



# THE CONDUCT OF THE INQUIRY

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The Commission used three main approaches to collecting the information it needed. Through community consultations and its legal team, it contacted the individuals and communities most affected by the fires to find out what their experience had been and what mattered the most to them. It conducted research, commissioned work from experts, and visited and had other contact with comparable jurisdictions internationally. Finally, it held exhaustive hearings, which provided the primary evidence base for its recommendations. In summary, the Commission did the following:

- held 26 community consultations
- received almost 1,700 public submissions
- conducted 155 days of hearings—including eight days of regional hearings and 23 days examining the 173 fire-related deaths, the hearings for which were attended by more than 450 family members and friends of the deceased
- heard from 434 witnesses, including 100 lay witnesses and two panels of expert witnesses
- received 31 submissions from counsel assisting and 107 submissions in response from interested parties
- webstreamed the hearings live
- produced 53 internal research papers
- prepared and released one discussion paper
- prepared one information paper
- generated over 20,767 pages of transcript
- received more than 1,000 exhibits into evidence—encompassing nearly 17,000 documents, photos, maps, and audiovisual and other material
- issued five practice notes
- produced two interim reports and this final report
- filed over 98,000 documents in its electronic data management system.

## 1.1 COMMUNITY ENGAGEMENT

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Early community engagement was central to the Commission's success and transparency. Throughout the period of its operations the Commission sought feedback and used community input to guide its work. All voices mattered and all opinions were valued.

### 1.1.1 THE CONSULTATIONS

The decision to go out into the fire-affected communities as soon as practicable after 16 February 2009 and seek community input was novel.

Image 1.1 The Kinglake community consultation, 23 March 2009

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Source: John Woudstra, courtesy of *The Age*.

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The community consultations were not hearings, and the information obtained from them was not formal evidence. The information was, however, of great value and helped the Commission determine areas for further research and investigation before starting its formal hearings. The consultations also gave the affected communities the opportunity to shape the direction of the Commission's work. Additionally, the Commissioners were able to see at first hand the impact of the fires on the landscape and on communities in the immediate post-fire period.

The consultations took place between 18 March 2009 and 8 April 2009, and the sessions were open to all who lived or worked in the communities directly affected by the bushfires. In all, consultation sessions were held in 14 communities and about 1,250 people attended (see Appendix B). Details of the times and locations of the consultations were publicised in major newspapers and local media, as well as being posted on the Commission's website. Once each session concluded, summary notes were made available on the Commission's website. The Commission's interim report provides details of the consultations.

**Image 1.2 Commissioner Teague talking with participants in the Kinglake community consultation, 23 March 2009**



Source: John Woudstra, courtesy of *The Age*.

### 1.1.2 PUBLIC SUBMISSIONS

On 18 March 2009 the Commission invited the public to put forward written submissions in response to its terms of reference. The submissions ranged from brief personal accounts and anecdotes to lengthy formal documents from organisations. They served a variety of purposes:

- providing valuable materials from which to isolate topics warranting consideration during the Commission's inquiry
- drawing attention to individuals and organisations with expertise of interest to the Commission
- providing insights into technical matters
- identifying people who would eventually give evidence as expert or lay witnesses
- illustrating the wide range of opinions on some subjects
- alerting the Commission to research that had been done or technology that was available.

