

SECTION 55 NOTICE

STATEMENT OF PETER LUCAS-SMITH

OPENING STATEMENT FROM PETER LUCAS-SMITH

I deeply regret and I am very sorry for the hardship that many ACT residents and families suffered as a result of the January 2003 bushfires and the tragic deaths of four members of the community. With the benefit of hindsight and the exhaustive review (over a number of years now) of the events surrounding the bushfires it is obvious that there are some things that I may have been able to do differently.

Nevertheless at that moment in time with the information and resources available, I know I did the very best I could and to this day I still genuinely wish I could have done more. In reality however, I don't think that any additional bushfire fighting actions would have made much difference considering the unpredictable speed and the ferocity of the bushfires that so unexpectedly overwhelmed us on the 18 January 2003.

STATEMENT IN RESPONSE TO CORONER'S PROPOSED COMMENTS

[1] 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. The suggestion that “neither ESB nor any of the ACT land management agencies made *any* additional preparations for the fire season over and above their routine preparations” (italics added) conveys a completely false impression of what was done and is completely at odds with the evidence.
2. My solicitor wrote to the Coroner to request some indication of the basis for the claim that there were not “any” additional preparations so that this comment could be addressed specifically. The request for elucidation of this comment was refused.

3. A comprehensive list of preparations which were in fact made is contained in the response by Mr Graham pages 2-11. I rely upon those matters as if they had been reproduced in full in this statement, however a summary of what was done includes:
 - documents relating to following activities such as: an excursion by the Bush Fire Council and others into Namadgi National Park (“NNP”) in 2002; correspondence between Environment ACT and ACTEW re NNP, fuel issues; development of a NNP pre-suppression plan; the 2002 NNP Burn Scenario tabletop exercise designed specifically for remote bushfire issues (see ESB.DPP.0018.0236 to ESB.DPP.0018.0286);
 - review of ICS training and implementation of a new training program, attaching the Sept/Oct 2002 training program (ESB.DPP.0019.0170 and ESB.DPP.0019.0172);
 - document regarding Remote Area Fire Training undertaken in December 2002 (ESB.DPP.0019.0227);
 - documents regarding extra fire hazard reduction activities undertaken at the urban interface during 2002 (ESB.DPP.0019.0229-0254);
 - Emergency Management Committee documents, indicating: traffic management planning provided to volunteer firefighters in mid-2002; Media Liaison review in August 2002; Evacuation Management course in December 2002; Horsefarms ACT put in place evacuation and emergency plans; electricity supply management disaster exercise undertaken on 17.12.02; exercise regarding defence forces working with civilian organizations during emergencies undertaken) (ESB.DPP.0019.0255);
 - letter from me to emergency management managers in the ACT re evacuation issues (ESB.DPP.0019.0303);
 - documents relating to media opportunities being sought to inform the public of the problem season ahead and measures the public could take to protect themselves (ESB.DPP.0019.0319-0323);
 - email confirming readiness of Canberra Connect, which had been set up in 2002 for emergency communications (ESB.DPP.0019.0335);
 - document confirming that by 20.12.02 the Canberra Connect website included Bushfire Safety Tips on its homepage (ESB.DPP.0019.0335).
4. For the past 25 years the ACT has used a sliding scale of bushfire fighting resource preparedness and as such the bushfire readiness in the greater fire danger of the 2002/03 period is in part incorporated in the fire danger ratings which are given each day. There is a sliding scale from a “nil” fire danger day when no crews are stood up, to an “extreme” or red fire danger day, all crews are stood up

and there is an automatic fire ban. In a season such as 2002/03 there are more days which are rated as extreme and automatically there are more crews stood up more often. The automatic effect of this system has been constantly misunderstood during the course of the Inquiry when it has been claimed that “no additional steps” were taken for 2002/03.

5. Insofar as the comment suggests that there should have been more resources to be called upon (a comment which anyone could make at any time) following the December 2001 bushfire event, a number of shortfalls were recognised in the organisational support. ESB requested in March 2002 for 2002/03:
 - a Community Support Officer to focus on community awareness;
 - a Research and Development Officer to focus on bushfire operational planning; and
 - additional funding for an additional and extended helicopter hire period.

