
TRANSCRIPT OF PROCEEDINGS

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2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

MELBOURNE

FRIDAY 11 DECEMBER 2009

(94th day of hearing)

BEFORE:

THE HONOURABLE B. TEAGUE AO - Chairman

MR R. MCLEOD AM - Commissioner

MS S. PASCOE AM - Commissioner

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1 CHAIRMAN: Yes, Ms Richards.

2 MS RICHARDS: Commissioner, we start this morning with oral
3 submissions on the building topic, which will bring more
4 or less to a conclusion a strand of evidence that we
5 commenced at the start of the second hearing block.

6 By now you have the benefit of detailed written
7 submissions on this topic from counsel assisting and from
8 the State, the Commonwealth, the Municipal Association of
9 Victoria representing local government and also from
10 Standards Australia and AFAC. There is a good deal of
11 agreement in those submissions about the recommendations
12 that have been proposed by counsel assisting and only a
13 couple of areas where issue has been taken with the
14 factual basis for the proposed recommendations that is set
15 out in counsel assisting's submissions.

16 The very constructive approach taken by the
17 parties to the submissions and the proposed
18 recommendations means that it is only necessary for me
19 this morning to make some brief oral submissions about a
20 handful of matters. The matters that I propose to address
21 are AS3959, the Australian Standard for construction of
22 buildings in bushfire-prone areas, which is a large topic
23 in and of itself and there are only three subtopics within
24 that that I would like to address.

25 Firstly, there is the attribution of
26 responsibility for the very long time taken to complete
27 the review of AS3959-1999. Secondly, there is the
28 appropriate pathway for the revision and development of
29 AS3959 and any other bushfire related standards referenced
30 in the BCA in future. Lastly, there is the question of
31 access to AS3959 and other bushfire related standards.

1 The next topic is the one that was probably the
2 most controversial within the building topic, which is the
3 prescription of deemed-to-satisfy solutions in the flame
4 zone, BAL-FZ. Then I would like to say something about
5 designation of bushfire-prone areas in Victoria and lastly
6 maintenance of buildings.

7 Starting with AS3959, the written submissions
8 that you have from counsel assisting set out at some
9 length the rather complicated regulatory scheme within
10 which building in bushfire-prone areas is regulated. So,
11 in brief summary, as at February this year the Victorian
12 Building Regulations adopted the BCA, the Building Code of
13 Australia, as setting building standards for Victoria.
14 The BCA in turn stipulated a performance requirement for
15 dwellings constructed in bushfire-prone areas so that they
16 must be designed and constructed to reduce the risk of
17 ignition from a bushfire while the firefront passes.

18 The BCA in turn prescribed Australian Standard
19 3959, the 1999 edition, as a deemed-to-satisfy solution
20 for that performance requirement. So, it was in the 1999
21 edition of AS3959 that one found the nuts and bolts of how
22 to build a building in a bushfire-prone area.

23 The ongoing development and review of that
24 standard of the nuts and bolts, the technical content of
25 the construction requirement for building in
26 bushfire-prone areas, was by and large left to Standards
27 Australia's technical committee, FP20, a committee of a
28 non-government organisation comprised of volunteers who,
29 as we heard, work within a consensus decision making model
30 and a decision making model that did not require them to
31 account to anybody for timely outcomes.

1 The submissions from counsel assisting also set
2 out the very long history of the review of AS3959-1999
3 spanning from late 2001 right through to March 2009, with
4 a recommendation from the COAG inquiry in the middle which
5 was publicly released in early 2005 that the process
6 should be finished as a matter of priority. That history
7 demonstrates that the regulatory framework really didn't
8 work very well in regulating buildings in bushfire-prone
9 areas.

10 CHAIRMAN: It is very consultative but it is very slow.

11 MS RICHARDS: Very slow; it didn't deliver a timely outcome in
12 an environment where it was widely accepted and had been
13 identified by the COAG inquiry that revision was required
14 and revision was required quickly.

15 In the written submissions we submit that the
16 responsibility for this failure of regulation is diffuse,
17 resting in part with Standards Australia and its failure
18 to actively manage the revision of the standard, a failure
19 that Standards Australia has by and large addressed for
20 the future with a very comprehensive restructure of its
21 business and the way in which it goes about its business.

22 Responsibility rests in part with Australia's
23 building regulators who come together as the Australian
24 Building Codes Board or the ABCB, who left the review to
25 Standards Australia without contributing resources and
26 without defining the scope of the standard that was
27 required. We suggest in the written submissions that, in
28 addition, responsibility may also rest in part with
29 Australia's governments and the very modest resources that
30 are allocated to the ABCB to carry out its
31 responsibilities for setting building standards for one of

1 Australia's largest industries.

2 None of the parties submits that any part of the
3 history of the review that's set out in the submissions is
4 incorrect, so there is no issue taken with the facts, but
5 there is some issue taken with the attribution of
6 responsibility. The Commonwealth picks up the point that
7 was made by Mr Donaldson in his evidence, when I put to
8 him or asked him to reflect on what had gone wrong, that
9 policy decisions are informed by technical issues and that
10 the ABCB could not have made a decision on flame
11 temperature, for example, until the technical experts had
12 identified the different levels of stringency that were
13 possible.

14 While that's so, it doesn't answer the point that
15 FP20 was left to grapple for far too long with the
16 difficult policy question of whether the standard should
17 contain deemed-to-satisfy solutions for the flame zone,
18 the highest risk zone, and in addition the fact remains
19 that it was the ABCB that chose to reference AS3959-2009
20 in the Building Code of Australia and, having done that,
21 it had some responsibility to ensure that the standard was
22 revised in a timely way and that the policy parameters of
23 the review were specified early and with some precision.
24 The history, in our submission, shows that that simply was
25 not done.

26 The State submits that the Commission should not
27 make the adverse findings of fact that are set out in
28 paragraphs 4.31 through to 4.35 of counsel assisting's
29 written submissions because other stakeholders in the ABC,
30 namely the other state and territory regulators, have not
31 had an opportunity to be heard. While it is the case that

1 we haven't had other states and territories represented
2 here, it is the case that the ABCB, which is comprised of
3 the heads of each of those jurisdictions, has been
4 represented and has actively participated in the hearings
5 and, in that sense at least, its stakeholders must have
6 been apprised of the submissions that have been made, the
7 evidence that's been heard by the Commission and the ABCB
8 has had an opportunity to make a response and indeed has
9 done so. It is also notable that the Commonwealth hasn't
10 taken this point about lack of opportunity for the ABCB
11 stakeholders to be heard.

12 In any event, the Commission can make a finding
13 that the State of Victoria has responsibility for the
14 failure to achieve timely regulation of building in
15 bushfire-prone areas in this state. There is evidence
16 before the Commission that two other states, South
17 Australia and New South Wales, had put in place more
18 stringent regulations for building in bushfire-prone areas
19 than were in place under the BCA. Victoria, as we have
20 seen, made no alternative arrangements while the review of
21 AS3959-1999 drifted on and on for years.

22 Victoria participates in a national regulatory
23 scheme and clearly outcomes of a national regulatory
24 scheme depend on the actions of others, not only Victoria.
25 But where that regulatory scheme is not delivering a
26 timely outcome, Victoria is not absolved of responsibility
27 for paying attention to appropriate levels of regulation
28 within its jurisdiction.

29 If I can move then to the second subtopic in
30 relation to AS3959, the pathway for revision and adoption
31 of AS3959 and any other bushfire standards that are

1 referenced in the BCA. Proposed recommendation 2 sets out
2 a proposed model for a future working relationship between
3 the ABCB and Standards Australia. There is broad support
4 among the parties for that recommendation and there is one
5 point of departure in the Commonwealth's submissions. The
6 proposed recommendation is modelled to assist the ABCB and
7 Standards Australia to avoid past mistakes, the long and
8 drawn-out review of AS3959. What it involves is utilising
9 the Standards Australia collaborative development pathway
10 under which stakeholders such as the ABCB and Standards
11 Australia jointly drive and resource a project through a
12 negotiated sharing of responsibilities.

13 The Commonwealth draws attention in its
14 submissions by attaching some press releases, one from
15 Standards Australia and one from Senator Carr and Richard
16 Marles, parliamentary secretary for innovation and
17 industry, which attest to an announcement by Standards
18 Australia in November that it has in effect reinstated the
19 Standards Australia driven pathway and will be allocating
20 resources to projects of high public interest that can't
21 be funded by stakeholders. The Commissioners will recall
22 Mr Tucker's evidence that Standards Australia, due to
23 financial constraints, had suspended the Standards
24 Australia driven pathway and had essentially told the
25 world that anyone wanting Standards Australia to develop a
26 standard would have to bring resources, bring their cheque
27 book.

28 This announcement apparently reinstates the
29 funding by Standards Australia of the development of some
30 standards and the pathway is now to be called the
31 Standards Australia priority pathway. On the basis of

1 this change of position by Standards Australia, the
2 Commonwealth submits that future projects for bushfire
3 related standards should proceed along that pathway rather
4 than the collaborative pathway under which stakeholders
5 need to bring resources and share responsibility.

6 It is our submission that this should not be
7 accepted by the Commission. As Mr Tucker explained, the
8 revision of AS3959 until 2009 proceeded on the Standards
9 Australia driven pathway. It was funded and managed
10 within Standards Australia. As we know, that didn't work
11 very well. It certainly took a very long time to
12 complete.

13 A different approach is called for in future. In
14 relation to bushfire related standards referenced in the
15 Building Code of Australia, it is the collaborative
16 pathway that is to be preferred. Under this pathway the
17 ABCB as the regulator would need to contribute resources
18 and share responsibility for the project. Unless it is
19 the case that the ABCB can't contribute resources, which
20 seems unlikely, then it is the collaborative pathway
21 rather than the priority pathway that should be preferred.
22 In relation to AS3959, which has been a standard that has
23 been picked up and referenced in the BCA, there is every
24 reason why the ABCB should contribute resources and share
25 responsibility for the timely review of the standard.

26 So, in our submission, the collaborative pathway
27 is far better suited to bringing about timely outcomes for
28 building regulation in bushfire-prone areas.

29 That brings me to the third point in relation to
30 AS3959, which is access to it and to other bushfire
31 related standards that are referenced in the BCA.

1 Proposed recommendation 3 is that the ABCB negotiate with
2 Standards Australia and SAI Global for free on-line access
3 to AS3959 and any other bushfire related standard that is
4 referenced in the BCA.

5 The submissions from the parties in relation to
6 this recommendation are quite interesting. The State
7 supports it, noting that it is a matter for others to
8 implement; the Commonwealth says that it should be left to
9 Standards Australia and SAI Global, the Standards
10 Australia publisher, to provide their standards for free
11 or no cost; and Standards Australia says that the ABCB
12 should negotiate directly with SAI Global.

13 So, it seems that everyone agrees it is a good
14 idea as long as they don't have to pay for it. This kind
15 of duckshoving really does no-one any credit. There is a
16 problem here and it needs to be addressed and fixed. The
17 plain fact is that AS3959-2009 is referenced in the BCA
18 and it forms part of the law regulating building in
19 bushfire-prone areas. It should be available to the
20 public and the building industry at no cost, at least
21 on-line. Exactly how that is to occur is a matter for the
22 ABCB, the regulator, to negotiate with those who own and
23 control the copyright over the standard. Implementation
24 of the recommendation will probably require the input of
25 some government funds and that will be a matter for the
26 ABCB to work out with its stakeholders which will include
27 the State of Victoria.

28 Moving to the prescription of deemed-to-satisfy
29 solutions in the flame zone, counsel assisting has
30 proposed recommendations that the ABCB amend the Building
31 Code of Australia and that the State amend the building

1 regulations to remove deemed-to-satisfy solutions for the
2 construction of buildings in BAL-FZ, the flame zone. This
3 proposal, perhaps not surprisingly, is strongly supported
4 by AFAC in its written submissions. It is opposed by both
5 the State and the Commonwealth, both of whom suggest an
6 alternative recommendation that the ABCB should review the
7 use of deemed-to-satisfy solutions in the flame zone, and
8 Victoria essentially says, "Whatever the outcome of the
9 ABCB review is, then we will follow that."

10 We submit that the Commission should not take
11 this course. It would amount to no more than suggesting
12 to the ABCB that it reconsider its position in light of
13 the evidence heard by this Commission and submissions made
14 by counsel assisting. The ABCB can of course do this in
15 any event whenever it sees fit. It should do so with the
16 benefit of the deliberations of this Commission about that
17 very central issue of controversy about building in
18 bushfire-prone areas.

19 The Commission can and should form a view about
20 how the competing policy considerations on this issue
21 should be resolved. The arguments of those who are in
22 favour of deemed-to-satisfy solutions in the flame zone
23 and those who are against were fully and well articulated
24 in this Commission by a wide range of different interests.
25 It is really hard to escape the conclusion that there has
26 been no concerted effort at any level of government to
27 weigh up the respective arguments and work out how they
28 should be resolved, and it is perhaps this that resulted
29 in a clearly unsuitable vehicle, technical committee FP20,
30 being the place at which this debate took place.

31 Within Victorian government there was no evidence

1 that anyone had tried to resolve the competing policy
2 positions of the CFA and the Building Commission on this
3 issue. Indeed, it took a fair bit of prompting and in the
4 end a summons to Mr Andreou to come and give evidence
5 before the different positions of the CFA and the Building
6 Commission were revealed to the Commission.

7 The general manager of the ABCB was quite
8 dismissive in his evidence of AFAC's position and senior
9 counsel for the Commonwealth in cross-examining
10 Mr Chladil, the AFAC representative, went so far as to
11 query whether the arguments that he was outlining in his
12 evidence in fact represented the position of AFAC and its
13 members. At a federal level at least, there is no
14 mechanism for resolving the differences of opinion between
15 the ABCB and the fire agencies about whether there should
16 be deemed-to-satisfy solutions in the flame zone.

17 So you, as Commissioners, having heard those
18 competing points of view and having heard what each side
19 of the argument has to say about the other, have a rare
20 and good opportunity to weigh up those arguments and to
21 express a conclusion and, in our submission, you should do
22 so. You should not simply leave the matter to the ABCB to
23 reconsider in the light of the evidence and submissions.
24 It can reconsider its position in the light of your
25 findings and recommendations.

26 On the one hand, building industry interests, the
27 Housing Industry Association, Master Builders Association
28 in Victoria and several building surveyors who gave
29 evidence, as well as building regulators, promote
30 deemed-to-satisfy solutions in the interests of certainty,
31 consistency, reduced cost of compliance and construction

1 and the provision of a benchmark for alternative
2 solutions. On the other hand, the fire agencies and fire
3 safety interests, AFAC, which includes the CFA and the
4 FPAA, oppose the prescription of deemed-to-satisfy
5 solutions in the flame zone because it normalises and even
6 encourages building in the highest risk area where there
7 is minimal or inadequate defendable space and it implies
8 that, so long as the deemed-to-satisfy requirements are
9 met, the resulting house is as safe as a house built in a
10 lower bushfire attack level.

11 For the reasons set out in the written
12 submissions which I have highlighted in argument but are
13 clearly more detailed than that, the Commission should
14 give priority to these life safety considerations over
15 those of the desire for consistency, certainty and reduced
16 costs and, in our submission, should make the
17 recommendations proposed.

18 There is one other matter that I need to address
19 before I move on to the next topic, which is a suggestion
20 by the State that there is a need for more
21 scientifically-based analysis to compare the performance
22 of houses constructed in accordance with deemed-to-satisfy
23 provisions with houses designed and built under an
24 alternative solution.

25 It is difficult to conceive how such a research
26 project might be constructed, but it is not really a
27 workable submission because the two different approaches
28 are simply not capable of direct comparison. The
29 performance requirement is the same, that the house must
30 be constructed to reduce the risk of ignition as the
31 firefront passes, but deemed-to-satisfy construction is

1 the same on any site in BAL-FZ, regardless of the nature
2 of vegetation, regardless of the slope on which the house
3 is built, regardless of any other risk factors.

4 Alternative solutions are of course designed to meet the
5 BCA performance requirement by reference to the specific
6 risks on that site.

7 So, in my submission, it is not a matter that is
8 capable of technical scientific analysis. The performance
9 requirement is the same and the building surveyor will
10 have to make a judgment about whether an alternative
11 solution meets the performance requirements.

12 The next topic I would like to talk about is
13 designation of bushfire-prone areas in Victoria. Proposed
14 recommendations 8 and 9 concern designation of
15 bushfire-prone areas for the purposes of the BCA and
16 AS3959-2009. In essence, it is proposed that the mapping
17 and designation of bushfire-prone areas in Victoria be the
18 responsibility of a single agency rather than local
19 councils, as was formerly the case. It is further
20 proposed that the designation of the whole of Victoria as
21 a bushfire-prone area be progressively phased out
22 commencing with areas in which there is no bushfire risk.

23 The State's submission is that there is
24 insufficient evidence before the Commission on this issue
25 at this stage and proposes to address these proposed
26 recommendations after the completion of the evidence on
27 land use planning, which we will be presenting in February
28 next year. Counsel assisting are at one with the State on
29 the need to revisit the issue of statewide mapping of
30 bushfire risk and the feasibility of a whole of government
31 approach to determining what in New South Wales is called

1 bushfire-prone land when submissions are made on the land
2 use planning topic. Clearly there is an opportunity there
3 for a much more holistic approach to be taken to mapping
4 and designation of bushfire risk areas.

5 However, there is ample evidence before this
6 Commission on which it can conclude that proposed
7 recommendation 8 is preferable to both the former system
8 of local government designating bushfire-prone areas and
9 to the current interim arrangements under which the whole
10 of Victoria is designated as a bushfire-prone area.

11 It is not proposed to lead further evidence about
12 the regulation of building in bushfire-prone areas and the
13 Commissioners can address that aspect of the evidence now.
14 The State should take the opportunity that it has today to
15 address this issue in relation to building regulation.
16 There is no suggestion that the structure of AS3959-2009
17 in the BCA which relies on governments designating
18 bushfire-prone areas to activate those provisions is going
19 to change.

20 The State submits at paragraphs 27 and 28 of its
21 written submissions that the basis for the proposed
22 recommendations is the expense and regulatory burden of
23 requiring a BAL assessment to be undertaken for every
24 building permit application in Victoria. The State say
25 that's the main reason advanced in support of the proposed
26 recommendations. It is one reason, but it is not the most
27 important. The most important reason for advancing the
28 proposed recommendations about the way in which
29 bushfire-prone areas should be designated is that the
30 interim system of site-by-site assessment of bushfire
31 risk, where it is left up to individual practitioners and

1 signed off by individual building surveyors, including in
2 areas of no risk at all, is a very poor way for a
3 community to manage its risk. It doesn't bring building
4 regulation into an overall management of bushfire risk; it
5 leaves it to be determined on a site-by-site basis. It is
6 not conducive to a thorough and consistent risk
7 assessment, and we had evidence from a number of building
8 surveyors about concerns about inconsistent BAL
9 assessments being done, and it is not conducive to a
10 holistic management of bushfire risk.

11 I should say that it is not proposed that these
12 recommendations should be made on an interim basis,
13 although the proposed recommendations did identify a date
14 of March 2010. That date will be long past by the time
15 the Commission presents its final report in July, but the
16 date of March 2010 is significant because the interim
17 regulations, by which the whole of Victoria has
18 effectively been designated as bushfire-prone, expire on 9
19 March next year and, as things stand, the former system of
20 local councils designating bushfire-prone areas will be
21 revived.

22 The State is no doubt already considering whether
23 to further amend the building regulations in March 2010 to
24 continue the system that is currently in place. Based on
25 the state's submissions, it seems likely that the current
26 arrangements will be continued for a further interim
27 period, again without the preparation of a regulatory
28 impact statement.

29 It would of course be a matter of concern if the
30 State were to do anything further than that while this
31 issue is still before the Commission, particularly given

1 the position that it has adopted of not making submissions
2 on this issue at this point. Counsel for the State may be
3 able to advise the Commission what is proposed for the
4 designation of bushfire-prone areas in the period between
5 March 2010 when the interim arrangements expire and
6 consideration and one would hope implementation of the
7 Commission's final recommendations and that may set at
8 rest some concerns about what is going to happen in March
9 next year.

10 The final topic that I would like to deal with is
11 the issue of maintenance of buildings in bushfire-prone
12 areas, which is a really important issue and possibly the
13 most difficult one that we have had to grapple with in
14 this topic. It is important because at present the
15 regulation of building in bushfire-prone areas, which as
16 we have seen is the result of a pretty complex structure
17 and some very technical requirements at the pointy end of
18 actually building a building, requires a building to
19 comply with a performance requirement in the BCA and,
20 where it is used, AS3959, at one moment in time and one
21 moment only and that's when the building surveyor signs
22 off on the certificate of occupancy for the building when
23 it is first built.

24 Beyond that, for the life of the building, which
25 may be 50 years, it may be longer, there is no requirement
26 for the building to be maintained to the standard to which
27 it was originally built. Shutters may be removed, window
28 screens may be damaged, roof tiles may be dislodged, a
29 noncompliant deck may be added, vegetation may encroach on
30 the house, increasing the bushfire attack level of the
31 site on which the house was built. Any of these things

1 will increase the probability of a building igniting and
2 burning in a bushfire. Any of these things may create the
3 weak link that Mr Leonard talked about in his evidence
4 that may see the house ignite and then burn.

5 Subsequent owners and occupants of the building,
6 including tenants, whose position has not really been
7 considered in much detail, are the intended beneficiaries
8 of the whole regulatory scheme. It is there not only for
9 the initial owner and builder but for subsequent occupants
10 and owners. They under the current arrangements may have
11 no idea about the bushfire safety features that were part
12 of the building's design and construction, whether they
13 have been maintained, what might be done to restore the
14 building to its initial level of compliance.

15 So, that problem focuses attention on what can be
16 done to ensure that buildings built to a bushfire
17 construction standard are maintained to that standard.
18 The House of Representatives Select Committee in its
19 report "A nation charred" and the COAG inquiry both
20 recognised the importance of this issue, but their
21 recommendations and findings haven't been taken up. There
22 has not been any implementation of suggestions that they
23 made about how this issue might be addressed.

24 Clearly community information and education to
25 owners that encourages owners to take responsibility for
26 maintaining their houses is vital. The CFA produces some
27 excellent material in this regard and there is now a very
28 useful section in the new household bushfire
29 self-assessment tool about ember protection measures. It
30 is proposed that the Building Commission also take on some
31 responsibility for community and education work, and

1 that's a proposed recommendation that's supported by the
2 State.

3 The question of whether maintenance could be
4 enforced by the mechanism of a condition on an occupancy
5 permit issued under the Building Act was explored with a
6 number of witnesses and the upshot of their evidence was
7 that, no, it really can't be unless there is some
8 legislative amendment. Even with legislative amendment,
9 the practicalities of enforcing maintenance conditions are
10 enormous and so discouraging that it is not a course
11 that's proposed in our written submissions.

12 That leaves us with a position where maintenance
13 requirements cannot practically be made mandatory and
14 raises the question of whether there are any other
15 measures that might be taken to encourage the maintenance
16 of bushfire construction standards throughout the life of
17 a building.

18 Two measures were proposed in our submissions.
19 The first would involve an amendment to section 32 of the
20 Sale of Land Act to require disclosure of the standard, if
21 any, to which the dwelling was constructed, the BAL
22 assessment at the time of construction and the current BAL
23 for the site. The aim of this measure is to ensure that
24 future purchasers of a house in a bushfire-prone area
25 would have notice of the current risk level of the site
26 and the standard and risk level for which the house was
27 constructed. Any increase in risk level over that for
28 which the house was constructed is likely to have an
29 impact on the price of the house and that would provide
30 indirectly an incentive for the safety features of the
31 house to be maintained and the original BAL of the site to

1 be maintained.

2 The State and the Municipal Association have in
3 their submissions pointed out some practical difficulties
4 with the proposed recommendation in the form that it takes
5 in written submissions and chief among those is its
6 potential application to dwellings that were not required
7 to be built to any standard and issues of retrospectivity.
8 The State would support a modified recommendation and
9 wants to revisit this issue after the conclusion of the
10 planning evidence, and that's a course with which we
11 agree. It is a measure that clearly requires some
12 thinking through. It could work, but it needs some more
13 work done on it.

14 The second proposed measure is the introduction
15 of a bushfire safety rating scheme for dwellings in
16 bushfire-prone areas, akin to the star rating scheme for
17 energy efficiency or perhaps akin to a roadworthy
18 certificate that is required to be provided for a car at
19 the time of sale. Under this scheme the bushfire safety
20 of a dwelling could be assessed by reference to factors
21 including its current level of compliance with building
22 and planning controls for bushfire safety, so that there
23 would be some ongoing mechanism for measuring compliance
24 of a building with the regulatory schemes in place.

25 Both the State and the Municipal Association have
26 opposed this suggestion for a range of different reasons,
27 and I would just like to talk through those. The MAV
28 submits that a bushfire safety rating scheme would be
29 beyond the provisions of the Building Act, and that's
30 true. It is not proposed that the scheme operate under
31 the Building Act. It is proposed that it operate as a

1 voluntary alternative to the regulation of maintenance.
2 So, we can put those arguments to one side.

3 Both the State and the Municipal Association are
4 concerned that rating the safety of houses could engender
5 complacency or a false sense of security for those whose
6 house achieves the highest safety rating. By that logic,
7 however, the requirement to comply with building and
8 planning controls in the first place can be questioned.
9 Indeed, the risk of a false sense of security is very much
10 present for someone who has built a house in the flame
11 zone in compliance with section 9 of AS3959-2009. If you
12 are going to regulate these matters at all, the risk of
13 complacency or a false sense of security by those who have
14 complied is an ever-present risk. It is a risk that must
15 be managed and it is a risk that can be managed with
16 appropriate community information and education.

