



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2016 0308

**DECISION BY CORONER WHETHER OR NOT TO HOLD AN INQUEST INTO FIRE**

*Form 29 Rule 50(2)*

*Section 53(3) of the Coroners Act 2008*

Decision of:	<b>JUDGE SARA HINCHEY, STATE CORONER</b>
Location of fire:	Wye River and Separation Creek
Dates of fire:	19 and 25 December 2015
Applicants:	Refer to Attachment A
Date of Applications:	Refer to Attachment A
Date of Decision:	20 September 2017

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## **HER HONOUR:**

### **INTRODUCTION**

1. On 19 December 2015, a lightning strike in the Great Otway National Park ignited what would, over the ensuing days, become a ferocious, uncontained fire which burned more than 2500 hectares of forest and destroyed 116 houses in Wye River and Separation Creek (**the Jamieson Track fire**).

#### **Observations about the terrain in the area of the fire**

2. As observed in the Review conducted by the Inspector-General of Emergency Management (**IGEM review**), the Otway Ranges in the area around Wye River, is characterised by steep hills and deep, narrow gullies.<sup>1</sup>
3. The Jamieson Track fire, which ignited approximately 1.2km off Jamieson Track,<sup>2</sup> had its point of origin in an extremely deep and complex gully system, located between Lorne and Wye River.
4. To say that the terrain is “*topographically and geographically challenging ... covered by dense, multi-canopied vegetation*”<sup>3</sup> is to understate just how inhospitable and isolated the area is.
5. Access by vehicle to the point of ignition, was impossible.<sup>4</sup> The experienced operator of the fixed wing reconnaissance aircraft was unable to determine the height of the flames, due to the steep nature of the terrain.<sup>5</sup>
6. The terrain was so steep and dangerous, that even after a track had been cut by the Department of Environment, Land, Water and Planning (**DELWP**) crew and a bulldozer, Country Fire Authority (**CFA**) crews, who had attended the area, were stood down, as the area was completely inaccessible to their tankers.<sup>6</sup>

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<sup>1</sup> IGEM review, at p 11.

<sup>2</sup> *ibid*, at p 12.

<sup>3</sup> *ibid* at p 11.

<sup>4</sup> *ibid*, at p 12.

<sup>5</sup> *ibid*.

<sup>6</sup> *ibid*, at p 25.

## **The fire risk in Victoria between 19 and 25 December 2015**

7. On Friday 18 December 2015, the Bureau of Meteorology released the State Fire Weather Intelligence Briefing for the period 19 to 25 December 2015.<sup>7</sup> This briefing indicated that the forecast fire danger for Saturday 19 December 2015 was “*Extreme*” in four regions across the State, including the Barwon South West region, where Wye River is located.<sup>8</sup>
8. An “*Extreme*” Fire Danger Rating indicates very hot, dry and windy conditions.<sup>9</sup>
9. In a statement dated 30 June 2016, provided to me in the course of my investigation into this matter, it was observed by Mr Craig Lapsley, the Emergency Management Commissioner (**the EMC**), that “*under these conditions, a fire that starts and takes hold is likely to be uncontrollable, unpredictable and fast moving.*”<sup>10</sup>

## **The role of the Department of Environment, Land, Water and Planning**

10. The fire started on public land. In that case, the Emergency Management Manual Victoria (**EMMV**) provides that it is the DELWP who co-ordinate and control the response to the fire within the framework of the existing Emergency Management structure within Victoria.

## **Preparation for the increased fire danger**

11. The incident management personnel involved in the response to a fire such as the Jamieson Track fire, go through rigorous training and accreditation processes. This ensures that incidents are managed by personnel with appropriate training and experience, as recommended by the 2009 Bushfires Royal Commission.<sup>11</sup>
12. In order to prepare for and respond to the fire danger posed during this period, the State Control Team (**SCT**)<sup>12</sup> met on a daily basis.<sup>13</sup>

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<sup>7</sup> statement Craig Lapsley, Emergency Management Commissioner, 30 June 2016 (**statement Lapsley**), at p 2.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> the State Control Team comprises, amongst others, the Emergency Management Commissioner, the State Response Controller and the State Commanders for the CFA, DEWP, MFB and VICSES.

<sup>13</sup> *ibid.*, at p 3.

13. The SCT provides advice to the EMC and the State Response Controller (**SRC**) in relation to readiness levels, appointments to the line of control, communication of warnings and information to the community, operational and strategic risks and consequences (including those to life and property), resourcing priorities and the need for additional support.<sup>14</sup>
14. The State Control Centre (**SCC**) is Victoria's primary control centre for the management of emergencies, including bushfire. On Saturday 19 December 2015, the SCC was activated at the highest staffing level – Tier 3 – running on a 24-hour cycle.<sup>15</sup>
15. Regional Controllers from eight emergency management regions across Victoria held regular teleconferences with the SCT during this period.<sup>16</sup>
16. During this period in the Barwon South West region, four Incident Control Centres were operational, with pre-positioned incident management resources in place.<sup>17</sup>
17. A range of personnel were also either pre-positioned, on standby arrangements or on rest days, to ensure adequate coverage over the following days. In addition, a range of vehicles and plant equipment (including bulldozers) were on standby in various work locations across the Otways area.<sup>18</sup>
18. The State of Victoria has an appropriately varied fleet of aerial firefighting resources. These are managed through the Aviation Services Unit that resides in the Office of the Chief Fire Officer of DELWP.<sup>19</sup>
19. As recorded in the IGEM review, the types of aircraft and roles and terrains for which they are best suited are as follows:<sup>20</sup>
  - (a) small light helicopters and fixed wing aircraft (Firebird, Birddog, Firespotter) used for reconnaissance, intelligence collection and Air Attack Supervision;

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<sup>14</sup> *ibid.*, at p 4.

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

<sup>19</sup> IGEM review, at p 21.

