

IN THE CORONER'S COURT OF THE ACT

INQUEST AND INQUIRY INTO THE 2003

ACT BUSHFIRES

Statement by Richard McRae in Response to a s.55 Notice

0.1. Preliminary

0.1.1. Your Honour, by letter dated 11 October 2006 and served at my office during my absence on school holidays, indicated that it was your intention to make certain comments adverse to me in the report of the inquests/inquiry. There were twenty eight such comments. The notice required a response within fourteen days of its date.

0.1.2. I was advised that the notice was invalid, because it failed to comply with the time provisions of the Coroners Act 1997 (ACT), failed to give adequate time for a meaningful response, and failed to give an adequate context in findings of fact or evidence for the proposed comments. I instructed my counsel to put those matters to you. That occurred by way of letter dated 16 October 2006. Your Honour replied by letter dated 19 October

2006, rejecting each contention, but granting an extension of time within which to respond to the notice.

0.1.3. It remains my contention that many of the proposed comments are vague and so lacking in specificity as to deny me a proper opportunity to respond to them. The making of this statement represents my genuine attempt to respond fully to the notice. It does not represent a concession that the notice is valid.

0.2. The structure of this response.

0.2.1. The comments were not numbered. I have assigned to them numbers 1 through to 28, and I have also identified the comments by setting them out in this response, in order to assist in providing intelligible responses.

1. Proposed Comment: “Yet, despite this knowledge and awareness, [OF PREVAILING EXTREME FIRE DANGER CONDITIONS] the evidence before this inquiry has revealed that- senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003. As well, despite being on notice from the fires some twelve months previously, apart from the preparations made by Mr Bartlett for ACT Forests, neither the ESB nor any of the ACT land management agencies made any additional preparations for the fire season over and above their routine preparations. Even though the necessity for a rapid and aggressive response was recognised, the response which was made to all the ACT fires lacked the sense of urgency which the situation demanded.”

- 1.1. The first comment alleges that “senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation” from the time of ignition, despite

knowledge and awareness of prevailing extreme fire danger conditions.

- 1.2. I had a proper appreciation of the gravity of the potential fire situation facing the ACT prior to the ignition of the fires. The emails that I wrote to personnel in relevant positions throughout the preceding year demonstrate that appreciation. The emails demonstrate that I not only appreciated the heightened risk of forest fire, but that I continually updated my knowledge with respect to each of the relevant indicia and ensured that others knew. In the course of so doing, I was urging that action be taken commensurate with the risk.
- 1.3. The comment that the “ESB” did not make “any additional preparations...over and above their routine preparations” appears to be directed towards me, because it is in a s.55 notice directed to me. However, since your Honour has declined to provide further particulars, it is impossible to do more than to point to the detail in the emails that I sent.
- 1.4. The term “routine” has not been defined, and I was not asked about it by Counsel Assisting. Accordingly, I do not know the basis upon which your Honour asserts that that which was done was no more than routine. The fact is that, so far as my position is concerned, there is no such thing as “routine” in the sense of a set of actions regularly undertaken in the lead up to a fire season. It is a case of doing all that the conditions demand. In the case of the year preceding the 2002–2003 fire season, I kept abreast of the state of fuels in the ACT, and studied weather predictions around the globe, calculating the likely state of affairs as the fire season approached; and I continued to do so right up until 8 January 2003. I passed on that information in readily digestible form to those who needed it. It was not put to

me by Counsel Assisting that there was something that I could, and should, have done, but did not do. Your Honour, with respect, proposes to make a sweeping statement which you regard as an adverse comment, but you offer no detail of the preparation that you say I could, and should, have undertaken, but did not undertake.

1.5. In addition to the field and research/calculation work lying behind the emails, itself a substantial undertaking, I was involved in the following other aspects of pre-season preparation, that is, I:

1.5.1. developed a rigorous bushfire risk assessment process; this process was, and still is, the foundation of the ACT Government's Strategic Bushfire Management Plan;

1.5.2. ran an Incident Control System training program, in collaboration with Messrs Lucas-Smith, Graham and Ingram; this involved introductory courses and longer specialist courses; I developed and ran a 5-day course on ICS Planning Officer for local conditions, our small jurisdiction and our limited resources; this was the key to having enough people to run the SMT Planning Section at all;

1.5.3. collaborately developed and conducted exercises during pre-season workshops for the Bushfire Service, designed to test skills likely to be needed during the ensuing fire season;

1.5.4. acquired the capability to print large maps and posters in-house; this involved the purchase of an A0 plotter, using a Federal Government grant acquired with the assistance of Ms Keane and Mr Milne; as this was installed a

few weeks before the fires, I had not yet developed ways to use it effectively;

1.5.5. developed an inventory of all rural residences in the ACT; this was designed to allow effective emergency response and was based on standard rural addressing; I was assisted in doing this by Mr Jeff Dau from the ACT Fire Brigade; the inventory won a “Safer Communities Award” from Emergency Management Australia in 2001; this material was widely distributed on 17 January, and was seen in the WIN TV News footage from District Officer Thornthwaite’s vehicle;

1.5.6. developed links to facilitate access to data for use in mapping; this was done within the ACT Government to ensure access to the latest data covering urban development; it was also done with the NSW Government to facilitate making maps that seamlessly crossed the border; moreover, it was also done with the private sector for access to remote sensing data; as part of this, I was involved in developing and delivering a multi-award winning national awareness package called GeoInsight, made possible by a large Federal Government grant;

1.5.7. involved with Mr Lucas-Smith and Dr Gill in early testing of Sentinel, the Federal Government’s national web-based fire detection system that uses satellite data; and

1.5.8. developed improved fire behaviour prediction systems; the system, which won a National Safer Communities Award from Emergency Management Australia in 2002, was ultimately not used during the January 2003 fires, as I was fully committed doing other tasks.

1.6. Any fair or reasonable assessment of that which was done needs to take account of issues of scale. I also had other tasks to attend to. I had little or no assistance to carry out the tasks specific to my role where I have not indicated the involvement of others, and I was not even part of the Bushfire Service.

2. Proposed Comment: “The fact that the ESB adopted a system of incident management for the fires which was not in accordance with the recognised AIIMS ICS model did serve to cause confusion among incident controllers in the field and inhibited the flow of important information to incident controllers.”

2.1. It is fundamental, in responding to your Honour’s proposed comment, to understand AIIMS ICS. Our industry long ago recognised the need for a standard system for managing incidents, and created the Incident Control System (ICS), based on a US model.

2.2. ICS works well and is flexible. It is based on management by objective, and places key authority with an Incident Management Team (IMT), headed by an Incident Controller (IC).

2.3. The ICS standard explicitly defines the way in which command, control and coordination are handled.

2.4. It was also recognised by the ESB that we had potential problems with coordination, based on being within a small jurisdiction, and being poorly resourced.

2.5. Therefore, the only way to achieve our goals was to centralise certain key coordination functions, run by a Service Management Team (SMT) according to ICS principles. As an example, and relevant to me, it was necessary to have a single point of contact with the Bureau of Meteorology (BoM). The document in evidence, “The Role of the SMT”, clearly states this. The taped phone calls with the BoM

played in Court clearly show how this was being done. This step did not detract from the obligation of the IC to listen to the regular BoM fire weather forecasts received by radio in each ESB vehicle.

2.6. It was unavoidable that an SMT arrangement was required. All of the personnel who would be used to fill the IC role were made familiar with the reasons for an SMT, how an SMT would function, and how the SMT would link with the IMT. Opportunities were made available for issues to be raised and discussed. It is clear from material made available that there was a strong culture of debate on such issues – the Fire Control Officers Group, the Land Managers Fire Liasion Group and the Bush Fire Council often debated them. Submissions to the 2001 Fires Coronial Inquiry show this.

2.7. The proposed comment gives the impression of a system that was imposed by Curtin. It was quite the opposite. It was imposed on Curtin. It has been raised in the testimony of various witnesses that problems were caused by the SMT.

2.8. Ms Raphael, Mr Sayer and others in testimony showed that they did, indeed, understand the SMT arrangements. This indicates that the preparations made were, in principle, sufficient to inform field staff.

2.9. The evidence of Mr Bartlett and his colleague, Mr Cooper was that these arrangements were not in accord with the operating procedures under which they were expected to act. Mr Cooper felt that he was acting in the role of a Divisional Commander, as in the NSW Rural Fire Service. While both of them may have genuinely held those views at the time, their evidence shows that there was a variety of views among those concerned about how well matters were being managed. It is manifestly unfair and unreasonable to suggest, as, it appears, your Honour suggests, that four people

within the ESB were solely responsible for any problems perceived by some people to have existed.

2.10. There was evidence about planning done for urban impact by the ACT Fire Brigade through its IMT. The evidence was that this was done on the basis that the ACT Fire Brigade was the primary response agency for the event once the fires spotted or breached control lines, and fires had made runs towards the city or “some properties east of the mountains close to Canberra”. Rather than passing this on to the SMT, the ACT Fire Brigade assumed that the SMT would expect the ACT Fire Brigade to be dealing with this. Clearly, if there is to be criticism of personnel for failures to pass on information, it should not be seen as only the fault of SMT staff.

2.11. Of fundamental importance for present purposes is that I did not

devise, recommend nor decide upon the model of incident management to be used during the fire event. Whilst my role involved training other ESB staff in the AIIMS ICS management model, I did not personally design nor modify it. So, I am unable to comprehend how, if at all, your Honour sees a variation of the AIIMS ICS model as a matter for adverse comment upon my conduct.

