on
what could have been provided in the way of
support had it been asked for.

Q. I think that you said that you took notes when you spoke to Mr Taylor?

5 A. It would have been part of those notes of the meeting relating to Mr Koperberg. They were taken the same day when I went to Sydney, and I think I may have made some annotation there in a brief discussion I had with Mr Taylor.

10 Q. So if there are notes, we would find those as part of the notes that you have identified as the notes you took with your discussion with Mr Koperberg?

15 A. That's correct. All of those people that are listed under New South Wales Rural Fire Service I spoke to on the same day and would be part of those - if I did make any notes on the conversation - it would be included with those ones that I indicated were with Mr Koperberg.

20 Q. By process of exclusion then, am I correct in thinking that you did not make notes of your discussions with the remainder of the people on that list on page 13?

25 A. No, that's not correct.

Q. What is the position?

30 A. I did make notes of some discussions I had with Mr Morgan from the Department of Sustainability and Environment in relation to policy on night-time firefighting.

Q. Mr Morgan?

35 A. Yes. Mr G Morgan, chief fire officer in the Department of Sustainability and Environment in Victoria.

Q. You did make notes of your discussion with him?

40 A. Yes, I did.

Q. Where are those notes?

A. I no longer have them.

Q. What happened to them?

45 A. I destroyed them once I incorporated the material into the report. I saw no reason to retain them.

Q. Do you recall when it was that you spoke to Mr Morgan?

A. No, I don't.

5 Q. Do you recall whether it was this year or last year?

A. If you like to go back in the transcript when the matter of the policy on night-time firefighting by the forest fire control officers group was introduced into evidence, it would have been at that time - a day or so afterwards or somewhere around that time - because that's the matter I rang him on.

10 Q. You had a conversation with him about the question of night-time firefighting?

A. No. I had a conversation with him regarding the policy of that group in relation to night-time firefighting.

20

Q. Is that the Forest Fire Management Group?

A. That's the one.

Q. You made notes of the conversation?

25 A. A brief note I would have made, yes.

Q. And you then destroyed the notes?

A. Once I incorporated it into the report, yes, I did.

30

Q. Where are those notes incorporated into the report?

A. Where I talk about the policy not being widely accepted in the industry and certainly not a policy of the Australasian Fire Authorities Council.

35 Q. At page 68 of your report, if I could take you there, the final paragraph on that page commences:

40

"The position of the Forest Fire Management Group relating to firefighting at night was put before the inquiry."

A. That's correct.

45

Q. Is that the reference that you have in mind?

A. No. On page 69 where it says:

5 "However, the position espoused in the paper
is not a position that is commonly adopted
within the Australian wildfire fighting
industry as a whole, and it is not a position
endorsed by the Australasian Fire Authorities
Council, the body that represents all
firefighting agencies in Australasia."

10 Q. That is what you said in the report. There is
no reference there to Mr Morgan, is there?

A. No.

15 Q. Do you say what you have included in your
report in the paragraph at the top of page 69 is
based upon your discussion with Mr Morgan?

20 A. It was the essence of my discussion with
Mr Morgan. The reason I rang Mr Morgan on that
matter was to seek his advice as to whether in
fact the position espoused by the fire management
group had been discussed at the Australasian Fire
Authorities Council and whether in fact it had
been endorsed as a national policy of that
council.

25 Q. What is Mr Morgan's position with respect to
the council?

A. He is a director of the Australasian Fire
Authorities Council, as I understand it.

30 Q. As you understand it?

A. Yes.

Q. Is he or isn't he?

35 A. He is a president or was I think at the time
president of the fire management officers or land
managers officers group - fire control officers
group it was called then. It now has another
name, I believe. So he was represented on both
those bodies, hence my phone call to him.

40

Q. What you say at the top of page 69 is:

45 "However, the position espoused in the paper
is not a position that is commonly adopted
within the Australian wildfire fighting
industry as a whole."

A. That's correct.

Q. What was it precisely that Mr Morgan actually said to you in that conversation that you had with him?

5 A. I don't know. I can't recount that. I can't recall that. I rang Mr Morgan for the purpose of ascertaining whether - I told Mr Morgan what it was in relation to, the evidence that had been before this court - in fact, as I had indicated to you, that had been discussed at the Australasian
10 Fire Authorities Council and whether in fact it was their policy. His response was no it wasn't. It hadn't been discussed there.

15 I had known Mr Morgan for a hundred years or thereabouts. He was the chief fire officer of DSE when I was the chief officer of the Country Fire Authority and we chatted about --

20 Q. Let us assume you knew him very well, that you asked him questions --

A. Yes.

25 Q. -- upon the subject matter that you sought to ask him questions about?

A. Yes.

30 Q. And that you discussed a range of other matters relevant or irrelevant to this inquiry because you have known him a long time?

A. Probably largely irrelevant to this inquiry.

35 Q. You caught up with him along the way to ask him about a particular matter; is that a fair summation?

A. I'm not sure how I would interpret that. As I have indicated --

40 Q. You exchanged pleasantries, you had a chat?

A. Yes.

45 Q. And in the midst of that you asked him a question about a document that had come into evidence here?

A. That's correct.

Q. You say you can't recall exactly what it was he said to you?

A. That's correct. With the exception of the fact, as I have indicated, that it was not AFAC policy and it had not been discussed by the council.

5

Q. You recall those two propositions but nothing else?

A. That was the reason I rang him so it was a good enough reason to call him.

10

Q. I am not asking you about whether you had a good reason to call him, I am asking you to confirm, if you would, that you recall him saying those two things but you don't recall anything else that he said upon the topic?

15

A. Not in relation to that subject, no.

Q. So as best you can recollect now, the note having been destroyed, what he said to you was that the Forest Fire Management Group position had not been discussed by AFAC and it had not become AFAC policy?

20

A. That's correct. I do recall that we may have discussed or in fact we did discuss how that policy came about. I can't recall the detail of that. It came out of Tasmania, but the reasons why or what have you, I don't know. But I do recall, now that you are focusing my mind, that Tasmania was the point of focus where it originated from.

30

Q. But there is no existing document that sets out the terms of his advice to you upon this topic, is there?

35

A. No, there is not.

Q. You spoke to three people from the Fire and Emergency Services of Western Australia, those being Mr Forbes, Ms Provost and Ms Valentine?

40

A. That's correct.

Q. I take it that there are no notes of your conversations with them?

A. No, there aren't. I rang Mr Forbes to obtain the contacts of the other two people in relation to community education matters. I spoke briefly to both of those people.

45

Q. Can I just stop you there just to eliminate Mr Forbes. Is it the case that he is only on the list here on page 13 because you spoke to him to get the details of the other two people?

5 A. That's correct.

Q. So moving on - before I interrupted you were telling me that you really wanted to talk to Ms Provost and Ms Valentine?

10 A. That's who I was advised by Mr Forbes to speak to. I spoke to - and I can't remember with one or both of them, one was going on holidays at the time and was to send me some information. Subsequently I didn't get back to her. The other
15 one did send me some information on community information which, after reviewing it, I discarded it. I still have a record - I still have that document but I didn't use it in my report.

20 Q. Which of the two, Provost or Valentine, did you actually speak to?

A. I can't recall. I think it was Ms Valentine from memory. I didn't personally know them.

25 Q. If you are not sure about that, say so?

A. I'm not sure who it was I spoke to.

Q. One or the other but you don't recall?

A. One or the other.

30

Q. You were sent some document that you discarded?

A. I review and then - when I say discarded it, I didn't use it at all in the compilation of the
35 report or reference to it. I didn't think it was of any value. It was, as I recall it, repetitive of other information that I had already included and footnoted.

40 Q. May I take it that there was no note made of your conversation with either Provost or Valentine?

A. That's correct.

45 Q. You spoke to Mr Gledhill of the Tasmanian Fire Service?

A. That's correct.

Q. Did you take notes of your conversation with him?

A. No, I did not.

5 Q. Do you recall when you spoke to him?

A. No, I do not.

Q. Do you recall what you spoke to him about?

A. Yes. I asked him for a copy of the report
10 into the 1965 fire in Hobart.

Q. Was that the extent of your contact with him?

A. No, it wasn't.

15 Q. What other contact did you have with him?

A. Personal matters because I have known
Mr Gledhill for a number of years.

Q. I really mean relevant to this, obviously you
20 probably know most of these people.

A. That's correct.

Q. I am not wishing to inquire about any personal
conversations that you had with people that you
25 are acquainted with. Did you have any other
conversation with him in relation to the issues
raised by this inquiry or the matters that you
wished to report upon?

A. Only to the extent I did inquire of him with
30 whom I could talk to in relation to other matters
relating to the impact of those fires, if I needed
that information. He provided a name of
Mr Chladhil, who I know, but I didn't pursue that
contact any further because I believed it would
35 not be of assistance to me. So I didn't contact
him.

Q. Just to clear this up, I think you say he
provided the name of "Mr Gladhill"?

40 A. Chladhil - I think it is spelt C-H-L-A-D-H-I-L
but I am not sure.

Q. Whatever it is, it sounds like Mr Gledhill but
it isn't Mr Gledhill?

45 A. It isn't Mr Gledhill.

Q. You spoke also to Mr Adams from the Victoria

Police?

A. That's correct.

Q. Do you recall when?

5 A. No, I don't.

Q. Did you take any notice of your discussion with Mr Adams?

10 A. No, I didn't.

Q. Do you recall what it was you spoke to Mr Adams about?

A. The evacuation policy in Victoria.

15 Q. Did anything that he said assist you in any way in thinking about the issues involved in this inquiry?

20 A. He sent me two documents. One was a little card that is issued to the police in Victoria on evacuation. A similar but more current one is attached to Mr Nicholson's report. He also sent me a form which police use when they are advising people to evacuate. And I determined not to use either of those documents or refer to them in my
25 report.

Q. Was there any particular reason for that?

A. No. I think I dealt with it in other ways.

30 Q. Now you said in answer to my question that he provided two documents. Did you also have a discussion with him? Did he provide information orally or don't you recollect?

35 A. Not any information that I subsequently incorporated in the report.

Q. I take it you made no notes of any information that he did give you, apart from the documents?

40 A. That's correct, apart from the documents he sent me. The primary reason why I contacted him was to obtain those documents.

45 Q. I think that you spoke to the office of the Emergency Services Commissioner, Victoria, and in fact the Commissioner Mr Esplin?

47 A. That's correct.

Q. Do you recall when you spoke to Mr Esplin?

A. No, I do not.

5 Q. Did you make any notes of your discussions with Mr Esplin?

A. No, I did not.

Q. What was the subject matter of your discussion with Mr Esplin?

10 A. I asked him regarding progress of a project that was being developed in Victoria using technology to contact people during an emergency to which I have made reference in my report.

15 Q. Without seeking to track it down here and now, you say you made reference to it in your report, can you recall the context and the nature of the technology?

20 A. Well, I can, but I prefer to go to the report because it is somewhat technical in nature.

Q. Sure. I am just after a shorthand way of enabling the parties to do so --

25 A. It is in the latter part of my report and it related to systems where, by using Telstra databases or other similar databases, you can make a phone call and leave a message or use a "canda" message to contact all of the subscribers in a given area.

30

Q. I think you spoke to Kevin Tolhurst?

A. Yes, I did.

Q. When did you speak to Kevin Tolhurst?

35 A. I can't be specific about that.

Q. Was it this year or last year?

A. I can't be specific.

40 Q. Did you make any notes of --

A. No, I did not.

Q. Can you recall the subject matter of your discussions with Dr Tolhurst?

45 A. Yes. I asked him for a document in relation to rates of construction of control lines by bulldozers.

Q. Rates of construction of control lines?

A. Of containment lines - control lines, yes.

5 Q. Is that the only subject matter of your discussions with Dr Tolhurst?

A. That is relating to this, yes, that's correct.

10 Q. Again, leaving aside any personal chitchat. You have the black bundle open now at a photocopy of an email with the name "Ted Woodward" at the top left-hand corner. There are actually two emails on that page, are there not?

A. Yes, there are, sir.

15 Q. The one on the bottom half of the page is from Michelle Heidtmann dated 31 March 2004 to counsel assisting?

A. And Ms Drew, yes.

20 Q. And it reads in part:

"As requested by Mrs Doogan, the Hansard from question time 30 March 2004 is forwarded for your information."

25

Then there is a reference to trouble scanning the document that we needn't trouble ourselves about. Then the top half of the page is apparently an email from Ms Drew to yourself dated 31 March 2004 which reads:

30

"Hansard as promised. See you Monday."

Do you see that?

35

A. Yes, I do.

Q. Obviously that had an attachment which was some portion of Hansard. Can you tell us whether you retained the copy of that portion of Hansard?

40

A. No, I don't. I can't even recall what it related to.

Q. Obviously nothing that you regarded as significant?

45

A. No, sir.

Q. You now have before you, again, a photocopy of

emails with "Trevor Roche" in the top left-hand corner. The top email is from Mr Woodward to yourself and it is dated 30 January 2004. Is that right?

5 A. That's correct.

Q. And then going down towards the middle of the page there is that notation "original message" and that appears to be a copy of an email from
10 yourself to Mr Woodward; is that right?

A. The bottom one, yes.

Q. That bottom one reads, after some irrelevant material in the first single line paragraph:
15

"You will recall that we discussed a visit to the points of origin of the ACT and McIntyre's Hut fires prior to the inquest resuming. Whilst I had a quick inspection
20 with Phil and Maria, we did not visit the Stockyard or Gingera fires. I would like to arrange a further visit to all locations, preferably with Phil as well. I recall that you were also interested to view these
25 sites."

And then there is some material that that might come to pass. The email at the top of the page appears to be a response to you in relation to the
30 matters that you had raised; is that right?

A. That's correct.

Q. The email at the top of the page is dated 30 January 2004.

35 A. That's right.

Q. In your email to Mr Woodward of counsel you refer to what you describe as a quick inspection with Phil and Maria:
40

"We did not visit the Stockyard or Gingera fires."

Is that a reference to an inspection that you made
45 of the points of origin of the ACT and McIntyre's Hut fires prior to 30 January 2004?

A. Yes, it must be, otherwise I wouldn't have

referred to it in an email or a memo on
30 January.

Q. Do you recall when that inspection was?

5 A. It wasn't long after I was engaged to assist
the coroner. So it would have been obviously in
2003. But I can't recall the exact date when it
was.

10 Q. You were retained in August of 2003, according
to page 12 of your report.

A. That's correct.

15 Q. Obviously that visit to the points of origin
post-dated that?

A. Yes.

20 Q. You think some time in 2003, but is it the
case that you don't presently recall just when
that was?

A. No, I don't.

Q. Do you recall which areas you visited?

25 A. As I recall it, we certainly went to Bendora -
Wombat Road area of the Bendora fire - and I think
the top part of that fire. We looked at part of
the McIntyre's fire - as I recall it the Webbs
Ridge area and the Baldy Range area. There may
30 have been some other areas. We did quite a bit of
travelling around those fires and, not being a
local, to be quite honest I couldn't tell you
where we went, except it was all burnt.

35 Q. Let us just try and work out what you can
recall. You say you went to Wombat Road?

A. Yes.

Q. Obviously the Bendora fire?

40 A. Yes.

Q. Where else can you specifically recall going
on that inspection?

45 A. I know we went to a location that overlooked -
where we could look down over the point of origin
of the McIntyre's fire and where the Mt Vale fire
had been. That was probably two ridges back from
where the McIntyre fire had commenced.

I believe we looked at the Powerline Trail and the serpentine nature of that trail and the power line easement itself. We visited the Flea Creek area. To add any more than that, I couldn't be specific.

5

Q. Was this all done in the course of the day?

A. Yes, it was.

Q. Now, you refer in the email itself to a quick inspection with Phil and Maria. You are referring to Mr Cheney?

10

A. Yes. The people who accompanied us on our visit was Mr Cheney, Mr Cheney junior, another Mr Hutchins, I think, from the CSIRO, Mr Lasry, her Worship. And that was the complement of people from memory, I think.

15

Q. How many site visits have you made?

A. Three.

20

Q. That first one was, as you have told us, done in the course of a day. You went to a great many places, some of which you can't really identify.

A. Yes, that's correct.

25

Q. When was the next one?

A. It would have been some time this year.

Q. Are you able to recall when?

30

A. No, I'm not.

Q. If that was the second, my guess is that the third was this year as well?

A. That would be correct.

35

Q. Can you recall when the third was?

A. No, I can't.

Q. Not even by month? I am not looking for one of these emails where it is at 1.45 on such and such a day?

40

A. No, I can't.

Q. Just two visits --

45

A. I assume it was some time prior to May.

Q. Both of them or the first --

A. I can only assume so because in May I was heavily into writing the report and I can't recall making any visits at the time I was writing the report. Again, I cannot be certain about that,
5 sir.

Q. But to the best of your recollection, there have been two site visits this year, each of them prior to May?

10 A. I believe so.

Q. Taking the first of those visits that occurred this year, where did you go?

15 A. The suburbs that were impacted by the fire.

Q. So not beyond the built-up area?

A. Not extensively, anyway. We may have gone on down to where - I think from memory there was a forest depot out on a flat sort of thing in
20 between the end of the urban area and further into the ranges.

Q. Close to Duffy?

25 A. May have been.

Q. And nowhere near the park?

A. Nowhere near?

Q. The national park?

30 A. Certainly nowhere near the national park. This side of the Murrumbidgee. Does that help?

Q. A bit. Anyway, who was on that site visit?

35 A. Mr Cheney and I.

Q. Just the two of you, I take it?

A. That's correct.

Q. There was a third site visit this year?

40 A. That's correct.

Q. Where were the locations that you attended on that occasion?

45 A. Went to the points of origin or as close as we could get to the points of origin without wasting time on all of the fires.

47

Q. Did you do that in one day?

A. Yes, we did.

Q. Who did you go with?

5 A. Mr Cheney, Ms Cronan, Mr Travers and I'm not sure whether Ms Drew was there or not.

Q. She will forgive you. In the one car?

A. Yes.

10

Q. You say the points of origin as near as you could get?

A. For instance, we didn't walk right up to the point of origin of the Gingera fire. We walked probably within 100 metres of the Stockyard Fire to where we could see the point of origin. We went within probably 15 or 20 metres of the McIntyre's - the tree that was struck at McIntyre's. The rest of them we went to that point - with the exception of Mountain Creek spot fires. I did not visit the site where they are alleged to have commenced.

I did look at the Dingi-Dingi trail, Webbs Ridge Trail area, the Baldy Ridge trail again, Mt Coree and a significant number of areas in between, which I couldn't recall exactly now.

Q. This was all done in the course of a day?

30 A. That's correct, long day.

Q. You say that you went to the point of origin of the Bendora fire?

A. That's correct.

35

Q. What did you do there?

A. Had a look at the terrain. We drove approximately halfway up the Bendora Break and walked into the area where it was alleged the ignition had occurred.

40

Q. Where it was alleged by who?

A. By the report.

45 Q. By what report?

A. By the report where it - for the point of origin.

Q. By what report?

A. I believe there was a report done, I think by New South Wales or by the police, which alleged where the lightning had struck.

5

Q. So the point where the New South Wales Police Service had identified the point of origin; is that what you are saying?

A. Whoever had identified the point of ignition, that's correct.

10

Q. But you are saying this was a point of origin identified by police?

A. My understanding is that's correct.

15

Q. You accessed that area from the Bendora Break --

A. We walked into close to that area from the Bendora Break, yes.

20

Q. You drove about halfway up the Bendora Break?

A. I assume approximately halfway up before we could not go any further.

25

Q. Because it has become overgrown again?

A. No. It was either the disturbance on the track and we couldn't get traction or there was a tree across it. I can't recall which, but we couldn't get any further.

30

Q. So an estimate halfway up the Bendora Break and then you tracked left into the forest?

A. No. Walked.

35

Q. Yes.

A. Didn't track in a vehicle.

Q. You walked left into the forest?

A. Yes.

40

Q. How far did you go?

A. Look, I can't recall. It seemed to be a reasonable distance but whether it was or not, I don't know. The other area I walked was the area on the east of the Baldy Range track where I walked right down into the scrub and along back again where I was led to believe that the spot

45

fire was on the night of the 8th.

MR CRADDOCK: Your Worship, I notice the time. I
am sorry that I hadn't noticed it before. I
5 apologise to all present.

THE CORONER: We will adjourn until tomorrow
morning at 10 o'clock.

10 **MATTER ADJOURNED AT 4.07PM UNTIL THURSDAY
7 OCTOBER 2004.**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 82

Thursday, 7 October 2004

<TREVOR MICHAEL ROCHE, RESWORN

5 MR LASRY: Before Mr Craddock continues, Mr Roche
tells me there are some matters that he wants to
clarify in relation to the evidence he gave
yesterday, if now is a convenient time for him to
do that.

10

THE CORONER: Thank you.

THE WITNESS: Your Worship, in my response to
Mr Craddock yesterday about the places that I
15 visited, whilst I visited a whole range of places
and travelled quite extensively across the areas
that were impacted, and obviously I can't recall
every physical location that I went to, I did omit
to mention the southern areas of the fire
20 including Tharwa, the Ingledene pine plantation
and Stromlo mountain. I think those were
significant because they are fairly significant
areas in terms of the spread of the fire.

25 THE CORONER: Q. That is in your report though on
page 14?

A. No, it is not.

Q. You say Tharwa village and the Ingledene
30 plantation areas.

A. It is in there?

Q. That is on page 14 of your report.

A. Right. My apologies.

35

Mr Craddock also asked me about the point of
origin of where I had information on the Bendora
fire. I subsequently ascertained that that was
from the Strike Force Toronto report that
40 indicated where that point of origin was.

Q. That is the New South Wales team investigating
the New South Wales fires?

A. That's the New South Wales strike force, yes.
45 I indicated at page 7500 of the transcript that I
walked off the Bendora Break toward the point of
origin. Thinking about that, I don't think I

walked off the Bendora Break; I walked part of
that fire from the top road. I'm not sure of the
name of the road - it may have been Parrot Creek
or Moonlight Hollow Road, but the road that
5 certainly went around the top of the fire on the
first day.

There are two other points I would like to make:
at line 15 on page 7492 of the transcript I spoke
10 about my discussion with Mr Adams. I said that he
had sent me some documents, and one was a card
that was issued to the police in Victoria on
evacuation. The transcript reads that "a similar
but more current one is attached to Mr Nicholson's
15 report". I believe the one that was sent to me is
the more current one, not the one in
Mr Nicholson's report, albeit that I made no
further reference to it in the report,
your Worship.

20
The other issue was that, in my discussions I had
with Mr Gledhill from Tasmania - and I omitted to
make mention of it yesterday - I also discussed
with him the introduction of the Australasian Fire
25 Authorities Council's position paper on evacuation
due to the fact that at the time that paper was
promulgated he was the president of the
Australasian Fire Authorities Council and had
actually briefed the chief commissioner's
30 commissioners and senior police from Australia at
a national police conference. I spoke to him
about that and I got the agenda and the date of
that meeting from him. That's all, your Worship.

35 THE CORONER: Thank you, Mr Roche. Yes, thank you
Mr Craddock.

<CROSS-EXAMINATION BY MR CRADDOCK CONTINUED

MR CRADDOCK: Q. If I could clarify your
40 clarification in relation to the site visits. You
have now informed us you went to the areas that
her Worship pointed out are referred to on
page 14. Do you have that?

45 A. Yes.

Q. Is that the fourth last dot point:

47

"Mt Stromlo and other areas between the forest/plantation estate and the western suburbs of Canberra."

5 A. I didn't specifically mention them yesterday. I did omit to remember they were in the report.

10 Q. I understand why you have drawn that to our attention. I just want to ask you - because you don't say there on page 14 and you haven't yet mentioned in your oral evidence - when you went there?

15 A. I can't recall exactly. I made from memory three visits over the space of time following when I was engaged. The actual dates - I suspect the first one I spoke about yesterday was in 2003 and the other two at some stage in 2004. But the specific dates, I can't indicate to you when they were.

20 Q. Don't worry about the specific dates. Is it clear enough to you that it wasn't in the 2003 site visit that you visited Mt Stromlo and those other areas that you mention on page 14; in other words, was it on one of those site visits this 25 year that you visited those areas or are you unsure even as to that?

30 A. No, I couldn't - I visited that many places during those visits - a lot of places were locations which didn't actually have a name. I travelled a significant distance and when I visited those areas I looked at specific things. The last thing on my mind was exactly where it was and the timing. It wasn't relevant to me at the time that I made those inspections, so I'm sorry 35 that I can't indicate it to you.

40 Q. In relation to the visit where you referred to the point of origin as it was alleged of the Bendora fire, you spoke yesterday of being in a vehicle that went some way, you estimated halfway, up the Bendora Break. You then walked into the bush. That's how you got to the area that you thought was the point of origin of the Bendora 45 fire.

Today do you say your recollection is that you went to a point above the point of origin of the

Bendora fire; in other words, somewhere other than via the Bendora Break?

5 A. I visited the point of origin or the area of origin of the Bendora fire on two occasions. The first occasion was primarily spent on the southern edge of that fire in its first night, which I think was Wombat Road.

10 Q. Was that during - if we call it the 2003 visit?

A. I don't know if it was the 2003. It was the first visit I made to the areas.

15 Q. There were three visits?

A. That's right.

Q. The first was in 2003?

A. I suspect so, yes.

20 Q. On that visit you went along Wombat Road and you inspected from the vantage point on Wombat Road and on that day you went to a great many other places?

25 A. That's correct.

Q. Is it your present thinking that on that day, that is the site visit in 2003, you also went to the Bendora Break?

30 A. No.

Q. So you have a recollection of going to the Bendora Break in --

35 A. Sorry, when you say the Bendora Break, the fact that we travelled down Wombat Road, we would have passed the junction of Wombat Road and Bendora Break.

Q. Oh, certainly --

40 A. We didn't go up the Bendora Break on that visit.

Q. As you go along Wombat Road, Bendora Break rises off sharply to the right?

45 A. That's correct.

Q. You certainly at least went past the intersection, if you like, of the Bendora Break.

The Bendora Break forms a T-intersection with Wombat Road?

A. That's correct.

5 Q. Do you presently have a recollection of driving up Bendora Break?

A. On the second visit, yes.

10 Q. So it didn't happen in the first visit in 2003; it happened in 2004?

A. That's correct.

15 Q. Is that the same day that you went to some position towards the top of where the point of origin of Bendora was?

A. On the track to the north - the next track to the north of where the fires were alleged to have commenced.

20 Q. On the same day as you went --

A. Sorry, to the west that would be, according to the map.

25 Q. But that was on the same day as you went at least some distance along the Bendora Break?

A. That's correct.

30 THE CORONER: Mr Craddock, I don't know if this will assist but I have exhibit 88 here, which is the notes of the field trip of 20 August. Do you wish to have access to those? It just might clarify some questions that you are asking.

35 MR CRADDOCK: I do have that document, thank you, your Worship.

THE CORONER: They are the fuller notes.

40 THE WITNESS: I am not aware of that document. I have never seen it.

MR CRADDOCK: I am going to deal with that document, if your Worship pleases.

45 THE CORONER: I just wanted to bring it to your attention.

47

MR CRADDOCK: I am glad you did because I didn't know the exhibit number.

THE CORONER: It is exhibit 88. It has a
5 [DPP.DPP] number though. If you want it brought up at any stage, it is there.

MR CRADDOCK: Thank you, your Worship.

10 Q. What you have been endeavouring to do as you have been giving your evidence in relation to these site visits is draw on your recollection of where you went out in the bush on two occasions: one in the second half of 2003 and one in the
15 first half of 2004; that's so, isn't it?

A. That sounds reasonable.

Q. There was another visit, but that was closer to the urban edge?

20 A. That's my recollection.

Q. On each of those occasions you went to a great many places, places with which you were previously unfamiliar?

25 A. That's correct, with the exception of Mt Stromlo. I was familiar with that previously.

Q. Certainly the remote locations, the fire, the point of origin of the fires and so forth, they
30 were locations which were unfamiliar to you?

A. That's correct.

Q. And on the two separate days you visited a great many of these places?

35 A. That's correct.

Q. Spending a little time at each?

A. Varying periods of time at each.

40 Q. Am I correct in thinking that you didn't make any notes yourself of either visit?

A. That's correct.

Q. Are you aware of a document in which Mr Cheney
45 has set out some notes of a visit to some of these areas on 20 August 2003?

A. No, I'm not.

Q. Amongst those people present on the 20th of August 2003 Mr Cheney named you, but he also names a number of the other people who you identified yesterday from recollection as having been on that
5 first visit in 2003. On the strength of that, would you accept that the visit in 2003 that you have told her Worship about occurred on the 20th of August 2003?

A. Yes, I would.
10

Q. And that would fit in, would it not, with what you told us yesterday about that visit being reasonably close to the point when you were first asked to provide assistance to the coroner?

A. That's correct, sir.
15

Q. I take it from your earlier answer that neither Mr Cheney nor anybody on the coronial team, if you like - counsel assisting and those
20 who assist them - provided you with a copy of the notes made by Mr Cheney in relation to that 20 August visit?

A. That's correct, sir.

Q. Mr Cheney in those notes in relation to the Bendora area says the following things, I will perhaps have that brought up.
25

THE CORONER: It is [DPP.DPP.0010.0271].
30

MR CRADDOCK: Thank you.

THE CORONER: Comments on Bendora you presumably are looking at --
35

MR CRADDOCK: Page 6.

THE CORONER: That is 0275.

MR CRADDOCK: Thank you, your Worship.
40

Q. Do you have a page on your screen, Mr Roche, upon which the first full paragraph commences with the words "discussion included difficulty"?

A. No, I don't, sir.
45

Q. Do you have anything on your screen?

A. I have what is up there.

Q. Are you able to read the one that is on the large screen?

5 A. No. I am able to read the one that is here.

Q. Take it from me, if you would, that these are Mr Cheney's notes of the visit of 20 August 2003 at the Bendora site. Mr Cheney says in that first
10 full paragraph on that page:

"Discussion included the difficulty of fire suppression in tall alpine ash forests."

15 You can read the remainder of that paragraph and the following paragraph to yourself.

Have you read those two paragraphs?

A. Yes, I have.
20

Q. You agree that there was on that visit discussion to that effect?

A. I wasn't a party to that discussion.

25 Q. Please read it again carefully, if you need to - you may need to. I want to ask you whether you agree with the observations that are set out in those two paragraphs.

A. Could I have it scanned up the top, please.
30

THE CORONER: I think in fairness the whole of that "stop 6. Wombat Road" should be shown. It might be easier for him.

35 MR CRADDOCK: If there is a hard copy, that would help.

THE CORONER: I will hand this to Mr Roche.

40 THE WITNESS: Could I read this first?

MR CRADDOCK: Q. Yes. If you go back to the previous page, do you have there a heading down towards the bottom "stop 6. Wombat Road"?

45 A. Yes, I have.

Q. If you just read the material commencing at

"stop 6. Wombat Road" and going through the end of the entry with respect to Wombat Road, the end of the entries demarcated by the entry "Wark's Road". Do you see that?

5 A. Yes.

Q. What I want to know from you, to assist you, is whether you agree with the observations that are made in the two paragraphs firstly commencing,
10 "Discussion included the difficulty of fire suppression" and the following paragraph commencing, "The widespread reduction of logging in native hardwood forests".

A. Yes, I would agree in essence with what is in
15 those two paragraphs.

MR CRADDOCK: Might I approach?

THE CORONER: Yes.
20

MR CRADDOCK: Q. Do you see before you in the black folder a document which is headed "minute and is addressed to Ted Woodward of senior counsel"?

25 A. Yes.

Q. Do you see an entry "subject: document review - Bureau of Meteorology submission to the ACT Coroner's Bushfire Inquiry"?

30 A. Yes.

Q. Do you see a numbered paragraph 2 which says as follows:

35 "There are some discrepancies between the Special Fire Weather forecasts issued by the New South Wales Regional Forecasting Centre for the Yarralumla (McIntyre's Hut) area and
40 the Canberra Meteorological Office for the Bendora/Stockyard area. This is despite the advice that liaison occurred between the New South Wales RFC and CMO in the compilation of these forecasts. However, they are not all
45 that significant and may be accounted for by the different locations and elevations in particular or some other factors of a scientific or technical nature of which I am

not familiar. I will make some further discrete inquiries on this matter at a convenient time in the future."

5 Do you agree that's what appears in the document?
A. Yes, I do.

Q. At page 4 of the document your name appears?
A. That's correct.

10

Q. You agree, do you, that you were the author of that document?
A. Yes, I am.

15 Q. In the document you were setting out some observations to Mr Woodward of senior counsel in relation to your review of the Bureau of Meteorology materials?
A. Yes.

20

Q. You made an observation about some discrepancies in the paragraph numbered 2 that I have read out and you indicated that you would make some further discrete inquiries in relation to the matter. Can I ask you why you thought you needed to make discrete inquiries in relation to such a matter?

25 A. I think it is just a word. I mean, I wasn't going to make an official inquiry; I was going to make some inquiries as to why that might have occurred. But there wasn't any desire to put anything in - in fact, in the finish I didn't make any inquiries.

35 Q. That answered my next question. It was a word that you use chose to use. I am trying to determine, if we can, why you didn't simply say, "I'll ask" and why you chose to say that you would make some further discrete inquiries?

40 A. I think what I meant to convey there is that I wouldn't have made a request in writing. I would have made a phone call to whomever to ascertain what the technical or topographical issues were that might have affected those forecasts.

45

Q. You say that you didn't make any inquiry of the Bureau ultimately?

A. That's correct.

Q. Did you resolve the matter of the discrepancies in some other way?

5 A. No. As I went on and became more familiar with the information that was available and the forecast et cetera, the priority that I assigned to that information faded into the background.

10 Q. Can I ask you to go to page 3 of the document. First of all, the document is dated 18 September 2003. That would seem to accord with what you have just said about being fairly early in the piece?

15 A. That's correct. It was one of the first documents that was passed to me when I was engaged - one of the first documents that was passed to me.

20 Q. Before you had access to statements of witnesses and so forth?

A. That's correct.

25 Q. You were really just beginning to get up to speed with what had happened?

A. That's correct.

30 Q. Can I ask you to go to page 3 of the document. There are a series of propositions separated on the first half of that page by these little squares that people seem to like to use - I suppose they are like dot points and maybe you could call them square points or something. The first one reads:

35 "CSIRO video footage of fire behaviour filmed early in the evening of the 8th indicated fire intensities well within prescriptions for a successful direct attack."

40 That's what it says; is that right?

A. Yes.

45 Q. And it was you who said that, that was your view?

A. Yes, my view at that particular early point in time.

THE CORONER: Which fire, Mr Craddock, are we talking about?

MR CRADDOCK: Yes, thank you, your Worship.
5 Your Worship is a couple of steps ahead of me.

Q. That was a view that you had formed and committed to writing on 18 September?

A. That's right.
10

Q. It was based upon CSIRO video footage; is that right?

A. And my visit to the area.

15 Q. What CSIRO video footage were you referring to when you made that observation?

A. I think it was the video footage taken on the first night by the team up around the McIntyre's area - but, look, I can't be sure about that.

20

Q. Can you identify it as being any other video than that?

A. No, I can't.

25 Q. Is it your best recollection at this point in time that the video that you saw which led you to that conclusion was a video taken by the CSIRO on the night of the 8th of January 2003 in the McIntyre's Hut area?

30 A. Look, I can't be sure, I'm sorry.

Q. Can you think what else it might have been?

A. No, I can't.

35 Q. Do you think that is the video that you are referring to?

A. I was shown a video that was taken by CSIRO and I can't now recall exactly - I know that one of the locations was in the area of the McIntyre's
40 fire - I can't recall whether it included other footage or whether I in fact saw other footage.

Q. The observation that appears at the top of page 3 of that document is an observation about the McIntyre's Hut fire?
45

A. If that's the video, then that's correct.
47

Q. Do you have any real doubt about it?
A. Yes, I do.

Q. What's the basis of your doubt?
5 A. Because I can't recall what the video was.

Q. Do you recall where you got the video?
A. I didn't obtain the video. It was shown to me
by CSIRO.
10

Q. By whom - by Mr Cheney, by Mr Gould?
A. I believe it may have been by Mr Hutchins.

Q. Do you know whether it is a video that has
15 been exhibited in these proceedings?
A. No, I don't.

Q. You now have before you a photocopy of an
email. It has your name in the top left-hand
corner?
20 A. That's correct.

Q. It is addressed from you to Therese Barnicoat?
A. That's correct.
25

Q. The date is Sunday, 23 November 2003?
A. That's correct.

Q. At 1959?
30 A. No.

Q. No?
A. At 6.59pm.

Q. I see. I have just been told there are two
35 identical but with different times. Perhaps you
sent it twice. Could you just go to the next page
in the bundle - is there an identical copy of that
document there - or the previous page?
40 A. There is on the previous page.

Q. Either of them will do. In any event, it was
23 November 2003 and the subject was "suggested
interview questions for Andrew Winter"?
45 A. Yes.

Q. It was an email sent by you to a police

officer; is that right?

A. That's correct.

Q. It reads as follows:

5

"Good morning, Therese. Please find attached some suggestions for the interview planned with Andrew Winter. In reading his statement, I am of the view that he probably

10 knew what should have been done and how to do it with some semblance of order and structure, but obviously the culture of 'ESB runs the show' prevailed."

15 "ESB runs the show" is in inverted commas?

A. That's correct.

Q. The email goes on:

20 "However, in the future and in the witness box, he could be a good ally for us!"

It goes on:

25 "I will not be up this week, but will be available on the home phone number if there are any questions. I am working on Viv Raffaele and hope to have this to you Tuesday

30 AM. I will ring you today, Monday, some time."

That's an email that you sent to that police officer?

A. That's correct.

35

Q. That, likewise, was reasonably early in your time assisting the coroner; that is 23 November 2003?

40 A. I wouldn't have said reasonably early. It was three months down the track.

Q. At that stage you were preparing lists of questions that you were suggesting be put by the police to various persons in the course of their

45 investigation of the matters about which this inquest is concerned?

A. That's correct. Sorry, could I just correct

that. I was preparing lists of questions that the interviewing police might consider putting to witnesses.

5 Q. Yes. And you fully expected that they would put those questions?

A. No, I didn't. I expected to give them a range of questions that they might choose from. They were aware of some of the views that I was forming and the information that I wanted to obtain or to clarify. But whether they put them or not was entirely up to them. I wouldn't presuppose for one moment that I could tell the police what to say during an interview.

15

Q. Yes, I accept that. But in relation to that person you said in this email:

"However, in the future and in the witness box, he could be a good ally for us."

20

A. That's correct.

Q. Who was the "us" to whom you referred in that email?

25

A. It was probably a very poor choice of words. It was primarily me. I had formed a view by that point in time that there were deficiencies in the command and control arrangements during those fires and I had shared that view with officers of the police.

30

A number of my documents submitted to the police task force were aimed at ascertaining issues associated with what I saw as deficient command and control. It was my view - and, as I said, probably a poor choice of words - to say that I wanted this interview conducted on the basis of information that could be obtained which would assist me in determining whether my line of understanding of deficient command and control was in fact correct.

35

40

Q. The use of the word "us" really is a poor choice of word, isn't it, if what you really meant was "me"?

45

A. I'd agree with that.

47

Q. Otherwise you stand by what you said there, do you?

A. Yes, I do. At the time.

5 Q. Why then did you see that person, that prospective witness, as being a potential ally?

A. I think I just explained that to you but I will go over it again. I had formed a view on the basis of other evidence and other documents which
10 I had reviewed that the arrangements for command and control, the implementation of incident control system during these fires was deficient. That was the view at that time that I had formed.

15 Mr Winter, as I recall, and without looking at the record of conversation and questions and his statement - which the questions were obviously framed from - indicated some support, if you like, for that view.

20

Q. The word "ally" in that context is one that connotes the forming of opposing sides; isn't it?

A. Oh, look, I'm not a dictionary. I'm not prepared to debate the application of words. I
25 have indicated to you it was probably a poor choice of words. My explanation again, for the third time, is that I believed Mr Winter in his statement, and the questions which I was asking the police to assist me with, were that
30 Mr Winter's information may have assisted me in arriving or in firming my conclusion that there were problems with command and control within ESB at that point in time.

35 Q. You said that the use of the word "us" was a poor choice of word. Are you saying now that the use of the word "ally" was also a poor choice of word?

A. I think the whole sentence is a poor choice of
40 word.

Q. Well, I am directing your attention to the word "ally".

A. I have just answered it.
45

Q. The answer to my question then is yes?

A. That's correct.

Q. In the paragraph above you chose to say:

"But obviously the culture of 'ESB runs the show' prevailed."

5 A. That's correct.

Q. You were taking sides, weren't you? Yourself and the police on one side and the ESB on the other?

10 A. Could I go back over my explanation for the fourth time so it is clear to you --

Q. Could you just answer my question I am putting to you --

15 A. I will go over the explanation which answers your question, if I may, your Worship.

Q. What I prefer you did, Mr Roche, is simply answer my question. I am putting to you that you were taking sides; that is, you and the police on one side --

A. The answer to your question is no.

Q. If you would just wait for the question, if you wouldn't mind. You and the police on one side and the ESB on the other?

A. The answer to your question is no.

Q. Then why did you frame your email in that way?

30 A. I think I've already explained that three times. I don't think I'll go for the fourth time.

MR CRADDOCK: I tender the email of Mr Roche to Sergeant Barnicoat dated 23 November 2003 bearing the subject "suggested interview questions for Andrew Winter".

MR LASRY: I don't object to the tender but can I just invite my learned friend to add to his tender the earlier document he referred to, which is the minute of 18 September 2003 which in the list is document 16.

THE CORONER: The minute is document 16 or the email is document 16?

MR LASRY: The email is document 40.

THE CORONER: Do you have any objection to the minute as well? You made reference to the minute?

MR CRADDOCK: Do I tender it?

5

THE CORONER: Do you want to tender it?

MR CRADDOCK: I hadn't really considered the whole of the document. I am happy to tender those portions that I have actually referred to, that is paragraph 2 on the front page and the first paragraph on page 3.

MR LASRY: That is totally artificial, your Worship, with respect. The whole document should go in.

THE CORONER: I don't propose to accept it on the basis of a bit or a piece of it. The whole document should be tendered.

MR CRADDOCK: Then I won't tender any of it now. I probably will tender the lot but I want to read the rest of it first, so what I am tendering now is the email. And then before I move on, I think I should just read that document and deal with it before moving on further; otherwise I will get lost again. So may I tender the email.

THE CORONER: What is the date of that email, Mr Craddock?

MR CRADDOCK: 23 November 2003.

THE CORONER: The email from Mr Roche to Sergeant Barnicoat dated 23/11/2003, which is otherwise known as document 40 will become 0104.

EXHIBIT #0104 - EMAIL FROM MR ROCHE TO SERGEANT BARNICOAT DATED 23/11/2003 (DOCUMENT 40) "SUBJECT: SUGGESTED INTERVIEW QUESTIONS FOR ANDREW WINTER" TENDERED, ADMITTED WITHOUT OBJECTION

MR LASRY: Your Worship, I don't want to make a huge issue about this but it seems artificial to treat this process as though it is inter partes. Your Worship has had access to the document; the

witness has been cross-examined about parts of it. Inevitably, if my learned friend doesn't tender it now and I am not permitted to, then I will tender it in re-examination. The document should go it.
5 It is the only way that you will get real assistance from understanding what the issue in the document is.

10 THE CORONER: I have not seen that document, either part of it, Mr Craddock. And I do think it is important - you discovered it. I think it should be tendered.

15 MR CRADDOCK: Mr Lasry is perfectly entitled to tender it. It doesn't matter if I am on my feet at the time. I don't see --

MR LASRY: Well I do.

20 THE CORONER: There is no magic as to who does or who doesn't tender it.

MR LASRY: I tender it.

25 THE CORONER: That document, which is the minute of Mr Roche dated 18 September 2003, will become exhibit 0105.

30 **EXHIBIT #0105 - MR ROCHE'S MINUTE OF 18/09/2003 (DOCUMENT 16) TENDERED, ADMITTED WITHOUT OBJECTION.**

35 MR CRADDOCK: Q. You now have before you, I think, a document which forms part of a larger document. But at the top of the page opened for you, do you see your name "Trevor M Roche, report to the coroner"?

A. Yes.

40 Q. And at the bottom of the page on the right-hand side the number 29?

A. That's correct.

45 Q. It appears to be a portion of one of the drafts of your report?

A. That's correct.

47

Q. The first two lines of the document are in bold?

A. That's correct.

5 Q. Those lines read:

"Ted, I am unsure about this as I am confused about the relationship between sections 26, 27 and 34 of the Emergency Management Act
10 1999."

Do you agree that those words appear there?

A. Yes, I do.

15 Q. By reference to the previous page, if need be - I will put it in proper context. Perhaps I really ought to go back two pages. If you go back two pages you will see a page numbered "26" at the bottom right-hand corner?

20 A. Yes.

Q. And do you see there about three-quarters down the page what is probably a heading "declaration of a state of emergency"?

25 A. Yes, sir.

Q. When I say, "Probably a heading" what I mean is that it is not underlined or put in bold but is there on its own. Am I right in thinking that was
30 intended to be a heading?

A. That's correct.

Q. You went on in your draft over the remainder of that page and the following two pages to
35 discuss aspects of the Emergency Management Act?

A. Yes.

Q. In the midst of your discussion of aspects of the Emergency Management Act you included the
40 words in bold, "Ted, I'm unsure about this as I am confused about the relationship between section 26, 27, 34 of the Emergency Management Act 1999"?

A. That's correct.

45 Q. And you did so because you were confused about the interplay of those sections and you wanted to get some advice about how those sections worked

before proceeding further with that aspect of your report; is that right?

A. That's correct.

5 Q. You are not a lawyer?

A. No.

Q. I take it then that, when you came across aspects of the law - that is statutes - that you
10 wished to consider in the context of your report, from time to time you sought the advice of counsel assisting as to the meaning of those laws in order to assist you in formulating your views and your recommendations; is that right?

15 A. In that case only.

Q. That case only?

A. That's correct.

20 Q. Are you sure about that?

A. Yes, I am.

Q. I take it --

25 A. The reason I'm sure is that I was instructed by Mr Woodward that I shouldn't worry about interpretation of the law. I should just make my recommendations and comments as I saw fit.

Q. Is that the advice he gave you in response to
30 what appears in bold on that page?

A. No, it's not.

Q. Did he give you some advice which assisted you to resolve the confusion that you were feeling in
35 relation to the interplay of those sections?

A. He confirmed my view.

Q. So he gave you some advice which resolved that
40 confusion?

A. He confirmed my view.

Q. Did that resolve your confusion? You express
yourself to be in a state of confusion. What I am
45 asking you is whether he gave you advice which assisted you to resolve your state of confusion?

A. I was no longer in a state of confusion after I spoke to him.

Q. Can I ask you to turn to page 19 of your report.

A. Yes, sir.

5 Q. Perhaps before we go there, did you speak to a person by the name of Sandra Lenardi during the course of your investigation?

A. Not directly related to this matter, no.

10 Q. Is that yes I did but not relating to" --

A. Not directly related to this matter. I had a meeting with Sandra Lenardi over proposed amendments or review of the AIIMS incident control system. At the time of that meeting, as I recall,
15 I was employed by EMA and I was EMA's representative on the working party that was reviewing AIIMS - ICS.

Q. So the discussion didn't relate to the matters
20 with which you were concerned in this inquiry and that's the reason that her name doesn't appear at page 13 amongst those other people's names; is that --

A. That's correct. Look, I have no doubt that I
25 probably spoke to her about issues that I had experience with over my involvement in the inquiry and what impact perhaps a review of ICS might be on that. But that discussion or the outcome from that discussion is in no way incorporated in my
30 report or influenced the direction of my report in relation to the application of ICS in the ACT.

Q. May I now take you to page 19.

A. Yes, sir.

35

Q. That's the second page of material under a heading which appears in fact on page 18, the heading being "the Bushfire Council".

A. That's correct.

40

Q. Just to set the context of it, you say at page 19:

45 "The Bushfire Council has performed an important role in the history and development of wildfire management in the ACT. As the forerunner to a more formal and bureaucratic

management structure, the council has ensured that not only were the strategic functions and legislative requirements of bushfire control and mitigation in the Territory well served, but equally importantly, they were
5 guided by a group that was in many ways representative of the diverse views of the community."

10 You go on to say in your following paragraph:

"To my observation, in more recent years governments (including the Territory
15 government) have tended increasingly to vest the powers and responsibilities for the management of the fire services in public servants with little or no knowledge of the services being delivered. In many instances this has correspondingly lessened the
20 emphasis on advice and guidance from those people with a more direct vested interest and expertise in those services."

Now, let me just take the subject of fuel
25 management. Have you carried out a study of fuel management, including the figures of fuel management actions under both the Bushfire Council and the ESB, in order to draw comparisons between the work being done in fuel management under each
30 regime?

A. No, I have not.

Q. On what basis do you say that the "public
35 servants who are exercising functions have little or no knowledge of the services being delivered"?

A. Across Australia, and the ACT is no exception, in the Emergency Services Bureau my understanding was that on his appointment Mr Castle had no
40 background in emergency services or the fire service in particular. That is true for a number of other services across Australia, including prior to the recent incumbent in New South Wales. It is the case in the Victorian Country Fire Authority; it is the case in the Western
45 Australian Fire and Emergency Services Authority; and it was until recently the case in South Australia in the Country Fire Service.

Q. Is that the entirety --

A. Sorry, it is the case in the Northern Territory in relation to the fire and emergency services in the Northern Territory.

5

Q. Is that the entirety of the basis upon which you say that those public servants have little or no knowledge of the services being delivered?

A. That's an obvious deduction, yes. By the same token it is also based on my experience in dealing with some of those people and the views that they may have taken in the past regarding the direction and management of fire services.

15 Q. Can I ask you to go to page 68 of your report it is on that page that you refer to the position of the Forest Fire Management Group relating to firefighting at night. What is the Forest Fire Management Group?

20 A. My understanding is that it is a group of people representative of the senior fire management people of the land management agencies in some jurisdictions in Australia.

25 Q. Are you familiar with its membership?

A. No, I'm not - except as I said it is representative of land management agencies in some jurisdictions - I don't know if it is all of them - in Australia.

30

Q. Did you know that Mr Tony Bartlett was a member of that group?

A. No, I did not.

35 Q. You indicated in your report and you confirmed in your evidence yesterday that the document which was placed before this inquiry headed "firefighting at night" has not been adopted by the Australian Fire Authorities Council; do you recall that?

40 A. Yes, I do. Australasian Fire Authorities Council.

45 Q. That has become exhibit 49 in these proceedings. I will just provide the witness with a copy. I have just given you a copy of that document which is exhibit 49, the "firefighting at

night" document of the Forest Fire Management Group; is that right?

A. Yes, sir.

5 Q. The document asserts:

10 "The Forest Fire Management Group believes that firefighting at night is a valuable technique which may be used when it is appropriate".

You don't disagree with that, do you?

15 A. I'm not quite sure of what the definition of "appropriate" is. It is a valuable firefighting technique. I don't differentiate - I think to the extent that this might - by inserting the term "appropriate" which suggests under a range of circumstances it won't be.

20 Q. Do you think there are circumstances where it isn't appropriate to apply direct attack methods to forest fires at night?

A. Yes, I do.

25 Q. Is it the case that there are a whole range of considerations which might go into the decision-making process in order to determine in any given situation whether it is appropriate to apply direct attack or not?

30 A. Are you saying direct attack at night or --

Q. At night.

A. There is a difference between --

35 Q. Yes, sure, I understand. I am only talking about at night.

A. Right. I agree with that. And, can I add, the majority of those are no different to day-time.

40

Q. Do you agree with the proposition in this paper that there are some safety requirements additional to those for day-time firefighting caused primarily by reduced visual range?

45 A. Not necessarily.

Q. Not necessarily?

A. I think there are environmental conditions around the fire - for instance, heavy smoke logging a fire can be just as difficult and more likely to occur during the day but at night just as difficult on interrupting visual range, as
5 would also occur in thick forest.

Q. There are a range of considerations set out in this paper including weather conditions, fuel
10 types and loads, safety matters, fitness and training of staff, personnel having had adequate rest, having been adequately briefed, the identification and dealing with specific hazards, provision for adequate communication, adequate
15 supervision, escape routes, adequate lighting for machinery, if it is to be used. They are all considerations, aren't they, that are relevant and which ought to be taken into account by an incident controller when determining whether to
20 apply direct attack to a fire in a forest at night?

A. With the exception of the last dot point, they are relevant at any time.

25 Q. Including at night?

A. Including at night.

Q. Some of them might have some added relevance by reason of the fact that it is dark; do you
30 agree?

A. I think every factor that is involved in any risk assessment of firefighting at all has different characteristics and different emphasis at any time of the night or day.
35

Q. Do you agree with the proposition that the fact that it is dark may add emphasis to some factors?

A. It may.
40

Q. It is obviously, isn't it, of considerable relevance to the safety of firefighters whether or not they are in a position to see potential hazards?

45 A. At any time that's correct.

Q. That is a factor which may have some greater

emphasis at night when visibility is reduced; do you agree?

A. It might.

5 Q. You have made reference in your report to the rural fire control manual --

A. Where might that be in my report, sir? I have made mention of it in a number of places; that's all.

10

Q. It is a document that you are familiar with, isn't it?

A. I am aware of the document. There may be some parts that I am more familiar with than others.

15

Q. Are you familiar with chapter 6 which is headed "safety"?

A. No, I'm not.

20

Q. I will show you this document. (Handed) Do you know what a disallowable instrument is?

A. My understanding is that it is similar to a regulation in that it has to go before parliament and be approved by a parliament.

25

Q. Are you familiar with the document, with at least the front page of the document that I just handed you?

A. No, I'm not.

30

Q. Can you turn to the second page of the document. Do you see that it is headed on the left-hand side at the top "Australian Capital Territory Gazette number S177, 15 October 1992"?

35

A. Yes, I do.

Q. Over to the right-hand side of that page there is a heading "Rural Fire Control Manual"?

A. With the numbers 53?

40

Q. Yes.

A. Yes.

45 Q. Would you accept from me that what you have before you is a photocopy of chapter 6 of that Rural Fire Control Manual, chapter 6 being headed "safety"?

A. Yes.

Q. May I take you to - I have some other copies
of this creature, if anyone wishes to follow
5 that --

THE CORONER: I am noting the time, Mr Craddock.
Would it be convenient to adjourn now?

10 MR CRADDOCK: Probably more convenient because
that will give Mr Roche an opportunity to read -
and I ask him to read - the pages that follow in
the document that I have just given him. That
will speed things along.

15

SHORT ADJOURNMENT

[11.23am]

RESUMED

[11.50am]

20 MR CRADDOCK: Q. Mr Roche, I think you have now
had an opportunity to try and stay awake during
reading of a portion of the Government Gazette
that you previously had an opportunity to study;
is that right?

25 A. That's correct, sir.

Q. That is chapter 6 of the Rural Fire Control
Manual for the ACT. Paragraph 6.1 of the document
is headed "safety policy". It states as follows:

30

"Bushfire control is an inherently dangerous
occupation involving strenuous labour in a
high temperature environment and will always
have more than its share of hazards. But
35 consistent attention to safe working
practices can keep injury to an absolute
minimum. Safety is a prime responsibility of
every person at an incident, not just the
field controller."

40

Now, may I take it that is a sentiment with which
you wholeheartedly agree?

A. Yes, I do.

45 Q. The following page numbered 54 under
paragraph 6.3 is the material under the heading
"fire ground safety". The first portion of that

material reads:

5 "The field controller bears the
responsibility for the welfare and safety of
each person assigned to his/her fire ground
workforce."

Do you see that?

10 A. Yes, I do.

Q. Is that something with which you agree?

15 A. Yes, I do, with the addition of the
qualification on the opening paragraph that also
indicates that it's the prime responsibility of
every person. But ultimately --

Q. But whether or not you agree with it - it
happens that you do - it forms part of the
gazetted manual which applies to those carrying
20 out firefighting functions in the ACT; that's so,
isn't it?

A. That's correct.

Q. On page 55 of the document at paragraph
25 numbered 6.4 there is a heading "protection of
firefighters from fire hazards". The first
portion reads:

30 "Hazards of the fire control situation which
may be encountered in the daily work
situation are: heat; falling objects; smoke;
nervous tension; and fatigue."

A. Amongst others. I would have no argument with
that.
35

Q. There is then some material set out in
paragraph 6.4.1 relating to heat. I won't take
you to the detail of that. Rather I will ask you
to turn over to the page which is numbered 57 in
40 the top right-hand corner. Paragraph 6.4.2 is
headed "falling objects". Do you have that?

A. Yes, I do.

MR CRADDOCK: Your Worship may be the only person
45 here without a copy of this.

THE CORONER: What is "this"?

MR CRADDOCK: I might hand up the original.
Perhaps I should tender the document now.

5 THE CORONER: The extract from the Gazette,
Gazette No. 153 of 1992 specifically dealing with
section 6 "safety", pages not including the
covering numbering pages 53 to 58 will become
exhibit 0106.

10 **EXHIBIT #0106 - EXTRACT GAZETTE NO. 153 OF 1992,
SECTION 6 "SAFETY", PAGES 53-58, TENDERED,
ADMITTED WITHOUT OBJECTION.**

15 MR CRADDOCK: Q. Now, Mr Roche, if I could take
you to paragraph 6.4.2 "falling objects". It
there says:

20 "Burning trees can drop limbs without any
warning noise. In some mature, and long
unburnt eucalypt forests, trees may start
falling within 30 minutes of a fire and
continue to drop for several days after the
fire.

25 "The type and condition of the trees should
be examined before mopping up in treed areas.
Lookouts must be posted when stags are to be
felled, to warn of falling limbs. On steep
30 slopes all firefighters are to avoid
dislodging rocks and logs, and to watch for
rocks rolling from above."

That is the material that appears under that
paragraph; is it not?

35 A. Yes, sir.

Q. Would I be correct in thinking that you agree
with the observations that are made there under
that heading of "falling objects"?

40 A. I'm not quite sure about where that 30 minutes
actually comes from but, from a practical point of
view, it is reasonable. I also note that there is
no qualification that it just applies to
night-time. That would apply equally to day or
45 night.

Q. You would agree that the difficulty presented

by the possibility of falling trees or limbs may, depending on the circumstances of the fire ground, be accentuated at night?

A. Not necessarily.

5

Q. Does that mean yes it may be accentuated but it may not be, or something else?

A. I think, as Mr Cheney explained, at night in a majority of circumstances - in my experience, anyway, and I have done a fair amount - always seem to win the night shift for some reason. In more circumstances than not the limbs that are likely to fall or the trees that are likely to fall are clearly visible because of the burning -
15 the glow and the flame.

Just as equally during the day that might not be so visible, particularly where the fire has been burning within a very dry tree or limb for some period of time and is not emitting a significant quantity of smoke that can't be discerned from the general smoke in the area.
20

So the risk of falling limbs and falling trees is equally a risk at night or during the day and is something that the incident controller must consider in making a decision of a particular strategy or tactics.
25

Q. Trees may fall night or day; limbs may fall night or day; is that right?

A. That's correct.

Q. Do you say that the reduced visibility of the night adds no further element of any importance to the question of whether firefighting in any particular location, any particular fire ground, ought to be carried out at night?
35

A. This is one other factor that needs to be considered amongst a whole range of factors.
40

Q. Can I ask you to go down the page to paragraph 6.4.5 "fatigue". That paragraph provides:
45

"The firefighters exposed to hard work and hazards on the fire line for long periods are

5 very prone to accumulating fatigue which will greatly reduce their efficiency. Supervisory staff are similarly affected by fatigue. Field controllers should: Take into account fatigue when setting fire control target items; anticipate a requirement for replacement of tired firefighters; ensure that they themselves are also getting sufficient effective rest."

10

May I take it that you agree with those observations?

A. Yes, I do.

15 Q. They are matters that an incident controller ought to consider in making a decision whether to undertake direct attack whether by day or by night?

20 A. Whether to undertake any activity, day or night.

Q. The fire ground is in fact a workplace, is it not?

25 A. It is under the Victorian legislation. I'm not quite sure for the purposes - if you are talking from the purpose of occupational health and safety. I know it is in Victoria. I am not quite sure whether that legislation is equally applicable in this jurisdiction. If it is, yes, it is.

30

Q. Do I take from your last answer that you didn't, in your deliberations and preparation of your report, examine the occupational health and safety legislation of this Territory?

35

A. No, I didn't believe it was necessary.

Q. Did you start your deliberations and the preparation of your report from a presumption that the fire ground is a workplace or not?

40

A. Two presumptions: (a) that the fire ground is a workplace and (b) that the safety rules that apply to firefighting apply whether it is a workplace or not - sorry, whether it is a defined workplace or not.

45

Q. Can I show you this document. I regret that I

haven't made extra copies of this - I did but I just can't find them. From my experience of the last lot I think they would be thrown back at me.

5 Can you take it from me, Mr Roche, that what you have in front of you is a photocopy of portions of the Occupational Health and Safety Act of 1989 of the Australian Capital Territory.

A. Yes, I do.

10

Q. I think that the first page that you have before you is a page headed "part 3. Duties relating to occupational health and safety"; do you have that page?

15 A. That's correct.

Q. I take it this document is new to you from the basis of your answers you have just given?

20 A. It is. But it looks fairly similar to the Victorian legislation.

Q. That's unsurprising that it would look very similar. You would be familiar with the Victorian legislation?

25 A. Yes, I am.

Q. Section 27 is headed "duties of employers in relation to employees". Subsection 1 reads:

30 "An employer shall take all reasonable practicable steps to protect the health, safety and welfare at work of the employer's employees. Maximum penalty: 250 penalty units."

35

Subsection 2 provides:

40 "Without limiting subsection (1), an employer contravenes that subsection if the employer fails to take all reasonably practicable steps:

45 "(a) to provide and maintain a working environment (including plant and systems of work) --

"(i) that is safe for the employer's

employees and without risk to their health;
and.

5 "(ii) that provides adequate facilities for
their welfare at work."

You agree those provisions are as I have read
them?

10 A. Yes.

Q. Are they materially in identical terms to the
provisions with which you are familiar from
Victoria?

15 A. I believe so. It is a couple of years since
I've had cause to refer to that legislation, but I
would believe so.

Q. If you go through the document you will come
to section 30. Do you have that?

20 A. Yes.

Q. That is headed "duties of employees".
Subsection (1) reads:

25 "An employee shall, at all times while at
work, take all reasonably practicable steps:

30 "(a) to ensure that the employee does not
take any action, or make any omission that
creates a risk, or increases an existing
risk, to the health or safety or an employee,
or of other persons (whether employees or
not) at or near the place at which the
employee is at work; and

35 "(b) in respect of any duty or obligation
imposed on the employee's employer, or on any
other person, by or under this Act - to
cooperate with the employer, or that other
40 person, to the extent necessary to enable the
employer or other person to fulfil that duty
or obligation."

45 Do you agree the provisions are as I have read
them?

47 A. Yes, sir.

Q. Upon the presumption that in the ACT a fire ground is a workplace the Act imposes a positive obligation, does it not, to provide firefighters with a safe system of work; do you agree?

5 A. Yes, sir.

Q. The Act, I guess in common with the Victorian legislation and probably legislation everywhere in this country, imposes a criminal sanction for
10 breach of that obligation to provide a safe system of work; that's so, isn't it?

A. That's correct.

Q. There is a similar obligation imposed upon
15 employees?

A. That's correct.

Q. Would you agree with this proposition: that firefighting, whether in forests or elsewhere, is
20 an inherently dangerous job but it doesn't need to be done dangerously?

A. That's correct.

Q. On a fire ground, whether it be in an urban
25 area or in a forest, there is under the AIIMS system an incident controller. That's so; isn't it?

A. That's correct.

Q. That incident controller has amongst his or
30 her responsibilities ensuring that the firefighting that is going to be conducted is conducted safely; do you agree?

A. As safely as is practicable under the
35 circumstances and in the environment. The point I am making there is that I have always had a concern with this legislation, because if you take it literally you don't do any firefighting, because every time you put anybody into a fire the
40 risk to them, as individuals and collectively, is increased.

My understanding is the way in which, certainly in
45 Victoria, that law is interpreted is provided that commanders and controllers take reasonable steps, at least reasonable and practicable steps, to limit the exposure and the risk then they would

have met the intent of the law.

Q. They have to take such steps as are reasonable and practicable to ensure that the firefighting is carried out safely; do you agree with that proposition?

A. Yes.

Q. An incident controller, when faced with a forest fire, has many factors weighing upon him or her as to the tactics to be followed and how to follow those tactics; do you agree? There are decisions as between direct attack, indirect attack; there are decisions as to whether to put in a mineral earth trail - a whole range of things have to be considered by an incident controller. Do you agree with that?

A. Yes, I do, including the consequences of not taking action.

20

Q. Yes, including the consequences of not taking action.

A. That's correct.

Q. But it is a multi-faceted decision-making process; isn't it?

A. Absolutely.

Q. Do you agree that in the course of making a decision as to whether to attack a fire and, if so, how to attack the fire, the safety of the firefighters is not just one of the considerations but is a pre-eminent consideration?

A. Yes, I agree.

35

Q. There is absolutely no point whatsoever in putting the lives and the safety of people at unnecessary risk in the fighting of bushfires in order to avoid some procedural consequence down the line. That's so, isn't it?

40

A. I wouldn't like to make it so black and white.

Q. That responsibility to make that difficult judgment as to whether to fight a fire and how to fight it is one that is reposed in the incident controller. That's so, isn't it?

45

A. Yes.

Q. Now it may be, depending upon circumstances, that an incident controller might or even should seek advice from others either at the fire ground or elsewhere in relation to the decision that is
5 to be made; do you agree?

A. Yes, I do.

Q. But in the ultimate it must be a decision made by that incident controller?

10 A. That's correct - on the basis, sir, if I could, if the senior officer may not agree with that decision then another incident controller may be appointed.

15 Q. The AIIMS system has a process, does it not, for scaling up, for increasing the experience level of incident controllers throughout an incident, depending upon the development of the circumstances?

20 A. No. The incident control system assumes that people appointed to positions are experienced and competent to perform that position. The scaling up is more to do with the complexity and dimension of the incident, rather than the competency of the
25 people involved.

Q. It is the incident controller who bears that final responsibility, I suggest, in part because the incident controller is the person on the spot;
30 do you agree?

A. Yes, I do.

Q. You gave some evidence before an inquiry in Victoria in relation to the fire at Linton; is
35 that right?

A. I wish I could say I don't recall that but, yes, I do.

Q. I wish to take you to one aspect only of the evidence that you gave - not in detail. But one of the matters I think that was under
40 consideration in relation to that inquiry was the question of the appointment of safety officers; is that right?

45 A. It was certainly a focus by the coroner and counsel assisting on the matter of safety officers at incidents.

Q. Am I correct in saying that one of the points that you made to the coroner in the course of your evidence was that fires being dynamic things it was important to have the person who is making
5 decisions about safety on the spot where the safety issues are arising --

A. That's correct.

Q. In other words, as I understood your evidence,
10 if you have got a large-scale fire there is no point in having some safety officer kilometres away purporting to make decisions about safety issues at another location?

A. That's correct.

15

Q. Am I correct in thinking that the force of the evidence that you gave, the reason that you put that position, was for the very reason that you need to be on the spot seeing the actual
20 conditions in order to make a proper judgment about safety issues?

A. About any issue.

Q. But amongst them safety issues?

25 A. That's correct.

Q. You need to be the person on the spot seeing the safety issues arising with your own eyes and being able to respond to the actuality of it
30 rather than just some second-hand report about it; was that the position you were putting?

A. The position that I was putting was more fundamental than that, and that is that the incident controller is in control of the fire
35 ground. My concern and the reason why I advanced that evidence was that there were proposals being floated that there would be a safety officer appointed to the Incident Management Team who had the power of veto on strategies and tactics over
40 the incident controller. So what I was arguing was that that role should rest with the incident controller.

Q. That safety officer might be somewhere else?

45 A. Yes but, equally, so might the incident controller be. And I think if you are drawing an analogy between, for instance, Ms Arman at the

Bendora fire who was theoretically the incident controller - I am not sure about that, but certainly she was the person that was on the ground in command, in control - compared to what I
5 am normally used to, particularly as a fire develops where an incident control centre and a Incident Management Team and therefore the incident controller can be some distance removed from the incident. But in the evidence that I was
10 advancing to the Linton inquest was that the incident controller, no matter where he might be, is the person who is ultimately responsible for safety.

15 As a fire develops in complexity and, as you have already mentioned, an Incident Management Team grows, then it is normal not to have the incident controller on the fire ground. So the proposition that you are advancing that the incident
20 controller has the responsibility for safety, I agree. The fact that the incident controller is always on the fire ground and therefore in a position to visualise the safety issues, I don't agree.

25 The evidence which I gave to Linton was designed to ensure that there was not another level of control, a safety officer with powers of veto, placed within that structure.

30 Q. But in particular someone with those responsibilities who might be divorced by distance from the area where the safety issue is arising; is that right?

35 A. No, it's not. Because as I indicated there, the operations with which I'm used to operating in, the structures which I am used to operate in with incident control systems - if I can use the New South Wales example of the incident control
40 centre at Queanbeyan. That's where the incident controller was. And the circumstances that I am used to is that that incident controller has the primary responsibility of the safety - nowhere near the fire ground but he has that primary
45 responsibility. His eyes and ears of course will be a commander on the ground. But at the end of the day he is the one that is responsible.

Q. But you wouldn't say, would you, that that commander on the ground, who may be the eyes and ears of the incident controller, wouldn't have the responsibility to take decisions or to strongly
5 recommend them in relation to safety matters?
A. Absolutely.

Q. In relation to the Bendora situation, I think as you have agreed the reality was that Ms Arman
10 was the incident controller there at the fire on the night of the 8th of January?

A. I believe she was the person in command and control on the ground. I don't want to get hung up in titles at this particular time. I won't
15 argue that she was the person that was in control and in fact in command at that time.

Q. It was her responsibility, was it not, to give consideration to safety issues and to make a
20 decision which included consideration of safety issues?

A. That's correct.

Q. And whatever advice she may have been given,
25 she was on the spot and in the best position to weigh up the safety considerations?

A. Consistent with her knowledge and experience, yes.

Q. That's right. As the person there, just take any wildfire in a forest, it is that person on the spot who can see the terrain, experience the terrain, judge what the fuel is like, assess the flame height, the size of the fire - all of those
35 sorts of matters which all play a role in the consideration of safety issues; do you agree?

A. Yes, I do.

Q. A person divorced from the scene obviously enough lacks those critical advantages; they may get a report about it that is necessarily second-hand; that's obvious, isn't it?

A. In general terms, yes, particularly when it comes to the fire itself, fire behaviour,
45 et cetera, it may well be people who have quite intimate knowledge of the terrain, of the fuels, of the access, et cetera, et cetera, because they

work and play in the forest. But in terms of the fire itself, I would agree.

Q. Can I ask you to go to page 66 of your report.
5 You have there Jeff Cuttings' photograph taken at 2100 hours on the 8th of January 2003 from Wombat Road. Now, you understand, don't you, that that photo was taken shortly before the crews left the fire ground on the night of the 8th of January?

10 A. Yes, I do.

Q. You have made the point on a number of occasions that the fire behaviour in the evening in a forest fire might be at its most benign?

15 A. Usually that's correct.

Q. "Benign" isn't a word of any great precision, is it?

20 A. Relatively to "not benign" I think it is.

Q. You designed or rather made a suggestion for questions to be put to many of the firefighters in interviews with the police; is that right?

25 A. A small number by comparison, I think - certainly not the major number of witnesses that were interviewed. I think there were 8 or 10 that I might have proposed some questions for.

Q. Does it fairly summarise the position that
30 amongst the questions that you suggested be imposed were questions based upon the proposition that a fire is usually at its most benign at night on the first night of the fire?

35 A. That's correct.

Q. And you were meaning to suggest, weren't you, that the first night of a fire might present an opportunity for effective direct attack?

40 A. In the majority of circumstances, yes.

Q. But obviously not in all circumstances?

A. No.

Q. The conditions --

45 A. I say that on the basis of fire behaviour. I have seen fires crowning at night and I don't think you'd be direct attacking those.

Q. Is this a fair proposition that you really have to weigh up the circumstances of each fire as you find it? You can't apply any golden rule. You have to be alive to the real considerations on
5 the ground at the time always.

A. That's correct.

Q. The photograph taken by Mr Cutting, which you have been good enough to include at page 66 of
10 your report, represents one snapshot of the fire behaviour on the night of 8 January, that's so?

A. Yes.

Q. Of course, what you don't gain from a view of
15 the photograph necessarily is any real appreciation of the terrain, the slope, the gradient, or the ground fuel; is that a fair summation?

A. Not from that photograph, but you do from
20 others.

Q. The fire behaviour, which is exhibited in the photograph on page 66, could not by any stretch of the imagination be described as "benign"; could
25 it?

A. I would differ with that.

Q. So you would describe the fire behaviour which is exhibited in the photograph on page 66 as
30 "benign"; would you?

A. Yes, I would.

Q. From that photograph and perhaps from your own site visits to that Bendora area, are you able to
35 estimate the height of those trees?

A. Those trees would have been at least 20-30 metres.

Q. Do you agree with the proposition that
40 constructing a rake hoe line is extremely arduous work?

A. Yes, I do.

Q. I think Mr Cheney somewhere in his evidence,
45 who has studied such matters, likened it to marathon running; is that a comparison you would be comfortable with?

A. Given my level of fitness, I think I would rather undertake a marathon run - people at my age, anyway.

5 Q. And certainly having given up the fags.

A. That may help me, actually.

Q. I think somewhere in your report, I won't trouble you for the actual reference, you refer to
10 a rate of 100 metres an hour for the construction of a rake hoe line?

A. That's correct. 80-100 I think I may have referred to.

15 THE CORONER: Q. Is that per person?

A. Per person per hour.

MR CRADDOCK: Q. That is a figure which must of course, mustn't it, bend to the particular
20 circumstances in which the work is being carried out?

A. Absolutely. That's a figure that I have, I'm aware of, and I would use for planning purposes. And then that rate of construction of course would
25 be validated as work progressed in the field.