<sup>20</sup> *ibid.*

- (b) bombers, used in suppression (retardant) or direct attack (foam, water) roles. These aircraft can be smaller, single engine fixed wing aircraft (single engine air tankers), or larger, four-engine aircraft (large air tankers). Bombers can carry between 3,000 and 17,000 litres of water/foam or retardant. They are the aircraft of choice for laying long, unbroken lines of retardant. The Bombers are faster and have a longer range than helicopters. Their range makes them valuable in remote parts of the State. They are best suited to open, flat or sparsely forested country;
  - (c) helitacks are medium to large helicopters used to carry and drop water from a belly tank (1,400 – 7,000 litres), or from a long line and bucket (1,400 – 3,000 litres).
20. The State Aircraft Fleet for 2015-16 comprised 47 contracted aircraft, with over 100 further aircraft available on a “*call when needed*” basis.<sup>21</sup>
21. In general:
- (a) aircraft are positioned in strategic locations across Victoria in readiness, based on risk;
  - (b) when requested, aircraft are dispatched to support the firefighting response to incidents, with consideration given to readiness for other concurrent or potential emergencies. On days of high fire danger, aircraft are often deployed over high risk areas for reconnaissance and fire spotting;
  - (c) aircraft are either “attack” or “intelligence gathering” resources. Attack aircraft include fixed wing water bombers, helicopters with water buckets and aircraft for dropping incendiaries (e.g. single engine air tankers, large air tankers, medium and large helitack). Intelligence gathering aircraft are used for reconnaissance, gathering aerial intelligence, spotting fire starts, using scanning equipment to identify hot spots or supervising attack aircraft (e.g. Firebird with infrared capability, firescan aircraft);

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<sup>21</sup> statement Lapsley, at p4.

- (d) aircraft have varying capability and effectiveness depending on a range of factors, including safety, vegetation type, weather conditions, and time-of-day of operation. There is no capability for night time water bombing operations.<sup>22</sup>
22. On the morning of 19 December 2015, there were 63 attack and intelligence gathering aircraft pre-positioned for immediate dispatch across the State.<sup>23</sup>
23. In the Barwon South West region over the period 19 to 25 December 2015, aircraft were pre-positioned at Colac, Hamilton and Casterton. Readiness arrangements also included the rostering of specialised personnel to undertake the roles associated with aircraft operation.<sup>24</sup>

### **Weather in the lead up to the ignition of the Jamieson's Track fire**

24. In September each year, the Bushfire and Natural Hazards Cooperative Research Centre (**BNHCRC**) releases a seasonal outlook of the bushfire potential across Southern Australia. This information is used by fire and emergency management authorities to make strategic decisions for the upcoming fire season.
25. The Bushfire outlook issued in September 2015 pointed to “*an above normal season across most of Victoria.*”<sup>25</sup> Key indicators of this outlook were an extended rainfall deficit, drying conditions in eastern Australia that affect north westerly air patterns, and rain levels that did not soak soil profiles.<sup>26</sup>
26. In the Monthly Weather Review for December 2015 released by the Bureau of Meteorology, the maximum temperatures during December were well above average in a band extending from the inland Pilbara to southeast Australia. Victoria recorded its warmest December on record, with a state-wide anomaly of +3.80°C, significantly higher than the previous record of +2.93°C in 1994.<sup>27</sup>
27. The State Fire Weather Intelligence Briefing released on the afternoon of 19 December 2015 predicted severe fire danger, lightning and a wind change for

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<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

<sup>24</sup> IGEM review, at p 21.

<sup>25</sup> statement Lapsley, at p 2.

<sup>26</sup> statement Lapsley, at p 3.

<sup>27</sup> *ibid.*

Sunday 20 December 2015. The briefing also predicted hot overnight minimum temperatures and strong and gusty northerly winds, ahead of a westerly wind change crossing the State on the Sunday.<sup>28</sup>

28. In the Aireys Inlet area, the temperature peaked above 42°C at around 2.30pm on Saturday 19 December 2015. The lowest overnight temperature of 26°C was recorded at 8.30pm on Saturday night and the temperature during early Sunday morning remained at around 30°C, with high winds.<sup>29</sup>
29. The CFA declared a total fire ban for many areas of Victoria, including the area around the Otway Ranges. Total Fire Bans are declared by the CFA on days when fires are likely to spread rapidly and could be difficult to control.<sup>30</sup>
30. There was significant lightning activity across Victoria on 19 December 2015, including in the Otway Ranges. A number of fires were ignited across the State as a result of this lightning activity.<sup>31</sup>

#### **Demands on State Resources in December 2015**

31. As was noted in the IGEM review, during the weeks leading up to the period of 10 to 25 December 2015, a number of fires placed considerable demands on the Barwon South West region's DELWP and CFA firefighting resources.<sup>32</sup>
32. There was a large fire at Mallala in South Australia, which called upon resources from the Barwon South West region. In addition, a grain fire on a ship at Portland and a peat fire in the Strathdownie area, also drew heavily on firefighting resources in the lead up to the Jamieson Track fire.<sup>33</sup>
33. Most notably, a fire at Scotsburn-Finns Road in the Ballarat region, had ignited on 19 December 2015. This fire was large and destructive, burning 4750 hectares of

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<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*, at p 3.

<sup>32</sup> IGEM review, p 12.

<sup>33</sup> *ibid.*; see also statement Lapsley, at p 3.



land over the next eight days and destroying 12 houses in the process. It was reported approximately one hour prior to the detection of lightning in the Otways area.<sup>34</sup>

34. Shortly after this, within 20 minutes of each other, two fires were detected approximately 8km apart, within the Great Otway National Park. Each was the result of a lightning strike. The Jamieson Track fire was detected at 4.10pm and the Lorne-Delanays Road fire was detected at 4.30pm.<sup>35</sup>
35. Further significant fires occurred across the State on 20 December 2015, including a fire in the Barnawatha-Indigo Valley region, which burnt 6650 hectares and destroyed or damaged five residential properties, 28 sheds, 210km of fencing and 14 cars.<sup>36</sup>
36. In total, there were 488 grass, scrub and bushfires reported in the period between Saturday 19 to Saturday 26 December 2015, with a total of 3739 incidents reported to the CFA, DELWP, Metropolitan Fire Brigade (**MFB**) and Victoria State Emergency Service (**VICSES**) over this period.<sup>37</sup> This included fires requiring large ground deployments and aerial fire suppression support at Wonthaggi, Epping, Wandin North, Marysville, Cann River and Mallacoota.<sup>38</sup>
37. These concurrent incidents placed significant firefighting pressure on the State's resources.<sup>39</sup>

#### **REQUESTS FOR AN INQUEST IN RESPECT OF THE JAMIESON TRACK FIRE**

38. Requests that there be an inquest to examine the circumstances of the Jamieson Track fire, were received from the persons listed in Appendix A hereto (**the applicants**).
39. The matters raised by the applicants concern the following issues:
  - (a) the adequacy of the initial response to the Jamieson Track fire, including whether rappel crews ought to have been utilised in fighting the fire;

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<sup>34</sup> statement Lapsley, at p 3.

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> statement Lapsley, at p 3.

