

STATEMENT IN RESPONSE TO SECTION 55 NOTICES

by
MIKE CASTLE

Preliminary

I would like to take this opportunity to once again express my sincere sadness at the tragic loss of four lives and the devastating impact of the property loss that occurred as a result of the 2003 fires. The personnel at ESB worked tirelessly throughout the fire emergency using their expertise and professionalism in attempting to protect the community. This emergency ran some 26 days from 8 January 2003 to 2 February 2003, even though Your Honour has limited your inquiries to the period ending 18 January 2003.

The nature, ferocity, speed of spread and extent of the impact of the firestorm on the 18th of January 2003 was not predicted by anyone and as such the significant efforts of the ESB emergency agencies and NSWRFs were overwhelmed.

In my view that all of the persons involved in some way in responding to the 2003 emergency, be they volunteer bushfire fighters, departmental bushfire fighters, fire brigade members, ambulance officers, emergency service volunteers, AFP officers, ESB staff, Canberra Connect, media liaison officers, many volunteers from community organisations and some as purely spontaneous volunteers, recovery workers and may other departmental staff – all worked tirelessly, some for the full 26 days straight, over very long hours, in extremely dangerous, difficult and harrowing conditions for the benefit of the Canberra community – both urban and rural.

With the benefit of hindsight there is always an opportunity to analyse decisions and ponder what may have occurred had other decisions had been taken. Undoubtedly, mistakes and errors of judgement were made by people, myself included, in the course of fighting these fires or managing and supporting the operational firefighting effort. Your Honour has been urged on many occasions (and I now do so again) not to be blinded by the wisdom of hindsight and to assess what was done, based on what was known at the time, not on what ultimately occurred.

I believe, that all personnel involved in every facet of the 2003 emergency made decisions at the time in good faith based on their professional assessment of the information that was available to them at the time. For Your Honour to suggest, as it would appear that you are doing in these comments, that I and others were not trying our best, or had deliberately acted in a way that would endanger persons or property is untrue, unwarranted and unfair.

I entered this Inquiry assuming it would be focused on identifying where mistakes may have been made so that lessons might be learnt for the future and findings and

recommendations made that may help us respond better to any future fire or other emergency.

It has become clear to me however from the way Counsel Assisting and the Court has approached its task, finding people to blame has been the primary focus of these proceedings rather than trying to identify mistakes that may have been made in order to prevent them from happening again.

Many of the comments that Your Honour proposes at this stage to make against me are made in the face of overwhelming evidence to the contrary. I am repeatedly singled out for criticism and censure for failing to have predicted what ultimately occurred on 18 January 2003 or for believing that we would be able to deal with the fire threat if it approached the city when such views were also held by many other persons, highly experienced in fire behaviour and bushfire fighting.

In particular, the ESB and its officers are seemingly to be held accountable by Your Honour for doing no better and no worse than the NSW authorities in preventing the fires entering the suburbs or predicting that it was going to happen. Your Honour needs to keep firmly in your mind that the McIntyre's Hut fire was the fire that ultimately burnt into Canberra on the afternoon of 18 January 2003. That fire was at all times being managed by the NSW authorities, who, when it commenced its fateful run after 1pm on 18 January 2003 courageously continued their efforts to halt its progress.

It is true that ESB did not fully appreciate the risk that this fire presented to urban Canberra until it was too late – but the evidence clearly establishes – neither did the NSW authorities.

Your Honour's comments that I and others knew what was to happen and deliberately took no action to warn residents of Canberra has no basis in evidence and simply confirms my views that Your Honour has been too focused on finding people to blame at the expense of finding out what happened and how it could be done better next time.

In the course of the comments directed to me Your Honour seemingly pays insufficient regard to the circumstances we were facing at any particular time. Rather than make generalised statements about our efforts, focused in large part on the fact that these were unsuccessful and who is to blame, I urge Your Honour to rigorously examine what was done at every stage so as to be able to offer constructive analysis of our efforts such that Your Honour's findings may be of benefit to people placed in similar circumstances in the future.

In making the adverse comments you propose against me, I urge Your Honour to pay particular regard to the following matters which in my view will help Your Honour to properly understand the circumstances I and others faced during the course of the fire emergency and in particular on 17-18 January 2003:

1. The worst case prediction I was made aware of on the evening of 17th January 2003 as to what might occur the following day did not have any fire reaching the urban edge let alone burning into the suburbs.
2. This prediction hypothetically assumed a completely unattended fire which was not to be the case. If the fire burnt into the eaten out drought ravaged grasslands between the Murrumbidgee River and the urban area, almost every witness attested that they held a view that the fires could be stopped or slowed. As it transpired the fire behaviour up until about 1pm was significantly under the worst case predictions that had been made the previous evening.
3. From 1pm on Saturday 18 January 2003 the fire behaviour was extraordinary and nobody predicted it. The McIntyre's Hut fire travelled as far in the two hours from 1-3pm as it had in the preceding 10 days.
4. The Standard Emergency Warning Signal was signed by me at a time when the McIntyre's Hut fire was over 8 km from the interface. In 2001, fires were within 2km of houses when the SEWS was issued. I (and Your Honour should note, neither did anybody else), never envisaged that the fires would travel that last 8km with such extraordinary speed and ferocity.
5. No one (including very experienced firefighters like Tony Bartlett, Neil Cooper and Your Honour's fire behaviour expert Phil Cheney) predicted the nature or scale of the firestorm that eventuated on the afternoon of 18 January 2003. It is clear that none of these persons anticipated fire entering the suburbs that afternoon. .
6. The ESB was established as an administrative element within the Department of Justice and Community Safety. As the Executive Director of ESB I did not have an operational role and relied on information from others as to the risk the fires presented at any particular time.
7. On the night of the 17 January 2003 NSW RFS actually released ACT resources from the McIntyre's Hut fire. Nobody from NSW RFS then indicated any belief that that fire was going to break its containment line and burn into urban Canberra within the next 24 hours (T4167).
8. NSW RFS lost over \$1 million worth of supplies and equipment when its base camp located adjacent to the Stromlo Settlement on the edge of Duffy was destroyed. Not even the NSW RFS, who had responsibility for the McIntyre's Hut fire, believed the fire posed the threat it ultimately did that day. Similarly, NSW RFS set up a relief –crew camp at Greenhills on the Friday evening only for those crews to be burnt over the following afternoon.

9. There was a border between the McIntyre's Hut fire and the ACT and this jurisdictional element to the situation did affect the way things were done – such as planning, resourcing and media.
10. The layout of the ESB building was totally unsuitable for efficient emergency operations. In particular the efficient receipt, analysis and dispatch of critical fire spread information to the appropriate officers was severely curtailed, especially during critical times.

I set out below a series of statements responding specifically to each of the proposed adverse comments you have given me notice that you are considering making.

If Your Honour decides to proceed to make a particular proposed adverse comment then I formally request you include in your report this preliminary statement and my specific statement responding to that comment. I have endeavoured to keep each statement brief so that Your Honour will not feel the need to prepare a “fair summary” of each response.

Statements responding specifically to each Proposed Comment Numbered [1]-[22]

Proposed Comment [1]

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.

I have broken this comment into three separate propositions in order to respond appropriately.

Proposition A

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

Response - Proposition A

1. There was much evidence before the inquiry which revealed the exact opposite – ie that “*senior ESB personnel DID appreciate the gravity of the fire situation and the potential for escalation.* Without knowing the basis upon which Your Honour makes this comment it is impossible to appropriately respond. Your Honour seems to reach this conclusion on the basis that because there was a failure to predict the ultimate outcome that therefore there was a failure to appreciate the gravity of the situation at the time such judgements were being made. Such hindsight reasoning is neither appropriate nor a proper basis to reach such views, especially if such reasoning forms the basis of personal adverse comment against me.
2. As has been made clear on a number of occasions, I was neither a firefighter nor a person with operational responsibilities. Notwithstanding this the evidence is clear that I received information and briefings from those with such experience and responsibilities and that I did appreciate the gravity of the fire situation and acted accordingly.
3. This comment is not justified and should not be made.