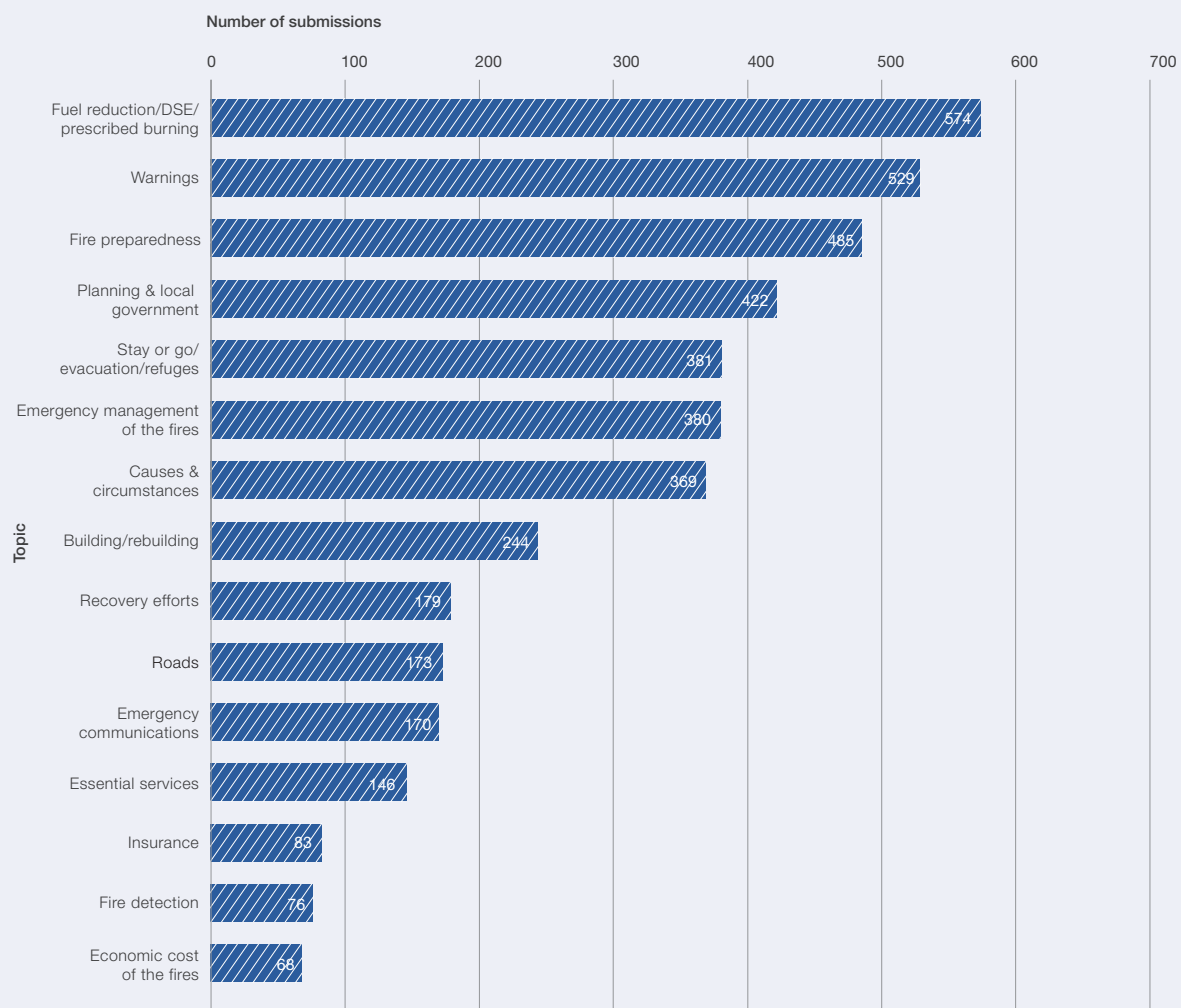
Submissions were read and reviewed and—providing they did not include material that was defamatory, offensive or contravened anti-discrimination or anti-vilification legislation or material outside the Commission's terms of reference—placed on the Commission's website. A small number of submissions were not published in that way because the Commission consented to the author's request for confidentiality.

Several submissions identified commercial products or technologies developed to help detect or suppress fire or to protect people from fire. The Commission did not endorse any of the products or express views on these submissions, but its research team did use the submissions process to compile an information paper, about bunkers, which was tendered as evidence on 21 September 2009.

By 9 April 2010, the closing date for public submissions, the Commission had received almost 1,700 submissions. Late submissions were also reviewed but were taken account of only if they contained compelling information not previously presented to the Commission.

As Figure 1.1 shows, the submissions received by 9 April 2010 dealt with a diverse range of general topics, the top seven of which were as follows:

- fuel reduction and prescribed burning
- warnings
- fire preparedness
- planning and local government
- 'stay or go', evacuation and refuges
- emergency management of fires
- causes and circumstances of the fires.

**Figure 1.1 Submissions received, 18 March 2009 to 9 April 2010, by main topics**

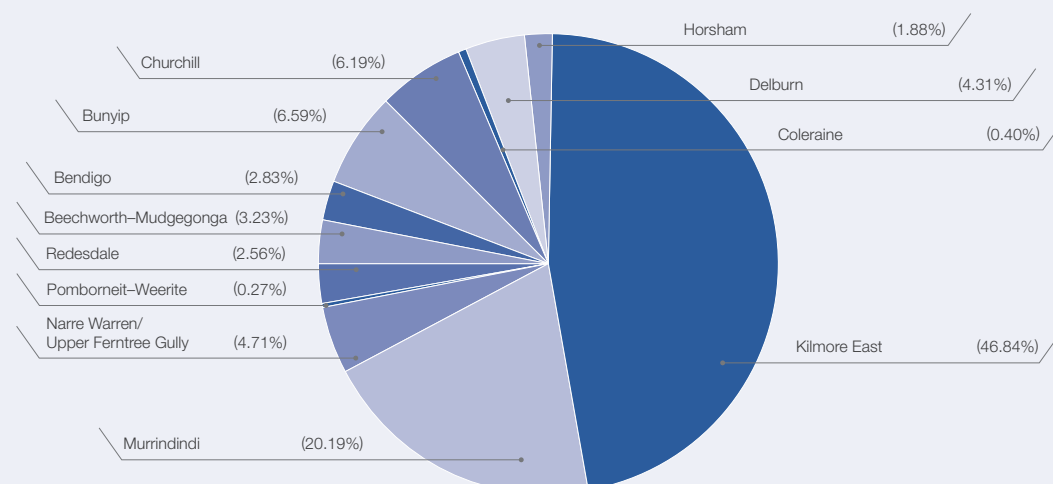
Notes: The equivalent illustration in the Commission's first interim report inverted the labels for the 'Roads' and 'Economic cost of the fires' items. The amended figures are shown here. The number of submissions received by topic exceeds the total number of submissions received because multiple topics were sometimes dealt with in a single submission.

Source: Submissions received by the Commission by 9 April 2010.



