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IN THE MATTER OF A REPORT OF THE INQUIRY OF THE 2002 – 2003 VICTORIAN BUSHFIRES.

MEMORANDUM

Introductory.

1. I have been asked by a committee, known as the Stretton Group, to comment upon a report of the inquiry into the 2002-2003 bushfires, which I shall hereinafter refer to as the “Esplin Inquiry” and “Esplin Report”. Mr. Bruce Esplin, Emergency Services Commissioner of Victoria, was the chairman of the Esplin Inquiry, which he conducted with the assistance of Dr. Malcolm Gill and Professor Neal Enright.
2. In addition to a copy of the Esplin Report, I have been provided with the following documents:
 - (a). Report of House of Representatives Select Committee on the Recent Australian Bushfires, “A Nation Charred: Enquiry into the Recent Australian Bushfires”, published October 2003;
 - (b). Report from certain “North Eastern Victorians regarding the 2003 bushfire crisis” entitles, “A Case of Burning Neglect”, dated 30 April 2003 and published by The Eureka Project;
 - (c). A collection of papers provided to me concerning the 2003 Victorian bushfires, including the following:
 - (i) David Packham, “Casual observations on the validity of the Esplin inquiry”, dated 1 February 2004;
 - (ii) David Packham, “Submission to Victorian Bushfire Inquiry”, dated 9 May 2003;
 - (iii) David Packham. “Supplementary Submission to Victorian Bushfire Inquiry”, 1 June 2003;
 - (iv) Letter from Andrew Chambers, managing director Pinkerton (Australia) Pty Ltd to Messers Tony Cutcliffe and Simon Paton, dated 6 May 2003;
 - (v) Letter to Graeme Johnston, State Coroner, from Tony Cutcliffe director The Eureka Project, dated 11 September 2003, together with other correspondence between Mr. Cutcliffe and Mr. Johnston.
 - (d). Jim Hoggett and Aled Hoggett, “When Will We Ever Learn’, IPA Backgrounder, May 2004.
3. I propose to comment upon two broad matters relating to the Esplin Report. First, I will address certain procedural matters affecting the manner in which the Esplin Inquiry was conducted. Secondly, I will comment upon some of the conclusions and recommendations of the Esplin Report.

Procedures.

4. Sound process in the conduct of an inquiry is an assurance as to reliability of outcome, but if the process is unsound one can have no confidence in the conclusions of the inquiry. Clause 1.17 of the Esplin Report, under the heading “How the Inquiry was conducted”, says “the Inquiry members approached the task with no pre-determined view about the eventual finding”. Nonetheless, I have been informed that, before the Esplin Inquiry began, the Minister for Emergency Services, Mr. Haermeyer, in an interview with Jon Faine of ABC Radio 774, made a public statement along the lines that the Esplin Inquiry would show that the State Emergency and Firefighting Services did an excellent job controlling and suppressing the 2003 Victorian bushfires. Clause 1.26 asserts the independence of the Esplin Inquiry from Government, but clause 1.17 states that the secretariat for the Esplin Inquiry was located within the Department of Premier and Cabinet, without describing, for example, the role of the secretariat in advising the members of the Esplin Inquiry or in drafting the Esplin Report.
5. Mr. Esplin was Emergency Services Commissioner for Victoria during the 2002-2003 fires the subject of the Esplin Inquiry. The Esplin Inquiry dealt explicitly with the Victorian Emergency Services role in fighting the 2002-2003 Victorian fires: see, for example, chapters 16 and 18 of the Esplin Report. Thus, Mr. Esplin was not, and did not appear to be, independent in relation to the matters inquired into.

Transcription

6. The terms for an inquiry are fundamental to the usefulness of the inquiry. The terms of reference for the Esplin Inquiry were to:
 1. *Examine the effectiveness of preparedness for the 2002/03 bushfire season, including hazard reduction and mobilization of resources;*
 2. *Assess the effectiveness of the response to the 2002/03 bushfires, including emergency management procedures, cross agency response and co-ordination and resource deployment; and*
 3. *Produce recommendations for future bushfire management strategies, including any required improvements to existing emergency management arrangements including public communications, community advice systems, infrastructure, training and overall resourcing.*

The terms of reference for the Esplin Inquiry were deficient, being too vague, generalized and unfocussed and, at the same time, too narrow. The report upon those terms of reference was correspondingly vague, generalized and unfocussed and failed to address important environmental and economic consequences of the fires, including the effect of the fires upon water catchments. Matters which the terms of reference ought to have addressed, in addition to the economic and environmental consequences of the fires, include land use practices of Parks Victoria, forest husbandry practices in Victorian State forests and specific steps which could have been taken to control and extinguish the fires but which were not taken, or not taken in a timely manner.

7. The Esplin Inquiry had no power to compel witnesses to give evidence. Evidence to the Esplin Inquiry was not generally given orally or under oath. Evidence to the Esplin Inquiry was not tested by cross examination. Evidence to the Esplin Inquiry was given secretly, so that one could not generally know what evidence was given by any witness. (All one knows from chapter 5 is that a great deal of evidence was critical of the Firefighting services, the response to the 2003 north east Victoria fires and the Government policies on fuel reduction burning on public lands. Further, after the publication of the Esplin Report, certain submissions were published on an internet website.)

