

**WRITTEN DECISION AND FINDINGS OF THE ACT CHIEF
CORONER IN RELATION TO THE BUSHFIRE EVENTS OF
DECEMBER 2001**

After hearing evidence on 28, 29 and 30 January 2004, I delivered orally my decision and reasons in the matter on 13 February 2004.

The Role of the ACT Coroner in respect of Fire Inquiries

Section 18 of the *Coroners Act 1997* provides as follows:

“18 Coroner’s jurisdiction in relation to fires

(1) (1) A coroner shall hold an inquiry into the cause and origin of a fire that has destroyed or damaged property, if-

(a) (a) requested to do so by the Attorney-General; or

(b) (b) the coroner is of the opinion that an inquiry into the cause and origin of the fire should be held.

(2) (2) Where-

(a) (a) the owner or occupier of destroyed or damaged property requests a coroner to hold an inquiry into the cause; and

(b) (b) the coroner is of the opinion that an inquiry into the cause and origin of the fire should not be held;

the coroner shall give to each owner or occupier who requested that inquiry be held written notice of his or her opinion and the grounds on which the opinion is based.”

It should be noted that subsection 52(4) enables the coroner to comment on any matter connected with the fire including public health, safety or the administration of justice as follows:

“52(4) *A coroner may comment on any matter connected with the death, fire or disaster including public health or safety or the administration of justice.”*

Section 55 deals with the coroner making adverse comment in findings or reports concerning a party in the following terms:

“55 *Adverse comment in finds or reports*

(1) (1) A coroner shall not include in a finding or report under this Act (including and annual report) a comment adverse to a person identifiable from the finding or report unless he or she has, prior to the making of the finding or report, taken all reasonable steps to give to the person a copy of the proposed comment and a written notice advising the person that, within a specified period (being not more than 28 days and not less than 14 days after the date of the notice), the person may-

(a) (a) make a submission to the coroner in relation to the proposed comment; or

(b) (b) give to the coroner a written statement in relation to it.

(2) (2) The coroner may extend, by not more than 28 days, the period of time specified in a notice under subsection (1).

(3) (3) Where the person so requests, the coroner shall include in the report the statement given under subsection (1)(b) or a fair summary of it.”

Many hundreds of fires are reported to the coroner pursuant to the Act in any one year. An extremely small percentage of fires result in inquiries. Several fire inquiries are held each year, usually in conjunction with a suspicion of arson or at the request of a party or insurance company. The discretion to hold an inquiry is usually

granted upon a reasonable request being made. Fortunately, inquiries into bushfires up to 2001 in this Territory have been a rare event. The December 2001 bushfire inquiry along with the bushfire inquiry surrounding the 18th of January 2003 have been large exceptions to the normal rule.

Background

The occurrence of the fires here was orally reported to me on Christmas eve 2001. Within a relatively short time I had received a written police report along with a verbal briefing and a view by helicopter of the scene involving senior police officers and bushfire service employees. I was aware that a substantial review of all practices and procedures and occurrences would be conducted. At that time I left the various services to get on with the job of preparing for me a lengthy report.

On 2 July 2002, a report prepared by the ACT Bushfire Service was made to me concerning the bushfire events of December 2001. The report was made known to all relevant parties including at a later point of time, the ACT Sustainable Land Group. The report detailed the events antecedent to the bushfire commencing. It described fire behaviour and conducted an overview of incident management arrangements.

At that time the report seemed to contain a detailed analysis of the situation along with the fact that there was to be a review by the various services of the situation to consider improvements. The report included minutes of operational planning meetings.

During subsequent months I had conferred with the ACT Bushfire Service, the AFP and other relevant agencies as to what progress needed to be made in respect of a fire inquiry. At that time I had planned, with their agreement, to present the report, make it public

and call for public comment and then conduct a relatively straightforward inquest into the matters pointing out the lessons to be learned and future changes that may assist.

