



**Economics and Industry Standing Committee**

# **Inquiry into the 2011 Kimberley Ultramarathon**

**Report No. 13**  
**August 2012**

Legislative Assembly  
Parliament of Western Australia

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# **Economics and Industry Standing Committee**

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## **Inquiry into the 2011 Kimberley Ultramarathon**

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Report No. 13

Presented by

**Dr M.D. Nahan, MLA**

Laid on the Table of the Legislative Assembly on 16 August 2012



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## Executive Summary

**O**n Friday, 2 September 2011, a 100km ultramarathon was conducted in the Kimberley Region across a predominantly off-road course starting from the Emma Gorge airstrip at El Questro and finishing in the town of Kununurra. This event was known as the 2011 Kimberley Ultramarathon.

The 2011 Kimberley Ultramarathon was organised by Hong Kong-based RacingThePlanet Events Limited (RacingThePlanet), a company that has staged more than 33 footraces in eight countries over the preceding ten years.

This was the second event that RacingThePlanet had staged in the Kimberley. In late April 2010, RacingThePlanet organised and held a 250km seven day event in the same area.

The 2011 Kimberley Ultramarathon attracted a sponsorship commitment from Eventscorp, the Western Australian government's events agency and an operating division within Tourism WA, for an amount of up to \$105,000 with an option for a further two years.

During the event, at least 13 competitors were directly confronted by a large bushfire. Five (Miss Turia Pitt, Miss Kate Sanderson, Mr Martin Van Der Merwe, Mr Michael Hull and Ms Mary Gadams) were unable to escape the flames and suffered burns of varying severity. The injuries suffered by Miss Pitt and Miss Sanderson were life-threatening and have resulted in permanent scarring, disfigurement and disability that will have a significant impact on the rest of their lives.

On 1 March 2012, the Legislative Assembly directed the Economics and Industry Standing Committee to investigate and report to the House on the 2011 Kimberley Ultramarathon. The House directed that the Inquiry include six areas of investigation. The terms of reference can be found in Appendix Two.

The Committee does not make findings of legal liability in this Report. That is a role for an appropriate Court. However, the Committee was asked to examine the actions of the organiser, and the roles and actions of a range of government agencies in respect of the event.

The Committee was asked to consider whether RacingThePlanet took all reasonable steps to identify and reduce risks and maintain the safety of competitors, employees, contractors, spectators and volunteers in the preparation for and running of the event and in responding to the fire and the injuries; including access to medical support and evacuations.

In a series of omnibus findings, the Committee has found that RacingThePlanet did not take all reasonable steps to identify risks associated with the 2011 Kimberley Ultramarathon (**Finding 2**). Nor did RacingThePlanet take all reasonable steps to reduce risks to the safety of competitors, employees, contractors, spectators, and volunteers (**Finding 3**). Finally, the Committee also found a series of factors which demonstrate that RacingThePlanet did not take all reasonable steps to maintain the safety of these parties (**Findings 4-7**).

The Committee is of the view that RacingThePlanet, in its approach to planning for the 2011 Kimberley Ultramarathon, did not involve people with appropriate knowledge in identifying risk. The level of communication and consultation with relevant agencies and individuals regarding the event's Management and Risk Assessment Plan was generally inadequate, both in terms of its timeliness and its approach.

As a result, RacingThePlanet deprived itself of the opportunity to identify risks that it may not have contemplated and to establish relationships with key agencies that may have been able to provide ongoing assistance with risk identification and mitigation.

Arguably the most significant omission from RacingThePlanet's pre-race communication and consultation process was FESA in Kununurra. FESA's fire monitoring expertise and advice prior the race could have been highly valuable to RacingThePlanet in terms of whether the race needed to be re-routed—with fires in the vicinity of the course—or possibly cancelled.

Similarly, during the race, when a message of fire approaching Checkpoint Two was relayed to RacingThePlanet staff, counsel with the local fire authority regarding the appropriate response could well have improved the decision-making capacity of the organiser.

RacingThePlanet was aware of fires on, and in the vicinity of the course, prior to and on the day of the 2011 Kimberley Ultramarathon. It sought advice on fire risk and was advised to contact FESA in Kununurra by the Kununurra Visitors Centre and a local Department of Environment and Conservation (DEC) officer, but did not do so. It appears that RacingThe Planet did not have a plan to monitor fire on the course other than by direct observation.

Another critical shortcoming in the pre-event consultation process was the planning for an emergency helicopter. Despite knowing for some time that a helicopter was the only means of evacuation from the Tier Gorge section of the course, RacingThePlanet only sought to make arrangements for the use of a helicopter in the event of an emergency the day before the race. RacingThePlanet elected not to put a helicopter on stand-by with Heliwork WA, and instead made informal and inadequate arrangements for the use of the helicopter hired separately by a media company filming the event (Beyond

Action). This helicopter was not appropriately equipped for a range of emergency evacuation scenarios.

As events unfolded on the day, RacingThePlanet's plan for using this helicopter in the event of an emergency was not enacted correctly, was not well understood, and suffered from only having been determined the day before the event.

Compounding these issues around planning for fire risk and emergency evacuation was a communications plan that was limited by the fact that key equipment (in particular the satellite phones) was not tested on the course prior to the race. Moreover, checkpoints were placed at distances too far apart to compensate for the difficulty in maintaining communications in these parts of the Kimberley.

Critically, these issues conspired to leave RacingThePlanet exposed when critical decisions needed to be made about a reported fire threat to the race course. At approximately 10:30am, a message was conveyed to a RacingThePlanet staff member at Checkpoint Two that a fire would likely be reaching that area within two hours. This Checkpoint was the gateway to the Tier Gorge—the most difficult and inaccessible section of the course. Between approximately 10:30am and 1:00pm, it became increasingly apparent to several RacingThePlanet race officials that a fire was encroaching on the course. Despite this, competitors were not held at Checkpoint Two while the direction, location and severity of this fire was determined. The Committee is also surprised that the media helicopter, which landed at Checkpoint Two to convey the message regarding the fire threat to RacingThePlanet staff was not subsequently engaged to investigate the reported threat.

**Finding 4 lists a** series of steps, including those discussed immediately above which, if taken, may have resulted in the five runners who suffered burns injuries being spared.

As part of its task relating to Term of Reference (b), the Committee undertook a comparative analysis of the Terms and Conditions and / or Rules and Regulations imposed by five trail ultramarathon event organisers. The 2011 Kimberley Ultramarathon was included in this analysis. The purpose of this analysis was to consider the extent to which these terms and conditions should reasonably protect the safety and interests of competitors, employees, contractors, volunteers and spectators. Due to the time constraints of the Inquiry, the Committee focused on the safety and interest of competitors.

What is clearly apparent from this analysis is that the conditions imposed by race organisers are quite similar in many aspects. In terms of the safety of participants, the Committee identified three areas where conditions could be enhanced. The Committee found merit in organisers conducting longer pre-race briefings that include the input of local agencies to discuss external safety issues. The Committee also sees merit in

topographical maps being incorporated into the list of mandatory equipment that competitors agree to carry as a condition of entry. Furthermore, and particularly in light of the 2011 Kimberley Ultramarathon where the injured competitors were unable to communicate their plight to race officials, organisers should consider mandating Personal Locator Beacons or satellite phones in races where mobile phone coverage is not available or reliable, and regular radio communication cannot be established across the entirety of the course.

Perhaps the most important condition that an organiser imposes on competitors for their own safety is the right to cancel, suspend, or re-route a race due to external factors (including environmental risks such as fire). It is not unprecedented for trail ultramarathons to be cancelled at short notice or once underway. The Committee cites seven examples from the last 10 years, not including the 2011 Kimberley Ultramarathon. From its examination, the Committee believes that such rules are essential, but they have to be effectively implemented. This requires appropriate decision-making capabilities within the organiser's team. This is enhanced through ongoing consultation with relevant local authorities and effective lines of communication between race officials and the race controller.

Among the more contentious aspects of race rules and regulations are caveats that organisers ask competitors to acknowledge around the timeliness and effectiveness of any medical treatment and evacuation. The Committee has found that these caveats are acceptable, but with them comes a responsibility on the organiser to ensure that the most reasonable systems available are in place to expedite any emergency medical requirements.

The most contentious of the terms and conditions imposed by race organisers relate more to the interests of competitors—particularly those who suffer harm while competing and look to seek legal redress from the organiser. Competitor waivers are quite standard across the races examined by the Committee and their terms are similarly onerous with competitors usually acknowledging that the activity they are undertaking may result in serious injury or death. These documents are also worded in a manner where the competitor agrees to waive the right to pursue claims against an organiser or related party in the event of serious harm occurring.

The Committee acknowledges that the terms of these waivers are onerous, but believes that without the assurances they provide to professional and volunteer organisers of sporting and recreational activities, the viability of these activities may be threatened by unaffordable insurance premiums.

Waivers were given greater effect via amendments to the *Civil Liability Act 2002* (WA) that were passed in 2003. However, there are still scenarios where the effect of waivers against claims of negligence may be limited. Firstly, the waiver must form part

of the contract between an organiser and a participant. Secondly, the terms of a waiver must be clear and unambiguous. Additionally, under the *Civil Liability Act 2002* (WA), protections afforded a recreational service provider from a waiver will not apply if it is established on the balance of probabilities that the harm concerned resulted from and act done or omission made with reckless disregard, with or without consciousness, for the consequences of the act or omission.

In a later section of the Report (**Chapter 5**) the Committee considers, but makes no findings on, the provisions of the *Civil Liability Act 2002* (WA) as they relate to the liability of operators and organisation of recreational activities particularly of a high risk nature. Underpinning this finding was the fact that these provisions remain relatively untested by the courts. However, the Committee thinks a review of the Act in light of the 2011 Kimberley Ultramarathon should be considered by the Department of the Attorney General. Such a review should consider the effectiveness of competitor waivers under the Act and the potential difficulties an injured party may face in establishing proceedings and enforcing a judgement against overseas-based providers of recreational activities.

On this latter point, it became apparent to the Committee when examining the waivers of event organisers that the rights of parties to pursue and obtain legal redress for injury suffered in an event can be significantly curtailed if the defendant is an overseas-based entity with no assets in an Australian jurisdiction. These limitations are present regardless of whether or where public liability insurance may be held.

The Committee was also asked to examine the roles and actions of a range of government departments in relation to the event. The department which had greatest responsibility for helping to ensure that the event ran smoothly and safely was Tourism WA, in its capacity as event sponsor.

**Chapter 4** is dedicated to analysing the performance of Tourism WA and its events agency, Eventscorp, in their dealings with RacingThePlanet that resulted in the sponsorship of the 2011 Kimberley Ultramarathon. Tourism WA advised the Committee that it is particularly important to adopt a standard of “responsible sponsorship” in the emerging category of adventure sports. The Committee examined three key tenets of the responsible sponsorship concept as it applied to the 2011 Kimberley Ultramarathon and found that Tourism WA and Eventscorp failed to meet their own standards.

The first tenet involves requiring the event manager to demonstrate that it has a competent risk management plan. In this respect, Tourism WA was found to have signed the Sponsorship Agreement with RacingthePlanet without requesting or sighting the company’s risk management plan. Nor did Tourism WA have any protocols in place to ensure that the plans could have been properly assessed had they been provided any earlier. While Tourism WA has conducted a review of its contract template for

sponsorship agreements, the Committee has urged the department to ensure that risk management plans are submitted for approval with all relevant agencies and local and state authorities no later than two months before an event is staged. Evidence of approval of these plans should also be provided before Tourism WA agrees to sponsor an event of this nature. It is also incumbent upon Eventscorp to use its facilitation skills to make sure that organisers of sponsored events are directed to all appropriate authorities and stakeholders to ensure the responsible, safe and efficient planning and conduct of the event.

Tourism WA also advised that the insurance requirements of its sponsorship agreements promote responsible sponsorship. Here, the Committee found serious flaws in the department's contract structure and its approach to contract management.

The Sponsorship Agreement for the 2011 Kimberley Ultramarathon had requirements for the Event Holder to effect and maintain a series of insurances with an APRA approved insurer 'acceptable to Tourism WA'. These included a \$10 million public liability policy, the terms of which 'are reasonable and approved' by Tourism WA. Workers' compensation and personal accident insurance for persons engaged as volunteers was also required.

Based on the evidence it received, the Committee can only deduce that Tourism WA signed the Sponsorship Agreement without confirming whether any of these insurance requirements were in place. Moreover, the department has failed to formally request the full insurance policies and schedules, as it appears contractually empowered to do, even after the race was cancelled. Three months after the event a relatively informal email was sent to RacingThePlanet requesting 'copies of the certificates for your insurance's [sic]'. The Committee sought the advice of a barrister with expertise in insurance law regarding the documentation that Tourism WA received in response to this request.

According to this advice, the documents provided to confirm public liability are of no apparent value to Tourism WA or to an injured participant. These, and the other documents do not provide evidence that RacingThePlanet complied with any of the obligations imposed on it by the clause of the Sponsorship Agreement pertaining to insurance. The Committee has made a recommendation calling for six amendments to the contract template for event sponsorship in light of the structural and operational flaws that were identified in the management of the Sponsorship Agreement with RacingThePlanet.

Finally, the Committee considered Tourism WA's due diligence processes to address Term of Reference (d), but also to assess another tenet of the responsible sponsorship concept cited by the department. Once again deficiencies were evident. In addition to



the shortcomings in its approach to assessing risk management plans, Tourism WA (in this instance Eventscorp as the agency preparing the sponsorship proposal):

- Conducted an inadequate level of independent research and showed an excessive reliance on information provided by RacingThePlanet;
- Failed to liaise with relevant stakeholders, including entities that had some level of involvement with the event staged by RacingThePlanet the previous year; and
- Provided inaccurate advice to departmental heads, the Board of Tourism WA, and ultimately the Government.

Regarding the latter point, this led the Board and Cabinet approval of the Sponsorship Agreement to be premised on the incorrect assumption that over 100 competitors from 30 countries were competing in the race that that a local event organiser had been engaged to assist RacingThePlanet.

The Committee has called on Tourism WA to develop a minimum standard of due diligence to address the deficiencies noted in the Report and has called on the Board of Tourism WA to review the quality of Board papers that are being submitted to it by the executive of Tourism WA.

**Chapter 6** examines the roles and actions of a series of other government agencies in respect of the event and the protection and rescue of competitors, employees, contractors, volunteers and spectators. The roles and actions of each agency are chronicled individually before the Committee draws conclusions on the aspects of their respective performances.

**FESA** in Kununurra was made aware of the event three days prior to the start via a call from the Kununurra Visitors Centre which indicated that RacingThePlanet was seeking advice on fire. The Committee examined the chain of communications that were conducted through Kununurra Visitors Centre. Had direct consultation occurred between FESA and RacingThePlanet, the emergency response to the incident on the day may have been markedly different—and in the Committee’s view—improved. Indeed, it is arguable that the emergency response would not have been required. Mr Tony Stevenson, FESA Kununurra’s District Fire Manger, confirmed that if FESA had been brought into the planning process, it would have advised that the race be cancelled or re-routed.

The Committee has found that primary responsibility for making this contact rested with RacingThePlanet as the event organiser, even more so after having been advised by two separate parties to make contact with Mr Stevenson—who was expecting a call. While the onus was on RacingThePlanet to make this call, it would still have been

reasonable and prudent for Mr Stevenson to attempt to make contact when no call was forthcoming prior to the race.

In terms of FESA's response on the day of the race, the Committee is generally satisfied with the performance of Mr Stevenson and Mr Graham Sears, the Kimberley District Manager of the State Emergency Services (SES). After the FESA Communications Centre in Perth (FESA Comcen) received a series of emergency calls from RacingThePlanet staff between 2:02 and 2:45pm, FESA in Kununurra acted appropriately to put a search team on standby and liaise regularly with Wyndham Police and the local Shire's Chief Bush Fire Control Officer who were attending the scene. The Committee did have some concern that Mr Stevenson did not appear to be preparing rescue resources to attend the scene if required—particularly when other agencies (in particular St John Ambulance) were en route. However, mitigating circumstances in this respect included limited resources and a lack of clarity regarding the requirements at the scene, facilitated in part by the mixed messages being relayed by the organisers as to whether competitors were seriously injured or not injured.

The Committee was surprised at the way that the **FESA Comcen** handled the initial call made from the course by RacingThePlanet's Dr Brandee Waite.

Dr Waite stated that there are people with burns and that they need help with evacuation. By the end of this call Dr Waite was advised to hang up and call 000 again and request the ambulance service. The Committee is of the view that Dr Waite should have been kept on the line while the FESA Comcen organised contact with the other relevant emergency services. This is similar to processes adopted through the WA Police call centre and would have enabled a consistent line of communication to be established and maintained during the emergency response. This may have reduced the confusion experienced by responding agencies (including FESA) that ensued when another RacingThePlanet staff member rang through later with different information, including that there 'are no injuries'.

The Committee has recommended that FESA, WA Police and St John Ambulance establish a uniform protocol for handling multiple emergency responses that does not involve callers having to make multiple calls to 000.

The **Shire of Wyndham East Kimberley (SWEK)** received relatively late notification of the event from RacingThePlanet and the contact that was made was regarding the hire of a local park for the finish line of the 2011 Kimberley Ultramarathon. An offer was made by RacingThePlanet to provide 'risk assessment documents' as part of the application if required. While there were some mitigating circumstances for SWEK, including late notification of the event, it still would have been prudent for the SWEK to make further enquiries regarding RacingThePlanet's risk management planning for the 2011 Kimberley Ultramarathon.

The **WA Department of Health (DoH)** had direct knowledge of RacingThePlanet from the 2010 race in the Kimberley, after local hospital services were impacted by multiple casualties presenting to Kununurra District Hospital suffering dehydration and other injuries. DoH followed up with RacingThePlanet regarding this, and other concerns it had regarding that event and ensured that these issues were addressed prior to the 2011 Kimberley Ultramarathon. DoH was in communication with RacingThePlanet from 26 January 2011 as part of this process.

DoH also raised the 2011 Kimberley Ultramarathon at a meeting of the Health Services Sub-Committee (HSS), held in Perth on 14 February 2011. This was a sub-committee of the State Emergency Management Committee (SEMC), and representatives from WA Police, FESA, St John's Ambulance, Royal Flying Doctor Service (RFDS) and the WA Local Government Association (WALGA) attended. While DoH highlighted to other agencies the concerns it had regarding the 2010 event, notification of the 2011 Kimberley Ultramarathon was an information item, rather than an action item on the agenda, so no recommendation was made by DoH for other agencies to follow the event up.

While the Committee believes DoH acted appropriately in several aspects relating to the 2012<sup>1</sup> Kimberley Ultramarathon, it argues that other local agencies in Kununurra would have benefited from the information that DoH had acquired regarding the race.

While not directly involved in any capacity on the day, the **Department of Regional Development and Lands (DRDL)** was involved in jointly approving the funding proposal put forward by Tourism WA to sponsor the 2011 Kimberley Ultramarathon with funds from the Royalties for Regions Regional Events Program (REP). What has become apparent through the Inquiry is that much of the land over which the race was conducted was Crown land under the administration of DRDL and leased by pastoralists under a 'non-exclusive tenure'. Under these arrangements, permission for use of the land for non-pastoral activities should have come from DRDL, not the occupiers of the land.

The appropriate vehicle for obtaining such permission is a section 91 non-exclusive licence application under the *Land Administration Act 1977* (WA). Had this process been followed, DRDL's internal processes would likely have led to RacingThePlanet's risk management plan being considered by the department and SWEK receiving a formal referral regarding the event. It is arguable that this would have led to a more appropriate level of communication and consultation with the organiser prior to the event taking place.

The fact that this process was not followed appears to be attributable to two main factors:

- DRDL not determining from the sponsorship proposal that the event was on land that would be subject to a section 91 licence application.
- A lack of awareness of the section 91 land use approval process among agencies, lease holders and event organisers.

The Committee has recommended that DRDL ensure that the knowledge of this process among relevant parties is improved.

In **Chapter 7**, the Committee discusses future measures it sees as worthy of consideration by government departments for making sure that risks including bushfires in remote areas in the context of extreme sporting events are adequately identified and addressed. The ideas put forward by the Committee are seen as equally applicable to high risk and adventure sport activities, although it is mindful not to burden all events with regulatory requirements that may be disproportionate.

In each instance, the focus is on bringing an event organiser into contact with appropriate local emergency services agencies (including the Shire, Police, FESA, DoH and St John Ambulance) so that risks inherent in the event, and local risk factors, can be identified and mitigated.

In the penultimate chapter, the Committee provides a short explanation as to why it feels the state should give consideration to determining an ex-gratia payment for Miss Turia Pitt, Miss Kate Sanderson, Mr Michale Hull and Mr Martin Van Der Merwe.

In the final chapter, the Committee discusses the appropriateness of expanding the jurisdiction of the Western Australian Coroner to investigate bushfires.

## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Economics and Industry Standing Committee directs that the Minister for Tourism; Minister for Health; Minister for Police; Minister for Emergency Services; Minister for Regional Development and Lands; Minister for the Environment; Minister for Sport and Recreation; and the Minister for Planning and the Arts representing the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



## Findings and Recommendations

### Finding 1

Page 15

RacingThePlanet was aware that there had been fires on, and in the vicinity of, the course prior to and on the day of the 2011 Kimberley Ultramarathon. RacingThePlanet should have been aware that there was a risk of fire posed to the competitors, employees, contractors, spectators and volunteers.

### Finding 2

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ISO 31000:2009 is the international standard for risk management. The Committee believes that this standard represents a reasonable benchmark for risk management. The Committee finds that RacingThePlanet Events Limited's (RacingThePlanet) Management and Risk Assessment Plan and its risk identification process for the 2011 Kimberley Ultramarathon was not consistent with ISO 31000:2009 on the basis that:

- RacingThePlanet did not involve people with appropriate knowledge in identifying risks;
- RacingThePlanet did not communicate and consult adequately with relevant agencies and individuals on its Management and Risk Assessment Plan or to identify risks associated with the event;
- the risks identified in the Management and Risk Assessment Plan appear to be generic and are notably lacking in the identification of causes and consequences;
- RacingThePlanet did not contact FESA about fires that RacingThePlanet staff had seen in the days leading up to the race, despite being advised to do so by Kununurra Visitors Centre and the Department of Environment and Conservation; and
- RacingThePlanet did not contact St John Ambulance prior to the race despite being advised to do so by FESA through the Kununurra Visitors Centre.

Consequently, the Committee finds that RacingThePlanet did not take all reasonable steps to identify risks associated with the 2011 Kimberley Ultramarathon.

As a result, RacingThePlanet deprived itself of the opportunity to identify risks that it may not have contemplated in its own right. RacingThePlanet also deprived itself of the opportunity to develop relationships with key agencies and individuals who may have been able to provide ongoing assistance to RacingThePlanet in identifying and managing risks associated with the 2011 Kimberley Ultramarathon.

**Finding 3****Page 63**

Based on the practices of other adventure racing events in remote regions of Australia, the Committee finds that a combination of the following elements reflects a reasonable standard for mitigating risks to safety:

- communicating and consulting with relevant authorities;
- establishing optimal communications strategies for the environment and nature of the event; and
- establishing adequate medical support and evacuation procedures.

The Committee has previously found that RacingThePlanet did not adequately communicate and consult with relevant authorities. In respect of its communications and medical and evacuation planning, the Committee believes that RacingThePlanet did not meet these standards because RacingThePlanet:

- did not test its communications equipment on the course prior to the race, and therefore could not have known if the location of its checkpoints were optimal for communications;
- placed its checkpoints at distances that were too far apart given the limited number of RacingThePlanet vehicles roving the course and the inherent difficulties associated with a communications plan based on satellite phones and short range radio systems (in particular the inability for sweepers to communicate with checkpoints once out on the course);
- did not engage the input and services of St John Ambulance in Kununurra; and
- did not make arrangements for the use of a helicopter in an emergency until the day before the event, despite knowing for some time that this was the only means of evacuation from the Tier Gorge. RacingThePlanet designated the helicopter hired by Beyond Action as first responder in the event of an emergency, however appears not to have been aware of whether this helicopter was appropriately equipped for an emergency evacuation.

Against these standards, the Committee finds that in relation to the 2011 Kimberley Ultramarathon, RacingThePlanet did not take all reasonable steps to reduce risks to the safety of competitors, employees, contractors, spectators and volunteers.

**Finding 4****Page 114**

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of competitors in the 2011 Kimberley Ultramarathon in respect of the following factors:



- Despite being aware of fires in the vicinity of the course in the days leading up to the event, the evidence received by the Committee does not indicate that RacingThePlanet had a plan, after the race began, to monitor those fires or detect new fires, other than what could be seen by RacingThePlanet staff while driving the course.
- Before 10:32am, while at Checkpoint Two, RacingThePlanet’s Event Manager received a message of a fire approaching the checkpoint. RacingThePlanet’s Course Director received this message upon arrival at Checkpoint Two at approximately 11:00am. RacingThePlanet’s Medical Director also received this message during this time. The Event Manager, Medical Director and Course Director failed to hold competitors at the checkpoint and determine the exact location, direction and severity of the fire referred to in the message.
- RacingThePlanet’s Event Manager and Course Director met each other on the course coming in to Checkpoint Two shortly after 1:00pm. The Course Director had just sent a volunteer in to re-mark the course and assist competitors after seeing smoke in the vicinity of the Tier Range. The Event Manager was returning from The Barrels where, between approximately 12:20 and 12:40, she had received reports of smoke and flames encroaching on the course from competitors coming out of the Tier Range. Despite this, the Course Director and Event Manager did not hold competitors at Checkpoint Two and determine the exact location, direction and severity of this fire.
- With the information available at 1:00pm, if not earlier, RacingThePlanet should have engaged the media helicopter to determine the exact location, direction and severity of the fire and, if required, to warn competitors to turn back to Checkpoint Two.
- RacingThePlanet’s plan to use the helicopter hired by Beyond Action in the event of an emergency—and that helicopter’s designation as first responder—was not enacted correctly, was not well understood, and suffered from only having been determined the day before the event.

Had these reasonable steps been taken, it is possible that Miss Pitt, Miss Sanderson, Mr Hull, Mr Martin Van Der Merwe and Ms Gadams would not have been injured.

## **Finding 5**

**Page 115**

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of competitors, staff, volunteers, spectators and contractors in the 2011 Kimberley Ultramarathon in respect of the following factor:

- The behaviour of the fire in the Tier Gorge was not consistent with RacingThePlanet's understanding of fire risk in the Kimberley and should have resulted in a change to the level of risk RacingThePlanet assigned to fire. Prior to the event, RacingThePlanet's understanding of fires in the Kimberley was that they were common and usually not a risk. Shortly after 2:00pm, RacingThePlanet's Medical Director and Event Director were both aware that a fire had injured and/or trapped competitors in the Tier Gorge. As this was not consistent with RacingThePlanet's understanding of fire risk, RacingThePlanet should have reassessed the level of risk it assigned to fire, and taken steps to mitigate that risk.
- RacingThePlanet did not have contact with relevant authorities to assist in mitigating that risk and does not appear to have had a plan to monitor fire on the course other than by direct observation. Therefore, it should have immediately held competitors at checkpoints beyond the Tier Gorge and cancelled the 2011 Kimberley Ultramarathon.

#### **Finding 6**

**Page 115**

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of volunteers during the 2011 Kimberley Ultramarathon in respect of the following factor:

- At approximately 1:00pm, having observed smoke in the vicinity of the Tier Range, RacingThePlanet's Course Director sent a volunteer to go into the area of a potentially dangerous fire alone to re-mark the course and assist competitors and without ensuring that the volunteer was carrying communications equipment.

#### **Finding 7**

**Page 116**

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of employees during the 2011 Kimberley Ultramarathon in respect of the following factor:

- At approximately 1:00pm, RacingThePlanet's Course Director left RacingThePlanet's Operations Manager to continue sweeping the course alone after the volunteer accompanying her was requested to go into the fire area to re-mark the course and assist competitors.

#### **Finding 8**

**Page 123**

The safety of competitors in ultramarathons can be enhanced by thorough mandatory pre-race briefings that engage the input of local agencies, such as fire and emergency services, to discuss external safety issues.

**Finding 9****Page 127**

The inclusion of topographical maps as part of mandatory equipment lists has the potential to enhance the safety of competitors in trail ultramarathons, particularly in remote locations where the majority of the competitors are not familiar with the area.

**Finding 10****Page 129**

The safety of competitors in trail ultramarathons would be enhanced by making satellite phones or Personal Locator Beacons mandatory items in competitor equipment lists for races where mobile phone coverage is not available or reliable, and regular radio communication can not be established across the entirety of the course.

**Finding 11****Page 137**

Terms and conditions relating to race control are essential for protecting the safety of competitors, spectators, volunteers and race staff. However, in order to be effective, race control conditions must not just exist on paper, they have to be implemented. This requires:

- appropriate decision-making, which is enhanced through consultation with all relevant local authorities, and
- communication between staff and the race controller.

**Finding 12****Page 139**

To enhance the safety of participants in trail ultramarathons, race organisers should, at a minimum, communicate and consult with relevant local authorities (including ambulance and emergency services) when developing an emergency medical and evacuation plan for an event.

**Finding 13****Page 139**

It is an acceptable practice for ultramarathon event organisers to impose caveats regarding the time it may take provide medical treatment and evacuation to competitors. However, organisers must ensure that reasonable systems are in place to treat and evacuate competitors in the most expedient manner.

**Finding 14****Page 140**

Adventure Activity Standards (AAS) may provide a vehicle through which a minimum safety standard may be developed for ultramarathons. AAS may also offer a standard that could be required by government agencies tasked with approving or sponsoring such events.

**Recommendation 1****Page 140**

The Department of Sport and Recreation facilitate the development of an Adventure Activity Standard for ultramarathons in order to determine a minimum safety standard for the sport.

**Finding 15****Page 146**

Waivers appear to be standard in ultramarathons and are designed to protect the interests of race organisers by transferring the assumption of risk associated with entering an event over to the individual competitor.

**Finding 16****Page 146**

While the terms of waivers are often onerous, without the assurances they provide to professional and volunteer sports organisers, the viability of these events may come under threat due to unaffordable insurance premiums.

**Finding 17****Page 149**

Event organisers should ensure that adequate public liability is in place so that injured parties pursuing redress within the current legislative framework have the maximum opportunity to have their claims heard and, if successful, settled.

To properly assess the adequacy of public liability insurance coverage, it is important to obtain the full insurance policy and relevant schedules. Without these, any assessment of the adequacy of coverage may be speculative.

**Finding 18****Page 151**

The rights of parties to pursue and obtain legal redress for injury suffered in an event can be significantly curtailed if the defendant is an overseas-based entity with no assets in an Australian jurisdiction. These limitations are present regardless of whether or where public liability insurance may be held.

**Finding 19****Page 161**

The example of the 2011 Kimberley Ultramarathon demonstrates serious flaws in Tourism WA's approach to ensuring that the risk management plans for events it sponsors are properly assessed. These include:

- Failing to request or sight the event risk management plans before signing the Sponsorship Agreement with RacingThePlanet;
- Failing to have protocols in place to ensure that RacingThePlanet's risk management plan could have been assessed by Tourism WA or any other relevant authority.

**Recommendation 2****Page 163**

As part of the current revision of its contract template for sponsorship agreements, Tourism WA should ensure that:

- Risk management plans are submitted for approval with all relevant agencies and local and state authorities no later than two months prior to a sponsored event being staged.
- Milestone payments should be linked to the strict adherence of this deadline
- Evidence of approval of the risk management plans by all relevant local and state authorities is provided to Tourism WA by the event organiser.

**Recommendation 3****Page 164**

Eventscorp should ensure that organisers of events its sponsors are directed to all appropriate authorities and stakeholders to ensure the responsible, safe and efficient planning and conduct of the event.

**Finding 20****Page 167**

The example of the 2011 Kimberley Ultramarathon demonstrates Tourism WA's unsatisfactory approach to its management of contracts for sponsored events, particularly in regards to the insurance requirements of event organisers. Notable flaws include:

- Signing a contract with an event organiser without confirming whether the insurance requirements of the contract were in place.
- A lack of understanding from senior Tourism WA and Eventscorp staff as to adequacy of the insurance materials that were subsequently provided after the event.
- Failing to formally request the insurance policies or schedules pertaining to the Sponsorship Agreement (before or after the event), despite being contractually empowered to do so and when significant interest exists from competitors and the Parliament as to whether appropriate insurances are in place.

**Recommendation 4****Page 170**

As part of its review of its contract management processes, Tourism WA (with the Board of Tourism WA taking a lead role) should amend its contract template for event sponsorship to ensure that:

- Tourism WA is provided with all relevant insurance policies and schedules prior to a sponsorship agreement being signed.

- All relevant insurance policies and schedules are lodged with Tourism WA by the time a sponsorship agreement is signed.
- Tourism WA retain the right to provide any information regarding the insurance policies and schedules to any parties involved in the event.
- Organisers provide independent verification of policies being Australian-based and approved by the Australian Prudential Regulation Authority.
- Tourism WA retains the right to verify the status of the policies with the organiser's insurer at any time throughout the contract period.
- Organisers submit to a clause allowing any claims against them by injured parties to be undertaken and enforceable in the state of Western Australia, and Tourism WA withdraws any offer of sponsorship if an organiser is not prepared to comply with this condition.

#### **Finding 21**

**Page 178**

The example of the 2011 Kimberley Ultramarathon demonstrates several deficiencies in Tourism WA's due diligence of organisations it proposes to sponsor including:

- Inadequate level of independent research and excessive reliance on information provided by RacingThePlanet.
- Failure to liaise with relevant stakeholders, including local entities that had some level of involvement with the event staged by RacingThePlanet in 2010.
- Providing inaccurate advice to departmental heads, the Board of Tourism WA, and ultimately the Government.

#### **Recommendation 5**

**Page 178**

As part of the review of its due diligence processes, Tourism WA should ensure that:

- A minimum standard of due diligence is established that addresses the deficiencies noted in this Report.
- Sponsorship agreements include a provision requiring event organisers to complete disclosure questionnaires. If an organiser is found at any time not to have complied, or to have withheld material information, the penalty regime should extend to the nulling of the contract.
- Consideration is given on a case-by-case basis to stipulating the engagement of local event management companies to assist organisers in regards to event planning and risk management.

**Finding 22****Page 180**

The Board of Tourism WA did not scrutinise the proposal prepared by Eventscorp seeking funding to sponsor the 2011 Kimberley Ultramarathon in sufficient detail.

**Recommendation 6****Page 180**

The Board of Tourism WA should take action to ensure that it reviews the quality of Board papers that are submitted to it by the executive of Tourism WA.

**Finding 23****Page 182**

The Committee makes no finding on the appropriateness of the provisions of the *Civil Liability Act 2002* (Western Australia) relating to the liability of organisers of high-risk recreational events, as these provisions remain comparatively untested by the courts.

**Recommendation 7****Page 191**

The Department of the Attorney General consider conducting a review of the *Civil Liability Act 2002* (WA) in light of the 2011 Kimberley Ultramarathon. Such a review should consider issues such as the effectiveness given to competitor waivers under the Act and the potential difficulties of establishing proceedings and enforcing a judgement against foreign-based providers of recreational activities.

**Finding 24****Page 216**

FESA in Kununurra was made aware on 30 August 2011 that the Kimberley Ultramarathon was going to occur on 2 September 2011.

**Finding 25****Page 217**

While the primary responsibility for establishing contact rested with RacingThePlanet Events Limited, FESA in Kununurra could have attempted to contact the organiser when no call was forthcoming prior to the 2011 Kimberley Ultramarathon.

**Finding 26****Page 219**

Notwithstanding mitigating circumstances including limited resources, information, and communications, FESA in Kununurra could have begun to prepare its rescue resources to attend the scene if required.

**Finding 27****Page 222**

The response of the FESA Communication Centre to the emergency call made by RacingThePlanet Events Limited (RacingThePlanet) at 2:02pm was surprising. In particular, the Committee was surprised that RacingThePlanet were advised to hang up and call 000 a second time to request an ambulance.

**Finding 28****Page 222**

A uniform approach should be adopted by all 000 agencies to minimise the risk of a message becoming distorted when retold. The approach adopted should be based on that of WA Police where the caller is kept on the line while other relevant agencies are contacted.

**Recommendation 8****Page 223**

FESA, WA Police and St John Ambulance establish a uniform protocol for handling multiple agency emergency responses that does not involve callers having to make multiple calls to 000.

**Finding 29****Page 229**

With the information available to its officers on the day, the response to the incident by Wyndham Police officers was appropriate and thorough.

**Finding 30****Page 229**

It would have been reasonable and prudent for Kununurra Police to forward the email received from RacingThePlanet Events Limited on 16 August 2011 through to Wyndham Police station and to the Kununurra Local Emergency Management Committee (LEMC).

**Finding 31****Page 239**

Notwithstanding the late notification it received, with the information available, it would have been reasonable and prudent for the Shire of Wyndham East Kimberley (SWEK) to make further enquiries of RacingThePlanet Events Limited regarding the company's risk management planning for the 2011 Kimberley Ultramarathon.

**Finding 32****Page 242**

The failure of RacingThePlanet Events Limited to contact FESA Kununurra directly should not be attributed to any communications made by the Kununurra Visitors Centre on either party's behalf.

**Finding 33****Page 250**

Other local agencies in Kununurra would have benefited from the information that the Department of Health had acquired regarding the 2011 Kimberley Ultramarathon.

**Finding 34****Page 258**

A significant portion of the 2011 Kimberley Ultramarathon was conducted over pastoral leases that are on Crown land. Accordingly, permission for use of this land should have come from the Department of Regional Development and Lands, which issues section 91 licenses under the *Land Administration Act 1977* for short-term non-pastoral related uses.



**Finding 35****Page 258**

With the information provided to it by Tourism WA, the Department of Regional Development and Lands (DRDL) should have recognised that the RacingThePlanet Events Limited required a section 91 licence to stage the 2011 Kimberley Ultramarathon. Had this process been observed, it would likely have resulted in RacingThePlanet's risk management plans for the event being considered by DRDL and the event being formally referred to the Shire of Wyndham East Kimberley.

**Recommendation 9****Page 258**

The Department of Regional Development and Lands should ensure that event organisers and government agencies responsible for sponsoring and approving events have a greater level of awareness about the requirements of section 91 licences under the *Land Administration Act 1977* (WA).

**Recommendation 10****Page 261**

Local Emergency Management Committee (LEMC) processes should be reviewed to ensure that:

- Local government authorities, emergency service organisations, other government agencies and event organisers are made aware of the requirements of a LEMC, and that
- Consideration is given to extending LEMC abilities to review and advise on proposals for higher risk and adventure spotting events.

**Recommendation 11****Page 264**

The review of the *Health Act 1911* (WA) should include the following amendments:

- enabling high risk or adventure sport activities to be subject to the events approval process currently applicable to 'public buildings' and;
- that a requirement be introduced for organisers of eligible events to provide medical and risk management plans to relevant authorities for assessment—prior to any event approval being completed.

**Recommendation 12****Page 268**

Department of Regional Development and Lands and Department of Environment and Conservation should consider how their respective land use approval processes can incorporate the input of Local Emergency Management Committees (LEMCs) as part of risk assessments for high risk events and adventure sport activities.

**Recommendation 13****Page 268**

Tourism WA must give specific regard as to whether land use approvals need to be sought, particularly from Department of Regional Development and Lands, when conducting due diligence for event sponsorship proposals that require sign off by both departments.

**Recommendation 14****Page 269**

The Attorney General gives urgent consideration to determining an ex gratia payment for:

- Miss Turia Pitt and Miss Kate Sanderson; and
- Mr Michael Hull and Mr Martin Van Der Merwe

**Recommendation 15****Page 274**

The Coroner's Act 1996 should be amended to give the Coroner jurisdiction to investigate fires that do not cause death, and that the Coroner should be suitably resourced to undertake investigations of the kind the subject of this Report.

## Relevant Persons

Organisation	Name	Description
RacingThePlanet Events Limited (RacingThePlanet)	Ms Mary Gadams	CEO and Founder / Injured competitor
	Mr Carlos Garcia Prieto	Course Director
	Ms Samantha Fanshawe	Event Director
	Ms Riitta Hanninen	Event Manager
	Dr Brandee Waite	Medical Director
	Dr Julie Brahm	Member of the Medical Team/ attended the injured competitors
	Ms Emma Fergusson	Operations Manager
	Mr Alasdair Morrison	Ms Gadams' husband and member of the Course Team
2011 Kimberley Ultramarathon Race Volunteers	Mr Andrew Baker	Race Volunteer and friend of Miss Kate Sanderson
	Mr Lon Croot	Race Volunteer, Kununurra local
	Mr Scott Connell	Race Volunteer, Kununurra local
Injured Competitors	Miss Turia Pitt	
	Miss Kate Sanderson	
	Mr Michael Hull	
	Mr Martin Van Der Merwe	
DEC	Mr Luke Bentley	Then Joint Management Co-ordinator (Kununurra), now Acting East Kimberley District Manager
DoH	Dr Andrew Robertson	Then Director, Disaster Management, Regulation and Planning Now Acting Executive Director, Public Health and Clinical Services
FESA	Mr Tony Stevenson	Fire Services Manager, East Kimberley
	Mr Craig Waters	District Manager, Fire Investigation and Analysis Unit
SES	Mr Graham Sears	District Manager - SES
Shire of Wyndham East Kimberley (SWEK)	Mr Fred Mills	Shire President 2011
	Mr Gary Gaffney	CEO
	Mr Mark Crumblin	Senior Ranger

Tourism WA	Mr Glenn Hamilton	Director, Events (Eventscorp)
Kununurra Visitors Centre	Mrs Nadia Donnelly	
El Questro	Mr Michael Bass	Wilderness Park Manager
	Mr Dale Niblett	Operations Manager
St John Ambulance	Mr Sarel De Koker	Community Paramedic
Heliwork WA	Mr Nathan Summers	Pilot of media helicopter chartered by Beyond Action
	Mr Paul Cripps	Operations Manager. Pilot of helicopter used to evacuate competitors.
	Mr Bryn Watson	Pilot/Paramedic. Attended with Mr Cripps in rescue helicopter.
Others	Mr John Storey	Farmer
	Mr James Salerno Snr	Pastoralist

# Chapter 1

## Introduction

### **The 2011 Kimberley Ultramarathon**

- 1.1 On Friday, 2 September 2011, a 100km ultramarathon<sup>1</sup> was conducted in the Kimberley Region across a predominantly off-road course starting from the Emma Gorge airstrip at El Questro and finishing in the town of Kununurra. This event was known as the 2011 Kimberley Ultramarathon.
- 1.2 Throughout this Report, the Committee will be referring to a number of locations on the course and has included a map on page 6. This map was provided by RacingThePlanet in its submission dated 4 April 2012, which is on the Committee's website. The Committee has cropped the map to show only the most pertinent areas, and to provide it at a readable size in the space available.
- 1.3 The 2011 Kimberley Ultramarathon was organised by Hong Kong-based RacingThePlanet Events Limited (RacingThePlanet), a company that has staged more than 33 footraces in eight countries over the preceding ten years.
- 1.4 This was the second event that RacingThePlanet had staged in the Kimberley. In late April 2010, RacingThePlanet organised and held a 250km seven day event in the same area.
- 1.5 Forty-one competitors, ten of whom were based overseas, registered to compete in the 2011 Kimberley Ultramarathon. The event attracted a sponsorship commitment from Eventscorp, the Western Australian government's events agency and an operating division within Tourism WA, for an amount of up to \$105,000 with an option for a further two years.
- 1.6 Eventscorp also entered into a separate agreement with Sydney-based film company, Beyond Action, to film the event as part of a proposed documentary series that would be distributed internationally to highlight the race and the scenery of the state's north-west.

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<sup>1</sup> Ultramarathons are endurance foot races conducted over distances exceeding the traditional marathon mark of 42.195km. Ultramarathons can be conducted over various terrains including track, trail, road, or a combination of trail and road.

## Chapter 1

- 1.7 The race started at approximately 8:30am and while competitors were given 48 hours to complete the 100km course,<sup>2</sup> the fastest were expected to cross the finish line in under 11 hours.
- 1.8 Six staffed checkpoints were established between the start and finish where competitors could rest, replenish supplies, and have their conditions monitored by RacingThePlanet's team of doctors.
- 1.9 Approximately five hours into the race, competitors proceeding between Checkpoint 2 and Checkpoint 3 through an area known as the Salerno or Tier Gorge were confronted by a large bushfire that entered the eastern end of the gorge.<sup>3</sup> Two competitors estimate that the fire front that blocked their path was between two and six metres high and up to 300 metres wide.<sup>4</sup>
- 1.10 At least thirteen competitors were directly confronted by the fire and most attempted to seek refuge by scrambling up the walls of the gorge. Five (Miss Turia Pitt, Miss Kate Sanderson, Mr Martin Van Der Merwe, Mr Michael Hull and Ms Mary Gadams) were unable to escape the flames and suffered burns of varying severity.

### **Turia Pitt**

- 1.11 Miss Turia Pitt was overcome by the fire. She suffered life-threatening injuries resulting in permanent scarring, disfigurement and disability. She had to be resuscitated and stabilised at Kununurra Hospital before being transferred to Concord Hospital Burns Unit via Darwin Hospital. Miss Pitt had burns to 64 per cent of her body, most of which were of a full thickness nature. The burns were located on her face, ears, neck, upper and lower limbs and her back.
- 1.12 Miss Pitt has undergone at least 11 surgical procedures during her stay at Concord Hospital and was transferred to The Royal Ryde Rehabilitation Centre on 3 February 2012. Her left hand was surgically amputated and she has suffered numerous septicaemic events. Miss Pitt's surgeon at Concord has described her prognosis as 'extremely poor' and has confirmed that she will remain dependent on some degree of care for the rest of her life.<sup>5</sup>

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2 Seven competitors were competing over an optional 50km distance that was available. RacingthePlanet Events Limited, 'Official Competitor Information', September 2011.

3 Fire and Emergency Services Authority of Western Australia, 'Fire Investigation Report 189412: Kununurra Bushfire, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 4.

4 Mr Trent Breen, Police Statement, no date, p. 13; Mr Martin Van Der Merwe, Police Statement, 8 September 2011, p. 5.

5 Submission No. 6 from Greg Walsh and Co Solicitors obo Miss Turia Pitt, Mr Michael Hull, Mr Shaun Van Der Merwe, Mr Martin Van Der Merwe and Mr Hal Benson, 4 April 2012, p. 66-68.

**Kate Sanderson**

- 1.13 Miss Kate Sanderson was overcome by the fire. She suffered life-threatening injuries resulting in permanent scarring, disfigurement and disability.
- 1.14 Miss Sanderson was airlifted from Kununurra Hospital to Melbourne's Alfred Hospital where she remained for just under six months. Miss Sanderson received extensive burns to the majority of her body including her back and legs. Half of her left foot and right index finger have been amputated and the rest of her fingers are clawed due to scarring. Miss Sanderson has also lost large parts of both ear lobes.<sup>6</sup>
- 1.15 Miss Sanderson has already undergone a significant number of surgical procedures and faces more in the future. The pain of this process Miss Sanderson says cannot be described and since the incident she has been 'unable to work or to enjoy life'.<sup>7</sup>

**Martin Van Der Merwe**

- 1.16 Mr Martin Van Der Merwe was flown to Royal Perth Hospital where he underwent skin graft operations on 6 September 2011. He suffered 35 per cent burns from both calves to midway up his thighs. He also received burns to the palm, thumb and finger of his right hand. In addition he required stitches to his ear for an injury he sustained when he fell while running through the flames.<sup>8</sup>

**Michael Hull**

- 1.17 Mr Michael Hull was flown to Royal Perth Hospital where he underwent skin graft operations on 7 September 2011. Mr Hull received burns to both legs from ankle to knee, his fingers, ears, and arms from triceps to elbow. Seven months after his surgery, Mr Hull was still wearing pressure garments to assist in the recovery of the injuries to his arms and legs.<sup>9</sup>

**Mary Gadams**

- 1.18 RacingThePlanet's Founder and Chief Executive Officer, Ms Mary Gadams, was competing in the event and suffered second degree burns to fingers on each hand, the back of her legs and the back of her arms. Ms Gadams was treated for her injuries at Kununurra Hospital and left the hospital at 11:30pm on the evening of the race.<sup>10</sup> Ms

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6 Submission No. 22 from Miss Kate Sanderson, 4 April 2012, p. 1; Miss Kate Sanderson, Competitor, *Transcript of Evidence*, 30 April 2011, p. 29.

7 Submission No. 22 from Miss Kate Sanderson, 4 April 2012, p. 1.

8 Mr Martin Van Der Merwe, Police Statement, 8 September 2011, p. 9.

9 Mr Michael Hull, Police Statement, 8 September 2011, p. 12; Mr Michael Hull, Competitor, Kimberley Ultramarathon 2011, *Transcript of Evidence*, 30 April 2011, p. 26.

10 Ms Mary Gadams, Police Statement, 4 September 2011, pp. 12, 17.

## Chapter 1

Gadams returned to Kununurra Hospital the following day to have her wounds re-dressed and was formally discharged.<sup>11</sup>

### Fire Investigation

- 1.19 In the aftermath of the event, FESA and the WA Police Arson Squad conducted a joint investigation into the fire. These agencies could not establish the cause of the fire but determined that it started in the vicinity of the Wuggubun Community, some 12.5km to the south-east of where the competitors were burnt, five days before the day of the race. No criminality was linked to the lighting of the fire and the cause was reported as 'undetermined'.<sup>12</sup>
- 1.20 The fire investigators were of the view that:
- the fire meandered with a slow rate of spread for five days;
  - as it entered the Tier Gorge, the fire intensified significantly, facilitated by a higher fuel loading in the gorge; and
  - the fire's rate of spread accelerated as it climbed the walls of the gorge, while the walls also provided a tunnelling effect for the prevailing easterly winds.
- 1.21 The joint FESA/WA Police Investigation was conducted as part of an internal investigation by WA Police's Kimberley Superintendent Michael Sutherland into the police's involvement in the 2011 Kimberley Ultramarathon. This investigation also involved the collection of more than 40 witness statements. Given the life-threatening nature of Miss Sanderson and Miss Pitt's injuries, it was thought that such statements should be collected for a possible coronial inquest in the event that either woman died.
- 1.22 Friends and family of Miss Sanderson, led by her brother, Ian, repeatedly petitioned the State government over the ensuing months seeking a formal inquiry into the organisation of the race and the events that unfolded.<sup>13</sup>

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11 Ms Mary Gadams, Police Statement, 4 September 2011, p. 18; Submission No. 4 from Department of Health, 2 April 2012, Appendix F, p. 4.

12 WA Police Internal Memorandum, from Superintendent Michael Sutherland APM to Assistant Commissioner Michael Burnby APM, 13 December 2011. *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*; WA Police 'Arson Squad Fire Report', 6 December 2011, pp. 8,10-11. Included *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*; Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, pp. 13,25-26.

13 Supplementary Item B, Hon. Dr Kim Hames, MLA, Minister for Tourism, 23 May 2012.



- 1.23 The State government, via the Minister for Tourism Hon. Dr Kim Hames, initially sought advice from the Public Sector Commissioner and Tourism WA on the options by which an inquiry might be undertaken. The advice received was that the State government was limited in the powers it had available to it to conduct a sufficiently thorough investigation into the matter.<sup>14</sup>
- 1.24 On 21 February 2012, the matter was raised during a sitting of the Legislative Assembly. At the end of the ensuing debate, it was decided that a parliamentary inquiry would be used to investigate the event and its aftermath. Both government and opposition parties agreed to bring the matter back before the House when time had been given to consider appropriate Terms of Reference.<sup>15</sup>
- 1.25 On 1 March 2012, the Legislative Assembly directed the Economics and Industry Standing Committee to investigate and report to the House on the 2011 Kimberley Ultramarathon. The House directed that the Inquiry include six areas of investigation. The terms of reference can be found in Appendix One.
- 1.26 The House resolved for the Hon Michelle Roberts MLA to be a co-opted member of the Committee for the duration of the Inquiry.<sup>16</sup>
- 1.27 On 13 June 2012, the Committee requested from the House, and was granted, an extension of the reporting deadline to Thursday, 16 August 2012 in order to deal with the substantial amount of evidence that was collected during the Inquiry.

**No findings of legal liability**

- 1.28 The Committee makes no findings of legal liability of any party. Such a role is for the Courts.

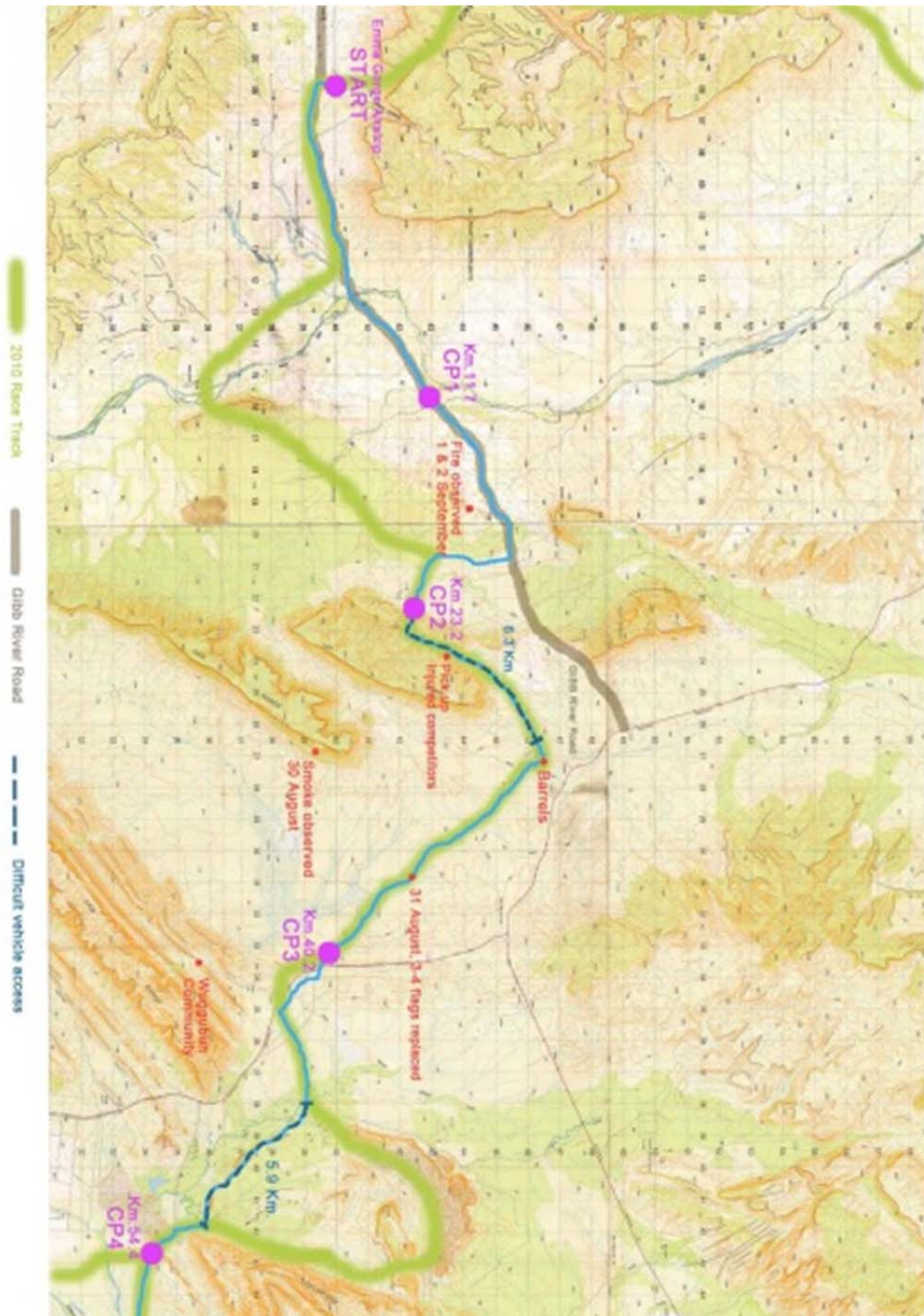
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14 Hon. Colin Barnett, Premier; Hon. Dr Kim Hames. Deputy Premier, Minister for Tourism; Hon. Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 February 2012, pp. 26-32.

15 Hon. Colin Barnett, Premier; Hon. Dr Kim Hames. Deputy Premier, Minister for Tourism; Hon. Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 February 2012, pp. 26-32.

16 Hon. Dr Kim Hames, Deputy Premier, Minister for Tourism, Hon. Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 1 March 2012, pp. 555-556.

## Chapter 1



## Chapter 2

### RacingThePlanet Events Limited

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This chapter addresses Term of Reference (a) by considering whether RacingThePlanet Events Limited (RacingThePlanet) took all reasonable steps to identify and reduce risks and maintain the safety of competitors, employees, contractors, spectators and volunteers in the preparation for and the running of the event and in responding to the fire and the injuries, including access to medical support and evacuations.

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#### Part One: Risk identification and assessment

##### Risk of fire in the course area

- 2.1 At the hearing before the Committee on 2 May 2012, and in a supplementary submission, RacingThePlanet Events Limited (RacingThePlanet) quoted part of the FESA publication *Bushfires in the North of Australia: Information for travellers*. The publication states:

*When visitors first see bush fires in the north of Australia it can come as something of a shock—fires and smoke seem common, fire trucks are rare and the country is often burnt and black for many kilometres.*

*Bush fires are a natural part of the savanna landscape in the north of Australia. But they still raise many questions. What do I do if a fire comes close? How are these fires affecting the environment? Should I report fires to the authorities?*

*This brochure answers many of these questions and provides contacts for more detailed information on fire.*

*Am I at risk from bush fires?*

*In most cases no—provided you respect the fire and follow basic awareness as outlined in this brochure. These fires are usually much less intense than the bush fires of southern Australia. This is because the vegetation types are different and the level of fuel available to burn is lower.<sup>17</sup>*

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<sup>17</sup> Fire and Emergency Services Authority of Western Australia, Queensland Rural Fire Service, Tropical Savanna CRC and the Bushfires Council of the Northern Territory, *Bush Fires in the North*

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- 2.2 RacingThePlanet stated that the advice is 'consistent with the advice given to RacingThePlanet in its race preparations. It is consistent with the advice which continues to be given out by the government today. It is consistent with the evidence as to general fire risk in the Kimberley given to this Committee'.<sup>18</sup>
- 2.3 This may be the case, however it does not mean that fire is not a risk in the Kimberley. RacingThePlanet noted that 'FESA [in the publication] go on to state that fires "can" be more dangerous and hotter in the late dry season (July to November), when the grass and tree litter is drier'. The FESA publication states:

*The intensity of bush fires also depends on the time of year. There are few fires in the tropical wet season (December to April) with its heavy rains. Fires become common in the early dry season (May to June), but cooler conditions limit their intensity.*

*However, outbreaks can be more dangerous and fires can be hotter in the late dry season (July to November), when the grass and tree litter is drier. Fires can be started by lightning and fanned by strong winds and can be a threat if adequate precautions are not taken.*<sup>19</sup>

- 2.4 RacingThePlanet picked up on the brochure's advice and asked whether there was a risk of a dangerous fire on the day of the race.<sup>20</sup> RacingThePlanet quoted evidence from two witnesses to the Inquiry who were not present on the day of the race or the period leading up to it in attempting to prove that there was not a risk of dangerous fire on the day of the race.<sup>21</sup>
- 2.5 RacingThePlanet also quoted evidence from Mr Salerno Snr, the operator of the pastoral lease on El Questro. The evidence given by Mr Salerno Snr is consistent with other evidence received by the Committee, in that he stated that '[n]ormally it is not a

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*of Australia – Information for Travellers*, May 2008, p. 1. Available at: [http://www.fesa.wa.gov.au/safetyinformation/fire/bushfire/BushfireManualsandGuides/FESA-Bushfire-Bushfires\\_in\\_Northern\\_Australia.pdf](http://www.fesa.wa.gov.au/safetyinformation/fire/bushfire/BushfireManualsandGuides/FESA-Bushfire-Bushfires_in_Northern_Australia.pdf). Accessed on 27 June 2012.

18 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 32.

19 Fire and Emergency Services Authority of Western Australia, Queensland Rural Fire Service, Tropical Savanna CRC and the Bushfires Council of the Northern Territory, *Bush Fires in the North of Australia – Information for Travellers*, May 2008, p. 1. Available at: [http://www.fesa.wa.gov.au/safetyinformation/fire/bushfire/BushfireManualsandGuides/FESA-Bushfire-Bushfires\\_in\\_Northern\\_Australia.pdf](http://www.fesa.wa.gov.au/safetyinformation/fire/bushfire/BushfireManualsandGuides/FESA-Bushfire-Bushfires_in_Northern_Australia.pdf). Accessed on 27 June 2012.