17 Both the State and the MAV query the duration of
18 a bushfire safety rating. Would it be a rating for all
19 time and, if not, for how long would it endure? It is
20 certainly not proposed as a rating for all time. The
21 purpose of the proposed recommendation is to encourage
22 ongoing maintenance and ongoing compliance with the
23 initial standard to which the building was built. It is a
24 measure that's designed to enable people to ascertain
25 their dwelling's level of compliance at a given point in
26 time and wouldn't endure for any longer than the moment or
27 the time at which the assessment is made.

28 Both the State and the Municipal Association of
29 Victoria refer to recommendation 7.2 in the interim
30 report, which was that the CFA consider means of providing
31 advice to residents on the defendability of their homes,

1 which has resulted in the development of the CFA's
2 household bushfire self-assessment tool.

3 The difficulty with that as things stand at
4 present is that the tool does not address compliance with
5 bushfire construction requirements. It takes you through
6 a very detailed assessment of the vegetation and slope and
7 surrounds of your house to determine minimum defensible
8 space requirements and if you can't create that defensible
9 space, it then says if you believe that your property may
10 be defensible for other reasons, including that you have
11 built a new house or retrofitted your house to comply with
12 AS3959-2009, then you should contact the CFA community
13 information line for further information.

14 A little bit further on, as you go through the
15 steps in the tool, it contains a very useful section on
16 ember protection which does address a number of
17 maintenance issues. But, beyond that, no attention is
18 given to how the house is designed or constructed, whether
19 it is made of brick, whether it is made of western red
20 cedar, and this is clearly an area in which the
21 self-assessment tool could be further developed. Unless
22 that's done, it is not a viable alternative to the
23 proposed bushfire safety rating scheme.

24 So, we do press the idea of a bushfire safety
25 rating scheme under which occupants, owners, prospective
26 purchasers of a property can get an assessment of the
27 current level of compliance with building regulations that
28 are in place, as we have seen, for a good reason and for
29 good effect. The aim of the proposal is to encourage and
30 ensure as much as possible ongoing maintenance and ongoing
31 compliance to the standard that's set when a building is

1 constructed.

2 Commissioners, unless there are any questions,
3 those conclude the matters on which I wanted to address.

4 CHAIRMAN: No, thank you.

5 MS RICHARDS: I have had indications from Dr Lyon for the
6 councils, from Ms Treleaven for the Commonwealth and
7 Ms Judd that they all want to make oral submissions. So
8 perhaps we could do it in that order, if that's
9 convenient.

10 CHAIRMAN: Yes.

11 DR LYON: Commissioners, the very comprehensive and balanced
12 approach taken by counsel assisting in the presentation of
13 the oral submissions means that I can be no more than
14 about a minute.

15 CHAIRMAN: Okay.

16 DR LYON: So start the clock.

17 CHAIRMAN: We would be grateful for that.

18 DR LYON: Okay, I choose to start now. As for the section 32
19 proposal, the MAV had supported counsel assisting's
20 proposal in this respect. We did point out that there are
21 some difficulties. We are happy to fall in line with the
22 further submission of counsel assisting that this matter
23 be revisited during the planning block. Unless there are
24 any questions, that is all I need to say about that.

25 The bushfire rating system, whilst we appreciate
26 the frustration felt by counsel assisting in this respect,
27 we make the submission that, with respect, the proposed
28 recommendation is flawed in many ways. But perhaps
29 fundamentally the greatest flaw is that, whilst it is a
30 scheme that has obviously had a lot of thought put into
31 it, it was not the subject of evidence at the time the

1 experts were available during the building block and that
2 makes it very difficult to assess what the private
3 building surveyors and the municipal building surveyors
4 would say about it.

5 The MAV has had the opportunity to go back and
6 speak to the building people, so the submission made
7 opposing the star rating system is one that has been made
8 after careful and deliberate thought. I don't intend to
9 revisit the reasons for which it is opposed. They are set
10 out in our written submissions. But each one of them, if
11 read carefully, will show the Commissioners why it is we
12 say that the system is flawed.

13 I will take up one of the arguments put by my
14 learned friend in her argument this morning, and that is
15 that the MAV says that the assessment is beyond the
16 provision of the Building Act but we can put that argument
17 to one side because this is a voluntary scheme. That
18 argument needs to be examined a little more closely. It
19 is voluntary in that it is not imposing an obligation on
20 the home owner to have it done. But once a building
21 surveyor or like professional is engaged, presumably for a
22 fee-paying service, there is an obligation upon that
23 professional to undertake an assessment and provide a
24 certification.

25 So far as that may fall to a building surveyor
26 and in my case a municipal building surveyor, that is
27 simply impossible because there is no obligation or power
28 under the Building Act for an MBS, or an RBS for that
29 matter, a relevant building surveyor, to perform such a
30 task, to give that assessment and to provide the
31 certification or guarantee.

1 Now, it is then that we get to the other
2 arguments that are made in my written submissions and
3 I don't intend to revisit them. But it is not enough to
4 say that, because it is a voluntary scheme, the argument
5 about it being beyond power under the Building Act can be
6 put to one side. It simply can't work that way. Once
7 someone is engaged, there is an obligation to do their job
8 properly and to make a professional assessment and to in
9 fact give a certification according to the star rating.
10 Now, that must imply that they have the power to do so
11 and, as far as the RBS goes, it is not available under the
12 Building Act.

13 Now, because of the pressure of time I won't take
14 up an expansion of that issue through my written
15 submissions, but if there are any questions I'm happy to
16 deal with them now.

17 COMMISSIONER PASCOE: I might explore that a bit. When we
18 heard from the State in response to counsel assisting's
19 oral submissions for the interim report, it was put to
20 Mr Myers that perhaps the State might consider an
21 accreditation scheme for professionals to make ratings of
22 this kind. So, if you like, it was a bit of a precursor
23 to these kind of recommendations. As I understand your
24 argument, you are not persuaded by the voluntary nature of
25 the proposed star rating system because, once a
26 professional is engaged, he or she requires powers for it
27 to be enforceable. Is that - - -

28 DR LYON: When I talk about a professional I'm particularly
29 talking about builder surveyors, municipal building
30 surveyors in particular, because they are part of the
31 domain of who I represent. Whether it can be done through

1 the private industry is a different matter.

2 COMMISSIONER PASCOE: I realise some of this might be more
3 pertinent for Ms Judd, but I think that that is part of
4 what needs to go into the mix. Are there other means such
5 as an accreditation system for people who may well be
6 experienced retired firefighters, but people who have a
7 lot of knowledge of fire risk, who could undergo some kind
8 of training or provide sufficient recognition of prior
9 learning that they would be regarded as competent to make
10 such an assessment?

11 I suppose what goes through my mind as I hear
12 both arguments is the capability of an individual
13 householder to apply the knowledge of what the siting, the
14 slope, the distance from vegetation really means for that
15 household, vis-a-vis the capability of a person who may be
16 doing dozens in a month and builds an accumulated
17 knowledge base that can be brought to bear on what is
18 really a very sophisticated judgement at the end of the
19 day.

20 I'm wondering, Dr Lyon, if at the nub of the
21 difficulty that you perceive is you seemed almost to
22 alternate the words "certification" and "guarantee" when
23 you were giving us your very brief response and I think
24 that may be a difficulty that, in the minds of some, a
25 certification is a guarantee. Even as it relates to the
26 notion of neighbourhood safer places, it is not intended
27 to be a guarantee. I can see why, for you, wanting to
28 provide some protection for municipal surveyors, you would
29 be wanting to make sure that no-one leaves with that
30 perception, but I do think that that's one of the real
31 challenges for a lot of the work in this area, that notion

1 that somehow a professional judgment or a certification is
2 a guarantee, when clearly it can't be a guarantee.

3 DR LYON: I agree that it can't always be a guarantee, but the
4 laws of professional misstatement and the giving of
5 opinion, the common law has developed a tort around such
6 certification and opinion. At present it is not so much
7 that I'm seeking to protect the MBS, but it simply is not
8 there, the power is not there. Chris Watson gave pretty
9 full evidence of what it was that an MBS could do. But,
10 yes, beyond that there is the question of what is the
11 effect of the assessment that is made, and particularly it
12 has to be a fee-paying service. It is not going to be a
13 voluntary service.

14 The voluntary aspect was what interim
15 recommendation 7.2 was aimed at doing, get people to get
16 the CFA in, keep them involved in the process, get them to
17 take responsibility for the assessment of their house and
18 around the house. But once you start paying for it, there
19 must be a level of comfort that you can derive from
20 the assessment that's undertaken and whether you call it a
21 certification or whether you call it a guarantee is going
22 to depend on the terms of the contract and how it settles
23 in the mind of the person who pays for it and the level of
24 comfort they draw will depend on how much they pay for it,
25 too.

26 COMMISSIONER PASCOE: I wouldn't want to get into an argument
27 on tort by any stretch, but it strikes me that in the same
28 way as a medico's diagnosis isn't a guarantee, it is a
29 judgment based on knowledge and experience, that it would
30 be a comparable kind of assessment that you would be
31 looking for. But we probably don't have the time and

1 I certainly don't have the expertise to argue that one
2 through.

3 DR LYON: Don't assume for a moment I do either. As Justice
4 Teague knows, my expertise, if you can call it that, lay
5 elsewhere. They are complex issues and I think even the
6 complexity of this exchange indicates that, even as a bare
7 bones proposal, there is a myriad of issues that attach to
8 it.

9 COMMISSIONER McLEOD: Dr Lyon, maybe I could make an
10 observation rather than to ask a question. It does strike
11 me as strange that communities are comfortable with
12 dwellings being rated from an energy efficiency point of
13 view, which is about environmental concerns and about
14 expenditure, which in a sense are much lesser concerns
15 than the safety of one's life in respect of a dwelling
16 that a person may be proposing to live in. Yet there
17 seems to be a reluctance to have a similar kind of safety
18 rating associated with a house which is more fundamentally
19 important to an individual than ratings for some of these
20 other subsidiary purposes. Do you have any comment on
21 that?

22 DR LYON: Yes, if I can, sir. Commissioners, there is a
23 difference. Some of the problems are discussed in the
24 submissions, but there is both subjective factors; that
25 is, that an energy rating for a house, that is whether it
26 has insulation, whether it has double-glazed windows and
27 that, is a rating that can be objectively measured and it
28 takes into account a range of climactic factors. The
29 problem with defendability and a star rating for a house
30 in a bushfire is because of the very problem you raise.
31 It is so important, it is usually a life and death issue,

1 and it depends on external factors that can't be measured
2 to some extent until the fire is upon us. Some of the
3 houses that burnt down on 7 February could have survived
4 in other conditions. So, it takes into account the
5 wildfire factor and the external factor.

6 It depends also upon the capabilities of the
7 people who are tasked with defending the house and that's
8 something that would be, we respectfully submit, impossible
9 to measure, and it must take into account factors, both
10 before and after, or particularly after the assessment is
11 made, so that the very things that my learned friend
12 Ms Richards was talking about, that shutters may come
13 down, shutters might not work, sprinkler systems have to
14 be maintained, pumps have got to be maintained, they have
15 got to be appropriately located; all of these things, if
16 there is a change after a rating is made, then it can
17 affect the defendability of the house.

18 Now, all of these things are things that any
19 person in this room will say we urge people to keep up a
20 vigilance. But, from the point of view of the MAV and
21 just looking at the current structure, we just can't see
22 how from a council perspective this can work.

23 Taking up Commissioner Pascoe's point, is it
24 feasible for the private industry to work up an
25 accreditation system? One would imagine it is, simply
26 because it then becomes a contractual basis, but so far as
27 the MBS derives their powers from the Building Act and
28 then local government responsibilities, it's just not
29 there. But can I say that even personally I would have to
30 say I agree with your observation. It is more important
31 in the long run that people understand the defendability

1 of their house because it is a life and death issue. It
2 is hard to see a life and death issue in short term from a
3 star rating for a house for energy purposes.

4 So we agree, but we just say the structure isn't
5 there to enable us to do it.

6 COMMISSIONER McLEOD: Thank you.

7 DR LYON: Thank you, Commissioners.

8 MS TRELEAVEN: If the Commission pleases, I anticipate that
9 I will be approximately a Dr Lyon minute. From the
10 outset, the Commonwealth wishes to bring to the
11 Commission's attention the fact that it has addressed
12 recommendations made by counsel assisting that are of
13 relevance to both the Commonwealth and the Australian
14 Building Codes Board, bearing in mind that the Building
15 Codes Board is in fact a national body which has been
16 established under the intergovernmental agreement and is
17 not a Commonwealth body.

18 In preparing its submissions, the Commonwealth
19 did consult with the ABCB and sought its advice to inform
20 the proposed alternative recommendations made by the
21 Commonwealth. My instructions are that the ABCB then
22 consulted with the various state and territory members and
23 that the alternative recommendations made by the
24 Commonwealth have been informed by that contribution from
25 the ABCB.

26 There is a point which has been clarified in the
27 Commonwealth's written submissions but I think needs to be
28 clarified again here today, and that is that the ABCB is
29 not a regulator. While it certainly has members or the
30 jurisdictions are represented on the ABCB and they
31 themselves have the responsibility for building regulation

1 within their jurisdictions, Mr Donaldson said in his oral
2 evidence via videolink, quite appropriately I think, that
3 the ABCB is a body of policy expression about what it is
4 that government has agreed ought to be achieved in
5 relation to the design and construction of buildings. So,
6 the ABCB itself does not have a regulatory role and while
7 the regulators are represented on there, there are also
8 other stakeholders from industry.

9 In summarising the Commonwealth's submissions,
10 I don't propose to go to all of the recommendations in
11 detail. Alternative recommendations have been made in
12 respect of counsel assisting's proposed recommendations 1
13 and 6 in relation to the objectives of the building code
14 and the standard that's under discussion.

15 In respect of proposed recommendations 4 and 5
16 about the deemed-to-satisfy provisions in the flame zone,
17 the Commonwealth wishes to emphasise that through its
18 proposed alternative recommendations the ABCB has agreed
19 to review the need for deemed-to-satisfy provisions, and
20 this is consistent with the State's position, that it
21 ought to be the subject of review, bearing in mind that if
22 the deemed-to-satisfy provisions were removed from the
23 building code, then it would be incumbent upon all states
24 and territories, not just Victoria, but all states and
25 territories to then develop alternative solutions, which
26 would be an incredibly complex process. Therefore, it is
27 the Commonwealth's view that it is a matter appropriate
28 for the ABCB to review and consider, being informed by the
29 evidence that has been led in this Commission and through
30 the regulatory processes which are set out in the
31 intergovernmental agreement and the COAG guidelines on

1 best practice regulation.

2 In respect of recommendation 2 which relates to
3 the review of the standard, the Commonwealth supports the
4 continuous review of the standard and ultimately what is
5 important for this Commission is the continual review of
6 that standard. The pathway by which it is reviewed is
7 important but the real emphasis needs to be on the ongoing
8 review. That being said, as counsel assisting has
9 identified, the key difference between the Commonwealth's
10 submissions and the counsel assisting's submissions is the
11 pathway by which that is to be achieved.

12 The media release of Standards Australia and the
13 Commonwealth's response were annexed to the Commonwealth's
14 submissions and I actually seek to tender those media
15 releases, if I might, so that they become exhibits. The
16 Standards Australia media release is document number
17 (RESP.6003.001.0011) and the Commonwealth's response is
18 (RESP.6003.001.0013). I have copies for the Commissioners
19 if you require them. Perhaps they could be allocated
20 exhibit numbers.

21 CHAIRMAN: I think if you give us the lot, we will certainly
22 have them in front of us.

23 #EXHIBIT 609 - Standards Australia media release "Standards
24 Australia to continue funding standards development as
25 primary focus" dated 4 December 2009 (RESP.6003.001.0011)
26 to (RESP.6003.001.0012). Commonwealth response "Government
27 welcomes revamped standards process" dated 4 December 2009
28 (RESP.6003.001.0013).

29 MS TRELEAVEN: The key paragraphs of the Standards Australia
30 media release are the third paragraph, which sets out the
31 objectives of the priority pathway, in that standards

1 which deliver safety, economic or community benefits are
2 those which ought to be given priority by Standards
3 Australia. In the fifth paragraph it notes that key
4 stakeholders, including the Commonwealth government, want
5 to see Standards Australia itself continue to
6 substantially resource public interest standards projects.

7 The Commonwealth submits that this pathway is the
8 preferable pathway because it is a continuation of what we
9 have come to know as the Standards Australia driven
10 pathway, and in fact the Commission is already aware that
11 the review of AS3959 has already commenced along that
12 pathway, which was addressed by the interim submissions
13 and recommendations of the parties and the evidence of
14 Mr Tucker when he was here.

15 It is also consistent with the obligations of
16 Standards Australia under the memorandum of understanding
17 it has with the Commonwealth government that it will
18 wherever possible give priority to requests for work the
19 Commonwealth considers necessary for the successful
20 attainment of public and national interest objectives, and
21 it is fair to say that that is the view taken by the
22 Commonwealth in relation to this particular standard and
23 it has by its submissions undertaken to submit a proposal
24 to Standards Australia for the revision of this standard
25 along that pathway. The priority pathway will apply to
26 standard development projects which deliver safety,
27 economic or community benefits, and it is the
28 Commonwealth's view that AS3959 is certainly one of those
29 standards.

30 We note that Standards Australia didn't refer to
31 the availability of this pathway in its submissions and

1 the reason for that the Commonwealth can't comment upon.
2 However, it is clear that this pathway was announced after
3 the evidence was led before this Commission and ought to
4 be brought to the attention of the Commission as the
5 preferred pathway.

6 COMMISSIONER McLEOD: Which, from the reading of the media
7 release, would carry a commitment of provision of some
8 kind of funding to support that kind of work.

9 MS TRELEAVEN: From Standards Australia, Commissioner.

10 COMMISSIONER McLEOD: Not from the Commonwealth?

11 MS TRELEAVEN: Commissioner, as noted in the Productivity
12 Commission report there are real obstacles relating to the
13 development of standards and the fact is that SAI Global,
14 which ultimately is responsible for the sale of the
15 standards and I will address accessibility of the
16 standards in a minute, there are commercial arrangements
17 in place and building regulation of course is a matter for
18 the states and territories ultimately and I understand
19 that the funding of these types of projects is constantly
20 under review. But at this stage the preference is that
21 these standards continue along the Standards Australia
22 driven pathway.

23 If I can just comment, too, in response to
24 counsel assisting's comment about the review of the
25 standard being left to the technical committee. It is the
26 Commonwealth's submission that the technical committees of
27 Standards Australia are the appropriate bodies to be
28 responsible for the development of standards, and again
29 the memorandum of understanding between the Commonwealth
30 and Standards Australia contains the recognition by the
31 Commonwealth that Standards Australia is the key

1 organisation or a key organisation in Australia's
2 standards and conformance infrastructure in coordinating
3 and developing knowledge and international experience in
4 standards development. It is entirely consistent with
5 that that the technical committee of Standards Australia,
6 under the supervision of the standards development
7 committee, is the appropriate body for the technical
8 review of matters.

9 The Commonwealth accepts that the review of
10 AS3959 took too long and the project scope as recommended
11 by counsel assisting and amended in the Commonwealth's
12 proposed alternative recommendation, no matter which
13 pathway any project proceeds upon, will address those
14 issues of timing and hopefully further reviews will be
15 completed within a much shorter timeframe.

16 The penultimate matter I wish to address is the
17 question of access to standards. It is a complex issue,
18 but ultimately the Commonwealth submits that Standards
19 Australia and SAI Global are the proper parties to
20 implement any recommendation regarding access, bearing in
21 mind that AS3959 is only one of many standards which are
22 referenced in the Building Code of Australia and any
23 arrangements would possibly need to extend to other
24 standards in that respect as well. Standards Australia is
25 the standards development body and owns the intellectual
26 property in the standards it develops and SAI Global has
27 been granted an exclusive licence pursuant to which it
28 sells the standard. Standards Australia in return
29 receives royalties.

30 The revision and continuing ownership of AS3959
31 is something which has fallen within the Standards

1 Australia budget and therefore there is a commitment
2 within those current contractual arrangements between it
3 and SAI Global. Once again, this is consistent with
4 Australia's standards-making regime as reflected in the
5 MOU. Ultimately, it is not the function of government to
6 cross-subsidise the activities of private entities and
7 I think that perhaps answers your earlier question,
8 Commissioner McLeod, about Commonwealth funding ongoing
9 review of AS3959. There are arrangements where a standard
10 is developed by a standards development organisation which
11 is generally a Commonwealth agency, but this is not the
12 case here.

13 None of the other standards which are referenced
14 in the BCA are the subject of subsidies from any
15 government at all. So, in terms of the broad framework,
16 to identify AS39 as an exception to the rule is
17 inconsistent with the national framework under which the
18 BCA operates and standards are developed.

19 There was just one small clarifying matter I wish
20 to address, and that relates to recommendation 10 in
21 relation to the development of sprinklers. The
22 Commonwealth has supported that recommendation. However,
23 in Standards Australia's submissions at paragraph 19 they
24 refer to having received a project proposal in respect of
25 which they are yet to receive confirmation from
26 stakeholders. Apart from being given notice about a
27 meeting of a technical committee which is responsible for
28 automatic sprinklers in February 2010, at this stage the
29 ABCB has had no contact from Standards Australia in
30 respect of a sprinkler proposal. That being said, the
31 recommendation is supported and a standard ought to be

1 developed.

2 So, they are the matters upon which I wanted to
3 address the Commission, unless there are any questions.

4 CHAIRMAN: Thank you.

5 MS JUDD: If the Commissioners please, there is not a huge
6 amount of difference between the approach taken by the
7 State and the approach taken by counsel assisting. Where
8 there are differences, there are very valid reasons for
9 those differences. The main difference is in relation to
10 the deemed-to-satisfy provisions. We say that the
11 difference arises because the submissions of counsel
12 assisting proceed upon an incorrect assumption. In order
13 to explain that incorrect assumption, I just want to take
14 you quickly through the way that counsel assisting seemed
15 to put its position.

16 Ms Richards in her written submissions appears to
17 rely on the evidence of Mr Chris Orr from the Fire
18 Protection Association of Australia, the evidence of CFA
19 through Mr Geoff Spring and Mr Andrew Andreou, and the
20 position advanced by AFAC. In her submission she starts
21 off by listing all of the reasons why a deemed-to-satisfy
22 solution might be a good idea, that these are the
23 advantages of having a deemed-to-satisfy solutions. Then
24 she culminates with the evidence that I have just referred
25 to, and we get to paragraph 4.57 of her submissions.

26 There is a quote there from Mr Orr, and he says
27 that, "The reliance upon a construction standard to
28 overcome planning issues is flawed." He is using the
29 deemed-to-satisfy solution as an example of a reliance
30 upon a construction standard which doesn't take into
31 account the planning issues. What he says is, "In my

1 opinion, a building constructed to that standard in the
2 flame zone as a deemed-to-satisfy solution, without any
3 consideration of any other fire safety element, would most
4 definitely not have withstood the Black Saturday fires."

5 Now, what he and those other witnesses and what
6 AFAC seem to be saying is not much more than you should
7 not rely on a construction standard to overcome planning
8 issues. You don't just look at the construction standard
9 on its own. Where the argument of counsel assisting is
10 flawed is that the argument assumes that the alternate
11 solution, this specifically designed building, does take
12 into account planning considerations. There seems to be
13 this assumption in the submissions and in the reasons for
14 saying let's get rid of the deemed-to-satisfy, an
15 assumption that the alternate solution does address
16 bushfire risks beyond the walls of the building, and
17 that's just not right.

18 When a building surveyor approves the alternate
19 solution, the building surveyor is looking at the
20 construction requirements. Now, it might ultimately be
21 said after the planning evidence that it is easier to take
22 into account the planning considerations with the
23 alternate solution. It might be. I don't make that
24 concession at this point in time because we haven't heard
25 the planning evidence and we haven't heard how the
26 planning regime can sit with the deemed-to-satisfy
27 provision.

28 But we do say quite clearly in our written
29 submissions at paragraph 17 that the other risk factors
30 which make the flame zone a higher risk place to live,
31 such as defensible space and vegetation management, those

1 risk factors should be considered at the conclusion of the
2 planning and related evidence.

3 Now, Ms Richards very frankly conceded in her
4 oral submissions that the performance requirements were
5 the same for the deemed-to-satisfy as it was for the
6 alternate solution. She was making that submission in the
7 context of whether there was scientifically-based or there
8 could be a scientifically-based comparison of the two. We
9 say that unless you've got evidence to suggest that the
10 alternate solution does have greater performance
11 requirements in the building sense, then it should not be
12 abandoned as one of the alternatives.

13 Now, there are a number of reasons why we say the
14 deemed-to-satisfy provisions have advantages. The State
15 is not saying that it is wedded to deemed-to-satisfy for
16 all times. The State is saying that certainly we can look
17 at the deemed-to-satisfy. The State is not saying that
18 the deemed-to-satisfy provisions in their current form are
19 necessarily the best for all time. Building standards are
20 dynamic and the State agrees that these issues should be
21 considered from time to time. But you don't just abandon
22 the deemed-to-satisfy solution for the reasons that
23 Ms Richards is relying on.

24 COMMISSIONER McLEOD: Could I just put to you, Ms Judd: what
25 you have said, is that really a reflection on history in
26 the sense that the planning regulations in my view have
27 attempted to deal with high level bushfire risk in certain
28 circumstances in a situation where planning decisions have
29 already been taken that haven't adequately recognised that
30 degree of risk in the planning decision, so that the
31 building regulations that come after the planning

1 decisions have endeavoured to ameliorate some of the risk
2 that apparently is present as a consequence of a planning
3 decision that permits a dwelling to be erected in a
4 certain locality?