3. Proposed Comment: “By late afternoon of 15 January 2003 senior personnel of the ESB were in receipt of information which either confirmed or was the basis upon which they formed certain views about the risks of the fires.”

3.1. Your Honour notifies me that this is intended to be a comment adverse to me, yet you have declined to identify the information of which you speak, or the person or persons to whom it was directed, or any other means of receipt, nor the views that it is asserted were either confirmed or provoked by its receipt. In those circumstances,

it is not possible to respond to the comment without guessing. The key aspect of the comment is the “views” formed or confirmed. Since you have declined to tell me what those views are alleged to be, I cannot confirm nor deny that I held them, and I should not have to speculate as to what your Honour has in mind.

3.2. It may be, for example, that your Honour has in mind the “view” that Counsel Assisting submitted that your Honour ought to find that I held as of the afternoon of 15 January, that is, that an impact upon the Canberra urban area was likely by 20 January: see par 1227 of Counsel Assisting’s submissions. If that is what your Honour has in mind, then such a conclusion would be wrong, or, at least, too simplistic to be warrant such a finding. The forward weather forecasting for the days following 15 January was such that the only reasonable conclusion was that the worst fire weather would most likely be experienced on 20 January. That did not mean for a moment that there was a likelihood of an impact on the urban area on 20 January. The fact is that the BOM forecasting was all there was to go on, so far as future fire weather was concerned, but everyone in the community knows that weather predictions may fail to eventuate. Nor, as at 15 January, was I in a position to predict the occurrence of any of the fires breaching containment and making runs over that period of time, much less the likely success of fire suppression activities.

3.3. I said in my statement that, after warning all present at the planning meeting, I referred to the possibility of fire runs to the south-east, but also to the difficulty in knowing when the forewarned severe fire weather would arrive. There is a reference to my statement and the evidence concerning these matters in paragraphs 622 and 623 of the submissions of Counsel Assisting. I did not say that I expected any particular impact on 20 January, and

if that had been put to me, I would have rejected it. I simply could not make any such prediction. I felt, as I said in cross-examination, that an impact of some kind could occur by 20 January, but that was not a prediction that I could offer to the suppression agencies as one they could act on. The fact was that the BoM prediction, which was the major ingredient in my analysis, even though the forecast might have been wrong, suggested that the worst conditions would occur on that day. I could not, by any rational analysis, predict, based merely upon that data, any place or kind of fire impact 2, 3, 4 or 5 days into the future. Nobody could have. For example, I had no way of assessing the kind of impact, whether it would be a discrete fire run towards a suburb or suburbs, much less where, or a fire front sufficiently proximate to cause impact from smoke, this depending upon the then prevailing wind conditions.

3.4. Thus, to suggest, as Counsel Assisting did in their submission as to findings, that I formed the view on 15 January that an impact upon the urban area was likely on 20 January is completely wrong. At the very least, it is too simplistic a view to be worthy of serious consideration. It presumes that I could take the weather forecast for five days, as at 15 January, and make some calculation of what would happen as to both weather and fire suppression efforts, and then predict some kind of urban impact. No expert has asserted to this inquiry that such an analysis is possible. Such a prediction would be mainly guesswork, and it would be wrong for someone in my position to make such a prediction which others might (wrongly) assume to have some scientific validity.

4. Proposed Comment: "By late afternoon of 15 January 2003 Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each recognised that the fires, including the McIntyre's Hut fire, presented a serious risk

to the Canberra urban area and rural settlements west of the urban area.”

4.1. As I endeavoured to say when cross-examined by Counsel Assisting, risk is assessed in emergency management in accordance with the applicable Australian Standard AS 4360. Assessment of risk is multifactorial, with factors pulling in opposite directions, but with a result achieved which may then, by reference to some convention or decision, be used to guide further action or decision-making.

4.2. Applying AS 4360 to the factors known as of late afternoon on 15 January, I did not arrive at a conclusion that there was a “serious risk to the Canberra urban area and rural settlements.” No emergency manager, basing an assessment upon the same factors, would have done so. No evidence was called from any expert, who applied at the time, or since, the information known at the time to the process required by AS 4360, and produced a result in conformity with that suggested by your Honour.

4.3. Such an assessment would necessarily produce different results for the Canberra urban area to the results for rural settlements. Also, different results would be achieved for different rural settlements.

4.4. Your Honour has not made clear what you mean by a “serious risk”. Do you mean a “very strong chance”, “more than likely”, “cannot be ruled out”, or some such characterization, in conjunction with “of a major impact”, or “of some property damage”, by reference to a time factor of something like “immediately”, “within a week”, with or without the addition of any contingency such as “without abatement of high temperatures”, or “with a wind change” , and so forth?

4.5. It is not being evasive to insist, as I did under cross-examination, that the issue of risk be assessed upon a commonly understood basis. That is, after all, what a standard is.

5. Proposed Comment: “The question must be asked. How could Mr McRae claim to know what the community was being told [ABOUT WARNINGS] if he had no input, did not see the final product and, seriously, did not monitor what was being put out? All of this activity was a part of his role and his responsibility.”

5.1. Contrary to your Honour’s proposed comment, I did not testify that I knew what the community was being told about warnings. I did not have an input into the material that was being issued, whether by way of press release, press statement or press conference. Nor was I monitoring that material. However, as I did say in evidence, I was assuming, and I assert that I was entitled to assume, that material was being issued that, in so far as it was relevant, was commensurate with advice that I had given at the planning meetings with respect to my areas of responsibility.

5.2. Contrary also to the proposed comment, “(a)ll of this activity”, apparently meaning community announcements, was not part of my responsibility. I said in evidence that the media section was formally part of the planning unit in ICS, but that during the fire event, it was being managed directly by Mr Castle under the ACT Disaster Plan. That was a true statement. As Counsel Assisting stated in their submissions, that is supported by the other evidence concerning the management of the unit: see par 1217. There is no evidence to the contrary, and it is simply wrong, with respect, for your Honour to assert that it was my responsibility.

5.3. I also told your Honour, correctly, that I had, and have, no training in formulating community announcements, whether they be warnings, or useful information in terms of preparations, or however they be characterised. I assumed, correctly I think, that those charged with those responsibilities were obliged to gather information from a range of sources, and decide what aspects should be disseminated, and how that was best to be achieved. For my part, I had certain responsibilities to provide advice as to fire weather and anticipated fire behaviour. I did that to the best of my ability using the resources that were supplied, by way of ESB staffing and resource allocation, together with the additional personnel and resources that I gathered during the early part of the fire event. I continue in the belief that it was proper for me to assume that those charged with the responsibility for dissemination of community information would take that which I had to say during the planning meetings and use it, together with other information, in formulating the material that was issued publicly in one form or another.

6. Proposed Comment: "It must be said that, based on his actions, Mr McRae displayed extremely poor judgment. Whilst he recognised that it was most important to forewarn the Fire Brigade and Ambulance Service to prepare for fire damage to houses and injuries to people in the suburbs, he did not consider that it was the right time also to activate his final "trigger" to warn the community of the impending danger."

6.1. The actions that I carried out, including with regard to the Fire Brigade and the Ambulance Service, were in accord with my duties, as I was instructed and trained to carry them out. I said this in my testimony. My actions also reflected the way that the ESB, and, in fact, emergency management in the ACT, operated.

6.2. There are many facets to emergency management, and there are various tasks carried out by the various agencies, including public servants of the ACT Government and members of the Australian Federal Police. It is both sound judgment and necessary for those agencies, including the Fire Brigade and the Ambulance Service, to be prepared first, as risks may escalate.

6.3. There were in place at the time a number of Acts that detailed how emergency management was to be implemented in the Territory. Indeed, that legislation clearly spelt-out that certain key tasks were the responsibility of “lead combat agencies”, as they are known.

6.4. It was rational and professional for a group of people, of whom I was but one, who were focused on a demanding task, and who had largely been working prolonged shifts for ten days, to assist professional emergency management agencies to carry out the tasks which would be expected of those agencies by the community and government in the event of an emergency.

6.5. I do not feel that I failed in any way to convey the gravity of the

situation facing the ACT. I had been warning of this for twelve months, and continued to assess the situation based upon the tools available to me, right up to the last moment. As part of my response to the complexity of the event, involving multiple fires and bad fire weather, I recognized my own limitations and sought and obtained independent analysts, who I gave free reign to use their own tools and learning to provide independent analysis. Up until 18 January, those persons were conducting their own analyses. There was no evidence called to the effect that I was failing to recognize the gravity of the situation, or that my analyses, compared to theirs, were overly optimistic. The

situation was that, until 18 January, all those charged with attempting to predict fire behaviour were coming up with similar views. However, on that day, as was recognized by all who worked in planning, the fires stopped behaving the way that they were expected to, and confounded the efforts of every planner. For this, I deserve no blame.

6.6. Rather, your Honour should, before blaming me for what occurred on 18 January, undertake a serious analysis of the scientific knowledge about the extraordinary events of that day. The science that has been developed in recent years sheds new light on those events, and confirms the belief I held, from late that day and following, that the fire behaviour on that day was unprecedented and unpredictable. The analysis of up-to-date scientific knowledge is, I say, a better approach than the overly simplistic, blame-attributing approach of concluding that the fires were simply large, but nonetheless quite manageable, if only certain individuals at the ESB, and only those four, had not failed their community. I have already addressed the warning issue generally in my response to earlier proposed comments.

