

# THE 2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

## SUBMISSIONS ON BEHALF OF THE POLICE ASSOCIATION VICTORIA AND ITS MEMBERS

HEARINGS 11 May 2009 – 6 July 2009

### **CRITICAL CONSIDERATIONS – 2009/2010 FIRE SEASON**

1. Effective, efficient and timely public warnings of the progress of the fires would have reduced the death toll on 7 February 2009.
2. Communication is the key issue to be addressed by the Commission before the commencement of the next fire season. Substantial improvements in communication within and between the Country Fire Authority (CFA), Department of Sustainability and Environment (DSE), and Victoria Police as well as between those organizations and the public are essential if lives are to be saved.<sup>1</sup>
3. Problems encountered by fire fighting units communicating with each other and their respective bases as well as problems experienced by police trying to communicate with each other, their respective police stations and

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<sup>1</sup> The Commission heard evidence of bickering and communication problems between those at the Kilmore Incident Control Centre and those at the Kangaroo Ground Incident Control Centre. Evidence suggested that this dispute resulted in the loss of an opportunity for the CFA DSE to issue timely warnings to those in the path of the East Kilmore and Murrindindi Mill fires. The lack of timely dissemination of essential information about the fire's location and predicted path at least contributed to people being surprised by its arrival; a commonly heard refrain from witnesses.

communication centres substantially hindered the effective coordination of the emergency services.<sup>2</sup>

4. The Police Association of Victoria (the Association) represents in excess of 98% of the 11,100 members of the Victoria Police Force. 92% of the Association's members are of or below the rank of Senior Sergeant.<sup>3</sup> The Commission has heard evidence of the considerable bravery demonstrated by police operating in bushfire affected areas on 7 February 2009.<sup>4</sup> Acting on their own initiative, officers put their own lives at risk to assist members of the public, including leading them to safety, without direction or assistance from police command and in some cases without the aid and comfort of effective communications systems.
5. These submissions make recommendations for the implementation of measures before the commencement of the next fire season to ensure Association members are better equipped to fulfill their duties to the public of Victoria effectively, efficiently and safely should the State again experience a conflagration of the scale seen on 7 February 2009.

### **RECOMMENDATIONS**

6. The Association makes 10 key recommendations for the Commission's consideration as matters to be addressed in advance of the 2009/2010 fire season.

<ol style="list-style-type: none"><li>1. <b>Funding of ESTA in rural Victoria.</b></li></ol>
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<p>Funding must be made available immediately to move all 'country D24' centres to the ESTA facility at Ballarat and provide CAD facilities. Funds must also be made available to replace the country analogue radio network with a digital network capable of communicating with the metropolitan radio network and other emergency services.</p>
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<sup>2</sup> See for example; Statement Mr. Walsh WIT.003.002.0001. Exhibit 19 and evidence commencing at T1192; Statement Mr. Dwight WIT.037.001.0001. Exhibit 64 and evidence commencing T2058.

<sup>3</sup> Ranks above Senior Sergeant are; Inspector, Superintendent, Assistant Commissioner, Deputy Commissioner and Chief Commissioner.

<sup>4</sup> T657:12-T660:31

**2. Co-location of Emergency Services.**

When responding to emergencies such as the fires of 7 February 2009, Police and fire fighting authorities should, at all levels, be located together to facilitate timely communication and co-ordination.

**3. Alignment of Geographic Areas.**

Police, CFA and DSE geographic areas should be aligned.

**4. Alignment of Agency Structures.**

The internal structures of the CFA, DSE and Police for response to fires must comply with the framework in the Act and the Manual.

**5. Clear Statutory Responsibility.**

The scope and content of the roles designated by the Act and the Manual should be explicitly and unambiguously set out<sup>5</sup>. The responsibility of the State Emergency Coordinator of DISPLAN to actively check the timing, content and issue of warnings, including advice to evacuate (currently implicit) should be made explicit.

**6. Strict Statutory Compliance.**

Those assuming roles under the Act should actively fulfill them and only delegate their responsibilities as expressly provided in the Act and Manual. If a role is delegated, the delegator should provide a detailed written description to the delegatee of the scope and responsibilities of the delegated role.

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<sup>5</sup> This ought properly be done by amending the Act. It is unlikely that such amendment will be able to be achieved by the beginning of the next fire season and but perhaps amendment of the manual may.

7. **Communication of timely and detailed information.**

Communication to the public of timely information about fires detailing their location, intensity, size, direction and speed of travel, and expected changes in these elements together with weather reports and forecasts should properly form the basis of adequate warnings. Details of what people in the path of a fire can expect and strategies which they ought to adopt, or at least consider, should be incorporated into any public messages. Members of the public must be urged to maintain battery operated radios in order to receive warnings in the event of power failure.

8. **Warnings must provide useful and relevant content.**

If warnings include advice to evacuate, then the message should also include a time frame for safe departure from the area under threat. Such advice must also make reference to routes for evacuation and rallying points/refuges. The critical nature of such advice means that it must come from a credible source. The most appropriate source is Victoria Police. The formulation of fire warnings is appropriately the purview of the CFA (being the organization with the best access to detailed information about fires). That the police are required to actively check the appropriateness of the warnings provides a useful safeguard. To the extent that this system is in place it should be retained; to the extent that it is not, it should be implemented. Such a strategy requires Emergency Coordinators to become far more enmeshed in the response to fires.