5 MS JUDD: I'm not sure that it is fair to state it quite that
6 bluntly, sir. I would rather have this debate after the
7 planning evidence because I think we need to see that
8 evidence.

9 COMMISSIONER McLEOD: Yes, I'm not suggesting we have it now.

10 MS JUDD: It is a very valid issue that you raise.

11 COMMISSIONER McLEOD: But it had to be put bluntly to be
12 understood, I think.

13 MS JUDD: And I think it does need to be understood and the
14 evidence does need to be adduced and we do need to have
15 this debate. We have done our best to try and respond to
16 what we can in these submissions before the planning
17 evidence has been adduced. We understand there are
18 management reasons why you wanted to have submissions on
19 this at this point in time, but the fact that building and
20 planning have been dealt with as separate topics doesn't
21 necessarily lead to the conclusion that there is no
22 integration between the two, and that's why we do have to
23 have this debate but we need to have it at the appropriate
24 time.

25 COMMISSIONER McLEOD: I'm not sure we have suggested that.

26 Perhaps the implication is there hasn't been as close an
27 association as there could be, in some respects.

28 MS JUDD: Let's have this debate after all the evidence is in.

29 COMMISSIONER McLEOD: Yes. Certainly.

30 MS JUDD: It is a very valid debate to have. I'm not saying
31 that for a moment. What the State is trying to do is make

1 as many submissions as it can at this point in time to
2 move forward, but to really highlight the fact that there
3 are other areas that we want to address you on with
4 appropriate evidence. I think it is Mr Gilmore from the
5 Department of Planning and Community Development that will
6 be able to address some of these issues in his evidence.

7 Ms Richards in her oral submissions suggested
8 that there was a failure of governments to weigh up the
9 competing interests in relation to the preference of an
10 alternate solution or a deemed-to-satisfy solution. We
11 reject that submission. Mr Arnel gave the evidence that
12 there was, from the State's perspective, a process where
13 those competing interests were being weighed up.

14 It is also not correct to imply that the State
15 was resistant to Mr Andreou giving evidence and that a
16 summons was required. The State's position in relation to
17 Mr Andreou was that his evidence would have made a lot
18 more sense in the planning timeframe. His real issues
19 were planning issues. Certainly there has to be an
20 integration of the two, but his evidence would have made a
21 lot more sense to you if you'd heard it after the planning
22 evidence and to suggest that there was any reluctance
23 there is quite wrong.

24 In relation to the BPAs, there was a comment that
25 Ms Richards made about not wanting to leave everything to
26 the individual surveyor. This submission ties in with the
27 deemed-to-satisfy because one of the reasons why a
28 deemed-to-satisfy solution is a good solution or is a
29 possible good solution as an alternative is that you are
30 not necessarily relying on the individual surveyor; you
31 have minimum standards that need to be met. So, there is

1 a bit of a contradiction there from Ms Richards to be
2 saying, "Well, it's a poor way for the community to manage
3 its risk by relying on a building surveyor for BPAs," but
4 they're not recognising that that might also flow in
5 relation to other areas.

6 The other aspect to all of that argument from her
7 is that all the BPAs do is trigger the necessity for a BAL
8 assessment, so you are still going to be having that BAL
9 assessment. So, it doesn't really answer that. The
10 reality is there is a huge overlap between the BPA issue
11 and the WMO issue and we will deal with that after the
12 planning evidence.

13 The State does oppose this rating scheme. It
14 opposes it primarily for the reasons set out in paragraph
15 41. The State is very concerned that it might engender a
16 false sense of security for householders whose homes are
17 assessed at the highest level of safety. The State does
18 not want householders to have that level of comfort, given
19 that the building standards are only one aspect of whether
20 their home is defensible or not. Now, it is all very well
21 to say it can be done in such a way that there are
22 qualifications imposed upon it and there is a lot of
23 education that goes with it and so forth, but the bottom
24 line is that those that have their house assessed at the
25 highest level will feel a lot more comfortable about their
26 home in circumstances where they may not.

27 What the State has done is that they have taken
28 this as far as they can in terms of having some kind of
29 tool and we have set out that on-line tool in paragraphs
30 44 and 45. I think that it is this on-line tool that
31 Commissioner Pascoe was referring to. We have taken it as

1 far as we can. We say to take it any further is dangerous
2 and we say that, to take it further, it is best to have a
3 system whereby the residents obtain professional advice as
4 to their home's compliance, that there should not be any
5 type of static rating.

6 Unless there are any questions, that was all
7 I proposed to address by way of oral submissions. Our
8 written submissions are fairly comprehensive.

9 COMMISSIONER PASCOE: Ms Judd, I'm interested in the last
10 position that you put. It is clearly very complex, this
11 area. I think when you look over the evidence that we
12 heard in the first round of hearings about the degree to
13 which households and individuals had prepared for the
14 bushfire, had availed themselves of the materials that had
15 been provided by the State, through the CFA and other
16 means, and the degree to which they hadn't was an issue,
17 the degree to which people were able to manage on the day
18 and all of the psychological and other physical factors
19 involved in that and you would note that in the interim
20 report the Commissioners in their preface made the point
21 of noting the partnership between individuals and the
22 State, and that there has to be a shared level of
23 responsibility.

24 In considering a star rating, it just seems to me
25 an example of where you set the balance in that
26 relationship. As I was discussing with Dr Lyon, I think
27 for me the issue is how do you balance the capacity of an
28 individual to take an on-line tool and to use it as
29 effectively as possible and the capacity of someone who
30 has expertise in an area to provide advice. I think
31 that's the issue that we need to consider. I think the

1 reason that I put to Mr Myers in the last round of oral
2 submissions, that notion perhaps of accrediting
3 individuals, is that that may be one way where you have
4 people with related expertise that may be able to provide,
5 on a user pays basis, an assessment to households where
6 they may not feel adequately equipped themselves to make
7 that assessment.

8 I take your point that it is not static, but
9 I think that's the dilemma that you are facing in this
10 area.

11 MS JUDD: If they are not sufficiently in a position to do it
12 themselves and to get the professional advice and to take
13 on board all the other competing considerations, then they
14 should not be staying in that home. It really is a
15 dangerous situation where you've got, say, a five star
16 rating for a household that can't cope with all the
17 psychological considerations that go with the concept of
18 staying.

19 The State has looked at this in a lot of detail
20 and what it has come up with is the on-line tool. It says
21 that, insofar as we can give that type of comfort through
22 an on-line tool, this is as far as we are prepared to go.
23 Once you get over those considerations, we are heading
24 into dangerous territory. I understand all of the reasons
25 why counsel assisting might be pushing for that type of
26 tool. We think that the motives there are very valid
27 motives and the issue is something that has to be debated,
28 but the State has got to a point where it says, "No, we
29 really ought not be going that far."

30 COMMISSIONER PASCOE: It may be that when we come to a
31 discussion at the end of the planning topic that many of

1 these issues will be seen, as you said yourself earlier,
2 in their full complexity.

3 MS JUDD: Certainly.

4 COMMISSIONER PASCOE: Because I think there are issues that you
5 referred to of the integration in the building and
6 planning topics that will be more fully considered at the
7 end of the planning.

8 MS JUDD: Yes, indeed.

9 MS RICHARDS: There are just a couple of matters in reply.

10 Firstly, if I could respond to some submissions that
11 Ms Judd made about the prescription of deemed-to-satisfy
12 solutions in the flame zone. It is not the submission of
13 counsel assisting that the prescription of
14 deemed-to-satisfy solutions is no more than relying on a
15 construction standard to overcome planning issues. There
16 is a great deal more to the argument than that.

17 At this point it is probably appropriate to
18 simply go to the arguments that are set out in AFAC's
19 submissions, which are as follows. Building in the flame
20 zone leaves a house with minimal and inadequate defensible
21 space. By definition, because it is in the flame zone,
22 there may be no setback at all. There may be large trees
23 right next to the house. The same construction solution
24 is prescribed for a site where there are trees right next
25 to the house as there are for a site where trees are 10 or
26 20 metres away. That leaves the house severely
27 compromised in the event of a bushfire.

28 Secondly, prescribing deemed-to-satisfy solutions
29 in the flame zone normalises or even encourages the
30 building of houses in high risk areas. Even where
31 deemed-to-satisfy provisions are met, in the event of a

1 bushfire the occupants of a house in the flame zone are
2 not as safe as those in lower hazard areas. The
3 availability of deemed-to-satisfy solutions in the flame
4 zone gives those constructing a house an easy solution, a
5 ready solution for building in that zone, rather than
6 directing attention to where attention should be, which is
7 on reducing the risk level of the site. So, if they have
8 to go to the trouble of developing and having approved an
9 alternative solution, they may actually decide that it is
10 best not to build in the flame zone at all but to reduce
11 the BAL level of the site before building.

12 The deemed-to-satisfy approach, say AFAC, implies
13 that, so long as the provisions are met, the resultant
14 safety level for a house built in the flame zone is
15 equivalent to a house built in a lower hazard area, and
16 clearly this is not the case.

17 The fourth point made by AFAC which is endorsed
18 by counsel assisting, is that there are no
19 deemed-to-satisfy provisions for homes built in floodways
20 or on landslips, which are both high risk areas, and there
21 has been no satisfactory explanation given to the
22 Commission as to why a different approach is warranted in
23 the areas of highest bushfire risk.

24 Moving to the thorny issue of maintenance of
25 buildings, the first argument relied on by Ms Judd is that
26 introducing a system of bushfire safety ratings for
27 buildings may engender a false sense of security. As
28 I said earlier, that false sense of security is already a
29 risk. The Commissioners will recall the evidence of
30 Mr Wigginton and Mr Kleinig from Callignee who had very
31 recently finished building their house to the highest

1 standard under AS3959 in the highest risk area. Their
2 house burnt down to the ground in 15 minutes. They
3 thought they had done everything they needed to build a
4 house that was fireproof and clearly they did not.

5 So, it is a risk that is there already for those
6 people who are building to the standard that has been
7 prescribed, and it is a risk that has to be managed
8 already. What the introduction of a star rating system
9 will do is enable people to gauge from time to time the
10 state of compliance of the house with regulations that
11 have already been prescribed.

12 Ms Judd referred to the bushfire self-assessment
13 tool. It should be said fairly plainly that the tool
14 leaves the judgment as to the defendability of a house to
15 the householder. It is a closely guided assessment and
16 there is very, very helpful information in there for those
17 householders who feel that they can make the assessment
18 themselves. But, in the end, the CFA has stopped short of
19 providing advice to householders about the defendability
20 of their home. It has given them a great deal of
21 information with which to make that judgment themselves,
22 and that's highly commendable, but there is at present no
23 facility for householders who, for whatever reason, are
24 unable or unwilling to make that judgment, to go to the
25 CFA and say, "You advise me."

26 Ms Judd said that really there is a need for a
27 system of professional advice. But, on the evidence
28 before the Commission, there is at present not really any
29 identifiable body of suitably trained and experienced
30 professionals who can provide advice to householders in
31 relation to bushfire planning and design, and there are

1 other recommendations that are proposed to address that
2 lack.

3 Just in relation to some submissions made by
4 Dr Lyon in relation to the maintenance issue, I rather
5 think that Dr Lyon is building the bushfire safety rating
6 scheme that is proposed by counsel assisting into
7 something more than it is intended to be. What it is
8 intended to be is a means by which a householder can get
9 an assessment of current level of compliance with
10 regulations that already exist. It is not designed to
11 measure the psychological ability of the householder to
12 defend their home against a fire. It is not designed to
13 measure the whole range of things that go into the
14 question of whether somebody should stay in their home.

15 It is really designed to tick off against an
16 already existing set of standards, "Does this house
17 currently comply? Are the shutters still there or do they
18 need to be reinstated? Has the BAL level increased since
19 the house was built? Does it need to be restored? Are
20 the protective screens over windows damaged? Do they need
21 to be prepared?" That is what is being proposed. The
22 standards are already there. What is needed is some way
23 for people to gauge whether the house still complies with
24 the standard and at present that is simply not available.

25 Unless there are any questions, Commissioners,
26 those conclude the submissions.

27 CHAIRMAN: No, thank you, Ms Richards.

28 MS RICHARDS: I think that is a suitable time for the morning
29 break.

30 CHAIRMAN: Yes.

31 (Short adjournment.)

1 CHAIRMAN: Yes, Mr Rozen.

2 MR ROZEN: Mr Chairman, Commissioners, the next fire that we
3 are to examine has been referred to on a number of
4 occasions in the evidence and is generally known as the
5 Delburn complex fires. The Delburn complex fires
6 consisted of a group of three main fires in Gippsland that
7 ultimately became one complex. The three fires were the
8 Ashfords Road fire, the Creamery Road fire and a third
9 fire which is known variously as the Darlimurla or
10 Lyrebird Walk fire.

11 The fire started on 28 and 29 January. The first
12 two fires joined together on 29 January and they in turn
13 joined with the Darlimurla fire on 30 January 2009. The
14 fires burnt on Hancock Victoria Plantations managed land
15 and private property near the townships of Boolarra,
16 Yinnar and Mirboo North. Although no-one died in the
17 course of the fires, a great deal of damage was caused by
18 the fires, particularly in the township of Boolarra.

19 The fires were ultimately declared contained on
20 3 February 2009 at 3 pm. The Delburn fires were initially
21 managed from a regional operations post but ultimately
22 were managed from an incident control centre located at
23 Traralgon in the DSE office. It was the same incident
24 control centre that was used to fight the Churchill fires
25 from 7 February 2009 onwards, as the Commission has
26 previously heard.

27 Commissioners, the evidence will be led in the
28 following way. Firstly, a document has been prepared
29 which I will seek to tender in a moment. It sets out the
30 evidence that is already before the Commission concerning
31 the Delburn fires. This consists primarily of evidence

1 that was led in the course of the Churchill fires, for
2 example evidence that was given by the incident controller
3 for the Churchill fires, Mr Lockwood, who was also the
4 incident controller for the Delburn fires. There is also
5 evidence from other witnesses who gave evidence at the
6 hearings in Traralgon in regulation to the Churchill
7 fires, where there are references to the Delburn fires.

8 The other evidence that the Commission has heard
9 that is of relevance to the Delburn complex fires is the
10 evidence of Lou Sigmund who gave evidence I think in the
11 first hearing block about his role, particularly in
12 relation to a town meeting in the town of Boolarra that
13 the Commissioners will recall.

14 As I indicated, a document has been prepared by
15 solicitors instructing the Royal Commission which sets out
16 the references in the evidence. The document is found at
17 (TEN.159.001.0001). It doesn't need to be brought up on
18 the screen, but I refer to it for the assistance of the
19 parties. It is a document that runs through to page 0008.
20 I tender that document at this time.

21 #EXHIBIT 610 - Delburn references in Churchill evidence
22 (TEN.159.001.0001). Delburn fire - all mentions on 774
23 ABC Radio broadcast on Saturday, 7 February 2009 - 7 am to
24 midnight (TEN.162.001.0001) to (TEN.162.001.0017). CFA/DSE
25 warning table - fire by fire - Delburn (TEN.162.001.0018)
26 to (TEN.162.001.0021).

27 MR ROZEN: The other two documents that I seek to tender as
28 part of a tender bundle for the Delburn fires are firstly
29 a summary of the references on ABC Radio that concern the
30 Delburn fire. These are references that were made on
31 7 February 2009. It is a document that starts at

1 (TEN.162.001.0001) and it runs through to page 0017.
2 There are also a brief document which sets out warnings
3 that were issued in relation to the Delburn fire on
4 7 February 2009. It is found at (TEN.162.001.0018) and
5 runs through to 0021. I seek to tender those two
6 documents. They could perhaps be part of that same
7 exhibit, if the Commission pleases.

8 CHAIRMAN: Yes, they will be part of 610.

9 MR ROZEN: I should add in relation to the second of those
10 documents, that is the summary of warnings, I don't want
11 to give the impression that the only warnings that were
12 issued in relation to the Delburn fire were those that are
13 summarised in that table. That table is limited to
14 warnings issued on 7 February 2009. As will be clear from
15 the evidence of Mr Owen, the incident controller, there
16 were a great number of warnings that were issued on
17 earlier days when the fire was in fact active.

18 CHAIRMAN: Yes.

19 MR ROZEN: Commissioners, at this point I would call Michael
20 Owen.

21 <MICHAEL JAMES OWEN, sworn and examined:

22 MR ROZEN: Mr Owen, is your full name Michael James
23 Owen?---Yes.

24 Where are you based?---I'm attached to region 8 headquarters
25 located at Dandenong.

26 You are in fact the operations officer for region 8?---I'm one
27 of eight operations officers attached to region 8.

28 You have been a career officer since 1983?---That's correct.

29 And prior to 1983 you were a CFA volunteer between 1971 and
30 1983?---Yes, that's correct.

31 You are accredited as a level 3 incident controller?---Yes.

1 You have held that accreditation since 2004?---That's an
2 approximate time, but that is correct.
3 For the purposes of the Royal Commission, have you prepared a
4 witness statement for us?---Yes, I have.
5 That witness statement has been prepared with the assistance of
6 the Victorian Government Solicitors Office?---That is
7 correct.
8 Are there a number of minor changes that you seek to make to
9 the statement?---Yes.
10 Is the first of those to paragraph 2?---Yes.
11 The reference in the first line to 4 February should be
12 3 February?---Yes.
13 The second change that you wish to make is in paragraph 24 on
14 page 5?---Yes.
15 The fifth dot point, which starts "30 January 2009 at
16 1413 hours", should the reference to "330 hectares" be to
17 "3,330 hectares"?---That is correct.
18 The next change you wish to make is on page 23?---Yes.
19 In the third line of the indented paragraph at the top of the
20 page there, the reference to "NEW" should be a reference
21 to "NE"?---Yes.
22 And that's an abbreviation for north-east?---Correct.
23 The next change you wish to make concerns paragraph 124, which
24 you would seek to delete as it reproduces a previous
25 paragraph, in fact 121 of the statement?---That's correct.
26 Finally, is there a change to paragraph 147 on page 27?---Yes.
27 Three lines from the bottom of the page, in the indented
28 paragraph, the second word presently is "communicates".
29 That in fact should be "communities"?---Correct.
30 With those changes, are the contents of the statement true and
31 correct?---Yes, they are.

1 I tender the statement, sir.

2 #EXHIBIT 611 - Witness statement of Michael James Owen dated
3 8 December 2009 and attachments (WIT.3004.031.0173).

4 MR ROZEN: As you indicate in your statement, you were the day
5 shift incident controller for the Delburn complex fires
6 commencing on 30 January 2009?---Yes.

7 Has an audiovisual presentation been prepared by the CFA which
8 summarises the Delburn complex fires?---Yes.

9 Perhaps if that could commence now and if you could take us
10 through that presentation, please?---The presentation is
11 for the Delburn complex fires in Gippsland for the period
12 Wednesday 28 January through to Saturday 31 January. The
13 graphics of the fire can be quite complex, as there were
14 multiple fires, multiple ignition points and different
15 times of fire starts. The general overview is that the
16 Delburn complex of fires was located approximately 18
17 kilometres south-west of the city of Morwell, Morwell
18 being 160 kilometres east of Melbourne.

19 The area forms part of the Strzelecki Ranges with
20 many hills and valleys. A number of settlements are close
21 to the area of the fires, these being Mirboo North to the
22 south of the fires of a population of 1300; Boolarra, a
23 population of 600 to the east of the fires; Darlimurla,
24 which was within the fire perimeter and is a locality;
25 Delburn to the west of the fires and is again a small
26 locality; Yinnar, which is to the east of the fires has a
27 population of 600; and to the north-east of the fires,
28 Churchill, with a population of 5,000.

29 There are a number of significant assets in the
30 area of the fire, these being the Morwell open cut, which
31 is approximately five kilometres north-east of the fire.

1 There is an adjacent power station at that location and
2 there is also a main high tension voltage powerline that
3 supplies Melbourne and western Victoria that runs north of
4 the fire, approximately 1.5 kilometres north of the fire
5 at the closest point, and it is coloured on this screen in
6 yellow. That is only a portion of the line that is
7 immediately affected in that area of the fire.

8 The incident control centre was situated 33
9 kilometres to the north-east of the fire at DSE offices in
10 Hotham Street in Traralgon. That is indicated on the
11 screen. In the area of the fire, the topography is a
12 number of valleys that are running approximately
13 north-south with rugged areas of forest and extensive
14 plantation, predominantly blue gum and pine, and they are
15 managed by Hancock Victoria Plantations. There are
16 scattered cleared areas but predominantly heavy forest.
17 In the valley to the east there are pastures and paddock
18 areas and a number of roads traverse the area; to the
19 north and the west the Strzelecki Highway, to the east and
20 the south the roads connecting Churchill to Boolarra and
21 on to Mirboo North.

22 The area experiences varied weather patterns,
23 mainly due to topography. The Latrobe Valley has
24 traditionally experienced differing weather patterns
25 compared to adjacent districts and the Delburn area also,
26 due to the valley and hill effects, can experience
27 different weather cycles over the local areas within
28 kilometres of each other.

29 The final fire area is indicated on black on the
30 screen and the final area was 6,350 hectares. The
31 perimeter was in excess of 70 kilometres long and the size

1 of the fire was approximately 13 kilometres long in a
2 north-south direction at the longest point and an average
3 of 7 kilometres wide. Approximately 60 per cent of the
4 fire burnt area was in forest plantations.

5 On the screen now we have a number of points of
6 origin. I draw your attention two three points of origin,
7 and these have no fire developments in the presentation.
8 The first one is at the Delburn-Yinnar refuse transfer
9 station. This is 4.5 kilometres south of Yinnar. This
10 occurred on Thursday 29 January at approximately
11 1318 hours where the brigades were dispatched and
12 extinguished the fire quickly. The fire did not spread
13 further than the initial fire.

14 The second fire I draw your attention to or the
15 second ignition point is at Ten Mile Creek Road in HVP
16 plantation and this is one kilometre south-west of
17 Delburn. This is a fire that occurred on Friday
18 30 January at about 0700 hours in the morning and was
19 contained by HVP crews at the time.

20 The third fire is one at Brewsters Road, Yinnar
21 South. This is approximately 7.5 kilometres south of
22 Churchill. On Monday 2 February at about 8.30 in the
23 morning we were advised that this fire was discovered. It
24 was a burnt area and it had been lit during the night, but
25 it had burnt itself out overnight without any
26 intervention. Fire investigators were on scene within the
27 first hour of discovery.

28 The three main fires of this Delburn complex, as
29 you have already heard, were the Ashfords Road fire, and
30 this is approximately 2.5 kilometres north of Boolarra.
31 It started on Wednesday 28 January at approximately

1 1610 hours. However there, were two other fires earlier
2 in the morning on that same day that were extinguished by
3 brigades.

4 The second fire is Creamery Road near Strzelecki
5 Highway and this is approximately 2.5 kilometres east of
6 Delburn. This fire started around 1300 hours on Thursday
7 29 January.

8 The third fire is Lyrebird Walk and this is
9 approximately 4 kilometres north-east of Mirboo North near
10 Darlimurla. This fire commenced on Thursday 29 January at
11 approximately 1530 hours.

12 The fires developed over a period of time and
13 they were quite complex because there were a number of
14 ignition points and at differing times. To enable the
15 screens to have some significance or be able to be read,
16 we will keep two perimeters on the screen at any one time,
17 the first one being the perimeter being discussed and then
18 plus the plot of the immediate screen before that, to get
19 some semblance of how they have developed. They are also
20 coloured.

21 The first fire slide is on Thursday 29 January at
22 1637 hours. It is coloured in red on the screen. The
23 Ashfords Road fire is one day old, starting on 28 January,
24 the day before, at 1610. At approximately 1330 hours the
25 fire intensified and slopped over control lines in the
26 north-east corner, spotting into grassland.

27 The Creamery Road fire started at approximately
28 1300, which is about three and a half hours earlier, and
29 the sit rep at the time indicated there were very hot
30 conditions with little wind. Lyrebird Walk, which became
31 known as the Darlimurla fire, started at approximately

1 1530 hours, so was only an hour old in this slide. All
2 fires were burning in a south-easterly direction. The
3 weather conditions were very hot, slight winds, but fires
4 were burning freely and intensely. At this stage the
5 total area of the fires was approximately 200 hectares.

6 The next slide is coloured yellow on the screen.
7 This is at Thursday 29 January at 1948 hours. This is
8 approximately three hours later. The Creamery Road and
9 Ashfords Road fires have joined and now are known as the
10 Delburn fire. Wind has changed to the south-south-east
11 and the fire has crossed containment lines at Ten Mile
12 Creek Road and is threatening to cross Strzelecki Highway.
13 The Lyrebird/Darlimurla fire also threatens to cross the
14 Strzelecki Highway, however is still a separate fire on
15 this slide. At this stage 760 hectares is the area burnt,
16 approximately.

17 The next point of time is at 0443 hours, the
18 morning of Friday 30 January. This is coloured blue on
19 the screen. At approximately 2100 hours winds changed to
20 the south on the 29th and fires have spread to the east
21 and the north. Reports advise that the fires were burning
22 freely overnight due to warm weather. Observed overnight
23 intensity was viewed by observers as being unusual. The
24 total area burnt at this stage is 2,150 hectares.

25 The next time in the presentation is at
26 1346 hours on Friday 30 January and it is coloured green
27 on your screen. The fires developed due to a wind change
28 and breached control lines on the eastern flank that were
29 being worked as part of that day's incident action plan.
30 The spread was easterly towards the Boolarra and Yinnar
31 townships. The fire near Yinnar spotted over at the

1 north-eastern edge. At this stage the fire area is
2 2,780 hectares.