Funding was refused for all three requests. Funding for ESB overall was reduced by \$630,000.¹

6. From page 6572 of the transcript, Mr Walker on my behalf endeavoured to put a list of recommendations arising out of the 2001 fires to Mr Bartlett with a view to ascertaining what changes and improvements were made in advance of the 2002/03 fire season.
7. Mr Walker asked Mr Bartlett a series of questions about recommendations arising out of the 2001 fires and whether they were implemented in the 13 months which elapsed before the 2003 fires. Mr Walker was ultimately stopped from asking further questions on relation to these matters however, before this occurred, Mr Bartlett stated:

THE WITNESS: Your Worship, if it assists, I would be more than happy to state that I believe, just listening to some of the discussion, that my recommendations were taken seriously and that through a wide range of mechanisms a variety of actions were taken to try to improve the systems, if you like, that go to the heart of some of the things that I wrote about. So I certainly wouldn't want anyone to imply that nothing was done. But I would also indicate, at least in the case of some of them, that the systemic problem still persisted into the 2003 fire.²

[2] The failure by Mr Lucas-Smith to recognise Mr Graham's limitations in terms of his experience was a serious error of judgment on his part – especially when he had two very experienced officers available, namely Mr Bartlett and Mr Sayer. This error of judgment resulted in an inadequate initial response in the first few

¹ Submission par. 505

² TR6584

days and was a factor in all the ACT fires expanding and ultimately becoming beyond control and thereby causing the devastation which occurred on 18 January 2003.

1. This comment could only be made with the benefit of hindsight. It is wise after the event.
2. The comment would appear to take no account that until the morning of 9 January 2003, ACT Bushfire Service had been informed by aerial observation that the largest fire in the ACT was the Bendora fire and that it was 500 square metres or one 20th of a hectare – less than half the size of an Olympic swimming pool. Stockyard Spur fire was reported to be 70 square metres or just a little over the size of a squash court. The Gingera fire was reported to be 20 square metres or about the size of a lounge room.
3. By contrast, the McIntyre's Hut fire which was just over the border and close to ACT pine forests was reported at 2,000,000 square metres or 200 hectares – which is about the size of Fyshwick.
4. Mr Bartlett was the head of ACT Forests. I went with him and his deputy, Neil Cooper, to NSW Rural Fire Service on the first night of the fires to ensure that NSW RFS was taking adequate steps in view of the threat to ACT assets and to offer ACT resources to that Service if they were required. As officer in charge of the pine forests, Mr Bartlett clearly should have been there. It would have been an absurd misallocation of Mr Bartlett's time to have him direct his attention to three fires, none of which were understood to be more than 500 square metres.
5. Mr Sayer was not rostered on at the time. Mr Graham had been the operations officer for hundreds of fires including during the 2001 fires. There was no reason to call Mr Sayer in for what were reported to be very small fires. The suggestion that he should have been called in for this fire would mean that he would have had to attend for duty on virtually every fire and that is not a practical proposition.
6. ESB had managed 92 fires in the 2002-03 season³ before the 8 January fire, many of which may have developed into serious fires. Was Mr Sayer or Mr Bartlett required on duty for each of these because it was a bad fire season? The only basis for saying that fires of the size reported to ESB on 8 January 2003 required Mr Sayer or Mr Bartlett (the superiority of whom is not conceded in the operations role in any event) is because we know the outcome and this is not a valid approach to the question.

[3] 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.