9. **Clarification of Roadblock protocols.**

Police should be provided with unambiguous instructions detailing who can pass and re-pass roadblocks. The classes of people who are to be permitted to pass roadblocks must be identified clearly. A simple and reliable method of identifying those with permission to pass must be established to facilitate police performing their duty.

10. **Warnings and protection for police in fire affected areas.**

Police working in fire affected areas should be informed of all warnings at least at the same time as the public through the police radio and computer network. This is necessary for the safety of both the public and police members themselves. Police stations should be fire resistant and provide fire suppression equipment.

7. Having identified these critical considerations, it is now proposed to consider in greater detail the evidence and material in support of these recommendations.

## ESTA & TELEPHONE/ RADIO COMMUNICATIONS

8. Mr. Walshe gave evidence that a person in the metropolitan area calling '000' and asking for the police will be connected to an ESTA operator who transfers the call to a dispatch facility operated by ESTA staffed by civilian telephone and radio operators. This facility utilizes computer aided dispatch (CAD) technology requiring no handwriting or double handling. Fire, ambulance and police can be dispatched to an incident via one computerized process. Mr Walshe gave evidence that if a person outside the metropolitan area calls '000' and asks for police, they are transferred to one of the five relevant 'country D24' centres. These centres are not operated by ESTA. They are staffed by police and have no CAD technology. Calls are recorded by hand on cards and manually time stamped. The process he described was laborious, time consuming and inefficient.<sup>6</sup> If more than one emergency service is required at an incident, each service must be telephoned by operators at the centre separately.<sup>7</sup> Mr Walshe agreed with the proposition that emergency telecommunications throughout the State should be provided via a single integrated system for call-taking and dispatch.<sup>8</sup>
9. Mr Walshe agreed with the proposition that in 2006, ESTA built a facility in Ballarat to house all 'country D24' centres and provide them with CAD technology and civilian operators but this facility remains essentially vacant. He agreed with the proposition that the 'country D24' centres have not been moved into this facility because applications to the Victorian Government for funding had been refused in 2005, 2006, 2007 and 2008.<sup>9</sup>
10. He agreed with the proposition that the analogue radio system combined with manually operated call-taking and dispatch facilities in rural Victoria and the digital radio centre and computer aided dispatch facility in the metropolitan area caused problems on 7 February 2009. He said that these differences

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<sup>6</sup> T1214-T1216, T1221-T1222

<sup>7</sup> T1215-T1216

<sup>8</sup> T1218

<sup>9</sup> T1219

continue to cause problems especially in areas on the rural - metropolitan fringe<sup>10</sup> to the extent that police operating in these areas may need to utilise:

- a country analogue radio (and possibly a portable);
- a metropolitan digital radio (and possibly a portable);
- a department issued mobile telephone;
- a CFA radio and possibly a CFA pager, and
- possibly a satellite telephone.<sup>11</sup>

11. The Commission heard numerous accounts of problems caused by incompatible equipment.<sup>12</sup>

12. On 11 November 2004 in the second reading speech to the *Emergency Services Telecommunications Authority Bill*, the Attorney General Mr. Hulls said:

*“The second-term Bracks Government is committed to enhancing emergency services telecommunications by establishing an integrated statutory authority with a clear legal responsibility for managing and providing the State’s emergency services telecommunications system...”*<sup>13</sup>

The Attorney General Mr. Hulls stated that this commitment was in response to the 2001 Metropolitan Ambulance Service Royal Commission which made broad-ranging recommendations for the reform of Victoria’s emergency services telecommunications. The Attorney General went on to say:

*“ESTA will have clear statutory objectives to provide the vital emergency communications link between Victorians and the emergency services organizations via a telecommunications network linking the essential operations of emergency services*

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<sup>10</sup> T1225

<sup>11</sup> T1225

<sup>12</sup> See note 2 above

<sup>13</sup> T1218

*career and volunteer workers in the field...The establishment of ESTA will ensure government provides a comprehensive, seamless and holistic network management approach to emergency services telecommunications. It will ensure an appropriate single point of responsibility for the management of these services across government... ”<sup>14</sup>*

Police usually receive many more public calls during emergencies or disasters, than other emergency services. The situation was no different on 7 February 2009. Ambulance and CFA communications have been catered for in the ESTA facility at Ballarat, yet police communications centres remain (and remain so to this day) isolated, fragmented and unable to cope with the volume of calls experienced on 7 February 2009. There is no present capacity, given a similar scenario in the future, for police communications to perform at a higher level than was experienced during the fires of February 2009.

There is sufficient space and capacity for police country communications to be re-located to the Ballarat ESTA facility. It has been the stated intention of Government that such a re-location take place.

**Relevant recommendation:**

**1. Funding of ESTA in rural Victoria.**

Funding must be made available immediately to move all ‘country D24’ centres to the ESTA facility at Ballarat and provide CAD facilities. Funds must also be made available to replace the country analogue radio network with a digital network capable of communicating with the metropolitan radio network and other emergency services.