Proposition B

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.

Response - Proposition B

4. With respect Your Honour is totally incorrect. Even Counsel Assisting qualified their submission (upon which your proposed comment appears to be based – par 1116) by using the phrase “*essentially no preparations*”. Your Honour’s formulation simply does not reflect the evidence.
5. It would appear that Your Honour has not considered the submissions made by the Territory at paragraphs 172-201 of its final submission where various preparations, including new initiatives for the fire season were outlined. In addition the following are some other examples of information in the brief that indicate that such additional preparations were made:
 - a. ESB.DPP.0018.0236 to ESB.DPP.0018.0286 - an excursion by the Bushfire Council into Namadgi National Park in 2002; development of a Namadgi National Park pre-suppression plan; and the Namadgi “Burn” scenario exercise.

- b. ESB.DPP.0019.0227 –Remote Area Fire Training undertaken in December 2002.
 - c. ESB.DPP.0019.0355 – a document confirming that the Canberra Connect website included Bushfire Safety Tips on its homepage.
6. Further examples of additional preparations for the 02-03 fires season are outlined in the statement by Mr Graham in relation to a similar comment Your Honour proposes be made against him.
7. Some additional preparations that I personally was involved in were:
 - a. The budget requests in about March 2002 seeking funding for a community education officer and increased aerial resources (Exhibit 0117);
 - b. I pursued in each regular meeting of the ACT Emergency Management Committee detailed implementation of the matters from the 2001 fires Strategic Debrief;
 - c. The attempts to overcome the Public Relations deficiencies identified following the 2001 fires by me briefing and having available the network of Media/Public Relations staff across the ACT Government Departments and the arrangements finalised by me on 18 December 2002 for Canberra Connect to be a source of information on ACT emergencies both by online access and through the 132281 telephone number. The process for Canberra Connect was activated by me on Thursday 16 January 2003.
8. As I do not know upon what evidence you have come to form this conclusion I can only presume that you have adopted the views of Mr Roche. If this is the case then in light of how discredited Mr Roche's evidence in this respect was shown to be (see for example Territory submission at par 427- 483), I would submit this comment is not only inaccurate but unjustified.

Proposition C

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.

Response – Proposition C

9. If Your Honour is to make adverse comments against individuals it needs to be clear against whom such comments are being directed and what the evidence is that demonstrates such comment is warranted against that individual.
10. The adverse comment here is not accepted by me as accurately reflecting the evidence, but even if it did, it is not a matter for which adverse comment can properly be directed against me as I had no responsibility for such operational matters.

Proposed Comment [2]

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.

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.

Response

1. I am unsure what Your Honour means by these statements. As statements of fact it is true that I was constantly receiving information all of which I considered to be the best of my ability and all of which was considered by me in forming views about the risks of the fires.
2. I can only assume (as Your Honour has declined to provide me with the necessary contextual information I requested in order to properly respond) that Your Honour is obliquely referring to the Cabinet Briefing I prepared on the evening of 15 January 2003. If that is the case then it appears that Your Honour has not considered paragraphs 207 – 215 of the submission made on behalf of myself and Mr Lucas-Smith dated 30 June 2006 (“my primary submission”). In particular Your Honour does not appear to have considered the fact that nobody present at that Cabinet meeting who gave evidence before the Inquest attested to being of the view that there was then a realistic risk of the fires impacting on the suburbs of Canberra.
3. If you are suggesting that by late afternoon on 15 January 2003 I was somehow aware that suburban Canberra was at a serious, significant, or imminent risk of impact by these fires or that the chance of any such impact was any more than a remote possibility then I reject that suggestion utterly.

Proposed Comment [3]

Comment

[IN RELATION TO THE CABINET BRIEFING ON 16 JANUARY 2003] Mr Castle also had difficulty recollecting many details of the Cabinet briefing even when it related to the items listed by him in the briefing note he prepared. His evidence on some matters was inconsistent, vague and confusing. I am willing to accept that concern over the impact of the fires on Canberra's power supply may well have been one matter in Mr Castle's mind

during the briefing of Cabinet. However, I do not accept that it was the only or even the predominant matter. He made no reference to it in his briefing paper and gave evidence that his recollection such as it was, on the discussion of declaring a state of emergency, centred around the process involved.

Response

1. I was the only witness NOT given the opportunity to refresh my recollection from the video made of parts of the Cabinet Briefing meeting despite the fact Counsel Assisting were in possession of that video when I gave evidence [T1578].
2. I was not given the opportunity to review the video and it was only in re-examination that I was first shown any of the other written notes taken at the Briefing (T1847). No doubt these facts contributed to what may have appeared (compared to others who were given such an opportunity) to be “*inconsistent, vague and confusing evidence*”. Throughout the six days I gave my evidence I did so honestly and to the best of my recollection, despite the aggressive, accusatory and adversarial way Counsel Assisting conducted his examination. I urge Your Honour to consider these matters before making this comment. To make this comment would be unfair and unwarranted.
3. The briefing paper was a guide but not discussed verbatim in the Cabinet Briefing. Your Honour seems to only grudgingly concede my legitimate concerns over the importance and sensitivity of the Macgregor Power Sub-station. Part C of a sub-plan of the ACT Emergency Plan sets out the extreme importance of the Macgregor Power Station to Canberra.
4. Whatever Your Honour’s ultimate views, the fact remains I considered the possibility of impact by the fires on the power lines coming into Canberra and consequently a massive disruption to the urban area as the basis upon which it might be necessary for a State of Emergency to be declared. Evidence from others present confirms this (see my primary submissions at par 218-233). In particular I remind Your Honour of the Chief Minister’s evidence on this point: “*The context of a discussion around a state of emergency, as I recall it, was the possibility of the ACT losing all of its power*”
5. Just as the Macgregor Sub-station was not mentioned specifically in the Cabinet Briefing paper, nor was the topic of the State of Emergency.

Proposed Comment [4]

Comment

At a briefing on 16 January 2003 Mr Lucas-Smith and Mr Castle did not inform Chief Police Officer Murray and Commander Newton that a serious risk existed of fire

impacting upon the Canberra suburbs on Saturday 18 or Monday 20 January 2003, and this was a serious omission because it exacerbated the confusion and chaos which subsequently occurred during the evacuation of residents fleeing from the fires.

Response

1. Your Honour's comment appears to assume (presumably with the benefit of hindsight as the contemporaneous evidence does not support the proposition) that Mr Lucas-Smith and myself appreciated there to be a serious risk of fire impacting upon the Canberra suburbs on Saturday 18 or Monday 20 January 2003 but decided not to tell anyone. This was not the case and is certainly not the evidence. As at the time of the AFP Briefing it was not my view that "*a serious risk existed of fire impacting upon the Canberra suburbs on Saturday 18 or Monday 20 January 2003.*" The briefing to AFP conveyed accurate information on the fires consistent with my understanding of the fires at that time.
2. I refer Your Honour again to my primary submission at par 293-298.
3. Irrespective of the specific information conveyed, there was close liaison between ESB and the AFP in particular:
 - Commander Newton was given a personal briefing on the fires by Mr Lucas-Smith on the 15 January 2003 and taken with him and the Chief Minister for a helicopter inspection of the fires.
 - AFP senior management (Chief Police Officer Murray, Commander Newton and Superintendent Mark Johnsen) were provided email updates on the fires situation on the evening of 16 January 2003 as members of the Emergency Management Committee.
 - the following morning (17 January 2003) and thereafter, a senior AFP officer attended the planning meetings.
4. The link Your Honour seeks to draw between the AFP Briefing and the chaos of Saturday afternoon 2003 is illogical and is simply not open to be made on the evidence. I cannot understand how a briefing to the AFP which undoubtedly resulted in close and ongoing liaison between ESB and the AFP – to the extent that the AFP heard everything I heard in planning meetings - somehow could have exacerbated the situation at the height of the extraordinary and totally unexpected impact on the urban area on 18 January 2003.