³ TR802

1. Before any criticism is made of the implementation of the AIMS ICS in the ACT based upon any alleged variation to the way it is used elsewhere, the Court must make specific findings of how it is implemented in the ACT, how it is implemented elsewhere and what constitutes the difference. In reality there is little difference.
2. The minor adaptations to the Incident Control System from the system used in other states are to take account of the ACT's smaller geographic and numerical size.
3. Other states have numerous fire control authorities. NSW for example has NSW Parks and Wildlife Service, NSW State Forests, the Catchment Protection Authority, local governments and the NSW Rural Fire Service (NSWRFS) as fire authorities. It is only when a section 44 declaration is made under the *Rural Fires Act 1997* that the NSWRFS assumes exclusive control of a fire. The resources of the several fire authorities must then be used together under NSWRFS control towards a common objective.
4. An Incident Management Team is then formed from these bodies in the area concerned. In that sense it is formed "at the scene". It is not formed at head office in Sydney.
5. The ACT does not have multiple rural fire authorities. It has one. The Incident Management Team meets at ESB head office in Curtin however, ESB head office at Curtin is often no further away from a fire being managed than an equivalent IMT in the states is from a fire if the state IMT meets in a local town hall for example.
6. These variations are appropriate for the ACT. One layer of organisation can be removed because of the smaller size.
7. Mr Bartlett noted that in other states there were typically three tiers of management: head office; regional and management close to the fire.⁴ In relation to the ACT he said:

*Now in the ACT because we don't have such a large land area, we don't have a need for three tiers of management. So that's one modification in particular that would spring to mind.*⁵

8. At question 38 of Mr Bartlett's TROC on 17 December 2003, he described the ACT variation to AIMS ICS as being a "slight variation" which made "enormous sense in terms of the size of the ACT". He did go on to say in his evidence to suggest that the local management should be closer to the fire than Curtin.
9. However, in the ACT, the ICS system is prescribed by disallowable instrument in the *Rural Fire Control Manual*⁶ it states:

* *Incident Controller*

⁴ TR 6553

⁵ TR 6554

⁶ ESB.AFP.0028.0112 at 0201

the Chief Fire Control Officer or the Deputy Chief Fire Control Officer will almost always be the Incident Controller and will have overall management of the incident

10. As a result and in particular during a multiple fire situation with major commitment of resources, control is most likely going to have to be run from Curtin.

[4] 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.

1. I did recognise that the fires represented a risk to the rural areas of the ACT. Not every fire to the west of Canberra is by virtue of that fact alone sensibly to be regarded as a threat to the Canberra suburbs. A threat is only identified as the risk increases and the fire draws closer.
2. It is not correct to say that it was recognised that there was a risk to the urban area on 15 January. I did not recognise it as a risk to the urban area at that time. To quote Commissioner Koperberg, from 15 January, "there would be serious implications for Canberra were the fires not contained before the onset of the predicted weather."⁷
3. The Bendora fire was contained to the east by 16 January. McIntyre's Hut fire was contained to the south and east by 16 January. On 16 January 2003, emergency service officers were briefed about the threat to the rural areas of the ACT.
4. On Friday staff of ESB worked until around midnight personally telephoning rural property holders about the threat from the fires.

[ON 16 JANUARY 2003]

[5] Mr Lucas-Smith did brief members of the ACT Fire Brigade and the ACT Ambulance Service about the real and serious possibility that the fires would break containment lines and impact upon the urban areas of Canberra sometime on Saturday 18 January or Monday 20 January 2003.

⁷ Koperberg statement par, 9

Mr Lucas-Smith did inform those persons who attended the briefing on 16 January 2003 that the information he was providing to them about the serious risk of the fires impacting upon the suburbs was not to leave the room, and that this remark was not said in jest.

Mr Lucas-Smith did say that the reason for keeping the information from the media was so as not to alarm the public and the media.