Q. Of course the achievement of it, that is the rate of 100 metres per hour, would depend upon a great many factors - obviously enough - including
30 the terrain and the conditions in which the trail is being constructed. The degree of rot on the ground and that sort of thing is going to make a difference; is that right?

A. Yes, it is.

35

Q. Slope is going to make a difference?

A. Yes.

Q. The rate at which the line can be constructed is going to drop off over time; in other words, no
40 firefighter, even a firefighter who is very fit, is going to be able to maintain that rate over, say, an eight-hour shift?

A. I think from memory one could expect something
45 like a 30 per cent reduction in efficiency toward the end of a 10-hour shift.

47

Q. And the capacity to maintain that rate will also be affected, will it not, by what the particular firefighter has been doing beforehand; in other words to make an obvious comparison, someone arriving at the fire ground late in the evening and starting a rake hoe line is not going to be as efficient having worked all day as somebody starting fresh having had a rest. That's a fairly obvious proposition, I suggest.

5
10 A. I suspect so. I'm not an expert in human physiology but I would expect that to be the case.

Q. Now, is it the case that rake hoe lines ought to be constructed close to the fire's edge?

15 A. As close to the fire edge as can safely be undertaken and to minimise the radiant heat effects - but the closer the better, yes.

Q. And that's because you want to leave as little unburnt fuel as you can between the fire edge and your rake hoe line?

20 A. That's one reason. The principal reason is for safety.

25 Q. When you talk about constructing a rake hoe line as close as possible to the fire edge, are you talking in terms of a couple of metres or 100 metres or what is the real scale of things, just so we can get a handle on that?

30 A. I am certainly not talking 100 metres. I am talking as close as practicable, given the radiant heat in the terrain. I would favour the 2 metres compared to the 100, by far.

35 Q. Two metres?

A. Don't hold me to the 2 metres. But if you get what I am trying to say, 100 metres is not an option. That is an unsafe option.

40 Q. That is not an option but 2 metres would be good?

45 A. Two or 3 metres would be, if you can do that without the radiant heat adversely reducing the performance of the crew, then that's where it ought to be, if the terrain allows that.

THE CORONER: Q. Why is safety more of an issue

further away from the fire? I would have thought that 2 metres, closer to the fire, is more dangerous I suppose or more risky than 100 metres away; I mean, given it is not desirable obviously to be 100 metres away from the fire if you are trying to contain it.

5
A. I am just fearful of going into a long - revisiting the Linton inquest, your Worship. The principal matter is, if you have that amount of fuel in between you and the fire on an extended fire edge and there is a change in the conditions or particularly a change in the wind, it is commonly known as a dead man zone, the fire can rapidly escalate and leave you with no escape route. You are working as close as you can to the fire edge for that particular reason so you actually have the black as your safety zone.

MR CRADDOCK: Q. Do you mean by that if you are close, that is to say if you have 2 or 3 metres, whatever it is exactly, between you and the fire edge and there is a sudden wind change, sudden blow-up in the fire behaviour, you can get onto the burnt ground?

25 A. That's correct. Significantly, of course, that's on the basis too that you would have tied your rake hoe line into an anchor point. So that the anchor point has provided burnt ground that has been burnt some time prior. As you are progressing along and you are not stepping across the most intense part of that line, you are able to fall back very rapidly to an area that is burnt and is less hot, if you like, than what otherwise might be the case if you are an extended distance away from the line.

Q. Do you mean that you need the capacity to get onto the burnt ground but it is better to get onto burnt ground that has been burnt an hour ago rather than half an hour ago?

40 A. In some circumstances. Again, we are talking about circumstances here that are going to range in the things that it will affect. For instance, if a dozer is operating on a containment line and there has been a dozed area, you might choose that as your safe area. But where we are talking hand line construction in the absence of any other

naturally cleared area, you are looking at the burnt area for the safety zone.

5 Q. Obviously enough, whilst the burnt ground might be ground upon which the surface fuel has been subject to combustion, you may still have trees and logs burning?

A. That's correct. It is still a safer place than the other alternative.

10

Q. A lesser of two evils?

A. Yes.

15 Q. But it has, nevertheless, a potential evil in that you may be on ground where, albeit the fine fuel is gone, there are continuing fires in logs and trees?

A. That's correct.

20 Q. If you are working in a forest where the trees are up to 20 or 30 metres tall, the danger from falling trees and falling branches is a danger emanating from trees which are as far back as 20 and 30 metres from the fire's edge; that's so, isn't it?

25

A. Commensurate with their height, yes.

30 Q. I think you have been at pains - in your evidence at least and in your report - to point out that you are not critical of Ms Arman personally for the decision she took on the night of the 8th of January?

A. No, I'm not.

35 Q. You recognise that she was in the position where she had to take into account safety considerations and to make a decision. That's so; isn't it?

40 A. I recognise that she made a decision based on her experience and knowledge, which included those safety factors.

Q. Your point is that others perhaps with more experience may have taken a different decision?

45 A. That's correct.

Q. I want to see whether you can put yourself

into the position of an incident controller on the
18th of January 2003 with the circumstances as
they were known at 11am or thereabouts on that
day. I want you to presume that you are giving
5 consideration to the question whether to issue a
warning to the community. Can you tell me, as
best you can with some precision, precisely what
warning you would give?

10 A. We are talking at 11 o'clock on the 18th of
January?

Q. About 11 o'clock?

15 A. Under what circumstances, which fire and what
prior community education and information had been
provided? Because otherwise I am not prepared to
answer that question.

Q. Are you saying that you can't answer that
question in the terms in which I have asked it?

20 A. You are taking a point in time, a simple set
of circumstances where I am asking you, is this
hypothetical or are we talking about what actually
occurred in the ACT on the 18th of January at 1100
hours?

25

Q. I am asking you to put yourself into the
position of being the incident controller for the
fires in the ACT at about 11am or thereabouts with
the conditions as you know them to have been. Are
30 you able to tell her Worship what precisely would
your warning to the community have been?

A. And am I also assuming that the level of
community knowledge and the information that had
been provided to them is as was at that time?

35

Q. Yes.

A. That is a difficult question for me, because I
would have been giving out information before 1100
on the 18th.

40

Q. If you can't answer the question, please say
so. Are you able to say what warning you would
have given? I appreciate that you may feel unable
to, and please tell us if that be the case.

45 A. I think there were too many other variables
which you haven't canvassed. As I have indicated
you are putting me in the position of the incident

controller. If I was the incident controller, then advice would have been provided to the community well before 1100 hours on 18 January.

5 Q. Are you unable to answer the question in any meaningful way?

A. That's correct.

MR CRADDOCK: Thank you, your Worship, I have no
10 further questions.

THE CORONER: Thank you, Mr Craddock. Mr Watts, do you wish to make a start? I note the time.

15 MR WATTS: I am happy to be a night watchman.

<CROSS-EXAMINATION BY MR WATTS

MR WATTS: Q. Mr Roche, on the 9th of
September 2003 you sent a minute to Mr Woodward.
20 Do you recall that document?

A. No, I don't.

Q. It begins with the words - putting the formalities to one side - "I have completed a
25 review of the statements provided of the ACT Fire Brigade employees"?

A. Yes, I do recall that.

Q. You mentioned early in the document that you
30 had reviewed 13 statements; is that so? There were 13 documents that you had reviewed?

A. If you show me the document that will help me.

Q. Yes, certainly, if you would please excuse
35 some highlighting. But otherwise it is unmarked.

A. (Shown) Yes.

Q. I want to ask you this: when was the first
40 time you were asked to give any consideration to the performance of the ACT Fire Brigade?

A. I was never asked specifically to comment on the performance of the ACT Fire Brigade. I was asked to comment on the performance and the approach of the agencies in the ACT to the fires
45 which occurred or commenced on 8 January 2003, and appropriately that included the ACT Fire Brigade.

47

Q. You took that to include the Fire Brigade?

A. Absolutely.

Q. How, if I might ask you, did you come into
5 possession of those statements that are referred
to in this document?

A. I can't recall whether they were provided to
me by counsel assisting or by the DPP.

10 Q. As at the 9th of September you had been
engaged for less than a month or about a month on
this project?

A. I would think less than a month, sir.

15 Q. And was it in that month or about that month
that you had had a meeting with counsel assisting?

A. I had a meeting with counsel assisting before
I was actually engaged in the period leading up to
this document. I suggest, as my memory serves me,
20 that that was the only meeting I had. And I
gathered that the purpose of that meeting was for
Mr Lasry to have a look at me as to whether I was
an appropriate person to assist the coroner and
counsel assisting. That's the only explanation I
25 can offer, sir.

Q. As at 9 September 2003, had you seen any other
documents concerning, in particular, what had
transpired at Duffy on 18 January?

30 A. Yes, I think I had.

Q. Had you, for example, seen the television film
footage?

A. Whether I had seen that as a result of my
35 involvement in this project or whether I had seen
it at the time that it was occurring, I can't tell
you that.

Q. What I am asking you is whether as at
40 9 September 2003 you had seen the film footage or
you simply don't know?

A. I told you my answer, sir.

Q. Well, I'm sorry, but is it the fact that you
45 don't remember?

A. What I said to you is that I saw the footage
but I cannot recall as to whether it was as a

result of material that was provided to me after I was engaged in this inquiry or whether it was as a result of me watching the normal television news at the time when it was occurring .

5

Q. It is not a complicated matter. All I am asking you: do you know as at 9 September whether you had seen the film footage?

A. I had seen some film footage, yes.

10

Q. You had?

A. Yes.

Q. Had you seen, as at 9 September, any other Fire Brigade statements, other than those set out in that document?

15

A. Not that I recall, sir.

Q. For example, had you seen the statement of District Officer Thornthwaite?

20

A. No, I had not.

Q. You mention in the first full paragraph of this document - you use these words, do you not:

25

"I had ignored the possibility that the UFU - that is the United Firefighters Union - may have guided the emergence of some of the issues."

30 A. That's correct.

Q. It was quite apparent, was it not, from the contents of a number of those statements, that union issues were intruding into the material provided?

35

A. It seemed to me to be the case. Sorry, can I qualify that, sir - not so much union matters but industrial matters.

40 Q. Industrial matters is a better way to put it.

A. Yes, sir.

Q. For example, the statement of one Shawn McIntyre, who is the first name on your list, raises the issue of accommodation and message facilities of the fire station; does he not? Do you recall that?

45

A. I don't recall that, specifically, no.

Q. That was the kind of thing that indicated to you that industrial issues had intruded --

5 A. Yes, sir.

Q. To a fair degree in some of those statements?

A. Without reviewing the material I can't say to a fair degree, but there was certainly some industrial matters covered in a number of statements that I didn't think were relevant to these fires or the response of the ACT Fire Brigade.

15 MR WATTS: Is that a convenient time, your Worship?

THE CORONER: Certainly. We will adjourn for lunch and we will resume at 2.

20

LUNCHEON ADJOURNMENT [1.00pm]

RESUMED [2.00pm]

25 MR WATTS: Q. Mr Roche, the firefighters whose names I drew your attention to in the document of 9 September had, almost without exception, been through a fairly horrendous experience on 18 January; that's true, isn't it?

30 A. Certainly a difficult experience.

Q. In many respects, the statements reflect a significantly emotional response to what had happened, don't they?

35 A. Sir, it is a considerable period of time since I went through those statements. Without refreshing my memory on that, I can't really say I agree with that or not.

40 Q. For example, Shawn McIntyre's statement, to which you refer, had been prepared on 26 March 2003, a little over two months after he had been at Duffy fighting the fires; would you accept that from me?

45 A. That that was the time that it was prepared, yes.

47

Q. Do you recall that he was a firefighter who in fact lived in Duffy?

A. No, I don't recall that, sir.

5 Q. Would I refresh your memory if I read to you a portion of your statement which touches upon what I am suggesting to you when he says on page 12 of his statement, which is [AFP.AFP.0086.0019]:

10 "Every day my family and I look out our windows at destroyed homes. Most days we drive past tens of these to take my daughter to school, avoiding the site where her kindergarten had stood weeks before. I am
15 yet to rebuild her cubby house."

What I am putting to you is, it was quite apparent from those kinds of statements that Mr McIntyre, as an example, had personally been affected
20 significantly by the fires?

A. Are you asking me whether that is the case?

Q. Yes, I am.

A. Look, I have no doubt that a number of people, both residents and Emergency Services workers were
25 significantly affected by the event and will carry those scars for probably the rest of their lives.

Q. Yes, I am not suggesting otherwise to you. I
30 suppose when you were forming your views early in the piece about the Fire Brigade you took into account the fact that those statements might have been affected in some way by those personal experiences?

A. To a minor extent you have to remember that
35 the evidence available to me was purely confined to witness statements and other material. I didn't have the benefit of speaking to those people or actually gauging for myself their state
40 of mind. So in forming any view that I did, my views are based on the documented evidence that is before her Worship.

Q. As at 9 September, all you had an opportunity
45 to look at were those statements that you referred to and the film footage?

A. I also looked at a number of other documents.

Q. What were they?

A. As a minimum it would have been the Bureau of Meteorology's report and a preliminary report or a report that was written by - his name will come to
5 me in a minute - Dr Justin Leonard from the CSIRO.

Q. I direct your attention more at the moment to the Fire Brigade at Duffy on the 18th of January and not other matters, if we could just confine
10 ourselves to that. In relation to the Fire Brigade to which this memo is directed, all you had looked at were those statements and the film footage but also perhaps the weather forecasts?

A. And Mr Leonard's report. Look, I understand
15 what you are saying. I can't separate it out. I didn't look at any material in isolation. It was material that I reviewed with a purpose of aggregating a whole range of people's views and experience as to form my own view. So when I
20 looked at any document, I looked at it in the context of other documents that may have added to the picture.

Q. Certainly by the 9th of January you were
25 forming some views about the performance of the Fire Brigade on 18 January; that's true, isn't it?

A. By the 9th of January?

Q. Sorry, I withdraw that. By the 9th of
30 September 2003 you were forming some reasonably firm views on the basis of what you were then seeing about the performance of the Fire Brigade at Duffy on the 18th of January 2003?

A. No.

35

Q. So, do I take it that the statements in this memo must be taken very much as statements of your opinion based upon what you had then seen?

A. What I had then seen, the evidence that had
40 been given to me, yes.

Q. Can you turn to page 53 of your report.

A. Yes.

45 Q. You will recall the second paragraph which begins "of particular concern"?

A. Yes.

Q. You will recall that Mr Lasry asked you about that paragraph after I had raised an objection to it. Do you recall that?

A. Yes, I do, sir.

5

Q. I think you gave a number of instances, including Mr McNamara and Mr Cooper; you also talk about some instances of the Fire Brigade at Duffy.

A. That's correct.

10

Q. Am I correct in understanding that you are talking about the pumpers which caught fire?

A. Not necessarily confined to the pumpers that caught fire - that was the end result of some of the locations where they were - but in general the locations of where firefighting appliances were deployed in Warragamba and Eucumbene area, particularly, of course, the destruction and immobilisation of those appliances does emphasise the environment in which they were operating.

20

Q. I suppose the destruction of those pumpers - I think to be fair only one was in fact destroyed. That's true; isn't it? Another caught fire and that was dealt with at some point?

25

A. That's correct - I think so.

Q. So as far back as September, was that a matter that was concerning you, the fact that the pumpers had caught fire?

30

A. Yes, it was.

Q. What inquiries did you make of the Fire Brigade or anywhere else as to the cause of that fire or those fires?

35

A. I was aware of the cause of the fire.

Q. Did you speak at any stage to Mr Wayne Willmott, the fleet manager of the Fire Brigade?

40

A. No. My understanding and my charter was that I was not permitted to speak to anybody directly. My opinions are based on the evidence that was put before the Court.

45

Q. Mr Roche, I hate to digress but that is simply not true, that last statement?

A. Yes, it is.

Q. On pages 111 and 112 of your report, you have given us significant information which you have acquired, you tell us, from conversations you have had on the telephone with other people?

5 A. That's correct.

Q. Well, what you put to me before was not correct, was it?

10 A. In that context you are right. When I am saying I was not permitted to speak to people, I meant people that were directly connected with the incident. People outside of the ACT who were able to assist me with technical advice, I didn't feel constrained in talking to them at all.

15

Q. Did you seek any kind of technical report about the cause of the pumpers catching fire?

20 A. I was aware of a technical report from Scania, and previous history of the cause of the immobilisation of the Scania pumpers.

Q. Did you ask that Mr Willmott or somebody who had intimate knowledge of that issue, so far as the Fire Brigade was concerned, be interviewed?

25 A. No.

Q. Wouldn't that have been a significant matter?

30 A. If it had been a significant matter I am sure it would be before her Worship, not on my institution.

Q. Wouldn't it be important for you to know what the Fire Brigade knew about the problem?

35 A. I was aware that the Fire Brigade knew of the problem prior to the January 2003 fires.

Q. Who told you that?

40 A. I believe it is in a document that I saw that was part of the brief.

Q. In fact, I suggest to you that the Fire Brigade were not aware of any problem with the air intake prior to 18 January 2003?

45 A. That's not consistent with my memory of the evidence.

Q. So you have simply taken at face value some

assertion that has been made to you in a statement about that?

A. As I took with all of the evidence that formed part of the brief.

5

Q. But you have not arranged for anybody in authority with intimate knowledge of the issue to be spoken to about the issue?

A. It wasn't my place to do that, sir.

10

Q. Well, Mr Roche, you have made a number of suggestions, haven't you, over the period of time about who should be interviewed and what questions should be asked?

15 A. No, I haven't, sir.

Q. You have made a significant number of suggestions about what questions should be asked of witnesses?

20 A. I have raised a number of questions on a small number of witnesses that should be asked, where I was asked to provide that information, sir.

Q. If it were true that the Fire Brigade in the ACT did not know - withdrawn. The problem with the Scania pumper was, was it not, that it took into it burning embers; is that as you understand the problem?

25 A. In the air intake. That's as I understand it.

30

Q. And it would be uncontroversial, wouldn't it, that that was a design defect on those pumpers?

A. From the evidence that I saw, that's correct.

Q. Are you aware that the Fire Brigade at that time had a mix of both series 3 and series 4 Scania pumpers?

35 A. No, I wasn't, sir.

Q. Do you know the difference between the design of those two appliances?

40 A. No, I don't, sir.

Q. Did you know that as at 18 January the number of pumpers was about 50/50 series 3 and series 4 Scania pumpers?

45 A. No, I wasn't aware of that, sir.

Q. Of course, if it be the fact that the ACT Fire Brigade people in authority did not know of that problem prior to the 18th of January, that would be a significant matter; wouldn't it?

5 A. Which people you are talking about in authority - are you talking about managers or are you talking about operational commanders?

Q. I am talking about all senior people of district officer and above in the Fire Brigade?

10 A. Are you saying that those people were not aware?

Q. If it was the fact that they were not aware, that would be a matter which would affect your opinion about what happened at Duffy on 18 January, would it not?

15 A. That is hypothetical because I understand that they were.

20

Q. Well, I am putting to you that they were not. I am suggesting to you if it be the fact that they were not aware, that would be a matter which would affect your opinion about the performance of the Fire Brigade at Duffy on 18 January?

25 A. To some extent, yes.

Q. Well, Mr Roche, the only reason these pumpers caught fire is because of the defect in the air intake system; isn't it?

30 A. I am aware of that.

Q. They didn't catch fire because of any flame contact, did they?

35 A. That's correct.

Q. It was the embers which were blowing through Duffy that caused them to catch fire?

40 A. That's correct.

Q. Those sending the pumpers to those positions were entitled to assume that those pumpers would perform and not catch fire if they were not aware of any problem?

45

MR LASRY: Your Worship, if I had asked that question I am sure it would have been objected to.

It is becoming a hypothetical upon a hypothetical.
The question is whether or not it is of any real
assistance to you. In my submission it can't be.

5 THE CORONER: Where are you going, Mr Watts? What
is your ultimate point in this in relation to the
pumpers?

10 MR WATTS: The criticism which has been made by
this witness is about the fact that these tankers
caught fire and therefore they were put in the
wrong position. What I am suggesting to him,
your Worship, is that that criticism only holds
15 true if the people who put them there know of the
defect.

THE CORONER: Well, what Mr Roche is saying is
that he is of the view that the people who should
have known did know.

20

MR WATTS: Well, with respect --

THE CORONER: You are suggesting to him the
hypothetical that these people didn't know.

25

MR WATTS: I am suggesting two things: one is that
that is incorrect, that he has simply adopted a
view. I am entitled to put to him that if it is
not true that his criticism falls away.

30

THE CORONER: I will let you ask that question.

MR WATTS: Q. I am asking you to assume,
Mr Roche, that the senior officers who sent those
35 pumpers into position had no idea of this problem;
do you understand that assumption?

A. Yes, I do understand what you are saying.

40 Q. If they didn't know, then it would be quite
reasonable of them to put the tankers in the
positions that they were put on the 18th?

MR LASRY: That's the question I originally
objected to.

45

MR WATTS: I press it.

47

MR LASRY: Mr Roche has already said if the
factual basis for his opinion is incorrect then
his opinion is affected. We have now gone to the
second level of hypothesis about the state of mind
5 of people sending trucks to the fire, if that
particular factual basis is incorrect.

Now, this witness, in my submission, can't
usefully answer that question because he is
10 working on a different assumption. He has no
basis to conclude what was in the minds of the
people unidentified to which Mr Watts refers. It
is, in my submission, a matter of comment or
submission rather than a useful question that can
15 be put to this witness. I press my objection.

MR WATTS: He has had no trouble in being able to
criticise the placing of the tankers in the
position they were in.

20 THE CORONER: Where is that? I don't understand
that that is the evidence that Mr Roche has given.
Are you talking about the paragraph on page 53?

25 MR WATTS: Earlier in his evidence, as I recall
it, he was critical about them being placed along
Eucumbene Drive.

30 THE WITNESS: I have made no comment about those
pumpers being burnt at all.

MR WATTS: Q. I beg your pardon?
A. In my report I have made no comment about
those pumpers being burnt.

35 Q. You have made comment in your evidence about
the pumpers being burnt.

A. No, I haven't - sorry, in terms of the end
result. But I have made no comment in relation to
40 the problems with those pumpers that caused their
ignition.

THE CORONER: Are you trying to determine whether
or not Mr Roche is critical of the fact that
45 pumpers were sent to Eucumbene Drive? As I
understand it, the one that stopped and burnt down
was on Warragamba Avenue. That's the one that

5 stalled and was ultimately burnt. Is that what
you are saying, whether or not there is any
criticism for pumpers or for fire engines to be
sent to Eucumbene Drive or Warragamba Avenue or
into Duffy?

10 MR WATTS: He is criticising the Fire Brigade
partly on the basis that these pumpers caught
fire.

THE WITNESS: No, I am not.

15 THE CORONER: That's not the way I understand it
either, Mr Watts.

MR WATTS: Well, your Worship, he was asked by
senior counsel to give an example of the criticism
which he expresses on page 53. He says in his
answer on page 7338:

20 "There were a number of incidences involving
ACT Fire Brigade appliances on Eucumbene
Drive and Warragamba Avenue."

25 I will seek to clarify it.

Q. Are you there talking about them catching
fire?

30 A. No, I'm not.

Q. So there is no criticism in your report or in
your opinion of the Fire Brigade on the basis that
the tankers caught fire?

35 A. There is no criticism in my report of the fact
that there was at the time that I wrote this
report I understood to be a known problem, a known
mechanical deficiency with the Scania pumpers
resulted in their ignition, regardless of where
they were located.

40 Q. I think you have clarified that. Your
criticism is solely based upon an assumption that
it was a known fault?

45 A. That's not what I said at all and not what I
am implying in the report. I think we need to
understand what I said in the report. I said in
the report:

5 "Of particular concern is the number of
apparent instances in which personnel were
required to undertake last-minute action to
avoid rapid fire development or arrived at a
point at which they were 'burnt over'."

10 "Burnt over" is a term that is used in the fire
service to indicate where an entrapment occurs and
fire passes over an appliance or a crew.

Q. Are you referring to a particular pumper when
you are talking about it being burnt over?

15 A. I am referring to a number of appliances that
were, in my view, burnt over to some extent in
Warragamba, Eucumbene and the other areas that I
mentioned the other day.

Q. I suggest to you that none of them were burnt
over.

20 A. You can suggest that, sir.

Q. Is the basis of your criticism or your
suggestion that they were burnt over based upon
the film footage only?

25 A. Predominantly, sir. And I think in a number
of those statements which you referred to - if my
memory does serve me correctly, and I may be
corrected here - some firefighters indicated their
concern about what occurred to them. Again, I
30 would have to go back to those statements to
validate that, sir.

Q. The Fire Brigade in the ACT has strict
legislative responsibility for certain things,
35 doesn't it, as you understand it?

A. In terms of its area of response, yes, sir.

Q. There is a gazetted area of responsibility, is
that so?

40 A. As I understand it.

Q. Which is essentially related to structural
fires?

45 A. That's not as I understand it.

Q. What do you understand it to be?

A. My understanding is that there is an area

cleared as - I am trying to think of the title of
it now --

5 Q. In this metropolitan area are you talking
about?

A. No. The urban area - I can't think of the
title now - which encompasses everything within
the urban area or within that geographic area
including bush, forest, grass, et cetera.

10

Q. It certainly had no responsibility from the
8th of January for the fires to the west of
Canberra at that time. That's so; isn't it?

15 A. Until it crossed that boundary, that's as I
understand, sir.

Q. In the period leading up to 18 January, you
know, don't you, that senior Fire Brigade people
were attending the ESB planning meetings?

20 A. My understanding of the evidence is they were
attending a number of them.

Q. It is also the fact, isn't it, that from the
information you had seen that leading up to the
25 18th, in the days before the 18th of January, the
Fire Brigade had placed in position what
Commissioner Bennett called "an escalation
strategy"?

30 A. No, I'm not aware of that.

Q. Did you hear his evidence?

A. I think I heard a part of it, sir.

Q. A number of other things were being done,
35 weren't they, like there had been an end to
cross-crewing?

A. Yes, that's correct.

Q. So that the tankers which the Fire Brigade had
40 were all manned?

A. As I understand it.

Q. And the Fire Brigade had in fact taken over
some additional responsibility which the Bushfire
45 Service otherwise would take care of. That was
true; wasn't it?

A. Yes, I understand that to be the case.

Q. The Fire Brigade personnel are particularly trained in relation to dealing with fires that might come within the metropolitan area of Canberra?

5 A. Sorry, just say that again, please.

Q. Their particular area of expertise is to deal with fires that might be within the metropolitan area of Canberra.

10 A. That's correct, as I understand it.

Q. The Fire Brigade people who attended the planning meetings, such as the Commissioner and Superintendent Newham, were entitled, were they not, to plan their future actions based upon what they might be told by those dealing with the fires out west?

15 A. Yes.

20 Q. They were being given forecasts of what might be the cause of the fires out west, weren't they?

A. When you say "forecasts" you are talking about weather forecasts or are you talking about passage of the fire?

25

Q. I am really referring to the passage of the fire.

A. Yes, I understand they were.

30 Q. A special meeting was arranged for 16 January for the Fire Brigade to attend and for some ambulance people to be briefed about what was happening. Do you recall that meeting?

35 A. I recall that meeting. I don't recall that the ambulance people were there. I certainly recall the meeting on the 16th of January in which the ACT Fire Brigade were briefed by the CFCO.

40 Q. I take it you read the planning meeting minutes in the days leading up to 18 January?

A. I read a whole range of planning meeting minutes. I would have to assume that I did, without looking at those. If I could see those, I can confirm whether I did or not.

45

Q. I suggest to you that the minutes for the planning meeting held at 1600 hours on 16 January

say this under the heading of "McIntyre's fire":

5 "There are no real concerns for this fire.
New South Wales Rural Fire Service is
considering using aerial incendiary on the
fire."

Do you recall that being put in the minutes?

10 A. Not specifically. I'm not saying that I don't
recall that information but whether it was then,
in that form in that meeting, I can't say
specifically.

15 Q. It would be reasonable, would it not, for
people such as Fire Brigade senior officers
attending such a meeting and being told something
like that - it would be reasonable for them to
accept that at face value; wouldn't it?

20 A. Yes.

Q. Again, on the 17th of January at 9.30 the
minutes record under the heading of "McIntyre's
fire":

25 "McIntyre's fire remains checked."

Do you recall that being said?

A. Not specifically.

30 Q. Again, the same proposition would be true,
wouldn't it, that they would be entitled to accept
that --

A. From the McIntyre's fire, yes.

35 Q. -- at face value?

A. I'm not quite sure the context of your
statement there as to whether they were also given
any information in regard to the Bendora and
Stockyard fires.

40

Q. It would not be correct from your observation
of the material to suggest that the Fire Brigade
in the days leading up to 18 January was sitting
on its hands doing nothing to prepare for what
45 might happen?

A. From the evidence available to me, with the
exception, as you have called it, of the

escalation strategy and I think at that stage there may have been some additional planning, with that exception, I am not aware of any other steps that were taken. I can't recall the date and time
5 at which the incident action plan was developed. I can't recall specifically, apart from those things, any other additional activity that occurred other than attempting, through the planning meetings, to keep abreast of the
10 situation.

Q. They in fact formed a special incident management team on the 16th; do you recall that?

A. I think you are right, after the meeting they
15 had with the CFCO.

Q. Subsequently, of course, Commissioner Bennett put in place steps to call in some assistance from New South Wales?

A. I think that was on the 17th, from memory. My
20 understanding of the evidence is that on the 17th he attempted to contact the New South Wales Fire Brigade.

Q. Of course you know, don't you, that senior Fire Brigade people such as Bennett, Newham, Collins and Cartwright have all suggested that what they were being told was Monday was going to be the big day?

A. I am certainly aware that they were told that.
30 I'm not sure that they weren't also told that there could be issues on the 18th and the 17th.

Q. Well, at 1920 of the transcript Commissioner
35 Bennett tells us that Monday was the day. There was a strong emphasis, wasn't there, in their evidence about Monday being the day they had to really plan for?

A. There was some indications of that but that
40 was not entirely consistent with the forecasts.

Q. They of course were entitled to - withdrawn. The other matter I suggest to you that was being done was all leave was cancelled. Have you seen
45 that from the evidence, from Mr Thornthwaite's statement?

A. I don't recall that specifically.

Q. Do you recall from Mr Prince's statement that three extra pumpers which had not been operational were put into operation prior to the 18th?

A. Yes, I do.

5

Q. Which gave them a total of 12 pumpers?

A. Yes.

THE CORONER: What date was that, Mr Watts?

10

MR WATTS: I would have to check that, your Worship. It is in paragraph 12 of Mr Prince's statement. He doesn't say when. He said:

15

"Arrangements had been made for extra three pumpers to be located at Belconnen, Fyshwick and Chisholm fire stations".

20 Q. It is true, is it not, that by the 18th all the Fire Brigade resources were being utilised fighting the fires?

A. All of the ACT Fire Brigade as an entity?

25 Q. Yes.

A. I'm not aware of that. I assume so.

30 Q. What you can't of course do with the Fire Brigade is to simply withdraw pumpers from each station and send them to one place for the preparation of something that might happen?

A. No. They have to maintain a level of security of your primary response area.

35 Q. Would it be surprising to you that in the days leading up to the 18th the Fire Brigade continued to receive numerous ordinary calls all over metropolitan Canberra?

40 A. I would have expected that they would have received calls. I don't know the number. I don't know whether "numerous" is an appropriate description or not. I expect that they would have continued to service the community.

45 Q. Can I take you to page 16 of your report, please, Mr Roche. Have you got that?

A. Yes, I have.

Q. I take you to the second last paragraph which begins with "the building stock within the suburban area is, by national standards, relatively new"?

5 A. Yes.

Q. You, I take it, have read the report of Justin Leonard which has been given to us in this inquest?

10 A. Yes, I have.

Q. Mr Leonard of course makes the comment that the houses in the Duffy area were built around the early 1970s?

15 A. Yes, sir.

Q. And he makes the comment that without exception they didn't comply with AS3959, which is now in place; you saw that?

20 A. Yes.

Q. It is true, is it not, that almost all of the fires which ignited houses in Duffy - I withdraw that - a huge number of houses which burnt in Duffy were ignited by ember attack?

25 A. A significant number, particularly initially, were ignited by ember attack. And then, as I understand Mr Leonard's report, as it progressed it was both ember and radiant heat.

30

Q. From other houses?

35 A. Exactly, or other built structures. The paragraph that you are reading from - I think you may be taking it out of context - it relates to an indication of why perhaps there may have been deficiencies in the experience of the ACT Fire Brigade in complex major incidents. That paragraph doesn't relate to why buildings may have burnt down or why they ignited or why they may not have.

40

Q. Thank you. Be that as it may, the matters identified by Mr Leonard in his report make the fighting fires in a suburb like that more difficult than they would if the houses were compliant with the standard?

45

A. Undoubtedly.

Q. And it is true, isn't it, that quite a number of the houses caught fire when embers got into the roof?

5 A. I can't recall that specifically in Mr Leonard's report but I would very much expect that that would be the case.

10 Q. I think at page 33 Mr Leonard says the roofs were not tightly sealed. That would be unsurprising?

A. That would not be surprising to me.

15 Q. I think District Officer Thornthwaite also commented upon the difficulty of fighting a fire which commenced in the roof?

A. It's slightly more difficult than something that ignited from the outside because, of course, you've got to make entry to the roof or entry to the roof space.

20

Q. You just can't pour water onto the roof because it runs off; doesn't it?

A. That's right.

25 Q. In circumstances where there is a large call on the resources of the Fire Brigade in the circumstances of Duffy, they have to make an assessment of which houses they can save and which houses they can't?

30 A. Do they?

Q. Yes.

A. Absolutely.

35 Q. Can I take you back to page 52 of your report where you seem to be critical of the incident action plan that was developed by the Fire Brigade. Do I understand that you are critical because they have kept in their plan a wish to have two pumpers at each structural fire?

40 A. I am not only perhaps critical of that, I'm critical of the fact that that was the content of the plan full stop.

45 Q. You mention the fact that the plan maintained the requirement for two pumpers for each structural fire?

A. That's correct.

Q. That is an appropriate wish, isn't it?

A. No.

5

Q. Are you suggesting it should have been less, fewer pumpers per house?

A. In some cases possibly, yes.

10

Q. That's in fact how it turned out, wasn't it?

A. That there was fewer than that?

Q. Yes.

A. Exactly.

15

Q. You are not suggesting, are you, that they should have had available to them two pumpers for every house that caught fire in Duffy?

A. No, I am not.

20

Q. That would have been an impossible thing for them to have available, wouldn't it?

A. I'm not aware that we have got quite that many in Australia.

25

Q. I think that is probably right. If I can now take you back, please, to page 111 which I referred you to before. Do you have that?

A. Yes, sir.

30

Q. You told us that you were instructed not to make inquiries of people involved in the fire but you felt unconstrained about making inquiries of the people mentioned in the footnotes to these dot pointed issues that you talk about on page 111 and 35 112. Is that so?

A. I felt unconstrained about talking to anybody outside of those who were directly connected with the fire, including these people.

40

Q. Well, you spoke to, for example, the chief officer of the Country Fire Authority in Victoria?

A. That's correct.

45

Q. What was his name again?

A. Mr Rees.

47

Q. What date did you speak to him?

A. I'm not sure whether it is on that note or not. I couldn't recall that unless it is specified on the note that I made.

5

Q. Would it assist you to look at your notes?

A. If it is on there, it will.

Q. You mean if the date is on there?

10 A. If the date is on there. I am not sure that the date is on there.

Q. Did you talk to him only on the one occasion?

15 A. No. I think I spoke to him on two occasions. Once I rang him and got the information there was some delay from the time when I incorporated that information into my report. I subsequently misplaced that information and I called him again to confirm it.

20

Q. You don't know what he consulted in terms of documentation before giving you his answer, do you?

A. No, I don't.

25

Q. You don't know from your knowledge what calls were made upon the Victorian Country Fire Authority in the period between, say, the 15th and 18th of January?

30 A. Sorry, no, I don't.

Q. You didn't think to recommend that a statement be obtained from him about this matter?

A. No, sir.

35

Q. You didn't think to seek from him some documentation which might have corroborated what he told you?

A. Why would I do that, sir?

40

Q. Well, it might have assisted those of us who have to rely upon your statement. Who did you speak to from the South Australian Country Fire Service?

45 A. Mr Ferguson.

Q. And again, you don't know what documentation,

if any, Mr Ferguson looked at in order to give you his response?

5 A. I contacted Mr Ferguson and, as my memory serves me, I left a message for him because I was unable to speak to him at the time. When he got back to me or I got back to him and he provided me with this response, my understanding was that he had had discussions with the other services in South Australia that are mentioned in that report.

10

Q. So what we have with him is not his first-hand knowledge but what he has gleaned from others?

15 A. He is the CEO and the chief officer of the Country Fire Service in South Australia. I would put a fair amount of weight on his evidence.

Q. What I am suggesting to you is that what we have here is what you are telling us about what he has told you that he has been told by others.

20 A. Not necessarily, no. It may be the case in relation to the South Australian Metropolitan Fire Service and the Department of Environment and Heritage but, in terms of the responses coming direct from the CFS, no, that is not the case at all.

25

Q. But we have no documentation from him; that's true, isn't it?

30 A. Not directly from him, no, sir.

30

Q. Or from that authority?

A. No, sir.

35 Q. Can I take you to page 39 of your report, Mr Roche. You are asserting there that these are things that should have been done in the lead-up to the January 18 fires?

40 A. That's my view - sorry, leading up to, in some cases, the summer season.

40

Q. The fire season?

A. Yes.

45 Q. Are you also asserting that none of these matters were attended to?

A. From the evidence available to me there was no indication that they were.

Q. This is a fairly significant criticism you were making in making this list, isn't it, if you are suggesting none of this was done?

A. That's correct.

5

Q. Did you make any specific inquiries of anybody in authority who might know whether these things were done?

A. No, I did not, for the reasons I have previously indicated.

10

Q. What reasons are they?

A. I think I have indicated on several occasions that my brief was that I was not able to speak to people directly connected with this incident. My report was to be based on the evidence on this matter put before the Court.

15

Q. But you could have suggested, couldn't you, to counsel assisting that they inquire of certain people about whether any of these matters were attended to?

20

A. I could have insisted to counsel assisting that every matter raised in my report be revalidated or revisited or witnesses be called. I wasn't in a position to do that. That is not my task.

25

Q. But you are making an assertion that none of these items were done simply from what you have seen from what has been given as evidence in this inquiry?

30

A. The evidence available to me. Not only the evidence that has been given, the evidence of the brief - some of those people, of course, who gave material in the brief have not given evidence as such, but it is still part of the brief.

35

Q. For example, can I take you to "hire of heavy plant"?

40

A. Yes.

Q. I think we have agreed at some stage what "plant" means - does it mean bulldozers?

45

A. Yes.

asked, from your knowledge, has been asked that question in this inquiry about whether any heavy plant was acquired for the fire season?

A. I am not aware of anybody being asked that.

5

Q. How can you tell us if the question has never been asked that it wasn't done?

A. The fact is there wasn't any.

10 MR LASRY: I object to this because it is going over and over the same ground. The witness has made it absolutely clear that on the material available to him he has seen no sign of this being done. That is all he can say. If there is a
15 criticism to be made of us, then of course it can be made of us. But what is the point of going over the same point with the witness? He says these are things that could have been done but on the evidence he has seen they haven't been. He
20 has made the point. He has given that answer two or three times.

MR WATTS: Your Worship, he may as well say, "I've read Charles Dickens' book "Hard Times", and I
25 didn't see any evidence of this."

Frankly, it is of no probative value unless these questions have been asked of some witnesses, and evidence has been given that these things were not
30 done.

THE CORONER: There has been evidence in relation to some of these matters in the inquiry.

35 MR WATTS: I am asking him, with respect, and I am entitled to, where is the direct evidence that heavy plant was not hired.

THE CORONER: I think the answer is - what
40 Mr Roche is saying is that he has not seen any evidence from his inspection of the material that he has had access to that these matters were actioned.

45 Q. That's your evidence, isn't it, Mr Roche? From the information that you had available to you, which includes the evidence given by

witnesses and other information which is evidence but not necessarily from people who were called, you believe that these matters were not attended to?

5 A. That's correct, your Worship.

Q. There was a deficiency in the preparation in relation to these matters?

A. That's correct.

10

MR WATTS: Q. Can you point out to me which piece of evidence you have relied upon to suggest there is no hire of heavy plant?

15 A. I have not seen one piece of evidence that says that there was.

Q. If, in fact, the forest brigade had hired a special D4 leading up to the fire season, that would not be consistent with your assertion that
20 there was no hire of heavy plant; would it?

A. You are absolutely right. And I am incorrect in saying that. Because in fact I was aware that - my understanding was that the forest department had two dozers on hire to them at the
25 time.

What I am saying here is that my understanding is they were not necessarily hired for fire suppression but for other duties. What I am
30 suggesting on this page is that the actions that should have occurred is that plant should have been hired for the purposes of fire suppression by the Emergency Services Bureau.

35 Q. If I suggest to you that a D4 bulldozer was hired by Forests specifically for the purpose of the fire season and fire suppression, if that was the fact, your assertion would be incorrect; wouldn't it?

40 A. Not necessarily, because I wouldn't call a D4 dozer necessarily the type of equipment that I would want to deploy in Namadgi National Park.

Q. If five people were specifically hired by ACT
45 Forests as additional firefighters for the summer, that would be inconsistent with what you are telling us wasn't done, if that be the case? I

direct your attention to "assessment of personnel availability" et cetera?

A. I don't think I make any particular mention there of hire of people at all.

5

Q. Well, isn't the hiring of people done, if firefighters are put on, after an assessment of personnel availability?

A. If that was the extent of the response to that particular criticism, I would suggest it is inadequate.

10

Q. I am talking about ACT Forests here at the moment, Mr Roche.

A. This particular analysis is not confined to ACT Forests.

15

Q. If Forests brigade had purchased eight self-contained RAFT packs leading up to the fire, that would be inconsistent with doing nothing; wouldn't it?

20

A. I was not aware that that occurred.

Q. If a special training program had been conducted for DUS firefighters on remote area firefighting in October and November 2002, a special program conducted by Mr Bartlett, that would not be consistent with doing nothing, would it?

25

A. I am not aware --

30

MR LASRY: I ask my learned friend to indicate which of the dot points on page 39 that proposition is put?

35

THE CORONER: I was going to ask that myself.

MR LASRY: Indeed, if what is being put is coming from the evidence that Mr Roche should have looked at, can we have some reference to where it all is?

40

MR WATTS: With respect, this list is an inclusive list. He says:

"Examples of the actions that should have occurred would have included."

45
47

What he is criticising is a failure of activity.

THE WITNESS: I don't believe that that is the case.

5

THE CORONER: There is no specific mention here of additional training. But where in the brief are you obtaining that information, Mr Watts, the extra training that has been conducted?

10

MR WATTS: Well, it is nowhere within the brief, with respect, your Worship, because the question has never been asked. It may make its way into the brief.

15

THE CORONER: Again that is the difficulty, is it not, given that Mr Roche has said he has compiled this list from the information that is in the brief. You are putting matters to him that certainly I am not even aware of. If that, indeed, is the case, can I accept that as evidence that these matters were taken, it is not part of the brief and nobody has provided this evidence to the inquiry?

25

MR WATTS: With great respect, your Worship, it is frankly an absurdity for this witness to put to this inquiry things didn't happen when the question has never been asked. I am simply pointing out, with great respect, your Worship, that he is drawing conclusions that things were not done when the question has never been asked in this inquiry. Is it an appropriate time to have the break, your Worship?

35

MR LASRY: Can I just respond to that: My learned friend is doing more than that. He is putting propositions to the witness as though, on his instructions, the way it sounds, these things actually occurred; or, on his analysis of the evidence, these things actually occurred. If the witness is incorrect in his assessment of the evidence and has overlooked particular pieces of fact which are before this court, either in the brief or in the transcript, in the evidence of my learned friend's witnesses, then let's have the references to them so Mr Roche's error or omission

40

45

can be identified.

To put a broad proposition that if certain things had happened we would be wrong, wouldn't he, is of
5 no use to you unless you can identify whether in fact those things have happened.

If that is the way in which my learned friend chooses to conduct his examination, so let us have
10 the factual basis for the questions.

THE CORONER: I will require you to do that, Mr Watts, put propositions to Mr Roche that are part of the evidence in this inquiry.
15

MR WATTS: They are not part of the evidence in this inquiry. They are my instructions. It will be a matter which I will consider as to whether evidence of that should be put before this inquiry
20 after this cross-examination is completed.

THE CORONER: We will take the adjournment, thank you.

25 **SHORT ADJOURNMENT** [3.02pm]

RESUMED [3.12pm]

THE CORONER: Mr Watts, the only fair way to
30 proceed with this is that if you do have information - and I say "information" as opposed to "evidence" because you say primarily a lot of the information you have is on instruction - it is not fair for you to put that information to
35 Mr Roche if he or indeed no-one else in this room apart from yourself is aware of that. Mr Roche has said that he has based these comments on page 39 and indeed on the page before that on the evidence that he has seen. It is not fair for you
40 to criticise him for not taking into account information that he didn't have when he has said to you that he did not go near people who were witnesses or people who were involved in this inquiry.
45

But indeed, if you have information that you want to put before me that shows that what is here is

wrong, then I invite you to do that. The proper way to do that is by obtaining a statement from the people who know, providing a witness statement or calling somebody else to give that evidence.
5 That is the proper way. I would appreciate it, if you do have evidence that comments on which Mr Roche has made comments where you can say, "This is wrong because have a look at the statement of" then you can certainly put it to him
10 in that way.

MR WATTS: Thank you, your Worship. I have nothing further.

15 THE CORONER: Thank you. Yes, Mr Walker?

<CROSS-EXAMINATION BY MR PHILIP WALKER

MR PHILIP WALKER: Q. Mr Roche, in dealing with that issue we have just been dealing with about
20 the instructions that you have been given not to speak to people directly involved, I take it that there was an occasion for you to have to make some decisions on whether somebody was sufficiently directly involved or sufficiently peripheral that
25 you could speak to that person; is that right?
A. I never had to make those decisions.

Q. I beg your pardon?
A. I really never had to make those decisions.
30 It was fairly clearcut to me.

Q. You spoke to Mr Stevens, for example. Mr Stevens attended the Bendora fire on the 8th of January; is that right?
35 A. I don't recall speaking to a Mr Stevens.

Q. Did you go on a site visit with Mr Stevens?
A. No, I did not.

40 Q. You spoke to Mr Kevin Cooper; is that right?
A. I spoke to Mr Kevin Cooper on a number of occasions because he is a personal friend of mine. I attended a conference at the invitation of Mr Lasry with Mr Cooper and Mr Lasry. My primary
45 objective of attending that conference with Mr Cooper, your Worship - and I failed - was suggesting to Mr Cooper, knowing him, that he

should confine his answers to the question he was asked rather than go on at length.

5 Q. Well, one couldn't criticise you for that, Mr Roche.

A. I did fail, sir.

10 Q. I wouldn't dispute that either. You say on pages 12 and 13 of your report:

"During the period of my retainer, in addition to attending the hearings and conducting the investigations and inquiries outlined below, I have regularly consulted with counsel assisting and the AFP's Operation Parrell investigation team about issues to be adduced in evidence that may be of assistance in preparing my report. I have also, on occasion, participated in discussions with witnesses whom I considered in a position to provide an expert assessment of relevant issues, including Mr Phil Cheney, Mr Leonard and Mr Cooper."

20 A. That's correct.

25 Q. First of all, focusing on the words "including", were there any others to include in that list of those three gentlemen, apart from the ones that you mention later on on that page?

30 A. Not that I recall.

Q. Mr Cooper, I think my recollection is that he arrived - I can't remember whether it was the night of the 16th or 17th of January - in the ACT and participated in the fight against the fires; correct?

A. I am unsure, like you, whether it was the 16th or 17th but I know it was very close to the 18th.

40 Q. Mr Cooper has been something of a trenchant critic of what he saw and he has provided documents providing criticisms across a range of areas of what he saw in the ACT; hasn't he?

45 A. Yes, he has.

Q. He also was in command of a number of New South Wales Rural Fire Service personnel in the

Territory, correct?

A. I believe so.

5 Q. Within the two days or so before the 18th, the 17th and the 18th, he was as directly involved with the fighting of this fire as anybody else involved in the fight; wasn't he?

A. You might say that.

10 Q. Mr Koperberg was somebody you spoke to as well. You don't think Mr Koperberg was particularly directly involved in any aspect of the fighting of the fires, including McIntyre's Hut?

15 A. No, I don't think he was.

Q. I take it because he wasn't actually out on the fire line or he wasn't for a prolonged period in Queanbeyan; is that the reason?

20 A. That's correct.

Q. He was, however, somebody who you say suggested to you that some greater number of resources could have been provided to the Australian Capital Territory; correct?

25 A. That's correct.

Q. But you considered that not to be such a direct involvement?

30 A. Well, I suppose I could have gone to the Deputy Commissioner of New South Wales in lieu of Mr Koperberg but, for all intents and purposes, I went to discuss with him a number of issues that weren't connected with the New South Wales response directly.

Q. In fact, you didn't just ring him up, you actually went up and spoke to him in person at Rosehill, didn't you?

40 A. That's correct.

Q. Mr Cheney - Mr Cheney wasn't somebody who fought the fire but Mr Cheney is in evidence as having spoken to Mr Lucas-Smith I think on the 45 12th, having been at the planning meeting on the 17th and having been out and about the fires as they engulfed the Territory on the 18th. He

wasn't directly involved, in your view?

A. Mr Cheney and Mr Leonard, as far as I was concerned, were part of the coronial team with which I was working.

5

Q. Did you ever ask for any advice as to who was a person who was too directly involved for you to speak to that person?

A. Would you repeat the question, please.

10

Q. Did you ever ask, say, counsel assisting for advice as to whether somebody was so closely involved with the firefight in the ACT or at McIntyre's Hut that, consistent with the restriction you have given evidence about, you were not able to speak to that person?

15

A. No, I did not.

Q. Who was it who told you that you should not speak to witnesses directly involved in the firefight?

20

A. I can't recall who it was directly. It was just, as I understood my instructions, that my information was to be gained from the brief and from attendance at court listening to witnesses.

25

Q. Who gave you those instructions?

A. Mr Woodward briefed me in terms of how I should go about obtaining the information.

30

Q. Did you, in the course of that brief, say to Mr Woodward, "But I'm supposed to conduct an investigation for a coroner who will doubtless want to reach correct and fair conclusions.

35

Perhaps I should put some of my ideas to people who were directly involved and get their answers"; did you say anything like that?

A. No, I didn't. The reason I didn't is, again, because the initial information that Mr Woodward gave me was, as I recall, also associated with the fact that I was not part of the investigation team.

40

Q. Did you suggest that your report may be all the poorer if you have certain ideas and possibly criticisms and yet you are restricted in putting those criticisms to the people about whom you

45

might make them?

A. I don't disagree with that.

Q. You don't disagree that your report might be
5 poorer if you couldn't put the criticism --

A. No, I disagree that, perhaps had I had the
opportunity to speak to the people directly
involved, some things may have been different. I
remain unconvinced that they would have been
10 significantly different though. The evidence is
as the evidence is.

Q. Yes, but what if you had an idea which you
thought was obvious and it hadn't occurred to
15 anybody else in these proceedings to ask a
question about it? Surely you would want the
opportunity to find out the information, wouldn't
you? I will give you an example --

A. I believe that option was not available to me,
20 sir.

Q. Let me give you an example. You mentioned, to
pick a rather startling one, how the Stockyard
fire, if I recall correctly, might have been
25 better fought if the ACT had a repelling
capability. Do you recall that?

A. That's correct.

Q. That is a facility whereby people come along,
30 a team comes along in helicopters and people jump
out of the helicopters hanging on to ropes and
slide down into the middle of nowhere and set
about fighting fires or for that matter invading
countries. That's the sort of thing that
35 repelling is, isn't it?

A. I don't know about invading countries, but I
think it is pretty close.

Q. It is a dangerous activity?

40 A. Walking across the street can be dangerous --

Q. Come on, Mr Roche, it is a dangerous activity.

A. No, I am quite serious. With the proper
safety measures in place, I don't believe it is a
45 dangerous practice. I mean I have abseiled down
the side of a building. I didn't think it was
dangerous because the proper controls were in

place. If I thought it was dangerous, I wouldn't have done it.

5 Q. It is an activity which requires extensive training, is it not?

A. It is an activity that requires a level of skill, yes, sir.

10 Q. It is an activity which requires specialised equipment?

A. That's correct.

Q. And both - the training requires a great deal of money; is that right?

15 A. Yes, in terms of being able - sorry, no, not necessarily. In terms of the training from a standing position it doesn't but certainly if you are doing the final, I guess, training that involves the hire of helicopters, yes, it can be
20 expensive.

Q. The helicopters have got to be specially fitted too, don't they?

25 A. That's correct.

Q. And you have got to be specially qualified to do it; correct?

A. Who has to be specially qualified?

30 Q. The people who jump out of the helicopter on the ropes?

A. They need to be trained.

35 Q. The people who fly the helicopters have to be specially trained?

A. Yes.

Q. Is there some sort of team leader that has to be specially trained?

40 A. I would assume so.

Q. Do you have any idea what the training budget is of the ACT Bushfire Service?

45 A. No, I don't.

Q. So if you make a suggestion like "Stockyard might have been better fought if you had a

repelling capability", you may be completely oblivious to whether that is a realistic proposition for the Australian Capital Territory or not, don't you?

5 A. Absolutely not.

Q. Just give me your best guess of what you think the ACT's Bushfire Services training budget is?

10 MR LASRY: What is the point of that? I object. He says he doesn't know. What is the point of asking him for his best guess? If we asked that question, there would be howls of derision.

15 THE CORONER: Where does it take you, Mr Walker?

MR PHILIP WALKER: I don't want evidence of what the training budget is. He says he doesn't know. I want to know whether this man is on the same
20 planet as the ACT --

THE CORONER: It is totally inappropriate for you to make those comments, Mr Walker.

25 MR PHILIP WALKER: Let me withdraw that and say: I want to know whether this gentleman thinks the budget is measured in tens of thousands, hundreds of thousands or millions.

30 THE CORONER: Are you suggesting a small jurisdiction should be allowed to burn because there is no money to protect it? Is that the proposition you are putting? That is what it sounds like, and that patently is nonsense.

35 MR PHILIP WALKER: I didn't put any proposition that went anywhere near that.

THE CORONER: Well you are.

40 MR PHILIP WALKER: Absolutely not, with respect, your Worship. I was raising the issue of repelling, an activity which the gentleman has given you some evidence requires special
45 equipment, special training and he said at the end of it, at the very least, quite a deal of money. He has absolutely no idea what the training budget

is. Bushfires are fought without repelling,
your Worship.

THE CORONER: How is that relevant?

5

MR PHILIP WALKER: I started this area of
questioning, your Worship, by asking him --

THE CORONER: If you want to put to me a
10 submission, Mr Walker, that Canberra is totally
underfunded and underresourced and undertrained
and underbulldozed and all the rest of it, you can
do so. But you shouldn't do it through Mr Roche's
evidence.

15

MR PHILIP WALKER: Mr Roche has made some
comments, your Worship, about facilities which
might have been available and it seems, on my
reading of the report, that he does so as a
20 criticism. And he does so as a criticism of the
service of which my client was the Chief Fire
Control Officer - he does it many times.

Under instructions from counsel assisting you, he
25 has been specifically restricted from going to my
client and saying, "Did you people ever consider
that?" So that at least my client - it mightn't
be his fault if the training budget is not very
large but he could at least say to him, "Trevor,
30 my budget is" --

MR LASRY: I object. This has nothing to do with
my objection. My objection was there is no
purpose being served by this witness being asked
35 to guess what the training budget is.

THE CORONER: You are now in the role of
submissions, Mr Walker. It is not appropriate --

40 MR PHILIP WALKER: I am responding to your
questions.

THE CORONER: Don't ask the question in relation
to asking Mr Roche to speculate on what he does or
45 does not know, just concentrate on the information
in the report and the evidence in the brief.

47

MR PHILIP WALKER: Q. Do you think, Mr Roche, in making such a recommendation your report might have been the better had you had the opportunity to go to somebody like Mr Lucas-Smith and say,
5 "Have you ever considered repelling in the Territory; and, if not, why not?"

A. I can't answer that because that option was not available to me.

10 Q. Sir, with respect, you can answer it. I am asking you to pass a comment on the quality of your own work. I am not saying it is your fault. You acted according to your instructions. But I am asking you as somebody who was the chief
15 officer of the Country Fire Authority of Victoria whether you think, in providing a report which contains a number of criticisms, your report would have been better had you been able to go to Mr Lucas-Smith and say, "Have you ever considered
20 this option; and, if not, why not?"

A. I can't submit to you that the report may have been better. Better for whom?

Q. Do you think you would have been able to make
25 a fairer assessment of what was done and the absence of that technique and the role of people such as Mr Lucas-Smith had you put to him the question I just raised?

A. It may well be right.

30

Q. You have made criticisms, have you not, about the level of training in the Bushfire Service in the ACT?

35 A. I've made comments; I am not sure they are criticisms. If you would like to take me to the appropriate part of the report.

Q. Have you not suggested that the ACT is not well experienced in handling large fires?

40 A. That's not necessarily consistent with training.

Q. I appreciate that. Let me ask that question first. You have made that point, have you not?

45 A. I believe I've made comments about training.

THE CORONER: Mr Walker, do you have a page

reference?

MR PHILIP WALKER: I am trying to turn the matter up, your Worship. I should have had it ready.

5

Q. Yes, at page 52, the first sentence of the last full paragraph. That is the Fire Brigade in that instance.

A. Sorry, which paragraph is that? The last full paragraph?

Q. The last full paragraph where you make a comment about the Fire Brigade appearing "not to have been exposed to any training relating to wildfire suppression"?

A. That's correct.

Q. In the paragraph above you are referring to the Bushfire Service and there you refer:

20

"However, in my opinion, the evidence also reveals that a lack of understanding of wildfire behaviour (particularly under extreme conditions) led a number of key personnel to make decisions and judgements that underestimated the potential of these fires."

25

That would suggest that you were indicating there was a lack of experience?

30

A. As distinct from training, but training is one way in which that experience can be in part gained.

Q. All right. Do you make any criticism of those who were in charge of the Emergency Services Bureau - people such as Mr Lucas-Smith as Chief Fire Control Officer and, for that matter, Mr Castle who was the head of it - because of a lack of training in dealing with wildfires?

40

A. If those people had the responsibility to ensure that people within the ACT Fire Brigade and the Bushfire Service and for that matter other agencies that were engaged in wildfire fighting were competent, then, yes, I am.

45

Q. But do I understand from your answer that you

do not know the answer to that question?

A. I can only assume that as the head of agency the executive director would have had some accountability.

5

Q. Again, I ask you the question: might your report not have been better and perhaps fairer had you have had the opportunity to ask those at the head of the Emergency Services Bureau and, for that matter, the Bushfire Service why more training had not been undertaken?

10

A. Not necessarily, because the end result would have been the same.

15 Q. Well, it might have enabled you to be a little bit more specific in targeting where the fault lay, would it not?

A. I don't think I have targeted individuals. What I have said is that there is a lack of competency. It is not up to me to determine who individually is at fault. That's a systemic organisational issue.

20

25 Q. So on systemic issues, to take your word, of which training is one, if we read of a comment such as the one that I just read, your report should not be taken to be a criticism of individual officers in charge of the Emergency Services Bureau or of the Bushfire Service because you are not familiar with the extent of their responsibilities; is that fair?

30

A. My criticism is that there was a lack of experience in these matters. Now, I haven't gone - my evidence or my report, as I recall it, does not go to whose responsibility that is.

35

40 Q. I just want to make this clear because somebody could pick up your report and read something like the passage I have just read to you and say, "Well, if there is not enough experience in this area, then that must be the fault of that Peter Lucas-Smith, he is the Chief Fire Control Officer, or Mike Castle for that matter, he is the head of Emergency Services Bureau. He, therefore, must be held accountable".

45

I understand your comment to be merely a

reflection that in your view there was not enough
planning and not intended to indicate that it was
the responsibility of any particular individual in
charge of either the Bushfire Service or the
5 Emergency Services Bureau.

A. I am not in a position to assign
responsibility, sir, in those matters.

Q. Perhaps some other things such as operational
10 matters might be a different story, that's what
you are saying?

A. Yes, sir.

Q. Dealing with operational matters, you have
15 been taken to a reference where you quote a figure
of a person being able to construct a 100-metre
hand line per hour, I think it was. Is that
right?

A. That's right.

20

Q. That's obviously a general figure that is used
as a rule of thumb in the construction of hand
lines when making a forecast as to what a team
might achieve over a particular period of time?

25 A. That's correct. There are a number of
different figures that are bandied about from time
to time. AFAC training manuals say one figure; I
think the Environment ACT handbook on prescribed
burning says another figure; NRE in Victoria say
30 another figure; Western Australia say another
figure. I believe that's a reasonable mid-point
in my experience to start from, from the planning
point of view.

35 Q. Based on that, you have made some estimates,
have you not, as to what might have been achieved
had a crew stayed overnight at the Bendora fire on
8 January?

A. That's correct.

40

Q. I take it from the restriction on your
instructions you have not had the opportunity to
speak to anyone who was present at site and could
tell you whether that estimate was realistically
45 achievable?

A. That's correct.

47

Q. At least in that respect, once again the criticism or the comment that you make that had a crew stayed overnight a certain amount of progress would have been achieved might have been better
5 had you been able to speak to somebody who had been there and said, "Do you think you could have constructed 100 metres of hand line an hour in that terrain, overnight, in the circumstances"?

A. No. The issue is regardless of the rate of
10 construction there could have been progress made in constructing a containment line, a wet containment line in part of Wombat Road with the tankers that were there, backed up by some rake hoe work, so that there could have been progress
15 made overnight. So the rate of progress is not the issue that I am criticising.

Q. But didn't you suggest that the Bendora fire might have been contained within the first 24
20 hours?

A. Yes, I did.

Q. That involves a rate of progress, doesn't it?

A. It does, involving wet extinguishment of fire
25 line, hand line and dozer trail.

Q. Well, wouldn't your report be the better had you been able to ask whether that rate of hand line construction could have been achieved in the
30 area where the Bendora fire started?

A. Until it was undertaken I don't think anybody could have assessed that.

Q. Well, you can certainly indicate that some
35 terrain will prove to be very difficult in constructing hand lines and some will be much easier, can't you?

A. As I have indicated to you, the 100 or
40 80 metres was a mid-point. I could have said 200, which some people will argue was the rate; I could have picked 50 metres. What I suggested, and what I suggested this morning, was that was a figure for planning purposes and associated resource allocation which has to be tested on the ground.
45

Q. But the fact that it is, for planning purposes, you might have asked for example not

Odile Arman but perhaps Mr Hayes who actually did work there on the 9th?

A. I was not given access to those people, sir.

5 Q. I appreciate that. I understand that. But your report and the prediction that you make is the poorer for not having been able to have access to those people; isn't it?

A. I don't necessarily agree with that.

10

Q. Well --

A. In this particular instance.

15 Q. Let me ask you some things about the Victorian Country Fire Authority for a moment. We will then go to the ACT. On page 9 of your report you say at the very top that you had legislative
20 accountability for the operational activities and management of the state's 1200 Fire Brigades, 400-odd career firefighters and approximately 70,000 volunteer firefighters. Just so I understand what you have said there, what do you mean by "400-odd career firefighters"? Are these people permanently employed?

25 A. Paid firefighters.

Q. So five days a week?

A. No, 7 days a week, 24 hours a day.

30 Q. Perhaps I didn't hear your answer, Mr Roche. They are full-time paid employees?

A. Paid firefighters, yes.

35 Q. Forgive my ignorance. If they are full-time firefighters, what do they do when they are not fighting fires? Do they work for National Parks people?

A. No, they are the same as the ACT Fire Brigade.

40 Q. They work in other areas?

A. No, permanent firefighters. That is their job.

Q. You mean effectively an urban firefighter?

45 A. That's correct.

Q. I see. In the Country Fire Authority, how

many people are employed on the staff of that organisation in its head office? I won't hold you to precise numbers but if you can give us some indication.

5 A. Are you talking about operational or administrative?

Q. Perhaps if you could give us both, if you wouldn't mind.

10 A. Operational people in the CFA headquarters probably would have been about 20-30 - please don't hold me to these - and the administrative people would have probably been upwards of 100, maybe more, I'm not sure. I wasn't responsible
15 for them.

Q. Can you give us some indication of what the operational people do? You have presumably got planning people. Do you have them in the head
20 office?

A. Planning people were generally civilians, non-operational people.

Q. Are they part of that 20 or 30 people that you
25 are talking about?

A. No.

Q. What do the operational people do in the head office?

30 A. Operational people are people who run the operations centre, that ran the dispatch centre and senior officers that supported the chief officer with various functional responsibilities.

35 Q. I take it the administrative people look after the rest of the service throughout the entire state.

A. No. They are supported by administrative people in the field as well.

40

Q. How many permanent staff, as opposed to what I would call urban firefighters, are employed throughout the remainder of the state? Do you have permanently employed district officers or
45 something of that nature?

A. Sorry?

47

Q. Do you have permanently employed district officers or something of that nature?

A. No. We have operational people outside of fire stations in regional headquarters and area headquarters throughout the state.

Q. And how many, approximately?

A. Probably around 100 - that may be a bit of an over-statement.

Q. The rural areas are divided up into districts or regions or something?

A. The CFA doesn't only protect rural areas.

Q. I appreciate that, it's a bit of an amalgam; isn't it? It has urban and --

A. Half the metropolitan area of Melbourne and all regional centres within Victoria.

Q. Yes, you mentioned as much but you do protect regional areas as well?

A. Yes, regional cities.

Q. And I think you said the Department of Sustainability and Environment protect crown lands?

A. Public land, yes.

Q. So it is a CFA responsibility to protect farm land, for example?

A. Yes, and unoccupied crown land.

Q. The CFA, as I said, it is divided into some districts; is that right?

A. 11 areas and 21 regions.

Q. And are there permanently employed staff in each of those areas or regions?

A. Yes, there are.

Q. Are you able to give us - it probably depends on the region - some sort of indication of the staffing in those areas?

A. There is operational and administrative staff, all functional staff - for instance, the training people --

Q. Perhaps you could take an area and tell us about that and then regions so we know what you are talking about.

5 A. An area does also encompass a regional headquarters. All support resources are attached to the area. Even though they may be distributed across the area into regions they are considered to be area staff. In a typical area you may have two or three training people, three or four
10 community safety people and three or four administrators and an area manager.

Regions generally would have two or three operational staff.

15

Q. Sorry, have I understood you correctly that regions are within areas?

A. A number of regions make up an area - in most cases. In a couple of cases in the outer
20 metropolitan area, there is an area and one region.

Q. Again, I am sure it varies, Mr Roche. Can you give us some indication of the number of
25 volunteer - what I would call bushfire fighters, recognising the dual function of the CFA - can you give us some idea of how many people volunteer for what is essentially bushfire fighting functions in the more rural areas of the CFA's responsibility?

30 A. No, I can't. The majority of the CFA's firefighters are dual operatives.

Q. Well, remove the qualification in relation to bushfire fighters. Can you give us some
35 indication of how many volunteers there are in your average area. I suppose it is a matter of dividing the 20 or whatever the figure was into 70,000?

A. No, it is not. The outer metropolitan areas
40 would have substantial numbers. One region may have 8,000 volunteers in it; whereas the far more distant remote areas may only have 1,000 or less.

Q. In the event of a large fire breaking out in a
45 particular area, are the areas able to call on resources or assistance from the head office of the CFA?

A. Yes.

Q. What sort of resources or assistance are they able to call on from the head office?

5 A. The whole of the state's resources - notwithstanding of course the need to secure or remain secure in those areas that might be depleted, the CFA shifts resources all over Victoria.

10

Q. Are there staff in the CFA head office who are actually moved out into an area when a large fire breaks out?

A. No.

15

Q. They remain wholly - nobody goes from head office out to the regions to assist?

A. Operations staff, no.

20

Q. You mentioned that the CFA's annual appropriation exceeded \$120 million, can you give us some idea of what the training budget is in the CFA?

A. No, I can't.

25

Q. Is it millions?

A. Yes, it is.

30 Q. Can you give us some indication of what the budget is for the provision of aerial firefighting services in the CFA?

35 A. I can't recall. The aerial resources in Victoria are managed jointly and funded jointly between the CFA and the Department of Sustainability and Environment. But CFA's contribution is in the millions.

Q. Again, are we talking \$10 million, in that order?

40 A. I can't be specific, sir.

Q. That, I take it, means that there are helicopters available 24 hours a day in fire season to the CFA?

45 A. No, aerial firefighting resources don't operate at night.

47

Q. I take the point. But there are permanently hired helicopters, for example, available to the CFA every day of the week during the firefighting season; is that right?

5 A. That's correct.

Q. How many?

A. I think from memory there are about 21 aircraft in all, including helicopters and fixed
10 wing aircraft.

Q. They are available every day of the week during the firefighting season?

A. It varies. There are shoulder periods, of course, at the beginning of the fire season when there are far less than that but certainly in the peak of the season - if we take February as an example - then, yes, those aircraft would be
15 available.

20

Q. It is a fact, isn't it, on any measure, Mr Roche, you are used to a much, much larger organisation than the Emergency Services Bureau by factors of 10s?

25 A. I was managing a much, much larger area, with a much, much bigger risk.

Q. Indeed. But the whole area doesn't explode in flames all at once - usually at least. You can
30 move resources from one area of the state to the particular point where the fire is whenever the occasion demands?

A. That's correct.

35 Q. And that's what you do?

A. That's correct.

Q. So in terms of the resources available at your disposal managing the CFA, we are, are we not,
40 really talking chalk and cheese by comparison with the Emergency Services Bureau in the ACT?

A. If you take the jurisdiction, you are right; if you took an area of Victoria, not necessarily
45 so.

Q. Perhaps you might explain exactly what you mean. I think I understand your answer but

perhaps if you could explain exactly what you mean by that answer.

5 A. The area of the ACT and the resources within it could be transplanted into Victoria as a region, and certainly within that region they have a finite resource capability. They also have the capability to call on resources outside their area.

10 Q. You are used to having at your disposal, being at the top of this organisation, the ability to move very large amounts of resources throughout the whole of Victoria to any place where they happen to be needed?

15 A. That's correct - or in fact I ask for outside support from other jurisdictions.

20 Q. Furthermore, in dealing with large campaign fires, do you have a body of personnel who are particularly skilled or particularly trained in dealing with those kind of fires? For example, do you have specialist planners who you might find at every large fire, to take an example?

25 A. There are people within the organisation that have trained in specific functions.

Q. Like what, for example?

30 A. Such as logistics, such as planning, even down to the extent of media people that are specifically trained to perform those functions.

Q. So --

35 A. Could I just say that, like the ACT, we don't only draw on the fire service itself but we have access to the Department of Sustainability and Environment and the metropolitan fire brigade.

40 Q. Just to round off on this, because I note the time, when you talk about specialised logistics people, there might be a number of logisticians who, in any major campaign fire in Victoria, you would expect them to be there because they are specialists and they are moved around where the particular emergency arises as and when. Is that the way it works?

45 A. That could be an option.

47

MR PHILIP WALKER: Your Worship, I note the time.

MR LASRY: Your Worship, before we adjourn, I wonder if I could raise a matter. It seems
5 tolerably clear that Mr Roche won't finish tomorrow and his evidence will go into next week, and I presume Mr Nicholson will be available for us to call next week. We originally requested documents in relation to Mr Nicholson and
10 specified in order to be able to make a decision as to whether to call him.

Having made that decision, we now of course want those documents to assist us with his evidence.
15 We don't have them and we haven't yet been given an indication as to when we will have them. But in order to have time to make sense of them, we would appreciate that we be provided with copies of them by the end of business tomorrow. I assume
20 there is no difficulty about that and I assume we won't have to go to the stage of issuing a subpoena or anything like that.

So I simply raise the matter to record it,
25 your Worship, but I am obviously anxious to have such documents.

THE CORONER: I will ask that those documents be provided by close of business tomorrow, if indeed
30 Mr Nicholson is to be called on Monday or Tuesday of next week.

MR PHILIP WALKER: Yes, your Worship. As you might know, my instructing solicitor has not been
35 here today. I know she is dealing with it. I have no idea where it is up to. But, irrespective, there won't be a need to produce a subpoena because the documents will be produced. But just where that is at the moment, I frankly
40 don't know.

Your Worship, there is one thing I wish to clarify on that, given that there has been a call. It may just be, no disrespect intended, slightly loose
45 language on Mr Lasry's part and not uncommon in barristers in this particular instance. Mr Lasry said something a couple of days ago about him

having various instructions. He spoke about, "I don't have them in front of me but I have some instructions about it" and he said, "I will be embarrassed by what I have just said but those are my instructions."
5

Yet in the matter before the Supreme Court, Mr Refshauge, the Director of Public Prosecutions, indicated - I rather understood him to say that
10 his office wasn't directly involved in the instruction of Mr Lasry and Mr Woodward. I am just wondering, is there a solicitor with the usual practising certificate and all the rest of it who instructs Mr Lasry and Mr Woodward; or are
15 they sort of self-acting or self-instructing in some respects?

I would appreciate if it would be possible for that to be clarified. If Ms Drew has the
20 requisite practising certificate and is the appropriate solicitor, then I would like that clarification.

THE CORONER: Ms Drew, as I understand it, is a
25 prosecutor with the Director of Public Prosecutions. It is not necessary for prosecutors to have a certificate. You are aware of that under the legislation.

MR PHILIP WALKER: I am aware of that, your
30 Worship, but it seemed to me from my recollection of what Mr Refshauge said that in some way Ms Drew was sort of outposted or seconded or something and that the DPP wasn't the solicitor instructing
35 counsel assisting.

THE CORONER: I can't comment on what Mr Refshauge said. I wasn't there.