Proposed Comment [5]

Comment

[IN THE CONTEXT OF THE MEDIA BRIEFING BY MR CASTLE AND MR LUCAS-SMITH AT NOON ON 17 JANUARY 2003]

At the media conference at noon on 17 January 2003, Mr Castle and Mr Lucas-Smith did not provide information of which they were aware and concerns which they held about the true situation of the fires and the real threat they posed to the rural and urban areas of the ACT.

The most obvious and most serious omissions from the media briefing include:

A failure to express the concerns held by ESB personnel about the real potential of all the fires to break the containment lines which were known to be vulnerable;

A failure to say (at the media conference) that the Bendora fire had already breached lines to the north and south;

A failure to provide information about the concerns held over the 'erratic fire behaviour', the 'significant risks of fire runs', and the potential for ten kilometre spot overs;

The failure to say that back-burning operations had stopped on the Bendora and Stockyard fires;

The failure to inform the media and the public about the proposed and imminent plan by the NSWRFSS to use aerial incendiary devices on a large sector of unburnt area of the McIntyre's Hut fire and the concerns ESB personnel held over the potential ramifications for the ACT from this operation;

The failure to share, express, reiterate and strengthen statements of concerns made by Mr Wade about the real threat to the pine plantation; and, finally

The failure to say that Saturday, the very next day, was shaping up to be a very bad fire day.

In my view, what was said by Mr Lucas-Smith in Mr Castle's presence did, instead, serve to downgrade what clearly was a serious and highly volatile and dangerous situation.

By not providing the information mentioned above and making such statements as:

The ACT fires are within containment lines;

No need to evacuate property;

No concern for Tidbinbilla Tracking Station or historic sites;

Pretty slim chance of fire meeting urban edge;

His (Mr Lucas-Smith's) level of anxiety had not changed since the previous week; and

The rural people knew what to do and probably had already done it,

Mr Lucas-Smith and Mr Castle, did not, in my view convey to the media at noon on 17 January 2003 the true situation regarding the real danger which they and others at the ESB recognised existed to the ACT community from the fires. However, the reasons why they did not do so are not clear. Mr Castle said that there was no conscious reason why a warning even worded as a potential threat was not publicised at noon on 17 January. I have no doubt that one of those reasons was that Mr Lucas-Smith held a hope that the fires could still be stopped, somehow. I do not accept his evidence nor the submission from counsel for the ACT that Mr Lucas-Smith was speaking only of the ACT fires and did not have the McIntyre's Hut fire in mind during the media briefing. However, even if he did, he still did not provide the true situation and potential threat from the ACT fires and there was no impediment on him, as he admitted to supplementing and commenting on the information being provided by Mr Wade. It is beyond credible belief that Mr Lucas-Smith did not think of the McIntyre's Hut fire in terms of its threat to the ACT on 17 January when he had regarded it as a potential threat as soon as it ignited on 8 January when he travelled to Queanbeyan to meet with NSW fire officials. Mr Lucas-Smith did not provide a full and frank disclosure of what he knew and what he regarded as being the worst case scenario.

Response

1. Your Honour relies on hindsight to analyse what was done and said and then compare and contrast that with what could and should have been done and said. This is valid for analysing actions in order to learn lessons for the future. Your Honour however, despite the exhortations of the Supreme Court that an inquest is not about laying blame, appears to have deemed it necessary to make pejorative, insulting and grossly unfair statements about my state of mind in order to imply some deliberate malfeasance on my part.
2. I agree that I was present when the statements were made by Mr Lucas-Smith and Mr Wade. As far as I was aware (and still believe) all statements made were factually correct. Your Honour seems to imply that they were not true or deliberately slanted to give a false impression as to the 'true' fire situation. This is incorrect and contrary to the evidence given both by myself and Mr Lucas-Smith.
3. I refer Your Honour once again to my primary submissions on this issue [at 344-349] which Your Honour appears to have overlooked. Your Honour must be mindful that neither myself nor Mr Lucas-Smith were given an opportunity to answer such serious allegations as "we deliberately downplayed, understated the risk or deliberately withheld information from the community."

4. Unless Your Honour's focus is only directed towards the actions of senior ESB personnel, it is not obvious why Mr Wade was not required to give evidence explaining the statements he gave during that press conference about the McIntyre's Hut fire – the fire that his employer had responsibility for fighting, which posed the most serious risk to the ACT and which ultimately burnt into Canberra the next day. A comprehensive analysis of Mr Wade's interview reveals (see my primary submission at pars 337, 394-405) that in reality he said nothing materially different to Mr Lucas-Smith in that media conference.
5. In my primary submission counsel set out at length the NSWRF's fire expectations and predictions [from par 387- 419] which Your Honour will see are not inconsistent with the predictions, expectations and public statements made by myself and Mr Lucas-Smith.
6. In particular it is pertinent to note that the Fire Sit Rep reports, prepared by the NSWRF's fire analysts contain no suggestion that suburban Canberra was under potential threat as at 11am on 17 January 2003.
7. To the extent your proposed comment is directed at myself, I note again that I was not a fire prediction expert or firefighter. I reject any suggestion that I somehow connived with Mr Lucas-Smith to downplay the true fire situation. Mr Lucas-Smith did no such thing.
8. Your Honour appears to have considered this media conference in total isolation from the information that had been provided in the days leading up to it in which it could not be suggested there had been any indication of a deliberate understating of the seriousness of the fires. For example:
 - The media release on the evening of 16 January 2003 declaring for the first time ever, a 5 day total fire ban.
 - The front page report of the Canberra Times indicating that the next five days were critical and that changing winds would “put pressure on containment lines to the south and east of the massive McIntyre's Hut fire burning in NSW, lines which are protecting the Uriarra pine plantations in the ACT.
 - The written Media release that was provided as part of the media briefing did indicate that some breakouts occurred to the north and the south of the Bendora fire.
 - The Sydney Morning Herald news on line (ESB.AFP.0110.0962), the Herald Sun (ESB.AFP.0110.0961), the Australian (ESB.AFP.0110.0968), the Daily Telegraph (ESB.AFP.0110.0964) and ninemsm (ESB.AFP.0110.0959) in the evening of 17 January 2003 all including a report “Mr Lucas-Smith said there was no immediate threat to ACT properties but that could change tomorrow as the temperature soars.”

9. Whilst Your Honour seemingly does not accept the submission that Mr Lucas-Smith was speaking of the ACT fires – the fact remains such a course was consistent with the Guidelines for Interstate Assistance that were tendered before Your Honour and that all his comments were entirely accurate when viewed as relating to the ACT Fires for which Mr Lucas-Smith had responsibility for fighting.

Proposed Comment [6]

Comment

The media release issued by the ESB at 3.45 pm on 17 January 2003 was wrong in that it did not report the true conditions regarding the fires and therefore seriously misrepresented the grave situation which existed.