1. While I did mention the possibility of fires reaching the urban/rural interface in the meeting with the ACT Fire Brigade and the ACT Ambulance, the suggestion that it was a “real and serious possibility” of breaking containment lines and reaching the urban area is contrary to the evidence of those attending the meeting. The evidence of Messrs Newham, Collins, Canham, O’Connor, Prince and Cartwright (all ACTFB) and Mr Dutton (ACT Ambulance Service) does not suggest that the risk to the urban area was either stated or viewed by me in this way.
2. The reference to not alarming the media and the public omits the essential context. People who attend emergency service incident briefings are not at liberty to each speak to the media. There is one person with responsibility to speak to the media so that confusion does not ensue. Although I do not recall stating it in the manner some witnesses alleged, it was nonetheless appropriate for me to inform participants at the meeting not to speak to the media so that press briefings could be conducted in a co-ordinated fashion. David Prince, Acting Commissioner when he gave evidence; District Officer Canham and Mr Cartwright said that this was the proper approach to dealing with the media.
3. There was no attempt by me to conceal information from the media.⁸ In my interview on 16 January, I outlined the historic risk to the urban area and in the *Canberra Times* I was reported as saying that previous fires had reached as far as Woden. I was reported as saying that at that time I did not think that there was any threat to the urban edge. This was my opinion at the time. The evidence shows that I said this to the meeting with the ACT Fire Brigade and the Ambulance Service. There cannot be any suggestion that I was disclosing certain information to the meeting but keeping it from the media.
4. The comments also do not record that emergency services personnel set about making preparations for the fire and that not one of them said that they were prevented from taking any action or speaking to any person they considered necessary to make preparations.

⁸ Submission par. 287

[6] 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 or Monday 18 or Monday 20 January 2003.

This was a serious omission because it exacerbated the confusion and chaos which subsequently occurred during the evacuation of residents fleeing from the fires.

1. I did not inform anyone else of the risk in the terms stated either because at the time, I did not believe it to be an accurate reflection of the situation.
2. However, I gave Commander Newton a personal briefing on 15 January and I took her and the Chief Minister on a helicopter flight inspection of the fires.
3. The comment that this “serious omission” caused the AFP confusion is not sustained by the evidence. When Sergeant Kirby was informed on the possibility that the fires would reach the urban edge, he said he did not consider it necessary to increase police resources and he said that he had “plenty of time” to do so if necessary.⁹
4. Commander Newton did not indicate any specific step which the AFP would have undertaken which would have reduced any alleged confusion. She appeared to be at pains to say that the AFP would work closely with the ESB as it was the lead agency.
5. There was an AFP liaison officer who was in attendance at ESB and attended the Incident Management Team planning meetings at 1600 hrs 16 January 2003 and onwards.
6. The Australian Federal Police received email updates from 16 January 2003.

[IN THE CONTEXT OF MR LUCAS-SMITH’S CONVERSATION WITH MR VAL JEFFERY ON 15 OR 16 JANUARY 2003]

[7] Whatever he may or may not have recalled saying and in whatever terms, I am persuaded that Mr Lucas-Smith did express his opinion that the fires would escape from the mountains if the bad weather did eventuate.

I contend that I did not express this opinion in these terms to Mr Jeffery.

[IN THE CONTEXT OF MR LUCAS-SMITH’S INTERVIEW ON ABC RADIO 666 ON 16 JANUARY 2003 AT 5.00 PM]

⁹ TR 4350

[8] It is inconceivable that a person in Mr Lucas-Smith's position charged with his responsibility would ignore and choose not to publicly comment on the activity of the largest fire in the region and the one which, only hours before, was being cited at various briefings as posing a serious risk to the ACT. If he did not have the most up-to-date information on this fire, the question begs to be asked – why not? Simply because he may not have been asked a question about the McIntyre's Hut fire by the interviewer did not prevent Mr Lucas-Smith from commenting on it because, to not do so provided incomplete and misleading information about the true situation of the fires and the potential threat.