7. Proposed Comment: “The media unit within the Planning Section did not operate effectively and no procedures existed for collection and dissemination of information which was relevant and important to senior personnel of the ESB and the media.”

7.1. Your Honour appears to regard this as a comment adverse to me. You should not think it so since, as noted above, I was not managing the media unit, nor otherwise involved with or in it. As noted above, it was being managed directly by Mr Castle under the ACT Disaster Plan.

7.2. As was stated in testimony, the media section was administratively attached to the planning unit that I headed for

most days of concern. It was not attached to the IMTs running the fires. Mr Castle, however, elected to run the media section personally, feeling that the ACT Disaster Plan, as it then was, was an effective way to manage media affairs. A representative of that media unit, primarily Ms Harvey, accompanied Mr Castle to all of the Planning Meetings and actively participated in discussion. Minutes of the Planning Meetings show this.

8. Proposed Comment: “[IN THE CONTEXT OF EVENTS ON 17 JANUARY 2003] The submission by Counsel, that there were many people at the planning meeting and no one expressed concern about warning the urban area residents, cannot be an answer to why those persons who were the professionals charged with the responsibility to do so failed to issue warnings. The senior personnel of the ESB were the people who had the accumulated knowledge of the situation with the fires since their ignition on 8 January and were in the best position to appreciate the ever growing risk they posed. The criticism of Mr McRae by Counsel Assisting [IN THEIR SUBMISSIONS, A COPY OF WHICH WAS PROVIDED TO MR McRAE' S Counsel] is warranted. He was the person responsible for providing the information predicting fire behaviour. The fact that he enlisted the help of professionals to assist him is commendable but then he did not accept the information which was provided because, it would appear, it did not accord with his own views. He had made many and early dire predictions of what the fire season would hold and still he failed to heed his own predictions. He was telling those at the planning meetings that Monday 20 January was a likely day to be impacted by fire but, as at Friday night he still had not activated his "trigger" as he described it to cause warnings to be issued because he had not identified the appropriate subset of the community and did not want to alert the entire community. He never reached the position of activating his final "trigger" because events overran him. The "trigger"

he did activate to warn the rural lessees was very late in the day, or very late at night to be precise, and this too was very late in view of the information he had before Friday evening 17 January. Mr McRae's philosophy regarding warnings appears to be: it is better to wait and tell no one about a potential serious risk which could have serious consequences to life and property than to tell some, or even all, the people and be wrong. This cannot be an acceptable approach for a person involved in an emergency management position charged with responsibility for recognising and acting to alert people to dangerous situations. By the evening on 17 January, if not well before, Mr McRae should have activated his final "trigger". The sub-set of the population had been identified as had the serious potential risk. Even the timing had been predicted. The media unit was located in his Section. He agreed that the people in that unit, and others, were waiting on him to tell them that it was time. He should have adopted a far more proactive role in keeping with his responsibilities rather than presuming, but not checking or monitoring, and not knowing whether the messages he thought he was providing were being understood and actioned."

8.1. The comment does not represent correctly what I stated in evidence about the role that I was carrying out.

8.2. I was a member of a team. This team comprised not just the SMT, but all of the representatives who attended the planning meetings. These meetings were where that broader team was coordinated. Your Honour acknowledges this in proposed comment 14.

8.3. My role was to provide decision-making support that accurately reflected analyses of forecast fire weather and of fire behaviour predictions. It is clear that there was unresolved confusion on this in the questions asked of me by Counsel Assisting. This confusion was

addressed in a submission made by my Counsel earlier in these proceedings, and its apparent continuance in your Honour's mind is a cause of serious concern with respect to these comments. The "trigger" that I spoke of in my evidence was not concerned with giving generalized advice about the need to prepare by eliminating flammable materials in backyards and so forth. No-one on the western side of Canberra needed a trigger from me in January 2003 to do so. I was concerned with the point at which, upon an analysis of the evidence of weather and fire behaviour and suppression or containment, one could identify a subset of the community which needed to take more advanced decisions – whether to stay or go etc. I was not capable of making that identification, nor did I see the need for it up to and including 17 January. On 18 January, in the early part of the day, there was no dramatic change. Your Honour will recall Mr Cheney's evidence to that effect, and further that, despite starting his post-event analysis at 10.00am, the fires only started to accelerate after 11.00am.

8.4. Your Honour should recall that Mr Taylor only came to reassess the fire spread prediction that he had joined in with Mr Gellie and Mr Lhuede on the afternoon of 17 January, after speaking with Mr Bartlett after the latter overflowed the fires on the morning of 18 January. Mr Taylor, recognizing the significance of his new analysis, fed it straight to the operational arm.

8.5. I was not there to make decisions. This was not in the tasking given to me by Mr Lucas-Smith, nor was it contained in the material that described the role of the SMT. My inputs to decision-making were not the only ones, nor were they necessarily the most significant.

8.6. The decision-makers were those controlling the resources of the operational agencies and of the various support services. This is why they attended the various planning meetings.

8.7. In my testimony, I described my own decision-making processes in relation to the “triggers”, and how to best address current levels of assessed risk. These decisions were only related to carrying out my assigned task, not to coordinating any Territory resources or assets. This distinction has been repeatedly misunderstood throughout the inquiry, and apparently your Honour, with respect, continues to misunderstand it.

8.8. Another perspective can be gained through examining the ACT Emergency Plan. It contains “Annex P – Evacuation Process”. This contains 6 dot points, but starts with:

“1) Decision to evacuate – The Territory Controller and Management Executive will determine whether to persons will be evacuated and the scale of evacuation, in consultation with the Field Controller(s) and TEOC Liaison Officers.

2) Warning – the Territory Controller will determine, and authorise the dissemination of, the most appropriate method of warning for the evacuation. This is likely to involve the SEWS dissemination system.”

It is obvious from this that emergency management had been taking a “reactive” approach in its planning for evacuation, and that it was the responsibility of the most senior officers to decide on evacuation. The Emergency Plan also states that “(t)he ACT Chief Police Officer is the nominated Territory Controller” (TC). It turned out that when an emergency was declared, the Chief Fire Control Officer was made the TC. However, in the absence of that specific decision, it was reasonable to expect that when emergency conditions did eventuate, the Chief Police Officer would be in charge

of an evacuation and warning plan. With a steadily escalating fire situation, with the warnings that I issued in the days leading up to 18 January, and with AFP officers attending the planning meetings, it may appear to your Honour as if I was the only “responsible officer” for this purpose. I was not. I played a role, conducting or facilitating the conducting of analyses and passing those on to decision-makers in a variety of fields. A lot of others had access to the same information, and others were the actual decision-makers. It must be stated that I am not, and never was, a senior officer of the ACT Government, or of the ESB.

8.9. The middle part of this proposed comment is, in fact, a fair overview of events. The remainder of it, however, and with respect, seems to be the product of your Honour’s misunderstanding of my role, my seniority and the way that the fire suppression effort was being managed.

8.10. The fact is that things were done the right way. Ultimately, however, the fires became far worse than had been envisaged, with serious consequences.

8.11. A simplistic way to explain these consequences, and not have to bother with a careful analysis of the evidence, is to start from an assumption that someone must have made gross mistakes that they should not have been made. This appears to have been the submission of Counsel Assisting, and, it would appear, now also the view of your Honour. That is a view which is not reasonably open.

8.12. There is another way to explain those consequences. This is that the fires did, in fact, do something unforeseeable. During the enquiry scientists across the globe have been studying the events, and have concluded that extraordinary events did in fact occur here on 18 January.

8.13. This scientific view is one that eliminates hindsight from its analysis. It tells us that no-one could have then foreseen the terrible tragedy that unfolded. That is not to say nobody made any mistakes. I would have done many things differently, and better, with the benefit of hindsight. But there were no gross mistakes that should not have been made by people if they were attending to their tasks diligently, the contrary of which appears to have been the operating assumption during this inquiry. It would be regrettable indeed if your Honour has been lead to believe merely that if it is hot, dry and windy, then the fire consequences can readily be predicted.

8.14. This has a strong bearing on the events of 17 January and relevance to the proposed comment. The only basis for adverse comment is a view arrived at with the benefit of hindsight. This view says, basically, that we should have known what the future held in store for us, and recognizing this, our choices at the time should have been different.

8.15. In order to respond fully to this proposed comment, I need to do more than discuss principles, there are a very large number of factual errors in the comment:

8.15.1. I did not simply assume that I would have the answers to whatever nature threw up after the lightning strikes. That is why I brought in a team of technical specialists and gave them free reign to conduct analyses and offer independent views.

8.15.2. Similarly, I did not make my own predictions. Indeed, at the afternoon planning meeting on 17 January, I presented as the planning unit's view the fire spread prediction formulated by Messrs Gellie, Lhuede and Taylor. That prediction, by those three independent people, based as it was on a worst-case analysis, and without factoring in any suppression effort outcome, did not

involve an urban impact on the 18 January, before amelioration of fire behaviour as part of the diurnal cycle. It did, however, involve rural impacts, and, accordingly, those responsible set about engaging with those rural citizens at risk.

8.15.3. My philosophy was nothing like the parody which, with respect, your Honour appears to make of it. It was more like: 1) Understand the situation; (2) Predict its evolution; (3) Assess the ensuing risks; (4) Pass that assessment on to the appropriate decision-makers, either directly or at a planning meeting.