Figure 1.2 shows that of the submissions focusing on individual fires most dealt with the Kilmore East and Murrindindi fires, although submissions were received in relation to most of the fires the Commission considered in detail.

**Figure 1.2 Submissions received, 18 March 2009 to 9 April 2010, by fire site**



Note: Figures do not add to 100 per cent: some submissions did not directly relate to the January–February 2009 fires.

Source: Submissions received by the Commission by 9 April 2010.

The Commission's interim report contained a similar analysis of the first 1,260 submissions that had been received. The main themes were the same, and the emphasis on particular themes and fires remained broadly consistent.

The Commission thanks individuals and organisations for the efforts they made in preparing submissions, which were very helpful to the Commission in many aspects of its work.

## 1.2 RESEARCH

Together with the legal team, a small research team conducted desktop research to identify relevant subjects and ensure that the Commission was up to date with academic and other research relevant to its terms of reference. The research focus was the collection and analysis of background information from Australia and overseas, so that matters that were likely to arise in scheduled hearings could be more closely examined.

The Commission also engaged recognised Australian and international experts to prepare reports and provide evidence at its hearings (see section 1.3.4). Through the website the Commission invited people who considered they had expertise in a field of relevance to the Commission's inquiries to make a written submission detailing their credentials, so that they could be considered for engagement. More broadly, the Commission acted as a forum for experts, organisations and others to make submissions as a way of sharing their views and knowledge.

A variety of research papers were prepared, covering topics such as bunkers, the history of fire agencies, climate change, current organisational arrangements in Victoria and other jurisdictions, prescribed burning, fire-resistant vegetation, school evacuation and refuge plans, the costs of the fires, and the operation of police roadblocks. Some internally prepared papers—on bunkers, building and planning policies in Australia, and shelter in situ and evacuation policies in the United States and Canada—were tendered into evidence.

Additionally, the Commission prepared a discussion paper on insurance and the fire services levy in order to gauge community and industry opinion. The paper invited both general comments and specific responses to a series of questions on the importance of insurance, the current method of funding fire services in Victoria, and alternative

approaches used by some other jurisdictions. The Commission received 25 industry and community submissions in response, and these made an important contribution to its consideration of the subject. Similarly, the paper on the costs of fires was used to gain feedback and input on methodologies for the measurement of the damage caused by the 7 February fires. The Commission also called for responses from the public on the topic of building.

Two expert panels were engaged to contribute to the Commission's consideration of the subjects of planning and fuel management. As a first step, the Commission's legal team asked the experts to respond to a series of questions. The experts then reviewed each other's responses before meeting to identify areas of agreement and disagreement. Each panel prepared a written statement describing the outcomes of this conference and then appeared as a panel of witnesses. This is described in section 1.3.4.

The Commission also drew on the expertise and research capability of the Bushfire Cooperative Research Centre. A memorandum of understanding was established in April 2009 between the Commission and the CRC setting out the nature of the relationship and the terms by which the CRC would provide information, research and advice to the Commission. The MOU established clear probity requirements to overcome any concern about potential conflicts of interest arising from the make-up of the CRC's stakeholder and funding agencies, including fire agencies. The CRC made several important contributions to the Commission:

- It offered the opportunity for contact with experts in its research network, in Australia and overseas, some of whom appeared as witnesses before the Commission.
- It gave the Commission access to its catalogue of research papers.
- It gave the Commission access to research already under way and related to the 2009 fires.
- Through the Victorian Government, the Commission had access to the CRC-led 2009 Victorian Bushfires Response Project, which collated fire and fire impact data in many of the fire-affected communities.
- The Commission contracted an extension to the foregoing project to study several additional communities.
- The Commission also contracted Professor John Handmer through the CRC to do an analysis of the data on the fire-related deaths and the implications for the empirical underpinnings of the 'stay or go' policy.

All relevant materials and reports were tendered into evidence and several researchers appeared before the Commission to give expert evidence.

Finally, the Commission benefited from information gained as a result of two visits to the United States. One of the Commission's senior instructing solicitors, Mr Val Gostencnik, and a consultant to the Commission, Mr Stuart Ellis AM, made separate trips there in late 2009. Although their visits were unrelated to Commission business, both Mr Gostencnik and Mr Ellis took time to meet bushfire experts and visit comparable government agencies. The information gained and contacts made were of great value to the Commission, leading to the identification of additional witnesses (examined via video link) and the tendering of additional written material. The two visits provided an alternative to international visits by the Commissioners themselves, which would no doubt have been beneficial but would also have been costly and time consuming.

## 1.3 THE EVIDENCE HEARD

### 1.3.1 THE HEARINGS

The hearings were integral to allowing the Commission to substantiate its conclusions and recommendations.

The Commission sat in five locations for a total of 155 days, divided into seven hearing blocks, between 11 May 2009 and 26 May 2010. It sat at the County Court until its purpose-built facilities had been completed. It also sat in three regional locations. Over 23 days it examined the circumstances of the 173 deaths associated with the fires; and it heard evidence from 434 witnesses in total.

8 The underlying principle for conducting the hearings was that they be transparent and open, ensuring that all who attended were granted procedural fairness. Further, individuals and organisations at risk of adverse findings were afforded natural justice through the 'leave to appear' process outlined later in this section.



