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SUBMISSIONS ON THE KILMORE EAST FIRE
(OTHER THAN ON CAUSE)

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Overview

1. The Kilmore East fire that ignited near Saunders Road Kilmore East on 7 February 2009 was extraordinary and unprecedented. This is recognised by Counsel Assisting at paragraphs 11.1 to 11.2. Conditions prevailing in the State on 7 February were unparalleled in Australia's history. Dr Kevin Tollhurst's evidence was that conditions were much worse than those on either Ash Wednesday in 1983 or Black Friday in 1939.¹
2. Experienced firefighters and fire behaviour experts have given evidence before the Royal Commission that this fire burned with incredible speed and intensity, and that the direction and manner of the spread of the fire, including the spotting activity which occurred, was atypical and unprecedented. The fire behaviour was described by Mr Ken Williamson, a CFA captain with 30 years experience, as 'radical', travelling at 'breakneck speeds'.² Senior wildfire instructor and fire investigator, Mr Fabian Crowe, highlighted the unexpected and unprecedented fire behaviour, with spot fires around Humevale and Strathewen running in multiple directions, uninhibited by the prevailing wind, creating numerous junction zones adding to the intensity of the fire.³ As Mr Crowe said 'there was no pattern to this'.⁴ While the Black Friday fires may have leapt from mountain peaks 'lighting the forests 6 or 7 miles [9.6-11.2kms] ahead', the Kilmore East fire leapt up to 47kms.
3. In order to properly understand the evidence relating to the Kilmore East fire, it is necessary to appreciate that it was a group of separate fires which (along with the main fire originating near Saunders Road) developed in Humevale, Strathewen and the Yarra Valley from spot fires thrown from the main fire

¹ *Report on the Physical Nature of the Victorian Fire occurring on 7th February 2009*, Ex 32, EXP.003.001.0017 at 0029; Tollhurst T1765.

² Williamson Ex 132, WIT.3004.009.0029, [64]; Note also the evidence of other firefighters, including Eric Smith the captain of the Eaglehawk brigade and other fire fighters who were engaged in suppression activities on Ash Wednesday in 1983 who described the behaviour of fires on 7 February as rewriting the book in terms of fire behaviour and intensity.

³ Crowe Ex 514, WIT.3004.022.0001, [92] – [93].

⁴ Crowe T10998:16 – T10998:17

4. Once the Kilmore East fire front reached the upper levels of Mount Disappointment, burning bark embers and even branches were propelled in a south-easterly direction igniting fires up to 47 kilometers away.⁵ Between 15:15 hours and 16:00 hours the fires that ignited at Humevale, Strathewen and St Andrews fires developed into what was described by Mr Crowe as separate masses of uncontrollable fire.⁶ The spot fires at Humevale moved towards Kinglake West and the spot fires that ignited at Strathewen and St Andrews moved against the prevailing wind to Kinglake. The 'firefront' of the fire that ignited near Saunders Road Kilmore East, did not reach St Andrews or Strathewen.
5. While the severe conditions experienced on 7 February were expected following forecasts issued in the days prior, the extreme fire behaviour that resulted was unpredictable using available fire behaviour prediction models. It was, in the experience of all those who observed it, without parallel. The State agrees with Counsel Assisting's proposed key findings set out in paragraphs 11.1 and 11.2 in this regard. It is a necessary implication of those proposed key findings that the fire behaviour was not predictable utilizing available methods and knowledge of fire behaviour as at 7 February 2009, and was not predicted. Counsel Assisting however do not appropriately take this into account when dealing with issues concerning incident management, warnings and fire behaviour prediction. The State refers in this regard to proposed key findings 11.11 and 11.15 in particular.
6. No issue is taken by the State with Counsel Assisting's summary of the spread and behaviour of the fires, however, to assist the Royal Commission, we provide a detailed examination of the evidence concerning the run and behaviour of the fire that ignited near Kilmore East fire, its extraordinary spotting and the ignition and behaviour of the Humevale and Strathewen fires, at Attachment 1 of these submissions.
7. At the time of delivering its Interim Report, the Royal Commission had not had the benefit of a full examination of the behaviour and spread of the Kilmore East fire. The State submits that the Royal Commission should, insofar as required, reconsider any findings or views expressed regarding the Kilmore East fire in light of the new evidence which has been adduced

⁵ Crowe Ex 514, WIT.3004.022.0001, [118] – [119].

⁶ Crowe Ex 514, WIT.3004.022.0001, [182].

regarding the behaviour of the fires, bearing in mind, in particular, the relevance of the failure to predict the behaviour of the fires and the unpredictability of the behaviour of the fires to the issues of incident management, warnings and the importance of fire behaviour prediction.

8. Although fire behaviour prediction work occurred at a number of places, including the Kilmore ICC, Kangaroo Ground ICC and the iECC, no-one predicted the direction, spread or timing of spread, spotting and behaviour of spot fires from the Kilmore East fire. Significantly, predictions reflected in a map produced by experts in the iECC, using the best available fire behaviour prediction models and distributed at about 16:30 on 7 February (**the 16:30 map**), predicted that the fire would impact on Arthurs Creek and Strathewen at between 18:00 and 19:00, Kinglake West after 20:00 and in respect of Kinglake, the predictive map had the fire still well west of the township at 21:00⁷. This prediction was not correct and indeed, the Humevale, Strathewen and St Andrews fires had already ignited before this map was distributed. Counsel Assisting do not refer to this evidence.
9. The 16:30 map also identified townships far to the south and west of the actual fire run being impacted upon by the fire. Although commencing at a time when the wind was almost directly from the north, the Kilmore East fire was pushed further east than was predicted or predictable, by a combination of the prevailing wind tending to the west of north and the 'pull' of the upper atmospheric conditions created by the convection column and approaching trough from the west.⁸
10. It is not the State's submission that any criticism be made of those officers who prepared the 16:30 map (or for that matter any other predictive map prepared on 7 February 2009 in relation to the Kilmore East fire), but the evidence regarding the accuracy of the map(s) highlights that the behaviour and course of these fires were not predicted or predictable and the actions of individuals or agencies should not be evaluated upon a basis that the fires were predictable.

⁷ Map created Sat Feb 07 15:11:15 EST 2009 – Potential Spotting, Sutton (Attachment 9) Ex 122, DSE.CD03.0001.0035.

⁸ See evidence of Dr Tolhurst referred to in Attachment 1 to this submission.

11. The evidence before the Commission is that the fires on this day rewrote the book in terms of the predictability of fire behaviour.⁹ It is submitted by the State that it is important that the Commission makes a finding to reflect this reality and considers, in due course appropriate recommendations to address the issue.
12. Counsel Assisting's proposed key finding 11.3 is generally correct, as far as it goes but requires further explanation and contextualization. Insofar as it is intended to create the impression that the behaviour of the fires was and/or should have been predicted, the State submits that it should be rejected.
13. The evidence, including that of Mr Crowe¹⁰ makes it clear that there were three separate masses of fire on the landscape which on the wind change were driven to the north and north east, to the outskirts of Broadford to the north and south to Chum Creek.
14. Moreover, and extraordinarily, the Humevale and Strathewen fires burned in a northerly and easterly direction before the south westerly wind change. It is also significant that the south-westerly wind change arrived earlier than had been predicted and at high speed. Wind speeds in excess of 90 kilometres per hour were recorded. The wind change significantly impacted on the three masses of fire, resulting in a rapid growth in the dimensions of the fire and an increase in smoke and flame heights. The eastern flanks of the fires moved at horrifying speed in the direction of the prevailing wind.

Operational Response

15. The State agrees with the submissions of Counsel Assisting, including the proposed findings at 11.4 and 11.5, regarding initial response by the agencies, subject to the following additional comment on this topic. For the assistance of the Commission, the State sets out at Attachment 2 to these submissions, a detailed analysis of the operational response to the Kilmore East, Humevale and Strathewen St Andrews fires.
16. The State welcomes the recognition in Counsel Assisting's submissions of the excellent operational response, suppression and asset and life

⁹ See evidence of Dr Tolhurst referred to in Attachment 1 to this submission; Smith T10238:19 – T10238:29.

¹⁰ Crowe Ex 514, WIT.3004.022.0001, [182].

protection efforts of the fire agencies.¹¹ It is important to recognize that this does not happen without appropriate and detailed preplanning and preparedness at all levels.

17. It is noted that the submission of Counsel Assisting have referred to Mr Gregory Murphy's conduct as incident controller.¹² The efforts of other members of the IMT should be similarly praised. Insofar as there are any shortcomings with respect to preparation and pre-positioning, the fire agencies have developed new procedures for pre-position of incident management teams as outlined in Attachment 3 to these submissions.
18. Counsel Assisting submit that 'The Kilmore fire' was not capable of containment, let alone control, likely within minutes of ignition. The State agrees with this proposed key finding, and submits that the evidence contained in Attachment 2 to these submissions demonstrates that proposed finding applies to each of the fires that ignited near Saunders Road Kilmore East, the Humevale area, the Strathewen area and the Yarra Valley with a minor qualification. The evidence set out in Attachment 2 discloses that a number of spot fires were suppressed by initial attack including some at Humevale and near Arthurs Creek. Although with the benefit of hindsight it is apparent that these fires were likely to be incapable of containment within minutes, fire fighters on the ground and members of the Fire Agencies worked tirelessly throughout the day and the night in their attempts to control these fires.

¹¹ Submissions of Counsel Assisting, SUBM.202.004.0001, [11.4].

¹² Submissions of Counsel Assisting, SUBM.202.004.0001, fn 97.

Planning and Preparation in the North East Area

Regional Planning and Preparation Generally

19. The procedures of the agencies in respect of pre-positioning of IMTs and the appointment of Incident Controllers are contained in joint SOPs as well as the Heads of Agreement and partnership guidelines.¹³ The Partnership Guidelines provide that level 2 and level 3 IMTs are to be identified in advance of deployment in accordance with the joint SOPs. It is the responsibility of the CFA RDO and DSE District Manager to identify available IMT personnel. Joint SOP J2.03, which was in operation on 7 February 2009, required each Region to have an IMT Co-ordinator appointed to manage IMT arrangements, readiness and rosters.¹⁴
20. Under JSOP 2.03, the IMT Co-ordinator was required to report to the State Duty Officer on the day prior to an agreed trigger point day as specified under a Local Mutual Aid Plan (**LMAP**). LMAPs are to include information regarding, among other things, contact between agencies, preparedness levels, joint ICC locations, triggers for the assembly of joint IMTs, IFACCs, and provision of personnel.¹⁵
21. DSE Areas produce an annual Readiness and Response Plan to define the readiness and initial attack procedures to be adopted in each district or area. The level of preparedness is set from level 1 (low) to level 4 (high). DSE District Duty Officers and Area Duty Officers set up pre-positioned IMTs, or have IMT staff available to be deployed, on days of extreme fire danger.¹⁶ The Model of Fire Cover is a tool used by DSE to annually assess the resources needed and available for fire suppression in Victoria.¹⁷ The numbers of resources was based on agency modelling of worst case scenarios.¹⁸ However the actual events of 7 February far surpassed these scenarios.
22. The Commission has received evidence of the DSE and joint CFA / DSE IMTs established pursuant to these procedures. The Commission has

¹³ Haynes Ex 547, WIT.3004.023.0011, [134].

¹⁴ Haynes Ex 547, WIT.3004.023.0011, [135] – [136].

¹⁵ Haynes Ex 547, WIT.3004.023.0011, [140].

¹⁶ Slijepcevic Ex 551, WIT.3024.005.0001, [114].

¹⁷ Slijepcevic Ex 551, WIT.3024.005.0001, [46].

¹⁸ Statement of Farrell Ex 254, WIT.3024.002.0219, [36]-[38].

evidence of the resultant DSE and joint CFA/DSE IMTs¹⁹ and a list of ICCs which were intended to operate on 7 February²⁰.

Planning in the North East Area

23. The North East Area stretches from Kilmore and Marysville in the south to Echuca in the west and to Corryong and the Alps in the east.²¹ There are four CFA Regions and four DSE Districts within the North East Area.
24. On 7 February, the Kilmore ICC was not designated as a level 3 ICC. It was identified in the CFA DSE Local Mutual Aid Plan as a potential level 3 ICC.²² There were 9 level 3 ICCs in the North East Area compared to smaller numbers in other Areas.²³

CFA Region	DSE Fire District	Township	Location	Custodian
Region 12	Murrindindi FD	Broadford (L2 ONLY)	DSE Office	DSE
		Kilmore (L3 potentially)	CFA Station	CFA
		Toolangi (L2 ONLY)	DSE Office	DSE
		Yea (L2 ONLY)	CFA Station	CFA
		Alexandra	DSE Office	DSE
		Marysville (L2 ONLY)	DSE Office	DSE
Region 22	Goulburn FD	Shepparton	CFA NEA Office	CFA
		Nathalia (L2 ONLY)	DSE Office	DSE
		Strathmerton (L2 ONLY)	CFA Station	CFA
		Euroa (L2 ONLY)	Shire Office	CFA
Region 23	Goulburn FD	Mansfield	DSE Office	DSE
		Benalla	DSE Office	DSE
		Wangaratta	CFA R 23 Office	CFA
Region 24	Ovens FD	Ovens	DSE Office	DSE
		Bright (L2 ONLY)	Parks Victoria Office	DSE
		Mt Beauty (L2 ONLY)	Southern Hydro Office	CFA
		Beechworth	LaTrobe University	DSE
	Wodonga (L2 ONLY)	CFA Region Headquarters	CFA	
	Upper Murray FD	Tallangatta	DSE Office	DSE
	Corryong	DSE Office	DSE	

¹⁹ *Availability of Incident Management Teams - Saturday 7 February 2009 - Data from Reports Received 5 February 2009*, Slijepcevic (Annexure 28) Ex 551, DSE.HDD.0074.0371.

²⁰ *ICCs with Pre-Positioned IMTs on 7 February 2009*, Haynes (Annexure 31) Ex 547, WIT.3004.023.0371 ; *DSE ICC Status as at 7 Feb 2009*, Slijepcevic (Annexure 23) Ex 551, WIT.3074.0359.

²¹ Creak Ex 506, WIT.3004.008.0309, [19].

²² *North East DSE - CFA Local Mutual Aid Plan*, Ex 673, CFA.001.033.0023.

²³ For example in the North West Area of the State, there are three level 3 ICCs: Creak T10895:12 – T10895:15.