3 The next time on the slides is 1413 hours and it
4 is only 45 minutes, approximately, after the last slide.
5 It is on Friday 30 January. It is coloured orange on the
6 screen. This is the most significant fire spread of these
7 fires during a relatively short time since the last plot.
8 Significant spread to the east bordering Boolarra and
9 north of Mirboo North has occurred. Thirty to 40
10 spotfires were reported by aircraft near Boolarra and at
11 1448 hours winds are reported as being westerlies. Total
12 fire area now is 3,300 hectares.

13 The next timeframe is on Friday 30 January at
14 2142 hours in the evening and is coloured red on the
15 presentation. There has been a significant size increase
16 from 1413 hours. This plot is almost the final area of
17 the fire. The eastern flank was within half a kilometre
18 of Boolarra with a large spotfire to the south of
19 Boolarra. This spot early in the evening is threatening
20 to enter the township of Boolarra from the south. Fire
21 has reached portions of Boolarra-Mirboo North Road and it
22 is also reported near the Limonite Road, South Boolarra.
23 Around 2100 hours the fires have joined into one and is
24 now known as the Delburn fire. The total fire area is
25 about 5,750 hectares.

26 The next timeframe is Saturday 31 January. This
27 is at 6.06 in the morning. It is coloured blue on the
28 screen. The fire area has not changed markedly from the
29 last plot and again approximates the fire size. Total
30 fire area burnt at this stage is estimated at
31 5,970 hectares.

1 The final slide is on Saturday 31 January at
2 1206 hours and it is coloured green on the screen. Again,
3 the fire area has not changed significantly and again
4 essentially approximates the final fire size. Total fire
5 area is 6,370 hectares.

6 Work on these fires continued until 8 February
7 2009 to ensure control lines were established or
8 maintained and any hotspots attended to. On 3 February
9 2009 the fire was contained at 1500 hours and on
10 8 February the Delburn portion of the Traralgon ICC was
11 demobilised, that ICC being operating for the Churchill
12 fire at that stage also. That concludes the presentation.

13 MR ROZEN: Thank you for that, Mr Owen. The various fires that
14 you have described that commenced on 28 and 29 January
15 2009 have been the subject of investigation by police
16 together with fire agencies?---That's correct.

17 In respect of the fires, the cause has been deemed to be
18 suspicious?---A large number suspicious.

19 In respect of that large number of the fires, charges have in
20 fact been laid and matters are pending before the
21 courts?---I believe so.

22 If we can turn to your statement, please, at paragraph 41.
23 Before looking at the detail of it, in relation to your
24 statement, Mr Owen, it is the case, is it not, as you told
25 us earlier, that your personal involvement in this fire
26 management exercise commenced on 30 January 2009?---That's
27 correct.

28 That was when you took up the position of incident controller
29 for day shift?---Yes.

30 You had no personal involvement in respect of the fire before
31 that time; is that correct?---That's correct.

1 And you have been able, very helpfully so far as the Commission
2 is concerned, to put together a statement where you have
3 drawn on incident action plans and logs and other
4 materials that have enabled you to give us a complete
5 picture of the response to the fire, both at the time that
6 you were in command and also prior to that time?---Yes,
7 I have.

8 If we can start by briefly examining the initial approach to
9 the management of the fires. If we could go to paragraph
10 41, you there note a report came through in relation to a
11 fire at Ashfords Road, and this is on 28 January 2009, and
12 that report was at approximately 1610 hours. Over on
13 paragraph 42 you note that the investigation report in
14 relation to that fire states that the first unit to attend
15 was from Boolarra, with Group Officer Sigmund as the
16 officer in charge - and the Commission has previously
17 heard from Mr Sigmund - and also there was attendance
18 there by HVP. Why did HVP attend the Ashfords Road fire,
19 Mr Owen?---My belief is from the detail provided to me
20 that it was in close proximity to or involved some of
21 their assets.

22 In fact so much so that, as you describe at paragraph 43 of
23 your statement, the initial incident control centre was
24 set up at the HVP office in Churchill; is that
25 correct?---That's correct.

26 Initially Mr Pettit was the incident controller and he assumed
27 responsibility for that on the afternoon of 28 January
28 2009?---That's correct.

29 At paragraph 49 of your statement you explain that that
30 incident control centre at Churchill was closed later that
31 evening, at 2330, but not permanently. It was only closed

1 to enable a reassessment to be made of the fire in
2 following morning on the 29th; is that right?---That is
3 what I have been advised.

4 If we can turn then to the 29th. You explain in paragraph 52
5 that it was a day of total fire ban and, in paragraph 54,
6 that Mr Pettit continued as the incident controller on the
7 29th and that the fire that was examined at fish farm - is
8 that the same as the Ashfords Road fire or is that a
9 different fire that you are referring to there?---It is in
10 a similar area. The fish farm is quite near Ashfords
11 Road.

12 So at that point in time that fire was considered to be very
13 small. You describe it as virtually a level 1 incident;
14 is that right?---That is the description that operations
15 officer Kevin Pettit has detailed to me.

16 But, as you explain, a further fire was detected around
17 lunchtime on 29 January - this is in paragraph 56 of your
18 statement - and that's the fire that's come to be known as
19 the Creamery Road fire?---Yes.

20 In paragraph 58 you note that shortly after the Creamery Road
21 fire started, the Ashfords Road fire began to intensify
22 and slop-over. In other words, it began to cross
23 containment lines. "It was jointly decided between CFA
24 and DSE management to manage both the Ashfords Road and
25 Creamery Road fires, as it was possible that the fires
26 would eventually meet up." As we know, that's ultimately
27 what in fact occurred?---That's correct, and that's what
28 I have been advised.

29 It was at that point, at 1300 hours on 29 January, that a
30 decision was made to set up an ICC in Traralgon at the DSE
31 offices?---That's correct.

1 You explain that it was set up as a joint CFA and DSE level 3
2 incident management team with a representative of
3 HVP?---Yes.

4 The third of the fires that have been referred to is described
5 by you in paragraph 67 of your statement. This was the
6 fire that is referred to as either the Lyrebird Walk or
7 the Darlimurla fire. It might be easier if we refer to it
8 as the Lyrebird Walk fire perhaps, Mr Owen?---Yes.

9 At paragraph 72 of your statement you note that there was
10 significant potential for that fire to threaten assets and
11 houses?---That's correct.

12 As at 6 pm on 29 January 2009 the position in respect of the
13 fires that were then burning are set out in an update that
14 was authorised by the state duty officer of the CFA,
15 Mr Paterson. If we could go to paragraph 79 of your
16 statement, please. Are you satisfied from what you are
17 aware of from talking to those involved as at 29 January
18 that the update prepared by Mr Paterson accurately
19 describes the situation as at 1800 hours on 29 January
20 2009?---By the information provided to me, and I was not
21 there at that time, I am satisfied that that is a correct
22 assessment.

23 We turn then to the commencement of your involvement. You were
24 contacted on the night of 29 January 2009 and asked to
25 take on the responsibility of being the daytime incident
26 controller on 30 January?---That's correct.

27 You describe being contacted by Mr Trevor Owen, who the
28 Commission heard from earlier this week as it turns out,
29 in paragraph 95 of your statement. What was your level of
30 awareness at that time of the Delburn complex
31 fires?---I was home off duty. I was aware of some fires

1 in country Victoria. However, I did not know of a fire at
2 Delburn or that area until Trevor Owen contacted me via
3 phone.

4 What period of time did he ask you to commit to in terms of
5 being the incident controller?---He asked me to commence
6 duty as day shift incident controller starting the next
7 day at 0700 for day shift and for a period of five
8 consecutive days, ending on 3 February.

9 Were you aware at that time of the severe fire weather that had
10 been forecast in the following week or so?---I was aware
11 of hot weather during the following days but, as history
12 shows, I wasn't aware of the severe fire weather that
13 occurred approximately a week later at that stage.

14 During the course, though, of the time that you were incident
15 controller up to 3 February presumably you became aware of
16 the forecast in the, say, four-day period after the
17 3rd?---Very much so.

18 In light of those forecasts, was it part of your concern or
19 upper most in your mind to try and ensure that the fires
20 were contained and hopefully ultimately were brought under
21 control in advance of that severe weather?---Our primary
22 focus at that stage was to ensure that the fires were
23 contained, that we had strong control lines around them
24 and that it would not break out over those control lines
25 in the ensuing weather that was to occur. That was our
26 primary focus.

27 As we now know, Mr Owen, you were ultimately able to achieve
28 that aim?---Yes. On the 7th and the 8th the Delburn fire
29 was held within lines without any major issues about
30 containment.

31 We will have a look briefly at what in fact transpired on the

1 7th in a moment. You describe the Traralgon incident
2 control centre as the best that you've worked in. I think
3 that's at paragraph 107 of your statement?---That's
4 correct.

5 I guess everything is relative. What is it about the incident
6 control centre at Traralgon that you found so
7 impressive?---It is a permanent structure. It is a large
8 office occupied by DSE, two levels, and had a number of
9 large, I will call them, meeting rooms or areas that were
10 able to be allocated to functions within the IMT.
11 Logistics, planning and operations all had distinct,
12 separate rooms. It was airconditioned. It had
13 facilities. Essentially the IMT utilised the entire
14 ground floor for operations. On the top floor, or the
15 floor above, DSE continued to operate. That enabled us to
16 have a very close relationship. On a number of times
17 I was required as incident controller to go upstairs with
18 the deputy incident controller to seek advice or
19 resources, and that was conducive to good operation of the
20 ICC.

21 Attached to your statement, Mr Owen, is a report that was
22 prepared by a real-time performance monitoring team.
23 Perhaps if I could take you to that. It is at annexure 20
24 and it commences at page (WIT.3004.032.0051)?---Yes,
25 I have it.

26 Mr Owen, you have your copy in front of you, the hard
27 copy?---Yes, I have. Section 4.1?

28 Before we get to the detail of it, the Commission hasn't had
29 the benefit of such a report in relation to any of the
30 incident control centres that we have looked at. Can you
31 perhaps explain to us briefly the process that resulted in

1 this report?---CFA and DSE, sometimes jointly and
2 sometimes individually, conduct real-time monitoring where
3 the chief officers allocate officers to come during an
4 incident and review operations and how we are operating.
5 I term them as a kind of auditor. They arrive and
6 interact with the IMT, ask questions, attend different
7 locations and make recommendations on improvements and in
8 some cases give feedback on things that are going well
9 also.

10 So the process serves at least two purposes. One is to provide
11 a report as a historical record of the observations made
12 by the audit team and also to assist with lessons being
13 learnt by those who were members of the incident
14 management team looking back on the experience; is that
15 the first purpose that is served by the report?---Yes.
16 The team actually gives feedback at the time. In a lot of
17 cases, feedback and reports you get them months after or
18 weeks after. In this case on a number of occasions the
19 team members met with me or some of my members of my team
20 and indicated where they saw deficiencies. An example of
21 that was the real-time monitoring team attended one of the
22 community information sessions at I think it was
23 Churchill. The large number of peoples there made the
24 session difficult to conduct and there were some issues
25 with the facilities at that time. That was reported to me
26 after by one of the team members and, as a result, we made
27 arrangements that the next session in that area was
28 changed. I think it went to the Churchill town hall, by
29 memory, to fix those issues. So the team gives you
30 real-time feedback, that you can actually fix some of the
31 issues that they see as needing improvement.

1 I take it that was of benefit to you both at the time that you
2 were managing this incident and also it has assisted you
3 in learning some lessons from the experience looking back
4 on it that will be of assistance to you in future?---Yes,
5 it has.

6 Have you previously had experience either as an incident
7 controller or performing any other function in an incident
8 management team of a real-time performance monitoring
9 report?---This is the first time that I have been involved
10 in an incident where they have been there when I have been
11 there.

12 You have anticipated that there is an aspect of the report
13 I wanted to take you to, and it is indeed at 4.1, which is
14 on page 0057. It would seem, Mr Owen, that the authors of
15 the report took a somewhat different view of the Traralgon
16 incident control centre to your more glowing description
17 of it?---Yes. When I read this report I was not surprised
18 but, as I have said before, it is all relative. I have
19 worked in some incident control centres that are very
20 primitive, don't have enough facilities, don't have IT
21 infrastructure or the like. Of the incident control
22 centres that I have worked in, this would be the best or
23 one of the better ones.

24 The references there to there being a lack of space for
25 functions to operate effectively, you don't necessarily
26 agree with that from your personal experience?---They were
27 large rooms and areas and, with those functions in them,
28 they were quite busy. It was a very active fire. You are
29 going to get activity levels. You are going to get people
30 talking. You are going to have phones ringing. That is
31 just the nature of incident management. It is valid, but

1 I don't think it detracted from the amenity and the
2 operation of the centre.

3 As it turns out, the Commissioners and counsel assisting have
4 had an opportunity of viewing the premises in Hotham
5 Street in Traralgon. How many people at its highest did
6 you have working as members of the incident management
7 team downstairs?---It would be an estimate. I would say
8 50 people, approximately.

9 They were able to operate effectively and efficiently in that
10 area, from your perspective?---Yes, I think so.

11 Whilst we have that page open and to save us coming back to it,
12 there is a heading at the bottom of that page in the
13 heading "4.3" to the issue of whether there was a safety
14 adviser appointed as part of your incident management
15 team. You address this issue as part of your statement as
16 well. I'll see if I can summarise it and tell me if I get
17 it right. When you took up your position as incident
18 controller on the morning of 30 January you were provided
19 with an incident action plan that was to apply to that day
20 shift that had been prepared by your predecessor,
21 Mr Pettit, who was the night incident controller?---That's
22 correct.

23 Mr Pettit provided to you a list of people who would fill the
24 various AIIMS functions that the Commission has heard so
25 much about, and you noticed that there wasn't a safety
26 officer that had been appointed as part of that team?---We
27 had a number of issues at that time, and they weren't
28 large issues. One of the things that happen when you
29 introduce a new incident management team to an incident is
30 you have a new team come in. In some cases people don't
31 arrive or there are vacancies in the team. The first

1 thing that morning we modified the incident action plan to
2 reflect different people in different positions; one
3 example being the operations officer is depicted as being
4 someone else, but in the end after some work by us it
5 ended up being Brian Cotter of DSE. One of the
6 deficiencies we did identify was not having a safety
7 adviser. That is not optimal. We made moves, as it
8 indicates in this real-time monitoring, to request that a
9 safety adviser be sent or provided along with a number of
10 other positions. That was not forthcoming. In the
11 interim we made arrangements where Ben Rankin, the deputy
12 incident controller from DSE who had those skills, would
13 perform that as one of the functions of his role that day.
14 So he carried that out at that time. We used a similar
15 method on the night shift and the following day,
16 I believe. We did not get a safety adviser for that
17 period. We made an additional request. Now, I don't know
18 the outcome of that request. We didn't receive one. But
19 I just assumed that there was none available.

20 I'll just go back a step in all that. You describe the absence
21 of a safety adviser as being not optimal. It is more than
22 that, isn't it? It is a breach of the applicable standard
23 operating procedure to have a level 3 incident management
24 team without a safety adviser?---Yes.

25 Was the fact that you had yourself been trained as a safety
26 adviser part of the reason why you (a) recognised that
27 deficiency and (b) took immediate steps to try and remedy
28 the absence of a safety adviser?---Yes, it was.

29 Just in relation to your training as a safety adviser, could
30 you indicate to the Commission what the nature of the
31 training is that is provided by the CFA to safety

1 advisers?---To become a safety adviser, it is a one-day
2 course with assessment at the conclusion. It is not
3 attend the course and get a certificate. You have to be
4 assessed. It entails detail about the role, what's
5 required and what you are meant to do. It gives you
6 examples of how to do that, you run through, and then
7 about what sort of issues you should be looking for or the
8 way you should conduct yourself in an IMT.

9 Is any reference made in that course to either the events at
10 Linton that resulted in the deaths of five firefighters or
11 the findings the coroner made in respect of that
12 matter?---I attended the course I think in 2003. My
13 recollection of that aspect of the course, I can't recall,
14 I'm sorry.

15 Just finally, before leaving the topic, you indicated that you
16 made a request for a person to fill the role of safety
17 adviser and, when someone wasn't forthcoming, you got your
18 deputy incident controller to double-up as the safety
19 adviser?---To include those duties as part of his role.

20 Would you agree with me that it is not optimal because ideally
21 a safety adviser should be focused solely on that role
22 rather than having an operational role?---Not optimal, but
23 in my assessment on that day something was better than
24 nothing.

25 You have made the point in your statement that one of the
26 things you were able to achieve that you considered to be
27 valuable was a running incident summary report in respect
28 of issues that arose in relation to the health and safety
29 of firefighters. I am particularly here talking about
30 annexure 22, which is at (WIT.3004.032.0089)?---That's
31 correct. On the 30th, because of the lack of a safety

1 adviser, one of my concerns is about having good
2 information about issues arising on the fireground. On
3 that day I had a logistics section that had a medical unit
4 leader there, a lady working in that. I tasked her with
5 ensuring that we collated and kept track of all incidents
6 on the fireground that were reported. The outcome was a
7 living document that you see in this annexure. This is a
8 single page. At the end of the five days I was there this
9 document was about five pages long. That enabled us as an
10 incident management team at the time to track trends about
11 what sort of issues were occurring on the fireground and
12 to ensure that the safety messages in the incident action
13 plan at each shift were appropriate to the incident rather
14 than being generalised messages that may appear in
15 incident action plans that are used regularly. So in this
16 case we did identify that we had an issue with hydration
17 and we made sure that that was covered in all briefings at
18 the start of shifts, it appeared in the incident action
19 plan, and also that we had sufficient water available on
20 the fireground for our people.

21 Thank you, Mr Owen. I want to ask you briefly about messages,
22 both alert messages and urgent threat messages, that were
23 released during the course of your shift on 30 January
24 2009. You summarise two of those at paragraphs 128 and
25 129 of your statement, or rather you quote from two of the
26 urgent threat messages that were released in the
27 afternoon. Were you involved in the wording of the
28 messages or was that a role that was fulfilled by your
29 information unit?---The information unit personnel
30 constructed the wording, initially.

31 I couldn't help noticing, Mr Owen, that there are references to

1 distances in your urgent threat messages which we don't
2 necessarily see in some of the other messages that have
3 been examined in the Commission. There is a reference in
4 the one at paragraph 128 to a fire burning within one
5 kilometre of Yinnar and in the one at 129 within two
6 kilometres of Boolarra. Do you agree that that sort of
7 very specific information could be quite useful to people
8 in communities?---Yes, it is useful. The aim of an urgent
9 threat message is to give members of the community detail
10 about where a threat would be and what they need to do.
11 The more specific you can be, ensuring that you are
12 factual, aids those people in their ability to decide what
13 they are going to do. So the more specific you can be,
14 the better the message will be handled and utilised by the
15 communities you send it to.

16 If we can return to the chronological record, at 149 of your
17 statement you note that the three fires ultimately
18 combined at approximately 2000 hours to 2100 hours on the
19 night of 30 January. Although you note that the fire did
20 not enter the Boolarra township properly, there were,
21 weren't there, a significant number of houses that were
22 lost on the outskirts of the town?---Yes, there were. In
23 the whole fire there were 30 houses destroyed. The
24 majority of those were on the outskirts of Boolarra, on
25 the western side and to the south. Firefighting
26 activities on that day in the evening was to prevent the
27 fire entering the town.

28 By the conclusion of your shift and later on the night of
29 30 January 2009 the worst run of the fire was essentially
30 over?---Essentially, yes.

31 As you say in your statement, by early on 31 January 2009 there

1 were no further significant flare-ups of the
2 fire?---That's correct.

3 I want to ask you about one aspect of the resources that were
4 available to you to fight the fire, and that is the air
5 resources. You make some reference in your statement to
6 the significant number of air resources that were
7 available to fight the Delburn complex fires. I think you
8 might even say that you had a significant proportion of
9 the state's air resources available to you; is that
10 correct?---Yes, I pretty well had my own air force.

11 Is that an unusual position to find yourself in as the incident
12 controller of a fire, in your experience?---Most unusual.

13 I was benefited by the fact that there was very little
14 activity within Victoria other than this fire at this
15 stage. There was one fire in the south-east of Melbourne
16 at Endeavour Hills that had some interest. But this fire,
17 because of its location and particularly the large
18 significant assets to the north, the powerline to
19 Melbourne and the open cut and the power station, I was
20 given air resources that were quite significant.

21 I requested a number of resources, and I can't recall ever
22 being told that they were unavailable.

23 I think you would agree with me, Mr Owen, that's a luxurious
24 position for an incident controller to find himself or
25 herself in in Victoria?---Very much so. At one stage
26 there I was advised that we couldn't get any more aircraft
27 in the air over the fire. The fire was, in Victorian
28 terms, quite a small fire. It was very close to the power
29 station pondage. That gave us an abundant water supply.
30 It's only about a five kilometre round trip. There's a
31 good airfield at Traralgon, a good air base, and we

1 utilised that to our benefit.

2 I take it from all of that that the abundance of air resources
3 that were available to you were of significant assistance
4 in combating the fire?---Yes.

5 You make the point at paragraph 184 of your statement that it
6 was not only the number of air resources you had but also
7 the fact that they had a good base to operate from at
8 Traralgon airport that was of benefit?---Yes.

9 And further that there was easy access to water in the form of
10 the water supply lakes at the power stations?---Yes.

11 Turn-around times were very short. So we bombed all the
12 time daylight hours as much as we could.

13 Were the aircraft laying retardant or were they bombing with
14 water or were they doing both?---Doing both.

15 You had no difficulties with accessing appropriate quantities
16 of retardant for the planes to use, I take it?---No.

17 Traralgon airport is set up for that and is used quite
18 extensively in major fires in Gippsland for that very
19 purpose.

20 The Commission heard evidence earlier this week of retardant
21 being ordered from Altona for the Bunyip state fire. Can
22 you think of any reason why it would have been necessary
23 to get retardant from Altona rather than getting it from
24 Traralgon, as you did?---No, I wouldn't be aware, other
25 than that's maybe where they store it at their depot.

26 You completed your period of responsibility as incident
27 controller on 3 February?---Yes, at approximately
28 2000 hours in the evening or thereabouts.

29 After that time, as the Commission has heard, Mr Lockwood took
30 over as day shift incident controller for the Delburn
31 complex fires; are you aware of that?---I believe so.

1 I think there is a listing in the front of the statement
2 about who was incident controller at varying times after
3 I left.

4 Given the state of the Delburn complex fire, how would you, if
5 you can, characterise the incident from after the time
6 that you ceased to be the incident controller? In other
7 words, did it remain a level 3 incident as far as you are
8 concerned or would it have been downgraded to, say, a
9 level 2 incident?---The information I've received, it
10 remained a level 3 incident through until 8 February,
11 I believe, where it operated out of Traralgon. However,
12 the Churchill fire started I think on the 7th. So there
13 was a bit of joint operations at that time at Traralgon
14 for two different fires in the area.

15 We touched earlier on events on 7 February so far as the
16 Delburn complex fire is concerned. Putting aside for the
17 moment the Churchill fire, were you monitoring what
18 happened to the Delburn fire on the 7th?---No, I wasn't.
19 I was a bit busy in other locations.

20 The Commission has the transcript of the radio broadcasts that
21 were made on ABC Radio on 7 February. There is a
22 reference, Commissioners, at 7.07 pm. Perhaps if it could
23 be brought up. It is at (TEN.162.001.0015). You will see
24 in the box that's allocated the time 7.07 Trevor Chappell
25 is talking. In the last three lines of that first
26 paragraph he says, "The Delburn complex fire has increased
27 in activity due to weather conditions. The community of
28 Driffield may also be impacted by these smoke and embers.
29 More to come, Jon." Then at the bottom of that page at
30 8 pm, third last line, there is a further reference, "The
31 fire in the Delburn complex near Boolarra has also flared

1 up and the township of Driffield is on alert. The CFA
2 says the next four hours will be critical." I take it that
3 you weren't aware on 7 February of those events, that
4 there was a small flare-up in the vicinity of
5 Driffield?---No, I wasn't.

6 Other than that, it is the case, is it not, that there were no
7 concerns in relation to the Delburn fire on 7 February
8 2009?---That's correct. That's what I have been advised.
9 Commissioners, they are the questions that I have for Mr Owen
10 in relation to the Delburn fire.

11 COMMISSIONER McLEOD: Mr Owen, just a couple of questions. You
12 mentioned in your statement that you saw significant fire
13 activity on Black Saturday, where you described your
14 involvement in other aspects of fires that were occurring
15 on that day. Did you have an impression that the fires on
16 Black Saturday were any more severe in their intensity
17 than was the case earlier when you were dealing with the
18 Delburn complex fires? The weather conditions of course
19 were perhaps more severe on the Saturday. But, in terms
20 of the fire behaviour, was there any significant
21 difference between Delburn and what you experienced on
22 Black Saturday?---The two days, from my assessment and
23 what I saw, they were poles apart. The week before at
24 Delburn we did have the luxury of low winds. They tended
25 to be of 20 kilometres an hour or less for an extended
26 period, days on end. That was significant to us in the
27 week prior to the 7th - the Monday, Tuesday, Wednesday,
28 Thursday and Friday - where we were able to shore up our
29 lines. That assisted. The fire behaviour, albeit it had
30 been contained, that enabled extensive blacking out and
31 hotspots to be fixed up. The difference on the 7th, for

1 me, is the wind. They were hot days, the week before, of
2 42 degrees I think at Delburn at one stage, slightly
3 hotter on the 7th, but the wind was the issue for me.
4 I was at a fire on the 7th where I struggled to stand up
5 in the open, yet at Delburn we were encountering 20
6 kilometre an hour winds, as I said.