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<sup>14</sup> T1217-T1218

## LEGISLATION - RESPONSE FRAMEWORK

13. The *Emergency Management Act* 1986 (the Act) as the source document for the management of emergencies, creates a useful, effective and efficient structure for dealing with emergencies in Victoria. It designates key roles and, in some cases nominates who ought to fill those roles. It is clear, however, from the evidence of the witnesses; Walshe, Collins, Rees and Waller that the scope of the duties of some of the roles referred to in the Act need clarification.
14. The Act provides for a plan, DISPLAN<sup>15</sup>, to deal with emergencies such as the fires of 7 February 2009.<sup>16</sup> The object of the Act is to ensure that components of emergency management are organized within a structure that facilitates planning, preparedness, operational coordination and community participation.<sup>17</sup>
15. The Act achieves this objective by conferring power on:
  - the Minister for Police and Emergency Services, as the Coordinator in Chief of Emergency Management<sup>18</sup>;
  - the Chief Commissioner of Police as the Deputy Coordinator in Chief of Emergency Management and State Coordinator of DISPLAN<sup>19</sup>;
  - Deputy Commissioner Walshe as the Deputy State Coordinator of DISPLAN.<sup>20</sup>
16. S. 13 of the Act provides for the appointment of DISPLAN Regional Emergency Coordinators (RECs) and Municipal District Emergency Coordinators (MDECs).<sup>21</sup> S. 13(2)(c) refers to the role of ‘the State

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<sup>15</sup> A part of Exhibit 11. WIT.005.001.0123. Referred to as The Emergency Management Plan / Emergency Management Manual

<sup>16</sup> s. 10 WIT.005.001.0485

<sup>17</sup> s. 4A WIT.005.001.0481

<sup>18</sup> s. 5(1) WIT.005.001.0482

<sup>19</sup> s. 5(2) WIT.005.001.0482 and the State Coordinator of DISPLAN by s. 11(1) of the Act WIT.005.001.0485

<sup>20</sup> s. 11(2) WIT.005.001.0485

<sup>21</sup> DISPLAN talks generally about Municipal Emergency Response Coordinators (MERCs) and District Emergency Response Coordinators (DERCs) and Regional Emergency Response Coordinators (REMI)s). The terms and divisions in DISPLAN then are not coexistent with the terms of the Act.

Coordinator' in the case of an emergency which affects more than one region.<sup>22</sup> S. 12 allows the State Coordinator to delegate any power or function of the State Coordinator under the Act by instrument.

17. The Act contemplates that in the case of a fire emergency which affects one municipal district, the MDECs may give directions concerning the allocation of resources to all relevant agencies having roles or responsibilities in relation to the emergency.<sup>23</sup> In the case of an emergency affecting more than one municipal district, the Act empowers RECs to give such directions. In the case of an emergency affecting more than one region, such directions can be given by the State Coordinator.<sup>24</sup>
18. Notwithstanding the responsibility of the CFA and DSE to deal with fires, they remain subject to the direction of the DISPLAN coordinators. This direction is provided:
  - at a local level, by the Municipal Emergency Response Coordinators (MERCs);
  - at a district level, by the Divisional Emergency Coordinators (DERCs); and
  - at a State level, by the Deputy State Coordinator of DISPLAN and the State Coordinator.<sup>25</sup>

**Relevant recommendation:**

**2. Co-location of Emergency Services.**

When responding to emergencies such as the fires of 7 February 2009, Police and fire fighting authorities should, at all levels, be located together to facilitate timely communication and co-ordination

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Further Superintendent Collins claims to hold the position of State Emergency Response Officer (SERO) a designation not referred to in the Act. It is preferable that DISPLAN and the designations of those administering it faithfully follow the applicable legislation.

<sup>22</sup> A reference to the Chief Commissioner appointed as State Coordinator of DISPLAN under s. 11 WIT.005.001.0485

<sup>23</sup> s. 13 WIT.005.001.0486

<sup>24</sup> s. 13 WIT.005.001.0486

<sup>25</sup> s. 13 WIT.005.001.0486

## LEGISLATION – STRUCTURAL AMBIGUITIES

### *Geographic Anomalies*

19. The administrative strategy of the Act is based on municipal boundaries. That which constitutes a region is not defined in the Act or the Manual. Each of the Police, CFA and DSE divide the State into their own administrative areas. Such divisions are not based on, nor are they coexistent with, municipal boundaries. In the case of the police structure, the smallest area is the patrol area of one police station. A number of such areas make up a division and a number of divisions make up a region. The State is currently divided into five regions, four rural with the fifth being the Melbourne metropolitan area. As a result, Victoria Police structured the Manual on its division of the State nominating Municipal Emergency Response Coordinators (MERCs), Divisional Emergency Response Coordinators (DERCs) and Regional Emergency Management Inspectors (REMI) rather than the terms used in the Act. This approach bears little relationship to the CFA or DSE methods of dividing the State.<sup>26</sup>

#### **Relevant recommendation:**

**3. Alignment of Geographic Areas.**

Police, CFA and DSE geographic areas should be aligned.