1. I did not choose to ignore the McIntyre's Hut fire. There is an established guideline for interstate assistance that a state bushfire authority talks about its own fires and leaves comments about another state's fires to that state. In this way there is one clear message about what is happening with a particular fire, not two.
2. I sent Mr Cooper as a liaison officer to NSWRFSS to monitor the McIntyre's Hut fire.
3. I left comment about the McIntyre's Hut fire to NSW. It was their fire. It was not for me to contradict or second guess the NSW operation on the NSW fire and I did not receive any information from NSW which was inconsistent with the message NSWRFSS was conveying to the public. There was not basis for me to add or vary what he said.
4. NSWRFSS did inform the public of the state of the McIntyre's Hut fire. The NSWRFSS press release stated:
 - *"Firefighters are concerned that wind changes predicted Saturday will increase pressure on lines and force fires back towards the ACT"* and
 - *"West northwest winds expected Saturday and Sunday will pressure lines to the east and southeast and force the fire to the ACT border."*
 - *Containment strategies are progressing well;*
 - *Control lines are complete on this fire, which is being fought by about 120 NSW firefighters*
 - *Containment was achieved with the completion of backburning yesterday and aggressive mop up and patrol of these lines today.*
5. It is a paradox that in the Court's proposed comments concerning the first night of the fires, when I went to speak to NSW about the McIntyre's Hut fire I am criticised for taking Mr Bartlett with me in order to concentrate attention on the McIntyre's Hut fire rather than leaving Mr Bartlett to attend to ACT fires. In this comment, I am criticised for commenting only on ACT fires and not commenting on the McIntyre's Hut fire in NSW.

[9] [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.

The comments in pars 9-12 are best dealt with together as they all relate in one form or another to absence of warnings.

[10] [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.

[11] 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.

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 Pierce's Creek.

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] 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]

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.

1. As the Court proposes to rely upon the comments of Mr Taylor, it is appropriate to cite again the comment Mr Taylor made in his statement.

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.

2. The Court’s comment does not provide a fair context to what I did. The impression created by the comments is that Mr Castle and I (and perhaps Mr Graham and Mr McRae) alone held the views they did. Such a comment and such an impression are created in spite of the evidence. The following witnesses gave evidence all of which acknowledged by their words or their actions that they did not have any idea that what eventuated on 18 January 2003 would occur as it did.

- Mr Bartlett – Deputy Chief Fire Control Officer (ACT) and head of ACT Forests – spent most of 18/1 in a helicopter in the south of the ACT. He flew to the Uriarra area around 1pm. The fire was still west of Uriarra at this stage. Despite these observations, he made no plans to evacuate the Forestry Headquarters or protect his own car as he had no expectation that the fire would arrive as and when it did. Mr Bartlett acknowledged that up until midday on Saturday 18/1 the fires had been more benign than worst case predictions.¹⁰

¹⁰ Submission par. 443

- Mr Cheney – CSIRO fire behaviour expert – did not alert anyone to his alleged view that the suburbs were at risk; sent his son and Mr Hutchins (a CSIRO employee) up to Mt Stromlo without telling them it was going to be burnt over that afternoon;¹¹ spent the most significant fire activity day of his lifetime down the southern end of the Territory in anticipation of fire crossing the Monaro Highway; did not even commence to travel back towards Canberra until 4pm on 18 January;¹² took no steps whatsoever to tell CSIRO management that they were in danger although CSIRO facilities at Black Mountain were significantly threatened on his views¹³ and conceded that the extreme fire spread in the grasslands from 2pm was, without hindsight unable to be predicted.
- Paragraph [9] suggests that I thought that the fires could be stopped “somehow” as if I was looking for some gift from heaven. I was one of many experienced firefighters who believed that the fires would be fought in eaten out pasturelands which existed between them and the urban area along the Murrumbidgee corridor. Those same firefighters expressed their incredulity at the fire burning over ground where there appeared to be no fuel to feed it. This evidence has been ignored.
- Paragraph [12] starts by talking in terms of “a real risk” and “realistic potential” for the fires to reach the suburbs and concludes “they all knew that impact was inevitable”. Leaving to one side the internal inconsistency in the paragraph, it is a comment based on some fire *forecast* evidence by planners. The forecast did not actually show the fires making contact with the suburbs but to Narrabundah Hill by 8pm Saturday night. The forecast was made upon the assumption that the fire would be *unattended* by firefighters when, as pointed out in this response below and clearly stated in the evidence that was never the intention. These comments also depend upon accepting this forecast over the evidence of many, many experienced firefighters who did not expect the fire to do as it did and who believed that it could be held in the eaten out pasturelands.
- To make the comment “they all knew it was inevitable” must assume that a wide variety of senior officers ACT and NSW, urban and rural firefighters, gave false evidence. They did not.
- Firefighters who gave clear evidence that the fires were either faster and more intense than anything anyone had experienced and that there was at least, initially, a belief that they would be held in eaten out pasture land were: me, Chief Fire Control Officer; Rick McRae, Planning Officer ACTBFS; Phil Koperberg, NSW Rural Fire Service Commissioner; Neil Cooper senior ACT bush firefighter and forester; Mr Ian Bennett, ACT Fire Commissioner; David Prince Acting Superintendent, ACT Fire Brigade; Bruce Athur Incident Controller NSWRFSS; Julie Crawford Deputy Incident Controller NSWRFSS.