It was initially planned that this would take place prior to the forthcoming bushfire season in 2002/03.

Due to the unavailability of certain witnesses and the workload that was involved at that particular time, it was generally agreed that we would look forward to conducting the inquiry during perhaps January or February 2003.

Of course, the terrible events of 18 January 2003 intervened with the bushfires on that occasion. I then found it inappropriate to be holding any inquiry at that particular time when all bushfire and other services were stretched in coping with the emotional and practical situation created by the 18 January 2003 bushfires and in the process of reviewing and considering future procedures. Then it was announced that the McLeod Inquiry would investigate the 2003 bushfires from a procedural and documentary viewpoint.

It became obvious to me that perhaps there might be a need to examine more closely than I had originally planned the event surrounding the bushfires in December 2001. In particular, I imagined that it would assist the subsequent inquiry into the 18 January 2003 bushfire. Equally, it did not seem appropriate to be conducting large inquiries at the one time involving the same witnesses. This was for resource as well as emotional reasons. The Territory was in shock.

Upon consideration it seemed to me that there might be a need to look further beyond the detailed report submitted to me by Mr Lucas-

Smith and the ACT Bushfire Service. Issues were emerging that needed to be considered in the light of my inquiry.

One of the difficulties that exists in conducting fire inquiries is that normally the evidence in respect of the inquiry upon which the coroner is to rely is investigated and provided by the very service who may be the subject of consideration and review as to their performances and process. If a successful and effective inquiry is to be conducted, there needs to be, on behalf of the coroner, a contender or contradictor to test the evidence and reports forwarded by the services in control of fighting the particular fire. It was with that in mind and having consulted the parties that I employed Brian Parry and Associates to perform a review of the Lucas-Smith report. Mr Parry provided his first report to me on 16 October 2003.

Subsequent to that it was clear by written submission in November 2003 that the ACT Government representatives were challenging some of the conclusions and material put forward by Mr Parry in the review provided to me on 16 October 2003. The ACT Government provided a lengthy submission and the ACT Sustainable Lands Group also provided submissions. During the course of subsequent proceedings up until the end of 2003 a number of supplementary reports were prepared by Brian Parry and Associates. One of them particularly dealt with allegations raised by Rod Shaw concerning particularly the Red Hill fire and a number of other issues.

Overview

An overview of the situation is best seen by an examination of the Executive Summary and Introduction to Mr Lucas-Smith's report. The initial police report provided to me and a report of initial concerns by the ACT Sustainable Lands Groups provided a useful reference point.

There was an enormous amount of detail and documentation before this inquiry and the detailed reports from ESB and Parry and Associates have been made public and freely reported in the media. Further, there does not appear to be, except in a few isolated areas that I'll mention below, a great conflict of detail.

An overview of events is best summarized by reference to paragraphs 1-22 inclusive of the detailed report of Peter Lucas-Smith on behalf of ESB dated 2 July 2002 – Exhibit 1A in the proceedings – annexed as Annexure 1.

At the commencement of the main hearing of this inquiry on 28 January 2004, Mr Lucas-Smith submitted a further report to me concerning the implementation of recommendations arising from the Christmas 2001 bushfires with annexures – see Exhibits 11A, 11B and 11C. These documents are of considerable length and detail and do not need to be elaborated here in full. They may well provide useful information for my colleague Coroner Doogan conducting inquiries into the bushfire events of 18 January 2003. I annex the main part of Mr Lucas-Smith's report (part of Exhibit 11A) as Annexure 2 (see paragraphs 1-72 inclusive). An additional document in this connection is headed "The SMT Role in ICS" Exhibit 22. That document is separately annexed as Annexure 3.

Ms Sara Cronan, the officer assisting me in this inquiry has also prepared a useful timetable of events covering in particular the 52 hours of crisis the subject of this inquiry. That will be Annexure 4.