20 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 2; Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 32.

21 RacingThePlanet cited evidence from Dr Kim Hames and Mr Andrew Hewat. Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, pp. 32-34. The Committee notes that Mr Hewat's evidence refers only to the risk of fire in events for which he is the Race Director and does not discuss the risk of fire to the 2011 Kimberley Ultramarathon. Dr Kim Hames, Minister for Tourism, *Transcript of Evidence*, 9 May 2012, pp. 4, 5; Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 2.

problem’.<sup>22</sup> Mr Salerno Snr also stated that the ‘incident was a complete coincidence. It must have been a perfect situation of unfortunate circumstances’.<sup>23</sup> Mr Salerno Snr was not asked if there was a risk of a dangerous fire on the day of the race and did not state that there was not a risk of a dangerous fire on the day of the race.

- 2.6 RacingThePlanet advised the Committee that on the day of the race, the fire danger index published by FESA was “Low Moderate”, the lowest rating on the scale used by FESA. RacingThePlanet states that no fire ban applied and no specific (or general) fire risk warning was issued.<sup>24</sup> The Committee agrees with these statements, however it notes that RacingThePlanet has not provided any evidence to the Committee that it knew this before the race. Moreover, the Committee notes that this fire danger rating is not specific to the course area. There are two fire danger ratings published for the Shire of Wyndham East Kimberley, one for the inland area of the shire, and one for the coastal area.<sup>25</sup> The Shire of Wyndham East Kimberley covers an area of 121,000 square kilometres.<sup>26</sup>

- 2.7 FESA advised the Committee that:

*The combination of a mild fire season in the Kimberley region in 2010, coupled with record rainfall during the 2010/2011 wet season, had seen significant increase in the level of annual grasses and the overall fuel loading within the Kimberley region in 2011.*

*This had also equated to an above average 2011 bushfire season, with the majority of bushfires occurring in remote locations on Pastoral Leases, DEC Reserves and unallocated crown land, with little or no fire suppression activities undertaken due to the limited infrastructure.<sup>27</sup>*

- 2.8 This advice is supported by the *Northern Australian Seasonal Bushfire Outlook 2011*, published by the Bushfire Cooperative Research Centre (Bushfire CRC) and the Australasian Fire and Emergency Services Authorities Council (AFAC) in August 2011. This document is available on the Bushfire CRC’s website and states:

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22 Mr James Salerno Snr, Cattle Operator/Landowner, Salerno Pastoral, *Transcript of Evidence*, 24 April 2012, p. 2.

23 *ibid.*

24 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 34.

25 Bureau of Meteorology, ‘Kimberley/Pilbara Fire Ratings’. Available at: <http://www.bom.gov.au/wa/forecasts/kimberleypilbarafireratings.shtml>. Accessed on 3 August 2012.

26 Shire of Wyndham East Kimberley, ‘About Us’. Available at: [http://www.swek.wa.gov.au/about\\_us](http://www.swek.wa.gov.au/about_us). Accessed on 3 August 2012.

27 Submission No. 16 from Fire and Emergency Services Authority of Western Australia, 3 April 2012, p. 7.

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*The Kimberley and Pilbara are fire-prone landscapes and it is normal for bushfires to occur each year. Above-normal bushfire potential is the chance of fires occurring that may be complex, protracted or could require resources beyond the local capacity.*

*Kimberley: Overall there is an above average bushfire potential. The area has been subject to record-breaking rainfall and this has resulted in significant and widespread grass growth across the region. This assessment is cognisant of the increased prescribed burning being undertaken across the region, but the rainfall and consequent fuel loads are significant.<sup>28</sup>*

- 2.9 FESA advised the Committee that the bushfire season in the Kimberley occurs annually from July to November. The Committee believes that it is reasonable to argue that the FESA Kimberley office had knowledge of the outlook for the 2011 fire season at the time of the 2011 Kimberley Ultramarathon.

- 2.10 In its Fire Investigation Report, FESA stated:

*The fuel loading within the Salerno (Tier) Gorge valley would have been greater than the open plains given the protected areas and greater water supply available due to the small creek. The forward rate of fire spread would have increased with the steep terrain and the high walls and cliffs of the Tier Ranges. The high Tier Range walls would have also influenced the prevailing easterly wind deflecting it off the sides creating a funnelling effect through the valley and gorge areas towards competitors.*

- 2.11 The following photos taken in the Tier Gorge clearly show the high fuel load in certain areas in this part of the course.

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28 Bushfire Cooperative Research Centre and Australasian Fire and Emergency Service Authorities Council, *Fire Note: Northern Australia Seasonal Bushfire Outlook 2011*, August 2011, p. 3.  
Available at:  
[http://www.bushfirecrc.com/managed/resource/northern\\_australia\\_seasonal\\_bushfire\\_outlook\\_2011.pdf](http://www.bushfirecrc.com/managed/resource/northern_australia_seasonal_bushfire_outlook_2011.pdf)



Figure 1: Fuel load in the Tier Gorge, 2 September 2011.<sup>29</sup>



Figure 2: A competitor moves through the Tier Gorge prior to the fire incident, 2 September 2011.<sup>30</sup>



- 2.12 RacingThePlanet's Course Director for the 2011 Kimberley Ultramarathon, Mr Carlos Garcia Prieto, marked the course for the race.<sup>31</sup> This would have required him to walk the entire length of the 100km course from the Emma Gorge airstrip to Kununurra. The Committee expects that Mr Garcia Prieto would have become very familiar with the terrain and should have been using this process to identify risks in the course area.
- 2.13 It is clear in hindsight that there was a higher risk of fire on the course than RacingThePlanet assessed. However, the Committee believes that with the knowledge held by FESA regarding the outlook for the fire season and Mr Garcia Prieto's knowledge of the course, RacingThePlanet had the capacity to obtain an accurate assessment of fire risk on the course prior to the 2011 Kimberley Ultramarathon.

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29 Still taken from: Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

30 *ibid.*

31 Mr Carlos Garcia Prieto, Police Statement, Garcia Police Statement, 4 September 2011, pp. 1-2.

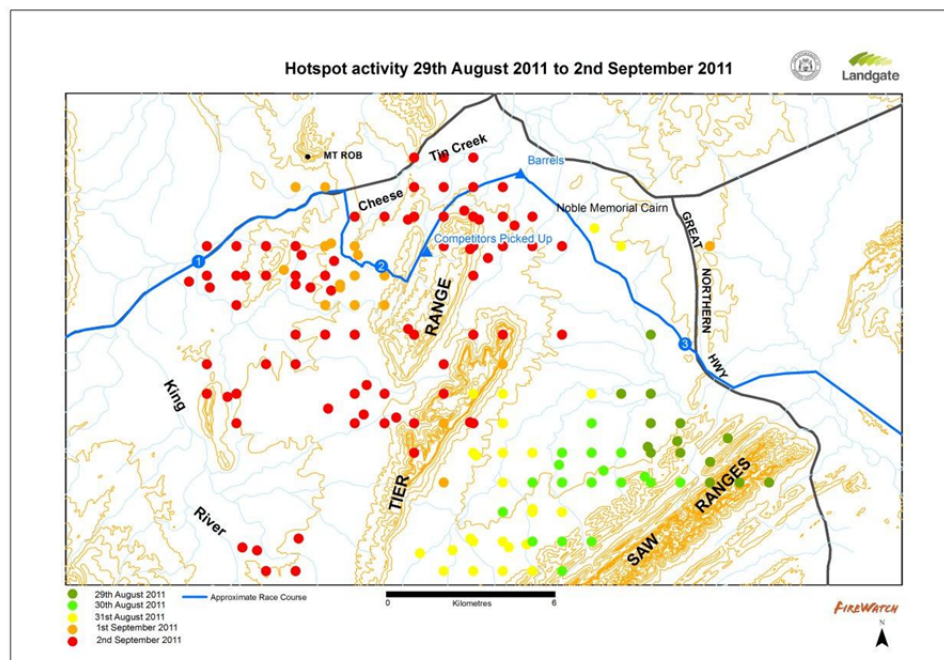
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Unfortunately, as will be discussed later (2.86 below), RacingThePlanet did not contact FESA prior to the race.

### RacingThePlanet's awareness of fires in the course area

- 2.14 Figure 3 below shows fire hotspot activity in the course area in the days leading up to and including the day of the race (2 September 2011). See Appendix One for a detailed explanation of how images of this nature can be created from satellite data which is displayed on bushfire monitoring websites such as Firewatch, North Australian Fire Information (NAFI) and Sentinel in “near” real time.

Figure 3: Hotspot activity between Checkpoint One and Checkpoint Three between 29 August 2011 and 2 September 2011.



- 2.15 RacingThePlanet was aware that there had been fires in the vicinity of the course in the days leading up to the race. On 26 August 2011, Mr John Storey flew Mr Garcia Prieto 'around the course he [Mr Garcia Prieto] had set from the Hall's Creek Road to Dunham and Kununurra/Wyndham Road'.<sup>32</sup> Mr Storey stated in his police statement that as they came over Deception Range into the Dunham Valley, he saw that the country had been 'burnt to complete bareness' and he could see that fire would cross the track through the Dunham Valley within a couple of days.<sup>33</sup> On 29 August 2011, Mr Storey flew Mr Garcia Prieto over the course again and he saw that this fire had burnt over the

<sup>32</sup> Police Statement, Mr John Storey, 9 September 2011, p. 1.

<sup>33</sup> *ibid.*



track through the Dunham Valley, and that the track was safe but the area had been burnt out.<sup>34</sup>

- 2.16 During this flight, Mr Storey also flew Mr Garcia Prieto over to the area around Dillon Springs and the Tier Gorge. Mr Storey stated in his police statement that there were no fires in the area at this stage.<sup>35</sup> The following day, 30 August 2011, Mr Garcia Prieto marked the section of the course between The Barrels (on Dillon Springs Road) and Checkpoint Three and RacingThePlanet staff observed smoke to the south east of the Tier Range.<sup>36</sup>
- 2.17 On 31 August, a member of the RacingThePlanet course team reported that 'some of the ribbons marking the footrace course' on the section between The Barrels and Checkpoint Three had been burned by a 'small, patchy and low intensity spot fire' that the member of the course team observed next to Dillon Springs road.<sup>37</sup> RacingThePlanet stated that '[t]he fire had burnt approximately 3-4 ribbons on this section of the course at sporadic non-consecutive intervals' and these markers were replaced that day.<sup>38</sup>
- 2.18 RacingThePlanet stated that Mr Garcia Prieto and members of the course team did not observe smoke or fire on the eastern side of the Tier Range on this day.<sup>39</sup> RacingThePlanet stated that by 2 September 2011, the area where this spot fire occurred did not show any signs of fire or smoke.<sup>40</sup>
- 2.19 RacingThePlanet submitted that:
- When Mr Garcia Prieto drove past the Tier Range along the Gibb River Road on 1 September 2011, he did not observe smoke or fire on or near the Tier Range.<sup>41</sup>
  - Mr Garcia Prieto and other RacingThePlanet staff observed a small grass fire on the south side of the Gibb River road near the turn off to Checkpoint Two.<sup>42</sup>
  - some course markers had been burned at 'sporadic non-consecutive intervals' and that these markers appeared to have been burned by this small grass fire.<sup>43</sup>

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34 Police Statement, Mr John Storey, 9 September 2011, p. 1.

35 *ibid.*

36 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, p. 23.

37 *ibid.*, pp. 23-24.

38 *ibid.*, p. 24.

39 *ibid.*

40 *ibid.*

41 *ibid.*

42 *ibid.*

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- Mr Garcia Prieto replaced approximately 10-12 markers between Checkpoints One and Two.<sup>44</sup>

- 2.20 According to RacingThePlanet, this spot fire remained burning on the day of the race, but had died down. RacingThePlanet advised the Committee that the location appeared not to pose a danger to competitors because the course was on the opposite (northern) side of the Gibb River Road and the fire was unlikely to be able to cross the road given its width and the absence of fuel on the road.<sup>45</sup> The Committee notes that in fact the course required the competitors to cross the Gibb River Road and head towards Checkpoint Two through the bush along a dirt track in the vicinity of this fire. However, the Committee also notes that the evidence it has received indicates that Mr Garcia Prieto was particularly vigilant in monitoring this fire, and while many competitors observed the fire, no injury eventuated.
- 2.21 The evidence given by RacingThePlanet indicates to the Committee that RacingThePlanet was aware that there had been fires on, and in the vicinity of, the course prior to and on the day of the 2011 Kimberley Ultramarathon. The evidence given by RacingThePlanet (as described in paragraphs 2.15 through 2.19 above) also indicates to the Committee that RacingThePlanet was aware that fire had the potential to appear within a short space of time in a location where fire had not been observed previously.
- 2.22 Despite this knowledge, RacingThePlanet appears to have given little consideration to the potential for fires to cross the course while the race was in progress. What little thought there was seems to have been given to the markers being burned and the competitors getting lost, rather than the competitors encountering a fire, regardless of its size.
- 2.23 The Committee notes that on 27 August 2011, the day after Mr Storey had flown Mr Garcia Prieto over the course and seen the fire in the Dunham Valley, Mr Storey sent an email to then-President of the Shire of Wyndham East Kimberley (SWEK), Mr Fred Mills regarding the race and the potential impact of this fire. Mr Storey's email stated:

*The route comes down the Dunham valley alongside the Dunham river and past Flying Fox waterhole. The fire that is still burning in that valley has been allowed to come unchecked right across from the main road completely annihilating the country that they will pass through. Its present position and rate of travel will put it on the track that they will be running on in the Dunham valley on about Friday when they would be coming through. Even now this fire could be put out with two*

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43 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, p. 24.

44 *ibid.*

45 *ibid.*

*passes with Lance's plane. It will make great headlines in the paper when we see 'International Race Cancelled due to Disinterest by Shire'[,] The charred landscape should make a good backdrop for the film's tourist promotion too.*

- 2.24 The fact that Mr Storey believes there is potential for the race to be cancelled if the fire is not suppressed indicates that fire is a higher risk than what seems to have been contemplated by RacingThePlanet. Mr Storey was not a volunteer for the 2011 Kimberley Ultramarathon and assisted RacingThePlanet staff in the preparation of the course as a friend, not in an official capacity. However, the Committee believes it would have been reasonable for Mr Garcia Prieto or other staff of RacingThePlanet to ask Mr Storey's opinion of the fire observed on 26 August 2011.
- 2.25 The Committee is not aware whether Mr Storey discussed this issue with RacingThePlanet staff. Had RacingThePlanet staff asked Mr Storey's opinion of this fire and its potential to affect the race, RacingThePlanet's assessment of fire risk may have changed.

#### **Finding 1**

RacingThePlanet was aware that there had been fires on, and in the vicinity of, the course prior to and on the day of the 2011 Kimberley Ultramarathon. RacingThePlanet should have been aware that there was a risk of fire posed to the competitors, employees, contractors, spectators and volunteers.

- 2.26 The warnings and information given to competitors by RacingThePlanet about these fires is addressed in Part Three of this chapter: Maintaining the safety of competitors, employees, contractors, spectators and volunteers.

#### **Communication and Consultation**

- 2.27 In order to evaluate RacingThePlanet's actions in regards to risk assessment and management for the 2011 Kimberley Ultramarathon, the Committee has referred to ISO 31000:2009, which is the international standard for risk management.<sup>46</sup> The Committee believes that ISO 31000:2009 reflects a reasonable benchmark for risk management.
- 2.28 ISO 31000:2009 states that an organisation 'should identify sources of risk, areas of impacts, events (including changes in circumstances) and their causes and their potential consequences'.<sup>47</sup> Specifically, ISO 31000:2009 states that '[r]elevant and up-to-date information is important in identifying risks' and '[p]eople with appropriate

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<sup>46</sup> ISO is the acronym for the International Organization for Standardization.

<sup>47</sup> International Organization for Standardization, ISO 31000:2009, Risk Management – Principles and Guidelines, p. 17.

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knowledge should be involved in identifying risks'.<sup>48</sup> ISO 31000:2009 also states that '[c]ommunication and consultation with external and internal stakeholders should take place during all stages of the risk management process'.<sup>49</sup> Communication and consultation is defined as 'continual and iterative processes that an organization conducts to provide, share or obtain information, and to engage in dialogue with stakeholders regarding the management of risk'.<sup>50</sup>

- 2.29 The Committee notes that RacingThePlanet's general attitude is that it is not responsible for initiating communication and consultation with external stakeholders or local expert bodies or agencies regarding its management and risk assessment plan. RacingThePlanet has stated in its submissions that no government agency, landowner or third party requested a copy of RacingThePlanets risk management plan, and that RacingThePlanet would have welcomed the opportunity for government agencies to review and comment on the plan.<sup>51</sup> Additionally, at a hearing on 2 May 2012, Ms Gadams stated: 'I do not view ourselves as any different from tourists there. We expect, as guests of the government, that we are there as tourists'.<sup>52</sup>
- 2.30 The Committee cannot agree with RacingThePlanet's assertion that it should have been treated as a tourist. RacingThePlanet is a commercial organisation which arranged the 2011 Kimberley Ultramarathon as part of its commercial operations. It is the Committee's position that the responsibility for initiating and maintaining communication and consultation with stakeholders in relation to risk identification, assessment and management lies with the organisation creating and implementing the plan—in this case RacingThePlanet—not with its stakeholders.
- 2.31 RacingThePlanet advised the Committee that it notified the following agencies/organisations/individuals of the 2011 Kimberley Ultramarathon prior to the day of the race:<sup>53</sup>
- Shire of Wyndham East Kimberley
  - The Fire and Emergency Services Authority (via the Kununurra Visitors Centre)

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48 International Organization for Standardization, ISO 31000:2009, Risk Management – Principles and Guidelines, p. 17.

49 *ibid.*, p. 14.

50 International Organization for Standardization, ISO 73:2009, Risk Management – Vocabulary, p. 3.

51 Submission No. 13(A) from RacingThePlanet Events Limited, 2 May 2012, pp. 4-5; Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 11.

52 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 7.

53 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, p. 18; Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 80.

- The Department of Environment and Conservation in Kununurra
- Kununurra Visitors Centre
- The Western Australian Police in Perth and Kununurra
- WA Health (DoH)
- Kununurra District Hospital
- St John Ambulance
- Heliwork
- Department of Indigenous Affairs
- Eventscorp

2.32 RacingThePlanet also advised the Committee that it sought consent to conduct the 2011 Kimberley Ultramarathon from:

- Relevant landowners/authorities/occupiers, including the Shire of Wyndham East Kimberley, El Questro Wilderness Park, the Salerno family, Ivanhoe Station and Doon Doon pastoral lease
- Traditional owners<sup>54</sup>

2.33 RacingThePlanet also advised the Committee that Kimberley residents John and Ann Storey and local volunteers were aware the event would be taking place.

2.34 The Committee has analysed RacingThePlanets interactions with the agencies and organisations identified in the DoH publication *Guidelines for concerts, events and organised gatherings* as being stakeholders for events held in Western Australia.<sup>55</sup> These agencies and organisations are:

- the Local Government Authority (Shire of Wyndham East Kimberley);
- DoH;
- the local hospital/health care provider (Kununurra District Hospital);
- local St John Ambulance service;
- Police;

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<sup>54</sup> Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, pp. 17-18.

<sup>55</sup> Department of Health referred RacingThePlanet Events Limited to this document on 12 April 2011 (see paragraph 2.41 below).

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- emergency services (FESA); and
- Department of Environment and Conservation.

2.35 The Committee has also analysed the interactions of RacingThePlanet with the following stakeholders that are directly relevant to the 2011 Kimberley Ultramarathon:

- Relevant landowners/authorities/occupiers, including El Questro Wilderness Park, the Salerno family, Ivanhoe Station and Doon Doon pastoral lease; and
- Kimberley residents including John and Ann Storey and local volunteers.

2.36 The Committee has analysed these interactions in order to determine whether these interactions could have assisted RacingThePlanet in identifying the risks associated with the 2011 Kimberley Ultramarathon. The Committee does not believe that merely notifying these agencies of the fact of the event's occurrence amounts to communicating and consulting with them to identify risks, and it does not satisfy the international standard on risk management, ISO 31000:2009.

2.37 The evaluation that follows demonstrates that RacingThePlanet's communication and consultation with relevant authorities and experts in regard to its risk identification process and its management and risk assessment plan was generally inadequate.

2.38 The responses of the abovementioned government agencies to contact from RacingThePlanet will be addressed in Chapter 6, under term of reference (e). RacingThePlanet's interactions with Tourism WA/Eventscorp will be addressed in Chapters 3 and 4, under terms of reference (b) and (d).

2.39 Notwithstanding the content of any findings the Committee makes in these later chapters, it retains the view that the main responsibility for planning and conducting the event, including communication and consultation with relevant local authorities and stakeholders regarding risk identification and mitigation, rested with RacingThePlanet.

### **WA Health (including Kununurra District Hospital and St John Ambulance)**

2.40 Aside from Tourism WA, the department with which RacingThePlanet had the most contact was DoH. RacingThePlanet first contacted DoH in relation to the 2011 Kimberley Ultramarathon via a letter dated 26 January 2011. Ms Gadams wrote to Dr Andrew Robertson, Director, Disaster Management, Regulation and Planning, Department of Health and requested advice and approval on the medical side of the event.<sup>56</sup> Specifically, RacingThePlanet asked if there was any information DoH would

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<sup>56</sup> Submission No. 4 from Department of Health, 29 March 2012, Appendix D, p. 1.

like it to provide or anyone it should inform before the event took place.

RacingThePlanet also sought clarity on the following questions:

1. *Is there anything we need to do in order to have international doctors working at the event?*
2. *Is there any reason why we cannot have medical doctors from Western Australia and / or other States in Australia as part of the medical team?*
3. *We plan to bring most of our own standard medical supplies – this is mainly to ensure that we have what’s needed for the event – is there any issue with this?*
4. *Is there anything else that we need to do from a medical standpoint in order to stage this event?*<sup>57</sup>

2.41 In response, in a letter dated 12 April 2011, Dr Robertson provided advice on the approval process for visiting medical professionals and the import of therapeutic substances.<sup>58</sup> Dr Robertson also directed RacingThePlanet to the ‘Medical, first aid and public health considerations’ in Section 4, Guideline 6 of the *Guidelines for concerts, events and organised gatherings* which includes an event Medical Risk Classification Tool.<sup>59</sup>

2.42 The particular section to which DoH directed RacingThePlanet was the Medical Risk Classification Tool.<sup>60</sup>

*The primary purpose of this tool is to determine the specific medical risks, the location and medical resources available to the public, and determines the level of medical planning required for an event, and the need for a medical intervention plan for an event.*<sup>61</sup>

2.43 The Tool allocates a rating for the event type, number, age and type of people attending, event location, availability of and distance to health resources, the duration of the event, alcohol consumption, probability of drug use, and the time and season of the event. The score for each category is added to give a total score and this is compared to the range provided for each of the medical risk categories; Low, Medium, High and Extreme.

2.44 The Committee will not attempt to categorise the 2011 Kimberley Ultramarathon. The Committee notes however, that notification of the local St John Ambulance and local hospital/health care provider is recommended for all medical risk categories.

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57 Submission No. 4 from Department of Health, 29 March 2012, Appendix D, pp. 1-2.

58 *ibid*, Appendix E, p. 1.

59 *ibid*.

60 *ibid*, Appendix B, p. 36.

61 *ibid*.

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Additionally, the minimum period for which all relevant agencies require notification ranges from four weeks for low risk to 28 weeks for extreme risk events. Provision of on-site medical teams is only required for extreme risk events, but this does not negate the requirement to notify the local St John Ambulance service and local hospital/health care provider.<sup>62</sup>

- 2.45 The Committee notes that DoH directed RacingThePlanet's attention specifically to the Medical Risk Classification Tool in this document. However, the link provided by DoH directs to the document as a whole, not just this section. RacingThePlanet was aware of, and had access to, the information contained in the *Guidelines for concerts, events and organised gatherings* in April 2011. The Committee notes that in one of its supplementary submissions, RacingThePlanet refers to the summary table of the key roles and responsibilities of stakeholders during the event phases,<sup>63</sup> which is not contained in the section to which it was directed.
- 2.46 The section in which this summary table appears provides advice on approvals and applications, and key roles and responsibilities that are specific to Western Australia. The guidelines indicate the importance of communicating with local government, stating:

*Local government, often referred to as the 'Local Council', is the key organisation as far as events are concerned; it is the only organisation that is involved with every event. Local councils have a number of statutory responsibilities across a variety of legislation. Local government should be the first organisation to contact.*<sup>64</sup>

- 2.47 The guidelines detail the roles and responsibilities of the key government agencies, Local Government, Police, DEC, and Department of Racing, Gaming and Liquor, during all phases of the event planning, conduct and debrief. Each of these agencies should be involved in the event approvals and applications phase, with DEC involvement in the risk management process being particularly recommended for large, high-risk or unusual events.<sup>65</sup>
- 2.48 The guidelines also provide advice on developing a risk management plan. A scenario is provided in which an event manager develops a risk management plan for a concert on private land with an estimated attendance of 10,000 people.<sup>66</sup> While the type of event and participation numbers are vastly different to that of the 2011 Kimberley Ultramarathon, the Committee's view is that the advice given is still applicable. In step two, where risks are identified, the event manager 'meets with the local government,

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62 Submission No. 4 from Department of Health, 29 March 2012, p. 38.

63 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 75.

64 Submission No. 4 from Department of Health, 29 March 2012, Appendix B, p. 8.

65 *ibid*, pp. 13 – 16.

66 *ibid*, p. 29.



stakeholders and the farmer who owns the site on which the event is to be held. Together they do a brainstorming session for potential risks associated with a rock concert at that location'.<sup>67</sup>

- 2.49 This document informs event managers that they should work closely with local government and key stakeholders to gain appropriate approvals, identify risks and ensure an appropriate level of medical and emergency services is available.
- 2.50 DoH has provided copies of all correspondence between the department and RacingThePlanet. After DoH's reply to RacingThePlanet's initial letter in April 2011, all correspondence until a few days before the race was in relation to the exemption for RacingThePlanet's medical team.<sup>68</sup> No further mention is made of the guidelines provided by DoH and RacingThePlanet does not request any additional information from the department.
- 2.51 On 25 August 2011, Muriel Leclercq, Manager Disaster Preparedness and Management Unit at DoH, sent an email to 18 individuals in DoH and WA State Ambulance Service advising details of the 2011 Kimberley Ultramarathon. This email provides information only, and does not request any action from any of the recipients. Ms Leclercq advised that '[s]hould any athletes or support staff become ill or injured, normal processes apply'.<sup>69</sup>
- 2.52 This email was forwarded to WA Country Health Service's East Kimberley Operations Manager, Mr Damian Jolly, Dr Erik Beltz, Senior Medical Officer, WACHS and Ms Lianne Macpherson, Clinical Nurse Manager, all of whom are based at Kununurra Hospital. Subsequent to these emails, on 29 August 2011, Ms Macpherson advised Ms Leclercq that she would be the hospital's liaison person and requested contact details for RacingThePlanet.<sup>70</sup>
- 2.53 On 31 August 2011, a meeting was held at the Kununurra District Hospital between staff of RacingThePlanet and staff of DoH. This meeting was convened at the request of DoH.<sup>71</sup> Dr Robertson advised the Committee that Ms Macpherson attended that meeting and 'received assurances regarding the medical planning and support for the event' and RacingThePlanet 'confirmed that they had their own registered medical team, sufficient medical supplies, communications, and evacuation facilities'.<sup>72</sup> However, '[n]o medical plan or risk assessment was produced at the meeting. So while

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67 Submission No. 4 from Department of Health, 29 March 2012, Appendix B, p. 29.

68 This correspondence will be discussed under the evaluation of RacingThePlanet's interactions with St John Ambulance and Kununurra District Hospital at paragraphs 2.53 to 2.60.

69 Supplementary Item B, Department of Health, 17 May 2012, Attachment 5f, p. 1.

70 *ibid*, Attachment 5h, p. 3.

71 Dr Andrew Robertson, Acting Executive Director, Public Health and Clinical Services, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 8.

72 *ibid*.

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they had verbal assurances, they were not given any written evidence of what that might be'.<sup>73</sup>

- 2.54 Of this meeting, RacingThePlanet advised that its staff and the Medical Director 'discussed potential medical risks associated with the footrace and evacuation procedures for injured competitors, including where an ambulance would meet staff from RacingThePlanet near the footrace course in the event an ambulance was called to assist with an evacuation.'<sup>74</sup>
- 2.55 RacingThePlanet advised the Committee that it was 'not told by hospital staff, nor anyone else, that it should put St John's Ambulance on "stand-by"'.<sup>75</sup> The Committee has not received any evidence that anyone advised RacingThePlanet to put St John Ambulance on "stand-by", however RacingThePlanet was advised to contact St John Ambulance. On 30 August 2011, Ms Hanninen and Ms Gadams met with Mrs Nadia Donnelly, Marketing Manager at the Kununurra Visitors Centre, and requested some specific advice. This meeting and the advice are discussed in more detail beginning at paragraph 2.72 below. As a result of this request, on 31 August 2011, Mrs Donnelly advised Ms Hanninen and Ms Gadams that Mr Tony Stevenson, Fire Services Manager at FESA in Kununurra had requested they contact the Kununurra Hospital, St John Ambulance, the chemist and a local helicopter company.
- 2.56 RacingThePlanet advised the Committee that it 'either already had, or did, notify each of those prior to the footrace'.<sup>76</sup> In respect of St John Ambulance, the Committee finds that RacingThePlanet's statement is incorrect. At a hearing on 23 April 2012, Mr Philip Strapp, Regional Manager, St John Ambulance advised the Committee that RacingThePlanet did not contact St John Ambulance at the regional level prior to the 2011 Kimberley Ultramarathon.<sup>77</sup> The evidence received by the Committee does not indicate that RacingThePlanet had any contact with St John Ambulance prior to the 2011 Kimberley Ultramarathon.
- 2.57 RacingThePlanet has drawn the Committee's attention to the fact that St John Ambulance was represented at a Health Services Subcommittee meeting held at DoH's Head Office in East Perth on 14 February 2011, at which the 2011 Kimberley Ultramarathon was discussed.<sup>78</sup> RacingThePlanet has also drawn the Committee's

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73 Dr Andrew Robertson, Acting Executive Director, Public Health and Clinical Services, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 8.

74 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 94.

75 *ibid.*, p. 48

76 *ibid.*, p. 80.

77 Mr Philip Strapp, Regional Manager, St John Ambulance, *Transcript of Evidence*, 23 April 2012, p. 2.

78 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 90.

attention to the email from Ms Leclercq on 25 August 2011, which was sent to the 'Manager State Ambulance Officer'.<sup>79</sup>

- 2.58 The response of various organisations and agencies that were represented at that meeting and included on that email will be discussed in Chapter 6. However, the Committee notes that RacingThePlanet has not provided any evidence to the Committee that it was aware before the 2011 Kimberley Ultramarathon that the Health Services Subcommittee meeting had taken place. The Committee also believes that RacingThePlanet would have become aware of the email from Ms Leclercq on 29 August 2011 at the earliest, when Ms Sampson forwarded it to RacingThePlanet as part of a long email chain which culminated in Ms Sampson requesting contact details be passed to Ms Macpherson.
- 2.59 The Committee remains of the view that RacingThePlanet did not contact St John Ambulance prior to the 2011 Kimberley Ultramarathon despite being advised to by the KVC.
- 2.60 The Committee also considers that RacingThePlanet should have been more pro-active in seeking comment on its overall risk management plans during its consultation with DoH.

#### Shire of Wyndham East Kimberley (SWEK)

- 2.61 RacingThePlanet notes that Mr Fred Mills, the former President of SWEK (who was President of SWEK until October 2011) gave evidence to the Committee to the effect that he was aware not long after the 2010 event that RacingThePlanet proposed to run another event in 2011 and that he received newsletters about the 2011 Kimberley Ultramarathon in the months leading up to the event.<sup>80</sup> Mr Mills stated that he was unsure how long before the 2011 race he heard about it, saying:

*From the 2010 race, I was on a mailing list from RacingThePlanet. Every month, or whatever it was, a newsletter would come. Sometimes I would read it, sometimes I would not, but it was there. I knew they had planned to have this particular style of race, a shortened version. I guess the first I knew they proposed to do that was not long after the first race.*<sup>81</sup>

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79 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, pp. 90-91. RacingThePlanet has incorrectly identified one recipient, Ms Linda Winn, as working for WA State Ambulance Service. As Ms Winn's email address indicates, she is an employee of the NSW State Ambulance Service.

80 *ibid.*, p. 85.

81 Mr Fred Mills, Former Shire President, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 8.

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- 2.62 Mr Mills also stated that he was also aware of the race through publicity, his relationship with John and Ann Storey, and as a member of the North West Tourism Committee.<sup>82</sup>
- 2.63 The Committee does not believe that RacingThePlanet can reasonably assume that SWEK was aware of the event because Mr Mills was on a RacingThePlanet mailing list as a result of having been a contracted bus driver for the 2010 race. Additionally, RacingThePlanet has not provided any evidence to the Committee that it knew before this Inquiry commenced that Mr Mills was aware of the 2011 event.
- 2.64 The Committee notes that Mr John Storey communicated with Mr Mills (then Shire President) about the fires in the course area twice in the week before the race. This contact was not initiated by RacingThePlanet and did not involve RacingThePlanet staff.
- 2.65 The evidence presented to the Committee indicates that RacingThePlanet did not contact Mr Mills directly in his role as Shire President in relation to the 2011 Kimberley Ultramarathon. Further, the Committee believes it would have been more appropriate for RacingThePlanet to contact SWEK's Chief Executive Officer, Mr Gary Gaffney, in relation to the event, or to formally approach the Shire. At a hearing on 23 April 2012, Mr Gaffney advised the Committee that he had never met representatives of RacingThePlanet.<sup>83</sup>
- 2.66 The Shire of Wyndham East Kimberley (SWEK) states that it became aware of the event on 17 August 2011 through a booking request to use Celebrity Tree Park in Kununurra as the finish line for the 2011 Kimberley Ultramarathon.<sup>84</sup> On 15 August 2011, Ms Christine Roe, Recreation Officer at SWEK, received a telephone call from Ms Riitta Hanninen regarding the hire of Celebrity Tree Park.<sup>85</sup> On 17 August 2011, Ms Roe emailed some forms to Ms Hanninen and requested they be completed in order to confirm the booking.<sup>86</sup>
- 2.67 On Tuesday, 23 August 2011, Ms Hanninen responded to this email and attached the completed forms. Ms Hanninen noted that the event did not exactly match the form and chose to provide more detail about the event in the email.<sup>87</sup> Ms Hanninen provided a large amount of detail about the event in this email and addressed a number of points which the Committee has observed in SWEK's events application packages, including insurance and risk management. There appears to have been some

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82 Mr Fred Mills, Former Shire President, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 6.

83 Mr Gary Gaffney, Chief Executive Officer, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 23 April 2012, p. 14.

84 *ibid.*, p. 7.

85 Supplementary Item A, Shire of Wyndham East Kimberley, 15 May 2012, p. 7; Submission No. 13(A) from RacingThePlanet Events Limited, 22 May 2012, p. 85.

86 Supplementary Item A, Shire of Wyndham East Kimberley, 15 May 2012, p. 7.

87 *ibid.*, pp. 6-7.

requirement for risk assessment documents in the forms Ms Hanninen received as she addressed this specifically towards the end of the email by stating: 'I haven't included risk assessment documents in this application. If they are required, could you please email me the forms'.<sup>88</sup> SWEK provided evidence to the Committee that it did not request a copy of the risk assessment as it was not required for the type of use of the park facility (as a finish line) that RacingThePlanet had booked.<sup>89</sup>

- 2.68 RacingThePlanet only contacted SWEK for the specific purpose of hiring Celebrity Tree Park as the finish line for the 2011 Kimberley Ultramarathon.
- 2.69 RacingThePlanet offered to provide its risk management plan to the Shire if required, but this offer was only made on 23 August 2011 as part of a specific request to book Celebrity Tree Park for the finish line of the 2011 Kimberley Ultramarathon.
- 2.70 In the Committee's view, RacingThePlanet should have sought SWEK's feedback on its risk management plan as a stand-alone issue. Additionally, RacingThePlanet should have done so within a reasonable time frame to allow SWEK to respond. This proactive approach is consistent with the International Standard on Risk Management (see 2.28 above).
- 2.71 Further, the Committee is concerned that RacingThePlanet was only making arrangements to hire a facility for the finish line of the race on 15 August 2011.

#### Department of Environment and Conservation

- 2.72 At around 11:00am on 30 August 2011, Mrs Nadia Donnelly, Marketing Manager at the Kununurra Visitors Centre (KVC)<sup>90</sup> met with Ms Mary Gadams and Ms Hanninen.<sup>91</sup> They discussed what KVC 'could offer in the way of gifts as well as the local emergency contact numbers and safety'.<sup>92</sup> Ms Gadams and Ms Hanninen were concerned about the possibility of a crocodile in Fletchers Creek and bush fires in the area and Mrs Donnelly advised she would make some calls and get back to them.<sup>93</sup>
- 2.73 In the afternoon of 30 August 2011, Mrs Donnelly contacted Mr Luke Bentley at the Department of Environment and Conservation in Kununurra to enquire about the crocodile in Fletchers Creek.<sup>94</sup> In an email to Ms Gadams and Ms Hanninen at 4:08pm that day, Mrs Donnelly provided Mr Bentley's contact details and advised that DEC

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88 Supplementary Item A, Shire of Wyndham East Kimberley, 15 May 2012, p. 7.

89 *ibid.*, p. 5.

90 See paragraph 6.179 below for a description of the Kununurra Visitor Centre.

91 Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 1.

92 *ibid.*

93 *ibid.*

94 *ibid.*

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would be happy to do an assessment but would need to know the exact route (of the course).<sup>95</sup>

- 2.74 Ms Samantha Fanshawe contacted DEC on 31 August 2011 and Mr Bentley returned her call the same day.<sup>96</sup> Ms Fanshawe requested specific advice 'regarding the risk of estuarine crocodiles in rivers around Kununurra' and Mr Bentley requested that a map be provided.<sup>97</sup> That day someone provided 'an A4 black and white map to the DEC office in Kununurra'<sup>98</sup> which 'indicated main roads, a number of watercourses, the Kununurra townsite and the proposed route of the race'.<sup>99</sup>
- 2.75 After looking at the map Mr Bentley contacted Ms Fanshawe and advised that where the course crossed the Dunham River, there was a risk of estuarine crocodiles being present.<sup>100</sup> Mr Bentley recommended that competitors be ferried across the river in a vehicle and Ms Fanshawe 'verbally agreed to comply with this recommendation'.<sup>101</sup>
- 2.76 Ms Fanshawe then asked about fires in the area and Mr Bentley advised that he 'was not aware of any fires, and as the route did not cross any DEC-managed land, that [DEC] could not provide any advice on that and she would need to contact the FESA office in Kununurra'.<sup>102</sup> Ms Fanshawe asked again if Mr Bentley could provide some advice and again he advised she would need to contact FESA.<sup>103</sup> Mr Bentley provided Ms Fanshawe with Mr Stevenson's name and contact telephone number and she indicated that she intended to contact FESA.<sup>104</sup>
- 2.77 RacingThePlanet contacted DEC two days before the 2011 Kimberley Ultramarathon to request advice about a crocodile in Fletchers Creek and about fires in the area. DEC provided advice about the crocodile and advised RacingThePlanet to contact FESA in respect of the fires.
- 2.78 RacingThePlanet's contact with DEC indicates that it had some concern about the risk of fire in the vicinity of the course. While RacingThe Planet acted on the advice given regarding crocodiles,<sup>105</sup> it did not act on DEC's advice to contact FESA. Further, while RacingThePlanet contacted DEC in regards to specific risks identified in the preparation

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95 Mrs Nadia Donnelly, Police Statement, 7 September 2011, Attachment.

96 Mr Luke Bentley, Police Statement, 28 September 2011, p. 1.

97 Submission No. 14 from Department of Environment and Conservation, 4 April 2012, p. 1.

98 Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 2.

99 Submission No. 14 from Department of Environment and Conservation, 4 April 2012, p. 1.

100 *ibid.*

101 *ibid.*

102 Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 2.

103 *ibid.*, pp. 2-3.

104 Submission No. 14 from Department of Environment and Conservation, 4 April 2012, p. 2.

105 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 9.

of the course, the Committee believes that RacingThePlanet's risk identification process would have benefited from earlier consultation with DEC.

#### Fire and Emergency Services Authority

- 2.79 In response to Ms Gadams and Ms Hanninen's request for information mentioned in paragraph 2.72 above, on the afternoon of 30 August, KVC's Mrs Donnelly contacted Mr Tony Stevenson, Fire Services Manager at FESA in Kununurra, and left a message for him to contact her. In the email that Mrs Donnelly sent to Ms Gadams and Ms Hanninen at 4:08pm that day, she advised that Mr Stevenson had not called her back but it was likely that he would need to know the course route so he could look at the current fires burning. Mrs Donnelly also provided Mr Stevenson's contact details.<sup>106</sup>
- 2.80 Mr Stevenson returned Mrs Donnelly's call at around 4:30pm that same day and advised that he hadn't heard anything about the race.<sup>107</sup> Mr Stevenson asked Mrs Donnelly to make sure that RacingThePlanet contacted the Kununurra Hospital, St John's Ambulance, the chemist and a local helicopter company (Heliwork).<sup>108</sup> At 8:27am on 31 August 2011, Mrs Donnelly sent an email to Ms Gadams and Ms Hanninen advising that she had spoken with Mr Stevenson and that he knew they would be in touch with him but he asked if they had contacted the four agencies/companies mentioned above.<sup>109</sup> Mrs Donnelly stated that if they had not, she would get the contact details for them.<sup>110</sup>
- 2.81 RacingThePlanet concede that Mr Stevenson requested a map of the race area.<sup>111</sup> According to RacingThePlanet this request was the only government request with which RacingThePlanet did not promptly comply, and attributed this failure to inadvertence.<sup>112</sup>
- 2.82 Mr Stevenson's evidence is that RacingThePlanet did not contact him prior to the event or provide him with a map of the course.<sup>113</sup>
- 2.83 When asked at a hearing why RacingThePlanet had not sought contact with FESA prior to 30 August 2011, Ms Gadams replied: 'Our race was actually staged on private land, except a little section at the end. We were told by multiple people that FESA would not

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106 Mrs Nadia Donnelly, Police Statement, 7 September 2011, Attachment.

107 Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 2

108 *ibid*, p. 3.

109 Mrs Nadia Donnelly, Police Statement, 7 September 2011, Attachment.

110 *ibid*.

111 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 80.

112 *ibid*.

113 Mr Tony Stevenson, Fire Services Manager, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, p. 2.

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want to be involved in something on private land'.<sup>114</sup> When asked by the Committee who told her that, Ms Gadams replied: 'Numerous people located in the area'.<sup>115</sup>

- 2.84 The issue of whether the race was being held on private land will be addressed in Chapter 6.
- 2.85 As indicated in paragraph 2.76 above, Ms Fanshawe clearly wanted advice about fires, however she did not contact FESA, despite being advised to do so by DEC and KVC.
- 2.86 The Committee finds that RacingThePlanet did not contact FESA prior to the 2011 Kimberley Ultramarathon.

### Western Australia Police

- 2.87 RacingThePlanet states that on 15 August 2011, Ms Riitta Hanninen contacted Western Australia Police in Perth and spoke with Senior Constable Tony Watson of the Permits and Parades Section.<sup>116</sup> SC Watson cannot remember the exact date, but vaguely recalls speaking to a lady who advised that 'she was organising another off road marathon in the North West' and that 'there were a small number of runners and they would only be on the road for a short distance 'crossing a bridge''.<sup>117</sup> SC Watson stated that his standard advice is that 'in accordance with the Road Traffic Code, provided there are no signs prohibiting pedestrians (e.g. on Freeways) otherwise where no footpaths are provided, pedestrians are entitled to walk or run in single file (or two abreast when overtaking a slower walker/runner) on the right side of the carriageway facing oncoming traffic'.<sup>118</sup> SC Watson also recalled that the lady advised there were no road closures required and there would be little impact on passing traffic.<sup>119</sup>
- 2.88 On 16 August 2011, Ms Hanninen sent an email to the Kununurra Police Station, attention to the Officer in Charge, advising of the event and providing details on the start and finish times, location, competitor and staff numbers and the course.<sup>120</sup> Ms Hanninen's email also stated that the event medical team had been approved by DoH, that they were in the process of applying for a permit from the Kununurra Leisure

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114 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 9.

115 *ibid.*, p. 9.

116 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 82.

117 Memorandum from Senior Constable Watson 7341, Permits and Parades Officer, Traffic Coordination Unit, to Sergeant Sutton, OIC Traffic Coordination Unit, 5 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

118 *ibid.*, p. 2.

119 *ibid.*

120 Email from Riitta Hanninen to Kununurra Pol Stn SMAIL, 16 August 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.



Department (sic) to finish the event in Celebrity Tree Park and that private land owners had been contacted for permits.<sup>121</sup>

- 2.89 Ms Hanninen requested her email be acknowledged and for the Police to advise if they required any other details of the event.<sup>122</sup> RacingThePlanet stated that it received a reply from Sergeant Peter Janczyk on 1 September who thanked her for the advice and stated that he had made his staff aware of the event.<sup>123</sup>
- 2.90 The Committee notes that RacingThePlanet did not send this, or a similar, email to Wyndham Police, who have jurisdiction in the El Questro area and the area of the Gibb River Road along which the course was run.<sup>124</sup> In respect of this, RacingThePlanet advised the Committee that 'the WA Police did not inform RacingThePlanet that it would need to inform Wyndham Police about the 2011 Kimberley footrace because the Police in Perth and Kununurra would not pass on the relevant and necessary information to Wyndham Police'.<sup>125</sup> As noted later at 6.135 and 6.136 below, the Committee believes that with the information RacingThePlanet provided, it was reasonable for Kununurra Police to accept the email correspondence as advice only. RacingThePlanet gave the impression that all appropriate permits had, or were, being sought and made no specific request for any assistance or information.
- 2.91 The Committee is also concerned that RacingThePlanet did not advise SC Watson or the Kununurra Police Station of RacingThePlanet's intention to run the course along an almost 12km section of the Gibb River Road.<sup>126</sup> At a hearing on 23 April 2012, Superintendent Michael Sutherland, Kimberley Police District Officer, WA Police, advised the Committee that RacingThePlanet should have contacted WA Police to discuss a traffic management plan.<sup>127</sup> Supt Sutherland also confirmed to the Committee that if WA Police had known RacingThePlanet planned to use the Gibb River Road, approval would have been required.<sup>128</sup>
- 2.92 The Committee notes that in each contact with the WA Police RacingThePlanet did not provide complete information, such as accurate details of the route of the course.

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121 Email from Riitta Hanninen to Kununurra Pol Stn SMAIL, 16 August 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

122 *ibid*.

123 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, pp. 84-85.

124 Submission No. 2 from Western Australia Police, 22 March 2012, p. 6; Western Australia Police, GIS/Mapping Unit, Business Intelligence Office, 'Subdistricts and Stations of the Kimberley District', 10 January 2012, available at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=CNffR%2fuW300%3d&tabid=1120>. Accessed on 2 June 2012.

125 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 112.

126 With the course route changes that occurred in the days before the race, this section was extended by approximately 6km.

127 Superintendent Michael Sutherland, Kimberley Police District Officer, Western Australia Police, *Transcript of Evidence*, 23 April 2012, p. 4.

128 *ibid*.

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- 2.93 In the Committee's view, it would have been highly desirable for RacingThePlanet to have sought the Police's feedback on its risk management plan as a stand-alone issue. This proactive approach is consistent with the International Standard on Risk Management. It is not immediately apparent that RacingThePlanet made enquiries of this nature when it notified WA Police of the event.

Relevant landowners/occupiers - El Questro Wilderness Park, the Salerno family, Ivanhoe Station and Doon Doon pastoral lease

### El Questro and the Salerno family

- 2.94 On 5 May 2010, following the 2010 Kimberley Ultramarathon, Ms Gadams sent an email to Mr Dale Niblett, Operations Manager, El Questro Wilderness Park, thanking him for his help with the event. Ms Gadams also stated that:

*we are considering holding an annual event in the Kimberley, and wanted to know if you and all at ElQ would be interested in working with us on the event. There are a number of things that would work better with a 100 kilometer event.*<sup>129</sup>

- 2.95 On 10 May 2010, Mr Niblett responded to this email, thanking Ms Gadams for her kind words and stating: 'I am pretty sure I speak for everyone when I say that we would love to work with you all on a 100km event I think as an annual event we could create a fantastic experience and form a longlasting relationship for all involved'.<sup>130</sup>

- 2.96 On 17 May 2010, Mr Niblett responded to an email from Ms Gadams (which has not been obtained by the Committee) and advised that he would be the contact for the proposed 100km race in 2011, in consultation with Micko (Mr Michael Bass). Mr Niblett also stated:

*As far as timing goes, September strikes me as the best month due to accommodation availability also the weather will be a little kinder than the April event although I guess with the event being shorter that won't be as much of a factor.*<sup>131</sup>

- 2.97 In his Police statement given after the 2011 event, Mr Niblett stated that Ms Hanninen contacted El Questro in January 2011 in regard to accommodation and touring options.<sup>132</sup> Mr Niblett advised the Committee that in regard to this contact '[n]o

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129 Supplementary Item B, RacingThePlanet Events Limited, 29 May 2012, p. 5.

130 *ibid.*

131 *ibid.*, p. 3.

132 Mr Dale Niblett, Police Statement, 29 October 2010, p. 4.

mention of the nature or timing of the event was made by Riitta Hanninen in January 2011'.<sup>133</sup>

- 2.98 Mr Niblett became concerned that they had not heard anything official from RacingThePlanet about their plans or the proposed course and so he sent an email to Ms Hanninen on 22 August 2011 expressing his concern.<sup>134</sup> The Committee has not obtained a copy of this email, however it understands that the reply from Ms Hanninen indicated that RacingThePlanet had been in correspondence with the Salerno family, who run the pastoral operations on El Questro.<sup>135</sup>
- 2.99 RacingThePlanet advised the Committee that on 10 August 2011, Ms Samantha Fanshawe sent an email to the Salerno family 'seeking permission to pass over some of the land that may have been part of their leasehold'.<sup>136</sup> When Ms Fanshawe did not receive a response, on or around 18 August 2011 she called the Salerno family's office and spoke to a lady named Deborah who informed her:
- (a) *James Salerno was the person to give permission;*
  - (b) *James Salerno was out mustering cattle and wouldn't be contactable for 10 days;*
  - (c) *Deborah didn't see it being a problem in theory, but it depended on where mustering would occur; and*
  - (d) *Ms Fanshawe should send Deborah a map of the course and the dates so she could pass them on to James Salerno.*<sup>137</sup>
- 2.100 RacingThePlanet advised that Ms Fanshawe emailed a copy of the map to the Salernos on 18 August 2011 but did not receive a reply.<sup>138</sup>
- 2.101 RacingThePlanet states that on or about 26 August 2011, the Course Director (Mr Carlos Garcia Prieto) met Mr Salerno Snr on the course.<sup>139</sup> The Committee notes that at this stage, RacingThePlanet had not been given permission to be on El Questro property.
- 2.102 Mr Salerno Snr discussed this chance meeting with the Committee at a hearing on 24 April 2012 and indicated that at the time he met Mr Garcia Prieto unexpectedly on the

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133 Supplementary Item A, Gadens Lawyers obo Delaware North El Questro Pty Ltd, 28 May 2012, p. 4.

134 Police Statement, Mr Dale Niblett, 29 October 2011, p. 4.

135 *ibid.*, p. 5.

136 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 7

137 *ibid.*, pp. 7-8.

138 *ibid.*, p. 8.

139 *ibid.*, p. 8

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course he had not been made aware of the race.<sup>140</sup> Mr Garcia Prieto discussed the route with Mr Salerno Snr who advised him that he would not be able to take the route south from Checkpoint One to the area around Matteo Rock, as Mr Salerno Snr was mustering in that area and was also concerned about wild bulls.<sup>141</sup> Mr Garcia Prieto agreed to Mr Salerno Snr's advice and the route was changed to continue along the Gibb River Road after Checkpoint One and turn south down a dirt track closer to the Tier Range.

- 2.103 After Ms Hanninen advised Mr Niblett that RacingThePlanet had been in contact with the Salerno family (2.98 above), Mr Niblett told Ms Hanninen that they should be liaising with El Questro, not the Salerno family.<sup>142</sup> The Committee is concerned that RacingThePlanet chose to contact the Salerno family and not El Questro, particularly as RacingThePlanet had been advised shortly after the 2010 event that Mr Niblett would be the contact for the proposed 2011 event (2.96 above).
- 2.104 On 27 August 2011, Mr Bass held a meeting with Ms Fanshawe, Ms Hanninen and Mr Garcia Prieto at El Questro.<sup>143</sup> In his police statement, Mr Bass notes that this meeting took place two days before the fire [which would later injure the competitors] had started to the south east of El Questro. However, there were two other fires, one near the Argyle Diamond Mine, and another in the Deception Ranges.<sup>144</sup>
- 2.105 Mr Bass advised the representatives of RacingThePlanet of the fire in the Deception Ranges as he assumed that they would be running the course around the back of that area.<sup>145</sup> Mr Bass advised them that they should take care with that fire being along the course and he stated that all three representatives of RacingThePlanet acknowledged that they knew about those fires.<sup>146</sup> Of this conversation, RacingThePlanet stated that RacingThePlanet staff told Mr Bass that they had seen some grass fires and he advised that grass fires burn from time to time in the region.<sup>147</sup>
- 2.106 Mr Bass and the representatives of RacingThePlanet discussed the use of Emma Gorge as the starting point for the 2011 Kimberley Ultramarathon.<sup>148</sup> RacingThePlanet was

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140 Mr James Salerno Snr, Cattle Operator/Landowner, Salerno Pastoral, *Transcript of Evidence*, 24 April 2012, p. 3.

141 Mr James Salerno Snr, Cattle Operator/Landowner, Salerno Pastoral, *Transcript of Evidence*, 24 April 2012, p. 3; Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 9.

142 Mr Dale Niblett, Police Statement, 29 October 2011, p. 5.

143 Police Statement, Mr Michael Bass, 29 October 2011, p. 7.

144 *ibid.*, p. 8.

145 *ibid.*

146 *ibid.*

147 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, p 19.

148 Police Statement, Mr Michael Bass, 29 October 2011, p. 7.

informed that it could use the airstrip at Emma Gorge as the starting point for the race, and then move out onto the Gibb River Road or a service track beside it.<sup>149</sup>

- 2.107 It appears that subsequent to this meeting, Mr Bass heard that RacingThePlanet had changed the route from that which appeared on the map given to El Questro. Mr Bass sent an email to Ms Hanninen on 29 August 2011 and asked her to confirm whether there had been changes. Mr Bass stated that Ms Hanninen did not email a new map with the altered route, instead sending him an email on 30 August 2011 describing the change.<sup>150</sup>
- 2.108 The Committee is not aware that there was any further contact between El Questro and RacingThePlanet before the day of race.
- 2.109 The Committee is concerned that RacingThePlanet did not contact El Questro to seek permission to conduct parts of the 2011 Kimberley Ultramarathon on its property and that the contact had to come from El Questro. The Committee also notes that this permission was requested less than two weeks before the event, and permission was only received five days before the event.
- 2.110 RacingThePlanet stated to the Committee that nobody from El Questro warned RacingThePlanet about fires in the area, 'particularly the fire that started in the vicinity of the Wuggubun Community on 28 August 2011'.<sup>151</sup> The Committee notes that staff from RacingThePlanet met with Mr Bass at El Questro on 27 August 2011, the day before that fire started, and he discussed a fire that was in the course area with them.
- 2.111 The evidence received by the Committee does not indicate that RacingThePlanet requested El Questro to assist with fire monitoring, or to keep it informed of any new fires that developed in the area. Further, RacingThePlanet did not advise El Questro of the change in the course route, that contact had to come from El Questro, and RacingThePlanet did not provide a new course map, merely a description of the change. The Committee believes that by failing to adequately communicate and consult with El Questro, RacingThePlanet deprived itself of potential assistance in monitoring fires in the area (particularly given El Questro's practices in this aspect – see 2.247 through 2.249 below).

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149 Police Statement, Mr Michael Bass, 29 October 2011, p. 7; Submission No. 10 from Gadens Lawyers obo Delaware North El Questro Pty Ltd, 4 April 2012, pp. 3-4.

150 Police Statement, Mr Michael Bass, 29 October 2011, p. 12.

151 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 101. The Committee notes the FESA Fire Investigation report expresses the view that the fire commenced on 29 August 2011, not 28 August 2011 as is suggested by RacingThePlanet in this submission. See, Fire and Emergency Services Authority of Western Australia, 'Fire Investigation Report 189412: Kununurra Bushfire, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 26.

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### Doon Doon and Ivanhoe Station

- 2.112 RacingThePlanet provided evidence to the Committee that it sought permission to pass over land on the Doon Doon pastoral lease on 9 August 2011. Ms Fanshawe contacted Ms Rebecca Sampi, Principal of the Dawul Remote Community School, via email and provided her with a map of the course. RacingThePlanet had been referred to Ms Sampi for any questions they had relating to the Woolah community. Ms Sampi consulted with Mr Ronnie McCale, the manager of the pastoral lease, and permission was granted on 19 August 2011.<sup>152</sup>
- 2.113 The Committee notes that RacingThePlanet sought permission from the Woolah Community to run part of the 2011 Kimberley Ultramarathon over Doon Doon Station less than one month before the event.
- 2.114 RacingThePlanet provided evidence to the Committee that it sought permission to pass over land on the Ivanhoe pastoral lease on 18 August 2011. Ms Fanshawe contacted Mr Geoff Warriner, then Chief Operating Officer of Consolidated Pastoral Company, which leases Ivanhoe, via email and provided a map on request on 19 August 2011. Permission was granted by Ivanhoe Station Manager Stirling Fearon on 19 August 2011.<sup>153</sup>
- 2.115 The Committee notes that RacingThePlanet sought permission from Consolidated Pastoral Company to run part of the 2011 Kimberley Ultramarathon over Ivanhoe Station less than one month before the event.
- 2.116 RacingThePlanet began marketing the 2011 Kimberley Ultramarathon as early as August 2010.<sup>154</sup> The Committee is very concerned that RacingThePlanet did not begin seeking permission from landowners and occupiers to run the course over their land until August 2011.
- 2.117 RacingThePlanet did not communicate or consult with representatives of Doon Doon or Ivanhoe on its management and risk assessment plan or to identify risks associated with the 2011 Kimberley Ultramarathon.

### Kimberley residents including John and Ann Storey and local volunteers

- 2.118 Mr John and Mrs Ann Storey are long-time Kununurra residents, farmers and gyrocopter pilots. Mr Storey has guided many wilderness treks and also works for Outback Initiatives, a Perth-based Human Resources Development company, for which

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152 Supplementary Item B, RacingThePlanet Events Limited, 29 May 2012, pp. 7-9.

153 *ibid.*, pp. 10-12.

