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TRANSCRIPT OF PROCEEDINGS

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The attached transcript, while an accurate recording of evidence given in the course of the hearing day, is not proofread prior to circulation and thus may contain minor errors.

2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

MELBOURNE

THURSDAY 4 MARCH 2010

(117th day of hearing)

BEFORE:

THE HONOURABLE B. TEAGUE AO - Chairman

MR R. MCLEOD AM - Commissioner

MS S. PASCOE AM - Commissioner

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1 CHAIRMAN: Yes, Mr Rozen.

2 MR ROZEN: Before commencing the proceedings this morning, it  
3 is necessary to place a matter on record. It will be  
4 recalled that yesterday, Mr Chairman, you made an order  
5 which was subsequently amended in a minor way which  
6 excluded certain people from the hearing of the  
7 circumstances surrounding the death of nine people at  
8 Pine Ridge Road, Kinglake West, and importantly  
9 suppressed publication of the names of the nine deceased,  
10 together with two other witnesses who were mentioned  
11 during the course of the proceedings. The purpose of the  
12 order was to protect the privacy of the named people and  
13 out of respect for the families of the deceased.

14 It has come to the Commission's attention that  
15 there may have been a contravention of the order by a  
16 media organisation yesterday. This is a matter that is  
17 viewed with considerable concern by the Commission and is  
18 presently being investigated.

19 CHAIRMAN: Yes. The Commission will obviously take a very keen  
20 interest in what transpires so far as that is concerned.

21 MR ROZEN: The first matter that we are to consider today  
22 concerns the deaths of Elizabeth and Phillip Perry.  
23 Mr Perry was 58 years of age, having been born on  
24 10 December 1950. The late Mrs Perry was 59 years of age.  
25 She was born on 9 July 1949. The Perrys lived at 115  
26 Chads Creek Road, Strathewen, and that is the location in  
27 which their remains were found. I recall Detective  
28 Superintendent Hollowood.

29 CHAIRMAN: I gather there is at least Mrs Trott and other  
30 members of the Perry family.

31 MR ROZEN: Yes, there are, and I apologise for not mentioning



1 MR ROZEN: Detective, the Phoenix Taskforce was established  
2 soon after the fires of 7 February 2009 as the Victoria  
3 Police investigation of the circumstances surrounding  
4 those fires that resulted in deaths?---Yes, it was.  
5 You are the senior investigating officer of the Phoenix  
6 Taskforce?---Yes, I am.  
7 One aspect of the taskforce's work has been given the codename  
8 Operation Angora and it is concerned with the deaths  
9 arising from the Kilmore East fire, including the deaths  
10 of the Perrys in Strathewen?---That's correct.  
11 If can you can open the investigation brief in relation to that  
12 investigation. If we could start, please, with the  
13 satellite imagery. If you could take us through the  
14 photographs, please?---Yes, this takes us to the address  
15 at 115 Chads Creek Road in Strathewen. The view actually  
16 shows a fairly heavily wooded property. In the centre of  
17 the image is where the house actually stood. Just to the  
18 north of the house is a dam. Just to the south-east of  
19 the house itself was a carport and to the south-west side  
20 were some associated sheds and the driveway actually led  
21 out to the right of the image where I'm putting the cursor  
22 to where Chads Road is, which is just off screen to right  
23 of image. The red marker which is indicated on the house  
24 shows the location where human remains were recovered.  
25 As investigators have established, that was in the laundry area  
26 of the house?---Yes, that's right.  
27 That image was taken, if I can read the date, on 3 January  
28 2009?---Yes, it was.  
29 If we could go to an image taken after the fires of 7 February.  
30 We can see that, other than one structure towards the  
31 bottom right of the picture, the property was clearly

1           devastated by the fires?---Yes, it was.

2   If we can go back to the pre-burn image for a moment, please,

3           Detective, and if you are able to increase the elevation

4           for us. We see there was a second dam on the property a

5           little bit further away to the north?---Yes, there was.

6   And we can now see Chads Creek Road on the right-hand side of

7           the photograph?---Yes.

8   We heard some evidence yesterday that Chads Creek Road is in

9           fact a continuation of Pine Ridge Road in Kinglake

10          West?---Yes, it is.

11   Although we did hear that it was very difficult certainly as at

12          7 February 2009, other than in a four-wheel-drive vehicle,

13          to drive south from Pine Ridge Road to Chads Creek

14          Road?---Yes, that's right.

15   Are you able to increase the elevation again for us, please.

16          That's an 800 metre shot. Then again, please. We can see

17          the township of Strathewen, including locations such as

18          Arthur Street and King Street that we looked at yesterday

19          to the east of Chads Creek Road?---Yes, that's right.

20   To the west of the location, and we will return to this in the

21          evidence, is Mount Sugarloaf?---Yes, it is.

22   Perhaps if you are able to indicate the general area. Thank

23          you. That's about a distance of about 1.5 kilometres from

24          Chads Creek Road?---Yes.

25   If we can see a post-burn image of the entire area. There is

26          one map that I would like to take you to under the

27          exhibits tab, please, Detective. It is the Chads Creek

28          Road residents map. The last one might require us to look

29          a bit closer. Perhaps if we can firstly identify the

30          location of the Perry household in red type there. The

31          Avolas lived in the property to the south of the Perrys

1 and we will be examining the circumstances surrounding the  
2 death of Mr Avola later today. If you could identify the  
3 location of the Minett household, please, which is to the  
4 north on the other side of Chads Creek Road, I think, Lisa  
5 and Neil Minett. And the McIver household, which is  
6 another investigation that will be considered immediately  
7 after this one?---Yes.

8 Detective, as has been indicated, the investigation of the  
9 circumstances surrounding the death of the Perrys has  
10 involved taking witness statements from a large number of  
11 people, including family members, friends, neighbours,  
12 police officers, CFA officers and so on?---Yes.

13 In addition, police investigators have checked telephone  
14 records to be able to establish with as much accuracy as  
15 possible the order in which telephone calls were made and  
16 that's enabled them to work out the chronology of events  
17 on the day?---That's correct.

18 Using that information, investigators have been able to put  
19 together a re-enactment of the events of 7 February 2009.  
20 I would like you, please, to take us through this  
21 re-enactment at this time?---This event relates to 115  
22 Chads Creek Road in Strathewen and ordinarily residing at  
23 the address were Phillip and Elizabeth Perry. The address  
24 was actually 7.8 kilometres west of Kinglake and it was  
25 35.5 kilometres from the actual point of origin of the  
26 fire in Kilmore East.

27 On 7 February 2009 the residents of this address,  
28 Phillip and Elizabeth Perry, were at home. At about 1.15  
29 pm Lisa Minett of 190 Chads Creek Road, Strathewen,  
30 activated the local fire tree and called the Perry  
31 property. She spoke to Phillip who was monitoring his

1 scanner and he said that he would call her if the  
2 situation changed. He sounded relaxed and told Lisa  
3 Minnett not to worry.

4 At about 1.20 pm Phillip telephoned neighbour,  
5 Vivian Robinson, and left a message on her answering  
6 machine telling her of a fire in Wandong and not to panic.  
7 At about 1.21 pm Phillip telephoned neighbour, William  
8 Putt, and told him that he was monitoring his scanner  
9 constantly and will let him know if anything happens.  
10 Phillip sounded calm and relaxed.

11 At about 3.48 pm Alison Pascoe of 235 Chads Creek  
12 Road, Strathewen, telephoned Phillip and informed him of a  
13 fire in Eagle's Nest Road. Phillip thanked her and  
14 sounded bright. At about 3.49 pm Phillip contacted  
15 Stephen Chapman of 20 Chads Creek Road, Strathewen, and  
16 informed him of the fire at Arthurs Creek. Phillip  
17 sounded fine, and did not mention what he was doing.

18 At about 4.06 pm Elizabeth telephoned Marty  
19 Bryson of 27B Minchins Road, Arthurs Creek, and told her  
20 of a fire in Harry's Road, Arthurs Creek. Marty Bryson  
21 informed Elizabeth of a fire on top of Mount Sugarloaf and  
22 stated that Elizabeth sounded surprised and ended the call  
23 abruptly after telling Marty Bryson that she was leaving.

24 At about 4.09 pm Elizabeth telephoned her mother,  
25 June Trott, and told her that she was packing the car and  
26 would be leaving to go to the Reids' place in Doreen.

27 At approximately 5 pm David McGahy, the captain  
28 of the Arthurs Creek CFA, stated that at around 4.57 pm  
29 four fires were reported in the Chads Creek Road,  
30 Strathewen area. At 5.01 pm a telephone call is made from  
31 the McIver residence at 145 Chads Creek Road, Strathewen,

1 to the Perry residence. The call duration is 35 seconds.  
2 Gregory, Judith and Catherine McIver all died in the fires  
3 on 7 February.

4 At approximately 5.30 pm the fire actually struck  
5 this location. At about 3.55 pm on 11 February 2009  
6 Detective Senior Constable Paul Hollingworth and Leading  
7 Senior Constable Jason Behan attended the property with  
8 the victim identification team. During a search, the  
9 remains of two deceased were located in the laundry area  
10 of the house. The remains were later identified as  
11 Phillip and Elizabeth Perry.

12 The police re-attended the property at a later  
13 stage on 11 February. They conducted a further search and  
14 further remains were actually located. The forensic  
15 anthropology report for some of these samples has been  
16 requested but not yet provided.

17 Thank you, Detective. If we can examine the still photographs,  
18 please, or a selection of them, starting with photograph  
19 number 1. If you could talk us through these photographs,  
20 please, Detective?---Yes. This is an image that was taken  
21 by the DVI team on 11 February. It shows a view from the  
22 driveway immediately to the south of where the house  
23 remained. It actually shows the front of the house and  
24 just to the left of image you can see the remains of the  
25 Ford station wagon that actually belonged to Phillip Perry  
26 and which was parked outside the front of the house.

27 The photographer is standing here on Chads Creek Road?---Chads  
28 Creek Road, no. It would probably be more to the right of  
29 image.

30 What we can see of the property are the remains of the mud  
31 brick walls?---Correct.

1 And we can also see pieces of roof sheeting?---Correct.

2 If we can go to photograph number 2, please?---This is a closer  
3 view of the remains of the house. The original house  
4 actually had a verandah all the way around the front.  
5 Most of the sheeting has actually come down and only the  
6 mud brick walls are still remaining.

7 It looks like it may be the remains of one of the posts of the  
8 verandah in the foreground of the photograph?---Yes, it  
9 is.

10 Photograph 3, please?---This is a view of the rear of the  
11 house. In the centre of the image can be seen some police  
12 blue tape. That indicates the laundry area, just  
13 immediately behind that, and that's the location where  
14 human remains were recovered.

15 Photograph 4, please?---This is an image taken inside the house  
16 itself where a box with documents was actually found.

17 And photograph 5 I think shows us the contents of the safe  
18 which we can just make out on the right-hand side of that  
19 photograph?---Yes. There were various person documents  
20 and monies and that actually put in there.

21 Finally photograph number 6?---This is a view of the dam which  
22 is situated about 32 metres north of the house. Just to  
23 the extreme right of image you can see a jetty which  
24 actually extends out into the dam itself.

25 Extreme left of the image, do you mean, Detective?---Sorry,  
26 extreme left, yes. You can see the red foundations of it.

27 Yes. Thank you. I would like, if I could, at this point to  
28 look at a selection of the statements that were obtained  
29 from witnesses. If I could start with the statement of  
30 June Trott, please. Mrs Trott informed investigators that  
31 she is the mother of the late Elizabeth Perry, and that

1 her late daughter was generally known as "Libby". She  
2 lived in the house at 115 Chads Creek Road, Strathewen,  
3 and had been married to Phillip for approximately  
4 30 years.

5 At the top of page 2 Mrs Trott provided  
6 investigators with some information about the house. She  
7 told them, "Their house was a single storey house and was  
8 built from mud. Phillip was going to put an extension  
9 onto the laundry prior to the fire and there may be an  
10 application for plans. I don't think there would have  
11 been any house plans. He had recently purchased some mud  
12 bricks from the fire chief at Strathewen for the  
13 extension." The layout of the house is there set out.

14 Then in the middle of page 2 Mrs Trott told  
15 investigators, "Phillip had recently purchased a sprinkler  
16 system for the roof, but it was not installed at the  
17 time." That's been confirmed by investigators?---Yes.

18 On the third page Mrs Trott was asked what she understood of  
19 the fire plans that had been made by the Perrys, in the  
20 middle of page 3 of the statement. There set out was  
21 Mrs Trott's understanding of the plans. "Phillip's idea  
22 was to stay and defend. Libby's idea was to go, because  
23 she hated fire." If I could just interrupt the reading  
24 there, that hatred or fire or fear of fire was something  
25 that was referred to by other witnesses as well, on  
26 Libby's part?---Yes, it was.

27 Returning to the statement, the third aspect of the plan, "They  
28 had water tanks." Fourth, "I am not sure what else they  
29 had planned to do."

30 A statement was also obtained from Millicent  
31 Reid. Mrs Reid explained that she and her husband were

1 close friends of Libby and Phillip. They had known them  
2 since 1992. She told investigators in the third  
3 paragraph, "They are the sort of people that would do  
4 anything for you." At the bottom of the first page of her  
5 statement Mrs Reid told investigators the following: "Over  
6 the years with Phillip and Libby we had a standing  
7 arrangement that if any fires ever came through their  
8 property, that Phillip and Libby would pack up their four  
9 dogs and they would come to our house at Doreen. Libby  
10 hated the thought of fires and particularly if Phillip was  
11 away travelling."

12           Investigators were informed by other residents of  
13 Strathewen that there was a fire tree in operation,  
14 particularly in relation to the residents of Chads Creek  
15 Road?---Yes, there was.