7 So Delburn, in a sense, was more within your experience
8 previously of fires but Black Saturday wasn't?---Yes. My
9 experience, I was a young firefighter during Ash
10 Wednesday. That had significant weather, but certainly
11 nothing to compare to the 7th. The 7th is the one that
12 sticks in the mind as being significant for me.

13 There was some questioning in relation to the provision of a
14 safety adviser. We have had evidence from others during
15 our inquiry that some other incident control teams didn't
16 have a safety adviser appointed, which perhaps leaves the
17 impression that it is one of the last positions on the
18 team to be filled, which isn't the way you would think it
19 ought to be. Is there anything in the general
20 arrangements in setting up an IMT that would suggest that
21 there is not as much emphasis in filling a safety adviser
22 position in a level 3 team that should have given us that
23 impression that a number of the teams didn't have one or
24 didn't have one for some time? Is it a question of lack of
25 trained people or is it an unpopular post to be
26 filled?---I don't think it has any less impetus to be
27 filled. We need to do it. We are trained and have bred
28 into us about safety, safety of our firefighters. So
29 I don't think it is an issue about a want or a need of
30 people to fill it. My assessment, in my opinion, is
31 I don't think there is a lot of numbers of them available

1 that have been trained. I haven't got numbers, but
2 I don't think there are large numbers of them available,
3 particularly at a level 3 size. Again, in my opinion,
4 I don't think it might be a position that gives a great
5 degree of kudos or people aspire to; just the fact you are
6 in an ICC, remote from a fire. At the end of the day, a
7 lot of people in the fire service like to fight fires and
8 they don't get much joy sitting in an ICC 30 miles away
9 from a fire. So that may have something to do with it.

10 The question of the suitability of the Traralgon centre for an
11 ICC, you made an observation that when you saw the
12 criticism of some shortcomings of that centre you were not
13 surprised. Would you like to elaborate on that
14 comment?---I think the term was that I was surprised.
15 I don't know if I - - -

16 Sorry, maybe I misunderstood you?---I was surprised because
17 I thought they were good facilities, although the issues
18 that were raised in the real-time monitoring report
19 I didn't think were major issues. The airconditioning
20 didn't work. I had 1,000 firefighters on the fireground
21 in 42 degree heat. I thought it might be good that I was
22 hot for a while. Often when you are in an ICC you go for
23 a walk outside to see what actually is outside. You get
24 insulated from it sitting in an airconditioned room.
25 I did that on a number of occasions. They were certainly
26 large rooms and they provided enough room, and we operated
27 quite well. As I said, in my experience it was a facility
28 that carried out its role well. It has been used many,
29 many times over the last five to seven years. During the
30 campaign fires of I think 2003 it was used extensively as
31 an IMAC. So I didn't think it was bad at all.

1 Is there an issue about personal preference with accommodation?

2 Some incident controllers have made comments that have
3 suggested to me that they like an open-plan situation
4 where everybody is in together where there is a sense of
5 understanding what's going on through sort of osmosis and
6 that that's a very effective way for a team to work
7 together. Others perhaps might prefer more traditional
8 accommodation where there is an opportunity to have
9 discrete groups operating in a more isolated environment.
10 I guess the centres that you use come in both varieties,
11 do they?---Yes, they vary greatly across Victoria.

12 Is it a matter of personal preference that some might prefer
13 one mode of operation as against another?---I can see that
14 happening with incident controllers and teams. They would
15 have a preference. Often you don't have a preference at
16 all. You have a fire. It occurs. The closest incident
17 control centre or the most appropriate one is used.
18 That's where you go. You are handed those cards and you
19 deal with them. The Traralgon facility allowed that teams
20 could have a team area. I had good teams and they worked
21 very well as a team. They had their own areas. They had
22 the ability to put up things on walls. They had break-out
23 areas in those rooms and they worked very well. So
24 I believe it was conducive to good planning and good
25 operations. The other aspect is that if you have those
26 rooms you are able to shut them off. Operations sometimes
27 get noisy; don't want to be interrupted too much. You can
28 seal them off. The other aspect is with large open areas
29 you tend to get a lot of peripheral people in your
30 incident management team. They tend to wander around and
31 they can deflect and also be a security issue for you;

1 whereas if you have got discrete areas and you have
2 leaders in charge of those discrete areas they can operate
3 very well.

4 <CROSS-EXAMINED BY MR CLELLAND>

5 Mr Owen, are you able to tell the Commissioners what the FFDI
6 was on 30 January?---Approximately the forest danger index
7 was around 50.

8 Notwithstanding that the temperature was in the region of
9 42 degrees?---That's correct.

10 You describe one of the significant differences between a day
11 like that and 7 February as being the wind
12 strength?---Correct.

13 Presumably also the effect of the heatwave where we had those
14 series of 40 degrees-plus days, that also affected the
15 conditions on 7 February?---Correct.

16 In response to Commissioner McLeod's question asking you to
17 compare the fire behaviour and particularly the intensity
18 between 30 January and 7 February I noted your answer as
19 being that it was poles apart?---Yes.

20 You were also asked a couple of questions by our learned friend
21 Mr Rozen about the sort of detail that was included in
22 some of the fire information releases where some specific
23 distances were given relating the fire or at least the
24 spotting to particular towns. Was the source of that
25 information from aircraft surveillance?---In operations
26 that day we had many sources of information. I think
27 I categorised before it was a small fire. It was in a
28 local area, 13 kilometres by seven kilometres roughly;
29 whereas other larger fires in Victoria in the past have
30 run long distances and been quite large. We had lots of
31 aircraft over the fire, we also had communications with

1 our people on the ground and we also had the ability to
2 see where people were reporting fires for. So members of
3 the community, aircraft, people on the ground, we were
4 able to get often not real accurate but a good assessment
5 of where the actual fire was at the time. That was good
6 to enable, one, good sit reps for my superior officers
7 above us and also to get good information in for tasking
8 and also, as you say, good information for alert messages
9 that we were able to send out to communities.

10 Just to draw that together, can we take it that the forward
11 rate of spread of the fire on 30 January was much less
12 than those fires on 7 February?---Very much so. On the
13 7th the fires were very, very quick, ran, spotted long
14 distances, were very hard to control, as we know. Not in
15 the same ballpark as on the 30th.

16 <RE-EXAMINED BY MR ROZEN:

17 Just two brief matters in re-examination arising from the
18 questions asked by Commissioner McLeod. In relation to
19 safety advisers and the availability of people to fill the
20 role, the Commission has been provided in respect of other
21 fires with lists of names of personnel that were available
22 on 7 February 2009 to fill particular roles. They have
23 been variously described as incident management team
24 planners and local mutual assistance plans. Was a
25 document of either that description or something similar
26 available to you that had a list of people that were
27 available that could be called upon to fill particular
28 roles?---No, I didn't have it available. I term them a HR
29 plan, and each area or region prior to the fire danger
30 period normally reviews or updates their HR plan. To
31 request a resource from the IMT, we go from the IMT to

1 local areas, such as regions 9 or 10, say, "We want a
2 safety officer or we want an information officer," and
3 then they determine through their mechanisms of where they
4 get them from and availability. So the short answer is
5 I'm not aware of a HR plan that existed in the IMT, nor
6 would I expect one to be there.

7 Finally, in relation to the question of the status of the
8 position of a safety adviser, as the Commission has been
9 informed, you can't fill the role of a safety adviser
10 unless you have achieved either an incident control level
11 2 endorsement or an operations officer level 2
12 endorsement; is that your understanding?---I'm sorry,
13 I have no knowledge of the current prerequisites for
14 safety adviser. As I said before, I completed in 2003.
15 I believe then I had to be an incident controller level 2
16 to do it. But I don't know the current prerequisites to
17 carry out that training.

18 Thank you, Mr Owen. They are the matters for Mr Owen. Could
19 he please be excused, Commissioners.

20 CHAIRMAN: Yes. Thank you, Mr Owen. You are excused.

21 <(THE WITNESS WITHDREW)

22 MR ROZEN: Commissioners, that concludes our examination of the
23 Delburn fires. There remains one witness to be called in
24 relation to the Bunyip fires, and if it is convenient
25 I would call that witness now.

26 CHAIRMAN: Yes.

27 MR ROZEN: I call Matthew Ahern.

28 <MATTHEW AHERN, sworn and examined:

29 CHAIRMAN: Mr Ahern, if you just sit centrally to those
30 microphones, you can then ignore them.

31 MR ROZEN: For the record, can you state your full

1 name?---Matthew Ahern.
2 You live at 3 Hovea Court in Boronia?---That's correct.
3 With the assistance of solicitors for the Royal Commission,
4 have you prepared a witness statement?---Yes, I have.
5 Have you had an opportunity to read through the witness
6 statement before giving evidence today?---Yes, I have.
7 Are the contents of that witness statement true and
8 correct?---I would like to make one change, and that's to
9 paragraph 17, if possible.
10 That appears on page 3 of the statement, in the middle of the
11 page. What's the change you would like to make there,
12 please?---Down the bottom, the second line has in there
13 that I don't know who took the photos that were submitted.
14 I have since found out the owners of the caravan park
15 actually took the photos.
16 So if we delete the words in brackets, that is the words "I do
17 not know who took them"?---That's right.
18 Are you content to leave the statement in that form or would
19 you like to add that further information, that you now
20 know that the photographs were taken by the owners of the
21 caravan park?---Yes, that's fine, if they could be added
22 in.
23 So if we add after MA-2 "the photographs were taken by the
24 owners of the caravan park"?---Correct.
25 Are you happy with that?---Yes.
26 With that change being made, are the contents of the statement
27 true and correct?---Yes, they are.
28 I tender the statement.
29 #EXHIBIT 612 - Witness statement of Matthew Ahern and
30 attachments (WIT.061.001.0001) to (WIT.061.001.0016).
31 MR ROZEN: Mr Ahern, you are giving evidence here today because

1 you were touched by the Black Saturday fires in at least
2 three respects, as you explain in your statement?---Yes,
3 that's right.

4 Firstly and most tragically, because your uncle and aunt died
5 in their property at Steels Creek?---Correct.

6 That was something that you didn't find out until late on the
7 7th or in fact on the following day; is that
8 correct?---Yes, that's right.

9 Secondly, that you yourself played a role as a volunteer
10 firefighter in combating the fire that has been referred
11 to in these proceedings as the Bunyip State Park
12 fire?---Yes, correct.

13 And we will examine the role that you played. Thirdly, if that
14 wasn't enough, your cousin lost a farm at Granton as well
15 as a separate bed and breakfast that they own in
16 Marysville?---Yes, that's correct.

17 We will focus on your own role, your personal role on the day,
18 which was in your capacity as a CFA volunteer. You
19 explain in your statement, firstly, that you were actively
20 following events in the week leading up to 7 February so
21 far as the risk of fire was concerned?---Yes, that is
22 right.

23 What did that involve? How did you do that?---Basically
24 using the weather reports off the news as well as being
25 informed by our local region, local group, as far as what
26 we were expecting in the days leading up to and during
27 that week, the temperatures and all that sort of stuff;
28 our possible preparedness for that week, we would have to
29 be.

30 I neglected to ask you about your background, Mr Ahern.

31 I should do that now. You have been a volunteer for about

1 20 years or so?---That's correct.

2 Which brigade are you attached to?---At the Basin.

3 You are the first lieutenant there; is that right?---Correct.

4 Is that one down from captain?---That is right.

5 Is that an elected position?---It is, yes.

6 In paragraph 4 you explain that you became aware on the evening

7 of 2 February 2009 that a fire had broken out in the

8 Bunyip State Forest. Over the following days you made it

9 your business to keep an eye out on the progress of that

10 fire. Was there any particular reason why you followed

11 the progress of that fire or is it just part of your

12 normal practice to keep an eye on fires generally?---Given

13 the weather conditions that we had been told that we were

14 going to be expecting that week, I guess it is just one of

15 those things that I probably just tune myself in to keep

16 track of what's happening in the local areas as to what

17 the possibility might be of us having been responded to

18 different areas and all that sort of thing. Given I had

19 sort of been up in that area four-wheel-driving myself,

20 it's a sort of pastime, have a bit of fun doing that,

21 I sort of knew that area as to what the area was like.

22 As it turned out, as we will see in a moment, you in fact did

23 play a role in combating the Bunyip Park fire when it

24 broke out on 7 February, but that's a fair way from your

25 patch in Boronia, isn't it?---Yes, it is.

26 Is it the case as a volunteer that your state of readiness is

27 such that you can expect to be sent pretty well anywhere

28 in the state if fires break out?---Yes, that's correct.

29 So during the course of the week I suppose in the back of your

30 mind was the possibility that if this fire wasn't

31 controlled and conditions got worse then you might end up

1 being in a position where you were fighting that
2 fire?---That's right.

3 At paragraphs 6 through to 10 of your statement you detail the
4 daily observations you were making of the Bunyip State
5 Park and you express concern there that, despite the
6 initial suggestions that the fire would be controlled by
7 the DSE, in actual fact as you looked at the website each
8 day the size of the fire was increasing?---Yes, that's
9 right.

10 You express a concern that perhaps if the CFA resources had
11 been employed as apparently had been offered that you
12 think maybe that fire might have been able to be
13 controlled earlier during the week?---Yes, that's right.
14 I think on the night that I heard that first initial call,
15 if the CFA resources had have been allowed to continue or
16 to assist in that fire it wouldn't have existed.

17 We have heard a deal of evidence this week in the Royal
18 Commission about the circumstances in which the fire
19 ultimately got out of control and left the park. Have you
20 been following the evidence that's been given in the
21 Commission hearings this week?---Not up until now, no,
22 unfortunately.

23 Have you had the benefit of any investigation report or any
24 report into the circumstances in which the fire left the
25 park?---No, unfortunately.

26 If we can turn then to your experience on 7 February 2009,
27 I take it that you were fully aware of the high fire
28 danger and the terrible weather conditions that were
29 forecast for 7 February?---Yes, we certainly were.

30 It was in light of that that you ate lunch early and then
31 turned out to the CFA fire station in the Basin at

1 1 o'clock in the afternoon?---That's right.

2 Were you responding to a particular call or was it just to make
3 yourself available in case you were needed?---No, it was
4 just a general call up to the station just to make sure
5 that everything was right should we be required in any
6 way, that the trucks were basically ready to go and we had
7 the gear ready.

8 As it turned out, you didn't have to wait terribly long before
9 you were actively involved?---That's right.

10 I think you indicate it was about 1.30 or so that you were
11 called out. What was your first responsibility?---Our
12 first responsibility was basically to make sure that the
13 crew that had been selected on that day was at the
14 station. So we waited for them to arrive, which didn't
15 take long. We made sure that we had adequate supplies on
16 the truck, water, ration packs which we get supplied with
17 were on the truck, and that everyone had their protective
18 gear and were ready to go.

19 Where was your first deployment?---Basically our original pager
20 message said we were to assemble at Ferntree Gully fire
21 station, which is close by. At that stage we didn't
22 actually know where we were heading to. Given that we
23 were going in that general direction, it was just my
24 assumption in my head that we were going to be sent down
25 to the Gippsland area.

26 In fact you headed down towards Drouin?---That's correct, yes.
27 Along the way you stopped at a number of CFA staging areas,
28 including one at Nar Nar Goon and you were given a job to
29 fight a spotfire; is that right?---Yes, that's correct.
30 Just near the Drouin area there was a spotfire that had
31 started in there that was threatening some properties near

1 the golf course there on I think it was McGlone Road, and
2 we got tasked in there.

3 You may not know the answer to this, but was that spotting from
4 the fire that had broken out of the Bunyip State Park, do
5 you know?---Not sure.

6 You don't know. All right. You then went and did some asset
7 protection work in Neerim South and also you were doing
8 some house protection work in Old Telegraph Road West in
9 Drouin West when your strike team leader went to see if
10 there were any other fires that you should be concerned
11 about. What did he report back to you?---The strike team
12 leader actually took a drive further along Old Telegraph
13 Road and actually found a caravan park, the Glen Cromie
14 Caravan Park, which was stuck down in a forested valley
15 along the river. Basically they had been surrounded by
16 fire and were fighting to save the caravans and everything
17 else.

18 You proceeded there. Was it the entire strike team that went
19 down to the caravan park?---Initially it was only a couple
20 of trucks. The rest of us were tasked to protect
21 properties along Old Telegraph Road. Given that the
22 firefront at that stage and the wind change had come
23 through, it was basically impinging on the properties
24 along that road. Originally it was just three trucks that
25 were sent down. I'm pretty sure it was three trucks.

26 You've indicated that the wind change had come through, so are
27 we talking about late afternoon, early evening at this
28 time?---That's right.

29 Were you given advanced notice of the timing of the wind
30 change?---Yes, we were told that the wind change was
31 expected I think around about 7 o'clock or somewhere

1 around there. I can't remember now.

2 The Commission has heard evidence that it came through somewhat
3 earlier than was initially anticipated and that it may
4 have passed through the area where you were shortly before
5 6 o'clock. Were you provided with updated information
6 about that earlier time, do you recall?---I don't recall,
7 I'm sorry.

8 In any event, is the position that you were in a safe position
9 at the time the wind change came through or did it cause
10 you any sort of safety issues for you and other members of
11 your crew?---At the time it came through we were in,
12 I guess, a semi-treed area, but a lot of it was open
13 grassland grazing area and things like that. Further
14 I guess towards the north, sort of north-westish, it was
15 getting more heavily treed. We had a number of trees come
16 down across the road and things like that. We had to
17 drive around smaller trees, we had to drive over to
18 actually get to the caravan park.

19 Tell us a bit about the caravan park. Where is it in relation
20 to Drouin? How far out of Drouin is it?---Out of Drouin,
21 from memory I think it is - it must be about 10 kilometres
22 or so. There is a map there.

23 Perhaps if we can go to the map. That's a good idea, Mr Ahern.
24 It is at (WIT.061.001.0007). The little bubble with
25 the letter "A", is that the location of the caravan
26 park?---Yes, it is.

27 It is just near that. It is on that creek, is it, or just near
28 that creek that we can see there?---It is actually right
29 on that creek. The creek runs through the park.

30 We can see towards the bottom left-hand corner of the map
31 Drouin West?---That's right, yes.

1 So that was the road that you took to get to the caravan park,
2 that Main Neerim Road; is that right?---No, it wasn't
3 actually. We came in from the south. We came in
4 basically from the Rokeby end.

5 Can you give us a bit of description of the park itself? We
6 have heard some evidence, if it is the same park we have
7 previously heard about, that it was mainly people who
8 lived there permanently rather than a holiday caravan
9 park; is that right?---That's right. I think the park is
10 mainly used for permanent residents. There are a number
11 of caravans there that looked like they had been
12 permanently fixed. I think there was a small area for
13 holiday goers that would call in there.

14 Can you give us an approximate number of the number of caravans
15 that were actually there when you arrived?---I think from
16 memory there was - I think they had about 40 to 50
17 caravans, permanent caravans, that were there, from
18 memory. I think of those, I have a feeling that they only
19 lost about three or four.

20 You describe the geography of the caravan park, that it has
21 dense bush on three sides, but that the river provided you
22 with a vital source of water; is that right?---Yes, that's
23 correct. The river was quite good. We were able to get
24 plenty of water out of that, as were the caravan park
25 owners. They had their own little makeshift fire truck,
26 you might say.

27 What was that? One with a little tank on the back, was
28 it?---Yes, it was basically a very small tip-truck. They
29 had, I think it was, eight 44-gallon drums up on the back
30 of the truck with a fire pump and they were basically
31 filling that and just using those. So they had done a

1 very good job to save what they did.

2 So they were engaged in that, were they, when you

3 arrived?---Yes, that's correct. I'm pretty sure the

4 caravan park owner was actually a CFA volunteer himself.

5 I'm guessing they were pretty pleased to see your tankers

6 arrive?---I have no doubt.

7 Over what period of time were you involved in fighting the fire

8 at the caravan park?---Basically we were there all night.

9 It got to the point where after the initial front had gone

10 through it was deemed to be more or less too dangerous for

11 us to leave the caravan park, given the amount of trees

12 and things like that that were coming down. So we sort of

13 spent the night patrolling the park. There was a large

14 pile of firewood behind the park owner's house which had

15 caught alight which took quite a bit of extinguishing or

16 making sure that it was safe. We spent the night

17 basically sleeping under our trucks, given that it started

18 to rain.

19 We will come to the sleeping arrangements in a moment. Perhaps

20 if we can go to the photos that are attached to your

21 statement which were taken by the caravan park owners.

22 The first one is at 0009. Were these photographs taken on

23 the night while you were involved in the firefight?---Yes.

24 The photograph that you see there at the moment was

25 actually taken, I think it was, about five or 10 minutes

26 before we arrived. I'm pretty sure that's the caravan

27 park owner actually on his tractor there.

28 The structures that are in the foreground of the photo, they

29 don't appear to be caravans; they seem to be more

30 permanent type buildings, is that right?---Yes, the way

31 that most of the caravans were in that park was they

1 actually had like an awning type structure built over the
2 top of them which I would imagine to keep leaves and
3 whatever else from settling on top of the roof of the
4 caravan.

5 Perhaps we can go to the next photo, number 10. Do you know
6 what time this photograph was taken, approximately?---No,
7 I don't. I guess it would have been around about probably
8 5, 6 o'clockish maybe, possibly.

9 Is that the sun we can just make out in the top left-hand
10 corner through the flames?---No, it wouldn't have been.
11 I would imagine that would just be - given the direction
12 that photograph was taken, it is looking towards the east.

13 Does that give us a good indication of what faced you when you
14 were at the caravan park?---Yes, it is.

15 If we go to photograph 11, please. What would be the distance
16 there between the building we can see in the middle there
17 and the flames? Are you able to assist us there?---That
18 building there actually sits sort of in the centre of the
19 caravan park. The treed area there was up, from memory,
20 behind the owner's house. So you are probably looking at
21 probably 50 to 75 metres.

22 So no doubt you would have really been able to feel the
23 intensity of the heat then in the caravan park?---Yes.

24 Is that the closest the flames got to the structures or did
25 they get closer than what we see in this photo?---No, they
26 actually got closer. I think in one of the other photos
27 that's there the fire actually came right down behind the
28 caravans. On the north-western and western side of the
29 park there is actually quite a steep treed area, and
30 around that area it actually came right down to the back
31 of the caravans.

1 Perhaps we can go to photo 12, please. Can you tell us what we
2 are looking at here?---Yes, that is the main entrance to
3 the caravan park, so off I think it was Neerim Road.
4 That's the way you came in, was it?---Yes, that's right.
5 So we can probably now see why you were unable to
6 leave?---Mm-hm.
7 Photograph 13?---That again is the driveway in along with a
8 couple of - that's a very permanent resident that was
9 there right beside the driveway.
10 So the photographer in that photo is standing inside the
11 caravan park and that is showing us the scene on the edge
12 and outside the park; is that right?---Yes, that's right.
13 Finally photograph 14, what's the view of here?---That one
14 there actually looks back from the centre of the park near
15 the caravan park owner's residence and looking back to the
16 treed area across the driveway looking sort of west.
17 You told us a moment ago that ultimately you had to sleep under
18 your truck; is that right?---Yes, that's correct.
19 Generally we are trained not to sleep under the truck
20 because it is reasonably dangerous. But, given that most
21 of the caravans in the caravan park were around the
22 perimeter of the park and were subject to falling trees,
23 the safest place for us to sleep was actually initially
24 beside our trucks and in sort of an open area, given it
25 was nice and dry and a fairly warm night. But it did
26 actually eventually start to rain. We had a thunderstorm
27 come through which we can only imagine was the cause of
28 the fire activity creating a thunderstorm.
29 We have heard some evidence, Mr Ahern, about the weather caused
30 by fires. There is a photo that is attached to your
31 statement at page 16 which seems to show a group of fire

1 trucks. Perhaps if we could go to that, please. Do you
2 know who took this photo?---I'm reasonably sure it was
3 either myself or it was another member of my crew.

4 I can't actually remember.

5 At what time was this photo taken?---That was actually taken
6 the next morning. I think it must have been reasonably
7 early morning.

8 We can see there are quite a few appliances there. How many
9 trucks ultimately did you end up having located at the
10 caravan park?---There was just one strike team, so five
11 tankers and the strike team leader's car.

12 You explain in your statement that ultimately you were
13 successful in saving the overwhelming majority of the
14 caravans at the park?---Yes, that's correct, with the
15 assistance of the caravan park owner.

16 How many were lost?---As far as I'm aware, three or four were
17 lost.

18 Thank you, Mr Ahern. They are the questions that I have for
19 Mr Ahern. Commissioners, any questions?

20 CHAIRMAN: No.

21 MR ROZEN: There is no cross-examination, apparently. If
22 Mr Ahern could please be excused.

23 CHAIRMAN: Yes. Thank you, Mr Ahern. You are excused.

24 <(THE WITNESS WITHDREW)

25 MR ROZEN: Commissioners, that concludes the evidence in
26 relation to the Bunyip fire.

27 CHAIRMAN: Yes. We will adjourn now until 2 o'clock.

28 LUNCHEON ADJOURNMENT

29

30

31

1 UPON RESUMING AT 2.00 PM:

2 CHAIRMAN: Yes, Mr Rush.

3 MR RUSH: Commissioners, I call Mr Kim Griffith.

4 <KIM PATRICK GRIFFITH, sworn and examined:

5 CHAIRMAN: Take a seat, Mr Griffith, roughly between the
6 microphones and then forget about them.

7 MR RUSH: Mr Griffith, is your full name Kim Patrick
8 Griffith?---That is correct.

9 Are you the CEO of Utility Engineering Solutions?---That is
10 correct.

11 Can you give us some indication of what that company or
12 organisation is?---That company is a consulting company.
13 It mainly focuses on consulting in the electrical area,
14 the electricity industry. It also does management
15 consulting, once again mainly focused around the energy
16 industry.