154 RacingThePlanet provided Western Australia Police with Miss Kate Sanderson's online registration form, which shows that she registered for, or enquired about, the 2011 Kimberley Ultramarathon on 5 August 2010. This material was provided to the Committee by Western Australia Police with its *Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

he conducts training for Ghurkha Police in the ranges in the area.<sup>155</sup> Tourism WA put RacingThePlanet in contact with Mr Storey in 2009 as someone who might be able to assist RacingThePlanet in finding a course for the 2010 Kimberley Ultramarathon.<sup>156</sup> Mr Storey assisted RacingThePlanet on a voluntary basis.<sup>157</sup>

- 2.119 In August 2009 Mr Storey assisted Ms Gadams and Mr Garcia Prieto to go through a section of the planned 2010 course in the Cockburn Ranges, during which they learned a lot about the terrain, conditions and dehydration and that it was too dangerous to run through that kind of terrain at night.<sup>158</sup> Mr Storey also advised the Committee that Mr Garcia Prieto traversed the entire length of the 250km long course 'to ensure safe passage for the participants'.<sup>159</sup> The Committee notes that Mr Garcia Prieto, in marking the 2011 course, would have traversed most, if not all, of the 100km course. This is a key way to identify risks on the course and the Committee commends Mr Garcia Prieto and RacingThePlanet in this respect.
- 2.120 Mr Storey assisted Mr Garcia Prieto in setting the course for the 2010 Kimberley Ultramarathon and provided a briefing to the runners before the race. Mr Storey also briefed competitors again each morning before each stage on what to expect on that section of the course. Mrs Storey competed in the 2010 Kimberley Ultramarathon and was sponsored by RacingThePlanet.<sup>160</sup>
- 2.121 Mr Storey advised the Committee that after the 2010 event he remained in contact with RacingThePlanet because they had become close friends, and he knew the 2011 event was being planned because it was discussed during get-togethers. However, Mr Storey stated that he 'was not involved with the planning or running of the 2011 event' or with RacingThePlanet's risk management strategy and did not see a copy of the plan.<sup>161</sup>
- 2.122 Mr and Mrs Storey were originally not going to be in Kununurra during the 2011 event, and when their plans changed Mr Storey 'merely took Carlos up in the gyro on two occasions for him to have a look at the two off-road sections'.<sup>162</sup>
- 2.123 RacingThePlanet has not provided evidence to the Committee that it communicated and consulted with other local volunteers and residents on its management or risk assessment plan or to identify risks associated with the 2011 Kimberley Ultramarathon. The Committee has not received evidence from other local volunteers and residents

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155 Mr John Storey, Cattle Operator/Landowner, Salerno Pastoral, *Transcript of Evidence*, 24 April 2012, p. 2.

156 *ibid.*

157 *ibid.*

158 *ibid.*, p. 18.

159 *ibid.*, p. 2

160 *ibid.*, pp. 2-3.

161 *ibid.*, pp. 2, 3-4

162 *ibid.*, p. 2.

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that RacingThePlanet communicated and consulted with them on its management and risk assessment plan or to identify risks associated with the 2011 Kimberley Ultramarathon.

- 2.124 Prior to the 2011 Kimberley Ultramarathon, RacingThePlanet had contact with: DoH (including the Kununura District Hospital); SWEK; DEC; WA Police; relevant landowners/occupiers; and Kimberley residents. RacingThePlanet's level of communication and consultation with these agencies or individuals on its management and risk assessment plan or to identify risks associated with the event was generally inadequate. Prior to the 2011 Kimberley Ultramarathon, RacingThePlanet did not contact FESA, despite being advised by the Kununurra Visitor's Centre and DEC to do so, and did not contact St John Ambulance, despite being advised to by FESA through the Kununurra Visitors Centre. Each of these agencies had appropriate knowledge that could have assisted RacingThePlanet in identifying risks associated with the 2011 Kimberley Ultramarathon.
- 2.125 RacingThePlanet deprived itself of the opportunity to identify risks associated with the 2011 Kimberley Ultramarathon that it may not have contemplated in its own right. RacingThePlanet also deprived itself of the opportunity to develop relationships with key agencies and individuals that may have been able to provide ongoing assistance to RacingThePlanet in identifying and managing risks associated with the event.
- 2.126 RacingThePlanet's failure to communicate and consult with these relevant stakeholders is not consistent with ISO 31000:2009, the international standard for risk management, which states that '[p]eople with appropriate knowledge should be involved in identifying risks'<sup>163</sup> and that '[c]ommunication and consultation with external and internal stakeholders should take place during all stages of the risk management process'.<sup>164</sup> Communication and consultation is defined as 'continual and iterative processes that an organization conducts to provide, share or obtain information, and to engage in dialogue with stakeholders regarding the management of risk'.<sup>165</sup>

### Risks identified in RacingThePlanet's risk management plan

- 2.127 RacingThePlanet has supplied its management and risk assessment plan to the Committee.
- 2.128 There are two sections of the document that deal specifically with risk identification and assessment. The first is the Course Risk Assessment and Details which is a Microsoft Excel spreadsheet. It lists, for each checkpoint (and the course in between):

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163 International Organization for Standardization, ISO 31000:2009, Risk Management – Principles and Guidelines, p. 17.

164 *ibid.*, p. 14.

165 International Organization for Standardization, ISO 73:2009, Risk Management – Vocabulary, p. 3.



the GPS coordinates (of the checkpoint only); altitude; cut-off time; distance; elevation; estimated fastest and slowest traverse time; difficulty rating; description and rating of terrain; vehicle access; driving time to the previous checkpoint, next checkpoint, access points and hospital; evacuation method; and communications reception for mobile phones, radio and satellite phones.<sup>166</sup>

2.129 This document covers many of the most important details of the course. It accurately identifies the lack of vehicle access for the first eight kilometres after Checkpoint Two and that a helicopter is required for evacuation for at least the first four kilometres.<sup>167</sup>

2.130 The second section that deals specifically with risk identification and assessment is Risk and Emergency Procedures. This section contains 'what-if' situations that checkpoint staff might encounter and describes how to deal with the resulting situation. The 'what-if' situations are risks or potential problems that RacingThePlanet has identified. They are:

- 1(a) Missing Markers (scenario 1) – You cannot see the last and/or next marker when you arrive at your checkpoint
- 1(b) Missing Markers (scenario 2) – A competitor comes to your checkpoint saying markers are missing
- 1(c) Missing Glowsticks – It is within 1 hour from dusk and you have not seen anyone come through with glowsticks
- 1(d) Missing / Hard-To-See Glowsticks – A competitor comes to your checkpoint saying glowsticks are missing or hard to see
- 1(e) Missing Markers / Glowsticks in inhabited areas (i.e. local people are taking them)
- 2 Competitors are running out of water on the course
- 3 You don't think there is enough water at your checkpoint
- 4 Competitor requests for more water than the standard allowance
- 5 Competitor(s) report that someone on the course looks like they need a doctor
- 6 Competitor(s) report that someone is unconscious on the course
- 7 The last competitor has come through and the numbers don't add up

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<sup>166</sup> Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 96.

<sup>167</sup> *ibid.*

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- 8 A competitor wants to withdraw
- 9 Sweepers are far away from the last active competitors
- 10 More shade is needed at a checkpoint
- 11 Competitor(s) say it is more (or less) than the distance stated on the course notes
- 12 It is windy at the checkpoint
- 13 The battery of a communication device is dead
- 14 If lightning strikes
- 15 There are dangerous dogs / other wildlife
- 16 A checkpoint vehicle breaks down
- 17 A competitor has a snake bite
- 18 The sweeper(s) is tired/ill
- 19 Reports of breaking the rules and regulations
- 20 There is a sandstorm
- 21 Reports of other obstacles on the course (e.g. water levels rising, water too high to cross a river, landslides etc)
- 22 Reports of locals bothering competitors on the course<sup>168</sup>

2.131 These scenarios identify many of the major risks associated with this type of race, particularly competitors becoming dehydrated or lost or injured on the course. Additionally, many of the scenarios provide a plan of action if communications are available and if they are not, which the Committee believes is prudent given the environment. However, the Committee notes that these ‘what if’ scenarios appear to be generic and could be applied to many of the events run by RacingThePlanet.

2.132 Additionally, the Committee does not believe that the course risk assessment spreadsheet and the ‘what if’ scenarios are consistent with ISO 31000:2009, the international standard for risk assessment. ISO 31000:2009 states that an organisation ‘should identify sources of risk, areas of impacts, events (including changes in

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168 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 123-140

circumstances) and their causes and their potential consequences'.<sup>169</sup> The course risk assessment spreadsheet and the 'what if' scenarios are noticeably lacking in the identification of causes and potential consequences.

#### RacingThePlanet's risk identification process

2.133 RacingThePlanet advised the Committee that:

*The Course Director for the 2011 Kimberley footrace had made a survey of local risks in his February 2011 on-site review. This followed up the survey conducted for, and the information gathered from, the 2010 footrace. During those processes, risks were identified and reflected in the risk management plan. Risks associated with dangerous animals on the course were identified and addressed in that risk management plan.*<sup>170</sup>

2.134 The Committee notes that Mr Garcia Prieto conducted his on-site review during February 2011, in the middle of the wet season and that the 2010 Kimberley Ultramarathon was held at the beginning of the dry season in May. The 2011 Kimberley Ultramarathon was held in September, towards the end of the dry season. Conditions in the Kimberley change vastly throughout the year and it is important to consider this when identifying and managing risks. Fires would not have been as prevalent during February and May as they were in September (see 2.3 above). This is why, in the Committee's view, it was imperative for RacingThePlanet to have sought local assistance and input in identifying risks.

2.135 It would have been appropriate for RacingThePlanet to have Mr Garcia Prieto initiate contact with relevant local agencies, including SWEK, FESA and St John Ambulance, during this review. The evidence received by the Committee does not indicate that Mr Garcia Prieto made contact with any of these agencies in February 2011.

2.136 Despite RacingThePlanet stating that risks associated with dangerous animals on the course were identified and addressed in the risk management plan,<sup>171</sup> no mention of crocodiles is made in this plan. The risk of crocodiles is commonly known in the Kimberley, and safety information is available on many tourism websites, including the Kununurra Visitors Centre's and Australia's North West, the Kimberley and Pilbara-specific website produced by Tourism WA. The Committee would have expected to see the risk of crocodiles addressed in the management and risk assessment plan, even

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169 International Organization for Standardization, ISO 31000:2009, Risk Management – Principles and Guidelines, p. 17.

170 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 9.

171 *ibid.*

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before RacingThePlanet became aware of specific sightings of a crocodile in the course area shortly before the race.

2.137 RacingThePlanet advised the Committee that the risk identification process:

*did not conclude in February 2011. Rather, RacingThePlanet continued to assess and prepare for particular risks that were identified, or assumed prominence in the footrace preparation process.*<sup>172</sup>

2.138 RacingThePlanet points to its response to sightings of a crocodile at Fletchers Creek, noting that it contacted DEC and made arrangements to drive competitors across that section of the course.<sup>173</sup>

2.139 RacingThePlanet states that the 'existence of small, low intensity spot fires in the vicinity of the race location first came to the attention of RacingThePlanet from about 25 August 2011'.<sup>174</sup> RacingThePlanet notes that in response it contacted DEC and the Kununurra Visitors Centre.<sup>175</sup> In relation to this, RacingThePlanet quotes the description of KVC's role from its website and highlights the following statement: 'The KVC prides itself on delivering professional up-to-date information and advice, as well as being one of the most pro-active Visitor Centres within the region, state and nationally'.<sup>176</sup>

2.140 The Committee is of the view that KVC was sufficiently pro-active. As described in paragraphs 2.72 to 2.85 above, in response to RacingThePlanet's request for information on crocodiles and fires in the area, KVC contacted both DEC and FESA, relayed the requests of these agencies to RacingThePlanet and provided their contact details to RacingThePlanet. RacingThePlanet was aware that further assistance from these agencies would require the provision of the course route and direct discussion with these agencies.

2.141 At a hearing on 2 May 2012, Ms Gadams stated that the risk management plan was not only written, but also verbal.<sup>177</sup> The Committee understands that as risks are identified close to the event, these may be dealt with as they arise and not necessarily incorporated into the written risk management plan. Three of these such risks were the sighting of a crocodile in Fletchers Creek, the fires in the vicinity of the course, and the presence of wild bulls and the conduct of mustering in the area between Checkpoints One and Two. RacingThePlanet made provisions to get competitors safely across

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172 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 9.

173 *ibid.*

174 *ibid.*

175 *ibid.*

176 *ibid.*

177 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 11.

Fletchers Creek and, on the advice of Mr Salerno Snr, altered the course route to avoid the wild bulls and mustering.<sup>178</sup>

2.142 The Committee reiterates that RacingThePlanet did not contact FESA, despite being advised to do so by KVC and DEC.

### Finding 2

ISO 31000:2009 is the international standard for risk management. The Committee believes that this standard represents a reasonable benchmark for risk management. The Committee finds that RacingThePlanet Events Limited's (RacingThePlanet) Management and Risk Assessment Plan and its risk identification process for the 2011 Kimberley Ultramarathon was not consistent with ISO 31000:2009 on the basis that:

- RacingThePlanet did not involve people with appropriate knowledge in identifying risks;
- RacingThePlanet did not communicate and consult adequately with relevant agencies and individuals on its Management and Risk Assessment Plan or to identify risks associated with the event;
- the risks identified in the Management and Risk Assessment Plan appear to be generic and are notably lacking in the identification of causes and consequences;
- RacingThePlanet did not contact FESA about fires that RacingThePlanet staff had seen in the days leading up to the race, despite being advised to do so by Kununurra Visitors Centre and the Department of Environment and Conservation; and
- RacingThePlanet did not contact St John Ambulance prior to the race despite being advised to do so by FESA through the Kununurra Visitors Centre.

Consequently, the Committee finds that RacingThePlanet did not take all reasonable steps to identify risks associated with the 2011 Kimberley Ultramarathon.

As a result, RacingThePlanet deprived itself of the opportunity to identify risks that it may not have contemplated in its own right. RacingThePlanet also deprived itself of the opportunity to develop relationships with key agencies and individuals who may have been able to provide ongoing assistance to RacingThePlanet in identifying and managing risks associated with the 2011 Kimberley Ultramarathon.

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178 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, pp. 9, 11-12.

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### Part Two: Reducing risks

2.143 The Committee has received evidence from a number of ultramarathon race directors who conduct races in other parts of Australia, as well as event managers who run adventure-style events in the Kimberley and in other parts of Australia. The Committee has also received evidence from Mr James Salerno Snr who organised six off-road marathons around El Questro during the 1980s. From the evidence it has received, the Committee draws the conclusion that a combination of the following elements reflects a reasonable standard for mitigating risk in these kinds of activities:

- communication with relevant experts, before and/or during the event;
- optimal communications equipment for the environment and nature of the event; and
- adequate medical support and evacuation procedures.

2.144 The Committee understands that it may not be possible to achieve 100 per cent perfection in each of these elements, particularly in regards to communication and evacuation in remote locations. However, the Committee notes that the robustness of one or more of these elements can greatly assist in mitigating potential problems caused by less robust elements.

2.145 For example, Mr James Salerno Snr, who ran six off-road marathon events on El Questro in the 1980s, mitigated risks by staging the event within close proximity to the homestead and having robust communications. Mr Salerno Snr advised the Committee:

*We had ranges all around the homestead. I tried to organise it so it was never too far away from the homestead. If there were any problems at all, a competitor could basically discontinue at a checkpoint or come directly to the homestead.*<sup>179</sup>

2.146 Further, Mr Salerno Snr stated that he arranged for the Army to provide communications.

*They were in strategic positions, which I thought would be safe enough, between one place and another, and the communication was good.*<sup>180</sup>

2.147 In this situation, particularly at this time, Mr Salerno Snr appears to have been aware of the difficulty of evacuation and the limitations of medical support. Therefore, he sought to mitigate the potential for injury to competitors and ensure they could be

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179 Mr James Salerno Snr, Cattle Operator/Landowner, *Transcript of Evidence*, 24 April 2012, p. 2.

180 *ibid.*, p. 2.

brought to the homestead quickly by locating the course on ridges in close proximity to the homestead and having robust communications.

2.148 Mr Simon Rimmer, Director of Karunjie Event Management, provided evidence to the Committee about his arrangements for the Lake Argyle Adventure Race and the Gibb Challenge. Mr Rimmer is a serving officer with the Western Australia Police and is based in Broome. Mr Rimmer provided the Committee with the event instructions for both events. The instructions follow a format common to military and law enforcement orders<sup>181</sup> and cover:

- a description of the event;
- a detailed itinerary for its execution;
- safety requirements;
- administration and logistics;
- the command structure;
- the emergency medical plan including options for evacuation and a casualty evacuation flowchart;
- communications; and
- a risk identification and assessment based on information provided by the West Australian Insurance Commission and AS/NZS 4360, the predecessor to AS/NZS 31000:2009, which is identical to ISO 31000:2009.

2.149 The Lake Argyle Adventure Race is a 3km swim, 34km kayak, 40km mountain bike ride and ten kilometre run which takes place on Lake Argyle, the Ord River and surrounds.<sup>182</sup> The East Kimberley Volunteer Sea Rescue Group accompanies competitors on the swim, providing a patrol presence and medical rescue response.<sup>183</sup> Another team of two provides a patrol presence and rescue response for paddle craft competitors in the Ord River which is also regularly traversed by recreational tour craft.<sup>184</sup> The mountain bike course is entirely accessible by vehicle. A two kilometre section of the run course is inaccessible by vehicle but is close to the race hub at the Lake Argyle Resort.<sup>185</sup>

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181 Military and law enforcement orders commonly follow a format known as SMEAC; Situation, Mission, Execution, Administration and Logistics, and Command.

182 Submission No. 26 from Karunjie Event Management, 17 May 2012, p. 2.

183 *ibid.*, Attachment A (Lake Argyle Adventure Race Group Orders), p. 4.

184 *ibid.*, p. 2 and Attachment A (Lake Argyle Adventure Race Group Orders), p. 4.

185 *ibid.*, p. 2.

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- 2.150 Mr Rimmer has four St John Ambulance personnel on stand-by on the course with two vehicles.<sup>186</sup> St John Ambulance is designated as the first responder for the event and will categorise the patient and evacuate them accordingly.<sup>187</sup> The casualty evacuation flowchart indicates that Priority 1 and 2 casualties are to be evacuated to hospital by road or air.<sup>188</sup> As the event is in close proximity to the Kununurra District hospital, evacuation will take place by road unless the casualties' condition would be compromised by road transportation.<sup>189</sup> The medical plan lists the air evacuation assets available, noting that the commercial assets in Kununurra and Broome (eg Heliwork) only have a daylight capacity.<sup>190</sup>
- 2.151 Mr Rimmer uses UHF radios and satellite phones and advised the Committee that he had problems with the latter last year but this was remedied by exchanging phones with other hire assets.<sup>191</sup>
- 2.152 The Gibb Challenge is a 700km+ charity team relay bike ride along the Gibb River Road from Derby to El Questro.<sup>192</sup> Mr Rimmer provided the Committee with the instructions for this year's event which concluded on 31 May 2012. The event instructions indicated that Karunjie Event Management would have two of its own personnel, supported by one from WA Police, two from St John Ambulance (with an ambulance), one from FESA, one from the Royal Australian Navy and 26 volunteers.<sup>193</sup>
- 2.153 The same casualty evacuation flowchart is used here as in the Lake Argyle Adventure Race. However, due to the vast distances covered by the event, evacuation of Priority 1 and 2 casualties would be by air provided by the Royal Flying Doctor Service (RFDS) or any other means determined suitable by the St John Ambulance staff and in consultation with the Participant Safety Officer.<sup>194</sup>
- 2.154 There are no road closures or special privileges to participants of the event and the Gibb River Road remains open to the public, including tourists, heavy haulage and articulated stock vehicles.<sup>195</sup> For safety, each team is required to have a support vehicle and Karunjie Event Management provides a forward and rear escort vehicle, one of

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186 Submission No. 26 from Karunjie Event Management, 17 May 2012, Attachment A (Lake Argyle Adventure Race Group Orders), p. 2.

187 *ibid*, Attachment A (Lake Argyle Adventure Race Group Orders), p. 10.

188 *ibid*, Attachment A (Lake Argyle Adventure Race Group Orders), p. 12.

189 *ibid*, Attachment A (Lake Argyle Adventure Race Group Orders), p. 11.

190 *ibid*.

191 Submission No. 26 from Karunjie Event Management, 17 May 2012, p. 2.

192 Karunjie Event Management, 'The Gibb Challenge – Information', Available at: <http://www.thegibbchallenge.com.au/information.html>. Accessed on 28 June 2012.

193 Submission No. 26 from Karunjie Event Management, 17 May 2012, Attachment B (The Gibb Challenge Event Instructions), p. 3.

194 *ibid*., p. 21.

195 *ibid*., p. 3.



which is provided and driven by WA Police.<sup>196</sup> Also for safety, the race is conducted during daylight hours only, and participants are required to observe a twilight curfew.<sup>197</sup>

- 2.155 Mr Rimmer advised the Committee that there have not been any injuries requiring medical treatment during any of his events.<sup>198</sup>
- 2.156 Mr Andrew Hewat, race director for the Bogong2Hotham, a 64km race through the alpine region in Victoria, and the Great Ocean Walk 100s, a 100km ultramarathon along the Great Ocean Walk on the south coast of Victoria, provided evidence to the Committee about his risk mitigation strategies. Mr Hewat also provided the Committee with a copy of his risk management strategy for the GOW100s.
- 2.157 Mr Hewat advised the Committee that in relation to the GOW100s, he has to gain approval and permits from Parks Victoria, the Otway Coast Committee, the Colac-Otway Shire Council, the Corangamite Shire Council, Vic Road, Victoria Police and Ambulance Victoria.<sup>199</sup> Mr Hewat stated that he submits his risk management plan to each of these agencies for approval.<sup>200</sup>
- 2.158 Mr Hewat advised the Committee that the majority of his races are held in national parks, which are the jurisdiction of Parks Victoria.<sup>201</sup> Mr Hewat liaises with Parks Victoria as a priority at least six months in advance of a race and during the race has communication with the on-duty ranger in that park.<sup>202</sup> Mr Hewat monitors the weather and any warnings that have been put out by the Country Fire Authority and in the event of a fire incident arising during the race, would take advice from the authorities.<sup>203</sup>
- 2.159 Mr Hewat advised the Committee that:

*... a fundamental part of my whole risk-management plan is to ensure that I have strong lines of communication, not only with the people on the ground in terms of checkpoints, but also with the authorities, if need be, to get guidance.*<sup>204</sup>

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196 Submission No. 26 from Karunjie Event Management, 17 May 2012, p. 3; Submission No. 26 from Karunjie Event Management, 17 May 2012, Attachment B (The Gibb Challenge Event Instructions), Regulations, p. 1.

197 Submission No. 26 from Karunjie Event Management, 17 May 2012, p. 3.

198 *ibid.*, p. 2.

199 Submission No. 21 from Mr Andrew Hewat, 12 April 2012, p. 2.

200 *ibid.*

201 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 2.

202 *ibid.*

203 *ibid.*

204 *ibid.*

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- 2.160 In terms of evacuation support for injured competitors, Mr Hewat advised the Committee that he sends his risk management plan to Ambulance Victoria and takes guidance from them and prior to the event, he attends the local ambulance station and speaks to the officers.<sup>205</sup> Mr Hewat stated that the Bogong2Hotham event would require a helicopter evacuation, for which he relies on the ambulance service, and he is very proactive in making sure they are aware of the event and the possibility their services may be required.<sup>206</sup>
- 2.161 With regards to communications, Mr Hewat advised the Committee that he would not conduct the race if he did not have reliable communications between the checkpoints.<sup>207</sup> Mr Hewat utilises an amateur radio group who hike into the course the day before and set up communications bases and repeater stations across the mountains.<sup>208</sup> Mr Hewat also uses Iridium satellite phones (he found Thuraya to be inadequate in his areas of operations) and mobile phones where service is available, particularly on the Great Ocean Walk.<sup>209</sup>
- 2.162 Mr Hewat advised the Committee that communications on the actual course between checkpoints is always a weak point but the sweepers will have a form of communication, which could be a mobile phone, satellite phone or a SPOT device, which is an emergency position location beacon.<sup>210</sup>
- 2.163 A SPOT device (of which there are several types) is a small handheld device which enables users to transmit their position via satellite to pre-determined email addresses, or to call for emergency assistance by pressing an SOS button.<sup>211</sup> The emergency function is monitored by the GEOS International Emergency Response Coordination Center, who will notify appropriate responders based on the users' GPS location and personal information. For users in Australia, GEOS IERCC will notify Rescue Coordination Centre (RCC) – Australia, which is a part of the Australian Maritime Safety Authority. The referral and management of requests for emergency assistance from a SPOT device is governed by a Memorandum of Understanding between IERCC and RCC – Australia.<sup>212</sup>

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205 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012., p. 3.

206 *ibid.*

207 *ibid.*, p. 2.

208 *ibid.*

209 *ibid.*, pp. 2-3.

210 *ibid.*, pp. 8-9.

211 SPOT LLC, 'SPOT Satellite GPS Messenger', Available at:

<http://au.findmespot.com/en/index.php?cid=102>. Accessed on 28 June 2012.

212 Australian National Search and Rescue Council, *National Search and Rescue Manual*, Australian Maritime Safety Authority, Canberra, 20 July 2011, p. 243 (Appendix P).

2.164 The Committee's research has established that a SPOT Satellite GPS Messenger can be purchased for approximately AUD\$207 and has an annual service fee of US\$115.<sup>213</sup> Alternatively, SPOT devices can be hired in Australia from satellite phone rental or specialist companies for approximately AUD\$25 per week.<sup>214</sup>

2.165 It is clear from these examples that managers of adventure racing events in Australia believe that communication and consultation with relevant authorities and services, optimal communications equipment for the environment and nature of the event, and adequate medical support and evacuation procedures are essential to staging a safe event. The Committee believes that these are the key elements to mitigating risks to safety during an event.

**Communication and consultation with relevant authorities and experts, before and/or during the event**

2.166 As discussed above (at 2.40-2.126) the evidence shows that, in the majority, RacingThePlanet only communicated with relevant authorities (government agencies, landowners) in respect of specific permissions. The level of communication and consultation with relevant authorities and experts in regard to its risk identification process and its management and risk assessment plan was generally inadequate.

**Optimal communications equipment for the environment and nature of the event**

2.167 RacingThePlanet advised the Committee that it had the following communications equipment for the 2011 Kimberley Ultramarathon:

- 8 satellite phones; four Iridium and two BGAN which RacingThePlanet brought into Australia and two Thuraya which were hired in Kununurra;
- 14 hand-held VHF radios which RacingThePlanet brought into Australia;
- 4 vehicles with UHF radios, though these were not originally a part of the communications plan as RacingThePlanet was unaware the rented vehicles would be equipped with UHF radios;
- Nokia and Blackberry mobile phones for communication in areas close to Kununurra; and
- Backup power supplies for all communications equipment.<sup>215</sup>

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213 Softrock Solutions, 'SPOT Satellite GPS Messenger', Available at: <http://www.findmespot.net.au/SPOT-GPS-Messenger.html>. Accessed on 28 June 2012; Softrock Solutions, 'SPOT Basic Service Plans', Available at: <http://www.findmespot.net.au/Basic-Service-Plans.html>, Accessed on 28 June 2012.

214 Oz Satellite Rentals, 'Spot Satellite Messenger'. Available at: <http://www.ozsatelliterentals.com/product/spot>. Accessed on 28 June 2012.

215 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 29.

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- 2.168 The Committee has received evidence that RacingThePlanet staff had difficulty contacting one another on the day of the race. The Committee acknowledges that RacingThePlanet was able to contact 000 after it became aware of the incident in the Tier Gorge, however the Committee notes that Ms Fanshawe was unable to contact the Heliwork office at this time and Ms Fergusson was only able to contact one checkpoint when she attempted to inform the checkpoint captains of the incident.<sup>216</sup> Earlier in the day, Ms Hanninen (then at The Barrels) was unable to contact Mr Garcia Prieto (then at Checkpoint Two) when she became aware that smoke and fire was encroaching on the course between Checkpoint Two and Checkpoint Three.<sup>217</sup>
- 2.169 At approximately 2:30pm, when Ms Fanshawe contacted Ms Hanninen to inform her of the incident, the 'satellite connection was really bad and patchy' and she 'wasn't sure what was going on' but knew people were in trouble.<sup>218</sup> Further, at approximately 4:30pm, when Ms Fanshawe requested an update on the incident, Ms Hanninen was unable to give her one as she 'had no communication with any people in the [incident] area, including the pilot'.<sup>219</sup>
- 2.170 The Committee understands that the reliability of satellite phones can be affected by a number of factors including cloud cover, weather interference and obstacles such as trees, buildings or mountains. RacingThePlanet's communications plan relied solely on the use of satellite phones for checkpoint to checkpoint communication as the VHF and UHF radios are only reliable for short distances.
- 2.171 RacingThePlanet stated that the checkpoints were placed at locations where reception was optimal, however also provided evidence to the Committee that it did not test the satellite phones on the course prior to the race.<sup>220</sup> RacingThePlanet stated:
- There was no reason to test the satellite phones at each checkpoint or along the course because they worked in Kununurra and there was no reason why they would not work on the course unless there was an issue with the satellites themselves or atmospheric interference.*<sup>221</sup>
- 2.172 The Committee does not know how the checkpoints could have been placed at locations where reception was optimal if RacingThePlanet did not test the communications equipment on the course. The Committee also considers that RacingThePlanet made an unreasonable (and as it turned out incorrect) assumption

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216 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 30; Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 5; Ms Emma Fergusson, Police Statement, 5 September 2011, p. 5.

217 Ms Riitta Hanninen, Police Statement, 5 September, p. 5.

218 *ibid.*

219 Ms Riitta Hanninen, Police Statement, 5 September, p. 7.

220 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 19.

221 *ibid.*

that because the satellite phones worked in Kununurra, they would work on the course. While checkpoints one and three were located in the open, Checkpoint Two was located at the base of a range and Checkpoint Four was located in the bush where interference from tree cover could have prevented reliable communications.

- 2.173 The Committee notes that sweepers carried VHF radios while out sweeping between checkpoints. However, VHF radios are limited to line-of-sight communications so once out on the course, the sweepers would not have had communication with the checkpoints. Competitors did not carry communications equipment. In respect of the races he directs in Victoria, Mr Hewat advised the Committee that communications between checkpoints was always a weakness.<sup>222</sup>
- 2.174 The Committee was particularly concerned about this weakness in the case of the Kimberley Ultramarathon given its remoteness and the terrain. The Committee looked at the communications arrangements for similar events to determine what was reasonable. Of the events sanctioned by the Australian Ultra Runners Association, only one can be considered to be similar to the 2011 Kimberley Ultramarathon in terms of distance, remoteness, terrain and availability of mobile phone reception. This is the Bogong2Hotham event directed by Mr Hewat. Other races of a similar distance and terrain were not suitable for comparison because they had one or more of: mobile phone reception; non-remote location; or support crews required/permitted for individual competitors.
- 2.175 The Bogong2Hotham is a 64km race and has three major checkpoints (excluding the starting point) and eight minor checkpoints.<sup>223</sup> The minor checkpoints are staffed depending on the availability of volunteers.<sup>224</sup> However, the Bogong2Hotham enjoys the volunteer services of the Albury Wodonga Amateur Radio Club, which allows 'complete communication along the course'.<sup>225</sup> Aside from the obvious communication benefit this provides, the radio operators provide a physical presence on the course. Radio operators are positioned at regular intervals along the course. Aside from the first section, and the section between Warby Corner and the major checkpoint at Langford Gap, competitors are never further than 6km from the next radio operator/checkpoint.<sup>226</sup>

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222 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 8.

223 The Trail Running Company, 'Bogong2Hotham – Race Information – Checkpoints', Available at: <https://sites.google.com/site/bogong2hotham/run-information/checkpoints>. Accessed on 29 June 2012.

224 *ibid.*

225 The Trail Running Company, 'Bogong2Hotham – Race Information – Safety', Available at: <https://sites.google.com/site/bogong2hotham/run-information/safety>. Accessed on 29 June 2012.

226 The Trail Running Company, 'Bogong2Hotham – Race Information – Course Description', Available at: <https://sites.google.com/site/bogong2hotham/course>. Accessed on 29 June 2012

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- 2.176 By comparison, the 2011 Kimberley Ultramarathon had 7 checkpoints (excluding the start line) over 100km. The distance between these checkpoints is not less than eleven and a half kilometres. The longest distance between two checkpoints is 17km, between Checkpoints Two and Three, which contained the most difficult section of the course.<sup>227</sup> As checkpoints are closed and dismantled after the last competitor departs, competitors are instructed not to turn back if in need of assistance, but to go forward to the next checkpoint.<sup>228</sup>
- 2.177 The Barrels was located approximately six and a half kilometres into the section between Checkpoints Two and Three. It was not a checkpoint, and was only designated to become a water point after Checkpoint One had closed and that checkpoint's vehicle had finished roving from Checkpoint One to Checkpoint Two.<sup>229</sup> Evidence presented to the Committee indicates that this vehicle did not arrive at The Barrels until approximately 2:00pm.<sup>230</sup>
- 2.178 In the early part of the course, the risk posed to competitors and volunteers from the lack of communications between checkpoints was reduced because the course ran along the Gibb River Road. The road is public and well-used, which increases the ability of competitors to obtain assistance in the event of an emergency, even if communications between race organisers are unreliable or not available. Additionally, RacingThePlanet staff were moving frequently between Checkpoints One and Two at this time.
- 2.179 However, from Checkpoint Two until just outside of Kununurra, competitors were on non-public tracks through sparsely populated pastoral leases and the likelihood of encountering people not associated with the race decreased. Competitors began to spread out significantly after Checkpoint One, to the point where the lead competitors were at Checkpoint Three and beyond by the time the fire swept through the Tier Gorge.<sup>231</sup> In races of this nature, safety along the course is aided by the fact that competitors must assist other competitors if they are ill or injured.<sup>232</sup> The level of risk therefore increases as the race goes on and competitors spread out.
- 2.180 Some of this risk can be mitigated by having race staff rove the course in vehicles (where possible) to monitor competitors. The Committee notes that RacingThePlanet's Management and Risk Assessment Plan provided a vehicle roving plan, which indicates that Ms Hanninen was designated to rove the course from the start line through the

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227 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 96 (Management and Risk Assessment Plan).

228 *ibid.*, p. 192.

229 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 192.

230 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 6; Mr Andrew Baker, Police Statement, 17 September 2011, p. 5.

231 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 2.

232 *ibid.*, p. 192.

course slowly, and leave for the finish line at about 4:00pm.<sup>233</sup> Other RacingThePlanet staff and volunteers were designated to begin roving sections of the course once their checkpoints were closed.<sup>234</sup> However, as the race allowed for people moving at a pace of between 3km/hr and 12km/hr, checkpoints would remain open for long periods of time, meaning very few vehicles would actually be roving the course, particularly during the earlier parts of the race.<sup>235</sup>

- 2.181 The Checkpoint One vehicle was designated to rove between that checkpoint and Checkpoint Two when Checkpoint One had closed and then move to The Barrels to become a water point.<sup>236</sup> Evidence received by the Committee indicates that this vehicle did move to The Barrels at approximately 2:00pm.<sup>237</sup> The Checkpoint Two vehicle was designated to '[t]ransfer cut off competitors from CP2 to CP3 along the course' when Checkpoint Two closed.<sup>238</sup> This indicates that this vehicle was to have taken competitors who did not make the checkpoint cut off time of 2:00pm around to Checkpoint Three via The Barrels and Dillon Springs Road. This vehicle was not designated to rove further and as it happened, the staff and volunteers were packing up Checkpoint Two when competitor Mrs Brenda Sawyer and volunteer Mr Lon Croot arrived back to advise them that there was a fire in the Tier Gorge.<sup>239</sup>
- 2.182 The Checkpoint Three vehicle was designated to begin roving to Checkpoint Four when Checkpoint Three closed.<sup>240</sup> Given that the last group of competitors had only passed Checkpoint Two not long before 2:00pm,<sup>241</sup> and someone moving at the minimum 3km pace would take approximately five and a half hours to get through this section, Checkpoint Three may not have closed until after 7:00pm. This plan effectively left Ms Hanninen as the only RacingThePlanet staff member designated to rove the course.
- 2.183 The Committee understands that Mr Garcia Prieto and his course team, including Mr Alasdair Morrison and volunteer Scott Connell, were also moving around the course in a vehicle early in the day and split up after reaching Checkpoint Three to begin marking the course with glow sticks for the night.<sup>242</sup>
- 2.184 The Committee considers that RacingThePlanet's communications plan exposed competitors and volunteers to an unacceptable level of risk. The Committee believes that the distances between checkpoints, the inability of the sweepers to communicate

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233 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012., p. 64.

234 *ibid.*

235 *ibid.*, p. 65.

236 *ibid.*, p. 64.

237 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 6; Mr Andrew Baker, Police Statement, 17 September 2011, p. 5.

238 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 64.

239 Ms Emma Fergusson, Police Statement, 5 September 2011, pp. 4-5.

240 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 64.

241 *ibid.*, p. 2.

242 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 5.

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with checkpoints once out on the course and the limited number of vehicles roving the course warranted a more robust communications plan.

- 2.185 Safety for competitors between checkpoints could have been improved by having more regular checkpoints or a number of vehicles designated solely to roving the race or being positioned between checkpoints. However the Committee notes that the checkpoint captains (to whom each checkpoint vehicle was also assigned) were RacingThePlanet staff or one of the medical team, not volunteers. Therefore, in order to have more regular checkpoints, RacingThePlanet would have needed to commit more staff to the event. The Committee will not assume that RacingThePlanet could have committed more staff to the event. However, the Committee believes that, at a minimum, local groups and volunteers could have been enlisted to provide better communications coverage or, at the least a presence, across the course.
- 2.186 In response to evidence from Mr Hewat about his use of an amateur radio group for the Bogong2Hotham race, RacingThePlanet advised the Committee that:

*..the existence of such a group in the Kimberley is not known to RacingThePlanet and, if it does exist, whether it could have been used to any effect is unlikely because there would have been significant risk to those operators in positioning radio operators in inaccessible areas such as on the highest point of the Tier Range.*<sup>243</sup>

- 2.187 However, Mr Storey, who provided assistance to RacingThePlanet for the 2010 Kimberley Ultramarathon, advised the Committee that for that race, when the competitors went through the gorge in the Cockburn Ranges, he placed three rangers from El Questro at strategic high points to enable line of sight with the radios.<sup>244</sup> In respect of the 2011 Kimberley Ultramarathon, Mr Storey advised the Committee that had it been him, he 'would have put people with radios on high points where you had line of sight for the radios'.<sup>245</sup>
- 2.188 Had this type of assistance not been available, there were still other communications options open to RacingThePlanet, including hiring Emergency Position Indicating Radio Beacons (EPIRBs) or similar devices such as a SPOT device. As the Committee noted in paragraph 2.164 above, the latter can be hired for approximately \$25 per week. EPIRBs can be hired in Australia for between \$35.00 and \$85.00 per week for a short-term hire.<sup>246</sup> The Committee does not believe it would be necessary to have one for each competitor. The Committee believes that as the calculated slowest and fastest running

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243 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 31.

244 Mr John Storey, Farmer, *Transcript of Evidence*, 24 April 2012, p. 8.

245 *ibid.*

246 GPSOZ, '406 MHz PLB hire', Available at: <http://www.gpsoz.com.au/epirb/index.htm>. Accessed on 2 July 2012; Landwide satellite solutions, 'EPIRB MT410G', Available at: <http://www.landwide.com.au/hire/epirb-mt410g>. Accessed on 2 July 2012.



times allowed for a significant spread over the course, one device for each of the sweeper teams and a small number distributed among the lead and middle competitors would have been sufficient and greatly increased competitor safety.

#### **Adequate medical support and evacuation procedures**

- 2.189 RacingThePlanet had four qualified medical doctors in its medical team for the 2011 Kimberley Ultramarathon, all of whom had provided their services at previous RacingThePlanet events.<sup>247</sup> Three of the doctors specialise in sports medicine, which the Committee feels is appropriate given the nature of the event.<sup>248</sup> The fourth doctor, Dr Julie Brahm, specialises in emergency medicine and has helicopter rescue qualifications.<sup>249</sup> When Mr Summers returned to Checkpoint Three for a doctor after locating the injured competitors, it was fortuitous that Dr Brahm was at that checkpoint.
- 2.190 RacingThePlanet had a ratio of approximately one doctor for every ten competitors and approximately one doctor for every 17 people present on the course as a competitor, volunteer, media or as part of the management and course team.<sup>250</sup> The Committee is not aware of any other ultramarathon events held in Australia which provide a team of qualified medical doctors. The Committee commends RacingThePlanet for the provision of a suitably qualified and experienced medical team for the 2011 Kimberley Ultramarathon.
- 2.191 However, the provision of such a team does not negate the need for an adequate medical plan and appropriate evacuation procedures. While the medical team is able to provide a high level of care on the course, in the event of an emergency or a competitor needing further treatment, evacuation procedures are necessary and assistance from emergency services may be required.
- 2.192 RacingThePlanet's medical contingency plan consists of a two-page document prepared by MEDEX (now FrontierMEDEX) an international company based in the US which provides travel medical insurance and emergency assistance,<sup>251</sup> and a screen shot from Google Maps showing the location of the Kununurra hospital.<sup>252</sup> The MEDEX document provides the following information:
- MEDEX's services and contact details;
  - the emergency numbers for ambulance, fire and Police (000);

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247 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 240-242.

248 *ibid.*

249 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 240-242; Submission 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 46.

250 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 6.

251 Information about FrontierMEDEX can be found at: <http://www.medexassist.com/Default.aspx>

252 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 113-115.

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- the contact details for the Kununurra and Wyndham hospitals and some basic details of the facilities and services available at these hospitals.
- advice on medical evacuation from Kununurra;
- details of the quality of care available in Australia;
- information on diseases and health risks in Australia;
- recommendations for immunisation and preventative treatments;
- details on the availability and quality of hospital care in Australia;
- details and availability of non-urgent care in Australia;
- the safety of blood and medical supplies in Australia;
- availability of medications in Australia; and
- payment for health care services in Australia.<sup>253</sup>

2.193 The advice on medical evacuation stated:

*From remote or rural areas in Australia, such as Kununurra, emergency evacuation to one of the large urban centers may be necessary for serious medical conditions. This evacuation can be performed efficiently by the public ambulance service. ... MEDEX would recommend that patients with serious and critical conditions be evacuated to Darwin, Australia. In the rare case the hospitals are unable to handle the injury, MEDEX recommends transportation to Perth. ... The Royal Flying Doctors is the national public air ambulance system. The closest base to Kununurra is located in Derby which is about 1 hour 20 minutes away by flight.*<sup>254</sup>

2.194 There is no information in this document about search and rescue services.

2.195 This document, under the heading 'Medical Contingency Plan' is not a plan, but a description of the available services and the contact details for those services. Addressing a medical situation is dealt with under the subsequent section 'Risk and Emergency Procedures'.

2.196 As discussed at paragraphs 2.130 above, RacingThePlanet's Management and Risk Assessment Plan includes 22 what-if scenarios and instructions on what to do if these

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<sup>253</sup> Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 240-242.

<sup>254</sup> *ibid.*, pp. 113-114.

situations eventuate. These scenarios appear to be addressed to the checkpoint captains. There are three that relate specifically to a medical situation:

- Competitor(s) report that someone on the course looks like they need help or a doctor

2.197 In this situation, the checkpoint captain is instructed to ascertain as much detail about the competitor as possible, including their name/bib number, location, symptoms and how they were acting. The medical doctor at the checkpoint will determine the requirement to go out to the person. If the medical doctor decides to go out to the competitor and vehicle access is available, the medical doctor should take the vehicle and the checkpoint captain should contact 'headquarters' to request a back-up vehicle or the roving vehicle to come to the checkpoint. If there is no vehicle access, the doctor should walk to the competitor with a volunteer, but the checkpoint captain should remain at the checkpoint. If it is a serious medical issue, the patient will be taken to the nearest help, if it is not, they should return to the checkpoint with the patient. The 'nearest help' is not specified.<sup>255</sup>

- Competitor(s) report that someone is unconscious on the course

2.198 The response to this situation is much the same as the previous one, with the doctor still determining whether to go out on the course. If the doctor decides to go out on the course, they must take communications equipment, another person (but not the checkpoint captain) and the minimum items in the medical manual (water, personal items, medical equipment etc). By minimum, the Committee assumes RacingThePlanet meant the items that should be taken at a minimum. If it is a serious medical incident, the checkpoint captain should ask the doctor before he/she leaves the checkpoint whether an ambulance should be called. Again, if it is a serious medical issue, the patient will be taken to the nearest help. If it is not, the doctor should return to checkpoint with the patient.<sup>256</sup>

2.199 The Committee notes that the checkpoint captains for Checkpoint Two, Three, Five and Six were the four doctors on the medical team.<sup>257</sup> This means that in any scenario that requires the doctor to go out on the course to assist a competitor, their checkpoint would be left without a captain.

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255 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 129.

256 *ibid.*, pp. 129-130.

257 *ibid.*, p. 9.

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- A competitor has a snake bite

- 2.200 In this situation, the instructions are to put compression bandages either side of the bite, do not suck out the venom, keep the person as still as possible and get them to hospital as quickly as possible.<sup>258</sup>
- 2.201 The instructions appear to be common sense and require the checkpoint captain and the medical doctor (who were one and the same for the majority of the checkpoints in the 2011 event) to assess each situation as presented, take action to determine the seriousness of the incident and remove the patient from the course to a hospital or the checkpoint. The broad applicability of the instructions may explain why there are not more specific medical scenarios contemplated or a decision tree provided.
- 2.202 The Committee does not have enough evidence or relevant experience to determine whether this is appropriate. However, the Committee is concerned that more attention was not paid to the requirements of how to effect an evacuation of a competitor from the Tier Gorge or from a section between Checkpoints Three and Four that did not have vehicle access.
- 2.203 The lack of vehicle access to these areas was identified as a potential problem on the course risk assessment spreadsheet discussed at paragraphs 2.128-2.129 above. The evacuation method for the Tier Range (the first 4 kilometres after Checkpoint Two) is identified as requiring a helicopter, with the four kilometres after that (from Tier Range to The Barrels) as requiring a helicopter or 4WD.<sup>259</sup> Similarly, a five kilometre section in between Checkpoint Three and Checkpoint Four was identified as requiring a helicopter or 4WD for evacuation.<sup>260</sup>
- 2.204 As discussed at paragraph 2.129 above, this course risk assessment spreadsheet identified the Tier Gorge as being the most difficult part of the course. However, despite recognition of its difficulty and the fact that helicopter was the only means of evacuation in this section, RacingThePlanet did not take steps to ensure the availability of this service in the event of an emergency until the day before the race.
- 2.205 On 1 September 2011, Ms Fanshawe contacted Mr Paul Cripps, Operations Manager at Heliwork WA, to enquire about helicopter availability in the event of an emergency.<sup>261</sup> Mr Cripps stated in his police statement that he informed Ms Fanshawe that ‘a helicopter had been booked for filming the event and it may be possible for this helicopter to be used in the event of an emergency’.<sup>262</sup> RacingThePlanet advised the Committee that it was aware that there would be a helicopter filming on the course

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258 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 138.

259 *ibid.*, p. 96.

260 *ibid.*

261 Mr Paul Cripps, Police Statement, 5 September 2011, p. 1.

262 *ibid.*, p. 1

and stated that Heliwork had advised that this would be the usual one sent out in an emergency.<sup>263</sup>

2.206 Mr Cripps advised Ms Fanshawe that Heliwork had another helicopter available in Kununurra, however it could be chartered by someone else unless they wanted to put it on standby.<sup>264</sup> Ms Fanshawe did not request the helicopter to be placed on standby.

2.207 That same day RacingThePlanet advised Mr Frank Chidiac, Executive Producer at Beyond Action (the company filming the event) that any vehicles, including the helicopter, would need to be deployed during an emergency and that Beyond Action had to agree to that.<sup>265</sup> At a hearing on 10 May 2012, Mr Chidiac advised the Committee that they agreed to that request on the basis that it was the right thing to do, even though there was no formal or financial arrangement between Beyond Action and RacingThePlanet.<sup>266</sup>

2.208 At the same hearing Mr Chidiac stated that Ms Fanshawe had actually made this request via email prior to 1 September 2011 and advised the Committee that he would provide a copy of this correspondence.<sup>267</sup> Subsequently, Mr Chidiac confirmed to the Committee that this was incorrect, and the request to use Beyond Action's vehicles in the event of an emergency was only made at the briefing prior to the race.<sup>268</sup>

2.209 The correspondence Mr Chidiac had referred to in the hearing is an email, dated 30 August 2011, from Ms Fanshawe to Ms Patrice Henderson of Beyond Action. Ms Fanshawe was responding to Ms Henderson's email in which the latter had asked:

*Is there first aid provided along the course, should the need arise (hopefully it doesn't!) and also air transport (chopper etc) available in the event that someone is seriously injured?*<sup>269</sup>

2.210 Ms Fanshawe responded:

*There is a helicopter that we can use for emergencies but the first priority is to evacuate people by car as this is faster. These medical facilities are also available to the Beyond Action media crew.*<sup>270</sup>

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263 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, pp. 21-22.

264 Mr Paul Cripps, Police Statement, 5 September 2011, p. 1.

265 Mr Frank Chidiac, Police Statement, 14 September 2011, p. 2; Mr Frank Chidiac, Executive Producer, Beyond Action, *Transcript of Evidence*, 10 May 2012, p. 3.

266 Mr Frank Chidiac, Executive Producer, Beyond Action, *Transcript of Evidence*, 10 May 2012, pp. 3-5.

267 *ibid.*

268 Supplementary Item B, Beyond Action, 25 May 2012, p. 5

269 *ibid.*

270 *ibid.*, p. 4.

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- 2.211 The Committee is concerned that, four days out from the race, Ms Fanshawe would advise Beyond Action that it had a helicopter arranged when it did not, and RacingThePlanet would subsequently advise Beyond Action that it would be required to release its vehicles, including its helicopter, for use in the event of an emergency.
- 2.212 RacingThePlanet advised the Committee that it 'knew that there would be a helicopter on the course filming' and 'it made the most practical sense to use the media helicopter as the first responder in case of an emergency since it would be on site and available'.<sup>271</sup> While this is logical, the Committee does not believe it is acceptable to make this request the day before the race.
- 2.213 When asked by the Committee why Ms Fanshawe waited until the day before the race to contact Heliwork, RacingThePlanet responded:

*Ms Fanshawe did not "wait until the day before the race". She was aware of the manner in which Heliwork operated from their engagement in the 2010 footrace. She confirmed her existing understanding – which was well founded – as part of her many confirmations which were obtained prior to the commencement of the race.*<sup>272</sup>

- 2.214 The Committee does not believe it is acceptable for Ms Fanshawe to assume that Heliwork would have a helicopter available that met her requirements with one day's notice. While Heliwork did have a helicopter available when it was required the following day, it could just as easily have not.
- 2.215 The Committee finds that, despite knowing that a helicopter was required in order to evacuate any competitors who became injured on the most difficult part of the course, RacingThePlanet did not make arrangements to ensure the availability of a helicopter until the day before the race.
- 2.216 The Committee is also concerned that RacingThePlanet does not appear to have established a communications protocol with Heliwork. Mr Cripps stated to the Committee:

*I think the biggest issue that I saw from talking to Nathan [the pilot of the helicopter chartered by Beyond Action] and our own experience on the day, was the lack of communication at each of the checkpoints, to be able to talk to the other checkpoint, and communication between our helicopter and checkpoints. We had aviation radios in the helicopters as well as UHF radios. The organisers could have contacted*

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<sup>271</sup> Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 22.

<sup>272</sup> *ibid.*

*us on UHF channels. That is possibly something that we could have made clear to them, that we did have those. We really did not go into any detail, because that was not what it was about; the helicopter was chartered for the filming, and that was that. But in the case of actually having a helicopter on standby for medical purposes, then we go into more detail about what we have on board to communicate with them and whatever else.*<sup>273</sup>

- 2.217 Furthermore, the evidence is that the emergency capabilities of the helicopter used by Beyond Action were insufficient to evacuate injured competitors from Tier Gorge.
- 2.218 Mr Tony Stevenson, FESA's Fire Services Manager for East Kimberley, attended a meeting with RacingThePlanet management in Kununurra on 4 September 2011 to discuss the event and the incident that had occurred. Mr Stevenson asked how RacingThePlanet had planned to evacuate someone in the event of an incident, and was advised they planned to use a stretcher. Mr Stevenson questioned them a little further as he did not believe the helicopter would fit a stretcher and Ms Fanshawe stated that the 'first attempt would be to put them inside, the second attempt would be to sling them underneath and the third attempt would be to hang them from a basket'.<sup>274</sup>
- 2.219 The helicopter hired by Beyond Action was hired for the purpose of transporting the media crew and their equipment, not for a rescue operation. It therefore did not have a stretcher or sling/basket or the capacity to transport an injured person other than in the seats fitted to the aircraft.
- 2.220 The Committee is concerned that RacingThePlanet did not know the capabilities of the helicopter it had designated as the first responder in an emergency. It is the Committee's view that it would have been extremely difficult and dangerous for a helicopter to land in the Tier Gorge. The Committee notes that the injured competitors had come out of the Tier Gorge and into the valley when they were confronted by the fire. The Committee believes that the evacuation of an injured competitor in the Tier Gorge would have required the competitor to be placed in a sling/basket, which the media helicopter was not equipped for, or to be winched out, a capability which is not available in the Kimberley.<sup>275</sup>
- 2.221 Further, the Committee believes that if there had been an injury requiring immobilisation in an area of the course that was not accessible by vehicle, the

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273 Mr Paul Cripps, Operations Manager, Heliwork WA, *Transcript of Evidence*, 23 April 2012, p. 7.

274 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 12.

275 Mr Philip Strapp, Regional Manager, St John Ambulance, *Transcript of Evidence*, 23 April 2012, p. 4.

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helicopter would not have been suitable as it would not allow the injured person(s) to be transported lying down.

2.222 RacingThePlanet advised the Committee that:

*The section of the 2011 Kimberley footrace course between checkpoint 2 and checkpoint 3 was on a track that RacingThePlanet considered was highly unlikely to result in any fall by, or injury to, competitors. In particular, there were no steep sections on that part of the footrace course.*<sup>276</sup>

2.223 The Committee refutes this statement. The Committee has seen footage of a number of competitors making their way through the course between Checkpoint Two and Checkpoint Three. The Tier Gorge section, which RacingThePlanet rated as 'Extremely Difficult' begins with competitors crossing a rocky stream near the pools and climbing up through a series of small running waterfalls. The course then went up the top of a ridge and descended down into the valley via a steep decline, with the ground in this area being grass and loose rock. These elements continued across the area between the Tier Gorge and The Barrels. The FESA report described the terrain in the area between Checkpoint Two and The Barrels as 'extremely rough and undulating'.<sup>277</sup> The Committee notes that the competitors it observed chose to walk for most of the section.<sup>278</sup>

Figure 3: A competitor negotiates a waterfall in the Tier Gorge.<sup>279</sup>



276 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 4.

277 Fire and Emergency Services Authority of Western Australia, 'Fire Investigation Report 189412: Kununurra Bushfire, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 23.

278 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

279 Photo by Nathan Dyer.



- 2.224 RacingThePlanet stated that it began the 2011 course at El Questro and finished in Kununurra in order to avoid competitors travelling over broken ground at night. RacingThePlanet also designated the cut-off time at Checkpoint Two as 2:00pm in order to have all competitors through The Barrels before dark.<sup>280</sup>
- 2.225 Despite these measures, the Committee believes that the risk of spinal injury (or other injuries requiring immobilisation) could not have been ruled out, particularly in this section of the course.
- 2.226 In the event of such injuries in an area not accessible by vehicle, evacuation would have required St John Ambulance, with perhaps FESA assisting, to carry the injured person(s) out on a stretcher. As discussed at paragraphs 2.59 and 2.86 above, RacingThePlanet did not contact either of these agencies before the 2011 Kimberley Ultramarathon.
- 2.227 As noted above at 2.224, RacingThePlanet determined a cut-off time of 2:00pm for Checkpoint Two in order to have all competitors through The Barrels before dark. That time does not appear to take into account a competitor being injured on this section of the course and the time it would take to evacuate the competitor. The injured competitors all left Checkpoint Two between 11:30am and 12:00pm and were caught by the fire around 1:30pm. They were evacuated from the course in fading daylight at approximately 5:15pm.
- 2.228 The last competitors left Checkpoint Two shortly before 2:00pm.<sup>281</sup> Based on how long it took to evacuate the competitors injured by the fire, if one of these later competitors had required evacuation from this area, it may not have been possible to achieve this that day as the Heliwork pilots are not rated to fly at night.
- 2.229 The Committee also notes that Beyond Action had only booked the helicopter for the first day of the race and according to the call sheet provided by Beyond Action, it was scheduled to leave Checkpoint Three at 4:00pm to film the competitors on the course at sunset and then return to Kununurra. Although the Tier Gorge was the only section where a helicopter was identified as the only means of evacuation, had RacingThePlanet required the services of a helicopter the following day, it would not have been guaranteed that Heliwork would have had one available.

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280 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 4; Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

281 Email correspondence from Mr Martyn and Mrs Brenda Sawyer to Western Australia Police. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*. Mrs Sawyer met the final group of competitors to pass through Checkpoint Two at the small waterfall near that checkpoint. Mrs Sawyer arrived back at Checkpoint Two just before 2:00pm.

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- 2.230 RacingThePlanet did not contact St John Ambulance in Perth or Kununurra prior to the 2011 Kimberley Ultramarathon. As discussed in paragraph 2.53, RacingThePlanet met with staff of the Kununurra District Hospital on 31 August, at the request of Lianne Macpherson, Clinical Nurse Manager. RacingThePlanet stated that RacingThePlanet staff and the Medical Director ‘discussed potential medical risks associated with the footrace and evacuation procedures for injured competitors, including where an ambulance would meet staff from RacingThePlanet near the footrace course in the event an ambulance was called to assist with an evacuation.’<sup>282</sup> RacingThePlanet advised the Committee that it ‘was not told by hospital staff, nor anyone else, that it should put St John’s Ambulance on “stand-by”’.<sup>283</sup>
- 2.231 The Committee believes that RacingThePlanet should have directly notified St John Ambulance in Kununurra of the event, particularly after it was advised to do so by KVC on the advice of FESA. While in hindsight it is easy to see how having an ambulance on stand-by on the course may have expedited the evacuation, the evidence presented to the Committee does not show that this is an obvious requirement for these types of events. Mr Hewat does not have an ambulance on standby on the course for his events, but in the week before the event will speak to the local ambulance crew who will be on duty on the day. The Committee notes that Mr Hewat also submits his risk management plan to Ambulance Victoria and receives its approval.<sup>284</sup>
- 2.232 RacingThePlanet had an ambulance on standby during the 2010 Gobi Desert event and the 2012 Jordan event.<sup>285</sup> The Committee does not understand why RacingThePlanet would have an ambulance on standby for those events, but not deem it necessary to even notify the local ambulance service for the 2011 Kimberley Ultramarathon.
- 2.233 St John Ambulance in Kununurra has one full-time community paramedic with the remainder of staff being local volunteers. With this kind of model, response times to a larger incident can be delayed as it takes time to mobilise volunteers. Mr Philip Strapp, Regional Manager, and Mr Matthew Maywald, Operations Manager, St John Ambulance, advised the Committee that if St John Ambulance had received information about the event they could have, and likely would have, prepositioned to respond in the event of an emergency.<sup>286</sup>
- 2.234 While the Committee understands that these are opinions given in hindsight, it notes that St John Ambulance in Kununurra provides two ambulances and crew to the Lake Argyle Adventure Race. It also provides resources to other events in the Kununurra

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282 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 94.

283 *ibid*, p. 48.

284 Submission No. 21 from Mr Andrew Hewat, 12 April 2012, p. 2.

285 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 2.

286 Mr Matthew Maywald, Operations Manager, St John Ambulance and Mr Philip Strapp, Regional Manager, St John Ambulance, *Transcript of Evidence*, 23 April 2012, pp. 14-15

community, such as the rodeo, the agricultural show and the speedway. This demonstrates that St John Ambulance in Kununurra has a proven record of providing its services to events if approached.

### Finding 3

Based on the practices of other adventure racing events in remote regions of Australia, the Committee finds that a combination of the following elements reflects a reasonable standard for mitigating risks to safety:

- communicating and consulting with relevant authorities;
- establishing optimal communications strategies for the environment and nature of the event; and
- establishing adequate medical support and evacuation procedures.

The Committee has previously found that RacingThePlanet did not adequately communicate and consult with relevant authorities. In respect of its communications and medical and evacuation planning, the Committee believes that RacingThePlanet did not meet these standards because RacingThePlanet:

- did not test its communications equipment on the course prior to the race, and therefore could not have known if the location of its checkpoints were optimal for communications;
- placed its checkpoints at distances that were too far apart given the limited number of RacingThePlanet vehicles roving the course and the inherent difficulties associated with a communications plan based on satellite phones and short range radio systems (in particular the inability for sweepers to communicate with checkpoints once out on the course);
- did not engage the input and services of St John Ambulance in Kununurra; and
- did not make arrangements for the use of a helicopter in an emergency until the day before the event, despite knowing for some time that this was the only means of evacuation from the Tier Gorge. RacingThePlanet designated the helicopter hired by Beyond Action as first responder in the event of an emergency, however appears not to have been aware of whether this helicopter was appropriately equipped for an emergency evacuation.