MR PHILIP WALKER: No, I appreciate that. Really
40 all I am asking is can I have it indicated who is the solicitor instructing counsel assisting, if in fact there is one at all, because a formal call has been made, formal production will be made and,
45 if there is correspondence, then I want to do it according to the rules. Perhaps if that can be indicated, I would be grateful.

MR LASRY: Your Worship, it is Ms Drew for these purposes.

5 THE CORONER: And it always has been, Mr Walker, and you have written and corresponded with Ms Drew and Ms Cronan on many occasions.

10 MR LASRY: What I probably should have said the other day was not so much "instructions", although it is a term that counsel regularly use when they are given information, but it would be obvious from the context of what I said that the information that had been given to me was that the documents were of a certain nature, as indeed it
15 turned out that they were. In that sense, the terms "instructions" and "information" are used interchangeably. But Ms Drew is the person to be communicated with.

20 THE CORONER: But you can deliver them to the court; you can deliver them to me, Mr Walker, if you have any confusion as to where they should go?

25 MR PHILIP WALKER: I don't know that there will be a lot. But do I understand that is Ms Drew personally or the DPP?

THE CORONER: Ms Drew, Mr Walker.

30 MR PHILIP WALKER: I understand. Thank you, your Worship.

35 THE CORONER: Just before we adjourn, I wish to make a comment. It is probably trite for me to have to say this but I will in any event. I see the prime role of all persons who come to take part in a coronial inquiry - and that is all witnesses and all counsel, counsel assisting and indeed all counsel - the prime role of all persons
40 who come before an inquiry is to assist in the inquiry process.

45 Now if any witness has information which is relevant, then they should come forward with that information. And the same applies to counsel. If counsel have come into possession of information which is relevant, that information should be

brought to the attention of the coroner.

5 Now I said some time ago, and I think it was probably at the start of this inquiry or if not at the start last year then earlier this year when we recommenced, that if there was information that was relevant and overlooked by those conducting the investigation process, or that was overlooked by counsel assisting, or information of which
10 either the investigating officers or counsel assisting were not aware, then that information should be brought to their attention. And I invited you all, everybody taking part, to do so.

15 I ask you all again: if there is any relevant information which you - counsel of this inquiry or witnesses in this inquiry - are aware of that should be brought to my attention, then I again invite you to do so. We will adjourn --

20

MR PIKE: Before you do rise, could I just indicate one thing that myself and a number of my other colleagues have been suffering under the strain of (a) coming into this matter relatively
25 late, although as more time goes by I am less and less able to rely on that.

THE CORONER: You should be very familiar and very comfortable now, Mr Pike.

30

MR PIKE: Your Worship, you would be wrong in thinking that the time so far allocated to the matter has enabled us, any of us, to get on top of the more than 37,000 pages of documents - but
35 leave that to one side.

The other factor is that certainly myself, Mr Watts and Mr Craddock, we are one-man bands and we have no teams to assist us. The effect of what
40 I am saying is that my inquiries grow by a daily basis. I get information and seek instructions all the time, and not always is all of that information in a state that I can put to your Worship. So I just want to make it quite
45 clear, given the way that this matter has progressed, that my position has been that and, I would imagine, has been that of my colleagues as

well.

THE CORONER: Thank you. We will adjourn until
tomorrow.

5

**MATTER ADJOURNED AT 4.10PM UNTIL FRIDAY,
9 OCTOBER 2004.**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 83

Friday, 8 October 2004

MR LASRY: Just a minor matter. This is essentially for certainly our convenience, but I wonder if your Worship would mind adjourning perhaps 10 or 15 minutes early today in order that aeroplane timetables can be complied with. So rather than 4 o'clock, quarter to 4.

10 THE CORONER: That is not a difficulty, Mr Lasry.

MR LAKATOS: Might I raise a matter of somewhat more significance from my client's perspective. It relates to some comments that fell from your Worship yesterday at transcript 7586 at lines 15 30-35. That was the comment your Worship made in the interchange with Mr Walker to this effect:

20 "Are you suggesting a small jurisdiction should be allowed to burn because there is no money to protect it?"

And it goes on. I say this with respect: your Worship holds an office of considerable influence and considerable respect in the public domain. People listen to the comments which fall from your Worship. The statement that you made yesterday has the capacity to adversely affect both my client and its officers, even if it was made flippantly, and I am not suggesting it was.

30 In my respectful submission, it was not a proposition which had any foundation in the questioning which Mr Walker was then conducting. And, to my knowledge, it has never been advanced by any counsel in these proceedings in its entirety. Your Worship yourself said at the end of the comment:

40 "That is what it sounds like and that is patently nonsense."

With respect, I agree with the last comment. Those would be my submissions.

45 Bearing in mind there is a statement to that effect on the public record of a serious

proceeding such as this, it is my application that your Worship withdraw those comments.

5 THE CORONER: I hear what you say, Mr Lakatos. I don't intend to withdraw the comments.

MR LASRY: If I might respond. It does seem to me that the comment was made in a sense in what might be described as a Socratic exchange with Mr Walker at a point where in effect objection was taken because of the manner in which Mr Walker was dealing with the witness at the time. That was really the way in which the matter arose.

15 Apart from anything else, it seemed to us that your Worship's comment was endeavouring to understand the relevance or the purpose of Mr Walker's questioning. In my submission, it is significantly oversensitive in the sort of exchanges that occur in cases like this and other cases to be asking your Worship to withdraw comments like that. We wouldn't submit that your Worship should.

25 THE CORONER: I don't intend to withdraw it, Mr Lasry. Yes, Mr Roche, if you would enter the witness box, please.

30 <TREVOR, MICHAEL ROCHE, RESWORN

<CROSS-EXAMINATION BY MR PHILIP WALKER CONTINUING

MR PHILIP WALKER: Q. Could we bring up page 7583 of yesterday's transcript, please. Mr Roche, could I direct your attention to the question that I ask at line 30 of the transcript. It begins with the words:

40 "Did you, in the course of that brief, say to Mr Woodward, 'But I am supposed to conduct --

You might read that question and answer.

A. Sorry, what line was it?

45 Q. Line 31 but it begins with the words "Did you, in the course of that brief, say to Mr Woodward, 'But I'm supposed to conduct --

A. Line 26?

Q. Line 31.
A. Not on my screen.

5 Q. My question to you was:

"Q. Did you, in the course of that brief, say
to Mr Woodward, 'But I'm supposed to conduct
an investigation for a coroner who will
doubtless want to reach correct and fair
10 conclusions. Perhaps I should put some of my
ideas to people who would directly involved
and get their answers'; did you say anything
like that?

15 "A. No, I didn't. The reason I didn't is,
again, because the initial information that
Mr Woodward gave me was, as I recall, also
associated with the fact that I was not part
of the investigation team."

20 Could I just ask you to contemplate the answer you
gave there, Mr Roche. Surely in the course of
what you were doing you had to undertake some sort
of investigation?

25 A. Of the material which formed a part of the
brief.

Q. So, really, a more accurate description was
that you were a reviewer of the evidence that had
been presented to the Court; is that right?

30 A. No.

Q. Can you give your description then of your
task?

35 A. My task was to provide the coroner with the
report that resulted from my access to all of the
evidence which was made up by the brief, my
inspections in the field and my attendance in
court with reference to the evidence that was
given to her Worship.

40

Q. Surely that involves you being something in
the nature of an investigator, doesn't it?

A. Not in my view.

45 Q. In the course of conference with Mr Woodward,
for example, were you told that you were going to
be an investigator?

A. No, I was not.

Q. You had conferences with other people. You met with the Federal Police. You regarded them as
5 investigators; didn't you?

A. Yes, I did.

Q. And you saw your task as quite different?

A. Yes, I did.
10

Q. You had conference with Mr Lasry?

A. What is your definition of "conference", sir?

Q. Did you meet with Mr Lasry for the purposes of
15 discussing any aspect of the tasks you were undertaking for the purposes of this inquest?

A. Yes, I did.

Q. Did not Mr Lasry suggest that you were an
20 investigator at some time?

A. No.

Q. I think you even had some discussion with the
coroner; is that right?

25 A. No.

Q. No discussion with the coroner?

A. I had a meeting with the coroner when I was
30 first engaged and the purpose, I guess, was just to meet the coroner. The only other time that I have had any meeting with the coroner or any contact with the coroner was on one of the field visits where I accompanied her.

35 Q. Well, the meeting that you have just referred to I take it was a meeting very early on in your period of engagement?

A. Yes.

40 Q. During that meeting presumably there was some discussion about the nature of the task that you were going to undertake?

A. Not specifically that I recall because I had
45 already had that discussion with counsel assisting, and I assumed that the coroner was well aware of the content of those discussions. It wasn't necessary for me to go back over that

ground.

Q. Well, were you told in the course of that meeting that you were an investigator?

5 A. No, sir.

Q. Could I just provide a document to Mr Roche. (handed) Mr Roche, I have just given you section 59 of the Coroner's Act and I would ask you to
10 read it, please.

Mr Roche, were you ever told that you were an investigator under section 59 of the Coroner's Act?

15 A. No, I was not.

Q. Have you ever seen this section before?

A. No, I have not.

20 Q. Yesterday I asked you some questions about the size of the CFA in Victoria. I would just like to provide a copy to you of an extract from the annual report of the CFA in Victoria. (shown). Could you just peruse that document, for me,
25 please, Mr Roche. Tell me when you think you have perused it enough to be familiar with it.

A. Yes.

30 Q. Do you recognise the document as being an extract from the Country Fire Authority annual report 2003?

A. I assume so.

35 MR PHILIP WALKER: I propose tendering this document. I am not aware of this report being in the brief.

THE CORONER: Can I just ask the relevance of it, Mr Walker?

40

MR PHILIP WALKER: Perhaps I can make it relevant by some further questions, and we will come back to the tender of it.

45 THE CORONER: I am interested in examining the resources in the ACT. I am not examining the resources that exist in Victoria, or indeed any

other jurisdiction. It is not relevant,
Mr Walker, unless you can make it relevant.

5 MR PHILIP WALKER: As I said, I won't press the
tender immediately. I will ask a few more
questions.

10 Q. Are you aware, Mr Roche, of how many
permanently employed officers there are in the ACT
Bushfire Service as part of the service as opposed
to employed in, say, a government department?

A. Are you talking about the Bushfire Service or
the Emergency Services Bureau?

15 Q. I'm talking about the ACT Bushfire Service?

A. No, I'm not.

20 Q. If I were to put it to you that there was the
Chief Fire Control Officer, Mr Lucas-Smith, and
three other people and some administrative
support - effectively four people and some
administrative support - firstly, would it
surprise you that there was so few people employed
in that service?

25 A. No, it wouldn't.

30 Q. Do you think that, in reaching some of the
conclusions that you have reached, you may have
been, to some extent, influenced by the fact that
you come from a service which is vastly larger
than the Bushfire Service in the ACT?

A. No.

35 Q. One of the things that you mentioned was, for
example, that the ACT Bushfire Service should
appoint a shadow IMT for the New South Wales IMT;
do you recall that?

40 A. I don't think I said "should". I think I
advanced that as an option to overcome what I saw
as issues in the communication between the New
South Wales IMT and the ACT.

45 Q. So when we read that in your report we
shouldn't take it as a criticism. It is just
advanced as a positive constructive alternative
that could have been used?

A. That's correct.

Q. In relation to that alternative, if it were ever to be taken up, how many people do you think it would involve?

A. At least four or five.

5

Q. And is that four or five, 24 hours a day?

A. That's correct.

Q. So we really are looking eight or 10 people over a 24-hour period?

A. Over an extended period more than that.

Q. So had that option been followed in these fires, what measure of staffing would the ACT have been required to devote --

A. I've not done that analysis.

Q. Well, from the answer that you have just given, the four or five people, can you make some guesstimate of the amount of staff you think might have been required to implement the suggestion that you make over a period of 10 days?

A. As a shadow IMT, in the vicinity of 12 to 15.

Q. How many people do you envisage ought to have been employed in the IMT in Curtin during the same period?

A. 20 to 30.

Q. Is that 20 to 30 per shift?

A. Oh, not necessarily. Some stages of the fire at some shifts there may have been less.

Q. To try to get an accurate picture, how many people do you think in your view ought to have been employed over a 24-hour period?

A. 20 or 30 in Curtin - sorry, in an IMT that was managing those fires.

Q. So not necessarily in Curtin?

A. That's correct.

Q. Were you envisaging I gather a team of people in Curtin and a team of people in the field; is that right?

A. No.

47

Q. Were you endeavouring to make some distinction between management people, apart from management people in Curtin?

5 A. All I'm saying, sir, is there would have been
around 20 to 30 people over an extended period
required for an IMT, with elements of the ESB in
Curtin retaining their proper management role,
senior management, senior executive role with
communication with government and other
10 stakeholders.

Q. Of those people, how many planning officers do you think ought to have been employed?

15 A. Are you talking about planning officers or
personnel in the planning unit?

Q. Well, let's take it piece by piece: Planning officers, first of all.

20 A. Two or three.

Q. And people in the planning unit?

A. The majority of people in the IMT would have been in the planning unit.

25 Q. So what are we talking about?

A. Six or eight, at least.

MR ERSKINE: May I ask for some clarification here because the questions and answers seem to have
30 ranged indiscriminately between Curtin and
Queanbeyan. Were the last questions and answers
intended to be at Queanbeyan in the shadow IMT or
the people in Curtin carrying out their functions
in ESB?

35 THE CORONER: That is a valid point. I understood
it to be Curtin. Do you mean Curtin?

40 MR PHILIP WALKER: That is what I mean. I will ask
Mr Roche if that is the nature of the answers that
he was giving.

THE WITNESS: The shadow IMT?

45 MR PHILIP WALKER: Q. No, no. The answers you
were more recently giving when you said 20 or 30
people required in an IMT.

A. In an IMT in the ACT that was managing those fires that were either impacting or likely to impact the ACT.

5 THE CORONER: Q. In the ACT but not in Queanbeyan. You are not referring to Queanbeyan.
A. In the ACT, not necessarily in Curtin. Yes, ma'am.

10 MR PHILIP WALKER: Q. The shadow IMT is additional to that and they are in Queanbeyan?
A. In Queanbeyan.

15 Q. In your report at page 39, I take it from what you said yesterday you don't make any assertion as to whether any of these things did or did not occur?

20 MR LASRY: Your Worship, this matter was dealt with at some length yesterday as to what that paragraph meant. Mr Watts asked a number of questions and in the course of objections made a number of submissions as to how it should be taken, leading to the suggestion that if there was
25 further information that Mr Watts had it should be provided to your Worship, indeed culminating in the remarks that you made at the end of the proceedings yesterday.

30 It is absolutely clear from that evidence that that page represents things that Mr Roche has given evidence could have been done, and that his evidence is that his perusal of the material available to him suggests that there is no
35 evidence that they were done. That's absolutely clear. To be going back over that definition now, with respect, is a waste of time.

40 THE CORONER: What do you propose to do, Mr Walker, in relation to those matters?

MR PHILIP WALKER: I was going to go through a number of matters as to what may or may not have been done. If your Worship takes the view, as you
45 did yesterday, I gather that is --

THE CORONER: Are you able to pinpoint from the

evidence that is before all of us where Mr Roche has misunderstood the evidence or he has missed the evidence? Are you able to make reference to areas in the brief in the evidence where these matters are not the way that Mr Roche says?
5

MR PHILIP WALKER: Your Worship, what I am proposing to do - there is likely to be some evidence called in reply, and in the course of that reply some of the matters that I might put I would canvass at that point in time.
10

THE CORONER: So it is not information that you have now that you can put on these matters, on these individual matters, but there is other information that you are going to call in reply?
15

MR PHILIP WALKER: Yes, your Worship.

20 Q. Firstly, Mr Roche, I gather you have no information at your disposal as to the total budget of the Emergency Services Bureau or the amount allocated to the Bushfire Service?

A. I'm sorry, would you say that again, please?
25

Q. I will break the question into parts. You did not have at the time you wrote your report information as to the budget of the Emergency Services Bureau?

30 A. Yes, I believe that I did see an annual report of the Bureau.

Q. Did you pay particular attention to the amount of money at its disposal?

35 A. I would have.

Q. Do you recall what it is?

A. No, sir.

40 Q. Did you have information about the budget of the Bushfire Service?

A. I didn't specifically look at that because of the interrelationship with the ESB.

45 Q. Were you aware of attempts by Mr Lucas-Smith to obtain an increase in the budget for aircraft operations?

THE CORONER: In what period?

MR PHILIP WALKER: Q. In 2002?

A. Outside of the national arrangements?

5

Q. Well, an increase in funding from the Australian Capital Territory for aircraft operations - I am referring for example to point 4 of the points that you have on page 39.

10 A. No, I have not seen any evidence to that extent.

Q. Are you, I take it, not aware of an attempt to obtain some funding for a community information officer for community education made in the same period?

A. I've not seen any evidence to that extent.

Q. Insofar as there were attempts by Mr Lucas-Smith to obtain at least additional resources on those two fronts, any criticism, whether expressed or implied, of him on those two points would be something that you would have to completely reconsider; wouldn't you?

20
25 A. To some extent, yes.

Q. In fact, that's another example, is it not? Had you not to some extent had one hand behind your back by not being able to speak to people who were directly involved in fighting these fires, you might have benefited by having a discussion with Mr Lucas-Smith about those sorts of issues?

30
35 A. I didn't have one hand tied behind my back, in my view, in terms of the task that I was given to provide a report under the circumstances that I was.

Q. Let me remove the cliché. It would have been an advantage to you, would it not, to be able to go to Mr Lucas-Smith and put to him perhaps why didn't he have some more aerial resources or why didn't he have some greater community education resources? You could have had the benefit of the sort of information I have just given you.

40
45 A. It wouldn't have made any difference to that dot point. The fact is that it wasn't there.

47

Q. Well, that may in the overall scheme of things be correct, Mr Roche, but I am asking you insofar as there is any express or implied criticism of Mr Lucas-Smith, it would certainly have removed
5 any criticism of him insofar as any assessment you made of him. It would be advantaged in that regard, would it not?

A. I do not recall - or, I am sorry, I haven't criticised Mr Lucas-Smith in this context.
10

Q. Sir, not necessarily by name - it is the point I took up with you yesterday - but it is not uncommon, is it in your experience, that if there is a criticism directed at an agency, even if the
15 chief executive in charge of that agency is not expressly named some people may interpret the criticism of the agency as being a criticism of the chief executive or manager of the agency; that is not uncommon, is it?

A. I didn't see Mr Lucas-Smith as the chief
20 executive of the agency.

Q. Well, he is the man with principal responsibility for fighting bushfires, isn't he?

A. Operational responsibilities, yes.
25

Q. He is also the man who you might have expected within the Emergency Services Bureau to whom people such as Mr Castle and perhaps others would
30 have had recourse for information about what was needed to adequately run the Bushfire Service; isn't that right?

A. I would assume that the executive director of course would have consulted with his technical
35 experts in seeking any resources or any funds.

Q. Yes. To some extent ESB is a bit of an agglomeration of urban firefighters, bushfire
40 fighters, ambulance service, that compartmentalisation tends to focus attention on the performance of each of those compartments on the person who is at the head of that particular compartment; does it not?

A. Not in my view when it comes to financial and
45 corporate strategic issues.

Q. Are you suggesting that, if there is any

adverse comment about the state of preparation of the Bushfire Service, it is not in any respect to be taken to directly relate to Mr Lucas-Smith?

5 A. No, I'm not suggesting that. Could I just say that my understanding is, and in this case I may stand corrected, there were not discrete budgets allocated to each of those services over which the senior manager of those services have unfettered responsibility.

10

Q. Well, let me return to the question more specifically. Is there, for example, a criticism that is to be read into what you say on the fourth point on page 39 about access to aircraft?

15 A. I've indicated in that dot point that, in my view, on the result of a risk assessment either additional aircraft should have been available or at least a register of "call when needed" aircraft to access additional aircraft. I have not
20 assigned responsibility as to who directly is the cause of that not being available. It may well go right to the heights of government. I don't know. I'm just making statement that it should have been available.

25

Q. In your criticism in relation to community education and warnings, for example, that falls into the same category that you are not necessarily making any criticism of any individual
30 about that?

A. All I am saying is that it should have occurred.

Q. Just to make that point quite clear. When I
35 talk about community education and warnings, I am talking about the sort of education and warning and so forth that goes on before a fire takes place. Do you understand the sort of thing that I am talking about?

40 A. Yes, I do.

Q. That's the terms in which you gave your answer?

45 A. Across the board when I talk about community education, I talk about the continuum that I have referenced in this report.

47

Q. Do you know whether the Bushfire Service had its own dedicated permanent planning officer in 2003? If you take my questions to mean the period relevant to the fires.

5 A. Yes, sir. Planning for what purpose - operational planning in the event of an incident?

Q. In the event of an incident, yes.

10 A. Am I aware whether they had one?

Q. Yes.

A. I understand they did have one.

Q. Sorry, did or did not?

15 A. I did understand that they had a planning officer.

Q. Do you understand whether Mr McRae was permanently employed as part of the Bushfire Service or not?

20 A. I understand he was employed - associated with the Emergency Services Bureau for risk management purposes. From the evidence that I have witnessed throughout this inquest, I understand that he
25 played a significant role in planning on behalf of the Bushfire Service, but whether he is actually employed in part by the Bushfire Service or not, I'm not aware.

30 Q. If I were to suggest to that you that Mr Lucas-Smith did not have a permanent planning officer available to him, would that be information that you did not previously have? I gather from an earlier question it would be.

35 A. I wasn't aware of that. But in the context of this page, I wouldn't have seen it as relevant.

Q. Let me go back to another question. Would you expect that the Bushfire Service might have a permanent planning officer associated with it, particularly a head office such as Curtin?

40 A. Not necessarily, but I would have expected that it would have had access to a planning capability in the event of operations.

45

Q. Just remind me, can you tell me how many people were attached to the task of community

education and warnings in Victoria in the CFA?

A. No, I can't tell you exactly.

5 Q. Were there people in your service that were employed specifically for the role of community education?

A. Yes, sir.

10 Q. Are you able to give us an estimate of that? Is it one officer who maybe arranges radio ads throughout the state or is it an officer throughout the areas or regions?

15 THE CORONER: Mr Walker, is this at the time of the disaster or is this on a regular basis?

MR PHILIP WALKER: Permanently employed, your Worship.

20 Q. Permanently employed?

A. Permanently employed across the CFA, I could only guess, Mr Walker.

25 Q. Your best estimate. Nobody is going to hold you to --

30 THE CORONER: How useful is this? I am not interested in what is happening in the CFA and how many officers they have in the CFA in Victoria. If you are only asking Mr Roche to guess, how useful is that going to be for me?

MR PHILIP WALKER: Nobody is asking him to guess.

35 THE CORONER: You have "your best estimate" you said.

40 MR PHILIP WALKER: I might be asked right now "many people are in this room" and I couldn't tell you but I could give you a fair estimate.

45 THE CORONER: How relevant is all this really? You keep on trying to make this comparison between what happens in Victoria and what has happened here. I want you to explain to me: how is that relevant?

47

MR PHILIP WALKER: There is one way it is relevant and I may have indicated it yesterday; that is, across the state the state has a level of resource which it can devote to a fire which it can pull
5 from across the 60,000 or 70,000 volunteers. It has specialist people, we gather. Mr Roche mentioned logistics officers, for example, which you might recall me putting a question to him, "If we have fires would you expect to see these people
10 there all the time because they are specialists" and he indicated that you probably would.

The relevance is, as I have put once to Mr Roche, that he comes from a background, and in my
15 submission to you or in the questions that I am proposing to ask of him, he has a level of expectation or performance which owes its origin to a service with a much greater capability than was ever available to those who were responsible
20 for discharging their functions in relation to the ACT Bushfire Service.

THE CORONER: Where does that get us? If you are able to establish that, what is the next step that
25 you want me to take from that information?

MR PHILIP WALKER: Your Worship, if ultimately Mr Roche says "Look, I do come from this background and I am used to a bigger and better
30 service," it puts in some context any criticism about performance both organisationally and, for that matter, some of the matters that were listed on page 39. In particular, it puts in context what could be said to be a failing on the part of
35 my client because he ran a bushfire service which didn't reach a level of a standard to which Mr Roche is somewhat more accustomed.

I could put the same questions, your Worship, to
40 New South Wales because it is a very different thing. It is a bit like the services available in the city of Sydney as opposed to the services available out the back of Bourke. One simply doesn't expect the same level of performance from
45 a much smaller operation with much less money and much less capacity to pull resources from the four corners of its jurisdiction.

5 THE CORONER: So where does that take us? Are you saying that Mr Roche is out of touch or that he is naive or he is wrong in the comments? If you want to say that, just ask him that, Mr Walker. I am sure anybody with a modicum of commonsense would agree with the propositions that you are putting that Victoria is bigger and that Victoria has more resources. That is really what you are putting. I am sure Mr Roche will agree with that proposition.

10 Perhaps if you take him to the parts in the report where you say he has misunderstood or where he is being critical of what has happened here where you say he has no valid reason to be critical. I would be assisted if you did it on that basis rather than constantly seeking to compare what happens in other jurisdictions and what exists here. I want to know what happened here and what exists here, and I know that. It is not going to assist me by making comparisons to what happens in other jurisdictions from the point of view of this report.

15 MR PHILIP WALKER: Well, to some extent, your Worship, I gather Mr Roche doesn't entirely know what the situation was here, with no disrespect to him. He has been told he was not to talk to people directly involved.

20 THE CORONER: Well then ask him about what he understands about what happened here. Don't keep asking him about what he understands exists in Victoria.

25 MR PHILIP WALKER: Q. Mr Roche, you have heard the discussion that has occurred between myself and her Worship. I suggest to you, as I did yesterday, that you have come from a jurisdiction which has a pool of resources available to it, both staffing and equipment, which gives you an expectation of performance which is much higher than can reasonably be expected from an organisation the size of the ACT Bushfire Service; what do you say about that?

30 A. That's not correct. Can I correct you on another matter. You assume from my evidence

yesterday that, when I indicated that logistics officers were available 24 hours a day, from what you have mentioned this morning, I take it you are assuming they were paid personnel. When I said
5 they were available, they were available, but I didn't qualify that by saying they were paid personnel. In fact, the majority of the resources which CFA uses, by far the majority, are either drawn from other organisations or are volunteers.

10

Q. Yes, but they are regularly drawn and they have regular experience in large fires; is that right?

15 A. Yes, sir, and probably drawn from a far smaller population base than exists in the ACT.

Q. The State of Victoria?

A. No, from within a region.

20 Q. Did you have the opportunity to read statements by Mr Simon Katz and Ms Smyth in the course of your perusal of evidence?

25 A. Mr Katz rings a bell, but I can't be certain. And the other person doesn't register with me, sir.

30 Q. Do you recall reading evidence that that particular gentleman undertook some - what you would broadly call - community education of neighbours in the Weston Creek area?

A. In Chauvel Place?

35 Q. I think you are right, I think it was Chauvel Place, if I do recall correctly.

A. Yes, I do recall that. He was, I think, from the Rivers brigade; wasn't he?

MR PHILIP WALKER: That is exactly right.

40 THE CORONER: And Mr Katz gave evidence, Mr Walker, as well.

45 MR PHILIP WALKER: Q. That is the sort of community education that you would expect from a bushfire service such as the ACT Bushfire Service?

A. That's certainly one option - real option, yes.

Q. You didn't make mention of that in your report, that particular incident?

A. Yes, I think I did, sir.

5 Q. Perhaps I missed it.

A. My recommendations for the delivery of community education within the ACT, I believe that I made mention of that.

10 Q. Of Mr Katz? Can you just turn that up?

A. I believe I made mention in the section where I talked about what had been delivered prior to the 2003 fires.

15 MR LASRY: I think it is page 174. There is a passage in the first paragraph on that page which includes a footnote to Ms Smyth's evidence. Perhaps the witness should be asked whether that is what he is referring to.

20

MR PHILIP WALKER: Q. If you could have a look at page 174, Mr Roche.

A. Sorry - page 172, halfway down the page:

25 "To achieve more direct community contact and consultation: ...

30 "The Rivers Volunteer Bushfire Brigade and the Parks Brigade conducted a street corner briefing on wildfire preparedness with residents of Chauvel Circuit, Chapman.

Q. You are right, Mr Roche, I frankly passed over that. At page 44 of your report you make some criticism about the ACT's co-operation with New South Wales. In fact you went on in your oral evidence to say there ought to be an ACT person appointed as part of the New South Wales IMT. Firstly, in paragraph 1 under the heading "liaison with New South Wales agencies", you say:

40 "The ACT Bushfire Service and the New South Wales NPWS entered into a cooperative agreement on 'Fire management and suppression' in late 1998. This agreement covers, amongst other matters, initial response, tactical limitations,

communications and information exchange.
There is no evidence to suggest that these
arrangements were ineffective in those
circumstances where the ACT Bushfire Service
5 and the New South Wales National Parks and
Wildlife Service were the lead agencies in
their respective jurisdictions."

10 Firstly, should we interpret the words, "There is
no evidence to suggest that the arrangements were
ineffective" that they in fact worked well?

A. I have seen no evidence that, where fires were
confined to one jurisdiction and didn't pose a
risk to another jurisdiction, the arrangements
15 were not satisfactory.

Q. I am not quite sure that answers my question.
In your assessment, did the arrangements work
well?

20 A. In the context of what is intended in that
paragraph, that's correct - where the ACT Bushfire
Service were in control of the fire in its
jurisdiction or where the National Parks and
Wildlife Service were the lead agency in their
25 jurisdiction, it seemed from the evidence
available to me that there were no issues.

Q. Halfway down that page you say:

30 "It is therefore difficult to understand why,
prior to December 2003, the ACT Bushfire
Service, as the equivalent agency in the ACT,
or the ESB, did not have an extensive
cooperative agreement with the New South
35 Wales RFS."

Again, do you suggest by that comment that there
was any difficulty in co-operation or do you
suggest it ought to be documented?

40 A. I think you have taken it out of context. You
need to read the paragraph in between those two
paragraphs. Because, as I understand the
arrangements in New South Wales - that was the
intent of the initial paragraph and I may stand
45 corrected on this interpretation - in the absence
of a section 44 declaration in New South Wales the
National Parks and Wildlife Service were in fact

the lead agency, the lead combat agency. Once a section 44 was declared on a much larger and much more complex fire, then the National Parks and Wildlife Service were no longer necessarily the lead agency and the New South Wales Rural Fire Service was then the lead agency.

For those reasons, I have suggested that there needed to be a much more formal arrangement between the ACT Bushfire Service or Emergency Services Bureau and the New South Wales Rural Fire Service.

Q. I understand the rationale for what you say from the answer you have given. But my question is: do you suggest that there was any difficulty or lack of co-operation between the ACT Bushfire Service and the New South Wales Rural Fire Service up to the occasion when these fires broke out in 2003?

A. As a result of the fires in 2003, I believe there was.

Q. No, no, I said up to the point. In other words, are you suggesting there were some difficulties in gaining the co-operation of New South Wales authorities or, for that matter, cooperating with them up to the point where these fires broke out in January of 2003?

A. Not according to the evidence that was available to me.

Q. I am not disagreeing with perhaps the fact the formalisation of it in document would be a good idea. But I understand your evidence to be that you have not seen any evidence that there was a difficulty in co-operation between the ACT Bushfire Service and the New South Wales Rural Fire Service up to the point of outbreak of the 2003 fires?

A. I think you have missed the point of that particular part of the report. I am not disagreeing with what you are saying. What I am saying is that the Bushfire Service had a cooperative arrangement with the National Parks and Wildlife Service. That is fine. That was good. I agree that that is appropriate.

The fact of the matter is that, when a large fire occurs and is of greater threat to the ACT from a large fire, then it seemed eminently sensible to me that there be a similar arrangement - and there
5 should have been a similar arrangement - between the Bushfire Service and the New South Wales Rural Fire Service.

Q. I understand that. But the point I am trying
10 to make clear is that, whilst that would have been a good idea - and nobody really argues with that - in actual performance on the ground the reality was you have not seen any evidence of a difficulty in co-operation between the New South Wales Rural
15 Fire Service and the ACT Bushfire Service up to the point when the January 2003 fires broke out?

A. That's correct.

Q. In fact, could I suggest to you that the
20 co-operation that occurred when those fires broke out was appropriate - you are aware, are you not, that Mr Lucas-Smith went to Queanbeyan on the night of the 8th to speak to New South Wales Rural Fire Service people about the McIntyre's Hut fire?

25 A. I'm aware of that.

Q. Are you aware who went with him?

A. I understand Mr Bartlett accompanied him.

30 Q. And also Mr McRae and Mr Neil Cooper; are you aware of that?

A. I believe so, sir.

Q. And you know each of those people to be senior
35 officers in the ACT Bushfire Service?

A. I certainly do, sir.

Q. That, in itself, was a perfectly appropriate,
40 sensible thing to do, given the size of the McIntyre's Hut fire on the night of the 8th?

A. Yes, sir.

Q. It is the co-operation which you would expect?

45 A. Absolutely.

Q. Were you aware that Mr Lucas-Smith went to Queanbeyan twice on the 9th of January?

A. I can't recall that.

Q. But if that were to be the case, then that also would be exactly the sort of co-operation you
5 would expect, not only between the services but involving the most senior officer of the ACT Bushfire Service; that would be appropriate?

A. Yes, sir.

10 Q. You know the liaison officer was appointed. You gave some oral evidence that you thought somebody on the New South Wales IMT would achieve a better outcome in your experience. Do you
15 suggest that the liaison officer or officers who were appointed to Queanbeyan in some way didn't achieve their task?

A. I'm not criticising the officers, Mr Walker. All I'm alluding to is that better arrangements are necessary - as a result of the evidence that
20 clearly indicates to me that there was inadequate planning between the ACT and the New South Wales jurisdictions.

Q. Is that at any particular time? I take it you
25 are referring to the latter part of the fire, are you?

A. Sorry, could you say that again?

Q. The last comment you made, does that relate to
30 the later parts of the fire?

A. Not necessarily, no.

Q. Again, you are aware that the ACT provided
35 tankers and light units and so forth in New South Wales?

A. Yes, I'm aware of that.

Q. Do you know that Mr Bartlett went to New South
40 Wales on the 10th of January?

A. Yes, I'm aware of that.

Q. Did you know that the ACT asked and received
45 some assistance from Mr Arthur by way of aerial support?

A. Yes, I'm aware of that.

Q. In fact, a number of helicopters were provided

to the ACT by New South Wales, were they not, when requested by the ACT?

5 A. I'm aware that a number were provided. I don't know whether that came from a direct request of the ACT or whether it occurred because of the proximity of the fire to the border.

Q. Do you know that Mr Good attended the ACT IMT on 15 January?

10 A. I couldn't be specific about the date but I'm aware that there were, from time to time, personnel from New South Wales in the ESB Headquarters at Curtin.

15 Q. You are also aware of course that Mr Lucas-Smith went to Queanbeyan on the 15th to speak to Mr Koperberg and that he had discussions with a number of different officers in Queanbeyan at that time?

20 A. Yes, I'm aware of that. I guess my underlying concern about that was that meeting, as important as it was, was not intended to occur.

Q. In fact, you are aware that Mr Lucas-Smith was informed that Mr Koperberg was in Queanbeyan and then Mr Lucas-Smith on his own initiative travelled to Queanbeyan to speak to him; is that right?

25 A. Yes, sir.

30 Q. That type of co-operation which I have just taken you through is different to what you suggested; namely, have somebody on the IMT. But you would make no criticism of that level of co-operation, would you?

35 A. I certainly do not.

Q. I want to ask you a little more about the initial response to the fires when they broke out. Firstly a question from yesterday: you said that you visited Bendora - I think you said at one point you came in from, broadly speaking, the top end. I think you initially said from Bendora Break but subsequently I think you said Moonlight Hollow Road or Parrat Road --

40 A. Yes. I believe I visited that fire from an access trail that was, as I would understand it,

the next trail to the north-west of Wombat Road. Now the exact name of that, I'm not sure. It was above the point of origin anyway, not below it.

5 Q. You went back on a second occasion where you were at the site and you were then on Wombat Road?
A. No. The other way around, sir.

Q. Wombat Road came first?

10 A. The first occasion I visited that fire I viewed it from Wombat Road. It was the second occasion that I viewed it from Wombat Road, the Bendora Break and an area to the north-west of it.

15 Q. On those two occasions did you on both occasions walk the fire ground?

A. No, I did not.

20 Q. So it was - I appreciate you are not quite sure - possibly the Bendora Break visit where you walked the northern part of the fire ground north of the point of origin --

A. I walked in a section of the fire north-west of the point of origin. On the second visit,
25 after having driven as far as our driver could access up the Bendora Break - he was well aware of the terrain. That gave me an adequate appreciation of the terrain. The change in the terrain that occurred from the bottom of the fire
30 at that particular time on Wombat Road to the northern boundary and the north-western flank where it flattened out to some extent.

35 Q. How long did you spend on that particular occasion walking the fire ground?

A. Probably as little as possible, sir.

Q. 5 minutes?

40 A. 10 or 15 minutes, 20 minutes. It wouldn't have been any longer.

Q. You accessed Bendora Break from the Wombat Road end?

A. Yes.

45

Q. If it was Bendora Break?

A. Yes.

Q. You came off Wombat Road?

A. Yes, sir.

Q. You said that, when you visited from Wombat
5 Road, you didn't get out and walk the fire ground
on that occasion?

A. I got out of the vehicle when the vehicle
stopped as far as we could go up that Bendora
Break. I didn't walk any distance into the fire
10 ground from there.

Q. You therefore haven't actually walked the
ground, the fire ground immediately off Wombat
Road?

15 A. No, sir.

Q. You do know, do you not, Mr Roche, that it is
the section of the fire ground - I am talking
broadly around the point of origin - off Wombat
20 Road which is the steepest part of the fire
ground?

A. I would understand that that would have been
the steepest part of the fire on that particular
night.

25

Q. You said you understand that that would have
been the steepest part. Am I to take your answer
to mean that you have been told it was the
steepest part and you did not observe it yourself?

30 A. Having seen the ground from Wombat Road,
having seen it from the Bendora Break, having seen
it from the top and having heard the evidence, I
would be certain that that was the steepest part.

35 Q. In your report on page 51 you have a table
which I understand to represent the standard
operating procedure for code orange response for
fires on the left-hand half and what actually was
40 responded to the particular fires on the
right-hand half. That's what that table
represents, does it not?

A. According to my information, yes.

45 Q. Firstly, one of the criticisms - or
suggestions that you make - prior to the outbreak
of these fires was that the standard operating
procedure number 7, to use a common term, was

bumped up somewhat because of the state of the dryness of the forest. That's a fair summary of what you said; is it not?

A. That was an option, yes.

5

Q. Do you know how standard operating procedure number 7 was developed?

A. No, I'm not aware of that, sir.

10 Q. Obviously any scale could theoretically be bumped up at any time. If you said dispatch 10 tankers and 10 light units, somebody could always say, "Well, maybe you should bump it up". You are therefore not aware whether standard operating
15 procedure number 7 has been determined for what you might call a worst case scenario or a dangerous fire situation such as you suggest existed in January of 2003?

A. I'm not aware of the parameters that were used
20 in developing it.

Q. You put it better than I did, Mr Roche. In the orange day response - firstly, an orange day you understand to be not the most severe fire
25 danger day. Red is the most severe; is that right?

A. That's correct.

Q. The difference between an orange day and a red
30 day is that there would be three tankers and three light units on a red day; is that right?

A. I would have to go back to the SOP or the fire manual. If you are saying that is the case then I
35 accept that, sir.

Q. The difference between the standard operating
40 procedure number 7 and the actual response to the Bendora fire is that there was one less tanker dispatched to that area; that's the difference, isn't it?

A. That's correct.

Q. And yet there were three more personnel who
45 attended the fire than what would be required under SOP number 7; that's what your table seems to suggest; is that right?

A. On that, yes. Yes, sir.

Q. And in this instance one of the principal functions of people who were dispatched to fight the Bendora fire would have been to construct a rake hoe line; is that right?

5 A. In part.

Q. In fact, to do any work on the head of the fire, it would have been rake hoe work, wouldn't it?

10 A. If the incident controller chose that option.

Q. Yes, we understand it didn't happen but that's what the work would have been, rake hoe work, on the head of the fire; is that right?

15 A. No.

Q. Well, what do you say would occur?

A. The head of the fire was, as I would understand it, some distance off Wombat Road. The other option, given the limited resources et cetera and all the other factors which the incident controller had to consider, there was no reason why standard practice of a flank attack couldn't have been instituted using direct attack from tankers on the area that was accessible with tankers or with hose lines off the Wombat Road and then use the rake hoe crews further up the line where that direct attack from tankers may not have been able to be achieved.

30

Q. I am not sure that we are really in disagreement, Mr Roche --

A. Well, we are to the extent of what I am saying, the option of attacking the head of the fire may not have been a choice the incident controller made at that point in time. But there were other activities that would have materially led to containment of the fire that could have been executed.

40

Q. Tanker work, as you understand it, would only have been available on the south-eastern corner of the fire; is that right?

A. Could I refer to my map, please?

45

Q. Certainly.

A. Yes, that is off Wombat Road. Yes.

Q. If there was any attempt to get some
containment of the fire, that would have required,
at a point at least, rake hoe work because the
hoses from the tankers didn't go far enough; is
5 that the situation?
A. That's correct.

Q. At least insofar as that score of conducting
rake hoe work is, the amount of response to the
10 Bendora fire, was that actually in excess of what
standard operating procedure number 7 would have
required, given that there were 14 people out
there rather than 11?
A. It appears that way.

15 MR PHILIP WALKER: That might be a convenient
time, if it suits your Worship.

THE CORONER: I just draw this to your attention
20 Mr Walker. You are asking questions about the
number of people available in the ACT Bushfire
Service, and I draw your attention to a table on
page 45 "ACT Bushfire Services - 450 people
approximately". It is a table of other personnel
25 involved.

MR PHILIP WALKER: Yes, your Worship. I think it
varies from time to time.

30 THE CORONER: Certainly. I just bring that to
your attention that there is a table. We will
take the morning adjournment. Thank you.

35 **SHORT ADJOURNMENT** [11.21am]

RESUMED [11.46am]

MR PHILIP WALKER: Q. Mr Roche, the Stockyard
fire - I gather from what you have said, you don't
40 make any criticism of the withdrawal of Mr Gray,
given the difficulty he encountered in locating
that fire on the afternoon/evening of 8 January?
A. Not of his actions directly.

45 Q. Do I detect some qualification in what you say
there?
A. As I have indicated in the reports, I think

there were alternatives that would have assisted him in locating the fire and resourcing the fire that night. Given the absence of that option, then I don't criticise his withdrawal.

5

Q. Just going back to the Bendora fire, to what extent do you say that it is significant that the response to that fire was one tanker under the standard operating procedure number 7; had there been a decision to commit to the fire?

10

A. I think it was somewhat significant to the extent that I would have allowed a greater extent of operation to occur on the flanks where it was accessible by tanker. Plus, as I understand it, there was a distance between where the fire was and available water supplies and therefore would have aided in the turn-around time of tankers involved in extinguishment.

15

Q. Do you have any knowledge as to how much of the fire front would have been accessible to tankers off Wombat Road?

20

A. I'm not sure what equipment the tankers carry. It would have been limited by the amount of hose line that they carried.

25

Q. Well, that was ultimately the limitation of the tankers, wasn't it, the length of hose?

A. An initial limitation, yes.

30

Q. Is that in any respect made up for by the additional personnel who were sent to the fire; some of it compensated for?

A. No, I don't think so. Not to a great extent.

35

I am not saying they couldn't have been usefully deployed, but the absence of the tanker also was significant in respect of reasons I have just outlined.

40

Q. Your answer therefore is somewhat.

A. I think every resource on the fire adds value. You can also have too many, can I just add.

Q. I suppose there is a natural limit?

45

A. Yes, sir.

Q. Is your principal criticism in relation to the

response to the Gingera fire given that one fire couldn't be reached and the other fire, there was a tanker down but there were some additional personnel?

5 A. No. I think as I have indicated in the report and particularly on page 51, I believe that even if the response, made in accordance with the SOP, had that of occurred, then it was still insufficient, given the conditions.

10

Q. That weight of respond, I take it, is dictated by a number of risk factors. For example, the most dangerous fire on that night, McIntyre's Hut - you accept that, do you, that McIntyre's Hut was the most dangerous fire, and was the one calling for the greatest attention?

15

A. By degrees, yes. You certainly couldn't discount the Bendora fire.

20

Q. I am not suggesting that, Mr Roche. I am just saying in order of priority, it was the one that was of the greatest concern, wasn't it?

A. I think they were all of concern.

25

Q. I don't dispute that they were all of concern. But if one had to prioritise in any respect, McIntyre's Hut was the greatest concern, wasn't it?

A. In terms of deployment of ACT resources.

30

Q. In terms of anything you like, Mr Roche. If these fires occurred in Victoria and you had four of them and you were directing your response, which would be the one which would occupy the greatest amount of your attention - McIntyre's, Bendora, Gingera or Stockyard?

35

A. You can't make a comparison like that because we are talking about two jurisdictions involved here, not a single jurisdiction.

40

Q. I don't quite understand, Mr Roche. A fire has no respect of borders. Which of the four fires was the one calling for the greatest attention, which was the greatest worry?

45

A. I am making the distinction, Mr Walker, on the basis that initially McIntyre's Hut fire could have been resourced from New South Wales, and

therefore the potential availability of resources from the ACT could have been applied to the fires that were at that time, on the 8th of January, in the ACT.

5

Q. Well, maybe so, sir. Perhaps you might direct your attention more to my question. Let us take a few basic characteristics. If one was identifying risk, one of the risks - I am not saying
10 determining - which you would examine between fires was their relative size. That is one thing you would take into account when working out which is the fire of greatest danger which requires the greatest attention; isn't it, the size, that is
15 one thing?

A. It is one factor.

Q. Another would be the proximity of that fire to a valuable asset; that's another thing you would
20 take into account, is it not?

A. What are you talking about - a "valuable asset"? If you are talking about private property or if you are talking about environmental assets which are just as valuable in some people's minds
25 as private assets.

Q. I am talking about in this instance a large pine forest which was to the south-east of the McIntyre's Hut fire?

30 A. Yes.

Q. That is another thing you would take into account?

A. That's correct.

35

Q. On those two bases, the McIntyre's Hut fire was by far the most dangerous fire requiring greatest attention; is that right?

A. Between the two jurisdictions, yes.

40

Q. Of the four fires?

A. Between the two jurisdictions, yes.

Q. Just so I don't misunderstand your last answer
45 unless you mean something I am not comprehending. When you say, "Between the two jurisdictions, yes" is that ultimately the same thing as saying of the

four fires it is the one that was of the greatest risk and required the greatest attention?

A. The potential to manage the risk of the Bendora, Stockyard and Gingera fires was a
5 responsibility of the ACT. Whereas the
responsibility to manage the risk of the
McIntyre's Hut fire in my view was a joint one and
therefore the resources of both agencies were
available. So the aggregate resource available to
10 the McIntyre's fire potentially could have been
greater.

Q. I wasn't talking about the availability of
resources. I was simply asking you the question:
15 which fire presented the greatest risk?

MR LASRY: Your Worship, in my submission, having
made several attempts, it isn't helpful nor
appropriate to try to ask that question in the
20 absence of the obvious consideration, which is
that there are two separate jurisdictions
involved, both of whom have an interest in the
fire.

25 The inevitable qualification that has to be added
to my learned friend's question, the greatest risk
to whom? And in whose mind does it pose the
greatest risk? Are we talking about the ESB or
are we talking about the New South Wales Rural
30 Fire Service? You can't just divorce that from
the considerations that the witness is being asked
about.

MR PHILIP WALKER: I will recast the question
35 then.

Q. Even to the ACT, McIntyre's Hut was still the
fire posing the greatest risk, wasn't it? Even
though it was across the border it was still the
40 biggest threat to the ACT?

A. Yes, sir.

Q. When one looks at questions of the weight of
response to fires, I think you have already
45 accepted - perhaps I shouldn't say that. When one
looks at the weight of response, the risk
presented by a fire is one of the matters one

would take into account; is that not right?

A. Yes, sir.

5 Q. Just as we just then canvassing, if a fire was a very large fire you might obviously send twice as many resources as you would to a smaller fire; that's pretty obvious?

A. Based on the risk, not the size.

10 Q. But size is a component of risk; isn't that right?

A. Not necessarily. You can have a very, very large fire that threatens limited assets; you can have a very, very small fire that can take out
15 half a community.

Q. I accept that, Mr Roche. Let us go to what was your understanding of the size of the Bendora fire at 2100. I think on page 106 of your report
20 you rely on Mr Cheney --

THE CORONER: Maybe page 90.

MR PHILIP WALKER: Sorry, I have written down the
25 wrong page. There was a reference to 4.5 hectares at 2100 hours.

MR LASRY: Page 67.

30 MR PHILIP WALKER: Thank you.

THE WITNESS: Sorry, which fire are we talking about?

35 THE CORONER: Bendora. Page 67.

THE WITNESS: Yes.

40 MR PHILIP WALKER: Q. Are the criticisms you make about the weight of response to Bendora based upon your understanding of the fire being a fire of 4.5 hectares at 2100 hours on the night of the 8th?

A. That's correct.

45

Q. What do you understand ESB - the Emergency Services Bureau - had been informed the size of

the Bendora fire was up to and including at least 7.30 on the night of the 8th?

A. I understand there was some confusion about the size. I would have to go back in the
5 evidence, to the evidence of both the observer in the helicopter and Ms Arman, to refresh my memory.

Q. Do you have that evidence available to you?

A. No, not directly, sir.
10

Q. Could we bring up [DPP.DPP.0006.0101]. Could you just read that telephone transcript of 8 January 2003 timed at 17:46:19 please, Mr Roche. Do you note the paragraph two-thirds the way down
15 the page where --

A. I have only got a small section of it on the screen, sir.

THE CORONER: How much of it do you want,
20 Mr Walker?

MR PHILIP WALKER: Perhaps if he could read the whole lot of it.

25 THE WITNESS: Yes.

MR PHILIP WALKER: Q. Now, it is plain from that conversation at least between Mr Graham and Mr Prince, is it not, that Mr Graham's
30 understanding at a quarter to 6 in the evening was that the ACT had two little fires, 70 square metres and 100 square metres or thereabouts?

A. That's what that says, yes, sir.

35 Q. At that time it is also plain, is it not, that Mr Graham was alive to apparently a greater risk presented by the McIntyre's Hut fire?

A. That's the way it seems, yes.

40 Q. Now I will read to you some transcript. It might be brought up as well but I will read it lest there be a delay. It is page 3535. It is a transcript of evidence given by Mr Ingram. At the top of the page, Mr Roche, Ms Cronan asks
45 Mr Ingram the following question:

"Q. I am trying to get an idea of exactly how

big the Bendora fire was on the night. You report it later on - at 1921 you reported it as 500 square metres?

"A. Yes.

5

"Q. Do you recall making a report over the radio?

"A. That was an error on my behalf. It should have been 5,000 square metres. 100 by 50 is 5,000 not 500.

10

"Q. If we go back to paragraph 16, at 1711 you say it is 100 by 50 metres, flame height, and that is 5,000 square metres; is that right?

15

"A. That's correct.

"Q. When you say it is 500 square metres later on to Mr Graham, that was an error?

20

"A. Yeah. We tried to plot the fire from the air. We provided some grid references where we thought the extremity of the fire had got to, looking down the canopy and the smoke. Knowing the fire was already 100 by 50, instead of saying 5,000, I said 500."

25

You can also pick up from the question by Ms Cronan, a paragraph or so down:

30

"Q. At 1853 'SouthCare 1' reported the Bendora to be between 500 and 750 metres square. Are you aware of that now?

"A. I'm aware of that now."

35

Over on page 3539 the question is put to Mr Ingram:

"Q. Your first observation I think is the Bendora fire, and you have made a note there that at 10 to 7 in the morning it is 750 square metres. Clearly, sir, that number or that figure is not correct?

40

"A. That's all the fire I could see at the time. An the early morning flight is probably not a good time to go flying. We have to fly visual."

45

47

He goes on to explain, essentially, what the cause of the error was. A couple of questions down he says:

5 "Q. You reported it to ESB headquarters at Curtin as being 750 square metres?

"A. That's all I could see, so that's all I could call it."

10 I will read some paragraphs from a communication log, VHF channel 2, 18:53:59: where 'SouthCare 1' - Parks 1:

15 "Parks 1: Southcare 1. We estimate the fires stayed fairly contained over the last hour and a half. We estimate it is between 500 metres and 750 metres."

20 I should say that is P1 - I assume it is Parks 1 -

"P1 to SC1. That's 500 by 350?"

25 SC1 to P1: 'Southcare 1', ah, negative. 500 metres square to 750 metres square."

Then at 1927 there is an entry between COMCEN and 'Firebird 7'. COMCEN says:

30 "Yeah, received and understood thanks 'Firebird 7'. Clear.

35 COMCEN to 'Firebird 7': 'Firebird 7', this is COMMS, can you estimate the size of that fire?

'Firebird 7': standby comms.

40 'Firebird 7' duty co-ordinator ask you do you have a sharp pencil?

Yeah, estimate at this stage about 500 square metres. Over."

45 You indicated to me a moment ago, Mr Roche, that part of your criticism of that weight of response depended upon your understanding of the fire being four and a half hectares at 2100 hours. With the

information that I have just read to you that was relayed back to the ESB where fires were variously described as, the earliest 70 and then 100 square metres and then 500 square metres. Then there was
5 a slightly different formulation of 750 metres square. And then in the following morning 750 square metres.

I would ask you to put yourself now in the
10 position of the people at COMCEN who had that information and ask you: do you make the same criticism about the weight of response, given the information that you have heard was communicated to COMCEN?

15 A. Yes, I do.

Q. Why do you do so? 4.5 hectares is 45,000 square metres; is that right?

A. No, I don't think so.
20

Q. Isn't a hectare 10,000 square metres, 100 by 100?

A. Sorry, you are right, yes.

25 Q. And 4.5 hectares is 45,000 square metres?

A. Yes.

Q. You make your criticism about the weight of response based on your assessment or the
30 information you have been provided that the fire was 45,000 square metres at 9 o'clock?

A. Yes.

Q. Doesn't it call for some adjustment to your criticism of those people responsible for setting the weight of response if they were possibly labouring under the misapprehension that instead of being 45,000 square metres the fire was 500 square metres; doesn't that require some
40 adjustment to the criticism about weight of response?

A. No. I said on the basis of, in my view, and accepting the proposition that we have, that the McIntyre's fire was the primary risk to the ACT
45 due to its proximity to the pines, when their aim should have been to put out the other fires as quickly as possible so all of the resources could

have been concentrated in support of New South
Wales on the McIntyre's fire. So on that basis
the size of the fire that you are indicating, the
4.5 hectares - and I am not arguing with that -
5 required a far greater response than it received.

Q. So just so we can break down your reasoning
into its component parts and understand your
thinking, if there had been no McIntyre's hut fire
10 your criticism would require some adjustment?

A. My analysis and comments are based on the fact
that there was a fire at McIntyre's. I did not
consider any formula or any response in any other
context than the existence of those four fires.
15

Q. Can I go the other way. If you say there
should have been a greater response and possibly
even I think you said greater than standard
operating procedure number 7 --

20 A. That's correct.

Q. And you still say that should have been the
case for a 500 square metre fire as COMCEN
understood it, you say the same amount of troops
25 should have been sent to a 45,000 square metre
fire?

A. I am saying more should have been sent.

Q. More than what?

30 A. More than the standard operating procedure
number 7 response.

Q. Even to a 500 square metre fire?

A. That's correct. What I'm suggesting to you
35 and what I have suggested in this report is that
the SOPs should have been adjusted given the
season, not necessarily individual fires but the
season that was being faced by the jurisdiction.

40 Q. I think you have already agreed with me you
are not familiar with the parameters which give
rise to the weight of response in standard
operating procedure number 7?

A. Regardless of the parameters, I believe it was
45 still inadequate.

Q. Why in your report, Mr Roche, do you not make

mention of the confusion which you acknowledged before I read those paragraphs to you that you were aware of when making comment about the weight of response?

5 A. My analysis and recommendations are based on what actually occurred. I didn't feel I was aware or I assume - sorry, I didn't assume. The evidence had already been put before her Worship of the confusion over the size of the fire so it
10 wasn't necessary for me to repeat that. My purpose was to outline, given what the actual circumstances were and what should have occurred.

Q. Insofar as your report is based on the actual
15 circumstances rather than what was known to those who were in charge at Curtin, it cannot be used as a criticism of those people in relation to the weight of response, can it?

A. As I think I have explained, I didn't
20 criticise them for the weight of response. What I am saying is the weight of response was inadequate, regardless of the circumstances and the size of that fire, full stop.

Q. I understand that. It may be that if those at
25 COMCEN were aware that the fire was 4.5 hectares or 45,000 square metres rather than 500, they may have a different view too. But lest it be thought that your report is a criticism of those people
30 who were responsible for dispatching people to these fires - so far as you thought it is a criticism - are we to understand your answers that it is not; it is not a criticism of the people who made judgments at COMCEN on the night about the
35 weight of response?

A. Yes, it is - and I say that because in fact the weight of response was adjusted. It wasn't a standard weight of response. So someone in ESB or
40 COMCEN made a decision that we will send less than we would normally send. Subsequent to that COMCEN were also aware of the confusion over the size of the fire, which should have been cause to evaluate and adjust the response again.

Q. So in relation to Bendora fire and any
45 criticism directed to those responsible for determining the weight of response, are we down to

a criticism based on the fact that they dispatched one less tanker to Bendora?

A. The criticism I have --

5 Q. In relation to the Bendora fire?

A. The criticism I have in relation to the Bendora fire was that the response was inadequate.

10 Q. I think we are at cross-purposes, Mr Roche.

THE CORONER: Mr Walker, I understand what Mr Roche is saying. He has now repeated it about four times. What he is saying is that the response was inappropriate in accordance with the SOP number 7. In any event, given the conditions he has serious reservations about the effectiveness and the correct number of responses and tankers that should have been reviewed - SOP 7 should have been reviewed given the conditions. That is really what he has been saying for the last 10 minutes, Mr Walker.

MR PHILIP WALKER: I am trying to ascertain whether his criticism about that response on that night, SOP number 7 not having been reviewed, is limited to in relation to Bendora --

THE CORONER: And the other fires?

30 MR PHILIP WALKER: Well, we can take it piece by piece - is limited in relation to Bendora to the fact that it was one tanker down.

THE WITNESS: That's not my criticism.

35

MR PHILIP WALKER: Q. Again, your criticism is, as you have said, the SOP had not been adjusted; is that right?

40 A. My criticism is that the response to the Bendora fire and, for that matter, the Gingera and Stockyard fires was inadequate.

Q. It is a common adage, is it not, in fighting the fires that one endeavours to fight the fire that you have got rather than the fire you may have. That's often a rule of thumb, isn't it?

45 A. To some extent, yes.

Q. But there are certain circumstances where that might be adjusted?

A. I think that's correct. I think yesterday someone, one of counsel, raised the issue for
5 instance of the need to still retain a capability in the urban area of Canberra. If you took literally your proposition then all of the resources of Canberra would have been committed to fighting the fire that existed at the time. There
10 still has to be security considerations to retain a capability where a risk still exists.

Q. In the particular circumstances on the night of the 8th, one of the characteristics which might
15 properly have operated on the mind of those in charge of the ACT Bushfire Service would have been the possible need to send resources to the McIntyre's Hut fire; is that right?

A. Yes, albeit I assume it could have been very
20 clearly or very rapidly clarified between communication between the two headquarters.

Q. You know in fact that communication was going to take place because you were aware
25 Mr Lucas-Smith in his planning officers and so forth were going to New South Wales to have that discussion, and that discussion was going to centre on McIntyre's Hut?

A. I would have assumed the communication would
30 have taken place before then.

Q. Doubtless that is the most detailed communication that was going to take place, given
35 the personnel in attendance plus the personnel involved?

A. That's correct.

Q. I think you are familiar with a telephone conversation between Mr Graham and Mr Lucas-Smith
40 which occurred at 7.42 on the night of the 8th. Have you seen a transcript of that telephone conversation? My copy of it, I should say, is on page 826 of the transcript. I know there is another reference to the document.

A. I understand there is a telephone conversation
45 between Mr Graham and Mr Lucas-Smith on the night of the 8th.

Q. I wonder if we could bring up - as I said I have a reference at page 826 of the transcript --

MR PIKE: I may be able to assist. I believe it
5 is [DPP.DPP.0003.0207].

THE CORONER: Thank you, Mr Pike.

MR PHILIP WALKER: Q. Just take the opportunity,
10 Mr Roche, to refresh your memory of that telephone conversation, please.

A. Yes, sir.

Q. Perhaps we could go back to the first page
15 again, please. The first part you might note about that conversation is that after the formalities Mr Graham indicates to Mr Lucas-Smith that the fire is 500 square metres and burning very slowly.

20 A. Yes.

Q. Further down you see Mr Lucas-Smith asks whether they are going to be able to do anything with the fire tonight. Mr Graham said he was
25 doubtful. Mr Lucas-Smith says, "We would be looking at crews back tomorrow." Mr Graham says "yes". Mr Lucas-Smith says, "I will leave you to organise that with Odile." Mr Graham says "okay". Mr Lucas-Smith then says:

30

"We need to make sure that we, ah, that we don't commit ourselves beyond what we might end up needing to commit to the McIntyre fire".

35

Pausing there, do you make any criticism with Mr Lucas-Smith's statement at that point, "We need to make sure we don't commit ourselves beyond what we might end up needing to commit to the McIntyre
40 fire"?

A. Only to the extent my understanding would have been that Mr Lucas-Smith was not aware at that particular time, because it was before the meeting with New South Wales, as to what, if anything, may
45 have been needed to support New South Wales, and the fact that the decision not to pursue action on the Bendora fires predicated prematurely before

Ms Arman had got back to them with her reconnaissance.

5 Q. Well, at that point you neither knew what was required - sorry, did you just say - you said, "The decision not to pursue action on the Bendora fires predicated prematurely before Ms Arman had got back with her reconnaissance". What is it about what Mr Lucas-Smith said there that
10 suggested he would not have committed to the Bendora fire?

A. Mr Lucas-Smith said, "Okay, so are they going to be able to do anything tonight, do you think?" Mr Graham said, "I would be very doubtful that
15 they could". Mr Lucas-Smith said, "So we would be looking at crews back tomorrow?"

Q. There is no decision there, is there?

A. No, there's not. But the additional evidence
20 that followed that indicates that that was the outcome.

Q. That might be the outcome. But I suggest to you there is in fact nothing that Mr Lucas-Smith
25 said which indicated that he had decided there would not be commitment to the Bendora fire?

A. He says in response to Mr Graham that they are not going to be doing - "so, ah, what are they going to be able to do anything tonight, do you
30 think?" Mr Graham replied, "I would be very doubtful if they could." Now, if Mr Lucas-Smith had decided there was going to be a response, I am sure he would have said, "We will leave those resources on the fire ground".
35

Q. "So we would be looking at crews tomorrow"?

A. That's correct - back tomorrow. Not "tomorrow" but "Back tomorrow".

40 Q. Indeed --

A. My assumption from that is --

Q. So "we would be looking at crews back tomorrow"?

45 A. That's correct.

Q. You make the same criticism as you have just

made in your oral evidence at page 71:

5 "It appears from this conversation that both the CFCO and the duty co-ordinator had determined to withdraw resources without the benefit of appropriate fire ground intelligence".

10 Now, if you read on past the reference to "not committing yourself beyond what might be needed to commit to McIntyre's" the conversation reads:

"Tony Graham: yes, sure.

15 "Peter Lucas-Smith: But I think we need - if we can get them out of the way the better.

"Tony Graham yep.

20 "Peter Lucas-Smith: But ah, McIntyre's will be most likely be, um, tankers with back-burning operations anyway, so --

25 A. "Tony Graham: yep. Okay." Sorry, where is this?

Q. Over on to the next page.

A. Yes, I see that.

30 Q. It goes on:

"Mr Lucas-Smith: we might use other resources for that."

35 A. Yes.

Q. I suggest to you the interpretation that you have made and included in your report, upon a fuller reading of that conversation, is simply wrong; that Mr Lucas-Smith is in fact recorded as suggesting "firstly if we can get them out of the way, I suggest the ACT fires and further that McIntyre's Hut" - which is what he was to some extent concentrating his attention on - "might use other resources." Accordingly, the criticism you make on page 71 is ill-founded?

45 A. I don't think so.
47

Q. Was the interpretation of that conversation a matter you had discussions with anybody else about?

A. Not that I recall.

5

Q. Did you gain your interpretation of that conversation from what you had read of questioning in the transcript?

A. I think there was no doubt that I was influenced in the final interpretation by the events that actually occurred.

Q. Do you recall when it was that ESB first learned the size of the Bendora fire was in the order of 20 hectares?

A. No, I don't recall that specifically; it would have been on the 9th.

Q. Yes. In fact, if I suggested to you it was when Mr McRae flew over the fire at about 10.30 that that information became available; does that refresh your memory in any respect?

A. I don't make the connection between Mr McRae's flight and the 20 hectares but I have no reason to doubt that, sir.

Q. It may follow from answers you have already given, but does the fact that up until approximately 10.30 on the morning of the 9th ESB appeared to be labouring under the misapprehension that the fire could have been as small as 750 square metres make a difference to any criticism that you make about the response made for the morning of the 9th?

A. No.

Q. What became exhibit 49, the Forest Fire Management Group paper which you were asked some questions about yesterday, you said that that document had not been endorsed by AFAC.

A. That's my information, sir.

Q. The Forest Fire Management Group, is that some constituent part of AFAC?

A. No, sir, not to my knowledge - not in the time that I was on various committees in AFAC.

47

Q. Is AFAC considering that particular paper, to your knowledge?

A. Not to my knowledge.

5 Q. You also gave evidence, I think, that there was no CFA publication on night-time firefighting; do you recall that?

A. Not to my knowledge.

10 Q. Do you mean no publication that dealt with night-time firefighting, even if only in part?

A. I can't recall any document.

15 MR PHILIP WALKER: Your Worship, might I approach?

THE CORONER: Yes.

MR PHILIP WALKER: Q. I show Mr Roche a document called "Wildfire safety and survival: a guide for fight fighter survival" - I think this has been exhibited. It is document [ESB.DPP.0001.0157]. I direct Mr Roche's attention to page 10 where there is some specific mention made to working at night. If you just look at that page, Mr Roche.

25 A. Yes.

Q. Have you read it?

A. Yes, I have.

30 Q. Was there any publication like that in the Country Fire Authority?

A. I believe that's a copy of a CHCFA document. I don't recall the specifics of that. When I indicated to you that there were no documents, it is probably slightly incorrect because from time to time night-time firefighting was always mentioned in some sort of a way. And I can remember that, for instance, in procedures for changeover of crews it was recommended wherever possible crews be sent in in daylight and not at night-time.

45 There were various references to some extent about issues associated with night-time firefighting, but I don't recall that document itself in specific terms. I have no doubt that it existed because I believe that it was adopted from the

CFA. If I could just have a look at the date of publication of that.

Q. It is at the back.

5 A. Thank you.

Q. It was 1997?

A. 1997.

10 Q. You were chief officer at that time?

A. I believe so. I was not responsible for publishing those sorts of documents, though. It didn't necessarily across my desk for approval.

15 Q. The particular document which you said the ACT publication is a copy says:

"Working at night."

20 And directs attention in the following terms:

"Day-time hazards in the fire ground will present new problems to you in the dark."

25 And goes on to refer to:

"Burning stump holes, branches at eye level, sticks, rocky terrain which cause accidental falls and tripping."

30

It seems to suggest that whatever hazards there are on the fire ground, of which doubtless there are many, there are in fact a greater range of hazards of a night-time?

35 A. I wouldn't disagree with that. I note that that publication doesn't talk about falling limbs, though, sir.

40 Q. No. But you would accept, I take it, that the evidence is that there were in fact falling branches of trees and so forth at the Bendora fire on the night of the 8th, do you?

A. I would expect at any fire there would be falling limbs within the fire perimeter within a
45 forest fire, yes, sir.

Q. Did I understand evidence that you gave

earlier to suggest that in some way the falling of timber is necessarily connected with the fire; in other words, if there wasn't a fire there wouldn't be falling of timber?

5 A. I don't recall saying that, but timber does fall within a fire.

Q. That's exactly what I was going to say. You have seen in that area, have you not, that even on
10 any day there are trees which have fallen over and are propped up by other trees and frankly could fall at any time?

A. Sorry?

15 Q. There are trees which have fallen over and are propped up by other trees and which could fall at any time?

A. That's correct. Day or night.

20 Q. One of the ways of dealing with that particular risk is to cut down the trees that present a risk; is that right - a chainsaw crew goes in?

A. Not necessarily.

25 Q. But it is a way --

THE CORONER: This is in a fire or not in a fire situation?

30 MR PHILIP WALKER: In a fire situation, your Worship. If I didn't make that clear, that's what I meant.

35 THE WITNESS: No, I don't think in general terms that would occur.

MR PHILIP WALKER: Q. Not even in the day-time?

40 A. That's correct. Unless there was a specific reason, for instance, of a tree that was in danger of blocking an access track or something like that. But just to go in and cut down trees in a fire perimeter just because they happen to be in danger of falling, you would be cutting out half
45 of a forest.

Q. On page 68 of your report, the first sentence

in that paragraph says:

5 "I noted during the evidence that a number of witnesses expressed their concern at the decision not to deploy firefighters overnight in the ACT."

10 Which witnesses did you have in mind relating to deployment at the Bendora fire on the night of the 8th?

A. I would have to go back over the evidence that has been presented before the Court.

Q. Well, was it Mr Stevens?

15 A. Without looking at his statement or his evidence, I can't be sure, sir.

Q. You refer in that sentence to "the first two nights". Should we read that sentence to suggest 20 that there was more than one witness on the first night, the night of the 8th?

A. I don't know, sir.

Q. Could I ask you perhaps during the course of 25 the lunch, Mr Roche, to see if you can in fact recall which witnesses you were referring to in that particular paragraph.

A. You may have to extend the lunch hour, sir.

30 MR LASRY: Your Worship, that may not be necessary. I refer my learned friend to the following pages, and in particular those passages which appear to be footnoted at 117 and 118.

35 MR PHILIP WALKER: It doesn't in fact address the same point about which I asked.

THE CORONER: You want to know --

40 MR PHILIP WALKER: Not 117. Footnote 118 refers to Mr Stevens. I will take the opportunity, given Mr Lasry has made mention of it, to have a look at those statements.

45 Q. Did you rely on the opinions provided to you that firefighting ought to have taken place on the night of the 8th in the opinion which you formed

yourself?

A. No.

Q. It is entirely your own?

5 A. No.

Q. Well, if your opinion that firefighting ought to have continued on the night of the 8th is not entirely your own opinion, what else did you rely on, apart from your own opinion?

10

A. Other evidence before this court.

Q. But not other opinions?

A. Well, some of that evidence did, I understand, contain opinions.

15

Q. Have you seen a list of the qualifications recorded by ESB for Odile Arman?

A. Yes, I have, sir.

20

Q. Do you regard them as in any respect deficient?

A. Not having them before me, I can't comment specifically but I had no reason to question Ms Arman's training.

25

Q. Your question about her experience then lies not so much in the absence of formal training but I gather in practical experience, is that --

30

THE CORONER: I think this is the ground that Mr Craddock went over yesterday or the day before, Mr Walker.

35

MR PHILIP WALKER: Maybe so --

THE CORONER: Unless there is another point with that you wish to make. But that is the area, as I understand it and recall it, that Mr Craddock covered fairly extensively.

40

MR PHILIP WALKER: Well, perhaps your Worship from my point of view the formal training part of it suffices.

45

Q. I have asked you some questions about dangers of firefighting at night. I want to raise with

you the question of whether actual deployment of firefighters in the dark to a fire ground to which they have not been before adds yet another measure of risk to the firefighters?

5 A. Yes, it does.

Q. In fact, that's the very reason why shift changeovers ordinarily take place during daylight hours so that firefighters can familiarise themselves with the fire ground in a manner which they might not be able to do in the dark?

10 A. That's preferred practice, in my view.

Q. Did you, in reaching your view about withdrawal from the fire ground, take any account of the opinions of people such as Neil Cooper, who said the best person to make a decision was the person on the fire ground. Did you recall Mr Cooper's opinion?

15 A. No, I didn't, because I don't disagree with what he is saying.

Q. Mr Roche, the question of rappelling, which I mentioned to you yesterday, have you been able to find out any information in relation to cost of that particular technique since I asked you some questions about it yesterday?

25 A. No, I haven't. But I thought about the exchange that occurred yesterday. A number of considerations are applicable. My understanding is that under the new national firefighting arrangements, the ACT will have access to helicopters that are capable of rappel operations during summer seasons.

35 Q. When is this? When is this to take place?

A. I think it is in my report.

Q. Well, that may be so, Mr Roche but you have not been able to update yourself on any aspect of costs about rappelling.

40 A. No. But what I am suggesting to you is that in the exchange that occurred yesterday there was a perception, or there may have been a perception that this was a totally new resource, totally new cost, based on one that the ACT might have to fund it totally themselves.

There are other alternatives to that which would significantly reduce the cost: the use of the helicopter that is, as I understand it, or will become available under national arrangements, a shared arrangement which could quite easily be struck with New South Wales because of the proximity to the Brindabellas itself and a whole range of other things. The training of people, not necessarily from within the Bushfire Service but also encompassing the land management agencies. There are a number of options available which can significantly reduce what might - it only needs a bit of initiative and innovation - to reduce what might be seen in isolation as a significant cost.

Q. It is not going to reduce the cost of any ACT contribution to that by way of training, is it?

A. May well.

20

Q. If I were to put to you that the cost of training four teams of rappellers of five members each cost a quarter of a million dollars annually, and that equipment is a cost of something like \$80,000, would that seem appropriate for the numbers of people concerned?

25

A. If you are talking about the cost that is incurred by the Department of Sustainability and Environment in Victoria that hire additional people and pay those people, yes. I'm not suggesting that that is a solution at all.

30

MR PHILIP WALKER: That reaches the end of a particular section, so that may be a convenient time. Mr Watts said he had something he wished to tender prior to the luncheon adjournment.