The press release issued by the ESB at 3.45 pm comprised six sentences, three of which were details on how to access further information. What was contained in the other three sentences was, in my view, misleading and was misinformation. It did not report the true situation which existed at the time of its release, namely that all the fires, including the smoking McIntyre's Hut fire had breached containment lines and were spotting and making runs. This information was known to the senior personnel at the ESB from 1.00 pm onwards. It should have been known to Mr Castle and if it was not, he should not have been a party to a media release being issued (where he is quoted making comments) until he had verified the truth and accuracy of those comments. Simply to say that it mirrored the NSWRF's release hours earlier is irresponsible and displays a total lack of professionalism. The only message which on any sensible reading of it comes from that media release is "Don't worry about the smoke and bits of flying ash, everything is under control with the fires".

Response

1. Your Honour's criticism is predicated upon a factual error.
2. According to the NSW Section 44 report the McIntyre's Hut fire "*remained within containment lines throughout the day*" and the spotovers from McIntyre's Hut fire did not occur until "*approximately 1600 hr*" (see MLI.DPP.0005.0191). Your Honour's statement that "*the smoking McIntyre's Hut fire had breached containment lines and [was] spotting and making runs*" is not the evidence. Not only is it not the case that I was aware that the McIntyre's Hut fire had broken containment lines it was not even the actual situation. The truth and accuracy of my comments are criticised on the basis of an inaccurate view of the facts and I respectfully request Your Honour to not make this inaccurate and unjustified comment.

3. Further, my evidence was that I did not see the earlier NSWRFSS media release and the content of this ESB media release was the subject of preparation by a number of people. I fail to see how I acted irresponsibly or unprofessionally in providing information that I believed on reasonable grounds (ie having come from the Media Cell within the Planning Unit), was correct at the time.
4. It is only by minutely examining that press release and comparing it with the NSWRFSS media release with the benefit of hindsight that any comment can be made about differences. To the extent that in hindsight and with full information this media release may have been better worded, I accept that may have been the case but reiterate that at all times I was acting in good faith and to the best of my ability relying on the information being provided to me.
5. I can find no reference in my evidence where I suggested, when being questioned about the 1545hrs media release “*that it mirrored the NSWRFSS release hours earlier*” and so this criticism of being “*irresponsible and displaying a total lack of professionalism*” is totally unfounded, unfair and should not be made

Proposed Comment [7]

Comment

[IN THE CONTEXT OF 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.

Response

1. At the outset I remind Your Honour of my non-operational role and reliance on the expertise of others in relation to the risk the fires posed at any particular time.
2. This comment assumes as an established fact that the position of and risk posed by the fires as discussed at this meeting was in fact something different to what was being conveyed to the public. This is not so. I refer Your Honour to my primary submissions at par 323 and following.
3. Your Honour seems not to have appreciated the relevance of the submissions that “*no one expressed concern about warning the urban residents.*” The point of these submissions is that it corroborates the assertions by myself and many others, that it was not the view of those present that the fires would burn into Canberra the next day. A prime example of this is Mr Tony Bartlett taking no steps to protect his HQ in Duffy. Its destruction the following day was something he did not

anticipate, even on Saturday the 18th when he was flying over the fires in a helicopter monitoring the situation minute by minute.

4. In fact the evidence is that there was discussion as to the type of warnings that should be given. Mr Kevin Cooper – a vehement critic of ESB and nearly everyone within it - stated in relation to the planning meeting on the evening of 17 January 2003 “*people [were] talking about what information would be provided to the community and in particular through Canberra Connect... it was certainly in a positive sense of what information would be given to the community. It wasn't what we won't give to the community; it was matter of what will be provided to the community.*”(T6140) Your Honour cannot properly make this comment without first rejecting this evidence.
5. The fire spread prediction presented at that meeting was a worst-case scenario. By definition (at least to my mind) this meant the most extreme case envisaged. This most extreme case had an unattended fire front reaching Mount Stromlo and potentially Narrabundah Hill at 8pm – not the urban edge, a time that would have coincided with a drop in fire danger index and a forecast wind direction change. One of the men who prepared this prediction (Nick Lhuede) specifically stated in evidence that in doing that prediction he did not identify the fire as reaching the urban edge (T4946).
6. Whilst any fire in the pine forests was going to be left unattended, it was the genuinely held belief of every person who gave evidence on the point that the fire could be stopped or contained in the eaten out grasslands. Your Honour seems to have completely overlooked the vast body of evidence on this point. A summary of this material is set out at paragraphs 330-335 and 356-377 of my primary submission and I urge Your Honour to consider that material.
7. I fully acknowledge that with the benefit of hindsight it would have been desirable for a warning to have been communicated to the residents of Canberra to the effect that the following day would be one of extreme fire danger and that residents on the interface should begin taking all necessary precautions to safeguard their homes in the event of fire activity approaching them over the weekend.
8. I had never experienced anything like what occurred on 18 January and, as of 17 January 2003, like many others, did not have any appreciation of the potential danger suburban Canberra actually was in on that evening. Your Honour should keep firmly in your mind the fact that I of course could not make predictions as to risk and fire spread but relied on those with the specific expertise to advise me when appropriate warnings were warranted. As Mr McRae himself said, he did not “*pull the trigger.*”

9. In summary, the reason why the warnings Your Honour feels should have been given on the evening of 17 January 2003 were not given is that the “*senior personnel of the ESB*” did not believe that the risk was as significant as it turned out to be. In retrospect, of course such warnings should have gone out, but the fact that they did not is no reflection upon the integrity and professionalism of myself or other senior ESB personnel.

Proposed Comment [8]

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.

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.

Response

1. See response to [7]
2. Further I note that specific measures were implemented to warn rural lessees when it was assessed there was a serious risk to them. In my statement (par 115) I refer to my personal actions in providing advice to Ms Kelly Chamberlain at Birraigai. After the fires Ms Chamberlain wrote to me and expressed her thanks for the advice – “*that virtually saved mine, my pets, and my neighbours lives.*” (A copy of this correspondence is attached). Whenever I became aware of a significant risk to people or property I did not hesitate in taking positive steps to issue warnings.

Proposed Comment [9]

Comment

No warnings were given on 17 January 2003 to the people living in the forestry settlements of Stromlo, Uriarra and Pierces Creek.

Response

1. Stromlo was at the urban edge, and even the unattended rate of spread predictions did not suggest impact on the urban area. In the case of Uriarra settlement the

NSWRFS still had its logistics air operations base adjacent to that area and there were no suggestions at that time that that area was under threat. Why they were not contacted by the team assembled during the evening of 17 January 2003 like the rural lessees is not known, but there was certainly no conscious decision taken by myself nor do I believe by anyone involved to exclude Uriarra, Pierces Creek or Stromlo.

Proposed Comment [10]

Comment

The media update issued at 8.50 pm on 17 January 2003 was inadequate and misleading and did not reflect the true situation which existed and was known to the senior personnel at the ESB at the time.

Response

1. As Your Honour has declined to provide me with any additional information explaining in what way it is suggested the update was “*inadequate and misleading and did not reflect the true situation*” I consider myself unable to provide any proper response to this proposed criticism.
2. The content of the update was all factually correct. Its prime purpose was to indicate the current threat to the rural areas at that time and to indicate the use of ovals for logistics operations with the possible impact this may have had on sporting events.
3. As I have set out both above and below (and in my evidence and primary submissions) I did not have any expectation at the time that update was released that the fires would impact on the urban edge. The predictions I had heard that evening were for a worst case of unattended rate of spread that even then did not suggest impact on the urban area.

Proposed Comment [11]

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.

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.

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. 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.

Response

1. There are a number of propositions contained within this comment that require individual response. Again I formally note the difficulty in properly responding to the general and sweeping nature of the statements you make in the absence of any understanding of the basis upon which Your Honour has reached these conclusions. Your Honour seems to propose these comments not in the light of any competing evidence but in spite of the evidence, which is all to the contrary.