¹¹ Cheney TR 20.09.04 pp7157-8, 7173,

¹² Cheney TR 20.09.04 p7155

¹³ Cheney TR 20.09.04 pp7172-3

3. It creates an erroneous impression to comment that ESB had no plans and no strategies for dealing with the fires on 18/1. ACTBS firefighters were entirely occupied fighting fires that were burning and threatening property in the south of the ACT.
4. Taking the comment at face value an uninformed reader would assume that no-one was to fight the fire as it came into the ACT. Commissioner Koperberg said that if there was a break-out from NSW containment lines, NSW firefighters would fight the fire as it progressed in the ACT. Julie Crawford, Deputy Incident Controller at Queanbeyan said that when the fire crossed into the ACT, NSWRFs stayed with the fire and undertook property protection.¹⁴
5. It is a further paradox that there appears to be criticism of the ACTBFS on the first night of the fires for holding back some resources in case further fires were called in. “Fight the fire you have and not the one you may have” was the criticism. On 18 January when all available ACT firefighters were engaged fighting the fire which was burning in the south of the ACT, they are criticised for not being ready to fight a possible fire in the north and then, when NSW were available to do so and in fact did so.
6. Mr Bartlett estimated that ten helicopters were working the fire. Most of these were on McIntyre’s Hut fire.
7. The reason that the fire struck was not that there were no plans or strategies and not because there was no-one fighting it. It was because it behaved in an unpredictable fashion and got away. That is why it burnt over two NSWRFs base camps and destroyed \$1.5 million of NSW firefighting equipment before the equipment could be moved.
8. There were warnings given to the public. In the light of the events that occurred, those warnings were inadequate but I did not attempt to mislead anyone at any time. The details of these warnings which were in the *Canberra Times* on Saturday 18/1 and in radio broadcasts throughout the day are set out from paragraph 430 in submissions filed on my behalf.
9. In light of the evidence from the firefighters in the final dot point of par. 3 that the fire behaved in an unpredictable fashion which appears not to be accepted, the tenor of the proposed comments suggest that the only people who really understood the fire on Saturday 18 January 2003 is the Court and Counsel Assisting – with the benefit of 90+ days of evidence and about 9000 pages of transcript.

[13] 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.

¹⁴ Details par. 330-5 of Final Submission

1. This comment is not in accordance with the evidence. There were warnings given to the public. In the light of the events that occurred, those warnings were inadequate but I did not attempt to mislead anyone. The details of these warnings which were in the *Canberra Times* on Saturday 18/1 and in radio broadcasts throughout the day are set out from paragraph 430 in submissions filed on my behalf. One example is given in response to comment [14] below.
2. It must be remembered that the fire travelled 2.5kms between 8am and 1pm and then 12 kms between 1pm and 3pm.

***[14] [IN CONTEXT OF MIDDAY PRESS CONFERENCE 18 JANUARY 2003]
Mr Lucas-Smith also did not provide adequate and important information during the midday press conference. The people who were in the path of the fires had a right to know and Mr Lucas-Smith had an obligation to disclose.***

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.