The ACT Sustainable Lands Group made two separate submissions to me on this matter. The initial submission by the group on June 2003 is Exhibit 3 in the proceedings. The subsequent submission dated 9 January 2004 by the group is Exhibit 10 in the proceedings. They are annexed as annexure 5a and b.

Brian Parry and Associates were engaged by me to review the reports and material submitted by the Chief Fire Control Officer (Peter Lucas-Smith) and also submissions by the ACT Sustainable Rural Lands Group and to provide an independent expert opinion upon the contents of the report. It is understood that this is a review process rather than a total investigation with the reinterviewing of many witnesses. Some witnesses were in fact interviewed for the purposes of the review process and numerous documents involved were examined. As a result of that the consultant raised a number of major issues arising from the fire that need to be addressed. It is clear in their work that people had some difficulty in recalling the details of the 2001 fire particularly due to the fact that the tragic and significant event of the bushfires in January 2003 had occurred in the interim period and quite a bit of high level trauma and concern existed in respect of that, particularly the volunteers and various members of the public were often involved in both incidents. The initial major report dated 16 October 2003 from Brian Parry and Associates was Exhibit 2 in the proceedings.

In his report Mr Parry provided a number of recommendations which he independently believed needed to be further investigated and developed. I annex as Annexure 6 segment 45.2 of the "Executive Summary and Recommendations" pages 46 to 50 of the report. Mr Parry at section 4.3 of his report gives an opinion of the likely influence of the 2001 fire event on the north-eastern extremities of the 2003 fire (this is included in the above annexure).

The Territory have provided a lengthy response dated 27 November 2003 to Mr Parry's report. It was then obvious that the Territory was challenging the content and some of the conclusions made by Mr Parry in his initial general report to the coroner. Mr Parry produced a number of other detailed reports relating to the matters raised in

the Territory response dated 11 December 2003, 22 December 2003 and 24 December 2003.

During the conduct of the inquiry an issue arose as a result of Mr Rodney Shaw coming forward to discuss issues with Mr Parry. Mr Shaw provided extensive material relating to various process, communications and recording systems. He particularly raised the issue about the recorded commencement time for the Red Hill fire. Mr Parry prepared a report separately into the issues involving the statements of Mr Shaw. This inquiry did generally consider the matters raised by Mr Shaw, in particular relating to the Red Hill fire and considered a vast amount of information and communication materials on that issue. Many other issues were raised by Mr Shaw that are left to the considerations of the second bushfire inquiry to deal with. I will not go into any further detail on Mr Shaw's issues as they will no doubt be subject of the second inquiry.

Much of the time of this inquiry focused upon what may be termed "the Stromlo plantation fire" and other related fire incidents in that area.

The principal incident and controller in respect of that matter was Tony Bartlett, Director of ACT Forests. Mr Bartlett prepared a detailed report of his involvement in this particular aspect of the fires during this period. That report is Exhibit 27 and is annexed as Annexure 7. At pages 21 and 22 of Mr Bartlett's report dated 19 February 2002, he sets out some recommendations arising from his experience in this fire.

A major concern in this inquiry particularly relating the Stromlo fire was the question of fuel loads and their control in forests. Tony Bartlett prepared as Exhibit 22 a synopsis of published reports on the question of fuels in pine plantations. That becomes Annexure 8.

Prior to December 2001 Tony Bartlett as Director of ACT Forests and Peter Lucas-Smith as Director of ACT Bushfire and Emergency Services had become concerned on the issue of fuel loads following tree felling in the Stromlo pine plantation area. Particular emphasis had been placed upon the management of slashing in areas and the management practices for the assessment in detail of bushfire hazard potential for heavy pine slash was a concern. Correspondence on that issue between Peter Lucas-Smith and Tony Bartlett prior to this fire event occurring dated 1 November and 28 November 2001 is annexed as Annexure 9. This clearly indicates that the two officers concerned with this issue had endeavoured to commence to address it after a considerable period where performance in this area fell short of what should have been expected. Unfortunately, the matter had only commenced to be addressed when the fire of December 2001 occurred.

