

2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

Letters Patent issued 16 February 2009

**SUBMISSIONS OF THE STATE OF VICTORIA – OUTLINE OF ALLEGATIONS MADE BY
COUNSEL ASSISTING AGAINST INDIVIDUALS**

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A. Allegations against individuals made in respect of the Murrindindi fire***Tony Lovick (DPI Level 2 Incident Controller, Alexandra ICC)¹***

1. Allegation by Counsel Assisting: failure to evacuate²
 - 1.1 A growing understanding of the ferocity of the fire and of the forecast wind change did not prompt either Mr Miller or, after he took over as IC, Mr Lovick to evacuate Narbethong, Marysville, Buxton or the surrounding areas.³ Sufficient information was available by 4.00pm and any decision to evacuate could have been made by 4.30pm or 5.00pm.⁴ Mr Lovick did not appear to give active consideration to evacuating Marysville or any other area threatened by the fire before this time.⁵

Response in the State's submissions:

- 1.2 The State submits generally that there should be no criticism of the ICs with regard to evacuation. ICs acted in accordance with DSE and CFA policy⁶ in distributing warnings with a view to assisting members of the public to make their own choice as to what they would do.⁷ A new policy on evacuation has been developed since 7 February 2009 which clarifies the issue. In the circumstances, any criticism should fall on the policy and not the individual.
- 1.3 Mr Lovick discussed the issue of evacuation with Mr Miller at some point after Mr Miller's conversation with Sgt Rowles at 5.55pm.⁸ Mr Lovick's opinion was that any evacuation attempt at this late stage was extremely

¹ Background details –

(a) Evidence given on: 7 October 2009.

(b) Transcript references: T15 T8366:17-T8410:29.

(c) Witness statement exhibit and doc number: Ex 340 (WIT.3024.003.0001).

² Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.7-9.8.

³ Counsel Assisting's submissions, Murrindindi fire, paragraph 9.7.

⁴ Counsel Assisting's submissions, Murrindindi fire, paragraph 5.29.

⁵ Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.09.

⁶ *Emergency Management Manual Victoria*, Ex 9, TEN.001.001.0200, Parts 3, 7 and 8.

⁷ State's submissions, Murrindindi fire, paragraph 173.

⁸ State's submissions, Murrindindi fire, paragraph 171.

risky.⁹ The Emergency Management Manual Victoria clearly states that travelling on roads when there is a fire in the area poses a risk to both residents and the fire fighting effort.¹⁰

1.4 Those at the ICC at Alexandra received little factual information prior to 1600hrs. At 16 00hrs they received information concerning the failure of first attack and spot fires to the east of Black Range. At 1610 the IMT at Alexandra took control of the fire. It is understandable that it took some time to assimilate the information received and gain a better appreciation of the fire's movement. The State submits that it was not until the Alexandra IMT received a report from Mr Lawlor in the aircraft at about 17:00 that they were able to gain a better appreciation of the run of the fire.

2. Allegation by Counsel Assisting: failure to develop an Incident Action Plan¹¹

2.1 It is a responsibility of the IC (Messrs Miller and Lovick) under the AIIMS structure to develop an Incident Action Plan, but this was not done.¹²

Response in the State's submissions:

2.2 The State submits that the failure to draft a written Incident Action Plan was justified in the circumstances and in any event does not evidence any failure in strategic planning by the ICs.¹³ In a rapidly escalating incident it is well recognised that it may be difficult for written incident action plans to be prepared in the initial stages.¹⁴ On 7 February strategic plans were developed and discussed by the IC, and were then formally documented at change of shift (5.20am on 8 February).¹⁵

3. Allegation by Counsel Assisting: failure to deploy resources to appropriately protect lives¹⁶

3.1 Both Mr Miller and Mr Lovick were aware that people had gathered on Gallipoli Oval but neither considered providing protection for them.¹⁷ Mr Lovick viewed the oval as quite a safe area and didn't consider it necessary to do anything.¹⁸ In any event he regarded the deployment of resources at Marysville as a matter for Mr Williamson as Division Commander.¹⁹ Yet it is difficult to understand how this judgment could have been left to Mr Williamson when he did not know it needed to be made.²⁰

Response in the State's submissions:

3.2 The State submits that Mr Lovick and Mr Miller's assessment that the oval was safe, and there was no need to deploy resources there, was correct.²¹ Clearly the focus at the time was on those firefighters in Marysville trying to

⁹ Urgent Threat Message, Rattray-Wood (Annexure 5) Ex 202, DSE.HDD.0012.1658.

¹⁰ *Emergency Management Manual Victoria*, Ex 9, TEN.001.001.0200, Part 8 Appendix 5 Evacuation During Wildfire Emergencies.

¹¹ Counsel Assisting's submissions, Murrindindi fire, paragraph 5.41.

¹² Counsel Assisting's submissions, Murrindindi fire, paragraph 5.41.

¹³ State's submissions, Murrindindi fire, paragraphs 56-61.

¹⁴ Introduction to AIIMS-AIIMS Manual 3rd Edition, Haynes (Annexure 9) Ex 547, WIT.3004.024.0124 at 0208.

¹⁵ State's submissions, Murrindindi fire, paragraphs 80-82.

¹⁶ Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.21.

¹⁷ Miller T8344:26-T8355:8; Lovick T8388:20-T8389:13.

¹⁸ Lovick T8388:23-T8389:16.

¹⁹ Lovick T8388:23-T8389:16.

²⁰ Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.21.

²¹ State's submissions, Murrindindi fire, paragraph 205.

protect lives by undertaking a backburn; the only option to protect Marysville. In any event resources were deployed elsewhere at the time for protection of assets and lives.²²

4. Allegation by Counsel Assisting: failure to access available wind change information²³

- 4.1 Mr Lovick agreed that a spot fire weather forecast would have been a timely source of weather information to assist in his planning as the 'key condition' that he needed to deal with and plan for 'was the south-west change that was coming'.²⁴ He conceded that there was no practical reason to prevent him seeking a Spot Fire Weather Forecast on the afternoon of 7 February 2009.²⁵ This omission unnecessarily deprived the IMT of an important source of weather information about wind change; the wind change ultimately endangered firefighter safety.²⁶

Response in the State's submissions:

- 4.2 The State submits that there is no evidence that a Spot Fire Weather Forecast would have provided any information additional to that already available at the ICC.²⁷ The Alexandra IMT were relying on the Wind Change Charts prepared by the BOM.²⁸ The Fire Weather Directive states that these are the highest priority charts produced by the fire weather services within the BOM.²⁹

- 4.3 Mr Lovick was made personally aware of wind change forecasts, and there was ample information available to the IMT.³⁰ Mr Lovick asked Mr Steer, the Situation Officer, to monitor the weather front through Fireweb.³¹ The Wind Change Charts show the wind change arriving at Marysville at 20:00 or at various times after 20:00. At about 18:20, Mr David Hayse advised Mr Lovick in the ICC that the wind change was due to reach Marysville in about 50 minutes. Mr Lovick passed this information on to Mr Bowdern and Mr Steer. There is no evidence that a Spot Weather Forecast would have altered the existing expectation of the timing of the wind change in Marysville.

5. Allegation by Counsel Assisting: role in the Kings Rd backburn³²

- 5.1 In his witness statement, Mr Lovick makes no reference to being aware of the backburn before it was lit and initially in oral evidence he said he was not sure if he knew in advance that the backburn would be lit.³³ He ultimately claimed to have approved the backburn in a discussion with Mr Bowdern,³⁴ but Counsel Assisting questioned the reliability of this claim.³⁵ Counsel Assisting submits that the IC is best placed to make the decision on whether to commence a backburn.