Against these standards, the Committee finds that in relation to the 2011 Kimberley Ultramarathon, RacingThePlanet did not take all reasonable steps to reduce risks to the safety of competitors, employees, contractors, spectators and volunteers.

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### **Part Three: Maintain the safety of competitors, employees, contractors, spectators and volunteers**

- 2.235 While RacingThePlanet staff had around a week before the race to become accustomed to the presence of fire in the general area and in the vicinity of the course, many of the competitors only arrived a day or two before the race. Additionally, most of these competitors were from overseas or from parts of Australia where bushfires do not burn uncontrolled.
- 2.236 The Committee has received evidence that the presence of fires in the general area and in the vicinity of the course was mentioned to competitors and volunteers during the pre-race briefing on 1 September 2011.<sup>287</sup> However, from this evidence, the Committee believes the information provided by RacingThePlanet was limited and did not include any specific indication of where these fires were relative to the course. Moreover, while RacingThePlanet stated to the Committee that it advised competitors on how to protect themselves against smoke inhalation,<sup>288</sup> RacingThePlanet did not provide any evidence that it provided specific advice to competitors on what to do if they encountered a fire. Mr Shaun Van Der Merwe advised the Committee that Ms Fanshawe stated at the briefing 'that she was aware that there were some spot fires in the area' and urged competitors to use common sense and if they saw any fires to steer well clear and don't go running towards them.<sup>289</sup>
- 2.237 RacingThePlanet stated to the Committee that in addition to the pre-race briefing given the day before the race, competitors were given a briefing prior to the start of the race on 2 September. RacingThePlanet stated that at this briefing, competitors were advised, 'as the first item of business, of the fact of, and the need to avoid, local fires (which were in any event evident from smoke in the sky), as referred to in the briefing'.<sup>290</sup>
- 2.238 The Committee has received all of the video footage taken in relation to the event by Beyond Action that was provided to Tourism WA. This footage contains the address given to competitors by Ms Fanshawe prior to the start of the race. Ms Fanshawe drew competitors' attention to the scenery and then stated: 'It's a shame about a little bit of

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287 Mr Michael Hull, Police Statement, 8 September 2012, p. 3; Mr Bradley Bull, Police Statement, 12 September 2011, p. 2; Mr Hal Benson, Police Statement, 7 September 2011, p. 2; Mr Ellis Caffin, Police Statement, 7 September 2011, p. 2; Dr Heather Scott, Police Statement, 6 September 2011, p. 1; Mr Andrew Baker, Police Statement, 17 September 2011, p. 2; Mr Lon Croot, Police Statement, 5 September 2011, p. 2; Mr Shaun Van Der Merwe, Competitor, *Transcript of Evidence*, 30 April 2012, p. 12; Miss Kate Sanderson, Competitor, *Transcript of Evidence*, 30 April 2012, p. 14; Miss Turia Pitt, Competitor, *Transcript of Evidence*, 30 April 2012, p. 15.

288 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 26.

289 Mr Shaun Van Der Merwe, Competitor, *Transcript of Evidence*, 30 April 2012, p. 12.

290 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 26.

a haze and you saw some of the fires out there so it's a reminder to please do be careful of them'.<sup>291</sup>

- 2.239 Ms Fanshawe's instruction to 'be careful of' the fires is not followed up by any information on what a competitor should do in the event they encounter a fire. Instead, Ms Fanshawe moves quickly on to reminders about the timing chips, the course markers and the checkpoint cutoff times.<sup>292</sup>
- 2.240 If this is the level of detail of advice that was given to contestants, as to how to deal with fire, the Committee is concerned at the adequacy of this advice.
- 2.241 The Committee notes that the brochure *Fires in Northern Australia: Information for travellers* (parts of which were quoted by RacingThePlanet in its supplementary submission<sup>293</sup>) contains information on what to do if a person encounters a bush fire while driving or on foot. The advice given for the latter is:
- Do not panic.
  - Move to clear or already burnt ground.
  - Don't try to run uphill. Stay low and seek shelter behind a log, rocky outcrop or embankment to protect yourself from radiant heat.
  - If your clothes catch fire, don't run—stop, drop, cover your face and roll over to extinguish the flames.<sup>294</sup>
- 2.242 The Committee is concerned that the general nature of the advice around fires given in the pre-race briefings sent an implied message to competitors that it was acceptable to stage the event with fires in the vicinity of the course.
- 2.243 Despite being aware of fires in the vicinity of the course in the days leading up to the event, the evidence received by the Committee does not indicate that RacingThePlanet had a plan, after the race began, to monitor those fires or detect new fires, other than what could be seen by RacingThePlanet staff while driving the course. It is noted that Mr Storey flew over the course before the race on 2 September 2011 and advised Mr Garcia Prieto that 'it all looked fine to proceed with the race'.<sup>295</sup> However, it appears

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291 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

292 *ibid.*

293 Submission No. 13(A) from RacingThePlanet Events Limited, 2 May 2012, p. 2.

294 Fire and Emergency Services Authority of Western Australia, Queensland Rural Fire Service, Tropical Savanna CRC and The Bushfires Council of the Northern Territory, *Bushfires in the North of Australia*, May 2008, p. 4. Available at: [http://www.fesa.wa.gov.au/safetyinformation/fire/bushfire/BushfireManualsandGuides/FESA-Bushfire-Bushfires\\_in\\_Northern\\_Australia.pdf](http://www.fesa.wa.gov.au/safetyinformation/fire/bushfire/BushfireManualsandGuides/FESA-Bushfire-Bushfires_in_Northern_Australia.pdf). Accessed on 2 July 2012.

295 Police Statement, Mr Carlos Garcia Prieto, 4 September 2011, p. 3.

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that this flight was conducted by chance. At a hearing on 24 April 2012, Mr Storey stated: 'Our flight to Emma Gorge on the morning of the second was purely us joining in the spirit of the event with friends'.<sup>296</sup> Further, Mr Storey stated that: 'When Mary knew that we were going to fly out, she asked if I would start the race. Because of our involvement the year before, we were glad to do that. Carlos also said, "Could you just have a look at the Dillon Springs Road to see that everything is all right?"'<sup>297</sup>

2.244 Additionally, RacingThePlanet advised the Committee that it 'did not expect or arrange that Mr Storey would play any role after the start of the race. He was travelling home and it was by chance that he saw a fire'.<sup>298</sup>

2.245 In his police statement, Mr Garcia Prieto stated that he was aware of the fire burning next to the Gibb River Road and investigated it prior to the race. Mr Garcia Prieto also stated that he could see this fire from Checkpoint One and he 'wanted to keep an eye on it' and that when he left there for Checkpoint Two, it was to monitor the progress of the fire.<sup>299</sup>

2.246 Apart from Mr Garcia Prieto's close monitoring of this particular fire, the evidence received by the Committee does not show that RacingThePlanet was undertaking any specific fire monitoring activity after the start of the race.

2.247 The Committee notes the actions of Mr Michael Bass in relation to fire monitoring in his role as Wilderness Park Manager at El Questro. Mr Bass uses the North Australian Fire Information (NAFI) website ([www.firenorth.org.au](http://www.firenorth.org.au)) which 'displays satellite information on the location of current fires ("hotspots") in close-to-real time across the whole of north Australia'.<sup>300</sup> The NAFI website also provides 'weather information such as wind speeds and temperature; various fire history maps; lightning strike locations; satellite images; a range of tools for analysing fire behaviour; and notification by email of fires in a given area'.<sup>301</sup> The NAFI website is open to the public. For more information on the use of satellite imagery for fire monitoring, please see Appendix One.

2.248 In his Police Statement, Mr Bass stated:

*One of the best means available for us for monitoring the outbreak and movement of fires on the property is by satellite imagery which I monitor regularly, on average every few hours. ... The satellite imagery updates when the satellite path comes up which is every few hours,*

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296 Mr John Storey, Farmer, *Transcript of Evidence*, 24 April 2012, p. 2.

297 *ibid.*

298 Submission No. 13(A) from RacingThePlanet Events Limited, 2 May 2012, p. 10.

299 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 3.

300 Tropical Savannas Cooperative Research Centre, 'The North Australian Fire Information (NAFI) Website'. Available at: <http://savanna.cdu.edu.au/information/nafi.html>. Accessed on 2 June 2012.

301 *ibid.*

*and I check the screens periodically to see what is happening. From about July onwards the weather at El Questro becomes extremely hot. Much of the property is very rugged and is accessible only by helicopter or on foot, and we make a practice of keeping a constant eye on fires which break out on the property or outside in the surrounding country. During the hot weather I tend to monitor the satellite picture both in the office or at home on my own computer, and on average would monitor any fire movement at least half a dozen times over the course of the day and sometimes often as hourly.*<sup>302</sup>

- 2.249 The Committee notes that as someone who is responsible for people, including staff and tourists, and property in that area, Mr Bass finds it reasonable to monitor fires in the area using NAFI at least six times per day during that time of year.
- 2.250 It is evident to the Committee that fire monitoring in this area is necessary at this time of year and the Committee reiterates that RacingThePlanet was aware of fires burning in the vicinity of the course prior to and on the day of the race.
- 2.251 The Committee received evidence from Mr Hewat that he liaises with Parks Victoria in planning his events and monitors the weather and any warnings that have been put out by the Country Fire Authority.<sup>303</sup> Additionally, on the day of the event, Mr Hewat has constant communication with an on-duty ranger and in the event of a fire incident arising on the day would take guidance from the authorities in terms of the dangers and the response.<sup>304</sup>
- 2.252 As previously noted, RacingThePlanet did not liaise with the Shire of Wyndham East Kimberley, FESA or with the landowners/occupiers of Doon Doon or Ivanhoe Station in respect of fire risk and the fires it observed in the area in the week prior to the event. While RacingThePlanet staff did discuss fires they had observed in the area during a meeting with El Questro staff on 26 August 2011, RacingThePlanet staff did not request assistance in fire monitoring and appear not to have discussed with El Questro the fires they observed subsequent to this meeting. RacingThePlanet has not presented evidence to the Committee that it was monitoring or had a plan to monitor fire or weather activity, other than by direct observation, prior to and during the 2011 Kimberley Ultramarathon.
- 2.253 RacingThePlanet's failure to consult or maintain contact with these agencies and stakeholders contributed to a series of critical missed opportunities to prevent

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302 Mr Michael Bass, Wilderness Park Manager, El Questro Wilderness Park, Police Statement, 29 October 2011, pp. 9-10.

303 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 2.

304 *ibid.*

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competitors, volunteers, staff and contractors from being exposed to injury. These missed opportunities will now be examined.

### Fire incident related events: 8:30am to 12:45pm

- 2.254 As stated at paragraph 2.245, prior to the start of the race, Mr Garcia Prieto went to inspect the spot fire on the Gibb River Road near the turn off to Checkpoint Two. Mr Garcia Prieto observed that '[t]hese fires appeared to be burning out' and he then went to Checkpoint One and stayed there until [after] the start of the race.<sup>305</sup> Mr Garcia Prieto stated: 'I could also see the fire from there; I wanted to keep an eye on it'.<sup>306</sup>
- 2.255 After starting the race at approximately 8:30am, Mr Storey, along with his wife Ann-Marie, had a coffee at the Emma Gorge resort and then left to return home in their gyrocopter, becoming airborne by approximately 9:40am.<sup>307</sup> Mr Storey stated that he flew east along the Gibb River Road to wave to the competitors, and was horrified to see a lot of the country between there and Tier Gorge was ablaze, though it was well west of the course and not a danger to competitors.<sup>308</sup> Mr Storey then tracked along the course to Checkpoint Two, and flew in to check on some small spot fires he had identified earlier in the day, and was relieved that these had gone out and were no longer a danger.<sup>309</sup>
- 2.256 Mr Storey stated that he turned north and saw thick smoke coming over the east ridge (of the Tier Range) to the valley that the course passed through and he immediately flew down the valley and around to the north eastern end of the range.<sup>310</sup> Mr Storey stated that again he was horrified with what he saw: a large expanse of country to the south east was now on fire and the flames were racing up the north east end of the range.<sup>311</sup>
- 2.257 Mr Storey stated that he immediately flew back to Checkpoint Two and repeatedly tried to contact RacingThePlanet staff on channel one, which he had been told was the operational channel for the race, and when he was not able to make contact, he called the media helicopter on VHF radio.<sup>312</sup> Mr Storey stated that, with as much urgency as he could get into his voice, he asked the pilot to land and tell staff at the checkpoint that 'a fire has flared up and is coming over the range. It is about 2kms away and will be on you in 2hrs'.<sup>313</sup> Mr Storey stated that he repeated this message twice.<sup>314</sup> Mr Storey

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305 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 3.

306 *ibid.*

307 Mr John Storey, Police Statement, 9 September 2011, p. 4.

308 *ibid.*, p. 5. The Committee notes that Mr Storey referred to it as Salerno Gorge, its former name.

309 *ibid.*

310 *ibid.*, p. 6.

311 *ibid.*

312 *ibid.*

313 *ibid.*

314 *ibid.*



discussed this message at a hearing on 24 April 2012 and recounted it in similar form to that in his police statement. It is important to note that Mr Storey could not convey the message directly himself as his gyrocopter, unlike a helicopter, was not capable of landing in the terrain.

- 2.258 Mr Summers (the pilot of the media helicopter) stated in his police statement that Mr Storey told him ‘there was a fire coming and it would be at the Checkpoint Two area within two hours’.<sup>315</sup> Mr Summers stated that he landed near Checkpoint Two and told a member of the media team ‘by shouting across a river, that there was a fire coming and it would burn through the Checkpoint Two area within 2 hrs’.<sup>316</sup> In a submission to the Inquiry, Mr Summers advised the Committee that the message that he passed on was ‘[t]hat there is a fire over the ridge and it would be at check point 2 in about 2 hours’.<sup>317</sup> Mr Summers stated that he could not detect urgency in Mr Storey’s voice when he radioed the message.<sup>318</sup>
- 2.259 The evidence of Mr Andrew Baker (volunteer and friend of Miss Kate Sanderson) is that at around 10:00am, he, Ms Hanninen and Mr Nathan Dyer (photographer from the Kimberley Echo) arrived at Checkpoint Two.<sup>319</sup> Mr Baker stated that before the first competitor arrived (so before 10:32am<sup>320</sup>) the media helicopter landed and people from the helicopter approached Ms Hanninen and said words to the effect that: ‘There’s a bushfire ahead and it’s expected to cross the track in about 1 and a half to 2 hours’.<sup>321</sup> In her police statement, Ms Hanninen recalls the message as being given to her by a member of the media team who said she was advised that ‘there was a fire and that it could be at checkpoint 2 in about two hours’.<sup>322</sup> Mr Baker stated that Ms Hanninen was making phone calls while they waited for the first competitors to arrive.<sup>323</sup>
- 2.260 Mr Garcia Prieto’s evidence is that when he arrived at Checkpoint Two, he was given a message from the checkpoint captain Dr Brandee Waite<sup>324</sup> ‘that there is a fire coming towards us and it may be at checkpoint 2 within 2 hours’.<sup>325</sup>
- 2.261 The evidence leads the Committee to conclude that by the time John Storey’s message was conveyed to the pilot of the media helicopter, and then to a member of the media

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315 Mr Nathan Summers, Police Statement, 9 September 2011, p. 1.

316 *ibid.*

317 Submission No. 25 from Mr Nathan Summers, 15 May 2012, p. 1.

318 *ibid.*

319 Mr Andrew Baker, Police Statement, 17 September 2012, pp. 3-4; Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 2.

320 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 2.

321 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4.

322 Ms Riitta Hanninen, Police Statement, 5 September 2011, pp. 4-5.

323 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4.

324 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.

325 *ibid.*

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team and then to Ms Hanninen, the detail of the direction of the fire—that it was coming over the range—was missing from the message.

- 2.262 RacingThePlanet stated to the Committee that '[d]espite containing a warning of possible fire, approaching in several hours, the message did not convey any specific or urgent action to be taken; for example, that the footrace should be cancelled immediately or that competitors should be evacuated or not allowed to pass along certain sections of the course'.<sup>326</sup> The Committee notes that Mr Storey was not a volunteer and did not have any knowledge of RacingThePlanet's management and risk assessment plan.<sup>327</sup> The Committee believes that it would not have been reasonable for RacingThePlanet to expect that Mr Storey provide such specific instruction to RacingThePlanet staff.
- 2.263 The Committee also notes that at the time he passed on Mr Storey's message, Mr Summers had not sighted the fire.<sup>328</sup> Mr Summers was the pilot of the helicopter hired by Beyond Action. Even if it were appropriate for Mr Summers to provide instruction to RacingThePlanet staff, he could not have done so as he did not know the location, direction and severity of the fire referred to in the message.
- 2.264 RacingThePlanet appears to argue that the lack of action taken by its staff on receipt of this message was because of its lack of urgency. The Committee does not believe that urgency or lack thereof changes the fact of the message, which was that there was a fire coming towards Checkpoint Two and it would be there in about two hours. According to the message, the fire may have been at Checkpoint Two at approximately 12:30pm. The cutoff time for Checkpoint Two was 2:00pm, which meant there was the potential for competitors to still be in that area when the fire came through. The Committee believes that whether the message sounded urgent is irrelevant, the information in the message described a situation that warranted an investigation to determine the exact location, direction and severity of the fire.
- 2.265 As mentioned in paragraph 2.238, the Committee has received all of the video footage taken in relation to the event by Beyond Action that was provided to Tourism WA. In this footage, Mr Garcia Prieto and Mr Alasdair Morrison are seen having a conversation with two competitors as the latter depart Checkpoint One.<sup>329</sup> This footage was taken at approximately 10:28am,<sup>330</sup> around the same time Mr Summers was passing Mr Storey's message to RacingThePlanet staff at Checkpoint Two.

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326 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 40.

327 Mr John Storey, Farmer, *Transcript of Evidence*, 24 April 2012, p. 4.

328 Mr Nathan Summers, Police Statement, 9 September 2011, p. 1.

329 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

330 The two competitors were recorded by RacingThePlanet as having arrived at Checkpoint One at 10:23am. When comparing the recorded arrival times of other competitors seen on the video

2.266 As the competitors leave the checkpoint to continue north east along the Gibb River Road, Mr Morrison can be seen pointing in a south-easterly direction and heard remarking 'look at the fire now'.<sup>331</sup> Both competitors can be seen looking in that direction and making exclamations in acknowledgment.<sup>332</sup> In the background, Mr Garcia Prieto can be seen stepping to Mr Morrison's side and looking in the same direction.<sup>333</sup> Someone can be heard to remark "shit".<sup>334</sup>

Figure 4: Mr Morrison points (hand, far right) in the south-easterly direction from Checkpoint One.<sup>335</sup>



footage at Checkpoint One to the time stamp, the Committee noted that the time stamp on the footage was approximately 10 minutes out. However, the time stamp indicates that the two competitors referred to in this paragraph were at Checkpoint One for approximately five minutes. Therefore, the Committee estimates that these competitors left the checkpoint at approximately 10:28am.

331 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

332 *ibid.*

333 *ibid.*

334 *ibid.*

335 *ibid.*

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Figure 5: Competitors (left) react to Mr Morrison's indication.<sup>336</sup>



Figure 6: Mr Garcia Prieto (right) reacts to Mr Morrison's indication.<sup>337</sup>



- 2.267 When the camera pans to interview the competitors as they leave the checkpoint, a large plume of smoke can be seen rising from the vicinity of a feature located in a south-easterly direction from the checkpoint. Two smaller, but wider, plumes are visible on either side of the main plume.

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<sup>336</sup> Still taken from Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

<sup>337</sup> *ibid.*

Figure 7: Plumes of smoke visible behind a feature in a south-easterly direction from Checkpoint One.<sup>338</sup>



Figure 8: Plumes of smoke visible behind a feature in a south-easterly direction from Checkpoint One.<sup>339</sup>



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338 Still taken from Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

339 Still taken from Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

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Figure 9: Plumes of smoke visible behind a feature in a south-easterly direction from Checkpoint One.<sup>340</sup>



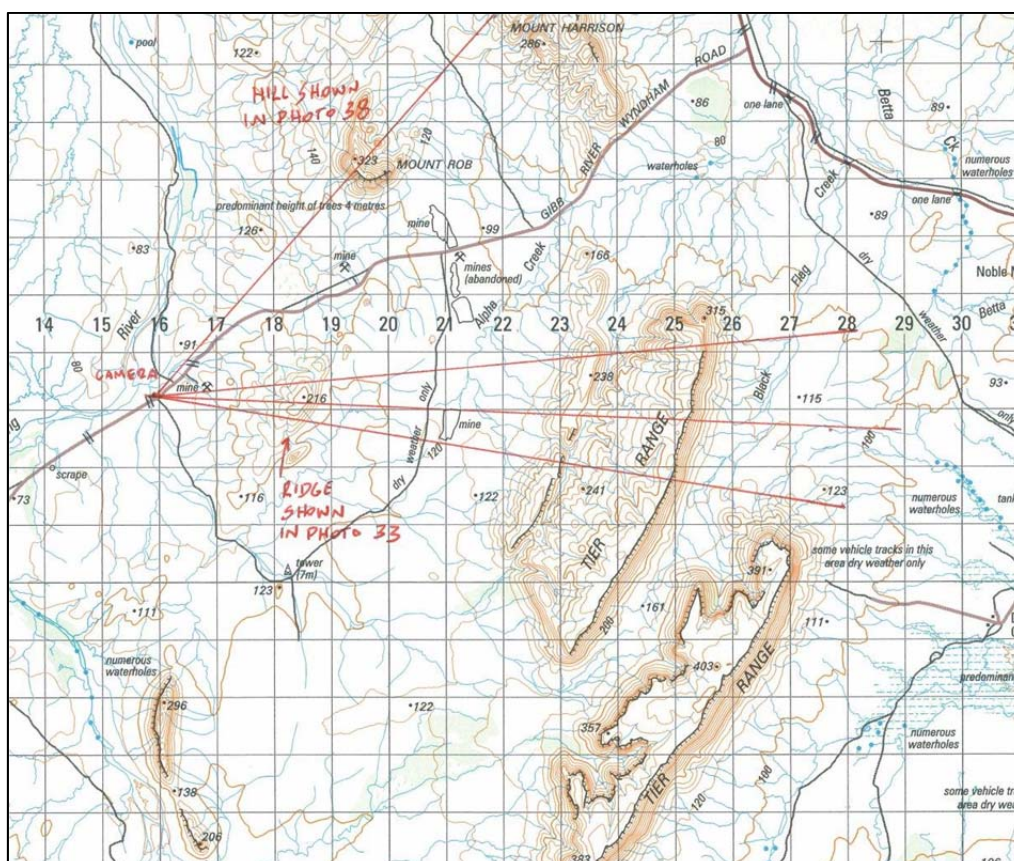
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<sup>340</sup> Still taken from Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.



- 2.268 The Committee commissioned the services of a commercial surveying company to verify the direction of the plumes from Checkpoint One. The surveyor provided the following map with its report.

Figure 10: Bearings of smoke plumes visible behind a feature in a south-easterly direction from Checkpoint One.<sup>341</sup>



- 2.269 The three lines indicate the direction of three plumes of smoke visible in the footage referred to in paragraph 2.267 above, with the centre line the largest and most distinct plume. The surveyor reported that the feature visible in the footage is a small unnamed feature in front of the Tier Range on the same bearing. It is not possible to determine distance from the footage and therefore whether the plumes of smoke are behind that unnamed ridge or the Tier Range.
- 2.270 However, the topmost of these three lines passes through the northern tip of the Tier Range. The Committee notes that shortly before this footage was taken, Mr Storey had observed a fire on the north east end of the range.<sup>342</sup>

<sup>341</sup> Cardno Spectrum Survey, *Survey Report: Gibb River Road Kununurra*, 20 July 2012.

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- 2.271 The evidence from the surveyor shows that the large plume of smoke seen by Mr Garcia Prieto from Checkpoint One at approximately 10:28am is not in the direction of the spot fire on the Gibb River Road, which he was monitoring. However, based on Mr Garcia Prieto's actions after seeing the large plume of smoke from Checkpoint One, the Committee believes he may have made an error in judgement about the direction of that plume.
- 2.272 As noted at paragraph 2.254, Mr Garcia Prieto stated that he could see the fire on the Gibb River Road. The fire is approximately five kilometres away and the footage shows that the flames of this fire are not visible at Checkpoint One. Therefore the Committee believes that Mr Garcia Prieto meant that he could see the smoke from this fire, or could see in the direction of this fire, from Checkpoint One.
- 2.273 While Mr Garcia Prieto does not mention the conversation captured on the video footage in his police statement, he left Checkpoint One shortly after it,<sup>343</sup> and stated in his police statement: 'I went back to checkpoint 2 to monitor the progress of the fire'.<sup>344</sup> Further, Mr Garcia Prieto advised the Committee that while he was at Checkpoint One, the only fire that he was aware of was next to the Gibb River Road. Therefore, the Committee can only assume that Mr Garcia Prieto mistook the large plume of smoke located in a south-easterly direction from Checkpoint One as being from the fire on the Gibb River Road.
- 2.274 While this was an error in judgement, the evidence indicates that shortly after he noticed a change in the behaviour of this fire (assumed to be a change in the size/density/height of the visible smoke plume), Mr Garcia Prieto left Checkpoint One to check on it. The Committee assumes that Mr Garcia Prieto did not assess that this fire was a danger to competitors, as he continued on to Checkpoint Two.
- 2.275 Footage provided to the Committee shows what Mr Garcia Prieto could have seen when he turned off the Gibb River Road and travelled down the track towards Checkpoint Two. This track is located to the east of the fire on the Gibb River Road that Mr Garcia Prieto had been monitoring. In footage provided to the Committee, a competitor with a GoPro camera attached to their head captures their progress from the turn off from the Gibb River Road to a point a short distance down this track. The

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342 See 2.256 above.

343 This footage was taken at approximately 10:28am. It was approximately 11.5km from Checkpoint One to Checkpoint Two, with around half that distance being 4WD track. Mr Garcia Prieto arrived at Checkpoint Two at approximately 11:00am. Therefore, the Committee believes that in order for Mr Garcia Prieto to have arrived at Checkpoint Two at that time, he must have left Checkpoint One shortly after 10:28am.

344 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.



Committee calculated that the competitor turned onto the track from the Gibb River Road at approximately 10:38am. The footage ended at approximately 10:47am.<sup>345</sup>

- 2.276 Mr Garcia Prieto arrived at Checkpoint Two from Checkpoint One at approximately 11:00am.<sup>346</sup> Therefore, Mr Garcia Prieto drove this section of the course very shortly after the footage captured on the GoPro camera ended.<sup>347</sup>
- 2.277 During this period there is a large plume of smoke visible to the competitor's south-east, rising from behind a large feature. The Committee believes that it is probable that the feature is the Tier Range.<sup>348</sup>

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345 The GoPro camera was placed on the competitor at the start line of the race and ran continuously. Knowing the time the competitor arrived at Checkpoint One, the Committee was able to calculate the approximate time the competitor turned down the track towards Checkpoint Two.

346 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 39. The Committee notes that in his police statement (4 September 2011, p. 4), Mr Garcia Prieto stated that he arrived at Checkpoint Two at approximately 11:00am, after having left Checkpoint One, checking on the fire on the Gibb River Road, driving to Checkpoint Two, receiving the message about the fire passed on by the pilot of the media helicopter, discussing it with Ms Hanninen, going out to re-check the fire on the Gibb River Road and returning. The Committee cannot confirm which account is correct, however notes that the driving times between the points referred to in Mr Garcia Prieto's account make it unlikely that he could have done all this within a half hour period. Therefore, the Committee accepts RacingThePlanet's evidence in this regard that Mr Garcia Prieto arrived at Checkpoint Two, for the first time, at approximately 11:00am.

347 The Committee notes that no cars passed the competitor between when the competitor turned onto the track towards Checkpoint Two and when the footage ended. Therefore, Mr Garcia Prieto must have passed by after the footage ended. Further, the Committee notes that even if Mr Garcia Prieto's account referred to in the preceding footnote is correct, he would have been driving along this section of the course shortly after this footage was captured.

348 The Committee notes that the nearest feature in a south easterly direction from the competitor's location appears to be the Tier Range.

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Figure 11: Plume of smoke visible behind a feature in a south-easterly direction from the head of the track to Checkpoint One.<sup>349</sup>



Figure 12: Plume of smoke visible behind a feature in a south-easterly direction from the head of the track to Checkpoint One.<sup>350</sup>



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349 Still from Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011.  
Provided to the Committee by Tourism WA.

350 *ibid.*

- 2.278 The Committee has also viewed footage taken from east of the Tier Range (the other side of the range from Checkpoint Two) at approximately 10:57am,<sup>351</sup> around the time Mr Garcia Prieto was arriving at Checkpoint Two. This footage is taken from the intersection of the Great Northern Highway and Gibb River Road and shows a large plume of smoke that appears to be rising from behind a prominent feature to the south-west. The closest feature in that direction is the Tier Range. The Committee acknowledges that no RacingThePlanet staff appear to have been present when this footage was taken. The Committee includes reference to this footage because it informed the Committee's view of the likelihood that the plume of smoke observed by Mr Garcia Prieto at Checkpoint One, and the plume visible to the east on the track to Checkpoint Two were in the vicinity of the Tier Range.

**Figure 13: Plume of smoke visible behind a feature in a south-westerly direction from the corner of the Gibb River Road and Great Northern Highway.**<sup>352</sup>



- 2.279 While it is not possible to determine the distance of the smoke plume from the competitor traversing the track towards Checkpoint Two (see 2.275 through 2.277 above), this smoke plume lies to the south east, the same direction as the course. The Committee believes it is reasonable to argue that the plume of smoke recorded in the footage would have been visible to Mr Garcia Prieto when he drove along this section of the course shortly before 11:00am.
- 2.280 RacingThePlanet stated to the Committee that:

*RacingThePlanet monitored fires on and around the course in the days leading up to 2 September 2011. Although RacingThePlanet had observed some signs of fire, it was aware of only one small spot fire on*

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351 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

352 Still from Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA

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*2 September 2011, which it continued to monitor. RacingThePlanet continued to monitor the course during the footrace.<sup>353</sup>*

- 2.281 This indicates that the fire causing the smoke plume in the vicinity of the course beyond the Tier Range was not present or had not been observed when the race began on the morning of 2 September 2011.
- 2.282 When Mr Garcia Prieto arrived at Checkpoint Two, he was given a message from the checkpoint captain Dr Brandee Waite, who was also the event's Medical Director.<sup>354</sup> As noted at 2.260 above, Mr Garcia Prieto stated that the message conveyed was 'that there is a fire coming towards us and it may be at checkpoint 2 within 2 hours'.<sup>355</sup> Mr Garcia Prieto stated that he was 'unaware that this was a new fire coming from a different direction' and 'went back up towards the Gibb River Road and checked the fire again'.<sup>356</sup> The Committee notes that this would have given Mr Garcia Prieto further opportunity to observe the plume of smoke to the south east, on the other side of the track from the fire on the Gibb River Road.
- 2.283 Ms Hanninen stated that she discussed the fire with Mr Garcia Prieto and that she too thought that the fire being referred to in the message was the one on the Gibb River Road.<sup>357</sup> When Mr Garcia Prieto checked on this fire, it 'seemed fine and the runners were passing it without issue'.<sup>358</sup> He then returned to Checkpoint Two.<sup>359</sup> Based on the evidence received by the Committee, neither Mr Garcia Prieto nor Ms Hanninen appear to have made any further attempt to determine the exact location, direction and severity of the fire referred to in the message.
- 2.284 Ms Hanninen, Mr Baker and Mr Dyer left Checkpoint Two shortly after 11:40am<sup>360</sup> and drove to The Barrels.<sup>361</sup>
- 2.285 After checking on the fire on the Gibb River Road, Mr Garcia Prieto returned to Checkpoint Two where he remained until leaving at approximately 12:45pm<sup>362</sup> with Mr

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353 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p.13.

354 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.

355 *ibid.*

356 *ibid.*

357 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 5.

358 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.

359 *ibid.*

360 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4; Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 2.

361 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4; Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 5.

362 In his police statement, Mr Garcia Prieto states that he left checkpoint two at approximately 12:00pm. The Committee believes this time to be incorrect and estimated it to be closer to 12:45pm. The Committee bases its estimate on the following facts: Mr Garcia Prieto left Checkpoint Two, and after noticing smoke between Checkpoints Two and Three, returned to Checkpoint Two, picking up Mr Croot along the way. Mr Croot was sweeping the course with Ms

Morrison and Mr Scott Connell (a local volunteer) to go towards Checkpoint Three to begin putting up glow sticks in preparation for the night.<sup>363</sup>

- 2.286 The Committee has a number of serious concerns about the actions of Mr Garcia Prieto, Ms Hanninen and Dr Waite during this period of time up to 12:45pm.
- 2.287 Firstly, Mr Garcia Prieto travelled the track between the Gibb River Road and Checkpoint Two three times within a short period after approximately 10:45am. Based on the video footage discussed at paragraph 2.275 through 2.277 above, the Committee believes that a plume of smoke behind a large feature to the south east would have been clearly visible. The evidence received by the Committee indicates that Mr Garcia Prieto did not attempt to determine the exact location, direction and severity of this fire. The Committee believes that Mr Garcia Prieto's actions in this regard represent a very serious error in judgement as the Committee finds it difficult to comprehend how Mr Garcia Prieto could not have become aware of this new fire, given his travels at this time.
- 2.288 Secondly, the evidence received indicates that after Mr Garcia Prieto determined that the fire on the Gibb River Road was not a danger to competitors, neither he, nor Ms Hanninen, gave any further consideration as to whether this was in fact the fire being referred to in the message.
- 2.289 Thirdly, from the evidence received by the Committee, it appears that not one of Mr Garcia Prieto, Ms Hanninen or Dr Waite considered it prudent to hold competitors at Checkpoint Two while they determined the exact location, direction and severity of the fire referred to in the message from the helicopter pilot. Moreover, no-one engaged the media helicopter to fly over the course to seek confirmation and clarification of the reported fire threat.
- 2.290 Fourthly, the Committee is concerned that Ms Hanninen, Mr Garcia Prieto and Dr Waite do not appear to have made contact with Ms Fanshawe to discuss the message passed on by the helicopter pilot. Ms Fanshawe was the Event Director, whose role it was to oversee the event. She was placed at the top of the organisation chart in RacingThePlanet's Management and Risk Assessment Plan, which also stated that all calls were to go to Ms Fanshawe.<sup>364</sup>

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Fergusson behind the last competitor. Mr Croot and Ms Fergusson were 1-2km away from Checkpoint Two when Mr Croot was picked up by Mr Garcia Prieto. Ms Hanninen met Mr Garcia Prieto as he was coming back out of Checkpoint Two after sending Mr Croot in to the Tier Gorge. After speaking with Mr Garcia Prieto, Ms Hanninen continued on to Checkpoint Two, arriving shortly before the last competitor, who, along with Ms Fergusson, arrived at 1:18pm.

363 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.

364 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 78.

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- 2.291 While Mr Baker stated in his police statement that he saw Ms Hanninen making phone calls after she received the message from the helicopter pilot, Ms Hanninen herself does not mention these calls, and the evidence received by the Committee does not indicate that Ms Hanninen, Mr Garcia Prieto or Dr Waite made contact with Ms Fanshawe at this time.
- 2.292 As noted in paragraph 2.130 above, RacingThePlanet's Management and Risk Assessment Plan provides a number of 'what if' scenarios. Scenario number 21 is 'Reports of other obstacles on the course'.<sup>365</sup> There are four steps given for what to do:
- Assess the severity of the situation.
  - If there is communication contact headquarters / course team to inform them and find out if they have additional information and ask them to send someone to check.
  - If no communications the CP captain should drive out to assess the situation first hand. Competitors can still leave the checkpoint but cannot pass the vehicle assessing the situation.
  - Dependent on i) the severity / ability to pass the obstacle and ii) ability to see the course markers, stop competitors from leaving the previous check point / continuing beyond the obstacle.
    - Note the time you have stopped people and who they are.<sup>366</sup>
- 2.293 The Committee believes that a fire in the vicinity of the course, or coming in the direction of a checkpoint, could reasonably be considered to be an obstacle, and one severe enough to warrant an investigation to determine its exact location, direction and severity.
- 2.294 The steps to follow in the event of an obstacle on the course provide specific actions dependent on the availability of communications, but indicate that competitors should be prevented from passing the obstacle until it is assessed. The difficulty in turning competitors back or evacuating them once they entered the Tier Gorge is obvious. Therefore, the Committee believes that it is reasonable to argue that any obstacle that had the potential to be in this area should have been investigated and assessed before competitors were permitted to leave Checkpoint Two.
- 2.295 The Committee believes, and the Management and Risk Assessment Plan supports, that upon receiving the message from the helicopter pilot, Ms Hanninen and Dr Waite

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<sup>365</sup> Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 139-140.

<sup>366</sup> *ibid.*

should have held competitors at Checkpoint Two until they had determined the exact location, direction and severity of the fire.

- 2.296 Ms Hanninen and Dr Waite had received the message from the media helicopter by approximately 10:30am, and Mr Garcia Prieto had received this message by approximately 11:00am. The first of the competitors who were subsequently injured did not arrive at Checkpoint Two until 11:29am. The Committee believes that if competitors had been held at Checkpoint Two while the exact location, direction and severity of the fire referred to in the message was determined, it is possible that Miss Pitt, Miss Sanderson, Mr Hull, Mr Van Der Merwe and Ms Gadams would not have been injured.
- 2.297 The Committee also notes that by the time Mr Garcia Prieto received the message passed on by the media helicopter at approximately 11:00am, he had also had the opportunity to be aware of a fire in the vicinity of the course beyond the Tier Range. The Committee believes that had Mr Garcia Prieto not missed this opportunity it is possible that these competitors would not have been injured.
- 2.298 The Committee finds that Mr Garcia Prieto, Ms Hanninen and Dr Waite did not take all reasonable steps to maintain the safety of competitors by failing to determine the exact location, direction and severity of the fire referred to in the message received from the helicopter pilot.

#### **Fire incident related events: 11:40am to 2:00pm**

- 2.299 Ms Hanninen, together with Mr Dyer and Mr Baker, left Checkpoint Two for The Barrels shortly after 11:40am, meaning they would have arrived at The Barrels between approximately 12:10pm and 12:20pm.<sup>367</sup>
- 2.300 Mr Baker stated that a competitor came through The Barrels and advised that the fire was getting close to the track.<sup>368</sup> Not long after, a group of four competitors came through and also advised that the fire was getting close to the track and they had waited until they were sure the competitor behind them had made it through.<sup>369</sup> Mr Baker stated that 'there was smoke rising from the direction the competitors were coming, and the smoke seemed to get thicker as we were there'.<sup>370</sup> Mr Baker also stated that the competitors were almost out of water, so Ms Hanninen 'gave them

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367 Ms Hanninen estimated the driving time to be approximately 30 minutes. Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 5. The Committee drove from checkpoint two to The Barrels on its trip to Kununurra, and concurs with Ms Hanninen's assessment.

368 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4.

369 *ibid.*

370 *ibid.*

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access to as much water as they needed'.<sup>371</sup> Mr Baker stated that around three more competitors came through advising about the fire and being low on water.<sup>372</sup>

- 2.301 The group of four competitors Mr Baker referred to in his police statement included at least one of the competitors pictured in Figure 15 below.<sup>373</sup> Therefore, the Committee notes that this view of the Tier Gorge and the smoke in its vicinity would have been visible to Ms Hanninen while she was at The Barrels.

**Figure 14: View of the Tier Range from The Barrels at approximately 12:37pm.**<sup>374</sup>



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371 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4.

372 *ibid.*

373 *ibid.*

374 Photo taken by Mr Nathan Dyer and provided to Western Australia Police.



Figure 15: Competitors come through The Barrels at approximately 12:39pm.<sup>375</sup>



Figure 16: View of the Tier Range from The Barrels at approximately 12:41pm.<sup>376</sup>



2.302 Of this period spent at The Barrels, Ms Hanninen stated: 'I had concerns about this section of the course, but this was due to the rough terrain. I noticed flames and smoke. I asked the competitors coming in about the fire. They said it was coming

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<sup>375</sup> Photo taken by Mr Nathan Dyer and provided to Western Australia Police.

<sup>376</sup> *ibid.*

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towards the course. However I still wasn't aware how big the fire was. My main concern was that it would burn the course markers and people would get lost'.<sup>377</sup> Ms Hanninen attempted to contact Mr Garcia Prieto but could not get hold of him.<sup>378</sup> Ms Hanninen decided to leave more water at the Barrels and left Mr Dyer there to assist competitors while she and Mr Baker returned to Checkpoint Two.<sup>379</sup>

- 2.303 Mr Garcia Prieto stated in his police statement that he left Checkpoint Two, along with Mr Morrison and Mr Connell, to go to Checkpoint Three to begin marking the course with glow sticks at approximately 12:00pm.<sup>380</sup> However, the Committee believes that it was closer to 12:45pm.<sup>381</sup> Mr Garcia Prieto stated that they had travelled about three or four kilometres when he observed a lot of smoke in the area between Checkpoint Two and Three.<sup>382</sup> Mr Garcia Prieto stated that he immediately turned back towards Checkpoint Two as he was concerned the fire would burn the markers and the competitors would get lost.<sup>383</sup>
- 2.304 On the way back to Checkpoint Two, Mr Garcia Prieto saw Mr Lon Croot, a local volunteer, who was sweeping the course with Ms Emma Fergusson, RacingThePlanet's Operations Manager for the event.<sup>384</sup> Mr Croot and Ms Fergusson were one to two kilometres away from Checkpoint Two.<sup>385</sup> The Committee notes that Ms Fergusson arrived at Checkpoint Two with the last competitor, who arrived at 1:18pm.<sup>386</sup>
- 2.305 Mr Garcia Prieto stated that he asked Mr Croot 'to go to the area where the fire was to help the runners find there (sic) way if the flags had been burnt'.<sup>387</sup> Mr Garcia Prieto stated that he dropped Mr Croot off at Checkpoint Two and gave him his GPS to enable Mr Croot to follow the track.<sup>388</sup> Mr Croot was also given pink marking tape and asked to re-mark the course.<sup>389</sup> Mr Garcia Prieto (along with Mr Morrison and Mr Connell) then 'continued back towards checkpoint 3 to put up the glow sticks'.<sup>390</sup>

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377 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 5.

378 *ibid.*

379 *ibid.*

380 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.

381 Please refer to footnote 363.

382 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 4.

383 *ibid.*, pp. 4-5.

384 *ibid.*, p. 5.

385 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 5; Ms Emma Fergusson, Police Statement, 5 September 2011, p. 4.

386 Ms Emma Fergusson, Police Statement, 5 September 2011, p. 4; Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 2.

387 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 5.

388 *ibid.*

389 Mr Lon Croot, Police Statement, 5 September 2011, p. 3; Mr Lon Croot, Race Volunteer, *Transcript of Evidence*, 24 April 2012, p. 2; Submission No. 7 from Mr Lon Croot, 4 April 2012, p. 2.

390 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 5.

- 2.306 After sending Mr Croot into the Tier Gorge, Mr Garcia Prieto met Ms Hanninen and Mr Baker as he was leaving Checkpoint Two and they were returning from The Barrels.<sup>391</sup> Ms Hanninen and Mr Garcia Prieto discussed the fire and their concern about the markers burning and Mr Garcia Prieto advised her that he had sent Mr Croot in to assist competitors.<sup>392</sup>
- 2.307 On his way to Checkpoint Three, Mr Garcia Prieto decided to drive into The Barrels because he could see the fire better from there and he wanted to make sure the runners did not get lost.<sup>393</sup> Mr Garcia Prieto stated: 'I saw one runner running towards me. I asked him about the fire, and he told me there was some smoke and flames but he found his ways (sic) through.'<sup>394</sup> Mr Garcia Prieto (along with Mr Morrison and Mr Connell) then went back to the Great Northern Highway and drove to Checkpoint Three.<sup>395</sup> Mr Garcia Prieto stated that they arrived there at about 1:00pm,<sup>396</sup> however given the previous timeline, the Committee believes that their arrival was closer to 2:00pm. The Committee notes that the first time the media team records Mr Morrison at Checkpoint Three, he is speaking to a number of competitors who had just arrived at 2:02pm.<sup>397</sup>
- 2.308 After speaking with Mr Garcia Prieto at Checkpoint Two, Ms Hanninen and Mr Baker stayed there for a short time before also driving back to The Barrels.<sup>398</sup> Neither Ms Hanninen, Mr Baker nor Mr Garcia Prieto mention seeing each other at The Barrels so the Committee assumes the latter had left before they arrived. Mr Dyer, who had remained there while Ms Hanninen and Mr Baker had returned to Checkpoint Two, advised that the competitors coming through 'had largely said the same thing about the fire in that it was getting close to the track'.<sup>399</sup> He told them that the most recent competitor had come through only a few minutes before.<sup>400</sup> Mr Baker states that he cannot recall whether it was the first or second time they were at The Barrels, 'but the fire roared up one of the hillsides while we were standing there'.<sup>401</sup>

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391 Mr Andrew Baker, Police Statement, 17 September 2012, p. 4.

392 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 6.

393 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 5.

394 *ibid.*

395 *ibid.*

396 *ibid.*, p. 6.

397 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

398 Mr Andrew Baker, Police Statement, 17 September 2012, p. 5.

399 *ibid.*

400 *ibid.*

401 *ibid.*

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Figure 17: View of the Tier Range from The Barrels at approximately 1:21pm.<sup>402</sup>



- 2.309 Ms Hanninen contacted Checkpoint Three and requested they send the Checkpoint One car to The Barrels as a permanent water point and to count people as they came through.<sup>403</sup> Mr Baker indicates that it was volunteers Andrea (Bolten) and Brenda (Walter) who brought this car to The Barrels.<sup>404</sup> Ms Hanninen, Mr Baker and Mr Dyer then drove to Checkpoint Three via the course route on Dillon Springs Road, arriving at approximately 2:15pm.<sup>405</sup>
- 2.310 RacingThePlanet advised the Committee that only two competitors advised RacingThePlanet staff that there were fires encroaching on the course.<sup>406</sup> The evidence discussed at paragraphs 2.300-2.302 and 2.307 above directly contradicts RacingThePlanet's statements.
- 2.311 The Committee has a number of concerns about Ms Hanninen and Mr Garcia Prieto's actions during this time period between approximately 11:40am and 2:00pm.

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402 Photo taken by Mr Nathan Dyer and provided to Western Australia Police.

403 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 6; Mr Andrew Baker, Police Statement, 17 September 2012, p. 5.

404 Mr Andrew Baker, Police Statement, 17 September 2012, p. 5.

405 In his police statement, Mr Baker stated that they got to Checkpoint Three just as a group of competitors, including a competitor whom he names, were leaving. The Committee notes that this competitor arrived at Checkpoint Three at 2:02 and took some time to rest and give an interview. Therefore, the Committee estimated that Ms Hanninen, Mr Baker and Mr Dyer arrived at Checkpoint Three at approximately 2:15pm. Mr Andrew Baker, Police Statement, 17 September 2012, p. 5; Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, 1 June 2012, p. 2.

406 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 41.

- 2.312 Firstly, although Mr Garcia Prieto and Ms Hanninen both returned to Checkpoint Two because of concerns about the fire in the Tier Range, the evidence received by the Committee indicates that neither took action to hold competitors at Checkpoint Two while they determined the exact location, direction and severity of the fire.
- 2.313 Secondly, apart from Mr Garcia Prieto sending Mr Croot into the Tier Gorge to re-mark the course, the evidence received by the Committee indicates that neither he or Ms Hanninen made any other attempt to determine the exact location, direction and severity of the fire or otherwise ensure the safety of competitors in that area.
- 2.314 Given that Mr Garcia Prieto and Ms Hanninen should have been aware that the last competitors were only arriving at Checkpoint Two at approximately 1:00pm, the Committee is extremely concerned that they did not take any action other than sending Mr Croot in to re-mark the course. Only around eight competitors had come through Checkpoint Three at the time Mr Garcia Prieto arrived at that checkpoint, with another four arriving shortly after, around the same time as Ms Hanninen. This left approximately 28 competitors (70%) somewhere between Checkpoint Two and Three with the fire known to be encroaching on the course in the area between the Tier Gorge and The Barrels.
- 2.315 The day before the event, Beyond Action had agreed to release any vehicles, including the helicopter it had hired, for RacingThePlanet's use in the event of an emergency (2.207 above). The Committee believes that this situation could reasonably be considered an emergency as it involved smoke and flames encroaching on a significant percentage of competitors in the most inaccessible part of the course. The Committee believes that RacingThePlanet staff, upon being told by competitors that smoke and flames were encroaching on the course (if not earlier), should have engaged the helicopter to determine the exact location, direction and severity of the fire and, if required, to warn competitors to turn back.
- 2.316 Thirdly, the Committee is concerned about Mr Garcia Prieto's decision to send Mr Croot into an area where he might be endangered by fire, or at the very least, smoke inhalation. RacingThePlanet advised the Committee that it felt this was an acceptable risk as 'Mr Croot was a local Kimberley volunteer who was familiar with the course and the terrain. At the time, RacingThePlanet did not know or expect there to be a dangerous fire in the Tier Gorge'.<sup>407</sup> While Mr Croot may have been familiar with the course and terrain in a general sense, the Committee notes that Mr Croot had not been through this part of the track. Further, the Committee cannot see how, if Mr Garcia Prieto and Ms Hanninen were concerned about the markers being burned by the fire, this fire was not expected to be dangerous.

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407 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 21.

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- 2.317 The Committee raised this issue with RacingThePlanet, asking specifically: 'Given that many of these markers are placed at head height, why weren't they concerned about the safety posed to competitors from flames of this height?'<sup>408</sup> RacingThePlanet refuted that many of the markers were placed at head height stating: 'RacingThePlanet occasionally places markers higher than waist height, but it is not common' and 'most of the markers in the Tier Gorge were knee or waist height'.<sup>409</sup>
- 2.318 While the Committee specifically asked about markers placed at head height, RacingThePlanet's response refers to the placement of markers as being above or below waist height. While the Committee believes that flames of any height have the potential to be dangerous, the Committee considers that flames capable of burning markers at or above waist height pose an obvious danger. The Committee has reviewed footage of several competitors moving through the area of the course between Checkpoint Two and The Barrels. This footage was filmed by GoPro cameras attached to a competitor's head or chest, and the footage captured by one competitor covers the entire section of the course between Checkpoint Two and The Barrels. The Committee observed 249 pink markers between Checkpoint Two and The Barrels. Of these 249 markers, 150 were located at waist height or higher.<sup>410</sup>
- 2.319 Therefore, the Committee finds that RacingThePlanet's statements regarding the common height of its markers and that of those placed in the Tier Gorge are incorrect. Further, the Committee finds that as Course Director, Mr Garcia Prieto should reasonably have known the height of the markers in this section of the course and thus should have recognised that any fire able to burn these markers had the potential to be dangerous.
- 2.320 Not only was Mr Croot sent into a potentially dangerous situation, he was sent in on his own and without any communications equipment. RacingThePlanet's Management and Risk Assessment Plan clearly stated that there must always be two sweepers for safety.<sup>411</sup> While technically not acting as a sweeper in this instance, the Committee believes the same standard should reasonably apply. This also goes against what Mr Garcia Prieto had stated in an interview only a few hours before, that the Kimberley

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408 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 21.

409 *ibid.*

410 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA. The Committee acknowledges that it may not have observed every marker in this section of the course. However, a total of 249 markers over the approximate 6.3km between Checkpoint Two and The Barrels roughly equates to the placement of one marker per 25m, which is the distance mandated by RacingThePlanet's Management and Risk Assessment Plan. The Committee also notes that where a marker was borderline, or its height was difficult to ascertain due to the angle or perspective of the GoPro camera, the Committee counted that marker as being below waist height.

411 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 33.

was one of the wildest places he had ever marked a race and he did not allow his team to go out there alone.<sup>412</sup>

- 2.321 In regards to the communications equipment, RacingThePlanet advised the Committee that it requires volunteers to carry communications equipment with them when going out on the footrace course and Mr Croot agreed in writing to comply with such a requirement.<sup>413</sup> Mr Croot advised the Committee that he believed he ‘somehow slipped though the net’ and did not think he signed anything.<sup>414</sup> The Committee is concerned about this, as Mr Croot assisted RacingThePlanet to prepare the course in the days leading up to the race,<sup>415</sup> so there was ample time for RacingThePlanet to have Mr Croot sign the required forms. Regardless, this was not the usual situation of a sweeper going out on the course behind the last competitor, this was an urgent requirement and the Committee believes that Mr Garcia Prieto should have taken more time to ensure Mr Croot had all the necessary equipment to ensure his safety.
- 2.322 Fourthly, the Committee notes that in taking Mr Croot to Checkpoint Two and sending him into Tier Gorge, Mr Garcia Prieto also left Ms Ferguson to finish sweeping to Checkpoint Two on her own, which is in clear violation of the Management and Risk Assessment Plan.<sup>416</sup>
- 2.323 Fifthly, the Committee notes that despite the presence of a large amount of smoke between Checkpoints Two and Three, first hand reports of smoke and flames encroaching on the course, and Mr Garcia’s decision to send Mr Croot in to re-mark and assist competitors, the evidence received by the Committee indicates that neither Mr Garcia nor Ms Hanninen attempted to contact Ms Fanshawe (the Event Director) and inform her of the situation.
- 2.324 The Committee finds that by approximately 1:00pm, Mr Garcia Prieto had observed smoke in the vicinity of the Tier Range and sent a volunteer in to re-mark the course and assist competitors, and Ms Hanninen had received reports of smoke and flames encroaching on the course from competitors coming out of the Tier Range. By failing to hold competitors at Checkpoint Two and determining the exact location, direction and severity of this fire, Mr Garcia Prieto and Ms Hanninen did not take all reasonable steps to maintain the safety of competitors.

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412 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

413 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 21.

414 Mr Lon Croot, Race Volunteer, *Transcript of Evidence*, 24 April 2012, p. 5.

415 Mr Lon Croot, Race Volunteer, *Transcript of Evidence*, 24 April 2012, p. 5; Submission No. 7 from Mr Lon Croot, 4 April 2012, p. 1.

416 Ms Emma Fergusson, Police Statement, 5 September 2011, p. 4.

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- 2.325 The Committee finds that Mr Garcia Prieto did not take all reasonable steps to maintain the safety of a volunteer by requesting Mr Croot to go into the fire area alone and without communications equipment to re-mark the course and assist competitors.
- 2.326 The Committee finds that Mr Garcia Prieto did not take all reasonable steps to maintain the safety of a staff member by leaving Ms Fergusson to continue sweeping the course alone after he requested Mr Croot go into the fire area to re-mark the course and assist competitors.

### Fire incident related events: 2:00pm to 2:45pm

- 2.327 Just before 2:00pm, competitor Mrs Brenda Sawyer returned to Checkpoint Two and advised that there was a fire on the course and that competitors were coming back but that someone may be trapped in the fire.<sup>417</sup> Mrs Sawyer also advised that the emergency services needed to be called and that a rescue helicopter would be needed.<sup>418</sup> Mrs Sawyer stated that Dr Waite immediately began to make calls on the satellite phone and that very shortly after, Mr Croot arrived back and advised Dr Waite who she should call.<sup>419</sup>
- 2.328 Mr and Mrs Sawyer had reached the top of the Tier Gorge at approximately 1:20pm and, seeing thick smoke and fire on the course route, decided to turn around. At about the same time, they heard a male voice shouting at them not to come down.<sup>420</sup> The Committee believes this to be Mr Ellis Caffin, who had descended into the valley only ten minutes before with his partner Dr Heather Scott.<sup>421</sup> Mr and Mrs Sawyer shouted back but could not get a response and started to walk back towards Checkpoint Two. They met Mr Croot coming towards them, explained what they had seen and suggested he take a look. Mr and Mrs Sawyer continued on towards Checkpoint Two and met a group of three competitors and explained that they needed to turn around.<sup>422</sup>
- 2.329 Mr Croot came running back from the top of the gorge—where he had seen two competitors overcome by fire—and fell to the ground with cramp. Mr Sawyer went to assist Mr Croot, who told him they would need a rescue helicopter. Mr Sawyer shouted this to Mrs Sawyer and told her to hurry back to the checkpoint. Recovering from his cramp, Mr Croot was in a hurry to get back to the checkpoint and went ahead of Mr

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417 Ms Emma Fergusson, Police Statement, 5 September 2011, p. 4.

418 Correspondence from Mr Martyn and Mrs Brenda Sawyer to Western Australia Police, 27 September 2011, p. 2.

419 Email correspondence from Mr Martyn and Mrs Brenda Sawyer to Western Australia Police, 27 September 2011, p. 2. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

420 *ibid.*, p. 1.

421 Mr Ellis Caffin, Police Statement, 7 September 2011, p. 3.

422 Email correspondence from Mr Martyn and Mrs Brenda Sawyer to Western Australia Police, 27 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.



Sawyer and the three other competitors. Mr Sawyer and these competitors met up with another four competitors on the way back to the checkpoint and the eight of them returned together.<sup>423</sup>

- 2.330 When he arrived at the checkpoint, Mr Croot advised Dr Waite that he had seen competitors overcome by the fire.<sup>424</sup> At 2:02pm Dr Waite placed a call to 000.<sup>425</sup> In Dr Waite's call to 000, she stated: 'we're at the edge of a fire, we've got a couple of people who've been burnt, the fire's come across them and they've been burnt. We need some help with the evacuation'.<sup>426</sup>
- 2.331 The Committee was surprised with the response Dr Waite received to her request for assistance from 000. This issue is discussed at Chapter 6.
- 2.332 After making this call to 000, Dr Waite contacted Ms Fanshawe, who was at Checkpoint Four at this time.<sup>427</sup> Dr Waite advised Ms Fanshawe that there was an emergency; 'that people had come back to checkpoint 2 stating that there was a fire and people were trapped'.<sup>428</sup> Dr Waite advised Ms Fanshawe that she had called 000.<sup>429</sup>
- 2.333 Ms Fanshawe stated in her police statement that '[a]fter getting off the phone with [D]r Waite I called Heliworks to activate our standby helicopter for emergency situations. I tried 2 different numbers however they did not connect'.<sup>430</sup> Ms Fanshawe stated that she then contacted Mr Garcia Prieto to establish the location of the media helicopter on the course and when Mr Garcia Prieto advised that the helicopter was at Checkpoint Three with him, Ms Fanshawe spoke to the pilot and asked him to investigate the situation.<sup>431</sup>
- 2.334 Ms Fanshawe's police statement indicates that she did this before contacting 000, which the Committee notes she did at 2:11pm.<sup>432</sup> However, in this call to 000, Ms Fanshawe made it clear that she had not yet spoken to the pilot of the media helicopter. In fact, Ms Fanshawe did not speak to the pilot of the media helicopter until approximately 2:35pm.

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423 Email correspondence from Mr Martyn and Mrs Brenda Sawyer to Western Australia Police, 27 September 2011, pp. 2-3. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

424 Submission No. 7 from Mr Lon Croot, 4 April 2012, p. 3.

425 Transcript of Call (Call Nos. 1 and 2) from Dr Brandee Waite to FESA Comcen (2.02pm), 2 September 2011.

426 *ibid.*

427 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 5.

428 *ibid.*

429 *ibid.*

430 *ibid.*

431 *ibid.*, pp. 5-6.

432 *ibid.*, p. 6.