Proposition A

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.

Response A

2. This statement is simply wrong. It ignores the fact that Incident and Sector Controllers were appointed and firefighters were deployed and continued to fight the fires. For the following day the ACT was sectorised and command and control arrangements implemented. Whilst the plans and strategies that were made and implemented may have proved totally inadequate, that is a separate matter. As a non operational person I do not propose to say any more in response to this proposition.

Proposition B

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.

Response B

3. A very real risk of what? If it is suggested that the “very real risk” was to the urban area then I again point to my responses above that the predictions were for a worst case of unattended rate of spread with no suggestion of impact on the urban

area. Throughout the Inquiry the concept of risk has been a matter of some ambiguity and debate. I cannot fully respond to this proposition without further information providing the necessary context.

Proposition C

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.

Response C

4. I, Mr Lucas-Smith, Mr Graham and Mr McRae all gave evidence over many days during which we stated our beliefs about certain matters including the potential for fires to reach the suburbs at various times.
5. Your Honour's use of the pejorative "*if any of these people were to claim*" is offensive and suggests that Your Honour has not considered what my evidence has been on these matters. Alternatively, Your Honour may be expressing acknowledgement that I was not given a proper opportunity to answer this specific criticism but that if I were at some stage to deny Your Honour's proposition, I should not be believed.
6. Again I cannot properly address this criticism in the absence of knowing the basis upon which it is made. I maintain the position set out in response to comments [7]-[10] that I did not form the view on the evening of 17 January 2003 that there was a realistic potential for any of the fires to reach the suburbs the following day. I was told of a worst case prediction using unattended rates of spread that had the potential for fire reaching Mt Stromlo and potentially Narrabundah Hill, (not the suburbs), at 8pm when fire danger would be dropping rapidly and a wind change was expected
7. I am unaware precisely (or even vaguely) what information Your Honour is referring to that came into my possession and apparently dispelled any doubts (illegitimate as they may seem to Your Honour) that I maintained as to the potential risk of fire reaching the suburbs.

Proposition D

*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**. 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.

Response D

8. This comment is contrary to the evidence. It would appear that in this comment Your Honour is specifically seeking to apportion blame which I understood not to be the role of a Coronial Inquiry.
9. Your Honour has not set out when I am supposed to have formed this conclusion. I cannot understand the basis upon which Your Honour asserts that I knew – be it on the evening of 17 January or even before early afternoon on the 18th that impact on the suburbs was inevitable – ie 100% certain. I certainly did not give evidence to that effect.
10. In relation to Friday night, to the best of my recollection nobody gave evidence to that effect. Even Mr Cheney failed to see this “*inevitable*” impact, choosing to proceed to the southern borders the following day rather than witness the most extreme fire behaviour of his career.
11. The “*false hope*” that Your Honour suggests I was living with seems to have been shared to varying degrees by such persons as Julie Crawford, Bruce Arthur, Neil Cooper, Tony Bartlett, the NSWRFs in general (given where it placed personnel and equipment on 17 January), Rick McRae, Peter Lucas-Smith, Tony Graham, Vivien Rafaele, Hilton Taylor, Nick Lhuede, Phil Cheney, Ian Bennett and Dave Prince. For Your Honour to even consider making a comment that so questions my integrity and damages my reputation, the *Briginshaw* principles require “exact proofs”. Unless Your Honour proceeds to deal with the evidence of each of the above persons (that is consistent in many respects with my expressed beliefs), you will not properly be able to make the seriously damaging comments you here propose to make.
12. Finally, Your Honour seems to justify your conclusion that I knew impact was inevitable by referring to the revised prediction prepared sometime late on the morning of 18 January by Mr Hilton Taylor. I respectfully remind Your Honour that this prediction was never brought to my attention and it cannot form a basis upon which Your Honour comes to consider what my genuinely held beliefs were. Further, if Your Honour is to rely on the revised prediction of Mr Taylor (that only hindsight proved to be accurate), Your Honour should also consider the following statement by Mr Taylor about the events of 18 January 2003 (at par 41 of [ESB.DPP.0001.0236])

I don't think anybody comprehended, or could have comprehended the rate at which the McIntyre's Hut fire jumped the Murrumbidgee River and came across the open ground between the Murrumbidgee Corridor and Stromlo Forest. This

happened during the early afternoon. The fire just seemed to burn across bare ground defying all the models.

Proposed Comment [12]

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.

Response

1. Up until about 1:00-1:30pm when reports of significant fire activity and the fire crossing the Murrumbidgee were being received, I had not formed a view that people in the suburbs of Canberra were at risk from the coming fire.
2. Information about the risk to the urban edge was conveyed by Mr Lucas-Smith in the midday media briefing and this fact was broadcast on the 666 ABC radio 1pm news. The transcript of what was broadcast is set out at par 447 and 449 of our primary submissions. Your Honour may have overlooked this as there is no reference to this broadcast in the submissions of Counsel Assisting.
3. There was delay in issuing the SEWS as Your Honour is aware. Due to the inadequate nature of the ESB Headquarters and fax problems, the SEWS signed at 2:05pm was not broadcast until 2:40pm. This half hour delay was of course in all the circumstances significant but was not something over which I had any control nor was I aware of it at the time.

Proposed Comment [13]

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.

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.

Response

1. Your Honour here makes a number of generalised statements criticising me such as “*appeared to be out of touch, providing inadequate information, information was out of date or wrong, appeared to be denying the dangerous situation*” without providing any particulars as to how Your Honour has reached these conclusions. Your last sentence in particular seems to be nothing more than a personal attack on me which has no connection to any of your powers as Coroner, including the power to comment and as such Your Honour should not make it as any such comment would be *ultra vires*.
2. I note that Your Honour declined, when asked to do so, to provide me with any information that might assist me to understand the basis for these comments.
3. I do not know what information in what interviews you suggest was inadequate or what information you feel I should have provided during these interviews. I am therefore denied any opportunity to, for example, submit that certain information had not been provided to me at the time of a particular interview.
4. I do not know what information in what press release is said to be out of date or wrong. The reference to the sizes of McIntyre’s Hut and Stockyard fires being incorrect was only apparent with the benefit of Mr Cheney’s detailed analysis – ie with hindsight.
5. I was not operational and not part of the Incident Control System (ICS). I assisted the ICS team to ease the burden of media access on the operations section. I received briefings from operations prior to media interviews in the mornings and

at other times. In the early morning interview on 666 ABC radio on the 18 January 2003, I passed on to the public all the information that I had received from the Operations Officer, Tony Graham.