²² See eg State's submissions, Murrindindi fire, paragraph 112-137

²³ Counsel Assisting's submissions, Murrindindi fire, paragraph 5.52.

²⁴ Lovick T8377:12-T8377:26

²⁵ Lovick T8377:12-T8377:14.

²⁶ Counsel Assisting's submissions, Murrindindi fire, paragraphs 5.53-5.54.

²⁷ State's submissions, Murrindindi fire, paragraph 141; Williams T766:10-T766:14.

²⁸ State's submissions, Murrindindi fire, paragraph 139.

²⁹ *Fire Weather Directive*, Rees (Attachment 12) Ex 3, WIT.004.001.0319, [8.1.2].

³⁰ State's submissions, Murrindindi fire, paragraphs 138-148.

³¹ Steer T8480:29-T8481:9.

³² Counsel Assisting's submissions, Murrindindi fire, paragraph 5.52.

³³ Bowdern T8446:21-T8446:23; Lovick T8392:17-T8392:18.

³⁴ Lovick T8393:12-T8393:13.

³⁵ Counsel Assisting's submissions, Murrindindi fire, paragraph 6.36.

Response in the State's submissions:

- 5.2 The State submits that Counsel Assisting misconstrues Mr Lovick's evidence.³⁶ His evidence was that he was not sure if he knew of the plan before the burn was lit, rather than whether he knew about the plan to backburn at all. Whilst Mr Bowdern did not specifically seek Mr Lovick's approval, Mr Lovick stated, 'If it's Greg Williamson, give him the go ahead',³⁷ indicating that he would have given approval if approval had been formally sought. Mr Lovick believed that, through this statement, he was giving approval for the backburn to be lit. DSE has no other more formal process for the approval of backburns. No sufficient basis has been advanced to reject the evidence of Mr Lovick or to characterise it as 'unreliable'.
- 5.3 There is evidence before the Commission that Mr Williamson was a trusted, experienced Division Commander. Those considering the question of whether to commence the backburn were in an invidious position. Those at Kings Road believed there was no other option to protect Marysville. Mr Bowdern considered time was tight but it was a good option in the circumstances.

6. Allegation by Counsel Assisting: failure to issue red flag warning³⁸

- 6.1 Mr Lovick was informed at about 6:20pm that the wind change would arrive at about 7.10pm.³⁹ He passed this information on to the relevant IMT officers and said that he asked them to pass the information on to firefighters, but Counsel Assisting questions his claim.⁴⁰ At 18:52 Mr Lovick requested Mr Bowdern to 'issue a warning of the predicted wind change to all fire line personnel and to check that all units got the message'.⁴¹ According to Mr Lovick this was 'in effect' a red flag warning, but the failure to actually issue a red flag warning breached protocols and imperilled firefighter safety.⁴²

Response in the State's submissions:

- 6.2 The State submits that the IMT acted reasonably in the circumstances and passed on all available weather information to firefighters in a timely manner.⁴³ At or around 18:52, Mr Lovick notified the relevant IMT officers to issue a warning of the predicted wind change to all fire line personnel and to check that all units received the message.⁴⁴ This was effectively a red flag warning. Mr Lovick explained he did not use an actual red flag warning because he had past experience that such warnings caused confusion amongst firefighters.⁴⁵ Mr Lovick explained that he was not sure whether the firefighters on Kings Road had previously been exposed to red flag warnings. Mr Lovick believed that by passing on information in the way he did, the key message that the weather change had come through would be understood by firefighters.

³⁶ State's submissions, Murrindindi fire, paragraph 121.

³⁷ Lovick T8393:12-T8383:13.

³⁸ Counsel Assisting's submissions, Murrindindi fire, paragraphs 5.57-5.65.

³⁹ Ex Statement of Lovick (WIT.3024.003.0001) [34].

⁴⁰ Lovick T8386:22-T8386:24; Counsel Assisting's submissions, Murrindindi fire, paragraph 5.57.

⁴¹ Ex 340 Statement of Lovick (WIT.3024.003.0001) [39].

⁴² Counsel Assisting's submissions, Murrindindi fire, paragraph 5.65.

⁴³ State's submissions, Murrindindi fire, paragraph 151.

⁴⁴ Lovick Ex 340, WIT.0324.003.0001, [39].

⁴⁵ Lovick T8386:12-T8386:26.

Andrew Miller (Parks Victoria employee, DSE Duty Officer and Level 1 Incident Controller, Alexandra ICC)⁴⁶

7. Allegation by Counsel Assisting: failure to evacuate⁴⁷

- 7.1 A growing understanding of the ferocity of the fire and of the forecast wind change did not prompt either Mr Miller or, after he took over as IC, Mr Lovick to evacuate Narbethong, Marysville, Buxton or the surrounding areas.⁴⁸ Sufficient information was available by 4.00pm and any decision to evacuate could have been made by 4.30pm or 5.00pm.⁴⁹ Mr Miller did not consider evacuation as an option, despite Sergeant Rowles raising it with him in a telephone call.⁵⁰ Mr Miller had a poor understanding of evacuation and was not even aware that it is the IC's responsibility to order an evacuation under the Emergency Management Manual.⁵¹

Response in the State's submissions:

- 7.2 The State submits generally that there should be no criticism of the ICs with regard to evacuation. ICs acted in accordance with DSE and CFA policy⁵² in distributing warnings with a view to assisting members of the public to make their own choice as to what they would do.⁵³ In the circumstances, any criticism should fall on the policy and not the individual.
- 7.3 Mr Miller became IC at 4.00pm and the IMT was not in a position to understand the run of the fire until about 5.00pm.⁵⁴ Mr Miller and Mr Lovick discussed the issue of evacuation at some point after Mr Miller's conversation with Sgt Rowles at 5.55pm.⁵⁵ At that time Mr Miller was no longer IC and he gave evidence that he thought Sgt Rowles was asking about evacuation rather than requesting it. Mr Rowles has no recollection of this conversation.⁵⁶ In light of this, the State submits that no firm conclusions can be reached.⁵⁷

8. Allegation by Counsel Assisting: failure to develop an Incident Action Plan⁵⁸

- 8.1 It is a responsibility of the IC (Messrs Miller and Lovick) under the AIMS structure to develop an Incident Action Plan, but this was not done.⁵⁹

Response in the State's submissions:

⁴⁶ Background details –

(a) Evidence given on: 7 October 2009.

(b) Transcript references: T8313:3-T8366:13.

(c) Witness statement exhibit and doc number: Ex 339 (WIT.3024.003.0093).

⁴⁷ Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.7-9.8.

⁴⁸ Counsel Assisting's submissions, Murrindindi fire, paragraph 9.7.

⁴⁹ Counsel Assisting's submissions, Murrindindi fire, paragraph 5.29.

⁵⁰ Ex 339 Statement of Miller (WIT.3024.003.0093) [82]; Miller T8343:22-T8344:25, T8346:8-T8348:21; Rowles T11951:31-T11953:2

⁵¹ Counsel Assisting's submissions, Murrindindi fire, paragraph 9.8; Miller T8347:3-T8347:19.

⁵² Emergency Management Manual Victoria, Parts 3, 7 and 8.

⁵³ State's submissions, Murrindindi fire, paragraph 173.

⁵⁴ State's submissions, Murrindindi fire, paragraph 173.

⁵⁵ State's submissions, Murrindindi fire, paragraph 171.

⁵⁶ Rowles T11952:31.

⁵⁷ State's submissions, Murrindindi fire, paragraph 174.

⁵⁸ Counsel Assisting's submissions, Murrindindi fire, paragraph 5.41.

⁵⁹ Counsel Assisting's submissions, Murrindindi fire, paragraph 5.41.

