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LESSONS FROM THE VICTORIAN BUSHFIRES

Australia suffered its worst natural disaster by bushfire on what is now becoming known as Black Saturday, 7 February 2009.

The scale of the disaster was such that the death toll amounted to about 181 at the time of writing and is expected to exceed 200. Over 5,000 people are homeless.

A Royal Commission has been called by the Victorian Government and inevitably, questions will be asked about whether the relevant local authorities discharged their duty of care to those who lost their lives, health or property.

Eye witness reports suggest that the disaster was the result of a “perfect storm”: fires starting in hot, dry weather, fuelled by strong winds. Nevertheless, the answer to the question “Could and should more have been done to prevent loss?”

Criticism has already surfaced about the decision of Nillumbik Shire to adopt a policy of encouraging residents to grow trees near their homes to give the appearance of a forest. The criticism is led by a former Victorian fire chief and a former CSIRO bushfire scientist, both of whom gave evidence to the Victorian planning authority around 2003.

It may well end up being a forensic mess for any Royal Commission and the trial of any claims.

For example, can one say that only trees planted in the last 5 years caused the loss? If so, how does one determine which were the relevant trees? Given the size and speed of fires, would it have made any difference? Then there is the question of whether the Transport Accident Commission of Victoria should be responsible for compensating those victims who died because of fallen trees blocking escape routes.

It may also be significant that the complex task of updating the relevant building codes has been occurring over the past 4 years. The new rules envisage fire shutters on windows and walls made up of brick veneer. This raises the question of whether a council should be under a duty to do more than the prescribed standard or apply a standard that is higher than the prevailing one.

And yet another potential issue is the matter of early warning systems. Discussion is beginning to appear around the issue of whether the State should have implemented a more accurate and timely early warning system and the use of more accurate warning descriptors, eg “category 5 fire”.

Some councils are particularly good at risk management. The question will be whether the risk was properly assessed and categorised.

Following the findings His Honour Judge Leonard Stretton in the Royal Commission after the Black Friday fires in Victoria in 1939, new standards were set for the protection of life and property. Preventative practices such as controlled burning were implemented. It is to be hoped that the proposed Royal Commission into the latest tragedy will result in higher standards of fire and forest management and of environmental policy generally.

Hopefully the new standards will prevent similar tragedies in the future. Hopefully, councils all over Australia will take heed of this latest tragedy and weigh its duty of care carefully.

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