The hearings were generally divided into set topics, some lasting for weeks and others for less than a day. The topics were determined by counsel assisting and endorsed by the Commissioners in conjunction with the solicitors instructing the Commission.

The initial focus was on material that would be used in developing the interim report—that is, matters that could be the subject of immediate action before the 2009–10 fire season. The Commission subsequently examined the causes and circumstances of the 15 major fires in considerable detail before moving on to other aspects of the terms of reference. Appendix C provides a summary of the Commission's hearing blocks and topics.

Some individuals appeared before the Commission a number of times. The normal hearing day started at 9.30 am and finished at 4.30 pm, with an hour for lunch. It was not the intention of the Commission to sit on Fridays, but in practice this often occurred. During busy times working days and weeks became longer. Balancing the need to be thorough in the formal hearings with short time lines and the Commission's other activities became a challenge for the Commission and the other parties.

The Commission issued five practice notes providing information about its processes. They covered the following:

- the start of hearings
- provision of documents to the Commission
- parties' submissions for the interim report
- the hearings into the fire-related deaths
- the expert panels on fuel management and planning.

Each hearing day two court reporters took down the transcript, which was distributed to the parties the same day. The transcript was typically made public on the Commission's website the morning after the hearing, with redactions to protect personal information and to comply with suppression orders (see section 1.5). In total 20,767 pages of transcript were generated. Tipstaff provided hearing room support, and court operators managed the flow of documents required in the hearing room.

In the interest of community access, the hearings (except for the regional ones and those connected with the fire-related deaths) were webstreamed. A link was established on the Commission's website to enable the public to view audiovisual streaming or to listen to audio-only streaming. The Commission received many emails, calls and letters saying how much this service was appreciated. When the system was not working properly, which happened occasionally, members of the public quickly alerted the Commission.

### 1.3.2 ROLES AND RESPONSIBILITIES

#### The Commissioners

The Commissioners' primary role was as follows:

- to direct and oversee all matters relating to the Commission's terms of reference
- to rule on applications by parties seeking leave to appear in formal hearings
- to consider the evidence presented
- to assess the relevance of the evidence and the weight to be given to it
- to ensure that all pertinent lines of inquiry were pursued
- to draw conclusions and make recommendations in accordance with the terms of reference
- to direct and oversee the writing of reports and approve their contents.

#### Counsel assisting

The role of counsel assisting covered a range of activities associated with the work of the Commission:

- in consultation with the Commissioners, directing the investigation of the Commission and presenting the evidence for the Commissioners' consideration

- managing the hearing program
- providing advice and assistance in developing Commission processes, in determining matters for examination during hearings and on questions of law and practice as they arose
- providing advice on the parties seeking leave to appear before the Commission
- selecting witnesses to be called to provide evidence
- examining witnesses
- deciding what documents and other material should be summonsed and tendered
- preparing submissions on specific topics dealt with in the hearings, for comment by other parties and consideration by the Commissioners.

Counsel assisting operated somewhat at arm's length from the Commissioners in order to ensure rigour in the gathering and testing of evidence and to preserve the Commissioners' independence in reaching their final views.

### **Solicitors instructing**

Corrs Chambers Westgarth had two primary functions. As solicitors instructing the Commission, they supported the activities of counsel assisting. They also provided legal advice to the Commission. Their work in these areas included the following:

- briefing and engaging expert witnesses
- preparing witnesses and managing the hearings program from day to day
- managing relationships with the legal representatives of parties with leave to appear before the Commission
- conducting legal reviews of the Commission's interim and final reports
- providing specialist legal advice as the Commission's lawyers
- assisting with the preparation of expert witnesses' and lay witnesses' statements
- developing the approach to exploring the matters identified in the terms of reference through the hearings
- reviewing all documents produced in response to summonses and identifying documents to be tendered as evidence or requiring further examination
- preparing drafts and evidence summaries and assisting the Commission with drafting the report.

### **1.3.3 LEAVE TO APPEAR**

There were 132 applications for leave to appear before the Commission. Where the Commission granted leave to appear the applicant became a party. Thirty parties were granted leave to appear.

In accordance with the rules of natural justice, leave to appear was granted to organisations or individuals whose conduct was under direct scrutiny by the Commission. Most leave to appear decisions were determined by or on 20 April; Appendix D lists the parties granted full or partial leave to appear. Once an organisation became a party it could participate in the hearings and make submissions relating to the terms of reference for which it was granted leave to appear. With leave of the Commission, these parties could also cross-examine witnesses and tender into evidence relevant documents.

Parties were granted unconditional or conditional leave to appear according to their interest. Unconditional leave to appear was granted to the State of Victoria, the Commonwealth of Australia and the Municipal Association of Victoria (representing 77 councils). All three of these parties—which had leave to appear in relation to all the Commission's terms of reference—took a unified approach to representation, acting on behalf of a range of organisations within their respective tiers of government. The State of Victoria, for example, represented the CFA, DSE, Victoria Police and the Office of the Emergency Services Commissioner, as well as a number of other Victorian government entities.