<sup>38</sup> IGEM review, p 12.

<sup>39</sup> *ibid.*

- (b) the adequacy of the resources allocated to the fire response and in particular, the aerial support that was employed to fight the fire;
  - (c) the appropriateness of the decision to backburn/burn out;
  - (d) whether the IGEM's report is independent and adequately addresses the issues which arise from the occurrence and handling of the fire;
  - (e) the appropriateness of fuel reduction strategies employed prior to the fire.
40. On 10 February 2016, I notified the relevant applicants that I had not yet decided whether to hold an Inquest into this fire.
41. Since that date, and for the purpose of investigating the fire and determining whether to hold an Inquest, I have received extensive additional materials from Emergency Management Victoria (**EMV**) and DELWP. I also toured by vehicle, on foot and in the air, the area in which the fire ignited and subsequently burned.

## **THE LEGISLATIVE FRAMEWORK**

42. The jurisdiction of the Coroners Court of Victoria (**the Court**) is inquisitorial.<sup>40</sup> The *Coroners Act 2008* (**the Act**) provides for a system whereby reportable deaths and fires are independently investigated by coroners.
43. It is not the role of the coroner to lay or apportion blame, but to establish the facts.<sup>41</sup> It is not the coroner's role to determine criminal or civil liability arising from a fire or death under investigation, or to determine disciplinary matters;
44. Section 31 of the Act provides that any person may request a coroner to investigate a fire.
45. Section 68 of the Act provides that as a result of any investigation into a fire, a coroner must, if possible, make findings as to:
- (a) the cause and origin of the fire; and

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<sup>40</sup> Section 89(4) *Coroners Act 2008*.

<sup>41</sup> *Keown v Khan* (1999) 1 VR 69.

- (b) the circumstances in which the fire occurred.
46. Section 52(6) of the Act provides that within three months of receiving a request to hold an inquest, a coroner must, in writing, advise the applicant whether they have:
- (a) decided to hold an inquest; or
  - (b) decided that an inquest will not be held; or
  - (c) not made a decision as to whether an inquest will be held and that they will advise the applicant of the decision when a decision has been made.
47. The Act defines the term ‘inquest’ to mean a “*public inquiry that is held by the Coroners Court in respect of a death or fire.*” Less than one percent of reportable deaths are the subject of an public inquiry. This figure includes those deaths where it is mandatory under the Act to hold an inquest. This is not such a case.
48. It is important to note that a coroner conducts an independent and thorough coronial investigation, regardless of whether or not an inquest is held and will make written findings in relation to their investigation.
49. For coronial purposes, the circumstances in which a fire occurred refers to the context or background and surrounding circumstances of the fire. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the fire, it is confined to those circumstances which are sufficiently proximate to be considered relevant to the fire.
50. In exercising my discretion whether or not to hold an inquest, I have had regard to the Act, including but not limited to:
- (a) the Preamble of the Act;
  - (b) the Purposes of the Act;<sup>42</sup>
  - (c) section 7 of the Act which expressly provides that it is the intention of Parliament that a coroner should liaise with other investigative authorities,

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<sup>42</sup> Section 1 of the *Coroners Act* 2008.

official bodies or statutory officers to avoid unnecessary duplication of inquiries and investigation to expedite a coronial investigation;

- (d) section 8 of the Act which sets out the factors a coroner should have regard to when exercising a function under the Act;
- (e) section 9 of the Act which provides that the coronial system should operate in a fair and efficient manner.

## **APPLICANTS' CONCERNS**

### **Response to the fire – Decision making of those responsible**

- 51. The matters raised in sub-paragraphs (a)-(c) of paragraph 39 above, all concern the decision making by those in charge of fighting the Jamieson Track fire, from its initial stages through to 25 December 2017, when houses were lost at Separation Creek and Wye River.
- 52. In order to investigate the matters concerning the appropriateness of the decision making of those in charge of fighting the Jamieson Track fire, I requested and obtained a detailed statement from the Emergency Management Commissioner, Mr Craig Lapsley. The analysis which follows arises from a review of Mr Lapsley's statement, the materials supplied by EMV in support of the matters set out in the statement, and the information contained within the IGEM review of the response to the fire.

#### *Initial response – 19 December 2015*

- 53. On 19 December 2015, DELWP and Parks Victoria had a total of 23 personnel rostered on across two shifts in the Barwon South West region. Some of these personnel were part of the pre-positioned crews prior to the ignition of the fires. A further 29 personnel were located in the Colac ICC.<sup>43</sup>
- 54. As referred to above, on 19 December 2015, numerous lightning strikes occurred in the Otway Ranges southwest of Lorne. During the afternoon, Mount Cowley observation tower reported smoke at two locations: one near Delanays Road and the

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<sup>43</sup> IGEM review, at p 25.

second near the Jamieson Track. The first report of the Jamieson Track fire was at 4.10pm.<sup>44</sup>

55. Within an hour of this fire report, fire behaviour experts at State level had started to predict the potential fire spread. This information was shared in order to inform planning and operational decision making.<sup>45</sup>
56. The fire spread simulation tool, Phoenix RapidFire, provides an indication of the potential impact area if no suppression activities are undertaken, based on a wide range of variables, including fuel availability, weather and topography.
57. Initial fire prediction maps were completed within an hour of the reports for both the Delaneys Road and Jamieson Track fires.<sup>46</sup> It is worthy of note that on the basis of these maps, at that time, the Delaneys Road fire was, arguably, the more threatening of the two fires.<sup>47</sup>
58. Although the two fires were relatively close together, the two ignition points were in different, deep gullies and therefore had the potential to threaten different areas of the Otway ranges. As a result, the available fire fighting resources in the area needed to be shared between the two fires. Crews from both DELWP and the CFA, supported by large bulldozers, were initially deployed to both fires following the smoke reports.<sup>48</sup>
59. Nine personnel, one tanker, two Slip on Units<sup>49</sup> and a bulldozer were dispatched to the Jamieson Track fire, late afternoon on 19 December. A fixed-wing observation aircraft was also dispatched to assess the fire. Two further bulldozers were available and on standby, in case they were needed.<sup>50</sup>
60. The crew that were dispatched were not able to access the fire in their vehicles, encountering terrain that was densely forested, extremely steep and hazardous.<sup>51</sup>

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<sup>44</sup> *ibid.*

<sup>45</sup> statement Lapsley, at p 9.

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*, and attachments R and S thereto.

<sup>48</sup> statement Lapsley, at p 6.