17 Mr Griffith, you started your career in the electricity
18 industry with the State Electricity Commission of
19 Victoria?---Yes, I did.

20 When was that?---That's a question I probably unfortunately
21 can't give you the exact date. I can say that at the time
22 I started in the SEC it was at a time when there had been
23 significant activity related to bushfires.

24 Perhaps we will work backwards; it might be better. Are you a
25 past director and chief executive officer of Ergon
26 Energy?---That is correct.

27 And Ergon Energy is an energy company based in
28 Queensland?---That's correct, yes.

29 And has substantial electricity infrastructure in that
30 state?---That's correct.

31 You also hold a directorship with SWD?---That is correct, yes.

1 And SWD is involved in what?---It's involved in new technology
2 that is used, fundamentally focused on the electricity
3 industry. It is technology that can be used in smart grid
4 applications, remote metering, et cetera.

5 I will just take you through a couple of other matters,
6 Mr Griffith. You are a past member of the Tree Clearing
7 Consultative Committee which had a role in
8 Victoria?---That's correct.

9 You might indicate to the Commissioners what that was?---The
10 Tree Clearing Consultative Committee was constituted after
11 the Ash Wednesday fires. It provided a forum for
12 discussion and development of approaches involving the
13 community and the then SEC.

14 In relation, I take it, to that very topic of tree clearing
15 around electricity assets?---That's correct.

16 You were past chair of the Powerlines Relocation
17 Committee?---Yes. The Powerlines Relocation Committee is
18 a committee that can fund or help fund relocation of
19 powerlines in sensitive areas. It is in fact not
20 applicable to a relocation of powerlines when there is in
21 fact fire risk, but it is more about focusing on the
22 environment and the amenity of areas.

23 You have been a member of the Victorian Electricity Supply
24 Industry Review Committee?---That's correct. Certainly
25 much of the review occurred in that time and then I moved
26 on being involved in setting up of the five distribution
27 businesses and then ultimately the sale of those
28 businesses.

29 After the sale of those businesses did you take up a position
30 as deputy chief operating officer with United
31 Energy?---Yes, I did.

1 Before taking up the position in Queensland?---That's correct.
2 At the request of the solicitors to the Royal Commission, have
3 you provided an outline of evidence in relation to setting
4 out your background, but also in relation to the potential
5 initiatives that might be taken, particularly directed at
6 bushfire mitigation?---Yes, that is correct.

7 The outline of evidence, as far as it sets out your views, is
8 it true and correct?---That is true and correct.

9 I tender that with the resume of Mr Griffith.

10 #EXHIBIT 613 - Outline of evidence of Kim Patrick Griffith and
11 attachment (EVI.001.001.0001) and (EVI.001.001.0012).

12 MR RUSH: Can I firstly ask you, Mr Griffith, you refer there
13 to being involved in the response to the Barber report
14 into the bushfires of 12 February 1977, that's the SECV
15 response, and the response of that organisation to the Ash
16 Wednesday fires?---Yes.

17 What were you involved in?---I joined the SEC as a junior
18 engineer and my early involvement was within the lines
19 area of the SEC. I started at a time, and I can't tell
20 you exactly the date, when for the first time there was
21 some question about whether powerlines could start fires.
22 So, that's going back quite a long time. Then, when the
23 1977 fires occurred, it became obvious that the powerlines
24 were quite capable of starting fires during that time, so
25 the SEC commenced a process to try and address all of
26 those issues. It identified where the risks were and
27 started making changes, design changes, standards changes
28 to address those issues. That work was more or less still
29 continuing and certainly that Barber report had quite a
30 significant impact on the way the SEC operated in rural
31 areas. That work was still being done when Ash Wednesday

1 came along and as a result of the Ash Wednesday fires
2 there was a significant and committed response by the SEC.
3 That work continued on for some years. I was involved in
4 that firstly as an engineer responsible for the
5 development of new standards, et cetera, and ultimately
6 I progressed through that and I guess ended up managing
7 that process for the SEC. So, along the way I was
8 involved in establishing clearance of lines legislation,
9 et cetera. So, a significant involvement for quite some
10 period of time.

11 You make the point in the outline that the nature of the
12 response of the SECV and what its capacity was to respond
13 is different compared with that available to the
14 privatised distribution companies in Victoria now. Can
15 you enlarge on what you are driving at there?---Look, that
16 is correct. The SEC was a very large organisation and had
17 a worldwide standing from an engineering viewpoint. It
18 was able to have a lot of resource, I guess, considering
19 issues like standards and new ways of doing things
20 et cetera. So it was very strong technically and it was
21 very well resourced. I think by today's standards it
22 would be seen to be very well resourced. From a financing
23 viewpoint, fundamentally it wasn't accountable to a
24 financial regulator et cetera, it was responsible for
25 setting tariffs et cetera, so it was able to commit both
26 people resource and financial resource as it saw fit.
27 Obviously the distribution businesses of today are
28 somewhat leaner in how they are and also obviously heavily
29 subject to the financial regulation.

30 CHAIRMAN: Can I interrupt there to inquire whether the work
31 that you have referred to was ever, so far as you are

1 aware, conveyed in a report or writing, because the work
2 that was done between the 1977 fires, which are the
3 subject of some comments in the Barber report, in the next
4 10 years, so far as I'm aware, and I have asked lots of
5 people to try and find what there is, it is almost
6 impossible to find anything in writing that would give us
7 the idea of the character of the incidents that gave rise
8 to electricity assets being seen to be involved in the
9 commencement of fires?---I think much of the work that was
10 carried out was by the SEC and internal to the SEC.

11 It was all internal?---Obviously because the Barber report was
12 there, don't quote me on this, but a decision was made
13 that it was still relevant, what was in the Barber report.
14 We needed to keep working and there were more issues to
15 address. So there wasn't a lot of activity outside of the
16 SEC, apart from ultimately progressing with the Clearance
17 of Lines Act, which obviously did require a lot of
18 external consultation.

19 And in relation to the Ash Wednesday fires, as far as I can
20 ascertain, almost nothing at all, because there was
21 nothing akin to the Barber report?---That's correct.
22 There's nothing externally apart from where we were
23 interacting on clearance of lines with local government,
24 there was a lot of interaction there. But otherwise there
25 was an enormous amount of work in the SEC and I guess it
26 was focused on its assets and was working away at making
27 significant changes.

28 So it is either in archives, if there are any, or it just
29 doesn't exist any longer?---I probably can't answer that.
30 I could probably look through some of my papers and maybe
31 identify some documents. Obviously much of that

1 outworking is what is in fact the current bushfire
2 mitigation regime. It has evolved over that period.

3 MR RUSH: You make the comment in the last three lines of
4 paragraph 6 that the distribution companies "are limited
5 by strong economic regulation with a strong focus on
6 'lowest cost technically acceptable' electricity
7 reticulation." What is the point that we take from
8 that?---I think the point is that I don't think anyone has
9 really put a lot of thought into what lowest cost
10 technically acceptable is, but the reality is it maintains
11 things somewhere around the status quo where things are at
12 the moment. So, it is very difficult within that
13 regulatory environment to look at step change in any of
14 these areas. Given what has recently occurred and the
15 predictions with global warming et cetera, I have the view
16 that maybe some form of step change is desirable,
17 certainly a need to review and consider what are the
18 community's priorities and whether we should be setting
19 targets for the future that are consistent with what the
20 community's requirements are.

21 Taking up those matters, at paragraph 9 you indicate that in
22 your view that should be a coordinated response with some
23 level of government involvement. So, do we take it from
24 that that what you are recommending is the coordination of
25 those interested parties but with some form of government
26 direction?---Absolutely. In looking at it from a climate
27 change viewpoint, there have been documents prepared, both
28 at federal and state level, with regard to climate change
29 and the potential impacts. At the moment, policy coming
30 out of that with regard to electricity distribution is in
31 the province of the individual DBs to work out their

1 response. I'm strongly of the view that one needs to be
2 worked up by the whole industry, but more importantly
3 there needs to be significant input from the community
4 with regard to what their expectations and their needs are
5 into the future. Obviously I also look a little bit
6 broader than just the bushfire situation. Climate change
7 is going to provide significant change to electricity
8 distribution. Currently it is what we call radial flows,
9 the electricity flows from a power station out to
10 customers. The distribution network that we are really
11 talking about here will have a lot of different current
12 flows in the future. The electricity network will need to
13 look at carbon neutral strategies which will require
14 changes to the network. They also are facing significant
15 storm issues. They have already faced those storm issues
16 that probably warrant some changes. So, from my viewpoint
17 there is an opportunity to consider all of those factors
18 and consult with the community. I guess the other thing
19 I would add is that in the work that I have done recently
20 and I am sure has been done elsewhere, the resilience of
21 the community has certainly diminished significantly in
22 recent times and the community's dependence on electricity
23 has also changed quite dramatically. From a health and
24 safety viewpoint, loss of power supply is now significant,
25 industrial losses et cetera. Obviously, when it comes to
26 these extreme days, the health issue, particularly with
27 aged people et cetera, is quite significant. So, in terms
28 of developing a business case, if you like, for change, a
29 business case is much broader than just looking at fire
30 starts or asset damage on the electricity network.
31 Perhaps that need for some form of government initiative and

1 the coordinated approach, you at paragraph 10 and
2 following identify that in a sense the electricity
3 distribution businesses you say operate independently and
4 comment on the fact that, whilst the regulator determines
5 revenue in relation to capital and maintenance and the
6 like over a five year period, the way in which that is
7 managed and the response of the individual distribution
8 companies is very much independent and something that they
9 are in control of?---That is correct. As I mentioned
10 before, at the moment they are responsible for any
11 reaction to climate change, any reaction to the Black
12 Saturday fires. The industry does talk to each other, but
13 there is no real evidence of them getting together at a
14 much more meaningful level and developing new approaches
15 et cetera. The industry is where the expertise is, it has
16 a lot of expertise, but it obviously is within five
17 companies, not one company. So I am very strong on the
18 industry getting together, working together, working
19 together with the other parties and government in
20 developing the most effective ways forward in this area.
21 You make the observation, of course subject to Energy Safe
22 Victoria, but the independence of the distribution
23 companies really enables them to react to the potential
24 issues from 7 February, you use the words "as they see
25 fit"?---Yes, that is correct. I think that, as I have
26 mentioned before, they hold the expertise in that area.
27 They will develop their responses. There obviously will
28 be some interaction between them. I guess where I'm
29 coming from is I think there needs to be a broad review of
30 the events from an electricity reticulation viewpoint.
31 There needs to be some development of a common approach

1 and to establish hopefully some targets. From my
2 viewpoint, the current system is more or less maintaining
3 the status quo. I don't believe the status quo is
4 acceptable for the future. If you want to move to some
5 different level, it is a matter of establishing what that
6 level should be, setting some targets and setting some
7 policy. Obviously, in determining that policy there
8 should be involvement of the community and government.

9 In looking at the current situation, we have really a bushfire
10 mitigation regime in Victoria and it has been said that it
11 is a best practice regime. Do you reach a stage where
12 there are diminishing returns in that mitigation risk
13 strategy?---I think so. Look, it is an asset management
14 strategy, so by and large we are talking about the same
15 equipment, the same lines and the same risks and what we
16 are trying to do is ensure that the maintenance is such
17 there are minimum faults, et cetera, but the areas of risk
18 still remain. Contact between powerlines and trees
19 remains a continuing problem. The SWER lines to me remain
20 quite a significant risk into the future. In a lot of
21 these areas there are programs that are in place, but
22 there are really no targets set with the programs for what
23 you might call step change. I believe at this stage we
24 need to look at step change, which may involve some of the
25 new technologies, and there are a lot of options coming
26 from new technologies, and also may involve use of some of
27 the older technologies but in a different way. Obviously
28 undergrounding is an old technology. Undergrounding
29 effectively solves all of the fire problems, but
30 undergrounding is enormously expensive. But that doesn't
31 mean with current developments there aren't undergrounding

1 solutions for at least the critical or the highest risk
2 areas. So, that's the sort of focus that I would be
3 looking at. There are other technologies, aerial bundled
4 cable, et cetera. There is even isolated generation in
5 some of these areas. Certainly in Ergon the distances are
6 so great there that they don't reticulate beyond a certain
7 point, they establish local generation. In the modern
8 world even that is quite possible on an individual
9 customer basis. So, there are lots of option. I'm not
10 trying to say which ones are the right ones, I'm saying
11 these all should be developed.

12 If we perhaps just look at the current situation. On the
13 evidence before the Commission, it could be thought that
14 electrical assets have a long but not defined lifetime and
15 components are replaced or they are maintained, but there
16 is very little done in relation to any form of major
17 change?---No, it is the nature of I guess overhead
18 powerlines that each individual component is replaced when
19 in fact it needs maintenance. Poles are replaced.
20 Normally if a pole is replaced there is some new equipment
21 put on that pole, quite often some of the old equipment,
22 but it is just piece by piece. So, it is very difficult
23 to allow rapid change in the electricity industry. Most
24 of these items have lives somewhere around 40 years.
25 Underground cable can be probably double that. But,
26 because you are only replacing individual components, the
27 character of the powerline doesn't change greatly.
28 Certainly, although there is a lot of new technology
29 around, there are still the issues that have been in place
30 30 years ago are still sitting there and there are a lot
31 of similarities in how the electricity distribution works

1 and there is still fire risk et cetera.

2 So would it be reasonable then, Mr Griffith, to say that

3 without targeted change and without the sort of

4 coordinated approach that you have referred to, that there

5 is little prospect of any form of real initiative being

6 introduced?---Yes. I believe that you only achieve if you

7 in fact set a vision and some targets and then people can

8 work to those and monitor the progress along the way.

9 I think with the current approach it is hard to see

10 anything like step change. Certainly with the current

11 approach there is a very significant influence from the

12 regulatory side, the financial regulatory side. I think

13 most of the distribution businesses have endeavoured to

14 take some initiatives involving new approaches, but in

15 general have felt that they didn't have the support from a

16 financial regulatory viewpoint. If things are to change,

17 obviously there would need to be some sort of recognition

18 on a national level from a regulatory level of the special

19 circumstances that do exist in south-eastern Australia and

20 the development I guess of a business case demonstrating

21 the value and the need for that special treatment.

22 You raised SWER lines and you refer to it at paragraph 12 of

23 your statement and it comes out potentially of your last

24 answer, the difference between SWER lines as they might

25 exist in Queensland and SWER lines as they exist in

26 south-east Australia and particularly here in Victoria.

27 The reason for that, you identify, is because of bushfire

28 risk?---That's correct. In Ergon it is obviously an area

29 that's ideal for SWER and I think SWER has served many

30 communities well over the years, including Victoria. In

31 Queensland, if the pole falls over or there is a small

1 local fire, it really doesn't matter, there is no real
2 risk to the community as such, it is just a matter of
3 going out and replacing the pole. Obviously they have
4 some different problems there, cyclones et cetera, but in
5 terms of fire risks it doesn't tend to be a risk in those
6 areas. Obviously throughout Australia the risk profile is
7 different and where they operate is very different. In
8 Victoria it is very high risk from an electricity
9 reticulation viewpoint and I believe it warrants a
10 different approach. From a SWER viewpoint, SWER I think
11 from my memory, and I'm not quoting any specific research
12 or data here, but SWER has always been involved in fire
13 ignition. SWER probably has the highest risk profile
14 because of the fact that the current returns through the
15 ground. From a protection viewpoint it takes away
16 90 per cent of your opportunity to provide effective
17 protection by having that return path through the ground.
18 At the time it was installed across Victoria, there was
19 this issue with telephone lines also being installed and
20 the need for separation, so SWER lines, the electricity
21 lines in general are in easement on private property, so
22 if there is a SWER pole smouldering or whatever, it is
23 unlikely there are going to be people driving past it or
24 notice it et cetera. So, from my viewpoint the risk
25 profile is very high and it is worthy looking at
26 alternative approaches. I think in a number of these
27 areas, and SWER is one too, I think it would be fair to
28 say that at least all DBs, except the fifth one that
29 doesn't have SWER, have had some sort of programs over the
30 years to replace SWER. But they really haven't made much
31 progress on them, except maybe one, and that once again

1 comes back to this financial regulatory problem.

2 With SWER, are we looking, from the Victorian point of view, at
3 an ageing infrastructure?---Yes. Obviously SWER was put
4 in to electrify the state after the Second World War.
5 Obviously the age is getting to that stage where the
6 maintenance requirements are increasing quite
7 significantly. Once again, under current regime we will
8 tend to just go and repair each fault as it occurs.

9 In relation to alternatives to SWER, you have mentioned aerial
10 bundled cable. Something else that has been mentioned in
11 the Commission is a single phase option or undergrounding
12 in potentially some areas where SWER lines exist. What do
13 you see as the sort of potential regime or target that can
14 be put in place in relation to SWER lines?---I think there
15 are many options for SWER and I think there is little
16 doubt that they will cost money, but the most inexpensive
17 option is to just go back to what we would call normal
18 supply, which is a single phase supply, so that
19 immediately allows you to have effective protection within
20 the system and it obviously immediately addresses its
21 ability to carry load and that has become an issue in many
22 of the rural areas.

23 With single phase supply, from a layman's perspective, are we
24 really looking at a two wire system?---That's correct, a
25 two wire system. Obviously the significant advantage of
26 SWER is having one small steel conductor with enormous
27 length of span. The enormous length of span is
28 facilitated by having one conductor, so that's the reason
29 SWER is used. But certainly you can still have long spans
30 of conductor with single phase construction and the single
31 phase construction, as I say, will provide a significant

1 reduction in risk compared to SWER. But I have also noted
2 over time that Telstra continues to plough in cable, has
3 done it for years and years. So, in some areas plough in
4 technology might allow undergrounding replacement for
5 SWERs. Obviously if it is in rocky area you wouldn't use
6 that, but it is always a matter of the right solution for
7 each particular area of activity.

8 Do you see SWER as having the potential, at least initially, if
9 high risk, high bushfire zone areas are targeted, for some
10 form of risk reduction by use of the methods that you have
11 referred to, at least as an initial phase of the
12 introduction of something on a more wider
13 scale?---Absolutely. I guess what I'm saying is that the
14 businesses have had some attempts at removing SWER.
15 I don't think there is a great argument with regard to the
16 risk. The risk profile of SWER is greater than any of the
17 other constructions and I think it is time with SWER that
18 some targets need to be set. Those targets may be longer
19 term, but I think we should have the industry working to
20 remove SWER because of its high risk profile and a target
21 to be set as to when that removal is completed. Obviously
22 there would have to be some support from a financial
23 viewpoint to implement such an initiative.

24 At paragraph 15 of your statement you refer to neutral earth
25 resistors. Perhaps if you could tell us what the history
26 in relation to neutral earth resistors is and what their
27 function is, and you note that the introduction was not
28 completed?---Yes. Look, the SEC engaged Electricite de
29 France in the 1990s to do a review of fundamentally its
30 bushfire mitigation activities. That review was carried
31 out and in general the review found that the approach by

1 the SEC was excellent. I think on a world scale it is
2 worth reporting that the asset management that is
3 conducted by the current DBs is considered best practice.
4 It is just the high risk profile that we have in this
5 area. But one of the recommendations that did come out
6 was to try and reduce the energy available at a fault.
7 So, if a fault occurs on the electricity network,
8 obviously fire ignition is a factor of how much energy is
9 escaping and so this neutral earth resistor is a device
10 that fundamentally restricts the amount of current flow in
11 a fault condition, so restricts the energy available so
12 the chances of fire ignition on the ground et cetera is
13 diminished. Now, that is I think a very good initiative.
14 There is some more later technology going along the same
15 line but using modern computer technology, et cetera, that
16 provides even more benefit. That sort of program should
17 be completed and targets should be set because I don't
18 think anyone is arguing the benefit of those programs,
19 they just need to be implemented and completed, and once
20 again I see the industry working together in terms of
21 developing the approach and then the implementation.

22 Is that fault level reduction considered in the industry and by
23 you, indeed, to be effective in reduction of bushfire
24 risk?---Yes. Within the industry, and I don't want to
25 speak for the DBs, but certainly there have been a number
26 of trials and they have determined that to be a valuable
27 initiative. I think just from the science the ability to
28 reduce that energy at a fault does provide enormous
29 benefit.

30 Mr Griffith, in relation to that sort of technology, is it
31 applicable to SWER lines?---No, unfortunately it is not a

1 applicable to SWER lines and that's because of the return
2 path. Fundamentally a SWER line already has very limited
3 current flowing from a load viewpoint and if a SWER line
4 faults, there is probably very little difference between
5 the fault current and the load current, so a lower neutral
6 resistor might slightly reduce the energy available. It
7 won't be significant because of the SWER line itself and
8 the - I shouldn't use the word impedance - but, anyway,
9 the impedance of the SWER line.

10 It is a term the Commissioners are fully on top of?---Right.

11 Mr Griffith, you refer to at paragraph 17 trees contacting
12 powerlines. The evidence before the Royal Commission
13 I think is that that is certainly, as I understand it, one
14 of the biggest causes of fire with electrical assets. In
15 that context, but not alone, you refer to undergrounding
16 and aerial bundled cable. You have spoken a little bit
17 about undergrounding and I will come back to it, but could
18 you just give us a short explanation of the aerial bundled
19 cable technology?---Perhaps if I could just start off by
20 making some comments on the tree clearing. Obviously
21 there was a lot of work after Ash Wednesday in developing
22 the responsibilities for tree clearing. There are always
23 significant issues in tree clearing. Obviously the
24 community and landowners are not keen for their trees to
25 be cleared. There are responsibilities. Local government
26 has responsibilities for tree clearing; the utilities have
27 responsibility for ensuring that other responsible people
28 actually complete their work. This puts a significant
29 workload on the industry at the time when the fire season
30 is approaching. It certainly provides significant
31 problems within the community. I believe within any work

1 that's carried out in the future that there is a need to
2 revisit the responsibilities from a tree clearing
3 viewpoint because there are still problems that are there
4 that need to be addressed. Moreover, the events of Black
5 Saturday raised some questions about the basic design
6 criteria of powerlines. Obviously within the current
7 clearing arrangements there is an inspection space and a
8 clearing space. There is some anecdotal evidence that in
9 fact some fires might have occurred outside of those two
10 areas, so there is a need to review the design parameters
11 in that area, and that work should be done.

12 What are you specifically referring to there?---First of all,
13 some work needs to be done to determine in fact whether
14 that information is correct or not and some work done to
15 determine what sag and sway may occur during the wind
16 speeds that people are predicting for the future as a
17 result of climate change. So, the design criteria may be
18 inadequate. I'm not saying it is, but it needs to be
19 checked. And from a viewpoint of fire ignition, et
20 cetera, trees do remain the major issue.

21 Aerial bundled cable?---Aerial bundled cable has been used
22 particularly in the mountain areas like the Dandenongs.
23 Aerial bundled cable has been very successful from a
24 viewpoint of reducing fire starts. The downside of aerial
25 bundled cable is, one, that it is obviously more expensive
26 than bare conductors and, two, that if there is a
27 firestorm then you will have to replace the aerial bundled
28 cable. But it has been successfully used, as I say, in
29 the Dandenongs. It has worked as anticipated. So it
30 remains a valuable means of providing supply and reducing
31 risk as far as fire starts are concerned. Certainly there

1 is an opportunity for more widespread use of aerial
2 bundled cabling.

3 There has been material seen where it has been compared or said
4 to be like undergrounding cable but on poles. Is it that
5 effective in relation to bushfire risk or ignition
6 reduction?---Yes, it is. Obviously I haven't done a total
7 analysis, but to my understanding it has been totally
8 effective from a fire viewpoint.

9 You mentioned that it has been put out in the Dandenongs.

10 There has been a suggestion I think also, in some of the
11 material that's been tendered in the Commission, in the
12 Macedon Ranges and other areas of Victoria?---Yes, it has
13 been used, but once again it is more expensive and there
14 is that concern about the time to restore supply if in
15 fact there is a fire that goes through the area. But from
16 my viewpoint I think it is one of many options that are
17 available and I think there is a right option in each
18 particular situation.

19 Going back to undergrounding or plough in technology, did the
20 SEC underground power between Jamieson and
21 Mt Hotham?---Yes, it did, and it has been very effective.
22 Obviously it was a decision made at that time. Obviously
23 some of the areas up there are sensitive as well. From my
24 understanding, it has worked very well. The issue with
25 plough in is that the setup costs are quite significant,
26 so if you were going to do more broad plough in of
27 underground cable you would try to establish programs.
28 For instance, if you were using it in SWER, then you would
29 establish a program of replacement of the whole SWER area
30 and that then would minimise the setup costs. But it
31 certainly is a real option in certain areas.

1 You have indicated that it is expensive. On a cost benefit
2 analysis, are there factors such as - I think you have
3 referred to maintenance - but also in relation to
4 electricity loss and other factors that are in its favour
5 as far as cost is concerned?---Absolutely, at the most
6 basic level. Normally underground cables have 40 to 80
7 year life, depending on whether it is high voltage or low
8 voltage. They require virtually zero maintenance during
9 that period and they also have fundamentally near zero
10 faults, so the maintenance costs are very, very low.
11 Obviously they maintain supply and in most cases they will
12 survive a firestorm. So, when you look at the annual
13 costs of maintenance of other ways of reticulation
14 compared to undergrounding, the business case can be much
15 stronger. Then if you go beyond that and look at the
16 community benefits and the cost to the community of loss
17 of electricity supply, then the business case gets better.
18 But I'm not suggesting that there is suddenly going to be
19 an overwhelming business case to underground. It will be
20 at some additional cost, but it is a matter of having a
21 broad look at that and the broad benefits to the
22 community.