8.15.4. It was simply not my task to alert the community, and such a conclusion is not reasonably open on the evidence.

8.15.5. The “sub-set of the population” who might suffer direct impact on 18 January had not been adequately identified, and using then available tools, it could not have been.

8.15.6. It is quite wrong and unfair for your Honour to suggest that I rejected the views of any other fire behaviour analyst. I did not. I put forward the joint Gellie/Lhuede/Taylor fires pread prediction as the agreed view of the planning unit. That is the evidence. That is what happened. After the event, indeed during the hearing, I was asked about Mr Taylor’s prediction made on 18 January itself. I was not privy to that view on 18 January. As noted above, Mr Taylor made his further analysis after Mr Bartlett’s report of his direct observations from the air. Mr Taylor gave his new analysis directly to the operations people. Assessed in hindsight, I said that I would not have agreed with it, because I did not think it was supported by the then known data. I said that, knowing that it came closest, in hindsight, to the actual outcome. Of course, my view in hindsight was merely academic, as your Honour should well know. I did not hear Mr Taylor’s prediction on the morning of 18 January. I did not reject

it. I was not even asked precisely what I might have done or said if, contrary to that which actually occurred, I had been given that prediction on the morning of 18 January.

9. Proposed Comment: “By the evening of 17 January 2003 the senior personnel of the ESB (Messrs Castle, Lucas-Smith, McRae and Graham) were in possession of information which confirmed what they had already believed namely that the fires were a serious risk to the urban edge of Canberra and that the impact was likely within the following twenty-four hours.”

9.1. This proposed comment is, with respect, written in imprecise language. It is difficult to respond to claims that gain credibility only through their generality.

9.2. The error in understanding the structure persists. Your Honour refers to “senior personnel of ESB”. But, during the emergency, ESB effectively ceased to exist. The emergency management structure that was created comprised the SMT, the IMTs in the field, the representatives of the operational agencies, and a range of other players.

9.3. No-one denies that there was a risk from fires to some parts of the urban edge. What was not known with clarity was where impacts might occur, when they might occur, which fire or fires might be responsible for them, and what the nature of those impacts might be.

9.4. With respect, your Honour misuses the concept of risk, which has a clear and well-known meaning in emergency management. There is no contradiction involved in knowing that there is a “potential serious risk”, and not knowing or being sure of its nature. As I said earlier, risk is defined as a combination of likelihood and

consequences, and these can come together in different ways to produce equivalent risk levels.

9.5. When your Honour uses phrases like “confirmed what they already believed” and “the impact was likely”, your Honour is not using the concepts with which I was obliged to deal, nor in their proper context. What I accepted as “likely” to be the case, as in might, upon the basis of some assumptions, occur, was the subject of analysis by Mr Gellie, Mr Lhuede and Mr Taylor. That analysis was developed by three professionals, applying their independent thought processes and models to the then known evidence and predicted data. I did not influence their thinking, and I accepted and acted on the outcome they predicted. That outcome was based upon the assumption that all suppression efforts on 18 January would be futile, even though, at the time, all reasonable firefighters believed they would have some success, an assumption which, on past experience, was not unreasonable. Even so, the fact remains that the prediction based upon the assumption of an absence of successful suppression did not involve an urban impact on 18 January.

10.Proposed Comment: “The same senior personnel of the ESB did not consider that it was necessary to issue warnings to those people in the urban area who were in the direct path of the fires and consequently, none were issued.”

10.1. Once again, with respect, it is difficult to respond to imprecise language.

10.2. The technical analyses of which I was in charge on 17 January did not indicate that the urban area was directly in the path of any fires. Some potential fire runs overnight, and the next day, clearly had the potential to approach the urban edge, but direct impacts

were more likely on subsequent days. This was based on a rational method of forecasting fire behaviour.

10.3. These analyses ultimately became the basis for development of warnings and other risk approaches.

10.4. Instead of what your Honour proposes to say in the comment, the truth is that the SMT assessed the situation and developed risk approaches that reflected the most likely circumstances under which urban areas could be impacted upon. These approaches involved operational preparedness, strategic actions in rural areas, and ensuring that information passed to the community reflected monitoring of likely threats to the city.

10.5. It is also necessary to address your Honour's use of the word "warning". As I said in my testimony, these have, at least, two forms: the first is a general indication of the need to prepare, and the second is an indication of a specific need to act.

10.6. The former was appropriate, given the assessments at the time, and without the benefit of hindsight, and, to my knowledge, were being correctly issued. The latter could not have been issued until the future evolution of the event became clearer.

10.7. What I did was correct within the scope of my tasking. Others may have been in a position to take the clear assessments given at the planning meetings, and use the powers of their agencies to alert the entire community. They did not. With respect, reflecting a failure to consider this aspect, your Honour's use of the phrase "senior personnel of ESB" is both indiscriminating and also far too narrow.

11. Proposed Comment: "No contact was made and no warnings were given on 17 January 2003 to the people living in the forestry settlements of Stromlo, Uriarra and Pierces Creek."

11.1. This is incorrect. The staff of CanberraConnect and field fire crews were contacting rural residents on the night of 17 January. The forestry settlements were on the lists.

11.2. The McLeod Report, in its section on events on the 17 and 18 January, states:

"The ACT Fire Brigade focused on preparedness. Among its specific activities were: (1) staff recall and standby; (2) familiarisation with the urban—rural interface; (3) vehicle and radio readiness; (4) additional communication centre and command staffing; (5) additional mapping; (6) **warnings to rural lessees, forest settlements, ActewAGL, and institutions on the urban fringe.**" [My emphasis]

11.3. This is reflected in the evidence of Mr Bennett, who mentioned liaison with ACT Housing on this matter.

11.4. Since your Honour places this proposed comment in a notice addressed to me, I must take it that it is regarded as a comment adverse to me personally. The fact is that the fire spread prediction formulated by Messrs Gellie, Lhuede and Taylor and presented to the planning meeting by me was undoubtedly a cause for direct warnings to the rural residents. I believe that message was, in fact, conveyed. It was not, however, my job, or that of my section, to carry out the work of delivering the warning to the rural residents.

12. Proposed Comment: "By the evening of 17 January 2003 the ESB had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge."

12.1. I have to make some assumptions about what your Honour has in mind if I am to respond to this proposed comment, since you

have declined to tell me by whom, or when, it was predicted that the fires would enter the plantation and advance toward the urban edge.

12.2. Your Honour implies that the ESB should have had plans and strategies. The reference to “the ESB”, however, has no relevant meaning. It is clear from the evidence that the field IMTs were responsible for strategies, and that incident action plans were in the ambit of field IMTs as well. It is also clear that the ACT Fire Brigade had established an IMT to develop its own plans and strategies. The ACT Fire Brigade was part of the ESB. The same was true of the ACT Ambulance Service. One might reasonably have expected the Australian Federal Police to have done the same, although they were not part of the ESB, and this seem to escape entirely any adverse comment on your Honour’s part.

12.3. As for the role of the SMT, the objectives for the next days were presented at the evening planning meeting, as reported in the minutes of that meeting.

12.4. Your Honour’s proposed comment appears to be focused entirely on the Uriarra outbreak of the McIntyres Hut Fire in NSW. If that is correct, then, with respect, your Honour’s comment is irretrievably tainted with hindsight, and ignores the effort which went into the fires for which the ACT suppression forces were responsible. Your Honour overlooks the rural part of our community, and the effort which was underway there – for example, the backburning around the township of Tharwa that night.

13. Proposed Comment: “Mr McRae failed to heed the evidence presented to him about the predicted fire spread and as a consequence did not activate his so-called “trigger” to cause warnings to be issued to the residents of urban Canberra.”

13.1. The generality of this comment makes it another one to which it is difficult for me to respond. There are a number of aspects of it which I have addressed with regard to other, clearer proposed comments.

13.2. I cannot deduce from it what “the evidence” referred to is, and I am left at a significant disadvantage in otherwise responding to it.

13.3. I have explained above, and I did so in my evidence, and my counsel drew it to your Honour’s attention in submissions, that the “trigger” was to be activated when the requisite knowledge was to hand. I will not repeat it here, at least in the absence of having any real understanding of the evidence, if any, underlying the proposed comment.

14. Proposed Comment: “It is clear from the evidence that the senior personnel at ESB, being Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham knew - and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended the planning meetings knew - that a very real risk existed [BEFORE 18 JANUARY 2003].”

14.1. Your Honour’s proposed comment appears to be an expansion of your proposed comment 9.

14.2. However, here, your Honour adds to the four oft repeated names “and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended he planning meeting”.

14.3. Your Honour often refers, in proposed comments, to “Messrs Castle, Lucas-Smith, Graham and McRae” as a group who should be regarded separated from the others here referred to.

14.4. Your Honour clearly opts not to name these employees – despite the material in the transcript that shows that they were as much involved in decision-making as the named four.

14.5. Present at planning meetings were people such as:

14.5.1. Fire Brigade officers Bennett, Prince, Newham, Cartwright, Collins and others

14.5.2. Ambulance Service officers Dutton, Foot and others

14.5.3. Australian Federal Police officers Murray, Newton, Kirby, Byrnes and others

14.5.4. Land Management officers, Bartlett, Neil Cooper and others

14.5.5. Senior ACT Government officers, Tomkin, Keady and others

14.6. The collective ability of these people to assess a situation and make important decisions was significant, yet they do not seem to rate a mention in your Honour's search for blame attribution targets. It is clear from this that, rather than attempting to blame a small number of individuals only, there is a real need for findings that show how to improve the systems with which we all worked.