Conditional leave to appear was granted to 27 parties. They had leave to appear only in relation to selected terms of reference that aligned with their substantial and legitimate interests. For example, the National Parks Association of Victoria Inc. was granted leave to appear in relation to land-use planning and management, including urban and regional planning (item 7 in the terms of reference). This allowed the association to participate in the hearings dealing with land and fuel management.

The majority of the parties were granted leave to appear at the start of the hearings. Some, however, were granted it later, as the Commission considered further topics. For example, the Victorian Association of Forest Industries and the National Association of Forest Industries were granted joint leave to appear on 20 January 2010, before the hearings on fuel and land management.

It was always intended that leave to appear would be limited to people or organisations under scrutiny so that those people or organisations who might be criticised in the Commission would be accorded procedural fairness. Separate grants of leave to appear were made for Mr Russell Rees and Ms Christine Nixon APM in 2010, independently of the earlier grant of leave to the State of Victoria, which acted on behalf of the organisations they represented (the CFA and Victoria Police respectively) on 7 February 2009. These steps were taken to allow Mr Rees and Ms Nixon to participate as appropriate in the Commission's processes throughout May 2010.

Early during the operation of the Commission there was some contention about the granting of leave to appear. The media reported that individuals who had been affected by the bushfires and who were not being given leave to appear before the Commission were being denied the opportunity to tell their personal stories or to raise concerns. There were, however, ways other than by being granted leave to appear in which individuals could participate in the Commission's processes. A large number of lay witnesses gave evidence before the Commission to tell their personal stories. In addition, the public submissions process and the community consultations allowed anyone to bring matters relevant to the terms of reference to the attention of the Commission.

#### 1.3.4 WITNESSES

Counsel assisting determined which witnesses were called and examined those witnesses. In conjunction with the solicitors instructing, they also identified and contacted potential witnesses for the formal hearings. They identified witnesses via a range of methods:

- through the community consultations
- on the basis of submissions
- through research
- on advice from parties.

In some cases the Chairperson of the Commission issued summonses for people to appear and give evidence.

Witness statements were usually prepared by either the Commission's legal team or the legal representatives of the parties. The statements and documents to be used in the hearings were then served on the parties in question via the electronic records system e.trial.

Typically, the hearings process went as follows:

- The witness gave sworn evidence, having taken an oath or made an affirmation.
- The witness's statement and any associated materials were tendered into evidence.
- Counsel assisting examined the witness in order to supplement or explain matters in their witness statement.
- The Commissioners sometimes asked the witness questions.
- Legally represented witnesses were then examined by their own legal representative. The witness was often then cross-examined by the legal representative of other parties with leave to appear.
- The witness's legal representative and counsel assisting sometimes re-examined the witness in order to clarify any matters raised during cross-examination.
- The Commissioners sometimes asked further questions of the witness or legal representatives.



Some witnesses were not called to give evidence; instead, their statements were served on the parties and then tendered as evidence, with the consent of the applicable parties. For example, a number of Victoria Police statements relating to its investigations were tendered in this way.

There were three main categories of witnesses: those representing particular institutions involved in the events of 7 February, expert witnesses, and lay witnesses. There were also a small number of eyewitnesses. Appendix E provides a list of witnesses who appeared before the Commission.

### **Institutional witnesses**

A number of witnesses were called because of the roles they had on and leading up to 7 February. This included senior staff with responsibility for aspects of their organisation's response and much more junior staff and volunteers who had important operational roles on the day. Often these witnesses were from emergency service organisations such as the CFA, DSE, Victoria Police, the Office of the Emergency Services Commissioner, Parks Victoria, the MFB and Victoria State Emergency Service. There were also staff from organisations such as Telstra, the Victorian Bushfire Information Line, electricity companies and local councils.

The Commission was aware of the stress these witnesses had already experienced through their involvement in the events of 7 February and the additional stress involved in appearing before it, but their evidence was crucial and the Commissioners thank them for their contribution and cooperation.

### **Expert witnesses**

The evidence of expert witnesses was an important part of the evidence the Commission considered. The solicitors instructing the Commission engaged experts to give evidence on topics such as building and planning, fuel management, organisational structures, trauma, electricity and arson. A number of other experts were engaged by other parties. Once engaged, experts performed a range of tasks, among them providing reports, appearing as witnesses and appearing as part of a panel.

Two panels of experts—in planning and in land and fuel management (see Appendix E)—gave evidence following a facilitated conference to clarify areas of agreement and disagreement. Six experts were engaged for the planning topic and seven for land and fuel management. The experts prepared a report that was provided to the other experts engaged to discuss that topic. They then attended a private facilitated conference to discuss matters raised in their reports.

The purpose of the conferences was to enable the experts to identify areas of agreement and disagreement in their reports. At the end of each conference the facilitator helped the experts prepare a short written statement describing the outcome of the conference. The experts subsequently appeared together in a forum before the Commission over two days. Their written statements were served on the relevant parties and tendered into evidence during the forum. At each forum the experts were examined and cross-examined in a way similar to that applying to other witnesses and were asked questions by the Commissioners. A third panel of experts gave evidence on roadside clearing, although this panel did not participate in a facilitated conference and did not produce a collective written statement before giving evidence.