25. Counsel Assisting is critical of the level of preplanning and preparedness in relation to the North-East Area generally and specifically of the Kilmore ICC, in particular the failure to have in place a level 3 IMT at the Kilmore ICC when the fire started.
26. It is axiomatic that having the best qualified and most experienced persons forming IMT's is desirable because that is likely to result in the best outcomes. The State has now instituted preparedness arrangements in order to ensure as far as practicable that there are appropriately pre-positioned staff at level 3 ICCs on days of "severe" fire danger and above. The new arrangements provide for escalation, when a fire starts, to a full level 3 IMT within minimum time periods based on risk analysis. The State refers to the evidence set out in Attachment 3 to these submissions which sets out the new standards and procedures for the State, designed to ensure maximum preparedness and appropriate staffing of IMTs in a variety of risk based scenarios.
27. Nonetheless, it is submitted that there was considerable preplanning and preparedness undertaken, in accordance with the escalation plan for the North East to ensure that there was an appropriately qualified and experienced IMT in place capable of managing the fire during the period of initial attack and any period of escalation. The escalation arrangements, as set out below and in Attachment 2 to these submissions, had historically served the Region well. The State disagrees with the contention by Counsel Assisting that there was 'no semblance of readiness'.
28. The State further notes the submission of Counsel Assisting at paragraph 3.14 and 3.15 that Mr Peter Creak, CFA Operations Manager for Region 12 was at fault because he failed to properly plan for 7 February including the failure to request additional personnel so as to have prepositioned level 3 IMTs in place at level 3 ICCs within Region 12. Counsel Assisting also appear to be critical of the Chief Officers, CFA State Coordinator and CFA State Duty Officer because, on the basis of information supplied by Mr Creak, they should have known that ICCs in Region 12 were not prepared for a 'hot start' on 7 February and did not do anything about it.²⁴ At paragraph 11.12 Counsel Assisting state that 'evidence and findings

²⁴ Submissions of Counsel Assisting, SUBM.202.004.0001, [11.6] – [11.10]; see also Submissions of Counsel Assisting, SUBM.202.004.0001, [3.11] – [3.13].

concerning the responsibility and role of the iECC and the Kilmore Fire will be addressed in due course in Counsel Assistings submissions regarding the iECC and systemic issues'.

29. The State disagrees with the above criticisms of Mr Creak and submits that they are not justified on the evidence.
30. The limitations on resources for the North East area described by both Mr Creak and Mr Farrell did not permit all key positions in the Kilmore ICC to have been filled by personnel with level 3 accreditation or authorisation at or before the time the fire started. The circumstances that prevailed on the day reduced the number of level 3 personnel for prepositioning at ICCs.
31. Mr Creak, and the DSE Land and Fire Area Manager, Mr Peter Farrell gave evidence that it was not possible to fully staff all level 3 ICCs in the North East Area with full level 3 IMTs, due to the number of authorised staff available.²⁵
32. Mr Creak stated that 'it is not possible to pre-arrange for specific people to be available for specific locations'²⁶ and that 'we weren't able to provide a full level 3 incident management team in each one of those locations purely due to the numbers of people that would have required and the numbers of incident control centres that we have in north-east Victoria.'²⁷ The large number of level 3 ICCs in the North East region (when compared to all other Regions), is occasioned by the unique topography and terrain of the region.
33. In response to the criticism directed towards the CFA Chief Officer, State Coordinator and State Duty Officer, the State submits that the evidence discloses an expectation and understanding by the Chief Officers, State Coordinator and State Duty Officer that identified ICCs would have in place prepositioned personnel capable of managing an initial response to an incident with the capacity to strengthen those IMTs as an incident escalated. The new procedures, as explained in the evidence of Mr Haynes and Mr Slijepcevic ensure greater definition and particularity in the required composition of prepositioned IMTs at particular ICCs, according to risk profiling. The new procedures also provide for formalised auditing of

²⁵ Creak T10857:27.

²⁶ Creak Ex 338, WIT.3004.017.0001, [19].

²⁷ Creak T10848:19, see also Creak T10856:15; and Farrell T7288:28.

prepositioning arrangements and for greater certainty in the escalation process.

34. The expectation and understanding of the Chief Officers was not inconsistent with the content of the IMT planner.

Escalation Plan

35. As set out in the evidence of Mr Creak, the AIIMS structure recognises that there are three levels of incidents. The three levels of an incident reflect the complexity of the incident at a particular time.²⁸ A development in the complexity of an incident may warrant a change to the personnel in control of a fire. Mr Creak explained:

'When an incident develops in size and complexity, there is an escalation from one incident type to the next. Level 1 incidents escalate to level 2 incidents and level 2 incidents escalate to level 3 incidents. During this period of escalation it is common for IMT roles to be transferred.'²⁹

36. The nature of developing incidents means that it is necessary to plan for escalation of a response to an incident, both in terms of the number and level of personnel and resources committed to an incident. This allows the agencies some flexibility to respond to incidents according to their needs.
37. The process of escalation, together with the distinct geography of the North East Area has led to a plan to escalate to the management of incidents by level 3 personnel. This plan had been in place in the North East Area for the three previous fire seasons.³⁰
38. The North East Area LMAP states that:

'When the GFDI is above 35 or FFDI above 50, the DSE-RDO and CFA-C will have immediately available nominations for key ICS positions (primarily Controllers, Planning Officers, Resources Officers, Communication Planning Officers, Operations Officers and

²⁸ Creak Ex 506, WIT.3004.008.0309, [9] - [12].

²⁹ Creak Ex 504, WIT.3004.021.0148, [14]; Creak Ex 506, WIT.3004.008.0309, [12].

³⁰ CreakT10860:25.

Logistics Officers and others where appropriate) by 10.00 am'.³¹
(emphasis added)

The IMT Planner

39. The CFA used an excel spreadsheet recording personnel available for roles at a variety of locations to prepare for days of extreme fire danger. This document is known as an 'IMT planner'. The CFA Area Coordinator oversees the preparation of the IMT Planner using information obtained from each of the four Regional Duty Officers.
40. While the IMT Planner set out available level 3 IMT personnel, it also listed available level 2 personnel for each of the Regions. The level 2 IMT is envisaged to operate as follows:
- '..when there is a level 2 incident, the pre designated level 2 IMT will manage the incident and if necessary it can draw on other IMT personnel from within the Region where the fire is located. If a level 2 incident progresses to a level 3 incident then personnel from the IMT planner will be called into the relevant ICC by the Area Coordinator or General Manager. Personnel from other level 2 ICCs can also be brought in if necessary'.³²
41. In CFA Region 12, each Group prepared a plan to staff level 2 ICCs in their respective Group. This plan sets out personnel to assume the roles of Incident Controller, as well as Planning, Operations and Logistics roles.³³ The use of Region 12 Group personnel to staff a level 2 IMT was noted on the IMT Planner.³⁴
42. Use of the IMT Planner has been supported by the customary response of CFA to incidents in the North East Area. Mr Creak's evidence was that level 2 incidents are managed by pre-designated level 2 IMTs. If necessary, these level 2 teams will utilise IMT personnel from within a Region. If an

³¹ *DSE - CFA Local Mutual Aid Plan Between DSE North East Area and CFA North East Area (Regions 12,22,23 & 24) - Draft Dec 08 - 2008-2009 Fire Season, Creak (Attachment 1) Ex 0338, WIT.3004.017.0032 at 0036.*

³² Creak Ex 504, WIT.3004.021.0148, [33].

³³ Creak Ex 504, WIT.3004.021.0148, [32].

³⁴ *IMT Planner, Creak (Annexure 4) Ex 506, WIT.3004.008.0309 at 0347.*

incident progresses to a level 3 incident, the IMT planner is used to identify personnel to be deployed to that incident.³⁵

43. It was Mr Creak's evidence that the IMT Planner had provided flexibility and a rapid response to incidents at Melba, Avenel, Tooborac and Granite Hills.³⁶ He explained:

'...at the start of the day we don't know where the fire is going to start, and a fire might start in a different spot and we have to move people to a particular locality. So, whilst we do have people spread geographically across the north-east, we can't fully populate all of the incident control centres in the north-east.'³⁷

44. Mr Farrell gave evidence that:

'...our strategy on that day was to ensure that we had sufficient people to be able to form a team to come in behind once an incident started so that it would be dealt with in the first attack scenario, and then we put an incident management team in behind them wherever that fire might have occurred'.³⁸

45. Further:

'.. we have a number of incident control centres where we can actually manage an incident from, and then you actually put an incident management team in to manage the incident from the incident control centre. So, it is about a prearranged, pre-established location to manage an incident. I guess it hasn't been our thinking that we would necessarily have enough Incident Controllers for all the incident control centres'³⁹.

³⁵ Creak Ex 338, WIT.3004.017.0001, [21].

³⁶ Creak Ex 504, WIT.3004.021.0159, [53].

³⁷ Creak T8285:24 – T8285:30.

³⁸ Farrell T7288:30 – T7289:4.

³⁹ Farrel T8501:28 – T8502:5.

Chief Officer's Preparedness Directions

46. CFA staff from the North East Area participated in the Chief Officer's teleconference held on 5 February 2009.⁴⁰ Mr Farrell participated in statewide DSE teleconferences at 11:00 and 16:00 on 5 February, and also had a conversation with Mr Ewan Waller on that day.⁴¹

47. During examination by Mr Rush QC, Mr Russell Rees explained his expectation for the staffing of ICCs as:

'.. there are people there, all the facilities, the equipment is up and running and tested'⁴²... the facility would be ready to operate, that there would be a minimum skeleton capability of people there from both CFA and DSE, and if there wasn't one from the other that they would be very close handy, able to make that ICC operate virtually immediately'.⁴³

The evidence of Mr Rees reflects the escalation of incidents as set out above.

48. The terms 'hot start' or 'warm start' referred to in evidence and in Counsel Assisting's submissions do not satisfactorily explain the degree of preparedness and preparation sought and achieved in the Regions. As described in evidence by Mr Haynes, the phrase 'hot start' is unfortunate, and is not a technical description adopted in any standard operating procedure of either CFA or DSE.⁴⁴ The phrase 'hot start' or the phrase 'warm start' was apparently used to encourage all regions to be at maximum preparedness for the conditions expected on 7 February. The phrases did not reflect an identical state of actual staffing of ICCs with IMTs across all

⁴⁰ The minutes show that Peter Creak, Peter O'Keefe, Steven Allan, Stewart Kreltszheim, Paul Horton, Paul King participated: *Daily Operations Managers Teleconference*, Warrington (Annexure 2) Ex 219, WIT.3004.011.0117.

⁴¹ Farrell Ex 254, WIT.3024.002.0219, [35], [39], [41].

⁴² Rees T2415:23.

⁴³ Rees T2415:9.

⁴⁴ Haynes T1193:21 – T1193:28; Conway T6232:15 – T6232:28. The Commission has heard evidence from CFA Operations Managers that the levels of preparedness and implementation of a 'hot' or 'warm' start varied across the State in accordance with local conditions; see Deering T10151:14 – T10151:16. Note that Deering was at the ICC from around 8.30am; Fallon T7956:29 – T7956:31. Note this has been well practiced since 2001, where we've had the one control centre only. We don't try to run more than the one because the manning required is such that you would rob Peter to pay Paul, so we have the one only; T7956: 20-24. Russell T7454:3 – T7454:10; Owen T12925:30 – T12926:7.

Regions and Areas. Mr Haynes observed that 'through the evidence there was some confusion about what a hot start meant'⁴⁵.

49. Mr Creak's evidence of his understanding of the message from the Chief Officer's teleconference was that 'our ICCs should be at their highest level of preparedness and our incident management arrangements should be at the highest level of preparedness'⁴⁶ and that the term 'hot start' meant that 'identified ICCs are staffed with some local incident management team personnel, not necessarily the full range of people and not necessarily level 3 personnel, or able to be staffed at very short notice and ready to manage incidents if required.'⁴⁷ Mr Creak used the IMT Planner to prepare the North East Area.
50. Mr Haynes gave evidence that all Regions had LMAPs which focused on the pre-positioning of teams but there was a lack of clarity about what such a team should consist of when pre-placed or pre-planned.⁴⁸ The variations in the previous practice have now been addressed by CFA and DSE in the development of a new Joint Standard Operating Procedure for preparedness, as set out in Attachment 3.

Preparations by Mr Peter Creak

51. Following the teleconference, Mr Creak, who was the Area Coordinator and Region 12 RDO on 5 February, undertook additional preparation for the forecast weather conditions. This preparation included reviewing staffing for IMTs.
52. The review and preparation of the IMT planner entailed establishing the availability of both CFA and DSE personnel across the North East Area.⁴⁹
53. The IMT Planner that was prepared set out level 3 and level 2 IMT staff, RECC personnel and personnel for business continuity.⁵⁰

⁴⁵ Haynes T11971: 23-24.

⁴⁶ Creak T10856:15.

⁴⁷ Creak T8286:13. See also Creak T10856:31: 'my interpretation was that our level 3 centres should be obviously established, open and ready with a small staff but ready to escalate as the need arose'

⁴⁸ Haynes T12027: 27 – T12027:30.

⁴⁹ Creak T9033: 6.

⁵⁰ *Untitled*, Creak (Annexure 4) Ex 506, WIT.3004.008.0347; *NE Area as at 5 Feb 2009 900hrs*, Murphy (Annexure 8) Ex 505, WIT.3004.021.0107.

54. Mr Creak convened a teleconference with Operations Managers and RDOs in the North East Area which was held on 6 February 2009.⁵¹ A Regional Coordination Reporting document was forwarded to the iECC via email at 10:16 on 6 February 2009 and Mr Creak spoke to personnel in the iECC regarding resources.⁵² The reporting document sets out the preparedness levels of the Area.⁵³ In the document, each CFA Region within the North East Area is listed as at Code Red preparedness levels. The document records that additional staff and volunteer personnel were identified for night shift sat night and that staff had been requested from headquarters for each RECC. Additional inter-agency preparations were also noted.
55. CFA Region 12 obtained additional support personnel from CFA to staff the RECC on 7 February. On 6 February support was being sought by the iECC for IMT staff at Traralgon and for the Bunyip fire. From this request, Mr Creak observed '[t]he indication I got there was that there was very little capacity in the rest of the state to provide that support.'⁵⁴ It is unfair to criticise Mr Creak for this approach in the context of what Mr Creak was informed about incidents already being managed in the State, and the resourcing demands generated by the extreme fire weather predicted across the entire State.
56. Mr Creak ensured that an Air Observer and an Air Attack Supervisor were on standby and were allocated Fire Spotter 381 on contract from Kestrel Aviation. The State Aircraft Unit also positioned additional aircraft at Mangalore.⁵⁵
57. Mr Creak conducted a teleconference with all Group Officers in Region 12. Mr Creak provided weather information and:
- '...passed on information I received during the state-wide teleconference, including the preparedness of ICCs and IMTs. In Region 12, that meant that each identified ICC was staffed with local IMT personnel and ready to manage incidents if required. We

⁵¹ Creak Ex 338, WIT.3004.017.0001, [17].