1. I did not receive Messrs Lhuede, Taylor and Gellie’s prediction about fire spread on Saturday 18 January or any revised prediction of fire spread.
2. I did warn people about their homes and property at the midday press conference. I said the following:

*There is no doubt whatsoever that people need to be taking precautions that may live adjacent to the grassland area on the western side of the suburbs of Canberra and they need to be making sure they have nothing combustible near their homes. They need to make sure that their gutters are clear, their hoses are connected and they can reach all corners of their houses and to be vigilant for any flying embers that might come as the day progresses... I think it is prudent under the current conditions that certainly anybody that lives on the western side of the ACT urban area needs to be taking these sort of precautions... certainly Weston Creek and they’re south. Belconnen is a little out of the frame and bit too far north but I think it is prudent that anybody that lives on that sort of interface area should be taking precautions... make sure you clear around, make sure its clear, make sure your hoses can fit, make sure you’re comfortable and you’ve got all the things you need to protect your property.*¹⁵

3. At the time that this comment was made, the fire had travelled less than 2.5kms in the preceding four hours and was more than 12kms from the urban edge.

¹⁵ See par. 444 submission

[15] 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.

1. The expectations about the fire and the steps taken have been mentioned earlier.
2. It is true that ESB was influenced by its experience in the seven major fires in December 2001.
3. The comment is grossly unfair because it would leave the reader with the impression that only Messrs Castle, McRae and Graham and I believed that the fire could be stopped in the grassland when there were many others who hold the same view and this has not been mentioned.
4. The comment in relation to Mr Koperberg is also completely one-sided. Mr Koperberg had not even planned to contact the ACT. I went to see him when I heard that he was in Queanbeyan.
5. Mr Koperberg gave at least three different versions of his predictions about these fires. He started out by saying that there would be serious implications for the western suburbs of Canberra if the fires were not “contained” (they were contained on their eastern side), he then said that he expressed concern if the fires were not “controlled” (a different concept in bushfire fighting) and finally he said that impact was “inevitable” that the fires would end up in Canberra. Mr Koperberg did not alert any NSW authority that the ACT may call for their assistance on Saturday 18 January. Each time Mr Koperberg retold his predictions, they became bigger and better.
6. Julie Crawford the NSWRFDS Deputy Incident Controller attended the meeting with Mr Koperberg and I did not recall Mr Koperberg saying anything about a threat to the Canberra suburbs and did not recall him using the words “inevitable”.
7. NSWRFDS situation reports are completely inconsistent with Mr Koperberg’s predictions. Even at 11am Saturday 18 January, they do not mention any threat to the Canberra suburbs.¹⁶ The NSWRFDS situation threat at 11 am said:

THREAT ANALYSIS

Current Threat: There is an immediate threat to private property and major pine plantations in the ACT and to the ACT water catchments. Specifically in Uriarra Pine Plantations in the ACT

¹⁶ Submission par. 413

and a small commercial pine plantation in NSW in the area of Two Sticks Rd.

Potential Threat: Rural Holdings in the ACT between the pine plantations and Canberra urban areas.

8. Mr Cheney is another expert who was wise after the event. Does anyone in Canberra remember Mr Cheney ever warning anyone that the Canberra suburbs or any ACT property was at risk? Mr Cheney attended the Incident Management Team's planning meeting on the Friday morning 17 January. There is no evidence from him or from anyone else that at that meeting, Mr Cheney told anyone that the suburbs were in peril and that people must be warned. Why not? If he was not to make a contribution and bring his expertise to bear, why did he go to the IMT planning meeting at all? The truth is that he did not know what was going to happen either and if any confirmation is needed it lies in the fact that on Saturday 18 January he went down to the south of the ACT – to the wrong fire!

[16] 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.

1. This comment is so general, so vague, covering so many people, so many events and over such a period of time it is not possible to respond to it in its present form. My solicitor wrote to the court requesting some insight into the particular factual events upon which this comment is based and that request was refused.
2. The breadth of the comment is an insult to all who worked to combat the fires. It does not acknowledge the difficulties faced whether in terms of resources, time or terrain. It does not acknowledge what was achieved and from the gently ordered course of events in court, it offers no concession to an environment where decisions have to be made between a range of competing priorities with limited information in limited time.