23 I take it there are no vegetation clearance issues?---No.

24 That's correct as well.

25 And on the basis of bushfire risk, no loss of life?---Correct.

26 And no asset loss?---Yes. Look, in terms of that, the point

27 I made before about the undergrounding of powerlines
28 committee, the undergrounding of powerlines committee
29 facilitates undergrounding in sensitive issues but is not
30 applicable to fire issues. Possibly there could be a
31 development of an initiative like that which is focused on

1 the high risk areas that may facilitate undergrounding.
2 In other parts of the world are you aware of undergrounding of
3 electricity to suit particular geographical or climate
4 issues?---Yes. Look, undergrounding is used significantly
5 worldwide, particularly in the more developed countries.
6 There are certainly examples where undergrounding has been
7 installed because they have experienced problems, ice
8 problems in Canada with powerlines and doing maintenance;
9 they sort of replaced it all. So, there are examples
10 where, at a government level, decisions have been made
11 that the risks are such that we need to make a commitment
12 and install underground.

13 Just I think two other matters. You refer to smart grid
14 technology in the course of that outline. Can you
15 indicate what you are talking about and how that may be
16 relevant to bushfire mitigation?---Yes. Smart grid is
17 something that's fairly recent from an electricity
18 viewpoint. Obviously the federal government has a program
19 at the moment, "Smart city, smart grid", and is putting
20 \$100 million into a pilot project in that area. Within
21 the electricity industry, smart grid has been developed
22 for some time, but in general the automation, if you like,
23 of networks has really been at a higher level and hasn't
24 tended to get out into areas where we are talking about
25 here where the fire risk is. New technologies can change
26 that. The most significant change that's occurred in
27 Victoria is the government's Smart Meter initiative.
28 Whilst it was focused on providing information to
29 customers, it also provides a very significant
30 communications system which is being installed at the same
31 time as the smart meters. That communication system can

1 then be used for a whole range of activities from an
2 electricity network viewpoint. For instance, you can
3 monitor the temperature of any item that's on the network
4 and this becomes low cost monitoring, not high cost.
5 Fundamentally, for small cost the low level items in the
6 network can be monitored, whether they are transformers,
7 poles; you can get real-time data of what's happening out
8 in the network; you can have real-time photograph evidence
9 so that you can better monitor the conditions, monitor
10 what's happening to your poles. So, this is one area
11 where there seems to be significant opportunity for
12 development, certainly significant opportunity for
13 development from a bushfire mitigation viewpoint. Once
14 again, it is an opportunity that's there. Much of the
15 initial cost has been carried by the Smart Meter process.
16 So, it is a great opportunity, but it requires the
17 industry and government et cetera to work together and
18 develop those opportunities.

19 Finally, Mr Griffith, your evidence has indicated, if you like,
20 the independence of the distribution companies under the
21 current regime. I guess to go back over what you have
22 said, to implement or to get these initiatives in place,
23 you, as I understand it, see a need for a role of
24 government to bring the regulators and the distribution
25 companies together to ensure that Victoria, because of its
26 bushfire risk, is well and truly represented in mitigation
27 and adopting the sort of strategies that you have put
28 forward?---That's correct. I think the opportunity is to,
29 first of all, set some targets and that's really something
30 that the community needs to own in terms of where we want
31 to be, in terms of bushfire risk, in terms of the more

1 broader global warming issues. We need to set those
2 targets and then drive towards those targets. That
3 requires policy and some vision, I guess, and that
4 requires government involvement. So the expertise in
5 general is with the distribution businesses, but with
6 government, relevant authorities like Energy Safe Victoria
7 and the five distribution businesses together, they should
8 sit down and work out a vision and targets that they need
9 to achieve for the future. There are enormous numbers of
10 opportunities to be considered. Which ones are the right
11 ones to go forward with and what the targets should be,
12 should be developed in that way, in a cooperative way.

13 Thank you. I have no further matters, Commissioners.

14 COMMISSIONER PASCOE: Just one question in relation to
15 paragraph 22 where you talk about the national regulator
16 having an important role to play as the economic
17 regulator. Do you want to just elaborate on
18 that?---Obviously the interaction with the regulator is
19 something between the DBs and the regulator. Obviously we
20 have moved or are moving to a national regulator. I think
21 there is little doubt at the moment that the initiatives
22 that the DBs are running with are restricted by the
23 regulatory environment. Without making a comment whether
24 that's correct or incorrect, they are restricted in terms
25 of those initiatives. What I'm saying is, in doing some
26 of this work and if in fact there is some identification
27 of special needs, particularly for Victoria, there is an
28 opportunity to make those submissions to the national
29 regulator and to ensure that the special circumstances are
30 considered by the regulator and that the DBs feel that
31 they will be able to confidently spend money on new

1 approaches, et cetera, and get a return in an appropriate
2 form.

3 And not be penalised?---That's correct.

4 So I'm assuming that this then ties into your paragraph 12
5 where you talk about the need to accept that there is a
6 differentiated level of bushfire risk within Australia and
7 the need for the regulator to take that into account in
8 its pricing regimes?---Yes, and I believe the national
9 regulator would. It is a matter of, once again, putting
10 some submission to the regulator that has been well
11 developed and well argued.

12 <CROSS-EXAMINED BY MR TOBIN:

13 My name is Tobin, acting on behalf of various victims. Since
14 the 1960s the SWER line distribution system has been
15 recognised as the highest fire risk concern of
16 the electricity distribution in this state, is that right,
17 more so than the three-phase and the major - -
18 -?---Certainly SWER represents a greater risk than
19 three-phase.

20 The SEC in its practice, particularly by the early 1980s, was
21 very proactive in relation to safety, especially of SWER
22 lines, so that the risks occasioned by them were minimised
23 as far as possible; is that correct?---Yes.

24 By the time the system was handed over in the early 1990s, the
25 state system, with the benefits of changes that occurred
26 in the previous 15 years, was a safe system in the sense
27 that the risks which were existing at that time had a very
28 close reactive program or proactive program by the SECV;
29 is that correct?---Yes.

30 The program up until the early 1990s, the risks associated with
31 SWERs were risks associated with trees and fuses, were the

1 two major risk problems up until the early 1990s; is that
2 correct?---I can't confirm that. I don't have the
3 statistics.

4 Up until that time, the risk of breaking by reason of corrosion
5 or ageing of tie wires and conductors was not a big
6 problem?---I'm not sure that I could confirm that.

7 I think that those issues have always been around.

8 They have been around, but would you agree that as the system
9 aged that problem became bigger?---I really don't have the
10 data to make - - -

11 One of the things you say in your report at paragraph 20 is in
12 effect the need to look at phasing out this type of system
13 and having another system; is that correct?---Yes.

14 Insofar as the system is something that's such a large system,
15 it is recognised that there are problems that will have to
16 be accommodated within the system before it can be phased
17 out, is that correct? It is not something you can do
18 overnight; it is going to take a long time to do?---It is
19 enormously expensive and enormously disruptive, so it
20 would be a significant program.

21 Consistent with the behaviour of the SECV, when they recognised
22 a problem in relation to lines, whether it was a
23 distribution line in any way, they engaged in retrofitting
24 in particular the spacers in the 1970s and 1980s; they
25 retrofitted spacers to a lot of the lines, didn't
26 they?---They did put spacers on, yes.

27 And that was to old lines, where there was a recognised
28 problem, they did that retrofitting program? It wasn't
29 only new constructions but it was old construction?---The
30 decision to put spacers on was focused on low voltage and
31 focused on the clashing, which was significant, so the

1 decision was made fundamentally to put spacers on all low
2 voltage conductors, not limited particularly anywhere.
3 But also to not only new ones that were going up, but old ones
4 that were there. If there was a risk, they put spacers on
5 those, retrofitted the state with those spacers?---Yes,
6 and that was specifically focused on a clashing issue.
7 Insofar as the assessments that were being made by the SECV in
8 relation to its distribution program, their assessments
9 were done on the basis, firstly, of safety and then,
10 secondly, of continuity of supply; is that correct?---Yes.
11 A matter would be investigated irrespective of the effect it
12 would have on supply but it would be investigated first
13 from the prospect of safety; is that correct?---Safety
14 was - - -
15 Paramount?---Paramount or a critical criteria, but obviously
16 there were other criteria as well.
17 If I can just show you a statement from Mr Peters. It is
18 (WIT.5101.001.0 008)and it will come up on the screen
19 shortly, at paragraph 236. That paragraph there,
20 indicating that matters are investigated when there is
21 10,000 minutes loss of supply, the equivalent of a week's
22 loss of supply for seven customers, that wasn't the type
23 of criteria that was used by the SECV. They looked at it
24 on the basis of the risk and possible consequence of that
25 risk; is that correct?---I don't believe that the SEC had
26 such criteria. I probably shouldn't say this, but I don't
27 think the SEC's approach was as sophisticated as the
28 distribution businesses are using now.
29 One of the matters that came out of the 1977 inquiry by Sir
30 Esler Barber was a recommendation that the SECV record
31 problems associated with their distribution so that there

1 could be a statistical analysis of those problems to
2 determine areas of problem; is that correct?---There was
3 certainly a recording of all those issues, yes.

4 And that occurred shortly after 1977 but it was recognised only
5 after the Pigeon Ponds fire in 1980 that the recording was
6 made but the analysis wasn't being made. So then there
7 was an analysis department in the SECV to determine where
8 the particular problems were?---I'm not quite sure what
9 you're talking about at the moment, and probably although
10 I was around in those days I'm a little bit confused about
11 what you are speaking of, so I'm probably not in a
12 position to respond.

13 Do you remember in the distribution the Pigeon Ponds fire where
14 long-billed cockatoos started chewing wires everywhere
15 causing fires in the Western District?---Yes, I do.

16 That was a matter that had been recognised in individual
17 offices of the SECV but it was only after they had
18 substantial fires they realised that they should have been
19 centralising that knowledge; is that correct ?---As part
20 of the reaction to Ash Wednesday there was a process that
21 was put in place which was to gather that knowledge.
22 I don't think it was any specific incident.

23 You mentioned the committee that was formed in relation to tree
24 clearance that you had an involvement in. That was a
25 committee that arose out of the 1977 report of Sir Esler
26 Barber; is that correct?---Yes.

27 It was in place before the 1983 fires, before the Ash Wednesday
28 fires?---In terms of the exact timing, obviously the
29 clearances et cetera went over a significant period of
30 time and I don't want to comment on the actual dates.

31 You were familiar with the recommendations, as a member of the

1 SEC at that time, from Sir Esler Barber in 1977?---Yes.
2 And the person he refers to as to that committee, Mr Pocknee,
3 the field practices engineer, to head it up, was he a
4 person you were familiar with as well?---Yes.
5 He headed up that first committee?---Yes.
6 If I can ask you this: the process that made the SECV as a safe
7 distributor in the late 1980s, early 1990s, was the
8 benefit of the recommendations of Sir Esler Barber's
9 report; is that correct?---That certainly was part of it.
10 Then there was a substantial review that occurred in 1983 which
11 also had the benefit of a coronial inquiry by Mr Ellis
12 that went for some seven or eight weeks down at
13 Warrnambool?---Yes.
14 And the SECV, through Mr McDonald and Mr Keon-Cohen as their
15 counsel, made a number of significant recommendations and
16 submissions to that inquiry, that coronial
17 inquest?---I can't recall that detail, no.
18 By the mid-1980s there is a program that is adopted by the SECV
19 for tree clearance, which was a broad tree clearance; that
20 was correct?---Yes.
21 And they also had replaced all the bad fuses that had the
22 potential to cause fires?---Substantially, yes.
23 And they had put spacers in?---Yes.
24 As far as you are aware, that was a proactive program?---Yes,
25 it was a reaction to the fires.
26 But in the sense that the SEC was very proactive with safety as
27 its primary concern?---I think the SEC obviously was
28 committed to change as a result of the fires and that,
29 from my viewpoint, continued straight on when the industry
30 changed.
31 Would it be correct to say that you were saying the SECV were

1 much more effective because of the size and the focus of
2 that industry compared with how it is now being
3 conducted?---They were well resourced and they were also
4 able to make their own determinations from a financial
5 viewpoint.

6 Is it correct to say that the industry, as you see it now
7 operating, fails in regard to safety because it is the
8 economic regulator that is calling the shots rather than
9 the safety engineer?---First of all, I don't consider the
10 industry has failed. If you wanted me to give you an
11 assessment, I would have thought in that area they do
12 better than the old SEC. There has obviously been
13 significant development over a period of time and there
14 are very sophisticated programs they have and very
15 comprehensive programs, far more comprehensive than
16 I certainly would have been involved in when I was in the
17 SEC. So, from that viewpoint, from a sophistication
18 viewpoint, I would differ. In terms of the other,
19 I really can't comment.

20 If in fact there were, on any day whilst you were involved in
21 the SEC in the 1980s or 1990s, a conductor failure rate of
22 over half the state of 64 conductors, that would have been
23 a disastrous figure, wouldn't it?---I can't comment
24 whether it would have been disastrous. Certainly if there
25 was that level it would have prompted some reaction, some
26 review.

27 We have those figures in relation to Powercor for Black
28 Saturday. If that had happened to the SECV, there would
29 have been significant review and changes of practices,
30 wouldn't there?---Look, I don't have the figures from
31 Powercor or anyone else. What the SEC may or may not have

1 done, I'm not sure that I could really comment on.
2 When you express in your opinion as to the improvements in the
3 system, it is not by reference to particular statistics,
4 it is by reference to your understanding of how the system
5 is operating?---That's correct. I'm making these comments
6 on the basis of some understanding of the industry, some
7 understanding of the issues and a long time involvement.
8 I have not sat down and analysed any of, for instance, the
9 fire statistics from Black Saturday or any specific
10 information from the Black Saturday fires.

11 Just one final matter. From your understanding of the SWER
12 system, the ageing of that system is a matter that would
13 concern you as far as its future reliability, both safety
14 wise and distribution wise; is that correct?---The ageing
15 of the SWER system, like any of the other lines, requires
16 monitoring and appropriate action.

17 If in fact that appropriate action included retrofitting of
18 materials to those lines consistent with what you had seen
19 with the SECV, that would be an appropriate
20 conduct?---I think you have led me too far. I'm not quite
21 sure what you're suggesting.

22 I'm talking about retrofitting of dampers to SWER
23 lines?---I have no information on whether dampers are an
24 issue or not, whether they should be fitted or not.
25 I can't comment at this stage. I have not the information
26 that's required to make that call.

27 Thank you, Mr Griffith.

28 <CROSS-EXAMINED BY MR STANLEY>:

29 Mr Griffith, my name is Stanley and I'm appearing for SP
30 Ausnet. I just want to raise one matter with you. You
31 have indicated that your views are not based upon any

1 specific statistics or studies that have been done. With
2 respect to your views about the safety record of the SWER
3 system, are you aware of the fact that in the period of
4 15 years leading up to February of this year there was not
5 a single SWER conductor break that led to a fire start in
6 the whole of the SP Ausnet distribution? Are you aware of
7 that fact?---No, I'm not aware of that fact. I will leave
8 it at that.

9 You have given some of the factors that led you to the view
10 that the SWER system is not as safe as other systems.
11 Have you taken into account the fact that there being a
12 single conductor means you are not going to get any
13 clashing, what you have been talking about previously, as
14 a cause of fire?---I would like to think I have taken all
15 factors into account. The fact that there is a single
16 wire means there isn't any clashing between cables, but
17 the reality is the SWER system uses that and that's the
18 reason that you are able to have very long spans with a
19 SWER system. You couldn't have that length of span if
20 there were two wires. So, in terms of making a call on
21 whether they are riskier or not, that would have to be
22 some work. But certainly from my viewpoint SWER has a
23 number of issues. The protection of it is extremely
24 difficult. I am aware over a period of time, but can't
25 debate with you on the SP Ausnet experience, but over a
26 period of time there has always been a number of SWER
27 related faults. I think the science says that because of
28 the difficulty of providing protection, that that in
29 itself provides a high risk. Where it is located, and
30 obviously some areas are not as risky as other areas, but
31 where it is located it is quite often in heavily treed

1 areas and so you have one very small conductor going
2 across very long spans in heavily treed areas and also
3 what I have mentioned before, out of sight. I'm more than
4 happy for people in the future to sit down and to examine
5 the exact evidence from Black Saturday and from general
6 and come up with what are the appropriate recommendations
7 and if that determines that SWER isn't a high risk, well,
8 I believe that's a worthwhile outcome from the process.

9 Your current view is, however, that in an ideal world there
10 would be no SWER system and it would be preferably an
11 underground system?---In an ideal world, probably all
12 would be underground. From a SWER viewpoint, the SWER
13 system has probably served Victoria extremely well in
14 terms of allowing electrification of the state. The SWER
15 system is still serving Victoria, but what we are talking
16 about here is probabilities and what we should do in the
17 future, bearing in mind that we are expecting even more
18 severe conditions in the future.

19 But the bottom line is, if we are going to get this ideal
20 system, it is really a matter of finances and the economic
21 regulator has to be convinced?---Absolutely.

22 The fact that there is now a national regulator, do you see it
23 leading to any potential problems by having various states
24 or distributors in different states competing with
25 different interests for a greater slice of the cake in
26 terms of financial provision?---I guess the regulator may
27 be concerned about that. I haven't had specific contact
28 with the regulator, but I am led to believe in discussion
29 that the regulator would certainly be willing to accept
30 and consider any proposals that are put forward, well
31 developed proposals. I think it is an appropriate

1 approach to take and obviously the regulator at the moment
2 has been heavily focused from an economic viewpoint, but
3 I think they are aware that there are other issues.

4 MR GOETZ: Commissioners, I haven't filed the necessary
5 document for cross-examination but there are a couple of
6 matters I would like to address.

7 CHAIRMAN: If you can have some focused cross-examination.

8 <CROSS-EXAMINED BY MR GOETZ>:

9 Mr Griffith, Goetz is my name and I appear for Powercor with my
10 learned friend Mr Curtain. In paragraph 6 you speak of a
11 philosophy for electricity reticulation in these terms,
12 "lowest cost technically acceptable". Would you agree
13 with me that that philosophy existed within the SEC and
14 not something that has arisen with the system moving to
15 the private distributors?---Yes, I certainly would agree.
16 So you are not wanting to paint a picture of that philosophy
17 developing after the system was, if you like, moved off to
18 the individual distributors?---No. Maybe if I could make
19 a statement. I think what the distribution businesses are
20 doing at the moment is best practice in this area, as
21 I mentioned before. Ultimately, if we want a better
22 standard of electricity supply, it is something that the
23 community has got to determine through appropriate people,
24 through government, through regulators et cetera. I have
25 absolutely no criticism of the distribution businesses at
26 all in this matter.

27 Indeed, when I ask this question I'm directing it towards my
28 client, Powercor. Are you aware that it has been quite
29 proactive in seeking a number of commissioned reports
30 specifically on the impact of climate change and such
31 matters?---Yes, I am.

1 They have retained consultants such as Maunsells, Parsons
2 Brinckerhoff and indeed used the Electricity Networks
3 Association to address some of the challenges ahead; would
4 that be fair?---Yes.

5 You talk about the vegetation management challenge for these
6 distributors. Would I be correct in saying that some of
7 the limits placed on the distribution companies come from
8 government itself, and by that I mean there are
9 restrictions placed on the width of the corridors
10 appropriate to the conductors; is that fair?---I think
11 what you're getting at I would agree with. I'm not quite
12 sure in those terms.

13 Would you like to see the government be more proactive in
14 addressing the vegetation issues that confront the
15 distribution companies?---Yes, I believe that certainly is
16 one of the issues that I have raised. I think there needs
17 to be a revisit. Obviously there are significant issues
18 coming from both sides and we need to look at ways of
19 addressing that problem.

20 I don't have any other questions, Commissioners. Thank you.

21 <CROSS-EXAMINED BY MS JUDD:

22 Mr Griffith, you have given evidence to the effect that the
23 current bushfire mitigation regime for the electrical
24 system adopted by the distribution businesses is best
25 practice. Do you agree with that?---Yes.

26 Would you also agree that the Victorian government, through
27 ESV, maintains rigorous oversight and audit of that
28 regime?---Yes.

29 Your main thesis today is for there to be a consultation
30 process, effectively led by the government but involving a
31 number of stakeholders?---Yes. I guess I'm a business

1 person ultimately and I think that if you want to improve
2 things or if you want to be somewhere else, you need to
3 set targets and then work to those targets. At the moment
4 that probably is the one thing that's missing from the
5 regime, where do we want to be in 10 years time or
6 20 years time. The actual regime I think is world class,
7 but I think the industry should get together, all of those
8 stakeholders in the industry should get together and
9 determine first of all where would we like to be, what are
10 the possibilities for us in the future and then set some
11 targets and then people can strive towards those targets.

12 Mr Griffith, I want to show you a statement that has not yet
13 been tendered and I have been informed that, although it
14 is coded, it is not yet on the system. Could I hand
15 perhaps a hard copy to those that might bring it up on the
16 screen and could I also hand to you, Mr Griffith, a hard
17 copy so that you can look at it. It will also be on the
18 screen, but it may be a little bit easier for you to read
19 it in the hard copy form. For the transcript, the
20 document that I have handed to Mr Griffith is a statement
21 of Marianne Lourey, executive director energy sector
22 development within the Department of Primary Industries.
23 The document number is (WIT.3019.001.0065). Now, there is
24 only a small part of that that I want to bring to your
25 attention. It starts under the heading on page 12, which
26 is 0076, "National initiatives", from paragraphs 57 down
27 to 60, and then another heading on page 13, "Victorian
28 initiative", paragraph 61. Now, would you mind just
29 taking your time and just slowly reading from paragraphs
30 57 through to 61. Can you indicate when you are at the
31 bottom of page 12 so that we can move the screen over to

1 page 13?---Yes, I am at the bottom of page 12.

2 You will see there that there is reference to a harmonisation
3 enhancement plan at a national level?---Yes.

4 You will also see the Victorian initiative in paragraph 61 to
5 the effect that, "The Victorian government plans to
6 coordinate a national workshop in April 2010 with relevant
7 stakeholders, including electricity businesses, regulators
8 and consumer representatives. The workshop will have
9 particular regard to the ageing of SWER lines and
10 alternatives to SWER technology." First of all, have you
11 been made aware that these processes are under way?---No.
12 Are they the type of processes that you think are good
13 initiatives in line with your general thesis here
14 today?---Yes, I think they are an excellent approach.

15 Sorry, I didn't hear that?---I think that's an excellent
16 approach. Certainly I probably ultimately would like it a
17 little bit broader, but I certainly strongly support what
18 is proposed.

19 COMMISSIONER McLEOD: Mr Griffith, can I just ask a question at
20 this point. You talked about your view that the current
21 companies operating in Victoria are following what you
22 would regard as industry best practice?---On asset
23 management, yes.

24 In terms of your other comments, would you agree that what you
25 have told us in a sense is that, while the industry is
26 following current best practice, current best practice may
27 not be best practice for the future?---I think that is one
28 issue, considering the predictions from climate change
29 and, as I have mentioned, there are some specific areas
30 that do need attention. I guess the other area, the best
31 practice is related to asset management and I am of the

1 view that the community needs to determine what best
2 practice may be to them because they are the broader
3 issues of reliability of supply, et cetera.

4 <RE-EXAMINED BY MR RUSH:

5 Mr Griffith, you were taken to matters of Ms Lourey's
6 statement. It appears your outline of evidence might have
7 been taken up by the government. But, putting that to one
8 side, do you know what a harmonisation or safety
9 harmonisation enhancement program is?---Yes, I think I do
10 and I won't make other comment.

11 You might explain it to us?---I think I understand what they
12 are trying to do.

13 You might, as best you can, tell us what you understand it to
14 be?---There are a number of issues in that area. There
15 has always been a desire on a national level to harmonise
16 the standards that are used between the states, et cetera.
17 Obviously there is potentially benefit from such action.
18 That can run to things like electricians having standard
19 approaches no matter what state you go to, et cetera, so
20 the harmonisation process can be very valuable. In terms
21 of the specifics of this, I do not have the specifics and
22 I cannot comment beyond that.

23 "Rigorous" means different things to different people. It was
24 put to you that ESV conduct a "rigorous" overview. I just
25 want to take you to your outline of evidence at paragraph
26 10. If we go down to the fourth line, you say this:
27 "While ESV has a role in approving the distribution
28 businesses' bushfire mitigation and vegetation management
29 plans, it is really only resourced for monitoring and
30 auditing of these activities." What are you referring to
31 there and using the word "only", what are you driving

1 at?---I think there is a process that is outworked. There
2 are people that are engaged to do audits and normally
3 those people have expertise and normally longstanding
4 expertise, but ESV itself doesn't have specific expertise
5 in that area. It is not particularly resourced to analyse
6 or to review standards, et cetera, so I guess I wasn't in
7 any way criticising ESV, I was just making the point that
8 from a resourcing viewpoint they were limited. But there
9 is obviously adequate resource to actually do the audits
10 and the inspections each year, but in terms of going
11 beyond that it was probably difficult for them because
12 they are not resourced or do not have the expertise to go
13 further.