<sup>49</sup> a firefighting unit often on a 4 x 4 tray body vehicle with a small water tank (400 litres), a pump and length of hose.

<sup>50</sup> IGEM review, at p 25.

<sup>51</sup> *ibid.*

61. It was determined that the preferred, and safest option, was to access the fire by bulldozer rather than using ground crews alone, given the very heavy fuels associated with tall stringybark forests, and forecast weather conditions.<sup>52</sup> The plan was for the bulldozer to construct a mineral earth track into the fire, an estimated distance of 1.5km.<sup>53</sup>
62. The crew did what they could to check on access to the fire while awaiting the arrival of a bulldozer. They were initially able to pick up a disused and extremely overgrown logging track, which nevertheless, assisted to a degree with access.<sup>54</sup>
63. The track ran for about 500m along the narrow ridgeline but then diverged away from where crews needed to go to attack the fire.<sup>55</sup>
64. After this point, the area was again densely forested, very steep and slippery.<sup>56</sup> Due to the dense forestation and heavy fuel loads associated with tall stringybark trees, access, even on foot, was extremely difficult and dangerous.<sup>57</sup>
65. Once it had arrived, the large bulldozer supported by ground crew, commenced constructing an access track, initially along the former logging track. After about 800m, the ridgeline became less obvious, and progressively steeper terrain was encountered. The air observer continued to provide support until dark, to ensure the bulldozer continued on the right ridgeline. Good progress was made.<sup>58</sup>
66. At approximately 6.00pm on 19 December 2015, a medium helicopter was dispatched by the State Air Desk to both fires, to undertake water bombing operations.<sup>59</sup> By this time, the Jamieson Track fire was estimated to be about one hectare in size.<sup>60</sup>

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<sup>52</sup> statement Lapsley, at p 6.

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

<sup>55</sup> *ibid.*

<sup>56</sup> IGEM review, at p 25.

<sup>57</sup> IGEM review, at p 25; statement Lapsley, at p 6.

<sup>58</sup> statement Lapsley, at p6.

<sup>59</sup> *ibid.*

<sup>60</sup> *ibid.*

67. Given the conditions and observed fire behaviour at that time, the Incident Controller's expectation late on 19 December 2015 was that the Jamieson Track fire would be contained by midday on 20 December 2015.
68. The bulldozer reached the western flank of the fire at about 9.00pm and commenced work, tracking a short section to the south into a very steep gully. At this point, the fire behaviour was described as "*notable*", with 1-2m flame heights and fire readily climbing to the tops of stringybark trees, which were in excess of 40m in height.<sup>61</sup> The fire was also observed to be spotting readily from the tops of the stringybarks, with spotover observed up to 50m across the gully at this time. The terrain was very steep with sections exceeding degrees.<sup>62</sup>
69. At this time, options were considered for the deployment of fire-fighting crews. In particular, consideration was given to the possibility of walking around the fire edge.<sup>63</sup>
70. The Sector Commander decided that it was unsafe for firefighters to proceed on foot, due to the strength and activity of the fire behaviour. He also concluded that attempting to construct a control line with hand tools would be futile, given that the spotting activity would immediately overrun any line which was able to be constructed.<sup>64</sup>
71. The Sector Commander also observed that there were a large number of overhead hazards, due to the fact that there were large trees with hollows burning within them, creating an inherent safety risk.<sup>65</sup>
72. It has been suggested that rappel crews ought to have been used to fight the Jamieson Track fire from an early stage. Rappel crews are normally dropped into a reasonably cleared area from which they walk to the fire zone. While both the terrain and safe access was difficult above Lorne, the area was not remote. As the United Firefighters Union (UFU) submission notes, a bulldozer track had been cut into the fire area within a matter of hours of it being detected. As such, rappel crews would not have been an appropriate initial attack strategy in

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<sup>61</sup> *ibid.*

<sup>62</sup> statement Lapsley, at p 7.

<sup>63</sup> *ibid.*

<sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*

this instance, given the timeframe for deployment, the time fire start and commensurate safety risks.

73. At this time, firefighters were directed to continue to operate slip-on units in support of the bulldozer, which continued to be engaged in construction of a containment line.<sup>66</sup>
74. The crew continued to work on the containment line until there was no natural light left. For safety reasons, the crew was withdrawn to the bulldozer track at this time. The night crew of 10 personnel was shared across the two fires.
75. During this period, the Sector Commander and the bulldozer driver, both very experienced firefighters, recognised that the fire behaviour continued to increase and consequently determined that it was not safe to proceed further. The bulldozer withdrew to safer ground, arriving back up at the constructed track on the northern edge of the fire at about 12.30am on 20 December 2015. When the bulldozer began to withdraw at around 11.30pm, about 80% of the fire perimeter had been tracked.<sup>67</sup> Shortly after midnight, the Sector Commander noted that the temperature exceeded 30°C and the fire behaviour continued to increase.<sup>68</sup>
76. A watch was maintained on the Jamieson Track fire overnight. The intent was to recommence bulldozer operations during daylight hours on 20 December 2015.<sup>69</sup>
77. Mr Lapsley's analysis of the initial attack on the Jamieson track fire is as follows:

*“Despite best efforts in the first attack response to the Wye River-Jamieson Track fire, conditions were such that unacceptable safety risks to fire fighters prevailed. Control line construction on the night of 19 December 2015 was undertaken in very demanding conditions, with operations skillfully undertaken ...”*<sup>70</sup>

78. I accept Mr Lapsley's evidence in relation to this matter.

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<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*



*The days which followed – 20 and 21 December 2015*

79. At 7.22am on 20 December 2015, it was estimated that the fire had grown to about five hectares in size. Due to spotover occurring throughout the night, about 80% of the fire perimeter was by then, untracked.<sup>71</sup>
80. The Incident Management Team (**IMT**) requested aircraft at the fireground as soon as possible. It should be noted that aircraft were used extensively in managing the Jamieson Track fire, performing aerial observation, water and retardant bombing, transport and aerial incendiary functions.<sup>72</sup>
81. The medium helitack and support aircraft were airborne at 7.24am. Between 9.00am and 1.30pm, a total of seven firefighting aircraft, including four water bombers (two large air tankers and two smaller tankers) and three helitacks (two medium, one large), had been dispatched to fight the Jamieson Track fire.<sup>73</sup>
82. It should also be noted that at the time of the ignition of the Jamieson Track fire, there were six major fires then alight which required water bombing resources to be allocated to them. In total, on 19 and 20 December 2015, aerial water bombing resources were deployed to approximately 32 fires (19 of which ignited on 19 December 2015 and a further 13 of which ignited on 20 December 2015). The deployments were required to places as far across the State as Barnawartha, Wonthaggi, Epping, Wandin North, Marysville/Buxton and Cann River.<sup>74</sup>
83. As the concurrent demands on the aerial water bombing resources were high, the State Air Desk, appropriately, allocated the available resources to these fires based on the State Strategic Control Priorities. Those considerations included the need to maintain capacity for readiness for other fires which might ignite across the State, due to the extreme fire conditions which then existed.<sup>75</sup>

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<sup>71</sup> *ibid.*

<sup>72</sup> IGEN review, at p 21.