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- 2.335 Ms Fanshawe made two phone calls to 000, the first at 2:11pm and the second at 2:45pm. In the first call, she advised the operator that they were in contact with a helicopter company in relation to the race and asked the operator whether there was any help in getting them started to go and look (for the missing competitors). The operator indicated that she should, and Ms Fanshawe stated that she would call the helicopter.<sup>433</sup>
- 2.336 At 2:45pm, Ms Fanshawe called 000 again, during which conversation she advised that she had spoken to the helicopter pilot about ten minutes beforehand and they were going to fly over to assess the situation.<sup>434</sup> Ms Fanshawe had contacted Mr Garcia Prieto at Checkpoint Three, advised him that there were runners missing between Checkpoint Two and the Barrels and when he informed her that the helicopter was at Checkpoint Three, Ms Fanshawe asked to speak to the pilot.<sup>435</sup>
- 2.337 The Committee has a number of concerns about the information relayed and the actions taken by Dr Waite and Ms Fanshawe during this period of time.
- 2.338 Firstly, Ms Fanshawe stated that after speaking with Dr Waite she called Heliwork to activate RacingThePlanet's standby helicopter for emergency situations.<sup>436</sup> As noted in paragraphs 2.206 and 2.207 above, RacingThePlanet did not have a helicopter on standby, having declined that option during a conversation with Heliwork the previous day. Instead, RacingThePlanet had opted to have Beyond Action release the helicopter they had hired from Heliwork (and any other vehicles) for RacingThePlanet's use in the event of an emergency. Therefore, Ms Fanshawe should have been contacting the pilot of the Beyond Action helicopter, not the Heliwork office in Kununurra. The Committee believes this demonstrates that RacingThePlanet's plan to use the helicopter in an emergency and that helicopter's designation as first responder was not well understood, and suffered from only having been determined the day before the event.
- 2.339 Secondly, it appears that the fact that competitors have been burnt by the fire is lost before Ms Fanshawe calls 000 for the first time. When Dr Waite called 000 at 2:02pm, she told the operator 'we're at the edge of a fire, we've got a couple of people who've been burnt, the fire's come across them and they've been burnt...'.<sup>437</sup>
- 2.340 However, When Ms Fanshawe contacted 000 at 2:11pm, after speaking with Dr Waite, she told the operator: '...there are bushfires out here and there is a possibility that

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433 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011.

434 *ibid.*

435 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 6.

436 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 5.

437 Transcript of Call (Call Nos. 1 and 2) from Dr Brandee Waite to FESA Comcen (2.02pm), 2 September 2011.

there are two people trapped in a bushfire'.<sup>438</sup> Further along in the call Ms Fanshawe told the operator that '[t]here were some people who got cut off by the fire ... [a]nd turned back...[a]nd they believe there are two people caught in the fire...'.<sup>439</sup> Ms Fanshawe did not tell the operator at any point in this call that people had been burnt, nor did she indicate any need for medical assistance.<sup>440</sup>

- 2.341 The Committee is concerned that either Dr Waite did not pass this information on to Ms Fanshawe, or she did and for some reason Ms Fanshawe did not relay this information to 000. The Committee notes that the quality of the connection between the satellite phones may have resulted in Ms Fanshawe not hearing the part of the conversation in which Dr Waite relayed this information. It is evident from Ms Hanninen's police statement that Ms Fanshawe was having difficulty communicating on the satellite phone.<sup>441</sup> As the Committee has no reason to believe that Dr Waite would not pass on the information that competitors had been burnt, it believes that it is likely that the error was the result of a poor connection between Ms Fanshawe and Dr Waite.
- 2.342 However, this error had serious ramifications. In addition to not providing an accurate picture of the incident to responding agencies, this error may have caused a delay in getting medical treatment to the injured competitors. Mr Summers, the pilot of the helicopter hired by Beyond Action, stated in his police statement that Ms Fanshawe asked him 'to go and look for two lost runners and get back to her'.<sup>442</sup> After locating the injured competitors, Mr Summers returned to Checkpoint Three to collect Dr Brahm. This series of events is discussed in more detail below, however the Committee notes here that if Ms Fanshawe had been aware that competitors had been burnt, she may have sent Dr Brahm with Mr Summers when he first went into the area. That Mr Summers had to return for Dr Brahm cost at least 45 minutes; time which could have been critical to the treatment of the injured competitors.
- 2.343 Thirdly, the Committee is concerned that Ms Fanshawe did not advise the 000 operator that they had a helicopter available until the call was concluding. Ms Fanshawe asked the operator if he thought she should get the helicopter to go and look, 'or is search and rescue done through you as well?'.<sup>443</sup> The Committee is very concerned that the Event Director had to ask the 000 operator whether to use the helicopter that RacingThePlanet had available, when that helicopter had been designated as first responder. Again, the Committee believes this demonstrates that RacingThePlanet's

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438 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 5; Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011.

439 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011.

440 *ibid.*

441 Ms Riitta Hanninen, Police Statement, 5 September 2011, p. 6.

442 Mr Nathan Summers, Police Statement, 9 September 2011, p. 3.

443 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011.

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plan to use the helicopter in an emergency, and the helicopter's designation as first responder was not well understood, and suffered from only having been determined the day before the event. Had Ms Fanshawe contacted the media helicopter before contacting 000, the media helicopter could have been in the air 20 minutes earlier.

- 2.344 Fourthly, during Ms Fanshawe's call to 000 at 2:11pm, she advised the operator that she did not have the GPS co-ordinates and would call back when she had them.<sup>444</sup> The Committee understands that at the time of this call RacingThePlanet had only just become aware of the incident and did not have the GPS co-ordinates for the location of the incident. However, Ms Fanshawe had the co-ordinates for Checkpoint Two and Checkpoint Three and was aware that the incident had occurred between those two checkpoints.<sup>445</sup> Ms Fanshawe could have given these coordinates and advised the operator that the incident site was between those two points, to give the operator a start while she determined accurate coordinates for the incident location.
- 2.345 The Committee does commend Ms Fanshawe for attempting to give the operator a description of the location. Unfortunately, through no fault of her own, Ms Fanshawe is unaware until most of this description is given that the operator is located in Perth. While the operator seems to recognise 'El Questro' he does not appear to be familiar with 'Emma Gorge', 'Tier Gorge' (which Ms Fanshawe tells the operator is spelled Tia) and the 'old barrels on the road to Dillon Springs'.<sup>446</sup> Given the operator's lack of local knowledge, providing him with the coordinates for Checkpoint Two and Checkpoint Three and advising him that the incident was between those points may have allowed him to give a clearer picture of the incident to responding agencies.
- 2.346 The Committee finds that RacingThePlanet's plan to use the helicopter hired by Beyond Action in the event of an emergency, and that helicopter's designation as first responder was not well understood and suffered from only having been determined the day before the event.
- 2.347 The Committee finds that several missed opportunities may have enabled the treatment of the injured competitors to be expedited. Had Ms Fanshawe enacted RacingThePlanet's emergency plan correctly, the helicopter hired by Beyond Action could have been on its way to the incident site 20 minutes earlier. Moreover, had Ms Fanshawe understood that competitors had been burnt, she may have requested Dr Brahm to accompany Mr Summers when he first flew out to the incident site, resulting in medical treatment being administered to the injured competitors 45 minutes earlier. Collectively, these measures may have resulted in medical treatment being

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444 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011.

445 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 53.

446 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011.

administered up to one hour earlier. Further, it is reasonable to conclude that had events proceeded as described, the evacuation of the injured competitors could have been similarly advanced.

### Fire incident related events: 2:45pm to 5:00pm

- 2.348 When Ms Fanshawe contacted 000 at 2:45pm she was again put through to the FESA call centre.<sup>447</sup> Ms Fanshawe provided the operator with the GPS co-ordinates for the incident location and advised the operator that they were still accounting for the numbers and that there were two people unaccounted for at the moment.<sup>448</sup> The operator asked Ms Fanshawe how many people were injured, to which Ms Fanshawe replied: 'there's two people missing there's nobody injured'.<sup>449</sup> The Committee does not know why Ms Fanshawe advised 000 that there were no injuries when she could not have been sure of this at the time.
- 2.349 The fact that there were now no injuries, where previously the advice had been that there were persons with burns, was relayed by the FESA Comcen to the St John Ambulance Operations Centre at 3:01pm.<sup>450</sup> This advice was then passed on at 3:04pm by the Ambulance Operations Centre to Mr Sarel De Koker, the St John Ambulance Community Paramedic in Kununurra, who was responding to the incident with a crew.<sup>451</sup> The Committee notes that despite the advice that there were no injuries, Mr De Koker advised the operator that he would report to the turnoff to El Questro as previously planned.<sup>452</sup>
- 2.350 At around the time Ms Fanshawe made her second call to 000 at 2:45pm, Mr Nathan Summers, the helicopter pilot, was taking off from Checkpoint Three (as requested by Ms Fanshawe) with one of the media crew, Mr Nathan Tomlinson, on board.<sup>453</sup> Mr Summers flew into the area and discovered a number of competitors on the valley floor and another group with casualties on a ridge north east of Tier Gorge.<sup>454</sup> Mr Summers attempted to land on the ridge, but could not because of the terrain and the camera equipment attached to the helicopter.<sup>455</sup> Mr Summers landed the helicopter in a clearing in the valley, and Mr Caffin, who had been heading towards Checkpoint Three,

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447 Transcript of Call (Call No. 16) from Ms Samantha Fanshawe to FESA Comcen, (2:45pm), 2 September 2011.

448 *ibid.*

449 *ibid.*

450 Transcript of Call (Call No. 6) from FESA Comcen to St John Ambulance Operations Centre, (3:01pm), 2 September 2011.

451 Transcript of Call (Call No. 7) from St John Ambulance Operations Centre to Mr Sarel De Koker, (3:04pm), 2 September 2011.

452 *ibid.*

453 Mr Nathan Summers, Police Statement, 9 September 2011, pp. 2-3.

454 *ibid.*, p. 3.

455 *ibid.*

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came over and advised him about the seriously injured people on the ridge.<sup>456</sup> Mr Summers made another attempt to land on the ridge but could not.<sup>457</sup>

- 2.351 Mr Summers then relayed messages on UHF Channel 10 to RacingThePlanet, 'asking for them to organise another chopper and whether they could get a vehicle into the area'.<sup>458</sup> Mr Summers also informed them of seriously injured persons and flew back to Checkpoint Three to collect Dr Julie Brahm.<sup>459</sup> Dr Brahm advised the Committee that Mr Summers returned to collect her at approximately 3:50pm.<sup>460</sup>
- 2.352 After collecting Dr Brahm from Checkpoint Three, Mr Summers flew Dr Brahm back to the ridge, where she disembarked by jumping from the helicopter and began medical treatment on Miss Pitt and Miss Sanderson.<sup>461</sup> Mr Summers landed in the valley and he and Mr Tomlinson walked up to the ridge.<sup>462</sup> Mr Summers then contacted Mr Cripps at the Heliwork base in Kununurra and over a number of broken calls, explained the situation and requested another helicopter.<sup>463</sup> Mr Summers states that these calls took place between 3:50pm and 4:00pm<sup>464</sup> and Dr Brahm states that she arrived at Miss Pitt and Miss Sanderson's location at approximately 4:00pm.<sup>465</sup> The Committee believes that Dr Brahm arrived at the incident site and Mr Summers made the calls Mr Cripps somewhere between 3:45pm and 4:00pm.
- 2.353 The Committee believes that it was at Mr Summers' request that the second helicopter was sent from Heliwork to rescue the injured competitors and that RacingThePlanet did not contact Heliwork to request a second helicopter until 4:48pm. The Committee raised the issue of who contacted Heliwork to request the second helicopter with Ms Gadams at the hearing on 2 May 2012. Ms Gadams advised the Committee that multiple people contacted Heliwork, including herself, the RacingThePlanet management team and the helicopter pilot (Mr Summers).<sup>466</sup>
- 2.354 The Committee stated to Ms Gadams that this was not the evidence received by the Inquiry. Subsequently, in response to this issue, RacingThePlanet provided a copy of the bill for the satellite telephone used by Ms Fanshawe on the day of the race. This bill

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456 Mr Nathan Summers, Police Statement, 9 September 2011, pp. 3-4; Mr Ellis Caffin, Police Statement, 7 September 2011, p. 6.

457 Mr Nathan Summers, Police Statement, 9 September 2011, p. 4.

458 *ibid.*

459 *ibid.*

460 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

461 Mr Nathan Summers, Police Statement, 9 September 2011, p. 4; Submission No 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 43.

462 Mr Nathan Summers, Police Statement, 9 September 2011, p. 4.

463 Mr Nathan Summers, Police Statement, 9 September 2011, p. 4; Mr Paul Cripps, Police Statement, 5 September 2011, p. 3.

464 Mr Paul Cripps, Police Statement, 5 September 2011, p. 3.

465 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

466 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 13.

shows that a call was made to the Heliwork office in Kununurra at 6:26am GMT on 2 September 2011, which RacingThePlanet stated was 3:26pm Perth time.<sup>467</sup>

- 2.355 In fact, the Committee has verified that 6:26am GMT on 2 September 2011 was 2:26pm Perth time (WST). This phone call was made during the period after Ms Fanshawe received the call from Dr Waite advising of the emergency and before speaking to Mr Summers at Checkpoint Three. The Committee believes that this may have been one of the calls Ms Fanshawe referred to in her police statement that did not connect.<sup>468</sup> The Committee acknowledges that the call duration is 1.20 minutes.<sup>469</sup> However, RacingThePlanet has not provided any evidence to the Committee regarding the detail of this call, such as who the caller spoke to at Heliwork or the details of this conversation, merely the bare fact of its existence.
- 2.356 Heliwork did not provide any evidence to the Committee that this call was received. Additionally, at 2:26pm, Mr Summers had not yet left Checkpoint Three to go into the incident site, where he determined the need for the second helicopter. Therefore Ms Fanshawe could not possibly have been aware of the need for a second helicopter at this time. Consequently, the Committee concludes that Ms Fanshawe did not speak to Heliwork at this time.
- 2.357 Further, this bill shows that another call was made to the Heliwork office in Kununurra at 8:48am GMT on 2 September 2011, which is 4:48pm WST, not 5:48pm as RacingThePlanet stated.<sup>470</sup> This call lasted for 5.2 minutes.<sup>471</sup> The Committee believes that Ms Fanshawe refers to this call in her police statement. Ms Fanshawe stated: 'I made another phone call to Heliworks to try and arrange another helicopter. The lady at Heliworks advised me that arrangements had been made for a second helicopter'.<sup>472</sup> In fact, the second helicopter, piloted by Mr Cripps, was just arriving at the incident site at around this time.<sup>473</sup>
- 2.358 Mr Cripps had asked Heliwork employee Mr Bryn Watson, who is also a qualified paramedic, to accompany him.<sup>474</sup> Mr Watson contacted the ambulance communications centre at 4:21pm and requested a stretcher be brought to the Heliwork hangar at Kununurra Airport while Mr Cripps prepared the helicopter.<sup>475</sup> At

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467 Supplementary Item B, RacingThePlanet Events Limited, 29 May 2012, p. 22.

468 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 5.

469 Supplementary Item B, RacingThePlanet Events Limited, 29 May 2012, p. 22.

470 *ibid.*

471 *ibid.*

472 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7.

473 Mr Paul Cripps, Police Statement, 5 September 2011, p. 5.

474 *ibid.*, p. 3.

475 Mr Bryn Watson, Helicopter Pilot/Paramedic, Heliwork WA, *Transcript of Evidence*, 23 April 2012, p. 9.

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4:30pm, Mr Cripps decided that because of the fading light they could not wait for the stretcher any longer, and he and Mr Watson departed for the Tier Gorge at 4:35pm.<sup>476</sup>

- 2.359 Between 4:45pm and 5:00pm, the St John Ambulance paramedic, Mr Sarel De Koker, arrived on top of the ridge and began assisting Dr Brahm in treating Miss Sanderson and Miss Pitt.<sup>477</sup> Mr De Koker had responded to Dr Waite and Ms Fanshawe's earlier calls to 000. After receiving the call about the incident from the Ambulance Operations Centre Mr De Koker made arrangements with a crew and subsequently requested and received an upgrade to priority 1 to hasten his arrival at the scene.<sup>478</sup> Mr De Koker was accompanied by four volunteer ambulance officers in one regular ambulance and one 4WD ambulance.<sup>479</sup> Upon arrival at The Barrels, Mr De Koker established the situation and arranged for equipment to be moved from the regular ambulance to an RacingThePlanet 4WD.<sup>480</sup> Mr De Koker and the volunteer ambulance officers then drove the 4WD ambulance and the RacingThePlanet 4WD over the rough ground between The Barrels and the incident site, before climbing to the ridge where the injured competitors were.<sup>481</sup> The Committee believes that Mr De Koker and his crew arrived at the incident site at the earliest possible time achievable.
- 2.360 The Committee probed RacingThePlanet extensively throughout the Inquiry about the medical treatment administered to the injured competitors, particularly Miss Pitt and Miss Sanderson. The Committee also sought to verify RacingThePlanet's statements about this medical treatment directly with Dr Brahm, who treated the injured competitors at the incident site.
- 2.361 As noted at 2.190 above, the provision of a team of qualified medical doctors, particularly ones with specialisations in emergency medicine, is unusual for an event such as this. Again, the Committee commends RacingThePlanet for the provision of a highly qualified medical team for the 2011 Kimberley Ultramarathon.
- 2.362 Dr Brahm advised the Committee that upon arrival at Miss Pitt and Miss Sanderson's location, she assessed both women and attempted to establish IV access on Miss Pitt

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476 Mr Paul Cripps, Police Statement, 5 September 2011, p. 4.

477 Mr Sarel De Koker, notes on Incident 11045796 provided to Western Australia Police, 9 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*; Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 10.

478 Mr Sarel De Koker, notes on Incident 11045796 provided to Western Australia Police, 9 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*; Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 5.

479 Mr Sarel De Koker, notes on Incident 11045796 provided to Western Australia Police, 9 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*

480 *ibid.*

481 *ibid.*



first as she was more seriously burned.<sup>482</sup> Unfortunately Dr Brahm was unable to establish IV access on Miss Pitt. Mr De Koker, who arrived at between 4:45 and 5:00pm, advised the Committee that he attempted to gain IV access on Miss Pitt, but she had swollen too much because of her burns and he was not able to gain access.<sup>483</sup> Dr Brahm stated that when she was unable to administer IV fluids to Miss Pitt, she attempted and succeeded in gaining IV access on Miss Sanderson.<sup>484</sup> At a hearing on 30 April 2012, Miss Sanderson confirmed that she was given IV fluids.<sup>485</sup>

- 2.363 Mr De Koker advised the Committee that when he arrived at the scene Dr Brahm told him that she only had one bag of IV fluid, the one that was being used on Miss Sanderson.<sup>486</sup> However, Dr Brahm advised the Committee that she ‘had more than enough bags of IV fluids’.<sup>487</sup> No other witness who was on the scene for any period of time has advised the Committee that Dr Brahm only had one bag of IV fluids. On the basis of the evidence, the Committee cannot conclude whether Dr Brahm only had one bag of IV fluids. Regardless, both Dr Brahm and Mr De Koker advised the Committee that it was not possible to gain IV access on Miss Pitt.
- 2.364 RacingThePlanet advised that as Miss Sanderson was given fluid intravenously, she did not require oral hydration. Miss Pitt, who did not have IV access, was ‘given a small quantity of water but Dr Brahm was concerned that [she] not consume too much water because of the risk of aspiration during her likely need for intubation once at the hospital’.<sup>488</sup> Mr De Koker confirmed that it was only advisable to give Miss Pitt and Miss Sanderson ‘water to wet their lips and in small amounts’ because of the likely need for surgery.<sup>489</sup>
- 2.365 The Committee questioned RacingThePlanet and Dr Brahm about the pain medication available and what was administered. Dr Brahm advised the Committee that after gaining IV access on Miss Sanderson, she gave both her and Miss Pitt ‘oxycodone 5 mg + acetaminophen 325 mg + ondansetron 4 mg’ by mouth.<sup>490</sup> Mr De Koker stated, and Dr Brahm confirmed, that he administered an intranasal analgesic on both patients.<sup>491</sup>

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482 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

483 Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 8.

484 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

485 Miss Kate Sanderson, Competitor, *Transcript of Evidence*, 30 April 2012, p. 21.

486 Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 8.

487 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

488 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 46.

489 Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 11.

490 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

491 Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 10; Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

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- 2.366 The Committee notes that Miss Pitt stated that the only medical attention she received was a Panadol given by one of the other competitors on the ridge.<sup>492</sup> Mr Hull stated to the Committee that Mr Shaun Van Der Merwe and Mr Benson handed out ibuprofen.<sup>493</sup> Mr De Koker advised the Committee that Miss Pitt and Miss Sanderson did not receive analgesia or pain medications before he administered the intranasal analgesia.<sup>494</sup> With respect, the Committee notes that Mr De Koker was not present at the scene for the entire period that Dr Brahm was there.
- 2.367 The Committee recognises that this is a highly contentious issue. With respect, the Committee notes that the injured competitors' awareness and recollection of events may have been affected by the severity of their injuries. The Committee believes that while Miss Pitt and Miss Sanderson do not recall being given pain medication other than that supplied by other competitors, this does not mean that pain medication was not administered by Dr Brahm, or by Mr De Koker.
- 2.368 RacingThePlanet advised the Committee that drugs such as fentanyl, ketamine or morphine are controlled drugs under Western Australian law.<sup>495</sup> To have these kinds of drugs on the course 'would require risk management processes in relation to their safe storage and administration, which would not be practicable given the remote environment where the footrace was conducted'.<sup>496</sup>
- 2.369 The Committee confirmed that fentanyl, ketamine and morphine are all schedule 8 controlled drugs under Western Australian law. The Poisons Regulations require that schedule 8 medicines are stored in a safe weighing at least 500kg, having a key or combination lock, a steel plate door at least 12mm thick and at least two locking bolts of a minimum 25mm thick.<sup>497</sup> The Committee agrees that this was not practicable for the 2011 Kimberley Ultramarathon. The Committee notes that the *Pharmaceutical Services guidance note* advises that supplies of schedule 8 medicines for emergency treatment of patients are exempted from having to be stored in a safe in circumstances where the medical practitioner has them in their possession or is transporting them to enable attendance at an emergency.<sup>498</sup> However, the Committee has not received any evidence that the provision of these sorts of medicines is common practice or

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492 Miss Turia Pitt, Competitor, *Transcript of Evidence*, 30 April 2012, p. 23.

493 Mr Michael Hull, Competitor, *Transcript of Evidence*, 30 April 2012, p. 24.

494 Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 10

495 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 47.

496 *ibid.*

497 Government of Western Australia, Department of Health, *Pharmaceutical Services guidance note: Purchasing a safe to store Schedule 8 medicines*, no date, p. 1. Available at: [http://www.public.health.wa.gov.au/cproot/4204/2/guidance\\_note\\_safes.pdf](http://www.public.health.wa.gov.au/cproot/4204/2/guidance_note_safes.pdf). Accessed on 1 June 2012.

498 *ibid.*, p. 2.

reasonable for ultramarathons or other adventure sports events, and will not make any finding on this issue.

2.370 The Committee questioned Dr Brahm about the treatment of the injured competitors' wounds. Dr Brahm advised the Committee that in regards to burn treatment she 'only had a few 4x4" gauze dressings and some gauze rolls' but had 'more than enough bags of IV fluids and basic oral medications for pain and nausea'.<sup>499</sup> The Committee notes that other competitors at the incident site had used the bandages in their medical kits to cover some of Miss Sanderson and Miss Pitt's extremities.<sup>500</sup> Dr Brahm advised that the 'best prehospital treatment for burns [more than] 10% would be to cover them completely with dry dressings'.<sup>501</sup> Dr Brahm stated that to do this properly she would have had to give Miss Pitt and Miss Sanderson stronger analgesics which she did not have, and in her opinion the top priority was to get them evacuated 'to a hospital where their burns could be cleaned and dressed with sterile gauze'.<sup>502</sup> Dr Brahm advised that she 'attempted to cover [Miss Pitt's] burns with an emergency blanket but she didn't tolerate it touching her skin'.<sup>503</sup>

2.371 Further, Dr Brahm confirmed that by the time she had arrived on the scene, cooling Miss Pitt and Miss Sanderson's wounds would not have been effective. Dr Brahm stated:

*The sooner you cool the burns the better. Ideally, they would be cooled immediately. There is research in animals saying that cooling can be effective up to 60 minutes post-burn. With [Miss Pitt and Miss Sanderson] however, cooling is not so simple because the large area of burn predisposes them to hypothermia since the skin no longer acts as an effective barrier to further heat loss. Generally, you would only flush the wounds with saline to cool them if they were less than 10% body surface area.*<sup>504</sup>

2.372 The Committee notes that other competitors at the incident site attempted to cool Miss Pitt and Miss Sanderson's burns with what limited water they had with them. More water did not become available until Mr Summers first flew in to survey the situation. This was after 3:00pm, more than 90 minutes after the competitors had been burned, and would therefore (according to Dr Brahm) have had limited effect. Even had RacingThePlanet staff been aware of the incident as soon as it happened, some time would have elapsed before additional water could be brought to the incident site.

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499 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

500 Mr Michael Hull, Police Statement, 8 September 2011, p. 9; Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 1.

501 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 2.

502 *ibid.*

503 *ibid.*, p. 1.

504 *ibid.*, pp. 1-2.

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2.373 In regards to the effectiveness of Burn-Aid Burn Gel, Dr Brahm stated:

*According to the website, Burn-Aid Burn Gel is a hydrogel that is used primarily to cool partial thickness (2<sup>nd</sup>-degree) burns. [Miss Pitt and Miss Sanderson] had mostly deeper 3<sup>rd</sup>-degree burns. The immediate application of small amounts of the gel to select areas of the burns would be unlikely to do harm if they could also be dressed to prevent contributing to subsequent hypothermia. I do not believe, however, that Burn-Aid Burn Gel would have been effective overall given the large burn surface area.<sup>505</sup>*

- 2.374 The Committee notes that while the use of Burn-Aid Burn Gel may not have been effective in this particular circumstance this does not mean that it is not a useful product, particularly in an area where there is a risk of encountering a fire of any size. Mr De Koker advised the Committee that all ambulances carry Burn-Aid Burn Gel.<sup>506</sup>
- 2.375 However, Mr Matthew Maywald, Operations Manager, St John Ambulance, stated that 'Burnaid is very important, but basic first aid is equally as good if you do not have Burnaid and that is to cool people with water'.<sup>507</sup> The Committee also notes that academic studies reflect conflicting evidence on the efficacy of products such as Burn-Aid.<sup>508</sup> Therefore, the Committee will not make any finding on this issue.
- 2.376 Dr Brahm also advised the Committee that Miss Pitt and Miss Sanderson required 'escharotomies that could not be performed at the scene'.<sup>509</sup> An escharotomy is a surgical incision to release rigid and inelastic burnt skin to allow circulation in a limb or breathing when the chest is involved. This is a surgical procedure that should be performed in a sterile environment.<sup>510</sup>
- 2.377 Dr Brahm is a qualified and experienced medical professional. Originally from Canada, Dr Brahm now lives in Australia where she works for a rapid response critical care service. The Committee has no reason to believe that Dr Brahm did not administer the medical treatment she described and did not do all she could for Miss Pitt and Miss Sanderson under the circumstances and with the equipment available. Further, the

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505 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 2.

506 Mr Sarel De Koker, Community Paramedic, St John Ambulance, *Transcript of Evidence*, 23 April 2012, p. 9.

507 Mr Matthew Maywald, Operations Manager, St John Ambulance, 23 April 2012, p. 10.

508 See for example: Cuttle, L., Kempf, M., Kravchuk, O., George, N., Liu, P-Y., Change, HE., et al. 'The efficacy of Aloe vera, tea tree oil and saliva as first aid treatment for partial thickness burn injuries.', *Burns: Journal of the International Society for Burn Injuries*, vol. 34, no. 8, December, 2008, pp. 1059-1216.

509 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 2.

510 NSW Agency for Clinical Innovation, *Clinical Practice Guidelines – Escharotomy for Burn Patients - NSW Statewide Burn Injury Service*, August 2011. Available at: [http://www.aci.health.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/162633/Escharotomy\\_CPG\\_new\\_format.pdf](http://www.aci.health.nsw.gov.au/__data/assets/pdf_file/0003/162633/Escharotomy_CPG_new_format.pdf). Accessed on 13 July 2012.

Committee has not been presented with any evidence of other equipment, products or treatments that could have significantly altered the medical outcome for Miss Pitt and Miss Sanderson.

- 2.378 However, the Committee has found that had Ms Fanshawe enacted RacingThePlanet's emergency plan correctly, and if she had requested Dr Brahm accompany Mr Summers when he first flew out to the incident site, Dr Brahm could have commenced administering medical assistance to the injured competitors up to an hour earlier (2.347 above). The Committee notes that from the evidence received there appears to be one aspect of Dr Brahm's treatment that could have benefited from beginning earlier; administration of IV fluids. By the time Dr Brahm arrived at the incident site, Miss Pitt's injuries had caused her to swell to the point where an IV could not be inserted.
- 2.379 The Committee cannot know whether IV access could have been gained on Miss Pitt even an hour earlier and whether earlier access would have made a difference to Miss Pitt or Miss Sanderson's medical outcomes. However, the Committee feels that RacingThePlanet denied the injured competitors this possibility because its medical evacuation plan was not robust and well understood by RacingThePlanet staff.
- 2.380 From the evidence of Dr Brahm, Mr De Koker, RacingThePlanet and the injured competitors, it is apparent to the Committee that Miss Pitt and Miss Sanderson required immediate hospitalisation. Regardless of any treatment that Dr Brahm could have afforded Miss Pitt and Miss Sanderson, they still would have required hospitalisation as a priority. The Committee notes that when competitors signed the waiver they acknowledged RacingThePlanet's Rules and Regulations, Clause 3.9 of which states that in the event of injury, 'transportation to the nearest hospital may take several hours or longer [and] .... emergency evacuation may be seriously delayed or in some cases not available'.<sup>511</sup> However, the Committee has found that, had RacingThePlanet's medical evacuation plan been executed correctly, the evacuation of Miss Pitt and Miss Sanderson could have occurred sooner.

#### **Fire incident related events: 4:50pm to 5:30pm**

- 2.381 While waiting for Mr Cripps to arrive, Mr Summers had worked with others on the ridge to clear the area of rocks and trees to assist Mr Cripps in landing.<sup>512</sup> Mr Cripps arrived at approximately 4:50pm<sup>513</sup> and with the guidance of Mr Summers and Mr Watson, placed the right skid on the rock ledge and hovered while Dr Brahm and Miss

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511 Clause 3.9, Rules and Regulations, RacingThePlanet Events Limited, 2011.

512 Mr Nathan Summers, Police Statement, 9 September 2011, p. 5.

513 Mr Paul Cripps, Police Statement, 5 September 2011, p. 5. Mr Cripps stated previously that he and Mr Watson departed Kununurra at 4:35pm. The Committee calculated the flight time during its own helicopter flight from Kununurra to the site on 22 April 2012 to be approximately 15 minutes.

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Sanderson were loaded into the helicopter.<sup>514</sup> Due to the helicopter's power limitations, Mr Cripps then took Dr Brahm and Miss Sanderson to the valley floor where they had to disembark to allow Mr Cripps to return for Miss Pitt.<sup>515</sup> Mr Cripps performed the same manoeuvre to allow Mr De Koker and Miss Pitt to be loaded into the helicopter.<sup>516</sup> From there, Mr Cripps flew back to where he had left Dr Brahm and Miss Sanderson, and they were loaded into the helicopter again.<sup>517</sup> The helicopter departed for Kununurra at approximately 5:15pm.

2.382 Although Mr Watson contacted the St John Ambulance Communications Centre at 5:15pm while enroute to Kununurra to request an ambulance to meet them at the Heliwork hangar, there was no ambulance there when they arrived.<sup>518</sup> The Committee understands that this delay was caused by the fact that the ambulance service in Kununurra operates with one full-time paramedic (Mr De Koker) supported by volunteers. The Committee notes that at the time, two out of three ambulances in Kununurra were at the incident site,<sup>519</sup> along with four volunteers,<sup>520</sup> and Mr De Koker was on board the helicopter.

2.383 Given the critical nature of Miss Pitt and Miss Sanderson's injuries, the decision was made to continue flying on to the hospital.<sup>521</sup> Mr Cripps looked for an appropriate area to land, and decided to land on the grass in front of the hospital.<sup>522</sup> From there, the ambulance (which was presumably on its way to the airport) positioned itself to block the street and assisted with getting Miss Pitt and Miss Sanderson out of the helicopter.<sup>523</sup>

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514 Mr Paul Cripps, Police Statement, 5 September 2011, p. 5; Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 7.

515 Mr Paul Cripps, Operations Manager/Pilot, Heliwork WA, *Transcript of Evidence*, 23 April 2012, p. 4; Mr Paul Cripps, Police Statement, 5 September 2011, p. 6.

516 Mr Paul Cripps, Operations Manager/Pilot, Heliwork WA, *Transcript of Evidence*, 23 April 2012, p. 4.

517 *ibid.*

518 *ibid.*, pp. 5-6.

519 Mr Philip Strapp, Regional Manager, St John Ambulance, *Transcript of Evidence*, 23 April 2012, p. 3; Mr Sarel De Koker, Community Paramedic, St John Ambulance, *Transcript of Evidence*, 23 April 2012, p. 6.

520 Mr Sarel De Koker, notes on Incident 11045796 provided to Western Australia Police, 9 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*. The Committee notes that one of the volunteers was from Perth and was in Kununurra conducting training and another had come to Kununurra from a St John Ambulance sub-centre in the south-west for the week to assist because of staff shortages.

521 Mr Sarel De Koker, St John Ambulance WA Community Paramedic, *Transcript of Evidence*, 23 April 2012, p. 11; Mr Paul Cripps, Operations Manager/Pilot, Heliwork WA, *Transcript of Evidence*, 23 April 2012, pp. 5-6.

522 Mr Paul Cripps, Operations Manager/Pilot, Heliwork WA, *Transcript of Evidence*, 23 April 2012, p. 6.

523 *ibid.*

2.384 Mr Summers then took Mr Hull, Mr Martin Van Der Merwe and Ms Gadams in his helicopter back to the Heliwork hangar where they were met by an ambulance and conveyed to Kununurra hospital for treatment.<sup>524</sup>

2.385 The Committee would like to commend Mr Cripps for the skill and bravery he demonstrated, both at the incident site and in Kununurra. The Committee would also like to acknowledge Mr Summers and Mr Watson, who both played vital roles on the day and without whom Mr Cripps may not have been able to effect such a difficult manoeuvre.

### **Cancellation of the race and evacuation of uninjured competitors**

2.386 RacingThePlanet advised the Committee that while waiting for the assistance of emergency services, it:

*(a) stopped further competitors proceeding beyond checkpoint 2 and met competitors returning to checkpoint 2;*

*(b) evacuated competitors at checkpoint 2 to the corner of the Gibb River Road and the Great Northern Highway;*

*(c) sent a vehicle with medical and other supplies to the access point near the Barrels and stopped competitors as they arrived at the Barrels;*

*(d) held competitors as they arrived at checkpoints 3, 4 and 5;*

*(e) ensured that competitors were provided with water and shade while making arrangements to transport them back to Kununurra; and*

*(f) identified 2 adults, a child and a dog swimming near a waterfall proximate to checkpoint 2 in the Tier Gorge, warned them that there was a fire in the area and requested that they leave the area with other competitors, staff and volunteers, which they did.<sup>525</sup>*

2.387 The Committee notes that in respect of (a), all competitors had proceeded beyond Checkpoint Two by this time. As it was past 2:00pm, the designated cut-off time for Checkpoint Two, RacingThePlanet should not have been letting further competitors through this checkpoint, regardless of the fire.

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<sup>524</sup> Mr Nathan Summers, Police Statement, 9 September 2011, p. 5; Mr Martin Van Der Merwe, Police Statement, 8 September 2011, p. 9; Mr Michael Hull, Police Statement, 8 September 2011, p. 11; Ms Mary Gadams, Police Statement, 4 September 2011, p. 17.

<sup>525</sup> Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, pp. 42-43.

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- 2.388 The Committee agrees that, in respect of (b) and (c), RacingThePlanet evacuated competitors at Checkpoint Two to the corner of the Gibb River Road and the Great Northern Highway and sent a vehicle with medical and other supplies to the access point near the Barrels.<sup>526</sup> In respect of (f), the Committee notes that these individuals were locals, one of whom was known to Mr Croot, and she offered the use of her car to drive people out.<sup>527</sup> Mr Croot advised the Committee that RacingThePlanet had only one vehicle at the checkpoint at that time, which was full of medical supplies and could only fit about six people in it.<sup>528</sup> At that stage, there were nine competitors plus staff at the checkpoint.<sup>529</sup>
- 2.389 However, the evidence received by the Committee does not support the argument stated in (d), that competitors were held as they arrived at Checkpoints Three, Four and Five.
- 2.390 The Committee notes that RacingThePlanet has not provided evidence of what time the cancellation of the race was complete and all competitors, volunteers, staff, contractors and spectators were removed from the course. The Committee requested RacingThePlanet to provide a list of the times each competitor passed through the checkpoints. RacingThePlanet provided the information for Checkpoints One, Two and Three only, even though a number of competitors continued the race until they were stopped at Checkpoint Five, and one competitor actually crossed the finish line.<sup>530</sup>
- 2.391 The Committee understands that cancelling an event held over such a distance cannot be instantaneous and that priority should be given to stopping the progress of competitors toward an identified risk and to addressing the actual risk.
- 2.392 RacingThePlanet advised the Committee that the cancellation of the race began at around 2:00pm (see 2.394 below). RacingThePlanet stated that the decision to cancel the race was made by the Medical Director, checkpoint captains and RacingThePlanet staff as soon as they were aware of this fire.<sup>531</sup> This is inconsistent with Ms Fanshawe's police statement, made shortly after the event, in which she stated that Dr Waite made the decision to cancel the race at 5:00pm.<sup>532</sup> The time given by Ms Fanshawe in her police statement is more consistent with evidence provided to the Inquiry than with RacingThePlanet's statement that cancellation began shortly after 2:00pm.

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526 Submission No. 7 from Mr Lon Croot, 4 April 2012, pp. 3-4; Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7.

527 Submission No. 7 from Mr Lon Croot, 4 April 2012, p. 3.

528 *ibid.*

529 *ibid.*

530 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 2.

531 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 24

532 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7.



2.393 RacingThePlanet advised the Committee that the first steps in cancelling a footrace are to:

- (i) take immediate action to assist those in danger and evacuate those people to safety;
- (ii) hold competitors at checkpoints; and
- (iii) begin transporting competitors either back to a central location or a hotel depending on the circumstances.<sup>533</sup>

2.394 RacingThePlanet stated that:

*[w]hile competitors are being held at checkpoints, the footrace course is checked by volunteers and RacingThePlanet staff for stray competitors. Glow sticks are put on the course if it is approaching dark. ... [d]uring the 2011 Kimberley footrace the cancellation began around 2pm when Lon Croot returned to CP2 and reported a dangerous fire in the Tier Gorge. ... Thereafter, all of the above steps involved in cancelling a footrace occurred according to plan. No risk eventuated (nor was one apparent or existing) for competitors passing between other checkpoints.<sup>534</sup>*

2.395 This process indicates that once a race has been cancelled, competitors are held at checkpoints at the earliest opportunity. Delays in the process would necessarily occur as a result of competitors being between checkpoints at the time of cancellation. The Committee understands that priority should be directed towards the emergency situation, but believes that in this instance evacuation of the injured competitors, holding other competitors at checkpoints and cancelling the race could have been done simultaneously.

2.396 Ms Fergusson and Ms Hanninen managed the emergency situation from Checkpoint Three and The Barrels and Ms Fanshawe, the Event Director, remained at Checkpoint Four until after approximately 5:00pm. The evidence received by the Committee does not indicate that the checkpoint captains at Checkpoint Five or Checkpoint Six were required to assist with the emergency or left their checkpoints. Therefore, the Committee does not see why competitors could not have been held at Checkpoints Three, Four, Five and Six as they arrived. The Committee has received evidence that competitors continued the race for several hours, with one competitor actually crossing the finish line, despite opportunities to hold them up earlier at checkpoints.

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<sup>533</sup> Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 23.

<sup>534</sup> RacingThePlanet Events Limited, Supplementary Item A, 25 May 2012, pp. 23-24.

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- 2.397 At Checkpoint Two, RacingThePlanet management and volunteers, including Dr Waite who was the Medical Director and Checkpoint Captain, evacuated competitors who had returned to the checkpoint out to the Gibb River Road and then to the junction of the Gibb River Road and Great Northern Highway. Mr Croot advised the Committee that after he had returned to Checkpoint Two and advised Dr Waite of what he had seen, things went very slowly. Mr Croot stated: 'I know when you are suffering from shock things slow down but this seemed ridiculous'.<sup>535</sup>
- 2.398 The decision was made to go back to the Gibb River Road as the fire was approaching the checkpoint. Mr Croot stated that at the Gibb River Road they 'seemed to waste endless time for decisions to be made and Sat phones to ring or work'.<sup>536</sup> Mr Croot advised that '[t]he decision to drive the competitors to the Gibb River road turn [off] was eventually made'<sup>537</sup> and the competitors were left with one volunteer and no car but ample water and were to remain there until Dr Waite told them they could move.<sup>538</sup> Competitors Mr Martyn and Mrs Brenda Sawyer described it as a 'long wait' and it was a 'number of hours' before they were collected and taken back to Kununurra.<sup>539</sup> The Committee believes that this group of competitors remained at the corner of the Gibb River Road and the Great Northern Highway until at least 6:15pm.<sup>540</sup>
- 2.399 Mr Garcia Prieto left Checkpoint Three to put up glow sticks on the course after the media helicopter had left to assess the situation in the Tier Gorge, but before the helicopter returned to collect Dr Brahm.<sup>541</sup> Mr Garcia Prieto stated in his police statement that he left Checkpoint Three at approximately 3:00pm.<sup>542</sup> Before leaving, Mr Garcia had a conversation with Ms Hanninen in which it was discussed that he was going to follow the pink markers and keep going until he met Mr Morrison and that Mr Connell would do checkpoints six to seven (the finish line).<sup>543</sup> Mr Garcia Prieto stated

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535 Submission No. 7 from Mr Lon Croot, 4 April 2012, p. 3.

536 *ibid.*

537 *ibid.*, p. 4.

538 *ibid.*

539 Email correspondence from Mr Martyn and Mrs Brenda Sawyer to Western Australia Police, 27 September 2011, p. 3. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

540 When Dr Heather Scott and Mr Ellis Caffin left for Wyndham Hospital the other competitors were still there. Dr Scott and Mr Caffin arrived at Wyndham Hospital at approximately 7:15pm. Based on an approximate 60 minute drive time from the corner of the Gibb River Road and Great Northern Highway to Wyndham, the Committee estimates that they departed at approximately 6:15pm.

541 Submission No. 29 from Mr Carlos Garcia Prieto, 6 June 2012, p. 5.

542 Mr Carlos Garcia Prieto, Police Statement, 4 September 2011, p. 6.

543 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

that then they would wait and maybe at two or three in the morning they would do it again.<sup>544</sup>

- 2.400 Mr Garcia Prieto advised the Committee that before leaving Checkpoint Three there was no discussion about holding competitors at checkpoints or cancelling the race.<sup>545</sup> The Committee believes that Mr Garcia Prieto left Checkpoint Three to mark the course with glowsticks as part of the usual processes for the race, not as part of the cancellation and evacuation procedure. The Committee finds that at approximately 3:00pm, around an hour after RacingThePlanet stated it had begun cancelling the race, competitors were not being held at Checkpoint Three, which indicates that the race had not yet been cancelled.
- 2.401 Mr Andrew Baker was at Checkpoint Three with Ms Hanninen when the helicopter returned to collect Dr Brahm. Mr Baker stated that after Dr Brahm left, there were only six or seven people at the checkpoint and Ms Hanninen had two people stay at the checkpoint, two people go to the finish line and the rest drive back to The Barrels. Mr Baker stated that at about 4:15pm, he and another volunteer went into Kununurra to set up the finish line.
- 2.402 The Committee finds that, as at 4:15pm, more than two hours after RacingThePlanet stated that it had begun cancelling the race, plans were still being made to set up the finishing line, which indicates that the race had not yet been cancelled.
- 2.403 As mentioned, the Committee has received the footage taken by Beyond Action in relation to the 2011 Kimberley Ultramarathon. This footage shows RacingThePlanet staff, competitors and volunteers at Checkpoint Four between 3:41pm and 4:17pm. One competitor is already there when this footage begins. Five other competitors arrived at the checkpoint and three of these competitors left the checkpoint during this time period. The mood is jovial and RacingThePlanet staff and volunteers, including Ms Fanshawe, are assisting competitors with refilling their water supplies and providing hot water and fruit.<sup>546</sup>
- 2.404 Neither Ms Fanshawe nor any other RacingThePlanet staff member or volunteer is heard to advise competitors about the fires on the course or the potential missing/injured competitors.
- 2.405 The Committee finds that as at 4:17pm, more than two hours after RacingThePlanet stated that it had begun cancelling the race, competitors were not being held at Checkpoint Four, which indicates that the race had not yet been cancelled.

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544 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

545 Submission No. 29 from Mr Carlos Garcia Prieto, 6 June 2012, p. 5.

546 Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

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- 2.406 As mentioned, RacingThePlanet stated to the Committee that '[n]o risk eventuated (nor was one apparent or existing) for competitors passing between other checkpoints'.<sup>547</sup> However, at some point prior to 5:30pm, Ms Fanshawe arranged for Checkpoint Five to be moved due to a fire in the vicinity of that checkpoint.<sup>548</sup> Further, Ms Fanshawe stated in her police statement that '[a]t 5pm Dr Waite made the decision to cancel the race in light of the seriousness of the incident and that there was a fire risk further on in the course'.<sup>549</sup>
- 2.407 The Committee has listened to an interview given to ABC Radio by one of the competitors who departed Checkpoint Four during the period mentioned at 2.403 above (3:41pm–4:17pm). She stated that she was stopped at Checkpoint Five at approximately 6:00pm because there was a fire on the track ahead.<sup>550</sup> She stated that she was not told about the incident (in which Miss Pitt and Miss Sanderson were injured) at that time. Her statement, that she was stopped at Checkpoint Five because of fire on the track ahead, is corroborated by two other competitors.<sup>551</sup>
- 2.408 One competitor finished the race at approximately 8:08pm. He crossed the finish line to the applause of a small group consisting of: at least one RacingThePlanet volunteer, who swiped his time card; media crew, who congratulated him on his win and conducted an interview with him; and several family members. RacingThePlanet advised the Committee that '[t]his competitor was in the front of the field. The later checkpoints leading into town would have been the last to hold competitors (because of the position of these checkpoints on the footrace course)'.<sup>552</sup>
- 2.409 As mentioned at paragraph 2.395 above, the Committee cannot see any reason why competitors who arrived at Checkpoints Three and beyond after the decision had been made to begin cancelling the race (shortly after 2:00pm), could not have been held at those checkpoints immediately.
- 2.410 The evidence presented to the Committee that:
- Mr Garcia Prieto left Checkpoint Three at approximately 3:00pm to begin putting glow sticks on the course for competitors running at night;

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547 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 24

548 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7; Mr Carlos Garcia, Police Statement, 4 September 2011, p. 7.

549 Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7

550 Ms Lana Reed, ABC Kimberley, Interview with Ms Katy Duffield, 5 September 2011. Available at: <http://blogs.abc.net.au/files/katy-duffield-air.mp3>. Accessed on 3 August 2012.

551 Doran, M., 'Divers plan to support victims', *Navy News*, 13 October 2011, p. 28. Available at: <http://digital.realviewtechnologies.com/?iid=55017&staRacingThePlanetage=page0000028>. Accessed on: 3 August 2012.

552 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 25.

- Ms Hanninen requested Mr Baker and another volunteer to go to Kununurra to begin setting up the finish line at approximately 4:15pm; and
- Ms Fanshawe permitted competitors to pass beyond Checkpoint Four until at least 4:17pm

indicates that the race was continuing even after Mr Croot had reported seeing competitors overcome by fire in the Tier Gorge and with 11 competitors unaccounted for and at least seven competitors having been evacuated to the corner of the Gibb River Road and Great Northern Highway.

- 2.411 Further, the Committee is concerned that it appears that the race was cancelled only after the threat of fire on the course ahead of Checkpoint Five was apparent.
- 2.412 In respect of how long it took RacingThePlanet to evacuate everyone from the course, the Committee notes that in her police statement, Ms Hanninen stated that between 10:00pm and 12:00am they all drove back into Kununurra and after arranging accommodation for everyone, Ms Hanninen went to the finish line to make sure they knew the race was over. Ms Hanninen then drove to Checkpoint Six to collect another vehicle but that was no longer needed and she drove along the highway towards Checkpoint Three to collect the remaining people before returning to Kununurra.<sup>553</sup> The Committee is concerned that more than eight hours after RacingThePlanet stated that it had begun cancelling the race, there was a possibility that people at the finish line did not know the race was cancelled and there were still people on the course.
- 2.413 The Committee notes that the behaviour of the fire in the Tier Gorge was not consistent with RacingThePlanet's understanding of fire risk in the Kimberley and should have resulted in a change to the level of risk RacingThePlanet assigned to fire. Prior to the event, RacingThePlanet's understanding of fires in the Kimberley was that they were common and usually not a risk. Shortly after 2:00pm, RacingThePlanet's Medical Director and Event Director were both aware that a fire had injured and/or trapped competitors in the Tier Gorge. As this was not consistent with RacingThePlanet's understanding of fire risk, it should have resulted in RacingThePlanet reassessing the level of risk it had assigned to fire, and taking steps to mitigate that risk.
- RacingThePlanet provided evidence to the Committee that in previous RacingThePlanet races, competitors have been held at checkpoints for reasons including:
- (a) fog on a section of the course;
  - (b) sandstorm which limited visibility;
  - (c) lightning storm;
  - (d) flash floods;

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553 Ms Riitta Hanninen, Police Statement, 5 September 2012, p. 9.

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- (e) rivers rising;
- (f) high winds;
- (g) severe heat; and
- (h) stolen course markers or glow sticks.<sup>554</sup>

2.414 The Committee cannot understand why, when RacingThePlanet has held competitors at checkpoints for those reasons, it would fail to do so immediately in light of an event which fundamentally altered its understanding of fire risk in the course area. RacingThePlanet did not have contact with relevant authorities (FESA) to assist in mitigating that risk and does not appear to have had a plan to monitor fire on the course other than by direct observation. Therefore, the Committee believes that after RacingThePlanet became aware that a fire had injured/trapped competitors in the Tier Gorge, it should have immediately held competitors at all checkpoints and cancelled the 2011 Kimberley Ultramarathon.

### Finding 4

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of competitors in the 2011 Kimberley Ultramarathon in respect of the following factors:

- Despite being aware of fires in the vicinity of the course in the days leading up to the event, the evidence received by the Committee does not indicate that RacingThePlanet had a plan, after the race began, to monitor those fires or detect new fires, other than what could be seen by RacingThePlanet staff while driving the course.
- Before 10:32am, while at Checkpoint Two, RacingThePlanet's Event Manager received a message of a fire approaching the checkpoint. RacingThePlanet's Course Director received this message upon arrival at Checkpoint Two at approximately 11:00am. RacingThePlanet's Medical Director also received this message during this time. The Event Manager, Medical Director and Course Director failed to hold competitors at the checkpoint and determine the exact location, direction and severity of the fire referred to in the message.
- RacingThePlanet's Event Manager and Course Director met each other on the course coming in to Checkpoint Two shortly after 1:00pm. The Course Director had just sent a volunteer in to re-mark the course and assist competitors after seeing smoke in the vicinity of the Tier Range. The Event Manager was returning from The Barrels where, between approximately 12:20 and 12:40, she had received reports of smoke and flames encroaching on the course from competitors coming out of the Tier Range. Despite this, the Course Director

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554 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 5

and Event Manager did not hold competitors at Checkpoint Two and determine the exact location, direction and severity of this fire.

- With the information available at 1:00pm, if not earlier, RacingThePlanet should have engaged the media helicopter to determine the exact location, direction and severity of the fire and, if required, to warn competitors to turn back to Checkpoint Two.
- RacingThePlanet's plan to use the helicopter hired by Beyond Action in the event of an emergency—and that helicopter's designation as first responder—was not enacted correctly, was not well understood, and suffered from only having been determined the day before the event.

Had these reasonable steps been taken, it is possible that Miss Pitt, Miss Sanderson, Mr Hull, Mr Martin Van Der Merwe and Ms Gadams would not have been injured.

### Finding 5

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of competitors, staff, volunteers, spectators and contractors in the 2011 Kimberley Ultramarathon in respect of the following factor:

- The behaviour of the fire in the Tier Gorge was not consistent with RacingThePlanet's understanding of fire risk in the Kimberley and should have resulted in a change to the level of risk RacingThePlanet assigned to fire. Prior to the event, RacingThePlanet's understanding of fires in the Kimberley was that they were common and usually not a risk. Shortly after 2:00pm, RacingThePlanet's Medical Director and Event Director were both aware that a fire had injured and/or trapped competitors in the Tier Gorge. As this was not consistent with RacingThePlanet's understanding of fire risk, RacingThePlanet should have reassessed the level of risk it assigned to fire, and taken steps to mitigate that risk.
- RacingThePlanet did not have contact with relevant authorities to assist in mitigating that risk and does not appear to have had a plan to monitor fire on the course other than by direct observation. Therefore, it should have immediately held competitors at checkpoints beyond the Tier Gorge and cancelled the 2011 Kimberley Ultramarathon.

### Finding 6

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of volunteers during the 2011 Kimberley Ultramarathon in respect of the following factor:

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- At approximately 1:00pm, having observed smoke in the vicinity of the Tier Range, RacingThePlanet's Course Director sent a volunteer to go into the area of a potentially dangerous fire alone to re-mark the course and assist competitors and without ensuring that the volunteer was carrying communications equipment.

### **Finding 7**

RacingThePlanet Events Limited (RacingThePlanet) did not take all reasonable steps to maintain the safety of employees during the 2011 Kimberley Ultramarathon in respect of the following factor:

- At approximately 1:00pm, RacingThePlanet's Course Director left RacingThePlanet's Operations Manager to continue sweeping the course alone after the volunteer accompanying her was requested to go into the fire area to re-mark the course and assist competitors.



## Chapter 3

### Terms and Conditions of Event Organisers

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This Chapter addresses the first part of Term of Reference (b) by looking at a series of comparable trail ultramarathons to determine the extent to which the terms and conditions applied by organisers of such events should reasonably protect the safety and interests of competitors and—where evidence is available—employees, contractors, volunteers and spectators.

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#### Comparing events and event organisers

- 3.1 The terms and conditions for ultramarathons represent the rules applicable to an event and are commonly available to competitors via the event organiser's website. Generally, it is a condition of entry that a competitor signs to acknowledge the rules applicable to the event.
- 3.2 The Committee has been asked to determine the extent to which rules imposed by organisers should reasonably protect the safety and interests of those involved in the event.
- 3.3 The Committee has sought to determine what is reasonable in this respect by looking at the terms and conditions of five comparable trail ultramarathon events,<sup>555</sup> including the 2011 Kimberley Ultramarathon. Details of these events are included at Table 1 below. The 'reasonable' standard against which the Committee has drawn its conclusions in this chapter is that defined as, 'within the limits of reason; not greatly less or more than might be expected'.<sup>556</sup>
- 3.4 The majority of the focus in this section will be on the safety and interests of competitors, as the time limit of the Inquiry did not permit a broader analysis. However, in some instances—particularly the rules governing race cancellation—it is evident that the standards imposed to protect competitors are also designed to ensure the safety of staff, volunteers and spectators alike.

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<sup>555</sup> Ultramarathon courses can vary between track (circuit), road, or trail. A trail ultramarathon is one where the majority of the course is conducted on off-road trails. To be classed as an ultramarathon, the race length must exceed the marathon distance of 42.195km.

<sup>556</sup> Bruce Moore (ed.), *The Australian Concise Oxford Dictionary*, Oxford University Press, South Melbourne, 2004, p. 1176.

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**Table 1: Ultramarathon Events Considered by the Committee**

Race	Details
RacingThePlanet 100 2011 Kimberley Ultramarathon	Distance: 100km (50km option available) No of competitors: 41 Cost: USD\$1,600 Competitor Support Crew: Nil Location: Western Australia
Great Ocean Walk 100	Distance: 100km (individual) (50km/50km 2 person relay) No of competitors: (Capped) 60 solo and 10 x 2 person teams Competitor Support Crew: Optional Cost: (Individual) AUD\$205/235 (AURA <sup>557</sup> /Non-AURA member) Location: Victoria
Bogong2Hotham	Distance: 64km (35 km option available) No of competitors: (Capped) 70 (64km) 30 (35km) Competitor Support Crew: Nil Cost: (Individual) AUD\$80/110 (AURA/Non-AURA member) Location: Victoria
The North Face 100	Distance: 100km (Individual) (2 person relay) No of competitors: (Capped) 900 Competitor Support Crew: Optional (in limited areas) Cost: (Individual) AUD\$330 (Team) AUD\$440 Location: NSW
Western States Endurance Run	Distance: 100 miles No of Competitors: (Capped) 369 Support Crew: Support crew and pacers permitted Cost: USD\$370 Location: California

### Safety of competitors

- 3.5 RacingThePlanet's Rules and Regulations were 'in place to ensure a safe, fair and environmentally sound event'.<sup>558</sup> To ensure compliance with these rules, RacingThePlanet reserved the right to apply time penalties to, or disqualify, competitors that breached any of these conditions.<sup>559</sup> A similar practice is adopted by the other race organisers<sup>560</sup> and the Committee sees this as a prudent measure to ensure events are run in an orderly manner.

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<sup>557</sup> Australian Ultra Runners Association Inc.

<sup>558</sup> RacingThePlanet Events Limited, Rules and Regulations, 2011, p. 16.

<sup>559</sup> *ibid*, pp. 17-20.

<sup>560</sup> See, The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html). Accessed on 17 May 2012; The Trail Running Company, GOW100s, 'General Rules', n.d. Available at: <https://sites.google.com/site/gow100s/home>. Accessed on 17 May 2012; The Trail Running Company, Bogong2Hotham, 'General Rules', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17

- 3.6 While the terms and conditions of the events referred to in Table 1 above are wide-ranging, the Committee has noted common clauses pertaining to safety in three key areas: competitor vetting; mandatory equipment; and race control.

### **Competitor Vetting**

- 3.7 Competitors in these races are vetted for their suitability to enter ultramarathons according to their race experience and their general health.
- 3.8 For the 2011 Kimberley Ultramarathon, previous experience in similar events did not appear to be a pre-requisite for entry. The competitor biographies indicate that of the 41 entrants, 17 had competed in ultramarathons covering at least 100km; six had completed marathons. With the information available, it was not possible to determine the longest distance over which the remaining 18 had run.<sup>561</sup>
- 3.9 However, competitors did need to be at least 21-years-old and had to submit a medical certificate and complete a medical form, which included a fitness evaluation. The medical certificate advised that the competitor would walk or run up to 100km over two days in extreme terrains and environments.<sup>562</sup> Each competitor's doctor had to sign the certificate to confirm that competitor's general health and to report any specific issues that RacingThePlanet's Race Medical Staff would need to be aware of.
- 3.10 The medical forms were signed by the competitors after reviewing the details with the RacingThePlanet Medical Director at a mandatory pre-race briefing held the night before the event. The Medical Director reserved the right to deny entry into the event at this time, but no competitors were excluded because of ill health.<sup>563</sup> In addition, Clause 3.5 of the Rules and Regulations said that by entering, competitors warranted that they were 'physically capable of competing in the event'.<sup>564</sup>
- 3.11 The most stringent vetting processes apply to the Western States Endurance Run (WS100), where potential competitors must achieve a series of qualifying times in lower distance races as well as completion of an accredited 100-mile trail race within a stated qualifying period.<sup>565</sup>

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May 2012. Western States 100, 'Participant's Guide', 2012. Available at: <http://ws100.com/pguide.htm>. Accessed on 17 May 2012.

561 RacingThePlanet Events Limited, 'Official Competitor Information', September 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

562 RacingThePlanet Events Limited, 'Medical Form' and 'Medical Certificate', 2011. included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

563 See, Clause 3.10 RacingThePlanet Events Limited, *Rules and Regulations*, 2011; Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, pp. 16,21.

564 Clause 3.5 RacingThePlanet Events Limited, *Rules and Regulations*, 2011.

565 Western States 100, 'Participant's Guide', 2012. Available at: <http://ws100.com/pguide.htm>. Accessed on 17 May 2012.