- 8.2 The State submits that the failure to draft a written Incident Action Plan was justified in the circumstances and in any event does not evidence any failure in strategic planning by the ICs.⁶⁰ In a rapidly escalating incident it is well recognised that it may be difficult for written incident action plans to be prepared in the initial stages.⁶¹ On 7 February strategic plans were developed and discussed by the IC, and were then formally documented at change of shift (5.20am on 8 February).⁶²
9. Allegation by Counsel Assisting: failure to deploy resources to appropriately protect lives⁶³
- 9.1 Both Mr Miller and Mr Lovick were aware that people had gathered on Gallipoli Oval but neither considered providing protection for them.⁶⁴
- Response in the State's submissions:
- 9.2 The State submits that Mr Lovick and Mr Miller's assessment that the oval as safe, and there was no need to deploy resources there, was correct.⁶⁵ Clearly the focus at the time was on those firefighters in Marysville trying to protect lives by undertaking a backburn; the only option to protect Marysville. In any event resources were deployed elsewhere at the time for protection of assets and lives.⁶⁶
10. Allegation by Counsel Assisting: failure as IC to control CFA resources⁶⁷
- 10.1 It is far from clear when the incoming IC, Mr Miller, took control of the CFA resources that were already fighting the fire. Surprisingly, he was unable to tell the Commission this simple fact.⁶⁸

Response in the State's submissions:

- 10.2 While no formal handover occurred between the incoming IC, Mr Miller, and the exiting Incident Controller, Mr Beer, there were ongoing communications both before and after the Alexandra IMT took control which enabled appropriate transfer of information.⁶⁹ The State submits that, given the fast moving nature of the fire, it is understandable that a formal handover (and therefore a precise time for the formal changeover in control of resources) did not occur.⁷⁰

Peter Farrell (DSE Land and Fire Manager, North-East)⁷¹

11. Allegation by Counsel Assisting: failure to appoint appropriate level 3 Incident Controller⁷²

⁶⁰ State's submissions, Murrindindi fire, paragraphs 56-61.

⁶¹ Introduction to AIIMS-AIIMS Manual 3rd ed, Haynes (Ann 9) Ex 547, WIT.3004.024.0124 at 0208.

⁶² State's submissions, Murrindindi fire, paragraphs 80-82.

⁶³ Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.21.

⁶⁴ Miller T8344:26-T8355:8; Lovick T8388:20-T8389:13.

⁶⁵ State's submissions, Murrindindi fire, paragraph 205.

⁶⁶ See eg State's submissions, Murrindindi fire, paragraph 112-137

⁶⁷ Counsel Assisting's submissions, Murrindindi fire, paragraphs 5.29.

⁶⁸ Miller T8326:27-T8326:29.

⁶⁹ Farrell Ex 347, WIT.3024.003.015.0154, [22], [44] and [37]; Beer Ex 350, WIT.3004.016.0016, [66]; Miller Ex 339, WIT.3024.003.0093, [59]; Rice Ex 348, WIT.3004.016.0091, [66].

⁷⁰ State's submissions, Murrindindi fire, paragraph 47.

⁷¹ Background details –

(a) Evidence given on: 16 September 2009, 8 October 2009.

(b) Transcript references: T7283:7-T7304:2 (16/09/09); T8495:30-T8513:5 (08/10/09).

(c) Witness statement exhibit and doc number: Ex 254 (WIT.3024.002.0219); Ex 347 (WIT.3024.003.0154).

- 11.1 Mr Farrell replaced Mr Miller with Mr Lovick who, on 7 February 2009 was an endorsed level 2 Incident Controller.⁷³ Mr Lovick was in transit to Kilmore at the time and it took him over an hour to get to Alexandra.⁷⁴ Mr Farrell admitted that prior to appointing Mr Lovick he made no further enquiries about the availability of other level 3 ICs, ie the experienced Mr Rice, who were closer to Alexandra.⁷⁵ This occurred in circumstances where there was a pool of 18 level 3 ICs to choose from to staff the Alexandra ICC on 7 February 2009.⁷⁶

Response in the State's submissions:

- 11.2 The State submits that there was nothing inappropriate about Mr Farrell's appointment of Mr Lovick.⁷⁷ Mr Farrell had observed him as IC at several level 3 incidents during the 2006/2007 Great Divide Fires.⁷⁸ Mr Farrell appointed Mr Lovick on the basis that he was available⁷⁹ and he was an experienced and qualified IC.⁸⁰ There is no evidence that Mr Lovick was incompetent in discharging his duties as IC.⁸¹ Additionally, Mr Farrell's staff relied on an IMT Planner which listed available ICs in the region on 7 February 2009.⁸² Mr Rice was not listed on the IMT Planner because he did not wish to travel. Other ICs had been deployed elsewhere (Mr John Kneebone) or were located a significant distance from Alexandra (Mr Rob Caddell).⁸³

Pauline Harrow (CFA Communications Officer, Marysville)⁸⁴

12. Allegation by Counsel Assisting: failure to communicate Marysville evacuation message⁸⁵

- 12.1 Fire tower operator Andy Willans contacted Ms Harrow at about 3.30pm and told her 'in no uncertain terms' to get to the fire station as quickly as possible to sound the alarm and evacuate Marysville.⁸⁶ She told him that she would get down to the CFA shed and speak to Glen Fiske, the Captain of the Marysville Brigade, which she did.⁸⁷ However she failed to understand or convey the urgency of Mr Willans' warning.⁸⁸

Response in the State's submissions:

⁷² Counsel Assisting's submissions, Murrindindi fire, paragraph 9.2.

⁷³ Farrell T8506:18-T8507:1.

⁷⁴ Ex 340 Statement of Lovick (WIT.3024.003.0001) [15]-[19].

⁷⁵ Farrell T8506:7-T8506:22.

⁷⁶ Farrell T8507:17-T8507:24; Counsel Assisting acknowledged that some of the CFA ICs listed were unavailable.

⁷⁷ State's submissions, Murrindindi fire, paragraphs 56-61.

⁷⁸ Farrell Ex 347, WIT.3024.003.015.0154, [57].

⁷⁹ Farrell T8505:16-T8505:29.

⁸⁰ Farrell T8505:16-T8505:29.

⁸¹ State's submissions, Murrindindi fire, paragraph 60.

⁸² Farrell T8499:9 – T8500:4.

⁸³ Farrell Ex 347, WIT.3024.003.015.0154, [57]; Farrell Ex 254, WIT.3024.002.0219 [51].

⁸⁴ Background details –

(a) Evidence given on: 12 October 2009.

(b) Transcript references: T8711:12-T8724:19.

(c) Witness statement exhibit and doc number: Ex 358 (WIT.3004.016.0247).

⁸⁵ Counsel Assisting's submissions, Murrindindi fire, paragraph 9.2.

⁸⁶ Willans T3035:25-T3036:8; Ex 94 Statement of Willans (SUMM.044.002.0084) at 0086.

⁸⁷ Harrow T8714:18-T8714:21; Ex 358 Statement of Pauline Harrow, Annexure 1 (VPO.001.030.0205) [9].

⁸⁸ Harrow T8714:15-T8715:14, T8716:15-T8716:24.