16 If we can examine that evidence starting with the statement of  
17 Alison Pascoe. Ms Pascoe told investigators that she  
18 lived with her husband, Stephen, at 235 Chads Creek Road.  
19 Halfway down page 1 of her statement she told  
20 investigators this: "My husband, Stephen, has been  
21 involved in Community Fireguard for a number of years. My  
22 husband was in region 13 CFA based in Lilydale. Community  
23 Fireguard is set up by the CFA which provides facilitators  
24 who provide fire safety and preparedness in the event of a  
25 fire and what to do and helping set up fire plans,  
26 clearing land and setting up pumps and sprinklers.  
27 Stephen was a facilitator and he would go out and provide  
28 information to community groups. With Strathewen, Stephen  
29 would organise a Fireguard meeting at the start of each  
30 fire season and were usually held in December. It  
31 involved Chads Creek Road residents."

1           "The Perrys attended the first meeting that was  
2           about five years ago. I have no idea what their fire plan  
3           was. After the first meeting attendance fell away over  
4           the next few years. I can't explain why people weren't  
5           interested in attending."

6           "When the Fireguard group for Chads Creek Road  
7           was first developed, members were asked if they wanted to  
8           be on a fire tree, which is used if there is a threat or  
9           knowledge of fire, then there is a list of names and phone  
10          numbers, the idea being that one person would ring the  
11          next neighbour, who in turn would call the next person in  
12          the list and so on, to inform them of the impending  
13          threat. The Perrys were on the list. It was purely a  
14          voluntary thing. The fire tree did form a good piece of  
15          communication."

16          As you have already indicated to us, Detective,  
17          the fire tree did operate on 7 February 2009. The  
18          investigators have been able to establish that it was  
19          initiated some time shortly after 1 pm?---Yes, it was.  
20          And that contact was made with the Perrys and the Perrys in  
21          turn contacted other neighbours to notify them of what  
22          information was available about the Kilmore East  
23          fire?---Yes, they did.

24          There was communication later in the afternoon, including a  
25          telephone call by Ms Pascoe to the late Phil Perry at 3.48  
26          pm. Mr Perry was advised that there was a fire in Eagle's  
27          Nest Road, a location in Strathewen?---Yes.

28          As you have already indicated, Detective, there was a telephone  
29          conversation between Marty Bryson, a friend of the Perrys,  
30          and Libby Perry at 4.06 pm. During that conversation  
31          Libby Perry told Ms Bryson of the fires in Harry's Road,

1           Arthurs Creek. Ms Bryson told investigators that Libby  
2           sounded surprised and said that she was leaving.  
3           Investigators have been able to establish that at 4.09 pm  
4           Libby made contact with her mother, Mrs Trott, and told  
5           her that she was packing the car up to go to Millicent and  
6           Harry Reid's house. That was consistent with the  
7           arrangement that Mrs Reid told investigators existed  
8           between herself and the Perrys?---Yes, it was.

9   As part of the investigation a report was obtained from a  
10          Mr John Kelleher. Mr Kelleher works for Victoria Police  
11          Forensic Services Centre as a scientist with expertise in  
12          the investigation of fire and explosive scenes?---Yes, he  
13          does.

14   He has performed that work since 1988?---He has.

15   If Mr Kelleher's statement could please be brought up. It is  
16          at page 0210. About two-thirds of the way down page 1,  
17          Mr Kelleher indicated that he was asked to review the  
18          investigation brief on 20 January 2010, and at the foot of  
19          page 1 that he visited the address on 22 January 2010. He  
20          says this about the scene that he found at that time: "The  
21          scene had been completely cleared and there had been some  
22          regrowth of the surrounding bush so a comprehensive scene  
23          examination was not possible. However, attendance at the  
24          location did provide an appreciation of the surrounding  
25          vegetation and the topography."

26                 On page 3 of his statement, after setting out the  
27          investigation material that he examined, he describes the  
28          location of the examination under the heading "Location"  
29          as follows: "The town of Strathewen is in the Arthurs  
30          Creek valley between Whittlesea and Kinglake, surrounded  
31          on three sides by the Kinglake National Park." In the

1 second paragraph he says, "There are three roads into  
2 Strathewen from the north - Pine Ridge Road, which becomes  
3 Chads Creek Road, which is impassable at the northern end  
4 for traffic except the largest four-wheel-drives; Bowden  
5 Spur Road, which is steep but quite driveable for ordinary  
6 cars; and Beale Avenue, winding between the other two  
7 roads, also steep but passable."

8 "The Perry property was at 115 Chads Creek Road  
9 about one kilometre north-west of the main town area, on  
10 the western side of the creek. The house was in the  
11 south-western quarter of the property, at the foot of the  
12 spur extending approximately south-east from Sugarloaf  
13 Ridge."

14 In the next paragraph, "The surroundings were a  
15 mixture of grazing land and medium density eucalypt  
16 forest. The Kinglake National Park was about 500 metres  
17 west, with a broad strip of farmland between the park and  
18 the Perry property. However, the Perry property itself  
19 was quite densely covered by what appears to have been at  
20 least medium height trees." And we saw that in the image  
21 that was taken in January 2009?---Yes.

22 Under the heading "Description" there is a description of the  
23 house and its orientation. At the foot of page 3  
24 Mr Kelleher notes, "The area around the house was  
25 relatively clear. There were a few trees, which appear to  
26 have been ornamental, possibly bushes rather than trees,  
27 and what may have been a lawn area to the rear and  
28 probably also to the sides of the house."

29 At the top of page 4, "There were four water  
30 tanks noted by Detective Senior Constable Hollingworth, a  
31 concrete tank at the back being the main supply for the

1 house. There appears to be at least 10,000 litres,  
2 possibly 20,000. There were three cars in the garage and  
3 one in the driveway." The one in the driveway is the one  
4 we saw in the photographs earlier, a station wagon?---Yes,  
5 we did.

6 Under the heading "Fire direction" Mr Kelleher notes,  
7 "Examination of the scene suggested that the main fire  
8 came from the west and north-west, but the situation is  
9 complex." There is reference then to what witnesses have  
10 said about what they observed. Then in the next paragraph  
11 Mr Kelleher says the following: "From the witness  
12 statements, the fire came from the north-west, with  
13 the firefront arriving at various times as might be  
14 expected from their different locations. Some of these  
15 reports are inconsistent, such as the CFA truck turnover  
16 south of Strathewen at 1640 hours, seemingly well before  
17 the main front arrived, but this may relate to spotfires  
18 spreading uncontrolled. An extremely consistent and  
19 comprehensive series of reports were obtained from Mark  
20 Roberts of the CFA, who observed the main firefront north,  
21 north-west of Eagle Nest, which is actually the hill in  
22 front of the McIver house, at 1735 hours. This is  
23 consistent with the statement of Mrs Tully, who spoke to  
24 Greg McIver at 1706 and whose house (across Chads Creek  
25 Road from the McIvers' house) the fire reached about 5.30  
26 pm. The Perry property is probably the area to which  
27 Mr Roberts refers."

28 Under the heading "Damage" Mr Kelleher notes the  
29 extensive damage to the house which we have seen in the  
30 photographs. In the second paragraph Mr Kelleher says,  
31 "There are corrugated iron sheets outside the perimeter of

1 the house, and it is not clear whether these were moved by  
2 searchers or by wind as the fire progressed. However,  
3 there is no evidence of major structural damage directly  
4 due to wind prior to or in the course of the fire."

5 Under the heading "Deceased" at the top of page  
6 5, Mr Kelleher notes that the remains of the late Mr and  
7 Mrs Perry were located in the laundry at the back of the  
8 house. This is a logical refuge with the fire actually in  
9 the house, and it may have had a water supply from the  
10 sink, possibly from the hot water service. It has the  
11 further advantage of being at or close to the back door,  
12 so that an at opportune time those sheltering can escape  
13 the burning house."

14 Under the heading "Firefighting equipment, water  
15 supply, power" Mr Kelleher sets out again the water supply  
16 at the premises and then in the second paragraph of that  
17 section he notes as follows: "Ms Trott refers to a  
18 sprinkler system for the house, which unfortunately was  
19 not yet installed." He goes on, "There is no certainty  
20 that a sprinkler system would have altered the outcome  
21 here, but provided there was the necessary water supply,  
22 the chances of survival would have been greatly improved."

23 Under the heading "Firefighting" towards the  
24 bottom of the page, Mr Kelleher notes, "Detective Senior  
25 Constable Hollingworth who examined the property noted  
26 hoses attached to the concrete and metal tanks, hoses  
27 which were extended rather than coiled or rolled. He  
28 inferred from this, probably correctly, that firefighting  
29 was under way prior to arrival of the main fire.

30 "Mrs Perry spoke to her mother at 4.09 in the  
31 afternoon. The McIvers called the Perrys at 5.01 and

1 Ms Bryson called them at 5.07. These calls were not  
2 answered, and the likely explanation for this is that the  
3 Perrys were outside, either wetting down or fighting  
4 spotfires. Mr McIver referred to embers falling on his  
5 roof at 5.06 and that was only some 300 metres from the  
6 Perry home. There are remnants of lawn which have  
7 survived north-east of the house, which supports the  
8 suggestion that some wetting down occurred."

9 At the top of page 6 of the report Mr Kelleher  
10 says, "The couple were forced to take refuge in the house,  
11 probably by the arrival of the main firefront at about  
12 1730," 5.30 pm, "possibly by spotfires somewhat earlier.  
13 However, given the evidence of extended hoses and water in  
14 the tanks, they may have been able to hold off all but the  
15 largest spotfires."

16 "On retreating to the house and losing their  
17 hoses and pump to the fire, they were obliged to remain  
18 until the firefront passed and they could exit the house,  
19 which by that time would almost inevitably be alight.  
20 They may have been able to extend this refuge period by  
21 internal firefighting, but it could not be established  
22 whether they did so."

23 "On exiting, their only option would be to head  
24 for the dam nearby, perhaps 50 metres north of the house.  
25 Their position is consistent with this, but they may have  
26 delayed their exit unduly, if they did consider that  
27 option."

28 Under the heading "Evacuation/escape" Mr Kelleher  
29 notes as follows, "Phil Jones evacuated safely at 4.24  
30 along Chads Creek Road, but there were spotfires around  
31 both the Eagle's Nest Road and the Cottlesbridge Road at

1 about 4.40, and from about this time evacuation was  
2 impractical via Strathewen. Evacuation via Pine Ridge  
3 Road was impossible, and evacuation by Beale Avenue or  
4 Bowden Spur Road would have required driving across the  
5 firefront."

6 "Mrs Perry told her mother at 4.07 that she was  
7 packing to leave. At that time she thought the fire was  
8 about two kilometres away on Mount Sugarloaf, as advised  
9 by Ms Bryson. There were four vehicles available, and a  
10 station wagon was parked near the front door facing the  
11 road. There may or may not have been an attempt to leave,  
12 but if it was delayed past about 4.30 pm Chads Creek Road  
13 would have been blocked in both directions by spotfires."

14 Mr Kelleher concluded by identifying certain  
15 issues from the investigation. He prefaces the expression  
16 of those opinions with the following words, "These  
17 comments should be regarded as to some extent tentative,  
18 given that a scene examination was not conducted  
19 immediately after the fire."

20 With that caveat, he then sets out his  
21 conclusions as follows, "The property was quite heavily  
22 wooded, and there was limited clearance around the house.  
23 The water supply was limited. It is not known whether  
24 this was a major issue, but two of four tanks were  
25 probably completely empty. Water pressure was almost  
26 completely dependent on electric pump. When the power  
27 failed, as probably occurred about 1700 hours", or 5 pm,  
28 "water pressure would have been lost. The couple do not  
29 appear to have been equipped with a generator or a  
30 petrol/diesel firefighting pump."

31 "The Perrys appear to have been surprised by the

1 arrival of the firefront. While they knew of the fire and  
2 referred to it in telephone conversations, there does not  
3 appear to be any reference to the imminent arrival of the  
4 fire, either as spotfires or a front."

5 "Mrs Perry intended to evacuate. The car at the  
6 front of the house was probably being prepared for  
7 evacuation. The development of spotfires may have  
8 prevented her evacuation."

9 "Exit from the house once it ignited may have  
10 been delayed by lack of awareness of the hazard of the  
11 burning house or by the prolonged presence of an intense  
12 firefront. The only real option was escape to the dam,  
13 and the couple were either unable or unwilling to do so."

14 That's a report that investigators received from  
15 Mr Kelleher?---Yes, it is.

16 Finally, Detective, post-mortem reports were obtained in  
17 relation to autopsies that were carried out regarding the  
18 remains of both Mr and Mrs Perry?---Yes, they were.

19 In each case the pathologist who conducted the post-mortem  
20 concluded that the cause of death was due to the effects  
21 of fire ?---That's correct.

22 MR ROZEN: Commissioners, they are the questions that I have  
23 for Detective Superintendent Hollowood in relation to this  
24 matter.

25 CHAIRMAN: Yes, thank you, Mr Rozen.

26 <CROSS-EXAMINED BY MR LIVERMORE:

27 Detective, just in relation to Mr Kelleher's report, we note  
28 that each of his reports he qualifies in the same manner  
29 as Mr Rozen read out to you. Some of his comments in  
30 relation to fire behaviour direction and evacuation should  
31 be looked at with some care because his primary expertise

1 is really that of an arson chemist?---Yes, that's correct.  
2 And his examination of the fireground was limited to an  
3 examination of the houses in which people died and the  
4 immediate environs?---Correct.  
5 We note in relation to each of his statements where he refers  
6 to the material that he looked at that he doesn't list  
7 there the extensive and detailed evidence of Mr Fabian  
8 Crowe, who examined the whole course and run of the  
9 fire?---Yes, that's correct.  
10 In particular, he doesn't refer to Mr Crowe's evidence about  
11 during mid-afternoon there being effectively three  
12 separate masses of fire: the main fire, if we can call it  
13 that, on Mount Disappointment; the many spotfires that  
14 combined at Humevale; and the many spotfires that combined  
15 at Strathewen?---Yes.  
16 And in that context should we read Mr Kelleher's reference to  
17 main fire and firefront, as you said yesterday, as really  
18 referring to the direction from which the most severe  
19 impact upon the residents that he was examining  
20 occurred?---Yes, that is correct.  
21 CHAIRMAN: Are there any queries or comments from members of  
22 the family? Thank you. Perhaps you now want to tender  
23 the brief.  
24 MR ROZEN: Yes, please.  
25 #EXHIBIT 773 - Police presentation of the circumstances  
26 surrounding the deaths of Phillip Perry and Elizabeth  
27 Perry (EXH.773.0001) and photographs.  
28 CHAIRMAN: Thank you, Mr Rozen. We will adjourn now until  
29 11.30.  
30 <(THE WITNESS WITHDREW)  
31 (Short adjournment.)