⁵² Creak Ex 338, WIT.3004.017.0001, [17].

⁵³ Standard Operating Procedure – Defining the Control Agency, Creak (Annexure 3) Ex 338, WIT.3004.017.0062.

⁵⁴ Creak T10865:21 – T10865:28. Mr Farrell also stated that "it was clear that support from outside the Area would be unlikely": Farrell Ex 254, WIT.3024.002.0219, [45].

⁵⁵ Creak Ex 504, WIT.3004.021.0148, 0159.

also discussed that brigades and Groups in the Region would have a rapid response capability in terms of strike team availability and effectively have the highest level of preparedness possible'.⁵⁶

58. Each Group within Region 12 planned to provide level 2 IMT personnel on 7 February. The pre-plan for the Northern Highway Group was prepared by Peter Hayes.⁵⁷ The Seymour Group pre-plan was prepared by Mr John Clarke.⁵⁸ The information submitted by the Groups to Region 12 was inputted into IMS.⁵⁹ The IMT Planner was emailed to the CFA State Coordinator in the middle of the afternoon on 6 February.⁶⁰
59. On the afternoon of 6 February, Mr Creak briefed Region 12 staff at Seymour⁶¹ and also briefed the DERC, Superintendent Peter Billing.⁶²
60. Mr Creak continued to provide regular weather updates to members and to staff prior to 7 February.⁶³ Weather information from the iECC was provided by email and was uploaded on to CFA websites accessible by CFA members. The information was also provided directly to Operations Managers and Operations Officers and Group Officers, as well as supporting service providers such as aviation companies. The forecasts were also made available in an abbreviated pager message and via a CFA radio broadcast to CFA members.
61. Mr Creak also provided a memorandum to officers, firefighters and brigade members on 'fire behaviour, tactics and safety during this weekend's forecast'.⁶⁴
62. Given the weather conditions on 7 February, Mr Creak determined that five Brigades would be paged to respond by pager to any call of a grass and scrub fire.

⁵⁶ Creak Ex 506, WIT.3004.008.0309, [23].

⁵⁷ Murphy Ex 505, WIT.3004.021.0001, [26]; see also *Northern Hwy Group Incident Management Plan, Level 2 Murphy* (Annexure 3) Ex 505, WIT.3004.021.0057.

⁵⁸ Murphy Ex 505, WIT.3004.021.0001, [26]; see also *Seymour Group Incident Management Plan Level 2, Murphy* (Annexure 4) Ex 505, WIT.3004.021.0059.

⁵⁹ Creak Ex 338, WIT.3004.017.0001. Copies are at [WIT.3004.008.0338] to [WIT.3004.008.0341].

⁶⁰ Creak T10855:13-15.

⁶¹ Creak Ex 506, WIT.3004.008.0309, [26].

⁶² Creak Ex 506, WIT.3004.008.0309, [26].

⁶³ Creak Ex 506, WIT.3004.008.0309, [28].

⁶⁴ Creak Ex 506, WIT.3004.008.0309, [29], 'Fire Behaviour Tactics, Safety During the Weekends Forecast Extreme Fire Danger, Creak (Annexure 6) Ex 506, WIT.3004.008.0352.

63. Steps were also taken to prepare the Kilmore ICC which was constructed in 2007.⁶⁵ This included having personnel to form an IMT.
64. Mr Murphy gave evidence that on 6 February, he set up the ICC in readiness for use on 7 February.⁶⁶ On 7 February, Mr Murphy held a briefing with local brigade members and reviewed the set up of the ICC.⁶⁷ A DVD provided to the Commission showed the layout and set up of the Kilmore ICC as at 7 February 2009.⁶⁸
65. Mr Creak gave evidence that the planning for 7 February was 'our existing planning', but that in addition, the CFA gave 'greater emphasis on the sharing of information about that forecast weather and the potential for the day' and communication between agencies prior to the day.⁶⁹ In his statement, Mr Creak stated 'we conducted more preparation and preparedness activities for this day than we had conducted for any other single day in my fire service experiences'.⁷⁰

Preparations by DSE

66. Preparations made by DSE in the North East Area also exceeded standard levels. The North East Area Readiness and Response Plan (**R&R Plan**) sets out the desirable levels of readiness of personnel, systems and equipment and their location and availability for the detection and control of wildfire.⁷¹ Mr Waller gave evidence that there were 16 level 3 ICCs that had a short team with at least a level 2 or level 3 Incident Controller in charge. Mr Waller further explained that there were other ICCs that were not as advanced which had personnel that were able to run the fire at a local level for a short period of time before they were relieved by a more advanced team.⁷²

⁶⁵ Creak Ex 504, WIT.3004.021.0148, [23].

⁶⁶ Murphy Ex 41, WIT.3004.001.0001, [14].

⁶⁷ Murphy Ex 41, WIT.3004.001.0001, [15].

⁶⁸ *Kilmore ICC Tour*, Murphy (Annexure 13) Ex 504, WIT.3004.021.0144. The physical facility is also described in the second supplementary statement of Creak: Creak Ex 504, WIT.3004.021.0148, [25].

⁶⁹ Creak T9031:17.

⁷⁰ Creak Ex 504, WIT.3004.021.0148, [52].

⁷¹ Farrell Ex 254, WIT.3024.002.0219, [12].

⁷² Waller T4388:25 – T4388:30.

67. In light of the weather forecast for 7 February 2009, the R&R Plan required readiness to be at level 4. This required Duty Officers at each of the Fire Districts. Minimum standby levels are also set out in the R&R Plan.⁷³
68. Mr Farrell gave evidence that whilst the R&R Plan specifies the configuration of standard Task Forces and standard level 2 and 3 IMTs, it does not follow that a First Attack Task Force can be placed at every First Attack work centre and an IMT at every level 2 and 3 ICC. The level of resource that the Area can provide is outlined in the Model of Fire Cover 2009 North East Region Annual Comparison 2008.⁷⁴
69. The available IMT staff in the North East Area on 7 February 2009 was set out in the North East Area Planner.⁷⁵ The North East Area Planner was emailed by DSE staff to iECC resources at 16:17 on 6 February 2009⁷⁶
70. The advice to the iECC was that DSE could staff two level 3 IMTs (of 15 staff)⁷⁷ for day shift.⁷⁸ As at 7 February, DSE had two level 3 Incident Controllers and one level 3 Incident Controller to be mentored.⁷⁹
71. On 7 February 2009, key DSE and NEO partner IMT personnel were placed on standby. In DSE's Murrindindi District, there were 24 DSE level 3 and level 2 accredited staff who were rostered on standby for 7 February 2009. 'These staff were nominally located at Alexandra (12), Broadford (3), Kinglake (1), Marysville (3) and Toolangi (5). Of these 12 were Operations Officers who would lead first attack at the First Attack workcentres where they were based.'⁸⁰ Availability of IMT personnel was affected by the Nariel – Ski Hut fire.⁸¹

⁷³ *North East Area 2008/2009 - Fire Readiness and Response Plan - Version 1 - 30th November 2008*, Farrell (Annexure 2) Ex 254, DSE.HDD.0012.2636_R at 02660_R. The plan states that at Level 3 readiness, minimum standby levels are for 3 Level 3 Controllers, 3 Level 3 Planning Officers, 3 Level 3 Logistics Officers, 3 Level 3 Operations Officers, 4 Situation Officer, 4 Resources Officer, 2 Air Attack Supervisors, 2 Aircraft Officer, 1 Investigations Officer and 4 IRIS Planning Officers; see also Appendix 14 and Appendix 15 of R&R Plan.

⁷⁴ Farrell Ex 254, WIT.3024.002.0219, [36].

⁷⁵ Farrell Ex 254, WIT.3024.002.0219, [36].

⁷⁶ Farrell Ex 254, WIT.3024.002.0219, [36], *CFA/DSE IMT Planner*, Farrell (Attachment 9) Ex 254, DSE.HDD.0032.0207_R.

⁷⁷ Farrell T7303:8 – T7303:11.

⁷⁸ Farrell Ex 254, WIT.3024.002.0219, [12].

⁷⁹ Farrell T8500:21.

⁸⁰ Farrell Ex 347, WIT.3024.003.0154, [5].

⁸¹ Farrell Ex 254, WIT.3024.002.0219, [45].

72. Mr Farrell gave evidence that 'in accordance with the R&R Plan it was my intention to have maximum firefighter capability at each of the First Attack work centres, as well as incident management staff at each of the DSE level 2 and 3 ICC locations.'⁸²
73. The State submits that based on the above evidence it is not possible to support the contention⁸³ that there was 'no semblance of readiness' for the 'required hot start' as submitted by Counsel Assisting at paragraph [11.6]. Rather, substantial preparations had been made to utilise available resources and to staff ICCs with IMTs as incidents occurred and escalated.

New Preparedness Arrangements

74. The evidence above demonstrates that additional planning and preparation was undertaken in the North East Area for the forecast conditions on 7 February. These preparations, however, did not extend to fully staffing level 3 ICCs with level 3 IMTs prior to an incident commencing. Importantly, the fire agencies have worked to improve and to formalise preparedness requirements for the 2009/2010 fire season.
75. Mr Haynes and Mr Slijepcevic have given evidence regarding new standards for the composition of IMTs, the appointment of Incident Controllers and the set up of ICCs, including the issue of pre positioning, improvements to ICCs and training. For the assistance of the Commission we set out at Attachment 3 a summary of this evidence.

Establishment of the IMT at Kilmore

76. The initial response to the Kilmore East, Humevale, Strathewen-St Andrews and Yarra Valley fires is described in detail in Attachments 1 and 2 and referred to earlier in these submissions.
77. It is necessary to recount briefly some of that evidence to address the submissions of Counsel Assisting regarding preparedness and preplanning.
78. The Saunders Road, Kilmore East fire was reported at 11:49 in the vicinity of Saunders Road, Kilmore East.⁸⁴ The first officer on scene was Ross

⁸² Farrell Ex 254, WIT.3024.002.0219, [35].

⁸³ Submissions of Counsel Assisting, SUBM.202.004.0001, [11.6].

⁸⁴ Rees Ex 4, WIT.004.002.0001, [14].

Hibbert, who undertook the role of initial Incident Controller.⁸⁵ His initial 'wordback' indicated the fire was not under control and requested additional tankers.

79. There was a designated level 2 ICC at Seymour Group Headquarters⁸⁶. After Ross Hibbert requested an escalation of resources, the incident was managed as a level 2 incident from the Seymour ICC.⁸⁷ The management of the fire by the Seymour ICC accorded with the escalation plan for the North East Area.
80. The appointment of personnel to key positions at Seymour also accorded with the level 2 pre-plan that had been prepared for 7 February 2009.⁸⁸ Noel Arandt assumed the role of Incident Controller,⁸⁹ John Clarke and Peter Robinson assumed Operations positions,⁹⁰ Barry Roworth was tasked to lead a strike team.⁹¹ Chris Bennett was tasked to go to Broadford to liaise with DSE.⁹² Margot Green, Paul Weston, Graeme Taylor, Peter Wales and David Stokes were also in attendance at Seymour.⁹³
81. As this escalation occurred, it was quickly decided to manage the incident from the level 3 Kilmore ICC. Peter Creak contacted Greg Murphy at approximately 12:05 and requested he take over as Incident Controller.⁹⁴ Mr Murphy's appointment was an interim measure until a level 3 Incident Controller could be deployed to Kilmore.⁹⁵ After ensuring that a basic structure covering key functional areas was in place at Kilmore ICC, command and control of the fire was handed over to Mr Murphy at the Kilmore ICC at 13:05.⁹⁶

⁸⁵ Hibbert Ex 659, WIT3004.021.0384, [17], Murphy Ex 505, WIT.3004.021.0001, [13] and [34].

⁸⁶ Creak Ex 504, WIT.3004.021.0148, [22].

⁸⁷ Arandt Ex 655, WIT.3004.021.0273, [16] – [17].

⁸⁸ *Seymour Group Incident Management Plan - Level 2*, Murphy (Annexure 4) Ex 505, WIT.3004.021.0059.

⁸⁹ Arandt Ex 655, WIT.3004.021.0273, [34], Creak Ex 504, WIT.3004.021.0148, [74.3].

⁹⁰ Robinson Ex 642, SUMM.044.002.2460_R, Clarke Ex 658, WIT.3004.021.0318, [36], Arandt Ex 655, WIT.3004.021.0273, [17].

⁹¹ Arandt Ex 655, WIT.3004.021.0273, [20].

⁹² Arandt Ex 655, WIT.3004.021.0273, [19].

⁹³ Arandt Ex 655, WIT.3004.021.0273, [27].

⁹⁴ Murphy Ex 505, WIT.3004.021.0001 at 0007, [14].

⁹⁵ Creak Ex 504, WIT.3004.021.0148, [70].

⁹⁶ Murphy Ex 505, WIT.3004.021.0001 [37]. Mr Creak was not aware of this at the time, and assumed that Mr Murphy was the Incident Controller from 12:05: Creak Ex 504, WIT.3004.021.0148 [69].

82. Contrary to paragraph [2.4] of Counsel Assisting's submissions, Mr Murphy's evidence was that he resorted to pre planned level 2 IMT lists to fill relevant IMT positions upon the Incident Control Centre being activated.⁹⁷ Mr Murphy staffed his IMT initially by reference to the pre planned level 2 teams and his personal knowledge of the qualities and experience of the personnel available to him. His evidence is that level 3 endorsed people were however quickly assembled. By 14:30, level 3 endorsed personnel occupied positions in the Planning Unit,⁹⁸ Operations Unit⁹⁹ and Logistics Unit,¹⁰⁰ with other level 3 endorsed personnel working within the IMT.¹⁰¹ Over the course of the afternoon, support roles were also filled as were liaison positions for Victoria Police and SES.¹⁰² Mr Murphy maintained the Incident Controller position until Mr Kreltzhaim (a level 3 CFA Incident Controller) arrived along with Mr Kneebone, a DSE level 3 Incident Controller to occupy the position of Deputy Incident Controller. Mr Rees gave evidence that such an approach was appropriate and that he 'knew the Incident Controller was a level 2 controller, which for this fire, certainly at the initial stages, is appropriate. Ideally you want level 3 people everywhere, but you don't have that luxury.'¹⁰³
83. DSE and Parks Victoria personnel, in addition to Mr Kneebone were also deployed to the Kilmore ICC to take up roles in resources, situation, air operations, liaison and recovery.¹⁰⁴
84. This escalation accorded with the both Chief Officer's expectations for an Incident Controller.¹⁰⁵
85. Mr Murphy was an appropriate and capable person to undertake the role of Incident Controller in view of the escalation plan in place at 7 February. Mr Murphy was an endorsed level 2 Incident Controller and was nominated in

⁹⁷ Murphy Ex 505, WIT.3004.021.0001, [27].