14 Just one other matter. You referred to problems in tree
15 clearing. Are they matters that you have addressed or
16 could you just summarise what you are referring
17 to?---I think the distribution businesses are assigned
18 responsibilities for tree clearing and those
19 responsibilities are not only for their own direct area of
20 clearing but in fact for some oversight, particularly
21 local government. My understanding, and certainly it has
22 been communicated many times, is that at the critical time
23 of the year the distribution business resource needs to
24 spend a lot of time trying to ensure that other bodies
25 meet their requirements from a tree clearing viewpoint.
26 Obviously the activity itself is one that is very
27 difficult because there are different views and different
28 objectives with the two groups and, because of that,
29 significant workload and significant issues within the
30 process. I'm suggesting it is worthwhile reviewing it and
31 see whether some of those stresses and pressures can be

1 removed.

2 And, in that regard, to potentially centralise it so there is
3 one code in relation to particular areas of
4 risk?---I think there is fundamentally one code at the
5 moment.

6 One body governing it?---I think, once again, much of the
7 problem gets back to the processes of the responsibilities
8 and what happens if the responsibilities are not outworked
9 which causes the problems from a distribution business
10 viewpoint. There is equally a lot of great work that's
11 done in local government, et cetera, but where in fact
12 there are some problems. It is difficult to outwork, and
13 I think other things that are occurring, like obviously
14 trees and powerlines don't mix is still appropriate today,
15 as it has been for a long time, and we still find that
16 tall trees have been planted under powerlines on a regular
17 basis. That's all a matter of education and some sort of
18 monitoring.

19 Identifying the problem as you do, do you have a specific
20 process or idea as to the way in which it can be directly
21 remedied?---Once again, I think it needs all of the
22 stakeholders involved. But, as I have mentioned before,
23 there are certainly areas where it is very difficult to
24 establish appropriate clearing because it is not very
25 popular with ratepayers and I believe that in those very
26 difficult situations there should be options. I made
27 comment on the state government's initiative about
28 relocation of powerlines. It is only applicable to
29 non-utility activity. It may be of value to put in place
30 a similar process that purely addresses high fire risk
31 associated with environmental issues, as an example.

1 They are the matters, Commissioners. May Mr Griffith be
2 excused.

3 CHAIRMAN: Yes, indeed. Thank you, you are excused.

4 <(THE WITNESS WITHDREW)

5 MR RUSH: Commissioners, I call Mr Fearon.

6 <PAUL FRANCIS FEARON, sworn and examined:

7 MR RUSH: Mr Fearon, could you state your full name to the
8 Commissioners, please?---Paul Francis Fearon.

9 Your current occupation?---I'm the director of energy safety
10 and CEO of Energy Safe Victoria.

11 You took up that position when?---Formally appointed by the
12 Minister on 10 November of this year.

13 Mr Fearon, prior to that, could you give the Commissioners a
14 brief outline of your experience, work experience and
15 particularly as it relates in relation to the electricity
16 industry?---I commenced work with the SECV in the
17 production group of departments in the Latrobe Valley in
18 1981. I progressed through some corporate areas,
19 corporate planning and treasury, until the breakup of the
20 SEC. I was for a short time energy adviser to the
21 Victorian government. I returned to the industry which
22 was then Electricity Services Victoria. Joined Citipower
23 at privatisation. Left Citipower in 2002 and became the
24 chief executive officer of the Essential Services
25 Commission in 2003. I held that appointment for the six
26 years up until the time I was seconded to Energy Safe
27 Victoria.

28 Mr Fearon, you have been, I observe, in the Royal Commission
29 during the time that Mr Griffith has given his evidence.
30 Firstly, from a point of view of safety, that is the key
31 or prime responsibility of your organisation in relation

1 to electricity assets in Victoria?---That is correct.
2 Have you read any of the material put forward by Powercor, SP
3 Ausnet, or let me put it to you: SP Ausnet here have
4 indicated that of fires that are reported in their network
5 area, that they have on average 1.1 per cent of fire in
6 areas reported and for Powercor, since 2004, it ranges
7 between just over 1 per cent to just over 4 per cent of
8 fires in their particular area being due to electrical
9 assets. Are they the sort of figures that you are
10 familiar with?---I am aware of those statistics.
11 Yet have you, and I don't blame you if you haven't, recently
12 had regard to the findings of the Barber Commission report
13 that was referred to during the course of evidence of
14 Mr Griffith?---I have only some understanding of those
15 recommendations.
16 The SECV there, it is recorded in that report, put forward that
17 they were responsible for 1.5 per cent on an annual basis
18 of fires that broke out across the state of Victoria. Sir
19 Esler Barber noted in relation to that that the overall
20 picture was in sharp contrast to the figures that were put
21 forward by the SEC. He went to the 8 January fires of
22 1969 and 12 February 1977 and said on days like that,
23 extreme bushfire days, the incidence of SEC fires rises
24 dramatically and made the comment that, "The alarming
25 aspect in relation to the figures is that they tend to
26 occur widely and in separate places at approximately the
27 same time, same time of day, when conditions and the rate
28 of spread of fire is likely to be at its peak." So
29 I suggest your experience and what you would recognise is
30 that on days of extreme fire danger and our bad days, that
31 that percentage rises dramatically?---That is probably

1 self-evident.

2 And self-evident indeed, I suggest, from the fires that this
3 Commission is looking at, where five out of the 11 are due
4 to electrical infrastructure?---As I understand, that's
5 the observation.

6 Then from the safety point of view, and putting aside the
7 economic regulator, the sort of issues that were put
8 forward by Mr Griffith your organisation would support.
9 Perhaps it is fair if I put them to you. It would be
10 proper to reassess the role and the functioning of SWER
11 lines in the context particularly of Victoria's ageing
12 infrastructure?---It would be Energy Safe Victoria's task
13 to understand, test and challenge how businesses, the
14 businesses, operate those systems, to ensure that the
15 safety of the public and the people and property is
16 minimised as low as practicable.

17 That's for the position extant that exists at the moment. That
18 would be what you do year in and year out, would you not,
19 as an organisation?---We must operate within the legal
20 frameworks that we have and to that extent work in
21 assessing and collecting statistics would assist and help
22 and inform the community and government.

23 But surely the matters that you are putting forward in relation
24 to the way in which you assess, look at and conclude in
25 relation to the SWER line infrastructure in Victoria, they
26 are matters that you would do as a matter of course,
27 routinely, to ensure as best you can the safety of that
28 service?---I don't believe that prime responsibility lies
29 with ESV. The prime responsibility for that assessment
30 lies with the businesses.

31 But insofar as ESV has an auditing or monitoring

1 responsibility, that is what it is directed at?---We have
2 a statutory responsibility to ensure that the businesses
3 to the lowest possible point are able to manage the risks
4 of their assets and the deployment of the particular
5 technologies at their disposal.

6 But from a safety point of view, a safety point of view, you
7 would support, would you not, the sort of matters that
8 were being put forward by Mr Griffith, firstly as to the
9 problems that are associated with SWER lines of their very
10 nature and construction?---We obviously have a general
11 understanding about the exposures and the risks associated
12 with those assets, but it is not the responsibility of
13 Energy Safe Victoria to dictate or even necessarily
14 suggest the use of those particular technologies.

15 No-one I think is looking to Energy Safe Victoria to dictate
16 anything, but when we look at the particular technologies,
17 surely Energy Safe Victoria as a matter of principle would
18 be supporting the best and safest options that are
19 available for the community in relation to electrical
20 infrastructure?---ESV has a general interest - more than a
21 general interest - it has a statutory obligation to ensure
22 that the safety of the public is paramount. The question
23 is the extent to which these technologies that Mr Griffith
24 is talking about are deployed and the rate and scope is
25 not a function of Energy Safe Victoria, no matter how
26 passionate we may feel about those technologies as
27 individuals.

28 So are you saying that Energy Safe Victoria sits in a position
29 where it accepts the current regime, both in relation to
30 infrastructure, maintenance and replacement, that exists
31 in Victoria?---It would be fairer to say that any

1 observations that we had there in relation to the legal
2 and statutory framework that covers that, we would be very
3 interested and we are often in dialogue with the
4 government on ways or suggestions that the framework can
5 be improved to advance the interests of the public in
6 relation to safety.

7 So is your position at the moment that ESV has no role in
8 recommending or putting forward the sort of initiatives
9 that have been suggested in the Royal Commission this
10 afternoon?---We would have a voice in relation to the
11 assessment of some of those technologies, but more in
12 relation to their relevance within the legal framework.

13 What do you mean the legal framework?---The issue of how
14 businesses respond to the incentives that exist within the
15 framework go to the nature of regulations and the
16 statutory obligations that exist.

17 But the incentives in the framework at the moment are for the
18 power companies to keep their expenses as low as
19 possible?---That's not correct.

20 No? What is the position, then?---The businesses respond to a
21 range of incentives. Some of them are obviously related
22 to profit. Others are related to commercial exposures,
23 their statutory responsibilities and obligations and other
24 economic incentives that exist within the regulatory
25 regime.

26 The position at the moment, is it not, Mr Fearon, is this: the
27 economic regulator determines the revenue for a
28 distribution business over a five year period?---That is
29 correct, but it is not the only thing the economic
30 regulator is responsible for.

31 Let me just read to you from paragraph 20 of the document that

1 Ms Judd took the previous witness to. I take it you are
2 aware of Marianne Lourey?---I am.

3 She describes the current regulatory regime, economic
4 regulatory regime, as having a number of features,
5 including, "An economic regulator determines the revenue
6 for each electricity transmission and distribution
7 business for a five year period and the price
8 determination is based on the forecast level of reasonable
9 capital and operating expenditure to meet all of the
10 business's functions and obligations, including safety."
11 That's correct, is it not?---That is correct.

12 "The regulator does not make any determination for a specific
13 category of expenditure"?---That is also correct.

14 "This provides the electricity transmission and distribution
15 businesses with an incentive to deliver services at a
16 lower cost to increase returns"?---That is also correct.

17 "The businesses do not have a positive obligation to direct
18 expenditure to any specific area or to achieve any
19 particular level of expenditure." That's also correct, is
20 it not ?---That is correct, but with one qualification.

21 And, importantly, "The inclusion of a service incentive scheme
22 balances financial incentives yet businesses are penalised
23 if expenditure reductions are achieved to the detriment of
24 service and reliability"?---And that's the key point.

25 So what is the incentive there for the power companies to pick
26 up the sort of matters that were raised in the Royal
27 Commission this afternoon?---You are drawing me on matters
28 that are probably more relevant in my previous role rather
29 than as a director of energy safety, so I'm prepared to
30 answer it on that basis. But the incentives around in the
31 previous price review which were administered by the

1 Essential Services Commission went to service and
2 reliability and, to the extent that there was a reasonable
3 correlation between reliability and safety, there would be
4 some incentive, not necessarily a very strong one, but
5 there was certainly some incentive to deploy technologies
6 to improve reliability and service in, say, remote or
7 sparsely-populated areas of the networks.

8 Not a very strong incentive, to use your words?---The regime
9 always has the opportunity to be refined in that regard.

10 Let me cut to the chase. The objectives under the Act of ESV
11 are as best they can to ensure electrical safety of
12 distribution systems in Victoria?---We are responsible for
13 achieving - - -

14 That's the objective?---That's correct.

15 Part and parcel of that, I suggest, is a significant role, from
16 a safety point of view, of oversight of bushfire
17 mitigation?---That's correct.

18 If there are proactive steps that can be taken towards bushfire
19 mitigation and they are practical steps, ESV would support
20 them?---We would certainly make recommendations and
21 suggestions to the government to improve where possible
22 aspects of the regulatory regime covering that.

23 Here you have heard the evidence of Mr Griffith as it relates
24 to undergrounding and aerial bundled cable. You have no
25 reason, I suggest, to disagree with anything he has put in
26 relation to those two matters?---In a general context, all
27 those proposals have merit. The issue is how they are
28 implemented, to what extent they are implemented, and that
29 is not a trivial issue.

30 You mean that's an economic issue?---It is an economic issue,
31 it is a complex technical issue, it is also a safety

1 issue.

2 From the economic perspective, that is not something - it might
3 be in your previous role - but it is not something that
4 directly bears on the view that ESV might take?---Could
5 you repeat that, Mr Rush?

6 It is not ESV's role to make a judgment about the economics of
7 a safety issue?---Not directly, but our Act does imply an
8 economic dimension in as much as it points to risks being
9 minimised as far as practicable.

10 Would you agree Mr Gardner was your predecessor at
11 ESV?---That's correct.

12 Would you agree with what he said to the Royal Commission,
13 which was in these terms? As an input into the Australian
14 Energy Regulator's process, he was asked this question:
15 "Isn't it desirable ESV make it clear it has a preferred
16 position in terms of safety of the community and that
17 position is that everything should be done to reduce the
18 number of potentially catastrophic bushfires in a year?"
19 To which he answered "Yes". Then it was put to him that
20 if the proposals involved the sort of things that
21 Mr Griffith has been talking about, that that also would
22 be a role for ESV in putting that to the AER?---In general
23 terms, I agree with that.

24 I have no other matters, Commissioners.

25 COMMISSIONER McLEOD: Mr Fearon, you listened to Mr Griffith
26 earlier. Did you want to make any comments about his
27 observation that he thought your organisation wasn't
28 sufficiently well resourced, nor did it have the technical
29 expertise to undertake its own independent analysis of
30 some of these issues that were touched on today that might
31 bear on long-term safety issues?---What I would say,

1 Commissioner, is that moving forward with the regime or a
2 part of the new regime that comes into effect this Sunday,
3 which is the compulsory submitting of electricity safety
4 management schemes, that that will involve a very
5 significant increase in ESV's role in assessing, testing,
6 challenging and exposing how the businesses manage risk in
7 their businesses, and those are matters that I will be
8 raising with the government. In relation to the second
9 matter about expertise, I don't believe that ESV will ever
10 be able to retain the sort of expertise that is assumed we
11 would need to undertake those assessment of technologies.
12 I don't believe that that assessment is actually necessary
13 or is part of ESV's role.

14 <CROSS-EXAMINED BY MR TOBIN:

15 Mr Fearon, my name is Tobin, acting on behalf of various
16 victims. Your background in electricity has been
17 principally in relation to the economies of electricity
18 distribution; is that correct?---That is correct.
19 And insofar as your background, little of that has been related
20 to the safety of electricity distribution?---That is
21 correct.
22 Insofar as you see the present structure, you see your role as
23 director of Energy Safe Victoria having to be dependent
24 upon the expertise provided to you by the distribution
25 companies?---Not specifically. Energy Safe Victoria does
26 obviously retain a good capacity in general industry and
27 technical knowledge.
28 There is no restriction as Energy Safe Victoria from you
29 setting criteria where the companies have to provide to
30 you statistics and analysis as to the operation of their
31 distributions, is there?---I would agree with that

1 proposition.

2 And so, insofar as the condition of their lines, whether they
3 be SWER line, three-phase lines and the like, you can
4 demand that they provide to you statistics as part of the
5 fire prevention codes?---The changes in regulations that
6 are foreshadowed would give us greater power to require
7 that information.

8 To the extent that there are abilities for you to demand
9 things, you could demand things such as a retrofitting of
10 dampers if that was seen to be beneficial to the system;
11 is that correct?---We do not have the power to do that and
12 I would not seek that power.

13 So if in fact there is a problem that needs to be rectified for
14 the system to be made safe, you don't have the power to do
15 that; is that what you are saying?---There is an
16 assumption implicit in that question that I disagree with.

17 If in fact there is a problem that needs to be rectified for
18 the safety of the system, you don't have the capacity to
19 cause that to be done; is that what you are saying?---If
20 there is an immediate safety issue, I have the power to
21 direct in quite a number of ways. But in relation to
22 mandating the particular use of technologies, I do not
23 have the power and it would be inappropriate for the
24 safety regulator in the current regime to have that role.

25 If in fact there is a matter that is determined that it is
26 necessary to be done, are you saying that there is no-one
27 that can set that regulation?---The deployment of the
28 technologies that Mr Griffith was talking about ultimately
29 will come or can come through two routes. One is through
30 the application of the incentives that exist within the
31 regime, and that's always a matter that can be improved.

1 The other is prescriptive regulations which exist in some
2 aspects of the industry. Mandating technologies through
3 regulation would not be regarded as best practice
4 regulation.

5 Make it prescriptive. If in fact dampers are needed in an
6 ageing SWER system, does your body have any role in
7 prescribing that?--We don't, but as a matter of custom
8 and practice we would raise that with the government and
9 either through a proposal to change regulation or indeed
10 the Act, the government would either pursue a business
11 impact assessment or a regulatory impact statement to
12 assess whether those technologies should be prescribed or
13 mandated.

14 You are talking about business impact assessments. I'm looking
15 at this from the point of view of people who are being
16 killed and people who are having significant damage out
17 there. Who is the body that is there to protect those
18 people, leave aside the economics of it, but life and
19 their livestock? Who does that? Is anyone doing
20 that?---Ultimately the responsibility for safety of the
21 community is shared by the regulators and the government
22 and the businesses.

23 We understand the businesses' responsibility. Insofar as you
24 as the representative of the regulator, in what way do you
25 set standards for the protection of the people of
26 Victoria? If it is not by prescription, how else do you
27 do it?---As I mentioned earlier, Mr Tobin, on Sunday
28 various changes to regulations and Acts have been
29 proclaimed which will require the businesses to submit
30 energy safety management schemes. Those schemes directly
31 point to keeping the public, people and property, safe

1 from electrical infrastructure. It will require them to
2 make considerable assessment and put forward plans that we
3 will have to assess, test, challenge, to ensure that the
4 public safety is paramount.

5 Am I right in understanding the companies are going to be
6 charged with putting forward a scheme for safety,
7 companies whose principal responsibility is profit, and
8 you as the safe keeper of the state is then going to
9 assess their schemes?---Within the regulatory and
10 statutory framework, that will put a very significant
11 statutory onus on them to keep the public safe from their
12 electrical infrastructure.

13 They establish the scheme, you don't have the expertise. Where
14 do you get the information to be able to be able to say,
15 "You should put dampers in or you should improve your
16 maintenance"?---In forming any assessment and indeed the
17 administration of the safety management schemes will be a
18 compliance system, a reporting system which will involve a
19 fair degree of reporting and will put a significant onus
20 on us, ESV, to analyse those statistics.

21 You don't have any area of expertise within your department to
22 be able to establish what the parameters should be of
23 particular activities; is that correct? You are reliant
24 upon the companies?---I don't accept that proposition.
25 ESV does have capacity, both technical in relation to
26 electricity systems, auditing and the examination of
27 safety management schemes. I believe that going forward
28 we will be required to allocate more resource to that
29 area, but we do have that expertise and we are not
30 entirely beholden to the distribution businesses.

31 Can I ask you, with ESV with that expertise, what if any work

1 have they done over the last nine or 10 months in relation
2 to whether dampers should be fitted to SWER lines or there
3 should be a change in the inspection program of SWER
4 lines? Technically what work have they done?---I'm not
5 aware - I'm not suggesting it hasn't been done - but I'm
6 not aware of any precise work within ESV on that
7 particular matter.

8 Would you agree that they are two matters which anyone looking
9 at the safety of this system would have seen as paramount
10 considerations over the last 10 months?---Not necessarily.

11 You talk about economic incentives. Would you agree that the
12 economic incentives within the system are incentives which
13 relate to customer hours lost?---That's one of the
14 incentives. There are a range of reliability and service
15 focused incentives.

16 The reliability and service focused incentives look principally
17 at customer hours lost rather than whether a particular
18 line was down; is that correct?---The reliability
19 incentive arrangements exist to achieve that objective.
20 There are other guaranteed service level arrangements that
21 are more focused on, for example, the worst served
22 communities.

23 The reliability service arrangements have an incentive in them
24 that means that you are proactive if it is serving a large
25 community and reactive if it is serving five or six
26 customers on a SWER line. Would you agree with
27 that?---I would agree that the current generation of
28 incentive arrangements go more to the average performance
29 rather than, say, the pockets of poorly serviced areas.

30 And the pockets of poorly serviced areas, that is the people on
31 the end of SWER lines, those lines on Black Saturday and

1 traditionally throughout this state have been the lines
2 that have been causing the major catastrophic fires.
3 Would you agree with that?---I would accept that.

4 So the economic incentives are something as in effect a
5 disincentive for appropriate maintenance of the SWER
6 lines?---It is a matter that the incentive arrangements
7 could address going forward.

8 <RE-EXAMINED BY MR RUSH:

9 Just two matters. How many people in audit and compliance at
10 ESV?---The area including compliance, auditing and
11 electrical safety is currently seven people directly.

12 How many are directly involved in audit and compliance?---There
13 are two, but that doesn't include the audit companies that
14 we employ.

15 Is that going to increase with the new responsibilities as of
16 Sunday?---For ESV to perform its role in administering the
17 regulations under an ESMS scheme it is my belief that
18 those resources will need to increase.

19 The material that has been put before the Commission in
20 relation generally to the electrical infrastructure of
21 Victoria is to the effect that it is entering a stage
22 where end of life characteristics are demonstrated across
23 that infrastructure. What view does ESV take as to how
24 that should be handled, having regard to the magnitude of
25 that description?---We would be expecting to see the
26 businesses through their electricity safety management
27 schemes to be demonstrating to us what they are doing to
28 predict or analyse the end of the life of those assets,
29 how they would conduct their condition monitoring
30 processes, how they record the condition, how they intend
31 to achieve the obligations that exist under the Act.

1 Does it not provide a base for ESV to be taking proactive steps
2 within the industry for the adoption of the new technology
3 and the sort of matters that Mr Griffith was talking
4 about?---Whilst those technologies have general merit, the
5 safety regulatory regime would not go as far as ESV either
6 being in a position to mandate or would have us in a
7 position to even suggest that to businesses. That would
8 be going too far.

9 But surely there is a role for ESV to make recommendations
10 concerning those matters, at least to
11 government?---Certainly, and particularly in relation to
12 how the regime and potentially how the - well,
13 particularly how the economic regime might deal with that.

14 Having regard to the matters of 7 February, would you accept
15 that there is some - and the ageing infrastructure issues
16 - that there is some degree of urgency in relation to that
17 sort of response and approach to government?---The ageing
18 assets is a central issue to how the businesses deal with
19 the risks to safety. It will be something that we will be
20 very focused on.

21 But particularly in relation to the matters raised by
22 Mr Griffith as they concern bushfire risk mitigation,
23 I take it included in your answer is you being very
24 focused on making recommendations to government concerning
25 those matters?---Other than the general observation that
26 those technologies are worthy of examination, we would not
27 see it as our role to assess the complex trade-off of cost
28 reliability and safety as it pertains to those technology
29 options.

30 But you have no role at ESV in relation to the trade-off in
31 relation to cost, do you?---We have some - - -

1 That's your former life?---No, it is not correct. The safety
2 regulator is not at large in relation to promoting safety
3 and being indifferent to cost. The objective is to
4 achieve the lowest possible risk at the lowest practical
5 point, so there is an economic dimension there.

6 How do you work out, using an economic factor, the lowest
7 practical point?---Well, it is complex - - -

8 As far as its safety is concerned?---It is complex, which is
9 why it is resource intensive on a regulator to assess, for
10 example, the safety management schemes in the first
11 instance.

12 Mr Fearon, to take up Mr Tobin's point in the context of the
13 questions I'm asking you, if ESV takes the approach that
14 you outline, who is it that will actively and, in the
15 sense of requirement, urgently be picking up these
16 issues?---There is an assumption underpinning your
17 question that the regime is somehow not able to deal with
18 this and I'm not sure I would agree with that. The design
19 of the regime is ultimately the responsibility of the
20 government and we have worked closely with government
21 officials in recent times to put forward a number of
22 suggestions that would strengthen that regime to the
23 benefit of the community.

24 Have you studied closely the causes of the electrically induced
25 or the electrically caused major bushfires in Victoria of
26 7 February 2009?---I'm aware of some level of detail
27 around that.

28 So what do you make of it in terms of safety issues?---Some of
29 those issues certainly need to be followed up within the
30 whole process of auditing and monitoring the businesses.
31 It is probably speculative on my part, but some of the

1 causes, a lot more work would need to be done to determine
2 whether they were systemic issues or whether they were
3 random failures and requiring particular attention.

4 So has ESV done anything in the nine months to follow up to see
5 if there are those systemic issues and if there are - let
6 me ask one at a time. Has ESV followed up in nine months
7 as to whether the causes of those fires relate to what you
8 call systemic issues?---We have closely followed the
9 evidence and that has informed the audit programs that
10 were going forward. But even prior to the bushfires we
11 were aware of things such as the ageing assets and put in
12 place further audits that would reveal more information.

13 I take it from your answer you've followed the evidence at the
14 Royal Commission. My question was has ESV done anything
15 to follow up of its own motion to investigate whether the
16 causes of the fires were as a result of what you call
17 systemic issues?

18 MS JUDD: I object to that question because the answer was, "We
19 have done a number of things", and following the evidence
20 was only one of those things in the answer.

21 MR RUSH: Has ESV done anything to follow up of its own motion
22 the causes of the bushfires due to electrical assets to
23 see if they relate to systemic issues?---We have done work
24 in that area.

25 And what is the result?---Some of that work is ongoing. Some
26 of the work relates to the condition of steel conductor
27 and we are currently harvesting a number of spans which we
28 will be subjecting to analysis.

29 So are there any results that can be ascertained or put into
30 some form of perspective looking forward to this bushfire
31 season?---The work will not reveal answers until probably

1 March or April next year.

2 I have no other matters, Commissioners. May Mr Fearon be
3 excused.

4 CHAIRMAN: Yes. Thank you, Mr Fearon. You are excused.

5 <(THE WITNESS WITHDREW)

6 MR RUSH: They are the matters today, Commissioners, and
7 I think we resume at 9.30 on Monday.

8 CHAIRMAN: Yes.

9 ADJOURNED UNTIL MONDAY, 14 DECEMBER 2009 AT 9.30 AM

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