- 12.2 The State submits that Ms Harrow gave evidence that she understood Mr Willans was concerned and that, while she told Mr Fiske to evacuate Marysville, she thought the fire was some distance away and that the arrival of the fire was not imminent.⁸⁹ In circumstances where Mr Fiske did not give evidence, the State submits that there are no grounds for findings that Ms Harrow did not understand or convey the urgency of Mr Willans' warning.⁹⁰

Glen Fiske (CFA Marysville Captain)⁹¹

13. Allegation by Counsel Assisting: failure to implement Marysville evacuation message⁹²

- 13.1 Mr Fiske does not specifically recall the conversation with Mrs Harrow in which she told him of the need to evacuate Marysville, but he does not dispute that it occurred.⁹³ His statements describe his actions on 7 February; but make no mention of any attempt to evacuate Marysville. If people asked him for advice he responded, according to CFA policy on evacuations,⁹⁴ that it was their decision to stay or go but leaving by the Buxton Rd would have been the best option.⁹⁵

Response in the State's submissions:

- 13.2 The State endorses the submission that Mr Fiske acted in accordance with CFA's evacuation policy on 7 February 2009.⁹⁶ His actions in recommending that the ESA Children's Camp and Scenic B&B Motel⁹⁷ be evacuated and supporting evacuation of residents on the SES list should be acknowledged.⁹⁸

John Steer (DSE Air Attack Supervisor then Level 3 Situation Officer, Alexandra ICC)⁹⁹

14. Allegation by Counsel Assisting: failure to access available wind change information¹⁰⁰

- 14.1 Shortly before Mr Steer became Situation Officer, he was asked by Mr Lovick to 'check the weather front and prepare a Situation Report'.¹⁰¹ While Mr Steer understood that he was being asked to check Fire Web,¹⁰² he did

⁸⁹ State's submissions, Murrindindi fire, paragraphs 160-166.

⁹⁰ State's submissions, Murrindindi fire, paragraph 165. (NB Solicitors for the State wrote to the Solicitors for the Commission on 2 June 2009 asking that Mr Fiske not be called to give evidence due to his unfortunate personal circumstances. This request was acceded to by the Commission).

⁹¹ Background details –

(a) Evidence given on: 12 October 2009.

(b) Transcript references: T8724:26.

(c) Witness statement exhibit and doc number: Ex 359 (VPO.001.030.0197_R).

⁹² Counsel Assisting's submissions, Murrindindi fire, paragraphs 9.3-9.4.

⁹³ Ex 359 Statement of Fiske (WIT.3004.017.0261) [5].

⁹⁴ Ex 101 Statement of Rhodes, Att 4-6 (WIT.3004.003.0049); Att 2-18 (WIT.3004.002.0864).

⁹⁵ Ex 359 Statement of Fiske (WIT.3004.017.0261) [8].

⁹⁶ State's submissions, Murrindindi fire, paragraph 166.

⁹⁷ Circumstances of Death, 30 Nov 2009 at T12397; Adams, VPO.001.042.0029, [7].

⁹⁸ Fiske, VPO.001.032.0014 at 0017; Fiske, WIT.3004.017.0261, [7]; Hunter T8952:27-T8954:27; Bates Ex , WIT.110.001.0001, [8]-[10].

⁹⁹ Background details –

(a) Evidence given on: 8 October 2009

(b) Transcript references: T8466:4-T8495:27.

(c) Witness statement exhibit and doc number: Ex 345 (WIT.3024.003.0026).

¹⁰⁰ Counsel Assisting's submissions, Murrindindi fire, paragraphs 5.50-5.54.

¹⁰¹ Ex 345 Statement of Steer (WIT.3024.003.0026) [33].

¹⁰² Steer T8476:28-T8476:30.

not seek a Spot Fire Weather Forecast until after the wind had changed (he did so at 9.08pm) and he conceded that there was no impediment to him doing so earlier.¹⁰³ This omission unnecessarily deprived the IMT of an important source of weather information about wind change; the wind change ultimately endangered firefighter safety.¹⁰⁴

Response in the State's submissions:

- 14.2 The State submits that there is no evidence that a Spot Fire Weather Forecast would have provided any information additional to that already available at the ICC.¹⁰⁵ Mr Steer said that he did monitor the Automatic Weather Stations (AWS) through Fireweb.¹⁰⁶

Peter Creak (CFA Operations Manager, Region 12)¹⁰⁷

15. Allegation by Counsel Assisting: deficient preparation and planning for the fire¹⁰⁸
- 15.1 Counsel Assisting do not directly criticise Mr Creak.
- 15.2 Counsel Assisting set out the preparation and planning undertaken by Mr Creak regarding the Alexandra ICC and noted that Alexandra was not prepared for a 'hot start'.¹⁰⁹ Counsel Assisting are critical of the appointment of Mr Lovick as incident controller¹¹⁰ and note that Mr Creak was 'unable to explain the failure to appoint Mr Rice other than to inform the Commission that Mr Rice's preference was not to travel.'¹¹¹

Response in the State's submissions:

- 15.3 The State's submissions notes that the appointment of Mr Lovick by Mr Farrell was appropriate.¹¹² The State's submission also notes the considerations by Mr Farrell in making his decision.¹¹³

B. Allegations against individuals made in respect of the Churchill fire

Peter Lockwood (CFA Level 3 Incident Controller , Traralgon ICC)¹¹⁴

16. Allegation by Counsel Assisting: failure to access available wind change information¹¹⁵

¹⁰³ Steer T8477:29-T8477:31.

¹⁰⁴ Counsel Assisting's submissions, Murrindindi fire, paragraphs 5.53-5.54.

¹⁰⁵ State's submissions, Murrindindi fire, paragraph 141; Williams T766:10-T766:14.

¹⁰⁶ Steer T8480:29-T8481:9.

¹⁰⁷ Background details –

(a) Evidence given on: 6 October 2009, 14 October 2009 and 16 November 2009.

(b) Transcript references: T8277:30 - T8311:7, T9030:22 - T9036:11, T10842:27 - T10865:30, T10866:28 - T10898:31.

(c) Witness statement exhibit and doc number: Ex 506 (WIT.3004.008.0309), Ex 338 (WIT.3004.017.0001), Ex 504 (WIT.3004.021.0148).

¹⁰⁸ Counsel Assisting's submission regarding the Murrindindi fire, paragraph 13.3.

¹⁰⁹ Counsel Assisting's submission regarding the Murrindindi fire , paragraphs 5.6 – 5.9.

¹¹⁰ Counsel Assisting's submission regarding the Murrindindi fire , paragraphs 5.22 – 5.34.

¹¹¹ Counsel Assisting's submission regarding the Murrindindi fire , paragraph 5.34.

¹¹² Submissions of the State, RESP.3000.005.0112, paragraph 183.

¹¹³ Submissions of the State, RESP.3000.005.0112, paragraphs 55 – 61.

¹¹⁴ Background details –

(a) Evidence given on: 19 October 2009.

(b) Transcript references: T9189:4-T9253:28; T9287:10-T9305:11.

(c) Witness statement exhibit and doc number: Ex 389 (WIT.7520.001.0001).

¹¹⁵ Counsel Assisting's submissions, Churchill fire, paragraphs 2.27-2.38.