14.7. As has been explained elsewhere, the assessed risk, as analysed by Messrs Gellie, Lhuede and Taylor, was specific, as were the actions taken as a result of that assessment. However, the timing, location and nature of fire impacts on the urban edge remained very uncertain.

14.8. Maps, prepared by staff working at Curtin, and presented in evidence, clearly demonstrate the uncertainty in the risk outlook. There was a focus on the Bendora and Stockyard Fires as the likely

sources of runs into the lowlands. The maps show planning on how to contain these and mitigate the threats that arose from them.

14.9. The operational plan handed to Mr Bartlett on the morning of 18 January was based on a sectorising of the rural areas under threat, with options for expansion from west of the Murrumbidgee River to its east if the fire or fires faced expanded through the day.

14.10. All of the planning, briefings and actions show a consistent approach to responding to the assessed risk. The proposed comment is not reasonable open on the evidence.

15. Proposed Comment: “If any of these people were to claim that they had doubts before 17 January about the realistic potential of the fires reaching the suburbs - and it is difficult to envisage how they could legitimately claim this - then there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting on 17 January. They all knew the fires would burn into Canberra. They may not have been exactly sure of the precise place or the precise time or even envisaged the precise nature of the fire. But they all knew that impact was inevitable.”

15.1. Your Honour’s proposed comment that “they”, (which I take to include myself), “knew the fires would burn into Canberra” is a dramatic phrase, but not one that, in fact, represented my thinking, and certainly not my thinking in common with the unidentified others. There is no evidence to support the making of such a comment.

15.2. I was of the view that in a worst case scenario, a fire could impact upon the urban edge, and that impact could encompass several rows of houses. That is what I said at the time, and I

repeated it in my evidence. However, I did not say that it was inevitable, and nor did I think that it was inevitable.

15.3. Had I thought that it was inevitable, I would have said so. Having spent a year issuing warnings as to the state of fuels, the developing weather, the risk of a major fire and so forth, it is an insulting suggestion to read that, according to this comment, I had suddenly decided, contrary to all that, that an unrealistic, overly optimistic approach should be taken, and that people should be kept in the dark.

15.4. The fact is that I accepted the prediction formulated by Messrs Gellie, Taylor and Lhuede. That prediction was developed on a worst-case basis, yet did not involve an urban impact on 18 January. The fact is that I did not predict an urban impact on 18 January. I foresaw a risk of that during the period of bad fire weather, but I never thought and never said that it was inevitable. I did not decide to keep anybody in the dark.

15.5. Whether I should have predicted, on 17 January, the impact on 18 January may be a matter for debate, but let that debate be conducted on a proper basis. Any such debate requires a genuine analysis of the state of scientific learning at that time, and not mere hindsight-based revision of history. I say that, using the available tools and knowledge, the events of 18 January were unpredictable. I say that the developments in scientific knowledge since 18 January, including Mills' "dry slot" phenomena support my position. It is far wiser to look at the developing science, and learn lessons for the future, rather than ignore it, so that a small number of individuals can be blamed for a bad outcome.

15.6. If, upon a proper assessment of the state of scientific knowledge to date, that is, at the end of 2006, it is proper to conclude that the events of the afternoon of 18 January were

predictable upon the science then known, and upon the basis of the facts then known, then, and only then, would it be possible to hold me responsible for failing to predict that which I should have predicted. And, of course, that same comment could then equally well be applied to Messrs Gellie, Lhuede and Taylor. Of course, no such criticism can, in fact, be properly sheeted home to those three. They brought independent views and approaches to bear upon the problem presented to them on the afternoon of 17 January, and nobody has, nor could, suggest that they took a wrong approach.

16. Proposed Comment: “Those people who said in their evidence that they still hoped the fires could be stopped were living with false hope, not reality, choosing to consciously ignore the information and the evidence presented to them. It is totally inexplicable why there was no reaction to Mr Taylor's revised prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm. Mr Graham saw the message but appears to have simply ignored it.”

16.1. This comment, in so far as I must assume that it is directed at me personally, is entirely misconceived. It is also insulting. I did not “consciously ignore” information presented to me in the course of my official duties. Nor do I know any person in any capacity during the fire event who did “consciously ignore” evidence of a risk to the property and health of members of their community.

16.2. As I have said on a number of occasions above, the revised prediction formulated by Mr Taylor on 18 January was not provided to me. The evidence is unequivocal. Mr Taylor delivered it directly to operations. One would expect that the operational people would then use it in formulating operational responses, and that those charged with community engagement would likewise use it in their decision-making processes. However, with respect, inconvenient as it may be for the manner in which your Honour has erroneously

conceived the decision-making structure in those two areas to have been, neither operations nor community engagement were my areas of responsibility.

16.3. Your Honour refers to the “false hope, not reality” of stopping the fires before they reached the urban edge, yet a number of very well qualified witnesses referred to an ability to achieve control of fires in grassland.

16.4. For example, Mr Neil Cooper expressed some confidence in controlling the fires once they left the forested area and entered the open grazing area. Paddocks were quite bare due to the drought and to grazing pressure. Also, Julie Crawford, another extremely experienced firefighter from NSW, was of a similar view. Neither Mr Cooper nor Ms Crawford were living in “false hope”. They were simply expressing views based upon a wealth of directly relevant bushfire fighting experience. That the fires proved uncontrollable, and behaved in extraordinary ways, despite the scarcity of fuel on the afternoon of 18 January, simply means that the fires behaved in extraordinary ways beyond the imagining of even the most experienced firefighters. It is unfair and unreasonable to use the benefit of hindsight to damn those views as “false hopes”.

16.5. Mr Tony Bartlett was tasked with, among other things, managing the deployment of a large number of fire appliances within the rural area.

16.6. These officers were not tasked with “stopping” the fires, as your Honour apparently infers.

16.7. Your Honour has said here, and elsewhere in the notice, that I was in receipt of a revised fire spread prediction that should have immediately caused a rethink, and a decision that warning to the public were required.

16.8. Mr Taylor's evidence was that he and Mr Gellie prepared a revised spread estimate after a briefing from Mr Bartlett, who had flown the fires. They felt it was fairly urgent, and passed it to Operations in the SMT. However, as I was busy elsewhere the message was signed off by Mr Wilcox, who was described as "a senior [NSW] RFS Planning Officer". So, at this critical moment, not only was I not involved, but those who were are apparently not the subject of any criticism by your Honour. As with many of your Honour's proposed comments, I am, with respect, left to wonder whether your Honour brings to the task at hand the spirit of impartiality and proportion that one might reasonably expect of your Honour. Here, I seek not to deflect blame, but merely to demonstrate the error involved in seeking to place blame upon a small number of individuals within the ESB.

16.9. Finally, it seems extraordinary that your Honour places a direct and substantial criticism of Mr Graham within the notice addressed to me, as if this is a matter to which I should somehow respond.

17. Proposed Comment: "Up until the issue of the first SEWS at 2.40 pm [ON 18 JANUARY 2003] the people in the suburbs of Canberra were not given any information which would serve as a warning to them that they and their property were at risk that day from the coming fire."

17.1. Your Honour's proposed comment is presumably intended to be a criticism of me. If so, I have already responded to this kind of material by reference to matters concerned with structure and duties. I have also reiterated my view of the assessed risks. I have explained how subsequent and recent scientific studies have shown how extraordinary the events of 18 January were. While it is very

unfortunate that events escalated faster than we could cope with, the science strongly suggests that it was also unavoidable.

17.2. In evidence, Mr Simon Katz said that he was the Sector Leader between Kambah Pool and the Cotter Road area. He described how he and his crews were burnt over unexpectedly not long before the fire raced to the urban edge.

17.3. At 14:00, Mr Cheney's staff were taking video footage of the fire developing on Mt MacDonald. They felt it prudent to drive back down to Duffy for their own safety, arriving not long before the fires did.

17.4. It is clear from a wide range of sources that things were then escalating at a very rapid rate. Getting intelligence from the field was becoming extremely difficult. That is not because those in the field were lackadaisical about keeping Curtin informed of developments, but simply because matters were developing at a speed that defeated the best will of all to keep up. Mr Gellie gave evidence of the perspective from Curtin in the face of large volumes of conflicting material, and the impacts which this had upon planning capacity.

17.5. I decided to task two of my staff to drive towards Weston Creek and assess the situation – i.e. to clarify what was happening and how quickly. When they reported back it was too late. I made that decision on the basis that the information coming in from the field was insufficient to assess the situation. This was in large part due to the congested radio system, often mentioned by witnesses as a significant flaw in our capabilities..

17.6. Up to 14:00, not even those in the operational sectors had recognized that things were significantly worse than would be expected. Without the benefit of hindsight, it is difficult to see how

we could have altered the assessment of risks that afternoon in time to issue warnings to those ultimately impacted on by the large number of fires that occurred.