### *Novel Administrative Designations*

20. Superintendent Collins gave evidence that he held the position of the State Emergency Response Officer, a designation not referred to in the Act or the Manual. He also gave evidence that he was the Officer in Charge of the State Emergency Response Coordination Unit (SERCU), another designation not referred to in the Act or the Manual.

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<sup>26</sup> Mr. Walshe gave evidence that discussion between DSE, CFA and the police to reconcile those differences commenced after 7 February 2009 at the request of the Minister. T1231:1-T1231:8

In such circumstances, the Chief Commissioner retained the powers, function, obligations and responsibilities of the State Coordinator of DISPLAN albeit that Mr. Collins was, internally to the Police Force, accountable to her.

21. Mr. Collins said that the SERCU coordinated committees and relevant individuals in preparation for emergencies. For example, the unit kept MERCs and DERCs up to date with policy and information in relation to emergency management. He also said that SERCU ensured ‘that the coordination arrangements are in place in relation to the resource allocation and personnel allocation’.<sup>27</sup> The SERCU was operational on 7 February 2009; Inspector Hocking was the Officer in Charge. Despite this description, Mr. Collins was unable to explain exactly what SERCU did during 7 February 2009 and what interaction it had with other emergency response bodies.
22. One plain purpose of the Act is to ensure that all stakeholders in emergency management in Victoria have a copy of the Manual so that each has a common understanding of the organizational structure of other stakeholders, their respective roles, tasks and responsibilities. That this is desirable is expressed in the Act through, amongst other things, the protocol provided for altering DISPLAN.<sup>28</sup> The decision to create positions such as the SERO and facilities such as SERCU and to insinuate them into the police response to an emergency risks fracturing the cohesive response to emergencies sought to be facilitated by the Act and DISPLAN.

**Relevant recommendation:**

**4. Alignment of Agency Structures.**

The internal structures of the CFA, DSE and Police for response to fires must comply with the framework in the Act and the Manual.

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<sup>27</sup> T2101-T2102.

<sup>28</sup> s. 10 *Emergency Management Act* (1986) WIT.005.001.0485

## **THE EMERGENCY MANAGEMENT ACT (1986) & DISPLAN**

### ***Powers and Responsibilities under the Act and Manual***

23. Part 1 Emergency Management Manual Victoria (the Manual) ‘Operational Management’ sets out the manner in which emergency services ought to deal with emergencies and makes clear that if local resources are insufficient, regional, divisional and ultimately state level personnel and resources are to support the response.<sup>29</sup>
24. The scheme of the Act then is clear; the initial response to any particular emergency resides with the emergency response coordinator of the relevant municipal area, the relevant MERC. As the scale of the emergency grows, so too does the level of the emergency response coordinator, from municipal to divisional (DERCs), regional (REMI) and State-wide (Deputy State Coordinator and State Coordinator).<sup>30</sup>
25. The Act confers powers on emergency response coordinators to give directions concerning the allocation of resources to all relevant agencies responding to an emergency.<sup>31</sup> This power is probably subject to the power conferred by s. 16(2) of the Act (see s. 16A) and operates when the nominated control agency fails or is incapable of properly managing the emergency response.<sup>32</sup>
26. The principle role of emergency response coordinators at whatever level is to:
  - ensure that the CFA, DSE are in attendance and responding to the emergency;
  - ensure that effective control of the emergency has been established;

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<sup>29</sup> Emergency Management Manual Victoria WIT.005.001.0143. The structure of the Manual suggests that the escalation regime is municipal, region, division, State. According to Police administrative structure however the lowest level is field, then municipal, next up in size is divisional then regional then State.

<sup>30</sup> Pursuant to s. 13(2) WIT.005.001.0486 of the Act but subject to s. 16(2) WIT.005.001.0487.

<sup>31</sup> s. 13(2) WIT.005.001.0486

<sup>32</sup> Manual WIT.005.001.0179

- ensure the effective coordination of resources and services having regard to s. 13(2) of the Act and the reserve powers referred to at page 3-8 DISPLAN;
  - in the event of uncertainty,<sup>33</sup> determine which agency is to perform its statutory response role within a region or other specified area where more than one agency is empowered to perform that role;
  - review and dispatch situation reports;
  - ensure that consideration has been given to:
    - alerting the public to existing and potential dangers arising from a serious emergency either directly or through the media;
    - any need for evacuation.
  - consider the additional objectives of emergency response coordinators referred to on page 3-8 of the Manual.<sup>34</sup>
27. The objectives of emergency response coordinators (at whatever level) relevantly include:
- in consultation with the control agency assess the need for declaration of an emergency area;<sup>35</sup>
  - notification of relevant government and non-government agencies;
  - maintenance of all proper records;
  - bringing relevant matters to the notice of the appropriate agencies for action.<sup>36</sup>
28. Additionally a ‘Field Emergency Response Coordinator’ is required to:

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<sup>33</sup> For example which agency was responsible for issuing