35

THE CORONER: Yes, Mr Watts?

MR WATTS: Your Worship yesterday on two occasions, once during my cross-examination and once at the end of my cross-examination, raised the question of information which may be available which is not before the Court. I have today given counsel assisting a letter which I tender relating to matters I raised yesterday, both in relation to the Scania pumper and the matters on page 39 of

45

Mr Roche's report.

THE CORONER: Thank you for that, Mr Watts. Do you want to tender this?

5

MR WATTS: Yes, I do tender it.

THE CORONER: You can step down, Mr Roche, thank you.

10

Letter dated 8 October 2004 from Mr Watts to Mr Lasry under the heading "bushfire inquest inquiry" will become exhibit 0107.

15

EXHIBIT #0107 - LETTER DATED 8/10/2004 FROM MR WATTS TO MR LASRY TENDERED

THE CORONER: Have you received the information requested from Ms Bird, Mr Lasry?

20

MR LASRY: No.

THE CORONER: What is the state of that?

25

MR PHILIP WALKER: During the course of my cross-examination Ms Bird handed me a note which related to that. I will read what I have been given:

30

"There is an index of documents - which I gather is available - photocopies of all publications can be made available for inspection at the office of Helen Rummery on Monday. I don't have the resources to have all emails photocopied before then. Some document are in the possession of Mr John Nicholson. Some are being looked at by him on the net, but not printed out."

35

40

Your Worship, I will seek some more clarification about this and I will give you an update on it after lunch. That is probably a better idea.

45

MR LASRY: Can I just take a minute to deal with Mr Watts' letter to the extent that I can. To deal with the last matter first, that is the information from Mr Bartlett, we would be content

with a letter to be provided setting out the material. I would be happy to tender it without the need for Mr Bartlett to be recalled.

5 So far as Mr Willmott is concerned and the defects to the Scania pumper, I will perhaps take that under consideration as to the need for it. I should make clear that we have only now, I suppose modicum of assistance from the police
10 investigation team - it doesn't exist now - who have obtained statements and material for us as we need it. But I will certainly make some inquiries about it and we will make some determinations as to whether that should be put
15 before you as well.

As far as I am aware the McLeod report is before you as part of the material.

20 THE CORONER: Yes, it is.

MR LASRY: To the extent that paragraph 129 of that report is significant, that material is already before this court.

25 THE CORONER: Thank you. We will resume at 2 o'clock. Thank you.

LUNCHEON ADJOURNMENT [1.05pm]

30 **RESUMED [2.02pm]**

MR PHILIP WALKER: Your Worship, I said I would give some indication of the story with those
35 documents and it is this: I anticipate there will be a comprehensive index of the documents available at 2.30 this afternoon. The documents are presently being copied. I do not understand that will be completed this afternoon, but it will
40 be by first thing Monday morning. There will be somebody working over the weekend to complete that exercise. I gather there are something in excess of 100 documents which are being copied for that purpose. That is the best information that I have
45 available to me at the present time.

THE CORONER: This 100 documents is over and above

the information available to all persons.
Mr Nicholson himself says he had access to some
statements and evidence that is in the brief. So
these presumably are matters that are on the list?

5

MR PHILIP WALKER: I haven't checked this
specifically - I got a rather quick telephone call
about it. I don't understand that it includes
copying of documents that are available on the
system.

10

THE CORONER: It wouldn't be necessary.

MR PHILIP WALKER: There would be no point in it.

15

THE CORONER: If there is an index of those
documents, that will be fine. So what time do you
say Monday morning?

MR PHILIP WALKER: That is my understanding - 9.30
or something in that order, and they will be
available to be looked at at that time. There
won't be multiple copies run off. There will be,
as I gather it, a copy on that occasion.

20

MR LASRY: We will wait and see what we get,
your Worship.

25

THE CORONER: I was hoping that we perhaps would
finish the evidence next week. I don't propose to
sit on Friday and I was hoping that we would
finish by Thursday, the 14th. Is there any
prospect of that?

30

I am not going to hold counsel to how long they
are going to cross-examine Mr Roche but I am sure
he would like some indication as well as to how
long he will be required next week. If anybody is
able to indicate how long they would be, I would
greatly appreciate that. We then have to fit in
Mr Nicholson.

35

40

MR PIKE: There will be every prospect he will be
finished next week.

45

MR LAKATOS: I agree with Mr Pike's assessment.

47

THE CORONER: By Thursday?

MR LAKATOS: Yes.

5 THE CORONER: But then we are talking about the recall of Mr Lucas-Smith and Mr Castle as well.

MR LASRY: It is not just this witness. There is a bit to go yet. It means Mr Lucas-Smith, Mr Castle, Mr Roche and Mr Nicholson. If we finish that by the end of Thursday we will be doing very well.

15 THE CORONER: Yes, we will see how we go.

MR PHILIP WALKER: Your Worship, I will review whether Mr Lucas-Smith is to be recalled over the weekend and, if there is a change in that, I will let you know at the first available opportunity. I won't call him for the sake of calling him.

THE CORONER: Yes, I understand that.

MR PHILIP WALKER: Q. Mr Roche, at page 111, you report a conversation that you had with Mr Koperberg of the New South Wales Rural Fire Service and you state that presumably he but you were informed that up to 100 tankers and crews with supporting infrastructure and command and control personnel could have been obtained. If the request had been initiated on 15 January, it could have been dispatched in time to arrive in Canberra by the night of the 17th of January.

35 Did you ask Mr Koperberg in the course of your discussions why, if he had up to 100 tankers and crews available that he could dispatch to Canberra, he didn't dispatch those additional resources to McIntyre's Hut, or part of them?

40 A. No, I did not.

Q. Why not?

A. My aim in discussions with the other jurisdictions was purely to ascertain what might have been available had it of been requested. No other reason.

47

Q. Well, you make some comment about not only the ACT but also New South Wales and at times you compare New South Wales response to McIntyre's Hut with the ACT response to the fires under their control. So you were clearly looking at the way New South Wales was conducting its fire, weren't you?

5
A. I don't recall where I made comparisons between the two agencies in that context.

10
Q. At page 85 you say in the last paragraph of the section:

15 "When multiple fires occur, early establishment of an IMT and a comprehensive and continuous intelligence gathering and planning capability are critical success factors in keeping ahead of the fire and anticipating resource requirements. Apart from the failure to arrange on-ground reconnaissance by agency personnel of the McIntyre's fire and the Baldy Range fire on the afternoon and evening of 8 January as discussed above, the New South Wales agencies were effective in this regard. In my opinion, the ACT agencies were not."

20
25
30 You intended to put their response to the respective fires side by side in the form of comparison there.

MR ERSKINE: I object to the question. The comparison that is being made there is, with great respect, unequivocally to do with the management structure. That is the creation of the IMT and planning and so forth. As we read Mr Roche's report, he has been meticulous in not going beyond simply noting what resources were provided by New South Wales to fight New South Wales fires, for reasons which your Worship would be familiar with.

THE CORONER: That does appear to be so, Mr Walker. Do you want Mr Roche to confirm that?

45 MR PHILIP WALKER: Q. Perhaps I will ask whether Mr Roche agrees with that, that that is in fact what he is doing.

A. Yes, I do.

Q. If it is just what resources were provided, Mr Roche, what is the reference to New South Wales agencies being effective and the ACT agencies not being so?

A. In the development of some of the implementation of an Incident Management Team, incident control structure and at least some semblance of a planning and intelligence gathering network.

Q. Isn't that making a comment about one part of the response which New South Wales had to make to the fire it was concerned with; that's making a comment about that, isn't it? You looked at what they did and you assessed it and you decided it was effective?

A. That's correct.

Q. You made the same comparison in your view when you said the ACT was not. If you were making those sorts of comparisons, why wouldn't you actually have said to New South Wales, "Look, you had these resources available to you and after all it was McIntyre's Hut, which was viewed as a very great danger by both the ACT and New South Wales, why didn't you send them down?"

MR ERSKINE: I object to the question, your Worship. I must say I am objecting at a rather strange place in the evidence in this respect that I rather thought we had sorted this part of it out. But we are now seeking to have comment made about the resources that New South Wales did or did not allocate to the fire.

MR PHILIP WALKER: That is not the question.

MR ERSKINE: It is, with respect, the question of where it is going to go. The question, in our submission for reasons previously discussed 10 months ago at least argued that --

THE CORONER: I don't know that it is what Mr Walker is asking, Mr Erskine. I think all he is asking is why didn't he - I don't know that it

is implying a criticism necessarily of New South Wales from what Mr Roche has said. All Mr Walker wants to know is whether or not Mr Roche did ask about further allocation.

5

MR PHILIP WALKER: He said he hasn't. I am curious as to what his reason was.

10 THE CORONER: Mr Roche said he hadn't and you're asking why he didn't ask.

15 MR ERSKINE: Yes, I understand that. But if we just follow this for 30 seconds, if we leave the question and answer there, "Why didn't you" and the answer presumably will be along the lines of what it was a couple of minutes ago, then that is not going to advance anyone's understanding in terms of the task before your Worship. If this is leading to the next question, then we are heading
20 into an area that is problematic --

MR PHILIP WALKER: Perhaps Mr Erskine might let us all in on the secret. What does he anticipate in his mind the next question is, and I will tell him
25 whether it is or it isn't.

MR ERSKINE: It is really a question of what the purpose is of this line of questioning?

30 THE CORONER: That is a valid comment, Mr Walker. But having said that, I don't believe there is anything objectionable about that question as to why - and I think Mr Roche has already answered it in part. I will allow that question as to why you
35 didn't ask, Mr Roche.

MR ERSKINE: If your Worship pleases.

40 THE CORONER: Q. Why didn't you ask?
A. Why didn't I ask who?

Q. Mr Koperberg.

45 THE CORONER: Can you repeat the question, Mr Walker?

THE WITNESS: You are talking about two different

circumstances.

THE CORONER: Just repeat the question, I think.

5 MR PHILIP WALKER: Q. When you were informed that New South Wales could have sent up to 100 tankers to the ACT --

THE CORONER: Tankers and crews.

10

THE WITNESS: I do understand the question, your Worship.

MR PHILIP WALKER: Q. In your command and so forth, why didn't you ask Mr Koperberg a question such as, "If you could have done that and you received no request from the ACT, why didn't you send them down to help fight McIntyre's Hut?"

15 A. As I have already indicated, the purpose of my inquiry of Mr Koperberg was to ascertain what may have been available to support the ACT, particularly in the event of a risk to the urban boundary of the ACT, not in a general firefighting regard. And the purpose of the inquiry was also
20 related to the period from the 15th of January on, not the period prior to that where I have already indicated that in my view the response by New South Wales was inadequate.

25 Q. Do you understand the containment of the Bendora fire on the east was completed; do you know what date it was completed?

A. Sorry?

30 Q. Do you know what date the containment lines on the Bendora fire to the east were completed?

A. To the east?

Q. Of the Bendora fire?

35 A. No. You would have to refresh my memory on that.

Q. Could I suggest to you that they were all but completed on the 15th and then completed on the
40 16th?

A. Was that the containment of the fire or the establishment of a containment line?

Q. The completion of containment lines?

A. That could well be right.

Q. Are you aware of where the containment lines
5 had to be located in relation to the Bendora fire?

A. Again, I would have to refresh my memory but,
from my memory, it is well to the east of the
fire.

10 Q. Perhaps I should ask the question slightly
differently. Were you aware where the containment
lines were located?

A. I was at the time I did the report. You would
have to refresh my memory now: is that before they
15 were breached and there was a second fallback line
or before that?

Q. If I could ask for [ESB.DPP.0013.0015] to be
20 displayed, please. Just have a look at the map,
Mr Roche. Have you seen it before?

A. I think I may have seen that map. The only
thing is: what date is that?

Q. Beg your pardon?

25 A. What date is that position of the fire?

Q. It is in fact a series of containment lines at
various times, one along Wombat Road and then cut
along Flat Rock Spur and so forth. The Midnight
30 Hollow Road and the Mt Franklin Road containment
lines at various times. It displays several of
the containment lines.

A. Yes.

35 Q. Just before I go on, if I suggest to you that,
in the centre where you see a dot in that
triangular piece, it was in that area that
ignition of the Bendora fire occurred; does that
assist you? Can you assist us by indicating how
40 you approached that fire when you visited it? You
said you came in from a road to the north - are
you talking about Warks Road?

A. It may well be.

45 Q. It is there referred to as "Bendora Break" and
at times "Warks Road"?

A. It may be. I can't read the names of the

roads on that map.

Q. Do you see the square "Bendora arboretum" approximately to the centre of the page slightly to the left?

A. No.

Q. Perhaps I will approach and point it out.

A. No, I don't see it there either.

10

THE CORONER: Q. There is Warks Road.

A. I can see Warks Road. I can see the arboretum now. Yes.

15 MR PHILIP WALKER: Q. Is it along Warks Road that you feel you may have inspected the Bendora site when you undertook your visit - or off Warks Road, I should say?

A. I can't be sure.

20

Q. Do you understand that on the evening of the 9th there was a decision made to change from direct attack to indirect attack but at the same time maintaining direct attack on the Bendora fire so as to minimise its spread while the containment lines for indirect attack were put in?

A. Yes, I believe that was the case.

30 Q. And in circumstances where you looked at the containment lines that were put in, most of them were dictated by the road and trail network in the area, were they not? Flat Rock Spur, I think you were aware there was some cutting done to put that line in. The others are dictated by roads and trails.

35

A. Could I see the full map again, please. Yes, according to this map the majority of them, as you say, with the exception of the road or the trail down Flat Rock Spur. I'm not sure about this section on the southern end of Parrat Road (indicating) whether it had to be constructed. The other thing I am not sure about I believe some of those trails needed brushing up as well.

40

45 Q. Indeed. That strategy of direct attack to try and minimise the spread of the fire so as to give some breathing space for the introduction of

containment lines is an appropriate strategy in the circumstances on the 9th and 10th of January for the Bendora fire?

5 A. If the resources are unavailable to continue direct attack, yes.

Q. At page 131 of your report you say in the sixth last line onwards:

10 "I do not agree with this assertion and believe that the planning officer made an error in his decision not to accept validated scientific outcomes in a situation where a significant risk to lives and property was
15 present."

The "validated scientific outcomes" that you are talking about, was that the adjustment that is being suggested ought to be made in accordance
20 with the project Vesta research?

A. That's correct.

Q. You have read the evidence of Mr Cheney?

25 A. Yes, I have.

Q. Do you still say that Project Vesta is a validated scientific outcome?

30 A. From an operational point of view, in my mind, the results of Project Vesta validated what I, as an operational officer, had known for a number of years, and validated and quantified it.

Q. Have you read the brochure that was sent out in relation to Project Vesta?

35 A. Yes. I haven't at this particular hearing but I have read it before.

Q. Do you recall the reference to:

40 "Forest fires in fuels with a developed shrub layer taller than one metre can spread up to three times faster than predicted by the MacArthur meter."

45 A. Yes.

Q. Well, in the pine forest areas in the ACT we didn't have shrubs between the pine trees taller

than a metre, did we?

A. I would have made an assumption that the construction of the pine tree with its lower --

5 Q. Perhaps you would just answer the question. There is no such shrub growth in the pine forest?

A. No.

10 Q. Did you hear Mr Cheney say, in answer to a question that I asked him, that Project Vesta research has nothing to offer in relation to progress through the ACT pine forests and that it would not justify multiplication by a factor of three?

15 A. Not a factor of three, no. That's correct.

Q. Did you also hear him answer my question that it would not justify a multiplication by a factor of two?

20 A. I don't recall that. But if you say that's how he responded, yes, I wouldn't dispute that.

25 Q. So whilst you may have a view based on your own experience that the MacArthur meter underpredicts the more intense level of fire, does that information and the absence of a shrub layer and Mr Cheney's answers - does it require some adjustment to your paragraph at least insofar as it depends upon the results of Project Vesta?

30 A. No.

35 Q. You make a number of criticisms of the fighting of the fire on the 17th and 18th by the ACT authorities. Where do you understand that the majority of ACT resources were deployed on Saturday the 18th?

A. The southern portion of the fire.

40 Q. Do you also understand that they were engaged in property protection?

A. Yes.

45 Q. Is there a point where, given the speed of the onset of the particular fire, one simply has to make a choice between - let me withdraw the question. Do you accept Mr Lucas-Smith in the disposition of his resources was entitled to place

his resources in the south to protect rural properties, as he did?

A. When did I say that?

5 Q. I am asking you: do you accept that he was entitled to do so, that it was an appropriate decision to allocate his resources to the fire which occurred on the 17th and continued on the 18th in the southern part of the Territory to
10 protect rural properties?

A. I think the incident controller had a responsibility to place his resources - or first of all to recognise the limitations of the resources that he had available and then to place
15 his resources to protect the areas of highest risk and highest exposure.

Q. How does that fit with fighting the fire that you have? There were rural properties actually
20 under threat in the south, on the 17th and 18th, weren't there?

A. Yes, there were.

Q. At 1 o'clock on Saturday afternoon the
25 McIntyre's fire was still west of the Murrumbidgee River?

A. I am sorry?

Q. The McIntyre's fire was still west of the
30 Murrumbidgee River at 1 o'clock, wasn't it?

A. As I recall, yes.

Q. In fact, it was still west at 2 o'clock, if I recall correctly?

35 A. I can't recall exactly when it crossed the river without reference to the material but I suspect you are right.

Q. Did you note the evidence of Mr Bartlett who
40 was somewhat taken by surprise because his headquarters, the forestry headquarters on the Cotter Road was actually burnt, and he was again taken by surprise because he thought his car might be in danger at Weston?

45 A. Yes, I do remember that.

Q. The fact of the matter is that the fire

descended, particularly after 1 o'clock, extremely rapidly, didn't it?

A. Not necessarily outside of predictions or - everybody's expectations.

5

Q. You accept --

A. Sorry, I accept there was a portion of the fires which impacted the western suburbs that nobody could have predicted.

10

Q. Nor could they have predicted quite the form in which impact occurred - the extraordinary fire that impacted?

A. I don't think the impact of the McIntyre's or the Bendora fire itself was overly extraordinary. I certainly believe that the fire that came off the back of the McIntyre's fire and spread between the northern flank of the Bendora fire and the southern flank of the McIntyre's fire was extraordinary.

20

Q. Just remind me, if you would, of the date that you were first appointed.

A. I was first appointed to assist the coroner in August of 2003.

25

Q. How much of the evidence did you have prior to the end of September?

A. I'm sorry?

30

Q. How much of the evidence in this inquiry had been provided to you by the middle of September? Did you receive statements, for example?

A. Some.

35

Q. I take it you don't have a list of which statements you had received by that time?

A. No, I don't.

40

Q. You wouldn't have heard any oral evidence?

A. I'm not sure when her Worship started taking oral evidence but if the Court was sitting then, then, yes, I would have.

45

Q. Had you had any discussions with Mr Cheney by that time?

A. I believe I had received his report - the

first report.

5 Q. You wrote a document to Mr Woodward dated 18 September. That document is number 15 in the list of documents. I think number 16 is tendered rather than number 15. Yes, it is exhibit 105. Do you have that document available to you, Mr Roche?

10 A. Is that my minute to Mr Woodward dated 18 September 2003 regarding the Bureau of Meteorology submission?

Q. That's correct.

15 A. Yes.

Q. Go to paragraph 12. What was the evidence available to you to enable you to reach a conclusion at the 18th of September that:

20 "... and the obvious threat to Canberra that these fires presented an aggressive, concentrated fire attack in the period immediately following ignition should have resulted in these fires being held. Had this
25 occurred, the agencies then had a period of some 4-5 days in which to make them safe".

What evidence did you have to make that estimate on the 18th of September?

30 A. It was the Bureau of Meteorology's report and Mr Cheney's report.

35 Q. That's all - no discussion or statements from people who were on the scene, the firefighters or anything of that kind?

A. I can't say that I didn't have some statements and I can't say that I hadn't seen some video evidence.

40 Q. That conclusion, however, was one which you say is reached with you having the benefit of hindsight. Sorry, what did you mean by that?

45 A. In the absence of other evidence that I had at that particular time, then that was the opinion I formed.

Q. And that would include competing priorities

such as McIntyre's Hut and the requirements that it might have for placing ACT resources?

5 A. I was aware that there were a number of fires in New South Wales and the ACT which would have caused competition for resources.

Q. Did you know that there had been some discussion about the ACT sending resources to McIntyre's Hut when you made that comment?

10 A. I don't know what evidence in that regard I had seen at that particular point in time.

Q. In paragraph 13 you say:

15 "The fires were located only around 40/50 kilometres to the north and north-west of Canberra."

Is that a distance as the crow flies?

20 A. I wouldn't think so.

Q. So it is road distance?

A. I think so, sir.

25 Q. Did you at any time in the course of providing advice to the DPP or counsel assisting or the AFP attempt to secure evidence to bring about a particular outcome in this inquest?

30 A. No, sir.

Q. Would you go to the document number 12 dated 15th of September 2003. Do you have that as a minute?

35 A. This folder is not catalogued.

Q. Does it help you if I tell you it is a minute to Mr Woodward dated 15 September 2003?

A. Before or after the one we just talked about?

40 Q. Before.

A. In relation to a CSIRO report?

45 Q. It is entitled "Document review - CSIRO client report 'Assessment of house loss from 18 January 2003 bushfires' "?

47 A. Yes, I have that.

Q. Commencing under the heading "Residents in impacted suburbs", I just invite you to read under that paragraph down to the middle of the page.

A. Yes.

5

Q. Read under there down to the middle of the page, and focus your attention on the words:

10 "Such evidence will assist in laying a solid foundation towards the adoption of a clear and unambiguous evacuation policy. (With your concurrence, I will be pursuing this matter in my evidence).

15 "Accordingly I recommend that you consider the submission of appropriate evidence from a limited number of residents that could subsequently support a recommendation from the coroner giving effect to the development
20 of an evacuation policy along the lines advocated by the Australasian Fire Authorities Council."

25 That, Mr Roche, is a circumstance in which you have endeavoured to persuade people to gather a particular type of evidence to bring about a particular consequence in this inquiry; is it not?

A. Absolutely.

30 Q. So at least on your view of what is an appropriate evacuation policy, the answer you gave me earlier on about not endeavouring to bring about a particular outcome to this inquiry requires some modification, doesn't it?

35 A. Yes, it does.

Q. By the way, why did you write to Mr Woodward "with your concurrence"?

40 A. At that time the framework of what I was to report on had not been finalised, and the issue of evacuation I wanted on that agenda.

45 Q. At least insofar as the selection of residents goes, do I gather that you were suggesting that residents be picked to give evidence to this inquiry specifically so that a submission could be made that the coroner recommend the implementation

of the evacuation policy from AFAC?

A. No. I was suggesting that in fact not all of the residents that were impacted be interviewed, which in my view was an impossible task.

5

Q. And you wanted particular ones interviewed for a particular purpose, didn't you?

A. I wanted to gain information on the views of residents as to whether they should have been allowed to remain and defend their property or not.

Q. You make another attempt to gather a particular character of evidence in the last paragraph on that page, don't you?

A. Yes, I do.

Q. You say:

20 "A significant finding of the report is that
a large proportion of the buildings damaged
or destroyed suffered from initial exposure
to fire spread within the suburbs as opposed
to the impact of the wildfire. The coroner
25 will no doubt wish to explore the matter
further. I would recommend that we be
prepared to submit evidence that supports
appropriate legislation that imposes an
obligation on public land managers within the
30 'built-up area' to take all practical steps
to limit the occurrence of or spread of fire
from property under their control or
management."

35 That is another example where you have endeavoured
to make sure that evidence brought before the
inquiry supports a particular predetermined view
of your own, isn't it?

A. I made no apology at all for proposing the
40 adoption by the coroner - by the ACT - of
legislation or practices that exist in other
jurisdictions, both nationally and
internationally, and would assist in preventing a
similar occurrence of what occurred in 2003. I
45 make no apology for that at all.

Q. I didn't ask you to make any apologies. For

all I know the recommendation that you are suggesting could be the most excellent public policy. But the fact of the matter is that, contrary to an answer you gave to me a moment ago, you have in fact in the advice you have given endeavoured to make sure that particular evidence was put before the coroner to support a particular point of view that you hold?

5
A. Absolutely.

10

Q. You say in the last paragraph of that page:

"In the meantime it will be worth while to note that the coroner should be prepared to introduce appropriate evidence supporting an alternative approach and conditions associated with future urban development on the interface, should such planning and development controls not already exist."

15
20

Again, Mr Roche, please don't misunderstand what I am saying: I am not questioning whether that is good policy or bad policy; I am simply putting to you it is a third example of where you suggest that the evidence should be picked in a particular way to support a particular point of view that you hold. Is that not correct?

25
A. That's not what that says, sir. It doesn't say, "Pick the evidence" at all. I can't see that at all in there.

30

Q. What do you mean by the words:

"In the meantime it will be worth while to note that the coroner should be prepared to introduce appropriate evidence supporting an alternative approach."

35

Is that not suggesting to Mr Woodward that particular kinds of evidence that supported a particular outcome should be led in this inquiry?

40

A. It says what it says, Mr Walker.

45

Q. Well, it is not actually --

A. It is a recommendation from me to Mr Woodward.

Q. What did you expect Mr Woodward to do if he

was inclined to follow your recommendation?

A. Ensure that the issue of appropriate building controls was on the agenda for this inquest.

5 Q. Sir, that is in fact not what you have said. It wasn't just that the issue was on the agenda but that a particular kind of evidence supporting that issue was put before the inquiry, I suggest to you.

10 A. If that evidence was available I would support that 100 per cent.

Q. You also flew to Canberra from time to time to meet with people such as Mr Cheney; is that right?

15 A. No.

Q. Are you quite sure about that, Mr Roche, that you didn't at least fly to Canberra at least once to meet with Mr Cheney?

20 A. I don't recall flying to Canberra specifically to meet with Mr Cheney - I may have - but I think in the majority of instances I met with Mr Cheney on a number of occasions as a result of my presence in Canberra.

25

Q. How many times do you think, from the time you were engaged in August until the commencement of the hearing earlier this year, would you have come up to Canberra?

30 A. I can't recall. It would be easy for me to check that. I can't recall specifically.

Q. Once or twice or five or six times. Were you up here week in and week out?

35 A. As I recall it, you may help me when the inquest started.

THE CORONER: 7 October last year.

40 THE WITNESS: I would have been up here - of course, I forgot the 12-month anniversary. I was up here several times prior to that to meet with various people, including Mr Cheney.

45 MR PHILIP WALKER: Q. When you say "various people", that would include members of the AFP investigations team?

A. That's correct.

Q. I take it you met many, many times with AFP investigations?

5 A. I wouldn't say many, many times but there were a number of occasions.

Q. A dozen times?

10 A. I don't think I would have met with them a dozen times prior to the inquest commencing, no.

Q. Document 33, which is an email from Mr Roche to Mr Woodward dated 10 November 2003, and the subject of the email is "V3 phase 2 issues"?

15 A. Yes, that's correct.

Q. In the second last paragraph you say:

20 "We might also need to briefly examine other legislation/policy, particularly that which imposes limitations or restrictions on fire suppression strategy and tactics and the implementation of fire prevention and protection measures. There is a raft of
25 legislation and policy of an environmental nature that appears to impose conditions on fire management planning and execution as well as fire suppression strategy and tactics. I am not suggesting an in-depth
30 examination of these matters as we have neither the time or the resources but rather a process to highlight the increasing emphasis that these issues can often make sensible fire management 'all too hard' for
35 the planners and implementers. Please discuss further if necessary."

What legislation did you have in mind, Mr Roche, in the ACT?

40 A. It is referring there to - sorry, I wasn't referring to any legislation in the ACT.

Q. Is that a comment made about some other jurisdiction?

45 A. No.

Q. Well, I don't quite understand what you mean

by "there is a raft of legislation and policy of
an environmental nature that appears to impose
conditions on fire management planning and
execution as well as fire suppression strategy and
5 tactics"? What are you --

A. I was generalising across all jurisdictions
there that, in many jurisdictions, there is
legislation of an environmental nature or policy
of an environmental nature that for instance
10 prevents the use of bulldozers for land clearing
or retardant - all sorts of policies and
provisions which make it more difficult where
planning controls inhibit clearing of land or
clearing of trees or those sorts of matters. I
15 was suggesting that those be investigated to see
in fact whether they were having an impact within
the ACT.

Q. Did you follow up on the suggestion in your
20 second last paragraph:

"I am not suggesting an in-depth examination
of these matters as we have neither the time
nor the resources but rather a process to
25 highlight the increasing emphasis these
issues can have."

A. No, I didn't.

Q. You gave one example in the course of the
30 answer to the preceding question about the use of
retardant. That was something that you made some
comment about in your report. In fact, I rather
interpreted it as a negative comment that there
was not such a facility available in the ACT. Did
35 you make any inquiry before making that comment
whether there was any legislation that restricted
the use of that firefighting device in the area
concerned?

A. No, I didn't - with the exception of the fire
40 management plan for the Brindabella national park
and Namadgi national park.

Q. More precisely, did you make any inquiry about
whether it could have been used on the Bendora
45 fire, for example - legally?

A. Sorry.

47

Q. Did you make any inquiry whether there was any legal impediment to using that technique on the Bendora fire?

A. No, I didn't need to.

5

Q. Why?

A. My understanding from other evidence was that the Chief Fire Control Officer had the right to use whatever resources he considered necessary.

10

Q. Could I ask that document [DPP.DPP.0010.0153], be brought up, please - it is a page from the notes I understand Mr Roche took in his book. It is one of the discovered documents of 29 April 2004.

15

THE CORONER: Has it just been tendered recently?

MR PHILIP WALKER: Yes, it has.

20

MR WOODWARD: It is one of the asterisk ones, your Worship.

MR PHILIP WALKER: The opening number might be [DPP.DPP.0010.0001]. The page in question is 0153.

25

MR WOODWARD: Can I assist my friend: I think that is a page within the second notebook which is [DPP.DPP.0010.0139].

30

MR PHILIP WALKER: I wonder if the best thing is to take the afternoon break.

35

THE CORONER: I will take a short break.

SHORT ADJOURNMENT

[3.00pm]

RESUMED

[3.15pm]

40

MR WHYBROW: Before Mr Walker continues, can I mention one thing so there is no delay at the end as I understand Mr Lasry at least needs to get away. Mr Walker and my instructing solicitor have been working feverishly in preparing an index of documents and getting them together consistent with the request received at about 4 o'clock on

45

Tuesday.

Ms Bird has tabulated a list of documents running
to some 118 documents. They are being put
5 together and will be put together over the
weekend. The folder which will be available for
inspection by anybody who wants to inspect them at
Hill and Rummery Solicitors from probably Monday
afternoon. They will be finalised on Monday
10 morning.

If I can hand out a copy of the index of the
material. I note there is probably some material
not on here which is in the personal possession of
15 Mr Nicholson in Victoria. He has been asked to
make a list of any such extra material and to
bring it along when he attends. He will be here,
I understand, on Monday - whether or not he is
called to give evidence on that day, at least he
20 will be available - and that material will also be
potentially available.

It is a lot of material in a short time, as
indicated, over a hundred items. Some will not be
25 reproduced. I am sure counsel understands that
things that are already in the brief, transcript,
et cetera, but there is reference to those
materials.

30 As I indicated, we apologise that that cannot be
physically complied with in the time frame
requested by counsel assisting, but it is a volume
of material and it was at short notice.

35 I do note in relation to the inspection that a lot
of the emails indicate that they are subject to
legal professional privilege. That may well be
the case. We have instructions to make them
available for the purposes of this to others.
40 Given that, that is also a reason why we are not
proposing to make copies available to people.

THE CORONER: But to have them available from
Monday morning.

45

MR WHYBROW: Yes, your Worship.

47

MR LASRY: I take it from that that it is proposed we would go and sit in Hill and Rummery's offices?

5 MR WHYBROW: It is similar to what we have had to do with the DPP, I suspect.

MR LASRY: If it is similar, we will take the similar treatment, which is that in relation to documents which are easily copied and put in a folder, we will take the folder. Where documents are too voluminous, then they can be inspected. These look like the kind of documents that were placed in a folder and made available to the parties to take away from us. We would like the same treatment.

10
15

THE CORONER: I do not know that it is going to be appropriate for counsel to go and sit in the office, given that we are sitting on Monday.

20

MR WHYBROW: They will have to do that with some of them, because they run to over 400 pages and we do not have the facilities to do it in this time frame.

25

THE CORONER: Which are the voluminous documents?

MR WHYBROW: Some of these emails that have been sent to or from Mr Nicholson include voluminous attachments. Just because something says, "email from" does not indicate that it is a one-page document. It may be that some of the shorter documents can be copied, it is not proposed that 10 copies be made or anything like that. We will do our best, your Worship. In my submission, we have done very well to get this level of detail and an index in this time frame. We are doing all we can to help counsel assisting in this sense.

30
35

40 I hear what my learned friend says, and we will endeavour to assist as we have been throughout.

THE CORONER: The shorter documents such as the emails, is it possible where it is just an email and where it is not accompanied by a 400-page attachment, is it possible to copy those?

45
47

MR WHYBROW: It probably is. The first task was tabulating the material. As it has been put into an appropriate folder it might be easy to, as it has gone through, for example, I don't want to --

5

THE CORONER: I would urge you to do that.

MR WHYBROW: -- tie Ms Bird to that sort of task.

10 THE CORONER: I urge you to do that for the convenience of all counsel. We will be sitting on Monday. The time to go and physically sit in the offices of Hill and Rummery will be limited for everybody.

15

MR WHYBROW: It has not been easy. I hear what your Worship says.

THE CORONER: Yes, Mr Walker.

20

MR PHILIP WALKER: Your Worship, just before I forget, I did make reference to an annual report of the Country Fire Authority. You asked me what the relevance of it was. The questions I asked about Mr Roche and the extent to which it is - and I don't mean this in any disrespectful way - a product of a large run organisation and the impact that might have in his opinion in offering views about the ESB is, in my submission, relevant for you to determine what weight you might put, if not to the whole of his document, to at least some of the component parts where he has spoken about certain things which might be done.

35 I press the tender of the extract of four pages from the annual report of the Country Fire Authority 2003. I understand a copy has been provided to you.

40 THE CORONER: Again, I have to ask you the relevance. How is it relevant and how can it assist, Mr Walker?

MR PHILIP WALKER: Your Worship --

45

THE CORONER: Mr Roche has denied that he was influenced by the resources of Country Fire

Authority in relation to the comments he has made.
You haven't as yet established, as far as I am
concerned, that he was influenced. The comments
and all the charts and all the tables that he puts
5 into this report, into the report before me, are
based on the resources that are available or were
available in the ACT.

MR PHILIP WALKER: There was clearly some
10 comment - sorry, I didn't mean to interrupt
your Worship. I thought you had finished.

THE CORONER: I have finished, Mr Walker.

15 MR PHILIP WALKER: There have been a number of
recommendations about different techniques and,
furthermore, references to things such as the kind
of personnel which might be devoted to incident
management teams up to and including something in
20 the order of 15 people be sent to constitute a
shadow IMT to Queanbeyan. That is an example.

Now, that might, against the background of Country
Fire Authority, be not a very difficult thing to
25 accommodate. It is, if one looks at the staffing
structure, the number of volunteers and so forth
in the ACT, a very difficult thing to
accommodate - much more difficult thing, I should
say, to dispatch 15 people who are capable of
30 constituting an IMT to Queanbeyan to
accommodate --

THE CORONER: Are you giving evidence now?

35 MR PHILIP WALKER: Your Worship, I am just trying
to indicate what my submission will be and that
is, some of the recommendations, whilst they might
be suitable to a much larger organisation, are far
more difficult to accommodate in a smaller
40 organisation. This gives some idea of the kind of
organisation to which Mr Roche has been
accustomed.

THE CORONER: This is the number of brigades, the
45 number of people, the number of volunteers - is
that what you are suggesting?

47

MR PHILIP WALKER: The amount of money, indeed.
Yes, your Worship.

5 THE CORONER: I don't know that I have any
evidence before me as to what resources, apart
from what is in Mr Roche's tables in his report,
and the amount of money that is available to the
ACT. Do you propose to put that sort of
information before me?

10 MR PHILIP WALKER: Yes, your Worship --

15 THE CORONER: Because otherwise I am not prepared
to accept just what you say from the Bar table.

MR PHILIP WALKER: My understanding is you will be
provided with the information as to the extent of
the budget for the ACT ESB.

20 THE CORONER: I say again: what conclusion do you
expect me to reach by comparing the ACT budget and
the Country Fire Authority in Victoria budget?

25 MR PHILIP WALKER: It simply enables one to make
the submission that some of the recommendations
made by Mr Roche may be somewhat unrealistic in
the circumstances of the Australian Capital
Territory. And insofar as he says he has taken
the size of the Territory into account and has not
30 been influenced by his background, you will at
least know what his background is, the size of the
organisation to which he has been accustomed.

35 THE CORONER: As I said you to before, Mr Walker,
if you have specific examples where you say
Mr Roche has been unduly influenced by the size
and resources in Victoria in comparison to the
ACT, you should put those to him.

40 MR PHILIP WALKER: I have put a number of examples
to him already. He denies it. I accept that that
is the evidence that he has given. It doesn't
mean that one can't refer to other evidence to
suggest that, notwithstanding his denial, his
45 report might be viewed with some reservations, at
least in relation to some of the recommendations
which he makes.

THE CORONER: Mr Walker, it will be faster to admit it than to keep on arguing about it.

5 MR LASRY: As a matter of principle, can I resist the tender because the kind of information that Mr Walker wants to rely upon to make the comment is in Mr Roche's report, page 9, when he sets out his legislative accountability as chief officer. On that page it summarises what he knew and what 10 he was in charge of, which is more relevant, frankly, than the annual report from 2003 when he was not the chief officer.

15 I object, your Worship, because it is tempting to say it is easy to admit it but as a matter of principle it is a waste of time.

THE CORONER: It is not relevant, Mr Walker.

20 MR LAKATOS: With respect, your Worship has made that ruling but I would support Mr Walker and the principles he says. The issue here, as Mr Walker puts it, is it is a matter which may be relevant to this witness's opinion. That's the point. It 25 may be a small plank, but nevertheless it is a plank on which this person's background may have something to do with how he has formed his views. I would support the tender of the exhibit.

30 MR PIKE: I also support it, your Worship.

MR WHYBROW: On behalf of Mr Castle, and it is particularly relevant because if he is recalled it is likely that some of the information one might 35 have expected would already be before the court, your Worship, in the sense of what the actual budgets were, is likely to be put before you. In that sense it is useful to be able to compare apples with apples or what in my submission might 40 be apples with cherries. So I support the submission for admission and indicate in my submission that it is relevant material.

45 THE CORONER: The annual report 2003 of the Country Fire Authority of Victoria will become exhibit 0108.

47

**EXHIBIT #0108 - 2003 ANNUAL REPORT OF COUNTRY FIRE
AUTHORITY OF VICTORIA TENDERED, ADMITTED**

MR PHILIP WALKER: There was another document I
5 referred to which I didn't understand to have been
tendered. That was document 12 in Mr Roche's
bundle of documents. That being the
15 September 2003 email from Mr Roche to
Mr Woodward document review "CSIRO client report."
10 Attached memo from Mr Roche to Mr Woodward and
Lasry re document review CSIRO client report
assessment of house loss" --

THE CORONER: How big is that document?
15

MR PHILIP WALKER: Including the email,
your Worship, it is 5 pages.

THE CORONER: That is document number 12,
20 15 September 2003?

MR PHILIP WALKER: That is correct, your Worship.

THE CORONER: That email and accompanying report
25 from Mr Roche to Mr Woodward of 15 September, 2003
will become exhibit 0109.

**EXHIBIT #0109 - EMAIL FROM MR ROCHE TO MR WOODWARD
AND ACCOMPANYING REPORT DATED 15/09/2003 TENDERED,
30 ADMITTED WITHOUT OBJECTION**

MR PHILIP WALKER: Q. On that document - again,
Mr Roche, you will recall I just asked you about
you getting particular evidence to support the
35 AFAC evacuation policy. Is that policy something
that is unanimously agreed to by all emergency
services organisations?

A. I can't comment about emergency services apart
from the fire service, sir.
40

Q. For example, one of the problems that the fire
services have sometimes is that they advise people
to stay with their houses whereas the police
suggest that people should be evacuated. That is
45 an issue in relation to evacuation in bushfires;
isn't it?

A. Not in bushfires, it's not. I accept that

that policy or the proposal by the Australasian Fire Authorities Council only applies to bushfires. It doesn't apply to other emergencies that may also require some evacuation.

5

Q. Well, taking bushfires, has it not been the case in your experience in bushfires where fire authorities have wanted people to stay with their house if they were capable of protecting it, whereas police were advising people to evacuate?

10

A. That's correct.

Q. Accordingly, is the Australasian Fire Authorities Council policy on evacuation something which is the subject of some controversy; for example, if you went and asked some police commissioners, would they say, "Well, we don't necessarily agree with this"?

15

A. No, that's not correct. The policy was adopted in all jurisdictions at a meeting of commissioners, chief commissioners of police, chief police officers, I think in October 2002 - I'm not quite sure when but some time around then. It is in evidence in this inquiry, a minute of that meeting.

20

25

Notwithstanding that, I would certainly accept that there is still some way to go with educating members of the police force and even members of the fire service in the application of that policy or of that position and the implications of it.

30

Q. So my basic proposition is that there may be some areas in which people have different views about that policy is correct; is that right?

35

A. I don't know that people might have different views about it, but certainly some people in organisations may not even be aware of it, to the extent that others might consider it desirable.

40

Q. Could I direct your attention to the document on the screen now, please. That document is a note which you took - firstly, that is a note that you made; is that right?

45

A. That's correct.

Q. And you made it while sitting in the hearing

or while reading the transcript?

A. No, whilst sitting in this courtroom.

5 Q. Go to the entry against "transcript 4231"
please. Do you see the reference there:

"Cabinet discussion on the need to make
quick decision on where to deploy resources."

10 A. Yes.

Q. Then "also 4236"?

A. Yes.

15 Q. There is an arrow to the left of that.
Looking at the spiral binding, the way this worked
on the original book this was the right-hand page
and the arrow pointed to something on the
left-hand page, didn't it?

20 A. That's correct.

Q. If we could call up [DPP.DPP.0010.0152], which
is an earlier page in the same document. Please
read what has come up on the screen. You have
made a notation beside that entry:

25 "Cabinet discussion on the need to make quick
decision on where to deploy resources."

30 The notation reads:

"If this statement was made by other than
Castle or PLS - it is a problem ie political
interference/direction to operational
commanders."

35 You go on to say:

40 "Priorities for important critical
infrastructure should be known before the
event and action/strategies determined at the
time by OPS controllers in this knowledge."

45 On what basis do you make the assumption that
there would be some political interference, just
simply because cabinet is involved?

47 A. Could we have the transcript for 4231, please.

THE WITNESS: Could I have that, your Worship?

THE CORONER: Yes.

5 Q. Do you have your notebook there?

A. Yes, I do.

Q. Is that what you want to have reference to?

A. No, the whole of the transcript on that page.

10

MR LASRY: To deal with the topic it is 4231 and 4232.

THE WITNESS: The other reference is 4236:

15

"Tim Keady will take administrative responsibility. Note that if necessary cabinet may need to be recalled to make quick advice on priorities for which assets to be saved."

20

MR PHILIP WALKER: Q. Firstly, do we assume from your notation of the reference to political interference you regard that in a negative light, I take it - from the preceding words it is a problem?

25

A. Well, it is a problem in so far as if --

Q. Firstly, do you regard it in a negative light?

30

A. Yes, I do.

Q. And do you assume political interference merely by virtue of the fact that cabinet may make a decision; is that the reason?

35

A. I think there is a difficulty if cabinet make decisions, operational decisions on which assets to protect in the middle of a strategic firefight and may cause that firefight to be interrupted, resources redeployed, when in fact what I am suggesting or what I was considering was to research that further and the view that where key assets, particularly life line assets were at risk, then that should be well known to the fire service and the government's priority well known.

40

I might add that I didn't take that issue any further and I don't recall that I made any

45

reference to that in my report.

Q. But you have worked on the assumption that there is something inherently wrong with cabinet
5 making the decision of which of the community's assets, if it comes to the crunch, are to be saved; haven't you?

A. No.

10 Q. Please explain why you then say:

"... Cabinet discussion on the need to make quick decisions on where to deploy resources if this is a statement made by either than
15 Castle or PLS - it is a problem ie political interference direction to operational commanders."

20 A. It is --

Q. Why shouldn't the cabinet that governs the Territory decide if it is a choice between a school or a fire station or something of that
25 nature or some important community resource; why shouldn't the government of this Territory say, "We allocate priorities in this fashion"?

A. Yes, they should. But not, in fairness to the fire service, in fairness to the fire service and
30 in fairness to the government, particularly in recognition of adequate planning and pre-response arrangements, those decisions should be made well and truly before a fire occurs not when a fire is running, Mr Walker.

35

Q. Maybe they should have been, Mr Roche. But you have taken the view the mere fact that there was government involvement in a decision affecting
40 community resources was something somewhat sordid or a problem, haven't you?

A. No, I haven't. Because I didn't pursue it any further, Mr Walker.

Q. It is what you said when you made your note
45 yourself, that was your view, isn't it?

A. It is a view that I may have had at the time. I reiterate again, I made a lot of comments in

here that subsequently were not included in the report. And I need you to focus on perhaps the issues in the report as to my frame of mind in relation to the priorities.

5

Q. I am interested in your thinking. And your thinking is that if the cabinet of this Territory makes a decision about which community asset is to be saved there is something rather wrong about it?

10

MR LASRY: My learned friend knows it is not his evidence. If he is going to put his evidence back to him he should at least do it accurately.

15

MR PHILIP WALKER: Q. Then it is a problem?

MR LASRY: No.

20

THE CORONER: No that is not the answer that Mr Roche gave. You can go back and quote it back to Mr Roche, Mr Walker if you would, in fairness.

25

MR LASRY: "It is a problem to do it in the middle of a firefight". That is the important part of the witness's evidence and that is what Mr Walker should concentrate on.

30

THE CORONER: And there was an acknowledgment that it was proper for cabinet to make those decisions, but not in the middle of a firefight.

35

MR PHILIP WALKER: With respect, that is not what the man has written. He has written "it is a problem, that is, political interference/direction to operational commanders".

THE CORONER: You asked him to explain what he meant and he has.

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45

MR PHILIP WALKER: Q. Let me go to another document. It is [DPP.DPP.0010.0001]. The page I am interested in is 0034. Can you have a look at the third paragraph there. Again, this is your document, is it not?
A. Yes, it is.

Q. It says:

"Involvement of Keady, CEO Justice and
Community Safety, in drafting media releases
politicisation of the process and
sanitisation of information."

5

What evidence did you have that there would be
sanitisation of information if Mr Keady had some
involvement in the drafting of the media releases?

A. That was a note I made at the time to me to
10 pay attention to further evidence in relation to
the drafting of media releases, because it was
clear to me that media releases weren't,
particularly toward the 18th of January, in fact,
conveying the true position to the community in
15 the ACT.

I was very, very interested in why that wasn't
occurring. And the fact that I made the note
doesn't necessarily mean to say that that was
20 actually occurring. But I'm aware that on the
evidence given by Mr Castle that in fact Mr Keady
was involved in assisting in the drafting of media
releases.

25 Q. Could I have - again it is in the same book -
0038, please. The first paragraph of that
document, again it is your document, isn't it?

A. Yes, it is.

30 Q. The first paragraph of that says:

"Castle's statement paragraph 101 raises
planning issues and suggests that they were
'on top of the situation'. This needs to be
35 dispelled!!"

What did you mean by the words "this needs to be
dispelled"?

A. In my view they weren't on top of the
40 situation.

Q. And how were you proposing that this notion be
"dispelled"?

A. In my report.
45

Q. So were you proposing that some evidence be
called to make sure that it was dispelled?

A. No.

Q. You were going to make sure that your report dispelled it; is that right?

5 A. I wanted to make sure that my report indicated that the planning was not "on top of the situation".

10 Q. Have you approached your task with a particular suspicion about those who work in the Emergency Services Bureau and the Department of Justice and Community Services, Mr Roche?

15 A. I first of all take that in two parts. I knew of no-one in the Department of Justice and Community Service.

Q. You knew Mr Keady?

20 A. No, I didn't. Not before this inquest; I didn't know Mr Keady at all. I had never heard of him.

In terms of the staff in the ESB, just the opposite, Mr Walker. Leading up to this, my involvement in this particular inquiry, I had
25 significant respect and regard for particularly Mr Lucas-Smith and Mr Castle. It wasn't until I commenced on this inquest that I realised there were some significant issues.

30 Q. I suggest that in fact the evidence that you gave yesterday that "Mr Winter would be a good ally for us" - do you recall the email where you said, "Mr Winter could be a good ally for us"?

35 A. Yes, I do.

40 Q. I suggest to you that the evidence that you gave yesterday was a substantial gilding of the lily and in fact your reference to him being a "good ally for us" meant exactly what the ordinary English meaning of those words is taken to mean; namely, you viewed some people as on your side and other people as on a different and opposing side; that's the case, isn't it, Mr Roche?

45 A. No, Mr Walker.

MR PHILIP WALKER: Your Worship, there may be a few more questions. I note the time. Those

documents, I take it, being numbered are in fact
in evidence before you, the notes that I have?

5 THE CORONER: Yes. If they are in the system and
on screen they are in the evidence. I would just
ask that you perhaps provide a copy of the last
exhibit, Mr Walker, 0109, so it can be put on the
system. The annual report I have but I don't have
the last exhibit, being the email.

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If that is all, we will adjourn until Monday
morning at 10 o'clock.

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**MATTER ADJOURNED AT 3.45PM UNTIL MONDAY,
11 OCTOBER 2004.**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 84

Monday, 11 October 2004

[10.04am]

MR GLISSAN: If the Court please, my name is
Glissan. I am retained, your Worship, by nine
5 interested parties: Mr Lucas-Smith, Mr Castle,
Mr Graham, Mr Ian Bennett, Ms Odile Arman, Mr Rick
McRae, Mr Peter Newham, Mr Rick Hayes and
Ms Vivien Raffaele to lead their respective
counsel for the purposes of making an application
10 to your Worship that your Worship will proceed no
further with this inquiry but will disqualify
herself on the ground of apprehended bias.

Before I proceed with the application, I am
15 advised by those representing counsel assisting
that senior counsel assisting Mr Lasry is not here
and is on his way from the airport and that they
seek some time before I proceed with that
application so that he may be present when it is
20 made. I can tell your Worship that that is, in my
respectful submission, necessary, because at least
part of the application relating to the asserted
apprehended bias of your Worship relates to the
conduct of counsel assisting and its impact on
25 this inquiry.

I can indicate to your Worship that I understand
from my learned friend Mr Johnson, who appears for
the interests of the Australian Capital Territory,
30 that he has a like application. I see Mr Lasry is
now here. I don't know whether he wants some
time.

THE CORONER: I think Mr Lasry should certainly
35 hear what you have had to say, Mr Glissan. There
is an application by Mr Glissan who now appears
for nine persons who are represented by other
counsel, Mr Lasry, and the application by
Mr Glissan is that I disqualify myself and proceed
40 no further with hearing evidence in this inquiry
on the basis of apprehended bias. And I also
understand that claim relates to yourself,
Mr Lasry.

MR JOHNSON: I was about to say the application is
45 supported by the Australian Capital Territory.

47

MR LASRY: The first thing to say about it is that, apart from the message, I have had no notice of this.

5 THE CORONER: Yes, nor have I.

MR LASRY: I would have thought in the usual circumstances, particularly given that a witness is in the process of giving evidence - and I
10 assume this has been under consideration for some time - that we be given some notice so we could make a response and expedite the process. Obviously the element of surprise is considered to be an important part of the application. I
15 received a phone message from Mr Glissan, at half past 9, quarter to 10 this morning. That is the first I have known of it.

Assuming that the matter has some time to occupy
20 it, and depending on the level of detail, it might take us some time to make a detailed and reasoned response.

Your Worship, the other question is whether or not
25 it is necessary that this be done now, bearing in mind that we are in the process of taking Mr Roche's evidence. Unless the way in which Mr Roche's evidence is being conducted is relevant to the application, it seems to me that it would
30 be more appropriate to deal with this application at least at a time when that evidence was finished.

Mr Walker is parway through his cross-examination.
35 Unless there is something about the application that is said to be in some way urgent and Mr Roche has been present and giving evidence now for nearly a week, then at least catering for the possibility that your Worship doesn't accept the
40 application that has been made, it would seem to me at least it would be appropriate to complete that process before dealing with this matter rather than interrupt it.

45 This matter may take some time, I don't know. Depending upon the nature of the application, there may be other steps that we need to take in

the way in which we respond to it. All of this, of course, interrupts that process.

5 THE CORONER: That certainly would be my preference, Mr Glissan. You would have to convince me why the evidence of Mr Roche should not be completed, given that he has now, as Mr Lasry has said, been giving evidence for a week.

10

MR GLISSAN: The short answer to that, at least in part, is that the evidence of Mr Roche and the position that it has reached or it reached at the end of last week was what might be described as "the trigger" for this application. So the continuation of his evidence, in our respectful submission, directly relates both to the application and the need for the application to be dealt with now rather than deferred.

20

It would be wrong to suggest to your Worship that it was the only matter which is to be the subject of criticism or complaint in relation to the proceedings, but it is certainly more than a peripheral part of the application.

25

Those instructing me are strongly of the view that the application should proceed without delay. We would understand that my learned friend, to the extent that the application is one that involves a response from counsel assisting rather than a matter which is not inter partes, but one that it involves an assessment by your Worship of the appropriate legal issues in relation to factual complaints that have been made, is one which might require some time for you to assimilate.

30

35

To that end, having endeavoured in the time available to us to put together a detailed basis for the application, I entirely reject the somewhat unusual assertion of personal impropriety that seems to be involved in a shortfall of notice. I can indicate to your Worship that I was engaged in this matter at the very late part of last week as a result of events that occurred during this inquiry. A great deal of work has been done by those instructing me and by those

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otherwise engaged in the case in preparing the argument in written form, which was not done and photocopying hadn't been finished so it wasn't available to anybody, including myself, until we
5 arrived in court this morning.

My learned friend will have as much notice as is possible to have been given of the application. Advice was only received in relation to the making
10 of the application again in the latter part of last week. Can I indicate to your Worship this: the application, based on disqualification for apprehended bias, is one in which both parties to the case, that is to say those who have been given
15 leave to appear as interested persons, and even members of the general public have, in the view of the High Court, locus standi to make the application.

20 The application arises from the history and the conduct of the proceedings over its entire duration and its conduct in this court. There are a number of propositions which we seek to articulate as providing the legal foundation for
25 the application.

If I might simply indicate them so your Worship and my learned friend understand where we are coming from --
30

THE CORONER: Just for Mr Lasry's benefit, would you please just repeat the interests that you represent, the persons.

35 MR GLISSAN: Certainly - Mr Lucas-Smith, Mr Castle, Mr Graham, Mr Bennett, Ms Odile Arman, Mr McRae, Mr Newham, Mr Hayes, and Ms Raffaele.

THE CORONER: Thank you.
40

MR GLISSAN: If your Worship please.

MR LASRY: Just before that process continues, can I deal with a preliminary matter. My learned
45 friend says that Mr Roche's evidence was in part the trigger for this application, although the reason why that is the trigger hasn't been

explained. Certainly what hasn't been suggested, perhaps it will - nothing has yet been suggested to indicate in the course of his evidence, as opposed to what was known before the evidence
5 commenced, something was said or something occurred which is an integral part of this application.

Now, it is simply unfair to an extent on Mr Roche to now make him wait some indeterminate time to
10 complete his evidence. If, for example, we were at the point where Mr Roche was about to give his evidence and an application was being made, it might be more practical to say, "Well, in those
15 circumstances we will stand Mr Roche's evidence down," but he is here and he has been here for a week. It is not as though he is about to give the evidence and it is not as though I am about to ask him questions.

20 It doesn't seem to me on the very limited information available to me at the moment the situation is going to change by the fact that both Mr Walkers, assuming Mr Walker of senior counsel
25 is participating, Mr Whybrow and Mr Pike will cross-examine Mr Roche.

THE CORONER: And Mr Archer as well.

30 MR LASRY: And Mr Archer as well. I would urge your Worship to give serious consideration to completing that process before dealing with this application. In the meantime, my learned friend might be then in a position to give me, preferably
35 by way of written outline or something like that, some idea of what the application is about so I can put into motion the things that have to be done to respond to it.

40 In my submission, in the absence of a clear demonstration that there is a need to deal with the matter this minute, that would be a more efficient way of dealing with the application. I repeat, I don't see at the moment that the urgency
45 is such as to interrupt Mr Roche's evidence.

MR JOHNSON: If I could be heard on that, thank

you, your Worship.

THE CORONER: Mr Johnson.

5 MR JOHNSON: What has just been put by Mr Lasry, I
would submit, is erroneous in law. When an
application of this type is brought there is a
duty to entertain it. It is, if the application
10 is acceded to, one with terminal effect. The
submission that will be put to your Worship is
that the basis now exists for disqualify on the
grounds of reasonable apprehension of bias. In
those circumstances, it would be entirely
15 inappropriate and legally erroneous for
your Worship to continue to exercise the functions
in this inquest until that application is heard
and determined. The convenience of Mr Roche is
not something that is relevant to determination of
that question.

20

The question is whether time is needed by counsel
assisting to understand the nature of the
application and deal with it. In my submission,
when an application of this sort is made, all
25 other matters need to be put to one side. That
means that this application should proceed. If
your Worship needs to give time to counsel
assisting to consider a response, that of course
would be appropriate.

30

But to continue with a hearing where there is
before you an application which is sought to be
proceeded with now that your Worship should
disqualify yourself is such that it would be
35 erroneous in law to proceed, and I would submit
that at this stage the appropriate course is that
this application be considered. How it proceeds
and when counsel assisting may wish to be in a
position to respond is a separate matter.

40

But to proceed with Mr Roche, in my submission,
would be entirely contrary to the nature of the
application that is now before you.

45 THE CORONER: I would like you, though, Mr Glissan
and Mr Johnson, to explain what has happened since
Mr Roche started to give evidence last week to

have brought this matter to the point that it has
come to today. When you say there has been
notice, the first notice that I had of this was
when I walked in this morning.

5

MR GLISSAN: Oh, indeed.

THE CORONER: The first notice that Mr Lasry had
was presumably the phone call he had this morning.

10

MR GLISSAN: I don't dispute the shortness of
notice. What I dispute is that there is any
mischievous element or attempt to take anyone by
surprise in this application.

15

THE CORONER: That may well be for others to
judge, Mr Glissan.

MR GLISSAN: If your Worship please. It would, in
any event, be irrelevant to the application if it
were otherwise successful.

20

Before I respond to your Worship's invitation to
deal with the peculiar position which resulted
from the evidence of Mr Roche thus far, it is
important, in my submission, that I articulate
some basic propositions of law in relation to the
issue of apprehended bias and identify the indicia
which we say exist to justify the bringing of this
application.

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Essentially we say this: that things which occur,
happenings in the course of a hearing, can give
rise to the beginnings of an apprehension of
partiality, an apprehension of bias. The High
Court said so in R v Webb & Hay and in the Court
of Appeal in New South Wales in Barbosa. Later
events which occurred during the hearing cast
light on the conduct which leads to either the
extinction or confirmation of the earlier inchoate
apprehension. The law requires, as my learned
friend Mr Johnson indicated, that when an
application such as this is made, the whole of the
circumstances giving rise to them be taken into
account, and, as was recently said by Mr Justice
Studdert in a case called Katherine in New South
Wales, an accumulation of matters may give rise to

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an apprehension of bias.

The test which is to be applied is an objective one. In order to determine whether or not
5 apprehended bias is made out, each of the indicia
relied on by those complaining must be examined
and consideration may need to be given in a proper
case to the role of counsel assisting. It was
established in a case, as I recall, of *Firman v*
10 *Lasry* in the Supreme Court of Victoria.

It is clear in our submission from the cases that
the classes of indicia which may give rise to an
apprehension of bias is not closed. Indeed
15 apprehended bias may arise in different ways. So
that they may be properly considered what we
advance as indicia which taint this court ought to
be articulated at the outset of the application
before we go any further.

20 We say first that this court has expressed views
about experts, including Mr Roche, which suggest
that their evidence will not be given impartial
consideration; that impartial consideration which
25 is required if justice is to be seen to be done.

Secondly, that there has been partial conduct,
that's to say, biased conduct on the part of
counsel assisting which has not been corrected by
30 the Court or has been condoned by the Court;
thirdly, that there has been evident and
persistent inequality of the treatment of certain
witnesses and between witnesses; and there has
been a failure to act by the Court to redress that
35 treatment by counsel assisting.

Fourthly, that there was a persistent refusal to
provide relevant material or assistance to
interested parties or that relevant material has
40 been withheld from interested parties.
Accordingly, there has been a denial of procedural
fairness.

Fifthly, there has been criticism or suggestions
45 that counsel appearing in the interests of
affected parties have a hidden agenda or are
impugning the Tribunal in circumstances where no

objective observer could reach such a conclusion.
And, sixthly, the combination of that material,
the cumulative effect of all the foregoing is
suggestive of prejudgment or partiality which
5 leaves in the mind of a non-participating observer
an apprehension of bias of the trial.

In support of that, over the weekend we have
prepared a document which runs over some 100 pages
10 setting out the law and articulating, we hope,
accurately, clearly and comparatively succinctly
the particular matters which give rise to the
complaint, many of which are derived directly from
the transcript of these proceedings, others of
15 which are derived from other documents and
judgments from other courts.

I have a copy of that document for each of
your Worship and my learned friends, including
20 counsel assisting. They are presently in the
possession of Ms Bird, who will make them
available. I understand your Worship and my
learned friend, before I proceed to develop the
argument in support of each of those matters,
25 would desire an opportunity to see the document.
If it is convenient, my proposed course would be
to provide the document now to your Worship and
then provide copies of the documents to those of
my learned friends who are here.

30 Let me say before I resume my seat that I entirely
endorse what my learned friend Mr Johnson has said
on behalf of the ACT that, once such an
application like this is made, it is not open to
35 the Tribunal to continue to hear the matter in
disregard of the application. And, indeed, to do
so would itself provide evidence which would
support the application of apprehended bias.

40 If my learned friend now wishes to have the
document we provide, I will make sure that those
documents are made available. Perhaps
your Worship might allow him some time.

45 THE CORONER: Thank you Mr Glissan. I think in
fairness some time should be taken, Mr Glissan, by
myself and counsel assisting to examine these

documents.

MR GLISSAN: A document that took a little time to
prepare, I am sure it will take a little time to
5 absorb.

THE CORONER: Yes. What I propose to do,
Mr Glissan, is to adjourn to consider the
information that you provide in this document.
10 Then I will decide whether or not - I will decide
on the course I will take after I have had an
opportunity to examine the information contained
in this.

15 I will adjourn now until further notice, thank
you.

SHORT ADJOURNMENT [10.25am]

20 **RESUMED [2.02pm]**

THE CORONER: Mr Glissan and Mr Johnson, I had an
opportunity to look through the material that you
submitted to me this morning and I do agree that
25 no further evidence should be taken in this matter
today.

But as the application is made without any notice
by you, Mr Glissan and counsel representing the
30 ACT government, it is obvious to me that counsel
assisting will need some time to consider a
response.

MR GLISSAN: Something in respect of which I can
35 say nothing to the contrary.

THE CORONER: Yes, I understand that. Thank you.

Mr Lasry, do you agree you will need some time to
40 consider a response?

MR LASRY: Your Worship, we do. Having looked
through these submissions, I say this, as it were,
without prejudice: it is likely that we would want
45 to make a detailed response. It is desirable in
my submission that the application and the
response to it be heard at the same time.

We would expect that, in order to respond to what is in the 100 or so pages of submissions and the folder of authorities, we would want some time into next week to be in a position to provide the sort of response that would be of assistance to you and would suggest at this stage that your Worship now adjourn until something like Tuesday of next week when the matter can be heard and disposed of.

But, your Worship, in our submission, it probably wouldn't be as helpful to you to hear the submission now, then adjourn for a period of time while we prepare a response. There is a significant amount of work that needs to be done in relation to the evidence, apart from anything else, because there is obviously a context to all of the issues raised in this submission which needs to be re-examined and itself put into submission form.

We would invite you to adjourn until the early part of next week. Tuesday, at this stage, is the suggested day.

THE CORONER: Do you have a difficulty with that, Mr Glissan? From my point of view, I would prefer to hear your further application and Mr Johnson as well, and hear the response at the same time rather than to hear application today. Does Tuesday or Wednesday next week suit you?

MR GLISSAN: I am entirely at your Worship's convenience so far as the adjourned date of the hearing is concerned. My own view would be that it is appropriate that the argument ought to be heard all in one piece. Our learned friend has the advantage of having our written material available to him. I would not want him, however, to be misled into thinking that what is contained in the written material confines entirely what we will be putting to your Worship. But for the balance, it is not of such volume of material as would be encompassed in the ordinary course by oral argument.

THE CORONER: That can be dealt with on the day.

MR GLISSAN: Certainly.

THE CORONER: Does that suit you too, Mr Johnson?

5 MR JOHNSON: Yes, it does, your Worship.

MR GLISSAN: There is only one other thing: in the
light of the shortness of notice I gave my learned
friend, it might be thought to be courageous,
10 shall we say, but your Worship might indicate to
my learned friend when he should serve his
response to this material, so that the argument
might be completed on the day without there being
a further adjournment sought.

15

THE CORONER: Were you contemplating providing a
response?

MR LASRY: I am not prepared to commit myself to a
20 time, save to say we would endeavour to have
material such as we can to our learned friends by
the end of business on Monday. I would be most
reluctant to offer anything prior to that. I am
sure my learned friend will take it in the spirit
25 in which I say this, and perhaps an improvement on
the position we faced this morning.

THE CORONER: No argument about that point,
Mr Glissan, I would hope?

30

MR GLISSAN: No. I think I understand the spirit.

THE CORONER: This inquest will be adjourned until
Tuesday, 19 October at 10 o'clock.

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**MATTER ADJOURNED AT 2.08PM UNTIL TUESDAY,
19 OCTOBER 2004.**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 85

Tuesday, 19 October 2004

[10.10am]

MR BURNSIDE: If your Worship please, may I
announce my appearance with Ms Neskovicin to assist
5 in connection with the application this morning.

THE CORONER: Yes, thank you, Mr Burnside. Yes,
Mr Glissan.

10 MR GLISSAN: Before I commence, I see Mr Stitt is
here. I think he wishes to announce --

THE CORONER: Yes, Mr Stitt. Welcome back,
Mr Stitt.

15 MR STITT: Thank you. I thought it may be of
assistance if we gave to this court our attitude
to the application that is to be made. As
your Worship will recall, my client was given
20 leave to appear only on a limited basis, and that
was to protect the interests of ActewAGL and its
related identities. The terms of the leave are to
be found on page 18 of the transcript.

25 My client did not understand that that leave was a
general right of appearance. Pursuant to that
leave, we have consistently adopted the position
throughout the inquiry that we would only
participate when the interests of our client
30 required us so to do and when they were directly
involved.

Consistent with that we have not participated in
the other areas of the inquiry and therefore we
35 have no direct knowledge pertaining to the matters
set out in the application presently before the
Court.

I have considered the submissions made in support
40 of the application and note that none of those
matters directly or indirectly relate to the
interests of my client or bear upon those
interests.

45 Your Worship, that is not to say, of course, that
my client does not have an interest in the outcome
of this application. The relevant interest of my

client accords with the public interest in having
the inquiry ventilate the matters and the
circumstances surrounding the bushfires and of
course my client has a direct interest in the
5 costs that it has incurred to date.

Your Worship, my client, along with other
interested parties and the public, has an interest
in bringing this inquiry to a speedy, efficient
10 and just termination. Because we have not been
present and have not participated in any of the
matters which form the basis of the application, I
don't believe that I can make any useful
submission in relation to those matters which
15 would have any value in respect of the substance
of the application.

THE CORONER: Have you seen a copy of the
application by Mr Glissan?

20

MR STITT: I have. I have also been given a copy
of the submissions in reply, thank you,
your Worship. Accordingly, my client's position
is this: that it will simply await and abide by
25 the Court's determination as to this application
and that I have no other submissions to make.

THE CORONER: Thank you, Mr Stitt.

30 MR ARCHER: If I could rise to perhaps adopt a
similar position to that expressed by Mr Stitt.
He has expressed the matter far more eloquently
that I would be able to. We are in a similar
position. The AFP has an interest in the
35 expeditious and just termination of these
proceedings. In relation to the application now
before you, the AFP indicates its position that it
neither opposes nor supports the application.

40 THE CORONER: Thank you, Mr Archer. Any other
counsel wish to be heard? Yes, Mr Glissan. I
have read carefully the submission that you made
on the 11th of October. Are there any other
additional submissions or additional points you
45 wish to make?

MR GLISSAN: There are a number. There is a

quantity of material referred to in that written submission which has been the subject of evidence before the Court but which has not been received into the Court as documentary exhibits.

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We have prepared the material which has been referred to, and I tender that material on this application. I can identify each document in that bundle for court record if that is a convenient course.

10

THE CORONER: Yes, thank you.

MR GLISSAN: The first is dated 22 August 2003 headed in a summary way "Lasry memorandum number 2". It is a document which was discussed in transcript between page 7185 and 7187 and subsequently at 7262-3 and referred to in our submission at page 29, paragraph 44.

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20

The second document in the bundle is "conference notes" again referred to at 7200 of the transcript and referred to in our principal submission at page 84, paragraphs 142 and 143.

25

THE CORONER: I think an abridged version of those notes is in evidence but not this full document.

MR GLISSAN: That is so. The third "conference notes of January 2004" which have been referred to in the submission as the "X marks conference notes". They are referred to at page 85, paragraph 146 and following of the submission.

30

35

Next an email from Helen Drew to Diana Prosser about a conference with Mr Bartlett and proofing witnesses which is referred to at paragraph 147 of the submission.

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Next, an email from Helen Drew to Diana Prosser and Rachel Bird, who instructs me, and a letter from Helen Drew to Diana Prosser about the commencement of cross-examination and the production of documents the day before Justice Whitlam brought down his decision. They are referred to at paragraph 154.

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The next emails passing between Matthew Doyle and Trevor Roche referred to at paragraph 181A of our submission.

5 The next, an email from Roche to Mr Woodward, junior counsel assisting, about the visit to ACT fires' points of origin, referring to two people described as "Phil" and "Maria" referred to at page 99, paragraph 181B of the submission.

10

The next, an email from Mr Roche again to Mr Woodward raising some question about the issues that needed to be agitated and an involvement in preparation of what is described as the "issues list" referred also at paragraph 181B.

15

The next, a document extending over some 11 pages setting out proposed witness questions that might be asked of a witness known as Andrew Winter, again prepared by Mr Roche. Your Worship will recall that Mr Winter was the witness about whom Mr Roche was cross-examined for using the expression "he would be a good ally for us". That is referred to at paragraph 181C of the submission.

25

Next document on which we seek to rely in support of the application is a minute from Mr Roche to Mr Woodward about Fire Brigade statements referred to in paragraph 181D.

30

Next, but finally, a letter together with some supporting documents dated 14 October - some three days after this application was made - provided by Helen Drew, solicitor for the Director of Public Prosecutions setting out additional conference notes relating to meetings that had taken place and other documents which had not previously been provided or discovered which are separately identified.

40

Those, of course, are not referred to in our earlier submission, as we had not at the time of the earlier submission aware of their existence. They directly relate to particular issues which we agitate in support of this application, including conference notes which relate to a meeting which,

45

on its face, occurred between your Worship and Mr Roche and other people a few days before the view which was undertaken, and a "to do" list upon which some reliance will be placed in the course of the submission which will be developed this morning, which include suggestions that senior counsel assisting was preparing "the report" of this inquiry to commence on 30 January 2004 before the evidence had been completed and that junior counsel assisting was preparing plans for expert witness statements from the witnesses in relation to whom challenge is primarily taken, Mr Cheney, Mr Roche and eventually Mr Leonard also on that date, that "to do" list having been brought into existence as at 5 December 2003.

Finally, letters variously dated January to May 2004 which I don't wish to further identify now but relate to a response we may make after our learned friend Mr Burnside has made his submissions. I tender that bundle of material.

THE CORONER: Any objection? Do you wish to be heard on that Mr Burnside?

MR BURNSIDE: In our submission it should be two separate exhibits. The letter of 14 October 2004 with its attachments are, as our learned friend has said, not referred to in the submission. They stand in a separate position and should be received separately.

MR GLISSAN: I am happy to adopt that course.

THE CORONER: The other documents referred to by you, Mr Glissan, minus the letter of 14 October 2004 in the attached documents are the first bundle of documents and will be exhibit 0110.

**EXHIBIT #0110 - FIRST BUNDLE OF DOCUMENTS
TENDERED, ADMITTED WITHOUT OBJECTION**

THE CORONER: The letter of 14 October 2004 and its attachments will become exhibit 0111.

EXHIBIT #0111 - LETTER OF 14/10/04 AND ITS

ATTACHMENTS TENDERED, ADMITTED WITHOUT OBJECTION

THE CORONER: Yes, Mr Glissan, are there any other
submissions that you wish to make additional to
5 the comments and points you have raised in your
application?

MR GLISSAN: Yes, your Worship, there are.

10 As your Worship recalls from Tuesday of last week,
we briefly outlined orally the submissions on
which we relied and identified a number of indicia
or indicators which we suggested could be drawn
15 from the case law which did not disclose a closed
class but provided indicators which can be
provided in the cases supporting a concern giving
rise to a conclusion of apprehended bias.

What I proposed to do in relation to the
20 application, and subject to any ruling of
your Worship's in relation to it, was to advance
the argument which we make by referring to those
indicia one by one in a summary way, nominating
the particular matters which we say establishes
25 each of them. As we indicated on the last
occasion at transcript 7705 or thereabouts that,
while the document of 105 pages contained the bulk
of our complaint, it was not to be taken to be
exhaustive nor were we intending that we be
30 limited by that document. It was merely as much
as could be put together in the time available
then to us.