1 CHAIRMAN: Yes, Mr Rush.

2 MR RUSH: Commissioners, the evidence this morning concerns the  
3 deaths of Gregory McIver, Judith McIver and Catherine  
4 McIver. There are representatives of the families of both  
5 Judith and Gregory McIver in court.

6 CHAIRMAN: Yes. Thank you. On behalf of the Royal Commission,  
7 I would like to extend a welcome to the members of the  
8 families and to give you an idea of how we proceed in a  
9 session which is designed to ensure that we get the  
10 information we need, but in a way which is sympathetic to  
11 the feelings of the members of the family. The aim is  
12 within the space of half an hour to an hour to bring out  
13 in a way that relies upon what we call hearsay evidence,  
14 rather than direct evidence from a lot of witnesses, the  
15 material that is needed.

16 The way that that is done is Mr Rush, counsel  
17 assisting the Commission, will put a number of questions  
18 to a very senior detective, Detective Superintendent  
19 Hollowood, who has put together all the statements and  
20 various other materials and is therefore able to deal with  
21 those matters in a very sensible way. So, what happens is  
22 the question and answer process continues and then at the  
23 end of that we are given the opportunity to ask questions  
24 and at that time I will turn to you and ask you if you  
25 have any question or comment. Just raise your hand if  
26 there is something you would like to have clarified and we  
27 will deal with it in that way. So, at this stage I will  
28 ask Mr Rush to proceed.

29 MR RUSH: Commissioners, Gregory David McIver, or Greg McIver,  
30 was born on 28 April 1949 and was 59 years and nine months  
31 old on 7 February of last year. He resided at 145 Chads

1 Creek Road, Strathewen, with his wife, Judith Lorraine  
2 McIver, or Judy, who was born on 27 October 1949 and was  
3 59 years and three months as of 7 February. Also at the  
4 house on 7 February was Catherine Mary McIver, who was  
5 born on 8 December 1924 and was 84 years and one month of  
6 age. She normally resided in Torquay, but she had been  
7 recently discharged from hospital on 5 February 2009 and  
8 was staying with Greg and Judy McIver for a rest, I think  
9 she described it as. All three died in the  
10 homestead-style house at 145 Chads Creek Road, Strathewen.  
11 Commissioners, I call Detective Superintendent Hollowood.

12 <PAUL STEPHEN HOLLOWOOD, recalled:

13 MR RUSH: Detective Superintendent, as part of the Phoenix  
14 Taskforce did you investigate the deaths of the three  
15 people that we have just heard about?---Yes, we have.  
16 Perhaps you could explain the Phoenix Taskforce, its purpose  
17 and how it was set up and its operation?---Yes. The  
18 Phoenix Taskforce was established by Victoria Police after  
19 the Black Saturday bushfires to investigate the  
20 circumstances of all those fires that resulted in death  
21 and my role during that time has been as the senior  
22 investigative officer.

23 In relation to the deaths of Greg and Judy and Catherine  
24 McIver, have you prepared a brief for the purposes of this  
25 hearing?---Yes, we have.

26 If you could open the brief. Firstly, we see there the event  
27 location as part of the brief. Can we look at the  
28 pre-burn photograph. There we see the house and its  
29 surrounds?---Yes, we do.

30 And the red dot?---Indicates the location where human remains  
31 were found inside the house after the fire.

1 Perhaps if we could come out to roughly 800 metres. We get a  
2 general view of the topographical area. What we see down  
3 towards the right of that photograph is the Strathewen  
4 oval?---Yes, we do.

5 In general terms, the house is located, is it not, about one  
6 kilometre north of the Strathewen township?---Yes, it is.

7 If we come out a little bit further, can we see that?---Yes.

8 The property itself is situated on a spur to the south-east of  
9 the Sugarloaf Ridge?---Yes, it is.

10 The house was situated on a crest, really on top of that  
11 spur?---Yes, it was.

12 To the north and south of the property we see there what's been  
13 described as forested area?---Yes.

14 And open paddocks to the west, is it?---Yes.

15 Perhaps if we could have a look at the post-burn photograph.  
16 We will come to it a little bit later, but the approach of  
17 the fire, are you able to give us an indication from the  
18 reconstruction generally speaking the direction of the  
19 approach of the fire?---It was generally coming from the  
20 north-west.

21 As part of the investigation, have you with other members of  
22 Victoria Police attempted to reconstruct the day as it  
23 concerned the McIver family?---Yes, we have.

24 Perhaps if you can take us to that?---This relates to the  
25 events on 7 February 2009 at 145 Chads Creek Road,  
26 Strathewen. Ordinarily residing at this address at that  
27 time was Gregory and Judith McIver. The address is  
28 situated 5.5 kilometres west of the township of Kinglake  
29 and 35.3 kilometres from the point of origin of the fire  
30 in Kilmore East.

31 In the morning of 7 February Greg and Judith

1 McIver were at home at 145 Chads Creek Road, Strathewen.  
2 Greg's elderly mother, Catherine McIver, was staying at  
3 the address to recover after surgery. At about 1.57 pm  
4 the McIvers' real estate agent, Ian Mason, telephoned Greg  
5 to talk about photographs of the house in relation to the  
6 pending sale of it. At about 2.02 pm Greg McIver  
7 telephoned Lorraine Tully, who had a CFA scanner.  
8 Lorraine told him that the fire was in the Kilmore and  
9 Wandong area.

10 She was a neighbour?---Yes, she was. At about 2.43 pm Jill  
11 McIver, Greg's sister and Catherine's daughter, telephoned  
12 and spoke to Judy. Judy told Jill that Catherine was  
13 having a nap and she would have to ring her back when she  
14 woke up. Judy also told Jill that Greg was listening to  
15 the radio, which Jill assumed would have been for updates.

16 At about 4.43 pm Lorraine Tully telephoned Greg  
17 and told him the fire had reached Hewitts Road and Eagle's  
18 Nest Road and was out of control. At about 5 pm Judy  
19 telephoned neighbour Mary Avola at 105 Chads Creek Road.  
20 Mary said she and Judy weren't worried as the smoke  
21 appeared far away.

22 At about 5.01 pm Lorraine Tully telephoned Greg  
23 and told him the fire had now reached Streamville, a  
24 property on the west side of Mount Sugarloaf. At about  
25 5.06 pm Greg telephoned Lorraine Tully and told her that  
26 embers were starting to fall on their roof and that he had  
27 been trying to ring 000 but couldn't get through. At  
28 around 5.06 pm spotfires started on the McIver's property  
29 around the time of Greg's call to Lorraine Tully, one in  
30 particular, approximately one kilometre north of their  
31 property, described as being the size of a car by Lorraine

1 Tully.

2 After 5.06 pm, examination of the scene by John  
3 Kelleher suggested that the fire came from the west and  
4 north-west. Kelleher opined that the McIver family  
5 appeared to have been surprised by the arrival of the  
6 firefront and its speed, which caused them to retreat into  
7 the home. After 5.06 pm fire appears to have entered the  
8 house via front windows, probably causing the family to  
9 seek refuge in a rear bedroom. Their option for escape  
10 would have been limited given the bushfire outside and the  
11 lack of shelter.

12 At about 1.55 pm on 9 February, Detective Senior  
13 Constable Karen Porter attended the premises with a  
14 disaster victim identification team. Detective Porter  
15 observed that the house was extensively damaged by the  
16 fire. Human remains were located in the burnt-out home.

17 On 21 February Leading Senior Constable Tanya  
18 Perry and other police attended and conducted a further  
19 search of the premises. Further remains were located at  
20 that time.

21 Detective Superintendent, the remains of Greg, Judy and  
22 Catherine were all found together in that one bedroom that  
23 was identified in the plan of the house?---Yes, that's  
24 correct.

25 Perhaps if we can look at a couple of photos, the first one  
26 being at IMTMEN001817 which is a view I think of the north  
27 side of the house?---Yes, it is. It shows the front of  
28 the house and it's taken from the driveway. This was  
29 taken on 9 February.

30 The house was a brick veneer house?---Yes, it was.

31 With a tin roof?---Correct, and an all-round verandah.

1 If we could have a look at 0002, there we see a view of the  
2 inside of the house and I think that's facing east?---Yes,  
3 it is facing east and it shows all the roofing had been  
4 collapsed on the inside of the house.

5 And at 0003, and I will come to it later, but there were  
6 I think a couple of Furphy tanks around the house and  
7 that's the fire damage caused to one of them?---Yes. They  
8 were located on the north-west corner of the house.

9 With the brief there are a number of photographs, but also  
10 videos. If I could ask you, firstly, to show us an  
11 amateur video taken of the fire in and about Strathewen.

12 (Video played to the Commission.)

13 This one was taken the day after the fire?---Yes, it was.  
14 It is taken in Chads Creek Road?---Correct.

15 (Video played to the Commission.)

16 Thank you, and if we could have a look at this one.

17 (Video played to the Commission.)

18 That video, Detective Superintendent, it is indicated was taken  
19 around 4.15 looking north towards Mount Sugarloaf?---Yes,  
20 it is.

21 And taken from the Cottles Bridge-Strathewen Road?---Correct.  
22 The house of Greg and Judy McIver was, as we have indicated, on  
23 a ridge line, but it was at the top - one gained access to  
24 it by quite a long drive?---Yes, that's right. About  
25 800 metres.

26 You have already referred in the brief to the limited means of  
27 escape from the fire. There is a video, quite a lengthy  
28 video, taken on the approach to the house up the  
29 driveway?---Yes.

30 Perhaps if we can go to that about halfway along it.  
31 (Video played to the Commission.)

1 So are we in the driveway here?---Yes, it's in the driveway and  
2 it's actually climbing up the ridge towards where the  
3 house is. We can just start to see a shed come into  
4 vision on the right-hand side and concrete water tank  
5 behind that, the three destroyed cars that were mentioned  
6 on the left vision, and this leads up the front driveway  
7 to the front of the house itself.

8 It would appear that the fire that affected the area was severe  
9 and intense?---Yes, it was. The two water tankers that  
10 were spoken of can just be seen on the right image, just  
11 to the side of the house.

12 Perhaps if we could go to a couple of statements. The first  
13 one I wanted to go to - there were a number of statements  
14 taken, but the statement of the neighbour, Mr Phil Jones,  
15 which is at (VPO.001.075.0116). In the statement towards  
16 the bottom of the page, Mr Jones indicated that on  
17 25 January he was asked to go over the road to have a  
18 drink with Greg and Judy McIver?---Yes.

19 I think he had recently moved into the area and it was the  
20 first time he had visited their home?---That's correct.

21 He over the next page at 117, in the first paragraph, indicates  
22 that he was reasonably impressed with the facilities that  
23 were available for fighting fire. He refers to a big  
24 metal water tank of 15,000 to 20,000 litres, a separate  
25 tank somewhere else for the house, and it appeared there  
26 was one for gardening and one for firefighting and he  
27 remembered seeing a water tank on a trailer and he thought  
28 Mr McIver was fairly well prepared for a normal  
29 fire?---Yes, that's right.

30 In the conversation he was led to believe that Mr McIver had a  
31 good relationship with the Strathewen CFA?---Yes, he did.

1 And I think in another statement there is evidence of him  
2 having made arrangements on leaving the house for his  
3 mother to be looked after by the captain, if there was any  
4 need in the days leading up to 7 February?---That's right.  
5 He describes the house at the bottom of that page, the McIvers'  
6 house, as a beautifully built homestead-style house,  
7 solidly built, sunken lounge and internal feature brick  
8 walls, and certainly what we have seen would suggest that  
9 was the case?---Yes, that's right.

10 If I can very briefly go to the statement of Mr Greg McIver's  
11 sister, Jill McIver, which is at (WVPO.001.075.0090). She  
12 gives some personal particulars, that Greg and Judy were  
13 married in 1971?---Yes.

14 Judy McIver I think was a charge theatre nurse at the Warringal  
15 Private Hospital?---Correct.

16 And Greg McIver I think had recently retired from an executive  
17 position with a shoe company?---Yes.

18 And that I think at 0091 they had moved to the property in late  
19 1995?---Correct.

20 Mr John Kelleher, the forensic scientist with Victoria Police,  
21 also prepared a report in relation to the circumstances of  
22 the fires and the death?---He has.

23 If I can go to that at 0095. Perhaps if we go over the page to  
24 0097 under the heading "Description", from the information  
25 available to him he reported, in the second paragraph,  
26 that at the north-west corner of the house site were a  
27 large metal water tank, probably 22,000 litres, a shed,  
28 possibly a garage. He describes the house as being brick  
29 veneer with a corrugated iron roof, probably on a cement  
30 slab. Then he says there were two more large tanks,  
31 probably 22,000 litres, on the southern corner of the

1 house, and these possibly provided house water.

2 Internally, he indicated pre-fire photographs  
3 showed a timber-lined, cathedral-type ceiling in the front  
4 rooms and conventional furniture and fittings. Over the  
5 page, 0098, he reported on the damage, that all the  
6 combustible material in the house had been consumed by the  
7 fire and that the house, to his observation, had burned  
8 freely without extinguishment?---That's correct.

9 In addition, he in the next paragraph indicated that, "The  
10 pattern of damage, and the position of the deceased  
11 towards the centre of the north-eastern (rear) wall,  
12 suggested the fire may have entered the house through the  
13 large front windows, in some or all of the dining, lounge  
14 and family rooms." That is the area of the house near  
15 where the vehicles were?---Yes, that's correct.