During the inquiry issues arose as to the exact time and origin of the exact time and origin of the commencement of the Red Hill fire. Rod Shaw provided material particularly in respect of communications that initially indicated that the Red Hill fire had commenced several hours prior to when it was first sighted and recorded by the authorities. That matter was subject of detailed consideration in the inquiry and my findings in respect of that issue are contained below.

An issue arose between the evidence of Mr Bartlett and the submissions of the ACT Sustainable Lands Group as to the question of the absence of a back burn at the pines area during the fire event. That matter will also be subject of specific consideration by me below in my findings.

General Findings as to Cause and Origin of the Bushfire of December 2001

A full detailed report in respect of each of the fires subject of this inquiry as been prepared by Mr Rick McRae, Risk Management Unit, ACT Emergency Services Bureau – Exhibit 17. This report has been fully accepted by all parties at the inquiry and I find no reason to question any of its contents. The summary of Mr McRae’s findings in respect of each of the individual constituent fires in this event are annexed as Annexure10 and appear at pages 22 and 23 of his report.

As set out in the annexure, many of the fires are strongly suggestive of deliberate lighting by an arsonist. Constable Raquel Ilsley of the Australian Federal Police – Exhibit 16, clearly indicates that AFP investigations have not revealed the identity of any person who was guilty of activities of arson in respect of any of these fires. Specifically, the causes of the Red Hill and Mt Wanniasa fires cannot be determined. Mr McRae records an open finding in respect of the cause of those fires. Otherwise I accept the causation attributed by Mr McRae in the above extract from the attachment.

I am satisfied that many of the fires concerned were deliberately lit. Nevertheless, I am not in the possession of any information that would enable me to recommend charges against any person for arson. It is unfortunate that in cases like this, often the perpetrators of such misery and danger are not brought to justice.

As stated above, some aspects of the Mt Stromlo fire and the commencement time and surrounding circumstances of the Red Hill fire are dealt with below.

The Time of Commencement of the Red Hill Fire

As a result of Rod Shaw coming forward to Brian Parry and subsequent investigations of communications and phone calls received, an issue arose as to time that the Red Hill fire in fact started. The position of Mr Lucas-Smith and his staff is that the fire was first

recorded and acted upon at 4.10pm on 24 December 2001. Nevertheless, an examination of communications reveals that in the vicinity of 2.15pm to 2.30pm on 24 December 2001, some 13 or so calls were logged reporting fires and smoke in the Red Hill area. If in fact the fire did take hold and commence at that time, the response to the fire by the authorities would have been regarded as extremely slow. However, should the fire have actually been reported and taken hold at about 4.10pm or so on that date, the response was within the bounds of acceptance.

Two pieces of evidence militate in favour of the fire only being significant from about 4.10pm on that day. The fire was sighted in an aircraft containing Tony Graham of Airspeed at about 4.10pm and reported. By 4.10pm the fire was reported as being a 50 metre radius. Should the fire have started some two hours or so earlier, one would have expected a larger fire by 4.10pm.

Tony Bartlett, an experienced observer of fires from the air passed over the area at about 3pm. It was an area of interest for him as it is the area in which he resides. It would be expected, should there have been a fire of any significance, he would have observed it at that particular time. He did not. Two fire appliances sent to the Red Hill area at about 2.30pm or so, in response to the earlier calls, could find no sign of any fire at that time.

On all of the evidence before me, I cannot be satisfied that the fire started much earlier than 4.10pm on that day. As a consequence, I have no difficulty about the response to that fire as complained about. However, it raises the issue of the competence of the emergency 000 phone system along with the necessity to integrate and co-ordinate intelligence. That appears to have been a defect in this case. I will comment on this matter in my precise recommendations.