As your Worship would understand, we, as well as
35 my learned friend, has spent some time looking at
this matter over the week that has gone by.

If it is convenient to your Worship, I would then
propose to take your Worship to the law from which
40 those indicia are derived and set out the legal
framework which underpins the argument that
your Worship should disqualify yourself for
apprehended bias; and after that turn to the
written submissions in a very, very summary way,
45 doing no more than adding an explanatory word as
required to more clearly reveal the argument and
put particular matters of complaint in their

proper context.

Your Worship, the first of the indicia, and in a sense perhaps the most important of them, to be
5 found in the cases we say occurs in a situation where a court has expressed or gives rise to a reasonable apprehension that it holds views about experts or that there has been inappropriate and undisclosed contact between the judicial officer
10 and the experts which may lead to, in this case, your Worship not giving those experts the impartial consideration required if justice is to be seen to be done.

15 In a case to which we refer in the written submissions, but to which this passage I am about to take your Worship to is not raised, in JRL v. CRL the High Court came to consider that precise
20 issue. The majority was comprised of three judges, each of whom was consecutively Chief Justice of Australia.

The second of those judges at page 350 of the report, Justice Mason, as he then was, said this:
25

"A central element in the system of justice administered by our courts is that it should be fair. And this means that it must be open, impartial and even-handed. It is for
30 this reason that one of the cardinal principles of the law is that a judge tries the case before him on the evidence and arguments presented in open court by the parties or their legal representatives and by
35 reference to those matters alone unless parliament otherwise provides.

It would be inconsistent with basic notions of fairness that a judge should take into
40 account or even receive secret or private representations on behalf of the party or from a stranger with reference to a case which he has to decide. This principle immediately distinguishes the judicial branch
45 from the other branches of government, except insofar as they may be relevantly affected by the rules of natural justice."

His Honour went on to say a little later on at
351:

5 "The receipt by a judge of a private
 communication seeking to influence the
 outcome of litigation before him places the
 integrity of the judicial process at risk. A
 failure to disclose that communication will
10 seriously compromise the integrity of the
 process."

I will return to that passage in the circumstances
of this case after dealing with the factual
material, if I may. Let me identify those
15 particulars of complaint which we say support the
 conclusion to a fair-minded but informed,
 independent observer that that particular indicia
 of apprehended bias has been made good in this
 case.

20 The first is that the Cheney notes, which were
 ultimately provided, were edited before they were
 handed down. An explanation may have been offered
 for that. Nevertheless, there was no disclosure
25 at the time they were made available and it is
 perhaps appropriate that I identify the second of
 those elements, the undisclosed contact, as a
 second principal element about which complaint is
 made.

30 I will deal with that by producing in a summary
 way a chronology of the events as I understand
 them from the transcript in a moment. I should
 perhaps before I move on go back and say that the
35 transcript dealing with the editing of those notes
 compared with the requirement that Mr Castle, for
 example, provide access to the whole of his folder
 of documents and notes can be found between 1645
 and 1646 of the transcript.

40 The second is that your Worship indicated at the
 time the notes were being discussed at T7641-7644
 that the Court was not aware that there was
 anything relevant in the documents to which the
45 parties sought access. Without arguing it now, it
 is quite clear that those notes contain material
 about management, capacity to fight the particular

fire which was an issue overnight, and a range of other things which have and remain central to this inquiry.

5 Third, claims by counsel assisting supported by
your Worship at T6709 that Mr Roche and Mr Cheney,
the principal expert witnesses about whom
complaint is made, were "your witnesses".
Distinction was drawn between those witnesses and
10 a witness for a party in an adversarial
proceeding. There was a claim made, an
insupportable claim in the event, that those
witnesses were appointed pursuant to section 59 of
the Act. No instrument exists. Those witnesses
15 were clearly simply contracted to provide expert
evidence.

Next it is asserted that in relation to those
witnesses - and the gentleman who remains in the
20 witness box at present time, Mr Roche, and as we
told your Worship last week was the trigger of
this application - there were restrictions placed
on cross-examination for the purpose of protecting
the witness from challenge as to his capacity as
25 an expert. That is to be found between 7578 and
7580 in relation to cross-examination by Mr Watts
and by Mr Walker.

Some other matters relevant to that relate to the
30 refusal of access to the documents in the course
of which the Coroner in her decision indicated
that if there was a desire to test credit it could
occur by cross-examination. When that task was
undertaken it was objected to and the objection
35 was upheld at 7577, 7610, 7684.

In addition, there was resistance to
cross-examination about the background of Mr Roche
in relation to an inquiry into his own conduct in
40 Linton and his performance as head of the Country
Fire Authority - again to be found at those pages
I have already referred to - which may be
contrasted with the treatment afforded to other
witnesses such as Tony Graham at 2589 to 2598 of
45 the transcript.

Similarly, Mr Roche was unable to remember a great

deal. He was unable to make, and indeed was forbidden to make, proper inquiries of people involved in the fire - 7554 is the transcript reference of that - and made assertions that he
5 reached conclusions on the basis that, where there was a lack of evidence, he concluded that there was a failure by those whose conduct he was examining to have acted.

10 It went to the point of restricting the tender of physical evidence. Maps were attempted to be tendered by Mr Walker which have been brought into existence by Mr McRae. As I understand the
15 position, that tender was refused unless those maps were shown not to be contrary to the evidence of Mr Cheney. That is to be found at T3467-8. Those are the particular matters which we say give rise to a concern about the views betrayed by the
20 Court as to its experts.

Let me next turn to the second, the inappropriate and undisclosed contact with the experts. Those assisting my learned friend Mr Johnson have produced, and I am grateful to them, what might be
25 described as a chronology. It isn't in a form which can be handed up but it is in a form which makes clear the history of this matter in relation to what we say is entirely inappropriate and completely undisclosed for the better part of the
30 year contact between your Worship, as the Coroner inquiring in this matter and expert witnesses who are central to this inquiry.

The 16th of June 2003 was the day on which this
35 inquest was opened. Your Worship made it clear at the very beginning of the transcript that counsel assisting would call all of the witnesses, "I will not permit other parties to call witnesses. If a party wishes to have a witness called, they should
40 liaise with counsel assisting". That will in its turn give rise to a separate complaint revealed in the bundle of documents.

But so far as contact with the expert witnesses is
45 concerned, on that day leave was given to Mr Bayliss to appear on behalf of the Australian Capital Territory, to a Mr Begbie to represent the

Australian Federal Police, and my learned friend Mr Stitt to represent ACTEW. There was no reference on 16 June that there was any intention by the Court to undertake a view or a field trip to the areas relevant to the fires and relevant to the inquest. Neither was there any notification between that date and the date of the field trip that such was intended to be undertaken. I remind your Worship of what Sir Anthony Mason said in JRL about material to be taken in the presence of the parties or their legal representatives and not privately.

On the very day after the field trip the matter was before the Court. On the 21st of August there was a conference at which Mr Bayliss and Ms Diana Prosser attended. It appears that the field trip of the previous day was not then referred to. It is certain that, at the directions hearing which took place on 1 September 2003 and Mr Lakatos appeared for the Australian Capital Territory and a limited grant of leave was given to Mr Lowe, no-one in the Court referred to the fact that a field trip had taken place on 20 August.

On the 7th of October Mr Lasry made an opening address. There was no mention in that opening address, no reference to the fact that a field trip had taken place on 20 August. That field trip was attended by the two principal expert witnesses called in this case. It was attended by counsel assisting. It was attended by your Worship. It was not attended by the representative of any party nor was any party given notice or invited to attend.

In the course of the opening address, Mr Lasry indicated a number of things - transcript number 3/20 in which he highlighted that:

"Principal issues in this case were likely to be that the ACT and its residents were very poorly prepared for the event, that there was complacency about the suitability of the structure of the fire authorities in the ACT and the issues of fuel reduction."

At 8/15 on the same day he referred to:

"The operational response to the fires."

5 And during the course of that passage referred to the Bendora and Stockyard fires, the site of which had been visited, although this was not revealed in August, and said this:

10 "So far as the three fires in the ACT were concerned there was no direct attack on those fires either. Whilst the fire crew had attended the Bendora and Stockyard fires in one form or another, it was determined that
15 no crews were to remain to conduct firefighting or control operations overnight on either 8 or 9 January."

He said to your Worship that:

20 "Your Worship may or may not later conclude that the failure to use the advantages that arise in the evening to control these fires was a significant opportunity that was lost."

25 During the evidence that took place thereafter between the 7th and 15th October, there was no reference to the fact that a field trip had been undertaken. There was any amount of opportunity
30 to inform the parties.

On the 15th of December there was a further directions hearing, again nothing was mentioned. But on that day Mr Cheney, who had already been
35 called, was referred to and Mr Lasry indicated that he intended to recall him on the issue of fuel management and Mr Roche would be called on the issue of systems of command, control and application, the suppression and community safety
40 and education, all of which the notes reveal had in one form or another had been the subject of the provision of information or discussion.

The inquest was then adjourned to 15 February.
45 Until its resumption there was no indication that a field trip had been undertaken and indeed, no issue, no disclosure of that field trip occurred

until the issue was raised by counsel appearing in the interests of particular individuals on the 27th of April.

5 Even in relation to court-appointed witnesses in JRL in the High Court, the then Chief Justice Sir Harry Gibbs at 347 said:

10 "In the performance the expert becomes a potential witness, a court-appointed witness who is perhaps in some respects analogous to an expert but is not part of the court and has no right to communicate with a judge in relation to a pending matter except through
15 the medium of the report."

The failure to disclose the inappropriate contact and indeed the continued inappropriate contact which I have already referred would, in our
20 submission, alone be sufficient to taint this inquiry to such a degree that it could not survive the attack which we now make upon it.

25 It is, however, but the first of the indicia on which we rely.

The second is the condemnation or failure to correct apparent partiality displayed by counsel assisting. Although your Worship had been on the
30 same trip, this field trip, when counsel assisting described it on 25 May at page 5855 in relation to the notes of the interview as "The notes containing only information of where those who were on the field trip went," your Worship allowed
35 that to go uncorrected. Your Worship indicated to those, as I have already said, who were then engaged for the parties that the contents of the notes were not relevant. One need only read them to see how erroneous that proposition is.

40 In the same context there was a request for the provision of a map by my learned friend Mr Whybrow, a map which already existed, a map which had existed for some time on the subsequent
45 evidence. It is not possible to say who had seen that map, but the provision of such a map as was requested and which already existed was objected

to by counsel assisting on the basis that it would impose extra work on Mr Cheney. It would appear he didn't even go so far as to ask whether such a map existed.

5

Another example is to be found around page 6620 of the transcript. It relates to an issue that arose about a statistical analysis of inquiries that had been made of persons whose properties had been destroyed without going to the very vice that that entails at this stage - although I will come to it in the future - those whose properties had been destroyed were asked a range of questions. My learned friend Mr Whybrow had produced some material by way of statistical analysis of the responses to those questions. There was discussion about that and it was said between your Worship and junior counsel then appearing for counsel assisting that that statistical analysis didn't accord with what your Worship had already seen.

No such document had then or has ever been produced. Some statistical analysis going to an entirely different issue has been subsequently produced, derived from different parts of the documents.

THE CORONER: Mr Glissan, are you referring to a questionnaire that was developed by the police and was handed to residents of houses?

MR GLISSAN: As I understand it, your Worship, yes, those are the documents to which I am referring. They are in a bundle which was produced as part of the courtbook, I think.

Next, there is the issue of the section 55 notices which we have dealt with in the principal submission briefly. Mr Lasry stated in open court that counsel assisting's submissions would amount to the equivalent of your Worship giving notice under section 55, as is required, if there is to be an adverse finding, thus assuming a role reserved to the coroner by the Act. But more particularly in the context at page 5849 of the transcript that "His submissions would be the

worst possible outcome for the represented parties".

5 Finally, the notes to which I have just briefly referred your Worship, which I handed up a moment ago and were separately marked as exhibit 0111, the notes produced after this application on 14 October showing a to-do list which suggests that counsel assisting would be the person
10 commencing the preparation of the report, including a review of the existing transcript.

I should say to your Worship that the case law - and I will take your Worship to it in a moment, as
15 I think I am obliged to do - makes it perfectly clear that counsel assisting should not have any role in the preparation of the report but not go further than making submissions, let alone drafting the report and let alone commencing a
20 draft of it at a time six months - no, 10 months before the bulk of the evidence had been heard.

We also say a close examination of the transcript reveals that this court has applied different
25 rules for counsel assisting in the receipt of documents to its treatment of documents when they are sought to be relied on by a party.

The Whybrow statistical analysis is one example.
30 A more graphic one, perhaps, relates to summary background material prepared not by the witness but by somebody else on which the witness has based an opinion. Mr Cooper, who was called by counsel assisting, was permitted to produce and
35 rely on and summarise and describe the contents of a report collated from the efforts of other people.

40 THE CORONER: This is Mr Kevin Cooper?

MR GLISSAN: Yes, your Worship. When Mr Walker wanted to put similar material at 6580 through Mr Bartlett, he was met with a simple refusal to receive it on the basis that it hadn't been
45 properly proved.

Each set of source materials raised precisely the

sort of issue which counsel is entitled to use to explore the qualifications, capacity and conclusions of an expert, applying for example the decision of Court of Appeal in New South Wales in Makita v. Sprowles. The applications were treated differently. There is no reason for that.

Next we say --

10 THE CORONER: Do you have any other examples, Mr Glissan, of where that happened?

MR GLISSAN: Only those that have been referred to in the written material. I don't want to go through material that is already in, if your Worship please.

Next we say there is evidence and persistent inequality of treatment between witnesses. One of the witnesses referred to and referred to at some length in the initial material was Marika Harvey. The degree to which your Worship was critical of that witness was suggestive of more than an ordinary reaction, but we have dealt with that in the written material. I don't want to go through it in any more detail.

It was, however, never revealed that Mr Roche was under instructions not to speak to witnesses, not to actively investigate the matters about which he was giving expert evidence. That was only revealed in cross-examination. It was not revealed in exhibit 62 nor in his evidence-in-chief. Mr Roche only spoke to those critical of the Emergency Services Bureau, for example Mr Cooper, Mr Koperberg.

I have dealt with the statistical material. I have dealt very briefly with the differential treatment of Mr Roche's incapacity to recollect the issues he was actually appointed to examine compared to the challenges to Mr Castle and Mr Stanhope, the Chief Minister - who were asked questions like "are you serious?" - when they said they couldn't recall things that occurred. And of course the treatment I have already referred to of Marika Harvey.

Additional to that, there is evidence, we say, to be found contained - our first primary complaint about this is contained in far too summary a way at paragraph 170 of the principal submissions.

5 Mr Lucas-Smith and Mr Castle consistent with counsel assisting putting a case, the intention to lock people in, as it were, in the order that witnesses were called, and unfairness demonstrated by the questioning of those witnesses.

10

I will give your Worship no more than three or four examples by way of transcript reference, if I may. So far as Mr Lucas-Smith is concerned, we point to transcript references 918-923; 1016-20; 15 1065 and 1207. So far as Mr Castle is concerned, from 1683 at about the top of the page to 1685, line 12; 1273, about halfway down, to about the same point on page 1276; and from page 1328-1333.

20

A reasonable observer informed as to this inquiry might well conclude from those aspects that those were targeted witnesses to whom there was an attempt to attach blame in the way they were questioned; efforts were made to lock them in to 25 positions; that a case was being put in many of the questions that were asked; and very briefly, simply referring to the submissions of my learned friend at page 45, bottom of the page Mr Lasry referred to a passage set out from T42 or T5849, 30 it is difficult to ascertain. It is clear that it was not only the fact but the intention of counsel assisting from the passage at the bottom of page 45 of the submission, that those witnesses were questioned in a different way and 35 deliberately so to the other witnesses called in the case.

40

Next in this summary of indicia that I am putting to your Worship, we say there is evidence of a persistent refusal to provide relevant material or assistance to those with legitimate interests, and there was a withholding of such material. The most recent example which is sought to be explained by inadvertence is the provision of the 45 additional documents, exhibit 0111, produced three days after this application was made revealing further notes of contact between the Court and

witnesses who were the subject of scrutiny.

There is the evidence of the ending of the Cheney notes. It is perhaps unnecessary to remind
5 your Worship of the chronology of that episode. The original report was released in October 2003. In July an amended report was made available. On the 16th of July Mr Roche's report was delivered. On the 22nd of July 2004 an application for access
10 to Mr Roche's documents was made and on 23 July access was refused.

It was not, and I don't really want to take your Worship through the whole of this, until the
15 day before Justice Whitlam pronounced his orders and well after it was clear what the effect of those orders would be that documents were made available for inspection. And it was suggested, despite the volume of them, that the hearing
20 resume in the earlier part of the following week. That would give the balance of one day and a weekend to look at the documents and possibly a day and a half in the following week and they should be ready to cross-examine after that.

25 There was an attempt to withhold those documents during the course of the proceeding on a range of bases ranging from privilege to public interest immunity. In all events, that has been litigated
30 elsewhere. It remains an important consideration, however, in an examination of whether an independent observer would regard this inquiry as being tainted.

35 There is the matter of the extraordinary reference about Mr Bayliss contained in the material just tendered, which has previously been the subject of at least an undertaking by counsel not to make it public. While it forms part of the material I
40 don't propose to go into it, at least orally here, but it contains within it a suggestion that those appearing for interests other than counsel assisting are not to be treated as trustworthy.

45 It is a suggestion which comes from the bench, according to the note.

47

THE CORONER: You are referring to paragraph 85?

MR GLISSAN: Yes, your Worship.

5 THE CORONER: That paragraph, the discussion
recorded there in the notes related to
transcription of tapes - you are aware of that
presumably, Mr Glissan - transcription of some
tapes which were then in the possession of the
10 Emergency Services Bureau. Those tapes related to
conversations between personnel then at the
Emergency Services headquarters and others during
the periods of the fires of 8 January and on.
Those transcriptions were needed by Mr Cheney so
15 he could take account of the information contained
in those reports.

I should say that those notations are attributed
to me on the record or rather do record the
20 concern about the delay that was occurring in the
transcription of those tapes under Mr Bayliss's
management. Furthermore, the integrity of the
process depended upon the fundamental examination
principle, in my view, Mr Glissan; namely, an
25 agency subject to an investigation should not be
responsible for and not be the custodian of
significant information.

This view I hold as much to protect the agency as
30 much as to protect the evidence.

MR GLISSAN: Thank you, your Worship.
Your Worship does appreciate, I trust, that it is
no part of this application to assert actual bias,
35 despite the passage referred to in the submissions
from a case called Jia v the Minister for
Immigration, a High Court decision of a couple of
years ago. This is not a case in which we say we
are making out a case of actual bias. We are
40 making out a case that an independent, informed
observer looking at the procedural unfairness
which has informed this inquiry would be compelled
to reach the conclusion that there is a risk that
the Court might not bring an open mind to the
45 hearing. The concern is for the appearance of
justice being done. It is the prime concern.

47

We do not need to, nor do we attempt, to make out a case of actual bias.

5 THE CORONER: I understand what you are putting, Mr Glissan.

MR GLISSAN: Thank you, your Worship.

10 So far as that issue of general procedural fairness is concerned, it forms part of our complaint as well. I have already raised a number of matters which falls under that umbrella: The view of August itself; the fact that that was not disclosed until April 2004; the fact that the view
15 was undertaken in the absence of those people who were interested in it, who were to be represented, who were already known to be persons of interest, and who had a particular capacity to assist in relation to that fact-finding mission, such as
20 Ms Arman, raises a further issue.

The fact that there was a simple refusal to reveal the contents of the discussions with Mr Cheney, despite the fact that the Court was drawn to the
25 decision in Szwarcbord v. Gallop at T5860. The criticism of Mr Bayliss, to which I have just referred, might well suggest, we say, to an independent objective observer that there was some suggestion that if Mr Bayliss had access to the
30 documents the integrity of the inquiry might be compromised suggests - one of a number of conclusions, I suppose, are possible. One at least is that there is to be no trust reposed in those who represent interests inconsistent with
35 those propounded by counsel assisting; the failure to provide the map, to which I have referred; and the further inappropriate contact, as we put it, between Mr Cheney, the witness, and the coroner after he had become a controversial witness when
40 there was a visit to a fire which was currently occurring in late May of this year at a time when Mr Cheney was dealing with considering a report of Mr McRae, who had started giving evidence on
14 April.

45

There are perhaps two more things I need to address. Second last, the continued criticism or

suggestion that counsel appearing for interested parties had a hidden agenda in some way, that they would impugn the inquiry, as is now happening, but which had not happened before. The statement
5 your Worship made about the conduct of counsel on Friday 27 August - I will find the transcript reference to that should it assist - criticism of counsel to be found in the transcript when they attempted to obtain copies of notes. And the
10 passage shortly before this application was made on 7 and 8 October where the cross-examination, I think of Mr Walker, was attacked on the basis that - I will read it:

15 "Are you suggesting that a small jurisdiction should be allowed to burn because there is no money to protect it? Is that the proposition you are putting? That is what it sounds like. That patently is nonsense."

20 We say two things flow from that: first, that could not have been, on any view - to a fair-minded listener, an unbiased listener - a conclusion that was being put by these questions
25 being asked by Mr Walker. Secondly, despite the fact that your Worship was asked to withdraw it, subsequently your Worship refused to do so.

30 It is similar to the criticism that was made of Mr Walker and Mr Whybrow for raising concerns that the way the evidence was being produced was slanted, to which the only response was:

35 "All you have sought to do is to inflame the situation."

At T6622 --

40 THE CORONER: What is that in relation to, Mr Glissan?

MR GLISSAN: That is in relation to Mr Whybrow's assertion, I think joined in by Mr Walker, that the evidence that was being produced, particularly
45 relating to witnesses at the view was slanted to achieve a particular result.

47

THE CORONER: In what context, are you able to recall?

MR GLISSAN: Without reference to the transcript,
5 I am unable to give your Worship a precise version of that. I will have it turned up.

We have indicated that there is material suggestive of pre-judgment. The Marika Harvey
10 incident is one example. The Bendora fire, we say, to a fair-minded observer might well be thought to be pre-judged. The Cheney site note was suppressed. The video walkaround which was done by Ms Odile Arman, who had been the
15 firefighter with personal interest, has never been transcribed and was never seen by the witness Mr Cheney. She was never spoken to by Mr Cheney nor, indeed, by Mr Roche, who was forbidden to speak to her. The only person to whom he spoke
20 was a man called Cliff Stevens, who was not involved.

There is the "X marks the spot" document which has just been handed up, which indicates that only
25 certain witnesses were to be examined. It is perhaps idle to remind your Worship in this case that the office of the coroner is one that extends back some 500 or 600 years, and at common law and preserved under statute the duty of a coroner is
30 to inquire of all witnesses who can give relevant information, not to be guided, if that were the case, by counsel assisting only to interview certain witnesses who might be thought to support the conclusion which is being contended for.

35 THE CORONER: Just in relation to that, are you referring to that "X marks the spot" paragraph, I think that is paragraph 86D in your application?

40 MR GLISSAN: The tender of that was rejected.

THE CORONER: I think it is important to indicate that I did not make those X marks and I do not know what they were intended to mean.

45 MR GLISSAN: Thank you. It was appropriate, however, to receive evidence as to what they did

mean and to examine the issue to see whether or not there was an element of fairness being denied in the continued conduct of the inquiry. That is the complaint that is being made.

5

Mr Roche's admissions to Mr Walker about the agenda, about how he absolutely wanted his views vindicated and that he suggested the order of interviewing of witnesses, including people who are here represented suggesting "interview them last so we can lock them in" - transcript 7676, perhaps it starts at 7674 and runs for two or three pages.

15 The statistics, the questionnaire to which your Worship referred me is itself an example of skewing or slanting the result of the inquiry. The questions in those statistics speak for themselves. Issues, some left open, "do you want to raise anything?" As to what happened in relation to it. But the complaint is that those to whom the questionnaire was sent are those described in the document itself as "bushfire victims". It is my understanding and certainly my instructions that those questionnaires went to those whose property had been destroyed, not to those whose property had been saved.

In any statistical undertaking, it is both commonsense and common knowledge that if one seeks to obtain the less than - sorry, I will put it another way. If one seeks to obtain a balanced response one needs to ask not only those who have been adversely affected by an outcome but those who have avoided the adverse results in order to obtain a fair and balanced picture. That simple proposition appears to have been disregarded in the inquiry.

40 The only person who was asked to give evidence about the fire at the sewerage treatment works was someone who was not involved in the fire at the sewerage treatment works but somebody who observed it from afar, Mr Camilleri, not Mr Knight who fought the fire or others of his crew who were there and involved in it.

47

This present application is based, as your Worship knows from the principal submissions, on an accumulation of matters which occurred over a period of many months. Critical information has only come to light so far as the parties whom I represent are concerned following the intervention of the Supreme Court, leading to the production of documents and the cross-examination of Mr Cheney and Mr Roche utilising those documents.

10 That itself has placed the antecedent undertaking of the inquiry at risk when that material was not available.

15 Those are what might be thought to be the indicia on which we rely to suggest that this falls within the apprehension of bias test as was articulated by the High Court in Webb v. R, which is set out in our principal submission at page 3, paragraph 9. The appearance as well as the fact of impartiality is necessary to retain confidence in the administration of justice. Both the parties to the case and the general public must be satisfied that justice has not only been done but that it has been seen to have been done.

It extends beyond the truly judicial. I know your Worship has variously described this inquiry as judicial, quasi-judicial.

30 THE CORONER: I have never described it as "quasi-judicial", Mr Glissan.

MR GLISSAN: Nevertheless, in Ebner v. Official Trustee in Bankruptcy, the present Chief Justice, Justices McHugh, Gummow and Hayne set out in the passage we have set out in the written material of the test as it now stands:

40 "A judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question that the judge is required to decide. It is a requirement which reflects the fundamental importance of the principle that the Tribunal be independent and impartial.

The importance is this: even the appearance of departure is prohibited lest the integrity of the judicial system be undermined."

5 As I said earlier, there the Court made clear no attempt need be made to inquire into the actual thought processes of the judge. We are not here seeking to inquire into the actual thought processes which inform the Court. The test is an
10 objective one. It is found in the need for public confidence in the judiciary. It does not admit of, one might reasonably say, explanation of conduct which, on its face, gives rise to an apprehension of bias because the question, being
15 one of possibility, deciding whether a judicial officer might not bring an impartial mind to the resolution of the question requires no prediction about how the judge will in fact approach the question.

20

Again, I quote from the decision of the High Court in Ebner, and it was picked up again and reiterated by an insignificant different Bench in Johnson v. Johnson.

25

Your Worship, I will move on to a different matter. I don't know whether your Worship is minded to take a break at this stage or not.

30 THE CORONER: It sounds like a convenient time, Mr Glissan. We will take the morning adjournment. Thank you.

SHORT ADJOURNMENT [11.17am]

35

RESUMED [11.45am]

40 MR GLISSAN: I am sorry to be taking so much time, your Worship, doing this. It is important both for those instruct me and for those who have a public interest in this that these matters be ventilated in a way that makes clear the reasons for the complaint. Because otherwise it might be thought to be a frivolous application or an
45 application which was brought out of a particular interest rather than one which, I quite frankly don't disguise it from your Worship, gives me no

pleasure to make.

5 It is important in circumstances where, although
the submissions were handed up into court a week
ago, they have not been available to the public at
large that they be, at least in a summary way,
gone through in open court so there be a full and
complete record of those matters which enliven the
application.

10

THE CORONER: I do intend to make the application
available publicly, Mr Glissan. I just was not
minded to do so last week.

15

MR GLISSAN: Indeed. If we may say so, with
respect, we understand your Worship's reluctance
particularly when there had been no opportunity
for those seeking to oppose the application to
produce any material, in the same way as we
20 readily agreed with Mr Lasry last week that the
oral argument should go forward all of a piece.
It is appropriate that if the written material is
to be made publicly available that, too, should be
done with both sides being adequately represented
25 so that those who see it have an opportunity
properly and fairly to judge it. Indeed, we could
hardly be heard to say the contrary when that is
the very basis of our application.

30

Could I turn to a slightly different issue. Much
of what I outlined when I set out the six or seven
indicators or fingerposts on which we say we rely
on suggests an independent fair-minded observer
would regard this hearing with an apprehension of
35 bias related to conduct which could not be said to
be the coroner's conduct but was the conduct of
counsel assisting. It might be thought by those
who consider this and it may indeed have been
thought by your Worship that it is inappropriate
40 and perhaps unfair to sheet home to the Court the
acts of those who are, on the case we seek to make
out, certainly not the Court and indeed not
entitled to improperly influence the Court.

45

Because some of our complaints relate to the
conduct of counsel assisting, it is important that
I take your Worship at this point to the law that

governs the somewhat peculiar role which counsel assisting occupies.

5 The first case to which we referred your Worship
in our written material was Demirok, which was a
criminal case which pointed out that counsel
assisting exercise special functions and
responsibilities. In Demirok the corollary of the
10 position of counsel assisting, the position of a
crown prosecutor, was considered by Sir Garfield
Barwick. And he pointed out that the Crown in a
criminal proceeding representing the community has
an interest in the result. He highlighted that
15 proposition by distinguishing the position of
counsel assisting. He said, "It is not in the
position of counsel assisting" - referring to a
Royal Commission but it is equally apposite to the
present inquiry - "with no function other than to
20 assemble for consideration such facts as are
available to it".

There are specific rules in the Australian Capital
Territory which governs barristers, which
your Worship would be readily aware. They require
25 that those who are acting in the position of
counsel assisting or as prosecutors have specific
ethical duties, fairly to assist the Court,
impartially to have the whole of the relevant
evidence placed intelligently before the Court and
30 not to seek to inflame or bias the Court.

We refer to a Court of Criminal Appeal case in NSW
which is of peripheral relevance but which again
points out that crown prosecutors need to function
35 with proper objectivity and impartiality.

What is important, and what we say has been most
consistently and significantly breached with fatal
consequences to this inquiry here, is that counsel
40 assisting do not put a case before the coroner.
As Commissioner Cole, as he then was, in the Royal
Commission into the building industry said:

45 "In leading evidence during hearings, counsel
assisting are not putting a case."

Counsel here do not present a case in proceedings.

That was then considered in *Firman v. Lasry*, a case in Victoria relating to a royal commissioner, a Mr Lasry QC, who was sought to be prohibited from proceeding on the grounds of apprehended
5 bias.

In the context of that case, the judge who determined it set out clearly the limits and role of counsel assisting. He pointed out that the
10 closeness of the working relationship between counsel assisting and the Tribunal may well be illuminated by what transpires at public hearings and that the conduct of counsel assisting in a case of apprehended bias may be relevant in at
15 least two ways: first, because the hypothetical observer would reasonably apprehend that partiality on part of counsel assisting is likely to reflect partiality on the part of the commissioner - that is the passage on which we
20 rely in this case, with respect - and second, if the conduct of counsel assisting appears to be partial and if the Tribunal appears to condone that conduct, either by saying or doing nothing or by joining in it, then the hypothetical observer
25 might reasonably apprehend partiality on the part of the court.

So that we say it is appropriate to look to the conduct of counsel assisting to illuminate the way
30 in which this Tribunal has undertaken its task of investigating and inquiring into these deaths and these fires.

Similarly, where there has been what might be described as a "teamwork" approach, the same principles are enlivened. Here, particularly because of the nature of events which I have already spoken about at length relating to
35 Mr Cheney and Mr Roche in particular, and the involvement particularly of Mr Roche in the preparation, presentation, structuring of questions and his apparent special position as a witness in the Court, he is part of the team. And your Worship will remember in the material that we
40 handed up this morning there is a reference to him sending emails to and from various people, referring to your Worship as "Maria" and referring
45

to people by abbreviated names "Doyly" and
somebody else. There is an indication of a
comfortable closeness between those various
people, a "teamwork" approach as is put in the
5 cases.

The case to which we have referred is Carruthers
v. Connolly where there were two commissioners.
There, the inference that was drawn was that there
10 had been regular contact discussing matters,
endeavouring to form or at least participate in
preliminary views and that that was a matter which
effectively compromised the inquiry.

15 Similarly, the accumulation of the matters to
which I have already suggested. There is a recent
case of Katherine to which I referred your Worship
last week where Mr Justice Studdert in the Supreme
Court of NSW said:

20 "An apprehension of bias may be established
by an accumulation of matters and indeed may
only become apparent after judgment has been
pronounced."

25 It is that legal context that led us to make the
submissions in the 105-page document. I have no
wish to go through that document with your Worship
in detail. But the document was structured in
30 such a way, perhaps because of the shortness of
time which attended its preparation, that it fell
into two parts: the factual complaints were set
out in the early part of the document; and the way
in which it is asserted the law required those
35 factual complaints if made out to be treated in
the latter part of the document starting at about
page 75.

40 There are also, in relation to those particular
matters there set out, of which there are 9 or 10,
some additional submissions which we wish to make.
It would be both unfair to the Court and to my
learned friend not to expose the reasoning which
45 informs the complaint so that it can be
considered.

The warning which your Worship gave to Marika

Harvey has occupied a significant amount of the document. She was a young lady, your Worship will recall, who was simply a public relations officer for the Chief Minister's Department. She was a
5 media liaison person. She gave evidence over some days commencing on 18 March --

10 THE CORONER: It was a total of a day. She started just before lunch one day and finished --

MR GLISSAN: Thank you. Her evidence was informed by a lack of recollection, I think it is fair to say. She had clear difficulty in her
15 recollection. She had more than merely a want of recollection because she had taken notes at various meetings which she had attended, and even with the prompting of the notes was unable then to recollect.

20 Your Worship found that a difficult state of affairs to accept. Indeed, your Worship was not backward in saying so on the first day she gave evidence and said to her, for example, in the passage that is set out:

25 "Why can't you recall? You are making notes. You are at the meeting. Why can't you recall? It is a significant event. Have you been through anything like this before?"

30 She then gave an answer to your Worship which said she was trying her best. It was a pressured time. It was an amazing experience. It was horrifying. Her memory was very blurry. She was doing her
35 best to remember what was said at the meeting, and so on.

Overnight your Worship considered those answers and on the next day read her section 81 of the
40 Coroner's Act, suggesting that she was or might be a person who could be subject to an adverse finding by the Court in the context of that section, which is to say knowingly giving evidence falsely or misleading in a material particular.
45 That is the only inference we can draw from what appears in the transcript.

47

There was an attempt to elucidate from the witness by my learned friend Mr Lakatos who then appeared for the ACT the difficulty that she was experiencing. She said she had never been
5 intentionally less than forthcoming and she hadn't given false evidence or misleading evidence and she said, again, that this was a very traumatic event.

10 Your Worship again engaged the witness in a way which, to any observer, would suggest that your Worship was, putting it as neutrally as I can, not inclined to accept that explanation.

15 What we say about that, going to the second part of the document, is that there was no reasonable basis for that conclusion, certainly not to the extent which would justify the giving of a warning under section 81; that your Worship didn't merely
20 urge her to do her best to remember events and conversations; or indeed recognise that the explanation that she gave that there may be difficulties in recalling events which occurred over several days during a stressful and traumatic
25 period could be accepted. Nor indeed, and as I understand the evidence it revealed this young woman had worked extraordinarily long hours during this period. So there were other explanations as well that might have suggested themselves to an
30 impartial observer to explain why the witness could be unable to recollect events rather than a sinister belief that she was withholding evidence from the Tribunal.

35 It is, in a sense, the seminal issue in this case because it is one of the early times in the course of the hearing that we say that a reasonable observer might have apprehended that your Worship was looking for particular evidence or particular
40 material to come from a witness rather than simply inquiring into what occurred. And it is material which suggests that your Worship may have, in the mind of an independent observer, been troubled by the fact that the witness didn't, as it were, come
45 up to prove or provide the evidence that was being looked for about what had been discussed.

47

We want to make it perfectly clear that it is part of a court's function to form a view about witnesses and to express that view. That, however, is circumscribed by a number of factors:

5 The warning was given publicly; it was given without notice to the witness or to Mr Lakatos who was then counsel for the Territory; it received substantial publicity in the media - and any lay observer might think that subsequent to that there

10 was a causal link, as we put it, between the warning given to Ms Harvey and the level of heightened apprehension on the part of witnesses yet to be called to give evidence.

15 More particularly, the actual warning in the circumstances in which it was given really suggest that it was too hasty for your Worship to form a view that a witness who says "I can't remember" is giving false or misleading evidence. The High

20 Court has considered this particular issue at least in two cases: in 1953 in a case called Coward v. Stapleton in 90 CLR and more recently in about 1980 in 143 CLR in Keeley v. Brooking. What the thrust of those two decisions is that even if

25 a witness gives the appearance of holding something back, a court will usually only conclude that the evidence is unreliable. It will go to credit.

30 Even then, unless there are very strong circumstances, none of which we say were here present, the Court would not publicly express that view unless the issue had been ventilated in submissions and the witness and anybody

35 representing an interest aligned with hers given an opportunity to deal with it.

The reason I put to your Worship that that was in a sense seminal wasn't because it was of huge

40 importance itself but because it was the first indication in the course of the hearing that there may have been a degree of partiality being betrayed by the Court in relation to the evidence that was being sought to be obtained.

45 More central are notes of the field trip and the editing of notes of the field trip. I have dealt

with these in indicating which indicia they fall into. But we say they are central --

5 THE CORONER: The notes?

MR GLISSAN: The notes and the fact of the editing and the form that the editing took, and they are incapable of explanation.

10 THE CORONER: You have made lengthy comments about those notes, Mr Glissan.

MR GLISSAN: I have. We have dealt with them at length in the written material.

15 THE CORONER: You are, of course, aware that the notes made were Mr Cheney's notes.

MR GLISSAN: Indeed. They say so on the surface.
20 They were adopted by your Worship. Your Worship took them away and your Worship edited them.

THE CORONER: There is no information in
Mr Cheney's notes so far as I can see which was
25 not readily available to the parties in the evidence that was given by Mr Cheney. Given that you have made such lengthy comments about those particular notes, I would like you to identify for me any of the information in those six pages of
30 field notes which was not already available to the parties in the evidence.

MR GLISSAN: We have made our submissions about those in the document between pages 29 or 30.

35 THE CORONER: You haven't addressed that point, Mr Glissan. I would like you to identify any information which you say is in those six pages of field notes which wasn't available to the parties.

40 MR GLISSAN: Certainly. The thrust is this: what certainly wasn't available to the parties indeed up to the time that this issue arose in the Supreme Court was material relating to the
45 development of the fire, material relating to - first of all the presence of Mr Roche, Mr Cheney, senior and junior, and your Worship at the view,

and I have dealt with that in some real detail -
the principle in the issues related to the nature
and development of the fire, whether or not the
fire was capable of being fought and whether the
5 terrain was such that the fire could have been
fought overnight, and the difficulty of fire
suppression in relation to the matter.

At the time Mr Cheney certainly first gave his
10 evidence these notes were not available. None of
the material set out at "stop 6: Wombat Road" -
indeed none of these notes were then available.
But so far as that is concerned, matters such as:

15 "Considerable reconstruction and widening of
Wombat Road carried out since the fire. The
condition of Wombat Road prior to the fire
assessed as being similar to Two Sticks Road.
The latter road and the Bendora Break had not
20 been maintained and were overgrown. The
difficulty of fire suppression in tall alpine
ash forests. The requirement for chainsaw
operators skilled at cross-cutting down log
material. The identification of hazardous
25 trees which once alight can fall without
warning".

THE CORONER: You are saying that that is evidence
that was not available to the parties?

30 MR GLISSAN: I am saying, the vice is this:
Mr Cheney was not able to be cross-examined about
the notes that he made and his observations at the
time. One of the most important perhaps relating
35 to the Waterfall Creek fire, about which he
couldn't be asked because no-one knew this was his
view and it was not the view he expressed in his
evidence, was there was discussion - that means
discussion with your Worship and others - about
40 the development of the fire and it was considered
that because the slopes were aligned with the
north-westerly wind direction that it would have
been "impossible to hold the up-slope spread of
the fire on the western slopes even if
45 firefighters had been present shortly after
ignition".

47

Giving a completely different view and a completely innocent explanation for the spread of that fire, one which couldn't be laid at the door - if that is the appropriate expression
5 because it seems to be the thrust of counsel assisting - of any firefighter because of the fact of impossibility. That is but one example.

The Mt Franklin Road, the Bendora Dam Works Road,
10 burning out completed by the morning of 17 January up to Bulls Head - that material set out in summary form in these notes are views not consistent with the views expressed by Mr Cheney in his evidence. But, more particularly, the
15 opportunity to explore and cross-examine the views of Mr Cheney and Mr Roche from these notes was denied. Whether or not similar evidentiary material was available from other sources to the parties is not to the point. This is an inquiry,
20 the function of which is to ascertain what happened rather than, absent particular issues arising, the assignment of blame.

This would have assisted the parties had it been
25 completely available earlier, with their capacity to explore and perhaps modify the views, some which might be thought to be extreme expressed by Mr Cheney - and they were asked for. I am sorry to say, your Worship, despite what is said in my
30 learned friend's submissions, they were asked for. As we point out between page 35 and 38, on 24 May Mr Walker raised it directly with your Worship when he said:

35 "You have kindly indicated to me where you went. But apparently there were some notes of what you were told about various things at various places. In my submission insofar as that conversation related to matters directly
40 relevant - I pass over the interchange between the Court and Mr Walker - if your Worship is able to indicate in broad summary terms what you were told in the course of that view, I would respectfully
45 request that your Worship make that known because it may be - I note Mr Cheney was on the view - that he says something about a

particular area that which might be
disputed."

5 He goes on. Mr Lasry says the question of the
view "is entirely a matter for you" and he goes on
to say:

10 "... I wasn't keeping notes either of the
conversation. All I can say in relation to
that, because you have informed the parties
by that document as to where we went and what
we saw, I think Mr Walker is asking whether
there has been conversation ... My very broad
15 recollection is that insofar as there was
conversation of a more formal nature, that is
a discussion about what we were doing, it was
primarily about where we were and being
pointed out to us where the fire was in
20 particular places ... It was clearly a view
that was designed to enable you in particular
to have a familiarisation with the area."

He goes on to say, a little later on in another
part of the transcript of course that this was
25 something that clearly was going to inform the
conclusions that were ultimately made and it would
be taken into account.

30 In that context Mr Walker raised Szwarcbord and
Grayson v. Gallop, the case to which I earlier
referred. Your Worship said you weren't obliged
to hand down your written notes; you were not a
witness in the proceeding. Part of our complaint
35 is that, by being on the view in the absence of
parties, your Worship had placed yourself to being
aligned with one side of the proceedings and
almost certainly led to an application of the kind
that means your Worship has virtually become a
40 witness in the proceedings - at least so far as
this part is concerned.

In the memo number 2 which is part of the bundle
of documents handed up today, part of 110,
Mr Lasry acknowledges that that view or site
45 visit, or whatever you call it, was part of the
fact finding of this Tribunal.

47

The obtaining of those notes might well be described by a somewhat florid observer, not an unastute one, as amounting almost to a saga. I started this chronology earlier and said I wouldn't take your Worship through it, but since your Worship has invited me to deal with it --

THE CORONER: I have invited you to bring to my attention any information in those notes that wasn't available in open court. I don't know whether it is necessary for you to go through the chronology of how those notes came to be, Mr Glissan. As I say, I have read the very detailed comments you make in your submission.

MR GLISSAN: Very good, your Worship. Perhaps I can go so far as to say this: between the 22nd of July when access to Mr Roche's documents was first asked for and the earlier part of July when the amended Cheney report became available, there was a detail and lengthy flow of correspondence that passed between those appearing on this side of the Bar table and counsel assisting extending over a dozen or more documents until the matter was listed before your Worship to argue for the release of all documents.

Prior to appearing before your Worship there had been a claim for legal professional privilege. That was abandoned. There was substituted for it a claim for public interest immunity. Your Worship refused access to the documents which led to proceedings before Justice Whitlam. I won't go through them any further. While I can't speak for my learned friends, it is clear that the documents and the content of the documents, including the conversations and the like, formed part of the request from the beginning.

Next we deal with the situation of legal representation of the employees of the ACT government. Perhaps it is appropriate that I leave it to my learned friend Mr Johnson, who appears in that behalf, to deal with that. And indeed your Worship has dealt with the Mr Bayliss comment. Your Worship has suggested that that might be regarded as not a sinister matter. I

understand what your Worship says about that. I have made my submissions in relation to the fact that it is the appearance not the fact with which we are here concerned.

5

We make the submission from paragraph 86 that one class of witnesses has been dealt with differentially from another class of witnesses and give some examples. I gave some additional examples to that in the earlier outline where I was grouping evidence under "indicia". I don't propose to revisit that.

15 THE CORONER: I will just ask you, if you are on paragraph 86, Mr Glissan, 86E referring to a meeting on 2 June 2004 between Mr Roche and Mr Kevin Cooper from the New South Wales Rural Fire Service. I don't know anything about that meeting apart from the fact that it is referred to
20 in the submission.

MR GLISSAN: I accept that. It isn't, as your Worship would readily understand, put as a particular other than as a particular of the
25 conduct of counsel assisting, which might be seen in the circumstances of the case to raise a risk, particularly in the way we say that counsel assisting has conducted the case by presenting a case with a particular view to arriving at a
30 conclusion inimical to particular people rather than inquiring in an open way to what occurred; in other words, presenting a case which, as pointed out in the cases to which I took your Worship earlier, forms no part of the function of counsel
35 assisting.

Let me move on as quickly as I may, your Worship. We set out between paragraph 87 and 104 some matters that deal with the way in which
40 your Worship's approach, in the apprehended sense, has been illuminated by the treatment of counsel. Let me say by exclaimer at the outset that I, as your Worship would and I am sure Mr Burnside will, will expect counsel to have broad shoulders and be
45 able to cope with whatever falls from the bench in relation to their particular position. We don't seek any particular privileged position so far as

that is concerned.

5 However, in our submission, what these matters do
raise is an apprehension that, where matter is
challenged, where matter is the subject of
complaint, where matter is the subject of dispute
that this court has consistently shown a
preference for one party over the other. It has
consistently displayed a tendency to not take
10 seriously the submissions of counsel appearing for
interested parties and consistently followed,
adopt and even on occasions, as Justice Whitlam
said, be misled by counsel assisting both as to
fact and law.

15 It is that complaint, that failure to accord fair
treatment to both sides of the Bar table, about
which we complain not the fact that some overly
sensitive counsel might think that he had not been
20 given the courtesy that he or she deserved.

We set out some examples - we don't say they are
exhaustive either - in this document after
page 66. The suggestion to Mr Petty that, before
25 documents were made available, he and indeed all
counsel who were claiming or seeking access to the
documents should justify why the document should
be provided. This in the context of a general
inquiry, this in the context of parties who are
30 represented and had a right to access all of the
material which might be used to bear on findings
about their clients.

At T6741:

35 "The nature of submissions made yesterday by
counsel have left me with the impression that
they are seeking to impugn the integrity of
this coronial inquiry and also the integrity
40 of counsel assisting".

We say that, on a proper reading of the transcript
before that expression of opinion at T6741, no
independent reader of the transcript could form
45 such a conclusion that that is redolent of a view
not supported by the conduct of the case and
indicative of a want of balance so far as those

counsel are concerned.

The slant matter which your Worship asked me about before the adjournment, let me come to that. I
5 gave your Worship a wrong transcript reference for which I apologise. The correct transcript reference is from 4872 to 4874. When an issue which is an important issue, whether or not the evidence is being presented fairly or with a bias
10 was agitated, the response was to counsel who sought to raise that issue, "Well, all you are doing is causing more distress to people". We say that was both intemperate and unjustified.

15 THE CORONER: The comments on 7 May to Mr Whybrow?

MR WHYBROW: It is page 4827.

MR GLISSAN: I am beginning to see the difficulty
20 your Worship had. On the 27th of August there was again comment, which by itself might not cause anybody too much concern but which again raises the conduct of counsel who makes submissions - this time counsel moving to the Supreme Court for
25 particular orders - about those counsel in their absence. Again, no opportunity given to deal with an important issue, an issue that raises a question of fairness and balance.

30 THE CORONER: What are you referring there to?

MR GLISSAN: Page 70 to 71, paragraphs 101-104. Then in that same behalf, on 7 and 8 October and in relation to the passage to which I have already
35 taken your Worship earlier in the day, the questions about the training budget of the ACT Bushfire Service, perhaps a very relevant matter, were dismissed by your Worship on the basis that what was being suggested was a small jurisdiction
40 might be allowed to burn - page 73.

Clearly, if I may interpolate, what was being challenged by my learned friend Mr Walker there, was that the person criticising the conduct of the
45 fire service in the ACT was this: that he was contrasting on the one hand somebody dealing with the Country Fire Authority in Victoria with a

budget in the tens, if not hundreds, of millions
of dollars with the Australian Capital Territory
Bushfire Service with a budget of \$1 million to 1
and a half million dollars. That could not be
5 properly compared in either their capacity or
their ability to respond.

To conclude from the question that first it was
inappropriate for counsel to ask those questions -
10 in the middle of 73 - or that a small jurisdiction
should be allowed to burn because there wasn't any
money to protect it did no justice to counsel who
was asking the questions and effectively closed
off a valid and appropriate line of inquiry.

15 Worse, we say, that when other counsel sought to
intervene - counsel for the Australian Capital
Territory, Mr Lakatos - on the basis that those
remarks coming from somebody holding an office of
20 such influence and respect as the coroner of the
Australian Capital Territory ought to be
withdrawn, with support from counsel assisting
your Worship declined to do so.

25 We say those things taken together raise a
question. But it is a question that can only be
answered one way.

In the submissions we deal in argument with a
30 number of matters: the attitude to the legal
representation of Territory officers, which my
learned friend Mr Johnson will deal with; the X
marks in detail, which was the context in which
the slant challenge came to light; and Mr Lasry's
35 unusual email with Mr Cheney in respect of which
it is important that I put a context.

The actual material is set out in the document at
paragraph 150, page 86. This is in the context of
40 documents relating to expert witnesses, including
Mr Cheney. In the course of giving reasons on
26 August, as I have already indicated,
your Worship said that you had been left with the
impression that counsel was seeking to impugn the
45 integrity of the coronial inquiry - a proposition
I should say rejected by Justice Whitlam - but
went on to say that Mr Cheney and Mr Roche had

been appointed as investigators under section 59 of the Coroner's Act. As Justice Whitlam concluded in his judgment, the evidence showed that neither had been so appointed. Indeed,
5 Mr Roche's evidence was that no such suggestion that he was appointed as an investigator had ever been made and he didn't regard himself as an investigator.

10 In that context there was some agitation of these matters publicly. Consequent upon that public agitation - I just misled myself for a moment, I am sorry. Documents were produced to the parties, as I have indicated to your Worship earlier, prior
15 to Justice Whitlam bringing down his reasons and prior to indicating what was to happen.

One of the documents that was produced in that bundle of material on 9 September were copies of
20 emails passing between Mr Cheney on 3 November 2003 and counsel assisting in which the public discussion of what was occurring at the inquiry had been raised in what in other states is sometimes referred to as "another place".
25 Mr Cheney's name had been mentioned. He sent an email to Mr Lasry. Again, showing perhaps an unusual degree of familiarity:

30 "Hello Lex. You might be interested in what the Chief Minister said about me in Hansard from 21 October. I guess it's an indication of what their tactic will be. Phil."

Mr Lasry replied to that in four words:
35

"They'll get theirs, Phil."

That document went into evidence. It was referred to in evidence, as we say in paragraph 160, and it
40 was received into evidence without comment. Nothing has been said about it since.

The issue of that email must be put in its context. It cannot be, as might be suggested,
45 that Mr Lasry was trying to indicate to a witness that the witness would be protected or that he had nothing to fear or that some other reasonable

explanation might arise because, by the date of the exchange of those emails, Mr Cheney had already been in the witness box. He had already been cross-examined by senior counsel on behalf of the Australian Capital Territory. During or immediately before that cross-examination, the Court had made clear on 13 October that so far as that witness was concerned the Court's view was the rule in Browne v Dunn would apply. Indeed, your Worship said at transcript 454:

"That is the only way it can proceed, Mr Johnson, that, if do you have a position or information that is contrary to what Mr Cheney is putting, then the only fair way to present that evidence to this inquiry, and the only way that it can possibly be beneficial to me, is if you do put that matter or those matters to Mr Cheney, as you are aware of them."

Mr Johnson cross-examined Mr Cheney on the 14th and 15th of October - the email I remind your Worship is the 3rd of November - on behalf of the ACT. When the email was received, when the email was replied to "they'll get theirs, Phil", on 5 November Mr Cheney had already been cross-examined in accordance with your Worship's ruling. So if anything was going to be put that might have been referred to by the Chief Minister, that had already occurred and, of course, as we all know from the transcript, nothing was put.

We say that the only conclusion that can flow from that is that there is no question of providing some reassurance to Mr Cheney because cross-examination had already taken place. The fair-minded lay observer viewing those events objectively would reasonably apprehend that, despite the fact that Mr Cheney had already been cross-examined, Mr Lasry chose to communicate with him in a way that forecast that officers of the Territory would be blamed or punished or otherwise adversely treated at future hearings of the inquest.

That email is exhibit 90. No comment by way of

explanation or otherwise has been made in relation to it.

5 It is but another example, in one sense, of the differential treatment of witnesses, in particular Cheney and Roche, as this hearing has developed.

10 I made reference to section 55 earlier on. Section 55 is a section of the Coroner's Act which requires a coroner minded to make adverse comment to take all reasonable steps to give an affected person a copy of the proposed comment. It is the coroner's comment; it is not a comment of one or any of the participants.

15 The suggestion by counsel assisting that his submissions would be taken to be the section 55 notice because it would put the position of the parties in their worst possible scenario cannot be a discharge of that obligation. A fair-minded observer might conclude that what has occurred is an impermissible delegation of the fact-finding task which section 55 contemplates which can only be made by the judicial officer who is the coroner. And given the email that Mr Lasry made of 5 November 2003, it might well lead any fair-minded observer to conclude that the principles which I earlier summarised in *Firman v. Lasry*, that aptly named case, apply here.

30 We say for those reasons and for the whole of the material set out in the 105-page document to which I have briefly referred your Worship in the context of these summary oral submissions that what has occurred here means the only prudent, appropriate judicial course open to a tribunal faced with an application of this kind, supported by voluminous material of this nature, is to uphold the application.

40 THE CORONER: Thank you, Mr Glissan. Yes, Mr Johnson, I presume you have read the written submission made by Mr Glissan.

45 MR JOHNSON: Yes, indeed, your Worship, and I have heard what has been said this morning by Mr Glissan. I won't trouble your Worship with

some unnecessary repetition.

The application is supported by the Territory. That is a position that has not been reached
5 lightly, I seek to assure your Worship. The written submission outlines an analysis of legal principles, a reference to a series of factual matters, and an analysis of the application of those principles.

10

There are a number of additional factual matters which I would seek to raise in addition to those raised by Mr Glissan. There was reference at page 100 of the submission in support of the
15 application at paragraph 181C to the role of Mr Roche in November and December 2003 in the preparation of interview questions for police who were to interview selected persons, those questions involving leading questions containing
20 criticisms of the Service Management Team and others.

In many cases the interviewing police really repeated Mr Roche's questions, the clear inference
25 is that Mr Roche and the team were in the process of building a case between members of the SMT and others. Mr Roche identified witnesses, for example, Mr Andrew Winter who he thought "in the future in the witness box could be a good ally for
30 us".

As part of the material which was tendered this morning and became part of exhibit 110 - exhibit 111 being the discrete 14 October 2004
35 material - there was the interview plan proposed with respect to Mr Andrew Winter --

THE CORONER: I see that, Mr Johnson, halfway through the documents.

40

MR JOHNSON: Yes. I just wanted to take your Worship by way of illustration to page 7 of that document, which has a heading "his interpretation of the implementation of ICS is
45 absolutely correct!" and then has immediately following - this is Mr Roche speaking to the investigating police:

5 "I raise this by way of illustration. Get him to elaborate on this point. In particular, we should try to establish if the obvious confusion over the roles of commanders in the field and those in the ESB adversely affected the firefight and in what way."

10 Now an examination of Mr Winter's typed record of conversation - which it is not necessary for your Worship to go to presently but for the record is [DPP.DPP.0004.0034] - shows that in relation to the proposed question which Mr Roche drafted and which I have just read from exhibit 110, questions 15 213-217 involve the police putting in effect that question. Indeed, the next four questions which I won't read out - but the next question can be found at question 225 of the TROC; the next one at 227 of the TROC; the next one at 230; and the next one at 228 and 229.

20 The submission that is put as part of an accumulation of matters is that the role of Mr Roche was playing at this stage was quite an unusual one. If he was there as an adviser to the police to accumulate material, that is one thing. 25 Although it is submitted that the role that he was taking on at that stage was a case building role proposing what the police should try to establish. That is inconsistent with the ultimate role which 30 he would seek to play of being an expert witness, expressing opinions and comments which he would be invited to act upon.

35 I should also draw attention to exhibit 104, which is an email from Mr Roche to Detective Barnicoat which forwarded on 23 November 2003 Mr Roche's proposed interview plan for Mr Winter. That was copied to Mr Woodward, so it may be inferred that Mr Woodward received it and was aware of the 40 particular role that Mr Roche was playing in this regard at that time. This goes to the concept of team. It goes to the concept of case building by a number of persons in a way that was clearly known to counsel assisting. A number of 45 submissions have been made by Mr Glissan in relation to that matter. I do not seek to repeat them but I draw the Court's attention to that

illustration.

There are a number of other matters which I wish to take the Court to. The question of the field notes prepared by Mr Cheney involve, as a starting point, recognition that Mr Cheney was expressly asked to prepare those notes as a result of Mr Lasry's memorandum number 2, which is part of exhibit 110 tendered this morning, which was dated 22 August 2003. That document, which is in the bundle 110 under the heading "field trip", reads:

"On Wednesday 20 August 2003, Dr Cheney conducted a field trip. The trip took the entire day as much of it was over roads that were accessible only to 4-wheel drive vehicles. The purpose of the trip to enable the coroner to see at first hand the areas where the fires which mainly affected Canberra commenced to develop. That meant that the areas that were being looked at were the ignition points and development areas of the McIntyre's Hut and Bendora fires. It would be useful to have some record of that trip given that it is part of the coroner's information gathering. Ideally, Phil Cheney could prepare a summary of where we went and what we saw so that, if the matter is raised or the coroner wishes to refer to it in her report, as she almost certainly will, there will be a record of it."

Mr Cheney, it seems, prepared the six-page document thereafter. Despite the status of the document as being what seems to be a near contemporaneous record prepared by Mr Cheney for the purpose identified by Mr Lasry which was "so that if the matter is raised or the coroner wishes to refer to it in her report, as she almost certainly will, there will a record of it", it was, in effect, the official record of this important information gathering field trip.

For reasons that have never been explained it did not appear in the brief. Many documents, thousands of documents appeared in the brief, but this document did not appear in the brief.

Mr Glissan has taken your Worship to a range of references where the opportunity would have existed for mention of the fact that such a field trip took place and there was no revelation,
5 despite the fact that by 20 August leave had been granted to at least three interested parties: namely, the Australian Capital Territory, the Australian Federal Police and ACTEW AGL.

10 The manner in which the fact that field trip had taken place has already been developed in written submission and in Mr Glissan's submissions. In effect, they have emerged when it was raised by
15 counsel when Ms Arman was in the witness box. I won't rehearse the history of what occurred at that time.

Your Worship has raised the question: what is it that was in that note that wasn't already known?
20 I will seek to address that issue. But at the outset, one might note that in the dialogue that occurred in particular on the 24th and 25th of May and indeed after the six-page document came to light following the intervention of the Supreme
25 Court, in the dialogue as took place as recorded on page 38 and following of the written submission, that is dialogue on 14 September when Mr Phillip Walker was inquiring of your Worship as to the explanation for the editing, no explanation
30 was given at that time. In fact, Mr Lasry intervened and said to your Worship - this appears in paragraph 57 on page 39:

35 "These are matters that can be raised with Mr Cheney in the witness box. He was the person who prepared the record of what happened. As your Worship knows and as I recall, he was the person who in effect led the field trip and has produced a record of
40 it. It is not appropriate, we are not now in an American court and certainly not in a military commission".

The point was not a question of Mr Cheney; the
45 question being raised by Mr Phillip Walker at that time was to seek some explanation as to how the editing occurred and why. It was not suggested

then, indeed it was not suggested until after this current application was made, that it may have some bearing on it that in some shape or form this material, or some of it, was already known to the parties. I will seek to deal with that issue after lunch directly, your Worship.

But that is not the issue. The issue here is there had been a field visit where your Worship was accompanied by experts, who apparently expressed views to you which were recorded in a document prepared at the request of senior counsel assisting for use in a future report, and that that document and its content was not produced. Indeed, an edited version of it was produced. Even when Mr Phillip Walker sought information as to what was said by Mr Cheney, there was a resistance to the production of that material.

The fair-minded lay observer would be troubled by that sequence of events. The question would be whether there was unequal treatment or at least a reasonable apprehension of it. A fair-minded lay observer might ask rhetorically: why wasn't the six-page document produced immediately after it was produced - if not on 27 April; if not then in May when Mr Phillip Walker asked about it; if not then, if the explanation was said to be because this information was said to be already in the possession of the parties, that explanation was not given at that time?

The critical question is: Mr Cheney had sought to put in that note a series of matters which clearly went to very live issues in this inquiry and which, at that point, had led to an allegation of negligence being directed towards Mr Tony Graham; questions being raised with Ms Arman about the adequacy of her response. And in those circumstances, and that is necessary context and background, the fair-minded lay observer would be greatly troubled by the fact that that was not produced.

The fact that in some respects there had been a reference to some of these issues by Mr Cheney does not go to the issue. The heart of the issue

here is the non-provision, even in the face of a
direct request, of communications made by experts
ex parte to your Worship on an important
fact-finding visit, and the official record of
5 that being withheld until the intervention of the
Supreme Court saw it being produced.

Now, I will seek after lunch to take your Worship
to a copy of the six-page document and draw
10 your Worship's attention to parts of it which we
would submit on a fair reading were not made known
by earlier evidence. But one might ask: even if
some of this material by a process of cobbling
together what had been said earlier may have been
15 known, is that a reason for non-production of the
material when the contemporaneous record contains
that material fashioned by Mr Cheney close to the
time in a way that indicates a degree of
prominence to it? A reading of the six-page
20 document, in my submission, would lead the
fair-minded lay observer to infer that issues
raised about difficulty of terrain and vegetation
were matters of significance.

25 As I indicated to your Worship I will seek to come
back after lunch to that issue. With that in
mind, I will seek to have a copy of the six-page
document marked up in certain ways to assist that
process.

30 THE CORONER: Thank you.

MR JOHNSON: I of course will have a copy for
Mr Burnside.

35 Even on this issue alone of the document, it would
be, with respect, the accumulation of what was
said and what was not produced going right up to
the 14th of September, and Mr Lasry putting
40 positions which, on the face of it, your Worship,
to use the words of Firman v. Lasry "condoned or
acquiesced". It is that combination of events in
this context which would be highly significant to
the fair-minded lay observer in determining what
45 may be reasonably apprehended from this saga, to
use Mr Glissan's term.

47

I would ask that your Worship now adjourn and I will come back to this issue at 2 o'clock to deal with it in the way that I have indicated.

5 THE CORONER: We will adjourn for lunch then.

LUNCHEON ADJOURNMENT

[12.57pm]

RESUMED

[2.05pm]

10

MR JOHNSON: Just before lunch I had foreshadowed the production of a document. Perhaps if I could hand one up to Mr Burnside, one to Mr Glissan and one to your Worship. It is a copy of exhibit 88,
15 which is the six-page unedited field note.

20

There has been highlighting in two colours. I will explain the colours for the purpose of the submission. Things marked in yellow indicate portions where the ACT legal team has found no evidence in that of Mr Cheney or Mr Roche of that type. The orange is evidence which in some form was given in the first phase relevant to the matters in orange but that that material was
25 clearly not pulled together in the form that it is here, this document being Mr Cheney's near contemporaneous and official record prepared for the purpose outlined by Mr Lasry. Clearly this document in its entirety, not just the yellow
30 portions but the orange portions, ought to have been provided to those granted leave and would have materially assisted them in preparing for the further evidence of Mr Cheney and the evidence of Mr Roche.

35

I conclude the submission on this aspect by drawing attention to one part in particular, on page 6, the middle paragraph which commences "the widespread reduction", which is marked yellow.

40

The final sentence reads:

"The task of building fire line in tall forest is one which perhaps should not be expected of volunteer firefighters."

45

The non-disclosure of that material is especially pertinent, we would submit.

But the concluding submission on this document generally is the issue raised by your Worship, "well, what was known before" in a sense and effectively misses the real point. The real point are the obligations of procedural fairness as respected in the decision of Szwarcbord v. Musumeci, the requirement that this material should have been made available at an earlier time, and the circumstances under which in its unedited form it was withheld with no explanation for the editing - all fortifying in the mind of a fair-minded lay observer a reasonable apprehension that there was unequal treatment with respect to different interests and a withholding of material in circumstances where no sensible explanation was given to anyone and in circumstances where there was a primary legal obligation that had been produced. But I have undertaken the task and those instructing me have as well of providing this marked-up version to deal with the issue raised expressly by your Worship.

THE CORONER: Thank you.

MR JOHNSON: If I could then go down and speak relatively briefly to a couple of issues raised in the long written submission.

At page 89 at paragraph 160, reference is made to the fact that the exchange of emails - that is between Mr Lasry and Mr Cheney which includes the "they'll get theirs, Phil" comment - became exhibit 90 before your Worship and was the subject of evidence from Mr Cheney on 20 September and indeed some short re-examination by Mr Lasry on 21 September at the pages shown.

A fair-minded lay observer would have noted that the existence and content of Mr Lasry's email was adverted to in court in the presence of Mr Lasry QC, and that neither your Worship nor he said anything about it apart from what appears in the transcript by way of his very short re-examination. The document was received into evidence without comment. This would serve to fortify an apprehension on the part of a fair-minded lay observer that your Worship

acquiesced in or condoned such an approach to the proceedings by Mr Lasry QC. And in the five sitting days that passed between 21 September and 8 October, nothing had been said to remove such an apprehension.
5

In that regard, your Worship, and this is by analogy only, one can find in other areas of the law - this is a decision of Justice Nettle of the Victorian Supreme Court in Comlaw No. 62 Pty Limited v. Owens, 2003 VSC 35. It is a contract case and it deals with the concept of offer and acceptance and whether silence constitutes acceptance of proposal. That of course is a concept that is picked up from time to time in the trade practices law apart from contract law and is raised here essentially by way of analogy. At paragraph 86 Justice Nettle said:
10
15

20 "That is not to deny the existence of cases where a party's silence in the face of a proposal may indicate that she has accepted the proposal, that will be so and an objective bystander looking at all the facts
25 would conclude that the party to whom the proposal has been made has accepted the proposal."

Now, that is sourced to a passage in a New South Wales Court of Appeal decision referred to in footnotes 7 and 8 of Imperial Holdings, a passage from Justice McHugh. But I raise that simply because the fair-minded lay observer would have noted and could not but have noted when that - I
30
35 would use the term - rather extraordinary email was tendered that it passed without comment.

Your Worship said nothing. No inquiry was made of Mr Lasry. No explanation was offered by Mr Lasry. There was essentially silence. The reasonable bystander, a fair-minded lay observer, may well conclude that that indicated a condemnation or acquiescence by your Worship in that process. Thus paragraph 160 is supported by legal argument
40
45 by analogy.

In paragraph 166 on page 92 there is reference to

events that culminated in your Worship's comment
of 26 August 2004. Mr Glissan has taken you to it
a number of times and I won't repeat it. But the
difficulty with that comment is, as Justice
5 Whitlam had noted, a day before there had been
detailed submissions, including submissions
advanced on behalf of the applicants, which his
Honour described as "a model of clarity" which
outlined what seemed to be the relevant
10 principles. Although of course courts always have
situations where there can be an error and that
error can be corrected, that is not the point that
is relied upon here; it is the fact that the
fair-minded lay observer could not have but formed
15 the view that your Worship's comment seemed to
indicate a preoccupation with counsel and what may
or may not have been in the mind of counsel in
putting arguments rather than the substance of the
argument that was put - an argument itself which
20 Justice Whitlam said was a model of clarity.

It is submitted that the fair-minded lay observer
would form the view that your Worship, coupled
with the comment of the next day, did have
25 something of a preoccupation with counsel and it
would seem had difficulty in objectively harkening
to submissions that were put; and that a
fair-minded lay observer may conclude that, when
the time came in this inquest when submissions may
30 be put involving section 55 or generally involving
weighing up of evidence of experts, Mr Cheney,
Mr Roche, hearing submissions put on behalf of
persons who were officers of the Territory or
indeed the Territory itself; and in circumstances
35 where those persons were entitled to have those
questions decided impartially and on the merits,
the fair-minded lay observer might reasonably
apprehend that your Worship would not bring such a
mind to bear having regard to the comments that
40 had passed from your Worship, certainly on 26th
and 27th, both comments made without notice to
those who were affected.

That is put in the circumstances where this, of
45 course, is an objective test, which is why I keep
referring to the fair-minded lay observer, and
that that combination of events coupled with the

rather fraught position that has been reached with
Mr Roche, who seems to be wearing so many hats in
this case that there is a difficulty for him in
accommodating them, that he is a principal
5 witness, it would seem, upon whom counsel
assisting would be relying to invite your Worship
to make criticisms, comments and findings of
individuals and agencies when his position has
been essentially compromised from an early stage,
10 or so a fair-minded lay observer may conclude.

The difficulty is that the fair-minded lay
observer would reasonably apprehend that
your Worship, having regard to the history of
15 decision-making particularly in August and since
then but also earlier instances referred to in the
written submissions, would have difficulty
bringing a fair mind to bear upon those
submissions.

20 I stress again it is an objective test.
Mr Glissan has made quite clear this is not a
natural bias case. What he has put is put in
accordance with the principles which the law
25 declares as being applicable.

This is an unusual case that is submitted. There
are aspects of the submission that touch upon
things done or not done by your Worship or which
30 the reasonable fair-minded lay observer might have
regard to, things done or not done by counsel
assisting, and a combination of those things which
can be brought to bear by application of the
principles in *Firman v. Lasry*.

35 It is in the unusual and most unfortunate
circumstances of this case that we submit there
are three issues which, even viewed in isolation,
would lead to the conclusion that disqualification
40 should occur. Those issues being: firstly, the
field note saga and the various aspects of it
which have been touched upon in writing and
orally; secondly, Mr Lasry's email and the way in
which that has been developed and the light that
45 has thrown upon the earlier history of this
inquest; and, thirdly, your Worship's judgment of
26 August and the comments made there in relation

to counsel, the absence of consideration of the real issues and a preoccupation with counsel supported by further comment the next day.

5 But even if one looks at those separately, and it would be a mistake to look at all these things separately, cases make quite clear it is a cumulative effect. Viewed cumulatively there is a clear and compelling case for what I would readily
10 conclude is an unhappy but unavoidable conclusion that your Worship should disqualify yourself in the circumstances which prevail and which have been identified in the submissions both orally and in writing.

15 If I could just have a moment, your Worship.

THE CORONER: Yes, certainly.

20 MR JOHNSON: Thank you, your Worship.

THE CORONER: Thank you, Mr Johnson. Yes, Mr Burnside. I have read your submissions as well, Mr Burnside. Do you have anything that you
25 wish to add in response to your submissions?

MR BURNSIDE: Just some short matters. I want to make one thing clear: in our submission we set out for convenience several passages from the Hansard
30 which provide the background to the comments which were made on two occasions: once in a comment by your Worship in court; the other time in email from Mr Lasry.

35 I make it very clear that, in setting out those passages from Hansard, all we are seeking to do is have before the Court a record of the words to which you on the one hand and Mr Lasry on the other hand were responding. We don't put them
40 forward in the slightest way to call in question the credibility of anyone speaking or to make any comment about them but merely because they are an essential part of the background.

45 I say that because in order to understand, for example, why you made the comments you did about separate legal representation, it is important to

look at the Hansard and to recognise that what was said about legal representation there does not accurately reflect what was said in court earlier but which was being discussed in the Hansard.

5

So what you were doing, in our submission, was setting the record straight rather than the reverse. It is really quite important to understand the background against which you made those comments.

Likewise Mr Lasry's email: Mr Lasry's email has been, we would submit, quite unfairly criticised - unfairly for a number of reasons. The first because it was, after all, a private communication, a very brief response to an email from Mr Cheney who no doubt felt very wounded by what had been said about him in parliament.

The interesting thing about the email is how brief and non-committal it is. Indeed Mr Cheney, when asked about the words in the email "they'll get theirs, Phil" said he didn't derive anything from it at all. And one thing that was conspicuously absent in the submission that's made attacking that email is any suggestion of what the words do mean and what implication they are supposed to bear.

There was some attempt made to suggest that the email reflected some approach that might be made to witnesses, but of course that point was just a straw man set up to be knocked down again because Mr Glissan went on to explain to you the relevant witnesses had come and gone by the time the email was written. So it couldn't have meant that.

What they probably mean but fear to say is that the email might have been suggesting that the Chief Minister would be dealt with harshly in the witness box on account of having made these comments in parliament. But of course that is demonstrably false. It is false because the email first came to light well after Mr Stanhope had given evidence, and there is nothing in the evidence of Mr Stanhope, nothing in the way he was treated as a witness, which suggests even the

slightest animus on the part of counsel examining him.

5 We have set out in the submission the one passage where a question was asked of Mr Stanhope and there was objection taken. You can read for yourself how that was dealt with.

10 But not one counsel today has ventured to suggest to you anything done by Mr Lasry which could, in the conduct of this inquiry, in any way be traced to any plausible meaning in that email. What you are left with, in our submission, is this: that the email was essentially a murmur of condolence
15 to a person who had been traduced. And absolutely nothing came from it.