<sup>73</sup> IGEN review, at p 26.

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid.*

84. Due to the fact that the Jamieson Track fire had jumped containment lines, in addition to the water bombing resources, additional bulldozers were also deployed to the fire.<sup>76</sup>
85. During the morning of 20 December 2015, fire intensity exceeded thresholds that are considered maximum for crews to successfully rakehoe control lines by hand. Thresholds for safe operation of machinery were also exceeded overnight, particularly in relation to fire intensity and terrain steepness. Under these conditions, successful direct attack on the fire was not possible due to weather, fuels and the exceedingly steep and inhospitable terrain.<sup>77</sup>
86. Decisions about safety are based upon a process of dynamic risk assessment informed by factors including continuous situational awareness, incident intelligence, fire predictions, weather prognosis and availability of resources.<sup>78</sup> Appropriately, this approach has been informed by the lessons of past events, most recently the findings and recommendations resulting from the inquest into the deaths of Katie Peters and Steven Kadar.<sup>79</sup>
87. Conditions continued to escalate during the morning, with fire increasing to 20 hectares in size by 10.25am.<sup>80</sup> The fire continued to be located in the extremely steep and inhospitable terrain which is a feature of the area. Two bulldozers constructed control lines, with the aerial water bombing resources assisting to slow the progress of the fire.<sup>81</sup>
88. Strengthening north-westerly winds led to a significant escalation in fire intensity from 12.30pm. Between 12.30pm and 1.00pm, the wind shifted to the west, associated with a frontal change, and the fire made a significant run, spotting across to the next ridge. Rain followed the frontal change and caused the aerial support to be grounded.<sup>82</sup>
89. At 5.40pm, the fire was estimated to be 65 hectares in size, with a 6km perimeter. Despite constant attention and best efforts, about 70% of the perimeter remained

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<sup>76</sup> statement Lapsley, at p 7.

<sup>77</sup> statement Lapsley, at p 8.

<sup>78</sup> *ibid.*

<sup>79</sup> *ibid.*; see also the Finding of Coroner Olle in the *Inquest into the deaths of Peters (COR 2013 0648) and Kadar (COR 2013 0649)*, dated 17 December 2015.

<sup>80</sup> statement Lapsley, at p 7.

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

uncontained.<sup>83</sup> The continued risks to the safety of firefighting personnel posed by the steep, inaccessible slopes and inhospitable and dangerous terrain, meant that increasing the on-ground resources was not feasible.<sup>84</sup>

90. On the afternoon of 21 December 2015, the Regional Controller (**RC**), deployed a Level 3 Incident Controller to assess the fire management arrangements. The conclusion of this review was that there was a significant risk of the Jamieson Track fire developing into a major incident.<sup>85</sup> The RC subsequently discussed escalation of the incident with the DELWP Chief Officer and SRC. This led to a decision to upgrade the fire to a Level 3 incident.<sup>86</sup> The formal transition of incident control occurred at 4.18pm on 21 December 2015.<sup>87</sup>
91. By the afternoon of 20 December 2015, the IMT had commenced planning and analysing alternative options for controlling the fire. Iterations of these options were produced at 1.00pm on 20 December and 5.00pm and 10.00pm on 21 December 2015. On 21 December 2015, the Incident Controller (**IC**) expected the fire to be contained by late on 24 December 2015.<sup>88</sup> By the morning of 22 December 2015, this expectation was revised to the fire being controlled by late on 26 December 2015.<sup>89</sup>

*Back burning and burning out – 22 to 24 December 2015*

92. The weather on 22 December 2015 was moderate, with cloud cover until early afternoon, temperatures below 20°C, and east/south-east winds of up to 9kmh. Temperatures were expected to increase to mid-20s on 23 December 2015, with winds remaining east/south-east and south-east at 10-15kmh. Expectations of considerably increased fire danger on 25 December 2015 remained.<sup>90</sup>
93. On the morning of 22 December 2015, the SCC, RC and IC conferred via a teleconference, to discuss the best way to approach the incident.

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<sup>83</sup> *ibid.*

<sup>84</sup> IGEN review, at p 29.

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*

<sup>88</sup> IGEN review, at p 30.

<sup>89</sup> *ibid.*

<sup>90</sup> *ibid.*

94. The final analysis included four options:<sup>91</sup>
- (a) Option 1: direct attack using helitak, aerial bombers and large air tankers in holding pattern;
  - (b) Option 2: establish and/or consolidate containment lines by hand, supported by bulldozers where practicable;
  - (c) Option 3: back burning from Jamieson Track/Wye Road (West) along Jamieson Track to the spur southeast of existing spotover in the east;
  - (d) Option 4: back burning from Jamieson Track/Wye Road to Great Ocean Road.
95. Option 4, involving back burning the unburnt areas between Jamieson Track and east to the Great Ocean Road was rated as having an 80-90% chance of succeeding. Option 3, with back burning of a lesser easterly extent, was rated as having an 80% chance of success. By contrast, options 1 and 2, which did not involve any back burning, were assessed as having a 20% and 50% chance of success respectively.<sup>92</sup>
96. The IMT analysed the options against cost estimates, fire fighting resource requirements and availability, estimated probability of success, consequences of failure and contingency requirements, risks to firefighters and the public, and broader economic, environmental and organisational impacts.<sup>93</sup> Taking these matters into account, the IC, together with team leaders of the IMT identified Option 4 as the approach that had the greatest chance of succeeding in containing the fire. The final options analysis was underpinned by a detailed assessment of relevant factors, including:<sup>94</sup>
- (a) the condition of existing tracks and firebreaks;
  - (b) prediction of fire behaviour through use of the Phoenix RapidFire mapping tool;
  - (c) an assessment of fuel moisture;

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<sup>91</sup> *ibid.*

<sup>92</sup> *ibid.*

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*; see also statement Lapsley, at p 13.