Evidence given to the Esplin Inquiry was not privileged for the purposes of the law of defamation and any witness who gave evidence may have been inhibited by the knowledge that the witness could be sued for defamation. These aspects of the manner in which the Esplin Inquiry was conducted stand in contrast with the procedures of the House of Representatives Select Committee, whose report is mentioned above, where evidence was given in public, with the benefit of parliamentary privilege and on oath. There was a Hansard report of the oral evidence before the House of Representatives Committee and written submissions were made public. It is also to be contrasted with what would have been the position had there been a coronial enquiry and with the position of the Royal Commissions conducted by Judge Stretton after the 1939 and 1944 bushfires.

8. Under the heading "Expert input into the Inquiry" the qualifications of Dr. Gill and Professor Enright are described. What is notably absent in the description of the skills of the members of the Esplin Inquiry and the resources available to them is any reference to skills and experience in relation to forestry management and fire prevention or suppression.
9. One must have grave misgivings about the manner in which the report is written. The language in which the report is written is highly generalized and qualified. There are few specific findings or recommendations upon the most critical issues about, for example, fuel reduction burning, the organization of fire and emergency services and the roles of landowners, volunteer firefighters and local communities in fire prevention and control. The Esplin Report contains a great deal of peripheral and irrelevant material. For example, one's attention is attracted immediately upon reading chapter 1 to the highlighted observations that "Victoria is not alone in experiencing fire events such as the fire season. Parts of Europe and Canada have also experienced extreme fire weather over the summer of 2003." That observation is irrelevant to the subject of the Esplin Report and merely distracts from an understanding whether the 2003 bushfires were well-handled by the State bushfire and emergency services organizations and whether correct bushfire prevention and suppression policies are being implemented in Victoria.

Conclusions and Recommendations of Esplin Inquiry.

10. In the executive summary of the Esplin Report, after stating in general terms the purpose of the Esplin inquiry, there is a blow directed against those “who attempt to use this report and its recommendations to apportion blame, and to advance their agendas”. That sets the tone for the report, which tends to deflect blame from those who are responsible for establishing and administering policies and programmes affecting bushfire mitigation and suppression. The executive summary also compares the fires of 2002-2003 with black Friday 1939 and says that the area of land burnt was similar, but in 2002-2003 there were “substantially and starkly different” numbers of deaths and injuries and property loss associated with the fires. In 1939 the means available to control bushfires was very different from the means available today. Furthermore, the losses of private property and deaths and injuries in 1939 were the greater because of the localities where the fires burnt. The 2002-2003 fires in Victoria caused enormous loss of public property and resources and environmental devastation not properly identified and valued in the Esplin Report. The executive summary concludes with a statement that the authors have “nothing but praise for ... [the] efforts of the many firefighters and support staff”. This statement is at odds with many findings of the Esplin Report which identify fire-fighting efforts that deserve condemnation rather than praise: see, for example, the findings in chp. 20 of the Esplin Report. It is also at odds with the preponderance of submissions as, for example, analysed and summarized in chp. 5 of the Esplin Report.
11. A major criticism of the efforts to extinguish the fires in north east Victoria in 2003 is that in the first week of the fire there were ample opportunities to completely control or extinguish the fires, but these opportunities were not sufficiently availed of. Indeed, it is suggested that those responsible for controlling the fire fighting prevented fire fighters completely controlling the fires, when it was possible to do so. There is some intimidation of this in paragraph 4.21 of the Esplin Report. On page 171 the authors say “Opportunities to safely attack sectors of the fire were missed ... The authors also reject the suggestion that recommendations of the Linton coronial enquiry about fire-fighter safety meant that decisions were taken not to attack sectors of the fire, especially during the first week, when it was safe to do so”. Furthermore, under the heading “Aggressiveness of Firefighting it is said:

“20.14 Many submissions to the inquiry were highly critical of the strategies and tactics employed by DSE and CFA in the management of the fires. These criticisms were made both by fire-affected communities and local CFA volunteers. (Chapter 17 discusses some of these concerns in relation to the initial response to the bushfires.)

20.15 The issues raised in these submissions were surprisingly consistent across all fires examined by the inquiry, and fall into a number of areas:

The Esplin Report concludes as follows:

20.18 The inquiry believes no one factor is responsible for the concerns raised by both firefighters and the community. The likely explanation is one of interacting factors and events including:

- Failure to adequately use local knowledge (discussed in detail below);*
- Incident Control Centres being established (in some cases), a considerable distance from the fire front;*
- A failure on the part of the Incident Management Teams to communicate the reasons behind selected strategies to both firefighters and affected communities;*
- Inexperience on the part of some Incident Controllers; and*
- AIIMS-ICS being applied too prescriptively or inflexibly by some staff operating from Incident control centres.*