And how such an email could be used as a foundation to suggest you should disqualify
20 yourself is, with respect, little short of ludicrous. No doubt the reason you didn't say anything about it was that, like everyone else, you didn't know what it actually meant; and no doubt, like everyone else, you hadn't seen the
25 slightest trace of anything in that email reflected in any of the evidence or any of the conduct of counsel assisting. In our submission, that email is a red herring. It meant nothing. It led to no consequences and your Worship
30 shouldn't be troubled by it.

That raises, I think, another point which is fundamental to the difficulties faced by those seeking to have you disqualify yourself. What
35 they have conspicuously failed to do is to identify any sort of agenda which they suggest might be swaying you from an even-handed approach to the task on which you are engaged.

40 No-one has put forward some finding that you are trying to tend towards. No-one has suggested some finding or outcome that counsel assisting are trying to lead you towards. No-one has suggested in any way at all how it is that your normal
45 obligation to approach the questions in an even-handed way is being distracted by any particular agenda.

Now, it is a curious thing to suggest that there can be bias without a point to which a person is biased. All they can say is on a couple of occasions they didn't like the rules on evidence
5 and on one occasion they didn't like you warning a witness. In the course of 84 days of hearing, it would be astounding if everyone was happy with every ruling made by any judicial officer in the world. What they have failed to do is to identify
10 an agenda.

That is especially important bearing in mind the nature of this inquiry and the way in fact that you have approached it. This is not a curial
15 proceeding between parties. This is not ordinary litigation of the sort that was involved in CRL v. JRL; this is an inquest in which you are investigating things that happened. You are entitled to pursue evidence to find out what did
20 happen.

If there is any suggestion lying beneath the surface that you have got some agenda to find selectively bits of evidence that support some so
25 far unarticulated view, it is demonstrated to be wrong by a passage at page 7602-3. At that point you made it clear to everyone in court that, if anyone had any evidence that had any bearing on the issues that you were investigating, they were
30 required to bring it to your attention. Counsel assisting had already made it clear that any witness would be called who was required by any party.

There could be no clearer indication of your
35 obvious desire to pursue this inquiry in an even-handed way than the combination of you asking people to draw any relevant evidence to your attention and saying that any relevant evidence
40 will be called by counsel assisting.

It is inconceivable how such an approach can be explained as reflecting some kind of bias. Now, it may be that the evidence is coming out in a way
45 that suggests fault in some quarters. That is the nature of most inquests. Most inquests will ultimately result in a finding that someone did

something wrong. The mere fact that the evidence tends to point in that direction isn't the slightest indication of bias on your part.

5 If it is wrong to lean towards the appearance that there are some parties who are responsible for the way the fires were managed and if there is evidence that tends in the opposite direction, then no doubt the parties complaining will draw
10 that evidence to your attention. No-one can suggest you refused to call evidence that was available. No-one has suggested that evidence is available which tends in a direction opposite to the evidence which has already been led.

15 The third point I would make, and this is also at a very fundamental level, is to be found in the principles set out in Ebner's case, which we have referred to in our submission at paragraph 6 and
20 also JIA's case in paragraph 11 of our submission. It is necessary for those seeking to have you disqualify yourself to identify the logical connection between the matters complained of and the feared deviation from your duty to decide the
25 matter on its merits.

They have to establish three things, and perhaps for this limited purpose can I take you to one part of our submission. The passage at pages 2-3
30 of our submission is drawn from the majority judgment in Ebner where their Honours say:

35 "Deciding whether a judicial officer (or juror) might not bring an impartial mind to the resolution of a question that hasn't been determined requires no prediction about how the judge or jury will in fact approach the matter. The question is one of possibility (real and not remote), not probability.
40 Similarly, if the matter has already been decided, the test is one that requires no conclusion about what factors actually influence the outcome, no attempt need be made to inquire into the act or thought
45 processes of the judge or juror.

The apprehension of bias principle admits the

possibility of human frailty. Its application is as diverse as human frailty. Its application requires two steps: first, it requires the identification of what it is said might lead a judge (or juror) to decide a case other than on its legal and factual merits."

That, we would say, can be described in shorthand as the agenda. What is the thing? What is the idea, the agenda, which is tending you away from an ordinary even-handed approach to the question?

The second step they say is no less important:

"There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits. The bare assertion that a judge (or juror) has an 'interest' in litigation, or an interest in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial decision-making, is articulated. Only then can the reasonableness of the asserted apprehension of bias be assessed."

That of course is a fairly recent decision of the High Court. It is more or less the last word on the apprehended bias test.

What the submissions singly fail to do is to identify either of those two steps. They do not identify any agenda which you or which counsel assisting could conceivably have. They do not articulate the logical connection between that imagined agenda and a deviation from a proper even-handed approach to decision making.

This becomes all the more important when we bear in mind that their Honours were there talking about ordinary judicial proceedings in inter partes litigation. The process is more difficult and the factual requirements to prove it are the greater when the process is not a strictly curial process. When it is an investigation, as this is,

then it is not enough to say, "Oh, well, the
Coroner spoke to the expert who has been helping
in the investigation". It would be an
extraordinary thing if he didn't. In curial
5 proceedings, of course it would raise eyebrows.
In a proceeding like this, it would be
extraordinary if you didn't speak to the
investigating team, including any experts engaged
to help the investigating team.

10

Likewise, as *Firman v. Lasry* makes clear, in
ordinary litigation you wouldn't expect a judge to
have regular contact outside court with counsel
for one of the parties. But the position of
15 counsel assisting in an inquiry like this is quite
different, and contact between counsel assisting
and the coroner is standard. These points simply
illustrate the distinction in fact between
proceedings like this and proceedings in court.
20 But, adjusting for those facts, one can then see
that there is nothing that has been put forward
which supports in the slightest way either the
existence of any agenda or any logical connection
between a supposed agenda and the feared deviation
25 from your task. And to point, as Mr Glissan did,
to the fact that you had contact with the expert
doesn't take you anywhere.

A couple of minor matters: there was a suggestion
30 from the documents tendered as exhibits 111 that
you had abdicated your role and Mr Lasry was going
to write your report. Of course, the note does
not suggest that in the slightest.

In *Firman v. Lasry*, Justice Ashley made the point
that counsel assisting are entitled to assist in
the preparation of the report, although of course
the report must be that of the decision-maker. At
paragraphs 197-198 of Justice Ashley's judgment,
40 you will see quite a clear approval of the
involvement of counsel assisting in the
preparation of the report. At 198, his Honour
said:

45 "I see no reason why counsel assisting and
other commission staff, if requested by the
solicitor for the second defendant, shouldn't

5 have supplied analyses of evidence of relevant witnesses. As a simple matter of fact, at least counsel assisting could be expected to be more readily familiar with the large body of transcript than counsel and the solicitor for the second defendant."

10 It is another illustration of the distinction between ordinary curial proceedings and inquiries of this sort.

15 Next can I mention specifically the matter of the section 55 notices. A bit has been made of that by Mr Glissan and Mr Johnson today as if there is something evil involved in what Mr Lasry suggested. There are two aspects to that. The first is: the way it was put to you, it was made to sound as if Mr Lasry had decided to produce submissions which put the very worst possible
20 gloss on the case. That of course misstates what he actually said in the passages referred to. What he said in the passages referred to was: by way of assisting in compliance with section 55 - that is to say by way of putting people on notice
25 of comments adverse to them that they might have to meet - a draft of his submissions would be made available and they could expect that no more harsh comments would be made in your report than were made in the submissions. In other words, here is
30 the high-water mark of any criticism you have to meet; here is an opportunity for you to make submissions to meet it.

35 No-one complained at that time that there was anything wrong with that approach. Now, rather opportunistically they say, "Well, this is a terrible thing because this did not involve strict compliance with section 55". Given that they brought this matter to your attention in their
40 submissions, we looked at the matter afresh and we agree with their analysis. The course proposed by Mr Lasry would not be strictly in compliance with section 55. Our submission to you is that you should adopt a strict compliance with section 55,
45 even if that is marginally less useful to the other parties.

47

But it cannot be suggested for a minute that it is any evidence of any likely bias on your part that Mr Lasry made a helpful, practical suggestion, and no-one expressed any disagreement with that
5 proposal until six or eight months later and you therefore were prepared to go along with it. How could it possibly be suggested to any fair-minded observer that that suggested a bias on your part? In our submission, it is simply fanciful. The
10 fact that they make much of it today perhaps indicates that they know they haven't got very much ammunition, because we have already said that that approach won't be adopted, the approach that they say shouldn't be adopted.

15 Can I now refer to the notes of the field trip. This is another issue, in our submission, which has been misrepresented by the parties seeking to have you disqualify yourself. First of all, it is
20 important to bear in mind that the matter developed in several steps. It is absolutely clear, contrary to what Mr Glissan said to you this morning, that when the request was first made that referred to these notes, the request was for
25 a note of where you had been, what parts of the sites you had visited, and that is exactly what was provided.

To refer repeatedly to that two-page document as
30 an edited version of these notes in our submission is mischievous and misrepresents what was done. What was done was to produce a two-page summary that set out the places that you had visited. That is precisely what was asked for. To say that
35 involves editing, providing an edited version of the notes is simply wrong.

Second, it was clear at all times that these were
40 not your notes. These were Mr Cheney's notes. Mr Cheney was due to be recalled to the witness box and of course it was competent for any cross-examiner to ask Mr Cheney to produce the notes, if they were required, for
cross-examination.

45 Third, the notes Mr Cheney made do not, in our submission, contain anything of any substance that

had not already been made available to the parties through his report and through his evidence in the first phase. The document which has been very helpfully handed up to you is marked up with
5 colours in the way that Mr Johnson described. Can I draw your attention to just a couple of points.

At the third page, the second paragraph under "stop 3 - Waterfall Creek", the matters
10 highlighted in that paragraph are highlighted by way of indicating that that matter hadn't been the subject of evidence. In our submission, that matter was the subject of evidence at transcript
15 340-341.

Next, can I take you to the fifth page under the heading "Gentle Annie fire trail": we merely make the observation - first of all, the fact that
20 construction works on the trail and the Webb Ridge trail had been carried out during and since the fire was probably self-evident. But that of course is relevant to the McIntyre fire, and no complaint has been made by the New South Wales
25 fire service in connection with this fragment of evidence.

Next, on the same page under "stop 6 - Wombat Road", the highlighted portion refers to the demonstrable fact that "considerable
30 reconstruction and widening of Wombat Road had been carried out since the fire". That is an objective fact. That is something that anyone would know, especially one would think the ESB
35 would know because it is something that has been carried out since the fires, presumably with their knowledge. It is inconceivable that they suffer any disadvantage at all from learning that
40 Mr Cheney has also noticed what is demonstrable on the ground.

If you go to the next sheet, the final sheet in the bundle, the portion highlighted in yellow is covered at pages 397-402 of the evidence of
45 Mr Cheney in the first phase.

That is an analysis done at very short notice. It leaves, I think, maybe one or two sentences in

Mr Cheney's notes which we haven't yet traced to his evidence. We would challenge our learned friends to identify any of those remaining bits that they could seriously suggest were matters
5 that take them by surprise, matters which disadvantage them in cross-examining Mr Cheney, matters which they didn't know about, whether or not they are matters that are formally within the body of evidence already called.

10

In our submission, the complaints made about your initial provision of a two-page list of places visited is completely misconceived. The complaints arising from your later ruling that you
15 would not require the document to be handed over illustrates nothing more and nothing less than this: that sometimes people make rulings in evidence which are later overturned by another court. You have made one ruling in the course of
20 84 days, and that ruling has been overturned by Justice Whitlam. That does not indicate bias. It does not provide any foundation for a fair-minded observer to apprehend that you will bring a biased mind to your task.

25

Can I then say one other thing, and that is the criticisms which have been made of your warning to Marika Harvey. That is something which occupied a good deal of time this morning. It is a curious
30 complaint for them to make - curious because if you hadn't warned her then a much more powerful complaint would be made if you ultimately rejected her evidence. The more powerful complaint that would be made in those circumstances is that you
35 didn't give her a fair opportunity to explain herself.

Every judicial officer conducting any sort of hearing in which a witness's credit is in issue,
40 every judicial officer must form tentative views about whether or not they accept the evidence of particular individuals. One of the most common observations in appeal courts is that the trial judge of the tribunal appealed from had the
45 advantage of seeing the witness. Every appellate court understands that seeing the witness, seeing the way they give their evidence, is an advantage

which appeal courts don't have. It is an
advantage precisely because you can observe the
detail of their reaction to questions. The reason
it is an advantage is that it gives you an
5 opportunity to form an impression about how candid
they are being and about how honest they are
being.

Any judicial officer who forms a concern about the
10 candour or honesty of any witness is not only
entitled but we would say obliged to press that
witness in order to see whether ultimately they
are prepared to accept their evidence as truthful
and candid. You were doing nothing more than
15 that. In our submission, what you did in pressing
Marika Harvey was perfectly proper and to do
anything different would have given rise to a
proper criticism. It may be regrettable that
there are witnesses whose candour is doubted but,
20 once you form the doubt, you have to give an
expression by warning them in appropriate
circumstances. And that's what you did.

Unless there are any other aspects that I can help
25 you with, those are all we wish to make by way of
oral submissions.

THE CORONER: Thank you, Mr Burnside. Mr Glissan,
do you wish to be heard in reply?

30 MR GLISSAN: It is broadly agreed between my
learned friend Mr Johnson and I that he will deal
with matters in reply but I do want to raise three
particular matters.

35 It is always bold advocacy to overstate one's
position. To talk about submissions by the other
side as "little short of ludicrous", "misstated",
"misrepresented" and "mischievous" invites at
40 least some reply.

Let me deal just with those things. The "little
short of ludicrous" matter arising out of
Mr Lasry's email "they'll get theirs" has to be
45 seen contextually in the light of Mr Lasry's
general conduct in this proceeding coupled with
his observation in relation to section 55 that his

submissions would relate to the "worst possible outcome" for persons interested.

5 So that it is by no means unreasonable, and we would say not at all ludicrous to make a contextual connection which identifies a witness inappropriately, and I note that that wasn't challenged, brought into contact with the judicial officer charged with the task of determining this matter and a comment unsolicited in an email, probably rendered the more sinister because it is private than if it were public, suggesting "they'll get theirs". It is idle to suggest, as my learned friend did, that we did not - as we did at paragraph 91 of the submission - suggest what the "theirs" that they would get was nor to whom it applied.

20 The second matter I want to raise relates to section 55. No-one, your Worship was told by my learned friend - and admittedly he suffers from a great disadvantage, as indeed do I, of not being in this matter for 84 days - complained at the time. Let me read to your Worship pages 6641 and 25 6642 of the transcript. I am sorry to have to do it but I have been invited to:

30 "MR WHYBROW: A couple of matters. I agree with what has been proposed in relation to giving concrete directions until 9 August, and then beyond, perhaps things that we don't know what will occur."

35 I will pass on two or three paragraphs. This, by the way, is not some 9 or 10 months after the matter occurs but on the 17th of June, the same day Mr Whybrow says:

40 "As to your Worship complying with the requirements of section 55, I take some comfort in what your Worship said about your Worship's obligation to provide a copy of the proposed comment that you are going to make. Whilst counsel assisting's submission 45 can certainly be an indication as to what criticisms they are proposing to make, certainly it wouldn't be, from my

perspective, an indication that your Worship
will necessarily be automatically making any
and all of those. Otherwise submissions made
on behalf of my clients might be seen to be
5 quite pointless."

Not complained about? It was raised within
minutes. It may be that your Worship ultimately
will accept part of some submissions of one party
10 and part of another. He goes on to say, 6642,
line 20:

"I raise that now so that your Worship is
15 aware of what my position on section 55 is."

It is a bold step to suggest that counsel, in
submissions oral or written, are mischievous or
misstate or misrepresent the material particularly
when it is so egregiously wrong.

20 Let us look at the next bit. "Mischievous" is
what was said about Mr Johnson and I in our
written submission in relation to the emendation,
editing, what you will, of the notes. No-one
25 again wanted any more than where your Worship had
been.

We set this out - there is no excuse for not
knowing this, unless our learned friend didn't
30 read our written submissions - between pages 34
and 39 of the primary submission between
paragraphs 51 and 56 or perhaps a little bit later
or thereabouts:

35 "MR PHILIP WALKER: There was one other
matter and that is a couple of days ago I
raised the question of your Worship having
gone and had a look" --

40 I think it actually goes before that.
Your Worship actually offered - we set it out at
paragraph, and I have lost the page --

THE CORONER: Page 32 perhaps.

45 MR GLISSAN: Yes, I think that's right. I am
obliged to your Worship for that indication. My

understanding is that Mr Pike says to
your Worship:

5 "MR PIKE: Your Worship actually had the
opportunity to physically trek around.

"THE CORONER: Yes, I have --

10 Then it is raised by counsel. Your Worship goes
on to say:

15 "I will have information on the area that I
visited provided to you. There is no
difficulty in providing that."

So far so good. At page 34, the passage that I
began to read your Worship actually offers, rather
than anyone asking, to provide material:

20 "I have a notation of that" --

One assumes that your Worship is there referring
to Mr Cheney's notes:

25 "and I will make available to you on Monday.
There is a dialogue in relation to the field
trip, if you like, and I just want to go
through that because all you really need to
know is the places that I visited. I will go
30 through that and make that available to you.
You don't really need the dialogue, I think."

That of course is the point at issue. What was
made available wasn't a summary, as my learned
35 friend said, but was simply 10 or 15 or 20 or
however many it was lines out of a six-page
document, uninformed by any contribution by
your Worship, but simply cut out and pasted
together from the six-page document of Mr Cheney.
40 It is not a very lengthy document, your Worship
said. Indeed it wasn't.

But on the 24th of May as we set out on page 35 of
the submission, Mr Philip Walker says this:

45 "Your Worship has indicated that you have
already undertaken a view. You have kindly

5 indicated to me where you went. But
apparently there was some notes of what you
were told about various things at various
places. In my submission, insofar as that
conversation related to matters directly
relevant --

10 Then your Worship says, and we now know it to be
the fact:

"I didn't take any notes at all."

15 Then you were asked to indicate in broad summary
terms what you were told in the course of that
view. Mr Lasry then gives what could at best be
dignified, if one was being personal and I try not
to be, a disingenuous description of the six-page
document. Perhaps his memory was at fault, but it
is wrong to suggest that anything in that document
20 is either mischievous or not based in transcript.
Thank you.

25 THE CORONER: Yes, thank you, Mr Glissan.
Mr Johnson?

MR JOHNSON: Thank you, your Worship. Could I
just inquire of Mr Burnside - I did have a
conversation with him before court today, and he
did indicate the possibility that there may be
30 certain edits to his submission. I haven't had an
opportunity to speak to him since so I am not sure
what I am replying to. Could I ask whether he has
edited it after I raised with him certain
provisions, including the Parliamentary Privileges
35 Act 1987.

MR BURNSIDE: We think that no editing is needed
because we have identified quite clearly that we
do not have a purpose in putting forward the
40 submissions that is touched on by section 16(3) of
the Parliamentary Privileges Act. I make that
absolutely clear. Our purpose is to establish the
context in which each of the two things happened.

45 If our learned friend wants to put in an amended
document at some time with a couple of adjectives
removed, I am sure we can do that, but lunchtime

didn't give us a sufficient opportunity.

5 Whilst I am on my feet, Mr Glissan mentioned the
6 section 55 business. He took you to the other
7 passage of transcript in which there was some
8 reservations expressed about whether Mr Lasry's
9 proposal was sufficient. That was three weeks
10 after Mr Lasry first made the proposal. 17 June
11 was the date of the portion read to you. The
12 initial proposal by Mr Lasry was articulated on
13 the 25th of May. So if there was some problem
14 with what Mr Lasry suggested, it certainly was not
15 obvious to people for a few weeks.

15 THE CORONER: Thank you, Mr Burnside. Mr Johnson,
16 do you wish to make any further submission?

17 MR JOHNSON: I do. I wish to hand up to
18 your Worship section 16 of the Parliamentary
19 Privileges Act and section 24 of the Australian
20 Capital Territory Self-Government Act. It seems
21 as though the document has not been edited. It is
22 not a matter of whether I want it. It is a
23 question of what the legislation of the parliament
24 of Australia requires. I raised this with
25 Mr Burnside. If there are aspects in his
26 submissions that remain there, it is not a matter
27 of what he says orally, it depends on what he says
28 in writing; and, if so, section 16(3) places
29 your Worship in a position of having to give
30 consideration to this. And if it is seriously
31 suggested that parts of Mr Burnside's submissions
32 are to remain, then in accordance with ordinary
33 practice as exemplified as recently as a couple of
34 years ago where Justice Crispin had to consider
35 such an issue, then the Clerk of the Assembly
36 should be notified and be given an opportunity to
37 be heard. I don't act for the Clerk of the
38 Assembly. I raise that essentially because of
39 some matters that appeared in the written
40 submission.

41 I am not going to refer to them in reply. But if
42 they are still in the submission, it is not a
43 matter for me, it is really a matter for
44 Mr Burnside and perhaps ultimately a matter for
45 your Worship. I drew the attention of Mr Burnside

to the paragraph numbers.

I will proceed and make my submissions in reply.
If need be Mr Burnside can take such course as he
5 sees fit. Of course, it will be a matter for
your Worship if that issue is left before you by
Mr Burnside.

10 Could I then make some submissions in reply. The
first submission I would put is that the written
submission of counsel assisting for this aspect is
an interesting document, but it doesn't meet the
15 matters that have been put in support of the
application. In some respects, if your Worship
were to rely upon it, it would serve to fortify
the existence of a reasonable apprehension of
bias. I make that clear at the outset.

I then turn to a number of specific matters.
20 Firstly, Mr Burnside said in relation to
Mr Lasry's email:

25 "There is no explanation as to what it means.
What it probably means they fear to say."

It seemed to be a suggestion that Mr Glissan and I
were fearful of putting a submission. Well, at
page 91 of our written submission it is put, not
fearfully but directly in paragraph 163(f):

30 "A reference to Mr Lasry's email of
5 November 2003 stating "they'll get theirs",
a fair-minded lay observer might reasonably
apprehend from that statement that officers
35 of the Territory would be in some way
punished, blamed or adversely dealt with in
the coronial proceedings."

40 It is interesting to see, because a theme in the
submissions of counsel assisting is, in effect,
not to deal with the submission that is actually
being put but to pose a version of that submission
and then seek to deal with it.

45 In paragraph 95 on page 28 of the submissions of
counsel assisting, it is said in relation to
Mr Lasry's email:

5 "Ultimately the matter comes to this: counsel for the represented parties take Mr Lasry's email as implying some kind of threat about the way government ministers will be treated in cross-examination. The manner of cross-examination shows that no such threat was intended or carried out."

10 Now that, of course, is not what the submission is that I just put to you. It is an interpretation of that submission which those who are putting the submission on behalf of counsel assisting wish her Worship to interpret as the submission.

15 The submission that was before your Worship that the fair and reasonable construction of "they'll get theirs" is that officers of the Territory will be dealt with in the way suggested at page 91. It wasn't confined to cross-examination, interesting
20 though some of the cross-examination was. I will take you shortly to an example of that, having been invited by Mr Burnside to do so.

25 Submissions are yet to be made in this case, whether worst case scenarios or otherwise, section 55 notices, counsel assisting was to exercise that function on your Worship's behalf, it is now said it won't happen. So this case is not over. What "they'll get theirs" means in the eyes of the
30 fair-minded lay observer remains a fraught question in this case. And it is not an issue that has been dealt with in a way that the submission of counsel assisting suggests.

35 It is not some red herring. It is an issue having emerged on and after 9 September, only after the intervention of the Supreme Court, allows those who have been participants in this case to look back and have some insight as to the approach that
40 has been taken by some of the participants in this case. We have been invited to provide your Worship with some examples. I would like to take your Worship to page 1019 of the transcript.

45 Mr Lucas-Smith was in the witness box. It was his third day. Mr Lasry was cross-examining him and at line 44 he said:

5 "I suggest to you that on a reading of this
document that sentence is a somewhat flippant
response to what was perceived to be a threat
from Mr Cheney making public statements about
the risk to Canberra. And that in the course
of dealing with that you or other people at
the meeting, as well, were blinded by the
reality. And the reality was that there was
now, by this time with this weather forecast
10 and the fires and the condition they were in,
there was an identifiable risk to the city of
Canberra."

15 Now, I objected:

"Could I object to that on the basis that it
is a series of questions saying it was a
flippant response and there are other
elements. If propositions of this sort are
20 to be put, I submit they should be broken up.
There are a series of propositions put in
that one question. These are important
matters clearly, if they are to be put. What
is the witness being asked to answer; the
25 first part, which raised flippant response,
or the second part which involve the series
of elements. I object to the question being
put on that basis, it being multifaceted."

30 Mr Lasry said:

"If the witness is overwhelmed with the
question I will put it some other way."

35 I said:

"That's not the point, your Worship."

40 I raised that, your Worship, having been invited
to do so, as an illustration of what is, in
effect, the putting of a case in a somewhat florid
way by counsel assisting, who is bound by rules
which have not been questioned by Mr Burnside, of
impartiality and objectivity. And that was put on
45 the third day of phase 2 of the inquiry of this
year.
47

Although from time to time Mr Lasry put questions and I objected - and there is another example where questions were put on the basis of a media release at page 918 and following - when I came
5 back after morning tea at 920 to draw attention to the fact that what was put in the question wasn't borne out by a fair reading of the whole document.

Although there are examples of these things, one
10 can look back through different eyes when one knows only since last month that Mr Lasry had expressed the view "they'll get theirs". Again, it seems the explanation that is proffered now, there having been no explanation proffered before
15 this explanation, is that it was some sort of vague condolence.

If a vague condolence was to be offered, Mr Glissan drew to your attention that I had
20 cross-examined Mr Cheney on the basis of the rule in Browne v Dunn. What one might have thought is what Mr Lasry could have said to Mr Cheney "Johnson has cross-examined you subject to the rule in Browne v Dunn. What he has put is what
25 has been put". If vague condolence or any condolence was needed, a factual statement could have been used. What was used was a statement of a pejorative type "they'll get theirs". It is not a red herring; it is a cloud over this inquiry;
30 and it has not been lifted. It has been acquiesced in, I regret to say, because there has been nothing said by your Worship which in any way distances yourself from it or indicates that that is not an acceptable approach by your counsel
35 assisting. I took your Worship earlier to some case law in that respect.

Mr Burnside in relation to the field trip notes, in my submission, has failed to address the real
40 issue. Insofar as he says "well, it is in this document", I counter that submission by noting what is on page 6 of this document and highlighted in orange can be found in one form or another in 397 to 402 but what is in yellow cannot. I invite
45 him to demonstrate that it can be, if he says it can.

47

Secondly, as I thought I put reasonably clearly orally, the real issue here is about fundamental justice, revelation of primary material which your Worship has obtained, a contemporaneous record produced at Mr Lasry's request so your Worship could use it. And the history, still unexplained, of how it was in the face of Mr Phillip Walker's direct requests that the full document was not provided when, I submit with respect, it should have been in the original brief.

Could I then turn to one aspect which was raised by Mr Burnside. It is said that you are not calling evidence that is available. Part of exhibit 110 this morning involved at the end of it some correspondence which commenced with exhibit 84, which is a letter of 16 January 2004. Your Worship may remember that I cross-examined Mr Cheney about this last month. Mr Cheney readily conceded that he had a view in relation to fuel reduction and such matters that was different to what might be broadly described as the environmental view.

The letter of 16 January from Ms Prosser identified six people as possible witnesses and invited consideration to them being called so that your Worship would have, as the letter put it, "a balanced understanding of the historical context of land management in the ACT".

There was the email which is also part of the bundle where Ms Drew sent that letter on to Mr Cheney. He said, "The people had little experience in practical land management issues, presented a narrow ecological view", clearly different to his own. That led to a letter of 12 February from Ms Drew saying, "in relation to calling witnesses who can give evidence about land management practices, we are happy to call the witness on your behalf and note you have nominated a number of potential witnesses. We will confirm which witness out of those you have nominated we will call closer to the time fuel management is addressed". The last email is of 25 May where Ms Drew indicated, "counsel assisting the coroner

propose to call Tony Bartlett and Phil Cheney only as witnesses in relation to fuel management". And the next paragraph refers to people who were not on that list of six. So that is an illustration of an area where your Worship has determined effectively, or counsel assisting have, or you have jointly, to curtail the evidence.

There is a further aspect of counsel assisting's submission which I would take your Worship to. It is at paragraph 120 and page 35. This relates to the events of 26 August and her Worship's comments there. The paragraph says, in the last three sentences:

"Your Worship took one view of the legal position. Justice Whitlam took a different view. Your Worship has the advantage of having seen counsel for all relevant parties across many weeks of the hearing. Justice Whitlam didn't have that advantage."

That seems to be an invitation by Mr Burnside for your Worship to effectively assess the demeanour or weight to be given to submissions. Indeed, he is noting that that is an advantage that you had. What precisely that has to do with the events of the 25th and 26th of August is not articulated. What it is clearly doing is inviting your Worship on the basis that has been identified, perhaps demonstrating that such an approach is what your Worship has taken to date, to in some way have regard to your observation of counsel in determining what weight, if any, you give to their submissions. That seems to be what that submission is addressed to.

There doesn't seem to be any stepping back, despite the fact that Justice Whitlam made quite clear that the submissions made on 25 August orally and in writing were a model of clarity, the submissions of counsel assisting were calculated to lead you into error and that your Worship had, for reasons that I have advanced in earlier submissions, an apparent preoccupation with counsel rather than the substance of the issues.

Counsel assisting even now on this application, it would seem, is noting with approval that your Worship could somehow have regard to what you had seen of counsel. It is a curious submission.
5 It has a flavour which is presently unhelpful. It was calculated to lead you into error again, and I would submit it indicates that the current submission opposing this application is flawed.

10 This application is a most unhappy one. The fact that it has to be brought at all is not to the interests of anyone. But if justice in this case, both the justice to the persons who are affected and the broad administration of justice in this
15 Territory requires it to be done, in my submission, distasteful as it is, it is a decision that your Worship should take.

I would submit for the reasons advanced generally that that is the course that you should take and that nothing that has been advanced by
20 Mr Burnside, counsel assisting today, would lead to you taking another approach.

25 There was reference in the submissions in support of the application to the fact that, when an application of this sort is made particularly after an inquiry that has gone for some time, there can be elements of cost and matters of that
30 sort. The general public may well ask, "Well, what about those considerations?"

I would put this submission that what the cases make clear is that, where reasonable apprehension
35 of bias exists, then no other course can be taken. If that means that a further inquiry is needed, it is undoubtedly one where there would be a record of many witnesses given in this case, one can see that there would be, if this inquiry proceeded
40 before another coroner, circumstances in which a very limited number of witnesses may need to be recalled given the uncontroversial nature of many of the witnesses who were called.

45 I put that, though, essentially because the question of an application of this sort, a most unusual one made at this stage of an inquiry such

as this, the community will undoubtedly ask those questions. They are entitled to have some sort of answer. The answer, in my submission, flows from an understanding of what has occurred in this inquiry, and that such a course is the inevitable result, given the application of the standards that the law sets in circumstances such as presently provided. If your Worship please.

10 THE CORONER: Thank you, Mr Johnson.

MR LOWE: I have listened and read the applications that have been before the Court. Our submission is that we support the need for you to take into account any concerns of any of the parties before the inquiry and that they be heard fairly and equitably. We do not support the application that you be discharged from this inquest and submit that it should continue on.

20 On the issue of fair treatment, I think we need to take into account why we are here in the first place and the reason that this court is in process is because there is no plaintiff here. The plaintiffs are the people who lost four family members and those many hundreds or perhaps thousands of people in the ACT who have suffered trauma, some which are quite life destroying. Absent from this court are representations of the victims.

30 In an inquiry such as this, the community expects that the Court will represent their interests. It is reasonable for counsel assisting to push a point to disclose the facts of the matter to before the Court and, if your Worship so wishes, for you also to push a point. It is also reasonable for the parties who are representing other people who might have adverse findings to argue their case particularly strongly.

40 It is the responsibility of all the parties to ensure all the facts are put before you. If there is a dispute, then my submission is that the responsibility is on the parties to bring that to your attention for you to take into account how you might deal with it. To seek your dismissal

from this is not reasonable.

We don't wish any further delays in this inquest
and wish it to continue. I think all the parties
5 involved wish this to happen so we can get on with
the next stage of recovery. There is enormous
community resources put in here, both energy and
costing, and we don't wish to see those wasted in
any way.

10 There has been some debate about bits and pieces
that have gone on in transmissions between people.
One of the things that is easy to forget in a
place like this, where very great care is taken in
15 communication, is the colloquialism which exists
in Australia generally. One of those
transmissions which has been the subject of some
comment here today can be interpreted in many
ways, from being a very positive statement to a
20 person - "you'll get yours" - which is a very
strong bonding comment in some situations, right
through to being an adverse one. The only way in
which it can be interpreted is to actually ask the
person who originally made that comment.

25 So, your Worship, we would wish you take into
account the concerns of the parties and that we
should continue on with this inquest. As other
counsel said this morning, it should be completed
30 as quickly as possible.

THE CORONER: Thank you, Mr Lowe, for your
comments.

35 Mr Burnside, the matter that Mr Johnson raised
about the Parliamentary Privileges Act, have you
had an opportunity to consider that piece of
legislation and particularly the parts of your
submission that Mr Johnson feels the provision
40 applies to?

MR BURNSIDE: Yes, we have. It seemed to us, with
respect, nothing within our submission falls
within the reach of subsection 3.

45 Subsection 3 provides:
47

5 "In proceedings in any court, et cetera, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made considering proceeding in parliament by way of or for the purpose of - this is the key point:

10 "(a) questioning or relying on the truth, mode of intention or good faith as anything forming part of those proceedings in parliament;

15 (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or.

20 (c) drawing or inviting the drawing of inferences or conclusions wholly or partly from anything forming a part of those proceedings."

It is no part of our purpose to do any of those things.

25 As I said at the outset, our purpose in putting those passages from Hansard before you was because they provide the setting against which two different things happened. The first of them was when you made some comments correcting the
30 impression that had been put in parliament that you wanted every individual witness to have separate representation.

35 Now, all we have done is to put, in our submission, what you originally said about representation, what was said in response to that in parliament about representation, and then what you said in response to that observation in parliament. We have commented accurately, in our
40 submission, what was said in parliament didn't accurately reflect what you had previously said. That is not calling anyone's credibility into question; it is not questioning anyone's motive or intention or anything of the sort; it is simply
45 pointing out that you said one thing, it was misinterpreted and you corrected it.

47

The second passage from the Hansard was the portions in which Mr Cheney was criticised, very directly, by the Chief Minister. In his criticism he misrepresents what has been said in his
5 evidence by Mr Cheney. His evidence is grossly misrepresented by the Chief Minister.

We cannot possibly put forward a sensible submission about Mr Cheney's email to Mr Lasry and
10 Mr Lasry's email response to that without identifying the background. The background was the attack on Mr Cheney in parliament. Now, we put that forward in order to explain what happened thereafter, not in any attempt to call into
15 account the credibility, motive, intention or good faith of anyone in parliament.

I think what Mr Johnson was troubled about was the way in which we have articulated the errors made
20 in the statements in parliament. That really makes the point that if you can't hold up something said in parliament to say, "It is factually incorrect and this is what happened as a result", then section 16 means something very
25 different from the way we read it.

As I said before, I make it clear, we are not calling into question the truth, motive, intention or good faith of anyone or anything in parliament.
30

Can I make one other observation arising out of Mr Johnson's helpful submissions. Paragraph 120 of our outline, I think he may have mistaken or misunderstood. I want to correct that, if I can.
35 Paragraph 120, as he pointed out.

THE CORONER: Yes, page 35.

MR BURNSIDE: We are talking about an observation
40 made by you which is set out in paragraph 116. We make the observation that you have the advantage of seeing counsel for a very long time and Justice Whitlam didn't have that advantage.

The comment which give rise to all of this is your
45 observation that the nature of the submissions made yesterday by counsel have left me with the

impression that they are seeking to impugn the integrity of this coronial inquiry and also the integrity of counsel assisting. If this is the intent of the submissions then I reject them as
5 being without foundation". What you were doing there, quite properly in our submission, was saying in open court the impression you had formed from submissions made. The impressions formed from submissions made will very often be informed
10 by a long observation by the particular counsel making the submissions. That is just the fact of life. Everyone has their own style. Everyone's style will communicate different messages. You were candid enough to say that was an impression
15 you had. If it was the intent of the submissions, you didn't accept that.

In our submission, it is reasonable then to justify and support what you said there by
20 reference to the observation that you did have the advantage of seeing counsel for a very long time. That's all we intended by it and nothing else.

THE CORONER: Thank you, Mr Burnside. Mr Johnson,
25 I will ask reluctantly whether you want to make a comment, particularly in relation to the legislation, section 16.

MR JOHNSON: I have drawn that to attention. As I
30 have indicated I think that is essentially a matter for the assembly. Mr Burnside has taken his view. It is a matter for him. I have nothing further to put. I have discharge marked for identification duty to bring to his attention and
35 your attention the existence of legislation.

THE CORONER: Thank you. Thank you Mr Johnson, Mr Burnside, Mr Glissan. What I will do, I propose to take an adjournment now and I will come
40 back at I will say 4 o'clock with my decision on this matter.

SHORT ADJOURNMENT

[3.25pm]

45 **RESUMED**

[4.03pm]

THE CORONER: Upon resumption of the proceedings

on 11 October 2004, Mr J.L. Glissan of Queen's
Counsel, who had not previously appeared in this
inquiry, announced that he had been retained by
5 Mr Lucas-Smith, Mr Castle, Mr Graham, Mr Ian Bennett, Ms Odile
Arman, Mr Rick McRae, Mr Peter Newham, Mr Rick
Hayes and Ms Vivien Raffaele - to lead their
respective counsel for the purpose of making an
application that I disqualify myself on the ground
10 of apprehended bias.

Mr P.A. Johnson senior counsel acting on behalf of
the ACT government supported the application.
After hearing the application from Mr Glissan,
15 Mr Johnson and counsel assisting Mr Lasry, I
adjourned the hearing of the application for a
week until today, being the 19th of October.

Today the application was argued before me.
20 Mr Burnside of Queen's Counsel, with Ms Neskovcin,
appeared as counsel assisting, given that part of
the application made by Mr Glissan and Mr Johnson
focused on the conduct of Mr Lasry of Queen's
Counsel and Mr Woodward, who appear as counsel
25 assisting in the inquest generally.

Now the test to be applied in determining whether
a judge is disqualified by reason of appearance of
bias is:

30 "Whether a fair-minded lay observer might
reasonably apprehend that the judge might not
bring an impartial mind to the resolution of
the question the judge is required to decide;
35 Ebner v Official Trustee in Bankruptcy [2001]
205 Commonwealth Law Reports, 337 at 344;
Chief Justice Gleeson, Justices McHugh,
Gummow, Hayne; and also Johnson v. Johnson
[2000] 201 Commonwealth Law Reports 488 at
40 493, Chief Justice Gleeson, Gaudron, McHugh,
Gummow and Hayne."

I have considered very carefully the very detailed
written submissions filed on behalf of counsel of
45 the represented parties and by counsel assisting.
I have heard their oral submissions today. I am
not satisfied that any fair-minded member of the

public who had followed the details of this
inquest over its full length could reasonably form
the view that I might not bring an impartial mind
to the resolution of the questions that I am
5 required to decide.

Accordingly, I propose to continue hearing the
evidence of Mr Roche. I propose to do that
tomorrow.

10 Is there any application or any comment that
anybody wishes to make? I propose to continue - I
presume Mr Roche will be available - so I will
adjourn until 10 o'clock tomorrow morning.

15 MR PIKE: Before your Worship does that, I should
indicate this: I am yet to cross-examine Mr Roche
and I have a part-heard matter tomorrow in Sydney
involving submissions in a matter which I
20 conducted in September at which I have to attend.
So I will not be able to be present, come what
may, tomorrow in Canberra. I will be present if
required on Thursday and/or Friday.

25 THE CORONER: I think Mr Walker is still to
complete his cross-examination of Mr Roche. There
are other counsel - Mr Archer, Mr Erskine.

30 MR PHILIP WALKER: Yes, your Worship, time-wise I
am in precisely the same situation myself as
Mr Pike; that is, I am committed tomorrow but free
Thursday. I was wondering if your Worship could
in some way possibly accommodate that.

35 MR GLISSAN: Before your Worship decides that,
might I indicate that I am now instructed to apply
to stay the further hearing of this inquest,
pending your Worship's ruling being tested
elsewhere. I then make a formal application for
40 your Worship to stay the proceedings sine die.

THE CORONER: I am not minded to do that. What I
will do is I will adjourn these proceedings until
a quarter past 2 tomorrow afternoon. Those
45 counsel who are in a position to cross-examine -
if you are not here, Mr Walker, well then you
won't be here, but there are presumably other

counsel who may wish to commence. Mr Erskine, I see you rising to your feet.

5 MR ERSKINE: Yes, your Worship. I did foreshadow this to Mr Lasry last week that I start a three-day hearing in the Court of Appeal tomorrow in a matter that I have been involved in since the middle of 2001, so that I would not be available for the next three days and my learned senior
10 counsel is not available all this week.

We would not be in a position to cross-examine Mr Roche at the moment for the rest of this week unless some amazing development happens that
15 allows time free.

MR ARCHER: I am in a position to proceed tomorrow afternoon. I would imagine my cross-examination would take an hour, an hour and a half.

20

THE CORONER: Then I will adjourn until a quarter past 2 tomorrow afternoon.

MR LASRY: Could I say something about that. At
25 the time this matter arose Mr Philip Walker's cross-examination was part-heard. I didn't catch all of what he said, but I gather he was saying he was not in a position to complete that cross-examination tomorrow.

30

MR PHILIP WALKER: Not tomorrow but Thursday is possible.

THE CORONER: I suppose it depends on how
35 desirable it is to interpose Mr Archer in Mr Walker's cross-examination.

MR LASRY: That might not matter. It is desirable obviously, for reasons I began to articulate,
40 until seeing the wisdom of the delay pending this application, that Mr Roche's evidence be expedited, given the time he has already spent waiting for it to be completed. Perhaps in the course of that, it is appropriate to fragment the
45 cross-examination to some extent.

THE CORONER: So a quarter past two, does that

suit you, Mr Archer? Would that suit Mr Roche as well, Mr Lasry, as far as you are aware?

5 MR LASRY: I think he would be here in the morning but, in view of what your Worship has said that you won't sit before 2.15, that can be accommodated as well.

10 THE CORONER: Does that suit you as well, Mr Archer?

MR ARCHER: Yes, it does, your Worship.

15 THE CORONER: I will adjourn until quarter past 2 tomorrow.

**MATTER ADJOURNED AT 4.10PM UNTIL WEDNESDAY
20 OCTOBER 2004 AT 2.15PM.**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

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

DAY 86

Wednesday, 20 October 2004

[2.15pm]

THE CORONER: Yes. Do you want to say something?

5 MR WOODWARD: I am tempted to say "I call Trevor Roche" --

THE CORONER: That might be a bit premature.

10 MR WOODWARD: I understand that you might have been provided or served with a copy of the order nisi.

THE CORONER: I have.

15

MR WOODWARD: I was shown it a moment ago, your
Worship. It does seem to operate to stay the
further hearing of the evidence. And, as I
understand it, Mr McCarthy may correct me, there's
20 a directions hearing for the further hearing of
the matter in the Supreme Court next Tuesday.

THE CORONER: 9.30 on Tuesday, yes.

25 MR WOODWARD: Perhaps Mr McCarthy can indicate what he understands to be the procedure following that.

MR McCARTHY: Perhaps as a preliminary matter, you
30 may be aware that there were two applications brought in the Supreme Court this morning: matters SC697 and SC698 of 2004. I understand your
Worship has received a copy of the order nisi made in matter 698 of 2004 --

35

THE CORONER: I have.

MR McCARTHY: -- and not a copy of 697. Perhaps, subject to the concerns your Worship might have, I
40 might provide you with a copy of the order nisi made in the additional matter.

THE CORONER: Is it in similar terms to 698?

45 MR McCARTHY: It is - well the orders made are identical, save for the first order which you will see corrects an error in the affidavit of Ms Bird

regarding the date upon which the application was brought before you to the 11th rather than the 12th of October.

5 The other matter I should bring to your Worship's attention is that the Director of Public Prosecutions is named as the second respondent in matter 698 of 2004 but not in matter 697. I have no direct knowledge of what is intended in the
10 additional matter but I anticipate that they will be run together and that the DPP will be added as an additional respondent in matter 697. It's obviously a matter for those prosecutors.

15 The other thing I could add, your Worship, is that, as you can see, the matter has been adjourned until that date for directions. I anticipate at that time directions will be made both as to the manner in which the application
20 will be heard, the nature of the evidence and obviously dates set for the hearing of the matter.

I don't think I can add a great deal more to what was said in court before Justice Crispin this
25 morning, save an acknowledgment by the Territory that the matter should be heard as expeditiously as is practicable.

30 THE CORONER: Thank you, Mr McCarthy.

Yesterday I indicated that I would not disqualify myself from finishing this inquiry and that I had intended to resume hearing evidence from Mr Roche this afternoon. And in the meantime, counsel
35 representing the ACT Government and associated ACT government employees have this morning obtained an order nisi from the Supreme Court.

40 The effect of this interim order is that I am prevented from continuing to hear Mr Roche's evidence today, and the inquiry is therefore adjourned until further notice.

45 MR WOODWARD: If your Worship please.

47 THE CORONER: Thank you.

MATTER ADJOURNED AT 2.20PM UNTIL FURTHER NOTICE

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TRANSCRIPT OF PROCEEDINGS

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CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

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MRS M. DOOGAN, CORONER

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CF No 154 of 2003

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CANBERRA

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INQUEST AND INQUIRY INTO
THE DEATH OF DOROTHY MCGRATH,

30

ALLISON MARY TENNER,
PETER BROOKE, AND DOUGLAS JOHN FRASER

35

AND THE FIRES OF JANUARY 2003

40

DAY 87

Wednesday, 17 August 2004

45

[10.00 am]

THE CORONER: Just for the record, this is the
resumption of the inquest into the deaths of
5 Dorothy McGrath, Allison Tenner, Douglas Fraser
and Peter Brooke and the inquiry into the January
2003 fires.

MR LASRY: Good morning, Your Worship. I'm sorry,
10 Your Honour, my apologies. I think there's
nowhere in the Commonwealth now where you can say
"Your Worship".

Your Honour, the purpose of this mention obviously
15 is to discuss the resumption of the evidence,
bearing in mind that at the time that the initial
application in the ACT Supreme Court proceedings
arose Mr Roache was in the course of giving
evidence and indeed, as I recall, being
20 cross-examined by Mr Phillip Walker.

Mr Woodward has I think polled the parties by
e-mail and it hasn't been possible to come to a
date that suits everybody, but the date that suits
25 most people, subject to adjustment and further
discussion this morning, would be 17 October.

One of the matters to be considered, of course, is
the position of the witness himself and Mr Roache
30 has difficulties, although he can comply I think
with 17 October, but he has accepted an
appointment which I think comes from both the
Commonwealth and Queensland governments into a
quite separate matter in Queensland and he is
35 therefore both preparing for that and of course
needs to in a sense prepare again to continue his
evidence in this case. But I think in the end he
accepted that 17 October would be a date that he
could comply with.

40 THE CORONER: That's his earliest availability?

MR LASRY: That is in effect his - it's not quite
his earliest availability but I think given the
45 position of the other parties, and they will of
course tell Your Honour about that shortly, that's
the date that it seemed to us was appropriate.

There are difficulties. My learned friend Mr Pike has raised a difficulty and he has raised it with us just before Your Honour came onto the bench this morning and he will no doubt raise the matter with you in a moment, but that's the date that we would suggest that the evidence start. We think there's probably two or three weeks of evidence to go.

10 We have been asked by those representing in effect New South Wales, Mr Brett Walker and Mr Erskine, to accommodate them and I think the way in which we will probably do that is to invite Your Honour to permit them to cross-examine Mr Roache as soon as Mr Phillip Walker has finished, because I gather he is close to being completed and if they can participate in that process virtually straight away, as I understand it their purpose will be served and, apart from Mr Roache himself, there probably aren't more than another two or three witnesses. I think that's still to some extent up in the air, but it seems to us that the certainties are Mr Roache's evidence to be completed, the foreshadowed expert Mr Nicholson to give his evidence and I think it's clear that Mr Castle will also be recalled. It's not yet clear whether Mr Phillip Walker will take up the opportunity to recall his client, Mr Lucas-Smith. If he does that, there will be obviously another witness, but that would seem to be the extent of the evidence that then remains.

So, our proposal is that Your Honour will resume the evidence on 17 October and indeed that we perhaps meet by way of mention on the previous Thursday, which will be Thursday 13 October, at 10 am to just ensure that the matter is ready to proceed.

40 We should make this clear, Your Honour: We are anxious to make sure that on the 17th when the court resumes that the evidence starts immediately. We want to complete the evidence as quickly as we can, bearing in mind the time that has now been invested in this case and therefore it's obviously important that it be done expeditiously. We are anxious to make sure that

happens. There may be other issues, but that's our proposal as to this stage.

5 THE CORONER: Thank you, Mr Lasry. I will just ask counsel to indicate the dates that they are available, but it's certainly my intention as soon as the evidence does recommence that we just sit until the evidence is completed and I would be surprised if people did not agree with that. That 10 certainly has to be the intention now. So, if we just perhaps go around the table. Mr Archer, is the 17th suitable for you?

15 MR ARCHER: Certainly that's suitable. Yes, certainly.

THE CORONER: Thank you. Mr Pike?

20 MR PIKE: It's not suitable for me, Your Honour. Can I just indicate perhaps some of the background to the reason as well.

25 THE CORONER: You still have to cross-examine, don't you, Mr Pike?

MR PIKE: I still have to cross-examine Mr Roache. When I received Mr Woodward's e-mail the other day, I responded to him saying that I am available the two weeks commencing 26 September, but for the 30 two weeks following that I have got a commitment in a matter which I have been retained in almost for two years now, since well before I was retained in this matter, which has been especially fixed for my convenience in October. It's a 35 serious matter; I have conferred at length, I have advised at length. It involves an industrial accident resulting in death.

40 THE CORONER: And what about it makes you not available in October?

45 MR PIKE: That is the 10th to 21st of October, which takes in that second week. I would have some flexibility in the first week of that potentially, but certainly not the second week because - - -

THE CORONER: Can you see this matter continuing through to the 21st?

MR PIKE: Yes, it's a very serious industrial
5 matter. There's been WorkCover inspectors
investigating at length. Their evidence will take
quite some time, leaving aside the issues relating
to the other aspects of it. There's no way I will
10 be free at all that week and, as I say, that's a
matter which I have been retained in for a long
time. It would be a very significant disadvantage
to my clients and to the coroner of that case who
has changed the date for me on that occasion to
15 specially fix it to suit my convenience in
October.

As Your Honour pointed out, I have yet to
cross-examine Mr Roache and I would need to do
that, so I just can't accommodate that date. It
20 wasn't a situation where we could in any way
predict when this matter would come back.

THE CORONER: It was always going to be difficult
for someone.
25

SPEAKER: Of course, and life had to go on in the
meantime and we can't hold our practices in
abeyance. That was one of the things that I had
to do and I'm in that position, Your Honour.
30

One thing that was (indistinct) by Mr Lasry as a
possibility was that Mr Roache's evidence be taken
as much as it can be in that week and then he be
recalled to be cross-examined by me later in the
35 proceedings. That's of course an available
option. If that were to be the path that would be
followed, my request would be that in that week of
the 17th, if that was chosen as the week for the
continuation or the commencement of the
40 continuation, only Mr Roache's evidence be taken,
then the matter be adjourned until the
commencement of the following week for the
remainder of the evidence and thereafter, at a
time obviously to suit Mr Roache, he be recalled
45 so that I could cross-examine him and then
thereafter obviously Mr Lasry would re-examine.
That's the best I can come up with, leaving aside

the prospect of simply not sitting that week of the 17th at all.

5 THE CORONER: I will take that into account,
Mr Pike. But you would be available if, looking
at the worst case scenario, that Mr Roache needs
to be recalled, say if we do start on the 17th and
he finishes his evidence by the 21st, then you
would be available, say, on Monday the 24th to
10 cross-examine?

MR PIKE: Or course. Yes. I don't as yet know
what by way of examination I will need to conduct
of the other witnesses. That really will depend
15 largely on the nature of the evidence they give.

THE CORONER: The only other witness at this stage
is Mr Nicholson, as far as I'm aware.

20 MR PIKE: The suggestion I think my friend
indicated a moment ago, Mr Castle, that hasn't
been fully determined but that certainly is in the
air or in the offing, so those two witnesses and
I can't make any assessment about that.

25 THE CORONER: Mr Castle will be recalled and I
will just find out from Mr Whybrow whether or not
that will happen.

30 MR PIKE: Quite so.

THE CORONER: Yes. Mr McCarthy, thank you.

35 MR McCARTHY: The resumption on 17 October is
convenient.

THE CORONER: Are you able to indicate which
counsel will be appearing?

40 MR McCARTHY: Mr Tracey is briefed on behalf of
the territory and I anticipate him being here on
that day.

45 THE CORONER: Thank you. Yes, Mr Stitt.

MR STITT: Good morning, Your Honour. I wasn't
polled, but 17 October is a date that - - -

THE CORONER: Do you feel left out?

MR STITT: No, I don't. 17 October is a date
that's convenient. Your Honour, the only matter
5 from our point of view which with respect should
be decided today is the question of what other
witnesses are to be called or recalled. If that
is to happen, then it would be our submission that
Your Honour should give a direction that the
10 topics or subject matters over which those
witnesses are to be recalled should be identified
now or certainly within a very short period of
time because, as Your Honour knows, the leave
which was granted to my client was of limited
15 leave.

I need to know whether there's to be additional
evidence led or recalled which may directly or
indirectly touch my client's interests. If it
20 doesn't, then plainly I won't be here, but it's
not satisfactory for me or for my client or I
suspect for the inquiry itself simply to not know
the scope of the evidence which is sought to be
recalled or any additional witnesses and with the
25 past history of this matter one would need the
benefit of chickens' entrails to predict what was
likely to happen unless we are told at the outset
and it's my submission that Your Honour should
make some order this morning requiring each of the
30 parties to indicate, one, whether they are going
to call further evidence and, two, if so, what
topics it's directed to and if any witness is to
be recalled, the same should apply.

35 THE CORONER: Yes. That's a very sensible
suggestion. Thank you, Mr Stitt. On that basis,
I might go back to you, Mr Archer. There's
nothing that you have indicated, Mr Archer, no
other witnesses that you want to recall?

40 MR ARCHER: No.

THE CORONER: Or other witnesses to be called. In
light of that, you haven't indicated anything as
45 well, Mr Pike. Mr McCarthy?

MR MCCARTHY: We are in the same position.

THE CORONER: The same, so so far that's the position, Mr Stitt.

MR LASRY: Perhaps I should just, in relation to that, first of all say that we agree with Mr Stitt's submission and it may go without saying, but I should say it, perhaps. We don't intend to call any more evidence so there's nothing else coming from us that Mr Stitt needs to be interested in. Mr Roache for all intents and purposes is our last witness, save for the recall of Mr Castle, at Mr Castle's instigation, if that's happens.

THE CORONER: Mr (indistinct), do you have anything in reply?

MR WHYBROW: Yes, Your Worship. Mr Walker sends his apologies. He might be along in a couple of moments. Your Honour, 17 October is suitable for both myself and Mr Walker. I can indicate that at the outset. I'm not in a position today to indicate with certainty whether or not my client wishes to give evidence or be recalled. On about 12 August Mr Bayliss sent a letter to counsel assisting seeking some clarification of matters in relation to jurisdiction and both Mr Walker and myself adopt the terms of that letter in relation to what matters does counsel assisting see in light of the various pronouncements in the Supreme Court judgment as falling within the jurisdiction of the inquiry, because depending on what counsel assisting indicates they intend to make submissions on will determine to a large extent whether or not Mr Castle will be recalled, for example questions of community awareness campaigns and things of that nature.

If counsel assisting takes the view, for example, that that matter is not one that they would seek to pursue any further, then Mr Castle will not need to be recalled to answer questions that have arisen, so I appreciate Mr Stitt's request for certainty today and once those issues are resolved I can sit down with my client and we can ultimately provide an indication of the issues to which he does intend to give evidence and we can

provide a list of the topics that will be covered or intended to be covered. My feeling I can indicate today to Mr Stitt is that none of them would be ones that affect his client.

5

THE CORONER: I don't propose to discuss the issue of jurisdiction.

10

MR WHYBROW: No, that's why I was going to raise it.

THE CORONER: Prior to the end of the evidence and my priority today is to set a date for the conclusion of the evidence.

15

MR WHYBROW: Yes. Those dates are suitable.

20

THE CORONER: I suppose what I'm saying to you, Mr Whybrow, is that you have to make a decision based on your knowledge of the brief and your knowledge of the evidence to date and your appreciation of what issues have already been raised and I suppose further to discussion with Mr Castle as to whether or not you wish to recall him on any of the issues that have been raised to date. As I say, I don't propose to canvass the issue of jurisdiction prior to the conclusion of the evidence. So if you are waiting for that to happen before you make the decision - - -

30

MR WHYBROW: No, I wasn't canvassing it with Your Honour.

35

THE CORONER: I'm sorry, I must have misunderstood you.

40

MR WHYBROW: I just noted that a letter canvassing these issues with counsel assisting had been provided. The terms of that letter aren't adopted by myself and Mr Walker. I understand that counsel assisting has indicated to the ACT government essentially what you have just indicated, Your Honour, and if that be the case, then at least that makes that clear.

45

THE CORONER: Yes.

MR WHYBROW: This is not something that I can indicate today.

5 THE CORONER: No, I understand. Hopefully you will be able to in the next short time, perhaps before we have the next directions hearing?

SPEAKER: Before the next directions hearing, yes.

10 THE CORONER: That's fine. And it would only have been Mr Castle. That's the only witness to be recalled. Are there any other witnesses who you wish to call?

15 MR WHYBROW: At this stage, Your Honour, I'm not aware of any, no.

THE CORONER: And what about - - -

20 MR WHYBROW: Mr Nicholson, we are still waiting on his availability, but given that we are talking about six weeks down the track I would be confident that he can fit in with the timetable so there's no hiatus.

25

THE CORONER: Perhaps in that second week after we start on the 17th.

MR WHYBROW: Yes.

30

THE CORONER: And are you able to indicate how long you will be with Mr Roache? I'm only asking this perhaps for Mr Pike's benefit to see how long Mr Roach's evidence will take.

35

MR WHYBROW: I would have thought half a day.

THE CORONER: And I think Mr Walker on the last occasion - - -

40

SPEAKER: He said half an hour, I think.

THE CORONER: He said half an hour on the last occasion, so about half a day. Thank you, Mr Whybrow.

45

MR LASRY: Your Honour, can I just deal with

Mr Whybrow's matters as we go. With respect, we agree with the observation that Your Honour just made and we would simply add that of course to date the issues in the issues list as it stands have all been the subject of evidence, I think, during the course of the inquest, so it's appropriate at this stage to continue on that basis and to have the discussion or debate about jurisdiction in the course of submissions.

10

The other matter to be raised, if I may through you remind my learned friend of a letter written on 5 October of last year addressed to his instructing solicitors requesting particular documents in relation to Mr Nicholson. We would still like to have those documents. There's a list of them which include letters and draft reports and all the things that are relevant to an expert giving evidence and we would be pleased to be informed when we might have access to those documents.

20

MR WHYBROW: They were provided to the court and left here for some days or weeks last year. They have been removed. I understand they might be in Mr Walker's chambers. Access can be facilitated.

25

THE CORONER: Thank you, Mr Whybrow. Yes, Mr McCarthy.

30

MR MCCARTHY: Your Worship, perhaps I should clarify. You might recall the Territory was, as it were, last to cross-examine Mr Roache. That still remains the case. I just noticed you have been canvassing the time that parties might require. The Territory still wishes to cross-examine Mr Roache. I imagine perhaps an hour to two hours would be sufficient.

35

THE CORONER: Yes. Thank you for that, Mr McCarthy. Mr Watts.

40

MR WATTS: Thank you, Your Honour. 17 October suits me and I have been asked to mention Mr Craddock's appearance and that day suits him. For our part we don't wish any witnesses to be recalled.

45

THE CORONER: Or to call any other witnesses?

MR WATTS: No, nobody else.

5 THE CORONER: Mr Erskine?

MR ERSKINE: "Ditto" is about the easiest way to
sum it all up, Your Honour. The dates are
suitable and we are not going to recall or seek to
10 recall witnesses.

THE CORONER: Are you able to estimate how long
you will be with Mr Roache?

15 MR ERSKINE: I won't be very long, a couple of
hours.

THE CORONER: Thank you.

20 MR WATTS: Your Honour, there's just one other
matter. I have indicated to counsel assisting
that I will be seeking Your Honour's leave on the
next occasion to - I had finished cross-examining
Mr Roache and there are some matters which have
25 arisen of which I have become aware and I would be
seeking Your Honour's leave on this occasion to
ask some more questions. It won't be long, it
would be an hour at the most if Your Honour grants
me leave on that occasion.

30 MR LASRY: Your Honour, the only submission I
haven't responded to was that of Mr Pike in
relation to the timing. In view of what he has
told you, it does appear that it will be necessary
35 to facilitate that and to bring Mr Roache back in
the following week and we can perhaps liaise with
him, but it does appear that there's no option but
to do that in order that he can cross-examine him,
so we would accept that that appears to be
40 necessary in the circumstances.

THE CORONER: As I said, it was always going to be
difficult to try to work out a time, Mr Pike, for
everybody and I'm rather pleased that we have been
45 able to get as far as we have. I mean one of the
main considerations was always the availability of
Mr Roache and if he is not available on the 17th,

then it really is essential in my view that we start as soon as we can and that seems to be the 17th. But, having said that, I will make efforts to accommodate your cross-examination of Mr Roache and I appreciate you are not going to be available that week between the 10th and the 21st but you never know what might happen, Mr Pike. It just might be - - -

10 MR PIKE: The difficulty is the matter I have got for that week is not a matter that can settle. It's an inquiry and there is a prospect that it blows out, but leaving that aside there is the other issue that I did raise in my submission as
15 to, if we are going to commence on the 17th and that certainly seems to be the writing on the wall at the moment, whether we can just take the evidence of Mr Roache and leave the rest of the evidence until the following week. Given the fact
20 that I'm just not aware of precisely where the evidence is going to be, it will create problems.

THE CORONER: Whose evidence?

25 MR PIKE: Mr Nicholson and Mr Castle, if he is recalled.

THE CORONER: Yes. I think that's something that we might have to give some thought to closer to
30 the time. It will probably depend on how long it takes to cross-examine Mr Roache. If it means wasting three days of that week, I'd be most reluctant to do that. If it means perhaps stopping half way through the last day or
35 something like that, then I think it's just a matter of waiting and seeing how long Mr Roache's evidence will take.

MR PIKE: That's probably likely. The other thing
40 of course is that Mr Nicholson, being an outer territorian, as it were, he would have to be brought back from where he comes from as well, if that were to happen, but we can consider those things later on.

45 THE CORONER: It would certainly be my preference and my intention that once we start the evidence

we sit until we complete all the evidence rather than breaking because I suspect there might be other people who might become unavailable if we did delay it beyond that timeframe, so that
5 certainly be my preference, that once we start taking the evidence on the 17th we sit until the evidence is completed and accommodate counsel as best we can.

10 MR PIKE: Yes. Thank you.

THE CORONER: Mr Stitt, as soon as we know whether or not Mr Whybrow intends to recall Mr Castle, we will pass that information on, but apart from Mr
15 Nicholson, Mr Castle appears to be the only other witness who will be recalled at this stage.

MR STITT: As Your Honour pleases.

20 MR ERSKINE: Might I raise one matter? In the light of Your Honour's remarks just then, which is that the evidence is likely to complete in a reasonably strict period from in October, may I
25 inquire through counsel assisting whether any consideration has yet been given as to where we then go to, into a submissions timetable of some kind or other into which will have to be slotted the jurisdiction argument of some kind or other,
30 as to the precise scope of issues that are relevant to the inquiry. And if we are going to be having evidence through October, that takes us into November and December and then (indistinct) January, so I simply flag it at this stage to ask whether consideration has yet to be given to a
35 submissions timetable beyond the end of the evidence.

THE CORONER: I think it probably has.

40 MR LASRY: It has, your Honour. In fact, I was asked I have to say extraordinarily optimistically whether it was likely that within four weeks of the end of the evidence our submissions would be in the hands of the various parties and they
45 clearly won't be. It seems to us that we would be unlikely to have our submissions completed before the end of January and beginning of February of

next year without being committed to a timetable and obviously the parties would need time beyond that to respond.

5 Where the discrete argument about jurisdiction fits in in the timetable, we are not yet sure. We had always envisaged that when all the submission were completed that Your Honour would sit for however long it took in order that each of the
10 parties could address argument, in effect speaking to their written submissions, before you finally adjourned the inquest for the purpose of preparing a report and that's still broadly the timetable, but it's just too early to tell at this stage how
15 that timetable will actually be defined. But that's broadly the approach we are taking.

THE CORONER: Thank you, Mr Lasry. That gives some indication, Mr Erskine.

20

MR ERSKINE: Yes. Thank you, Your Honour.

THE CORONER: Yes. Are there any other matters? If it is convenient we will adjourn now to a
25 directions hearing on Thursday 30 October at 10 o'clock and that's to deal with any issues that might arise so that hopefully we can dispose of those issues before Monday 17th so when we start on the 17th we will start with the evidence and
30 continue the evidence of Mr Roache.

MR LASRY: If Your Honour pleases.

MATTER ADJOURNED

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TRANSCRIPT OF PROCEEDINGS

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

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MRS M. DOOGAN, CORONER

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CF No 154 of 2003

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CANBERRA

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

30

DAY 88

35

Thursday, 13 October 2005

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THE CORONER: Yes, this is a directions hearing that I foreshadowed last week. That we'd have a forum - rather than last week, the last time we met. For just finalising arrangements and making
5 sure that parties will be ready to proceed with the evidence of Mr Roche on 17 October, next Monday. Yes.

MR WOODWARD: Thank you, your Honour. I can
10 indicate for our part that Mr Roche will be here on Monday and ready to proceed with his evidence. What happens thereafter will depend a bit on how long the conclusion of his cross-examination takes. However, based on the estimates that were provided
15 on the last occasion it seems quite likely that with the exception of Mr Pike, whom your Honour will recall had sought and was given an indulgence permitting him to undertake his cross-examination of Mr Roche on Monday week, it would appear likely
20 that his evidence will conclude on about Wednesday of next week.

It had been our hope at that point to interpose probably Mr Nicholson at that point. A letter that
25 we'd received from Mr Walker and Mr Whybrow's instructor on 12 September would indicate that he is available that Thursday and Friday but that position may have changed and we'd need to find out the current status of his availability. If it were
30 possible for Mr Nicholson to give evidence on Thursday and Friday he may well conclude in that period, which would mean that the only thing remaining apart from the cross-examination by Mr Pike of Mr Roche on the Monday is - - -

35 THE CORONER: And Mr Nicholson.

MR WOODWARD: And perhaps Mr Nicholson if Mr Pike
40 is interested to cross-examine him as well. Then that will leave only those witnesses which were a little bit as I recall it up in the air as to whether or not they would be recalled. Your Honour will recall that the position on the last occasion I think was that it seemed unlikely that Mr Lucas-Smith
45 would be recalled, but likely that Mr Castle would be. If that position is still unchanged then that would mean Mr Castle being recalled on Monday or Tuesday and his evidence one assumes concluding

within a day or two.

5 So that assumes to be the timetable. There are one
or two other minor matters but perhaps if it's
convenient to your Honour it might be appropriate
just to check whether all parties are still in the
position indicated on the last occasion.

10 THE CORONER: I'll do that.

Yes, Mr McCarthy.

15 MR McCARTHY: Your Honour, from the Territory's
viewpoint we're certainly ready to proceed on
Monday the 17th. I've been asked by Mr Watts to
appear on behalf of his clients and by Mr Clark to
appear on behalf of his clients. And there's three
things I wanted to mention about that, none of
which clashes with anything said by my friend.

20 First on behalf of Mr Watts he's presently in the
process of finalising a statement from Mr Peter
Cartwright which will address ACT Fire Brigade
training on bushfire fighting. We certainly
25 understand there's every intention to have two
counsel assisting tomorrow, but in any event if
it's not tomorrow it will certainly be very soon
thereafter.

30 The second thing was on behalf of Mr Pike, there is
likewise a similar - a statement being prepared by
Mr David Ingram, who you might remember as the
logistics officer with ESB. And that will be
dealing with the preparedness of ESB prior to
35 January 2003, and in particular from a logistics
point of view. Again we anticipate having that
statement to counsel assisting tomorrow or shortly
in the following week.

40 The third thing I've been asked to mention is that
Mr Pike can confirm that he will be able to appear
on Monday the 24th. He is still unable to appear
on any occasion next week. And I'm also asked to
convey to you that he expects to complete his
45 cross-examination of Mr Roche on the 24th.

THE CORONER: Well, I suppose that depends on
whether Mr Nicholson is called on Thursday and

Friday that - and I think in relation to Mr Watts he also asked, and I would certainly grant him some leave, to ask Mr Roche a few extra questions. He had examined Mr Roche and he wants to do that. He indicated on the last occasion that he'd only be very brief about it.

MR McCARTHY: I'm grateful for that, your Honour. He did actually speak to me yesterday that he does have that intention and I'll convey to him that he has that leave.

THE CORONER: I'll certainly grant him leave to do that. I think I indicated that on the last occasion that would happen.

MR McCARTHY: With respect to Mr Pike I will convey to him the intentions about Mr Nicholson and - - -

THE CORONER: Yes. I'll just find out whether or not Mr Nicholson is available on Thursday and Friday but if he is then Mr Pike should be - if Mr Nicholson is finished his evidence on Thursday/Friday then Mr Pike should be prepared also to cross-examine him if he wishes. We'll ask him then.

MR McCARTHY: I have to say that my understanding is Mr Pike I'm told has made careful arrangements in order to be here on the 24th. But as I understand it it is only for that day that he is available. Now I accept that that's an issue that he will need to - - -

THE CORONER: That's a matter for him, yes.

MR McCARTHY: I will bring that to his attention. I am just telling you that I anticipate that - - -

THE CORONER: You're saying that that's the only day that he's available.

MR McCARTHY: The 24th. But the acknowledgement of the coronial to proceed, he certainly asked me to convey that he intends to complete his cross-examination of Mr Roche that day.

THE CORONER: That's fine.

MR MCCARTHY: The issue about Mr Nicholson, I'd consider bringing that to his attention, but I just bring your Honour's attention that that might present a problem for him. I just pass that on.

THE CORONER: Thank you, Mr McCarthy. Yes, thank you.

Mr Whybrow.

MR WHYBROW: Your Honour, firstly I indicate for the benefit of my friend in relation to Mr Roche I don't expect to be a very long time with him.

THE CORONER: I think you said about half a day on the last time.

MR WHYBROW: Yes. I think that's even being a little bit optimistic - or pessimistic.

Your Honour secondly, given that my understanding is that counsel assisting do not intend to recall Mr Castle his instructions are that he does not intend to give any further evidence so he will not be recalled by myself. And I assume based on previous indications there'll be no need for his - to give any further evidence in the witness box.

As of I think it was approximately 12 September it was the understanding of myself, Mr Walker, and our instructing solicitor through Mr Nicholson that he would be available Wednesday, Thursday, Friday, and indeed as late as last Friday I received an email from him where he indicated that he was intending to drive up early last week and be available. I don't know what's happened between then and the Monday, but on Monday afternoon we were advised that he is unavailable next week at all and is not available until the following Monday.

Now that's something which is no doubt concerning to the inquiry in terms of finishing but, as Mr Walker will indicate to you, certainly not something that doesn't suit either myself or him.

THE CORONER: Has he given any explanation or any reason as to why he's not available?

MR WHYBROW: I didn't go into that with him. I received an email and then made some enquiries as to locking him in for the following week as soon as possible so there's no further possibility of things dragging out. And confirmed with him yesterday - had a short conversation trying to find out if there's any possibility he could turn up. I'm told that he cannot that week. So he's unavailable until the Monday and the Tuesday and he's available that entire week until his evidence is completed. Monday the 24th.

THE CORONER: Monday the 24th, yes.

MR WHYBROW: In case there's any confusion I think everyone was proceeding on the basis that he might be available Wednesday, Thursday, Friday of next week.

THE CORONER: Next week. That's right, yes.

MR WHYBROW: Yes. And that was what we were working on. That's no longer the case.

THE CORONER: Yes. No, I understand that he's not available until Monday the 24th.

MR WHYBROW: Yes. And finally, your Honour, I've indicated Mr Castle's not going to give any further evidence. I note Mr Watts has been distributing some short statements dealing with some peripheral but important matters on behalf of various of his clients. I expect to provide some further documents, nothing unexpected in the nature of ESB budgets and the analysis of the statistics that were undertaken by a lady who's going to provide a short statement. Other than that, unless there's anything further your Honour?

THE CORONER: No, thank you. And when will these documents be available, Mr Whybrow?

MR WHYBROW: Hopefully by tomorrow.

THE CORONER: By tomorrow.

MR WHYBROW: Yes.

THE CORONER: Thank you. Yes, thank you.

Yes, Mr Walker.

5

MR WALKER: Your Honour, there's nothing I can usefully add in relation to Mr Nicholson beyond what Mr Whybrow has said. The only thing I will mention is this recent unavailability is a problem for me, but I think it's just something I'm going to have to live with. I can't expect given the lateness that ...(indistinct)... can be changed as a consequence, but I personally am committed in another matter, which I cannot get rid of, for the first three days of the week beginning the 24th. And if I am not here when Mr Nicholson is here I might just endeavour to get Mr Whybrow to ask the questions in the areas that were of interest to me.

20 THE CORONER: You have his report in any event.

MR WALKER: Indeed. That's right. So the late change certainly has done me no favours. The only other thing I need to say is on the question of whether Mr Lucas-Smith will be recalled, it won't be my request. I can now confirm that I do not request that he be recalled.