18. Proposed Comment: “The management of information within the ESB was extremely poor. It would appear that there was no system to co-ordinate the flow of information nor effective collection and dissemination of vital information. No one appeared to know what, if anything, was being said and ESB personnel were not sure who was responsible. Mr Lucas-Smith thought information was being put out through a number of press releases about what people should do to prepare when in fact the first such release was midday on 18 January. Mr McRae said he was not familiar with the content of media releases because it was not his responsibility (but in fact - despite his assertion to the contrary - his position was responsible for public information dissemination). He thought that work was being done behind the scenes by the media people. As well, Mr McRae thought that information about a general threat had been publicised by Saturday 18 January. If Mr Castle was ultimately responsible for authorising the publication of information, then he did not ensure that it was disseminated in a timely fashion in keeping with the urgency of the situation. The midday press release was issued hours after the evacuation planning and 9.30 am planning meetings. The SEWS notice was signed by him at 2.05 pm yet was not disseminated till about thirty minutes later. As well, the information contained in some of the press releases was out-of-date or wrong and generally the content was inadequate and misleading. One glaring mistake was the release which underestimated the sizes of the McIntyre's Hut and Stockyard fires.”

18.1. It is readily accepted that there were problems with the way that information was handled at Curtin. This is due to the poor

facilities provided to the ESB to handle what are, in reality, some of the most difficult and demanding tasks in the ACT Government.

18.2. However, it is difficult to respond to this comment adequately when the comment is written in such general terms.

18.3. In the first few sentences, your Honour makes some sweeping claims that are, even superficially, contradicted by the evidence. As an example, the planning meetings were held to coordinate activities, and records were kept from 14 January. While not perfect in any way, records were kept.

18.4. Your Honour appears to assume that the SMT was, in fact, an IMT. While an IMT has a well defined need for record keeping under the national standard for incident management, the SMT's role is defined by the operating procedure titled "The SMT Role in ICS". It provides that:

18.3.1. The SMT established policy, gives direction and allocates authority and resources to the Incident Controller

18.3.2. The following are only available through the SMT:

Additonal resources

Specialised resources

Fire weather forecasts

Detection system [fire towers]

Transceiver channel allocations...

18.4. It has not been demonstrated in evidence that the information management in place was insufficient for these explicit roles.

18.5. Your Honour correctly refers to my evidence where I stated that I did not manage the media unit, but then asserts that my evidence was wrong. Your Honour has no basis at all for the

assertion that, contrary to my sworn evidence, I was responsible for public information dissemination. The evidence was that Mr Castle ran the unit, but that it was attached to my unit for purely administrative purposes. I gave the example of the need to provide for a meal or something of that sort as the only level of responsibility exercised by the planning unit for the media unit during the course of the fire event. That was so because of a decision by my superiors as to how the media unit was to be run during the event. It was not for me to second-guess that decision. Mr Castle, in evidence, described how the media unit worked closely with him. Ms Harvey said in evidence that she had not received any directions from me. The evidence is overwhelming that I did not manage, nor involve myself in, the media unit. The contrary is also inconsistent with, and contradictory of, the last two sentences of proposed comment 20.

18.6. If I had made a mistake in the course of making some decision that I actually made as to, for example, the tasking of the media unit, such as by assigning someone else to be responsible for it, then that would be one thing; it is quite another entirely to be blamed for something that was not my function or responsibility, and clearly within the exclusive control of others.

18.7. The evidence was that the media unit sourced information from across the SMT, and elsewhere, including from me as required. This was established by attendance of a representative at the planning meetings, and at times information provided being a major agenda item of interest to the media unit.

18.8. If problems occurred with communication within the SMT, then I was not aware of them at the time.

19. Proposed Comment: “[ON 18 JANUARY 2003]

Mr Castle appeared to be out of touch with the situation as it was

developing. He provided inadequate information in his media interviews and the press releases did not contain important facts which could have served to raise the level of awareness and alert within the community about the worsening conditions of the fires. Mr Castle had, and should have taken, the opportunity immediately after the 9.30 am Planning Meeting, in consultation with Mr McRae, to issue a press release containing all the information which had been presented and discussed at the meeting about the predicted fire spread. He said nothing about the prediction at the midday press conference nor was that information contained in the 1.00 pm media update release. Even after the declaration of the State of Emergency, at that late hour, by his comments, Mr Castle still appeared to be denying the dangerous situation which was then facing the community.”

19.1. Your Honour’s proposed comment follows on from the previous one, contains similar content, and, with respect, embodies similar misconceptions.

19.2. The proposed comment appears in a notice directed to me, but contains adverse comment about Mr Castle for failing to take certain steps, not me.

19.3. At the risk of labouring the point, I was not, and the evidence is not, that I was responsible for media releases. Those who were had the opportunity to make full use of such information as was available in relation to fire spread and predictions of fire behaviour. There were a number of potential sources. The relevant persons who could provide that information attended at planning meetings and made such information as they had available to all those present. Those in charge deemed, for good reason it seemed to me, that this was an appropriate forum for the dissemination of such information. It had the plain advantage that it gathered together all

those involved in decision-making. It allowed for (minuted) oral presentations, reducing the paperwork that many officers in different areas would otherwise be required to read; it allowed discussion; and it allowed those who would make decisions to do so then and there, or to break into smaller groups and seek additional opinion, and so forth.

19.4. I was but one source of information in relation to fire spread prediction. Taking the example of the afternoon of 17 January, I presented to all the prediction formulated by Messrs Gellie, Lhuede and Taylor. All those in other positions were able to take that prediction, together with news from the fire grounds, and make decisions as to engagement with rural residents, tasking for the following day, and so forth.

19.5. On the morning of 18 January, I was involved in providing briefings to a number of people, and attending upon the evacuation committee. Mr Taylor did precisely what he should have done. He took on board what Mr Bartlett had to say after his aerial view of the fires, and no doubt other information disseminated at the planning meeting, and re-formulated his prediction and fed it straight to the operations people. It was open to those actually responsible for community engagement, who did not include myself, to take that information and formulate some message for the community. Nobody had to await my say-so to do so. Even at a practical level, there was no need for anybody with that responsibility to await my becoming available, free of other briefing duties, to speak about it. Mr Taylor had gathered the evidence; he had a keen eye for it, since he took part in the development of the 17 January prediction, and had formulated the 18 January prediction. Mr Taylor, and indeed other planners, were perfectly well qualified to provide such technical advice, if any, as might have been requested.

20. Proposed Comment: "On the evidence, it is difficult to reconcile the important role which should have been played by Mr McRae in his capacity as Planning Officer, and what he actually did, particularly in the few days leading up to 18 January. Several submissions were made by his Counsel on his behalf, which, in short, said, that it was not Mr McRae's responsibility to issue warnings, but he did provide the necessary information which enabled others to do so, even though he believed that it was not necessary because he was missing information which was precise as to time and exact location of impact. All of this is rather contradictory and difficult to understand and reconcile because, in the mix also, is Mr McRae's belief that the ACT Fire Brigade and Ambulance Service should be informed and fully prepared for the impact upon the urban areas yet he also believed that it was not yet time to tell the residents. He did not appear to voice his disagreement at the 9.30 am planning meeting on Saturday 18 January with the fire spread predictions yet, in his evidence before the inquiry said, both that he believed the fire would reach Narrabundah Hill at 8.00 pm on Saturday and he also believed that the fire would most likely evolve and impact on or by the end of the following Monday and therefore, there was no need to activate 'the trigger' and cause warnings to be issued on Saturday. Mr McRae enlisted the assistance of experts Messrs Gellie, Lhuede and Taylor to work with him and then he effectively ignored their predictions. Mr McRae was not told of Mr Taylor's revised prediction of impact on the suburbs at 3.00 pm instead of 6.00 pm but his evidence was that even if he had he would not have agreed with it. He believed that general warnings had been issued to the community and thought that these were adequate. The problem is that there were no general warnings issued by the ESB and this should have been something of which Mr McRae was aware. Mr McRae accepted that his failure to activate 'the trigger' on Saturday

18 January was the reason why the midday press release did not contain information about the predicted impact upon the suburbs of Weston Creek to Greenway. However, Mr Lucas-Smith and Mr Castle also heard the prediction and could have and should have disseminated that information immediately by holding a press conference - not waiting till midday - and putting out a media release. Both accepted that it was their responsibility to keep the community informed.”

20.1. The ACT Emergency Plan dated September 2000 provided the list of “key agencies” for “Fire – Rural”: ACT Bushfire Service, ACT Fire Brigade, Australian Federal Police, Parks & Conservation Service, ACT Forests, ACT Emergency Service, Bureau of Meteorology, and NSW services. It also lists agencies for “Fire – Urban”: ACT Fire Brigade, Australian Federal Police, ACT Ambulance Service, ACT Emergency Service, ACT Bushfire Service, Department of Urban Services, Telstra and ACTEW Corporation.

20.2. Under this Plan, it was appropriate that the ACT Fire Brigade prepare for the prospect of becoming the lead agency when and if the fires entered the urban area. The ACT Fire Brigade established an IMT to coordinate the preparedness. Other agencies are alerted to the risks and undertook appropriate actions.

20.3. It misrepresents my view, and was not my testimony, that I had to await evidence as to the “precise” time, and “exact” location of an anticipated impact, before indicating to those up the chain of command that a warning of the fact of an approaching fire should be given. However, I took the view, genuinely believing it to be the proper approach, that I could not tell my superiors to issue such a warning, unless and until the evidence informed me that it was likely that fire would impact

upon residents, whether they be urban or rural. So far as the urban edge was concerned, it did not need to be a single suburb, but could be, as was ultimately the case, a number of suburbs, with others being added to the list as an impact there could reasonably be foreseen.