6. In the extended interview at 7.30am on 666 ABC on Saturday 18 January 2003 I publicised the Canberra Connect website and the 132 281 information number. I warned the public at that time that *“the exact locations of the fires are particularly difficult to assess, and therefore my advice is for people to stay out of the Murrumbidgee River and stay out of the treed area”*.
7. The *“evacuation planning”* meeting Your Honour refers to was something that I was not aware of at all and only became aware of during the course of the Inquiry. It took place at a time I was absent of ESB. I was not invited to this meeting. I was not informed it was proposed and I was not informed it had taken place.
8. I had no reason to believe at that time that the suburbs were going to be impacted that day. The worst case scenario from the previous evening and a reference to *‘put fire out in the grasslands’* is what I believed was the outcome from the 9:30am planning meeting. Your Honour should also keep in mind that the typed minutes that have been pored over at length during this Inquiry were not available to me or anybody else until many hours or days after the particular meeting, especially that one.
9. At the midday media briefings the Chief Fire Control Officer gave the detailed briefing and provided the expert information.
10. There was a system for media and it was part of the ICS arrangements. I had boosted the normal media capacity, which was only one staff member, by having a network of media staff from other departments led by Ms Harvey from Chief Minister’s Department to assist in this function.
11. I had arranged for Canberra Connect to takeover the website and also provide a telephone hotline that became operational from Friday 17 January 2003.
12. In evidence I said that I believed there was an earlier press release prepared about the SEWS that was signed by Mr Lucas-Smith but when it came to issue he was not available so I signed another version at 2.05pm. It was released at 2.05pm but was not broadcast by the ABC until thirty minutes later – this was explained in McLeod Report to have been caused by fax problems.
13. Your Honour needs to consider the extraordinary speed of the fire storm on the afternoon of 18 January 2003 before criticising the speed in which information was disseminated. Your Honour also needs to have proper regard to the poor facilities and layout of the ESB Headquarters which severely hampered the timely analysis and provision of information. The advice provided to the public was

based on the best available operational information at the time. Given the extraordinary dynamics of the day, such information may have been significantly out of date by the time it was received, analysed and disseminated. If this is the basis upon which you suggest I appeared “*out of touch with the situation as it developed*” I submit that such criticism would be totally unfair in the circumstances.

14. Advice to the community was based on information coming from the Planning Unit. In evidence Mr McRae said that he had not activated “the trigger” thereby advising the (non-operational) media unit that it was time to issue a warning at least to people in the urban area between Weston Creek and Greenway that the fires posed a threat to them.
15. There is no evidence that after the declaration of the state of emergency that I was, as the Coroner suggests, “*denying the dangerous situation which was then facing the community.*” The transcript of the ABC broadcast that went live to air indicated that I announced that the State of Emergency had been declared and then, amongst other information, advised people in all the suburbs mentioned and not just on the perimeter to “*...prepare around their houses anything they can do to take the flammability from around their house and stay with their house with garden hoses ready on the taps and that can reach to all corners...*” I was followed on air by the Chief Minister and then a press conference was held where the Chief Minister and the Chief Fire Control Officer provided further information.

Proposed Comment [14]

Comment

Mr Lucas-Smith and Mr Castle also heard the predictions [FIRE SPREAD PREDICTIONS BY MESSRS LHUEDE, TAYLOR AND GELLIE] 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.

Response

1. I refer to my comments above as to this prediction, in particular that it was a worst case prediction of unattended spread without amelioration of fire spread in the grasslands.
2. I also remind Your Honour of my lack of experience in fire prediction and reliance on others in this respect.

3. I am not aware what Your Honour is suggesting the community should or could have been told at the time. I did not have the benefit of the hindsight Your Honour now has, and in order to properly address this comment would need to know what it is you suggest I should have or could have said.
4. The revised fire predictions were only completed after the 9:30 am planning meeting and were never communicated to me at any stage on 18 January 2003.
5. I readily accept that better warnings should have been issued, if not on Friday evening then on Saturday morning and that in future, emergency authorities should keep in mind the difficulties in accurately predicting the worst case scenario for a bushfire.

Proposed Comment [15]

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.

and [16]

The decision to issue the SEWS was taken far too late and there is a very real issue about whether, in the circumstances, it contained appropriate advice. There was nothing in the announcement which told people the fire was advancing and that impact was highly likely if not an absolute certainty. The announcement still downplayed the real risk which was known to all senior ESB personnel and was phrased in the imprecise and meaningless terms of ‘there is increasing risk due to fire spotting’. There was no mention of a fire front. To announce that ‘there has been a major deterioration in the ACT fire situation’ could only have been meaningful if the people already knew the true fire situation in the ACT which they did not because they had not been told. The message listed suburbs which should be “on alert” instead of saying that these suburbs were at very high risk of impact, which should have been the focus of the announcement. The message urged residents in these suburbs to return to their homes. This was an inappropriate and dangerous message to announce to people at 2.40 pm, minutes before the fire arrived in

Duffy and the forestry settlements because people who were away from their homes were being urged to drive towards the fires without any information about what to expect. The continuing broadcast of this message every 15 minutes after houses had been destroyed, roads blocked and access into certain areas was denied, was totally inappropriate and sent a dangerous message. It caused confusion and further danger in an already turbulent and dangerous situation. It would appear that there was no monitoring by the ESB of what was being broadcast. This is not a criticism of the broadcasters because they were following ESB instructions.

Response

1. I am unsure as to what Your Honour means when you say I recognised the worst case scenario but did not prepare for it. In what way? The worst case scenario that I was aware of did not have the fire entering the suburbs on 18 January 2003. I did not make preparations for fire entering the suburbs because until about 1:30pm on Saturday afternoon I did not foresee that as a real possibility. Preparations were made for the following day and indeed the evening of 17 January 2003 where threats to the southern rural lessees were recognised and specific warnings given.
2. I was influenced by my experiences of 2001. Your Honour seems to imply that this was improper or foolish. Experience does influence behaviour. Even Mr Koperberg said in evidence that we all rely on experiences. If for example the lessons of 2001 had not been taken on board, no doubt Your Honour would criticise ESB (rightly in this case) for not having learnt the lessons of 2001. However, Your Honour will be aware of the detailed debriefings of the 2001 fires and how I ensured that at the strategic level the Emergency Management Committee systematically worked through each of the areas for improvement at the regular 6 weekly meetings throughout 2002.
3. The mistake of believing the fires might be controlled in the grasslands is only a mistake when viewed with the benefit of hindsight. It is unfair of Your Honour to criticise me for holding such a belief when that same view was also held by persons with extensive bushfire fighting experience or fire behaviour knowledge such as Julie Crawford, Bruce Arthur, Neil Cooper, Tony Bartlett, Rick McRae, Peter Lucas-Smith, Vivien Rafaele, Hilton Taylor, Nick Lhuede, and Phil Cheney.
4. The emails of Mr McRae some months earlier were of no relevance to anyone's views that the fires may be controlled in the grasslands. Indeed Mr Cheney's view relied on the severity of the fire season.
5. The decision to issue the SEWS was taken when the risk to urban Canberra had become apparent. The fact this was only about 60 minutes before impact only has the sinister connotations Your Honour seeks to place on it once the issue is

- examined with the benefit of hindsight.
6. A fairer way to examine the issuing of the SEWS would be to compare it with the issuing of the SEWS in December 2001. In the 2001 fires, the SEWS was issued at 1753hrs on the 24 December 2001 when the Stromlo fire was 2km from Duffy and the Huntley fire was 4.5km from Duffy. In 2003 the first SEWS was broadcast (noting the 30 minute delay) at 2.35pm on 18 January 2003 when the fire was over 5km from Duffy. At 2pm when the SEWS was signed the fires were over 8km from Duffy. Your Honour seems to ignore the fact that between 1pm and 3pm the McIntyre's Hut fire travelled as far in two hours as it had in the previous 10 days.
 7. Even as the 2003 SEWS was being prepared I did not believe impact was a certainty. There was no fire front – it was spotting that was progressing the fire. Then an extraordinary fire event developed, including a tornado. Three years later meteorologists are still attempting to understand and describe the extraordinarily unusual and unpredictable fire behaviour that occurred that afternoon.
 8. Your Honour's criticisms seem to be based on a subsequent understanding of what occurred that only could be properly achieved after many months of expert analysis of all the information. Your Honour seems to forget that this was a dynamic fire event that developed quickly and changed minute by minute. There was no opportunity for quiet analysis of data. The situation called for immediate responses. In such circumstances and with the benefit of hindsight it might be said that different decisions might have been taken at the time. It would be unfair to suggest that decisions made during times of crisis were unprofessional or not made in good faith, simply because with the benefit of hindsight they might be said to have been wrong.
 9. For example, your criticism of (presumably) me for not having media broadcasts monitored unfortunately bespeaks a lack of understanding of what was happening at ESB on that afternoon. Who in this crisis was to be taken off other duties to listen to the radio and monitor broadcasts? A radio that would not work within ESB in any event due to interference from all the communications equipment. What were they to listen for? Soon after 3pm ESB Headquarters itself lost power and came under direct threat of impact. To observe that things during this period were chaotic is understandable. To criticise ESB for having failed to amend change or update the SEWS during this hour is to put it mildly, unfair.
 10. Your Honour again suggests that impact was "*known to all senior ESB personnel*". This too is unfair when one considers that the Incident Controller on the day, a man whose fire experience has been lauded by Counsel Assisting and who was in effect ESB's 'eye in the sky' flying over the fires, himself failed to appreciate and call in the gravity of the fast developing situation.