16 It was the opinion of Mr Kelleher that it was likely that the  
17 fire approached this house very quickly?---Yes.

18 And gave little opportunity for any firefighting effort to take  
19 place?---Yes.

20 Apart from the obvious supply of water and equipment for  
21 firefighting, there is no other evidence in relation to a  
22 plan that police have been able to find?---That's correct.

23 They are the matters, Commissioners.

24 CHAIRMAN: Thank you. Any questions?

25 <CROSS-EXAMINED BY MR LIVERMORE:

26 Detective, just in relation to that last matter, Mr Kelleher's  
27 opinion about the fire approaching rapidly leaving little  
28 time for firefighting activity, the chronology you have  
29 provided, however, does indicate telephone communication  
30 with the McIvers reporting the various spotfires in the  
31 Strathewen area?---Yes, that's correct.

1 And at page 0098, under the heading "Fire direction",  
2 Mr Kelleher opines that the evidence indicates that the  
3 McIver residence was possibly affected by spotfires, the  
4 first noted at 1550 hours near Beale Avenue, that  
5 Mr McIver was speaking to Mrs Tully at 1706 and the main  
6 fire hit their house about 30 minutes later?---That's  
7 correct.  
8 That's all, thank you.  
9 CHAIRMAN: Are there any matters that any family member would  
10 want to have raised?  
11 MR RUSH: Just some matters by way of clarification,  
12 Commissioners. Catherine McIver's second name, I think  
13 I might have said Mary. It is in fact May. And to  
14 correct the date of birth of Greg McIver from the 28th, if  
15 it could be 26 April 1949.  
16 CHAIRMAN: Yes.  
17 MR RUSH: The other matter that I neglected was in relation to  
18 the causes of death. If I can just put that to  
19 Mr Hollowood.  
20 The pathological findings, Mr Hollowood, in relation to the  
21 causes of death were as a consequence of the effects of  
22 fire?---That's correct.  
23 Thank you.  
24 CHAIRMAN: Yes. Apart from noting that the brief would be  
25 tendered as exhibit 774, that would appear to complete the  
26 appropriate evidence and we will adjourn now until 1.30.  
27 #EXHIBIT 774 - Police presentation of the circumstances  
28 surrounding the deaths of Gregory McIver, Judith McIver  
29 and Catherine McIver (EXH.774.0001) and photographs.  
30 <(THE WITNESS WITHDREW)  
31 LUNCHEON ADJOURNMENT

1 UPON RESUMING AT 1.30 PM:

2 CHAIRMAN: Yes, Mr Rozen.

3 MR ROZEN: Commissioners, the evidence to be led this afternoon  
4 concerns the deaths of Donald Edsall Hatton, who was  
5 83 years of age, having been born on 1 May 1925 and his  
6 late wife, Mabelle Leonie Hatton, who was 81 years of age,  
7 having been born on 12 July 1927. Mr and Mrs Hatton lived  
8 at a property at 45 Rankines Road, Strathewen, where they  
9 also ran a bed and breakfast accommodation service, the  
10 details of which will be examined shortly. The son of the  
11 late Mr and Mrs Hatton, David Hatton, is present in the  
12 hearing room.

13 CHAIRMAN: Yes. Thank you, Mr Rozen. Mr Hatton, the  
14 Commission welcomes you to the special session of the  
15 Royal Commission which is concerned to look into the  
16 deaths of your parents. It is hoped that the kind of  
17 hearing that we have will be one that respects your need  
18 to have some information, but our need to have quite a bit  
19 of information but in a way that does not mean that we go  
20 through the court-type process of having lots of witnesses  
21 undergo cross-examination and so on.

22 So, the process we use is basically to have  
23 hearsay information provided by the questioning through  
24 Mr Rozen, as counsel assisting the Commission, of the  
25 senior detective, Detective Superintendent Hollowood. You  
26 will understand that, because the Detective Superintendent  
27 has so much information, it is possible for them to work  
28 out most of the information we are likely to need in a  
29 relatively sympathetic way.

30 At the end of the questioning the opportunity  
31 will be given to the Commissioners and the parties to ask

1 any questions, and at the same time I will ask you if  
2 there is anything more that you think should be added or  
3 any questions you would like asked, but if it suits you to  
4 just shake your head, that's fine, and we will proceed  
5 from there. At this stage we will work on the basis that  
6 Mr Rozen will proceed with the questioning.

7 MR ROZEN: I recall Detective Superintendent Hollowood.

8 <PAUL STEPHEN HOLLOWOOD, recalled:

9 Detective, you are the senior investigating officer with  
10 the Phoenix Taskforce?---Yes, I am.

11 And the taskforce was established by Victoria Police in the  
12 aftermath of the fires of 7 February 2009 to investigate  
13 the circumstances surrounding the deaths that occurred due  
14 to the fires on that day?---Yes, it was.

15 The codename that has been given to that aspect of the  
16 taskforce's work which is concentrating on the Kilmore  
17 East fire is Operation Angora?---Yes.

18 And one of the investigations that has been carried out in  
19 relation to that operation concerns the Hattons at 45  
20 Rankines Road, Strathewen?---That's correct.

21 If you could open the investigation brief, please, Detective.

22 If we could start by examining the satellite photographs  
23 to orientate the location. The address at 45 Rankines  
24 Road is an isolated location east of Strathewen?---Yes, it  
25 is.

26 Perhaps if you can explain what it is that we are seeing on  
27 this image which is taken from 200 metres above the  
28 ground?---Yes. The property is approximately about  
29 50 acres. It was set up as a wildlife sanctuary with bed  
30 and breakfast facilities. It has a number of buildings  
31 throughout. What is located just in the centre of the

1 image is the primary residence and the red dot actually  
2 indicates where human remains were found inside the house  
3 after the fire.

4 We can see a dam to the north-east of that location?---Yes, we  
5 can.

6 Are you able to indicate the approximate distance between the  
7 residence and the dam?---No.

8 Could you please increase the elevation for us. If we take it  
9 up to 800 metres, we can see Rankines Road there running  
10 north-south?---Yes, that's correct.

11 And that's a pre-burn image that was taken on 3 January 2009.  
12 We also have the benefit of a corresponding image taken  
13 after the fires. If we could bring that up, please. We  
14 can see that certainly all of the property was affected,  
15 although it is apparent that some of the structures,  
16 including the convention centre, have actually escaped the  
17 bulk of the fire effect?---That's correct, yes.

18 And we will see that a bit more closely when we look at the  
19 photographs taken at ground level. Perhaps if you could  
20 increase the elevation a little bit more. We can now see  
21 Strathewen township on the left of the photograph. We can  
22 see Arthur Street and King Street with which the  
23 Commissioners will be familiar?---Yes.

24 And Bald Spur Road running more or less north-east/south-west  
25 on the right-hand side of the photograph?---Yes.

26 Sorry, I may have confused you. Right across to the west of  
27 the location of the property, so to the right-hand side of  
28 the photograph, I think that is Bald Spur Road  
29 there?---Yes.

30 As part of the investigation that police have carried out,  
31 statements have been taken from a number of relevant

1 witnesses, both family members, neighbours and  
2 particularly investigating officers from the police, from  
3 the fire agencies and so on?---Yes, they have.

4 And telephone records have also been checked to determine the  
5 time that particular phone calls were made. Based on all  
6 of that material, police have been able to put together a  
7 re-enactment of the circumstances of the day concerning  
8 the Hattons?---Yes, we have.

9 Perhaps we can go to that re-enactment now, please,  
10 Detective?---This takes us to the events of 7 February  
11 2009 and at 45 Rankines Road, Strathewen. Ordinarily  
12 residing there were Donald and Mabelle Hatton. 45  
13 Rankines Road is situated about 4.3 kilometres to the west  
14 of the township of Kinglake and is approximately 37.8  
15 kilometres from the point of origin of the fire in Kilmore  
16 East.

17 Some fire prevention initiatives had been  
18 conducted for two to three years prior. This included  
19 removal of kerosene bush and tea-tree, and cutting down of  
20 trees close to the house. The property had been cleared  
21 with the idea fire would approach from the north. There  
22 were three major water tanks on the property as well as  
23 three dams.

24 A sprinkler system was installed around the house  
25 and on the roof and the Hattons intended to stay at the  
26 property during an incident of fire. On the morning of  
27 7 February it is believed that Donald and Mabelle were at  
28 home in the morning. It is believed that they did not  
29 have any guests at the bed and breakfast facility on this  
30 day. There is no information to suggest that there was  
31 any activity out of the ordinary.

1           At about 11.14 am a phone call was made from the  
2 landline at 45 Rankines Road to the Manningham Medical  
3 Centre Podiatry Clinic. Inquiries have not been able to  
4 reveal the nature/content of the call made. The call  
5 lasted for about four minutes and 25 seconds.

6           Prior to 3.50 pm Donald and Mabelle became aware  
7 of fire in the vicinity of their home and Donald switched  
8 on the fire sprinkler system on the roof of the house. At  
9 3.50 pm Donald used the home phone to call his son, David  
10 Hatton, and left a message on David's answering machine  
11 similar to, "This is your mum and dad. The fire system is  
12 switched on the roof and I think we'll be okay."

13           At about 5.30 pm CFA member Timothy Wells was  
14 performing duties as a fire spotter. At this time he  
15 recorded on the map that the fire crossed Hildebrand Road  
16 to Hewitts Road into bushland, and this location is  
17 approximately four kilometres south to south-west of the  
18 Hatton property.

19           At 5.30 pm, based on information provided, it is  
20 believed that the fire was in the vicinity of the Hatton  
21 property. Between 5.30 and 6.30 pm, arson chemist John  
22 Kelleher believes fire struck the premises. The damage is  
23 indicative of the fire travelling from the south-west.  
24 Although the premises had a comprehensive fire defence  
25 spray, there was no obvious evidence of active  
26 firefighting.

27           At about 3.25 pm on 10 February a disaster victim  
28 identification team attended at the address and commenced  
29 the DVI process. A search was conducted in the master  
30 bedroom where the remains of two persons were located.  
31 They were identified as Donald and Mabelle Hatton. At

1 about 10.30 am on 20 February the DVI team re-attended to  
2 continue with the DVI process.

3 Thank you, Detective. I would like to take you now to a video  
4 recording that was taken by investigating police officers.  
5 I think it is under "Scenes". If you are able to talk us  
6 through this recording, please?---Yes. It is taking us  
7 north along Rankines Road and very shortly it turns off to  
8 the right-hand side into the driveway of the property,  
9 through the entrance, and follows a quite winding road up  
10 to where the residence is situated. As can be seen, it is  
11 a very heavily wooded area all the way to the house.

12 You may have already indicated this to us, Detective, but the  
13 property itself was set up as a nature reserve?---Yes, as  
14 a wildlife sanctuary.

15 And there is evidence in the statements of a significant number  
16 of native orchids that were grown on the  
17 property?---Correct. It is starting to come into view  
18 now. There is a number of buildings that are set up for  
19 B&B and conference facilities. It can be seen there is  
20 the carport which is in front of the primary residence and  
21 two cars which belonged to the deceased actually facing  
22 into the carport. The driveway continues through to a  
23 number of other facilities set up on the property.

24 A number of the buildings have quite a distinctive design.  
25 That building there I think is octagonal?---Yes, that's  
26 right.

27 As we can see, barely touched, so far as is apparent from this  
28 side, by the fire?---Correct.

29 There is a water tank there on the left?---Yes.

30 Thank you. A significant number of photographs were taken by  
31 investigators. If we could go to a selection of those,

1 please, starting with photograph number 1?---Yes. This is  
2 the image we saw at the start of the video. It was taken  
3 by the DVI teams on 10 February and it shows the roadway  
4 entrance into the property with the driveway heading up to  
5 right of screen.

6 Go to photograph 2, please?---This is the sign which was on the  
7 gate just indicating that the place was known by  
8 "Laanecoorie Biodiversity Haven" and that it was actually  
9 set up as a wildlife sanctuary.

10 Photograph 3, please?---This is one of the B&B buildings  
11 actually called "The Wurlie" which is on the property.

12 Were there sprinklers on the roof of that building?---Yes,  
13 I believe there are.

14 Photograph number 4?---This is one of the other facilities, the  
15 conference facility, which had more extensive fire damage  
16 to it. It's called "The Quint".

17 Photograph 5, please?---One of the other B&B buildings. It is  
18 actually called "The Snug" and on the previous image, that  
19 building you can see to the extreme right-hand side of the  
20 screen, but you can also see the roofing material having  
21 come off one of the buildings.

22 Yes, thank you. Photograph number 6?---This is the carport we  
23 viewed a little earlier with the two cars inside, and to  
24 the rear of the carport is where the primary residence is.

25 Photograph number 7?---This is just an area to the north-east  
26 end of the carport where there was a concrete-walled  
27 surround which had two firefighting pumps which were  
28 enclosed inside and they were connected to a concrete  
29 water tank.

30 Photograph number 8?---This is one of the sprinklers which was  
31 actually set on the ground also around the outside of the

1 house and this particular one is on the south-east side of  
2 the primary residence.

3 Photograph number 9, please?---That's a view looking into the  
4 north-west side of the primary house and with only the  
5 exterior walls really remaining and most of the roofing  
6 having collapsed into the house.

7 And photograph 10, another perspective of the same  
8 location?---Yes, it is a north-west view into the same  
9 location.

10 And finally photograph number 11?---Yes. This is a view from  
11 the outside again into the primary house and this is into  
12 the master bedroom area and just in the foreground of the  
13 image you can see a broken sprinkler connection.

14 And the location we are looking at here was the general area  
15 where the remains were found, in the master  
16 bedroom?---That's correct.

17 I would like to now go to look at some of the statements that  
18 were obtained. If we could start with a statement of  
19 David Hatton, which is at 0340. Mr Hatton is the son of  
20 the late Mr and Mrs Hatton. At the bottom of page 1 he  
21 explains the location of the property, that it is a 50  
22 acre property set on the east side of Rankines Road  
23 between St Andrews and Strathewen. He describes it as  
24 heavily wooded with virtually all of the trees being  
25 Australian native trees.