30 THE CORONER: Thank you. And I think on the last occasion with Mr Roche you indicated that you only had a short time to go and Mr Whybrow on your behalf at the last directions hearing said that you people can probably only have a very short time, about half an hour or so. Can you just confirm that?

35 MR WALKER: That is correct.

40 THE CORONER: That's very helpful. Yes, thank you. Thank you, Mr Walker.

Yes, Mr Erskine. Do you want - - -

45 MR ERSKINE: Your Honour, we were actually I think the next cab off the rank to cross-examine Mr Roche last year.

THE CORONER: Yes.

MR ERSKINE: And on that occasion I wasn't going to be doing it, Mr Brett Walker was unavailable, so he and I had talked about the questions we needed to ask and the estimate at that stage would have been a couple of hours. Since then with the change of date Mr Walker is now available, I'm conferring with him tomorrow, I can't imagine that we would suddenly invent a whole new line of cross-examination that wasn't apparent to us 12 months ago. So I would expect that he would be cross-examining on Monday for a couple of hours.

THE CORONER: Thank you.

MR ERSKINE: Certainly well less than a day.

THE CORONER: And what we'll do then is we'll say that Mr Walker can follow - - -

MR ERSKINE: Mr Walker.

THE CORONER: - - - Mr Phil Walker.

MR ERSKINE: Yes.

THE CORONER: Yes, thank you. Thank you, Mr Walker.

Yes.

MR WOODWARD: Your Honour, obviously the only difficulty that's arisen as a result of that discussion concerns Mr Roche - I beg your pardon, Mr Nicholson. There's no real difficulty, your Honour, other than minor inconvenience in relation to deferring Mr Nicholson's evidence to the commencement of the following week, presumably to follow Mr Pike's cross-examination of Mr Roche on the Monday. I should say I hadn't understood on the previous occasion that Mr Pike's difficulties were such that he would only be available on the 24th.

THE CORONER: I didn't either. I thought that he was going to be available for that whole week.

MR WOODWARD: That was my understanding, or at

least most of it. But perhaps, your Honour, this can be resolved at the beginning of next week. It may be necessary to somehow structure things so that Mr Pike can cross-examine Mr Roche. There can be - and this may depend a bit on discussions with Mr Whybrow which I can have after court concludes about how long any examination he may have of Mr Nicholson may take, but we may have to try and squeeze in Mr Pike's cross-examination of Mr Nicholson on the Monday as well. And one would hope that - - -

THE CORONER: If Mr Pike wishes to cross-examine.

MR McCARTHY: That's obviously a ...(inaudible)... quesiton.

THE CORONER: Yes.

MR WOODWARD: So that's something we'll endeavour to deal with as best we can, your Honour. But it will have to await obviously further discussion.

THE CORONER: It was certainly my understanding, and maybe I misunderstood, but I thought that Mr Pike indicated - certainly indicated that he wouldn't be available next week but that he would be available for the following week.

MR WOODWARD: My recollection was he explained he had a longstanding commitment in a coronial inquest which would finish in that week, but perhaps it's run over. In any event, your Honour, we'll certainly try and accommodate that as best we can, although it may take some co-operation from those who have retained Mr Nicholson to see if we can have Mr Pike also conduct any cross-examination that he has of Mr Nicholson on the Monday.

Two other minor matters. Or perhaps I should just say apart from that hiccup it would appear that without a recall of Messrs Lucas-Smith and Castle subject to one matter which I'll mention in a moment it would seem likely that we will finish the evidence early in that second week.

Your Honour, there are two other matters. I've provided this morning to the parties a copy of a

letter that was sent to your Honour, it's dated 12 August, in relation to matters concerning the McIntyre's Hut fire and the meeting at Yarralumla on 9 January 2003.

5

I've only done that to enable the parties to have a little bit of background so I can then indicate to your Honour that having received that letter arrangements were made for a representative of the AFP to contact the author of the letter and to follow him up on the matters raised. In the course of that discussion his attention was drawn to the fact that the evidence would indicate, I think uncontested evidence, that in fact on 8 January a series of decisions were made about how the New South Wales Rural Fire Service should respond to the McIntyre's fire. And it seems clear, and the evidence is largely consistent, that decisions were then made about a controlled burn within a certain defined area and so on.

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15

20

So that the suggestion in the letter that no decisions had been made as at the morning of 9 January appears to be inconsistent with that evidence. That was pointed out to the author. He conceded that he'd come into the meeting late and perhaps there were things said prior to him being in the meeting. But he did stand by what he says about the remarks that he heard. However, he has indicated that at this stage he is unwilling to provide a statement and in those circumstances unless any other party wishes the matter to be pursued further, having read the letter and having heard what I've just said, we would not be proposing to take the matter raised by him any further.

25

30

35

Your Honour, the second matter that I wanted to raise relates to two folders of documents that were provided to us by the ACT Government Solicitor last week. They comprise, if you like, a number of different categories of documents. Some of them were documents that are already part of a coronial brief. Others are documents that appear to have been provided by the ACT Government to the investigators at some point but were not included in the brief as part of the initial decision making process.

40

45

Discussions I've had this morning indicate that there's a request that those be made part of the brief and we'll be considering that request over
5 the next couple of days. They relate largely to issues of land management planning in the period leading up to the fires. And at this stage I don't anticipate any difficulty in accommodating that request.

10 Finally, your Honour, there's a small number of documents which comprise emails sent by Mr Rick McRae to Messrs Lucas-Smith, Castle, Graham, Bennett, and others, which had not previously been
15 identified by either the investigators or any of those assisting you amongst the material that had been gathered. And they do appear to be of some significance. I'll be providing copies of those emails to all parties who don't already have them
20 and to your Honour this morning. In fact I might just give a set to your Honour now before I forget.

I don't propose to take the matter any further this morning except to indicate that we'll be
25 considering over the course of the next couple of days how best to deal with these documents. They clearly contain matters that were relevant and had they been available at the time, or had we been aware of them at the time those persons I've
30 mentioned gave their evidence, they would have been amongst the material put to them.

So we will need to consider, among other things, whether it is necessary to recall any of the
35 persons concerned for the purposes of asking them about this material. There may be a way of dealing with it which would not necessitate that recall, but we'll consider it over the course of the next couple of days and let the parties know on Monday
40 how we propose to deal with it.

Those are the only matters I wish to raise, your Honour.

45 THE CORONER: Yes, thank you Mr Woodward. And do you say these emails are going to be distributed to the other parties?

MR WOODWARD: I understand the parties have all had an opportunity to review the two folders of documents which the ACT Government Solicitor compiled, which have been provided to us last week.
5 So some parties may have seen them, but in case they haven't I've got 12 copies here so any party who hasn't seen them or hadn't noticed them in the folders is welcome to take a set so that they'll know what we're talking about when we address this
10 on Monday.

THE CORONER: And if I could just ask if anybody does wish to consider recalling or have some issue with these emails or indeed the other documents
15 that have been provided, if they just let counsel assisting know prior to next Monday and then we can discuss that and arrangements can be made if that indeed is considered to be ...(inaudible)...

MR WOODWARD: Sorry perhaps I should just say, your Honour, on a similar issue, in relation to statements that have been produced and have been foreshadowed, including those that have already
20 been provided, amongst which include a short supplementary statement by Mr Bartlett, there is of course an issue as to how those will be dealt with.
25

We would hope given the indication that - as I understand it most of the material that's in those statements is generally uncontroversial, but they
30 can be put into the category which parties may recall we developed in about June of 2004 where we had a category, "witnesses", which we described as make available witnesses.
35

And as the transcript discloses the arrangement in relation to those witnesses was that their evidence would be treated as if they had been called and sworn as to the truth of their statements. And any
40 party who wish to cross-examine any of those witnesses was invited to let us know and they would have been made available. That didn't occur in respect of any of those witnesses. So that evidence has that status and I suspect we can take
45 a similar position in relation to these additional statements. But again we'll need to obviously see and read them before we can - - -

THE CORONER: Before the decision's made.
Certainly.

5 MR WOODWARD: Yes, as your Honour pleases.

THE CORONER: Yes, thank you. Yes, thank you Mr
Woodward.

10 Yes, any other matters at this stage? Mr Walker.

MR WALKER: Your Honour, you heard what I said
about Mr Lucas-Smith. I hadn't read this letter at
the time I made that comment. I'll draw it to his
15 attention. I don't anticipate that it will cause
anything to change, but I made my remarks without
having read the contents of that letter. I'll also
more closely examine those emails, I haven't had an
opportunity to have a look at them yet. But again
I do not anticipate what I told you will change.

20 THE CORONER: That's why it's been provided to you,
to give you that opportunity.

MR WALKER: Thank you.

25 THE CORONER: All right. So we'll adjourn till
Monday the 17th at 10 o'clock.

30 **ADJOURNED TO MONDAY 17 OCTOBER 2005 AT 10.00 AM**
[10.20 am]

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TRANSCRIPT OF PROCEEDINGS

5

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

10

MRS M. DOOGAN, CORONER

15

CF No 154 of 2003

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

25

30

DAY 89

35

Monday, 17 October 2005

40

45

THE CORONER: Are we ready to resume?

MR WOODWARD: Yes, your Honour. There has been
some additional material circulated between
5 various parties late last week, in particular. I
understand that it is intended, at least in one or
two cases, to ask Mr Roche some questions that
arise from that additional material. I just
mention that, so that the parties have an
10 opportunity to indicate that to your Honour and
seek to tender any additional statements now so we
can perhaps get that out of the way.

For my part, I would seek to tender the bundle of
15 emails that was provided to the parties last week
at the direction hearing. I have some additional
copies for anyone who doesn't have them.

I have had some preliminary discussions with
20 Mr Lasry about how we propose to deal with those.
I would hope that by either morning adjournment or
lunchtime we will be in a position to indicate to
the parties what we propose in relation to those.

25 If I could tender that bundle of emails.

The other documents that have been provided --

THE CORONER: I will mark those as an exhibit.
30 The emails from Mr Rick McRae, sent on Wednesday,
23 January 2002 to Ian Bennett, Peter Lucas-Smith,
Tony Graham and David Ingram. The second one sent
by Rick McRae on 30 May 2002 to Maxine Cooper,
Darrell Thornthwaite, Tony Graham, Ian
35 Bennett, Peter Lucas-Smith.

The next one dated 31 May 2002 to Maxine Cooper,
Darrell Thornthwaite, Tony Graham, Ian Bennett,
Peter Lucas-Smith and Mike Castle.
40

The next one sent by Rick McRae on 12 August 2002
to Tony Graham.

The next one sent 6 November 2002 by Rick McRae to
45 Peter Lucas-Smith, David Prince and Tony Graham.

The next one, 14 November 2002, sent by Rick McRae

to Peter Lucas-Smith, Tony Graham, David Prince
and David Ingram.

5 The next one sent by Rick McRae on 14
November 2002 to Peter Lucas-Smith, Tony Graham,
David Prince and David Ingram.

10 The next one sent by Rick McRae on 15
November 2002 to Peter Lucas-Smith, Tony Graham,
David Prince and David Ingram.

15 The next one sent by Rick McRae on 2 December 2002
to Peter Lucas-Smith, Tony Graham, Ian Bennett,
David Ingram and Mike Castle.

The next one sent on 3 December 2002 by Rick McRae
to Peter Lucas-Smith.

20 The next one sent on 30 December 2002 by Rick
McRae to Peter Lucas-Smith, Tony Graham, David
Ingram and Ian Bennett.

25 The last one sent on 6 January 2003 by Rick McRae
to Peter Lucas-Smith, Tony Graham, and David
Ingram.

EXHIBIT #0112 - THE ABOVEMENTIONED EMAILS SENT
FROM RICK MCRAE ADMITTED WITHOUT OBJECTION

30 MR WOODWARD: The remaining documents comprise
statements. The order in which they were
provided, I believe, the first one is a
supplementary statement by Mr Bartlett dated 4
September 2005. A supplementary statement from
35 Mr - I don't have spares of these.

40 THE CORONER: I should mark those. There is no
objection? I presume everybody has seen a copy of
these.

MR WATTS: These are statements I provided. I
have copies. Your Honour invited me to provide
this material. I have copies of those statements.
Perhaps I can continue.

45 The first one is Tony Bartlett of 4
September 2005.

THE CORONER: Statement by Mr Bartlett dated 4
September 2005 will be exhibit 0113.

5 EXHIBIT #0113 - STATEMENT OF MR BARTLETT DATED 4
SEPTEMBER 2005 ADMITTED WITHOUT OBJECTION

MR WATTS: Statement of Peter Cartwright dated 12
October 2005.

10 EXHIBIT #0114 - STATEMENT BY PETER CARTWRIGHT
DATED 12 OCTOBER 2005 ADMITTED WITHOUT OBJECTION

MR WATTS: Statement of Wayne Willimott dated 5
September 2005 with coloured photographs. There
15 is a bundle of coloured photographs attached to
that statement. All those have not been
circulated to all the parties. I invited them and
if they wanted to see the originals in colour they
could make arrangements to see them.

20 THE CORONER: The statement by Mr Willimott and
the photographs will be exhibit 0115.

25 EXHIBIT #0115 - STATEMENT BY MR WILLIMOTT DATED 5
SEPTEMBER 2005 WITH COLOURED PHOTOGRAPHS ADMITTED
WITHOUT OBJECTION

MR WATTS: The statement which I provided on
behalf of Mr Pike, who is not here, but in the
30 interest of his clients, of David Ingram dated 15
October 2005.

35 EXHIBIT #0116 - STATEMENT FROM DAVID INGRAM DATED
15 OCTOBER 2005 ADMITTED WITHOUT OBJECTION

MR WOODWARD: Could I indicate in relation to
those, in the case of Mr Bartlett's statement,
that was forwarded - I do this in the context of
understanding that there are aspects of these
40 matters that will be raised with Mr Roche in
cross-examination - the supplementary statement of
Mr Bartlett, exhibit 0113, I think he has had for
a week or two. However, the statements of Mr
Cartwright and Mr Ingram he has only had very late
45 last week. In fact, in one case, due to an error
on my part in forwarding an email, I think it was
Mr Ingram's statement that he only received

yesterday. I should say, they only came to me late last week.

5 In the case of the statement of Mr Willimott, I don't recall receiving that statement at any stage. I make no criticism of this. I only raise it because the consequence of that is Mr Roche hasn't had it at any stage before today. To the extent that any counsel wishes to ask him
10 questions about that, he will need an opportunity to read it.

THE CORONER: Thank you.

15 MR WATTS: May I say in relation to that, Willimott's statement was served by me last week by email to everybody. I am not suggesting my learned friend has received it - I apologise if he hasn't.

20 I foreshadowed to counsel assisting - your Honour may recall I had concluded my cross-examination of Mr Roche in circumstances where there had been a problem with material that I had been putting
25 because of the absence of material in the brief. That has been attended to now. I therefore seek leave to re-open my cross-examination, particularly, in fairness to Mr Roche, so I can put material to him in cross-examination which is
30 contained in these statements.

There would also be some other material which I can simply say, having looked at the material over
35 12 months, there are a few other matters I do seek to raise with you. I now seek Your Worship's leave to re-open my cross-examination of Mr Roche. I understand Mr Walker is still in the middle of his. Mr Brett Walker I think will probably go after that. I would seek to go after that or
40 after Mr Whybrow. I would be about an hour.

THE CORONER: That is fine. I think I indicated on the last occasion I would give you leave. You can do that. We will sort the order out perhaps a
45 little later. You can certainly ask some further questions.

Any other preliminary matters before we start?

MR WHYBROW: Your Honour, I provided some extra documents. In relation firstly to the emails,
5 those emails were tabbed as part of a two-volume bundle of material provided to the parties a week and a half ago by the ACT Government. An accompanying letter sets out over 100 separate documents of which those emails formed separate
10 items amongst that.

It is my submission that those other materials should also form part of the material before your Honour, in particular the emails generically
15 described, it would appear Mr McRae's concern with it being a difficult season.

A number of other documents relate to actions taken by the Emergency Services Bureau in terms of
20 pre-season training, workshops conducted which is relevant to the actions taken by Emergency Services in preparation for what they were being told was going to be a difficult season. In my submission, the rest of the material should also
25 form part of the brief.

The letter had been provided which I understand authored by ACT Government Solicitor which outlined what they are, 1-108. It is my
30 submission to keep in context those emails, certainly other things were happening at the time those emails were being sent. It is convenient that perhaps they go in as those two volumes. I am not saying I want to ask Mr Roche about
35 necessarily any or all of those documents, but in fairness, in the context of what those emails mean the rest of that material should go in.

THE CORONER: I haven't seen the letter. I don't
40 know what else is in that material that has been sent. My understanding is that. So the material is already included in the brief. That is the reason why it wasn't simply tendered en masse because some of it is already in the brief.
45

MR WHYBROW: Mr Woodward raised in the directions hearing last week that whilst he was interested in

the emails, the other material was taken on notice. We will get back to the parties on that. If that could be perhaps a question on notice.

5 THE CORONER: That is perhaps still the position. Mind you, I would certainly be interested if there were any other emails, particularly emails responding to the emails that Mr McRae sent. I don't know whether there are any other emails in
10 that pile of material that haven't been put into evidence already, but I would certainly be interested in seeing those and have those brought to my attention.

15 MR WHYBROW: I don't have any.

THE CORONER: Indeed, if any other counsel is aware of any other emails replying to these emails I would be interested in seeing those.

20 MR WHYBROW: Any actions that were taken relevant to those expressions by Mr McRae should form part of the brief, if they do not already form part of the brief. Additionally, I am not in a position
25 to provide copies yet.

I have had delivered to counsel assisting on Friday a number of documents that have been foreshadowed already, or indeed parts of which
30 appear in those volumes of material. I am in the process of having copies provided to the parties. So, again, I won't tender them at this stage but bring them to the attention of parties so they have a chance of knowing what is coming.

35 They include budget approvals by Mr Lucas-Smith in the six months leading up to this season which I think were subject to some questions to Mr Roche last year about asking for money for an increased
40 area of capacity and asking for money for a community awareness officer. In particular, requests had been located and copies made. I don't believe they are already part of the material.

45 Within the materials that I have just referred to in those two folders of bundles are minutes of

Emergency Management Committee meetings. They are
at tabs 90-95 of those materials. They have, for
quite sensible reasons, been redacted in many
5 respects because they are obviously of a sensitive
security nature of aspects that don't relate to
bushfire management.

I have, after consultation with the ACT,
10 unredacted some of those entries and provided
another deleted copy which has a few extra
additions into them.

There is a further document relating to an
15 extraordinary Emergency Management Committee
meeting. When I have copies of that, I will
tender that.

THE CORONER: What date was that meeting?

20 MR WHYBROW: That meeting was 23 October 2002. It
is quite relevant in terms of the period leading
up to the fires.

I have provided to counsel assisting a full copy
25 of the ACT Major Systemic Failure Subplan, which
is a document which sets out the consequences for
particular calamities striking the ACT. By its
very nature, it contains a lot of very sensitive
material which should not become widely
30 distributed. I have provided a full copy to
counsel assisting and an extract of the parts that
I seek to tender so they can see the context in
which I seek to tender that. Copies of the
extracted parts I will provide to the other
35 parties. Again, the extracts have been discussed
with the ACT Government, which has no objection to
those parts being provided to the inquest.

40 Finally, there are extracts from the Emergency
Services financial statements for the years 1999,
2000, up to 2003-2004. I am obtaining copies of
those to distribute. They are in the form of
budget figures for the organisation throughout
those periods.

45 Late last week I emailed the parties and indicated
that I was in the process of obtaining a formal

statement from Ms D Watson, who undertook the
analysis or the physical task of going through the
411 questionnaires that appear already in the
brief and putting them into a spreadsheet format.
5 I emailed the spreadsheet.

Ms Watson's brief extracted figures to all of the
parties and indicated that a formal statement was
being prepared by her setting out effectively the
10 mechanics involved.

It is intended that Mr Roche will be asked
questions about what those figures disclose.
Hopefully, the parties have had the opportunity to
15 see the formal statement of those figures without
necessarily having a signed statement, knowing the
contents of that statement. Again, when I get
that to hand, it is intended that I will tender
that and a copy of the spreadsheet that she
20 produced. Thank you, your Honour.

THE CORONER: Thank you, Mr Whybrow.

MR WOODWARD: Can I say in relation to those
25 documents that my learned friend has referred to,
the two files, in a sense the reason the emails
were singled out was because on my quick review of
documents they were the only ones that hadn't been
provided to us, or otherwise come to our attention
30 in some form.

Your Honour is right to say a number of the other
documents in the folders are already in the brief.
I think most, if not all, of the balance, putting
35 the emails to one side, were documents that had
been provided to the police investigators but had
not been included in the coronial brief. Based on
my preliminary assessment, I see no difficulty in
having those documents moved across into the brief
40 so they will form part of the material before your
Honour.

The only thing I will need to check is if there
are any other documents in the same category of
45 the emails not previously before you or that have
otherwise come to our attention.

I didn't locate in the material any replies to the emails. I certainly endorse your Honour's request and make a formal call for any responses to those emails, given that they somehow were not located
5 on any previous occasion. If those could be provided, we would seek that.

The documents that my friend referred to which were provided late last week I only received this
10 morning. I haven't had a chance to review those. At this stage, I don't anticipate that there would be any difficulty in having those form part of the material before your honour. Perhaps we could have today and tomorrow to consider that further.
15 We can probably deal with it between counsel, without having to trouble your Honour again. If we have any difficulty, we will draw it to your Honour's attention.

20 THE CORONER: Thank you. Is Mr Roche available?
Thank you, Mr Roche.

<TREVOR MICHAEL ROCHE, sworn and examined

25 <CROSS-EXAMINATION BY MR PHILIP WALKER

MR PHILIP WALKER: Q. Do you have a copy of Mr Nicholson's report available to you?

A Yes, I do. I have two parts of it, your
30 Honour. The second part, which I only received this morning, I have not considered in any depth. I am not really in a position to respond to any of the issues that he raises in that second part of his statement.

35 Q I see. If you turn in the first part--

THE CORONER: Can I ask, what is the second part? I have the report that became exhibit 0099. Is
40 there a change to that report? Is there a second part to that report?

MR PHILIP WALKER: Yes, there is an addendum that has been circulated.

45 THE CORONER: If you have a spare copy, Mr Walker.

So there is an addendum that was circulated this morning; is that correct?

5 MR PHILIP WALKER: It has been circulated to all parties. It has not been admitted in evidence before you at this stage. I am instructed that it was provided to counsel assisting in September.

10 MR WOODWARD: Can I respond to that? What has been referred to is an addendum which was apparently prepared and provided by Mr Nicholson to Mr Walker's instructors on 11 October last year. I only became aware of it last week when I first had an opportunity to review the Nicholson
15 documents that had been provided, which comprised a bundle of over a foot and a half high, and found it amongst those.

20 I then raised with my learned friend's instructor whether or not it was intended that that would be relied on. Strictly speaking, it was in a box of paper which was provided some time in September which we didn't get an opportunity to review until last week.

25 To suggest it was sent to us last September gives the impression that we have sat on it. We weren't aware of its existence until, in fact, last week when I asked my learned friend's instructor,
30 having found it, were you intending to rely on this part of the report. I suggested that it be circulated to the parties and an application be made formally for it to become part of the material. I only formally received a copy of it
35 this morning.

MR PHILIP WALKER: I am sorry about that. I wasn't aware of some of that detail. I gather there was some correspondence on 13 October
40 indicating there was an intended -- it had been overlooked last year. The letter of 13 October was formally served. I hear what Mr Woodward says. Obviously, Mr Roche has to have some time to look at it. I wasn't aware of those details
45 that Mr Woodward has indicated.

THE CORONER: Does everybody else have a copy of

it?

MR PHILIP WALKER: I understand that to be the
case. In any event, the question I want to ask
5 Mr Roche relates to the first part of the report.

Q If you go to page 16, Mr Roche --
A Of Mr Nicholson's report?

10 Q Yes.
A Yes.

Q About community warnings.
A Yes.

15 Q See paragraph 2 there. If this could be
brought up on the screen - document
[HIL.DPP.0001.0001]. If you go to the second
paragraph there:

20 "In dealing with the preparation and issue
of warnings and advice to the community, it
is important to avoid instilling panic, which
may cause people to flee into certain
25 danger."

There is presumably a risk if a warning is put out
too early or in inappropriate terms - that is a
potential consequence, is it not?

30 A Not in my experience, sir.

Q You disagree with paragraph 2?

A Yes, I do. I think the panic arises if the
warning is given too late and people flee in the
35 face of the fire.

Q In the course of examining the material in the
brief, have you been acquainted with earlier
literature published to the ACT community about
40 what they should do in preparation for bushfire?

A Yes.

Q What was it that you have been provided with?

A A range of material. I think, from memory, it
45 was about an inch thick of various handouts that
had been developed over a number of years and
provided at various opportunities within the ACT.

And also, if my memory serves me correctly, some media releases.

Q If you go to the next paragraph:

5

"In providing advice and warnings to the community, advance work needs to be done to identify what they are to be told and how advice to leave will be given."

10

The documents to which you have just referred that you said you examined, do they fall into that particular category of advice about leaving?

A A number of them did.

15

Q It goes on:

"The work needs to be done well in advance to identify where people who choose to leave will go. Very risky to encourage people to leave their homes without having planned on the route to follow and nominated assembly or refuge points to move to."

25 Do you agree with that?

A Yes, I do.

Q In your experience, if one goes a couple of paragraphs down, have you also found some difficulty in the media's portrayal of evacuations of dwellings, as described by Mr Nicholson in two paragraphs further on - the paragraph headed "Gaining the acceptance of the wider community for the "stay or go early" policy I am referring to; do you agree with that paragraph?

35

A To some extent, yes.

Q With which parts do you agree and which parts do you express--

40

A I remain unconvinced that it's financially costly. Some cases it can be. It depends on which approach the agency might take to providing that information in the community. If one utilises television and those sort of mediums, yes, it is very expensive. But there are plenty of other less costly mediums that can be adopted

45

which would provide a similar outcome.

Q That would include, for example, mailouts of those sort of letters to the householder, the type
5 of mailouts providing advice. That would be an appropriate way to convey the message that is not as financially costly, perhaps?

A It is one way. I venture to say, Mr Walker, and your Honour, as I have mentioned before, those
10 sort of passive mediums have, in the past, proved not to have been ultimately - or not to achieved the penetration that is really required. They do certainly assist in that penetration, but they are not the best means of achieving penetration and
15 retention of the message.

Q Do you have to hand the material you have just been referring to that you saw about conveying these warnings?

20 A No, I don't.

MR PHILIP WALKER: I am a little rusty on this. I can't remember if this is indicating this is part of the brief or it is simply in the possession of
25 the AFP. [AFP.GSO.0029.0257]

THE CORONER: What is it?

MR PHILIP WALKER: It is a message mail to the
30 householder with some accompanying literature about bushfire warnings.

THE CORONER: We will check.

35 MR PHILIP WALKER: I know some codes are on and some are not. I can't remember which is which. It is, in fact, in the folder that the ACT circulated, at tab 84.

40 THE CORONER: It appears not to be part of the exhibit within the brief at the moment.

MR PHILIP WALKER: Is there a copy of the ACT's documents that can be provided to Mr Roche? Does
45 he have one there?

MR LASRY: He doesn't, he can have. I don't know

whether Mr Walker has something else he can go on with.

MR PHILIP WALKER: I have a spare copy.

5

Q If you go to tabs 84 and 85, Mr Roche, if I could ask you to have a look at that particular document --

10 MR PHILIP WALKER: I have been informed there is, in fact, another reference which brings this up on the system. It is [ESB.GSO.0005.0269].

Q Have you had an opportunity to read that, Mr Roche?

15

A I am just finishing it. Thank you, Mr Walker.

Q That is the kind of warning and example of some of the kinds of things that one would do to prepare and advise a community in advance of bushfire threats; is that right?

20

A Well, it was obviously something that was done here in the ACT. It wouldn't have been my choice as to how that information would have been conveyed.

25

Q Because it was a "To the Householder" type of letter?

A Yes. I think, as I explained in my report, Mr walker, for these sort of things to have an impact, people need to personalise the risk. We are inundated these days with material in the letterbox. Unless people see it as individually applying to them then the tendency, and I can only speak from my own experience, is to put what a lot of people call "junk mail" straight into the rubbish tin. I think that's the risk that these sorts of mediums or publications generate.

40

Q The content of it, however, is nonetheless consistent with the sort of message which needs to be conveyed, is it not?

A Again, to some extent, although I think some of it needs explanation - further explanation for it to be of relevance to the people receiving it as to why they should do certain things rather than

45

just saying they should be done. I particularly,
I guess, emphasise, given the circumstances that
have arisen in this inquest or inquiry, as filling
the bathtub with water, there should be some
5 explanation of why that needs to be done.

Q Have you seen in your material that you have
examined the book titled "Will You Survive?"?
A I think I recall that. I think I recall it was
10 actually borrowed or negotiated from the CFA --
part of it anyway.

Q Perhaps if I could show you this document as
well. The document you have been provided with is
15 titled "Will You Survive?" It is a document which
you have said has its origin from the Country Fire
Authority in Victoria?

A I think many, many years ago I seem to recall a
similar titled document. Whether the content was
20 exactly the same - I wouldn't be prepared to say
that.

Q Could you briefly peruse the document? Have
you seen it before, as part of your preparation
25 for the report?

A I believe so.

Q Is, again, that kind of document made available
on public occasions, such as shows and exhibitions
30 where the Bushfire Authority is available - is
that kind of publication to advise people about
bushfire dangers and to do what you are referring
to?

A Yes. With the same reservations as I expressed
35 about that letter.

Q The need to personalise it?

A Yes, sir.

40 MR PHILIP WALKER: Your Honour, I won't ask for
this to be tendered at the moment. I will just
see whether, in fact, it is on the system. If it
is not, I will ask that it be tendered at a later
stage.

45

Q Have you seen the examples published in The
Canberra Times where there was advice provided to

citizens of the ACT how to prepare their home for the bushfire season?

A I don't recall that specifically, sir.

5 Q I will ask that you be shown one further document.?

A No, I don't recall that particular extract.

10 Q The extract is [ESB.GSR.0005.0329]. As you can see, your Honour, the book I passed to Mr Roche is in fact on the system.

THE CORONER: Yes.

15 MR PHILIP WALKER: The end should be 330 instead of 329.

Q Have you had an opportunity to read that particular article, Mr Roche?

20 A Briefly, thanks.

Q You agree that article, firstly, explains the danger of the bushfire season and provides some a description of the dangers of the bushfire season?

25 A Yes.

Q And that it does so some four days before the commencement of these fires?

A Yes.

30

Q The tips to prepare your home -- again, you would agree they are appropriate advice to the community?

A Yes.

35

Q Equally, the advice, if in fact caught in a bushfire, is also appropriate?

A Yes.

40 Q Have you seen techniques such as described in the last half of the extreme right hand column where the Emergency Services Bureau advises that it has what they call a survival meter - I think that almost ought be in inverted commas - where
45 residents might determine the risk that bushfires pose to their premises; have you seen that technique before?

A Yes, I think that meter was actually produced by CSIRO. I am aware of that.

Q Is that also an appropriate means of
5 communicating to people the dangers presented to their house by bushfires?

A The use of the meter?

Q Yes.?

10 A It certainly would aid in people forming a view as to whether their property is at risk or not.

Q The techniques that I have mentioned, one was a general mailout to the householder, the other was
15 a book which is available at public displays where the Bushfire Service is in attendance. The third is an article in The Canberra Times and I think you mention in your report some training seminar for residents within Chauvel Circle; do you
20 remember that?

A Yes, I do.

Q They are a different approach to community education. They are the kinds of approaches which
25 are required to educate the community; is that right?

A Yes.

Q You say that it is often best if you can personalise the message. If there are mailouts to members of the community identifying bushfire hazard reduction work taking place in particular suburbs to which they belong, that would be the
35 sort of thing that would personalise the danger of bushfires to them; wouldn't it?

A Not necessarily, no.

40 MR PHILIP WALKER: I have no further question, your Honour.

THE CORONER: Yes, Mr Walker, thank you.

45 MR BRET WALKER: Thank you, your Honour.

<CROSS-EXAMINATION BY MR BRET WALKER

MR BRET WALKER: Q. Could you turn, please, to page 59 of your report? Do you see there the paragraph commencing "There was nothing in Mr Cooper's evidence"; do you see that?

5 A Yes.

Q So far as you are concerned today, having read and heard everything that you read and heard to make this report and since, do you regard that as a complete statement of the position so far as the planning able to be done on the evening of 8 January is concerned?

10 A I'm not sure of the relevance of your question to that particular paragraph.

15 Q In relation to the Baldy Range spot fire.? A Yes.

Q Do you say that that paragraph there is a complete statement of the state of affairs in relation to the information for the purposes of planning of 8 January?

20 A That's not what I'm saying at all.

25 Q Where else in your report do you refer to or give an opinion about the extent of information available to the planning meeting on 8 January concerning the Baldy Range spot fire?

30 A Further up that page talked about the aircraft that was over those fires there on the afternoon, use National Parks and Wildlife Service officers to dispatch and conduct a reconnaissance that didn't reach the fire.

35 Q Could you distinguish between McIntyre's Hut and the Baldy Range spot fire?

A I'm not distinguishing between them.

40 Q I want you to.?

A I didn't.

Q I want you to.?

A I didn't.

45 Q You have in your report though, haven't you?

A In that context, yes.

Q What do you mean by telling her Honour that you didn't distinguish?

A Sorry?

5 Q Why did you tell her Honour that you did not distinguish between those fires?

A I was obviously wrong.

10 Q In your report you distinguish between them and in a number of paragraphs refer to information gained by some people about the Baldy Range spot fire, don't you?

A Yes, I do.

15

Q What I asked however was about information available to the planning meeting on the evening of 8 January. Could you tell her Honour, please, where in your report do you deal with that matter?

20 A I do not.

Q That is a gap in your report, isn't it?

A I don't recall in the evidence of that material being available.

25

Q You mean --

A I don't recall in the evidence that material, discussions about the planning meeting on 8
30 January conducted by New South Wales, apart from Ms Crawford's evidence.

Q Why would you leave that apart? She was in charge of that meeting, wasn't she?

35 A Look, I don't know. I don't know whether she was in charge or not.

Q Why would you leave that "apart"?

40 A No reason at all.

Q The fact is that, as you now appreciate, observations made by Mr Bretherton and his team do not appear to have been passed on completely to
45 the planning meeting that night; isn't that right?

A Yes.

Q Yet we find no mention of that gap in information available to the planning meeting in your printed report, do we?
A I've not specifically mentioned that.

5 Mr Cooper may not have conveyed fully the information provided by Mr Bretherton.

Q When you say, "not specifically mentioned", you mean that there is no mention at all to him, don't you?
10 A Of the information being provided to the meeting?

Q That's right.?
15 A No.

Q You agree with me, don't you?
A Sorry?

20 Q No mention at all; is that correct?
A That's correct.

Q In order to give a fair and as full as possible picture of the information available for those planning at that meeting, you would need to supplement your printed report by including the conversation between Mr Cooper and Ms Crawford, wouldn't you?
25 A Yes.

30 Q When one does that, the very clear picture emerges that the information available at the time of that strategising meeting was pessimistic about the Baldy Range spot fire being attackable there and then, wasn't it?
35 A No, I wouldn't say that.

Q Would you say it was optimistic?
40 A No, I wouldn't say that either. I would say there was limited discussion in the absence of information.

Q What discussion there was supported the view that that fire had already got away; isn't that correct?
45 A No, I don't believe that's the case.

Q Could you point, please, to the material on the basis of which you give that last answer?

A Mr Gould's opinion.

5 Q I am talking about the conversation between Mr Cooper and Ms Crawford, please.?

A There is no reference to that. But you are making --

10 Q Just attend to my questions, please.?

A I will attend to your questions provided you leave me --

MR BRET WALKER: I can't question a witness who
15 insists talking over me like that.

THE CORONER: I think what Mr Roche is trying to do is explain the answer, Mr Walker. Perhaps if you give him a bit of latitude.

20

MR BRET WALKER: I am not quite sure what he is explaining, that is the trouble.

THE CORONER: You asked him a question about a
25 reference to conversation between Ms Crawford and Mr Cooper.

MR BRET WALKER: I did indeed. A more orderly way to proceed is for the witness to answer the
30 questions rather than to ask them himself.

THE CORONER: I think he was attempting to. Perhaps if you give him a little bit of latitude.

35 MR BRET WALKER: Q. Do you want to answer the question?

A I am not trying to override you. Please give me the decency to answer the question. Give me
40 the opportunity, please.

Q You attend to the question of the conversation of which you are aware between Mr Cooper and Ms Crawford at the planning meeting.?

45 A Please go on, Mr Walker.

Q In relation to that conversation you agree,

don't you, that it supports the view that that Baldy Hill spot fire had already got away?

A No.

5 Q What is it in that conversation that leads you to give that answer?

A You are suggesting, on the basis of Mr Cooper's evidence, that in fact confirmed a view that was already in place that the Baldy spot fire was
10 uncontrollable, and yet there is no evidence that anybody ever looked at the Baldy Range spot fire. So my question is -- my answer is the condition of the Baldy spot fire was not known.

15 Q I'm sorry. You do understand the difference, don't you, between what, in fact, was true of that fire and a conversation about it; you understand that difference?

A Yes, I do.

20

Q I am not asking you about what, in fact, was true about that fire; do you understand? I am asking you about what was conveyed by a conversation. Do you understand that?

25 A Yes, I do.

Q Was there anything in that conversation, as you understand it to have occurred, as you have prepared to give your evidence, that you would
30 point to as showing that the Baldy Range spot fire was in a fit state to attack there and then?

A No.

Q Rather, don't you agree, the conversation
35 tended to the view that that fire had already got away, whether that was right or wrong or not; do you agree with that?

A Couldn't be specific about that. I don't think that that's the case.

40

Q That depended, does it, upon the reports you have read and considered of that conversation?

A That's correct.

45

Q What is it you have in mind, in your recollection, that leads you to the view you have

just expressed?

A Ms Crawford's statement, Mr Huntley's statement, Mr Cooper's statement and some of the evidence that was provided there. I remained
5 unconvinced there was a view that the fire had already reached a stage of being uncontrollable.

Q What is it in Ms Crawford's statement or evidence that leads you to that view?

10 A I seem to remember there was nothing that indicated that it wasn't controllable.

Q So it was what was not said rather than what was said, or how would you prefer to put it?

15 A I would have to review her statement, sir.

Q Did you review her statement before you wrote your report?

20 A Yes, I did.

Q Is there some explanation as to why there is no reference in your written report?

A No.
25

Q You yourself drew a conclusion about a contrast between what was in fact true and what Ms Crawford had been given to understand, didn't you? Isn't that right?

30 A Yes.

Q You drew a contrast, didn't you, between what you regarded as the correct view, being that the fire could have been attacked, and what

35 Ms Crawford had been given to understand, namely, that it could not; is that right?

A No.

40 Q Could you turn to page 60 of your report, please. Do you see under the heading "Queanbeyan meeting and determination of the strategy" several sentences and the following appears:

45 "The IC understood incorrectly this information to mean that the Baldy spot fire was beyond direct attack."

Do you see that?

A Yes, I do.

5 Q That is a part of your report where you are drawing a distinction between what you regard as the correct state of affairs on the one hand and on the other hand what you understood Ms Crawford to have been given to understand; is that right?

10 A On that simple piece of information, yes.

Q The answers you have given in the last half minute need to be supplemented in order to give a better picture of your views, don't they?

15 A Yes.

20 Q You have had a lot of experience over your career in depending upon people to relay to you information of different sources and qualities and weighing it up in order to make strategic decisions, haven't you?

A Yes.

25 Q During the course of your career experience in that regard, you have become used to the idea that the reliability of information can vary quite widely, haven't you?

30 A Yes.

35 Q You have also become used to the idea that there is an unavoidable amount of dependance by decision-makers such as yourself on information, the reliability of which cannot be gauged there and then; is that right?

A Not necessarily.

Q What do you mean by that answer?

40 A Well, you are making it quite black and white, which is not what happens. What, in my view, in my experience, you don't rely on single information. To make a major decision like was made that night you look for a corroboration before you make that decision.

45 Q Let's go to the Baldy Range spot fire. There was only one --

A That's the one we are talking about.

Q There was only one source of information available to that meeting, apart from a
5 generalised aerial survey material; is that correct?

A That's correct.

Q You are not suggesting, are you, that there
10 should have been a delay in the strategising in order to have gained corroborative information about every one of the fires that had been reported to that meeting, are you?

A Depending on the circumstances, yes, I am.

15

Q Let her Honour get it clear. Are you concretely suggesting for this evening of 8
January that the meeting should have been adjourned and strategies not decided until
20 corroborative information had been received about each and every one of the fires, the outbreak of which and the possible fighting of which was before that meeting?

A That's not what I said.

25

Q You accept, don't you, that it was reasonable and proper for that strategising meeting to have been held?

A Yes.

30

Q And to have been held that night?

A Yes.

Q And to have been held with the people who
35 attended?

A If my memory serves me correctly of those who were attending, yes.

40 Q In particular, for example, ACT liaison?

A Yes.

Q And to have received from all of the sources
45 available to it as up-to-date information as could be obtained about all the fires that were before it?

A Yes.

Q There were, of course, more than two fires before that meeting, weren't there?

5 A Yes.

Q You accept, don't you, that the information before that meeting led Ms Crawford to understand that the Baldy Range spot fire had already reached
10 a stage where it was beyond direct attack?

A Yes.

Q You don't suggest, do you, that the meeting should have somehow deferred a decision about that
15 question until there had been some corroborative information sought about Baldy Range; is that right?

A Nothing wrong with developing an interim
20 strategy, but not to put a concrete strategy on the table.

Q You said not to - I'm sorry.

A Not to put --
25

Q You mean not to actually start doing anything one way or the other?

A Yes, that's correct.
30

Q To actually hold action back before making a decision?

A I think the planning can be done on an interim
35 strategy. But depending on when the commitment was to occur, not to make that commitment necessarily until corroborative information was received.

Q Commitment means actually getting men, woman
40 and machines off to various places to do various tasks; is that right?

A That's correct.

Q If you are holding your commitment, it means
45 you are not actually assigning people to particular tasks; is that right?

A I'm not implementing a strategy.

Q Not implementing the strategy. Let us come
back from the abstract now. That means not
5 telling people to go and do something at a
particular place; is that right?

A No.

Q How do you implement a strategy without getting
10 men, women and machines into a particular place to
do a particular thing?

A Such a thing as planning, Mr Walker, and that
should have been implemented. The physical
15 commitment of resources on a fire line should not
have been committed until a position was well and
truly established.

Q What you are telling her Honour is there could
20 have been mental work done, discussion and
provisional decision but no men, women and
machines told to go to a particular place and do a
particular thing until something further had been
supplied by way of information; is that correct?

25 A On that particular fire, yes.

Q When you say "on that particular fire", you
mean the Baldy Range fire; correct?

30 A Yes, I do.

Q Do you mean, therefore, that of the available
resources to be decided as to deployment at that
meeting, a certain amount should have been held
back in reserve in case the Baldy Range fire
35 needed fighting there and then; is that what you
are saying?

A I'm saying three things. (a) an interim
strategy should have been developed; (b) I agree
that perhaps commitment should have been reserved;
40 but (c) there is no doubt in my mind that every
effort should have been made that night to gain
corroborative evidence. That doesn't mean to say
you have got to stop the meeting. I am sure there
are other people available that could have been
45 sent to look at that position, again to ensure
that there was additional information prior.

Q Is this special to the Baldy Range fire or does it apply to all of the fires being considered by the meeting?

5 A It applied to all of them where there was a lack of clear and definitive evidence of what the situation was.

Q That is all of them, isn't it?

10 A Yes.

Q So we have established that you are saying all of them should have been the subject of provisional decisions, no deployment of resources and expeditions off to get corroborative information at night; is that right?

15 A No, that's not what I said.

Q I think you said, didn't you, it was true of all of them that you did not have the clear information; correct?

20 A That's my understanding.

25 Q You said earlier that the criterion for applying corroborative information before action was a lack of clear information; correct?

A In connection with the Baldy fire, yes.

30

Q Then I asked you was that a requirement special to the Baldy Range fire, you said no, it would apply to all of them?

A In terms of interim strategy, yes.

35

Q I suggest that you have yourself in a tangle here. You don't know whether you want to say that Baldy Range spot fire was special or whether it was simply an occasion for the application of an ordinary, standard approach. Which do you want?

40

A I'm not suggesting any of them were special. They all required a standard approach.

45 Q A standard approach, you have explained to her Honour, at least, as meaning you would not put into effect by men, women and machines doing anything particular at any particular place until

you had what you call corroborative information;
is that correct?

A That's not what I said.

5 Q Is that not what you said?

A I said in relation to the Baldy spot fire that
an interim strategy was appropriate to be
developed without commitment.

10

Q But not put into action; is that correct?

A But the resources not deployed.

15 Q Is there a difference between that and not put
into action?

A Absolutely, because part of that strategy would
have been, for instance, to seek additional
evidence on what the position was. I would have
expected that that certainly would have been put

20 into action that night.

25 Q But you are not suggesting that that is special
to Baldy Range? Getting extra information would
have been desirable for all of them; wouldn't be
that right?

A Yes.

30 Q Does that mean, then, that if there is any such
thing as the principle you have been talking
about, that it would have equally required no
strategy to be implemented in relation to any of
the fires that night?

A No.

35 Q That would be absurd, wouldn't it?

A Absolutely.

40 Q So that whatever this principle is, somehow it
involves devising a provisional strategy, part of
which would be getting more information, but not
concretely putting anything into action in
relation to Baldy Range; is that right? Is that
what you told her Honour?

45 A Until that evidence or that information was
received.

Q You are agreeing with me, aren't you?

A Yes.

Q But you are not saying that only the Baldy
Range fire was in that position, are you? All of
5 them were like that, lack of clear information?

A I think there was clear information in relation
to the McIntyre's point of origin itself.

Q I beg your pardon. Did you not tell this
10 inquest in the last five minutes that all of the
fires were in the same position as lacking clear
information?

A That's correct.

15 Q Do you want to change that evidence?

A I said they lacked clear information. That
doesn't mean to say there wasn't any information.

Q I don't think I've suggested to any degree at
20 all there was no information about any of the
fires.?

A Neither have I.

Q But you did say that in the absence of clear
25 information, you have suggested as a principle
that should have guided conduct that night going
off to get corroborative information before
concretely implementing any firefighting strategy,
haven't you?

30 A If I've said that, that's not correct.

Q You ask her Honour to treat as wrong or
misconceived any of your evidence which was fairly
summarised in that last question of mine; is that
35 right?

A I ask her to make up her own mind.

Q The fact is, isn't it, that you would not
criticise the strategy meeting conducted under the
40 New South Wales auspices that night for having
proceeded on the basis that the Baldy Range fire
was already beyond direct attack, would you?

A I believe they shouldn't have made that
decision until they got corroborative evidence.

45 Q If you are awaiting corroborative evidence
before you make a decision, one thing you are not

doing in the meantime is directly attacking; is that correct?

A Yes.

5 Q As you well know, information was attained the next day in the morning, approximately, about the Baldy Range fire, wasn't it?

A And I believe that was too late.

10 Q I'm sorry?

A I believe that was too late.

Q Are you talking about an expedition by some people out to Baldy Range only or out to other fires as well that night?

15 A I believe that the more information that could have been gained that evening in relation to all of the fires would have assisted in a decision-making process of determining particular strategies and tactics to be used.

Q I suggest to you that is simply a trite statement that planners benefit from the best and most copious information about the things they are planning to deal with; isn't that right?

25 A Not at all.

Q Is that right as a principle?

30 A No.

Q Isn't it? What planners don't benefit from the best of most copious information about what they are trying to deal with?

35 A I agree with you. But I don't think it is a trite statement, Mr Walker.

Q I am suggesting to you, in the context of your evidence here today, you have not indicated at all, notwithstanding about five opportunities to do so, that there was anything special about the Baldy Range fire compared to the other fires under consideration; do you agree with that?

45 A That's correct.

Q Do you also accept that it is an inescapable conclusion from the reasoning that you have

presented this morning -- I'm not suggesting that that reasoning is correct, I should make it clear -- it is an inescapable conclusion from that reasoning that nothing should have been done, in
5 your opinion, that night by way of implementing any strategy apart from going out and obtaining more information from the field about each of the fires in the above meeting?

A That's not what I said.

10

Q How does that differ from what you have said?

A You are suggesting to me, or your interpretation of what I have said is that nothing be done that evening about attacking --

15

Q Apart from getting more information?

A Will you let me finish again, please Mr Walker.

Q Yes.?

20

A I said nothing could be done -- your suggestion that I said nothing could be done in terms of attacking the fires that night, that's not correct. What I am suggesting to you and what I said in the report, what I'm suggesting is there
25 should have been additional steps taken to acquire additional information which would then allow a strategy to be implemented. In my view, that should have been implemented before the next morning. It didn't take long to get people to go
30 out to there.

30

If you've done your homework and you have got an interim strategy in place, it doesn't take long to get people to go out there and confirm one way or
35 the other that, yes, the strategy is appropriate and we should implement it now or, alternatively, no, this is beyond control, we need to review our position, and that can wait until the next morning.

40

Q All of that amounts to this: According to you, in the face of the information that that meeting had about all of the fires that it was considering what the meeting should have done, was to decide
45 to send out more people to all those fires to check and add to the information already obtained; is that correct?

A While the interim strategy was being developed.

Q You call it an "interim strategy" because it
was one which was based upon information which
5 obviously was not complete; correct?

A That's correct.

Q All strategies are incomplete; in a sense, like
10 the plans of generals in war, they crumble in the
face of the enemy; isn't that right?

A Not before you implement them.

Q And upon implementation, you then alter them in
15 order to meet change to circumstances; correct?

A Obviously a situation is dynamic, such as a
fire, yes.

Q We are trying to understand what you mean by
20 "interim strategy". It means, doesn't it, a plan
which is based upon the information you have, you
knowing that that information is not complete; is
that right?

A Yes.

25

Q As you have also explained, this interim
strategy on the night of 8 January was one which,
you tell her Honour, should have had, as a
cardinal point, that no actual firefighting start
30 until you have checked the information or got
more; is that right or not?

A Yes.

Q And depending upon how long it took to get back
35 the information would depend upon the time at
which one could start firefighting if that turned
out to be your not so interim strategy; is that
correct?

A I'm not quite sure what you mean by "not so
40 interim strategy".

Q A strategy, instead of having your only step of
obtaining more information, to now start
firefighting if you thought that is what should be
45 done?

A That's not what I said at all.

Q What is different from that, Mr Roche?

A Well, initially, you seem to suggest that these things are sequential, and they are not. Planning should be occurring at the same time as the
5 development of an interim strategy occurs, the same time as readiness to implement that interim strategy occurs, providing the flexibility is built in to change it. Otherwise, the alternative is you do what happened, is you sit back on your
10 hands and do nothing.

Q I do beg your pardon. Are you saying somebody in this particular fire on 8 January sat back and did nothing?

15 A Overnight.

Q You seriously think that is a proper statement to make about the people involved here? They sat
20 back on their hands and did nothing?

A There was no action taken in relation to --

Q Please answer the question.

A There was no action taken in relation to either
25 obtaining additional information on the Baldy Range spot fire or attacking that fire overnight.

Q Mr Roche, I will ask the question a third time. Do you say, on your oath as an expert, that it is
30 a fair way to describe what the people involved in that meeting did and had others do, was to sit back on their hands and do nothing? Do you think that is a fair and proper way to describe what they did?

35 A There was no action taken in relation to obtaining additional information or attacking the Baldy Range spot fire. No action taken.

Q Mr Roche, why won't you answer my question, please?

A I think I have.

Q I'm suggesting to you that the words you have adopted are unworthy of you as an expert and a
45 person with experience in the field; what do you say to that?

A I'd sack you for your advice.

Q It is actually something that I need to ask you
in order to give you an opportunity to deal with
it so that her Honour may, with fairness, consider
a submission. You might like to take the
5 opportunity to deal with my suggestion. It is not
proffered as advice at all.?

A Thank you.

Q Can you deal with the suggestion? Do you want
10 to say something?

A No, sir.

THE CORONER: I note the time. Is it convenient
15 to take the morning adjournment?

SHORT ADJOURNMENT [11.27am]

RESUMED [11.50am]

MR BRET WALKER: Q. How many fires do you have in
20 mind the meeting should have been seeking
corroborative information about that night?

A I always --

Q Just the number.?

A All of them.

Q How many, I said. Just a number.?

A All of them.

Q Please, Mr Roche. How many --
30

A How many were there, Mr Walker?

Q I'm sorry, your Honour, my hearing must be
35 going, I didn't hear that.?

A I said how many were there.

Q I was asking you, how many do you have in mind?
40

A All of them.

Q Does that mean you don't know how many there
were?

A In the McIntyre's Hut area there were at least
45 four.

- Q I don't suggest you should remember all this detail. It is not a criticism, Mr Roche. If I suggest eight to you, does that gel with the way you have considered this beforehand?
- 5 A There were slightly in excess of what I recall were in there, bearing in mind that there were some that were very, very small and inaccessible at that particular point in time.
- 10 Q You are not disputing the number eight, are you?
- A No, but I don't recall whether that is correct or not.
- 15 Q But that's not a matter for you to say, whether it is correct. That's from evidence that you either have or have not studied; is that correct? Someone else, the Coroner, for example, will look at the material and work out how many fires there were.?
- 20 A Yes.
- Q Have you a recollection that there were about eight fires which were of immediate concern to that meeting that night?
- 25 A No, I don't recall that.
- Q You have been working, in your answers this morning, on the basis of about four fires; is that correct?
- 30 A Around that number, yes.
- Q You have also been proceeding, I suppose, on the basis that the New South Wales agencies had more than just those four or eight fires to be concerned about?
- 35 A That's correct.
- Q Because, as I think is clear to you and has been for a long time, there was, as it were, a chain of lightning strikes up from your home state right through the Snowy right up to the ACT; is that correct?
- 40 A I think I made mention in my report a number of fires in both of those jurisdictions.
- 45 Q Going back to the question about what you say

should have been done at the meeting of 8 January,
to how many fires do you think the meeting should
have dispatched people to go as close as they
could to the fires to supply these corroborative
5 reports or checking reports?

A That evening, the ones that were considered to
be relatively accessible.

10 Q And they were what ones?

A I believe they would be the Baldy Range, the
spot fires on the Dingi-Dingi Trail and the
McIntyre's on the - you will have to help me with
the name of the road there.

15 Q McIntyre's Hut?

A Yes, the McIntyre's Hut fire. I just can't
recall the road that that was actually straddling.

20 Q So this hypothetical decision-making would have
been based on an assessment of accessibility,
taking into account both the conditions at that
time of day plus what was understood, however
provisionally, about the state of the fires; is
25 that right?

A Yes.

30 Q Should her Honour understand that until those
teams had been dispatched and had been able to
report back, either by remote communication or
face-to-face, that in your opinion, though there
should have been planning and interim
strategising, there should not have been
firefighting starting until that information had
35 come back; is that correct.?

A Certainly the firm strategy should not have
been implemented, that is correct.

40 Q Do you now have in mind, by way of a
hypothetical reconstruction, from what location
people should have been dispatched to look, say,
at the Baldy Range fire?

A From the resources that were available closest
to the fires.

45 Q In your reconstruction of what should have
happened, have you gone so far as to work out who

would have been available and where they would have had to start from?

A Not directly, no. But I'm aware that there were people available, for instance, volunteers, Fairlight, which was relatively close, and obviously resources in Queanbeyan and in the ACT. Just because it was a New South Wales fire, in my view, didn't preclude additional resources being -- because they had already been used once -- but being used again.

Q Perish the thought. I am not going to suggest that either. Have you ever worked out, for example, a range of times from when the meeting should have decided to dispatch these information-seeking teams to when the updated, further information about the Baldy Range fire would have been available to the planners, how many hours would have elapsed?

A I don't necessarily think it should have been a decision of the meeting.

Q I'm sorry. Say that again?

A I don't necessarily think it should have been as a result of the decision of the meeting.

Q When do you have in mind that Mr Bretherton's eye-witness report was mentioned by Mr Cooper to Ms Crawford? In your mind, when did that take place?

A Well, my understanding was it was somewhere during the course of the meeting.

Q That was the information that you said should have triggered a request for updated or corroborative information; is that right? I think that is what you said earlier today?

A Certainly, I would be looking for corroboration. My point of view is that as soon as the weather conditions abated, there should have been steps taken --

Q Can we take it one question at a time, please.?

A Go on, Mr Walker.

Q Just one at a time, please. You have talked about corroborating.?

A Yes.

Q But in fact, by definition, you are talking
about updating, getting the information at a later
5 time from the earlier information; is that
correct?

A Giving more than one source of information.

Q Does that mean you would not send back the same
10 person who had given the original information?

A You may or you may not.

Q It would be the same source if you sent the
same person back, wouldn't you?

15 A Yes.

Q You are not excluding that, are you? Or are
you? I don't know.?

20 A No, I'm not. I am not excluding any
opportunity to gain additional information to make
a valuable and correct decision.

Q Let us go back to the position that you hold
her Honour about. During the meeting, Mr Cooper
25 relays to Ms Crawford Mr Bretherton's eye-witness
statement.?

A Yes.

Q I think you and I can proceed on the basis that
30 whether there was something lost in the
translation or whether it was incomplete, for
whatever reason, that gave Ms Crawford something
to understand which you think factually may not
have been correct; is that right?

35 A Yes.

Q You have told her Honour that that should have
been the subject of a request for what you call
40 corroborating, or what might be called updating or
confirmatory or checking information to be
attained from another source, even from the same
person on another trip; is that correct?

A Yes.

45 Q Do you have in mind now, in reconstructing what
you say should preferably have happened, how many
hours would have elapsed between that request for

the further information from another trip and the information coming available so as to add to the mass of material being used for planning?

A What mass of material?

5

Q All the information they had.?

A They didn't have any. All they had was Mr Cooper's information.

10 Q You don't mean that seriously, do you?

A You are saying "mass of information" they had for planning. I have not seen a mass of information that they had for planning.

15 Q I'm sorry about the word "mass". I'll never use it again. To add to the information they already had?

A Yes.

20 Q How many hours do you say you have taken into account in thinking through in your mind what should have happened--

A I have not worked that out, Mr Walker.

25

Q So you are not able to tell her Honour at all, for example, how close it would have been in fact to the time the next morning when the Baldy Range fire was actually observed again by eye witnesses, are you?

30

A No.

Q For all you know, an expedition of that kind might have produced updating information pretty close to the time when, the next morning, people did go to Baldy's and report back; isn't that correct?

35

A No.

40 Q Why not?

A I don't believe that's correct.

Q Why not? If you have not done the estimates, how can you tell?

45

A I think there is a sublime, there is a ridiculous and it falls somewhere in between.

Q Let us do that. Walk through the times of the day for us. When do you say the request should have been made?

A The request should have been made immediately.

5

Q Which is at what time?

A As soon as the meeting commenced.

Q Which is at what time?

10 A I believe it was 8 o'clock. I'm not sure.

Q Presumably, it would be a request after Mr Cooper had spoken to Ms Crawford; is that right?

15 A No.

Q How could a request for certain information to be checked be made before the information was received?

20 A Because there was little or no relevant information on the Baldy's fire on which they could make a decision.

Q Mr Roche, you have been talking, up to now, about an idea that I don't think appears in your report, namely, getting new information to check information already to hand, what you call corroborating information; is that correct?

30 A Additional information, yes.

Q You have called it "corroborating"; is that right?

A I may have.

35 Q You used that word today?

A Yes.

Q Not may have. You did?

A Yes.

40

Q You called it "corroborating" because you start with a piece of information but you want more than one piece of information. You want something, as you say, to corroborate it; is that right?

45 A Yes.

Q It may contradict, qualify, update or check as

well?

A The information that they already had.

Q Now --

5 A You agree with that?

Q Sorry, I'm not agreeing with anything. I have no idea what you mean by that last answer.?

10 A You said my corroboration was in relation to information that they already had.

Q Yes.?

A Yes.

15 Q That's what you meant, isn't it?

A Yes.

Q In actual fact, you proceeded on the basis that there was material, reliable or not, conveyed to Ms Crawford at the meeting by Mr Cooper from Mr Bretherton, his officer; correct?

20

A Yes.

Q That's the information you started telling her Honour today should have been the subject of a prompt request for what you call corroboration; correct or not?

25

A If I tied it to Mr Cooper, I certainly didn't mean to. Corroboration of the existing information that they had -- they knew they had a spot fire at Baldy. My understanding is, on the evidence that I have seen, that they didn't know -- they knew little else about that fire.

30

35 Q Then they received some information via Mr Cooper from Mr Bretherton, didn't they?

A Yes.

Q That is what you say should have been the subject of a proper request for proper corroboration; isn't that right?

40

A All of the information should have been subject to corroboration.

45

Q You mean you wanted another reccy in order to get better intelligence?

A Yes.

Q That would have been requested at some time soon after you say Mr Bretherton's report was considered; is that right?
5

A No.

Q It would have to be after his information was considered if it was being requested as a corroboration or a check of it, wouldn't it?
10

A It would have if you are talking about solely Mr Cooper's or Mr Bretherton's information. They had other information.
15

Q But the best information they had about that fire was, to all appearances, what Mr Cooper had to offer from Mr Bretherton; isn't that right?

A When Mr Cooper offered that evidence, yes.
20 Prior to that, they had other information.

Q And they also had Mr Cooper with officers out in the field looking at it; correct?

A Yes.
25

Q Which is good, isn't it?

A Yes.

Q Then they came back with information, didn't they?
30

A Yes.

Q That's the information that you told her Honour earlier you say should have been the subject of corroboration; correct or not?
35

A Yes.

Q Before people actually started putting into action or implementing what you call interim strategies; is that right?
40

A No.

Q What have I misunderstood?

A You are trying to suggest --
45

Q I am not suggesting anything. I am trying to summarise your evidence.?

A You are trying to state to her Honour that this implementation of a strategy is purely about getting troops on the ground and doing something. I have tried to explain --

5

Q Let me withdraw that.?

A I have tried to explain to you several times --

Q I will shorten things. I will use your expression only, by whatever you mean "implementing the strategy" -- that is your expression; do you understand?

10

A Yes.

15

Q I am not asking you what that means at the moment. You simply have said to her Honour, haven't you, before implementing the strategy, you think it was preferable for what you call corroborating information which you sought after Mr Bretherton's report had been received; correct?

20

A Yes.

Q How many hours after you say that request for corroboration should have been sought do you suppose, as an estimate, that corroborating information would have come back to the planners?

25

A A matter of hours.

Q How many hours?

30

A I don't know.

Q Three, four, five; what do you say?

A I can't tell you.

35

Q How many kilometres roundtrip do you have in mind would be necessary?

A Depending on where you talk from. From Fairlight --

40

Q How many do you have in mind?

A I would have -- in my mind, I think then three or four hours or even less than that if they used communication that they could have got someone in there and given a report back on what was happening. They didn't have to drive in there and drive back again. To suggest that is not correct.

45

They need to get someone in there to review the situation with all of the fires and then report back. Now, hopefully, communications facilities that are available in that area would have
5 permitted them to do that, or at least not to have to return to Queanbeyan or Canberra to be able to do that.

Q To report back from having gone to the site or
10 as close as one could get the same way as Mr Bretherton had; is that right?

A Not necessarily. I mean, if I was sending people in --

15 Q Sorry, Mr Roche, I withdraw that. Mr Bretherton had reported having --

A Yes.

20 Q You wanted someone else to go and report; correct?

A I wanted someone else to go and have a look at it, yes. To report, yes.

25 Q Have you looked at the information that was in fact the next received about the Baldy Range fire on 9 January?

A Yes.

30 Q When do you have in mind that was first received?

A The following morning.

Q So that depending upon your estimates, there
35 may only be another three or four hours' difference between what you say should have been done and in fact what the very next information received was; isn't that correct?

A Well, the time issue was not necessarily mine.
40 I can't confirm that one way or the other.

Q In summary, you accept, don't you, as fair, that what happened the next morning was that there were early physical observations of the fire, plus
45 a little later in the morning an aerial observation of the fire, the combination of which produced the view that it was hard, if not

impossible, directly to attack Baldy's control there and then; isn't that right?

A No. That's not the way I quite recall it.

5 Q How do you recall it?

A I recall at some stage during the day there was a decision made to commence a direct attack on the fire.

10 Q The experiment was tried, correct, and did it succeed?

A No. It didn't.

15 Q That's a pretty good way of producing the conclusion that it was hard, if not impossible, to directly attack and control; is that right?

A No.

20 Q Isn't trying something and seeing what happens a pretty good way of finding out whether you can do it?

A It depends on the resources you commit.

25 Q Is there somewhere in the report concerning the Baldy Range spot fire on 9 January where you have set out how you would have differently resourced those efforts compared to the way they were resourced? Can you point that out to us, if it exists? Just to remind you, 9 January, the Baldy Range resources.?

30

A On page 61.

Q The paragraph commencing with what words?

A Talked about the --

35

Q Give me the opening words?

A "The process of estimating a likely time".

40 Q That has nothing to do with Baldy specifically, does it?

A No, it doesn't.

45 Q That's not what I am asking about. Just to remind you again, Baldy Range, 9 January, firefighting resources. Is there anything in your report comparing what you say would have been preferable to what actually happened? Nothing

- else, Mr Roche, just that.?
- A Only to the extent of the bottom of page 64, sir.
- 5 Q That doesn't say anything comparing what you say preferable resources would have been with actual resources, does it?
- A I'm sorry, would you repeat that, please?
- 10 Q That says nothing about comparing what you consider to be preferable resources with what actually was used to fight Baldy's on the 9th, does it?
- A No.
- 15 Q There is nothing in the report where you set out any expert opinion comparing that so-called preferable position with what actually happened, is there? There isn't, is there?
- 20 A Only the extent in the fourth paragraph down, "More particularly the failure to deploy adequate resources --"
- Q What page?
- 25 A Page 65. I have said in there I considered there was a failure to deploy sufficient resources.
- Q I know. Where do you set out the comparison?
- 30 A I don't.
- Q You have not done that exercise, have you?
- A Not directly, no.
- 35 Q Not at all, you have?
- A No.
- Q While we are asking about what is in or not in the report, is there anywhere in the report
- 40 prepared for her Honour where you have set out the basis upon which and the way in which you say this approach of seeking corroborative information should have delayed the implementation of a strategy?
- 45 A No.
- Q Is that because that really is a notion that

came to you for the first time this morning and formed no part of the expert assistance you gave her Honour?

A No.

5

Q Do you have any explanation as to why something that is not just a recent thought by you doesn't have any place at all in your report?

A No.

10

Q It is a mystery to you, is it?

A It could be considered to be an omission, not a mystery to me, no.

15

Q Something you say you should have put in, given your experience and views?

A Hindsight is a wonderful thing.

20

Q It certainly is. The whole inquest is hindsight. I am asking you about your report.?

A Yes.

25

Q If this was such an important principle, do you have any explanation as to how it was left out of your expert, hindsight review of what was done on the 8th?

A No.

30

Q It is an omission or defect committed by you, is it?

A I wouldn't suggest --

35

Q A shortcoming on your part?

A Certainly an omission.

40

Q A shortcoming?

A An omission.

45

Q It amounts, does it, to an omission to point out what you say was a shortcoming on the part of those who conducted the 8 January meeting; is that right?

A An omission.

Q An omission to point out a shortcoming by others; is that what you are saying?

A I think I pointed out the shortcoming.

Q Shortcoming by them, but only an omission by you; is that right?

5 A That's your words.

Q That's your words. After my error of using the words "mass of information", you corrected me and pointed out there was a deal of information

10 available to the planning meeting; correct?

A Sorry, would you repeat that?

Q You have pointed out already, haven't you, there was a deal of information available to the

15 planning meeting on the 8th, haven't you?

A Some information, yes.

Q It was information on the basis of which you would expect professional fire control officers to

20 set about devising a strategy; correct?

A An interim strategy, yes.

Q By "interim", you mean one which is not yet implemented until further information; is that

25 right?

A I thought we had been over that. I don't intend to go over it again.

Q Is that what you intend?

30 A I don't intend to revisit it.

Q It is your use of words. I want to make sure the record is not misleading.?

A I think the record that I previously explained

35 what I meant by "interim strategy" is quite clear.

Q By "interim strategy", do you mean one which is not implemented until there is further information obtained?

40 A No.

Q What do you mean?

A Interim strategy is one that is developed and pending the receipt of additional information may

45 or may not change. I emphasise "may not change".

Q All strategies change with fresh information,

don't they?

A Not initially. If that was the case, you wouldn't implement them in the first place, would you?

5

Q Please listen to the question.

A I have heard the question. I hope you have heard the answer.

10 Q In your answer, you used the word "initially". I am saying upon the receipt of fresh information

--

A I have already explained.

15 Q Do you want to listen to the question or not?

A I don't need to. I have already explained firefighting is a dynamic environment and, accordingly, planning an ongoing and continuous process.

20

Q Thank you. In light of all of that, could you clarify for the record, when you talk about enough information to devise an interim strategy, do you or do you not accept there was enough information available from the meeting of 8 January for them to set about devising and beginning to implement a strategy?

25

A No. I've already said I don't believe there was sufficient information.

30

Q Does it not then follow that what you were telling this inquest is whatever devising or planning was done at that meeting, they should not have proceeded to the stage of implementing; is that what you are saying?

35

A They should have got further information before they commenced the attack. Your Honour, we seem to get hung up on this sequential business. For instance, the people I would have sent to take a look at that fire would have taken firefighting equipment with them. I would have expected, had they arrived there with that firefighting equipment, reviewed the position and saw "we can do something here", at the same time as sending back the information they would commence the attack then.

45

Q Where do I find that in your written report?
A It is not in there. It is commonsense, I guess, and that's why I omitted it from a firefighter's point of view. I apologise for
5 that. From a firefighter's point of view, if you are sending someone in to look at a fire and you have never seen it before and don't know what it is, in my view, you send someone in there who can do something when they get there.
10

Q You have seen the information about Mr Bretherton's reconnaissance; is that right?
A Yes, I have.

15 Q You are aware that Mr Bretherton and his team did not consider themselves sufficiently resourced to get down to firefighting there and then?
A I understand that they didn't have a firefighting capability with them.
20

Q That's right.?
A Yes.

Q That's what I said, isn't it?
25 A In so many words.

Q Are you criticising whoever it is who sent out Mr Bretherton in that fashion?
A Yes, I am.
30

Q Does that mean so far as deployment of resources is concerned, each of the information-obtaining expeditions had to have, in your view, sufficient resources to be able to
35 commence an attack if considered appropriate?
A Some resources. I didn't say sufficient. Some resources take with you something that gives you an ability to do something about it when you get there, if in fact you can -- because of the very
40 issues that you have raised, Mr Walker, in relation to time and space.

Q You have just contradicted the suggestion in my question about sufficient resources. I think the
45 whole of your answer means yes, they should have sufficient to be able to do something; is that right?

A My interpretation of "sufficient resources" is sufficient to achieve containment. Now, I don't think they should have taken those resources with them. I think they should have taken a
5 firefighting vehicle with them that was capable of commencing an attack.

Q Are you saying that to be properly resourced, everybody must be travelling on such trips always
10 with a firefighting vehicle?

A Yes.

Q Have you, in forming that view, worked out the deployment of all firefighting vehicles as it
15 should have been made on that night?

A Yes.

Q Where do we find that in your report?

A From the ACT's perspective only.
20

Q Sorry, I'm appearing for New South Wales. What about New South Wales --

A We are talking about two people from the ACT.

25 Q Please don't jump ahead, Mr Roche. I didn't ask about Mr Bretherton then. That's who you were referring to, wasn't it?

A Yes.

30 Q You haven't done an exercise of resources of how they should have been deployed in relation to firefighting vehicles on the evening of 8 January, have you? I'm not suggesting you should have.?

A For the New South Wales fire, no.

35 Q I want to show you a document which I understand has some multi-digit reference. [RFS.AFP.0093.00092]. I will give you a hard copy because it is easier to read. It certainly is for
40 me.?

A Yes, sir.

Q Could you turn to page 21. You have seen the whole of this document before and, indeed, used
45 it, haven't you?

A Yes, I have.

Q You could tell her Honour please, is there anything in the narrative contained on pages 21 through to page 27 with respect to 8 and 9 January that you in some way or other don't accept?

5 A Sorry, would you say that again?

Q Could you tell her Honour in that narrative of 8 and 9 January, pages 21-27 of that document, which in some way or other you do not accept?

10 A You have to give me time to read it.

Q Re-read it, you mean, I take it, Mr Roche?
Mr Roche?

A I heard you.

15 Q I want to know, have you read it before?

A Yes, I have.

Q Jumping to 9 January, it is the case, isn't it, on the material that you have seen, not only in that document but summarised in that document but elsewhere, there was a reconnaissance plus attempts to fight Baldy Range on the morning of 9 January. There was aerial reconnaissance which

20 led to that being interrupted, and there was subsequent consideration that day of the amount of resources that would permit perhaps direct attack; is that correct?

25 A I'm not quite sure of what you mean by attempt on the Baldy Range fire.

30 Q Perhaps if I go to page 25 in the entries for 9 January in that summary exercise that I have just had you read. Three paragraphs from the foot of that page:

35 "Fairlight brigade dispatched."

Do you see that?

40 A Yes.

Q That is a reporting exercise; do you see that?

A And a preparation for property protection.

45 Q Over the next page, 26, second paragraph:

"A diversion of 3RFS category seven."

Do you see that?

A Yes.

5

Q That's to the Baldy Range fire?

A Yes.

10 Q In the middle of that page, the paragraph commencing "Reconnaissance flight":

"The Baldy Range fire was detected from the air as being far bigger than could be seen by the ground."

15

Do you see that?

A Yes.

Q Firefighters were on the ground, weren't they?

20 A Not to my knowledge, not at Baldy.

Q There had been vehicles diverted there, hadn't they?

25 A They might have been on the ground on the way. But I don't think at that hour there was anybody on the Baldy Range spot fire.