16.1 Mr Lockwood was not aware of any communications between the iECC and the Traralgon ICC about the wind change,¹¹⁶ of who the most likely point of contact in the ICC would have been,¹¹⁷ and even aware that there were BOM forecasters located at the iECC.¹¹⁸ Also, Mr Lockwood did not request any Spot Forecasts, but left it up to the planning unit to obtain them as necessary.¹¹⁹ The IMT was deprived of crucial and highly accurate wind change information that was available at the iECC from 16:30. Mr Lockwood was taken by complete surprise when the wind change arrived at 18:00 rather than the time advised to the IMT of 19:00.¹²⁰

Response in the State's submissions:

16.2 This allegation (about Mr Lockwood's knowledge of the wind change forecasts and weather forecasts generally) is not directly addressed in the State's submissions. In broad terms however, the State accepts that it would have been desirable for the Churchill spot weather forecast to have been circulated more broadly within the IMT (noting however that they were passed on through the Division Commander to the firefighters).¹²¹ Still, spot weather forecasts are only one of many sources of information about weather, many of which (including 'real-time tracking' of the wind change) were used at Traralgon on 7 February.¹²²

17. Allegation by Counsel Assisting: failure to issue accurate threat messages¹²³

17.1 Mr Lockwood did not appoint a media officer¹²⁴ and was unable to recall his role in relation to identifying locations that ought to be warned.¹²⁵ He did however state under cross examination that Callignee and Koornalla should have been warned of the fire and he could not explain why they were omitted from threat messages.¹²⁶

Response in the State's submissions:

17.2 The State submits that, although there was no Media Officer appointed, the AIIMS manual does not require the appointment of a Media Officer and the Information Unit was well staffed with six members.¹²⁷ Mr Lockwood's anticipation of the risk posed on the wind change is reflected in the unequivocal warning given by him on ABC Gippsland at 16:25. Mr Lockwood warned those east of the fire, which he described by reference to a line from Churchill down to Yarram-Woodside, that the fire would be heading in their direction after the change.¹²⁸ This warning was plain in its terms and extended to both Callignee and Koornalla. Warnings broadcast over the radio at other times also mentioned surrounding towns.

18. Allegation by Counsel Assisting: failure to develop an Incident Action Plan¹²⁹

¹¹⁶ Lockwood T9239:6-T9239:9

¹¹⁷ Lockwood T9239:13

¹¹⁸ Lockwood T9237:28-T9237:30.

¹¹⁹ Lockwood T9236:2-T9236:8.

¹²⁰ Lockwood T9236:15.

¹²¹ Mitchell Ex 401, WIT.3024.003.0315_R, [38].

¹²² Gillham T9392-T9393.

¹²³ Counsel Assisting's submissions, Churchill fire, paragraph 5.41.

¹²⁴ Counsel Assisting's submissions, Churchill fire, paragraph 3.2.

¹²⁵ Lockwood T9215:1-T9216:15.

¹²⁶ Lockwood T9226:28-T9227:4.

¹²⁷ State's submissions, Churchill fire, paragraph 26.

¹²⁸ Transcript - Extract from EX79, Lockwood (Annexure 16) Ex 389, WIT.7520.001.0124 at 0127.

¹²⁹ Counsel Assisting's submissions, Churchill fire, paragraph 5.41.

- 18.1 It is the responsibility of the IC (Mr Lockwood) under the AIIMS structure to develop an Incident Action Plan.¹³⁰ This was not done.

Response in the State's submissions:

- 18.2 The State submits that the failure to draft a written Incident Action Plan was justified in the circumstances and in any event does not evidence any failure in strategic planning by the IC.¹³¹ In a rapidly escalating incident it is well recognised that it may be difficult for written Incident Action Plans to be prepared in the initial stages.¹³² Normally a full written IAP is not available until the end of the first shift. On 7 February strategic plans were developed by Mr Lockwood and discussed with his IMT staff.¹³³

- 18.3 As the AIIMS manual makes clear, firefighting tactics are to be determined in the field¹³⁴ Firefighters routinely make decisions in the field about fire suppression tactics during first attack. It is impossible to prepare and distribute an IAP in first attack mode. An IAP requires analysis and preparation. It is therefore expected that experienced firefighters will commonly make tactical decisions in the absence of a written plan.

19. Allegation by Counsel Assisting: failure to appoint a safety advisor in the ICC¹³⁵

- 19.1 Mr Lockwood did not appoint a Safety Advisor. The unexplained failure to appoint a Safety Advisor is another example of the dysfunctional Traralgon ICC and it is fortunate that no firefighter was killed or seriously injured.¹³⁶

Response in the State's submissions:

- 19.2 The State agrees that no Safety Advisor was appointed to the Churchill IMT. However it should be noted that Mr Lockwood in particular was not asked by Counsel Assisting if he considered the appointment of a Safety Advisor.¹³⁷ The comment about there being no deaths or serious injuries is unnecessary and invites unsubstantiated speculation.¹³⁸

Andrew Gillham (Parks Victoria employee, DSE Level 3 Planning Officer, Traralgon ICC)¹³⁹

20. Allegation by Counsel Assisting: misinterpretation of wind change forecast¹⁴⁰

- 20.1 Mr Gillham formed the view and informed attendees at the 3:00pm IMT meeting that the wind change was due at 7:00pm, being a 'mean or average time' fixed upon by him.¹⁴¹ Many IMT officers held the belief

¹³⁰ Ex 475 AIIMS Manual (TEN.121.001.0001) at 0040.

¹³¹ State's submissions, Churchill fire, paragraphs 56-61.

¹³² Introduction to AIIMS-AIIMS Manual 3rd Edition, Haynes (Annexure 9) Ex 547, WIT.3004.024.0124 at 0208.

¹³³ State's submissions, Churchill fire, paragraphs 49.

¹³⁴ Introduction to AIIMS – AIIMS Manual 3rd Edition – Exhibit 547 – Annexure 9 to Statement of John Haynes WIT.3004.024.0124 at 0208

¹³⁵ Counsel Assisting's submissions, Churchill fire, paragraphs 8.20-8.25.

¹³⁶ Counsel Assisting's submissions, Churchill fire, paragraph 8.25.

¹³⁷ State's submissions, Churchill fire, paragraph 89.

¹³⁸ State's submissions, Churchill fire, paragraph 90.

¹³⁹ Background details –

(a) Evidence given on: 20 October 2009.

(b) Transcript references: T9375:19-T9436:16.

(c) Witness statement exhibit and doc number: Ex 395 (WIT.3024.004.0069).

¹⁴⁰ Counsel Assisting's submissions, Churchill fire, paragraphs 2.32-2.33.

¹⁴¹ Gillham T9392:19-T9392:30;

throughout 7 February 2009 that a wind change would affect the Churchill fire 'at 19:00'.¹⁴²

Response in the State's submissions:

20.2 It should be acknowledged that: the time of 7.00pm was consistent with the wind change chart issued by the Bureau at 1:50pm; there is no evidence the use of the median '7.00pm' caused any confusion in the IMT; and there is no evidence that Mr Gillham's references to '7.00pm' during IMT meetings were relied on by others.¹⁴³

21. Allegation by Counsel Assisting: failure to issue accurate threat messages¹⁴⁴

21.1 Unlike Koornalla, there were warnings issued to Callignee South, Callignee North and Callignee but the warnings were inadequate. Residents were warned at 3.30pm to expect 'heavy smoke and ember attack from the main fire', but they were not being warned that they were in the path of the firefront.¹⁴⁵ It is submitted that these communities should have been warned at 5:30pm, when those on the fire ground received the Red Flag Warning, that the wind change would move the front in the direction of those communities.¹⁴⁶ Mr Gillham incorrectly rejected the suggestion that the warnings should have gone out earlier.¹⁴⁷

Response in the State's submissions:

21.2 The State submits that the Commission should be very cautious in forming a view as to whether Mr Gillham's evidence on this point was 'acceptable'. This is particularly so in circumstances where: there is no basis on which to impugn his character; the Planning Unit was handling three large fires simultaneously; it is difficult to decide on what level of detail to include in threat messages; and there is potential to confuse the community with lengthy messages.¹⁴⁸ The evidence shows that Mr Gillham did put much effort into predicting the likely movement of the eastern flank of the fire due to the wind change, which was set out in the ABC warning to the community broadcast at 4.25pm.¹⁴⁹ Mr Gillham's evidence was that his thinking was only to issue an Urgent Threat Message when the threat was 'imminent', which was consistent with the Guidelines for the AIIMS Information Unit (August 2008) as at 7 February 2009.¹⁵⁰

Ross Pridgeon (DSE Strategic Planning Officer, Traralgon ICC)¹⁵¹

22. Allegation by Counsel Assisting: failure to make any contribution to predictive mapping¹⁵²

¹⁴² Counsel Assisting's submissions, Churchill fire, paragraph 7.9.