11. If Your Honour were to peruse the radio logs in evidence you will see that it was not until a few minutes before impact that Mr Bartlett called in the fact that there was going to be an impact. His realization that his Depot was about to burn is something that on the logs clearly only arises a few moments before it happens. Similar observations might be made about Mr Neil Cooper's experiences and expectations.
12. Before Your Honour makes this or a number of the other proposed criticisms relating to my supposed knowledge of what was to occur or downplaying of the 'true' situation, Your Honour must have regard to the evidence of Julie Crawford on the question of what warnings she would have issued to the Canberra community on the 18th of January. Ms Crawford said: "*It would be a really difficult decision because you have got big roads, you have got rivers, you have got open paddocks. I don't think anyone expected the fire to get to the urban area in such a short time. When it did get there, I think we all had the same confidence that we have had for a long time, which is the ACT Fire Services have such a fantastic ability to hold it on the edge*".(T4521)
13. I do not understand how Your Honour proposes to criticise me for not predicting or warning what was going to happen when no such criticism is directed to others in a much better operational position to have predicted, such as Mr Bartlett or Ms Crawford?
14. I am not suggesting that Mr Bartlett, Ms Crawford or any other person should be criticised but merely point out the unjustness of the comments directed towards me. The point is nobody foresaw what was to occur yet I am and other senior ESB personnel are singled out for not having done so.
15. The criticism about advising people to return to their homes minutes before impact again is predicated on hindsight and assumes that somehow I knew that impact was going to occur within the hour. I did not. Nor obviously did Mr Bartlett, Mr Cooper or the NSWRFSS. Mr Leonard of CSIRO said that the actions of residents tended to mitigate the spread of structural fires deep into urban areas. But for the phenomenal rate of spread that occurred from 2pm, the information in the SEWS could not have been criticised as it was similar to that which was issued in 2001.
16. Your Honour should not make these comments as they are predicated on hindsight reasoning and inconsistent in the way I (and the *senior ESB personnel*) have been singled out for criticism.

Proposed Comment [17]

Comment

*The information about precautions residents should take was not adequate and did not explain why people should take certain actions and in what order of priority. It said nothing about wearing appropriate clothing, nor warning about the dangers of smoke inhalation, nor radiant heat nor other essential instructions which are necessary for people to take to improve their chances of surviving a fire. The instructions were inadequate, incomplete and misleading. It is highly likely that the announcement of the precautions at 2.40 pm as part of the SEWS was the first time many people had heard that information, if of course, they were listening to the radio or watching television that afternoon. Even if people heard this and were at home in the forestry settlements and Duffy, Rivett and Chapman and the other affected areas, it gave them precious little time to act and **robbed them of their choices**. Should they pack or should they prepare their houses? Should they leave or should they stay? These decisions were made all the more difficult because the people **at no time were given any information as to what they could expect from a fire which was about to impact**.*

In different circumstances the messages contained in the SEWS authorised by Mr Castle and aired on Saturday 18 January may have been appropriate. However, for the Canberra community, in the face of what they were about to confront, and in circumstances where no prior meaningful information had been provided to them beforehand, the content and form of the warning was totally inadequate and in fact, was a recipe for disaster..

Response

1. I have largely addressed the matters Your Honour has raised here in my response to Comments [15] and [16], however Your Honour raises a number of further issues that need to be addressed.
2. The use of the phrase “*robbed them of their choices*” implies that I deliberately intended to limit the options residents had. It also implies that somehow I knew at the time I signed the SEWS, firstly that it would not be broadcast until 2:40pm and secondly that the fire would impact within another half an hour. I reject both imputations and say they are unfair and contrary to the evidence. The phrase itself is couched in the terms of ‘blame’ a concept the Supreme Court has stated has no part in an inquiry of this nature.
3. Your Honour then suggests that *the people at no time were given any information as to what they could expect from a fire which was about to impact*. To suggest that I or anyone else at any stage had an appreciation of the *fire which was about to impact* is contrary to all the evidence.
4. Meaningful information had been provided by public radio from at least 1pm. The Canberra Connect call centre received 7,984 calls and there were over 5,000

visits to the ACT Bushfire Status website on Saturday 18 January 2003.
(AFP.GSO.0037.0063).

5. Once the phenomenal fire speed and behaviour is considered, Your Honour's comments cannot in my respectful view be fairly made.

Proposed Comment [18]

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.

Response

1. Your Honour has declined my request for information as to what factors or evidence has led Your Honour to have formed these "*impressions.*" I am therefore significantly disadvantaged in availing myself of my right to respond.
2. Findings of incompetence and unprofessionalism are serious matters that Your Honour should not make lightly without having properly considered all of the evidence and all the relevant circumstances.
3. At the height of any emergency there will be degrees of disorganisation and chaos due to events overwhelming the ability of authorities to be in all locations at once and able to provide instantaneous informed analysis of field information that may be out of date seconds after it has been received. It would appear that in making these comments Your Honour has not given any or any proper consideration to the extreme nature of what ESB faced during "*the most critical period of the fires.*"
4. Nor does it appear Your Honour has fully considered the impact the inadequacies of the ESB HQ building had on ESB's ability to operate in a fully coordinated and professional manner. To suggest that no one was "*was actually doing very much*" is a comment Your Honour seems to be making in spite of the evidence. It is a gross inaccuracy, biased with hindsight and undervalues the tireless efforts of all involved. Your Honour may feel not enough was done or that matters should have been handled differently, but to suggest that persons (including myself) who had been working 18 hour days for 10 days straight were not "*actually doing very much*" displays a complete lack of insight into what ESB and its personnel were faced with and actually did do. That Your Honour is even considering such a comment has caused me great unease and I respectfully ask Your Honour to act

judicially and not cast such a grossly unfair and inaccurate slur upon all those who worked so tirelessly for so long.

5. Everyone involved, myself included, gave total effort in a professional manner to the best of their capacity in difficult circumstances and with poor resources and substandard facilities. Your Honour obviously takes the view that it wasn't enough or we "stuffed it up". Be that as it may, we did all try and we did all try to the best of our abilities.
6. The decision-makers you suggest were incompetent and unprofessional were the same personnel specifically praised in a Legislative Assembly motion and given community recognition for their efforts in protecting the community during the 2001 fires.
7. On 19 February 2002 the ACT Legislative Assembly moved the following motion:

"That the ACT Legislative Assembly places on record its appreciation of the dedication, professionalism and commitment of all those men and women, particularly the volunteers, who successfully protected the community from the Christmas 2001 bushfires, and records its thanks for the outstanding contribution they have made to the Canberra community and the territory."

8. During the debate on this motion the following comments were made by the Minister for Police and Emergency Services:

"The bushfires of Christmas 2001 were the most dangerous and threatening to the Canberra community for many decades, and the courage, commitment and outstanding effort by all involved are a major credit to the professionalism, skill and community spirit of our bushfire fighters, be they professional or amateur."