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- 3.12 In terms of vetting the health of its competitors, entrants are urged to seek a full examination from their own doctor in the lead-up and a mandatory pre-race health examination is conducted the day before the race. Weight, blood pressure, and pulse are recorded as a benchmark that will then be monitored at ten major medical checkpoints throughout the course.<sup>566</sup>
- 3.13 For the Great Ocean Walk 100s (GOW100s) and Bogong2Hotham races, entrants must have completed at least one ultramarathon in the previous 12 months. For the Bogong2Hotham race, there is also a qualifying equivalent time based off a six-hour finish in the 6-Foot Track event in the Blue Mountains.<sup>567</sup>
- 3.14 Unlike the 2011 Kimberley Ultramarathon and the WS100, the GOW100s and Bogong2Hotham races do not appear to have competitors vetted by race doctors prior to the start. However, both events require competitors to sign a waiver before the race which includes an acknowledgement that they believe they are fit enough to compete.<sup>568</sup>
- 3.15 In terms of previous experience, The North Face 100 has no pre-requisite race requirements, but runners were required to be 'an experienced race trail runner and must be sufficiently skilled and trained to undertake the event'.<sup>569</sup>
- 3.16 Similar to the Bogong2Hotham and GOW100s, The North Face 100 asks for some basic medical information, but does not appear to require a medical clearance for entry. It is up to the competitor to take responsibility to ensure they are fit enough to compete for up to 28 hours.<sup>570</sup>
- 3.17 Competitors do not seem deterred by the qualifying restrictions placed on the North Face 100, Bogong2Hotham, GOW100s and WS100 events, which have been over-subscribed in recent years.

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566 Western States 100, 'Participant's Guide', 2012. Available at: <http://ws100.com/pguide.htm>. Accessed on 17 May 2012.

567 The Trail Running Company, GOW100s, 'Entry Details', n.d. Available at: <https://sites.google.com/site/gow100s/home>.; The Trail Running Company, Bogong2Hotham, 'Entry Requirements', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17 May 2012.

568 The issue of competitor waivers will be examined in detail from paragraph 3.105 below. The Trail Running Company, GOW100s, 'Online Entry', n.d. Available at: <https://sites.google.com/site/gow100s/home>.; The Trail Running Company, Bogong2Hotham, 'Online Entry', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17 May 2012.

569 The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html). Accessed on 17 May 2012.

570 *ibid.* Accessed on 17 May 2012. See also the Online entry form under 'Race Entry' on the same page.

- 3.18 Competitor vetting continues once a race has commenced by way of mandatory cut-off times at designated checkpoints. Race staff also have the ability to deem a competitor unfit to continue.
- 3.19 Clause 15.2 of RacingThePlanet's Rules and Regulations stated that cut-off times would be mandated for each checkpoint of an event and runners would not be allowed through after these allocated times.<sup>571</sup> RacingThePlanet's Management and Risk Assessment Plan (MRAP) stated that the cut-off time for Checkpoint Two was 2:00pm and runners must get to The Barrels before 5.20pm. No competitor was to be allowed to pass between Checkpoints Two and Three after dark.<sup>572</sup>
- 3.20 RacingThePlanet also had four doctors on the course, acting as Checkpoint Captains, who could stop competitors from continuing due to ill-health.<sup>573</sup>
- 3.21 The other events examined by the Committee exercise similar practices. Arguably the most rigorous event is the WS100, which has 50 physicians and 75 nurses as part of its 1,500-member volunteer team. WS100 conducts brief medical examinations on all of its competitors at its ten major checkpoints. This is in addition to a comprehensive assessment of health and environmental risk conditions that are outlined in the Participant's Guide. Twenty-four stations on the course have cut-off times and runners failing to meet a cut-off time are not allowed to continue. Those refusing to comply with a directive not to continue under these circumstances are disqualified and can be banned from future events.<sup>574</sup>
- 3.22 The Committee did not confirm whether the three Australian races have professional physicians, although each has support crews with basic first-aid equipment available on the course. Bogong2Hotham has standardised cut-off times at two major checkpoints while GOW100s and The North Face 100 have them at five. The two Victorian events also retain the authority to withdraw runners deemed unfit to continue, while the Blue Mountains' race advises that 'you must obey directions of marshals if you miss any time cut-offs'.<sup>575</sup>

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571 Clause 15.2 RacingThePlanet Events Limited, *Rules and Regulations*, 2011

572 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 66.

573 However, this right also extended to any RacingThePlanet staff member under clause 3.10 of the Rules and Regulations.

574 Western States 100, 'Participant's Guide', 2012. Available at: <http://ws100.com/pguide.htm>. Accessed on 17 May 2012

575 The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html). See also: The Trail Running Company, GOW100s, 'Checkpoints' and 'Safety', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Cut-offs' and 'Safety', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. All accessed on 17 May 2012; Mr Andrew Hewat, Race Director, Great Ocean Walk 100, Bogong2Hotham, *Transcript of Evidence*, 9 May 2012, p. 10.

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- 3.23 All the information pertaining to these aspects of competitor health and cut-off times are addressed in mandatory pre-race briefings. All races examined by the Committee have these briefings, which vary in length from 20 minutes (for the 2011 Kimberley Ultramarathon and The North Face 100) through to one-hour (Bogong2Hotham, GOW100s) and up to 90 minutes for the WS100.<sup>576</sup>
- 3.24 Police statements taken from competitors in the 2011 Kimberley Ultramarathon confirm that dehydration was covered thoroughly at the pre-race briefing held the night before the event and again at the start line. Other issues addressed included cut-off times, assisting injured competitors and environmental dangers, such as snakes and a crocodile that had been spotted on part of the course.<sup>577</sup> While some mention was made of spot fires in the vicinity of the course, the degree to which this issue was covered—in particular of how to respond if confronted by fire—remains contentious and was addressed in an earlier chapter of this report.

### Conclusions on Competitor Vetting

- 3.25 The Committee received evidence from the Australian Ultra Runners Association Inc (AURA), a voluntary member-based organisation whose objectives include lifting the level of health and safety in the sport. AURA pursues this goal through a range of strategies including the sanctioning of events and information sharing with race organisers.<sup>578</sup> AURA sanctions over 50 ultramarathons in Australia conducted over road, trail and track courses.<sup>579</sup>
- 3.26 AURA advised that the degree of competitor vetting depends on the nature of the race. Basically, '[t]he harder the race, the more stringent the vetting'.<sup>580</sup> The Committee was initially surprised that a 100km event in the Kimberley did not have stricter qualifications in terms of previous events. However, it is noted that the medical

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576 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 42; The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html); The Trail Running Company, GOW100s, 'Schedule', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Schedule', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Western States 100, 'Participant's Guide', 2012. Available at: <http://ws100.com/pguide.htm>. All accessed on 17 May 2011. See also Western States 100 'WS100 FAQ', n.d. Available at: <http://ws100.com/faq.htm>. Accessed on 29 May 2012.

577 Police Statement, Mr Martin Van Der Merwe, 8 September 2011, p. 2; Police Statement of Mr Michael Hull, 8 September 2011, p.3.

578 Mr Robert Boyce, President, and Miss Bernadette Benson, Vice President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 9 May 2012, pp. 1-2.

579 Australian Ultra Runners Association Inc, 'AURA Sanctioned events for 2012', n.d. Available at: [www.aura.asn.au/events.html](http://www.aura.asn.au/events.html). Accessed on 28 May 2012.

580 Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 9 May 2012, p. 10.

clearance process for the event appears to have been thorough, there was a ratio of one doctor for every four competitors, and a 50km distance was also available.

- 3.27 The Committee understands that it would be difficult, and impractical given the varied nature of different ultramarathons, to adopt a blanket policy regarding health and qualification standards for competitors. It has not obtained any information to convince it that autonomy in this respect should not be left with race organisers.
- 3.28 In terms of competitor briefings, the Committee endorses the practice of mandatory attendance adopted by organisers of the races examined. However, it is concerned that some of the shorter briefings prevent health and safety issues being explored in adequate detail. This is particularly important in events where competitors are not familiar with the area and/or they are competing in their first ultramarathon.
- 3.29 The Committee also endorses the practice adopted by Mr Andrew Hewat, Race Director of the Bogong2Hotham and GOW100s events, of having a Parks Victoria staff member attend briefings at his races to, 'outline any pertinent safety issues'.<sup>581</sup> Race organisers who, like RacingThePlanet, stage one-off events or are relatively new to an area in which a race is being held, could derive great benefit from engaging relevant local authorities in this capacity.
- 3.30 RacingThePlanet had local resident Mr John Storey brief competitors in an unofficial capacity immediately before he started the 2011 Kimberley Ultramarathon.<sup>582</sup> The Committee does not wish to detract from the quality of the information provided by Mr Storey on the day. However, it is arguable that input from fire, emergency service, and local ambulance authorities during either of RacingThePlanet's pre-race briefings would have enhanced the information available to (and consequently the safety of) all parties involved in the event.
- 3.31 While it is acknowledged that this is not currently a widespread practice, the Committee sees it as a reasonable measure for organisers of trail (and road) ultramarathons to conduct longer pre-race briefings that engage the input of relevant local agencies.

### Finding 8

The safety of competitors in ultramarathons can be enhanced by thorough mandatory pre-race briefings that engage the input of local agencies, such as fire and emergency services, to discuss external safety issues.

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<sup>581</sup> Submission No. 21 from Mr Andrew Hewat, Race Director, 12 April 2012, p. 4.

<sup>582</sup> Beyond Action, video footage from 2011 Kimberley Ultramarathon, 2 September 2011. Provided to the Committee by Tourism WA.

## Chapter 3

### Mandatory Equipment Requirements

- 3.32 The five races examined each have mandatory equipment requirements, or “gear lists”, designed to ensure that competitors have the essentials to ensure basic health and nutrition during the event. Mr Hewat, considered by AURA to be one of Australia’s pre-eminent race organisers,<sup>583</sup> said that the mandatory gear list ‘gives a fair indication of how switched on a race organiser is and how seriously they take safety matters’.<sup>584</sup>
- 3.33 RacingThePlanet’s Rules and Regulations for the 2011 Kimberley Ultramarathon imposed strict penalties on competitors who had inadequate or insufficient mandatory items. Competitors who failed to attend the mandatory pre-race equipment check, or fail to acquire necessary items in time, would be denied entry. Spot checks are also conducted mid-race to ensure that competitors have not jettisoned essential equipment to carry less weight. On these occasions one-hour time penalties can be imposed or runners can be disqualified.<sup>585</sup> The other races examined have similar regimes in place.<sup>586</sup>
- 3.34 Mr Andrew Hewat advised that mandatory gear lists are similar across many events, as Race Directors monitor what their counterparts are doing.<sup>587</sup> This is evident when inspecting the mandatory gear requirements across the Australian events. All four events, including the 2011 Kimberley Ultramarathon, had a mandatory and optional items list. RacingThePlanet had a comprehensive list with 27 compulsory items, including: headlamp and back-up light source; red flashing light (rear); compass; whistle; survival blankets; compression bandage; various clothing items to counter the acknowledged cold temperatures in the evening; blister kits; electrolytes and salt tablets for up to two days; and a hydration system capable of carrying 3 litres of water at a time.<sup>588</sup>
- 3.35 Many of these items were found in a similar form on gear lists of the other events examined.<sup>589</sup> Given the similarities in many aspects of these inventories, the

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583 Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 28 May 2012, p. 11.

584 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 7.

585 Clause 13.5 and Penalty Table, RacingThePlanet Events Limited, ‘Rules and Regulations’, 2011

586 See, for example, The North Face 100, ‘Competitor Briefing Notes’, 2012, p. 21. Available at: [www2.thenorthface.com.au/100/pdf/TNF100\\_2012\\_Competitor\\_Briefing.pdf](http://www2.thenorthface.com.au/100/pdf/TNF100_2012_Competitor_Briefing.pdf); The Trail Running Company, GOW100s, ‘Mandatory Gear’ and ‘Runner Safety’, n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, ‘Mandatory Gear’ and ‘Safety’, 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. All accessed on 17 May 2012.

587 Submission No. 21 from Mr Andrew Hewat, Race Director, 12 April 2012, p. 4.

588 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 199-209.

589 The North Face 100, ‘Competitor Briefing Notes’, 2012, pp.19- 20. Available at: [www2.thenorthface.com.au/100/pdf/TNF100\\_2012\\_Competitor\\_Briefing.pdf](http://www2.thenorthface.com.au/100/pdf/TNF100_2012_Competitor_Briefing.pdf); The Trail Running Company, GOW100s, ‘Mandatory Gear’, n.d. Available at:



Committee has focused on three important areas where it has identified some important contrasting approaches: map data; communications devices and medicines.

### Maps and Course Notes

- 3.36 Maps and course notes are provided to competitors in each of the five races examined by the Committee. With the exception of RacingThePlanet, which provided a plain black and white map with limited course notes,<sup>590</sup> topographical maps are used in the other races examined.
- 3.37 In the Bogong2Hotham race, topographical maps and course diagrams, which are mandatory items, are available on the race website.<sup>591</sup> The GOW100s provides course updates on-line throughout the year and requires competitors to carry a Parks Victoria map of the course that details each section and gives information on 'decision points'.<sup>592</sup> The North Face 100 has topographical maps on its website covering the entirety of the course and one for each leg. A final map of the course and a comprehensive course description document is included in the mandatory gear list for this event.<sup>593</sup> Finally, the WS100 has topographic map data for 15 sections of the course available on its website and holds optional course workshops in the days before the race where veterans explain the course to new entrants.<sup>594</sup>
- 3.38 Miss Kate Sanderson told the Committee that she had also received topographical maps when entering other races, including the Great North Walk 100 event in New South Wales.<sup>595</sup>
- 3.39 It is important to acknowledge the point made by AURA, that maps are not mandatory at all events and that whether topographical or plain maps are used will depend upon what is considered most useful. AURA added that some races may have maps, while others may rely on flagging the course.<sup>596</sup>

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<https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Mandatory Gear', 30 December 2011. Available at:

<https://sites.google.com/site/bogong2hotham/>. All accessed on 17 May 2012.

590 Submission No. 22 from Miss Kate Sanderson, 4 April 2012, Attachment "KS8".

591 The Trail Running Company, Bogong2Hotham, 'Mandatory Gear', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17 May 2012.

592 The Trail Running Company, GOW100s, 'Course' and 'Mandatory Gear', n.d. Available at: <https://sites.google.com/site/gow100s/home>. Accessed on 17 May 2012.

593 The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html). Accessed on 17 May 2012.

594 Western States 100, 'Participant's Guide', 2012. Available at: <http://ws100.com/pguide.htm>. Accessed on 17 May 2011. See also, Western States 100, 'Trail Sections and Elevation Profiles', n.d. Available at: <http://ws100.com/wstrail-detail.htm>. Accessed 28 May 2012.

595 Miss Kate Sanderson, Competitor, *Transcript of Evidence*, 30 April 2012, p. 4.

596 Ms Bernadette Benson, Vice-President, Australian Ultra Runners Association Inc, *Transcript of Evidence*, 9 May 2012, p. 10.

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- 3.40 In a response to a question from the Committee, RacingThePlanet said that it does not provide topographical maps in its races as it:

*does not expect competitors to have map reading skills .... Courses are carefully marked with bright pink ribbons and metal markers.*

RacingThePlanet added that:

*Other than multiday wilderness competitions that require map reading and orienteering skills, RacingThePlanet is not aware of another footrace that provides a topographical map to competitors.<sup>597</sup>*

- 3.41 This final comment is inconsistent with the Committee's observation of the other races which mandate topographic maps and, in some cases, make them available via the race website.
- 3.42 Notwithstanding this point, the Committee agrees that RacingThePlanet went to great lengths to make the course easy to navigate by placing flags within the line of sight and using glo-sticks to mark the course at night. It is noted that The North Face 100 and WS100 provide similar markings, but these are in addition to topographical maps. The events that unfolded in 2011 Kimberley Ultramarathon illustrate the potential importance of such detailed map information in remote areas when an emergency occurs and the majority of the competitors are not familiar with the area.
- 3.43 It is notable that two of the competitors burned by the fire that swept the course were critical of the maps provided, as they provided no guide to water sources or evacuation routes after the runners were injured.<sup>598</sup> Similarly, Mr Ellis Caffin, who narrowly escaped being caught by the fire, was also critical of the rudimentary nature of the map:

*I believe if I had a topographical map with me, that I would have been better able to assess whether or not the trail would lead to fire.<sup>599</sup>*

- 3.44 The Committee acknowledges these criticisms, but it did not obtain evidence that demonstrates that the provision of topographical maps would have mitigated the risk of injury in the 2011 Kimberley Ultramarathon. However, of relevance to this term of reference is the fact that other races appear to recognise the importance of mandating detailed map data as a complementary source of information for competitors running on trails. While not all participants may be familiar with the use of such maps, it does

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597 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 17.

598 Mr Michael Hull and Miss Kate Sanderson, Competitors, *Transcript of Evidence*, 30 April 2011, pp.20-21.

599 Police Statement, Mr Ellis Caffin, 7 September 2011, pp. 1, 3.

seem prudent for race organisers to make these available as an additional safety measure.

### Finding 9

The inclusion of topographical maps as part of mandatory equipment lists has the potential to enhance the safety of competitors in trail ultramarathons, particularly in remote locations where the majority of the competitors are not familiar with the area.

### Competitor Communications

- 3.45 Event rules vary around the extent to which competitors must carry communications as a safety back-up. Where reception is available, mobile phones appear to be a critical piece of equipment.
- 3.46 Mobile phones and emergency contact numbers (or an Emergency Instructions Card) are included in the mandatory gear lists for the Bogong2Hotham, GOW100s and The North Face 100. Each race urges competitors to carry Next G phones as they offer superior reception on courses where the quality of reception can vary.<sup>600</sup> For The North Face 100, where Next G coverage is available on almost 90 per cent of the course, the competitor briefing notes also provide a breakdown for each section of the race indicating where reception is strongest.<sup>601</sup>
- 3.47 However, not all races are run in locations where coverage is as reliable. The Committee could not confirm whether the WS100 requires competitors to carry mobile phones although organisers do advise the volunteer radio communications teams that mobile coverage is not reliable at many of the checkpoints.<sup>602</sup>
- 3.48 Like the WS100, RacingThePlanet conducted the 2011 Kimberley Ultramarathon in a more remote area where its own multilayered communications system 'did not work perfectly all of the time'.<sup>603</sup> The company was also aware from the previous year that there was a 'lack of mobile phone coverage outside of Kununurra'.<sup>604</sup>

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600 The Trail Running Company, GOW100s, 'Mandatory Gear', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Safety', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. All accessed on 17 May 2012.

601 The North Face 100, 'Competitor Briefing Notes', 2012, pp.17-21. Available at: [www2.thenorthface.com.au/100/pdf/TNF100\\_2012\\_Competitor\\_Briefing.pdf](http://www2.thenorthface.com.au/100/pdf/TNF100_2012_Competitor_Briefing.pdf). Accessed on 17 May 2012.

602 Western States 100, 'WS100 Comm FAQ', n.d. Available at: <http://ws100.com/faq-comm.htm>. Accessed on 29 May 2012.

603 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 28. RacingThePlanet accept this point but stated that it is a feature of similar systems and not just those used by RacingThePlanet.

604 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, p. 4.

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- 3.49 Notwithstanding this known lack of mobile coverage, there was still a prohibition in the Rules and Regulations against the use of mobile phones, except in an emergency, with a one-hour time penalty applicable. However, this seems to be related to RacingThePlanet wanting to ensure it retained commercial exclusivity over image rights and media content that might be obtained from the event.<sup>605</sup>
- 3.50 Competitors including Miss Kate Sanderson and Mr Caffin were aware that there was no mobile coverage on the course.<sup>606</sup> Mr Caffin added that, 'If we required help, we were told to either get to the closest checkpoint, and/or get assistance from another runner'.<sup>607</sup>
- 3.51 Unfortunately for all parties, when an emergency struck, it was on the most inaccessible part of the course in terms of both communication and evacuation options. While it is most likely that mobile phones would not have worked, injured runner Mr Michael Hull highlighted the fact that:
- We had no communication, no form of communication; you know, we had no sat phones, we had no radios.*<sup>608</sup>
- 3.52 The Committee believes that all organisers of remote trail ultramarathons should observe the important lessons learned from this experience where direct communication from the emergency site may have expedited the response from race organisers or emergency services.
- 3.53 The Committee is loath to recommend a ban on races in such areas, as it considers this to be a disproportionate response.
- 3.54 Event organisers have to look at the communications options at their disposal. AURA confirmed that mobiles phones are usually mandatory equipment where reception is available, but in remote area races like the Coast to Kosciusko, a large number of runners will carry satellite phones.<sup>609</sup>
- 3.55 Mr Hull has competed in a race in the Sahara Desert where each athlete was given a flare in case of distress.<sup>610</sup> The Committee also received evidence of a race in Victoria

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605 This prohibition was included under 'Article 10: Image Rights, Media Content and Devices'. See Clause 10.2 and Penalty Table, RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

606 Miss Kate Sanderson, Competitor, *Transcript of Evidence*, 30 April 2011, p. 20.

607 Police Statement, Mr Ellis Caffin, 7 September 2011, p. 3.

608 Mr Michael Hull, Competitor, *Transcript of Evidence*, 30 April 2011, p. 23.

609 Mr Robert Boyce, President, Australian Ultra Runners Association Inc, *Transcript of Evidence*, 9 May 2012, p. 5.

610 Mr Michael Hull, Competitor, *Transcript of Evidence*, 30 April 2011, p. 23.

that provides competitors with a Personal Locator Beacon (PLB).<sup>611</sup> The Committee further notes that PLBs are an optional item in the Bogong2Hotham event.<sup>612</sup>

- 3.56 Mr Hewat was asked whether he used location devices in his events to which he replied:

*It is not something that I have needed at this point. The Bogong2Hotham race, as I said, I am very well covered with radio communications and the checkpoints between the radio communications are quite relatively close together by ultra-marathon standards, so I am quite comfortable with that.*<sup>613</sup>

- 3.57 The Committee believes that organisers of races where phone reception cannot be guaranteed, and robust radio communications—such as those implemented by Mr Hewat in the Bogong2Hotham race—are not available, should consider a more conservative approach to competitor safety.
- 3.58 In this respect, there is clear merit in mandating satellite phones or personal location devices that provide GPS coordinates via satellite directly to emergency services communications centres. These could be PLBs or the SPOT devices referred to earlier in the report (at 2.163-2.164 above). In the case of the incident that occurred during the 2011 Kimberley Ultramarathon, such equipment would have enabled those on site to immediately send off an emergency request for assistance that flagged their exact position. This would likely have saved critical time in facilitating the subsequent treatment and rescue of the injured competitors.
- 3.59 The Committee realises that many ultramarathons are non-commercial enterprises run on very tight budgets. However, the impost for the mandating of such devices need not be borne by the organisers, as is the case with the event in Victoria referred to at 3.55 above. A condition can be imposed on competitors requiring them to carry this equipment.

### Finding 10

The safety of competitors in trail ultramarathons would be enhanced by making satellite phones or Personal Locator Beacons mandatory items in competitor equipment lists for races where mobile phone coverage is not available or reliable, and regular radio communication can not be established across the entirety of the course.

### Use of iPods and MP3 players

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611 The Alpine Challenge 100 Mile event. Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 10.

612 The Trail Running Company, Bogong2Hotham, 'Mandatory Gear', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17 May 2012.

613 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 10.

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- 3.60 The Committee was surprised to learn that competitors in the 2011 Kimberley Ultramarathon, including the CEO and Founder Ms Mary Gadams, who received burns injuries, were wearing portable music devices while competing.<sup>614</sup> Mr John Storey also expressed concern about this practice in remote bush areas.<sup>615</sup>
- 3.61 The Committee pursued this line of investigation as part of its inquiry and found that the approach to this policy is consistent across most of the events it examined. Namely, there is no blanket ban, but there may be sections of courses—particularly roads or high competitor traffic areas, and at checkpoints—where the use of portable music devices is prohibited.<sup>616</sup>
- 3.62 While the Committee feels that the use of such equipment may expose competitors to danger by dulling awareness of their immediate external environment, it makes no finding on whether the current flexible approach used by race organisers should be altered.

### Essential Medical Items

- 3.63 Mr Hull has extensive experience competing in trail ultramarathons and he advised that medical kits are quite generic across events.<sup>617</sup> Of the Australian events examined by the Committee, including RacingThePlanet's, compression bandages and emergency blankets are mandated with other basic first aid items being optional.<sup>618</sup>
- 3.64 One area of contention that was raised by Andrew Hewat was RacingThePlanet's inclusion of Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) (such as Ibuprofen) in its mandatory equipment list. Mr Hewat argued that the use of NSAIDs during endurance events has been proven to be dangerous and, while not banning these medications outright, he warns runners against taking them in his events.<sup>619</sup> Mr Hewat explained:

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614 Police Statement, Ms Mary Gadams, 4 September 2011, p. 8.

615 Submission No. 1 from Mr John Storey, 14 March 2012, p. 3.

616 See, for example: Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 16; The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html). Accessed on 17 May 2012; Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 28 May 2012, p. 7.

617 Mr Michael Hull, Competitor, Kimberley Ultramarathon 2011, *Transcript of Evidence*, 30 April 2011, p.7.

618 See, for example, The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html); The Trail Running Company, Bogong2Hotham, 'Mandatory Gear', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>; The Trail Running Company, GOW100s, 'Mandatory Gear', n.d. Available at: <https://sites.google.com/site/gow100s/home>. All accessed on 17 May 2012.

619 Submission No. 21 from Mr Andrew Hewat, Race Director, 12 April 2012, p. 5; The Trail Running Company, GOW100s, 'Nutrition', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham,

*Best practice now in ultra-marathons and, in fact, in any endurance event, is to educate the runners and the organisers and the checkpoint volunteers to not administer, and for the runners to not take, any non-steroidal anti-inflammatory drugs because of the impact it has on the function of the kidneys at a time when they are already stressed.*<sup>620</sup>

- 3.65 While Mr Hewat is not a medically qualified professional, his views are consistent with the Medical Director of the WS100, Dr Marty Hoffman. Dr Hoffman has completed that race on several occasions and is part of a team of medical researchers established in 2007 that uses the WS100 to study the impact of endurance events on the human body. Dr Hoffman writes on the use of NSAIDs in the WS100 Participant's Guide and warns that NSAIDs:

*...increase the risk of acute renal failure by constricting the blood vessels supplying the kidneys. It should be apparent that the use of NSAIDs during endurance events is a risky business.*<sup>621</sup>

- 3.66 RacingThePlanet included NSAIDs in its Final Equipment List sent to competitors, but warned strongly against excessive consumption. Under 'Medications', the document reads:

*Anti-inflammatory medication and mild pain relief for head and foot aches such as Ibuprofen, Aspirin, Tylenol or Paracetamol. Bring enough so that you are not dependent on medication from the medical team. Note that using other competitor's medication and consuming heavy quantities of painkillers can be extremely dangerous.*<sup>622</sup>

- 3.67 The Committee asked one of the 2011 Kimberley Ultramarathon's doctors, Dr Julie Brahm, MD FRCPC, for comment on this issue. Dr Brahm wrote:

*RacingThePlanet also warns against the use of NSAIDs and we make this clear when we give our medical briefing to the racers. The issue is using them while you're dehydrated as they can contribute to renal impairment. They can, however, be used in camp at the end of the day once racers have been rehydrated. NSAIDs are effective pain relievers and reduce inflammation and that is why they are included in*

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'Safety', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17 May 2012

620 Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 6.

621 Western States 100, 'WSER Research Program', n.d. Available at: <http://ws100.com/research.htm>. Accessed 29 May 2012.

622 Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, pp. 202-203.

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*mandatory equipment - to be used only as needed when not dehydrated.*<sup>623</sup>

- 3.68 The Committee does not have the medical expertise sufficient to draw a definitive conclusion, but wishes to highlight that there is contention among practitioners that are qualified to comment on this issue. While it acknowledges the explanation provided by Dr Brahm, the Committee still holds some concern that the pitfalls of using of NSAIDs—particularly in 100km races where competitors may continue without an overnight stop—may outweigh the perceived benefits. The Committee is not prepared to make a finding on this issue, but thinks it appropriate to include it in the Report to raise awareness among event organisers and government agencies who may conduct risk assessments for these events.

### **Rules surrounding race control**

- 3.69 Undoubtedly the conditions that provide the greatest safeguard for all parties involved in trail ultramarathons are those pertaining to the organiser's right of control over the race.
- 3.70 All races examined by the Committee have similar rules granting the Race Director, and /or senior staff, the authority to cancel, suspend, hold-up, or re-route the race in the event of factors beyond their control, such as fire and bad weather.
- 3.71 Article 11 of RacingThePlanet's Rules and Regulations for the 2011 Kimberley Ultramarathon has several clauses giving the organiser the discretion to exercise any of these options.<sup>624</sup> Most significant is clause 7.6, in which RacingThePlanet reserves the right to modify, cancel, or change the date of an event. The clause adds that RacingThePlanet will only exercise these rights 'due to circumstances beyond our control'.<sup>625</sup> More than a dozen examples of what constitutes these circumstances are listed and these include fire and 'adverse weather conditions (actual or threatened)'.<sup>626</sup>
- 3.72 The other races examined by the Committee also make it clear in their pre-race information that events can be altered or cancelled due to various environmental risks, including fire.<sup>627</sup>

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623 Submission No. 28 from Dr Julie Brahm, 28 May 2012, p. 2.

624 See Clauses 11.1, 11.4, 11.5 and 11.8 RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

625 Clause 7.6 RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

626 *ibid.*

627 The Trail Running Company, GOW100s, 'Cancellation', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Entry Requirements', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>; The North Face 100, 'Race Information', n.d. Available at: [www2.thenorthface.com.au/100/more-information.html](http://www2.thenorthface.com.au/100/more-information.html). All accessed on 17 May 2012. See also, Western States 100, 'Western States Endurance Run (WSER) Official



- 3.73 Race cancellations or suspensions due to adverse conditions are far from unprecedented, as the following table demonstrates.

**Table 2: Sample list of ultramarathons cancelled due to adverse weather**<sup>628</sup>

Event (and Year)	Action taken - Circumstances
Hardrock 100 Colorado (2002)	Event cancelled due to nearby forest fires.
Bogong2Hotham Victoria (2007)	Cancelled due to bushfires.
Mansfield to Mt Buller Victoria (2007)	Cancelled due to risk from fires that had been recently extinguished.
Western States 100 California (2008)	Cancelled three days out due to concerns over dangers to runners, volunteers and aid station personal from nearby fires. Organisers also cited smoke inhalation as a key concern.
UTMB 100 Mile France (2010)	Event with 2,000 competitors cancelled in its early stages due to risk of mudslides from rain. Revised event staged the following day.
Bogong2Hotham Victoria (2012)	Cancelled after 35km due to dangers of high winds on later sections of the course and the consequent risk of falling trees.
Six Foot Track NSW (2012)	Event with 900 competitors cancelled two days out due to flood risk on course.

- 3.74 The 2011 Kimberley ultramarathon is the only event that RacingThePlanet has cancelled. However, approximately 70 per cent of its races have had stages modified due to a variety of factors including fog; sandstorms; lightning; flash flooding; high winds and severe heat.<sup>629</sup>

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Release/Agreement, Covenant Not to Sue, Waiver and Assumption of Risk' n.d. p. 1. Available at: <http://ws100.com/RunnerWaiver.pdf>. Accessed on 30 May 2012.

- 628 Information sourced from: Hardrock 100 Endurance Run, 'Race Results / Past and Present', 2011. Available at: <http://hardrock100.com/hardrock-pastresults.php>. Accessed on 30 May 2012; Australian Ultra Runners Association Inc, 'bogong to hotham ~ 64 km', n.d. Available at: [www.aura.asn.au/BogongToHotham.html](http://www.aura.asn.au/BogongToHotham.html). Accessed on 28 May 2012; Australian Ultra Runners Association Inc, 'mansfield to buller ~ 50 km', n.d. Available at: [www.aura.asn.au/MansfieldToBuller.html](http://www.aura.asn.au/MansfieldToBuller.html). Accessed on 28 May 2012; Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 28 May 2012, p. 8; ultraRunning Online, 'Fires, Smoke Force Cancellation of Western States 100', n.d. Available at: [www.ultrarunning.com/ultra/features/news/fires-smoke-force-cancell.shtml](http://www.ultrarunning.com/ultra/features/news/fires-smoke-force-cancell.shtml). Accessed on 12 March 2012; iRunFar.com, 'UTMB 2010 Results and Report: Bragg and Hawker win!', 30 August 2010. Available at: <http://www.irunfar.com/2010/08/utmb-2010-results-and-report.html>. Accessed on 30 May 2012; Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, pp. 10-11; Mr Robert Boyce, President, and Miss Bernadette Benson, Vice-President, Australian Ultra Runners Association Inc, *Transcript of Evidence*, 9 May 2012, pp. 8-9.
- 629 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, pp. 4-5.

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3.75 As previously noted at 2.296 above, the Committee has found that RacingThePlanet had the opportunity—at a time that could have prevented the injuries to competitors—to hold the race up while the exact location, direction and severity of the fire approaching the course was determined.

3.76 When explaining the decision making process of RacingThePlanet in this respect, Ms Gadams confirmed that every checkpoint captain had the authority to cancel the race and added that:

*... any time there is any danger out on the course, our checkpoint managers are trained to hold people at checkpoints. That is the most important thing that you can do.*<sup>630</sup>

3.77 RacingThePlanet has provided several explanations for why this condition was not imposed at or soon after the time John Storey's message was relayed to the relevant staff at Checkpoint Two. These include:

- The advice from locals with whom RacingThePlanet consulted was that spot fires posed no risk to people.<sup>631</sup>
- The message conveyed was not one of urgency, nor did it contain specific advice that the race should be cancelled.<sup>632</sup>
- At the time RacingThePlanet sent volunteer Mr Croot in to re-mark the course, 'RacingThePlanet did not appreciate that the risk of fire was acute or severe'.<sup>633</sup>

3.78 The Management and Risk Assessment Plan indicates that the Event Director, Ms Fanshawe, was in control of the event (2.290 above). However, the Committee notes that Ms Hanninen, Mr Garcia and Dr Waite do not appear to have made contact with Ms Fanshawe to discuss the message passed on by the helicopter pilot and ask her advice on what action to take (2.290 above). The Committee is extremely concerned that, not only were competitors not held at Checkpoint Two at this time, the person in control of the event was not informed of the issue. The Committee believes this reflects poor implementation of race control conditions.

3.79 Comparing the practices and experiences of other races with that of the 2011 Kimberley Ultramarathon shows that conditions imposed on race control are most

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630 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 14.

631 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, p. 25.

632 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 40.

633 *ibid*, p. 41.

effectively discharged when the relevant local authorities have input into the risk management and decision-making process.

- 3.80 The importance of consultation was made evident to the Committee throughout the Inquiry. The WS100 was cancelled after organisers conferred with the US Forest Service, the local county's Air Pollution Branch and Public Health Officers.<sup>634</sup>
- 3.81 AURA's Mr Robert Boyce cancelled the 2007 Mansfield to Mt Buller race after taking advice from the local authorities.<sup>635</sup>
- 3.82 Mr Hewat stipulates that the cancellation of his events may occur at the direction of local authorities including those responsible for fire and emergency services.<sup>636</sup> Mr Hewat added that in the event of fire, he defers all authority 'on cessation and evacuation' to the incident controller from the Department of Sustainability and Environment (DSE).<sup>637</sup>
- 3.83 The Risk Management Plan for Mr Hewat's GOW100s race has a section dedicated to Fire Emergency Response. It states the agencies with which the Race Director will liaise directly to determine whether the race will go ahead if fires are in the vicinity of the course. Similar consultative processes are in place if a fire breaks out in the vicinity of the course during the race to decide what course of action will be taken (cancel, hold competitors, or re-route).<sup>638</sup>
- 3.84 Mr Hewat consults with the various agencies that review his risk management plans months before one of his events take place. Mr Hewat advised that '[t]his rigorous process ensures that all foreseeable contingencies are considered and planned for'.<sup>639</sup>
- 3.85 Rapid Ascent (RA) is an adventure event management business that organises various forms of races, including trail runs, in five states of Australia. Discussing a mountain bike event it ran in the Otway Ranges, RA said it also worked 'very closely with DEC,

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634 UltraRunning Online, 'Fires, Smoke Force Cancellation of Western States 100', n.d. Available at: [www.ultrarunning.com/ultra/features/news/fires-smoke-force-cancell.shtml](http://www.ultrarunning.com/ultra/features/news/fires-smoke-force-cancell.shtml). Accessed on 12 March 2012

635 Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 28 May 2012, p. 8.

636 The Trail Running Company, GOW100s, 'Cancellation', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Entry Requirements', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>. Accessed on 17 May 2012.

637 Submission No. 21 from Mr Andrew Hewat, Race Director, 12 April 2012, p. 4. The DSE manages fire on approximately one-third of Victoria's public land.

638 *ibid*, Attachment 1, pp. 19-20.

639 Submission No. 21 from Mr Andrew Hewat, Race Director, 12 April 2012, p. 2; Mr Andrew Hewat, Race Director, *Transcript of Evidence*, 9 May 2012, p. 3.

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local council and fire service to formulate a fire management plan and evacuation plan and an event cancellation/postponement policy'.<sup>640</sup>

3.86 It is important to acknowledge that bush fires in Victoria are generally considered to pose significantly higher risk than those in areas such as the Kimberley. However, the Committee argues that fire of any sort is a risk that needs to be respected, and mitigated, when staging events in remote areas of Australia.

3.87 The Committee holds that it is incumbent upon the Race Organiser/Race Director to proactively seek the input of all relevant local authorities when identifying and mitigating such risks. This is consistent with ISO standards (2.28 above) and the comments of other event organisers:

*... it is in the event organisers best interests to gain input and local expertise from local agencies such as DEC, fire service etc. to gain insight into assessing event risks such as fire, flood etc.*<sup>641</sup>

*... when it comes to fires and floods, consult widely and understand the risks in each area.*<sup>642</sup>

3.88 When RacingThePlanet received a warning of fire approaching a checkpoint, and later when it became known that competitors had been injured by a fire, race staff were required to make timely and effective decisions on what action to take.

3.89 RacingThePlanet's ability in this regard undoubtedly suffered due to the fact that it did not have the expertise of FESA to defer to on the day of the race (in a manner similar to other organisers). Given its knowledge of fires in the vicinity of the course in the days prior to the race,<sup>643</sup> RacingThePlanet should have communicated with FESA when it was advised to. The Committee is confident that such consultation would have improved RacingThePlanet's decision-making capacities in respect of race control.

3.90 The experience of the 2011 Kimberley Ultramarathon demonstrates why the terms and conditions on race control are the most important for protecting the safety of competitors, spectators and race staff. The Committee is satisfied with the adequacy of these conditions as they appear in all of the terms and conditions of the events it has examined. However, it finds that in order to be effective, race control conditions must not just exist on paper, they have to be implemented. This requires appropriate

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640 Submission No. 3 from Mr John Jacoby, Director, Rapid Ascent Pty Ltd, 1 April 2012, p. 1. The Committee has assumed Mr Jacoby's reference to DEC in Victoria was meant to be the Department of Sustainability and Environment (DSE), Victoria's equivalent of DEC.

641 Submission No. 3 from Mr John Jacoby, Director, Rapid Ascent Pty Ltd, 1 April 2012, p. 1.

642 Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 28 May 2012, p. 9.

643 See paragraphs 2.151 through 2.19 above.

decision-making—which is enhanced through consultation with all relevant local authorities—and communication between staff and the event controller.

- 3.91 The Committee believes that RacingThePlanet’s conditions around race control for the 2011 Kimberley Ultramarathon were adequate and prudent on paper, but they were not effectively actioned, and suffered from the lack of consultation with relevant local authorities, when an emergency struck.

#### **Finding 11**

Terms and conditions relating to race control are essential for protecting the safety of competitors, spectators, volunteers and race staff. However, in order to be effective, race control conditions must not just exist on paper, they have to be implemented. This requires:

- appropriate decision-making, which is enhanced through consultation with all relevant local authorities, and
- communication between staff and the race controller.

#### **Emergency Medical Treatment**

- 3.92 After suffering her injuries, Miss Sanderson said ‘it just felt like eternity until help turned up’.<sup>644</sup> The Committee estimates that at least two hours passed before the injured competitors received formal medical assistance and at least another 75 minutes elapsed before evacuation was effected. This gave the Committee cause to consider what undertakings organisers gave regarding access to emergency medical treatment.
- 3.93 The races examined by the Committee provide a fairly standardised caveat. Clause 3.9 of RacingThePlanet’s Rules and Regulations states that transportation to the nearest hospital ‘may take several hours or longer [and] .... emergency evacuation may be seriously delayed or in some cases not available’.<sup>645</sup>
- 3.94 The WS100 is arguably the most comparable to the 2011 Kimberley Ultramarathon in terms of remoteness and competitors in that race are advised in capitalised text that much of the course is accessible only by foot, horse or helicopter. WS100 has a volunteer radio communications team, rescue helicopters on standby, mounted search and rescue personnel, and emergency services people at many of its checkpoints. Even then, WS100 provides ‘absolutely no assurance that aid or rescue assistance will arrive in time to give you effective assistance’.<sup>646</sup> The race waiver asks competitors to

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644 Miss Kate Sanderson, Competitor, *Transcript of Evidence*, 30 April 2011, p. 21.

645 Clause 3.9 RacingThePlanet Events Limited, ‘Rules and Regulations’, 2011.

646 Western States 100, ‘Participant’s Guide’, 2012. Available at: <http://ws100.com/pguide.htm>. Accessed on 17 May 2012.

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acknowledge that any assistance may not arrive in time to avoid 'physical injury or death'.<sup>647</sup>

- 3.95 Both of Mr Hewat's races and The North Face 100 also advise that it could be at least several hours before injured runners can be assisted.<sup>648</sup> When asked to comment on the issue of limited access to medical treatment, AURA said that such scenarios do not stop them sanctioning an event. AURA argued that it could not always be known what factors on any one day may inhibit access.<sup>649</sup>
- 3.96 RA's Director, Mr John Jacoby, who has held some events in extremely remote parts of Australia, added that evacuation expectations have to be tempered to acknowledge the limitations of local resources, which, in some areas, may be quite limited. However, Mr Jacoby qualifies this argument, stating that:

*... it still should be the event organizers responsibility to provide adequate medical support and evacuation methods that are consistent with the limitations imposed on them by suitably available resources within the event area and what is the "norm" for that geographical area.*<sup>650</sup>

- 3.97 Given the location of some of these events and the inherent desire of many competitors to challenge themselves in remote areas, the Committee is satisfied that the caveats around access to emergency medical assistance are acceptable.
- 3.98 Organisers who expect competitors to accept such caveats do, however, have a responsibility to ensure that reasonable systems are in place to treat and evacuate competitors in the most expedient manner in the event of an emergency. This includes making best use of whatever relevant local resources are available to assist on the day of an event. The actions taken by organisers of the WS100 (see 3.94 above) are notable in this respect. It is reasonable for competitors to accept caveats around delayed medical assistance when such efforts have been made by the organiser.
- 3.99 The Committee maintains that when holding events in remote areas, the best way of ensuring optimal access to emergency medical assistance is through communication

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647 Western States 100, 'Western States Endurance Run (WSER) Official Release/Agreement, Covenant Not to Sue, Waiver and Assumption of Risk' n.d. p. 1. Available at: <http://ws100.com/RunnerWaiver.pdf>. Accessed on 30 May 2012.

648 The Trail Running Company, GOW100s, 'Safety', n.d. Available at: <https://sites.google.com/site/gow100s/home>; The Trail Running Company, Bogong2Hotham, 'Safety', 30 December 2011. Available at: <https://sites.google.com/site/bogong2hotham/>; The North Face 100, 'Competitor Briefing Notes', 2012, pp.17-21. Available at: [www2.thenorthface.com.au/100/pdf/TNF100\\_2012\\_Competitor\\_Briefing.pdf](http://www2.thenorthface.com.au/100/pdf/TNF100_2012_Competitor_Briefing.pdf). All accessed on 17 May 2012.

649 Ms Bernadette Benson, Vice-President, Australian Ultra Runners Association Inc, *Transcript of Evidence*, 9 May 2012, pp. 3-4.

650 Submission No. 3 from Mr John Jacoby, Director, Rapid Ascent Pty Ltd, 1 April 2012, p. 2.

and consultation with relevant local authorities (in particular ambulance and emergency services) when planning the event. It is the responsibility of organisers to make every effort in this respect when asking competitors to sign an acknowledgement regarding the limitations of available medical assistance.

#### **Finding 12**

To enhance the safety of participants in trail ultramarathons, race organisers should, at a minimum, communicate and consult with relevant local authorities (including ambulance and emergency services) when developing an emergency medical and evacuation plan for an event.

#### **Finding 13**

It is an acceptable practice for ultramarathon event organisers to impose caveats regarding the time it may take provide medical treatment and evacuation to competitors. However, organisers must ensure that reasonable systems are in place to treat and evacuate competitors in the most expedient manner.

#### **Development of a minimum safety standard**

- 3.100 With the sport seemingly increasing in popularity, the ultramarathon community in Australia would benefit from the establishment of a minimum safety standard. Mr Hewat was one race director that saw benefit in such a move, but was pessimistic about the prospects of its development.<sup>651</sup>
- 3.101 The Committee did not address this issue extensively in its research, but notes that Adventure Activity Standards (AAS) exist for events, operators and products that seek accreditation within the Australian tourism industry. Each state has its own set of AAS covering 16 outdoor adventure activities. While bushwalking has its own set of standards, marathons and foot races currently do not.<sup>652</sup>
- 3.102 The Western Australian AAS were developed through consultation between industry stakeholders and Outdoors WA<sup>653</sup> using grants from the Department of Sport and Recreation. The funding followed the state government's 2006 *Adventure Tourism Visitor Safety Task Force Report*.<sup>654</sup> According to the Tourism Council of WA:

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651 Submission No. 21 from Mr Andrew Hewat, Race Director, 12 April 2012, p. 5.

652 Submission No. 24 from Tourism Council WA, 1 May 2012, p. 7.

653 Outdoors WA is the peak body for the outdoor sector in Western Australia, including camping, outdoor recreation and outdoor education. See: <http://www.outdoorswa.org/>.

654 Outdoors WA, 'Western Australia Adventure Activity Standard – Bushwalking', December 2009, p. 2. Available at: [www.outdoorswa.org/files/WA%20Adventure%20Activity%20Standard%20-%20Bushwalking%20VER%201.2%20DEC%202009.pdf](http://www.outdoorswa.org/files/WA%20Adventure%20Activity%20Standard%20-%20Bushwalking%20VER%201.2%20DEC%202009.pdf). Accessed on 10 June 2012.

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*AAS benchmark the minimum industry requirements for organisations and leaders conducting outdoor adventure activities for commercial and non-commercial groups.*<sup>655</sup>

3.103 While AAS are not statutory standards, they do:

*provide the basis for policy formation and decision making by jurisdictions external to the outdoor adventure activity industry including, but not restricted to, licensing, insurance and legal jurisdictions.*<sup>656</sup>

3.104 Importantly, in the context of this Inquiry, AAS may offer a minimum safety standard for government agencies to require as part of due diligence undertaken before approving, or indeed sponsoring, such events.

### Finding 14

Adventure Activity Standards (AAS) may provide a vehicle through which a minimum safety standard may be developed for ultramarathons. AAS may also offer a standard that could be required by government agencies tasked with approving or sponsoring such events.

### Recommendation 1

The Department of Sport and Recreation facilitate the development of an Adventure Activity Standard for ultramarathons in order to determine a minimum safety standard for the sport.

## Interests of competitors

### Waivers

3.105 When assessing the extent to which the terms and conditions of events should reasonably protect the interests of competitors, among the most contentious issues that arose during the Inquiry were the clauses and waivers that are used to limit the liability of race organisers. In this Report, a waiver is defined as a term of a contract or other document that purports to exclude, restrict or modify a liability to pay damages.

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655 Submission No. 24 from Tourism Council WA, 1 May 2012, pp. 6-7.

656 Outdoors WA, 'Western Australia Adventure Activity Standard – Bushwalking', December 2009, p. 4. Available at: [www.outdoorswa.org/files/WA%20Adventure%20Activity%20Standard%20-%20Bushwalking%20VER%201.2%20DEC%202009.pdf](http://www.outdoorswa.org/files/WA%20Adventure%20Activity%20Standard%20-%20Bushwalking%20VER%201.2%20DEC%202009.pdf). Accessed on 10 June 2012



- 3.106 The Minister for Tourism expressed surprise at the rights that were waived when competitors agreed to enter a race,<sup>657</sup> while Miss Sanderson argued that the risks she assumed when signing such waivers did not contemplate the circumstances that she actually faced: 'I certainly hadn't considered that I could have been burned by a fire'.<sup>658</sup>
- 3.107 Competitors acknowledged that waivers are quite common and are usually signed at the start of the race, although there are some races that provide an online entry process where waivers can be lodged in advance.<sup>659</sup> All five races examined by the Committee require a signed waiver as a condition of entry.

#### **RacingThePlanet's Waiver and relevant rules**

- 3.108 As stated in its Rules and Regulations, RacingThePlanet reserved the right to withdraw the offer of entry for a competitor who did not sign and submit a liability waiver within 10 days of the race.<sup>660</sup> However, as the cases of Mr Hull and Miss Turia Pitt indicate, waivers could be signed at the registration/briefing process the day before the race.<sup>661</sup>
- 3.109 In the waiver itself, the competitor acknowledges:
- Understanding the contents of the waiver and Rules and Regulations and signing both documents 'freely and voluntarily'.
  - That the activity undertaken is 'inherently dangerous and may cause serious or grievous injuries... and/or death'.
  - That although RacingThePlanet and its "Sponsors"<sup>662</sup> 'have taken precautions to provide proper equipment and qualified staff for the Kimberley Ultramarathon', it is impossible for these parties to 'guarantee absolute safety'.
  - That they 'waive all claims for damages, injuries and death sustained to me or my property, that I may have against RacingThePlanet, the Kimberley Ultramarathon, the Sponsors...including claims in tort, contract, equity or otherwise'. The waived right of claim extends beyond the competitor to include their heirs, administrators, executors and next of kin.
  - That 'it is the specific intent and purpose of this document to release and discharge any and all claims and causes of action of any kind whatsoever,

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657 Hon. Dr Kim Hames, MLA, Minister for Tourism; Health, *Transcript of Evidence*, 9 May 2012, p. 8

658 Submission No. 22 from Miss Kate Sanderson, 4 April 2012, p. 28

659 Mr Michael Hull and Miss Kate Sanderson, Competitors, *Transcript of Evidence*, 30 April 2011, p.33.

660 Clause 6.1(c) RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

661 Mr Michael Hull and Miss Turia Pitt, Competitors, *Transcript of Evidence*, 30 April 2011, p.33.

662 A collection of parties listed in the waiver including 'all its co-sponsors'.

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whether known or unknown or whether specifically mentioned or not, which may or may not exist' at the time the waiver is signed.

- Notwithstanding the above, 'any dispute, controversy or claim' relating to the event or the organiser and Sponsors 'shall be governed and construed in accordance with the laws of the British Virgin Islands. Each party submits to the non-exclusive jurisdiction of the British Virgin Islands'.<sup>663</sup>

3.110 The Rules and Regulations must also be signed and competitors are advised that the document represents a legally binding agreement that needs to be read carefully and understood before signing. The Rules and Regulations also contain the clause referred to in the waiver regarding the non-exclusive jurisdiction of the British Virgin Islands.<sup>664</sup>

3.111 Interestingly, a separate clause states that 'nothing in these Rules and Regulations excludes or limits RacingThePlanet's liability for: .... death or personal injury caused by negligence on the part of RacingThePlanet'.<sup>665</sup>

3.112 However, a following clause states that RacingThePlanet's maximum liability payable is limited to the amount of the entry fee, '[e]xcept as otherwise provided by any applicable law'.<sup>666</sup>

3.113 RacingThePlanet does acknowledge that if any provision of its Rules and Regulations are unlawful, void or unenforceable, those provisions 'shall be deemed severable' from the remainder of the document, but will still be enforceable to the maximum extent allowed.<sup>667</sup>

### Waivers for other events

3.114 While there are differences in the wording, the intent of waivers for other races the Committee examined are very similar to that of RacingThePlanet. The Bogong2Hotham and GOW100s waivers do not explicitly state that the events are dangerous, but competitors do acknowledge that they 'could get hurt, lost, dehydrated, injured or could even die'.<sup>668</sup> In the event of accident, injury or death, no other party can be held responsible and the entrant cannot hold the organisers liable for any claim arising under the document 'in contract, tort, statute or otherwise in relation to the run'.<sup>669</sup>

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663 See 'Assumption of Risk and Waiver and Release of Liability Kimberley Ultramarathon 2011', as provided in Submission No. 22, Miss Kate Sanderson, 4 April 2012, Attachment "KS4".

664 Clause 2.2, 24.4 RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

665 Clause 8.1(b) RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

666 Clause 8.3 RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

667 Clause 24.2 RacingThePlanet Events Limited, 'Rules and Regulations', 2011.

668 The Trail Running Company, GOW100s, 'Online Entry', n.d. Available at: <https://sites.google.com/site/gow100s/online-entry/waiver>; The Trail Running Company, Bogong2Hotham, 'Waiver', n.d. Available at: <https://sites.google.com/site/bogong2hotham/online-entry/waiver>. Accessed on 17 May 2012.

669 *ibid.*

Should such claims proceed, competitors indemnify the organisers for the full amount of the costs of any action.

- 3.115 Moreover, to the ‘fullest extent permissible by the law’, the event organiser will not be liable for consequential losses incurred ‘as a result of any act or omission whatsoever’ of the Bogong2Hotham and GOW100s organisers, employees, agents or sub-contractors.<sup>670</sup>
- 3.116 The Bogong2Hotham waiver includes an additional phrase where the organisers make no representation or warranty that the recreational services provided ‘will be supplied with due care or skill’.<sup>671</sup>
- 3.117 Both event waivers acknowledge that nothing in the documents excludes, restricts or modifies the application of any legislation, which by law cannot be excluded, restricted or modified. However, they seek to limit the liability for breaches of conditions or warranties implied by the *Trade Practices Act 1974*<sup>672</sup> relating to the supply of goods or services to the cost of having the relevant goods replaced or services resupplied.<sup>673</sup>
- 3.118 The North Face 100 waiver contains very similar provisions to the three already discussed. Most notably, like the RacingThePlanet waiver, competitors acknowledge that they are competing in a ‘dangerous’ activity. However, in contrast to RacingThePlanet, The North Face 100 explicitly refers to negligence leading to ‘injury, loss, damage or death’ as part of a blanket range of actions that the competitor waives the right to pursue.<sup>674</sup>
- 3.119 Similarly, entrants in the WS100 acknowledge that they are competing in an event that is ‘extremely difficult and hazardous for even well-conditioned athletes’.<sup>675</sup> This waiver lists a range of natural factors that might lead to physical injury (fire is not specified). Runners indemnify WS100 organisers and sponsors from all claims, demands, causes of

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670 The Trail Running Company, GOW100s, ‘Online Entry’, n.d. Available at: <https://sites.google.com/site/gow100s/online-entry/waiver>; The Trail Running Company, Bogong2Hotham, ‘Waiver’, n.d. Available at: <https://sites.google.com/site/bogong2hotham/online-entry/waiver>. Accessed on 17 May 2012.

671 The Trail Running Company, Bogong2Hotham, ‘Waiver’, n.d. Available at: <https://sites.google.com/site/bogong2hotham/online-entry/waiver>. Accessed on 17 May 2012.

672 Now the *Competition and Consumer Act 2010*.

673 The Trail Running Company, GOW100s, ‘Online Entry’, n.d. Available at: <https://sites.google.com/site/gow100s/online-entry/waiver>; The Trail Running Company, Bogong2Hotham, ‘Waiver’, n.d. Available at: <https://sites.google.com/site/bogong2hotham/online-entry/waiver>. Accessed on 17 May 2012.

674 The North Face 100, ‘Competitor Briefing Notes’, 2012, p. 25. Available at: [www2.thenorthface.com.au/100/pdf/TNF100\\_2012\\_Competitor\\_Briefing.pdf](http://www2.thenorthface.com.au/100/pdf/TNF100_2012_Competitor_Briefing.pdf). Accessed on 17 May 2012.

675 Western States 100, ‘Western States Endurance Run (WSER) Official Release/Agreement, Covenant Not to Sue, Waiver and Assumption of Risk’ n.d. p. 2. Available at: <http://ws100.com/RunnerWaiver.pdf>. Accessed on 30 May 2012.

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action or other proceedings. This release extends to ‘all claims of every kind and nature whatsoever, whether known or unknown’.<sup>676</sup>

- 3.120 The Committee concedes that the terms of these waivers, and the burden of risk that they transfer from organiser to competitor, may appear onerous. Yet without waivers in place, it is likely that many sporting events—including ultramarathons—could not be staged, as organisers would not be able to insure themselves to cover the potential risks of staging the event (see 3.123 below).
- 3.121 AURA offers assistance to Race Organisers with the preparation of waivers and provides advice on how these can be strengthened if needed. Despite AURA implicitly encouraging strong waivers, its President, Mr Robert Boyce, argued that, ‘a waiver does not absolve you from your responsibilities if you are not meeting health and safety requirements’.<sup>677</sup> He added that race directors generally knew that a waiver would not completely protect them from legal proceedings.<sup>678</sup>
- 3.122 While there is some validity to Mr Boyce’s statement, reforms to tort law have enhanced the effectiveness of waivers.
- 3.123 Following the collapse of the HIH group of companies in March 2001, a crisis struck the Australian insurance industry as premiums skyrocketed. For many recreational service providers (professional and voluntary), the subsequent sharp rise in insurance costs made their activities increasingly unviable. In response to the crisis, a panel of experts was formed to conduct a national *Review of the Law of Negligence*. The final report of this panel became known as the “Ipp Report” named after the panel’s Chairman, the Hon. David Ipp.
- 3.124 The reforms to tort law that followed the Ipp Report gave greater effect to waivers. Until this time, statutory warranties for recreational services to be provided with due care and skill, under section 74 of the *Trade Practices Act 1974*, could not be waived from a contract. The *Fair Trading Act 1987 (WA)* contained provisions that mirrored those found in the *Trade Practices Act 1974*. The reforms that followed served to override this statutory warranty provision, allowing recreational service providers to enter into more effective waivers.<sup>679</sup>

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676 Western States 100, ‘Western States Endurance Run (WSER) Official Release/Agreement, Covenant Not to Sue, Waiver and Assumption of Risk’ n.d. pp. 1- 2. Available at: <http://ws100.com/RunnerWaiver.pdf>. Accessed on 30 May 2012.

677 Mr Robert Boyce, President, Australian Ultra Runners Association (AURA), *Transcript of Evidence*, 28 May 2012, p. 4.

678 *ibid.*

679 Attorney-General’s Department, ‘Affordable and Available: Improvements in liability insurance following tort law reform in Australia’, December 2006, pp. 1-5. Available at: [http://archive.treasury.gov.au/documents/1200/PDF/Available\\_and\\_affordable.pdf](http://archive.treasury.gov.au/documents/1200/PDF/Available_and_affordable.pdf). Accessed on 25 May 2012.

- 3.125 In Western Australia, reforms giving greater effect to waivers were written into the *Civil Liability Act 2002* (CLA),<sup>680</sup> which was enacted as part of the state government's response to the Ipp Report. Section 5J of the CLA permits waivers in contracts for the supply of recreational services.
- 3.126 Despite the impact these reforms have had on the strength of waivers, there are still scenarios where the effect of waivers may be limited.
- 3.127 Firstly, the protections afforded to recreational service providers under section 5J of the CLA<sup>681</sup> will not apply, 'if it is established (on the balance of probabilities) that the harm concerned resulted from an act done or omission made with reckless disregard,<sup>682</sup> with or without consciousness, for the consequences of the act or omission'.<sup>683</sup>
- 3.128 Secondly, for a waiver to be effective against claims of negligence<sup>684</sup> under the current legislative framework, the wording of any exemptions included in the waiver must be clear. To the extent that the language in an exemption clause is ambiguous, that ambiguity is likely to be resolved against the party who seeks to rely on it, particularly if that party introduced the clause into the contract.<sup>685</sup>
- 3.129 The waiver must also form part of the contract. Whether this is the case will depend on the facts as they relate to the circumstances under which each contract is established. A contract may be proven to exist where:
- A participant read and signed the waiver before agreeing to pay an entry fee.
  - A person did not pay an entry fee or otherwise enter into a contract before that person was shown the waiver form, but an exchange of promises occurred between an organiser and a participant—the organiser's agreement to allow a person to participate and that person's corresponding agreement to the terms of the waiver.<sup>686</sup>
- 3.130 Conversely, a waiver would likely be ineffective against a person who agrees to participate and pays an entrance fee—hence making a contract—before that person is

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680 The *Civil Liability Act 2002* (WA) will be examined in greater detail in Chapter 5.