⁹⁸ Paul Blythman: Murphy Ex 505, WIT.3004.021.0001, [60].

⁹⁹ Peter Lucas: Murphy Ex 505, WIT.3004.021.0001, [60].

¹⁰⁰ Chris Bennett: Murphy Ex 505, WIT.3004.021.0001, [60].

¹⁰¹ John Smith, Noel Arandt, Justin Dally and Greg Murphy all held level 3 endorsements: *CFA Personnel for Wildfire Incident Functional Management Positions - Approved List - 01 Dec 2008*, Murphy (Annexure 2) Ex 505, WIT.3004.021.0024; Creak Ex 504, WIT.3004.021.0148 [72.5].

¹⁰² Murphy Ex 505, WIT.3004.021.0001 [54]; Creak Ex 504, WIT.3004.021.0148 [72.6].

¹⁰³ Rees T2416.

¹⁰⁴ John Kneebone, Dave Tyson, Merv McAliece, Judy Ryan, Ian Walton, James Stewart, Ian Foletta and Jane Court attended: Farrell Ex 254, WIT.3024.002.0219 [51]; Creak Ex 504, WIT.3004.021.0148 [72.4].

¹⁰⁵ Rees T2415 - T2416; Conway T6232.

the IMT planner to perform roles as a level 3 Operations Officer and level 3 Logistics Officer.¹⁰⁶ With his experience, and his local knowledge as Captain of the Kilmore Fire Brigade, Mr Murphy was an appropriate initial choice.

86. In accordance with the escalation plan, a level 3 Incident Controller was deployed to attend the Kilmore ICC to take over from Mr Murphy. Mr Creak gave evidence of discussions between the CFA North East Area General Manager, Alan Davies, and Mr Farrell regarding deployment to Kilmore.¹⁰⁷ It was decided that, in accordance with the IMT Planner, Mr Kreltszheim would be deployed to Kilmore with Mr Kneebone of DSE as his deputy.¹⁰⁸ Mr Kreltszheim was based at Mansfield ICC and left for Kilmore ICC at approximately 14:30.¹⁰⁹
87. Mr Murphy handed control over to endorsed level 3 Incident Controller, Mr Kreltszheim at 16:30.
88. Mr Blythman was present at the Kilmore ICC from 14:30. Mr Blythman is an endorsed level 3 Incident Controller.¹¹⁰ He was identified on the IMT Planner as being available on 7 February as a level 3 Planning Officer. He fulfilled this position on 7 February.¹¹¹ He was not asked to perform the role of Incident Controller and was not called to give evidence before the Commission to explain why he had made himself available as a level 3 Planning Officer for 7 February and not an Incident Controller. The Commission should note, however, the importance of the core AIIMS roles in the IMT is not to be underestimated, as 'the team is the thing that actually does the job, not one person'.¹¹² There are a number of different roles that need to be filled in an IMT.¹¹³
89. As noted above, at 14:30 a level 3 Incident Controller was deployed to the Kilmore ICC and that person arrived at approximately 16:30. It is accepted that it would have been preferable if a level 3 Incident Controller had been

¹⁰⁶ Murphy Ex 41, WIT.3004.001.0001 [11]; Murphy Ex 505, WIT.3004.021.0001 [31].

¹⁰⁷ Creak Ex 504, WIT.3004.021.0148 [72].

¹⁰⁸ Creak Ex 504, WIT.3004.021.0148 [72.2].

¹⁰⁹ Kreltszheim Ex 42, WIT.3004.001.0032 [12], [16], [17].

¹¹⁰ Murphy Ex 505, WIT.3004.021.0001 [30].

¹¹¹ IMT Planning NEA, Ex 204, DSE.HDD.0048.0540; Mr Creak gave evidence that at the time, he did not make the judgement that Mr Blythman should fulfil the incident controller position as Mr Blythman was nominated on the IMT planner for a different role: Creak T10869.

¹¹² Haynes T12088.

¹¹³ Creak T10871.

deployed to the Kilmore ICC sooner. However, as acknowledged by Counsel Assisting, the response was appropriate and timely.

90. The inconsistencies identified in the evidence and recognised by the State in the fire agencies arrangements for preparedness across the State have been addressed for the 2009/2010 fire season. CFA and DSE have formalised the requirements to pre-position IMT members.

Functioning of Kilmore ICC

91. It is suggested in the proposed key findings of Counsel Assisting that the lack of preparedness meant that the ICC did not function efficiently in a number of ways on 7 February.¹¹⁴ Several instances are identified in support of this submission, principally relating to the issue of communications.
92. The State submits that although there is some evidence of the problems the problems identified at [11.11(a)] to [11.11(e)] having occurred at the Kilmore East fire (and indeed other fires examined by the Commission), there is no proper basis on the evidence to attribute those problems to the alleged lack of preparedness of the Kilmore ICC.

Communication of Fireground Information

93. The State acknowledges that there were problems in respect of the timely communication of information from the fireground to the ICC. The State sees this as an important and complex issue which is not simply the product of an alleged lack of preparation.
94. The State notes that further evidence regarding communications will be heard by the Commission in 2010 as part of the systemic issues hearings. Set out below is available evidence heard for the Kilmore East fire as relevant to the submissions of Counsel Assisting.

Communications Planning

95. Communications for an incident occur within the structure of the chain of command. Communications planning is designed to reflect this chain of

¹¹⁴ See proposed key finding [11.11].

command and is tiered to enable communications within a span of control.¹¹⁵

96. The chain of command is set out in CFA Standing Order 8.00.¹¹⁶ The objective of the Standing Order is to provide clear lines of accountability and responsibility.
97. CFA and DSE procedures require the creation of a default communications plan that sets out relevant radio channels for command and fireground purposes. In the initial stages of an incident, the default communications plan is to be used until a communications plan is developed for an incident. Default communications plans are set out in planning documents including Regional Readiness and Response Plans,¹¹⁷ Regional Operations Management Plans¹¹⁸ and Local Mutual Aid Plans.¹¹⁹
98. The evidence shows that CFA brigades responded to incidents on 7 February in accordance with default communications plans established in their respective Regions.
99. The nominated radio channels used in Region 12 (for the Kilmore East fire) were VHF channels 49, 50, 51 and 159,¹²⁰ as set out in the communications plans for the Seymour and Northern Highway Groups.¹²¹ The nominated radio channels used in Region 13 were VHF channels 54, 61, 55 and 58,¹²² as set out in the Lower Yarra Group Communications Plan.¹²³ The nominated radio channels used in Region 14 were VHF channels 61, 62, 63 and 64 in accordance with the Region 14 default communications plan.¹²⁴

¹¹⁵ Creak Ex 504, WIT.3004.021.0148 [154].

¹¹⁶ *Standard Operating Procedure*, Paterson, (Annexure 3) Ex 127, WIT.3004.010.0281 at 0983.

¹¹⁷ *DSE Fire Management Manual 8.1 - Fire Suppression*, Waller (Annexure 2) Ex 6, WIT.002.001.0111.

¹¹⁸ *Standard Operating Procedure*, Paterson, (Annexure 3) Ex 127, WIT.3004.010.0281 at 0979.

¹¹⁹ Haynes Ex 547, WIT.3004.023.0011 [135] – [141].

¹²⁰ Dixon Ex 652, WIT.3004.021.0348 [30], Creak Ex 504, WIT.3004.021.0148 [156] – [166]

¹²¹ Northern Hwy Group Default Communications Plan - CFA Only Incidents, Murphy (Attachment 14) Ex 505, WIT.3004.021.0146; DSE - CFA Local Mutual Aid Plan Between DSE North East Area and CFA North East Area (Regions 12,22,23 & 24) - Draft Dec 08 - 2008-2009 Fire Season, Creak (Attachment 1) Ex 0338, WIT.3004.017.0032.

¹²² Barrow Ex 533, WIT.121.001.0001 [33], [48].

¹²³ *Kangaroo Ground ICC – Default Communications Plan*, Barrow (Annexure 2) Exhibit 533, WIT.121.001.0024: at 0029.

¹²⁴ Holland Ex 653, WIT.3004.021.0209 [90].

100. A communications planner was deployed to Kilmore ICC to devise a communications plan in response to the incident.¹²⁵

Communications on 7 February 2009

Fireground Communications

101. The Commission has heard some evidence from firefighters working on the Kilmore East fire about difficulties they experienced communicating with other crews over the radio.¹²⁶ Communication up and down the chain of command is an important issue in respect of all fires examined by the Commission. It is obvious in respect of all fires examined that there were a large number of instances of successful communications and some instances where communication difficulties were encountered. The Commission has not yet heard sufficient evidence on the reasons for any communications problems to make findings about the issue.
102. Evidence has been received that some people who engaged in the operational response on 7 February did not have contact with the ultimate controller or indeed appropriate personnel at the IMT. Counsel Assisting have submitted that these instances of lack of communication are attributable to lack of preparedness of the Kilmore ICC.¹²⁷ Similar instances of communication difficulties and instances of lack of communication can be found in respect of fires where level 3 IMTs were established and in place before any incident commenced. There is no evidence to support the contention that any instances of communication difficulties in respect of the Kilmore East fire were attributable to the manner in which the IMT was established.
103. It must also be understood that it was common and appropriate that people engaged in the emergency response on 7 February did not have direct contact with the Incident Controller or even the IMT. That is in accordance with the operation of the chain of command.
104. As explained by Ivan Smith, the Incident Controller for the Bunyip fires, who was based at the Pakenham ICC on 7 February 2009, as a part of the

¹²⁵ Creak Ex 504, WIT.3004.021.0148 [164].

¹²⁶ For example, Barrow T11543-T11544; Court Ex 513, WIT.3004.021.0292 [113]; Dixon Ex 652, WIT.3004.021.0348 [61].

¹²⁷ Submissions of Counsel Assisting, SUBM.202.004.0001, [11.11].

planning process on 6 February, a deliberate decision was made as part of the plan, for no radio contact between the ICC and the fireground. Rather, the IMT would communicate solely through one Division Commander. The rationale for such a decision was to try to force the chain of command, to make sure the chain of command was followed through the operations officer and that the only person who was authorised to speak to the Division Commanders was the Operations Officer. That would ensure the Division Commander received one source of information and was not bombarded by multiple sources. It was Mr Smith's goal that all information should flow back, via the Operations Officer from the Division Commanders and their Sector Commanders. This was done to allow the division commanders and the sector commanders to focus on their respective roles, and to prevent radio congestion and delay within the command structure.¹²⁸

105. In its submission regarding the Kilmore East fire, Counsel Assisting cite examples of individuals who did not have contact with the Kilmore ICC or the Kangaroo Ground ICC on 7 February.¹²⁹
106. Each of these individuals played an important role in the fire suppression effort. The State submits that it is advantageous to explore ways of ensuring that all relevant information travels up and down the communication line from the fire ground to people performing incident management roles in a timely manner. The flow of information is essential to ensure that those managing the fire can carry out their function of supporting the fire suppression activity and ensure timely, detailed and accurate information is made available to the community.
107. In respect of the Kilmore East fire, as with other fires, the evidence shows that despite some communications difficulties experienced by crews on the day, individuals did indeed communicate with the person to whom they reported under the chain of command.
108. Counsel Assisting in its submissions has stated that 'Mr Holland, like many others, had extreme problems contacting the Kilmore ICC'.¹³⁰ In his witness statement, Mr Holland stated that at 12:41 he assumed that Kilmore was the

¹²⁸ Smith Ex 587, WIT.3004.030.0001, [64]; Smith T12865:23.

¹²⁹ Submissions of Counsel Assisting SUBM.202.004.0019, [5.4-5.11].

¹³⁰ Submissions of Counsel Assisting SUBM.202.004.0019, [5.5].

ICC responsible for the fire but he had no confirmation.¹³¹ He does state that he had minimal contact with the Kilmore ICC and for all intents and purposes he was acting independently and responding to the fire in his area. Mr Holland gave evidence of communicating with Kilmore ICC through Justin Dally, that he spoke to people at the Region 14 RECC and that Phil Peacock, the divisional commander at Whittlesea spoke with Justin Dally.¹³² In fact he stated that at 17:05, 19:45 and 21:21 he spoke with Justin Dally at the Kilmore ICC.¹³³

109. The submissions of Counsel Assisting state that Ken Williamson could not communicate with Kilmore ICC on the day and therefore he did not provide details of important observations of the fire to the ICC and that the lack of communication had a 'major impact'.¹³⁴ Mr Williamson gave evidence that he had no direct communications with the Kilmore ICC over the course of 7 February.¹³⁵ He did not give evidence that he tried and could not communicate with the Kilmore ICC. In fact, there was no need for Mr Williamson to communicate directly with the Kilmore ICC. Mr Williamson was regularly in contact from the fireground with Mr Holland who was based at the Whittlesea Divisional Command¹³⁶. He also liaised with Mr Holland¹³⁷ and briefed the Divisional Commander Phil Peacock¹³⁸ in person at the Whittlesea Divisional Command about developments. Both Mr Holland and Mr Peacock communicated with Justin Dally at the Kilmore ICC.
110. In their submission, Counsel Assisting state that David McGahy and Paul Hendrie had no communication with the Kilmore ICC all day.¹³⁹ It would not be expected that captains on the fireground would necessarily need to communicate directly with an ICC. Indeed, following the chain of command, they would not contact the ICC directly. Both Mr McGahy and Mr Hendrie communicated with Divisional Commands. Mr Holland also spoke with

¹³¹ Holland Ex 653, WIT.3004.021.0209, [21].

¹³² Holland Ex 653, WIT.3004.021.0209, [62], [83].

¹³³ Holland Ex 653, WIT.3004.021.0209, [56], [65], [68].