¹⁴³ State's submissions, Churchill fire, paragraph 19.

¹⁴⁴ Counsel Assisting's submissions, Churchill fire, paragraphs 3.19-3.25.

¹⁴⁵ Counsel Assisting's submissions, Churchill fire, paragraph 3.20.

¹⁴⁶ Counsel Assisting's submissions, Churchill fire, paragraph 3.21.

¹⁴⁷ Counsel Assisting's submissions, Churchill fire, paragraph 3.24.

¹⁴⁸ State's submissions, Churchill fire, paragraph 21.

¹⁴⁹ State's submissions, Churchill fire, paragraphs 24-25.

¹⁵⁰ Guidelines for AIIMS Information Unit, August 2008, Waller (Annexure 13) Ex 6, WIT.002.001.0385 at 0414; State's submissions, Churchill fire, paragraph 32.

¹⁵¹ Background details –

(a) Evidence given on: 20-Oct-2009.

(b) Transcript references: T9339:9-T9361:10

(c) Witness statement exhibit and doc number: Ex 393 (WIT.3024.004.0110).

¹⁵² Counsel Assisting's submissions, Churchill fire, paragraphs 6.1-6.18.

- 22.1 Mr Pridgeon produced only two maps during the day, the first shortly after 3.00pm and the second at about 9.00pm.¹⁵³ Mr Pridgeon personally prepared these two maps and he was unable to produce any other maps prepared by his team, or the infrastructure maps he had referred to in evidence.¹⁵⁴ It is indefensible that Mr Pridgeon did seek out spot forecasts or real-time weather information for use in his strategic planning, and his team therefore added little value to the ICC.¹⁵⁵

Response in the State's submissions:

- 22.2 The State submits that there are no bases upon which this Commission should make any adverse comment on the nature of the roles within Mr Pridgeon's unit, or that Mr Pridgeon's unit contributed little to the ICC.¹⁵⁶ There was no substantive evidence given, or sought, as to the nature of the work performed by those members of Mr Pridgeon's team. Similarly, both Mr Pridgeon and Mr Gillham's statements only dealt with the activities of the Strategic Planning Unit in general terms.¹⁵⁷ Mr Pridgeon and his team engaged in other work to assist the ICC and this was not put into evidence at the Commission. However, from the evidence that was adduced it is clear that Mr Pridgeon's work did have real and immediate value on the day.

- 22.3 The first map prepared by Mr Pridgeon was a vital tool in the early stages of the Churchill fire. The data he required to prepare the first map was only relayed to him from the fire ground shortly before 1500hrs and from this data he calculated the fire rate of spread in order to identify which communities were in the path of the fire and immediately at risk¹⁵⁸.

Using the first map Mr Pridgeon was able to identify where the head of the fire would be when the wind change arrived and the communities that would be affected by the wind change¹⁵⁹. This information was passed to the Information Unit, who utilised it to create warnings. A second map was prepared later in the day when further information was relayed from the fireground, and also had predictive value.

Brett Mitchell (Parks Victoria employee, DSE Deputy Level 3 Operations Officer, Traralgon ICC)¹⁶⁰

23. Allegation by Counsel Assisting: failure to provide an accurate red flag warning¹⁶¹

- 23.1 At approximately 17:30, a Red Flag Warning was issued by Mr Mitchell.¹⁶² Mr Mitchell's statement is silent as to the content of the Red Flag Warning he issued or as to the information on the basis of which he constructed it. Mr Mitchell stated he could not recall the precise terms of the Red Flag Warning he sent, but he was 'pretty sure it would have said that the wind change may be at a certain location or imminent within the next 30

¹⁵³ Counsel Assisting's submissions, Churchill fire, paragraphs 6.4 and 6.7.

¹⁵⁴ Counsel Assisting's submissions, Churchill fire, paragraph 6.9.

¹⁵⁵ Counsel Assisting's submissions, Churchill fire, paragraphs 6.4 and 6.7.

¹⁵⁶ State's submissions, Churchill fire, paragraphs 44-45.

¹⁵⁷ Pridgeon Ex 393, WIT.3024.004.0110, [32] and [38]; Gillham Ex 395, WIT.3024.004.0069, [51].

¹⁵⁸ Paragraph 27 – Statement of R Pridgeon WIT.3024.004.0116

¹⁵⁹ Paragraph 29 of his R.Pridgeon statement WIT.3024.004.0116

¹⁶⁰ Background details –

(a) Evidence given on: 20 October 2009.

(b) Transcript references: T9485:31-T9515:5.

(c) Witness statement exhibit and doc number: Ex 401 (WIT.3024.003.0315_R).

¹⁶¹ Counsel Assisting's submissions, Churchill fire, paragraphs 7.9-7.52.

¹⁶² Ex Statement of Mitchell (WIT.3024.003.0315_R) [41].

minutes'.¹⁶³ However, on balance the evidence appears to establish that Mr Mitchell passed down the message to the effect that the wind change was expected 'at 19:00'.¹⁶⁴

Response in the State's submissions:

23.2 The State submits that Counsel Assisting has acknowledged that from the evidence presented to the Commission, on balance, all that one can say is it's more likely than not that Mr Mitchell did exactly as he thinks he did, doing his best to remember: namely, he issued a wind change warning that it would come at about at 1800¹⁶⁵. The evidence shows that firefighters did receive and act on the warning message.¹⁶⁶ The State supports any improvements that can be made in the delivery of up-to-date weather information to firefighters and is taking steps to improve those processes.

C. Allegations against individuals made in respect of the Kilmore East fire

Russell Rees (CFA Chief Fire Officer)¹⁶⁷

24. Allegation by Counsel Assisting: lack of awareness re Kilmore ICC's preparedness¹⁶⁸

24.1 Mr Rees (along with Mr Paterson and Mr Conway) was unaware of the lack of preparedness of the Kilmore ICC and of the usual system of IMT placement in the North–East region. This demonstrates significant failure in the chain of command and reporting structures within that command. The evidence concerning the responsibility and role of the iECC and the Kilmore Fire will be addressed in due course in Counsel Assisting's submissions on the iECC and systemic issues.¹⁶⁹

Response in the State's submissions:

24.2 The State submits that Mr Rees gave evidence which adequately explained his expectations for the staffing of ICCs.¹⁷⁰ Mr Rees said that the approach adopted in the initial stages of the incident in preparing and staffing the Kilmore ICC was appropriate.¹⁷¹ The State submits that the evidence disclosed 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.¹⁷²

24.3 More generally on the issue of preparedness, the State submits that additional planning and preparation was undertaken in the North-East area

¹⁶³ Mitchell T9502:10-T9502:18.

¹⁶⁴ Counsel Assisting's submissions, Churchill fire, paragraph 7.39.

¹⁶⁵ T13743:7

¹⁶⁶ State's submissions, Churchill fire, paragraph 74.

¹⁶⁷ Background details –

(a) Evidence given on: 11-12 May 2009, 1 June 2009, 9-11 June 2009.

(b) Transcript references: T15:7-T102:14 (11/05/09); T143:30-T166:16 (12/05/09); T1842:13-T1870:2 (01/06/09); T2368:2-T2441:12 (09/06/09); T2509:2-T2580:16 (10/06/09); T2653:1-T2701:26 (11/06/09).