- (d) fallback and escape routes for fire crews;
  - (e) access for vehicles;
  - (f) limitations of the effectiveness of the use of retardant and water bombing as a method of fire control; and
  - (g) the time available before expected escalation in fire danger.
97. The back burning strategy which formed Option 4 was formally approved at 1.00pm on 22 December 2015 by the SRC, comprising incident, region and state levels of control.<sup>95</sup>
98. Since it was recognised that if the back burning strategy failed, there was a risk of a much larger fire and therefore a risk to assets, the IC initiated planning for community engagement and safety strategies for communities to the north and south of the fire, as well as for the Great Ocean Road.<sup>96</sup>
99. As at 2.26pm on 22 December 2015, the Jamieson Track fire was estimated to be 141 hectares in size and had burnt upslope from its origin to the Jamieson Track. The edge of this section ran approximately 500m along the Jamieson Track.<sup>97</sup> Two sections in this vicinity were identified as being appropriate for back burning operations, *viz*:
- (a) from east of the section that had burnt out to the Jamieson Track, through to the Great Ocean Road (**the east section**);
  - (b) from west of the section that had burned out to the Jamieson Track, through to Wye Road (**the west section**).<sup>98</sup>
100. Once the back burning operations began on 22 December 2015, they progressed well,<sup>99</sup> with flame heights of 1-1.5m<sup>100</sup> and fire burning downslope from the Jamieson Track, as planned.<sup>101</sup> The time sequence of operations was recorded by aerial infrared

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<sup>95</sup> *ibid*; see also statement Lapsley, at p 13.

<sup>96</sup> *ibid*.

<sup>97</sup> statement Lapsley, at p 14.

<sup>98</sup> *ibid*.

<sup>99</sup> *ibid*.

<sup>100</sup> IGEM review, at p 31.

<sup>101</sup> statement Lapsley, at p 14.

linescan, which shows the progression of the back burn over 22 and 23 December 2015.<sup>102</sup> A small amount of incendiary ignition was also dropped into the fire zone on 23 December 2015, to target previously unburned or incompletely burned areas within the original area which the fire had moved through between 19 and 22 December 2015.<sup>103</sup>

101. As a result of the back burning operations and incendiary ignition which took place between 22 and 24 December 2015, very little fuel within the target area remained unburned.<sup>104</sup>
102. Reports from 24 December 2015 indicate that the fire was quiet throughout the day and remained within the existing containment lines. By this time, the crews were also finalising the back burning operations.<sup>105</sup>
103. Overall, reports indicate that the back burn progressed as had been planned, implementing the strategy of protecting against the fire spreading south, with northerly winds forecast for 25 December 2015. Final reports from 24 December 2015 indicate the helitak water bombing continued until late afternoon and that crews were actively patrolling and blacking out hotspots.<sup>106</sup>
104. With the back burning providing protection against the spread of the fire to the south, crews prepared containment lines on the northern side in preparation for a wind change which was expected for late on 25 December 2015.<sup>107</sup> For this purpose, crews cut, by using a bulldozer, a containment line along the north-west of the fire area, as well as along Jamieson Creek running along the north east flank of the fire area. By 10.00pm on 24 December 2015, the bulldozer had progressed up Jamieson Creek from the Great Ocean Road to a point halfway along the northern boundary of the fire.<sup>108</sup>
105. Aerial reconnaissance monitored the fire throughout the period 22 to 24 December 2015. This strategy was successful in reducing fuel and potential fire intensity as

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<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*; the only notable area of unburned fuel was within a wet gully area in the west section. Attempts to burn out this section on 24 December 2015 were unsuccessful.

<sup>105</sup> IGEM review, at p 31.

<sup>106</sup> *ibid.*

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid.*

infrared mapping had previously identified 1000 hotspots in the original fire. In addition, the IMT undertook smoke modelling to assess the impact on towns and the Great Ocean Road.<sup>109</sup>

106. There were two flare ups during the night of 24 December 2015, which were successfully dealt with. By the morning of 25 December 2015, the fire was still within the established containment lines. The southern edge of the fire included a “*tongue*” that had burnt upslope to within 10m of the Jamieson Track during a fire run which had taken place on 21 December 2015.<sup>110</sup> Wind speed increased to a maximum of 19kmh late on the evening of 24 December 2015 and swung to the north north-east. Reports indicated that a maximum wind speed of 39kmh was expected for the early hours of 25 December 2015.<sup>111</sup>

#### *25 December 2015*

107. Due to the high fire danger which had been forecast for 25 December 2015, the fire control strategy focused on keeping the fire within the containment lines which had been built over previous days.<sup>112</sup> Northerly winds continued throughout 25 December 2015. For this reason, it was recognised that that any fire which jumped containment lines and was not quickly controlled, could expand and run to the south. The proposed strategy was for aircraft to immediately attack any spotover that occurred.<sup>113</sup>
108. On 25 December 2015, day shift crews were deployed from 6.30am. Active patrols were undertaken along the Jamieson Track (which was still the southern boundary of the fire) to ensure that any areas of potential flare up were blacked out.
109. The Division Commander reported increasing winds by mid-morning, and crews were actively deployed along the Jamieson Track in a concerted effort to deal with

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<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.*

hotspots and flare ups.<sup>114</sup> Aircraft were water bombing the fire on the morning of 25 December 2015.<sup>115</sup>

110. At about 11.00am, the Division Commander became aware of a flare up reported north of the Jamieson Track, in a steep gully downslope from the track.<sup>116</sup> There was heavy material, likely from previously fallen tree limbs, which had caught alight and flared up. A slip on unit was directly working on this flare up and had called for tanker support as they were experiencing difficulty controlling the flare up.<sup>117</sup> The Division Commander was then advised that spotting had occurred across the Jamieson track.<sup>118</sup> The fire spotover is reported to have been started by a tree falling in an area that had previously been well burnt. As the tree fell, it provided additional, unburnt fuel which caught fire and started throwing embers as a result of the extremely hot and windy conditions.<sup>119</sup>
111. The spotover event included embers being thrown into a large stringybark tree.<sup>120</sup> From this elevated position, further spotting quickly occurred in the area immediately to the south of the Jamieson Track, which comprised a steep gully system.<sup>121</sup> Due to the proximity of water bombing aircraft at that time, water bombing operations on this spot fire occurred within minutes of it being reported.<sup>122</sup>
112. The Division Commander also called in a large bulldozer to support fire fighting operations, but due to the steepness of the terrain in which the spotover had occurred, there was no possibility of the spot fire being accessed by the bulldozer<sup>123</sup> or on ground crews.<sup>124</sup>
113. Despite best efforts, it quickly became obvious that the aircraft were not going to be effective in controlling the breakout.<sup>125</sup>

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<sup>114</sup> statement Lapsley, at p 14.