<sup>34</sup> Manual WIT.005.001.0176

<sup>35</sup> s. 36A of the Act WIT.005.001.0510

<sup>36</sup> Manual WIT.005.001.0179

- satisfy himself or herself that the emergency is being responded to efficiently and effectively;
  - brief MERCs and DERCs;
  - ensure that consideration has been given to:
    - alerting the public to existing and potential dangers arising from a serious emergency;
    - the need for evacuation;
    - public information;
    - consider the additional objectives shown on p.3-8.<sup>37</sup>
29. The responsibilities of MERCs include obtaining and forwarding regular advice to the DERCs regarding the potential for an emergency which is not under substantial control by the control agency.<sup>38</sup>
30. The responsibilities of DERCs are largely the same as MERCs albeit on a broader scale.<sup>39</sup>

***Evidence of Deputy Commissioner Kieran Walshe and Superintendent Rodney Collins – The Operation of DISPLAN***

31. Without a thorough analysis of the conduct of the senior officers of Victoria Police charged with the statutory responsibility under the Act of managing the State’s response to the fires of 7 February, including command and control practices, the Commission will be unable to properly understand the Victoria Police response including the manner in which the organization dealt with its obligation to issue warnings. In the absence of such an understanding, the Commission will be unable to properly consider the scope of issues necessary to allow it to make recommendations to maximize the safety of Victorians when we are next threatened by very large, fast moving bushfires capable of causing wide-spread death and catastrophic property damage.

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<sup>37</sup> Manual WIT.005.001.0177

<sup>38</sup> Manual WIT.005.001.0177

<sup>39</sup> Manual WIT:005:001.0178

32. Mr. Walshe stepped through the police structure for dealing with emergencies from field emergency response coordinators to the State Coordinator of DISPLAN including his own role as the Deputy State Coordinator of DISPLAN. He said that the SERO was a person to whom the Chief Commissioner:

*“...delegates the day to day functions with regards to the emergency management, emergency management knowledge and expertise to the emergency response office.”<sup>40</sup>*

He went on to agree with the proposition that the SERO’s role was to perform a number of the roles of the State Emergency Response Coordinator identified in the Manual.<sup>41</sup>

33. Mr. Collins gave evidence that as the SERO, he held no “*statutory delegation*”<sup>42</sup> (from the Chief Commissioner) but had “*internal delegation ...as you would I have in any management structure.....If the boss wants you to do something*”.<sup>43</sup> In such circumstances, for the purposes of the Act and the Manual, Mr. Collin’s role was informal. The Chief Commissioner retained the obligations of the State Coordinator of DISPLAN and the State Emergency Response Coordinator and remained seized of the powers and functions of those roles albeit that she apparently expected Mr. Collins to perform at least some of those functions and exercise some of the concomitant powers.
34. Even if the Chief Commissioner had properly delegated the functions and powers of the State Coordinator of DISPLAN or State Emergency Response Coordinator, she remained responsible for the proper performance of the functions and exercise of the powers of those offices.
35. Mr. Collins gave evidence that his superior officer on 7 February 2009 was Mr. Fontana although it was unclear whether this was because he, Collins, was the SERO or the Officer in Charge of SERC or both or neither. It would seem

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<sup>40</sup> T626:26 – T627:1

<sup>41</sup> T627:2 – T627:5

<sup>42</sup> This may be a reference to the power in s. 7 WIT.005.001.0482 or s. 12 WIT.001.0485 of the Act.

<sup>43</sup> T2100. It is unclear whether his reference to ‘statutory delegation’ was a reference to the s. 12 power WIT.005.001.0485

that this reporting line was simply by virtue of line control / rank structure.<sup>44</sup> He provided no detail of briefings he gave to Mr. Fontana.

36. Implicitly, Mr. Collins perceived his duty as the SERO as requiring him to deal with at least some of the items listed on pages 3.5 – 3.8 of the Manual said to be the role of Emergency Response Coordinators. His understanding of the scope of the tasks required to fulfill these obligations and his explanation of how he fulfilled them was, on one view, unclear. He gave no evidence of understanding his role in the context of the roles of those nominated by the Act to manage emergencies including the Minister for Police and Emergency Services as the Coordinator in Chief of Emergency Management, the Chief Commissioner of Police as the Deputy Coordinator in Chief of Emergency Management and State Coordinator of DISPLAN<sup>45</sup> or Deputy Commissioner Walshe as the Deputy State Coordinator of DISPLAN.
37. On the 7 February 2009 Mr. Collins, as Officer in Charge of SERCC, was not physically present at the Victoria Police Centre before approximately 5:00pm and it would seem he left the Centre to be run by Inspector Hocking. Mr. Collins gave no evidence of having spoken to Mr. Hocking on the 7<sup>th</sup>. He provided part of a document purporting to be a log of information flowing into the Victoria Police Centre and resultant action. The document is, at best, vague and gives little information of how the Centre fulfilled its obligations.
38. Mr. Collins gave evidence that he had no formal training in fire behaviour and didn't think it necessary that he have any. He explained that he was able to call on experts in the emergency services, those from Universities, or academia, interstate or overseas. He gave no evidence of the availability of timely advice from any such sources or of making any attempts to obtain any such advice.<sup>46</sup>

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<sup>44</sup> T2101:7. He gave no evidence however of speaking to Mr. Fontana on 7 February 2009.