12. Nonetheless, the Esplin Report deals with the serious failures identified in submissions and found by the Esplin Inquiry itself, as follows:

Transcription

20.25 *The Inquiry concludes there were some opportunities where weather conditions, local fire behaviour and available resources could have justified a decision to undertake a more aggressive or direct attack safely on the fires during the campaign. While we can speculate on the difference this decision might have made to property damage and losses, it is not possible to objectively, or conclusively, assess the impact it might have had on the total area burnt by the fires. Nor is it possible to assess whether it would have reduced the impact of the fires on private property. (Emphasis added.)*

Thus, notwithstanding the many critical submissions about the conduct of the Firefighting efforts in north east Victoria and the conclusions reached by the members of the Esplin Inquiry quoted above, the Esplin Report states that, in substance, nothing was seriously amiss in the fire fighting efforts and those on command had difficult decisions to make which with the benefit of hindsight one could not say were definitely wrong. No specific recommendations are made concerning the way in which fire fighting strategy should be improved, local knowledge should be used or indeed any other matter which touches upon the widespread criticism of the way in which the 2003 fires were fought. The language of para. 20.25 quoted above is designed to deflect and dilute criticism and stands in contrast with the serious deficiencies in firefighting efforts already identified.

13. The Preceding matter is related to the complexity of the relationships between organizations responsible for Firefighting and also the relationships between paid employees and volunteers and landowners. The complexity of the relationships between various organizations responsible for fighting the 2003 fires was the subject of a great deal of criticism in the evidence given to the Esplin Inquiry. The complexity is demonstrated graphically by figure 15.5 in the Esplin Report, which identifies seven or eight layers of command above the firefighters! Furthermore, the case study in paragraph 15 of the Esplin Report is a powerful instance of a breakdown of communication between permanent (or "professional") fire fighting organizations and landowners and volunteers. Yet there is not any recommendation which adequately deals with these matters. The only recommendation is as follows:

15.87 *That government supports the immediate development of financial models to analyse and determine the appropriate level of investment in fire management planning, preparedness and suppression on public land.*

This recommendation is so generalized as to be worthless. It completely ignores the evidence of serious deficiencies in the organization of the permanent fire fighting bodies and in the relationship between those bodies and volunteers and owners.

14. Another related issue concerns access roads and tracks. This is dealt with in the Esplin Report in paragraph 15.91 and following. The evidence contained in the submissions, as best one can judge, before the Esplin Inquiry supported a policy of undertaking work on the establishment and maintenance of fire tracks and access roads, many of which had been neglected or closed before the fires as a result of government policy and lack of expenditure in the maintenance of tracks and roads in National Parks and State forests. The Esplin Inquiry recommendations, at paragraph 15.105 to 15.107, are so generalized as to be worthless, referring to recommendations that bodies "assess" various matters and undertake "community consultation". It was open to the Esplin Inquiry to make specific recommendations concerning access roads and tracks and to comment upon the difficulties that were caused in the fighting of the 2003 fires by decisions to close access tracks and by inadequate maintenance of the remaining access tracks and roads.
15. Possibly the most sensitive area of the Esplin Inquiry concerns fuel reduction burning. Before the 2002-03 fires, there had been a considerable decline in fuel reduction burning on public land, especially National Parks. The submissions received by the Esplin Inquiry identified this as a major source of difficulty in preventing and controlling fires. What did the Esplin Inquiry do? There were five chapters touching upon this matter. One chapter ended with an inconclusive observation about high country grazing. The next chapter appeared to focus on the breeding habits of the mallee fowl! There was a further chapter in which members were unable to reach any conclusion about aboriginal burning

Transcription

practices as compared with what has happened since European settlement. In chapter 11 there was some ponderings about "philosophical and comparative approaches to determining effectiveness'. But, in the end, it was concluded as follows:

- 11.61 *A prime purpose of fuel modification is to mitigate the effects of unplanned fires. The main technique for doing this in public forested landscapes is prescribed burning. Prescribed burning by its very nature reduces fuel quantities so, by definition, it reduces potential fire intensity. It also changes fuel arrangement in ways that can only be considered beneficial for protection purposes.*
- 11.62 *with the mitigation of unplanned fires, the chances of fire control are improved and therefore the risks to life and property are reduced.*

16. Having reached that conclusion, the Esplin Inquiry was in a position to make recommendations for the future about fuel reduction burning policies and observations about what would have been the effectiveness of fuel reduction burning in controlling and mitigating the effects of the 2003 north east Victoria fires. But the Esplin Report did not do so. This is a serious deficiency in the Esplin Report amounting to an abdication of responsibility to fulfil properly its terms of reference.

Conclusion.

17. The establishment of the Esplin Inquiry and the procedures followed in the conduct of the Esplin inquiry were seriously flawed. The Esplin Report is correspondingly flawed in its conclusions and recommendations. It is open to the coroner to hold a coronial inquiry into the 2003 north east Victoria fires or for the government to establish a board of inquiry or royal commission to undertake an adequate, public examination of the 2003 north east Victoria fires and related issues.

Signed,
A.J. Myers.

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