¹³⁴ Submissions of Counsel Assisting SUBM.202.004.0019, [5.8].

¹³⁵ Williamson T4450:22.

¹³⁶ Williamson Ex 132, WIT.3004.009.0029, [25], [28], [31], [35], [37], [39], [40], [79], [89] Williamson T4435 - T4450.

¹³⁷ Williamson Ex 132, WIT.3004.009.0029, [60], [75], [86].

¹³⁸ Williamson Ex 132, WIT.3004.009.0029, [86], [93].

¹³⁹ Submissions of Counsel Assisting SUBM.202.004.0019, [5.10].

captains of brigades¹⁴⁰ as well as speaking specifically with Mr McGahy on the day.¹⁴¹ Mr Williamson also spoke with Mr McGahy.¹⁴²

111. Paul Hendrie gave evidence that he spoke with Peter Cumming, Deputy Group Officer, based at the Kangaroo Ground ICC. It was Mr Hendrie's understanding that Kangaroo Ground was in control of their area of the fire.¹⁴³ The fact it was not an Incident Control Centre in no way impacted on Mr Hendrie's communications with Kangaroo Ground. It was appropriate that Mr Hendrie's contact be to Kangaroo Ground, which was operating as a Division Command.
112. The submissions of Counsel Assisting refer to DSE Park Ranger Anthony Fitzgerald having no communications at all on 7 February with Kilmore ICC and that he was in a position to provide valuable information concerning the fire.¹⁴⁴ In his witness statement, Mr Fitzgerald refers to being told by Steve Grant at around 1 pm that Kilmore ICC was running the fire but 'they are not functioning very well-you are on your own'.¹⁴⁵ Mr Fitzgerald does not state that he made any attempt to contact Kilmore ICC and was unsuccessful, in fact, he states that it was agreed between he and Mr Grant that he would communicate with Mr Grant.¹⁴⁶ He does not state whether he passed on the information he had about the fire to Mr Grant and Mr Grant did not refer to any communications with Mr Fitzgerald in his witness statement.¹⁴⁷ It is also noted that Mr Fitzgerald's statement was tendered and he did not give evidence and that Mr Grant was also not called to give evidence. Counsel Assisting's reliance on this purported example indicates the lack of evidence upon which to base this submission.
113. Counsel Assisting submit that the Kinglake West fire brigade had no contact at all with the Kilmore or Kangaroo Ground ICCs.¹⁴⁸ While Karen Barrow, the Second Lieutenant of the Kinglake West Brigade, gave evidence that she was not aware of whom the Incident Controller was and received no communication from the Kilmore ICC, there is evidence that members of the

¹⁴⁰ Holland Ex 653, WIT.3004.021.0209, [30].

¹⁴¹ Holland Ex 653, WIT.3004.021.0209, [63], [64].

¹⁴² Williamson Ex 132, WIT.3004.009.0029, [29], [55]

¹⁴³ Hendrie Ex 25, WIT.027.0001.001, [14]; Hendrie T863.

¹⁴⁴ Submissions of Counsel Assisting SUBM.202.004.0019, [5.8].

¹⁴⁵ Fitzgerald Ex 669, WIT.3026.001.0154, [14].

¹⁴⁶ Fitzgerald Ex 669, WIT.3026.001.0154, [14].

¹⁴⁷ Grant Ex 667, VPO.001.041.0107.

¹⁴⁸ Submissions of Counsel Assisting SUBM.202.004.0019, [5.11].

Kinglake West Brigade did communicate with the Kangaroo Ground ICC. Ms Barrow gave evidence that Frank Allan, a member of Kinglake West Brigade, had spoken to personnel at the Kangaroo Ground ICC. As noted above, the Kangaroo Ground ICC was acting as a Division Command.¹⁴⁹

114. In the Royal Commission's Interim Report, the Commission referred to the evidence of David Cooper to the effect that he thought that the Kangaroo Ground Divisional Command would be managing the fire as the ICC.¹⁵⁰ Mr Cooper gave evidence that all the intelligence he had about the fire and his observations were conveyed back to Kangaroo Ground.¹⁵¹ He gave evidence of numerous communications he had with Kangaroo Ground.¹⁵² Kangaroo Ground was the Divisional Command by approximately 16:30¹⁵³ by which time that Mr Cooper was on the fireground, so it was entirely appropriate and in accordance with the chain of command structure that he communicated with Kangaroo Ground and not the Kilmore ICC.
115. The examples referred to by Counsel Assisting must be considered in the context of the chain of command. Pre planned response, communication and management plans were in place on 7 February and were used. Whilst of course acknowledging instances of communication difficulties (for a variety of reasons, including technical and extreme operational pressure on crews) as set out above, there is evidence that people communicated with the appropriate person in the chain of command.

Inter Region Communications

116. There has been evidence that, from the commencement the fire at Kilmore East, there was regular communication between personnel at the Kilmore ICC and the Region 12 RECC at Seymour.¹⁵⁴ Personnel at the Kangaroo Ground ICC communicated with the Region 13 RECC.¹⁵⁵

¹⁴⁹ Barrow Ex 533, WIT.121.001.0001, [20].

¹⁵⁰ *2009 Victorian Bushfires Royal Commission Interim Report*, [9.177].

¹⁵¹ Cooper T3270:9 – T3270:12.

¹⁵² Cooper T3256: 21 –T3257:6, T3257:17- T3257:22 and T3258:4- T3258:17, T3259:28-T3260:22 and T3268:22 to T3269:11.

¹⁵³ Lawrence, Ex 50, WIT.3004.001.0197, [37].

¹⁵⁴ Creak Ex 338, WIT.3004.021.0148 and Murphy Ex 505, WIT.3004.021.0001.

¹⁵⁵ Lawrence Ex 50 , WIT.3004.001.0197, Armstrong Ex 508, WIT.3004.008.0255.

117. On 7 February, liaison officers were posted at the Kilmore ICC¹⁵⁶ and Kangaroo Ground ICC.¹⁵⁷ Justin Dally, Region 14 Operations Officer, was the liaison officer at Kilmore and acted as a point of contact for information relevant to Region 14 and Region 13.¹⁵⁸
118. Jason Lawrence and Rocky Barca, who were both located at the Kangaroo Ground ICC, reported difficulties contacting the Incident Controller at the Kilmore ICC.¹⁵⁹ Parts of their evidence to the Commission were set out in the Commission's Interim Report.¹⁶⁰
119. Mr Lawrence gave evidence that he spoke with people at the Kilmore ICC, namely Operations Officer Peter Hayes, Justin Dally, Mr Murphy and later Mr Kreltshheim.¹⁶¹ However, Mr Lawrence also reported he tried to contact the Kilmore ICC by mobile and landline phone, but he was 'not able to make contact'.¹⁶² Mr Lawrence stated that he kept in contact with the Region 14 Liaison Officer, Operations Officer Justin Dally.¹⁶³ Mr Lawrence also gave evidence that in kept in contact with Phil Peacock, the Divisional Commander in Whittlesea.¹⁶⁴
120. In his witness statement, Mr Barca gave evidence of conversations with personnel at the Kilmore ICC including Ian Walton, the designated DSE Liaison Officer at Kilmore ICC and Stewart Kreltshheim, the Incident Controller.¹⁶⁵ He also spoke to Mr Murphy at around 16:00.
121. As at times on the fireground there were communication difficulties and it is also clear that there were difficulties with the telephone system at Kilmore ICC during the day on 7 February. Contrary to Counsel Assisting's submissions however, the evidence and any logical analysis dictates that these difficulties had nothing to do with any alleged failure to have a preplanned IMT in place. Mr Creak and Mr Murphy explained the problem with the phone system at Kilmore ICC; the rotary capability of the telephone

¹⁵⁶ Murphy Ex 505, WIT.3004.021.0001, [51].

¹⁵⁷ Holland Ex 653, WIT.3004.021.0209, [66].

¹⁵⁸ Murphy Ex 505, WIT.3004.021.0001, [51-53], [81].

¹⁵⁹ Lawrence Ex 50, WIT.3004.001.0197 [19].

¹⁶⁰ *2009 Victorian Bushfires Royal Commission Interim Report*, 9.171-9.177.

¹⁶¹ Lawrence Ex 50, WIT.3004.001.0197, [19], [22], [23], [27].

¹⁶² Lawrence Ex 50, WIT.3004.001.0197, [20].

¹⁶³ Lawrence Ex 50, WIT.3004.001.0197, [19].

¹⁶⁴ Lawrence Ex 50, WIT.3004.001.0197, [19].

¹⁶⁵ Barca Ex 107, WIT.3026.001.0001, [32] [36] [51].

system was not functioning initially on 7 February.¹⁶⁶ Despite the preparations and testing undertaken by Mr Murphy on 6 and 7 February, the issue was not detected at that time (nor during previous exercises held at the ICC¹⁶⁷) that the telephone system at Kilmore was not installed with a rotary function that would enable calls to cascade to other lines if the initial line was busy. Without the rotary installed, incoming calls to the Brigade advertised number were not redirected to other available lines on the Commander system. The problem was identified within the ICC on 7 February 2009 and a rotary system was installed on 9 February 2009.¹⁶⁸ The difficulties that people had contacting the Kilmore ICC¹⁶⁹ appear to have been due to this deficiency.

122. In light of the above evidence, the connection drawn by Counsel Assisting regarding the alleged lack of pre-planning and specific communications difficulties experienced on 7 February is ill founded. The evidence above demonstrates that despite the communications difficulties encountered, communications did occur in accordance with the plans on the day.
123. The State submits that communications is a topic upon which the Commission is to hear further evidence and the prospect of the Commission ultimately making appropriate recommendations to improve communications would not be assisted by accepting Counsel Assisting's submission that the difficulties in respect of the Kilmore East fire were due to an alleged lack of preplanning and preparedness of an IMT.
124. Since the February 2009 fires, new communications infrastructure has been installed.¹⁷⁰ Further evidence regarding communications infrastructure will be heard by the Commission in 2010 as part of the systemic issues topic.

Communications with Aircraft

125. Counsel Assisting has submitted that the lack of preparedness of the Kilmore East ICC meant that the ICC did not function efficiently on 7

¹⁶⁶ Creak Ex 304, WIT.3004.021.0148 at [152].

¹⁶⁷ Creak Ex 506, WIT.3004.008.0309, [14].

¹⁶⁸ Creak Ex 304, WIT.3004.021.0148, [175].

¹⁶⁹ For example, the difficulties referred to by Lawrence Ex 50, WIT.3004.001.0197, [20] and Barca at T3477:26- T3477:31.

¹⁷⁰ See Barrow T11557:5- T11557:11. Further evidence may be adduced in the systemic issues hearings regarding communications.

February and that an example was the failure of aircraft (both tactical and spotting) to communicate with the Kilmore ICC.¹⁷¹

126. The State refers to and supports a finding in accordance with the evidence of Mr Murphy, referred to in the submissions of Counsel Assisting that aircraft were extremely effective in combating the southern flank of the fire and protecting assets in and around Wandong.¹⁷²
127. The State submits that preparations by Peter Creak and the State Air Desk were vital in ensuring that the initial dispatch of aircraft on 7 February were timely and organised. Mr Creak undertook preparations in response to the extreme weather conditions forecast for that day and ensured that Air Observer, Leigh Coleman and Air Attack Supervisor, Paul Leishman would be on standby at Mangalore Airport from 9:00.¹⁷³ The State Air desk ensured that additional aircraft were also on standby.¹⁷⁴
128. Upon the Kilmore East fire being reported at 11:52 on 7 February Mr Creak coordinated air resource requests from the Seymour RECC¹⁷⁵. At 12:01 Mr Creak processed a request from Deputy Group Officer John Dixon for air support to assist in the attack on the fire front.¹⁷⁶ John Dixon was at the operations point and was assisting with the coordination of the fire fighting effort. The State Air Desk dispatched a spotter aircraft (Firespotter 381) and two firebombing aircraft involved in the fire attack (Helitack 747, Helitack 401). The two helicopters were supported by Firebird 307 which provided an air attack platform for the Air Attack Supervisor.¹⁷⁷ All aircraft were working over the fire by 12:53.¹⁷⁸ The observational aircraft was tasked with observing and reporting on the movement of the fire and tactical aircraft were tasked with water bombing spot fires ahead of the main fire.
129. The State refers to paragraph [5.3(a)] in the submissions of Counsel Assisting and acknowledges that the Air Observer on Fire Spotter 381, communicated information directly to the Seymour RECC. Mr Creak gave evidence that it was normal practice for the Air Observer to initially report

¹⁷¹ Submissions of Counsel Assisting, SUB.202004.0001, [11.11(b)].

¹⁷² Submissions of Counsel Assisting, SUB.202004.0001, [4.6].

¹⁷³ Creak Ex 506, WIT.3004.008.0309, [31].

¹⁷⁴ Creak Ex 506, WIT.3004.008.0309, [31].

¹⁷⁵ Creak Ex 506, WIT.3004.008.0309, [34].

¹⁷⁶ Creak Ex 506, WIT.3004.008.0309, [35].

¹⁷⁷ Creak Ex 506, WIT.3004.008.0309, [35].

¹⁷⁸ Creak Ex 506, WIT.3004.008.0309, [35].

directly to the RECC and then after one to two hours into the fire, the spotter would then report to the Incident Control Centre¹⁷⁹. It is noted that Fire Spotter 381 was grounded after the first hour of operation due to mechanical problems exacerbated by the intense weather conditions. A replacement aircraft had been tasked to attend other fires and was not able to return to assist above Kilmore East area as it was grounded due to poor visibility and high winds.¹⁸⁰

130. The State refers to paragraph [5.3(b)] in the submissions of Counsel Assisting and submits that tactical aircraft engaged in aerial fire suppression do not communicate with the Situation Unit at the ICC, as was asserted by Counsel Assisting. In line with the protocols contained in the *SAU Air Operations Manual*, the Air attack supervisor reported directly to Deputy Group Officer, John Dixon at the Operations Point on the fire ground. Further, Incident Controller, Greg Murphy noted that it would be normal to expect tactical aircraft to communicate with the Operations Point or Sector Commanders.¹⁸¹
131. The evidence of Mr Dixon was to the effect that although communication with the tactical aircraft was difficult at times, support from the air was very important in the suppression effort.¹⁸²
132. The State submits that information reported by tactical aircraft to the Operations Point was accurate, timely and communicated in accordance with normal practice.
133. Contrary to Counsel Assisting's submissions at paragraph [5.3(c)] and [5.3(d)], the Kilmore ICC did have information about the aerial fire fighting effort prior to 15:30. Evidence shows that Tim Tingiri, Situation Officer in the Kilmore ICC provided a situation report to James Holyman, the Situations Officer at the Seymour RECC advising that aircraft were attempting to protect assets north of Wandong.¹⁸³

¹⁷⁹ Creak T10874:3 – T10874:9.