681 Section 5J 'Waiver of contractual duty of care for recreational activities'.

682 Reckless disregard is something more than negligence but less than intentional disregard for consequences. Reckless conduct occurs when a person can foresee a probable or possible harmful consequence but nevertheless decides to continue with that conduct with an indifference to, or disregard for, the consequences. Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012.

683 Section 5J(6) *Civil Liability Act 2002* (WA).

684 A breach of a duty to exercise reasonable care.

685 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 44.

686 *ibid.*, paras 48-51.

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shown the waiver form. Hence, a waiver document that is provided after a contract has been made will not form part of the contract, therefore leaving an organiser potentially exposed to liability for negligence.<sup>687</sup>

### **Committee's view on waivers**

- 3.131 The incident that occurred during the 2011 Kimberley Ultramarathon has generated calls from injured competitor Miss Sanderson for waivers to be struck down in the event that an organiser is proven guilty of gross negligence.<sup>688</sup>
- 3.132 While the Committee acknowledges the criticisms surrounding the efficacy and potential consequences of waivers to participants injured in events, the broader policy implications for the sport and recreation industry make the endorsement of such measures difficult to support.
- 3.133 Undoubtedly waivers serve the interests of race organisers by transferring the balance of the assumption of risk over to the competitors. However, without the assurances provided by waivers to professional and volunteer sports organisers alike, the viability of these events might again come under threat due to unaffordable insurance premiums.
- 3.134 Within the CLA, which will be examined in greater detail in Chapter 5, there are other provisions applicable to parties who are seeking damages for injuries suffered while competing in a recreational activity. Without seeing these provisions tested—and given the short time the Committee has had to consider this matter—it is difficult for the Committee to support changes to the reforms that emanated from the Ipp Report.

### **Finding 15**

Waivers appear to be standard in ultramarathons and are designed to protect the interests of race organisers by transferring the assumption of risk associated with entering an event over to the individual competitor.

### **Finding 16**

While the terms of waivers are often onerous, without the assurances they provide to professional and volunteer sports organisers, the viability of these events may come under threat due to unaffordable insurance premiums.

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687 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012., para 84.

688 Submission No. 22 from Miss Kate Sanderson, 4 April 2012, p. 30.

### Access to legal claims

- 3.135 It is reasonable, however, to expect that event organisers should ensure that injured parties pursuing redress within the current legislative framework are provided with the opportunity to have their claims heard and settled.
- 3.136 In this respect, it is important that event organisers have public liability insurance in place. Public liability insurance protects event organisers against the financial risk of being found liable for injury or loss suffered by a third party.<sup>689</sup>
- 3.137 Organisers of AURA-sanctioned races must, at a minimum, present AURA with a Certificate of Currency showing that a public liability policy is in place for the event. Alternatively, AURA can arrange public liability coverage of \$20 million for the organiser which costs \$120 for the first 100 competitors and \$1.20 for every competitor thereafter.<sup>690</sup> The policy obtained under AURA membership is underwritten by an Australia-based insurer that covers local race organisers and volunteers for claims made by injured participants.<sup>691</sup>
- 3.138 Notably, The North Face 100, GOW100s and Bogong2Hotham races are all sanctioned by AURA.<sup>692</sup> By contrast, the 2011 Kimberley Ultramarathon was not an AURA-sanctioned event and it was staged by a company based outside of Australia. RacingThePlanet was required, under its Sponsorship Agreement with Tourism WA, to maintain a \$10 million public liability policy with an insurer approved by the Australian Prudential Regulation Authority (APRA).<sup>693</sup> However, unlike the AURA-sanctioning process, where proof of insurance has to be provided before an event is sanctioned, Tourism WA only required RacingThePlanet to provide its insurance policy 'as and when requested'.<sup>694</sup>
- 3.139 RacingThePlanet stated that it has 'complied with the sponsorship arrangement with the Western Australian Tourism Commission, including in relation to insurance'.<sup>695</sup>

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689 Attorney-General's Department, 'Affordable and Available: Improvements in liability insurance following tort law reform in Australia', December 2006, p. 6. Available at: [http://archive.treasury.gov.au/documents/1200/PDF/Available\\_and\\_affordable.pdf](http://archive.treasury.gov.au/documents/1200/PDF/Available_and_affordable.pdf). Accessed on 25 May 2012.

690 Australian Ultra Runners Association Inc, 'race sanctioning requirements', n.d.. Available at: <http://www.aura.asn.au/SanctioningRequirements.html>. Accessed on 3 June 2012.

691 Ms Bernadette Benson, Vice-President, Australian Ultra Runners Association Inc, *Transcript of Evidence*, 9 May 2012, p. 3.

692 Australian Ultra Runners Association Inc, 'Aura sanctioned events for 2012', n.d.. Available at: <http://www.aura.asn.au/SanctioningRequirements.html>. Accessed on 3 June 2012.

693 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', clause 14.

694 *ibid.*, Clause 14.3.

695 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 55.

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3.140 Tourism WA confirmed that it sighted details of the company's public liability insurance details on the day before the event.<sup>696</sup> Tourism WA then emailed a request for 'copies of the certificates' on 9 December 2011, which RacingThePlanet provided two months later on 15 February 2012.<sup>697</sup> These documents were provided to the Committee and included a contract endorsement for third party liability insurance.

3.141 The Committee sought independent advice on these insurance documents from Mr Geoffrey Hancy, a barrister who has been recognised by the Australian Insurance Law Association (AILA) for his contribution to insurance law and insurance law education.<sup>698</sup> According to Mr Hancy's advice:

*The contract endorsement for liability insurance is not an insurance contract, but merely an endorsement from a contract that has not been fully disclosed. The policy schedule and policy wording have not been provided. Consequently, the identity of the insurer and the terms of the insurance, including exclusions from cover, are not known. Whether the insurer is an APRA approved insurer is not known. The document appears to have no apparent value to Tourism WA or to an injured participant.*<sup>699</sup>

3.142 The Committee was unable to obtain the policies and schedules and as such, it remains unable to satisfy itself of the fact that adequate public liability insurance was in place for the 2011 Kimberley Ultramarathon. The flaws in Tourism WA's contract management process that led to this situation will be addressed in greater detail in Chapter 4.

3.143 An important fact drawn from Tourism WA's experience is that without access to the full policy and schedules, it is difficult to determine whether an event organiser has appropriate public liability coverage in place. A Certificate of Currency, may not, on its own, provide sufficient information to make this assessment. Parties that sanction, sponsor, or provide approvals for events requiring public liability should be wary of this potential pitfall.

3.144 In this regard, the process employed by the Tourism Council WA (TCWA) for operators seeking accreditation demonstrates an appropriate standard of due diligence. Applicants must provide details of each insurance policy and give the right to the Council's accreditation officer to verify these details with the operator's insurer. In addition, the original insurance policy and schedules are sighted during an on-site visit

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696 Supplementary Item A, Tourism WA, 8 May 2012, p. 4.

697 *ibid*, pp. 1, 3.

698 Australian Insurance Law Association, 'Insurance Prize Holders', 2012. Available at: [www.aila.com.au/information/insurancePrizeHolders.php](http://www.aila.com.au/information/insurancePrizeHolders.php). Accessed on 3 July 2012.

699 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012.



by the accreditation officer who retains the authority to verify the insurance at any time.<sup>700</sup>

- 3.145 The process adopted by TCWA for its accreditation offers a robust way of ensuring that event organisers have appropriate public liability coverage in place.

#### **Finding 17**

Event organisers should ensure that adequate public liability is in place so that injured parties pursuing redress within the current legislative framework have the maximum opportunity to have their claims heard and, if successful, settled.

To properly assess the adequacy of public liability insurance coverage, it is important to obtain the full insurance policy and relevant schedules. Without these, any assessment of the adequacy of coverage may be speculative.

- 3.146 A notable contrast in RacingThePlanet’s terms and conditions relative to the other Australian races was the requirement for parties pursuing claims to submit to the non-exclusive jurisdiction of the British Virgin Islands (see 3.109 above). Using this example, the Committee sought advice on how parties would pursue, and if successful enforce, a civil action against an overseas-based entity conducting an event in Australia. The information that is provided in paragraphs 3.147 to 3.154 below is taken from that advice.
- 3.147 The non-exclusive jurisdiction clause is arguably the least problematic issue. If an injured race participant was in some way bound by the Rules and Regulations of RacingThePlanet, Article 24.4 of those Rules and Regulations would not preclude that participant from bringing an action in Western Australian Courts. Article 24.4 might confer jurisdiction on a court of the British Virgin Islands that it would not otherwise have. Article 24.4 would not prevent an action in an Australian Court as long as that jurisdiction was not a clearly inappropriate forum for determining the dispute.
- 3.148 The issues of serving a writ and enforcing a judgment present greater challenges. The first difficulty for a prospective plaintiff is that there is not an automatic right to serve an originating process for an action commenced in a Western Australian Court on a foreign defendant. Leave of the Court is required to serve a writ or notice of a writ on a person who is not in Australia and that leave is only granted in limited cases.
- 3.149 Those limited cases include where:
- The action is on a contract made in Western Australia, made by an agent residing in Western Australia, or which is governed by the law of Western Australia.

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700 Supplementary Item A, Tourism Council WA, 18 May 2012, p. 4.

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- The action is founded on a tort (for example, the tort of negligence) committed in Western Australia.

- 3.150 A court would have to determine whether either of these criteria was satisfied in the case of 2011 Kimberley Ultramarathon.
- 3.151 Even then, service of Western Australian legal process on a defendant in another country has legal significance in Western Australia, but not necessarily in that other country. If the process is ignored and a legal action proceeds in Western Australia in the absence of the defendant, eventually the plaintiff will be confronted with the problem of how to recover money under any Court judgment obtained in this state.
- 3.152 Whether a judgment could be enforced against a foreign company will depend on whether and where the company has any assets, and the law of the country where the assets are located. Unless a foreign company had assets in Australia, the prospect of recovering any sum under a judgment obtained from an Australian Court would be uncertain, if not speculative.
- 3.153 An injured plaintiff will have difficulty recovering any sum under a liability insurance policy. The insured under a contract of liability insurance is the defendant and not the plaintiff. The insurer agrees to provide indemnity to the defendant for the defendant's liability to the plaintiff. The defendant and not the plaintiff has the right to make a claim on the insurer: ***Visic v State Government Insurance Office*** (1990) 3 WAR 122.
- 3.154 There are very few rights that would enable an injured person to recover directly from an insurer under a contract of liability insurance. They are restricted to recovering where the insured has died or cannot be found (*Insurance Contracts Act 1984* (Cth) s.51), or the insured is a deregistered company for the purposes of the *Corporations Act 2001* (Cth) (that Act s.601AG).<sup>701</sup>
- 3.155 The advice received by the Committee suggests that the rights of parties to pursue and obtain legal redress can be significantly curtailed if the defendant is an overseas-based entity with no assets in an Australian jurisdiction. There are practical limitations on the successful exercise of rights regardless of whether or where public liability insurance may be held.
- 3.156 In summary, when considering what redress competitors may have against overseas event organisers the following questions are raised:
- What if an overseas organiser of an extreme sporting event in Western Australia was sued by a competitor in a Western Australian Court, and the

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701 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, paras 88-96.

organiser declined to appear or otherwise declined to contest the proceedings?

- Would the resultant judgment be enforceable in the jurisdiction in which the overseas organiser has assets?
- Would such a judgment trigger the obligation of the insurer of the organiser to pay out the judgment?

3.157 Due to time and resource constraints, the Committee has not investigated these issues, but identifies them as worthy of further consideration by the House. It may be that there are opportunities for government departments and agencies in their dealings with an overseas organiser prior to a sporting event to seek to have the organiser voluntarily submit to the jurisdiction of the State Courts. This in turn may assist in the overseas enforcement of any judgment obtained in Western Australia. The Committee offers these comments by way of speculation only, and does not purport to express a view as to whether such an approach would be effective in improving the legal prospects of recovery against an organiser.

#### **Finding 18**

The rights of parties to pursue and obtain legal redress for injury suffered in an event can be significantly curtailed if the defendant is an overseas-based entity with no assets in an Australian jurisdiction. These limitations are present regardless of whether or where public liability insurance may be held.



## Chapter 4

### Terms and Conditions of Associated Sponsorship Agreement

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This chapter addresses the second half of Term of Reference (b) by looking at the extent to which terms and conditions of sponsorship agreements with Tourism WA should reasonably protect the safety and interests of parties involved in sponsored adventure sports. In determining what is reasonable, the Committee critiques Tourism WA's sponsorship of the 2011 Kimberley Ultramarathon against the standards set by the department under its own concept of "responsible sponsorship". As the key tenets of responsible sponsorship include due diligence practices, this chapter also addresses term of reference (d).

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#### Sponsorship Agreement with Tourism WA

- 4.1 Of the events examined by the Committee in the previous chapter, the 2011 Kimberley Ultramarathon differed in that it attracted formal sponsorship from a state government agency—Tourism WA.
- 4.2 Determining the extent to which such an agreement should protect the safety and interests of competitors is difficult due to the lack of comparable examples. Accordingly, the Committee has chosen to examine the adequacy of the standards Tourism WA sets for itself in its approach to adventure activity sponsorship and whether these standards were met in the case of the 2011 Kimberley Ultramarathon.

#### Tourism WA - Background

- 4.3 Tourism WA is a statutory authority formally known as the Western Australian Tourism Commission. Eventscorp is the events agency of the Western Australian government and is an operating division within Tourism WA.<sup>702</sup> Eventscorp is the body that liaises with potential event organisers and it conducted the negotiations with RacingThePlanet that led to the Sponsorship Agreement between it and RacingThePlanet (Sponsorship Agreement).
- 4.4 Tourism WA told the Committee it has various levels of involvement in events. These encompass:

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702 Mr David Lowe, Acting Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 20 April 2012, p. 2.

## Chapter 4

- free listing of events on the Tourism WA website;
  - event facilitation (providing introductions to stakeholders, including relevant authorities);
  - sponsorship; and
  - event promotion or management.<sup>703</sup>
- 4.5 Tourism WA added that it rarely acts as an event manager, but when it does it assumes responsibility for the safe conduct of the event. Tourism WA usually manages events when the event is classified as a Major Event<sup>704</sup> that is seen as delivering significant benefit to the state, but is lacking private investment.<sup>705</sup> Tourism WA stressed that ‘the dividing line between event management and event sponsorship is control and responsibility .... The event sponsor contributes money, but has no control’.<sup>706</sup> Tourism WA added that the greater the role it assumes in management or controlling an event, the greater its potential exposure to legal liability. This can ‘increas[e] the cost of sponsoring and constrain the department from performing its statutory functions in an effective manner’.<sup>707</sup>
- 4.6 Hence, Tourism WA argues that its primary focus is event sponsorship, not event management. The overall intent of sponsorship is ‘to ensure the development of an exciting and diverse calendar of sporting, cultural and regional events’.<sup>708</sup> The main criteria for event selection are economic and media impact.<sup>709</sup>
- 4.7 Before evaluating the actions of Tourism WA and Eventscorp in relation to the 2011 Kimberley Ultramarathon, the Committee rejects at the outset the arguments Tourism WA put forward regarding the limitations of the department’s role as an event sponsor. The manner in which Tourism WA presented its role to the Committee differs markedly from the manner in which the department promotes itself to the public.
- 4.8 Potential event organisers visiting the Tourism WA website are advised that Eventscorp’s mission is to ‘identify, develop and deliver world class events’.<sup>710</sup>

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703 Submission No. 11 from Tourism WA, 4 April 2012, p. 3.

704 Defined under s39F(a) of the *Police Act 1892* (WA) as an event expected to attract a crowd of 5,000 attendees or participants.

705 Submission No. 11 from Tourism WA, 4 April 2012, p. 5.

706 *ibid.*

707 *ibid.*, Covering letter, p. 2.

708 Submission No. 11 from Tourism WA, 4 April 2012, p. 4.

709 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 2.

710 Tourism WA, ‘Eventscorp’, n.d. Available at:

[http://www.tourism.wa.gov.au/Events/Pages/Major\\_Events.aspx](http://www.tourism.wa.gov.au/Events/Pages/Major_Events.aspx). Accessed on 6 August 2012.

Eventscorp promotes itself having expertise in ‘event management ... government relations and venue identification’.<sup>711</sup> The website adds that ‘Eventscorp sets world benchmarks in organisation and professionalism’ and that it supports and develops events ‘from concept to successful implementation’.<sup>712</sup> Potential organisers are entitled to assume from such claims that they are dealing with a pro-active professional events organiser that is invested in ensuring a positive outcome.

- 4.9 The way in which Tourism WA described its role to the Committee suggests that the department was looking to distance itself from the outcome of the 2011 Kimberley Ultramarathon. The Committee is of the view that any time state funds are committed to an event through Tourism WA, the sponsorship and outcomes should not be considered separately.
- 4.10 Tourism WA did acknowledge that the use of state funds to support events must entail “**responsible sponsorship**”[emphasis added]. In determining a standard for responsible sponsorship, Tourism WA put the view that it must balance a range of factors including: Tourism WA’s statutory objectives; its limited role as a sponsor (as opposed to manager); the degree of inherent risk associated with the event; and the need to ensure that funds are not directed to events that ‘are dangerous because they are poorly managed’.<sup>713</sup> Tourism WA sponsorship agreements are one of the key tools it uses to ensure this balance of factors is met.<sup>714</sup>
- 4.11 Tourism WA told the Committee that ‘it is particularly important to adopt a standard of responsible sponsorship’<sup>715</sup> in the emerging category of adventure sports, which in 2012, will comprise approximately 20 per cent of the events sponsored.<sup>716</sup>
- 4.12 The Committee believes the concept of responsible sponsorship has merit in principle, but is weakened by Tourism WA’s underlying position on its role as a sponsor. Notwithstanding this limitation, the Committee has examined the effectiveness of responsible sponsorship as it applied to the 2011 Kimberley Ultramarathon and has found that Tourism WA and Eventscorp failed to meet their own standards. The case study that follows demonstrates these failings in greater detail.

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711 Tourism WA, ‘Eventscorp’, n.d. Available at:  
[http://www.tourism.wa.gov.au/About\\_Tourism\\_Western\\_Australia/Pages/EventsCorp.aspx](http://www.tourism.wa.gov.au/About_Tourism_Western_Australia/Pages/EventsCorp.aspx).  
Accessed on 6 August 2012.

712 *ibid.*

713 Submission No. 11 from Tourism WA, 4 April 2012, p. 6.

714 *ibid.*

715 *ibid.*, p. 7.

716 *ibid.*, p. 4.

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### **“Responsible Sponsorship” Case Study: Sponsorship Agreement with RacingThePlanet Events Limited**

#### **Background to Sponsorship Agreement**

- 4.13 To foster the development of adventure sports, on 13 August 2009, the Board of Tourism WA endorsed the allocation of \$1.3 million to sponsor five events for three years under a program known as the WA Action Events Series (WAAES).<sup>717</sup>
- 4.14 The objective of WAAES was to leverage off the media coverage associated with these events to promote Perth and regional Western Australia. The media coverage was to be developed through the filming and distribution of television programs featuring the event, with Tourism WA having input into aspects of the production.<sup>718</sup>
- 4.15 The 2011 Kimberley Ultramarathon was added to the WAAES in 2011 as a sixth event in the series. Tourism WA had been in contact with RacingThePlanet since 9 January 2009 and had originally contemplated sponsoring RacingThePlanet’s 2010 multi-stage event in the Kimberley, but was not in a budgetary position to do so.<sup>719</sup>
- 4.16 Sponsorship of the 2011 Kimberley Ultramarathon was approved by the Board of Tourism WA on 29 July 2011. As funding for the event was to be drawn from the Royalties for Regions, Regional Events Program (REP), the proposal required endorsement from the Minister for Tourism and the Minister for Regional Development and Lands. This was obtained on 7 August 2011 before Cabinet gave final approval on 22 August 2011.<sup>720</sup>
- 4.17 The final Sponsorship Agreement was executed by Tourism WA on 30 August 2011 and by RacingThePlanet on 1 September 2011, the day before the race commenced. The Agreement was for one year with a two-year option. Under the terms of the Agreement, Tourism WA would pay RacingThePlanet as much as \$105,000 per year based on the successful completion of six contract milestones.<sup>721</sup> A separate agreement of \$170,000 for filming the event was struck between Tourism WA and Beyond Action on 9 August 2011. This agreement was included as a variation to the pre-existing WA Action Event Series Filming Agreement originally signed with Beyond Action on 23 December 2010.<sup>722</sup>

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717 Submission No. 11 from Tourism WA, 4 April 2012, p. 4. See also Annex 8 of the same document.

718 *ibid.*

719 *ibid.*, pp. 4, 8.

720 Submission No. 11 from Tourism WA, 4 April 2012, pp. 11-12; Hon. Dr Kim Hames, MLA, Minister for Tourism; Health, *Transcript of Evidence*, 9 May 2012, p. 2.

721 Submission No. 11 from Tourism WA, 4 April 2012, pp. 2, 12; Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - ‘Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement’, Schedule, Items 3-5.

722 Tourism WA, Correspondence to Committee, 16 March 2012; Submission No. 11 from Tourism WA, 4 April 2012, p. 12.



- 4.18 The Committee has sought to evaluate the responsible sponsorship standard against the Sponsorship Agreement between Tourism WA and RacingThePlanet. The evidence provided by Tourism WA indicates that responsible sponsorship, as it pertains to events like the 2011 Kimberley Ultramarathon, involves numerous principles. Prominent among these are: the demonstration of a competent risk management plan; the maintenance of adequate and appropriate event insurance; and conducting thorough due diligence.
- 4.19 The Committee believes that the lateness with which the Sponsorship Agreement was executed should not have prevented Tourism WA from ensuring that these tenets of responsible sponsorship were met.

#### **Principles of Responsible Sponsorship: No. 1 – Risk Management Plan**

- 4.20 According to Tourism WA's own standards, 'where an event involves inherent risk to competitors, responsible sponsorship involves .... requiring the event manager to demonstrate that it has a competent risk management plan'.<sup>723</sup> The need for event holders to have a risk management plan has been a long-standing contractual requirement imposed by Tourism WA.<sup>724</sup>
- 4.21 For the 2011 Kimberley Ultramarathon, Tourism WA 'sought to ensure responsible sponsorship'<sup>725</sup> by linking the provision of a risk management plan to one of the Sponsorship Agreement's milestone payments. Indeed, \$20,000 was payable upon the 'provision of a Marketing Plan, Operations Plan, Communications Plan, Risk Management Plan and an Event Budget agreed to by both parties'.<sup>726</sup>
- 4.22 Within the Sponsorship Agreement, the Risk Management Plan was described as 'the plan prepared for the Event which must detail and outline all potential risk using the following assessment:
- a) Description of the activity;
  - b) Identifying potential risk;
  - c) Identify the likelihood of risk;
  - d) Identify the consequences; and

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723 Submission No. 11 from Tourism WA, 4 April 2012, Covering letter, p. 2.

724 Submission No. 11 from Tourism WA, 4 April 2012, Covering letter, p. 2; Submission No. 11 from Tourism WA, 4 April 2012, p. 7.

725 Submission No. 11 from Tourism WA, 4 April 2012, p. 13.

726 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Schedule, Item 5.

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### e) Control mechanisms to reduce risk'.<sup>727</sup>

- 4.23 While the principles behind Tourism WA's approach to this aspect of responsible sponsorship have merit, the Committee finds that the process of obtaining and scrutinising the risk management plan for the 2011 Kimberley Ultramarathon was fundamentally flawed in several respects.
- 4.24 Firstly, the Sponsorship Agreement did not specify a timeframe in which the plan should be presented. Instead, the Agreement merely required the Event Holder to provide any documents relating to the Agreement within five days of receiving a written request from Tourism WA.<sup>728</sup> Tourism WA's failure to stipulate a period in its contract by which a risk management plan is produced meant that the organiser's planning was not scrutinised before the sponsorship deal was agreed (including Cabinet sign off).
- 4.25 Tourism WA did not view RacingThePlanet's risk management plan until the Sponsorship Agreement was finalised on 1 September 2011; the day before the race. This is despite the fact that Eventscorp's Director Events, Mr Glenn Hamilton, had commenced pre-feasibility research soon after 18 October 2010, when RacingThePlanet flagged its intention to stage a 100km annual event in the Kimberley and asked whether Eventscorp would 'be able to give us any marketing support on this'.<sup>729</sup> The Committee notes that RacingThePlanet advised that it had its risk management plan prepared and available from January 2011.<sup>730</sup>
- 4.26 Tourism WA advised in its submission that it was provided with a copy of the risk management plan on 1 September 2011,<sup>731</sup> but this was later proven to be incorrect. Appearing before the Committee, Mr Hamilton confirmed that he only 'sighted' the plan that day.<sup>732</sup> It was not until 6 September 2011 that he received a copy via email—and even then this copy did not contain the full plan.<sup>733</sup>
- 4.27 Given that a funding condition of the Sponsorship Agreement states that the risk management plan needs to be 'agreed by both parties' (see 4.21 above), the Committee was alarmed at the lack of urgency shown by Mr Hamilton towards scrutinising the document in his role as the event's contract manager:

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727 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Clause 1.1.

728 *ibid.*, Clause 15.3.

729 Submission No. 11 from Tourism WA, 4 April 2012, Annex 6. See also pp. 8-9, 12.

730 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 62.

731 Submission No. 11 from Tourism WA, 4 April 2012, p. 12.

732 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 16.

733 The risk management plan provided to Mr Hamilton did not include the full Risk and Emergency Procedures Document. Supplementary Item A, Tourism WA, 8 May 2012, p. 4.

*My role up there as a contract manager or as an observer was really just seeing how the event was running on in terms of the competitor briefings, the competitor notes, the medical briefings and all that sort of side things. There were no red flags from that and part of that process was working with RacingThePlanet and saying, "Hey, as part of the contract, can you show me your risk management plan?" They provided it to me. I had a few minutes to mull over it; the event was happening the day after [emphasis added].<sup>734</sup>*

- 4.28 Mr Hamilton confirmed he had not considered asking for these documents before the contract was signed.<sup>735</sup> When questioned as to why he would not have sought a copy soon after he began his feasibility process, Mr Hamilton explained that:

*The current scenario for all events is that we do not receive risk management plans, marketing plans or operations plans until we have signed the contract.<sup>736</sup>*

- 4.29 The actions of Mr Hamilton, and the answer he provided to the Committee on this issue, stand in stark contrast to Eventscorp's approach to assessing risk, as articulated on the Tourism WA website. Under the section 'Event Funding Criteria', Eventscorp states: 'Events involve risk. The greater the potential risk, the more intense the analysis of that risk'.<sup>737</sup> It goes on to state that risk analysis will cover a range of issues, including 'the potential for injury [and] event cancellation'.<sup>738</sup>
- 4.30 In a series of emails between RacingThePlanet and Eventscorp from 9 through 31 August 2011, there was no discussion about the risk management planning aspect of the event by either party. Conversations related almost exclusively to the event funding process, and media and communications strategies.<sup>739</sup>
- 4.31 The Committee did not receive any evidence from Tourism WA (or RacingThePlanet) to suggest that the risk management planning requirements of the proposed sponsorship arrangement were discussed any other time after the idea was first raised on 18 October 2010.<sup>740</sup>
- 4.32 The second flaw in Tourism WA's application of this process is that, even if it had received the document within a reasonable time, Tourism WA did not have the internal

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734 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 16.

735 *ibid.*, p. 20.

736 *ibid.*, p. 21.

737 Tourism WA, 'Events Funding Criteria', n.d. Available at: [http://www.tourism.wa.gov.au/Events/Pages/Events\\_Funding\\_Criteria.aspx](http://www.tourism.wa.gov.au/Events/Pages/Events_Funding_Criteria.aspx). Accessed on 7 August 2012.

738 *ibid.*

739 Supplementary Item B, RacingThePlanet Events Limited, 29 May 2012, pp. 24-46.

740 Submission No. 11 from Tourism WA, 4 April 2012, Annex 6.

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expertise to evaluate risk management plans.<sup>741</sup> Moreover, Tourism WA did not indicate that it had protocols in place to have the plans for such events assessed by an external agent. The Committee finds it hard to believe that an events management body of such long-standing<sup>742</sup> that has required risk management plans as a long-term requirement does not have the capacity to assess these materials or engage external expertise to assist them.

- 4.33 Finally, it is the Committee's view that the department explicitly avoids critiquing risk management plans, lest it 'be forced into the role of "shadow" event manager', exposing it and the state to legal liability.<sup>743</sup> This is in spite of indemnity clauses in the Sponsorship Agreement including one that indemnifies Tourism WA from liability in negligence from any advice it provides at the request of the Event Holder.<sup>744</sup> This unwillingness to critique risk management plans is in direct contravention of the principles of responsible sponsorship and, arguably, Tourism WA's contractual obligations with event proponents. How can a risk management plan linked to a milestone payment of a contract be mutually agreed (4.27 above) if the sponsoring agency is not prepared to assess the document?
- 4.34 Under its "responsible sponsorship" standard, Tourism WA required RacingThePlanet to demonstrate it had a 'competent' risk management plan. It appears that, in reality, all that was required was that a risk management plan be presented.
- 4.35 With RacingThePlanet a relatively new entrant into the Western Australian events market and operating in a remote region, Tourism WA should have been making some effort to have the company prove the adequacy of its risk management plan. Even if Tourism WA did not have the expertise to evaluate the plan, it is not unreasonable to assume that it could have used its event facilitation processes (see 4.4 above) to introduce RacingThePlanet to the relevant government agencies who could have provided comment and assistance in relation to the company's risk management planning. This approach would have been more reflective of responsible sponsorship and may have ensured that key local agencies, including FESA and St John Ambulance, were engaged.
- 4.36 The concept of providing a risk management plan to a government agency under a sponsorship agreement is endorsed by the Committee. It is reasonable to expect that this process would enhance the safety and interests of event participants, by ensuring that an event organiser has appropriate safeguards and contingencies in place.

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741 Submission No. 11 from Tourism WA, 4 April 2012, p. 7.

742 Eventscorp was established 20 years ago. See Tourism WA, 'Eventscorp', n.d. Available at: [http://www.tourism.wa.gov.au/Events/Pages/Major\\_Events.aspx](http://www.tourism.wa.gov.au/Events/Pages/Major_Events.aspx). Accessed on 7 August 2012.

743 Submission No. 11 from Tourism WA, 4 April 2012, Covering letter, p. 2.

744 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Clause 4.1.4 and 13.

Arguably, this would be highly valuable when applied to an offshore entity looking to stage an event in an area where it has limited knowledge. In these circumstances, Tourism WA (through Eventscorp) could act as a conduit between the organiser and relevant authorities who could look to address any flaws, particularly in the risk and emergency response plans. Given Eventscorp's acknowledged expertise in government relations (see 4.8 above), it should take the lead in advising an organiser as to which departments and relevant local stakeholders the organiser must liaise with to ensure that an event is run safely. From this, the multi-agency consultation process that other organisers like Andrew Hewat has to go through in Victoria (see 3.84 above) could develop.

- 4.37 The Committee understands that Tourism WA's primary focus is on promoting the state, and supports the concept of attracting higher risk adventure sports for this purpose. However, given the inherently higher risk associated with these events, Tourism WA must be a responsible sponsor and ensure that appropriate risk management processes are in place.

#### Finding 19

The example of the 2011 Kimberley Ultramarathon demonstrates serious flaws in Tourism WA's approach to ensuring that the risk management plans for events it sponsors are properly assessed. These include:

- Failing to request or sight the event risk management plans before signing the Sponsorship Agreement with RacingThePlanet;
- Failing to have protocols in place to ensure that RacingThePlanet's risk management plan could have been assessed by Tourism WA or any other relevant authority.

- 4.38 Both Tourism WA and the Minister for Tourism have acknowledged the flaws in the department's approach to overseeing the risk management requirements related to Sponsorship Agreements.<sup>745</sup> Tourism WA also advised that it has 'already adopted new contractual terms in its sponsorship agreements to give effect to the risk management plan requirements'.<sup>746</sup>
- 4.39 The department has now consulted with the State Solicitors Office (SSO) in regards to reconstructing the requirements of sponsorship agreements. Contracts will now require event holders to provide a risk management plan that is consistent with the ISO

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<sup>745</sup> See, Submission No. 11 from Tourism WA, 4 April 2012, p. 13; Hon. Dr Kim Hames, MLA, Minister for Tourism; Health, *Transcript of Evidence*, 9 May 2012, p. 8.

<sup>746</sup> Submission No. 11 from Tourism WA, 4 April 2012, p. 14.

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standard referred to extensively throughout Chapter 2. Proof of compliance from an independent risk management expert will also have to be supplied. In addition, event holders will also have to verify that the plan has been supplied to local relevant authorities.<sup>747</sup>

- 4.40 The requirement that relevant local authorities receive the risk management plan should facilitate the consultation process that organisers of other ultramarathon events in Australia appear to employ effectively to mitigate risk (see 3.79 to 3.90 above). To ensure consultation occurs, contracts should stipulate that the risk management plan be submitted for approval with all relevant local authorities, including the Local Emergency Management Committee (LEMC).<sup>748</sup> As an added safeguard, Tourism WA should order that the event organiser then provide evidence that the plans have been approved by these authorities.
- 4.41 While the Committee acknowledges Tourism WA's response, it remains concerned about the ambiguity surrounding the timeframe within which risk management plans need to be presented. Tourism WA advises that the reforms will require the provision of the plan 'a reasonable time before the event'.<sup>749</sup>
- 4.42 In determining a reasonable timeframe, it is noted that DEC requires event management and emergency response plans to be submitted as part of the application process for staging events on DEC-managed land. DEC often takes six to ten weeks to complete its approvals process, part of which involves event organisers collaborating with local DEC staff to 'mitigate or minimise potential risks during the planning stage'.<sup>750</sup>
- 4.43 Tourism WA's then-Acting Chief Executive Officer, Mr David Lowe did acknowledge that the 'risk management plan needs to be referred to the relevant authorities such as the police, FESA and the local shire well in advance of the event'.<sup>751</sup> The Committee urges a two-month minimum for Tourism WA-sponsored events, as multiple stakeholders will require input under the revised contractual conditions. This timeframe is not unreasonable given that Eventscorp appears to have once required risk management plans to be provided three months before an event.<sup>752</sup> Even if a contract is not finalised

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747 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 7; Supplementary Item A, Tourism WA, 8 May 2012, p. 1.

748 The Local Emergency Management Committee (LEMC) is established under the *Emergency Management Act 2005* (WA). The role and purpose of LEMCs will be examined in greater detail in Chapter 6.

749 Submission No. 11 from Tourism WA, 4 April 2012, p. 14.

750 Supplementary Item A, Department of Environment and Conservation, 10 May 2012, pp. 1-3.

751 Mr David Lowe, Acting Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 20 April 2012, p. 14.

752 Hon. Dr Kim Hames, MLA, Minister for Tourism; Health, *Transcript of Evidence*, 9 May 2012, Supplementary Information, Item 5 - Ministerial Briefing Note dated 23 December 2011, Attachment 1.

until soon before an event, the process for assessing and approving risk management plans can be undertaken while the underlying negotiations for the Sponsorship Agreement are being negotiated.

- 4.44 The Committee further argues that a milestone payment should be attached to the provision of a risk management plan only if the deadline is observed. It has been reported that the payment of milestones prior to the staging of an event is common practice across the tourism industry. While there is a risk that the organiser reneges on staging the event after the receiving an early milestone payment, the reputational damage to the organiser is likely to act as a strong deterrent.<sup>753</sup>
- 4.45 The Committee recognises that, while contracts may be negotiated over an extended period of time, the reality is that some contracts may not actually be signed until days before the event. Under these circumstances, the milestone payment provision could still form part of the contract and be paid, if the condition has been met, upon the execution of the agreement.
- 4.46 The Committee notes that one of the state's other event sponsors, Healthway, does not require organisers to provide risk management plans. However, 'elements of high level risks identified with an event or an activity may be raised with applicants and mitigation strategies noted within the assessment process'.<sup>754</sup> It is noted that Healthway sponsors a considerably greater number of events each year, many of which would have a significantly lower risk profile than adventure sports. Nonetheless, it is urged that the sponsorship process of this agency also be reviewed in light of the Committee's findings against Tourism WA.

## Recommendation 2

As part of the current revision of its contract template for sponsorship agreements, Tourism WA should ensure that:

- Risk management plans are submitted for approval with all relevant agencies and local and state authorities no later than two months prior to a sponsored event being staged.
- Milestone payments should be linked to the strict adherence of this deadline
- Evidence of approval of the risk management plans by all relevant local and state authorities is provided to Tourism WA by the event organiser.

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<sup>753</sup> Standing Committee of Estimates and Financial Operations, *Report on the Inquiry into Western Australian Tourism Commission's Involvement in Major Tourism Events*, Legislative Council, Western Australia, December 2011, p. 13.

<sup>754</sup> Submission No. 27 from Healthway, 28 May 2012, p. 2.

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### Recommendation 3

Eventscorp should ensure that organisers of events its sponsors are directed to all appropriate authorities and stakeholders to ensure the responsible, safe and efficient planning and conduct of the event.

### Principles of Responsible Sponsorship: No. 2 – Event Insurance

4.47 When asked by the Committee which terms of the Sponsorship Agreement promoted “responsible sponsorship”, Tourism WA included Clause 14 “Insurances” among its responses.<sup>755</sup>

4.48 This clause of the Sponsorship Agreement states:

*14.1 The Event Holder must effect and maintain insurances with an APRA approved insurance office acceptable to Tourism WA (such approval not to be unreasonably withheld) for:*

*14.1.1 A public liability which policy must [sic]:*

- (a) comprise terms and conditions which are reasonable and approved by Tourism WA;*
- (b) provide public liability cover of \$10,000,000;*
- (c) extend to the contractually assumed liability of the Event Holder pursuant to clause 13; and*
- (d) provide cover until the expiry of the Term.*

*14.1.2 workers' compensation to the extent required by State law and including employers liability cover of \$50,000,000 for any one occurrence.*

*14.1.3 personal accident insurance for persons engaged by the Event Holder on a voluntary basis.*<sup>756</sup>

4.49 Such requirements should, theoretically, enable competitors, volunteers, and employers to seek redress for injuries sustained while participating in an event, confident in the knowledge that an organiser is covered if a court orders damages to be

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<sup>755</sup> Others clauses included Event Holder’s Obligations (Clause 3); Tourism WA’s Obligations (Clause 4); Promotion of the Event (Clause 5); Indemnities (Clause 13); and those pertaining to the provision of risk management documents (Clause 1, Schedule Item 5). Supplementary Item A, Tourism WA, 8 May 2012, p. 1.

<sup>756</sup> Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - ‘Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement’, Clause 14.



paid. Thus, they suggest a reasonable standard for which a sponsorship agreement should protect the interests of these parties.

- 4.50 However, the Committee has found that serious flaws in Tourism WA's contract structure and approach to contract management may limit the opportunities for participants to pursue and obtain remedies via civil proceedings should actions proceed following the 2011 Kimberley Ultramarathon.
- 4.51 The Committee questioned Tourism WA regarding how the department actioned Clause 14.3 which states that the event holder shall provide true copies of any policy referred to in that clause 'as and when requested'.<sup>757</sup> Tourism WA confirmed that it did not receive, assess, or make any request for the required insurance documents before the event.<sup>758</sup> Mr Hamilton said that he saw the public liability insurance on 1 September 2011 and that he 'believed' the other policies were in place at the time.<sup>759</sup>
- 4.52 As noted at 3.140 above, Tourism WA subsequently requested the insurance documentation on 9 December 2011. According to Tourism WA, RacingThePlanet complied with this request on 15 February 2012. When asked by the Committee whether he thought the insurance policies were adequate, Mr Hamilton responded in the affirmative.<sup>760</sup> Tourism WA's CEO, Mrs Stephanie Buckland's understanding was that the insurer was an Australian company.<sup>761</sup>
- 4.53 The Committee has received advice regarding the adequacy of these documents which shows that Tourism WA had a profound lack of understanding regarding the insurance requirements of the contract with RacingThePlanet. As indicated previously (see 3.141 above), the Committee has been advised that the documents provided to Tourism WA to confirm public liability insurance are of 'no apparent value to Tourism WA or to an injured participant'.<sup>762</sup> In respect of the other documents, the Committee was advised:

*The workers' compensation "Notice of Insurance" document appears to be valueless. It is not an insurance contract. The nature of cover is unknown. The Hong Kong insurer presumably is not an APRA approved insurer and not an approved insurer for the purposes of the Workers' Compensation and Injury Management Act 1981 (WA). Whether*

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757 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Clause 14.3.

758 Mr David Lowe, Acting Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 20 April 2012, pp. 24-25.

759 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, pp. 25-26.

760 *ibid*, p. 26.

761 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 10.

762 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 100.

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*employees of RacingThePlanet are covered for workers' compensation under Hong Kong law if injured in Western Australia is unknown.*<sup>763</sup>

- 4.54 The final document received was a flyer for a medical emergency insurance firm. This also 'provides little useful information for the purposes of Tourism WA or an injured participant'.<sup>764</sup> The Committee has not received any evidence that satisfies it that personal accident insurance for volunteers was in place.
- 4.55 The Committee believes, based on the advice it has received,<sup>765</sup> that the documents provided to Tourism WA do not provide evidence that RacingThePlanet complied with any of the obligations imposed on it by Clause 14 of the Sponsorship Agreement.
- 4.56 As noted at 3.142 above, the Committee was unable to obtain further information about the insurance documentation for the event. The scarcity of information around the insurance for the event leaves the Committee with ongoing doubt as to the adequacy, and potentially the existence, of coverage as per the terms of the Sponsorship Agreement.
- 4.57 It is reasonable for the Western Australian community to expect that Tourism WA, in its capacity as a responsible sponsor, would ensure that the appropriate insurances were in place in case anyone involved in a sponsored event suffered serious injury and wished to pursue an action against an organiser or third party for liability.
- 4.58 The fact that insurances for the 2011 Kimberley Ultramarathon cannot be confirmed is a reflection of the total inadequacy of the measures Tourism WA had in place at the time the Sponsorship Agreement was developed.
- 4.59 Notably, Clause 15.3 states that the Event Holder must provide Tourism WA with information relating to any matter covered by the Agreement within 5 days of receiving a written request. The clause adds that '[a]ll such information must be full, true and accurate in all aspects to the best of the Event Holder's knowledge at that time'.<sup>766</sup>
- 4.60 Tourism WA's Mrs Buckland conceded that, '[w]hen an incident like this happens, ideally we would have had the entire policy, but we do not have that'.<sup>767</sup> The Committee notes that it appears that the Sponsorship Agreement is still in place.<sup>768</sup>

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763 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 101.

764 *ibid.*, para 102.

765 *ibid.*, para 99.

766 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Clause 15.3.

767 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 9.

768 Supplementary Item A, Tourism WA, 8 May 2012, p. 2.

Consequently, Tourism WA remains contractually empowered to request the insurance policies in their entirety.

- 4.61 Given the acknowledgement of Mrs Buckland, and the contractual powers Tourism WA holds, the Committee is alarmed at the informal manner in which the department has sought this material from RacingThePlanet. No request appears to have been made prior to 9 December 2011, more than three months after the event was staged. When a request was made, it was via an email from Mr Hamilton which read:

*Hi Mary [Gadams]*

*One item I didn't get from you when I was on event with you was the copies of the certificates for your insurance's [sic].*

*Could I ask you to forward these to me so that I can put them on the file please?*<sup>769</sup>

- 4.62 Notably, Mr Hamilton only requested certificates. No reference was made to the accompanying policies and schedules, without which it is difficult to determine whether appropriate coverage is in place (as argued at 3.143 above).
- 4.63 The Committee is dismayed that Tourism WA has, to date, made no formal request for these additional materials, despite significant interest from Parliament and injured competitors as to whether appropriate insurances are in place.
- 4.64 In the absence of evidence indicating any earlier request, the Committee can only deduce that Tourism WA signed the Sponsorship Agreement without knowing whether the insurance provisions of the contract were in place. When a request for the insurance documentation was made some months later, it was neither sufficiently formal nor thorough. This is clearly an unsatisfactory approach to the management of contracts for sponsored events.

## **Finding 20**

The example of the 2011 Kimberley Ultramarathon demonstrates Tourism WA's unsatisfactory approach to its management of contracts for sponsored events, particularly in regards to the insurance requirements of event organisers. Notable flaws include:

- Signing a contract with an event organiser without confirming whether the insurance requirements of the contract were in place.

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<sup>769</sup> Supplementary Item B, Tourism WA, 30 May 2012, p. 3.

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- A lack of understanding from senior Tourism WA and Eventscorp staff as to adequacy of the insurance materials that were subsequently provided after the event.
- Failing to formally request the insurance policies or schedules pertaining to the Sponsorship Agreement (before or after the event), despite being contractually empowered to do so and when significant interest exists from competitors and the Parliament as to whether appropriate insurances are in place.

- 4.65 The Committee believes that these lax processes are exacerbated by structural flaws in the sponsorship agreement template. All required insurance policies are supposed to be with an APRA-approved insurance office 'acceptable to Tourism WA' and the public liability policy must 'comprise terms and conditions which are reasonable and approved by Tourism WA'.<sup>770</sup> Yet these documents only have to be provided 'as and when requested'.<sup>771</sup> There is no provision to ensure that these requirements have been satisfied before an event is staged. In the case of the 2011 Kimberley Ultramarathon, the Committee is not satisfied that Mr Hamilton conducted, or had the capacity to make, any assessment of the adequacy of the public liability documentation he sighted.
- 4.66 Tourism WA has also recognised its failings and commenced to take corrective measures. Tourism WA was consulting with external legal counsel to review its sponsorship template and was due to complete this review in May 2012.<sup>772</sup> It has also asked senior executives at RiskCover to assist in reviewing current contracts to ensure that the appropriate insurances are being requested for each event.<sup>773</sup> Finally, Tourism WA is preparing an Event Development Framework, which will address contract management processes to 'reinforce the agency's standards of responsible sponsorship'.<sup>774</sup> This latter initiative, due to be finalised by late August,<sup>775</sup> was established in response to a Legislative Council Committee report tabled in December 2011 that was also critical of Tourism WA's event management practices for an event dating back to 2008.<sup>776</sup>

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770 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Clause 14.1, 14.1.1.

771 *ibid.*, Clause 14.3.

772 Supplementary Item A, Tourism WA, 8 May 2012, p. 1. Tourism WA has confirmed that the contents of this review will be considered as part of the preparation for its new Event Development Framework that is discussed later in this paragraph. Tourism WA, Correspondence to Committee, 10 August 2012.

773 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, pp. 9-10.

774 Supplementary Item A, Tourism WA, 8 May 2012, p. 1.

775 Tourism WA, Correspondence to Committee, 10 August 2012.

776 Government Response to Standing Committee on Estimates and Financial Operations Report 35 – *Inquiry into Western Australian Tourism Commission's Involvement in Major Tourism Events*, 28 March 2012, p. 4. Available at:

- 4.67 The Committee acknowledges this review, but nonetheless finds it hard to fathom that adequate protocols in this area have not been in place given how long Eventscorp has been involved in event sponsorship.
- 4.68 The Committee urges that within these reviews, Tourism WA (with the Board taking a lead role) looks to establish a contract template where the following standards are applied:
- a. Tourism WA is provided with all relevant insurance policies and schedules prior to a sponsorship agreement being signed (in a manner similar to that adopted by Tourism Council WA in its accreditation process (see 3.144 above)).
  - b. All relevant policies and schedules to be lodged with Tourism WA by the time a sponsorship agreement is signed.
  - c. Tourism WA retains the right to provide any information regarding the insurance policies and schedules to any parties involved in the event.
  - d. Independent verification that policies are Australia-based and APRA-approved to be provided by the organiser.
  - e. A clause maintaining the right of Tourism WA to verify the status of the policies with the insurer at any time while the Agreement is in place.
  - f. In light of the jurisdictional issues referred to at 3.148 through 3.154 above, an undertaking from the organiser that any claims against it by injured parties can be undertaken and enforced within the state of Western Australia.
- 4.69 Such measures would help to ensure that a reasonable standard of protection of the interests of competitors, volunteers and employees involved in sponsored events was in place.
- 4.70 Noting that Healthway appears to have the same practice of viewing documents upon request,<sup>777</sup> the Committee urges other state agencies that sponsor events to conduct a similar review of their respective insurance requirements in light of the issues identified in this report.

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[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(ReportsAndEvidence\)/822360D9A7CAF4CB482579590024EFD4?opendocument](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(ReportsAndEvidence)/822360D9A7CAF4CB482579590024EFD4?opendocument). Accessed on 6 June 2012.

777 Submission No. 28 from Healthway, 28 May 2012, p. 2.

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### Recommendation 4

As part of its review of its contract management processes, Tourism WA (with the Board of Tourism WA taking a lead role) should amend its contract template for event sponsorship to ensure that:

- Tourism WA is provided with all relevant insurance policies and schedules prior to a sponsorship agreement being signed.
- All relevant insurance policies and schedules are lodged with Tourism WA by the time a sponsorship agreement is signed.
- Tourism WA retain the right to provide any information regarding the insurance policies and schedules to any parties involved in the event.
- Organisers provide independent verification of policies being Australian-based and approved by the Australian Prudential Regulation Authority.
- Tourism WA retains the right to verify the status of the policies with the organiser's insurer at any time throughout the contract period.
- Organisers submit to a clause allowing any claims against them by injured parties to be undertaken and enforceable in the state of Western Australia, and Tourism WA withdraws any offer of sponsorship if an organiser is not prepared to comply with this condition.

### Principles of Responsible Sponsorship: No. 3 – Due Diligence

- 4.71 Tourism WA stated that when an event involves inherent risk, responsible sponsorship involves:

*... carrying out a "due diligence" investigation to ensure that the event organiser has the capability to run the event competently and safely, and is of good standing in the relevant field of activity.*<sup>778</sup>

- 4.72 Due diligence can be defined as the 'research and analysis of a company or organization done in preparation for a business transaction'.<sup>779</sup>

- 4.73 Term of Reference (d) for this Inquiry asked the Committee to investigate:

*the extent to which WA Tourism adequately assessed the qualifications, capability, experience, and capacity of RacingThePlanet*

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<sup>778</sup> Submission No. 11 from Tourism WA, 4 April 2012, Covering letter, p. 1.

<sup>779</sup> Merriam-Webster, 'due diligence', 2012, n.p. Available at: <http://www.merriam-webster.com/dictionary/due%20diligence>. Accessed on 6 June 2012..

*to organise, promote and run the event safely and with appropriate protections to competitors, employees, contractors, volunteers and spectators and the extent to which these should be assessed for future events [emphasis added].*

- 4.74 Accordingly, this section will focus on the processes adopted by Tourism WA in its pre-contractual feasibility stage. The Committee has already noted flaws in Tourism WA's approach to ensuring appropriate risk management plans and required insurances are in place for events (see 4.23 through 4.37 and 4.58 to 4.69 above). These practices have been an obvious and serious impediment to assessing the extent to which organisers can run events safely and with appropriate protections to those involved.
- 4.75 There are three other procedural shortcomings that were noted during the Inquiry, all of which relate to due diligence processes:
- Inadequate level of independent research.
  - Inadequate liaison with relevant stakeholders.
  - Inaccurate advice to departmental heads and the Board of Tourism WA.

#### **Inadequate level of independent research**

- 4.76 Eventscorp's Mr Hamilton commenced pre-feasibility research, relating to what was then a potential sponsorship agreement, soon after RacingThePlanet indicated its intention on 18 October 2010 to stage an annual 100km event in the Kimberley (see 4.25 above). Mr Hamilton explained that the pre-feasibility process involves a lot of 'desktop research and talking to particular stakeholders'.<sup>780</sup>
- 4.77 Mr Hamilton had acquired prior knowledge of RacingThePlanet, having received a PowerPoint presentation from the company in 2009. This package comprised data on increasing competitor numbers and a range of positive international print and online media articles regarding RacingThePlanet and its events.<sup>781</sup> For his pre-feasibility research for the 2011 Sponsorship Agreement, Mr Hamilton went to RacingThePlanet's website, from which he gained 'a lot of information' including access to the company's Rules and Regulations for events.<sup>782</sup> Tourism WA added that it relied on blogs from the RacingThePlanet's website for the 2010 Kimberley event as the primary source for competitor and stakeholder feedback.<sup>783</sup>

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<sup>780</sup> Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 5.

<sup>781</sup> *ibid.*

<sup>782</sup> *ibid.*

<sup>783</sup> Submission No. 11 from Tourism WA, 4 April 2012, p. 10.

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- 4.78 This research allowed Mr Hamilton to rightly conclude that the company had extensive experience in holding remote location trail footraces in diverse parts of the world and that RacingThePlanet's events 'were viewed positively by competitors and hosts (over 20 blogs were considered as part of this process) and were highly regarded by world media and in endurance event circles'.<sup>784</sup>
- 4.79 The Committee accepts Tourism WA's initial research methodology as a reasonable part of the preliminary due diligence undertaken. However, an important aspect of due diligence is the acquisition of corroborative material from independent sources. Tourism WA conceded that an issue with its due diligence 'is the ability to find complete, accurate and independent information on event holders domiciled outside Australia'.<sup>785</sup> Tourism WA added that overarching governing bodies can assist in the event selection process.<sup>786</sup> While AURA is not a governing body, the Committee was still surprised that Tourism WA appears not to have sought feedback from this group or other members of the Australian ultramarathon community.<sup>787</sup>
- 4.80 The extent of Tourism WA's independent research appears to have been limited to visits to online endurance event forums, SleepMonsters and CoolRunnings Australia.<sup>788</sup> While these sources provide a substantial number of blogs on various events, the adequacy of what was viewed by Tourism WA was not ascertained, although Mr Hamilton advised that 'no negative issues came up in terms of the internet research'.<sup>789</sup>
- 4.81 Despite this, Tourism WA has since conceded there were 'potential' gaps in its due diligence processes after information regarding dehydration issues in the 2010 Kimberley event and the death of a competitor three days after collapsing in the 2010 Gobi March event were not uncovered.<sup>790</sup> Tourism WA's Chief Executive Officer confirmed she was not aware of either issue when the sponsorship recommendation went to the Board of Tourism WA for approval.<sup>791</sup>
- 4.82 While this raises concerns for the Committee, a mitigating factor for Tourism WA was that neither issue was raised by RacingThePlanet during its pre-contractual negotiations.<sup>792</sup> The Committee questioned RacingThePlanet on why it did not advise Tourism WA of these issues. In respect of dehydration in the 2010 Kimberley event,

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784 Submission No. 11 from Tourism WA, 4 April 2012, p.11.

785 *ibid.*, p. 6.

786 *ibid.*, p. 6.

787 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, pp. 6-7.

788 *ibid.*, p. 7.

789 *ibid.*.

790 Submission No. 11 from Tourism WA, 4 April 2012, p. 10.

791 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 4.

792 Submission No. 11 from Tourism WA, 4 April 2012, p. 10; Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 4.



RacingThePlanet advised that it is a common problem in ultramarathons and is not something they have to mention to every person.<sup>793</sup>

- 4.83 Regarding the death of a competitor three days after collapsing in the 2010 Gobi March event, RacingThePlanet argued that this information was available as a press release on the company's website during the due diligence period. Furthermore, reference to the incident is now on the "History" section of the Gobi March page.<sup>794</sup> The Committee has confirmed the validity of both claims.<sup>795</sup>
- 4.84 Responding to a further question from the Committee as to whether this matter was disclosed, RacingThePlanet argued that the contention in the Committee's question—that the competitor died 'in' the race—was false information and that any relationship between the death and the race 'is entirely conjectural'.<sup>796</sup> RacingThePlanet added that it 'did not give that false information to Tourism WA'.<sup>797</sup>
- 4.85 The Committee accepts RacingThePlanet's argument that dehydration is a common issue in ultramarathons, but notes that the number of competitors suffering from this condition in the 2010 Kimberley event had a significant, and unanticipated, impact on Kununurra Health Services.<sup>798</sup> Eighty-one of the 198 competitors were unable to complete the race,<sup>799</sup> and the high drop-out rate saw WA Police call RacingThePlanet on 30 April 2010 to express concern at the number of people being taken to hospital suffering dehydration.<sup>800</sup>
- 4.86 Regarding the Gobi March, the Committee acknowledges that the competitor died three days after collapsing while competing in the 2010 event.
- 4.87 Notwithstanding these concessions, the Committee maintains that such issues are material to a sponsor's interests, as part of its due diligence process, to make assessments on the capacities of an organiser to stage events (especially in rugged and remote regions). Tourism WA has received advice from the State Solicitor's Office (SSO)

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793 Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 8.

794 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 16.

795 A web archive search shows that on 27 December 2010, the RacingThePlanet website had a link to a press release entitled, 'RacingThePlanet community mourn the death of competitor....'. The current reference can be found at <http://www.4deserts.com/history> by clicking on "Gobi March" and "2010". Accessed on 3 June 2012.

796 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 5.

797 *ibid.*

798 Dr Andrew Robertson, Acting Executive Director, Public Health and Clinical Services, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 3.

799 Submission No. 13 from RacingThePlanet Events Limited, 4 April 2012, pp. 3,6.

800 Submission No. 2 from Western Australia Police, 29 March 2012, p. 4.

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that RacingThePlanet's failure to disclose such information may have represented a contravention of Clause 19.1.4 of the Sponsorship Agreement,<sup>801</sup> which reads:

*[The Event Holder represents and warrants that] .... it has not withheld from Tourism WA any document, information or other fact material to the decision of Tourism WA to enter into this Agreement [Emphasis added].*<sup>802</sup>

- 4.88 In summary, there appears to have been an over-reliance on material provided by RacingThePlanet when the sponsorship proposal was being compiled. Evidence of this is illustrated in the paper prepared for the Tourism WA Board recommending the sponsorship deal. This paper noted that '[t]he 2010 Racing the Planet event staged in the Kimberley was a success according to the event organisers and participants' [emphasis added].<sup>803</sup>
- 4.89 Tourism WA should have made independent enquiries with stakeholders and local government agencies (including DOH and Police) regarding the 2010 Kimberley race. Ultimately, Tourism WA's dependence on RacingThePlanet, which displayed a lack of candour throughout the due diligence stage, contributed to the department's ignorance of issues it might reasonably have looked to investigate further.

### **Inadequate input from relevant stakeholders**

- 4.90 As discussed at 4.77 above, Tourism WA's primary source for obtaining competitor and stakeholder feedback on the Kimberley 2010 race was via RacingThePlanet's race website. Moreover, Tourism WA advised that 'discussions with RacingThePlanet indicated positive support from key stakeholders including El Questro and Kununurra Visitor Centre' [emphasis added].<sup>804</sup>
- 4.91 The Committee is concerned that Tourism WA did not take advantage of the availability of independent information sources for feedback on the 2010 Kimberley event when conducting its due diligence, particularly given their acknowledged difficulties around obtaining independent information on overseas-based event organisers (see 4.79 above). Mr Hamilton personally introduced Ms Gadams to the General Manager of El Questro and the CEO of the Shire of Wyndham East Kimberley (SWEK) in 2009 when RacingThePlanet was preparing for its first race in the area.<sup>805</sup> Despite this, Mr

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801 Supplementary Information, Tourism WA, 8 May 2021, p. 2.

802 Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Clause 19 and 19.1.4.

803 *ibid*, Annex 11, p. 2.

804 Submission No. 11 from Tourism WA, 4 April 2012, p. 10.

805 *ibid*, p. 8.

Hamilton does not appear to have followed up directly with El Questro or SWEK for comment on the organisation and conduct of this race. Given El Questro's subsequent involvement with the event, the Committee is particularly surprised that no direct input was sought from this stakeholder.

- 4.92 The Committee is not implying that such follow up would have generated negative feedback or issues of concern. The point is that the consultation did not occur, leaving Tourism WA without an important source of independent feedback on matters that may have been pertinent to its due diligence.
- 4.93 Mr Hamilton confirmed that when conducting his research he did not speak to anybody about the 2010 Kimberley race who was not connected to RacingThePlanet either financially, or in some other way.<sup>806</sup> After making the initial introductions in 2009, he appears to have assumed that RacingThePlanet 'would have communicated with all the relevant stakeholders', and did not follow the issue up any further.<sup>807</sup>
- 4.94 As noted at 4.79 above, Tourism WA did not liaise with AURA or directors of other ultramarathons in Australia. The Committee feels that such contacts may have been an invaluable further source of information on what issues need to be considered when staging such events.
- 4.95 Mr Hamilton told the Committee that the process he followed with RacingThePlanet was the same as what Tourism WA applies to the other events it sponsors.<sup>808</sup> The Committee believes that Tourism WA needs to show greater initiative, particularly when dealing with a new entrant from overseas going into one of the more remote areas of the state. As a responsible sponsor, it is not sufficient to draw assumptions that all contingencies are addressed, without confirming this with the organiser and seeking independent verification.