26 At paragraph 5 he explains, "About halfway  
27 between the slope where the bed and breakfast was built  
28 and Rankines Road was another dam. This was constructed  
29 about the same time as the carport, and was a man-made  
30 dam."

31 At paragraph 12 on page 4 of the statement

1 Mr Hatton told investigators about his parents' fire  
2 plans. "Whilst living at Rankines Road, my father had  
3 initiated a few fire plans. Some of them included the  
4 removal of kerosene bush and tea-tree, which are very  
5 flammable, from around the house and on the property." He  
6 goes on and gives a little more detail about that.

7 Then at paragraph 16 on page 5 of the statement  
8 the following appears: "My father and mother had never  
9 conducted any fuel reduction burns on the property since  
10 he owned it. I think he attempted to conduct a small burn  
11 in the late 80s prior to moving to the property but was  
12 petrified of what had happened. He had conducted a small  
13 burn in the grasslands near the dam west of the now Wurlie  
14 B & B site. The fire had got out of control and burned  
15 through to the next property to the south damaging some  
16 fence posts. Since then he had never conducted a fuel  
17 reduction burn or conducted any sort of burning off apart  
18 from burning heaps of cut down tea-tree and kerosene bush  
19 during the cooler months."

20 "Another fire plan that my father had initiated  
21 at the property was to have sprinkler systems installed  
22 around the house and on top of the roof. The sprinkler  
23 system that he installed around the house was about a  
24 metre from the main house. It was constructed from a  
25 metal pipe with about seven or eight sprinkler heads which  
26 protruded about a foot or two from the ground. The  
27 sprinkler system on the roof was constructed from a heavy  
28 duty copper pipe which was used to squirt water onto the  
29 roof and into the gutters. Both these sprinklers systems  
30 were plumbed back to the small house water tank of about  
31 18,500 litres, which was also connected to the gravity

1 feed 95,000 litre main tank up the hill. The house tank  
2 was located at the front of the house between the patio  
3 and the carport area of the property. The tank was  
4 constructed from concrete and was kept at least half full.  
5 Next to the tank and the carport adjacent to the tank was  
6 a small cupboard about one metre by two metres. This was  
7 constructed from concrete-type bricks and a fibreglass  
8 sheet roof. The roof was built from timber rafters and  
9 was flat. The room housed the electric pump and the  
10 petrol-driven firefighter's pump." If I could just  
11 interrupt there, we saw a photo of that area  
12 earlier?---Yes, we did.

13 Returning to the statement, "It would pump the water to the top  
14 or main tank. This top tank is a concrete tank that holds  
15 about 95,000 litres of water. This tank was elevated  
16 20 metres above the smaller tank and created sufficient  
17 water pressure for the house and sprinkler systems. This  
18 tank was also supported by the petrol firefighting pump.  
19 The pump could boost the pressure to the fire sprinkler  
20 system."

21 "My general feeling is that I would be surprised  
22 if they would have left the house at the time of the fire.  
23 From everything that I have gleaned from them over the  
24 years, I think that my parents assumed they would have a  
25 very good chance of surviving the fires due to the fire  
26 sprinkler system installed on the roof and around the  
27 house and the mud brick construction. My father was not  
28 much of a gambler and would not have risked his life or my  
29 mother's life. I believe that my father had a very good  
30 chance of survival. The sprinkler system was the main  
31 thing that would assist with the house surviving the fire

1 or would create enough time for my parents to survive a  
2 main blaze. I think that my parents always intended to  
3 stay at the time of the fire."

4 Mr Hatton was asked about communication with his  
5 parents during the course of 7 February 2009 and, as you  
6 have already indicated, there was one telephone call made  
7 from the Rankines Road property to Mr Hatton junior. He  
8 describes that in paragraph 19 of his statement. At the  
9 very bottom of the page he says, "I have a voice message  
10 which was left on Saturday 7 February 2009 at about 4 pm."  
11 If I can interrupt there, investigators have been able to  
12 establish that the phone call was made at 3.50 pm?---Yes,  
13 that's right.

14 Returning to the statement, "The message was from my father.  
15 He said something like, 'This is your mum and dad.' This  
16 is different from any other time when he says, 'This is  
17 your father.' His voice in the message was subtle but  
18 seemed anxious but not panicking. He told me in the  
19 message that, 'The fire system was switched on the roof  
20 and I think we will be okay.' Thinking about it, my  
21 father did not sound confident when he left this message.  
22 He only left one message and that is the last contact  
23 I have had with my parents."

24 The other statement I would like to go to is a  
25 statement of Mr Alexander Jones at 0352. Mr Jones gave  
26 evidence of being a landscape gardener by trade, living in  
27 Flowerdale. He said that he knew the late Mr and  
28 Mrs Hatton for about eight years as he had done some  
29 landscaping work for them and had become friends with  
30 them. Halfway down the first page of his statement he  
31 told investigators this: "On Thursday 5 February 2009

1 I went to Don's house at approximately 8 am to fit  
2 shadecloth panels which I had previously made for the  
3 skylight. It was our second day and took all day to do.  
4 We finished about 4 pm. I didn't discuss anything with  
5 Don about his fire prevention prep on that day, but I've  
6 helped Don to clear a large amount of bergen (like  
7 tea-tree) from around the house especially last year."

8 "One problem with the clearing of Don's property  
9 was that most of the clearing occurred was relating to the  
10 idea that a fire would come up from the north.  
11 Unfortunately it appeared the fire came from  
12 the south-west. Don's house was designed with large  
13 timber-framed glass windows overlooking in a westerly  
14 direction, which probably would have got the full impact  
15 of the fire. Part of Don's fire prevention he had was a  
16 sprinkler system in the garden for the sole purpose for  
17 fires and it was a reasonably big system. Also Don had an  
18 external sprinkler system on the roof of the house.  
19 I remember seeing some of the sprinklers on the roof, but  
20 I don't know what type of system Don had, but he would  
21 have had the best."

22 Finally, Detective, if we could go to the  
23 statement of Mr Kelleher which appears at 0355. Mr John  
24 Kelleher is employed by the Victoria Police Forensic  
25 Services Centre as an arson chemist?---Yes, he is.

26 And he has expertise in the investigation of fire scenes and  
27 explosion scenes?---He does.

28 He routinely prepares reports in relation to those  
29 investigations and his observations?---Yes, he does.

30 In relation to this matter he was asked to complete a report on  
31 27 January 2009 and he had visited the area. Should that

1           be perhaps 27 January 2010?---I think it should be, yes.  
2 He indicates that he was asked to review the investigation  
3 report, which of course wouldn't have been completed on  
4 27 January 2009. He was asked to look at it on 27 January  
5 2010. Part of his investigations included a visit to the  
6 area on Saturday 7 March 2009. He says, "My visit was in  
7 relation to a scene examination of 10 King Street,  
8 Strathewen," which was examined earlier this week by the  
9 Commission. He goes on, "and did not involve an  
10 examination of 45 Rankines Road, although I have since  
11 become familiar with the area."

12           He sets out on page 2 the documents that he has  
13 had an opportunity to examine, including maps,  
14 photographs, statements and other material, some of which  
15 have been examined in this hearing. Then at the bottom of  
16 page 2 under the heading "Location", Mr Kelleher reports,  
17 "The town of Strathewen is in the Arthurs Creek valley  
18 between Whittlesea and Kinglake, surrounded on three sides  
19 by the Kinglake National Park . Most of the houses are  
20 along the line of the creek, between Bowden Spur to the  
21 south-east and the lower slopes of Sugarloaf Ridge to the  
22 north-west."

23           In the third paragraph on page 3 he explains,  
24 "Rankines Road runs from School Ridge Road, at the foot of  
25 Bowden Spur, approximately south to the foot of Bald Spur.  
26 The Hatton property is about 1.5 kilometres west of the  
27 main township area of Strathewen, in the Chads Creek  
28 valley between Bowden and Bald Spurs."

29           He gives a description of the buildings on the  
30 premises, noting that it was a biodiversity haven. He  
31 identifies four buildings; firstly, "The house proper,

1 which was a mud brick octagonal house built on a frame of  
2 cypress beams. It was set in the southern part of the 50  
3 acre block about 200 metres east of Rankines Road along a  
4 gravel driveway. The roof was of corrugated iron." He  
5 then goes on to describe the bedrooms.

6 The second building, the main bed and breakfast  
7 building, 70 metres south-west of the house, was also  
8 octagonal with concrete-rendered double brick. There was  
9 a shed on the western side of the driveway. Finally,  
10 opposite the tractor shed, on the eastern side, was the  
11 conference centre. He notes the pump house and the  
12 vehicles in the carport. He describes the property being  
13 covered with quite thick bush.

14 Then under the heading "Fire direction" a quarter  
15 of the way down page 4, Mr Kelleher notes, "Detective  
16 Senior Constable Von Tunk indicated that part of a roof  
17 was found north or perhaps slightly north-east, 50 metres  
18 distant from the house. Other parts of the house roof are  
19 overturned on the northern side of the building and  
20 further south some of the conference centre roof was also  
21 blown off, landing in the driveway some distance north.  
22 It is not possible to say at what stage this damage  
23 occurred, except that it appears in each case to have  
24 occurred before there was a substantial fire inside the  
25 building (because the pale eucalypt colour of the roofing  
26 iron is undamaged by heat)."

27 "Apart from roof damage from the south-west and  
28 south, what leaf and branch indicators are visible show a  
29 fire travelling across the slope from the south-west,  
30 possibly south of south-west. All this suggests that at  
31 the time of the fire the wind was blowing strongly from

1 the south or south-west, obviously after the late  
2 afternoon wind change."

3 "The fact that the fire defence sprays were  
4 turned on at or about 1550 suggests that there was a fire  
5 on the property at that time. Witness statements from  
6 Mark Roberts, from Rae Tully and from David McGahy  
7 indicate the main firefront came from the north-west and  
8 reached Strathewen about 1730 hours. However, there were  
9 numerous spotfires, some well ahead of the main front, and  
10 David Wells reported a fire four kilometres south of the  
11 Hatton property at about 1730 hours. The exact time of  
12 the wind change is not clear, but there seems little doubt  
13 that the major damage at the Hatton property occurred  
14 after the wind change, at some time after 1730 hours,  
15 possibly as late as 1830 hours."

16 Under the heading "Damage" Mr Kelleher reports  
17 that, "The house and the conference centre were destroyed  
18 and there was major damage to the tractor shed and  
19 attached suite. The main B&B accommodation building  
20 survived largely undamaged. The buildings other than the  
21 house were not examined in detail. The house, where  
22 remains were located, was photographed more  
23 comprehensively." A description is there given of what  
24 burnt in the house.

25 At the top of page 5 Mr Kelleher reports that  
26 based on the photographs he is able to provide the opinion  
27 as follows, "This suggests that the house burnt as a  
28 result of ember attack rather than from collapse of a wall  
29 or radiant heat effects. With the roof at least partly  
30 removed by wind, the house would have been much more  
31 susceptible to ember attack."

1           "The carport structure remained intact, but was  
2 severely heat affected. The damage in this area suggests  
3 the structure was damaged by the house fire, and by the  
4 cars burning inside, but was not affected by the wind.  
5 The concrete tanks have survived, but the pumps have some  
6 fire damage, enough to render them inoperable. Some hoses  
7 remained at least partially intact, but there were no  
8 obvious remains of a spray or sprinkler system."

9           It is noted that the bodies of Mr and Mrs Hatton  
10 were located in the master bedroom. "They were close to a  
11 mattress and to a window. It is not possible to establish  
12 their intention, other than that they were sheltering,  
13 possibly using the mattress to block the window."

14           Under the heading "Firefighting equipment, water  
15 supply, power" the store of water on the property is  
16 described. It is noted that it is not known exactly how  
17 much the tanks held at the time. In the second paragraph  
18 under the heading "Firefighting equipment" Mr Kelleher  
19 reports, "There was a sprinkler defence system around the  
20 house on the ground and another on the house, the former  
21 with 7-8 sprinkler heads rising on metal pipes, the latter  
22 on copper pipe, although the exact arrangement was not  
23 covered/described. There were two pumps, one electric and  
24 one petrol powered."

25           "Power failed in the area about 1700 hours but,  
26 while the exact arrangement of pumps is uncertain, the  
27 spray system was probably driven by the petrol pump.  
28 Obviously, if it relied on the electric pump, the system  
29 would fail also, but this seems an unlikely arrangement."

30           Under the heading "Firefighting", "The Hattons  
31 were reported to have undertaken some clearing of

1 undergrowth, and in previous years to have done some  
2 limited fuel reduction burning on the property. There is  
3 no obvious evidence of active firefighting. While some  
4 may have been undertaken and obscured by damage, the age  
5 of the couple suggests extensive active firefighting was  
6 unlikely."

7 "The couple installed a comprehensive fire  
8 defence spray and sprinkler system, made from metal pipe,  
9 to cover the house and the immediate surrounds. This was  
10 switched on at about 1550 hours. The issue here appears  
11 to be that the spray system was connected to the small  
12 concrete tank, holding somewhere between 9,000 and  
13 18,000 litres. The spray system would use perhaps 100 to  
14 150 litres per minute, so if the tank held 18,000 litres  
15 it would last two to three hours."

16 "There are then three possibilities in relation  
17 to the effectiveness of the fire defence spray." The  
18 first, "If the roof was ripped off by winds, the spray  
19 system would become ineffective; similarly, if the  
20 interior of the house was exposed by broken windows or  
21 doors, the spray system is of no assistance in  
22 extinguishing internal fires." Second, "If the pump  
23 failed or pipes were damaged, it may not have been  
24 possible to repair or reconfigure the system if the house  
25 was under direct attack from the fire at that time; even  
26 running out of petrol could have been a major issue,  
27 because refuelling in these circumstances is challenging."  
28 Third, "If the water supply was exhausted which seems a  
29 real possibility there was no defence left and no  
30 alternative strategy."