These forums constituted an innovative, effective and time-efficient means of identifying areas of consensus and examining areas of difference more deeply. Hearing from experts simultaneously allowed each to critique the others' views while being subject to individual examination and cross-examination.

### **Lay witnesses**

Usually in the afternoon and on most hearing days lay witnesses gave evidence about their personal experience of the fires. These witnesses are referred to as 'lay witnesses' to distinguish them from independent experts, officers or employees of one of the parties granted leave to appear, other institutional witnesses and eyewitnesses.

The lay witnesses were central to the Commission's understanding and awareness of the personal toll of the fires, and they made a powerful contribution to the Commission's work. They ensured that the community impact of the

fires remained at the forefront in the minds of all involved in the formal hearings. They also often provided insights about how policies and other arrangements actually worked in practice.

In general, these witnesses were chosen from among the people who attended the community consultations, who made applications seeking leave to appear, or who sent submissions to the Commission. Other lay witnesses were brought to the legal team's attention through media coverage of the fires and by witnesses nominating people they knew.

Potential lay witnesses met with the solicitors instructing the Commission and sometimes with counsel assisting. The solicitors subsequently helped the witnesses draft their statements.

Appearing before the Commission to speak of what were sometimes tragic experiences was difficult for some lay witnesses. Many brought family and friends for support. They were offered additional support by the psychologists the Commission had engaged. In all, 100 lay witnesses described their experiences, and the Commission is indebted to them. Appendix E lists the lay witnesses who appeared before the Commission; their statements and associated material are presented in Volume IV of this report.

### **1.3.5 DOCUMENTARY EVIDENCE**

The solicitors instructing the Commission reviewed the large volume of documents the Commission received. Many of these documents had been provided in response to a summons. The Chairperson of the Commission issued 296 summonses to produce documents, to entities such as Victorian government departments, the CFA, the Municipal Association of Victoria, the Commonwealth of Australia, the State Coroner, Standards Australia, SP AusNet and Telstra. Documents, maps and tables of data were provided under summons. Other objects were also produced, among them electricity insulators relevant to the investigations into the causes of the fires.

The documents were received mainly in electronic form, under a protocol established to ensure that the Commission could readily comply with its obligation to preserve its records and as an essential management and efficiency requirement given the quantity of such material. Document management is discussed in Chapter 3.

There was extensive use of maps and other audiovisual tools during the hearings. These were displayed on small screens in front of the Commissioners, the parties and the witnesses and on larger screens for everyone else in the hearing room. In particular, Google mapping and related tools were used to provide audiovisual representations of the passage of the fires. In some instances witnesses had prepared their own audiovisual presentations, which they showed as part of their evidence. Most of the material tendered in evidence was made available on the Commission's website.

## **1.4 THE SUBMISSIONS OF COUNSEL ASSISTING AND THE PARTIES**

Once evidence taking on a particular topic was complete, counsel assisting prepared written submissions proposing findings or recommendations, or both. The parties then had the opportunity to provide written submissions in response for the Commission's consideration.

After the parties' written submissions had been received and reviewed, counsel assisting made oral submissions to the Commission, highlighting aspects of their proposed findings and recommendations. The parties were also given an opportunity to make oral submissions. These were intended to expand on and explain the matters raised in written submissions. They also enabled the parties to identify areas of agreement, to suggest proposed findings based on the evidence, and to express views on the oral submissions (including proposed recommendations) of counsel assisting and other parties. The submissions were all made publicly available through the Commission's website.

## 1.5 EXCLUSION AND SUPPRESSION ORDERS

Although the Commission's approach was generally in favour of openness, transparency and accessibility, there were some occasions when it was necessary to close hearings or impose limitations on the publication of information in the public interest or in order to ensure the effective conduct of the hearing. The mechanism employed for this purpose was the making of an exclusion or suppression order. The Chairperson issued 24 suppression and exclusion orders during the hearings.

Exclusion orders limit the classes of people who can attend a particular hearing. Such orders can be very restrictive—for example, permitting only parties and relevant witnesses to attend a hearing. Alternatively, they can be very broad—for example, permitting particular named individuals or categories of individuals to attend a hearing but excluding all groups and individuals not expressly named.

Suppression orders, on the other hand, impose restrictions on the publication of any reports arising out of the hearings. In the case of this Commission, in most instances they were granted in response to privacy concerns expressed by or on behalf of individuals named in material before the Commission, often the family members of people who had died in the fires; in other instances they applied to commercially sensitive information. There was one breach of a suppression order by a media outlet—see Section 1.7.

As noted, in early March 2010 it came to the Commission's attention that there was a limitation in the legislative provisions governing the powers to create exclusion and suppression orders. The powers are contained in s.19B of Victoria's *Evidence (Miscellaneous Provisions) Act 1958* (and its predecessor, s. 19B of the Evidence Act). This limitation cast doubt on the Commission's power to create suppression orders in the absence of exclusion orders. To remedy the situation, at the request of the Commission the Victorian Government introduced and the Parliament passed urgent legislative amendments by means of the Crimes Legislation Amendment Bill 2009, which came into effect on 17 March 2010. The provisions made it clear that suppression orders can be made in the absence of exclusion orders and validated the previous orders made by the Commission. The Commission was appreciative of the speed with which this matter was resolved by the parliament and extends its thanks to all involved in achieving such rapid legislative change.