<sup>115</sup> *ibid*; see also IGEM review, at p 31.

<sup>116</sup> statement Lapsley, at p 14.

<sup>117</sup> *ibid*.

<sup>118</sup> *ibid*.

<sup>119</sup> IGEM review, at p 32.

<sup>120</sup> statement Lapsley, at p 14.

<sup>121</sup> *ibid*.

<sup>122</sup> *ibid*.

<sup>123</sup> *ibid*.

<sup>124</sup> IGEM review, at p 32.

<sup>125</sup> statement Lapsley, at p 15.



114. In accordance with the triggers previously agreed with the IC, community safety plans were initiated in response to the escalating risk caused by the rapid southward spread of the fire.<sup>126</sup> Crews were withdrawn from the fireground and CFA resources were readied in Wye River and Separation Creek, to give direct protection to houses.<sup>127</sup> The IC established an additional divisional command to support this effort.<sup>128</sup> Shortly after 11.30am, the IC initiated evacuations of Wye River and Separation Creek and closed the Great Ocean Road.<sup>129</sup>
115. As part of its planning for this contingency, the IC had expected that any fire spilling over containment lines would quickly move south over Godfrey Track, which runs south/south-east for about 2km from its junction with Jamieson Track.<sup>130</sup> Infrared scans taken immediately prior to and during the run of the fire to the coast, show the fire rapidly moving as expected,<sup>131</sup> with long distance spotting.<sup>132</sup> By 12.45pm the fire had crossed both Godfrey Track and Wye Road. At 2.00pm, another spot fire broke away 50m south of Wye Road on the western edge of the fire. The fire area rapidly increased from around 271 hectares overnight, to 600 hectares at 2.00pm and 1399 hectares by 4.17pm.<sup>133</sup>
116. Around this time, power was cut to Wye River as fallen electricity poles and live wires were causing an electrocution risk to fire crews. Fire activity with the potential to threaten Lorne was evidenced by 8.00pm. Two separate spot fires led to northerly spread of the fire up to the Cumberland Track, with flame heights of 2-3m.
117. With community safety strategies implemented, records show that the IC moved to prepare for the change of wind to the south west, which was expected in the evening between 7.00pm and 9.00pm. The IC closed the Great Ocean Road at Anglesea to the north of Lorne and initiated the evacuation of Lorne at 4.11pm.
118. Later on 25 December 2015, the fire was still under the influence of a strong northerly wind.<sup>134</sup> The expected early evening south-west change arrived much later in the

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<sup>126</sup> *ibid*; see also IGEM review, at p 32.

<sup>127</sup> IGEM review, at p 32.

<sup>128</sup> *ibid*.

<sup>129</sup> *ibid*.

<sup>130</sup> IGEM review, at p 32.

<sup>131</sup> *ibid*.

<sup>132</sup> statement Lapsley, at p 15.

<sup>133</sup> IGEM review, at p 32.

<sup>134</sup> *ibid*.

evening of 25 December 2015. By 10.36pm on 25 December 2015, the fire was estimated to be 2080 hectares in size. A report, at 5.00am on 26 December 2015, notes that the change brought 3mm of rain, moderating the southerly progress of the fire, which stopped one km short of Kennett River, to the south of Wye River.<sup>135</sup>

119. Over 2500 hectares of forest was destroyed by the Jamieson Track fire, along with 116 houses in Wye River and Separation Creek.
120. In a post-bushfire building survey conducted by the Commonwealth Scientific and Industrial Research Organisation (**CSIRO**), it was noted that fire in the heavier fuels stored under and adjacent to the houses' subfloor area such as plastic water tanks, building materials, small garden sheds, boats and kayaks, also appear to have been a significant factors in many of the losses. It was also noted by the CSIRO that the presence of wooden retaining walls and timber decking increased the chance of a particular house being lost to the fire.

### **Independence of the Inspector-General of Emergency Management**

121. The submission of the UFU calls into question the appropriateness of the IGEM conducting a review into the Jamieson Track fire. In particular, the UFU questions the independence of the IGEM and asserts that it does not have appropriately wide powers to conduct the necessary investigation into this particular fire.<sup>136</sup>
122. This submission is not supported by the evidence.
123. The IGEM was established under Part 7 of the *Emergency Management Act 2013*. The function of the IGEM is:
  - (a) to provide assurance to the Government and the community in respect of emergency management arrangements in Victoria; and
  - (b) to foster continuous improvement of emergency management in Victoria.

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<sup>135</sup> *ibid.*

<sup>136</sup> paras 40-46, UFU submission dated 18 January 2016; point 4, UFU submission dated 9 March 2016.

124. In undertaking its role, the office of the IGEM operates independently of the emergency services and those parts of government with a role in emergency management.<sup>137</sup>
125. In relation to the Jamieson Track fire, on 5 January 2016, the Minister for Emergency Services (**the Minister**) requested the IGEM to report on the lessons, to date, from the Jamieson Track fire.<sup>138</sup> The scope of the review, as directed by the Minister, was as follows:
- (a) to consider and incorporate good practice and [lessons] from the management of the Wye River-Jamieson Track fire over the period 19 to 25 December 2015, in particular the following:
- (i) detection of the lightning strike and initial attack on the fire on 19 December 2015;
  - (ii) the incident action plan developed and implemented by the Incident Controller;
  - (iii) the fire control strategy developed and implemented between 19 and 25 December 2015;
  - (iv) the community information, warnings and engagement between 19 and 25 December 2015;
  - (v) the evacuation and traffic management planning developed and undertaken on 25 December 2015.
126. In his review, the IGEM stated that all relevant evidence was considered “*in an impartial and objective manner*”<sup>139</sup> and that the observations and findings made as part of the review were made “*on the basis of merit and without bias.*”<sup>140</sup>
127. There is no evidence before me to suggest anything to the contrary. The assertions made by the UFU about this matter do not amount to evidence of a lack of objectivity

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<sup>137</sup> statement Lapsley, at p 15.

<sup>138</sup> letter from Jane Garrett, Minister for Emergency Services to Mr Tony Pearce, Inspector-General for Emergency Management, dated 5 January 2016.

<sup>139</sup> IGEM review, at p 7.