20.4. I did not indicate that a warning should be given, because I did not see the need for it. In large measure, that was because the fire behaviour on 18 January was unprecedented and unpredictable. In your Honour's comments, despite to overwhelming body of evidence, including from experienced and respected firefighters on the ground, as to fire behaviour that day, there seems to be a reticence or reluctance on your part to accept the proposition that fire behaviour on 18 January was unpredictable. Such a view would, if held, also be contrary to the current state of scientific knowledge concerning the events of that day.

20.5. To some extent, with the benefit of hindsight, perhaps it can be concluded that there is now a need, demonstrated by the unpredictable fire behaviour on 18 January, for emergency managers to re-think the subject of warnings, and perhaps to err to a considerable extent upon the side of earlier, and therefore necessarily less specific, warnings. Remembering that we are not here dealing with general preparatory warnings, there is a tension between warning too early, and being too general, and therefore less helpful, that is to say, giving a message less likely to be acted upon, on the one hand, and warning too late and allowing inadequate time for action, on the other. These involve policy matters properly and appropriately discussed within government and in emergency management forums. I am not saying that they are no business of the Coroner, but they should not be

addressed on the evidence of one event only, and in the absence of dispassionate and truly expert opinion. No such experts gave evidence in this inquiry.

20.6. I would, of course, be more than prepared to accept the view reached by a process that received and properly considered all of the evidence as to past incidents, and from qualified experts, on the question whether a warning should have issued on the afternoon of 17 January. As I have noted above in earlier responses, however, I was not involved in the formulation of Mr Taylor's prediction on 18 January, or in the response to it.

20.7. I reiterate that I did not ignore the predictions of those who I brought into the unit to provide independent views. I regard such a comment as insulting and offensive. Why would I go to the trouble of seeking outsiders who could offer different views if I could not care less what they said? I put the jointly formulated prediction to the planning meeting as having the endorsement of the planning unit. That prediction did not assert that any of the fires would, in fact, necessarily reach Narrabundah Hill by 8.00pm the following day. Even on the assumption, inherent in the prediction, that one or more might, in the genuine application of the principles that I believed were applicable, that did not give me proper cause to "trigger" a directed warning to those in the suburbs further to the south west of Narrabundah Hill. If, as I have said above, the verdict of experts in the field would now be that such circumstances did require a targeted warning, then so be it. I would accept that view. But your Honour has not been provided with any credible evidence from any properly qualified experts to that effect in this inquiry.

20.8. I have also dealt above with the notion that I disagreed with Mr Taylor's revised opinion. To restate the position in case it may

still be misunderstood. I did not know of Mr Taylor's revised opinion on the morning of 18.1.03. Assessed in retrospect, and knowing that it came closest to predicting what, in fact, came to pass, I expressed the view that I could not agree with it. That was simply because, assessed on the basis of the variables then known, it did not seem to me, and based upon the models in use then, to be the correct outcome. I am unable to comprehend why your Honour could fairly or reasonably criticize me for having an ex-post facto disagreement with a professional colleague about a professional matter. The record remains that, whatever my technical disagreement with the Taylor revised prediction, it came closest, viewed in hindsight, to the actual outcome.

20.9. It appears that, with respect, your Honour has taken somewhat out of context my evidence that I expected that those whose job it was to decide to issue a targeted warning were awaiting my indication of the need for same. In a formal sense, it is correct. I was the officer in charge of the planning unit. Ordinarily, predictions produced by the planning unit would be formally issued by me. That was so on the afternoon of 17 January, even though the prediction was the work of the Gellie/Lhuede/Taylor triumvirate. On 18 January, in the ordinary course, had a planner devised a revised prediction, it would come to me, and I would pass it on.

20.10. What happened, in fact, was that Mr Taylor revised his prediction, realized that it needed to go to those who might act upon it, and quite appropriately "cut out the middle man", ie myself, as I was engaged on other duties. In those circumstances nobody could possibly have thought that Mr Taylor's prediction ought to be ignored until I had re-surfaced from other tasks and

given it my imprimatur. Nobody said so, and nobody acted on that basis.

21. Proposed Comment: “Whatever his own calculations were telling him, he did not see the need to warn at all on Saturday 18 January. Further, in Mr McRae's evidence he said that ‘today’ he would rely on the same method he used in January 2003 (which failed him and, ultimately, the whole community).”

21.1. At no point in evidence did I testify that I did my own calculations. I held no view as to the future spread of the fires beyond what my team of technical experts told me.

21.2. What I did was to gather a team of technical experts, have them conduct independent predictive analyses, produce a consensus report, and present that to the evening planning meeting to ensure that all actions were coordinated and based on sound decision-making support.

21.3. Your Honour refers to my evidence that I would adopt the same approach today. That is what I honestly thought when I gave my evidence, which was in about April 2004. At that time, there was no better model in use that could be substituted for the approach that was taken by Messrs Gellie, Lhuede and Taylor. Even at the close of evidence in this inquiry, the Project Vesta experiments had not yielded a publication that Mr Cheney was prepared to submit to a refereed journal. That is not, in this regard, to criticize Mr Cheney. On the contrary, it demonstrates that fire behaviour prediction is not a science that is straightforward. The stakes are far too high to simply skip to some untried method in the most trying of circumstances. Moreover, Messrs Gellie, Lhuede and Taylor did not adopt a simplistic approach in any case. They did, as they said in evidence, use models, add in factors to take account of their own

actual knowledge of the variables, and then discuss and agree upon a worst-case scenario. When I gave evidence in 2004, that was still the best approach. Since then, there has been a wealth of further study and learning. Some of this has come from places as remote as the United States and the United Kingdom, which only serves to demonstrate the impact that the events of 18 January have had upon the relevant scientific community worldwide. I would now have additional knowledge about channeling effects and the dry slot phenomena that I would put to use. I have, through my counsel, supplied a good deal of this new learning to your Honour and urged you to take it into account, because this is, after all, an inquiry, and your report should take account of relevant scientific material which can be of benefit of the community in the future.

21.4. Your Honour may be relying upon evidence received which challenged the approach that I, as well as members of the planning team, took. Mr Cheney, in one of his reports to you, described a methodology based on setting the fire danger index to 100 (or maybe 80) at 10:00, and leaving it constant to predict the maximum spread potential of a fire. He said that if the break-out near the Uriarra property was used as a starting point, then a predicted arrival time at Weston Creek, close to that observed, would be obtained. This also relied on applying the Project Vesta corrections.

21.5. If so, some issues must be raised with this, especially if hindsight is to be avoided. Most notably, this technique is contrary to all industry training material.

21.6. Also, there was considerable fluctuations in the forecast weather received from BoM. These were not investigated by the inquiry. But examining the “error bars” on weather inputs to fire

behaviour prediction is an area publicly championed and applied by Mr Cheney.

21.7. While the range of forecast weather values was enough to yield considerable uncertainty in predictions, the difference between forecast and observed was far larger. This is discussed in the scientific paper written by Dr Graham Mills, on the dry upper air slots, submitted by my Counsel and appended to a written submissions on my behalf.

21.8. If uncertainties about the starting point of a fire run are added, then it must be accepted that there has to be professional judgement involved in doing this work. This is what was done at the time. It is then difficult to find fault fairly or reasonably without benefit of hindsight.

21.9. The other factor not investigated in depth during the inquiry was the goal of predictions. If the tasking is to make a reasonable prediction of the fire's evolution, then we did that. As I stated in my testimony, if too much "worst case" thinking is applied, then opportunities for field operations to successfully mitigate the fire impacts may be lost. If I had been tasked to get my team to find the worst possible scenario, then not only would it have been easier to do that, but it would have been quite a different scenario. A true worst case scenario, without the team adding in their own knowledge and "reality checks", as they say they did, would have involved a larger number of fire runs and long-range spotting, and it would not have reflected what happened on the day.

21.10. I was tasked to make a realistic prediction of the situation that would occur on 18 January.

21.11. It is my belief that what did occur was, in fact, not forecast in any manner; nor could it have been forecast, at that time, in any manner.

22. Proposed Comment: “The senior personnel of the ESB recognised the worst case scenario but did not prepare for it. They hoped for the best. They were influenced in their thinking and their planning and by their experiences with the fires in December 2001 and the success they had in controlling those fires. This was a mistake because it led to the perception, certainly on the parts of Messrs Lucas-Smith, Castle, McRae and Graham, that the fires could be controlled once they reached the grasslands on the urban fringe. This perception existed despite the views expressed publicly by Messrs Lucas-Smith and McRae, at least, that conditions in January 2003 were significantly worse than those of December 2001, and despite the expert opinions previously expressed by Commissioner Koperberg and CSIRO expert Mr Cheney - to say nothing of the dire opinions expressed by Mr McRae in his earlier emails which are on the public record. “

22.1. The claim that we recognised the worst case is contradicted by both the evidence of firefighters on the ground, and also recent scientific evidence. The published scientific findings show that the worst case was rather worse than anything suggested during the inquiry. No-one recognised it.

22.2. The report of the Coroner who handled the 2001 fires and his findings were made available to this inquiry. In it, there is a lot of material relating to suppression efforts undertaken in the field by IMTs. Perhaps the best instance of this is a report titled “Stromlo Plantation Fire – December 2001 – A Report Prepared by Tony Bartlett”. In it, 14 key recommendations are made.