At the conclusion of its hearings the Commission conducted a review of the orders it had issued and, after consultation, lifted many of them. The sensitivities generally centred on the hearings themselves, so the lifting of the orders will allow the greatest access for the public record. In instances where the concerns that gave rise to the need for the order continued to exist, the order remained in place with some variations (such as sunset provisions).

## 1.6 THE HEARINGS DEALING WITH THE FIRE-RELATED DEATHS

The Commission decided to hold hearings into the 173 individual deaths, as outlined in Volume I. In consultation with Victoria Police and the State Coroner, it decided to hold hearings based around the locations at which people had died. This meant there were 86 fire-related death hearings.

It was vital to ensure, as far as possible, that these hearings did not cause further or undue distress to grieving families and friends. The challenge, however, was to balance this against the need for sensitive and potentially upsetting material to be brought into evidence so as to assist the Commission in its efforts to gain a full grasp of the events as they unfolded and to help to evaluate the 'stay or go' policy. The Commission was mindful of the wellbeing of all involved with its work, none more so than the families and friends attending the inquiries. Those who attended were encouraged to bring their counsellor, case manager or case worker, or any other support person of their choice. When necessary, the Commission also organised for Auslan and other language interpreters to be present at the hearings.

The Commission appointed a community engagement manager to liaise with family members in relation to the hearings into the fire-related deaths. Grief counsellors from the Australian Centre for Grief and Bereavement attended all these hearings to support family members and friends. The centre's services were provided through the Department of Human Services as an extension of the Victorian Government's bushfire recovery programs.



This meant that the counsellors had in many cases met or were already supporting some of those who attended the hearings. The counsellors' support during the hearings, and their capacity to provide continuing support and care afterwards, resulted in a number of referrals for their services. Such services had already been made available, but many had chosen not to use them. Additional assistance and support for families was provided by Carfi, a group of psychologists led by Gus Carfi, who also provided support for Commission personnel involved in these hearings. The Commission thanks the Department of Human Services, the Australian Centre for Grief and Bereavement and Carfi.

The Victoria Police Phoenix Taskforce developed a unique electronic presentation package for each hearing. In each of the hearings the evidence was presented by Detective Superintendent Paul Hollowood, senior investigative officer of the Phoenix Taskforce. Much of the evidence was presented by means of an animated reconstruction of events, created using statements and material (such as photographs and phone records) received from family members, witnesses and forensic scientists as part of the taskforce's investigations. The nature of the evidence in these hearings was mostly hearsay but was acceptable to the Commission for its own purposes.

Mindful of the sensitive nature of these hearings, the Commission made a number of changes to normal hearing room practices. First, the hearings were conducted in an annexe that was smaller than the main hearing room. Second, there was no webstreaming, and media cameras were not allowed in the annexe during hearings.

The hearings were held at regular intervals throughout the Commission's overall hearing program. Between September and December 2009 the hearings covered the Beechworth, Bendigo, Churchill and Murrindindi fires; the Kilmore East fire hearings were conducted from March to May 2010. More than 450 family members and friends participated in the 23 days it took for the 86 hearings. Of course, participation by family members and friends was voluntary, and in most cases those who attended came to observe the proceedings rather than take an active role. At the end of the hearing family members were given an opportunity to ask questions, through counsel assisting, of the Commissioners or Detective Superintendent Hollowood.

Some family members who were based interstate chose to attend the hearings in Melbourne. For those who could not come to Melbourne, the Commission offered to make arrangements for them to participate via a video conference at a suitable venue close to their home. Many took up this option, which enabled them to see and hear the evidence as though they were in the annexe. For these people there was generally little interaction with the Commissioners and the other parties, but some did take the opportunity to ask questions through counsel assisting. Among the venues for video conferences were a number of universities and the offices of Corrs Chambers Westgarth in Perth.

Although difficult, the hearings into the deaths associated with the fires appear to have had important benefits for some of the family members and friends who attended: informal feedback suggests that gaining access to the evidence and learning more about the events and circumstances in which loved ones perished helped many family and friends in their efforts to assuage their grief.

**Box 1.1 A family room with a difference**

The conduct of the hearings into the fire-related deaths was one of the Commission's most important tasks. The method adopted, inside and outside the hearing room, was without precedent. The need for sensitive and often distressing material to be brought into evidence had to be balanced with the respect and support due to the families and friends attending.

The Commission set up a family room for use as a private retreat before, during and after the hearings. The room contained comfortable chairs and flowers, and home-made refreshments and tea and coffee were available. Grief counsellors from the Australian Centre for Grief and Bereavement were there to provide support.

The success of the approach is evident in the many cards, emails, letters and phone calls the Commission's officers received from those who attended the hearings.

Great credit is due to the Commission's Community Engagement Manager, Ms Lana Kolyunski, who worked closely with grieving families and friends. She contacted many family members in the months, weeks and days leading up to the hearings to explain the Commission's processes and to see if she could help in any way. She then provided follow-up support and assistance as necessary.