<sup>45</sup> s. 5(2) WIT.005.001.0482 and the State Coordinator of DISPLAN by s. 11(1)WIT.005.001.0485 of the Act

<sup>46</sup> T2106:10-T2107:10

### ***Briefing The Chief Commissioner***

39. Mr. Collins gave evidence that he spoke to Ms. Nixon once on 7 February 2009 when she visited the IECC between 3.30pm and 4.00pm.<sup>47</sup> He said that he spoke to her for about 10 – 15 minutes, briefing her on the current state of emergency and telling her, amongst other things, that the situation was deteriorating.<sup>48</sup> He gave evidence that he didn't speak to her about the fires because he believed that she was aware of the extent of the fires and the potential for a statewide disaster – serious incident<sup>49</sup> having spoken to “*the fire services*”<sup>50</sup> prior to speaking to him.
40. When giving evidence he was unable to recall what Ms. Nixon told him to do, or what he told her he was going to do, given that ‘*the situation was deteriorating*’. He could not recall if Ms. Nixon told him what ‘*the fire services chiefs*’ had told her of their immediate, short term, medium term and long term expectations of how the fires would develop and their plans. The issue of why there was no declaration of a state of emergency/disaster is of significant moment. The legislation allows for such a declaration<sup>51</sup> and with that declaration comes additional powers and abilities to deal with an emergency. He gave evidence that he thought that Ms. Nixon was still at the IECC when, at about 5.00pm it was time for him to knock off and go home.
41. Mr. Collins gave evidence that prior to speaking to Ms. Nixon he did not prepare any briefing notes and that during their conversation took no notes of their conversation.
42. He gave evidence that he took no notes at all of any of his activities or conversations throughout the day including at the large number of meetings he attended of State Emergency Strategy Team and the Emergency Management Public Information Sub-Committee (EMPIC)<sup>52</sup> during the afternoon of 7

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<sup>47</sup> T2162:17-T2162:19

<sup>48</sup> T2231:17-T2231:28

<sup>49</sup> T2235:24-T2236:21

<sup>50</sup> T2163:3-T2163:7

<sup>51</sup> s. 23(1) of the Act WIT.005.001.0501

<sup>52</sup> He gave evidence T2148:15-T2148:19 that a log keeper followed him around on that day and took some notes of what he did and said. The log was tendered as a part of Exhibit 66 WIT.0310.001.0040. WIT.0310.001.0041. He gave evidence that at no stage did he check these notes for accuracy. These notes contain no reference to Mr. Collins briefing Ms. Nixon.

February 2009.<sup>53</sup> He was unable to give any evidence of the content of these meetings, decisions made or the implementation or influence of any such decisions.

43. He gave no evidence of providing any hand-over briefing to Superintendent Knight who it would seem, took over his role when he, Collins, left the IECC at about 5.00pm and returned to the SERCC for a short time before going home.<sup>54</sup>
44. He was unable to give any evidence at all about the roles played by Messrs Fontana and Walshe in managing the State's response to the fires. He was unable to give evidence about the role Ms. Nixon played in managing the State's response to the fires before she arrived at the IECC, whilst she was there, after he briefed her or indeed after he knocked off and went home. He was unable to give evidence at all about the role played by the Minister in managing the State's response to the fires other than to say that the Minister was in country Victoria in his electorate.<sup>55</sup> He gave no evidence of having spoken to the Minister, Mr. Walshe<sup>56</sup>, Mr. Fontana in detail, or any of the Field Emergency Response Coordinators, MERCs, DERCs or REMIs.
45. Mr. Walshe seemed to acknowledge that the Chief Commissioner retained the responsibilities of the State Coordinator of DISPLAN and the State Emergency Response Coordinator. He gave evidence that the Chief Commissioner 'attended' the SECC early in the afternoon and "*acquainted herself to ensure*" (sic) that the relevant coordination functions were in place in accordance with her responsibilities under the Act. He said that she later "*attended*" the IECC where she was briefed by both Mr. Rees and Mr. Waller as to what was occurring relevant to the fires.<sup>57</sup> He gave evidence that she remained at the IECC for "*a good couple of hours*" from around 4.00pm.<sup>58</sup>

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<sup>53</sup> He made no notes of these meetings nor did he give evidence of having arranged for such notes to be made.

<sup>54</sup> T2228:26-T2229:8

<sup>55</sup> T2183:16-T2183:20

<sup>56</sup> Other than briefly during one telephone conference

<sup>57</sup> T643:22-T643:31

<sup>58</sup> T644:12-T644:17

### ***The Role Played by Deputy Commissioner Walshe***

46. Mr. Walsh gave evidence that during the afternoon of 7 February 2009, he was at home listening to the radio. He said that from time to time he spoke to Assistant Commissioner Fontana on the telephone and periodically Mr. Fontana sent him text messages about the developing fires.<sup>59</sup> He gave evidence of having spoken to Ms. Nixon during the day although said that it was just to keep him in the loop. He provided no detail of whether he spoke to her directly or by telephone or of the number of times he spoke to her or of the content of any of their conversations. Mr. Walshe said that he was recalled to duty at about 7.00pm and went to the IECC at about 8.00pm to deal with the press.<sup>60</sup> He said nothing about how, why or by whom he was recalled to duty. He gave no evidence of speaking to the Minister, Mr. Collins or anybody else, other than Mr. Fontana,<sup>61</sup> about the fires during the afternoon. He produced no notes at all of the conversations he had with Mr. Fontana nor did he produce copies of the text messages.