<sup>140</sup> IGEM review, at p 7.

by the IGEM in the gathering and analysis of the information required to conduct the review which was, in turn, provided to the Minister.

128. To the contrary, the information which I have gathered from the EMC and the DELWP as part of my investigation concerning the response to the fire, is entirely consistent with the matters set out in the IGEM review.
129. As to the width of the powers possessed by the IGEM, under section 64(1)(c) of the *Emergency Management Act 2013*, it is the Minister who sets the scope of the review which is undertaken.
130. In this case, insofar as it related to an analysis of the adequacy of the response to the Jamieson Track fire, the scope of the IGEM review mirrors exactly the scope of the investigation which I consider appropriate to undertake under the Act. Insofar as it examines the management of community information, warnings, evacuation and traffic management, the scope of that review was in fact much wider than the coronial investigation.
131. Thus, I do not accept that the IGEM was an inappropriate entity to conduct a review, due to insufficiently wide powers.
132. Lastly, I note that the process and methodology employed by the IGEM is outlined at page 8 of the IGEM review. I am informed by the EMC and accept that insofar as was possible, the IGEM was given every cooperation in accessing all relevant personnel and materials held by the relevant emergency management agencies.
133. In those circumstances, it is clear, as far as access to relevant materials is concerned, that the IGEM had available to him, exactly the same cohort of materials that would have been sought by a coroner, had the Court had primacy of the initial review.
134. Thus, consistent with the terms of section 7 of the Act, I do not consider it appropriate to duplicate any aspect of the review previously undertaken by the IGEM.

#### **Fuel reduction in preparation for fire risk**

135. The last matter raised by those who applied for an inquest in this matter was the adequacy of the fuel reduction which had taken place in the area surrounding Wye River and Separation Creek.

136. For the purpose of investigating this matter, I requested and obtained information from DELWP which disclosed the following matters:
- (a) fuel reduction and management is a long-term strategy, requiring an annual program of burns that, over time, will reduce the risk of fire across the landscape;
  - (b) fuel management reduces the risk of bushfire, but does not eliminate it;
  - (c) there have been numerous fuel reduction strategies employed in relation to management of bushfire risk in Victoria in the last 20 to 30 years;
  - (d) following the 2009 Bushfires, recommendation 56 of the Victorian Bushfire Royal Commission (**VBRC**) was that: *“The State fund and commit to implementing a long term program of prescribed burning based on an annual-rolling target of five per cent minimum of public land.”* This target is often referred to as the *“hectare target”* or the *“5% target”*;
  - (e) in 2015, the IGEM examined the performance of VBRC recommendation 56 and found that the state-wide target was *“useful in providing a guide to the overall scale of burn required to achieve risk reduction, but had limitations: namely, hectares of burn are not of equal value and were location dependent with respect to risk reduction”*;
  - (f) this resulted in the current ‘risk reduction’ target, adopted by the State Government, set out in *Safer Together: A new approach to reducing the risk of bushfire in Victoria* (**Safer Together**);
  - (g) the *Strategic Bushfire Management Plan: Barwon Otway Bushfire Risk Landscape* (**the strategy**), replaced the *Otway Fire District Fire protection plan* (2003) in 2014. The strategy was prepared with a focus on risk reduction – which the Barwon Otway region had been piloting – in accordance with the policy which was subsequently articulated in *Safer Together*;
  - (h) in its implementation, the strategy was applied to the operational delivery of the hectare based target, with burns prioritised to deliver the greatest risk reduction outcome over time;

- (i) as referred to above, DELWP uses a predictive modelling tool known as Phoenix Rapidfire, to assess bushfire risk. The Phoenix Rapidfire modelling has shown that in the Barwon Otway region, the highest ignition threat areas are to the north of Moggs Creek and Anglesea – in other words, any bushfire that starts in these areas would have the potential to destroy to the highest number of properties in that region. The modelling indicates that Lorne, Anglesea and Jan Juc are in the top five Victorian towns most at risk of property loss from a major bushfire. For modelling purposes, property loss is used as a proxy for potential for loss of life;
  - (j) while Wye River and Separation Creek are locally recognised as high risk communities, the magnitude of potential loss in these communities is significantly less than coastal townships to the east of Wye River, that have larger populations and a similar likelihood of damaging fire exposure;
  - (k) planned burns took place in and around Wye River and Separation Creek in 2010 and 2012. This was part of a program of planned burns executed between 2006 and 2015 in the Barwon Otway Shire bounded by Forrest to the north, Skenes Creek to the south and the area north-east of Deans Marsh and the Great Ocean Road to the East;
  - (l) mapping of the planned burns in the area during this period demonstrates a concentration of planned burning activity around the key populated areas in this region, including around Wye River and Separation Creek. As would be expected and consistent with the Phoenix Rapidfire modelling, the majority of planned burning activity along the Great Ocean Road in the area referred to above, took place in and around the vicinity of Lorne.
137. Having assessed the extensive materials provided by DEWLP, it is especially important to note the concentration of private land which surrounds all sides of Wye River and Separation Creek.
138. Any suggestion that DELWP was able freely to conduct planned burning in these areas which immediately bound these two townships, fails to take into account the reality that planned burning on private land requires the consent and cooperation of the owners of that land. Sadly, this is not always forthcoming.

139. There is no evidence before me which would suggest either:

- (a) that the policies and procedures governing fuel reduction and/or management were inappropriate; or
- (b) that DEWLP failed to comply with those policies and procedures.

**DECISION**

140. In the circumstances, and having considered the applications, I have decided that is not necessary to hold an inquest, for the following reasons:

- (a) the available evidence is sufficient to allow me to make the findings required by section 68 of the Act concerning:
  - (i) the cause and origin of the fire;
  - (ii) the circumstances in which the fire occurred, as set out above; and
- (b) that there is no legitimate coronial purpose that is likely to be served by holding a public hearing in this matter.

Signature:



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**JUDGE SARA HINCHEY  
STATE CORONER**



Date: 20 September 2017

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*NOTE: Under section 82 of the Coroners Act 2008 if a coroner determines not to hold an inquest into a death, the person who requested the coroner to hold an inquest into the death may appeal against the coroner's determination to the Supreme Court within 3 months after the day on which the determination of the coroner is made.*

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## **ATTACHMENT A**

### **DETAILS OF THE APPLICANTS WHO MADE A REQUEST FOR AN INQUEST INTO THE JAMIESON TRACK FIRE**

1. Mr Gordon McComb, by application dated 26 January 2016;
2. Mr Andrew Allen, by application dated 1 February 2016.