¹⁸⁰ Creak Ex 506, WIT.3004.008.0309, [39].

¹⁸¹ Murphy Ex 505, WIT.3004.021.0001, [21].

¹⁸² Dixon Ex 652, WIT.3004.021.0348, [28].

¹⁸³ *PIR Detail – Inc No:1211362 –PIR No: 11*, Creak Ex 506 (Annexure 9), WIT.3004.008.0377.

134. Whilst acknowledging, as set out above, that there were some communications difficulties involving aircraft, there is no evidence to support the contention that any such difficulties were attributable to any lack of preparedness or failure to function efficiently by the Kilmore IMT, as submitted by Counsel Assisting.

Warnings

135. At paragraph [11.13], Counsel Assisting submit that critical warnings were not provided to communities in the path of the fire or were late and that some warnings were not uploaded onto the CFA website.
136. The State agrees that not all fire affected areas received timely warnings on 7 February 2009. The State agrees that some warnings were not uploaded onto the CFA website, however, frequent warnings were also issued on ABC 774 which also broadcast updates on the location and size of the Kilmore East fire
137. At paragraph [11.14] and [11.15], Counsel Assisting submit that the failure to provide appropriate warnings is not a criticism of the IMT at Kilmore ICC. The State agrees with this proposed finding. Counsel Assisting further submit that the failure to provide timely warnings was due to a lack of planning, system and operational efficiency. It is not clear to the State what is meant by this submission, but if it means that any failures to provide timely warnings were due to the alleged failure to prepare and pre-plan the Kilmore IMT the State submits that there is no evidence to support such a finding.
138. The submissions of Counsel Assisting at paragraph [6.3] and proposed finding [11.13] refer to communities in the 'path of the fire' fails to appreciate the reality that affected communities were not overrun by the head of the fire that ignited near Saunders Road Kilmore East but rather were devastated by separate fires that ignited tens of kilometres ahead of the main fire front.
139. As demonstrated by the evidence referred to below and set out in Attachment 4 to the State's submission, the statement at paragraph [6.4] of the submissions of Counsel Assisting is potentially misleading. True it is that those at Kangaroo Ground (and elsewhere) predicted that various communities might be at risk after the predicted wind change. No one

predicted that relevant communities would be impacted upon at or around the time they actually were and in the circumstances that eventuated. Moreover, as the evidence demonstrates, Kilmore East ICC issued an urgent threat message for Kinglake at 16:10, well over an hour before any such warning was sought to be issued by Kangaroo Ground. This is not a criticism of those at Kangaroo Ground. The conduct of those at Kangaroo Ground should not be used to evidence alleged failures by those at Kilmore to issue timely warnings.

140. The State submits that the primary causes for any failure to provide timely warnings was the extraordinary and unpredictable behaviour of the fires, consequential difficulties in obtaining accurate and timely information from the fire ground regarding fire behaviour, the earlier than expected arrival of the wind change and operational pressure experienced by all those involved in the emergency management response on the day.
141. The State supports initiatives to improve the quality and timeliness of warnings issued during fires and submits that the content of bushfire warnings in Victoria must be designed to maximise the potential to save lives.
142. The State submits that it is important to learn as much as possible from the events of 7 February. The evidence discloses that any deficiency in the issuing of warnings with respect to the fires must be viewed in the context of the unpredictable and unpredicted behaviour of the fire, which itself was further complicated by the earlier than predicted arrival of the south west wind change. It is important to recognise that this was the primary reason for any deficiency in warnings and that improvements, including improved capacity to accurately predict the behaviour of fire as a result of observations and analysis of what occurred on 7 February, should enhance the capacity for accurate, specific and timely warnings.
143. It is also important to recognise, that it will not always be possible for warnings to be delivered in time for communities to take appropriate action. For example, as explained in the expert testimony of Mr Crowe, the Strathewen - St Andrews fires were effectively independent and separate fires from the Kilmore East fire. In addition to the unpredictability of their ignition (because of both distance and direction of the spotting), the

behaviour of these fires was, if anything, even more unpredictable, rapidly escalating to destructive, uncontrollable proportions within minutes. These fires could just have easily been ignited by means other than the extraordinary spotting of the Kilmore East fire, some 25 kilometres away, leaving no time to issue warnings.

144. The State sees the issue of improved warnings as being connected to better and more timely fire behaviour prediction and the associated and equally important issue of getting accurate and timely information back to the ICC (and fire behaviour predictors) from the fireground.
145. The State also emphasises the importance of warnings, education and information well prior to days of extreme fire danger, because of the ever present reality that it may not be possible to provide a specific warning on the day of a fire and that people are more likely to react in a manner consistent with reducing risk if they have engaged in such programs, whether they receive a formal warning on the day or not. This is consistent with the expert evidence heard by the Commission.
146. The State accepts that not all fire-affected communities received a timely warning on 7 February and has made significant changes to improve the system for improving the issuing warnings. The inability to obtain accurate and timely information from the fireground, the rapid and unpredictable fire behaviour (including ignition of new fires by long distance spotting), the early arrival of wind change and the extreme pressure under which individuals were working on the day revealed limitations to the systems in place. The various initiatives the State has implemented to ensure accurate and timely warnings are outlined in paragraphs [168] - [174] of this submission.
147. However, the State does not agree that the absence of timely warnings was purely, as submitted by Counsel Assisting a consequence of a lack of planning, the lack of system and operational efficiency, In particular, the evidence does not support the making of findings of the kind proposed by Counsel Assisting at the last sentence of paragraph [11.14] (that ICC personnel were gathered together on an ad hoc basis) or paragraph [11.15].

Information available on 7 February

148. Peter Creak referred in his first witness statement,¹⁸⁴ to the information flow back into the RECC being patchy. Initially, he stated, they were able to rely on information from a firespotter aircraft but that was grounded at 13:44. Mr Creak gave evidence that a request was put in for another aircraft but it was not possible to get that aircraft back to the Kilmore fire until later in the day.¹⁸⁵ When a fire is rapidly developing and growing quickly, as it was on 7 February, it is often difficult to know exactly where the head of the fire is located. Peter Creak referred to reports from the field becoming rapidly outdated. He was conscious that fire information releases needed to go out regularly, however, it was important to ensure that all releases were accurate.¹⁸⁶
149. The extraordinary behaviour of the fire and lack of timely reliable information coming from the fireground impacted on the ability of those in the IMT to prepare accurate, timely and detailed warning messages. Stewart Kreltshheim gave evidence of this significant impediment 'I believe that warnings were sent as effectively as possible at the time with the information known'.¹⁸⁷
150. The speed and intensity of the fire and the resultant difficulties in issuing messages ahead of the fire was also addressed in the evidence of Mr Caughey. When asked when he had an understanding that the fire was 'out of control' he gave evidence that he issued one of the warnings to Wandong saying that the fire will be there in ten minutes and that never in his life had he issued a warning with such a very tight time frame and that it became fairly obvious at that stage (13:50) that the fire had real legs and was moving (speed) spectacularly. The need to get information out was becoming more and more important. Alex Caughey gave evidence that at that stage, everything about the fire was indicating to him that it was a major fire.¹⁸⁸ He also referred in his witness statement to the fire's behaviour being such that

¹⁸⁴ Creak Ex 506, WIT.3004.008.0309, [60].

¹⁸⁵ Creak T10874:24 -T10874:31.

¹⁸⁶ Creak Ex 506, WIT.3004.008.0309 at 0322, [60].

¹⁸⁷ Kreltshheim Ex 42, WIT.3004.001.0032, [38].

¹⁸⁸ Caughey T1693:3- T1693:18.

"our messages were nearly chasing the fire instead of the fire chasing our messages".¹⁸⁹

151. Counsel Assisting allege at paragraph 6.2(a) that Mr Caughey was overwhelmed with other duties. The State submits that the evidence established that in his role at the RECC, Mr Caughey dealt with calls from the public regarding the fire and also calls to the ABC. Mr Caughey was therefore inundated with duties specific to his role as Information Officer which prevented him from issuing an awareness message that he prepared at 12:50. The State submits that this must be taken in context to the volume of communications that he was required to deal with on the day in his role. Whilst working remotely at the Seymour RECC, Mr Caughey was in receipt of all relevant information and which was being communicated out through the Kilmore ICC. In this context, Mr Caughey's role may not necessarily have been carried out more effectively had Mr Caughey been situated at the Kilmore ICC rather than the Seymour RECC on the day.
152. The problems with information flow must be addressed through further training and improvement in communication systems. The expert witness Fabian Crowe gave an insight into the difficulties in ensuring that those with relevant fire behaviour information communicate it up the chain of command. His evidence was that CFA as an organisation is made up of people and whilst some at a fire may report it first and then react to it, others may be overwhelmed and not report it. 'Firefighters who found themselves in unprecedented situations were understandably conscious of their own safety and whatever fire suppression, but more likely asset protection, they could undertake. Many were not focussed on providing intelligence to others in the chain of command about the fire's behaviour.'¹⁹⁰ Firefighters who found themselves in unprecedented situations were understandably conscious of their own safety and whatever fire suppression, but more likely asset protection, they could undertake. Many were not focussed on providing intelligence to others in the chain of command about the fire's behaviour.

¹⁸⁹ Caughey Ex 52, WIT.3004.001.0154, [23].

¹⁹⁰ Crowe T10997:11 – T10997:22.

Predictive Information available about the Kilmore East fire

153. As referred to above, prediction mapping was carried out at a number of locations including the iECC, Kangaroo Ground ICC and Kilmore ICC. No one accurately predicted the course, timing and behaviour of the fire. The suggestion by Counsel Assisting at paragraphs [6.3] and [6.4] linking the alleged failure to give critical warnings to communities in the path of the fire and the purported recognition by Mr Barca of this does not accurately reflect the evidence. The concept of ‘the path of the fire’ is based upon the erroneous view of the evidence that the ‘firefront’ travelled from Kilmore East through effected areas in a predictable course. Mr Barca did not predict the course of the fire more accurately than anyone else. He recognised (as did others) that Kinglake, Strathewen, St Andrews and Flowerdale may be at risk on the arrival of the south west wind change. Attachment 4 to the State’s submission sets out the evidence regarding prediction mapping in support of the above proposition. The reliance by Counsel Assisting on the evidence of Mr Barca to support the criticism of others is dealt with under the Warnings topic herein. Such reliance and criticisms are misplaced.
154. Michael Sutton, from DSE, who was working in the Fire Behaviour Analysis Unit in the iECC on 7 February, prepared a witness statement and gave evidence about the predictive work done for the Kilmore East fire on the day.¹⁹¹ Mr Sutton gave evidence about a hand drawn predictive map that was initially prepared at approximately 15:11, was later amended and also produced into a smaller scale. The map was shown to Alan Slijepcevic, Chief Officer Contact and Ewan Waller at approximately 16:42.
155. Mr Sutton's witness statement refers to him discussing a grassland forward rate of spread of 5-6 kilometres per hour with Kevin Tolhurst at 15:28,¹⁹² and preparing a report about the fire (with input from Dr Tolhurst) after 16:42.¹⁹³ The maps produced predicted that Whittlesea would be impacted by the fire between 16:00 and 17:00, that Kinglake West would be impacted between

¹⁹¹ Sutton Ex122, WIT.3024.001.0008, [61]-[81]; Sutton T4059:1-4095:2.

¹⁹² Sutton Ex122, WIT.3024.001.0008, [67].

¹⁹³ Sutton Ex122, WIT.3024.001.0008, [67]-[72]; *Incident Management Log – FBA*, Sutton (Annexure 1), Ex 122 WIT.3024.001.0030; *Untitled Annexure*, Sutton (Annexure 2), Ex 122 WIT.3024.001.0045; *Fire Behaviour Estimates – 2 day Head Fire Intensity*, Sutton (Annexure 4) Ex 122 DSE.HDD.0005.2840, *Fire Behaviour Estimates – Day 0 key fire behaviour variables*, Sutton (Annexure 4) Ex 122 DSE.HDD.0005.2842; and Sutton T4066:13-T4075:4, T4090:15-4095:3.

20:00 and 21:00 and that Kinglake would be impacted shortly after 21:00. Experts in the iECC did not predict that areas such as Strathewen, St Andrews, Kinglake West and Kinglake would be impacted prior to the wind change. Tragically, this is what occurred.

156. Mr Sutton gave evidence that that the spotting occurred in and around St Andrews some three and a half hours before his model predicted and firefronts developed in St Andrews and Strathewen some four and a half hours before the he predicted the firefront hitting impacting on St Andrews and Strathewen.¹⁹⁴
157. It was not envisaged by anyone at the iECC, the Kilmore ICC, Kangaroo Ground ICC or the Seymour RECC at or before approximately 16:30 that areas such as Strathewen, St Andrews, Kinglake West and Kinglake would be impacted upon prior to the wind change.¹⁹⁵ In fact, the closest prediction was that it would be impacted upon well after the predicted wind change at approximately 20:00.
158. In light of this evidence it is appropriate to restate the State's submission, made to the Commission regarding the Interim Report:

'Predictive work done in the iECC was also based on models which underestimated the speed of travel of the fire and on weather forecasts which predicted a later arrival of the wind change and projected that communities would be affected much later than in fact they were. Even though the fire behaviour analyst's predictive map took into account information received as to the location of the fire between Upper Plenty and Mt Disappointment at 1530, it still predicted that the fire front would reach St Andrews between 2000 and 2100, preceded by spotting between 1900 and 2000. While the State contends that all predictive mapping should be provided to the ICC as a matter of priority and that warnings should incorporate and make use of fire projections, the predictive maps produced for the Kilmore East fire on 7

¹⁹⁴ Sutton T4093:17- T4093:29.

¹⁹⁵ In addition to the evidence referred to above reference is made to the evidence of Dr Tolhurst in Attachment 1 especially at [57]-[67] and the evidence of Mr Cowan set out in Attachment 2 especially at [117] and following.