#### **Relevant recommendation:**

##### **6. Strict Statutory Compliance.**

Those assuming roles under the Act should actively fulfill them and only delegate their responsibilities as expressly provided in the Act and Manual. If a role is delegated, the delegator should provide a detailed written description to the delegatee of the scope and responsibilities of the delegated role.

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<sup>59</sup> T644:18-T644:22

<sup>60</sup> It was not clear why the Deputy State Coordinator of DISPLAN was not on duty during on 7 February given the weather forecast or why he felt he that his only task was to deal with the press late in the afternoon.

<sup>61</sup> On 7 February Mr. Fontana had no nominated role under the Act or in DISPLAN.

## WARNINGS & EVACUATION

47. The assertion that there is no legislative provision nominating who, in the sense of which agency, is responsible for issuing warnings to the public about danger posed by bushfires is simply wrong . The provisions of the *Country Fire Authority Act* (1958) and the Manual, in combination, make it abundantly clear that the responsibility is borne both by CFA and Victoria Police.<sup>62</sup>

### *Obligations of State Emergency Response Coordinator*

48. The gravamen of Mr. Walshe's evidence is that, in so far as warnings are concerned, the State Emergency Response Coordinator<sup>63</sup> need not make any sort of qualitative analysis of the decisions made by the CFA and DSE staff to issue (or not to issue as the case may be) warnings or of the content or timing of those warnings. He said that so long as the police coordinator was aware that consideration is given to warnings, then the coordination officer has fulfilled his or her responsibilities.<sup>64</sup>
49. Mr. Collins gave evidence about his perception of this role and his obligations in relation to warnings. He summed it up by agreeing with the proposition that it was not his role to assess the adequacy of warnings given by a control agency and, with this in mind, he took no steps to make any such assessments.<sup>65</sup>
50. Further, he said that his understanding of the 'stay or go policy' was such that it overtook the requirement in the Manual that the State Coordinator of DISPLAN had to consider evacuation herself because, he said, if a person had not 'gone early' pursuant to the 'stay or go policy' he should not provide

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<sup>62</sup> Mr. Rees makes this claim at T41:23. In the same way that the Authority does not have a statutory responsibility to put water on fire it may be said not to have a statutory obligation to warn the public of the spread of fires. Mr. Rees's claim would seem to be contradicted by s. 20 *Country Fire Authority Act* (1958). Supporting this contention the Manual makes it clear that the control agency initiates the issuing of a warning by making a request of the Emergency Response Coordinator WIT.005.001.0181 Decisions to recommend evacuation rests with the Control Authority in consultation with police and others Manual WIT.0050001.0184

<sup>63</sup> As would be the case for her deputy.

<sup>64</sup> T631:4-T631:21

<sup>65</sup> T2165:3-T2165:10

advice to evacuate “*at the last minute, or not the last minute, the last hour last couple of hours*”.<sup>66</sup>

51. The powers, in particular under s. 16A of the Act, and the obligations conferred under the Manual on the State Coordinator of DISPLAN contradict such an assertion and make it clear that an active role is required. If the State Coordinator of DISPLAN is to comply with the obligation in the Manual that he or she ensure that consideration is given to alerting the public to existing and potential dangers arising from a serious emergency, he or she must acquire an understanding of the danger canvassed, the areas potentially threatened and the time frame within which any threat may manifest. It is trite to suggest that the State Coordinator can fulfill such an obligation simply by asking someone from CFA or DSE “*Have you thought about warnings and evacuation?*” and be told “*yes*”.
52. Mr. Collins gave little useful evidence of what he did to ensure that he was properly provided with information which allowed him to be satisfied that the CFA and DSE had properly considered the need for warnings. It is unclear whether Ms. Nixon considered warnings at all. Ensuring that effective control of an emergency has been established is not simply a matter of seeing CFA and DSE staff do things.
53. Relevantly, the State Coordinator DISPLAN is empowered to direct the conduct of the CFA and DSE should she or he consider,<sup>67</sup> for example, that one or other of them is incapacitated or failing to properly manage a fire emergency. Such a power includes the ability to direct the provision of warnings and advice to evacuate.
54. Axiomatically, the State Coordinator, or indeed her deputy, must understand the adequacy of any warnings and advice already issued to be properly able to consider if she or he should direct that further warnings be issued.
55. There has been no evidence of how it is said that the Chief Commissioner fulfilled her role as the State Coordinator. There has been no evidence of any role performed by the Minister as Coordinator in Chief on 7 February 2009.