31 "Detective Senior Constable De Ridder examined

1 the fire reserve tank and sprinkler system in some detail.  
2 He found the sprinklers around the carport were in the on  
3 position and those around the house were in the off  
4 position. It is not clear whether this refers to the roof  
5 sprinklers on the house as well. He also noted about 20  
6 centimetres of water in the fire reserve tank and that the  
7 fuel tank was empty. While I have no doubt that his  
8 observations were accurate, it is not possible to  
9 determine whether these controls were set before, during  
10 or after the fire. To protect the carport at the expense  
11 of the house would seem illogical. His visit was three  
12 days after the fire, and it may be that in checking the  
13 system some earlier searcher or investigator has  
14 inadvertently altered the setting."

15 Under the heading "Evacuation/escape" Mr Kelleher  
16 notes this, "Evacuation was possible well prior to the  
17 fire, but from about 1600 hours", 4 pm, "evacuation in  
18 this area was complicated by the presence of numerous  
19 spotfires. The only clear route available was up Bowden  
20 Spur Road to Kinglake, which was at least temporarily  
21 safe. There is no evidence in the statements to indicate  
22 that the couple intended to evacuate and it appears they  
23 relied on their fire defence system. Once the firefront  
24 arrived, there were no realistic options for escape."

25 Finally, Mr Kelleher sets out some conclusions.  
26 He describes them as to some extent tentative, given that  
27 he didn't do a scene examination immediately after the  
28 fire. With that caveat, the following conclusions appear  
29 in the report, "Strathewen projects into the Kinglake  
30 National Park, with state forest to the south and  
31 south-east, so that it is on a larger scale almost

1 surrounded by eucalypt forest, with limited avenues of  
2 escape. There is no mobile phone coverage, water supply  
3 is from tanks and the power supply would be subject to the  
4 vagaries common in an area with many trees."

5 "The couple had some awareness of fire hazards  
6 and had some fuel reduction strategies. There appears to  
7 be a correlation between roof damage and fire damage,  
8 which is not unexpected, and which suggests potential  
9 areas which might be addressed in building regulations and  
10 construction standards."

11 That is a point that Mr Kelleher has made in  
12 other reports that have been provided to the  
13 Commission?---Yes, he has.

14 He goes on, "Mr Jones indicated fire planning envisaged a fire  
15 from the north, and the house was possibly slightly less  
16 defensible with a fire from other directions."

17 "This house was well prepared to withstand even a  
18 severe bushfire. The fact that it did not and that two  
19 fatalities resulted suggest that there was a failure of  
20 either the fire defence system or the way in which the  
21 system was operated."

22 "The water tank needs to be of sufficient size to  
23 supply water for several hours. While operating it prior  
24 to the arrival of the firefront is desirable, it is not  
25 essential, if wetting down can be accomplished from some  
26 other water source such as the domestic supply.  
27 Similarly, the fuel tank needs to be capable of supplying  
28 the motor for that same period."

29 "The fire pump may not have been sufficiently  
30 protected. It is not possible to determine at what time  
31 the pump was damaged, and this may have occurred after the

1 fuel or water was exhausted, but the pump needs to be well  
2 protected from both the fire and the spray/sprinklers. In  
3 this instance, total reliance was placed on the spray  
4 system, apparently with no alternative plan."

5 That is the report provided by Mr Kelleher to  
6 investigators?---Yes, it is.

7 Finally, Commissioners, I can indicate that post-mortem reports  
8 were carried out in relation to the remains of both the  
9 late Mr and Mrs Hatton and in each case the cause of death  
10 in the pathology findings is indicated as effects of fire.  
11 They are the matters that I have for the Detective.

12 CHAIRMAN: Yes, thank you, Mr Rozen.

13 MR LIVERMORE: No questions, sir.

14 CHAIRMAN: Anything you want to raise?

15 MR HATTON: Yes.

16 MR ROZEN: If I can approach Mr Hatton, please.

17 CHAIRMAN: Yes.

18 MR ROZEN: Thank you, Commissioners. There are three points of  
19 clarification. Perhaps I can start with the easy one  
20 concerning the name of the late Mrs Hatton. I may have  
21 inadvertently referred to her as Mabelle. It should in  
22 fact be Mabelle, but she was generally known as Leonie.  
23 That was the name that she was known by.

24 The second point concerns the water supply.  
25 Mr Hatton indicates, and I think this is actually dealt  
26 with in the evidence, that the tank with the maximum  
27 capacity of 18,000 litres that Mr Kelleher refers to in  
28 his report was able to be automatically topped up by the  
29 larger of the tanks, which was a gravity-fed tank. So it  
30 would automatically - that tank I think is referred to as  
31 holding up to 90,000 litres - feed into the tank. So that

1 issue of running out of water would not necessarily arise,  
2 depending of course on how much water was in the top tank.  
3 There is no evidence directly on that point.

4 Mr Hatton tells me that when he first visited the  
5 property after the fires he found the top tank empty,  
6 suggesting to him that it had just run until it was empty.  
7 He also notes that the tank at the bed and breakfast was  
8 three-quarters full, which may provide some indication of  
9 the amount of water that was in the other tank.

10 The final point that Mr Hatton makes that he has  
11 asked me to record is that if it was suggested by me in  
12 the presentation that the tea-tree had only been removed  
13 for the previous three years, that wasn't what I had  
14 intended to convey. It is understood that the tea-tree  
15 had been removed during the time that the Hattons were on  
16 the property. What had occurred in addition to that in  
17 the previous three years was the removal of some eucalypt  
18 trees which were too near to the house.

19 They are the matters that I seek to clarify and  
20 I would also seek to tender the brief, please.

21 CHAIRMAN: Yes.

22 #EXHIBIT 775 - Police presentation of the circumstances  
23 surrounding the deaths of Donald Hatton and Mabelle Hatton  
24 (EXH.775.0001) and photographs.

25 CHAIRMAN: Yes, thank you. We will now adjourn until 3.30.

26 <(THE WITNESS WITHDREW)

27 (Short adjournment.)

28 CHAIRMAN: Yes, Mr Rozen.

29 MR ROZEN: Commissioners, the evidence to be led this afternoon  
30 concerns the circumstances surrounding the death of Peter  
31 Avola. The late Mr Avola was 67 years of age on

1           7 February 2009, having been born on 28 June 1941.  
2           Mr Avola lived with his wife, Mary Avola, at 105 Chads  
3           Creek Road, Strathewen. His body was found at the  
4           Strathewen football oval a short distance north of the  
5           residence. There are members of the Avola family,  
6           together with Mrs McIver, who was here this morning,  
7           present here in the hearing room.

8   CHAIRMAN: Thank you, Mr Rozen. Can I address Mrs Avola and  
9           other members of the family and friends and indicate that  
10           this is a special hearing of the Commission which is  
11           concerned to deal in a perhaps unusual way with the  
12           circumstances of the death of Peter Avola. It is unusual  
13           in that what we are aiming to do is to get as much  
14           information as we need for our purposes, but consistently  
15           with doing it in a way that allows for the fact that it  
16           can potentially cause you additional grief.

17                   The process we use is to use hearsay evidence,  
18           and that involves Mr Rozen putting questions to a very  
19           senior policeman, Detective Superintendent Hollowood, that  
20           enables the material that's been collected by the police  
21           to be the subject of evidence before us but in a way that  
22           will only take half an hour to an hour. The process at  
23           the end of it will enable us to ask any questions that we  
24           may like and at the same time I will turn to you and say,  
25           "Is there anything you want to clarify, is there some  
26           question you want to ask or some comment you want to  
27           make," and if there is, just raise your hand. So bear  
28           that in mind. We will come back to that, but at this  
29           stage we will proceed using Mr Rozen to put questions to  
30           Detective Superintendent Hollowood. Thank you, Mr Rozen.

31   MR ROZEN: Thank you, Mr Chairman. At this point I will recall

1           Detective Superintendent Hollowood.

2     <PAUL STEPHEN HOLLOWOOD, recalled:

3     MR ROZEN: Detective, you are the senior investigating officer

4           of the Phoenix Taskforce?---Yes, I am.

5     The taskforce was established by Victoria Police in the

6           aftermath of the fires on 7 February 2009 to investigate

7           those fires that resulted in deaths?---Yes, it was.

8     One aspect of the taskforce's work has been given the codename

9           Operation Angora and it relates to the Kilmore East

10          fire?---That's correct.

11    Just for explanation, on the screen at present is a yellow

12          shape. That's the final area burnt by the Kilmore East

13          fire?---Yes, it is.

14    We will just orientate ourselves. Kilmore East, the point of

15          origin is at the top left-hand corner?---Correct.

16    And we can see the fire burnt in a south-easterly direction to

17          Healesville?---That's correct.

18    One of the matters investigated as part of Operation Angora

19          concerned the circumstances surrounding the death of Peter

20          Avola?---Yes.

21    And I would ask you, please, to open the investigation report

22          in relation to that matter. Perhaps if we could start

23          with the satellite photography. This is a photograph that

24          was taken on 3 January 2009 from an elevation of

25          200 metres?---Yes, that's right.

26    Could you describe what it is that we can see, please?---It

27          indicates the general area and grounds of the Strathewen

28          football ground.

29    We can see Chads Creek Road running north-south between the two

30          yellow lines?---Correct.

31    And we can in the bottom right-hand corner see the boundary

1 line of the football oval?---Yes.

2 Sometimes referred to I think as the Strathewen cricket ground.

3 There was a cricket pitch in the middle of the

4 oval?---Correct.

5 We see an area to the north-west of the football oval which is

6 perhaps a car parking area, is it?---Yes.

7 And we see a red dot there that indicates the location in which

8 the body of the late Mr Avola was found?---That's correct.

9 There is a building towards the bottom of the screen just near

10 the road. Is that some sort of pavilion or changing

11 rooms?---Yes. It was sheds which were actually destroyed

12 during the fire.

13 What we are looking at now is a photograph which of course was

14 taken prior to the fire. Do we have an equivalent image

15 taken after the fire? We can see that the area has

16 obviously been severely affected by the fires?---Yes, it

17 was.

18 Perhaps we can return to the pre-burn image and increase the

19 elevation, please, Detective. We are now looking at - we

20 can now make out the oval and the cricket pitch there. We

21 can see O'Deas Road in the top right-hand corner of the

22 photograph?---Correct.

23 And Chads Creek Road, which you have previously indicated in

24 evidence is an extension of Pine Ridge Road, about which

25 the Commission heard a great deal earlier this

26 week?---That's right.

27 If you can increase the elevation again, please. And again.

28 The area we are looking at here is to the north-west of

29 the main Strathewen township?---Yes, it is.

30 If we look at that image taken after the fires we will see

31 that, apart from a few patches on the right-hand side,

1 most of the vegetation in the area was obviously  
2 burnt?---That's correct.

3 The investigation carried out by your officers has involved  
4 taking statements from a number of witnesses, family  
5 members, neighbours, friends and CFA and police  
6 officers?---It has.

7 In addition, investigators have examined telephone records to  
8 enable them to determine with accuracy the time at which  
9 phone calls were made during the course of the  
10 day?---Correct.

11 Based on that material, investigators have been able to put  
12 together a re-enactment of the events of 7 February so far  
13 as they concern the movements of Mr and Mrs Avola and in  
14 particular the late Mr Avola?---Yes, correct.

15 Can you please take us through that re-enactment at this  
16 time?---This relates to the events of 7 February 2009 and  
17 in particular the location of the Strathewen cricket  
18 ground, which was located at 160 Chads Creek Road in  
19 Strathewen.

20 Also it relates to the address of 105 Chads Creek  
21 Road, Strathewen, where ordinarily residing there was  
22 Peter and Mary Avola. The location of the cricket ground  
23 is some 35.3 kilometres from the point of origin of the  
24 fire in Kilmore East and the cricket ground itself is  
25 about 6.6 kilometres from the Kinglake township. The  
26 cricket ground is also approximately 700 metres north of  
27 the Avola property.

28 On the late morning of 7 February 2009, Andrew  
29 Avola, Peter and Mary's son, rang his mother and told her  
30 that due to the hot weather he had decided he would not  
31 bring his children to visit. About midday, Peter Avola

1 prepares for the threat of fire, adjusting the position of  
2 hoses around the house and preparing the pump. He  
3 commenced watering the garden and the ground around the  
4 house.

5 At about 2.25 pm, Mary Avola contacts neighbour,  
6 Denis Spooner, of 45 School Ridge Road, Strathewen, on the  
7 telephone and they discussed what they can see, which  
8 includes smoke in the sky and a yellow glow in the west.

9 At about 2.30 pm Mary noticed leaves being  
10 carried by the wind and observed they were scorched and  
11 began to see small black things, similar to gumnuts,  
12 intermittently falling on the north boundary of the  
13 property. When she picked them up, they disintegrated.  
14 At about 2.50 pm Mary hoses down the patio of the house.

15 At about 4.31 pm, after checking the CFA website,  
16 Denis Spooner attempts to call the Avolas to warn them  
17 about the fire. Nobody answers, so he drives from his  
18 home at 45 School Ridge Road to the Avola home.

19 Shortly after 4.31 pm he arrives there, three to  
20 four minutes after he attempted to make the phone call,  
21 and stays for about five to 10 minutes. Denis Spooner  
22 attends at the Avola home, speaks with Mary and Peter, and  
23 as leaving the address he notices spotfires in the top  
24 paddock of the Avola property. He then reverses back and  
25 informs the Avolas of the fire.

26 At approximately 4.50 pm Mary Avola is told by  
27 Peter to go and change into jeans for protection. Peter  
28 Avola moves two vehicles from the carport to the driveway  
29 away from the house as the fire approaches. At about 4.55  
30 pm Mary Avola attempts to contact 000 and speak with fire  
31 authorities. Her call is not answered. At 4.57 pm Mary

1 contacts Marilyn Spooner on the telephone and establishes  
2 that she is also having trouble getting through to 000 and  
3 emergency services.