9. Comments by other MLA's included:

"I thank the staff of the Emergency Services Bureau – people like Mike Castle and Peter Lucas-Smith, who are always on the ground and show consummate professionalism – the Ambulance Service, the police service and particularly the volunteers. It might be romantic and it might be adventurous, but spare a thought for the people who allow their family members to go out and put their life on the line and who just sit and wait at home."

10. Your Honour's severe criticism is also at odds with the views expressed in the McLeod Report, which incidentally related to the 2003 fire effort, not the 2001 effort:

"The individual officials, employees and volunteers spared nothing in terms of their personal commitment during a long and difficult crisis, then as soon

as the crisis had passed they had to cope with the demands and the complexities of the recovery phase.”

11. I do not know how Your Honour has arrived at these conclusions but they seem to be based on the fact that “*we didn’t stop the fire*” ie outcome driven rather than on a rigorous assessment of the individual and collective actions of ESB personnel at each stage of the fire fight. I urge Your Honour to not make these unwarranted, unfair and inaccurate comments.

Proposed Comment [19]

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.

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 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

Response

1. Your Honour here makes further comments suggesting that early on Saturday morning I recognised a serious potential for an impact at the urban edge. I refer Your Honour to my responses above where I set out at some length the fact that I did not have any such belief and the reasons why.
2. However Your Honour now suggests that I was ‘*deluded*’ and “*deliberately withheld information from the community.*” These comments are so grossly unfair and couched in such a general way that it is impossible for me to try and defend myself. It was never put to me that I was deluded. As to a suggestion that I had deliberately withheld information I remind Your Honour of my evidence in this respect at T1846:

Did you at any stage deliberately understate the risk to the Canberra urban community?

A. No.

Q. Was there any advantage to you in taking the course of deliberately understating to the Canberra urban community the level of threat?

A. No. None whatsoever.

At no other stage was this proposition put, pursued or suggested to me. I again ask (Your Honour having rejected my application earlier) on what basis does Your Honour come to the conclusion that I deliberately withheld information from the community?

3. If Your Honour were to make these comments in these circumstance I understand they would amount to a denial of procedural fairness, at least, and I therefore ask Your Honour to refrain from making them.
4. There was no deliberate action by myself or to my knowledge any other person to withhold any information from the public. If we were lulled into a false sense of security then as I have set out previously, so were many other persons ranging from Mr Cheney to the NSWRFs to Mr Bartlett and Mr Taylor.

Proposed Comment [20]

Comment

The ESB failed to inform the AFP in a timely manner of the true situation and this resulted in a lost opportunity for better coordination on 18 January of the police role in evacuations.

Response

1. Your Honour does not explain in this comment what is meant by “*the true situation*” but I assume Your Honour is suggesting that ESB deliberately or negligently withheld accurate information from the AFP. This is incorrect. I do not accept that at any time the AFP was ever told inaccurate information about the “*true situation*” as we understood it to be and without the benefit of the hindsight analysis which has subsequently occurred.
2. The “true situation” of the fires at any time is a wholly objective concept which could only be definitively determined many months later after significant analysis of all the data. Your Honour seems to be forgetting that from the perspective of ESB at any particular time, the true fire situation is something that is assessed based on the data being received and on the analysis being conducted of that data over a period of minutes, not months.
3. Again Your Honour seems to have a view that the AFP was ‘left out of the loop.’ I have addressed this criticism at [4] above, but reiterate the following matters Your Honour seems to have overlooked:

- ESB maintained contact with senior AFP command structure throughout the fire emergency.
- The AFP Commander Operations (Ms Newton) was given a personal briefing on the fires by Mr Lucas-Smith on the 15 January 2003
- She was then taken with him and the Chief Minister for a helicopter inspection of the fires.
- Following the briefing of AFP Senior officers on 16 January 2003 an AFP liaison officer attended briefings at ESB and was providing the total information back to the AFP senior officers.

Proposed Comment [21]

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.

The Declaration of the State of Emergency was delivered far too late and was made just as fires were entering Duffy and that the Declaration should have been, at the latest, immediately after the planning meeting at 9.30 am on the morning of Saturday 18 January 2003.

Response

1. Information warning of the risk to the western side of the ACT urban area was given in the midday media briefing by the Chief Fire Control Officer and broadcast by the ABC radio just after 1pm. Your Honour's criticisms must be tempered with the fact that nobody had any appreciation for what was going to occur at that afternoon or how soon it would happen.
2. Whilst it may be factually the position that the warnings that were provided did not allow sufficient time for residents to make preparations or informed decisions, this was a direct consequence of the unexpected speed and ferocity of the fire that afternoon. At no stage did anyone deliberately withhold information from the public that was believed to be information that should have been provided.

3. It is worth noting the McLeod Report discussion about a State of Emergency:

“...the handing across of political control and authority to a public official to manage an emergency, with substantial coercive powers and few checks and balances, should normally be contemplated only in the most extreme of situations. This is probably why in the state government arena the extant powers to declare a state of emergency have rarely been exercised. They have never been exercised in New South Wales, for example, despite the occurrence of numerous large-scale emergencies such as severe floods, earthquakes, major bush fires and railway disasters.”

4. Your Honour needs to keep in mind that following the planning meeting at 9.30 am on the morning of Saturday 18 January 2003 there is no evidence that anybody present at that meeting held the view that a State of Emergency should be declared.
5. Undoubtedly with the benefit of hindsight, a State of Emergency should have been declared on Friday night or Saturday morning. The difficulty is that nobody at those times appreciated what was going to occur at 3pm the following afternoon.
6. Your Honour’s comments also appear to ignore the fact that when there were high level discussions about making the declaration, even at that point, the arguments were varied and it was not a clear-cut decision. In any event, the person designated under the relevant legislation to be the Territory Controller (the Chief Police Officer) was absent from the ACT until approximately 1.30 pm on the afternoon of 18 January 2003.

Proposed Comment [22]

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.

Response

1. Your Honour does not explain what is meant by this statement. Taking into account the serious lack of resources available to the ACT and the fact that what developed was one of the worst fire events South Eastern Australia has ever witnessed, it might accurately be said in an objective sense that we were out of our depth.
2. I understand however Your Honour to be making a personal adverse criticism of me, based presumably on your previously expressed views of a lack of

competence and professionalism. I have already attempted to address these unfair, unjustified and *ultra vires* comments earlier in my response.

3. This statement is so general and so lacking in particularity that I cannot possibly respond in a meaningful way to it. I have asked Your Honour to provide me with some further particulars to allow me to understand the basis upon which Your Honour has formed this view but you have declined to do so.
4. I ask Your Honour, in light of my inability to make a proper response, to reconsider making this comment, which seems only directed at attacking my integrity and in no way related to any of Your Honour's powers or functions as Coroner.
5. These comments also appear to be focussed on "blame" which is not the role of a Coronial Inquiry. Finally I remind Your Honour of the words of Ron McLeod who said in his report into these fires:

"Experience is the basis of most of the progression of human knowledge, and there is much we can learn from our mistakes. It is inevitable therefore that inquiries of this kind concentrate on weaknesses, errors and shortcomings. They do not dwell to the same extent on those aspects where systems and people performed satisfactorily or in the way intended. ... Any criticism directed at individuals because of the role they were required to perform is in no way intended to question their integrity or their honesty in doing what they felt in the circumstances was the right thing to do at the time"

6. I urge Your Honour to consider these words. Having read all of Your Honour's proposed comments I am left with the impression that Your Honour unfortunately appears to be focused on questioning the integrity or honesty of people who were doing what they felt in the circumstances was the right thing to do at the time.

Mike Castle
22 November 2006