The Failure to Conduct a Backburn at Blewitts Pines

In their submissions to the inquiry in June 2003 and January 2004 and also their evidence given before the inquiry in January 2004, the ACT Sustainable Lands Group had been critical of the failure to backburn at Blewitts Pines on the evening of 24 December 2001. This was an operational decision taken by Tony Bartlett, the fire controller in respect of the Stromlo area. Mr Parry also raised this issue on behalf of that group.

Decisions of this sort must always be taken in light of the current environment, resources, man power and environmental conditions. Mr Bartlett impressed me as a dedicated and experienced fire controller and he has explained that due to resources, man power, lack of appliances and climatic conditions, he took the view that it was best not to take a decision to backburn in this area. As he was the person on the spot, I cannot be critical of that decision.

I will be recommending below that attention be given to scenario training and other reviews of such vital decisions in a fire fighting crisis as the decision to backburn or otherwise and the matters important to be taken into account in making such decisions.

Recommendations Pursuant to Section 52(4) of the Coroners Act 1997

Due to the lack of time available and also at the request of the parties, I did not embark upon detail concerning command control, structure, organization and matters of that sort. Those matters were anticipated to be dealt with by the subsequent bushfire inquest in quite a deal of detail. It was a question of resources and the difficulty in distracting witnesses of expertise on two fronts in relation to identical issues.

There remains of course valuable information and recommendations in the material provided by Brian Parry as well as the response by

ESB and related agencies and the general Territory response. The issues are clearly delineated in those various submissions from all angles. Of course my aim was to complete “bushfire one” inquest prior to the commencement of the subsequent bushfire inquiry. At the same time I have made available to Coroner Doogan the materials decisions and recommendations that I have made to assist in her task in the subsequent inquest. There seemed to be little to be gained from two coroners conducting inquiries into issues that remain essentially the same.

On 13 February 2004 (within 14 days of completing evidence and submissions), I provided substantially in oral form all of the information that are contained in these written reasons. That material has also been available to ESB and other authorities for their assistance. They were represented at the inquiry and were given a copy of the transcript shortly afterwards.

Detailed Recommendations

1. 1. Review, training and research should be conducted into important decisions made by field commanders in bushfire crises such as backburning or otherwise. Decision making on issues such as backburning should be subject of continuous critical review. There have been occasions that such decisions wrongly taken in the Kosciusko and French’s Forest fires some time ago have proved to be disastrous.
2. 2. The system of receiving 000 calls, the recording and integration of information so received and development of appropriate intelligence for the purposes of better decision making, should be implemented. The appreciation for the development of appropriate intelligence for future planning can never be overestimated. The confusion that resulted in respect of the time of the start of the Red Hill fire is a prime example of this difficulty should this recommendation not proceed.

3. 3. The provision of appropriate staffing and resources for bushfire fighting over Christmas and other high risk periods is vital. At present, I understand, that funding and resourcing should be sufficient (given the availability of staff) to ensure the availability of three shifts. I recommend for an optimum situation the best response to a high risk area in time and holiday period is the provision for four shifts. Appropriate strategies for recruitment and funding are needed to ensure that four shifts are available for more abundant caution and safety.
4. 4. Long term strategies and procedures for the control of fuel loads in ACT forests needs to be maintained and appropriate. This is particularly so in the area of pine plantations when slashing has occurred and dangerous levels of fuel load are available to cause difficulties should a bushfire such as this reoccur in the area. It is noted that Mr Lucas-Smith and Mr Bartlett had appreciated the difficulty of increasing fuel loads as late as November 2001 and had commenced to take action. It was a question of too little too late and the price has been paid as a result. The fact that future planning ensures that any pine forest will be located west of the Murrumbidgee river is to be applauded. The need to locate such forests away from residential areas is obvious. The effort to minimalize damage is to be applauded. However, there is little doubt that should the fires have escaped into the Black Mountain area the results would be so devastating as not to even be contemplated.
5. 5. In particular I recommend that the bushfire management plan incorporate fuel reduction procedures particularly following harvesting. This is particularly applicable to pine forests. Any such harvesting should be done in sufficient time to achieve chopper rolling or prescribed burning before the start of the following bushfire season when the risk is great. The timing of these processes in relation to climatic conditions and seasons are vital.