Q What about the next sentence, "Information was conveyed to group captains at the Baldy fire"; do you see that? Do you see that?

30

A Sorry, where are you reading from?

Q The next sentence, "This information was conveyed to the RFS group captains 'at the Baldy fire'"; do you see that?

35

A Page and paragraph, please.

Q Page 26, and in the same paragraph as I have been asking you about, commencing with the words "Reconnaissance flight".?

40

A Yes, 11.45; yes, I do see that.

Q There were on the ground at that fire, at that time of that aerial report, firefighters, weren't there?

45

A Yes.

Q And they were, understandably, withdrawn upon that aerial report, correct?

A I'm not clear that it was on the basis of that report. But they were withdrawn.

5

Q You would regard that as an understandable withdrawal, given what apparently was the deceptive appearance from the ground of that fire and ordinary human considerations of safety; is that correct?

10

A No.

Q Safety is irrelevant or not?

15

A That's not what I said. You said in the ordinary course of events the withdrawal -- that is the thing I am disagreeing with, the withdrawal of resources.

20

Q Do we find that anywhere in your report?

A Nos.

Q Is that because it is an idea that has just occurred to you now?

25

A No, sir.

Q Then why isn't it in your report?

30

A There are some things I took for granted in terms of the actions that people would take and, in hindsight, perhaps it should have been.

Q Why would you take it for granted that a withdrawal was inappropriate? Why not take for granted that it was appropriate because decided by people on the spot at the time?

35

A I don't think it was decided by people on the spot. It was decided from the air.

40

Q When you say "on the spot", there are a number of locations here. There is planning where the Incident Management Team is, there is the person up in the air in the aircraft, and there are people on the ground at the fire; correct?

45

A Yes.

Q And there are decisions made pulling together a

number of different sources of information and for a number of different reasons, including safety; is that right?

A Yes.

5

Q It would appear that a decision was taken to withdraw, following the information from the air that what could be seen from the ground was deceptive; is that correct?

10

A A decision was taken to withdraw based on the information from the air. Whether that was deceptive or not, I'm not prepared to say.

15

Q I didn't say the information from the air was deceptive. Please, Mr Roche.?

A The size of the fire was deceptive. I am not suggesting --

20

Q What could be seen from the ground appeared to be deceptive?

A What couldn't be seen from the ground.

25

Q Suffice it to say that you would accept that making a decision on the basis of information available from the air which was not available from the ground is not something you would criticise, would you?

A No.

30

Q In fact, as the summary in this document goes on to point out, the people who have been on the ground at the fire had information about what they regarded as a possibility, with appropriate resources, of being able to contain the Baldy Range fire, just as I put to you?

35

A That's correct.

40

Q That's another example of other information being put together with pre-existing information in what you call this dynamic situation of altering and adjusting your strategies; is that right?

A Yes.

45

Q That was done in, I suggest to you, copybook fashion in relation to the Baldy Range fire on 9th

January, wasn't it?

A I'm not aware of the process under which that decision was made so I can't say it was copybook, but it appears as though there were three sources
5 of information. The reason I say that is because, in my view, the final decision in those circumstances should have been made by the incident controller. Now, he has got information from wherever, including the air, but it doesn't
10 say on what basis the withdrawal was made.

Q We don't find any of this in your report, do we, doubting the decision of withdrawal?

A I think we do because I have said it should
15 have been attacked. Now, you can play on words all you like, Mr Walker. The fact that I have said it should have been attacked suggests to me that I doubt the decision that was made to withdraw.

20

Q In your report at page 64 under the subheading "9 January 2003"--

A Yes.

25 Q -- don't you actually point out that the incident controller did revise a strategy so as to commence a direct attack on the eastern flank of the Baldy Range spot fire?

A Yes.

30

Q So you are not criticising the fact that the incident controller made that decision, are you?

A No.

35 Q Quite the contrary; isn't that right?

A Correct. Except that it was too late.

40 Q When you say it was too late, is that because of a lost opportunity to have done so earlier at a time you can't estimate for us had there been a reconnaissance expedition by people sent out after receiving Mr Bretherton's report; is that what you mean by--

A Lost opportunity.

45

Q That's the lost opportunity?

A It was a lost opportunity.

Q On page 65 of your report, there is a heading "More particularly" - do you see that?

A Yes.

5 Q When you made that statement, from what you have told us this morning, you did not have at your hand or in your grasp information about what resources were available to be released to that fire given the calls upon the New South Wales
10 authorities for other fires; is that right?

A That's correct. Provided you took the New South Wales resources in isolation.

15 Q There is, you would agree, no real basis for making a criticism until one is aware of the material with which decision-makers had to work; do you agree with that?

A Just run that past me again, please, Mr Walker.

20 Q You wouldn't make criticisms of somebody for making a decision unless you knew of the materials they had in order to make the decision, would you?

A If they failed to take the necessary steps to obtain all of the information that they could
25 have, yes, I would.

Q Did you take any steps to obtain the information about the resources available in light of competing claims on the New South Wales
30 authorities at that time?

A From New South Wales, no.

Q It would be unfair for you to criticise the New South Wales authorities without having made
35 inquiries about the available resources?

A If you took--

Q Wouldn't it?

A Not necessarily.
40

Q I see.

A That would be so if you took New South Wales as the only resources that were available - I would agree with you.
45

Q You are not suggesting, I think, that New South Wales authorities were in a position to deploy, by

their own command, ACT resources, are you?

A No.

Q That may or may not be a constitutional
5 weakness in this country, Mr Roche--

A I think again--

Q That is beyond this inquest, you understand.?

A You have suggested that.

10

Q It is also beyond your expertise - the
Constitution, that is.?

A Absolutely. That is one point we will agree
on, Mr Walker.

15

Q Let us go back to the reality on the ground.
You would never base a criticism, given our
constitutional arrangements, on the inability of
the New South Wales authorities to command the use
20 of ACT resources. You wouldn't use that as a
basis for criticism, would you?

A Not to command them. But I would to control
them.

25

Q When you say "to control them", you mean--

A There is a lot of difference between "command"
and "control", in the emergency management sense.

30

Q Does "control" include telling people what to
do, when to do it?

A Yes.

Q What is the difference between that and
commanding?

35

A Command is --

Q Telling people what to do and when to do it?

A No. I think, there is a lot of wasting time,
your Honour.

40

Q I am trying to work out what your criticism is.

A "Command" in the emergency services is the
command of resources within a jurisdiction which
operates vertically across the resources.

45

"Control" in the emergency management environment
is horizontally across all of the resources which
may or may not be committed to an incident,

5 regardless of the agency or jurisdiction. And there are numerous occasions where, for instance, Victorian resources have been deployed into New South Wales under the control of the New South Wales agency but not under their command.

10 Q When you make all of that comment and when you look at the paragraph to which I have drawn attention in your report, page 65, starting with the words "More particularly", did you, when you wrote that, have in mind any particular extent and kind of ACT resources which were then under the control, as you explained it, of the New South Wales authorities?

15 A The incident controller could have asked the liaison officer--

20 Q Please, Mr Roche. Just answer the question.
A The incident controller could have asked the liaison officer from the ACT for resources. There was nothing to prevent him doing that.

25 Q Could you answer my question? Did you have in mind the extent and kind of resources, being ACT resources, which were then under the control of New South Wales authorities?

30 A There were no resources at that time under the control of the New South Wales agency on that particular fire.

35 Q Does it come down to this: Your criticism focuses on a failure by New South Wales and ACT authorities to have anticipated a specific need at Baldy Range and in advance to have put ACT resources out of the control of ACT into the control of New South Wales; is that your criticism?

A No.

40 Q Are you able to explain to her Honour what is your criticism, if that is not it?

45 A My view is based on Mr Walker's assertions that there were insufficient New South Wales resources available. There may have been insufficient New South Wales resources available, but there seems to be a perception that there couldn't be a request made anywhere else for suitable resources

at the calling of New South Wales to be able to assist the New South Wales authorities with that particular incident.

- 5 Q Mr Roche, could I make this crystal clear. I don't give evidence, nor do I make assertions. I will make suggestions to you and ask for your assent or not, or I will otherwise ask you questions. I have not asserted, nor does New
10 South Wales submit, that it had inadequate resources. I have asked you questions about whether you, in giving your expert report, took into account the nature and extent of certain resources. Do you understand the difference?
15 A Yes, I do.

- Q Does the last answer you have given amount to this: When you express the criticism on page 65 in the paragraph commencing "More particularly",
20 you did not have in mind what was the nature and extent of resources available, given competing claims of other fires from the New South Wales sides, and you did not have in mind what, if any, ACT resources were then under the control of New
25 South Wales; is that correct?
A That's correct.

- Q It means, doesn't it, that your criticism focuses on what you perceive to be a failure on
30 one or both of the New South Wales and ACT sides to have anticipated a need at Baldy Range and thus already to have had ACT resources under the New South Wales control?
A No.

- 35 Q That would be, for a start, a pretty silly and unfair criticism to make, wouldn't it? That would be real crystal ball.
A That is not the essence of my criticism or
40 comment at all.

- Q Just restricting yourself, please, to that paragraph commencing "More particularly" on page 65, what is the essence of your complaint or
45 comment?
A The failure to deploy resources to the task of containing the Baldy fire during the afternoon and

overnight of the night of 9 January.

Q You drop the word "adequate" from your reports?

A Failure to deploy adequate resources.

5

Q When you say "adequate", you are obviously comparing it with something. You are comparing it with what you say would have been enough; isn't that right?

10 A No. Adequate resources is a formula that the incident controller will determine in terms of what he or she knows about the fire, knows about the topography, knows about the vegetation and what the capabilities are of the firefighting
15 resources that he needs to be able to bring about the objective that the incident controller has determined.

Q Mr Roche, in that paragraph you criticise what
20 you call "a failure to deploy adequate resources"; do you see that expression?

A Yes, I do.

Q By those words you mean to say that you have
25 compared what was deployed with what you say should have been deployed and you find a shortcoming?

A No, not correct.

Q That's the ordinary, English meaning of your
30 words, isn't it? A failure to deploy adequate resources means, in your opinion, there was not enough, they needed more than they used; isn't that right?

35 A No.

Q If a failure to deploy adequate resources
40 doesn't mean what I have three times failed to paraphrase in plain English, do you tell her Honour that you didn't make any comparison between what was used and what should have been used when you prepared that criticism?

A As I have already stated, my interpretation, my
45 use of the word "adequate resources" is adequate to achieve the appropriate strategy of containment.

Q That means "enough". Another word for "adequate" is "enough"?

A Doesn't take into account what is already there. I am not worried about what is already
5 there. What I am saying is you look at the fire--

Q Mr Roche--

A Please, Mr Walker. You look at the fire. You look at what needs to be done, what your objective
10 is and then you resource it. The same as if you have got 500 cows to milk and you put one person on it, it is going to take a long time. If you want to achieve it in an hour, you put additional resources on it.

15

Q Thank you for that homely example. I am trying to get to the point of what you did there. You have already said that you work out how much is needed?

20 A No, I didn't work out how much is needed.

Q I will start again. You have already said in order to understand your use of adequate resources you are talking about somebody working out what is needed?
25

A That's correct.

Q Are you telling her Honour that you haven't done that yourself?

30 A That's correct.

Q What I want to suggest to you, it is a baseless and unfair criticism for you to make if you haven't done the exercise yourself; what do you say to that?
35

A I don't agree.

Q How can you criticise someone for not working out what is needed and therefore having deployed
40 not enough if you yourself have not worked out what would have been enough?

A The outcome speaks for itself.

Q You surely aren't committing the simplistic fallacy, are you, of saying every time a firefighting effort fails and you simply say there weren't adequate resources?
45

A I wouldn't say that.

Q Because all these things are relative in the real world, particularly where there are multiple
5 fires to be dealt with; isn't that correct?

A That's correct.

Q You have not yet done the comparison exercises, the counts and estimates that would enable you to
10 be more detailed than you have already been; is that right?

A That's correct.

Q You did take into account, did you, all the
15 information contained on pages 21-27 of the summary and submissions that I asked you to re-read this morning when preparing your report?

A And other information of course, yes.

20 Q This was a part of some of the information you took into account?

A Just one part of the information, yes.

Q It would be fair to say, wouldn't it, there is
25 very little reflection of the detail of the work done on 8 and 9 January containing the summary you re-read this morning in your own report?

A That's correct. By the same token, in that
30 respect, over that period what I am saying, I didn't say there wasn't anything done.

Q In order to be complete and evenhanded, you are accepting the material summarised in that
submission you re-read this morning--

35 A Yes, I am.

Q -- that there ought to have been acknowledgment of that in your report before you expressed
40 criticisms of the New South Wales authorities; isn't that right?

A Evidence is before her Honour.

Q You would ask her Honour to prefer the fuller or more complete picture created by taking into
45 account those matters of summary in the submission you re-read rather than confine herself to the way you have summarised it; isn't that right?

A It's not my position to ask her Honour to do anything.

Q For example, to go back to the passage I have
5 already asked you about, under the heading "9
January" at the foot of page 64, you don't suggest
for a moment, do you, that that is anywhere near a
fair picture of what was done both by way of
10 planning and execution on 9 January in relation to
Baldy Range, do you?

A No.

Q It needs to be fleshed out with material of the
15 kind summarised in the submission document you
re-read, doesn't it?

A It needs to be considered in the light of all
of the evidence that's been put before her Honour.
If I had included all of the evidence in that
particular area that you are talking about, then I
20 would have had to include all of the text of that
report, Mr Arthur's section 44 report, numerous
other reports and New South Wales Parks Service,
et cetera, where I guess we would have added
another three or four volumes to that report. I
25 took the view that the information that you
referred to, that evidence was already in the
brief, already before her Honour. It was my view
that I took relevant parts of it just to portray,
if you like, the background.

30 Q You have given expert evidence assistance to
her Honour about approaches which, in your view
and your experience, ought to be taken in
containment lines as part of a strategy for
35 fighting forest fire?

A Would you take me to that -- where I have given
that view?

40 Q As a general proposition, you have attempted to
do that in your report in evidence, haven't you?

A Yes.

Q The setting, devising as a strategy of
containment lines is not an exact science, is it?

45 A Sorry, just say that first couple of words
again.

Q The setting or devising of containment lines in a strategy is not an exact science, is it?

A No, it's not.

5 Q It involves the application of judgment which not only draws on previous experience of other fires in other places and general principles learned in your trade, but also the particular circumstances at the time and with the particular
10 fire; is that right?

A That's correct.

Q It is especially part of the strategising where the topography, the nature of the fuels, the
15 weather and the short-term weather forecasts can be very important; is that right?

A Yes, sir.

Q Another factor in what might be called a multi
20 factorial decision is the availability of resources and the skills and facilities comprising those resources in terms of creating or upgrading natural or man-made features to containment lines; is that right?

25 A Yes, sir.

Q Furthermore, containment lines very often become a critical part of a back-burning tactic; is that right?

30 A Either back-burning or burning out tactic, yes.

Q Thank you for that. In other words, a line to which one way or the other one hopes fuel will be able to be exhausted so that the fire will not
35 travel further; is that correct?

A That's right.

Q That's what the word "containment" means, or is intended to convey; is that right?

40 A That's the definition of a containment line, yes.

Q Where there is a wildfire within a containment line, one of the standard approaches is to
45 attempt, as it were, to rob that fire of future fuel by burning back to lines in advance of it; is that correct?

A A containment line is of no value unless the fuel inside the containment line is removed.

Q Quite. Of no value because if it is still
5 there then it is simply going to be a minor hurdle in the way of a wildfire that is fuelled inside it?

A The potential is it will cross the containment line either through direct flame infringement or
10 spotting activity.

Q The idea is the containment line will serve its intended line because by the time the wildfire would have otherwise have reached it, the
15 firefighters would have taken away the fuel which would otherwise be available for the wildfire; is that correct?

A I'll go back and say what I said before, that a containment line is of no value until all of the fuel within it is removed. Now, whether that is
20 done by the fire itself, in some cases it will be, depending on how close the containment line is to the fire edge. In other cases, it could be some distance away from the containment line. But the
25 principle is a containment line is only a secure containment line - the fire is only contained once that fuel is - in the containment line is removed.

Q As you say, whether taken away by, as it were, a well-behaved wildfire or taken away by
30 back-burns or perhaps taken away by physical non-fire means it needs to be removed; is be that correct?

A Yes. Not necessarily by back-burns. I don't
35 like your term. Burning out. There is a difference.

Q Sorry, I am not a firefighter. So it can be taken away by fires which have been set. It can
40 be taken away by the wildfire itself or it might actually be affected or removed physically; is that correct?

A Yes.

Q All of that, of course, takes up men and women and machines and tools; correct?

A Yes.

Q It involves obviously consideration of safety because people are working in the path of the fire; correct?

A Yes.

5

Q It involves--

A Not necessarily working within the path of the fire. It depends on what you determine is the path of the fire.

10

Q Working in the vicinity of the fire, to put it more vaguely?

A Yes.

15

Q It requires frequently and continuously updated intelligence to the extent that is available in relation to weather?

A Yes.

20

Q And in particular, it involves trying to work out how long the tasks in hand will take compared with how quickly the wildfire is moving; is that right?

A Yes.

25

MR PHILIP WALKER: Is that a convenient time?

THE CORONER: Yes. Thank you. We will take the luncheon adjournment and resume at 2 o'clock.

30

LUNCHEON ADJOURNMENT [1.00pm]

RESUMED [2.02pm]

35

MR BRET WALKER: The different factors that you gave answers about in the last five minutes before lunch, Mr Roche, which can come into play in producing a strategy involving containment lines mean that there will, in many cases, be several candidates in the different compass directions for a containment line or containment lines around a wildfire; is that correct?

40

A My simple interpretation of what you are saying, several locations where it could be constructed, yes.

45

Q. So far as you are concerned, the skill of the

person or persons responsible for finally making a decision, "That's where we will do it", has to do with the weight they give to the various factors, depending upon the reliability of the information and the relevance of the experience they bring to bear; is that correct?

5
A. I guess governed by one principal strategy, and that is whether in fact you are talking about a parallel attack - a containment line for
10 parallel attack or a containment line for indirect attack; two entirely different things.

Q. If we are talking about indirect attack, then it is certainly the case, isn't it, that the way in which one hopes that the skill of setting a containment line will proceed is by giving appropriate weight to all the sorts of information and experience you have; is that right?

15
A Yes.

20
Q. And in quite a few cases that you can recall, in your experience, it must be the case, mustn't it, there never was any one correct answer, there was a range of answers which were acceptable, a range of answers which were unacceptable, and you hoped that you would pick one of the better ones of the acceptable ones; is that correct?

25
A No. I don't necessarily agree. When the analysis is done of all of the options, there is usually - it is usual, in my experience, one that stands out and says, "Please pick me", almost.

Q. This analysis will include, as you will agree before the adjournment, taking into account how much work has to be done, what resources you have to do it, how long it is likely to take and how quickly the fire is likely to travel; is that right?

35
A Yes.

40
Q. Unless you think about those balances then you might well find yourself in a beautifully constructed containment line but the wildfire arrives there just as you finish completing it?

45
A. In an indirect strategy, that is correct.

Q. That would be not only ineffective and time

wasting and labour wasting but perhaps dangerous as well?

A And bloody embarrassing to, yes.

5 Q. In the scale of seriousness, it is the danger that you take most seriously, isn't it?

A Yes.

10 Q. With a containment line as well, however much you trust the weather forecasts, you have to take into account the fact that particularly in hilly terrain there can be some funny things happen with directions of burns; is that right?

A Yes.

15

Q. All other things being equal, you would look with some caution, real caution, upon the notion of putting a containment line with respect to one fire between that fire and another fire; isn't that correct?

20

A If you are talking about a complex of fires --

Q. Yes.

25 A. -- you have to take into consideration all of the fires within that complex.

Q. You have to be careful not to locate a line where it may, for example, pose dangers to people, depending upon weather changes?

30 A. From another fire.

Q. Yes.?

A Or from the fire you are trying to contain.

35 Q. Both, but from another fire in particular.?

A Yes.

40 Q. In other words, you have to be aware of what we call a pincer movement of the flames; is that right?

A I'm not sure you would call it a pincer movement. I would call it movement of the fire.

45 Q. In this case, a proper matter for consideration was the controllability or the prospects for control of the Baldy Range fire when one was considering the eastern containment line

for McIntyre's Hut; isn't that right?

A Absolutely.

5 Q. Whatever containment line is chosen is, in your opinion and experience, a trade-off between locating it so as to reduce the amount of fuel to be removed on the one hand, so reducing the area

--

A Yes.

10

Q. -- and on the other hand ensuring that it is in a location where it can be made and used before the wildfire arrives; is that correct?

A. Really one and the same.

15

Q. Yes, of course. When I say "a trade-off", they are two of the factors involved in just the one decision; is that right?

20

A What I'm saying, they are really the same thing. Locating it so the area is minimalised. This is the key objective, if that is available to you.

25

Q. It is a timing question. In a sense, you have to know how much time is needed to do the work against how much time you estimate before the fire comes back, is that right?

A Yes. And all of those things are estimatable.

30

Q. By that, you mean that you believe that they are able to be the subject of an opinion expressed in a range of hours or minutes or days or whatever?

A Yes.

35

Q. Sufficiently usefully with all the degrees of approximation you need to proceed to make decisions?

A As a starting point, yes.

40

Q. So long as you remain open to changing information and change in the fires, is that correct?

A Yes.

45

Q. In this case, to prepare your report did you prepare any estimates of the amount of time which

would have been necessary in light of resources that you also estimated for the containment lines chosen in fact for the McIntyre's Hut fire?

A No.

5

Q. In this case, for your report, did you prepare estimates of the time required for the tasks required with the resources available for what you would have regarded as a preferable set of containment lines?

10

A The initial containment lines that I had in my mind and which I turned my mind to and whilst I didn't document any calculations, did not encapsulate the whole of the fires. It covered initially the western boundary of the McIntyre's fire west of Lowells fire trail and the eastern boundary of the Baldy fire east of the Baldy Range trail. In my mind when I initially talked about controllability, that was what I had in mind.

20

I was cutting the fire off west and east in effect so that those two lines would then become the larger containment lines for the complex of four fires that were of concern to me when I considered it. That's the McIntyre's fire, the two fires I think in the Mountain Creek area and the eastern-most fire, which was the Baldy Range fire.

25

Q. Is that the end of your answer?

30

A Yes, sir.

Q. Did you prepare any estimates of the amount of time it would have been --

A. Not written.

35

Q. I have to ask the question first so the record shows what it was. Did you, in fact, in preparing your report, prepare in it estimates of the amount of time necessary for the tasks necessary with the resources available for the containment lines that you considered preferable?

40

A In my mind, yes.

Q. Are you able to say was there ever any record made of that during the course of your report preparation?

45

A. No, sir. That is straightforward in my mind

because the area we are only talking about is very small distances.

Q. What was the hours that you came up with?

5 A. From memory, I worked on a hundred metres per hour per person for trailing on the McIntyre's fire, and it was about 700 or 800 metres west of Lowells Trail, so a matter of seven or eight
10 hours, and a similar distance with support from dozers on the western side of the Baldy Range trail for the Baldy fire.

Q. Those are rule of thumb, rounded up standard estimates; is that right?

15 A I wouldn't say they are standards because there is no such thing. If you look at the documentation, there is a whole range of different views. But I believe, in my experience, that they are appropriate figures from which to start.

20

Q. Did you mean the western side of the Baldy Range or the eastern side?

A The eastern side. The extent of fire east of the Baldy Range fire - east of the Baldy Range
25 track of the Baldy fire.

Q. When you say that's the starting point, this approach you put some numbers on and said you thought about but didn't record, did you ever
30 finish up with an exercise of estimation that took into account the amount of men, women and machines, the topographical conditions, and used the benefit of hindsight from what was able to be done in fact; did you ever do that?

35 A Yes, I did.

Q. What was the result?

A What I've just told you.

40 Q. No, you've just told us what you described as the starting point, being a rate of progress.

A. That's what I believe could have been achieved.

45 Q. What is the amount of men, women and machines that you are talking about when you give that estimation?

A On the McIntyre's fire I think I considered -
I'm not quite sure whether it is in my report or
not - I think it is --

5 Q. It is not, is it?

A A couple of rake hoe teams or RAFT teams and
a tanker and RAFT teams - three RAFT teams, I
think, and a dozer and a tanker on the Baldy fire.

10 Q. In your report we have a reference, don't we,
by you to what you call a rule of thumb, not what
I just called a rule of thumb, but what you call
it, page 61.?

A Yes.

15

Q. Your report doesn't go on, having referred to
that rule of thumb, to take the steps that your
report said would be necessary from that starting
point, does it?

20 A No, it doesn't.

Q. Your words in the report, as an expert to her
Honour, are:

25 "These rates - that is the rule of thumb
rates - then need to be adjusted for certain
things."

Do you see that?

30 A That's correct.

Q. But you haven't done that, have you?

A No.

35 Q. I didn't need to. Well --

A. In my own - sorry, go.

40 Q. In order to make a criticism of a strategy for
being unrealisable on account of time constraints
and resource constraints, you would need, wouldn't
you, as an expert, with all the benefit of
hindsight, no pressure of time, wouldn't you need
to carry out for yourself a kind of shadow
calculation as to what could have been calculated
45 at the time?

A And I did that in my own mind. That's when
I arrived at the conclusion that those lines could

have been put in in that time.

Q. But if I look at your report - you appreciate this is what was made available to parties or
5 interested persons, I should say, for the purposes of helping us help the Coroner - if we look at your report we don't actually find any conclusion expressed in terms of meterage, hours, numbers in teams or kinds of numbers of machines; do we?

10 A Meterages you talk about is in the report.

Q. In paragraph 61?

A Not in my report. But it is before the Court. The distance of the patrol line --

15

Q. I can only take it one at a time. In your report when you expressed this criticism about the strategy not taking into account the time necessary - this is page 61 - you don't there or
20 thereabouts go on to perform the exercise that you say should have been performed by the people at the time; do you?

A. Didn't need to.

25 Q. Let's just take it one at a time. You don't do it, do you?

A No, I don't. I didn't need to.

Q. In order to work out whether they were wrong
30 and, if so, by how much they were wrong, you would need to have some conclusions of calculations to make a comparison, wouldn't you?

A The conclusions of comparisons are before this court.

35

Q. Where do we find in your report, as an expert, expressing criticisms of the officers of my client? Where do we find your version of the time
40 estimating exercise you criticise them for not undertaking at the time?

A It's not in my report.

Q. In fact, it's never been done in anything like the detail that you suggest should have been
45 performed at the time by them, has it, by you?

A By me?

Q. Yes.?

A Yes, it has been done. Not in writing.

Q. It hasn't been prepared in detail, has it?

5 A. Didn't need to. It is not a detailed
calculation. We are talking about a very, very
small distance here in both cases. Didn't need to
prepare a great written diatribe. The information
10 I needed, or is needed to perform that calculation
is before the Court.

Q. You opined it could not be done in two shifts,
that was practically impossible?

15 A. Beg your pardon?

Q. You say it is practically impossible in two
shifts? Believe me that you do say that. Is that
what you say is not a big task?

20 A I didn't say the onground work wasn't a big
task. I said working out the initial starting
point of calculating what resources we needed to
implement that particular strategy is a very
simple task.

25 Q. I do beg your pardon, didn't you say, line 16
of the current page, "We are talking about a very,
very small distance here", in both cases?

30 A Yes, and so for the purpose of the calculation,
not a difficult one.

Q. However, in your report you said that
"completion of the tasks in two shifts was
practically impossible"; didn't you?

35 A Sorry, would you take me to that please?

Q. The top of page 61, first paragraph.?

A That is totally irrelevant.

Q. I'm sorry?

40 A Totally irrelevant. What I'm talking about
there is the overall strategy of the full
containment line and the removal of all material
within the containment line for the four fires.
Not the Baldy Range fire - not the eastern part of
45 the Baldy fire. Not the western part of the
McIntyre's fire. We are talking about there the
whole fire.

Q. So have I been.?

A Quite a difference.

5 Q. On page 61, you criticise the officers of my client for not carrying out appropriate estimates of the time necessary to complete the work necessary for the containment lines they fixed on, don't you?

A Yes.

10

Q. As you correctly point out, for a containment line to be a containment line it needs to be part of a complete whole; is that right?

A Yes, it does.

15

Q. The exercise of estimating the time necessary for the tasks necessary with the available resources is one you have not done yourself for the whole of that containment complex; do you agree?

20

A That's correct.

Q. Yet you criticise the officers of my client for not having done the estimate itself?

25

A That's correct.

Q. Whether what they actually set out to do when they determined on the strategy and implemented it was in fact, as you say, practically impossible, depends upon comparing what time it would be necessary with the time they had available; is that right?

30

A That's correct.

35

Q. And you don't know what time would have been necessary because you have not done the estimating required to do that, have you?

A. Not in detail. But it was a lot more - it would have been a lot more than the time which they allowed.

40

Q. Might I suggest to you that this page 61 criticism, whether it be correct or not in suggesting there was insufficient time to carry out their strategy, was one that you have performed on what might be called a broad brush basis; is that fair?

45

A Yes.

Q. The difficulty with a broad brush basis is that it does not take into account the capacity of
5 a team of people with local knowledge each to contribute their little bit of information about the nature of the topography and what alternatives were available to the strategy in question. Do you agree with that?

10 A That's correct.

Q. And you have not, in your report, given a comparable arrival time and resources estimate for any alternative containment strategy, have
15 you?

A. That wasn't the intention of that particular part of the report.

Q. I'm simply saying, you haven't in your report
20 done that, have you?

A. No, I didn't.

Q. So, her Honour is left without your expert assistance as to the practical feasibility of any
25 alternative containment strategy by reference to the critical question of the available time and resources to complete it; isn't that right?

A Perhaps.

30 MR BRET WALKER: Thank you, your Honour.

THE CORONER: Thank you, Mr Walker. Yes, Mr Watts, do you wish to cross-examine?

35 MR WATTS: I will let Mr Whybrow go next. As I understand those statements have not been read in detail by the witness. I would certainly need him to do that before I ask him questions. It may be necessary for me to do that overnight.

40 THE CORONER: Thank you, Mr Whybrow.

<CROSS-EXAMINATION BY MR WHYBROW

45 MR WHYBROW: Q. Mr Roche, do you have your report in front of you?

A Yes, I do.

- Q. You, at page 9 or thereabouts, set out extensive experience that you have, including experience as chief officer of the Country Fire Authority of Victoria?
- 5 A Yes.
- Q. At page 9 you indicate that during your period as chief officer, the CFA was involved in 30,000 fires annually?
- 10 A That's right.
- Q. "Many of these were wildfires"?
- A. Yes.
- 15 Q. You are able to say what "many" is?
- A No.
- Q. The CFA had jurisdiction, if you like, over structured fires in built up areas in Victoria as well as a rural firefighting aspect, did it not?
- 20 A Yes.
- Q. You indicate that:
- 25 "Operationally, the chief officer was responsible to ensure operations were conducted in accordance with state-wide policy and procedures, Standing Orders and procedures, including the application of the
- 30 AIIMS ICS. While operational command and control was delegated to officers on the fireground, the chief officer was ultimately responsible for the command and control of
- 35 satisfactory outcomes."
- A. Yes.
- Q. Of course, you were the chief fire officer at the time of the Linton tragedy in 1998?
- 40 A. Yes.
- Q. That was an incident where firefighters responding to a fire just a few kilometres from the town of Linton were killed whilst fighting that fire, volunteer firefighters?
- 45 A. That's correct.

- Q. That fire was a fire that burnt around about 660 hectares and it was successfully brought under control in less than one day?
A Yes.
- 5
- Q. It was a fire that occurred early in the season?
A Yes.
- 10
- Q. In December?
A. Yes.
- Q. Fire restrictions were not in place?
A. Yes.
- 15
- Q. Due to the tragic loss of life of the volunteer fire crew, there was an extensive coronial inquest into the events that happened there?
A. That's correct.
- 20
- Q. As the chief officer of the brigade, you were closely involved in the process?
A Yes.
- 25
- Q. Indeed, I think - and Mr Woodward would know better - there were over 105 days of sitting in that inquest, with over 12,000 pages of transcript?
A Yes.
- 30
- Q. And 774-page report was handed down which contained 55 recommendations?
A The 55 recommendations is right. Don't hold me to the number of pages, I can't quite --
- 35
- Q. It was big?
A Yes.
- 40
- Q. Many of the recommendations dealt with safety of firefighters and volunteer firefighters when attending firebrands?
A. Yes.
- 45
- Q. Indeed, what happened to this crew was within a very short period of attending on the fire, they were burnt over and killed?

A Yes.

Q. Following the Linton inquest, you would agree,
and following that incident, a greater level of
5 awareness and focus by firefighting authorities
was placed on the training and safety of
firefighters?

A Well, I can only speak for the CFA. But that
certainly occurred in the CFA, yes.
10

Q. There were, as you indicated, a number of
recommendations relating to the safety of
firefighters?

A Yes.
15

Q. They included a recommendation as to the
possible introduction of an additional feature to
the AIIMS control system being not only control
operations, planning and logistics but also
20 safety?

A Yes, that's correct.

Q. There were also recommendations that the CFA
consider a requirement that safety officers be
25 included amongst the personnel to attend on
firebrands?

A That's correct. Neither of which
recommendations I agreed with.

Q. I was going to ask you, but neither of those
recommendations were matters that you agree with?
30

A That's correct.

Q. Is it fair to say that your view is that too
35 much emphasis was placed by the coroner on the
need for safety for firefighters at the expense of
the need to also fight fires?

A. That's not correct.

Q. You disagreed with at least those two
recommendations relating to the safety of
firefighters pursuant to the coroner's
recommendations?
40

A What I disagreed with was the appointment and
45 delegation to a person the responsibility and
accountability for safety. My view was that the
responsibility and accountability for safety rests

with everybody on the fire ground, not the least of whom is the incident controller.

5 Q. This report was handed down in January of 2002, as I understand it.?

A I couldn't tell you.

Q. You resigned as chief officer in June of 2002?

10 A That's correct.

Q. Was your resignation in any way linked to the fact that many of these safety recommendations had been made by the coroner that you did not agree with?

15 A No.

Q. Part of the findings in that inquiry was that the AIIMS-ICS system had broken down?

20 A That's not correct.

Q. On the fire ground.?

A The AIIMS-ICS system had not been properly implemented. It did not break down. It was not implemented.

25 Q. Was not properly implemented?
A. That's correct.

30 Q. As the chief fire officer, you were ultimately responsible for the command and control of those operations and to ensure that the operations were conducted in accordance with policy and procedures?

35 A That's correct.

Q. You also, according to your report at page 9:

40 "The chief officer also had the primary [responsibility] for establishing protocols for and the maintenance of inter-department and agency liaison, intra and inter-state mutual aid arrangements and corporate media management during major incidents."?

45 A That's correct.

Q. You would agree that one of the problems identified by the coroner at Linton was the lack

of appropriate interdepartment and agency liaison between the CFA and the Department of Mines and Energy, who also attended the fires - Environment and --

5 A. I know the agency you mean. I can't recall exactly that particular recommendation or particular shortcoming.

10 Q. This is, I suggest to you, taken from the preface to the report:

15 "Ultimately, the failures of training, supervision, communication, enforcement of operational and safety systems lay behind the deaths of the volunteer firefighters and the serious risks to the lives of many other firefighters in the wildfire that has come to be known as 'Linton'."

20 A. Yes.

Q. You, I take it, are here as an expert in relation to what could, should and would have been done by you if you were involved in the ESB during January 03?

25 A. Yes.

30 Q. You would agree, would you not, that an agency needs to try and learn from incidents, undertake investigations as to how people perform at those incidents, identify any shortfalls and try to rectify any shortfalls identified?

A. Yes.

35 Q. Have you, in the course of your preparing your report here, made any examination of what the ACT Emergency Services Bureau did following the Christmas 2001 bushfires?

A. I've seen the report.

40 Q. When you say you've seen the report, what do you mean by "the report"?

A. As I understand, there is a report - I'm trying to think now what it was titled - on the 2001 fires.

45 Q. Is this the "Strategic Debrief of Senior Officers"?

A I'm not sure.

Q. Could we have brought up [AFP.AFP.0035.0392].
Whilst that is being done, I appreciate it is
5 easier to read from a hard copy. I have a hard
copy of that document. If that could be provided
to the witness and copies to everybody else who
wants to see that document. Can you recall
whether that was the document you were referring
10 to or whether you had seen that before?

A. I don't believe I've seen this, sir.

Q. Before I take you to that, you have already
agreed that it would be prudent practice by an
15 organisation to examine how it performed during an
incident?

A Yes.

Q. And in particular you are aware that the ACT
20 Emergency Services and bushfire authorities had
been quite successful in the way they dealt with
the threat of fires leading up to January 2003?

A I can't comment about that.

Q. I suggest to you that there had not been any
25 loss of urban structures in the Territory
before January 2003 as a result of wildfire.?

A I'm not aware of that.

Q. Are you aware that the December 2001 fire was,
30 in effect, the largest fire incident that the
Emergency Services Bureau had ever had to deal
with in its history?

A. I've not done that comparison.

Q. If you were to assume for the moment the fact
35 that the incident in December 2001 was the largest
fire incident that ESB had to deal with, then
again you would expect that there would be some
significant examination of issues that arose out
40 of that incident with a view for officers learning
for the future?

A Yes. As I would with any incident.

Q. You would expect things that went well to be
45 noted and continue, and things where there may
have been some problems to be identified and

actions taken to try and reduce the possibility of those things occurring again in the future?

A Yes.

5 Q. For example, in this debrief document in January 2002 a number of issues were identified. You will see, just going from the headings - you are on page 2, sir?

A Yes.

10

Q. "Shift change over procedures, logistic support, communication, aerial resources, public communication", over the page "ICS support staff" are matters that were apparently identified and discussed at this initial debrief?

15

A I see that.

Q. Over on page 5, an issue that was examined was evacuations and there is a reference to the fact that the standard emergency warning systems, SEWS, had been utilised during that crisis?

20

A Yes.

Q. On page 6 and following there are issues identified in relation to planning and agency co-ordination.?

25

A I see that there are issues identified, yes.

Q. Where at least in respect to issues identified there is discussion of liaison officers, liaison with the AFP, with ACTEW, Internet management teams, for example, are matters that seem to be raised during this debriefing exercise?

30

A In accordance with this document, yes.

35

Q. And that would accord with what you would expect an organisation to do in terms of learning for the future from its experience in a major incident?

40

A Yes.

Q. You would expect, beyond the mere identification of issues, that there would be efforts made to deal with any of the identified areas of concern?

45

A Yes.

Q. Were you aware that in December 2002
a strategic debrief action status summary was
prepared which reported on the issues that had
been identified in January 2003, a strategic
5 debrief?

A I have not seen that.

Q. Assuming for a second that this debrief took
place and that throughout the year actions were
10 taken to deal with issues that were identified,
you would agree that that is an appropriate course
of action to have been taken by the Emergency
Services Bureau for the future?

A Yes.
15

MR WHYBROW: Your Honour, my inquiries with
Ms Prosser have identified the debrief as already
being on courtbook. For whatever reason, the
strategic debrief action status summary of
20 18 December 2002 has not appeared. I have some
copies. I seek to tender this document. Perhaps
while, particularly counsel assisting, considering
whether the tender should be allowed -
I appreciate this is a document which has only
25 come to attention now.

THE CORONER: I ask the question: Why is
a document such as this only coming to light
today? Is there any information as to how it was
30 compiled, who compiled it and when it was
compiled? Again, that would be very useful
information to have to be able to consider the
status of it.

MR WHYBROW: It was tabled, as I understand it, as
the Emergency Management Committee meeting of
18 December 2002. Some of the Emergency
Management Committee minutes appear as part of
40 those two folders of documents that were provided
to the parties and I have spoken about that
earlier. On a perusal of those minutes, it is
apparent that various action items relating to the
Christmas 2001 debrief are referred to from time
to time.

45 That appears, just from my going through the
documents, to be the forum of which the ongoing

management of the debrief was conducted of the
Emergency Management Committee forum. Ultimately,
this document was tabled as a document at that
meeting on 18 December 2002, in effect as what had
5 occurred in relation to the matters identified in
the first document in January 2002.

THE CORONER: I think, at this stage, it might
have to go into that category of documents that
10 are part of that information provided last week
and give counsel, and indeed other interested
persons, an opportunity to look at it. If there
are some more questions to be asked of it then
that can happen. But I won't prevent you from
15 asking any questions of Mr Roche today, if you
wish to.

Q. You have never seen this before, have you
Mr Roche?

20 A No, your Honour.

MR WHYBROW: On that basis, I don't intend to take
him through it. The document speaks for itself.

25 Q. Mr Roche, you make comment, firstly, in
relation to learning from earlier incidents, that
is something that, as the chief officer for seven
years in Victoria, whilst issues can be
identified, there can be difficulty in
30 implementing changes or changing systems over
a short space of time?

A Yes.

35 Q. Indeed, in the lead-up to the Linton tragedy,
the Country Fire Authority had been involved in
four other major incidents which had led to
coronial inquests occurring, being the
Berringa-Enfield fire in 1995, the Creswick fires
in January 1997 and also on that same day the
40 Dandenong Range fires and the Mount Martha fires?

A. That's correct.

Q. The coroner in Linton identified that some of
the problems that had arisen during those earlier
45 incidents - there was an examination, briefly, of
the circumstances of those earlier fires; do you
recall that?

A Yes.

Q. For example, in relation to the
Berringa-Enfield fire, in relation to that fire it
5 was said in that report by the coroner:

"Throughout the fire the Incident Control
Centre had difficulty managing the fireground
because of inadequate radio communications,
10 remoteness to the fire front, lack of
facilities for managing CFA resources, and
the inappropriate layout of the office for
incident management. These factors combined
with poor mapping resulted in the failure to
15 maintain a single incident status map, a
particularly important requirement during
dual agency operations."

Do you recall those as being some of the problems
20 identified from that fire?

A I don't recall it. If you say that's the case,
I'm not going to argue with you, sir.

Q. For anybody who is interested in following it
25 it appears on page 115 of the Linton report.

THE CORONER: What was the date of that fire?

MR WHYBROW: The date of that fire was 25 and
30 26 February 1995.

Q. I suggest to you by the time we get around to
Linton in December 1998 the Coroner, Johnstone,
noted the problems listed as having occurred in
35 those earlier fires occurred again in Linton in
1997. I suggest to you that is an indication of
the difficulties sometimes from implementing
changes that can be identified in earlier
incidents.?

40 A I think we need to be careful - I need to be
careful in agreeing that the same things appeared.
In some cases that may well be correct, but the
reasons were totally different, circumstances were
different.

45 Q. Between those fires, or you are talking about
this incident?

A No. In those fires, in terms of what was identified as being an issue, for instance, in the Berringa fire, one of the things that was identified was communications. The authority moved to significantly upgrade its communications and in fact that caused difficulties with communications in the Linton fire. So the issues were the same but the reasons were somewhat different. I hasten to caution in terms of comparing apples with oranges.

Q. Can I suggest to you that Coroner Johnstone said, after examining, for example, the circumstances of the Berringa fire, that:

"Many other topics were dealt with in the CFA report [into that fire] but they are not relevant to the Linton fire. What will become apparent, however, is that the problems listed here as having occurred on 25 and 26 February 1995 occurred again at Linton on 2 December 1997."

A. Yes.

Q. Following an examination of those earlier incidents in which the CFA played a role, the coroner, I suggest, commented:

"It can be seen from this short examination of fires occurring shortly before Linton that there were common problems in them and when an examination is made of incidents that occurred at Linton it will be seen that the same types of problems occurred there. In short, the lessons of the other fires had not been translated into effective reforms in the time that elapsed between those fires and Linton."

That was a comment made by the coroner in Linton, was it not?

A That was his comment, yes.

Q. Do you accept --

A. Not all of it, no.

Q. You were aware that it was common knowledge

within the Emergency Services organisation leading up to the bushfire season 2002-2003 it was likely to be a very severe weather season?

A. Yes, that's correct.

5

Q. You would expect, would you not, that appropriate action would be taken by any fire authority facing such a fire season to prepare itself for such a season?

10 A Yes.

Q. That would include, would it not, trying to increase the level of resources available to the organisation?

15 A Where there was identified deficiencies, yes.

Q. If it was identified that increased aerial capability is necessary for an upcoming season then you would expect some action to be taken by those within Emergency Services to try to obtain increased aerial firefighting capacity?

20

A Yes.

Q. I take it you are now aware that following the December 2001 bushfires, Emergency Services did make an approach to government for a variation to its budget so as to increase the budget allowing for an increase in aerial bushfire fighting capability?

25

30 A I wasn't aware of that until recently.

Q. You are now aware of it?

A Yes, I am.

35 Q. You have seen the minute prepared by Mr Lucas-Smith outlining the reasons why such funding is necessary?

A. No, I haven't.

40 Q. You have been made aware that such a request for funding was made?

A Yes.

45 Q. You would agree that such action is one of the appropriate courses of action leading up to a severe fire season?

A Yes.

Q. You are aware that the funding request was knocked back?

A I am now - sorry, recently I became aware of that.

5

Q. Indeed, are you now aware that in addition to being denied additional funding to improve its firefighting capability in the 2002-2003 financial year, the Emergency Services Bureau was required to find some 2% budget cut, being about \$680,000?

10

A I believe Mr Nicholson may have mentioned that in his report.

Q. That, you would agree, if it factually was correct, would place some strain on the capabilities of the Emergency Services Bureau to deal with a forthcoming fire season which, by all accounts, was going to be more significant than the previous one?

15

A I find it very surprising. In fact, rather extraordinary that given the circumstances, given the knowledge and I would assume the representation was made to government, that that occurred.

20

25

Q. You are also now aware, are you not, that in a further request for additional funding following the December 2001 bushfires, a request was made for funding for two additional positions within Emergency Services, being a community support officer and a research development officer?

30

A As far as the titles and functions are concerned, I'm not sure, but certainly I became aware recently that there had been submissions made for additional staff of that nature.

35

Q. Again, with the benefit of hindsight, it would have obviously been more desirable had that funding been allowed and those positions been filled before the 2002-2003 fire season?

40

A Yes, sir.

Q. Assuming that a research and development officer was intended to provide some support to Mr McRae in the planning division, you would agree that would have been even more appropriate, given the level of planning capacity at ESB in January

45

2003, to have been approved?

A Yes.

5 Q. Given your stated opinions as to the level of
community awareness as at January 2003, the
provision of a community support officer, with
functions including the provision of community
education about bushfires, would have also been
10 a desirable outcome leading up to the January 2003
bushfires?

A. Yes.

15 MR WHYBROW: These documents have been referred to
in the report of Mr Nicholson. I haven't been
able to identify them in the courtbook; that is
not to say that they don't exist there. But so
that anyone going back and reading this can see
what I am talking about, it might be appropriate
that I tender those two documents at this stage.

20

THE CORONER: Do you know whether or not they are
already in the system, Mr Whybrow?

25 MR WHYBROW: At the risk of sounding like
Mr Roche, I can't find any evidence that they are.
It doesn't mean that they are not, but I can't
find any evidence that they have been.

30 THE CORONER: If you can hand them up, we will see
if we can find them. The two documents you speak
of, where are the requests that you made for the
additional funds and the resources? Are they the
documents, Mr Whybrow?

35 MR WHYBROW: The contents indicate they are post
the 2001 bushfires and in the lead-up to 2002-2003
and, as I understand it in the budget process, in
order to make these sorts of requests it would
have been in about March 2002 that these requests
40 were made.

THE CORONER: Mr Lasry, have you seen these
documents before?

45 MR LASRY: No, your Honour, I haven't. I don't
object to them being tendered at this stage.

THE CORONER: If they are there then it will be just a duplication.

5 MR WHYBROW: I am not trying to add to the exhibits.

THE CORONER: Do you wish them to be tendered as one document?

10 MR WHYBROW: I think they essentially go together. I think they are only in separate documents for government purposes, as different lines on a budget paper. They are both dealing with requests for further funding for the same use.
15 They could usefully be the same exhibit number.

THE CORONER: There is no date on these documents, as I can see.

20 MR WHYBROW: No. As I indicated --

THE CORONER: There is no date indicating when they were prepared. That is what I am querying.

25 MR WHYBROW: The best I can do - in the normal course, such requests would be made in March. Given that reference to the December bushfires and being before the January bushfires,
30 that March 2002 appears to be the date of both these requests.

THE CORONER: Two documents titled "Budget Approval Brief" and "Budget and Forward Estimates Variation Advice" will become exhibit 01177.

35 EXHIBIT #01177 TWO DOCUMENTS TITLED "BUDGET APPROVAL BRIEF" AND "BUDGET AND FORWARD ESTIMATES VARIATION ADVICE TENDERED, ADMITTED WITHOUT OBJECTION.

40 MR WHYBROW: Mr Roche, have you been given the opportunity to look through the two folders of material that were put together by the Australian Capital Territory legal representatives and
45 provided to parties about a fortnight ago?
A No. I wasn't aware they existed until today.

Q. If, as we have indicated, there is an expectation that the coming season is going to be a severe one, you would expect there to be a number of actions taken to prepare for this season and they would include training capabilities. Would you agree with that?

5 A I think I have already said that in my report.

Q. You haven't indicated that you weren't aware of any evidence that there had been such training capabilities?

10 A Not quite sure what you mean by "training capabilities".

15 Q. Preparatory training undertaking --

A Additional training?

Q. Yes.?

20 A No.

Q. Would any such additional training include emergency simulation exercises, for example?

A Unless you are more specific I can only say it could be.

25 Q. If you direct it towards the outbreak of fires in Namadgi, that would be something that you would say is a useful preparatory matter for the upcoming fire season?

30 A Yes, sir.

Q. Were you aware that such an emergency simulation exercise was conducted in November of 2002?

35 A I am aware of one which was conducted in the Namadgi fire scenario. I am not quite sure when that was conducted.

Q. Can you recall what the Namadgi fire scenario was?

40 A Pretty well replicated what happened.

Q. There was an exercise conducted in November 2002 whereby it was simulated that a fire breaks out in the Namadgi National Park in three different areas as a result of lightning strikes and how emergency services would respond in terms

45

of logistic support and resources and things of that nature?

5 A The thing -- I think I made comment of the outcomes of that exercise in my report, Mr Whybrow.

10 Q. You would agree such an exercise would be a useful thing to do in terms of preparing for the possibility of such an event in the forthcoming fire season?

A. Yes.

15 Q. If we could turn up [DUS.GSO.0001.0051].?

A Could we have a five-minute break, please, your Honour?

THE CORONER: Yes. We will take a very short adjournment.

20 SHORT ADJOURNMENT [3.03pm]

RESUMED [3.18pm]

25 MR WHYBROW: Q. Sir, just going back briefly to the Linton report, I suggest to you, in relation to learning the lessons and changing systems, there can be difficulties in that occurring quickly and sometimes response to changes can be patchy?

30 A Yes, I agree with that.

35 Q. In the case of Linton, that occurred at a time when the CFA had introduced the AIIMS-ICS system but there were still vestiges of the old group system being employed by individuals of your organisation.?

A That's correct.

40 Q. Do you agree with this comment:

"Given the dynamic nature of a wildfire, and given the exigencies of the situation, information obtained by those managing the fire may be far more limited than the detailed information which later becomes available during processes such as an Inquest."?

A Just --

Q. Run that by you again?

A Yes, please.

5

Q. It says:

"Given the dynamic nature of a wildfire, and
given the exigencies of the situation,
10 information obtained by those managing the
fire may be far more limited than the
detailed information which later becomes
available during processes such as an
Inquest."

15 A. Absolutely.

Q. When one examines the actions taken by
individuals made during the exigencies of
a bushfire situation, one needs to take into
20 account they would not have all the detailed
information that ultimately can come to bear on
that situation?

A You would have to be very, very careful.
Again, hindsight is a wonderful thing, of not
25 being coloured by the hindsight or assuming just
because information has come to light during the
inquiry that it was necessarily available at that
particular time. I was certainly conscious of
that in all of the activities that I undertook.

30

Q. One of the areas that you were asked about
last year, I suggest, was the difference between
the actual size as later determined of the Bendora
fire and what those at ESB had been told about the
35 size. That would be an example of examining what
people did based on the information they had and
examining it based on what the actual situation
was; would it not?

A In relation to there being confusion over size,
40 that's right. I would just have to refresh myself
as to the impact of that in terms of the
strategies and actions that were taken.

Q. In terms of examining the actions taken by
45 people at the time, one needs to take into account
the information they had at the time?

A Yes.

Q. Going to your report, there are a few issues, sir, that I want to question you on. At page 18, you have --

A. Of my report?

5

Q. Yes, of your report.?

A Yes.

Q. At the bottom you are talking about the
10 Bushfire Council:

"... the council had its own budget with
separate lines for fire suppression, plant
and equipment, hazard reduction, fire trail
15 maintenance, administration, training and
wages."

A. That's as I believed it.

Q. Your belief is sourced from the statement of
20 Mr Val Jeffery?

A That's correct.

Q. If the situation actually was that the
Bushfire Council, whilst it had powers under the
25 Bushfire Act, did not have its own operating
budget, that would, at least in that respect,
require your comments there to be rethought; would
it not?

A. Not greatly.

30

Q. It may be that your assertion there on those
matters could be inaccurate because it relies on
the correctness of what Mr Val Jeffery has
asserted to you?

35 A. That's right.

Q. And over the page you have indicated that
whilst the Rural Fire Patrol manual does not
reflect the current arrangements, you assume,
40 following the formation of ESB in 1995, the
executive director of ESB had assumed these
responsibilities?

A Yes.

45 Q. I suggest to you that following formation of
ESB, it was still the case that there was
a departmental structure under which the various

departments assumed the responsibilities for firefighting capability but some of the aspects were overseen, such as communications and things of that nature, by Emergency Services - sorry, 5 ESB. To put it another way, the services within ESB still had their own separate budgets and operations rather than, as you have indicated, Mr Castle assuming these responsibilities?

10 A If that's the case, I would have to accept that is the case.

Q. On page 46 of your report, sir, you make a comment in the last paragraph in your discussion of aerial firefighting resources:

15 "During the 2003 fires, it appears that in a number of instances, the deployment of helicopters on water bombing missions may not have been efficiently coordinated and often 20 the pilots had the responsibility to select appropriate targets."

Do you see that statement?

25 A Yes, I do.

Q. You have not, in that statement of fact - mixed fact and opinion - indicated a source for that assertion. Would you agree that the most appropriate place to go to see whether or not that 30 is borne out is in the transcripts of the communications between the pilots and those on the ground?

35 A. That's where I got it from, the COMCEN transcripts.

Q. It hasn't been referenced there?

A No.

Q. Do you have those references?

40 A. From the COMCEN transcripts indicated that air operations was conducted in the absence of ground report".

Q. You go on to say:

45 "... generally speaking" - you are talking about the pilots - "they do not have the

appropriate level of training or experience
in fire suppression or fire behaviour... "

A. Yes.

5 Q. I take it, before you made a comment in
relation to the capacity of these pilots, that you
identified who they were and conducted some sort
of check as to what their experience was?

A No, I didn't.

10

Q. So when you say "generally speaking", you are
not talking about the actual pilots involved in
2003 helicopter firefighting?

A. I'm saying generally speaking.

15

Q. It may be in relation to this specific pilots
who flew in 2003 that that general statement may
not apply?

20

A I would still stand by it. I have yet to come
across a pilot that has the appropriate fire
behaviour qualifications and experience. Some
have wide experience in fire bombing fires but not
necessarily in prioritising fire bombing and fires
based on wildfire behaviour.

25

Q. But you don't know?

A No, I don't, sir.

30 Q. At page 162 of your report you deal with the
topic of evacuation and the police role in
evacuation. Do you agree?

A Yes.

35 Q. You note in the third last paragraph there
that your understanding was that the Chief Police
Officer, Mr Murray, had supported the application
of the AFAC position on evacuation at a meeting of
the senior officers group, Australian Police
Ministers Council on 20 December 2001. You go on
40 to suggest:

"However, the evidence suggested that this
position was not widely known throughout the
AFP at the time of the January 2003 fires.
45 Hence it is understandable that the reaction
of police in the affected suburbs remained
one of seeking to remove people from the

risk".

You agree, firstly, that that is what appears on page 162?

5 A Yes.

Q. Your position is that you support the AFAC position in relation to early decisions being made based on information that it should be up to those
10 who are able to defend their homes to make a decision whether to stay and fight or to go?

A Yes. Can I say, it was not my understanding that that was Mr Murray's position. I have seen a document of minutes of the meeting that
15 Mr Murray was attending where, in fact, that decision was taken unanimously, with the exception of Queensland. So that is the fact.

Q. One would have hoped, following that position being taken, that steps were taken within the AFP to ensure that its members were aware of what the AFAC position on evacuations of the bushfire were?

A One would have hoped.

Q. You make some comment at page 174, and the bottom of page 173, about the level of community education, community safety - in a section about community education and community safety. Would you agree that you effectively assert that the residents of Canberra were neither well-prepared
30 nor informed about what to do in the event of a bushfire approaching?

A That's right.

Q. Having formed that opinion you indicate on page 174 that that opinion was borne out, in your view, by the evidence of 19 of the residents who appeared before the inquest, of which only six had prior knowledge of the actions that they should
40 contemplate or initiate when threatened by a bushfire?

A Yes.

Q. You were made aware of various steps taken by Emergency Services in terms of the various hand-outs, letter drops?

A. Yes.

Q. Material that Mr Walker referred to this morning --

A. Yes.

5 Q. -- in terms of community education. You took that into account in relation to your opinion that the assumption that Emergency Services had adequately informing the community was misconceived?

10 A Sorry, say that again?

Q. Your conclusion you came to was that it was misconceived for Emergency Services to have any belief that the community was well-educated on this issue?

15 A I wouldn't use the word "misconceived". I think they may have underestimated the extent to which the community was alert and aware of the threats associated with a bushfire and what they should do.

Q. So "misconceived" would be a bit strong but "underestimated" is probably a better way of putting it; would that be fair?

25 A. It is a bit of a play on words, but yes, I guess.

Q. Your opinion in that regard, I suggest, was strongly based on the fact that only six of the 19 residents who gave evidence before the inquiry indicated any idea as to what to do? The first full paragraph of 174. Do you agree with that comment?

30 A And I think, from my point of view, there was a lot of media at the time as well that I was aware of where people had said that they didn't receive warning and weren't aware of what to do.

Q. You compare the level of community education in Canberra leading up to January 2003 with the type of community education that occurred through the Country Fire Service in South Australia at a community called Marble Hill?

40 A Yes.

45 Q. Marble Hill is a small settlement in the Adelaide Hills?

A. Yes.

Q. It is so small it doesn't even have its own
postcode.?

5 A I wouldn't hold that against it.

Q. No. It probably is an attractive proposition
for many people.?

A It may well be.

10 Q. Marble Hill was completely destroyed in the
1955 Black Sunday bushfires in the Adelaide Hills?

A. Yes.

15 Q. Based on the size of it, you would expect
a community of less than 500 or thereabouts; would
you agree?

A I would think so.

20 Q. In comparing the level of community education
undertaken in a community of 500, could I suggest
to you, it is not appropriate to compare that with
the community education conducted in a population
of over 300,000?

25 A That's correct.

Q. Yet you do that in your report?

A Could you take me to that section where I do
that, please?

30 Q. At the bottom of page 183.?

A I don't think I make a comparison there.

Q. You state your opinion that the level of
education in Canberra was, in your opinion,
insufficient.?

35 A Yes.

Q. You then go on to talk about community
education and consultation, dealing with subjects
such as risk perception, future programs and then
go to page 180 --

40 A. I think you might have taken that section out
of context. The context of that particular part
of my report relates to the fact that evaluations
were done following the introduction of programs.

45

Q. In that case, the relevance is there was a post-incident survey of residents?

A Yes.

5 Q. And there was some way of evaluating the level of community awareness --

A. That's right.

Q. -- of what to do if a bushfire approaches?

10 A Yes.

Q. In that case, as you have indicated, 83% of the people surveyed at Marble Hill had undertaken activities to ensure that their house was better prepared?

15

A 83 percent?

Q. The second last line says 83.?

A Sorry, yes.

20

Q. Is it fair to say that you are putting that example as an indication as to the positive effects appropriate community education can have in leading to such a high awareness of what to do by residents in the event a bushfire approaches?

25

A. No. What I am trying to point out there is following an incident, that a post-incident survey can indicate the efficacy or otherwise of the programs that have been undertaken. In this case, a 83 percent success rate.

30

Q. And that's --

A. That's not necessarily a standard that I would say is appropriate or achievable right across Australia.

35

Q. Your view is that is a good level of community education?

A. Quite surprisingly good level.

40

Q. You are, I take it, aware that following the January 2003 bushfires, the Australian Federal Police questioned all the residents that they could locate whose houses had been destroyed?

45

A. Yes, I'm aware of that.

Q. Some 411 persons were interviewed; you are

aware?

A Well, I am now that I have received your paper.

Q. And --

5 A. Which I received at the weekend, I might add.

Q. Were you present when Mr Prince gave evidence?

A No, I wasn't.

10 Q. You will see there, if you are familiar with that analysis, of those 411 people, some 286 people were at their residences on the day of the bushfires impacting on the Canberra suburbs, 18 January?

15 A I have not analysed that information at all, sir.

Q. You have analysed it to the extent to see that the analysis indicates that some 86% of those
20 persons who were at home on the day indicated that they knew what preparations to take and took some preparations?

A. No, I have not analysed it, Mr Whybrow. I have noted - I have read that's the figure. But I
25 have not analysed the reasons, the efficacy of the survey itself, the validity of the survey, the expertise of the person who carried out the survey, the information relied upon, et cetera, et cetera. I have not done any of that analysis.
30

Q. The only analysis you have done and put in your report is 19 hand-picked residents coming in and six of them saying they knew what to do?

A Don't know that they were hand-picked. As far
35 as I am concerned, there were only 19 residents who were presented to her Honour in relation to their experiences. Now, that's the sum total of the evidence that I had available to me.

40 Q. You now have available to you this analysis of the answers provided by those questionnaires undertaken by the Australian Federal Police. I understand you haven't gone through and tabulated the answers yourself.?
45

A I have read it very briefly.

Q. If the analysis indicates that some 86% of the

- persons who were at home on the day knew what preparations to take in response to the advancing bushfire threat, you would agree that that was a very good indication of the level of community awareness; would you not - if that is what the survey indicates?
- 5 A Not necessarily.
- Q. Not necessarily?
- 10 A Proof is in the pudding.
- Q. Yes, and what is the pudding here?
- A The outcome was that 500 houses were lost.
- 15 Q. In Australia's history, would you agree that when that many houses are lost, generally there is a significant number of fatalities?
- A. Sorry?
- 20 Q. You have said that because 500 houses burnt down, that is an indication that people didn't know what to do.?
- A Perhaps.
- 25 Q. "Perhaps"?
- A Perhaps is an indication, yes. As I said, in fairness, I've not looked at the information. I don't know what questions were asked so I am not able to judge the relevance of a connection
- 30 between that information and what occurred.
- Q. You don't know what occurred in Marble Hill, do you? You don't know who conducted those surveys, what questions were asked?
- 35 A That's correct.
- Q. Yet you are prepared to rely on that as an indication of effective community awareness campaigns?
- 40 A. Yes.
- Q. In this case, what we do have is a survey of people whose houses actually burnt down. You agree that that is not necessarily a
- 45 representative sample of all the residents of Canberra, is it?
- A The people whose houses burnt down is not

representative of all the people in Canberra, no,
it's not.

Q. You are aware that a number of people
5 successfully defended their houses, didn't they?
A. I believe so.

Q. Assume for a moment the accuracy of the
analysis. What it indicates is that 86% of the
10 people who were at home and whose houses were not
successfully saved indicate that they knew what
preparations to take.?
A That's what it says, yes.

Q. I suggest to you that that is the best
evidence we have as to the level of actual
community awareness and education as to what to do
in the face of an approaching bushfire.?
A It's the best evidence we have, based on
20 a range of questions that were asked, of which I
am not aware. As you would understand,
Mr Whybrow, the question will very much dictate
what the answers are. I don't know what questions
were asked.

25 MR WHYBROW: Your Honour, as I indicated, I have a
statement coming from the individual who has
undertaken the task of going through each of these
individually. That task has produced
30 a spreadsheet. Within that spreadsheet are
a number of worksheets. That first worksheet has
every single questionnaire outlined. There are
subspreadsheets which indicate those who indicated
"Yes" to being home and "No" to being home, and
35 "Yes" to knowing what preparations to take and
"No" to what preparations to take. I can print
out that spreadsheet now. I have emailed it to
everybody. I am in your Honour's hands whether
you prefer that to be done at the time the
40 statement is available.

THE CORONER: That might be best. If you hand
this out at the moment and put the statement in
when you receive it and it can be subject to any
45 objection that anybody might have. It can become
a whole exhibit.

MR WHYBROW: For the purpose of the inquest, there is one colour copy of the worksheets. I have black and white copies of the overall worksheet which has every single questionnaire tabulated.
5 As I indicated, each of the parties has been emailed the spreadsheet.

In that spreadsheet the names of the residents have not been reproduced for privacy issues.
10 Because the exact residence is identified, and the exact street, it is possible for this information to be reverse-engineered to locate who may have been the author. Each of the questionnaires identifies that. I just indicate that has been
15 taken out so that anybody looking at that document won't automatically be able to identify an individual.

Your Honour, the copy I handed out, all of the
20 coloured ones need to go to your Honour. The black and white one is a copy of the main spreadsheet outlining all 411 responses.

Q. You worked closely, Mr Roche, with the
25 Australian Federal Police at times during the investigation phase of this inquiry?

A. I worked with the AFP at times.

Q. Did you assist the AFP in putting together
30 this questionnaire?

A No, I did not.

Q. Did you provide any advice in relation to the
administering of it?

35 A No, I did not. I wasn't aware that it had been conducted, to be quite honest.

Q. Mr Roche, I take it you were in court last
40 year when a fire progress map prepared by Mr Cheney was tendered which indicated where the fire was at particular times?

A A whole range of maps. The maps that more specifically stick in my mind is the maps in Mr Cheney's report itself.

45 Q. I think it is exhibit 81, described as "Whole Fire Spread Map". Were you present, sir, when

Mr Cheney gave evidence?

A The majority of his evidence, I believe, so.

5 Q. You don't recall in the particular map I am describing at moment?

A. When I see it, I probably will.

Q. It had a number of different colours on it and areas which indicated "Under construction".

10 A. Yes, I do recall that, yes.

Q. Do you know whether or not Mr Cheney did any further work on finalising that fire spread map?

A No, I don't.

15

Q. Briefly, with respect to maps, you make some comment about the obvious need for fire services to have up-to-date maps?

A. Yes.

20

Q. In your opinion, how frequently should maps be updated?

A. That's a difficult question in terms of - whether you are talking about a regional area or a town area or a city area, where there is development going on all the time. For instance, on the perimeter of the ACT, I would expect there would be fairly regular updates in terms of, Melaways publish a street directory every 12

30

months, roughly because of the amount of changes that occur within that area that that map covers. It is very much dependent on the extent of changes in the key attributes of the map, as to whether it should be updated 12 months - I would think, you know, between three and four years is not unreasonable.

35

Q. You are aware that the CFA submission to the coroner in Linton recommended that updating of the mapping books should occur every five years on a cyclical program?

40

A Yes, I am.

Q. You wouldn't disagree with that now, would you?

45

A. Yes, I would.

Q. You would?

A Yes, I would. I think it is a bit too long and in fact the CFA has taken a decision that they are not going to update them at this stage. So, yes,
5 I wholly disagree with their timetable.

Q. At that time, as the chief officer, and this being the submission put forward by the association, is it fair to say at that time you
10 were content with a recommendation that there be a review of maps every five years?

A. It never came before me for endorsement. Mind you, we are talking - I think, again, we may be comparing apples with oranges - the complexity of
15 size of Victoria and the detail on maps in Victoria is a lot - significantly larger than the ACT. By comparison, to update the ACT's map, for instance, only involves, in effect, a 1:100,000 map sheet, whereas in Victoria there are dozens of
20 map sheets. So you can't really --

Q. Indeed, there are dozens of planning officers for that organisation?

A Not involved in mapping - there are none. The
25 updating of the maps is done by the volunteers.

Q. You indicated, in an answer to questions by Mr Bret Walker, that you hadn't done an exercise of resources, how they should have been employed
30 in relation to the evening of 8 January for the deployment of the McIntyre's Hut fire?

A That's right.

Q. You had done that exercise in relation to
35 deployment to Bendora?

A As I recall, yes. If you take me to the page, please.

Q. That's the answer you gave at page 81 of
40 today's transcript.?

A Take me to the page we --

Q. For the New South Wales fire, no.?

A That's right.
45

Q. You said you hadn't.?

A That's correct.

Q. You agree, do you not, that that fire was, on that evening, the fire that represented the most significant threat to the Australian Capital Territory - the McIntyre's Hut fire was by far the most dangerous fire requiring the greatest attention?

5 A. Sorry?

Q. You agree, do you not, that the McIntyre's Hut fire was by far the most dangerous fire requiring greatest attention?

10 A. Yes.

Q. Yet, and as it turned out, it was the fire that caused the most significant impact on Canberra on 18 January?

15 A. That's right.

Q. You did not conduct the resource deployment exercise in relation to that fire that you did in relation to the Bendora fire?

20 A. That's right.

Q. You had, I take it, when it came time for you to put your report together, formed a view that the Bendora fire was put outable, if it had been strenuously fought, on the night of 8 January?

25 A. Yes.

Q. And that view had been expressed amongst the investigation team from an early stage, had it not?

A. Certainly Mr Cheney had made that - expressed that view in his report. I don't know what you call "the investigation team". Mr Cheney was the only other one that I'm aware of that may have had a view.

Q. You had a focus, I suggest, on concentrating on what occurred at Bendora to the exclusion of what occurred at McIntyre's Hut?

40 A. I don't think my report indicates that at all.

Q. Sorry?

45 A. I don't think my report indicates that at all.

Q. In respect of doing the exercise of how many

resources were deployed to McIntyre's Hut on 8 January, you didn't do that?

A. Not for the McIntyre's, I didn't.

5 Q. Even though at that time it was the most dangerous fire?

A All I've said in relation to McIntyre's was, accepting that it was the most dangerous, that it was inadequately resourced. The strategies were
10 inadequate. I have already indicated that.

Q. You have already indicated, you had at an early stage formed a view that that fire could have been put out on 8 January - "that fire" being
15 Bendora?

A No. I never said that.

Q. A few moments ago, I believe - sorry, that was a view that you were aware of, of Mr Cheney's?

20 A I've never indicated, only Mr Cheney has, that the fire was able to be put out on the evening of the 8th.

Q. Sorry, when I suggested put-outable, you agreed that was your view if it had been fought --

25 A. Yes, it could have been contained.

Q. Could be contained is now your evidence?

30 A. Yes.

Q. And you had formed a strong view that there should have been overnight firefighting at that firebrand?

35 A That's correct.

Q. You had formed strong views about other matters during the course of preparing your report, had you not?

40 A I formed views, yes.

Q. In relation to the AFAC evacuation policy, you had a strong view about that?

A. I supported the policy, yes.

45 Q. You have already indicated to her Honour that you endeavoured to persuade people to gather a particular type of evidence to bring about

a particular consequence in the inquiry in relation to that evacuation policy.?

A I certainly looked for evidence that supported the introduction of that policy.

5

Q. But it was your view that it was an appropriate evacuation policy?

A. Yes.

10 Q. You were endeavouring to bring about a particular outcome in this inquiry in relation to findings about the appropriateness of that policy?

A. Yes.

15

Q. You were asked questions last year about fire spread within the suburbs and you were asked a question - there was another example where you endeavoured to make sure that the evidence brought before the inquiry supported a particular predetermined view of your own. I suggest you answered you make no apology for that.?

20

A Same issue.

25 Q. That was an issue on which you had a strongly held view about what the outcome should be?

A That particular issue, that's right.

Q. You, as you have agreed, endeavoured to persuade people to gather a particular type of evidence to bring about a particular consequence?

30

A. I asked people for that evidence.

Q. I suggest that is the approach you took. For that purpose, you asked that that type of evidence be gathered so that that outcome could be achieved in this inquiry.?

35

A No. That's not correct. What I asked was for the evidence that would support my strong view that it was an appropriate policy. And in putting that forward in my report, it would of course be my intention that I would hope the Coroner would look at that favourably.

40

45 Q. You were taking it upon yourself to decide what the outcome on that issue of this inquiry should be, were you not?

A No, I wasn't. It is not up to me to decide what the outcomes in this quest are, sir.

5 Q. I suggest you agreed with a proposition put by Mr Phillip Walker last year that you endeavoured to persuade people to gather a particular type of evidence to bring about a particular consequence in the inquiry and you said, "Absolutely."?

10 A That's right.

Q. I suggest that is what you were doing in relation to the fighting of Bendora on 8 January. You had a preconceived view as to what the outcome of this inquiry would be and endeavoured to persuade people to gather a particular type of evidence to bring about a particular consequence.

15 A. That's not correct.

Q. Your report does not identify within it the areas where you were attempting to bring about a particular consequence and areas where you were just reporting your findings, does it?

20 A They were my recommendations.

Q. But your report does not identify at all that you were endeavouring to bring about a particular consequence in relation to the AFAC policy, for example, does it?

25 A No, it doesn't. Or does it in relation to night-time firefighting.

Q. On the basis of your report, it would be extremely difficult for her Honour and those representing parties here to work out which of your opinions are strongly held beliefs where you have been endeavouring to bring about a particular consequence and ones which are not; you would agree it would be difficult from your report?

35 A It may be if my report was taken in isolation, yes.

40 MR WHYBROW: They are my questions, may it please the Court.

45 THE CORONER: You have finished your cross-examination?

MR WHYBROW: Yes, your Honour.

THE CORONER: I note the time. We won't continue
with any further cross-examination of Mr Roche
5 today. Does anyone have any issue before we rise?
If not, we will adjourn until 10 o'clock tomorrow
morning.

10 MATTER ADJOURNED AT 4.05PM UNTIL TUESDAY,
18 OCTOBER 2005

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