(c) Witness statement exhibit and doc number: Ex 3 (First witness statement) (WIT.004.001.0001); Ex 4 (supplementary witness statement) (WIT.004.002.0001); Ex 75 (actions on 7 Feb) (WIT.004.004.0001).

¹⁶⁸ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.19.

¹⁶⁹ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.12.

¹⁷⁰ Rees T2415:9.

¹⁷¹ Rees T2416.

¹⁷² State's submissions, Kilmore East fire, paragraph 33.

and at the Kilmore ICC in the lead up to 7 February.¹⁷³ The State concedes that this did not extend to fully staffing level 3 ICCs with level 3 IMTs prior to fires commencing, but new standards have been introduced in this regard.¹⁷⁴

25. Allegation by Counsel Assisting: false claim re Kilmore ICC prepared for 'hot start'¹⁷⁵

25.1 Mr Rees (along with Mr Paterson) said that Kilmore was a pre-designated Level 3 ICC prepared for a hot start on 7 February.¹⁷⁶ The Kilmore ICC was not prepared at any level for a hot start as an ICC at the time the Kilmore East fire was reported.¹⁷⁷ At the time of making his first statement on 1 May 2009, Mr Rees referred to the ICC at Kilmore as being a level 3 ICC at 'a high level of readiness'.¹⁷⁸ A 'high level of readiness' could never be achieved because of the lack of resources to fill IMTs. It was inappropriate for Mr Rees to make such a claim in May 2009 as he should have been aware of such deficiencies.¹⁷⁹

Response in the State's submissions:

25.2 Mr Rees gave evidence that by referring to 'hot start' he intended to convey that all regions should be prepared to the highest degree possible in advance of 7 February.¹⁸⁰ The State submits that the evidence does not support the contention that there was 'no semblance of readiness' for the required hot start'.¹⁸¹ Substantial preparations had been made to utilise available resources and to staff ICCs with IMTs as incidents occurred and escalated. However, the State accepts that while the terms 'hot start' and 'warm start' were intended to encourage the highest levels of preparedness, those terms are uncertain.¹⁸² If the expression hot start is intended to convey a prepositioned level 3 IMT, the State agrees that was not in place but submits there was a significant level of readiness put in place for 7 February.¹⁸³ The fire agencies have instituted new procedures regarding preparedness levels and the pre-positioning of IMTs according to fire danger conditions.¹⁸⁴ The allegation that Mr Rees should not have claimed in his witness statement that there were high levels of readiness is not addressed in the State's submissions.

25.3 The State's submissions note¹⁸⁵ that "evidence and findings concerning the responsibility and role of the iECC will be addressed in due course in Counsel Assisting's submissions regarding the iECC and systemic issues".¹⁸⁶

Gregg Paterson (CFA State Duty Officer)¹⁸⁷

¹⁷³ State's submissions, Kilmore East fire, paragraphs 66 and 74; 54-58; 63-64..

¹⁷⁴ State's submissions, Kilmore East fire, paragraphs 74-75.

¹⁷⁵ Counsel Assisting's submissions, Kilmore East fire, paragraphs 2.2 and 11.6.

¹⁷⁶ Rees T2415:18-T2415:27 (note Rees referred to a 'warm start'); Patterson T4261:7-T4261:18.

¹⁷⁷ Creak T10852:11-T10853:2.

¹⁷⁸ Ex 3 Statement of Rees (WIT.004.001.0001) [112].

¹⁷⁹ Creak T10857:26-T10858:3 and T10859:29-T10860:4.

¹⁸⁰ State's submissions, Kilmore East fire, paragraph 49.

¹⁸¹ State's submissions, Kilmore East fire, paragraph 73 and response to finding 11.6.

¹⁸² State's submissions, Kilmore East fire, paragraph 48 and response to finding 11.6.

¹⁸³ State's submissions, Kilmore East fire, response to finding 11.6.

¹⁸⁴ State's submissions, Kilmore East fire, response to finding 11.6.

¹⁸⁵ State's submissions, Kilmore East fire, paragraph 28.

¹⁸⁶ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.12.

¹⁸⁷ Background details –

(a) Evidence given on: 25 June 2009, 26 June 2009.

26. Allegation by Counsel Assisting: lack of awareness re Kilmore ICC's preparedness¹⁸⁸
- 26.1 Mr Paterson (along with Mr Rees and Mr Conway) was unaware of the lack of preparedness of the Kilmore ICC and of the usual system of IMT placement in the North–East region. This demonstrates significant failure in the chain of command and reporting structures within that command. The evidence concerning the responsibility and role of the iECC and the Kilmore Fire will be addressed in due course in Counsel Assisting's submissions on the iECC and systemic issues.¹⁸⁹
- Response in the State's submissions:
- 26.2 The State submits that the evidence disclosed 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.¹⁹⁰
- 26.3 Generally on the issue of preparedness, the State submits that additional planning and preparation was undertaken in the North-East area and at the Kilmore ICC in the lead up to 7 February that exceeded standards levels.¹⁹¹ The State concedes that this did not extend to fully staffing level 3 ICCs with level 3 IMTs prior to fires commencing, but new standards have been introduced in this regard.¹⁹² On the issue of chain of command and preparedness, the State submits that various steps were taken by and communicated to appropriate personnel to prepare the Kilmore ICC to the highest levels possible before 7 February, and this included inter-agency coordination.¹⁹³
- 26.4 The State's submissions note¹⁹⁴ that "evidence and findings concerning the responsibility and role of the iECC will be addressed in due course in Counsel Assisting's submissions regarding the iECC and systemic issues".¹⁹⁵
27. Allegation by Counsel Assisting: false claim re Kilmore ICC prepared for 'hot start'¹⁹⁶
- 27.1 Mr Paterson (along with Mr Rees) said that Kilmore was a pre–designated Level 3 ICC prepared for a hot start on 7 February.¹⁹⁷ The Kilmore ICC was not prepared at any level for a hot start as an ICC at the time the Kilmore East fire was reported.¹⁹⁸ Mr Paterson said that the Kilmore ICC was a Level 3 ICC ready for a 'hot' start in the sense it had staff in place

(b) Transcript references: T4238:2-T4279:4 (25/06/09); T4281:2-T4339:21 (26/06/09).

(c) Witness statement exhibit and doc number: Ex 127 (WIT.3004.010.0001).

¹⁸⁸ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.19.

¹⁸⁹ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.12.

¹⁹⁰ State's submissions, Kilmore East fire, paragraph 33.

¹⁹¹ State's submissions, Kilmore East fire, paragraphs 66 and 74; 54-58; 63-64.

¹⁹² State's submissions, Kilmore East fire, paragraphs 74-75.

¹⁹³ See eg State's submissions, Kilmore East fire, paragraph 54.

¹⁹⁴ State's submissions, Kilmore East fire, paragraph 28.

¹⁹⁵ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.12.

¹⁹⁶ Counsel Assisting's submissions, Kilmore East fire, paragraphs 2.2 and 11.6.

¹⁹⁷ Rees T2415:18-T2415:27 (note Rees referred to a 'warm start'); Paterson T4261:7–T4261:18.