4 At about 5 pm, Judy McIver, a neighbour from 145  
5 Chads Creek Road, Strathewen, called and spoke to Mary.  
6 Judy asked if they were okay and Mary told her that they  
7 were and that she was hosing.

8 At about 5.04 pm Mary and Peter observed fire  
9 erupting in the area and in the Kinglake National Park.  
10 Mary contacts Norma Nelson via the telephone. Nelson  
11 resides at 675 Eagle's Nest Road, Strathewen, and Nelson  
12 is evacuating her property with her family.

13 At about 5.06 pm a call is made from the Avola  
14 household to 000. The call lasts 11 minutes. However,  
15 Mary Avola is unable to get through.

16 At about 5.15 pm the fire hits the property.  
17 Peter tells Mary to get into her car. The two vehicles  
18 travel into the neighbouring property across Chads Creek  
19 Road. At about 5.15 pm they are forced to turn around and  
20 head back to Chads Creek Road due to the fire. They make  
21 it to Chads Creek Road and begin travelling north.

22 At a slight bend on Chads Creek Road, Peter  
23 failed to take the bend due to poor visibility. The  
24 vehicle came to rest on the verge on the opposite side of  
25 the road and Mary pulled up next to him, at which time  
26 Peter motioned for Mary to drive on. Mary drove to the  
27 Strathewen oval where she waited for a short period before  
28 continuing on. Mary took refuge at 190 Chads Creek Road,  
29 Strathewen, the property of Neil Minett.

30 At about 7.15 pm, after the fire passed, Neil  
31 Minett travelled on his dirt bike in search of Peter

1 Avola. Neil Minett discovers the body of Peter Avola near  
2 the Strathewen oval. About 7.15 pm, separately, Dennis  
3 McCrohan, the father-in-law of Minett, travelled along  
4 Chads Creek Road, Strathewen, in company with Danny Jacka.  
5 They first observed the white Ford stuck on Chads Creek  
6 Road. They continued further down Chads Creek Road and  
7 discovered the body of Peter Avola. At about 7.15 pm Mary  
8 Avola is informed of the discovery.

9 At about 3.18 pm on 8 February, Detective Senior  
10 Constable Jason Boyce, Leading Senior Constable Peter Cox  
11 and Detective Senior Constable Cooper attend the  
12 Strathewen oval. A search of the scene located one  
13 deceased male.

14 Thank you, Detective. Can we examine the video footage that  
15 was taken by investigators, please. If you are able to  
16 talk us through what we are seeing?---Yes. The footage  
17 actually is taken along Chads Creek Road and it is in a  
18 northerly direction from approximately where the vehicle  
19 had come to a halt and is heading towards the Strathewen  
20 reserve. As can be seen on both sides of the road, there  
21 has been evidence of extensive fire coming through this  
22 particular area. The distance travelled on foot by  
23 Mr Avola is believed to be about 290 metres from the car  
24 to where he was actually located near the oval.

25 It is now turning into where the oval is  
26 situated. The grounds can be seen to the right of screen.  
27 Even though it is not heavily wooded in this area, you can  
28 see the ground is heavily scorched. The remains of the  
29 rooms are in the image to the left, to the side. There is  
30 a water tank near that location. This is the approximate  
31 area where Mr Avola was found.

1 Thank you. A selection of the photographs taken by  
2 investigators can now be examined. If we can start with  
3 photograph number 1, please. If you can talk us through  
4 these?---Yes, this is a view in the Strathewen reserve  
5 that's looking in a north-east direction at the top end of  
6 the oval. You can see a screened-off area with police  
7 tape and the location of the green tarp indicates where  
8 Mr Avola's remains were found.

9 That green tarp that is being used there to cover the late  
10 Mr Avola's body was actually part of the cricket pitch  
11 that was removed by Captain McGahy, I think, of the  
12 Arthurs Creek CFA?---Yes, that's right.

13 Commissioners will no doubt recall Captain McGahy's evidence  
14 earlier on in the Commission's proceedings. If we go to  
15 paragraph 2, please?---This is a view of the same area but  
16 looking in a south-easterly direction and to the  
17 background you can see the oval area.

18 Photograph 3?---This is the position on Chads Creek Road where  
19 Mr Avola's vehicle became lodged on the side of the verge  
20 of the road, and heading further north from this location  
21 is where the reserve is. It can be seen just to the right  
22 of the vehicle is a dam.

23 Photograph 4?---This is a view of the vehicle a bit closer up  
24 looking from the front of it.

25 No apparent fire damage to the vehicle, certainly nothing  
26 extensive?---No.

27 Photograph number 5, please?---It is a view of the rear of the  
28 vehicle where damage can be seen which obviously occurred  
29 when it came to a stop.

30 Photograph 6?---That shows the interior of the vehicle. Again,  
31 there's no fire damage inside the vehicle itself.

1 Photograph 7?---A similar view but looking south down Chads  
2 Creek Road from back towards where the Avola property was.  
3 And the direction in which the Avola vehicles  
4 travelled?---Correct.  
5 And photograph 8, please?---This is the entry of Chads Creek  
6 Road into the Strathewen reserve.  
7 That's the path that the vehicle followed in the video that we  
8 saw a little earlier?---Correct. That's right.  
9 I would like now to examine some of the witness statements that  
10 were obtained as part of the investigation, in fact two in  
11 particular. If we could start with the statement of Mary  
12 Avola, please. Mrs Avola explains that she is 67 years of  
13 age and lived at 105 Chads Creek Road, Strathewen, with  
14 her husband, Peter. About a quarter of the way down the  
15 page she explains that Peter was born on 28 June 1941 in  
16 Sicily; in the next paragraph that he immigrated to  
17 Australia in 1955 when he was 14; and towards the bottom  
18 of the page, the Avolas married in 1965 and had two  
19 children.  
20 On page 2 of the statement, about three-quarters  
21 of the way down the page, Mrs Avola explains that the  
22 property in Chads Creek Road, Strathewen, was bought in  
23 the 1980s and was called "Bellheaven" because of the  
24 bellbirds in the area and a house was built on the 20 acre  
25 property in 1990.  
26 Turning to page 3 of the statement, just nearly  
27 halfway down the page, there is a paragraph which  
28 commences "When we built the house". Mrs Avola is there  
29 referring to the question of fire plans. She told  
30 investigators this: "When we built the house we considered  
31 a fire plan. Our plan was to stay and fight. We

1 installed a firefighting pump on the dam. That was a  
2 mechanical pump so if the power went off it would keep  
3 working. We also had a trailer with a water tank on it  
4 which also had a mechanical pump. We learnt about fire  
5 plans everywhere. Peter was in the CFA when he was  
6 younger. Even the kids were junior members of the fire  
7 brigade. We went to a town meeting two years ago where  
8 they explained that if there was threat, we either left  
9 early or we stayed and fought. The CFA even told us that  
10 there were some places in Strathewen they wouldn't go.  
11 There was an uproar about that. All the residents wanted  
12 to know where the CFA wouldn't go, but they were not at  
13 liberty to say and that caused a lot of angst."

14 "We had two dams on the property. That enabled  
15 us to have ample water to water the gardens and lawns. We  
16 kept the lawn mowed and the property cleared of any  
17 debris. We had a 2,000 litre gas tank which serviced the  
18 house."

19 Turning to page 4 of the statement, Mrs Avola  
20 gave a detailed account of her actions and those of the  
21 late Mr Avola on 7 February, and you have already taken us  
22 through a summary of that. If I could just address a few  
23 other issues that are in the statement.

24 Two-thirds of the way down page 4, Mrs Avola  
25 explained to investigators that, "Early that morning Peter  
26 had started the firefighting pump and starting watering  
27 the garden and wet the ground around the house. He left  
28 the hose in a position so the hose could water itself and  
29 he went and replaced the filters on the tractor."

30 On page 5 of her statement in the second  
31 paragraph she makes reference to a time at about 2.30 when

1 she noticed leaves being carried by the wind that were  
2 scorched. She said, "I then saw little tiny black things,  
3 they were like gumnuts. They were intermittently falling  
4 on the north boundary side. When you picked them up they  
5 just disintegrated. It was then that I went and rang  
6 Denis Spooner and asked what he could see."

7 She explains that she continued hosing the patio.  
8 Then in the last paragraph on that page explains that  
9 later in the afternoon, "Then everything started to get  
10 darker and darker and Peter told me to go inside and ring  
11 000 and the CFA to try and find out what was going on.  
12 The 000 put me through to fire and on the wall above the  
13 phone we always had the CFA emergency number. I was  
14 getting nowhere with that. I called Marilyn Spooner and  
15 asked her if she was having any luck getting on to anyone  
16 but she said she hadn't."

17 Then she gives an account of leaving the  
18 property, starting in the middle of page 6, first driving  
19 across Chads Creek Road and then ultimately turning in a  
20 northerly direction. At the bottom of page 6 of the  
21 statement she explains that at a point where the road  
22 verges to the left she said, "I saw Peter's brake lights  
23 go on and he went straight ahead and his car was resting  
24 on the dirt off the road facing towards her paddock.  
25 There was a little dam below where he was. I parked on  
26 the road alongside of him. I did as he said and he was  
27 motioning for me to go. It didn't even occur to me to  
28 tell him to get in with me, too much was happening.  
29 I drove down Chads Creek Road towards the oval and  
30 I stopped and waited for him but he didn't come. I had  
31 ash coming into the car and the flames all around me up in

1 the air. I saw kangaroos everywhere and horses running  
2 around me. I put the windows up and still he didn't come  
3 behind me and I just went." She explained she went to the  
4 Minetts' house and sheltered there while the Minetts  
5 defended the property.

6 She concludes at the bottom of page 7 of the  
7 statement, "Peter was a perfect man. He was my hero. He  
8 was a gentle, manly man and was always smiling. He loved  
9 me and his family and would do anything for anybody."

10 On page 8 of the statement Mrs Avola said, "This  
11 was a disaster we hope we will never see again, and we  
12 know the risks of living in these beautiful out of the way  
13 places. However, better communication of pending area  
14 fires is a must. We have never had the facilities in our  
15 area that others have. Broadband facilities et cetera  
16 have been practically non-existent."

17 The other statement I would like to go to is a  
18 statement of John Kelleher. Mr Kelleher is an arson  
19 chemist employed by Victoria Police Forensic Services  
20 Centre?---Yes, he is.

21 And he has since 1988 been involved in examining fire and  
22 explosion scenes and writing reports for court proceedings  
23 about those scenes?---Yes, he has.

24 He explains in his report that he was asked on 29 January 2010  
25 to review the investigation brief in relation to the  
26 circumstances surrounding Mr Avola's death and he explains  
27 that he visited Strathewen on a number of occasions in  
28 February and March of 2009 and more recently in  
29 January 2010. He is familiar with the area where  
30 Mr Avola's car was found, and also the football oval.

31 He sets out the location of Strathewen and notes

1 that there are three roads into Strathewen from the north.  
2 On page 3 of his statement in the second paragraph, he  
3 notes that, "The Avola property was at 105 Chads Creek  
4 Road, about 800 metres north-west of the main town area,  
5 on the western side of the creek."

6 The next paragraph, "The surroundings were a  
7 mixture of grazing land and medium density eucalypt  
8 forest. The Kinglake National Park was about 500 metres  
9 west, with a broad strip of farmland between the park and  
10 the Perry property. The Avola property was about half  
11 orchard but there was a broad belt of trees between the  
12 orchard and the southern half and the house against the  
13 northern boundary. The Perry property to the north was  
14 quite densely covered by mature, medium height trees and  
15 moderate to thick scrub, particularly in the southern  
16 half."

17 Under the heading "Description" there is a  
18 description of the home and its surroundings. It is said  
19 that the Avola house was a two-storey house, brick with a  
20 corrugated iron roof. He notes that, "Whilst this is not  
21 directly relevant to the incident, it is of significance  
22 in that a fire wall separated the two halves of the house.  
23 Half of the house survived and the pattern of burning  
24 suggests a fire inside the house probably started by ember  
25 attack from the north side. I note that the lawn to the  
26 southern side of the house survived and there appeared to  
27 be at least one large tank and a large dam still near full  
28 after the fire. Sheds around the property appeared to be  
29 burnt."

30 In the second last paragraph on page 3  
31 Mr Kelleher reports, "The roadway between the Avola

1 property and Minnett property was a two-lane country road,  
2 in good condition, with trees along both sides of the  
3 road, fairly sparse at the Avola end but towards the  
4 Minnett house a substantial belt of trees and scrub rather  
5 than isolated trees."

6 At the bottom of page 3, "Mr Avola was found in  
7 what might be a grassed parking area for the football  
8 ground. This was on the northern side of the oval about  
9 150 metres from the Minnett house."

10 On page 4 of the report, under the heading "Fire  
11 direction," Mr Kelleher notes, "From previous scene  
12 examinations and reviews of scenes in this area, at the  
13 McIver and Perry properties, the main fire came from the  
14 west and north-west."

15 In the third paragraph under that heading  
16 Mr Kelleher writes, "Mr Roberts of the CFA observed the  
17 main firefront north north-west of Eagle's Nest, which is  
18 actually the hill in front of the McIver house, at  
19 1735 hours." So that's 5.35. "This is consistent with  
20 the statement of Mrs Tully, who spoke to Greg McIver at  
21 5.06 and whose house across Chads Creek Road from  
22 the McIver's house the fire reached about 5.30 pm."

23 Under the heading "Damage" Mr Kelleher writes,  
24 "Mr Avola's car was on the bank at the side of the road,  
25 probably stuck, with the underside on a bank of about 20  
26 centimetres. There is damage to the underside of his  
27 vehicle at the rear, with branches against the towbar and  
28 possibly damage to the vehicle's tailpipe. There are  
29 broken branches and leaves on the road around the car.  
30 The car appears undamaged otherwise, excepting some  
31 melting of the plastic number plate protectors."