Lana also baked biscuits and slices for each of the 86 inquiries into the deaths, demonstrating a level of personal commitment that became a hallmark of her approach. An astonishing 3,150 biscuits and pieces of slice were eaten—accounting for about 12 kilograms of butter, more than 12 dozen eggs, more than 5 kilograms of icing sugar, and 5 kilograms of plain flour. Lana leaves a personal legacy to many who came into contact with her during this time.

In March 2010 Ms Kolyunski received an Institute of Public Administration Australia (Victoria) International Women's Day award for excellence in service delivery.

## 1.7 MEDIA LIAISON

The events of 7 February 2009 received considerable attention in the Australian media and were widely reported abroad.

It was important for the Commission to establish an open and constructive relationship with the media, without compromising its processes and at the same time adequately protecting witnesses. With the exception of the hearings into the fire-related deaths, from the outset the Commission's proceedings were webstreamed and media outlets supplied a 'pool camera' providing footage of the formal hearings to all the television networks. The networks shared pool-camera duties, each in turn supplying a video camera and camera operator.

Several meetings were held to discuss and negotiate processes and media protocols. The first meeting was a general one. The second followed an incident outside the County Court on the first day of hearings, when the first lay witness to come before the Commission was pursued up the street by television news crews, causing her distress. The Commissioners convened an informal meeting with journalists that afternoon and reiterated their preference for a constructive relationship with the media. The Chairperson invited the journalists present to draft procedures that would enable maximum access to witnesses while respecting the witnesses' privacy.

To their credit, by the next morning journalists had developed their own set of protocols for ensuring that lay witnesses would not be subjected to undue pressure. After review and discussion, the Commission endorsed the arrangements.

It was agreed that lay witnesses would not be videotaped, photographed or approached as they entered and left the hearing rooms and that any interview requests would be conveyed through the Commission's Communications and Media team. These protocols were adhered to throughout the hearings, at both the County Court and the Commission's premises at 222 Exhibition Street. Extended protocols were developed in recognition of the sensitive nature of the hearings associated with the fire-related deaths, which, as noted, were held in the annexe at 222 Exhibition Street.

For the most part, the arrangements were respected by all. This good relationship was, however, substantially marred when Channel 9 breached a suppression order relating to a hearing into a fire-related death. During its nightly news bulletin Channel 9, in direct breach of an order, named and showed photos of a number of people, including children, who had died at a particular location. The television network took swift steps to redress this breach. Senior executives of the network delivered a personal apology in proceedings before the Commission on the following day. The network issued an apology on the following night's news bulletin, wrote a letter of apology to the family members concerned, which the Commission distributed, and instituted a range of measures designed to protect against such a breach recurring.

Unfortunately the breach caused some of the family members concerned further trauma and undermined the trust they had placed in the Commission. This reinforced the need for suppression orders to be used on limited occasions and demonstrated the seriousness with which any breach needed to be treated. Late in the Commission's proceedings there were also an extremely unfortunate series of leaks to media outlets of counsel assisting submissions, which the Commission had distributed to parties but not more broadly at that stage. The Commission condemned these leaks.

For the most part, a regular contingent of journalists covered the hearings, some of them gaining an in-depth knowledge of the evidence and the matters raised. A number of them received industry awards in recognition of their dedicated and insightful coverage.

## 1.8 THE BLACK SATURDAY GALLERY

As a place where fire-affected artists could display their works, the Black Saturday Gallery was an important part of the Commission's connection with the community.

The gallery was established in the foyer of the hearing rooms at 222 Exhibition Street. Not only did it add interest and colour to the public sitting and viewing area; it offered the opportunity for people to tell their stories and share their journeys through their art. Six images from the four exhibitions that were held appear on the covers of the volumes of the Commission's interim and final reports.

**Image 1.3 The Black Saturday Gallery**



Source: 2009 Victorian Bushfires Royal Commission.



Many pieces of artwork from the Black Saturday Gallery were bought by people who attended the hearings and by Commission staff. This was not the motive for setting up the gallery, of course, but it was an unexpected and pleasing outcome.

### **Box 1.2 The art of community recovery**

The Black Saturday Gallery was an example of the nature of the Commission's engagement and its role in contributing to community recovery.

When Commission officers were searching for images for the first interim report, it emerged that a number of residents of fire-affected areas were using art as part of their recovery process. For many, their homes and studios and the community galleries in which to show their work had been destroyed. The big blank walls of the Commission's public foyer presented an obvious opportunity.

Four exhibitions were staged between August 2009 and May 2010. More than 214 artworks were hung, including 155 from 10 schools and after-school programs. One artist who benefited from her involvement with the Black Saturday Gallery was Kinglake resident Linda Haggard, who worked with children from St Andrews Primary School to help them prepare their artwork for the children's exhibition. Linda exhibited in two of the Black Saturday Gallery's exhibitions; one of her paintings was chosen for the front cover of the interim report and another for Volume II of this final report. Said Linda:

I didn't have a lot of confidence in myself as an artist beforehand, so it legitimised me as an artist. It also gave me a connection with other artists in Kinglake, some of whom were only acquaintances before. Now they are good friends.

The Commission thanks the artists who generously shared their work and their insights, and it acknowledges the assistance provided by Arts Victoria and the Department of Education and Early Childhood Development.