February illustrate the limitations of predictive mapping. This serves as a reminder that predictive mapping is but one tool among others upon which warnings should be based. Those within an ICC are likely to be best placed to assess whether the predictions are accurate at the time they are made, which may be some time after receipt of the latest intelligence upon which they are based'.¹⁹⁶

159. As pointed out earlier in these submissions, the fire prediction maps prepared, in particular that prepared by the experts in the iECC and distributed at 16:30 on 7 February (Figure 5-2 in the Interim Report) were grossly inaccurate in the assessment of the areas and timing of impact of the fire. This is no criticism of those who prepared those maps or made those predictions, as it is clear that the fires of 7 February 2009 rewrote the book of fire behaviour and predictability of fire behaviour.
160. In the above context, it is difficult to maintain that an urgent threat warning to Kinglake and surrounds issued at 16:10 (read on ABC radio at 16:39) at a time when the experts predicting the course of the fire were not foreseeing impact on Kinglake until after 21:00, was 'not timely and did not reflect the fire information that was available'.¹⁹⁷
161. To assist the Commission we include as Attachment 4 to the State's submission a summary of the fire information releases issued in respect of the Kilmore East fire and comparison of releases either issued or prepared at Kangaroo Ground

Warnings for specific communities: Kinglake and Strathewen

162. There has been a substantial focus on the issue of warnings in respect of the townships of Kinglake and Strathewen.

¹⁹⁶ Submission of the State of Victoria, SUBM.100.005.0001, [117]

¹⁹⁷ Submissions of Counsel Assisting, SUBM .202.004.0001, [6.2]. In its submission to the Commission regarding its Interim Report, the State noted that 'all predictive mapping should be provided to the ICC as a matter of priority [126] and that warnings should incorporate and make use of fire projections, the predictive maps produced for the Kilmore East fire on 7 February illustrate the limitations of predictive mapping. This serves as a reminder that predictive mapping is but one tool among others upon which warnings should be based. Those within an ICC are likely to be best placed to assess whether the predictions are accurate at the time they are made, which may be some time after receipt of the latest intelligence upon which they are based'. Submission of the State of Victoria, SUBM.100.005.0001, [117], [126].

163. In respect of Kinglake, an urgent threat message (the 16:10 urgent threat message, Release Number 6) was prepared by Ms Hunter at the Kilmore ICC at approximately 16:00 and was signed by Mr Murphy.¹⁹⁸ The warning stated in part:

'The communities of Clonbinane, Mt Disappointment, Kinglake, Heathcote Junction and Upper Plenty, Humevale, Reedy Creek, Strath Creek may be directly impacted upon by this fire'.

164. Mr Caughey sent the 16:10 release to a number of recipients, including the ABC, UGFM Radio, Star FM Radio and the iECC.¹⁹⁹ It was emailed to the iECC at 16:35²⁰⁰ and faxed to the iECC at 16:38. Despite it being sent to the iECC, the message was not uploaded onto the CFA website as the email was not flagged as having been actioned by any of the three Information Unit staff who were uploading Fire Information Releases to the CFA website on 7 February 2009.²⁰¹

165. The release was read over 774 ABC by Mr Haynes at approximately 16:39²⁰² and was uploaded on the DSE website at 16:45.²⁰³

166. The ABC was unable to explain why the warning was not read out in accordance with arrangements regarding Urgent Threat Messages. Samantha Stayner, Acting Program Director of the ABC gave evidence that if an Urgent Threat Message was received by the ABC at 16:34 in relation to the township of Kinglake and other places that under the system it should be

¹⁹⁸ Hunter Ex 55 WIT.3004.001.0129 [18].

¹⁹⁹ Caughey Ex 53 WIT.3004.001.0154, [22], *Fax activity report from Seymour RECC*, Ex 53, TEN.011.001.0001 and Caughey T1707:28 - T1709:6.

²⁰⁰ *Email from Alex Caughley to iECC Information Unit Attaching Fire Information Release No. 6 for the Kilmore East Fire*, Henshaw (Annexure 18) Ex 149, WIT.3004.009.0220, *Fire Information Release - Urgent Threat Message - Kilmore East Fire - Release No. 6*, Henshaw (Annexure 18) Ex 149, WIT.3004.009.0221, Henshaw Ex 149, WIT.3004.009.0096, 75, Caughey Ex 53, WIT.3004.001.0154, [36] and T1697:17 to T1697:20.

²⁰¹ Henshaw Ex 149, WIT.3004.009.0096, [81].

²⁰² Henshaw T4808:3- T4808:16 and T4831: 8- T4832:18, Mr Haynes gave evidence that he referred to the communities of Clonbinane, Mount Disappointment, Kinglake, Heathcote Junction and others and that the reference to Kinglake came from a hard copy Urgent Threat Message or a threat message passed to him. He further gave evidence that it was given to him under the door sitting in the booth, that it was an Urgent Threat Message that he read directly out and he wouldn't have known if it was already on the net or if it had already been read or not: T6155:2- T6155:16.

²⁰³ Note: this information is taken from chronologies only and the source data has not been exhibited before the Commission. Mr Waller was taken to the 1745 DSE web update, but this document was not exhibited: T4370:8- T4370:18.

broadcast as soon as possible and then read repeated every 15 minutes.²⁰⁴

Ms Stayner said she would have to take it on notice and find out whether the 16:10 Urgent Threat Message that was faxed by Mr Caughey to the ABC at 16:34 and read out over the ABC by John Haynes at 16:39 was put on air by the ABC.²⁰⁵ Chief Officer Russell Rees was aware of the reference to Kinglake given by John Haynes over the air.²⁰⁶

167. None of the delays in publication of the 16:10 threat message for Kinglake had any connection to the alleged lack of preplanning and preparedness of the Kilmore ICC.
168. Kinglake was first mentioned in a warning posted on the CFA website at 17:55 as part of Fire Information Release No 7 that had been prepared by Leonie Hunter and signed by Stewart Kreltszheim. The Release was timed 17:20.²⁰⁷
169. During the Commission hearings Counsel Assisting highlighted the situation of the township of Strathewen. Strathewen was not mentioned in web or radio warnings before fire impacted upon it. The timing and magnitude of the impact of fire on Strathewen at around 15:30 and following was not predicted and was not predictable. The main fire front was some 25 kilometres away to the north west. Nearby Whittlesea was warned, as the fire was predicted to run much more to the west, on its southerly run.²⁰⁸ Strathewen and St Andrews were not predicted to be under potential threat until after the south west wind change, (if the fire travelled far enough south)

²⁰⁴ Stayner T1826:20-T1826:31, T1827:1-T1827:16.

²⁰⁵ Stayner T1834:1-T1835:3; Haynes Ex 196, WIT.3004.011.0058.

²⁰⁶ Rees T91:12-T91:21.

²⁰⁷ Hunter Ex 55, WIT.3004.001.0129, [20]; *Urgent Threat Message Release No: 7, 7 February 2009*, Hunter (Annexure 3) Ex 55, WIT.3004.001.0140 at 0141 to 0142.

²⁰⁸ Strathewen was not specifically referred in Fire Information Releases prepared for the Kilmore East fire. The following nearby communities were referred to in Fire Information Releases at the following times for Kinglake (approximately 6 kilometres from Strathewen) and Humevale (approximately 9 kilometres from Strathewen): a warning was read over ABC 774 at 16:39 and a further message was published on the CFA website at 17:55, for Arthurs Creek (approximately 7 kilometres from Strathewen): an urgent threat message was published on the CFA website at 16:43; for Whittlesea (approximately 14 kilometres from Strathewen): an urgent threat message was published on the CFA website at 15:53.

which, as at around 15:30, when the landscape in those areas commenced to erupt in fire, was not predicted to arrive until after 19:00.²⁰⁹

170. At paragraph 9.144 of its Interim Report, the Commission found, having observed that Mr Lawrence had telephone conversations with Mr Murphy and Mr Hayes at the relevant time, that it is difficult to accept that Mr Lawrence was in fact giving priority to the issuing of threat messages from the Kangaroo Ground ICC. Mr Lawrence gave evidence that he spoke with Mr Murphy 'regarding the fire and spotting into the Toorourrong Catchment area which is the northern part of Kangaroo Ground's footprint'.²¹⁰ The evidence discloses that Mr Barca also had numerous telephone calls with people where, had there been an air of urgency regarding threat messages and threat messages for Kinglake in particular, the topic would have been expected to be raised. It was not.²¹¹ The Commission should also note that Mr Barca acknowledged that he had written entries in his original log some time after March 2009, after his log was returned to him but had no recollection of doing so.²¹² Whatever be the situation it is clear that Mr Barca, along with all others engaged in predicting the course of the fire, saw any risk to Kinglake arising after the wind change.
171. None of the above is put by way of criticism of any person or agency but rather reflects the extreme pressure under which all engaged in the emergency response operated on 7 February.

Improving Warnings in the Future

172. Discussions between the Fire Agencies have resulted in the development of an integrated strategy which will address a number of matters including meeting the prescribed standard of preparedness and escalation is intended

²⁰⁹ See wind change chart issued at 1350 hours on Saturday 8 February: *Meteorological Aspects of the 7 February 2009 Victorian Fires, An Overview*, Williams (Annexure 1) Ex 22, WIT.013.001.0012.

²¹⁰ Lawrence Ex 50, WIT.3004.001.0197, [23]. In oral evidence Mr Lawrence stated that the conversation included 'where the fire was at, resources available to both sides of the firefighting effort and...control of the incident': Lawrence T1595:18-T1595:20.

²¹¹ Murphy Ex 505, WIT.3004.021.0001, [81]-[82]. Mr Graystone gave evidence that Mr Barbetti was concerned that the Kilmore East fire was going to be into Melbourne Water catchments areas and into DSE managed areas. Mr Graystone further gave evidence that Mr Barbetti did not raise any concerns from the Kangaroo Ground ICC as to the way the fire was being managed at Kilmore: Graystone T6054:22-T6055:14. See also *Untitled Annexure Munns* (Annexure 1.2) Ex 44, WIT.3004.001.0081 at 0082.

²¹² Barca Ex 107, WIT.3026.001.0001, [13].

to ensure the appropriate structure is in place so that timely warnings are provided to the community and relevant situation reports are provided to the Area of Operations Controller and in turn to the State Controller.²¹³

173. As part of improvements made for the 2009/2010 fire season, personnel in ICCs can now upload warnings to the CFA website, so delays caused by sending warnings to the iECC (now SCC) for uploading will no longer occur.²¹⁴ The CFA and DSE have implemented a Common Alerting Protocol for bushfire warnings and developed the One Source – One Message software tool (**OSOM tool**). This will mean that information and warnings entered onto the OSOM tool from the ICCs will appear concurrently on the CFA and DSE websites and will also be provided to VBIL operators, and media outlets for broadcasting.
174. In anticipation of the coming fire season, CFA has led joint training sessions for Information Officers, with additional training sessions scheduled in the future. Training for Information Officers has taken place including practical drills to give them the opportunity to experience preparing the new warnings.²¹⁵ 330 CFA and DSE personnel have participated in joint Information Officer training sessions, including 185 CFA personnel and 145 DSE personnel. Each participant attending the full training session is required to attend for three days. Last season this was a two day course.²¹⁶ A new IMT position of Public Information Officer has also been created.²¹⁷
175. Those participants attending the refresher course are required to attend a one day course, which covers topics such as the role of the Information Unit within the AIIMS structure, managing information, developing and authorising warnings and new methods of disseminating warnings. The refresher course also requires the participants to carry out a practical drill in order to give them the opportunity to experience preparing the new warnings and become familiar with the new OSOM tool.²¹⁸ The participants are assessed.²¹⁹

²¹³ Haynes Ex 547, WIT.3004.023.0011, [5].

²¹⁴ Haynes Ex 547, WIT.3004.023.0011, [106]-[111].

²¹⁵ Haynes Ex 547, WIT.3004.023.0011, [106]-[111].

²¹⁶ Haynes Ex 547, WIT.3004.023.0011, [106]-[108].

²¹⁷ Haynes T11968:9-T11968:10.

²¹⁸ Haynes Ex 547, WIT.3004.023.0011, [109].

²¹⁹ Haynes Ex 547, WIT.3004.023.0011, [110].

176. All CFA level 3 personnel are provided with the opportunity to update their skills and knowledge via attendance at joint CFA /DSE Regional Briefings which are held in October or November each year, as detailed in the evidence of Mr Haynes.²²⁰
177. The joint Information Officer training and refresher courses involves training in relation to the new command and control structure and provides a strong emphasis on the responsibility for issuing warnings. The Information Officers also receive training in respect of the SEWS, a joint SOP (J4.01) has been developed on Incident Information and Warnings.
178. CFA and DSE have prepared new Guidelines for the AIIMS Information Unit which set out in detail the reporting relationships and information flow within the Information Unit, the role and structure of the Information Unit, tools, processes and the activation of the Information Unit. The Guidelines have been provided to all training participants. The Guidelines will also form part of the IMT Toolbox and will be distributed to personnel with the IMT Toolbox.²²¹

²²⁰ Haynes Ex 547, WIT.3004.023.0011, [68].

²²¹ Haynes Ex 547, WIT.3004.023.0011, [111].

PROPOSED KEY FINDINGS

Counsel Assisting's Proposed Key Finding 11.1

The Kilmore fire demonstrated extreme fire behaviour. Once the fire reach Mountain Ash stands in Mt Disappointment, the spotting activity caused by the intensity of the fire, the wind, the convection column was likely unprecedented. Spotting fire was reported between 20 and potentially 40 kilometres from the main fire.

State's Response

The State agrees. The Kilmore East, Humevale and Strathewen fires were unprecedented and scientific models available as at 7 February 2009 were not able to predict the extreme fire behaviour that was demonstrated. Fire weather conditions were worse than those recorded on 'Black Friday' in 1939, or those on 'Ash Wednesday' in 1983.

Counsel Assisting's Proposed Key Finding 11.2

In some cases spot fires developed into significant fires in their own right (eg Humevale and Strathewen).

State's Response

The State agrees. Both the distance of spotting from the fire that commenced near Saunders Road, Kilmore East, and the speed with which the spot fires established themselves as uncontrollable 'main fires' was unprecedented and unpredictable.

Counsel Assisting's Proposed Key Finding 11.3

Consistent with the history of fire in south-east Australia, the south-westerly change brought fire havoc — the eastern flank of the fire upon the change extended from Clonbinane to Chum Creek area.

State's Response

The State agrees. The State submits further that it is important to recognise, the fact that at the time of the wind change from the south west there were at least three

separate large masses of uncontrollable fire burning, the Kilmore East fire burning north of the Whittlesea/Yea Road, the Humevale fires and the Strathewen fires.