1            "A structure which may have been the football  
2 ground changerooms, perhaps 50 metres from Mr Avola, was  
3 completely destroyed."

4            There is then a description of the location of  
5 the body of the late Mr Avola and the circumstances in  
6 which he was found.

7            In the last paragraph on page 4 Mr Kelleher says,  
8 "Mr Avola apparently left his car and headed north towards  
9 the Minett house, presumably following the road. His  
10 route is not known, but he passed the O'Dea's property to  
11 the east, then the football ground also to the east, and  
12 was possibly heading to the Minett house. From where he  
13 was located he may have been able to see the Minett house,  
14 but as a local resident would have known where it was. It  
15 could also be that he headed for this area simply because  
16 it was cleared, but if that was the case the football  
17 ground itself was probably a better option."

18           "Reports show that Mr Avola was not badly burnt  
19 and did not suffer from smoke inhalation. I noted that  
20 the route from his car to the Minett house would take him  
21 into the firefront and into thicker bush along the  
22 roadside, with consequent increased exposure to radiant  
23 heat. He was 67 years old, under some stress from the  
24 presence of the fire, as well as physical stress from  
25 the heat and humidity. In the circumstances, the exertion  
26 of running 300 metres from his car may have caused a  
27 physical collapse, possibly a heart attack or stroke."

28           Under the heading "Evacuation/escape", "Phil  
29 Jones evacuated safely at 1624 hours along Chads Creek  
30 Road, but there were spotfires around both the Eagle's  
31 Nest Road and the Cottlesbridge Road at about 1640," or 20

1 to 5, "and from about this time evacuation was impractical  
2 via Strathewen."

3 Next paragraph, "Once the fire arrived,  
4 evacuation was impossible. Escape from the Avola  
5 residence was possibly not the best option, but Mrs Avola  
6 managed to escape to the Minett house."

7 Under the heading "Issues" Mr Kelleher firstly  
8 notes that his comments should be regarded as to some  
9 extent tentative, given that he didn't conduct a scene  
10 examination immediately after the fire. With that  
11 warning, he says, "The Avola residence survived the fire  
12 partly intact and, although there was limited firefighting  
13 equipment, sheltering until the fire passed was probably a  
14 practical proposition at that location."

15 "Mr Avola ran off the road, and his car became  
16 stuck. While he was driving in thick smoke, it seems he  
17 may have hit a branch or a tree on the road, causing him  
18 to run onto the verge, which was where his car became  
19 stuck. The car was essentially undamaged. It was in a  
20 relatively open area, where exposure to radiant heat would  
21 be minimised, and remaining in the car would have been in  
22 accordance with CFA advice."

23 At the top of page 6, "There was a small dam  
24 where the car ran off the road. This would have provided  
25 a relatively safe refuge, but Mr Avola may have been more  
26 concerned about his wife." That was the report that  
27 Mr Kelleher provided?---Yes, he did.

28 Just in relation to the suggestion that Mr Avola may have  
29 suffered a heart attack or stroke, there is a post-mortem  
30 report that was obtained by investigators. There was a  
31 toxicology analysis which was conducted by the

1 pathologist?---Yes.

2 It was assessed that the level of blood carboxyhemoglobin was

3 less than 5 per cent saturation and that's what enables

4 Mr Kelleher to state that there are no signs of smoke

5 inhalation?---That's correct.

6 But, so far as the identification of cause of death, the cause

7 of death is identified as effects of fire, which one would

8 anticipate, wouldn't one, that if there was a heart attack

9 or stroke that that would have been noted in the

10 post-mortem report?---Yes, that's right.

11 MR ROZEN: They are the matters that I have for Detective

12 Superintendent Hollowood in relation to this matter.

13 CHAIRMAN: Thank you, Mr Rozen.

14 MR LIVERMORE: I have no questions, sir.

15 CHAIRMAN: Are there any matters that you would wish to rise?

16 MRS AVOLA: So what did he die of?

17 MR ROZEN: Are you able to assist us at all, Detective?---Well,

18 unfortunately the pathologist is only able to conclude the

19 effects of the fire itself and nothing more specific than

20 that. But that's all I could take it as far as without

21 the pathologist probably clarifying it more.

22 CHAIRMAN: I think you may be able to make some further

23 inquiries of the Coroner's office in relation to that

24 matter. But the indications are routinely that we have

25 had many other cases where the only definition that's been

26 given is "the effects of fire". That's routinely used in

27 circumstances of this kind where there is no other

28 apparent abnormality.

29 Mr Rozen, would you mind approaching Mrs Avola to

30 check whether she has anything else.

31 MR ROZEN: Certainly, sir. It is just a matter of

1 clarification about the Avola house. It has been said,  
2 Detective, to me that the Avola house had a tiled roof  
3 rather than a corrugated iron roof. You would accept  
4 that?---Yes.

5 CHAIRMAN: Thank you, Mr Rozen.

6 MR ROZEN: It just remains to tender the brief, please.

7 CHAIRMAN: Yes.

8 #EXHIBIT 776 - Police presentation of the circumstances  
9 surrounding the death of Peter Avola (EXH.776.0001) and  
10 photographs.

11 CHAIRMAN: Thank you, Mr Rozen. We will now adjourn until?

12 MR ROZEN: Wednesday, the 17th, I understand.

13 CHAIRMAN: Is it Wednesday?

14 MR ROZEN: That's what I'm instructed. Wednesday, 17 March.

15 CHAIRMAN: At 9.30.

16 MR ROZEN: I just note the fire related deaths hearings will  
17 recommence on 22 March in this hearing room.

18 <(THE WITNESS WITHDREW)

19 ADJOURNED UNTIL WEDNESDAY 17 MARCH 2010 AT 9.30 AM

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TRANSCRIPT OF PROCEEDINGS

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*The attached transcript, while an accurate recording of evidence given in the course of the hearing day, is not proofread prior to circulation and thus may contain minor errors.*

2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

MELBOURNE

THURSDAY 4 MARCH 2010

(117th day of hearing at 4.30 p.m.)

BEFORE:

THE HONOURABLE B. TEAGUE AO - Chairman

MR R. MCLEOD AM - Commissioner

MS S. PASCOE AM - Commissioner

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1 CHAIRMAN: Yes, Mr Rush.

2 MR RUSH: Commissioners, we desire to mention a matter arising  
3 out of a breach of an order that the Commission made  
4 yesterday, which is the order in relation to the  
5 circumstances of the deaths of nine people in Pine Ridge  
6 Road. The order, Commissioners, as you would be aware,  
7 prohibited the publication of any report of proceedings of  
8 the Royal Commission that would tend to identify any of  
9 the persons named in the order. They were all persons,  
10 nine in all, who died in Pine Ridge Road, Kinglake West.  
11 Two other persons were named in the order, one of whom  
12 gave evidence yesterday.

13 On Channel 9 News at 6 pm last night a report by  
14 reporter Laura Turner concerning the Commission hearings  
15 on those deaths was broadcast. The report identified by  
16 name the mother of three of the children, all of whom died  
17 in the fires, and also during the course of the report  
18 displayed a photograph of mother and children, and another  
19 family the subject of the order were also named and a  
20 photograph of that family was also depicted during the  
21 course of the broadcast. Another person who died and also  
22 a subject of the order was named.

23 Commissioners, the report is brief, but I would  
24 ask that it be played to the Commission now.

25 (Video played to the Commission.)

26 MR RUSH: Commissioners, there are three relatively short  
27 matters I wish to put before you. It is only when there  
28 is very good reason for an order prohibiting publication  
29 that an order is sought from the Commissioners. The  
30 request for prohibition of names is investigated by  
31 Commission staff so as to ensure as far as possible the

1 proceedings of the Royal Commission are open and  
2 transparent and with these particular nine deaths there  
3 were a number of sensitive matters that gave rise to that  
4 order.

5 Secondly, Commission staff today have had to deal  
6 with upset and frustrated family members as a consequence  
7 of the report.

8 Thirdly, it should be noted that the upset does  
9 not end with families. Staff members of the Commission,  
10 with great patience and dedication, build up relationships  
11 with bereaved and emotionally affected members of families  
12 who have lost loved ones in those fires. They encourage  
13 them to attend hearings and on a day-to-day basis have to  
14 deal with their grief. For those staff members at the  
15 Royal Commission there is a feeling as a consequence of  
16 this report that there has been a breakdown in the  
17 relationship of trust between families and themselves, a  
18 relationship that they have fostered.

19 Commissioners, this afternoon counsel assisting,  
20 solicitors and the CEO of the Royal Commission met with  
21 Mr Jeff Browne, the managing director of Channel 9, and  
22 some of his senior executives and with the reporter, Laura  
23 Turner. We are satisfied from counsel assisting's point  
24 of view and we accept that the breach of the order was  
25 inadvertent. Mr Browne is here and I know desires to put  
26 some matters before the Commissioners.

27 MR BROWNE: If the Commission pleases, my name is Jeffrey  
28 Browne. I'm the executive director of the Nine Network  
29 and the managing director of GTV9 in Melbourne. The  
30 subject news report was broadcast on the 6 pm news at GTV9  
31 in Melbourne last evening. Channel 9 accepts it was

1 broadcast in breach of the suppression order that was  
2 made.

3 Channel 9 sincerely apologises to the Commission  
4 and to the staff of the Commission who have had to deal  
5 with the circumstances of these horrendous events in a  
6 position of trust and where confidence is critical to them  
7 performing their duties. Channel 9 apologises to the  
8 families and friends of those victims who were depicted in  
9 our news story.

10 Following this matter coming to our attention  
11 today, we undertook an investigation. There are  
12 procedures in place in the Channel 9 newsroom in relation  
13 to how we should deal with suppression orders. Those  
14 procedures were not followed, not as a result of our  
15 reporter choosing not to follow them, but being not as  
16 aware of them as she could have been. In that sense the  
17 failure is not systemic, it is a human error by our  
18 reporter.

19 As a result, this afternoon Channel 9 has  
20 circulated all reporters in each of our newsrooms in  
21 Brisbane, Sydney and Melbourne a fresh memorandum in  
22 relation to how they should deal with suppression orders,  
23 emphasising the importance of these orders and the  
24 importance of compliance with those orders.

25 In the case of our particular reporter, who is a  
26 skilful reporter who overlooked the importance of the  
27 suppression order and the need to observe that strictly in  
28 this case, we have arranged for a one-on-one session with  
29 our external legal advisers to further emphasise the  
30 importance of complying with suppression orders and so  
31 that she can appreciate the significance of what has

1 occurred.

2 Chairman and Commissioners, I have also brought  
3 with me a letter addressed to yourselves and affected  
4 persons which contains a written apology on behalf of the  
5 Nine Network. Chairman, I would seek your leave to hand  
6 that up rather than to read it onto the record and whilst  
7 I would ask that the letter be not for publication, I am  
8 in your hands on that ultimately.

9 CHAIRMAN: At this stage, without having read it, I can't  
10 really say what the ultimate result would be, but I think  
11 my preliminary view is that it would not be published, but  
12 I wouldn't guarantee that that would be the case.

13 MR BROWNE: I would still like to hand the letter up in those  
14 circumstances.

15 CHAIRMAN: Yes. Thank you, and we receive the letter.

16 MR BROWNE: I have three copies, Chairman. Would you like a  
17 moment to read it or shall I continue?

18 CHAIRMAN: The letter reflects the same sentiments essentially  
19 that you have already expressed to the Commission.

20 MR BROWNE: Yes. Chairman, I should also point out that the  
21 6 pm Channel 9 News this evening will carry a broadcast  
22 apology. That apology will be in this form: Last night  
23 we identified a number of people as victims of the  
24 Victorian bushfires. The Nine Network sincerely  
25 apologises to families of those people for the impact that  
26 broadcast may have had on them. It was certainly not our  
27 intention to cause any further distress to those involved.

28 Our 6 pm bulletin last evening was carried on the  
29 ninemsn website and also rebroadcast by Sky News pursuant  
30 to the contribution arrangements that Nine News has to  
31 that service. In the 4 pm Sky News bulletin this

1 afternoon Sky broadcast the apology which I have just read  
2 to you. Shortly after 4 pm today the ninemsn news website  
3 posted that apology on the website.

4 Chairman and Commissioners, may I reiterate the  
5 apology, reiterate that we have taken positive steps to  
6 attempt to remedy the harm and the wrong that was done by  
7 an inadvertent act. We have re-emphasised our procedures  
8 to all of our news staff and we have arranged for specific  
9 instruction to the particular reporter involved. Unless  
10 there are any questions of me, I have nothing further to  
11 add.

12 CHAIRMAN: Thank you, Mr Browne. Unless you want to say  
13 anything more, Mr Rush, all I had in mind to do is to say  
14 that the seriousness of the matter has been of concern to  
15 us because this particular session was one that had  
16 received so much more attention than others because of the  
17 extreme sensitivity involved, and whilst I'm saying much  
18 the same thing as Mr Rush has said, we have been reluctant  
19 to make exclusion or suppression orders and have only done  
20 so where we have thought that they satisfied the higher  
21 hurdle that applies in a court of being necessary, not  
22 just expedient, if you like. So that's why it is so  
23 disappointing because we know that the relatives and the  
24 staff members have gone to so much trouble.

25 Having said that, we have been extremely grateful  
26 at the Commission for the sensitive reporting by your  
27 channel and by other sections of the media, so we have  
28 been grateful that that course has been followed and it  
29 does seem that lessons have been learned and, by the  
30 promptness of your acting as you have and by the  
31 thoroughness of the steps that you have taken by way of

1 remedial action, it seems appropriate that we in effect  
2 acknowledge that whilst it is a very serious matter and we  
3 would still be concerned about the ongoing effects so far  
4 as the families are concerned in particular, that we  
5 accept and appreciate the apology that you have made on  
6 this occasion.

7 MR BROWNE: Thank you, Mr Chairman.

8 CHAIRMAN: Is there anything further you would want to add,  
9 Mr Rush?

10 MR RUSH: No, Commissioners.

11 CHAIRMAN: We will now adjourn.

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