6. 6. Consideration should be given to a system that involves any logging approval containing an enforceable obligation that involves appropriate fuel reduction as part of that approval. Such a system would need to have sufficient inspectors and resources to enforce that compliance.
7. 7. Despite the protest of Mr Bartlett, I recommend an immediate safety audit for fuel management issues be conducted. In fact, the question of such an audit needs to involve a continuous safety audit of fuel loads and fuel reduction to follow and be properly planned and timed. I note that from about late 1999 when Mr Bartlett arrived in ACT forests, he was quickly aware of the issue and started moving strategically to cover issues such as fuel loads and general forest management. The foresight of he and Mr Lucas-Smith in November 2001 is to be admired but as I said above, it was a question of far too little far too late. I note the recommendations of the McLeod Inquiry concerning the management of forest fuel loads and I support them.
8. 8. Despite the fact that bushfire inquiry two will deal with communication, command and control issues, some matters have come to light and need attention in the context of this inquiry:
 - • There appeared to be tension in command control issues between headquarters and on site incident control on the fire ground.
 - • Mr Lucas-Smith has indicated there is a reconsideration and rejigging of the arrangements and relative positions of headquarters and on scene incident control.
 - • Flexible communications remains an issue and there needs to be distinct movement to the rationalization of communications systems involving police, fire brigade and

other areas of New South Wales. I understand there are plans advanced to meet this problem.

- • Planning minutes need to be used as a matter of best practice and kept at all levels of activity in relation to crisis bushfire incidents – best practice necessitates this.
- • Incident action plans were noticeable by their absence throughout this particular fire crisis. Although Tony Bartlett appears to have kept a form of incident action plan in relation to the Stromlo fire where he was in charge, it appears that incident action plans both at headquarters and on the scene, did not play the best practice role nor did they receive the priority appropriate.
- • I accept the recommendation of Tony Bartlett that there be an appropriate buffer zone (particularly in pine forests) between the forest and other material and combustible building etc. He suggested the safe buffer zone was in fact 40 metres. Research should be conducted to discover what is the appropriate buffer zone and steps taken to enforce compliance with that buffer zone. Obviously this will diminish risk in many situations if an appropriate buffer zone is established.
- • The ACT Sustainable Lands Group have brought to my attention the loss suffered by them in respect of land, some building and the obvious psychological, physical and emotional effect of these fire incidents. I recommend that land holders involved and subjected to such stress be given the appropriate assistance, bolstering, comforting and encouragement to return to normal life. It was obvious from my observation that these fire incidents had taken a great toll particularly on those involved in the Stromlo fire. Appropriate recovery systems and support needs to be introduced.

Conclusion

As mentioned above, I have left untouched many structural process, command and control issues to be considered in depth by bushfire inquiry two. Obviously the expansive material that I have available to me in this inquiry will be made available to Coroner Doogan and her team.

I extend my sympathies to those that suffered damage but I applaud the outstanding efforts of the emergency services team led by Mr Peter Lucas-Smith. Volunteers involved provided the backbone of the firefighting force. It is noted that in other countries such as the USA such volunteers are actually paid employees. It never ceases to amaze me how our bushfire fighting efforts are so well complemented by many volunteers.

I thank Mr Lucas-Smith and his ESB staff and also Mr Brian Parry and his firm for their outstanding contribution to investigate these matters. I am also grateful to Ms Sara Cronan who so ably assisted me in the conduct of this inquiry. I thank other parties and the legal representatives and particularly the ACT Sustainable Lands Group that were able to play an active role in this inquiry.

It should be noted that the material contained in these written reasons today remains substantially the material delivered orally on 13 February 2004.

R.J. CAHILL

Chief Coroner

3 November 2004