Moreover, and extraordinarily, the Humevale and Strathewen fires burned in a northerly and easterly direction before the south westerly wind change. It is also significant that the south-westerly wind change arrived earlier than had been predicted and at high speed. Wind speeds in excess of 90 kilometres per hour were recorded. The wind change significantly impacted the three masses of fire, resulting in a rapid growth in the dimensions of the fire and an increase in smoke and flame heights. The eastern flanks of the fires moved at horrifying speed in the direction of the prevailing wind.

The wind change caused the three separate masses of fire then burning to burn with increased intensity in a north and north easterly direction from near Broadford in the north to the Chum Creek area in the south.

Counsel Assisting's Proposed Key Finding 11.4

Initial response was appropriate and timely. CFA brigades were at the scene of the fire quickly after call out. The need for additional resources was recognised and the response was in good time.

State's Response

The State agrees with this key finding.

Counsel Assisting's Proposed Key Finding 11.5

The Kilmore fire was not capable of containment, let alone control, likely within minutes of ignition.

State's Response

The State agrees with this key finding, and confirms that the above finding applies to each of the fires that ignited at near Saunders Road Kilmore East, the Humevale area, the Strathewen area and the Yarra Valley. It is also important to note that the evidence discloses that a number of spot fires were suppressed by initial attack including some at Humevale and near Arthurs Creek. Although with the benefit of hindsight it is apparent that these fires were likely to be incapable of containment

within minutes, fire fighters on the ground and members of the Fire Agencies worked tirelessly throughout the day and the night in their attempts to control these fires.

Counsel Assisting's Proposed Key Finding 11.6

The pre-designated Level 3 ICC was not established at the time of the Kilmore East fire – there was no semblance of readiness for the required hot start. No IMT was in place, no person of any level or qualification was appointed to IMT positions. It was the Operations Manager's role to have the ICC/IMT in readiness.

State's Response

The State disagrees with the contention by Counsel Assisting that there was 'no semblance of readiness'.

Under the direction of the Region 12 Operations Manager, the Kilmore ICC facility was set up on 6 February in preparation for potential use on 7 February. Available personnel within the Area were rostered on the Area wide IMT Planner and such personnel were on standby to be deployed.

The incident management team at the Kilmore ICC was initially assembled according to the pre planned Level 2 incident management team plans which identified personnel to fill IMT positions. If the expression hot start is intended to convey a prepositioned level 3 IMT, the State agrees that there was not a prepositioned level 3 IMT in place, however the State submits there was a significant level of readiness put in place for 7 February. The State also submits that the evidence demonstrates that the expression "hot start" was uncertain in its meaning.

By 14:30, Level 3 endorsed personnel fulfilled the key AIIMS positions within the IMT, other than the Incident Controller who was an endorsed Level 3 Operations Officer.

As the local brigade Captain, a qualified level 3 Operations officer and level 2 incident controller, Mr Murphy was an appropriate person to be the initial incident controller pending the arrival of a level 3 controller.

The fire agencies have instituted a new Joint Standard Operating Procedure regarding preparedness levels and the pre-positioning of IMTs according to fire danger conditions. Under the new arrangements, Area of Operations Controllers will be responsible for auditing preparedness levels.

Counsel Assisting's Proposed Key Finding 11.7

There was a shortage of Level 3 qualified personnel in the region. This situation existed in previous fire seasons and was known to senior CFA personnel.

State's Response

There were insufficient Level 3 qualified personnel in the North East Area to allow **all** incident control centres to be fully staffed by Level 3 incident management teams. The IMT Planner was a tool used to prepare the North East Area and to allocate staff appropriately trained and qualified as an incident escalated.

The DSE used tools to predict the resources available for worst case scenarios, conducted a gap analysis against their current resources and trained to meet the identified shortfall. The actual events of 7 February far surpassed these scenarios.

The Delegates of the Chief Officer of the CFA undertook annual regional audits to test preparedness levels.

The fire agencies have continued to train additional staff, including the fast-tracking of endorsing Level 3 personnel.

Counsel Assisting's Proposed Key Finding 11.8

The materials ostensibly indicating operational readiness were sent to the iECC by the Operations Manager (the IMT Planner). Reading of this information would have informed senior management at the iECC that the Kilmore Level 3 ICC was not pre-planned and not ready for a hot start.

State's Response

Extensive preplanning was undertaken at the Kilmore ICC. The Kilmore Level 3 ICC was preplanned and prepared according to the "escalation" model that had served the Region well.

The staffing of the ICC with an IMT was also preplanned and prepared as explained above.

The IMT planner provided to the iECC prior to 7 February set out in chart form Level 3 IMT personnel available for deployment as required on 7 February.

The North East Area could only be considered 'not ready' if the term 'hot start' is taken to mean that Level 3 ICCs had to be fully staffed with Level 3 IMTs at the beginning of the day. The evidence demonstrates that some CFA regions were able to achieve this level of preparedness and the North East Area not. The North East Area was however otherwise "ready" given the resources that were available and in respect of local conditions.

The use of the phrase 'hot start' is unfortunate as described in the evidence of Mr Haynes. It is not a technical description adopted in any standard operating procedure of either the CFA or the DSE. It or the phrase "warm start" was apparently used to describe the Chief Officers of DSE and CFA encouraging all regions to be at maximum preparedness for the conditions expected on 7 February. High levels of preparation and planning were undertaken in the North East Area.

Counsel Assisting's Proposed Key Finding 11.9

No initiatives or steps appear to have been taken to redress the shortage of personnel; the shortage was accepted and previous practice adopted. For what was anticipated for 7 February, this was unacceptable preparation.

State's Response

The State does not agree that there was "unacceptable preparation" but agrees that it would have been preferable for a level 3 incident controller to have arrived at the Kilmore ICC sooner and indeed preferable to have had a level 3 IMT in place when the incident commenced.

There is no proper basis to find that no initiatives or steps had been taken to redress staffing of ICCs in the North East Area. The fire agencies undertook high levels of preparation and planning that included addressing the issue of personnel availability.

Counsel Assisting's Proposed Key Finding 11.10

The Chief Officer, the State Coordinator and the State Duty Officer should have known that Kilmore ICC had no IMT prepositioned, and that it was not ready for a hot start on 7 February.

State's Response

The Kilmore ICC was prepared for operation on 7 February in the days leading up to 7 February.

Plans were in place to quickly form an IMT at the Kilmore ICC to deal with an incident and for the strengthening of that initial team as any incident escalated.

The evidence discloses an expectation and understanding by the Chief Officers that identified ICCs would have in place prepositioned IMTs capable of managing an initial response to an incident with the capacity to strengthen those IMTs as an incident escalated.

This understanding and expectation was not inconsistent with the content of the IMT planner provided by Mr Creak.

The new procedures as explained in the evidence of Mr Haynes and Mr Slijepcevic ensure greater definition and particularity in the required composition of prepositioned IMTs at particular ICCs and mandate the manner and timing of escalation, according to risk profiling.

. Senior fire agency personnel were briefed on the importance of a high level of preparedness for 7 February at teleconferences convened by the Chief Officers. Details of preparedness levels were sought from Regions and Districts across the State. The responses were checked on the morning of 7 February.

Counsel Assisting's Proposed Key Finding 11.11

The lack of preparedness of the Kilmore East ICC meant that the ICC did not function efficiently on 7 February. Instances included:

- (a) fire ground information was not conveyed to the ICC;

- (b) aircraft (both tactical and spotting) did not communicate with the Kilmore ICC;
- (c) there was confusion on the fire ground as to the role of the Kilmore ICC in managing the fire;
- (d) Brigades and Groups were unaware Kilmore ICC was in control of the fire;
- (e) information such as fire situation maps and prediction maps concerning the Kilmore East Fire were not provided to the Kilmore ICC.

State's response

The State submits that although there is some evidence of the problems identified at 11.11(a) to (e) having occurred at the Kilmore East fire, the evidence in the submission shows that these instances were attributable to other factors and not to any lack of preparedness of the Kilmore ICC. The State does not support that these instances were due to a lack of preparedness at the Kilmore ICC.

The evidence demonstrates substantial fire ground information was conveyed to the ICC by a variety of means including ground observers.

Aircraft did not communicate with personnel in the ICC however the practice as set out in the evidence did not require reporting to the ICC by tactical aircraft, but rather to the Operations Point on the fire ground, which did occur.

It is agreed that some people reported confusion as to the role of the Kilmore ICC in managing the fire and that some people were unaware of the Kilmore ICC's role. This must be seen in the context of the extreme and unprecedented fire behaviour on the day that saw new fires ignite up to 47 kilometres away from their source.

Notwithstanding the above, the evidence shows that firefighters responded appropriately and reported in accordance with the chain of command.

The State submits that all relevant maps prepared at the iECC should have been provided to the Kilmore ICC. It also would have been preferable if other relevant prediction maps had been provided to the Kilmore ICC. The State notes that the Kilmore ICC was preparing its own situation maps for the Kilmore East fire, based on information coming from the fireground.

The State submits that the flow of information and communication to and from the fireground and the iECC and IMT is important and needs to be improved. Further, the State submits that communication systems and ground communications are being upgraded.

Further evidence regarding communication will be heard by the Commission in 2010 as part of the systemic issues topic. It is submitted that no recommendations should be made about communications until this evidence has been heard.

Counsel Assisting's Proposed Key Finding 11.13

Critical Warnings to communities in the path of the fire were not provided or were late. Some Urgent Threat messages were not uploaded to the CFA website at all.

State's Response

The State agrees that some communities impacted upon by the fires were not provided with timely warnings and that some urgent threat messages were not uploaded onto the CFA website.

The State acknowledges that the provision of accurate and timely fire warnings to the community is a matter of the highest importance and therefore supports initiatives to improve the quality and timeliness of warnings issued during fires and agrees that the content of bushfire warnings in Victoria must be designed to maximise the potential to save lives.

Warnings about the Kilmore fire were also given on the day through radio broadcasts on the ABC, in particular the 1610 Warning that was read out by John Haynes on ABC 774.

The State has made significant changes to improve the system for issuing warnings.

Any deficiency in the issuing of warnings with respect to the Kilmore East, Humevale and Strathewen fires must be viewed in the context of the unpredictable and unpredicted behaviour of the fire, which itself was further complicated by the earlier than predicted arrival of the south west wind change and difficulties in obtaining accurate information from the fireground.

Notwithstanding the above, those working in at the Region 12 RECC at Seymour and the Kilmore ICC were focussed on the need to issue warnings. The Urgent Threat message issued at 1610 to a variety of communities including Kinglake was timely and appropriate having regard to available information including predictions of likely fire weather, direction and behaviour.

Counsel Assisting's Proposed Key Finding 11.14

The failure to provide appropriate warnings is not a criticism of the IMT at Kilmore ICC. The personnel were gathered together on an ad hoc basis over the course of the afternoon on 7 February.

State's Response

The personnel comprising the IMT were assembled in accordance with planning for the North East area. Issues of communication to and from the fireground and the unpredictable and unpredicted fire behaviour were the factors that directly contributed to the difficulties in issuing timely and accurate warnings, not the composition of the IMT or the manner in which it was set up as proposed by Counsel Assisting.

Counsel Assisting's Proposed Key Finding 11.15

The failure to provide appropriate warnings is demonstrative of the consequences of a lack of planning, the lack of system and operational efficiency. Proper system and proper operational efficiency come about when personnel can properly prepare and concentrate on the potential responsibilities that lie ahead of them on a day such as 7 February.

State's Response

The State submits that the evidence does not support a finding that any failure to provide appropriate warnings was a consequence of a lack of planning, a lack of system or a lack of operational efficiency.

Any deficiency in the issuing of warnings must be viewed in the context of the unpredictable and unpredicted behaviour of the fire, which itself was further

complicated by the earlier than forecast arrival of the south west wind change. The State submits that this was the primary reason for any deficiency in warnings.

The State regards the issue of improved warnings as being connected to better and more timely fire behaviour prediction and the associated and equally important issue of getting accurate and timely information back to the ICC (and fire behaviour predictors) from the fireground.

The Fire Agencies are working extensively toward providing better systems and training for those who are responsible for the preparation, approval and dissemination of warnings in the future.

The State also emphasises the importance of warnings, education and information well prior to days of extreme fire danger, because of the ever present reality that it may not be possible to provide a specific warning on the day of a fire and that people are more likely to react in a manner consistent with reducing risk if they have engaged in such programs, whether they receive a formal warning on the day or not. This is consistent with the expert evidence heard by the Commission.

Counsel Assisting's Proposed Key Finding 11.22

Preparations and preplanning by Victoria Police and Municipal Authorities were adequate with MERCS and DERCS undertaking thorough planning

State's Response

The State agrees with this key finding

Counsel Assisting's Proposed Key Finding 11.23

On 7 February Police did not receive adequate information about the run of the Kilmore fire from CFA. This restricted forward planning for Police

State's Response

The State submits that the CFA and the Victoria Police had comprehensive joint operational guidelines in place on 7 February. In the lead up to the fires, significant inter-agency preparations were undertaken at municipal, divisional and State levels.

On 7 February, police liaison officers were situated at both the Kilmore and Kangaroo Ground ICCs.

The availability of important information concerning the Kilmore East fire was limited and at times unavailable to the CFA. In these circumstances it was not possible to ensure that comprehensive and timely information was provided to Police.

The State submits that Counsel Assisting did not examine evidence about information sharing between the ICCs and the police liaison officers on the day. The State notes that this proposed key finding is not supported by the evidence

The State supports the continued efforts by agencies to strengthen current integrated emergency management arrangements. In May 2009 the Office of Emergency Services Commissioner produced a Practice Note to provide further guidance in the establishment and operation of Emergency Management Teams.

Counsel Assisting's Proposed Key Finding 11.23

There was a lack of consistency in road closures. CFA designations for "full" and "partial" were applied inconsistently. Police officers interpreted instructions applying to the road closures with common sense and initiative. Other police officers interpreted instructions strictly resulting in an inconsistent approach.

State's Response

The State submits that the Victoria Police have made significant changes to the Traffic Management Point Guidelines that were in place on 7 February 2009. These changes address the central issues that were identified by the Commission in the Bushfire Royal Commission's Interim Report, and they also address the further evidence that was presented to the Commission since the production of that Report.

Neil Clelland SC
Garry Livermore
Catherine Button
Counsel for the State of Victoria

Dated: 27 January 2010

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*Victorian Government Solicitor's Office
Solicitors for the State of Victoria*