[17] 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.

1. See responses to [13] and [14].
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[18] 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.

1. See responses to [9]-[12] and [15].
 2. I have not criticised the NSWRFSS and I do not do so here. I recognise that its members operated under the same limitations and difficulties and had to make the same kind of decisions as the ACTBFS. The proposed comment is however symptomatic of the one-sided version of the evidence which has attended a number of the proposed comments. Despite the NSWRFSS being no better predictor of what was going to happen with the McIntyre's Hut fire than the ACTBFS, the ACT is criticised for failing to deal with the fire and failing to provide adequate warnings and no such criticism is made of NSWRFSS.¹⁷
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[19] 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.

1. This statement is easily made but there is no specific evidence about what the AFP would have done to support the comment. There is no clear evidence that if at time X the AFP had been given a warning about the fires, it would have done Y with the better outcome Z.
 2. See response in relation to [6].
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¹⁷ Submissions under Heading *NSW Expectations and Predictions* par. 387 and on

[20] 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.

1. See response to [13] and [14] and par. 420 of submissions and onwards.

[21] 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.

1. Despite my request in writing, Your Honour refused to provide me with the specific facts upon which you rely to make this statement. It is therefore impossible to provide a factual response.
2. 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 Mr Castle and I were out of our depth.
3. 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 powers or functions as Coroner.
4. These comments also appear to be focussed on “blame” which is not the role of a Coronial Inquiry as the Supreme Court has clearly stated.
5. 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”

GENERAL STATEMENT IN RESPONSE

1. The inquiry appears to have attributed blame to officers in the ACT and none to NSW when the evidence reveals that NSWRFSS was no better predictor of the course of the fires than the ACT ESB and in circumstances where the principal fire that impacted on Canberra was in fact a NSW fire fought by NSW at all times
2. No consideration appears to have been given to the resources available to the principal ACT officers charged with fighting the fires. In this respect the ACT and its officers has been treated differently to NSW. Counsel Assisting withdrew proposed criticisms of NSWRFSS on the ground that it was not possible to criticise the manner in which the NSWRFSS fought the McIntyre's Hut fire without evidence that that Service had the necessary resources to do so. No equivalent concession has been made to the ACTBFS.
3. It is not apparent from the comments or the submissions of Counsel Assisting that Mr Castle and I made submissions to government to enhance the readiness and capability of the ESB to confront bushfires and those submissions were rejected. Of key importance included: community education officer – rejected (2002), increased funding for aerial fire fighting capability – rejected and bushfire planning officer – rejected.
4. Counsel Assisting submissions and the critical comments proposed by the Coroner appear to owe much of their origin to the evidence of Mr Trevor Roche. This “expert” was briefed to provide critical comment on the ACT response to the bushfires. Despite the magnitude and importance of this task he was specifically instructed not to speak to any of the principal ACT officers who were involved in that fight. He had no appreciation of the limitations of the ACT Bushfire Services budget and made no inquiries to find out. His experience appears to have been drawn from his service in the Victorian CFA, an organisation approximately 100 times larger than the ACT BFS. He acknowledged that he led certain evidence before the inquiry to ensure the inquiry would make findings consistent with his own personal views.
5. The inquiry has been conducted with a view to holding people accountable and apportioning blame in direct contravention of the decision of the Full Court of the Supreme Court.
6. The unfortunate consequence of this approach is that it can only damage the ACT Bushfire Fighting capability and the capabilities of equivalent services in the other states and territories. The ACT and other services depend on the willing participation of volunteers. Those volunteers and the officers who lead them will always be required to make operational “calls” with limited information and with limited time. Inevitably some of those calls will in hindsight be wrong. To criticise the people making these decisions as a result of a court proceeding involving mountains of evidence and months of consideration is rank injustice. Oh, that such luxury was available when fighting fires! Such an approach will only serve to dissuade persons who might otherwise volunteer to serve or take up officer positions, from stepping up to the crease and doing so.

Peter Lucas-Smith

22 November 2006