22.3. When the ESB conducted a thorough series of debriefs in the months after the fires, scores of recommendations for

improvements were made. Mr Brian Parry was engaged as a consultant to report on some key issues. For my own part, I conducted an investigation into the cause and origin of the fires, and my findings were a serious concern.

22.4. In those fires, few structures were threatened, and none lost. However significant silvicultural and agricultural losses did occur.

22.5. These facts do not suggest that a feeling of overconfidence emerged from suppression efforts in respect of those fires.

22.6. A rigorous process of internal review to enable continual improvement has long been the policy of the ACT Bushfire Service.

22.7. I am surprised that your Honour has referred to the testimony of Mr Koperberg as expert opinion. Who is an expert on what has always been an issue for me during this inquiry, and many of the areas that I have needed to raise in response to this notice have had little, or no, coverage with evidence from qualified experts during the inquiry.

22.8. Looking at this comment from my standpoint, it suggests that I knew the worst, that I told people that I knew the worst, and had done so for some time; therefore, I am criticized for hoping or perceiving that things were not so bad. Such claims are difficult to respond to, because hopes and perceptions were not part of my testimony.

23. Proposed Comment: "I have been left with the overall impression that the ESB, at the senior levels, lacked competence and professionalism, was disorganised and was functioning in a chaotic uncoordinated fashion particularly in the most critical period of the fires. The impression I have is that the left hand did not know what the right hand was doing and neither hand was actually doing very

much to deal with the crisis which was growing day by day and hour by hour.”

23.1. There is no way that I can respond to this proposed comment. It contains no reference to facts or evidence, if any, upon which it may be based, and is gratuitously abusive and offensive. It is a comment that is not reasonably open.

24. Proposed Comment: “By the early morning of 18 January and before, senior personnel of the ESB being Messrs Castle, Lucas-Smith, McRae and Graham all recognised the serious potential for fires to impact upon the urban edge at some time during the afternoon or evening of Saturday 18 January and failed to take action within their respective areas of responsibility to ensure public warnings were widely broadcast and disseminated to the community.”

24.1. Again, your Honour repeats assertions made earlier about the four people, recognition of potential for impact, areas of responsibility and failure to take action. Similar comments have been addressed earlier, and my responses to those claims do not bear repeating here.

24.2. To summarise, I stood by the prediction made by the Gellie, Lhuede and Taylor team on 17 January. It was the subject of discussion among the decision-makers, and decisions were made accordingly. I was not engaged in making fire spread predictions on the morning of 18 January. Mr Taylor made a prediction and gave it to the appropriate people for further consideration and action.

25. Proposed Comment: “These same senior ESB personnel lulled themselves into a false sense of security because they had managed to prevent the December 2001 fires from destroying any urban structures; and that as a result of this self-delusion, they

deliberately withheld information from the community in the belief that they would - as they had done in 2001- stop the fires in the grasslands; and they did not wish to alarm the community.”

25.1. Your Honour’s proposed comment raises some serious concerns for me.

It is suggested that I, as one of “these same senior [sic] ESB employees” had a sense of security arising from the outcomes of the 2001 fires. Further, this sense of security is said to be false, forming the basis of a criticism.

25.2. The reports to the Coroner who handled the 2001 fires and his findings were made available to this Inquiry, and I have discussed them already under comment 22. The aftermath of that process does not justify the comment.

25.3. Your Honour goes on to suggest a perception that the fires could be controlled once they entered “the grasslands on the urban fringe” and that this perception arose as a result of the 2001 fires.

25.4. It is hardly surprising that most firefighters anticipate that they can extinguish fires. If grasslands are fully eaten out and drought stricken, there may be even more reason to entertain a real expectation of success. As forecast fire danger increases, this expectation may decrease, but bare paddocks would also persist. However, this has nothing to do with the 2001 fires, in which grassland with much greater fuel loads challenged fire crews.

25.5. Another consideration arises from your Honour’s apparent and, with respect, erroneous belief that the SMT was, in fact, the IMT. Stopping fires is a strategic and tactical process, using those terms in their well-defined sense under the IMS. It is clearly stated in the “role of the SMT” document that strategies are the

responsibility of the IC in the SMT, and that tactics are the responsibility of the Operations Officer in the IMT.

25.6. If there was actually an expectation of controlling fires, not necessarily “stopping” the fires, then its place was in the IMT. My role in the SMT was to monitor the situation that resulted from the combination of fire behaviour and the actions of fire crews. It is in evidence that I tasked my staff to monitor reports to allow a continuing assessment of the situation. This was never claimed to be a monitoring of the success of fire crews – it was simply a process of monitoring: (1) Where are the fires? (2) What is under threat?

25.7. The final part of this proposed comment asserts a deliberate decision to withhold information and a desire “not...to alarm the community”. The comment is offensive, suggesting as it does some desire to keep information from the community to their detriment, without, I might add, the slightest suggestion of any motive. This comment has no supporting context and is not supported by the evidence. The context is presumably making risk assessments. That, in turn, is based on knowledge of where the fires were, how they were spreading, and where and when they might impact on the urban part of our community.

25.8. Nevertheless, warnings about the fires – from CanberraConnect, from fire crews, and from individuals such as Mr Jeffery - had already been received by the rural part of our community without causing alarm.

26. Proposed Comment: “There was no official warning to the community by the ESB until about 2.40 pm on 18 January 2003 and that warning was far too late to enable people to take effective precautions for their safety and to enable them to make informed decisions to stay with their homes or leave in the face of oncoming

fire; and this late notification caused people to be placed in increased danger in their homes and in vehicles attempting to flee in the face of the fire which arrived approximately 20 to 30 minutes later.”

26.1. It is the fact that the warning issued at 14:40 was too late to assist those facing the initial onslaught of the firestorms. It is also the fact that the severity of events unfolding escalated rapidly after 14:00. I refer your Honour to the material set out in relation to earlier proposed comments as to the dramatic unpredictable escalation in the fire behaviour.

26.2. Your Honour has no demonstrable bases for the claims concerning this having lead to “people in increased danger in their homes” or “vehicles attempting to flee in the face of the fire”. Historically, in catastrophic bushfires, people are commonly killed whilst driving away from the fire. This did not happen, and was not suggested by the evidence.

26.3. Additionally, your Honour does not address anyone in particular in this proposed comment, so, once again, I am impeded in my ability to effectively respond to it.

27. Proposed Comment: “The system employed by Mr McRae, ie, his “trigger” system, which resulted in him waiting for a precise subset of circumstances to be identified before taking any action to warn a specific subset of the community was seriously flawed and a dangerous way to operate in an emergency management environment.”

27.1. This proposed comment is a summation of a number of previous comments, and my previous replies apply to it as well. Without repeating that detail, I add the following:

27.2. I was tasked to do specific actions as part of the SMT. I was continually providing updates on the situation and the ensuing

risks. These updates were received by most of the Territory's senior emergency managers. The way that I assessed the risks was a reflection of the then current ACT Emergency Plan. The events for 18 January unfolded in a manner that was unforeseeable. The only ways in which my approach has been, or can be, criticized is by means of a heavy reliance on hindsight. While concerns and alternate views were raised at the time, none of these anticipated the true nature of the events that came to pass.

27.3. If I erred because I followed the ACT Emergency Plan, then I cannot fairly or reasonably be criticized for that – rather, your Honour should make recommendations for improving this vital instrument of public policy.

28. Proposed Comment: “Messrs Castle, Lucas-Smith, McRae and Graham were completely out of their depth at the time of the conflagration and the days leading up to it.”

28.1. With respect, without factual findings in detail or reference to evidence, this proposed comment is little more than a gratuitous insult and is personally offensive. Moreover, it seems that in your Honour's mind, only we four were “out of our depth”.

28.2. If this is not simply an exercise in finding someone to blame for the damage wrought by the fires, one must endeavour to find some meaning in the phrase used by your Honour to characterise our positions. The New Shorter Oxford Dictionary defines the phrase “out of one's depth” to mean “in water too deep to stand in” or, figuratively, “beyond one's capacities or understanding.”

28.3. By reference to that meaning, I must concede that on 18 January 2003, I was out of my depth in the sense that the nature

of the fire behaviour on that day was beyond that which I had personally experienced, and beyond the scope of any of the predictive capacities of any model then available. With respect, your Honour's impartiality is called into question when you single me, and the other three, out for this criticism, since all operational officers and all managers in agencies supporting the suppression services were "out of their depth" in the face of the unprecedented fire behaviour on 18 January.

28.4. I have already adverted to the circumstances that coincided on the 18 January to confound all models, defy any predictive capacity, overwhelm suppression efforts and render all agencies and all agents "out of their depth"; matters which your Honour seems unwilling to acknowledge, preferring to blame four individuals only for the disastrous outcome.

28.5. Your Honour's comment appears to ignore a considerable body of evidence and testimony that goes to demonstrating the professional actions of myself and my colleagues – not just those in the SMT – under working conditions not even approached in the Territory in recent decades.

28.6. Beyond saying that, and the detailed responses to the previous 27 proposed comments, I am unable to further address the phrase "completely out of their depth" without knowing what, if anything, your Honour has in mind. If we were out of our depth, it has never been demonstrated that there was any capacity for better to be done for the Territory. For us, our actions are on record. For others, only their words are.

Dated: 22 November 2006

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RICK McRAE