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<sup>66</sup> T2166-T2169

<sup>67</sup> The power is not restricted to these two options. Manual WIT.005.001.0179

56. Provided each agency does what it is supposed to do, having more than one organisation involved in the drafting and dissemination of warnings (including warnings to evacuate) provides an independent checking process to ensure that nothing is missed. This is an important advantage in stressful and dynamic circumstances such as those experienced on 7 February 2009.

**Relevant recommendations:**

**5. Clear Statutory Responsibility.**

The scope and content of the roles designated by the Act and the Manual should be explicitly and unambiguously set out<sup>68</sup>. The responsibility of the State Emergency Coordinator of DISPLAN to actively check the timing, content and issue of warnings, including advice to evacuate (currently implicit) should be made explicit.

**6. Strict Statutory Compliance.**

Those assuming roles under the Act should actively fulfill them and only delegate their responsibilities as expressly provided in the Act and Manual. If a role is delegated, the delegator should provide a detailed written description to the delegatee of the scope and responsibilities of the delegated role.

**7. Communication of timely and detailed information.**

Communication to the public of timely information about fires detailing their location, intensity, size, direction and speed of travel, and expected changes in these elements together with weather reports and forecasts should properly form the basis of adequate warnings. Details of what people in the path of a fire can expect and strategies which they ought to adopt, or at least consider, should be incorporated into any public messages.

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<sup>68</sup> This ought properly be done by amending the Act. It is unlikely that such amendment will be able to be achieved by the beginning of the next fire season and but perhaps amendment of the manual may.

**8. Warnings must provide useful and relevant content.**

If warnings include advice to evacuate, then the message should also include a time frame for safe departure from the area under threat. Such advice must also make reference to routes for evacuation and rallying points/refuges. The critical nature of such advice means that it must come from a credible source. The most appropriate source is Victoria Police. The formulation of fire warnings is appropriately the purview of the CFA (being the organization with the best access to detailed information about fires). That the police are required to actively check the appropriateness of the warnings provides a useful safeguard. To the extent that this system is in place it should be retained; to the extent that it is not, it should be implemented. Such a strategy requires Emergency Coordinators to become far more enmeshed in the response to fires.

***Mandatory Evacuation***

57. The Commission heard evidence from a large number of people who lived in the fire affected areas on 7 February 2009. Even in the face of the unprecedented fires of that day and regardless of noble intentions, no witness has suggested that mandatory evacuation is a desirable policy. Some like Mr. Brown<sup>69</sup> said that they would actively avoid and resist police seeking to enforce such an order. The prospect of police attempting to physically subdue every person ‘for their own safety’ who does not wish to leave makes it clear that such a policy is unworkable. Trying to move a large number of people, or even a small number, who don’t want to be moved is difficult enough; trying to do so in a timely fashion in the face of a fast moving bushfire places police and those being evacuated in considerable peril.
58. The Commission has heard evidence from witnesses who remained in the fire areas and were permitted to pass roadblocks to get essentials such as food,

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<sup>69</sup> T1635-T1657

water and clothes. In some cases these people were prevented from returning with those supplies.<sup>70</sup>

**Relevant recommendation:**

**9. Clarification of Roadblock protocols.**

Police should be provided with unambiguous instructions detailing who can pass and re-pass roadblocks. The classes of people who are to be permitted to pass roadblocks must be identified clearly. A simple and reliable method of identifying those with permission to pass should be established to facilitate police performing their duty.

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<sup>70</sup> Some who claimed a pecuniary interest in property were permitted to return. s. 31(4) *Country Fire Authority Act* (1958); s.24(7) the Act WIT.005.001.0503 – WIT.005.001.0504

## **PROTECTION AND SAFETY OF POLICE MEMBERS AT RISK.**

59. If police are to be required to assist in providing direct warnings of threatening fires to communities including advice to evacuate by physically going street to street or house to house, it is likely that they will be amongst the last to leave a threatened area. By the time they have properly executed their duties, it may be too late for them to safely leave. Whilst it may not be practical to build bunkers at all rural police stations,<sup>71</sup> the safety of police risking their lives in the protection of their communities should not be ignored. Fire suppression equipment such as sprinkler systems and a suitable water supply must be made available in all rural police stations. All new police stations in fire affected areas should be fire resistant and a maintenance program should be undertaken to make existing police stations fire resistant.
60. The dissemination of warnings, including any advice to evacuate, should be communicated through the police radio channels and the police computer network. Keeping police members on the ground informed of critical information must be a priority, not only for the safety of the community but for the safety of the members themselves.

### **Relevant recommendation:**

**10. Warnings and protection for police in fire affected areas.**

Police working in fire affected areas should be informed of all warnings at least at the same time as the public through the police radio and computer network. This is necessary for the safety of both the public and police members themselves. Police stations should be fire resistant and provide fire suppression equipment.

Tony Hargreaves & Partners

Mr Ian Hill QC

30 June 2009

Mr Darren Bracken

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<sup>71</sup> For a number of reasons not the least of which is the difficult question of how many people such bunkers should be capable of sheltering, who should be excluded and what to do when someone knocks on the door as the fire is about to engulf the police station. Cost is of course another influencing issue.