¹⁹⁸ Creak T10852:11-T10853:2.

ready to operate at the start of a fire.¹⁹⁹ However there was no reasonable basis for reaching this view.²⁰⁰

Response in the State's submissions:

- 27.2 There is no direct response to the comments made by Mr Paterson on the Kilmore ICC being prepared for a 'hot start'. However the State submits that the evidence does not support the contention that there was 'no semblance of readiness' for the required hot start'.²⁰¹ Substantial preparations had been made to utilise available resources and to staff ICCs with IMTs as incidents occurred and escalated. However, the State accepts that while the terms 'hot start' and 'warm start' were intended to encourage all regions to implement the highest levels of preparedness, these terms are uncertain.²⁰² If the expression hot start is intended to convey a prepositioned level 3 IMT, the State agrees that was not in place but submits there was a significant level of readiness put in place for 7 February.²⁰³ The fire agencies have instituted a new procedures regarding preparedness levels and the pre-positioning of IMTs according to fire danger conditions.²⁰⁴

Geoff Conway (CFA Deputy Chief Officer; CFA State Coordinator on 7 February 2009)²⁰⁵

28. Allegation by Counsel Assisting: lack of awareness re Kilmore ICC's preparedness²⁰⁶

- 28.1 Mr Conway (along with Mr Rees and Mr Paterson) was unaware of the lack of preparedness of the Kilmore ICC and of the usual system of IMT placement in the North-East region. This demonstrates significant failure in the chain of command and reporting structures within that command.²⁰⁷ The provision of the IMT planners for the north-east region by Mr Creak to the State Co-ordinator should have placed the State-Coordinator on notice that key IMT personnel were not allocated to specific ICCs in the north-east region and that the ICC at Kilmore was not ready for a Level 3 hot start.²⁰⁸ The evidence concerning the responsibility and role of the iECC and the Kilmore Fire will be addressed in due course in Counsel Assisting's submissions on the iECC and systemic issues.²⁰⁹

Response in the State's submissions:

- 28.2 The State submits that the evidence disclosed an expectation and understanding by the Chief Officers, State Coordinator and State Duty Officer that identified ICCs would have in place prepositioned personnel

¹⁹⁹ Paterson T4261:19-T4261:27.

²⁰⁰ Creak T10854:18-T10854:21; Ex 127 Statement of Patterson (WIT.3004.010.0001) [28]-[29]; Creak T10854:20-T10855:2.

²⁰¹ State's submissions, Kilmore East fire, paragraph 73 and response to finding 11.6.

²⁰² State's submissions, Kilmore East fire, paragraph 48 and response to finding 11.6.

²⁰³ State's submissions, Kilmore East fire, response to finding 11.6.

²⁰⁴ State's submissions, Kilmore East fire, response to finding 11.6.

²⁰⁵ Background details –

(a) Evidence given on: 2-3 September 2009, 5 October 2009.

(b) Transcript references: T6164:11-T6177:15 (02/09/09); T6179:1-T6257:2 (03/09/09); T8084:20-T8116:16 (05/10/09).

(c) Witness statement exhibit and doc number: Ex 197 (WIT.3004.011.0023).

²⁰⁶ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.19.

²⁰⁷ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.19.

²⁰⁸ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.12; See also Proposed Key Finding 11.8.

²⁰⁹ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.12.

capable of managing an initial response to an incident with the capacity to strengthen those IMTs as an incident escalated.²¹⁰

- 28.3 Generally on the issue of preparedness, the State submits that additional planning and preparation was undertaken in the North-East area and at the Kilmore ICC in the lead up to 7 February that exceeded standards levels.²¹¹ The State concedes that this did not extend to fully staffing level 3 ICCs with level 3 IMTs prior to fires commencing, but new standards have been introduced in this regard.²¹² On the issue of chain of command and preparedness, the State submits that various steps were taken by and communicated to appropriate personnel to prepare the Kilmore ICC to the highest levels possible before 7 February, and this included inter-agency coordination.²¹³
- 28.4 The State's submissions note²¹⁴ that "evidence and findings concerning the responsibility and role of the iECC will be addressed in due course in Counsel Assisting's submissions regarding the iECC and systemic issues".²¹⁵

Peter Creak (CFA Operations Manager, Region 12)²¹⁶

29. Allegation by Counsel Assisting: confusion in relation to appointment of IMT staff²¹⁷

- 29.1 Mr Creak was 'not aware Mr Blythman was a Level 3 Incident Controller'. This is stated as evidence that 'confusion extended up the chain of command'.²¹⁸

Response in the State's submissions:

- 29.2 In the State's submission, it is noted that Mr Creak did not give evidence that he was not aware Mr Blythman was a Level 3 incident controller, rather that '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'.²¹⁹

30. Allegation by Counsel Assisting: inadequate planning²²⁰

- 30.1 The planning undertaken by Mr Creak for 7 February was usual for the north-east region.²²¹

²¹⁰ State's submissions, Kilmore East fire, paragraph 33.

²¹¹ State's submissions, Kilmore East fire, paragraphs 66 and 74; 54-58; 63-64.

²¹² State's submissions, Kilmore East fire, paragraphs 74-75.

²¹³ See eg State's submissions, Kilmore East fire, paragraph 54.

²¹⁴ State's submissions, Kilmore East fire, paragraph 28.

²¹⁵ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.12.

²¹⁶ Background details –

(a) Evidence given on: 6 October 2009, 14 October 2009 and 16 November 2009.

(b) Transcript references: T8277:30 - T8311:7, T9030:22 - T9036:11, T10842:27 - T10865:30, T10866:28 - T10898:31.

(c) Witness statement exhibit and doc number: Ex 506 (WIT.3004.008.0309), Ex 338 (WIT.3004.017.0001), Ex 504 (WIT.3004.021.0148).

²¹⁷ Counsel Assisting's submissions, Kilmore East fire, paragraph 2.12.

²¹⁸ Counsel Assisting's submissions, Kilmore East fire, paragraph 2.12.

²¹⁹ State's submissions, Kilmore East fire, footnote 111, Creak T10869.

²²⁰ Counsel Assisting's submissions, Kilmore East fire paragraphs 3.8, 3.14– 3.16, 11.6.

²²¹ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.8.

30.2 There is no evidence that Mr Creak made any requests for additional personnel for 7 February.²²² Mr Creak did not attempt to fill positions from outside the region. He appeared in his evidence to underestimate the importance of pre-positioning persons into designated roles.²²³ Furthermore, the failure to appoint any person as Incident Controller at Kilmore ICC, prior to the outbreak of any fire is demonstrative of a failure by the Operations Manager to properly plan and prepare for 7 February. This failure meant there was no pre-planning or preparation at the Kilmore ICC. The mere production of an IMT planner setting out availability of people to fill IMT positions fell short of the planning requirements necessary for a day such as 7 February.²²⁴

30.3 In addition, there was no semblance of readiness for the required 'hot start' and that it was the Operations Manager's role to have the ICC/IMT in readiness.²²⁵

Response in the State's submissions:²²⁶

30.4 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.²²⁷ 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'.²²⁸

30.5 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'.²²⁹ 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.²³⁰

30.6 The State further submits that 'substantial preparations had been made to utilise available resources and to staff ICCs with IMTs as incidents occurred and escalated'.²³¹ The State's submissions outline the set up of the Kilmore ICC facility, the initial assembly of the IMT according to plans and the fulfilment of key positions by endorsed Level 3 personnel.²³² It also notes that the State has instituted new requirements for preparedness.

²²² Counsel Assisting's submissions, Kilmore East fire, paragraph 3.14.

²²³ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.16 (footnotes omitted).

²²⁴ Counsel Assisting's submissions, Kilmore East fire, paragraph 3.15.

²²⁵ Counsel Assisting's submissions, Kilmore East fire, paragraph 11.6.

²²⁶ State's submissions, Kilmore East fire, paragraph 55 and 65.

²²⁷ Creak T9031:17.

²²⁸ Creak Ex 504, WIT.3004.021.0148, [52].

²²⁹ 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].

²³⁰ State's submissions, Kilmore East fire, paragraph 55.

²³¹ State's submissions, Kilmore East fire, 73.

²³² State's submissions, Kilmore East fire, pages 52-53.

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