#### **Inaccurate advice to departmental heads and the Board of Tourism WA**

- 4.96 The advice that Eventscorp provided to departmental heads, the Board, and the Minister also indicate shortcomings in the due diligence processes for this event.
- 4.97 In its submission to the Committee, Tourism WA said that the pre-event analysis indicated that the 100km race scheduled for 2011 in the Kimberley would be the 'first time an event of this distance would be held in the State, or anywhere in Australia'.<sup>809</sup> This is not an accurate statement. The Kep Ultra (100km Northam to Mundaring Weir)

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806 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 9.

807 *ibid.*, p. 12.

808 *ibid.*

809 Submission No. 11 from Tourism WA, 4 April 2012, p. 9.

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was first staged in 2009, while interstate events including The North Face 100 and GOW100s also pre-date the Kimberley 2011 ultramarathon.<sup>810</sup>

- 4.98 More significantly, information presented to the Board and Minister was inaccurate as a result of not being followed-up. The paper presented to the Board for approval on 1 July 2011 advised that up to 100 competitors from 30 countries would compete in the event. It further stated that the race 'will employ a local (Kununurra) event management company'.<sup>811</sup> The Standard Feasibility Assessment attached to the board proposal included a preliminary budgeted estimate of \$76,000 for 'Local Event organisers'.<sup>812</sup>
- 4.99 The Ministerial Media release that was issued a week before the event also contained a reference to the 100 competitors from 30 countries.<sup>813</sup> Appearing before the Committee, Tourism WA's Mrs Buckland advised that the draft media release had been sent out to RacingThePlanet to check and they advised it was 'fine to go'.<sup>814</sup> Mrs Buckland later confirmed that the evidence she had given was inaccurate. Indeed RacingThePlanet had replied via email four days before the media release was issued saying that 'the number of competitors will be less than the 100 you have stated', but Tourism WA made no further enquiry.<sup>815</sup> Consequently, they permitted a media release to be issued that was inaccurate.
- 4.100 As it eventuated, 41 entrants from eight countries were registered to compete, with Tourism WA not becoming aware of this fact until the day before the event.<sup>816</sup> Moreover, no local company was hired by RacingThePlanet.
- 4.101 It is important to note that neither factor was a binding condition of the Sponsorship Agreement.<sup>817</sup> However, the Economic Impact Evaluation conducted by Eventscorp that accompanied the funding proposal did factor in 100 competitors (and 100 accompanying visitors),<sup>818</sup> thereby misleading the Board as to the direct economic potential of the event to the local community and the state. This same argument applies to the failure to follow up on whether a local event organiser was to be engaged.

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810 Hoka OneOne Kep Ultra, '2012 Race Results'. n.d. Available at [www.kepultra.com/results.htm](http://www.kepultra.com/results.htm). Accessed 6 June 2012.

811 Submission No. 11 from Tourism WA, 4 April 2012, Annex 11, pp. 2-3.

812 *ibid*, Annex 11, Attachment 1, p. 5.

813 *ibid*, Annex 13.

814 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 13.

815 Supplementary Item B, Tourism WA, 30 May 2012, pp. 1-2,7.

816 Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 22.

817 Although a milestone payment of \$20,000 was payable on securing 40 competitor entries. Schedule, Submission No. 11 from Tourism WA, 4 April 2012, Annex 14 - 'Kimberley Ultramarathon 2011 and options for 2012 and 2013 Sponsorship Agreement', Item 5.

818 Submission No. 11 from Tourism WA, 4 April 2012, Annex 11, pp. 3-4.

- 4.102 Tourism WA confirmed that its main focus for this event was on the television production and the potential for showcasing one of the state's most pristine areas.<sup>819</sup> The Committee is fully supportive of this concept and the idea of taking the adventure sport series events into the north-west of the state. However, there is legitimate concern in this instance that the allure of the media potential of the event blinded Eventscorp staff in particular to the more mundane, but nonetheless vital, due diligence practices.
- 4.103 Tourism WA has confirmed that its pre-event assessment processes need to be improved.<sup>820</sup> This is a long-standing problem for Tourism WA which needs to be addressed urgently. Tourism WA was criticised in a 2011 Legislative Council committee report into the sponsorship of the One Movement for Music Festival for not liaising adequately with relevant stakeholders while conducting due diligence.<sup>821</sup> The report also found that there appeared to be no overarching guideline outlining the roles and responsibilities within Tourism WA, 'with respect to undertaking due diligence, staging and assessing events'.<sup>822</sup> The report called for production of a policy that set out minimum standards of due diligence 'as a matter of urgency'.<sup>823</sup>
- 4.104 The Event Development Framework that is being put together by Tourism WA in response to the 2011 report (see 4.66 above), is due to be completed by the late August 2012. It is imperative that this initiative address the deficiencies in Tourism WA's approach to due diligence and contract management that have been acknowledged by Tourism WA and identified in this report.
- 4.105 In terms of greater counterparty disclosure, the Committee notes that Tourism WA is considering the merit of formal questionnaires to obtain information on potentially material issues during the pre-contractual period.<sup>824</sup> The Committee supports this strategy and believes that if an organiser is found at any time not to have complied, or to have withheld material information, the penalty regime should extend to the nulling of the contract.
- 4.106 The idea of stipulating the engagement of local event managers is also worthy of consideration on a case-by-case basis. Beyond the economic benefits to the community, it is arguable that local event managers could be used as another conduit

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819 Submission No. 11 from Tourism WA, 4 April 2012, pp. 9,11; Mr Glenn Hamilton, Director Events, Eventscorp, *Transcript of Evidence*, 20 April 2012, p. 22.

820 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 11; Mr David Lowe, A/Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 20 April 2012, p. 11.

821 Standing Committee of Estimates and Financial Operations, *Report on the Inquiry into Western Australian Tourism Commission's Involvement in Major Tourism Events*, Legislative Council, Western Australia, December 2011, pp. 23-26.

822 *ibid.*, p. 27.

823 *ibid.*

824 Submission No. 11 from Tourism WA, 4 April 2012, p. 10.

## Chapter 4

between an organiser not familiar with an area and relevant local authorities. The Committee recognises that engaging a local event manager may be difficult in remote areas. Given its acknowledged role in event facilitation (see 4.4 above), it is expected in these circumstances that Eventscorp would be pro-active in finding appropriate local management support for potential race organisers, or take on the role itself.

### Finding 21

The example of the 2011 Kimberley Ultramarathon demonstrates several deficiencies in Tourism WA's due diligence of organisations it proposes to sponsor including:

- Inadequate level of independent research and excessive reliance on information provided by RacingThePlanet.
- Failure to liaise with relevant stakeholders, including local entities that had some level of involvement with the event staged by RacingThePlanet in 2010.
- Providing inaccurate advice to departmental heads, the Board of Tourism WA, and ultimately the Government.

### Recommendation 5

As part of the review of its due diligence processes, Tourism WA should ensure that:

- A minimum standard of due diligence is established that addresses the deficiencies noted in this Report.
- Sponsorship agreements include a provision requiring event organisers to complete disclosure questionnaires. If an organiser is found at any time not to have complied, or to have withheld material information, the penalty regime should extend to the nulling of the contract.
- Consideration is given on a case-by-case basis to stipulating the engagement of local event management companies to assist organisers in regards to event planning and risk management.

### Actions of the Board of Tourism WA

- 4.107 The Committee has further concerns at the apparent lack of scrutiny by the Board of Tourism WA when the sponsorship proposal was presented by Eventscorp for approval. The 1 July 2011 proposal provides information on expected economic benefits, which was inaccurate. Further, no mention is made in the proposal, or the accompanying

feasibility study, as to whether the risk management processes were adequate or whether the insurance requirements underpinning the event were in place.<sup>825</sup>

4.108 The Committee received no indication that the Board questioned the proposal's authors on these issues or on whether a local event organiser had been engaged to assist RacingThePlanet. The Committee has made the assumption that the Board did not question Eventscorp on these aspects of the proposal. When Chair of the Board of Tourism WA, Ms Kate Lamont, was asked by the Committee whether she was disturbed by the inaccurate information in the proposal presented to the Board, Ms Lamont replied: '[t]he information that the Board was given on the day we believed to be true. There was no reason for us to question it'.<sup>826</sup>

4.109 While the Committee is concerned at the apparent lack of scrutiny demonstrated by the Board, it recognises that ultimate responsibility for the quality and accuracy of any information presented to Board members rests with the Chief Executive Officer. Mrs Buckland was asked by the Committee what she does to ensure the information in proposals to the Board is accurate and thoroughly researched. She stated:

*Typically, I would get a draft Board paper as well as the feasibility assessment, so I am asking for the recommendation to be fleshed out. I would read the Board paper, read the feasibility assessment and then ask questions about things like the financial projections and the event proponent—what do we know about them and their track record in running events in the past? I will typically ask a number of questions before I feel comfortable that a recommendation is ready to go to the board. However, I will say that in this instance I cannot recall the questions that I would have asked on this particular proposal. Just to give that some perspective, I would review well in excess of 100 of these types of proposals in a 12-month period.*<sup>827</sup>

4.110 Given the inherent deficiencies in Eventscorp's current due diligence processes, it is critical that the Chief Executive Officer revises her approach to assessing proposals prepared for the Board. The same emphasis must be given to scrutinising the health and safety aspects of a proposal as would be given to the media and economic impact.

4.111 Additionally, the Committee recommends that the Board of Tourism WA should take action to ensure that it reviews the quality of Board papers that are submitted to it by the executive of Tourism WA.

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825 Submission No. 11 from Tourism WA, 4 April 2012, Annex 11. See also Annex 13 for the subsequent extract of the Minutes from the Board of Tourism WA meeting of 29 July 2011 where the proposal was ratified.

826 Ms Kate Lamont, Chairman, Board of Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 14.

827 Mrs Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 9 May 2012, p. 3.

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### **Finding 22**

The Board of Tourism WA did not scrutinise the proposal prepared by Eventscorp seeking funding to sponsor the 2011 Kimberley Ultramarathon in sufficient detail.

### **Recommendation 6**

The Board of Tourism WA should take action to ensure that it reviews the quality of Board papers that are submitted to it by the executive of Tourism WA.



## Chapter 5

### The Civil Liability Act 2002

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Term of Reference (c) requires the Committee to investigate and report on ‘...insurance and civil liabilities matters and the appropriateness of the *Civil Liability Act 2002* (Western Australia) provisions regarding liability of operators and organisation of recreational activities particularly of a high risk nature.’ The Committee has explored insurance and civil liabilities matters in other sections of the report (see 3.123 through 3.157 and 4.47 through 4.70 above). Consequently, this chapter will focus on the second part of the term of reference.

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#### Scope of chapter

- 5.1 The “appropriateness” of the *Civil Liability Act 2002* (WA) (CLA) needs to be considered in light of the intended purpose of the provisions that were introduced via the *Civil Liability Amendment Act 2003* (WA). These provisions affected claims for damages for personal injury to address perceived problems of availability and cost of liability insurance for recreational service providers. As then-Parliamentary Secretary for the Premier, Hon. Mark McGowan, explained during the Second Reading speech for the *Civil Liability Amendment Bill 2003*:

*The second significant provision is the introduction of voluntary assumption of risk. The principle behind the voluntary assumption of risk is that participants should assume a degree of risk when engaging in recreational services .... Recreational service providers, be they commercial, community-based or private, have suffered extensively from skyrocketing premiums, if they have managed to secure insurance at all ....*

*To ensure the continuation of recreational services in this State, participants can now assume some risk when voluntarily engaging in an activity. This will work on a 2-tiered framework, whereby there will be no liability for injuries from obvious risks of dangerous activities, while for other recreational activities, risk warnings and waivers will be effective in certain circumstances to limit liability.*<sup>828</sup>

- 5.2 The introduction of the voluntary assumption of risk through the CLA has enabled providers of recreational and sporting activities to continue operating after their

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828 Hon. Mark McGowan, Parliamentary Secretary to the Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 20 March 2003, p. 5693.

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viability had been threatened by rapidly increasing insurance premiums. The Committee remains supportive of the intent of the Act in this respect and is reluctant to consider amendments at this time.

- 5.3 Within the time available, the Committee was not in a position to acquire sufficient familiarity with the current body of case law testing the Act to enable it to make findings on the appropriateness of the provisions relating to the liability of organisers of high-risk recreational activities. Additionally, the relevant provisions of the Act, particularly sections 5H-5J are comparatively untested, making it somewhat premature for the Committee to offer practical commentary.

### Finding 23

The Committee makes no finding on the appropriateness of the provisions of the *Civil Liability Act 2002* (Western Australia) relating to the liability of organisers of high-risk recreational events, as these provisions remain comparatively untested by the courts.

- 5.4 Therefore, this section will focus more on how the CLA might operate, and the issues a court would have to consider, if a sport that might be interpreted as 'dangerous' is the subject of civil proceedings.
- 5.5 While the legislation will be looked at in general terms, issues of its applicability as it might relate to the 2011 Kimberley Ultramarathon will be considered in part.<sup>829</sup> The Committee will not make any findings of liability during this process. That is the role of a Court. The Committee will only highlight issues raised by contributors to the Inquiry that a Court may have to consider based on the facts as presented.
- 5.6 The Committee has sought the advice of Barrister Mr Geoff Hancy on a series of questions relating to the general application of the Act. Where this advice is referred to, Mr Hancy will be cited.

### Causes of Action Available

- 5.7 Causes of action for damages that may be available to a competitor injured in an event like an ultramarathon include:
- Negligence (breach of a duty to exercise reasonable care).

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<sup>829</sup> The Committee notes that the lawyer representing four of the competitors in the 2011 Kimberley Ultramarathon, including Miss Turia Pitt, has indicated that he would consider civil action against RacingThePlanet on behalf of his clients. See, Paige Taylor, 'Runner Turia Pitt tells of horror bushfire ordeal', *The Australian* (Online), 1 May 2012. Available at: [www.theaustralian.com.au/news/nation/runner-tells-of-horror-bushfire-ordeal/story-e6frg6nf-1226343107321](http://www.theaustralian.com.au/news/nation/runner-tells-of-horror-bushfire-ordeal/story-e6frg6nf-1226343107321). Accessed on 4 July 2012.

- Breach of contract.
  - Negligent misrepresentation.
  - Breach of a consumer guarantee under the Australian Consumer Law to render services with due care and skill.<sup>830</sup>
- 5.8 The cause of action for negligence is the one most likely to be relied upon by an injured person. It is the cause of action that is most commonly relied on by a person who seeks to recover damages for an injury.<sup>831</sup>
- 5.9 Prospective defendants may include an individual or company whose conduct, by act or omission, constituted a breach of duty, breach of contract, misrepresentation, or breach of a consumer guarantee. Where the relevant conduct was by an individual who was acting as employee or agent of a company, that company may be liable for the individual's conduct.<sup>832</sup>
- 5.10 In the case of a claim in contract the relevant defendant is the contracting party. A claim for breach of a consumer guarantee can be made against the supplier of the services.<sup>833</sup>
- 5.11 In regards to an adventure sporting event sponsored by a government agency, potential defendants in an action by an injured participant could include the organiser, staff of the organiser who participated in the management of the event, and the State, through the agency that sponsored the event.

### **Negligence (Duty of Care)**

- 5.12 As noted at 5.7 above, negligence constitutes a breach of a duty to exercise reasonable care. Two elements must be satisfied before a common law duty of care arises:
- a sufficiently close relationship between the defendant and the individual (or group of people) who might suffer harm from the defendant's conduct; and
  - judged prospectively, it was reasonably foreseeable that the individual (or a member of a class of people) might suffer harm if the defendant did not exercise reasonable care.<sup>834</sup>
- 5.13 Teachers and students, doctors and patients, occupier and entrant, employer and employee, jailer and prisoner are examples of established categories of cases in which

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830 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 4.

831 *ibid.*, para 5.

832 *ibid.*, para 6.

833 *ibid.*, para 7.

834 *ibid.*, para 27.

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the common law imposes a duty on the former class of person to take care of the latter: ***Vairy v Wyong Shire Council*** [2005] HCA 422; (2005) 223 CLR 422, 432-433 [27].<sup>835</sup>

- 5.14 The CLA has not modified the first element required to establish a common law duty of care—that of a close relationship between the defendant and the individual (or members of a class of people).<sup>836</sup>
- 5.15 The second requirement of foreseeable risk of injury was modified by the additional statutory requirement that there can be no liability unless the risk of harm was “not insignificant” (s5B(1)(c)). This is intended to indicate a risk that is of a higher probability than indicated by the phrase “not far-fetched or fanciful” but not so high as might be indicated by a phrase such as “substantial risk”.<sup>837</sup>
- 5.16 Liability to pay for injury for damages depends not only on the existence of a duty of care, but also on proof that there was conduct by the defendant amounting to breach of the duty and that this conduct caused the injury. In addition, it is possible to impose by contract a duty of care that is more onerous than the obligation to exercise reasonable care.<sup>838</sup>
- 5.17 A duty of care may arise under the common law, as part of the law of tort, or as an express or implied term of a contract.<sup>839</sup>
- 5.18 The CLA affirms or modifies the rules that otherwise would have governed liability at common law or under contract. For example, liability will not be imposed:
- For failing to take precautions against a risk unless:
    - This risk was foreseeable;
    - The risk was not insignificant; and
    - A reasonable person in the defendant’s position would have taken those precautions (s5B(1)).
  - Unless the defendant’s fault was a necessary condition of the occurrence of the harm and it is appropriate for the scope of the defendant’s liability to extend to the harm so caused (s5C(1)).
  - For failing to warn of an obvious risk (s5O).<sup>840</sup>

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835 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 32.

836 *ibid.*, para 36.

837 *ibid.*, para 38.

838 *ibid.*, para 19.

839 *ibid.*, para 22.

- For harm that is the result of the occurrence of something that cannot be avoided by the exercise of reasonable skill and care by the defendant (s5P(1)).
- 5.19 There are three other defences, under Division 4 of Part 1A of the CLA, that are specific to recreational activities.<sup>841</sup> These are most relevant to the Committee's term of reference, and will be considered in the section that follows.
- 5.20 What is important to note at this stage is that the provisions of the Act described in this section serve to constrain or prevent liability that might otherwise have attached in a personal injury case where a duty of care arises or, but for the provisions of the Act, would have arisen.<sup>842</sup>
- 5.21 These relevant provisions will now be examined.

**Modifications to Duty of Care under the *Civil Liability Act 2002* (Western Australia)**

- 5.22 Division 4 provides three defences that apply to recreational activities. Under the Act, recreational activity includes:
- a) any sport (whether or not the sport is an organised activity);
  - b) any pursuit or activity engaged in for enjoyment, relaxation or leisure; and
  - c) any pursuit or activity engaged in for enjoyment, relaxation or leisure at a place (such as a beach, park or other public open space) where people ordinarily engage in sport or in any pursuit or activity for enjoyment, relaxation or leisure.<sup>843</sup>

**No liability for harm from obvious risk of dangerous recreational activities**

- 5.23 By Section 5H(1) of the Act, a defendant is not liable for harm caused by the defendant's fault and suffered by the plaintiff, while the plaintiff engaged in a dangerous recreational activity if the harm is the result of the occurrence of something that is an obvious risk of that activity. A dangerous recreational activity is a recreational activity that involves a significant risk of harm.<sup>844</sup>
- 5.24 Whether there is a significant risk of harm is to be determined objectively and prospectively. The standard lies somewhere between a trivial risk and one that is likely

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840 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 20.

841 *ibid.*, para 21.

842 *ibid.*, para 23.

843 Section 5E *Civil Liability Act 2002*, (WA).

844 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012 (para 39). Section 5E *Civil Liability Act 2002*, (WA)

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to occur. Significance is to be informed by the elements of both risk and physical harm. The characterisation must take place in the particular context in which the plaintiff places himself or herself: *Lormine Pty Ltd v Xuereb* [2006] NSWCA 200.<sup>845</sup>

- 5.25 The standard for determining obvious risk is defined by section 5F, as a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person. The term includes risks that are patent or a matter of common knowledge. A risk can be obvious even though it has a low probability of occurring. A risk can be obvious even if it is not prominent, conspicuous or physically observable.<sup>846</sup>
- 5.26 The defence of obvious risk does not apply, and the organiser must warn of the obvious risk, if the participant requested advice or information about the risk from the defendant or the defendant was required by written law to warn the plaintiff of the risk.<sup>847</sup>
- 5.27 In the context of the Kimberley Ultramarathon, RacingThePlanet has submitted:

*... that it does not accept that it breached its duty of care in the 2011 Kimberley Race (with, or without, the effect of the Civil Liability Act 2002 which then and now governs liability under Western Australian law). Remote area endurance footraces, as with all sports, carry risks.*<sup>848</sup>

- 5.28 RacingThePlanet added that the passage of the CLA enabled people to assume, by agreement, the risks of undertaking a dangerous activity: 'There was such an agreement with each participant in the 2011 Kimberley footrace'.<sup>849</sup>
- 5.29 Solicitor Mr Greg Walsh, representing four of the competitors who participated in the race, has implied that this defence provision may not be applicable because the sport could not be categorised as a dangerous recreational activity.<sup>850</sup>
- 5.30 The Committee is not equipped to make such an assessment. Applying this Act to the facts that are presented to it for each individual case, a Court may have to consider whether the sport constitutes a dangerous recreational activity, as is stated in the event waiver (see 3.109 above).<sup>851</sup> A Court may then have to consider whether

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845 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012 para 40.

846 *ibid.*, para 55.

847 *ibid.*, para 56.

848 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 58.

849 *ibid.*, p. 7.

850 Submission No. 6 from Greg Walsh and Co Solicitors obo Turia Pitt, Michael Hull, Shaun Van Der Merwe, Martin Van Der Merwe and Hal Benson, 4 April 2012, pp. 47-49.

851 The waiver states that the activity being undertaken is 'inherently dangerous and may cause serious or grievous injuries ... and/or death'.

suffering burns from a bushfire is an obvious risk of that activity. There may be a range of other factors that the Court would consider. Without full knowledge of these, and in the absence of these facts being tested, the Committee is not prepared to make findings on the appropriateness of this provision of the CLA.

### **No liability for recreational activity where risk warning given**

- 5.31 The second defence that may be available to organisers of recreational activities, whether dangerous or not, applies where a risk warning has been given.
- 5.32 By Section 5I(1), an organiser would not owe a duty of care to a participant in a recreational activity to take care in respect of a risk of the activity if that risk was the subject of a risk warning to the participant.<sup>852</sup>
- 5.33 A risk warning in relation to a recreational activity is a warning that is given in a manner that is reasonably likely to result in people being warned of the risk before engaging in the recreational activity (s5I(4)). It is not necessary that the participant in the recreational activity has received or understood the warning or is capable of receiving or understanding it (s5I(5)). The risk warning need not be specific to the particular risk and can be a general warning of risks that include the particular risk concerned (s5I(7)).<sup>853</sup>
- 5.34 A risk warning will not apply in specified circumstances, where:
- The risk warning was not given by or on behalf of the defendant or the occupier of the place where the recreational activity is engaged in (s5I(8)).
  - The harm resulted from contravention of a written law or law of the Commonwealth that establishes specific practices or procedures for the protection of personal safety (s5I(9)).
  - The warning was contradicted by a representation about risk made by or for the defendant to the participant (s5I(10)).
  - The participant was required to engage in the recreational activity by the defendant (s5I(11)).<sup>854</sup>
- 5.35 Similarly, by Section 5I(12), a risk warning cannot be relied upon as a defence, if it is established on the balance of probabilities that the harm concerned resulted from an

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852 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 57.

853 *ibid.*, para 58.

854 *ibid.*, para 59.

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act done or omission made with reckless disregard, with or without consciousness, for the consequences of the act or omission.<sup>855</sup>

- 5.36 Reckless disregard is something more than negligence, but less than intentional disregard for consequences. Reckless conduct occurs when a person can foresee probable or possible harm, but nevertheless decides to continue with that conduct with an indifference to, or disregard for, the consequences: ***Bell Group v Westpac Banking (No. 9)*** (2008) 70 ACSR 1, 157.<sup>856</sup>
- 5.37 In the context of the 2011 Kimberley Ultramarathon, RacingThePlanet has submitted that it 'provided a number of warnings about the dangers of remote location footracing in its rules and regulations, information provided to competitors and pre-race briefings'.<sup>857</sup> In addition, the 'location, movement, intensity and threat [of the fire] were not known by, nor not foreseeable to, RacingThePlanet on 2 September 2011'.<sup>858</sup>
- 5.38 Conversely, some of the injured competitors have argued that the adequacy of the warning regarding the dangers of fire given at the pre-race briefing, the start line briefing, and during the race after John Storey's message was relayed to Checkpoint Two, was insufficient.<sup>859</sup>
- 5.39 Miss Sanderson further submitted that the failure to advise her of the warning relayed to Checkpoint Two 'constituted a reckless disregard for my safety and the safety of the other competitors on the part of RacingThePlanet'.<sup>860</sup>
- 5.40 RacingThePlanet argued that such claims are 'extremely serious allegations' that have 'no foundation—whatsoever in any evidence received by the Committee'.<sup>861</sup>
- 5.41 Besides these issues, there may be a range of additional factors that the Court may consider based on the facts presented in each case before determining whether a defence under s5I held. Without full knowledge of these, and in the absence of the facts being tested, the Committee is not prepared to make findings on the appropriateness of this provision of the CLA.

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855 Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, para 81.

856 *ibid.*, para 82.

857 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 58.

858 *ibid.*, p. 7.

859 See, for instance, Mr Michael Hull, Miss Turia Pitt, Miss Kate Sanderson, Miss Turia Pitt, Mr Shaun Van Der Merwe, Competitors, *Transcript of Evidence*, 30 April 2011, pp. 10,12,14-16; Submission No. 22, Miss Kate Sanderson, 4 April 2012, p. 28; Submission No. 6 from Greg Walsh and Co Solicitors obo Turia Pitt, Michael Hull, Shaun Van Der Merwe, Martin Van Der Merwe and Hal Benson, 4 April 2012, pp. 47-49.

860 Submission No. 22, Miss Kate Sanderson, 4 April 2012, p. 26.

861 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 5.



### Waiver of contractual duty of care for recreational activities

- 5.42 The third defence that may be available to an organiser of recreational activities is incorporation of a waiver clause into a contract with a participant.
- 5.43 Waivers were discussed at paragraphs 3.125 through 3.134 above. A waiver that is expressed in clear terms may be capable of excluding or restricting liability for negligence.
- 5.44 Section 5J of the CLA permits a contract for the supply of recreational services to exclude, restrict or modify liability that results from breach of an express or implied warranty that the services will be rendered with reasonable care and skill.
- 5.45 The significance of 5J may have been overtaken by the Australian Consumer Law that permits exclusion, restriction, or modification of liability for breach of a consumer guarantee (e.g. that the services will be rendered with due care and skill—Australian Consumer Law s60) in a contract for the supply of recreational services to a consumer (s139A(c)).<sup>862</sup>
- 5.46 Notwithstanding this point, the waiver must be unambiguous—it must also form part of the contract to be effective in protecting an organiser from liability. A waiver document that is provided after a contract has been made will not form part of the contract.<sup>863</sup>
- 5.47 Similar to the risk warning protections noted above (at 5.35), the defence provided by a waiver to a claim for breach of a warranty of due care and skill will not apply if ‘it is established (on the balance of probabilities) that the harm concerned resulted from an act done or omission made with reckless disregard, with or without consciousness, for the consequences of the act or omission’.<sup>864</sup>
- 5.48 In the context of the 2011 Kimberley Ultramarathon, a court would have to consider whether the waiver formed part of the contract. The circumstances that enable this determination to be made may vary according to the individual circumstances of each competitor. Indeed the circumstances of Miss Pitt, Mr Hull (who were granted free entry) and Miss Sanderson (who paid to enter) appear to differ in respect of how and when their contracts might have been established.<sup>865</sup>

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<sup>862</sup> Mr Geoffrey Hancy, Barrister, Advice to Economics and Industry Standing Committee (Closed Evidence), 18 May 2012, paras 78-80.

<sup>863</sup> *ibid.*, para 84.

<sup>864</sup> Section 5J(6) *Civil Liability Act 2002* (WA).

<sup>865</sup> See, for instance, Submission No. 22 from Miss Kate Sanderson, 4 April 2012, Attachment “KS1”, p. 3; Mr Michael Hull and Miss Turia Pitt, Competitors, Kimberley Ultramarathon 2011, *Transcript of Evidence*, 30 April 2011, p. 33.

## Chapter 5

- 5.49 Under the provisions of the CLA, a court would also have to consider whether the wording of the RacingThePlanet waiver was sufficiently broad and clear so as to exclude liability for negligence. In the waiver, the participant agrees ‘to waive all claims for damages, injuries and death sustained to me or my property ... including claims in tort, contract, equity or otherwise’.<sup>866</sup>
- 5.50 It may also be that a court could choose to look at what relevance, if any, Clause 8.1(b) of RacingThePlanet’s Rules and Regulations<sup>867</sup> has on the content and ambit of the waiver.
- 5.51 A further issue for consideration may be whether the waiver is ineffective if submissions made to the Inquiry regarding reckless disregard<sup>868</sup> are argued before a Court.
- 5.52 Once again the nuances of each case are potentially too many and varied for the Committee to offer comment. All it looks to do, by examination of the potential application of these provisions, is to demonstrate how the provisions might apply to the organisers of activities with an inherent degree of risk. The extent to which the application of these provisions is appropriate, taking into account the original intent of the amendments to the CLA, is not something the Committee can make a finding on at this time.
- 5.53 That said, the Committee acknowledges that it has been 10 years now since the CLA has been enacted and that a formal review of the Act by the overseeing department (Department of the Attorney General) should be considered given the increasing popularity of sports such as trail ultramarathons. This review would be a more appropriate forum in which to consider issues such as the effectiveness given to competitor waivers under the Act and the potential difficulties of establishing proceedings and enforcing a judgement against foreign-based parties as discussed in earlier section of this report.

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866 See ‘Assumption of Risk and Waiver and Release of Liability Kimberley Ultramarathon 2011’, as provided in Submission No. 22, Miss Kate Sanderson, 4 April 2012, Attachment “KS4”.

867 This clause states that ‘nothing in these Rules and Regulations excludes or limits RacingThePlanet’s liability for: .... Death or personal injury caused by negligence on the part of RacingThePlanet.’ Note that a following clause (8.3) says that RacingThePlanet’s maximum liability payable is limited to the amount of the entry fee, ‘[e]xcept as otherwise provided by any applicable law’.

868 Submission No. 22 from Miss Kate Sanderson, 4 April 2012, pp. 26-27; Submission No. 6 from Greg Walsh and Co Solicitors obo Turia Pitt, Michael Hull, Shaun Van Der Merwe, Martin Van Der Merwe and Hal Benson, 4 April 2012, p. 49.

**Recommendation 7**

The Department of the Attorney General consider conducting a review of the *Civil Liability Act 2002* (WA) in light of the 2011 Kimberley Ultramarathon. Such a review should consider issues such as the effectiveness given to competitor waivers under the Act and the potential difficulties of establishing proceedings and enforcing a judgement against foreign-based providers of recreational activities.

**Quantum of Damages**

- 5.54 The final aspect of the CLA that the Committee sought advice on was the provisions within the Act that a judge is required to take into account when determining damages. The Committee sought clarification on whether Division 2 of the CLA placed a cap on the amount of damages that could be awarded for non-pecuniary loss.<sup>869</sup> The advice received is in the following paragraphs.
- 5.55 Part 2 Division 2 of the CLA imposes constraints on the amount of damages that may be awarded for personal injury. By Section 7 a Court cannot award damages contrary to Division 2.
- 5.56 The constraints on awards of damages for non-pecuniary loss only apply if the assessed amount is less than the sum of Amount A and Amount C as defined by Section 10. Currently Amount A is \$18,000 and Amount C is \$55,000.<sup>870</sup> Accordingly there will be no reduction from an award of damages for non-pecuniary loss if that award is equal to or greater than \$73,000.
- 5.57 If the assessed amount is not more than \$18,000 then there can be no award of damages for non-pecuniary loss (s9(1)). If the assessed amount is more than \$18,000 but less than \$55,000 then the award is the assessed amount less \$18,000 (s9(2)). If the assessed amount is greater than \$55,000 but less than \$73,000 the award is the difference between twice the amount assessed and \$73,000.

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869 Non-pecuniary loss is defined as (a) pain and suffering; (b) loss of amenities of life; (c) loss of enjoyment of life; (d) curtailment of expectation of life; and (e) bodily or mental harm. Section 9(4) *Civil Liability Act 2002* (WA).

870 Figures taken from the Government Gazette, 19 June 2012.



## Chapter 6

### Role and actions of government departments

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This chapter addresses Term of Reference (e) by examining the roles of several government agencies including FESA, WA Police, Shire of Wyndham East Kimberley, Department of Environment and Conservation, and Department of Health in respect of the event, and the protection and rescue of competitors. The role of Tourism WA relating to the event has already been examined in Chapters 3 and 4.

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#### Introduction: The current legislative framework

- 6.1 In order to evaluate the roles and actions of the listed government agencies in respect of the 2011 Kimberley Ultramarathon, it is important to briefly consider the relevant legislative framework applicable to the agencies in this instance.

#### ***Emergency Management Act 2005 (WA) and the Local Emergency Management Committee (LEMC)***

- 6.2 The emergency management framework within Western Australia is underpinned by the *Emergency Management Act 2005* (WA) (Emergency Management Act). Emergency management is described within the Act as being the management of the adverse effects of an emergency and includes the four tenets of prevention, preparedness, response and recovery.
- 6.3 The functions of each emergency service agency (including police,<sup>871</sup> fire and emergency services,<sup>872</sup> local government,<sup>873</sup> DEC,<sup>874</sup> and ambulance,<sup>875</sup>) within the context of emergency management are prescribed within this Act (and subsidiary legislation), and are delineated by state, district and local responsibilities. A focus of the Act is to contemplate how emergency service agencies should coordinate and cooperate in a given emergency situation at each of these levels. Under the Act, any emergency management activities that were undertaken with respect to the 2011 Kimberly Ultramarathon were vested in the first instance with the Local Emergency Management Committee (LEMC).<sup>876</sup>

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871 Regulation 16, 28, 29 *Emergency Management Regulations 2006* (WA).

872 *ibid.*, Regulation 17.

873 *ibid.*, Regulation 31.

874 *ibid.*, Regulation 30.

875 *ibid.*, Regulation 27.

876 Section 38 *Emergency Management Act 2005* (WA).

## Chapter 6

### Local Emergency Management Committee (LEMC)

- 6.4 Under the Emergency Management Act, the local government authority (LGA) assumes primary responsibility for local emergency management arrangements.<sup>877</sup> The LGA must ensure that effective local emergency management arrangements are prepared and maintained in its responsible district. This includes the establishment of one or (if required) more LEMCs.<sup>878</sup>
- 6.5 The purpose of the LEMC is to advise and assist the local government and to liaise with public authorities and other persons in the development and maintenance (review and testing) of local emergency management arrangements.<sup>879</sup> A LEMC also has a responsibility to perform other emergency management activities as directed by the State Emergency Management Committee (SEMC).<sup>880</sup>
- 6.6 Local emergency management arrangements will vary from community to community. They are largely dependent on the existing pool of resources in each community and should reflect appropriate emergency management capabilities based on these resources. When required, a LEMC can request additional support for large or complex emergencies through existing state-wide resources.<sup>881</sup>
- 6.7 A LEMC may consist of local council members, employees and other persons who are representative of local emergency management agencies such as FESA, Police, Health agencies and welfare support agencies. In addition, the committee will have a Chairman who is appointed by the local government<sup>882</sup> and a Local Emergency Coordinator who is appointed by the State Emergency Coordinator.<sup>883</sup> The local government will determine the remaining membership, which may include representatives from community groups and local industries. Secretariat and administration support to the LEMC is provided by the local government.<sup>884</sup>

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877 Local Government can mean one established under the Local Government Act 1995; two or more local governments combined under section 34(1) of the Emergency Management Act (2005) or a public authority specified under section 35(1) of the Emergency Management Act (2005) to perform all of the functions of a local government under Part 3 of this same Act.

878 Section 38 *Emergency Management Act (2005)* (WA).

879 *ibid.*, Section 39.

880 Please see Section 88 *Emergency Management Act (2005)* (WA) for an explanation of the roles and functions of the SEMC.

881 State Emergency Management Committee, *State Emergency Management Policy No. 2.5: Emergency Management in Local Government Districts*, 1 December 2009, p. 2. Available at: <https://extranet.fesa.wa.gov.au/sites/emwa/Lists/StateEmergencyManagementDocumentLibrary/State%20EM%20Policies/Administration/SEMP%202.5%20Emergency%20Management%20in%20Local%20Government%20Districts.pdf>. Accessed on 14 August 2012.

882 Section 38(3) *Emergency Management Act (2005)* (WA).

883 *ibid.*, Section 37(1).

884 State Emergency Management Committee, *State Emergency Management Policy No. 2.5: Emergency Management in Local Government Districts*, 1 December 2009, p. 5. Available at: <https://extranet.fesa.wa.gov.au/sites/emwa/Lists/StateEmergencyManagementDocumentLibrary/State%20EM%20Policies/Administration/SEMP%202.5%20Emergency%20Management%20in%20Local%20Government%20Districts.pdf>.

- 6.8 Membership of the Kununurra LEMC consists of local representatives from SWEK, WA Police, DEC, FESA, WA Health and St John's Ambulance. As with all LEMCs, the Kununurra LEMC is required to meet every three months—and as required.<sup>885</sup> A number of set items are required for consideration at these meetings, such as the progress of development of the review of the local emergency management arrangements; however, other matters as determined by the local government can be discussed.<sup>886</sup>
- 6.9 For the examination of the LEMC member agencies that is undertaken in this chapter, it is important to note that the LEMC is an emergency planning body—not an operational or response body. Nonetheless, the LEMC will incorporate members from operational bodies to assist it with its planning role.
- 6.10 It should also be emphasised that while the LEMC is a prescribed committee under the Emergency Management Act, its individual agencies have broader statutory responsibilities for emergency management. Where appropriate these broader duties will be outlined.

### ***Health Act 1911 (WA)***

- 6.11 In April 1992 Part VI (Public buildings) of the *Health Act 1911* (Health Act) was amended to require local government to administer public buildings legislation.<sup>887</sup> Under this Act, a public building does not need to be a physical building, but can include a place where people usually or occasionally assemble for entertainment, recreation or sporting events. As such, an application for approval to hold an 'eligible' event in a local government area is required under this legislation—and the local government authority is charged with the responsibility of managing this approval processes.<sup>888</sup>
- 6.12 Section 180 of the Health Act determines that regulations may be made to prescribe under what conditions an application for public building approval may be made.<sup>889</sup> The subsequent regulations provide a comprehensive list of such conditions.<sup>890</sup> The Department of Health has issued a number of guidelines

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y/State%20EM%20Policies/Administration/SEMP%202.5%20Emergency%20Management%20in%20Local%20Government%20Districts.pdf. Accessed on 14 August 2012.

885 State Emergency Management Committee, *State Emergency Management Policy No. 2.5: Emergency Management in Local Government Districts*, 1 December 2009, p. 5. Available at: <https://extranet.fesa.wa.gov.au/sites/emwa/Lists/StateEmergencyManagementDocumentLibrary/State%20EM%20Policies/Administration/SEMP%202.5%20Emergency%20Management%20in%20Local%20Government%20Districts.pdf>. Accessed on 14 August 2012.

886 *ibid*

887 Part IV, Public buildings, *Health Act 1911* (WA). Available at: [www.public.health.wa.gov.au/cproot/1718/2/Public%20Buildings%20Guidelines%20Final.pdf](http://www.public.health.wa.gov.au/cproot/1718/2/Public%20Buildings%20Guidelines%20Final.pdf). Accessed on 16 May 2012.

888 Section 176 *Health Act 1911* (WA).

889 *ibid.*, Section 180.

890 *Health (Public Buildings) Regulations 1992*.

## Chapter 6

pertaining to these regulations to assist local governments administer these regulations since the legislation was enacted.<sup>891</sup> The most recent publication '*Guidelines on the Application of the Health (Public Buildings) Regulations 1992*' was published in 2002.<sup>892</sup> In addition, the Department of Health has developed a further guideline for assessing public building approvals, entitled '*Guidelines for concerts, events and organised gatherings*', in accordance with the legislative requirements prescribed in the Health Act and subsidiary legislation.<sup>893</sup>

- 6.13 These last guidelines are intended to 'identify the basic standards and safety measures for event organisers which are necessary to satisfy authorities such as local government, police, Department of the Environment and Conservation and emergency service organisations.'<sup>894</sup> While aimed primarily at event organisers, these guidelines were developed to provide 'a useful tool for Local Governments, Police, Department of Environment and Conservation and emergency service organisations.'<sup>895</sup> They are a comprehensive resource tool that includes checklists and information to assess: potential safety hazards of an event; government agencies to contact prior to an event application being made; and advice on issues not covered formally by legislation in the manner of a 'best practice' guide to running an event.
- 6.14 Since the Health Act was amended in 1992, the definition of a 'public building' has been the cause of debate. This is significant as an event must first be considered a 'public building' under this Act before the requirement for the events approval process is triggered.
- 6.15 As noted at 6.11 above, the Health Act states that a public building can include a place where people usually or occasionally assemble for entertainment, recreation or sporting events. In the context of the status of the 2011 Kimberley Ultramarathon the Committee sought clarification on this definition from DOH. In DOH's view, the term 'assemble' was at the core of whether an event was deemed eligible for a public building approval. If an event entailed spectators (as opposed to participants) it would more likely be required to seek public building approval. Primarily this is because the greater the prevalence of spectators the greater the public health risk.<sup>896</sup>

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891 Dr Andrew Robertson, Department of Health, Electronic Mail, 29 May 2012, Attachment 1, p. 1.

892 *Guidelines on the Application of the Health (Public Buildings) Regulations 1992*, Produced by Environmental Health Directorate with assistance of Population Health Division, Department of Health, 2002.

893 *Guidelines for Concerts, Events and Organised Gatherings*, Environmental Health Directorate, Department of Health, 2009 Edition.

894 *ibid.* p.5.

895 *ibid.* p.6.

896 Dr Andrew Robertson, Department of Health, Electronic Mail, 29 May 2012, Attachment 1, p1.



- 6.16 With this definition in mind, there has been an assertion by both the Shire of Wyndham East Kimberley (SWEK) and the DoH that—because of the lack of spectators—the 2011 Kimberley Ultramarathon (and from this the Committee will infer that this view holds for the RacingThePlanet’s 2010 event) was not a public building under the Health Act and therefore the approval processes that would normally apply to such an event was not required.<sup>897</sup>

## Fire and Emergency Services Authority of Western Australia (FESA)

### Roles and Actions

- 6.17 The Fire and Emergency Services Authority of Western Australia (FESA) has numerous legislated responsibilities around emergency management under the Emergency Management Act and *Emergency Management Regulations 2006*. One of FESA’s major responsibilities is its role as the Hazard Management Agency (HMA)<sup>898</sup> for, among other things, the emergency management aspect of a response to fire and for preparedness and response with respect to injury or threat to life of persons trapped by the collapse of a structure or landform.<sup>899</sup> It is also required to have representatives on any LEMC that is established.<sup>900</sup> In addition, FESA has roles with respect to fire prevention and suppression under the *Bush Fires Act 1954* (WA) and the *Fire Brigades Act 1942* (WA).<sup>901</sup> These legislated responsibilities will be discussed as they are relevant to roles and actions that FESA took with respect to the 2011 Kimberley Ultramarathon. However, the Committee will not attempt to critique the appropriateness of FESA’s legislated functions or powers with respect to emergency management or bush fire suppression and control across the state.

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897 Submission No 4 from Department of Health, 2 April 2012, p.2; Submission No 15 from Shire of Wyndham East Kimberley, 5 April 2012, pp. 8-9.

898 Under Section 4(3) of the Act a hazard management agency is prescribed as a public authority which, because of its function, expertise and resources, has responsibility for the emergency management of a particular hazard.

899 Regulation 17, *Emergency Management Regulations 2006* (WA).

900 State Emergency Management Committee, *State Emergency Management Policy No. 2.5: Emergency Management in Local Government Districts*, 1 December 2009, p. 4. Available at: <https://extranet.fesa.wa.gov.au/sites/emwa/Lists/StateEmergencyManagementDocumentLibrary/State%20EM%20Policies/Administration/SEMP%202.5%20Emergency%20Management%20in%20Local%20Government%20Districts.pdf>. Accessed on 14 August 2012.

901 In part, these Acts prescribe which agency is responsible for bush fire prevention and suppression—and which agencies are able to provide assistance and support to a responsible agency—inside gazetted fire districts (towns) and outside gazetted fire districts. These Acts, in addition to the *Fire and Emergency Services Authority of Western Australia Act 1998* (WA), prescribe the powers and functions of FESA. Please note that a Bill (the *Fire and Emergency Services Legislation Amendment Bill 2012*) to amend these Acts—including the *Emergency Management Act 2005* (WA), is currently being considered by the Western Australian Parliament.

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- 6.18 FESA submit that 'FESA had no contact with Race Organisers and was only made aware the event was underway during the afternoon on 2 September 2011'.<sup>902</sup> While it is true that FESA's involvement prior to the 2011 event was limited, and that FESA had no direct contact with RacingThePlanet before the event, the Committee does not accept that FESA was only made aware of the event once it was underway. The following evidence indicates to the Committee that FESA in Kununurra was made aware—albeit indirectly—that the 2011 Kimberley Ultramarathon was going to occur three days prior to the race starting.
- 6.19 Both FESA and the Kununurra Visitors Centre (KVC) informed the Committee that on 30 August 2011, Mrs Nadia Donnelly, Marketing Manager at the KVC, telephoned Mr Tony Stevenson, Fire Services Manager, East Kimberley, FESA, at approximately 2pm. Unable to reach him, she left a message asking him to call her back, and informing Mr Stevenson that the race was occurring on Friday, 2 September and that it was being run by an organisation called RacingThePlanet.<sup>903</sup>
- 6.20 Upon receiving the message, Mr Stevenson did an online search about the company to inform himself about the race and the organisers.<sup>904</sup> Mr Stevenson stated that in the process he discovered there had been some problems with regard to dehydration during the 2010 Ultramarathon.<sup>905</sup>
- 6.21 Mr Stevenson returned Mrs Donnelly's phone call at around 4:30pm that afternoon. Over the course of the conversation he was asked to provide fire risk advice, to which he replied that without a route map he would not be able to do so. Mr Stevenson also said that he would like a copy of the risk assessment, as he was concerned about the dehydration issues the previous year.<sup>906</sup>
- 6.22 Mr Stevenson 'expressed to [Mrs Donnelly] that the race organisers should contact me as soon as possible to discuss the race plan and risk assessments'.<sup>907</sup> He requested that his contact details be passed on to them with the message that 'the matter should be treated as urgent by them'.<sup>908</sup> Mr Stevenson also asked Mrs Donnelly to ask RacingThePlanet to make contact with a number of local bodies (such as the Chemist, Kununurra Hospital and Heliwork WA).<sup>909</sup> Details of the emails from Mrs Donnelly to

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902 Submission No. 16 from Fire and Emergency Services Authority of Western Australia, 4 April 2012, p. 3.

903 Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 2.

904 Mr Tony Stevenson, Police Statement, 8 November 2011, p. 2; Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 2.

905 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 2.

906 *ibid.*

907 Mr Tony Stevenson, Police Statement, 8 November 2011, p. 1.

908 *ibid.*, p. 2.

909 Mr Tony Stevenson, Police Statement, 8 November 2011, p. 1. Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 3.

RacingThePlanet advising of the requirements and advice from FESA are included at 2.79 and 2.80 above. The Committee notes that all information, bar the request for a copy of the risk assessment, was passed on in these emails. Mrs Donnelly's email did not state that Mr Stevenson said the matter should be treated as urgent, but she did say that Mr Stevenson 'knows you will be in touch with him'.<sup>910</sup>

- 6.23 When asked if Mr Stevenson made any attempt to contact RacingThePlanet directly, Mr Stevenson replied that he did not as '... it was quite clear from the visitor centre that RacingThePlanet staff and organisers were going to make contact with me. I had every faith that would occur'.<sup>911</sup>
- 6.24 Mr Stevenson stated that RacingThePlanet did not contact him before the race, nor was he aware of RacingThePlanet contacting any other FESA staff up until this point.<sup>912</sup> Evidence from RacingThePlanet suggests that this is an accurate statement.<sup>913</sup>

### **Race day**

- 6.25 FESA in Kununurra was first made aware that an incident had occurred during the 2011 Kimberly Ultramarathon at approximately 2.30pm on the day of the race. Mr Graham Sears, District Manager, State Emergency Services, FESA, received a call from Mr Mark Crumblin, SWEK's Chief Bush Fire Controller at this time. Mr Crumblin informed Mr Sears that he had received a call from FESA Communications Centre (FESA Comcen)<sup>914</sup> in Perth 'about a fire on El Questro Station and there was a possibility there were persons trapped'.<sup>915</sup>
- 6.26 It is important to note that according to the submission put forward by SWEK to this Inquiry, the original message received by Mr Crumblin from the FESA Comcen was stated as being that the FESA Comcen 'had received a phone call (by a satellite telephone) regarding a fire and that two people were unaccounted for *and maybe injured*' [Emphasis added].<sup>916</sup>
- 6.27 The Committee was concerned about the discrepancy between these two—and subsequent, messages. It has received all of the 000 calls made to and from the FESA Comcen in relation to the incident that occurred during the 2011 Kimberley

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910 Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 5 (Attachment).

911 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 2.

912 *ibid.*

913 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 10; Submission No's 13, 13(A), 13(B) from RacingThePlanet Events Limited, 4 April 2012; 2 May 2012; 23 May 2012; Ms Mary Gadams, Founder and Chief Executive Officer, RacingThePlanet Events Limited, *Transcript of Evidence*, 2 May 2012, p. 9.

914 Responsible for taking 000 calls requesting fire brigade or emergency services.

915 Mr Graham Sears, Police Statement, 8 November 2011, p. 1.

916 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, p. 2.

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Ultramarathon. The message Mr Crumblin received was that people 'have been separated due to the fire and there could be some injuries possibly as well'.<sup>917</sup>

- 6.28 The Committee is aware that at 2.32pm, after receiving the call from Mr Crumblin, Mr Sears called FESA Comcen directly to clarify the information.<sup>918</sup> He stated that the information relayed to him was that 'a [staff member of RacingThePlanet] had called 000 and told the operator that there were people missing possibly trapped by the fire at Tier Gorge on El Questro Station'.<sup>919</sup> This information is significant in that it does not make any mention of people being injured.
- 6.29 The Committee can confirm from the 000 call transcripts that Mr Sears was in fact informed that 'people are separated from the fire and that they are lost as well and [with] possible injuries' [emphasis added].<sup>920</sup> The Committee queried Mr Stevenson about whether FESA Comcen provided him with information that there were injuries. Mr Stevenson responded that 'No; the call centre never provided any information to me to indicate that there were persons injured, just that they were missing and they had not made it to the checkpoint'.<sup>921</sup>
- 6.30 The Committee does not dispute Mr Stevenson's claim regarding his conversations with FESA Comcen.<sup>922</sup> However, the Committee notes that Mr Stevenson had several calls with Mr Crumblin (see 6.40 and 6.162 below) and was working from the same location as Mr Sears<sup>923</sup> and that both of the latter had received information that there were possible injuries.
- 6.31 The initial information received by the FESA Comcen about the incident came via the first 000 call made by RacingThePlanet's Medical Director, Dr Brandee Waite, at 2.02pm. The call transcript shows that Dr Waite stated that 'we've got a couple of

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917 Transcript of Call (Call No. 7) from FESA Comcen to Mr Mark Crumblin (2.23pm), 2 September 2011.

918 Transcript of Call (Call No. 8) from Mr Graham Sears to FESA Comcen (2:32pm), 2 September 2011.

919 Mr Graham Sears, Police Statement, 8 November 2011, p. 1.

920 Transcript of Call (Call No. 8) from Mr Graham Sears to FESA Comcen (2:32pm), 2 September 2011.

921 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 3.

922 The call logs received by the Committee show two calls from FESA Comcen to Mr Stevenson. The first call, made at 2:54pm, goes to Mr Stevenson's voicemail and the operator leaves a message providing him with coordinates 'for the job near El Questro'. Transcript of Call (Call No. 21) from FESA Comcen to Mr Tony Stevenson (2:54pm), 2 September 2011. The second call provides Mr Stevenson with contact details for Mr De Koker. No mention of possible injuries is made in this call. Transcript of Call (Call No 26) from FESA Comcen to Mr Tony Stevenson (3:11pm), 2 September 2011.

923 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 3.

people who've been burnt the fires come across them and they've been burnt we need some help with evacuation'.<sup>924</sup>

6.32 By the time Mr Crumblin was informed as the first regional responder, the urgency of the situation had been diminished to people being 'separated due to the fire and there could be some injuries possibly as well'.<sup>925</sup>

6.33 In the Committee's view there are a number of reasons for this:

- Upon receiving Dr Waite's call and being told that people were burnt, the FESA Comcen operator directed Dr Waite to hang up and call the ambulance. It appears from the Committee's evidence that FESA Comcen then took no action to alert FESA's regional officers as to a possible incident in their area. FESA Comcen did contact St John Ambulance a couple of minutes later to see whether they had received a call. However, upon being informed that St John had not been contacted by Dr Waite, FESA Comcen's response was that 'we will just have to wait for her to ring back'.<sup>926</sup>
- At 2:11pm, before FESA Comcen made direct contact with Mr Crumblin, it received its second call from the scene (from Ms Fanshawe) advising that 'there are bushfires out here and there is a possibility that there are two people trapped in a bushfire'.<sup>927</sup> Unfortunately, this information diluted the message from the definitive one of 'people who've been burnt' (6.31 above) to a possible 'two people trapped in a bushfire'.<sup>928</sup> While it may be reasonable to assume that people trapped in a fire may have injuries, the message nonetheless introduced uncertainty about any such injuries.
- As a result of this second call, FESA Comcen placed the aforementioned call to Mr Crumblin (6.27 above) some twelve minutes later at 2:23pm.<sup>929</sup> By choosing to alert the Chief Bush Fire Controller of the region in the first instance (who is the correct person for FESA Comcen to notify on receiving a report of a bushfire)<sup>930</sup> the message underpinning both 000 calls would likely have

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924 Transcript of Call (Call Nos. 1 and 2) from Dr Brandee Waite to FESA Comcen (2.02pm), 2 September 2011.

925 Transcript of Call (Call No. 7) from FESA Comcen to Mr Mark Crumblin (2.23pm), 2 September 2011.

926 Transcript of Call (Call Nos. 3 and 4) from FESA Comcen to St John Ambulance Operations Centre, (2.06pm and 2.07pm), 2 September 2011.

927 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen, (2:11pm), 2 September 2011.

928 Transcript of Call (Call No. 16) from Ms Samantha Fanshawe to FESA Comcen, (2:45pm), 2 September 2011.

929 Call went through to Mr Crumblin at 2:25pm.

930 The role of the Shire's Chief Bush Fire Control Officer as first responder to reports of a fire on pastoral leases is described in Submission No. 16 from Fire and Emergency Services Authority of Western Australia, 3 April 2012, p. 9. It is consistent with the information provided by WA Police

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become further diluted from one involving a response to assist injured people to one whereby the treatment of a bushfire was the main focus.

- 6.34 The Committee has some concerns regarding the response of the FESA Comcen to the emergency calls on the day. These are explored in further detail at 6.105 below.
- 6.35 During the call outlined in paragraph 6.29, FESA Comcen provided Mr Sears with a contact number for RacingThePlanet. After several attempts, and contacting FESA Comcen again to check the number, he managed to make contact with Ms Samantha Fanshawe at approximately 2:48pm. Mr Sears states that Ms Fanshawe 'was very vague' about what happened and stated that there were two people unaccounted for 'who had not reached a check point for that stage of the race and they may be trapped by a fire in Tier Gorge'.<sup>931</sup> Mr Sears states he also learnt during this conversation (before the satellite connection dropped out) that the location of the two people was not known, and that there was a helicopter on site filming the race. Mr Sears proceeded to call the local helicopter company, Heliwork, to ascertain if they had any more information about the fire or the incident. According to his evidence they were unable to provide more information.<sup>932</sup>
- 6.36 At approximately 2:49pm, around the time Mr Sears first made contact with Ms Fanshawe, Mr Stevenson telephoned El Questro to see if they were aware of the incident.<sup>933</sup> Mr Stevenson stated that he did this because 'it was close to their boundary and to see if El Questro had already commenced a search for these people'.<sup>934</sup> Mr Stevenson added that:

*At that point, it was my intention to ascertain as much information as I could about what had happened so that if there was a need for FESA to have a response, we could be informed and also respond to it with the necessary resources that we would require to assist there.*<sup>935</sup>

- 6.37 Mr Stevenson further reasoned that he made this contact to assist Mr Crumblin, because he was aware that there would be a considerable time delay, 'probably

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in Superintendent Sutherland APM, Kimberley Police District, WA Police, Internal Memorandum, 13 December 2011, p. 3.

931 Mr Graham Sears, Police Statement, 8 November 2011, p. 2. The Committee notes that Ms Fanshawe made 'numerous phone calls to St John Ambulance, Police, FESA, and my other organisers' in the period after her calls to two calls to 000. Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7. Mr Sears' account of this conversation with Ms Fanshawe is consistent with the information Ms Fanshawe conveyed to FESA Comcen in her second call to 000, which occurred at 2:45pm.

932 Mr Graham Sears, Police Statement, 8 November 2011, pp. 2-3.

933 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 2.

934 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 2.

935 *ibid.*

somewhere in the vicinity of an hour<sup>936</sup> before Mr Crumblin, as per the correct procedure in his capacity as Chief Bush Fire Control Officer (CBFCO), could respond to the situation and provide FESA with more information.

- 6.38 During this phone call Mr Stevenson spoke to Ms Rachel Balderson who informed him that El Questro's Operations Manager, Mr Michael Bass, was out on site looking at fire activity. Mr Bass telephoned into El Questro while Mr Stevenson was still on the phone. Mr Stevenson notes the following:

*[Mr Bass] phoned in to the office on the sat phone and provided a SITREP [situation report] that he had been to Tier Gorge and the last of the race the planet cars were just leaving the area and heading back to Kununurra. There were no other persons still in the gorge area to the best of his knowledge. He also stated that there was fire activity in the area but only minor and El Questro staff had been monitoring the fire and extinguishing it when it got into accessible areas.*<sup>937</sup>

- 6.39 At this point, Mr Stevenson notes that he advised Ms Balderson that he had heard about the race through the KVC, which had asked him if he could provide any advice about fires. Mr Stevenson relayed his response that he would need a course map before he could do so—and had asked Mrs Donnelly to request that RacingThePlanet call him and provide him with a map. He then informed Ms Balderson that despite this request no contact had been made.<sup>938</sup> Ms Balderson then informed Mr Stevenson that El Questro staff were concerned that they had not been involved in the preparation or administration of the event.<sup>939</sup>

- 6.40 According to SWEK's evidence, Mr Stevenson called Mr Crumblin after this phone conversation and advised him of the information he had received from El Questro. Mr Crumblin advised Mr Stevenson that he would obtain a satellite phone and drive out to

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936 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 4.

937 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 2.

938 The Committee received evidence from Ms Balderson via El Questro's submission that Mr Stevenson had informed her during this conversation that he had spoken with RacingThePlanet directly and asked them to provide him with the course map. Submission No. 10 from Gadens Lawyers obo Delaware North El Questro Pty Ltd, 4 April 2012, p. 89 The Committee enquired of Mr Stevenson during the hearing if this was accurate. Mr Stevenson stated that it was incorrect and suggested how such confusion may have arisen. Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 3. Time constraints do not allow the Committee to verify whether this is the case with Ms Balderson. The Committee also notes that RacingThePlanet have not at any stage stated that they had contact with Mr Stevenson prior to the race. The Committee is consequently prepared to accept Mr Stevenson's recollection of the conversation as accurate.

939 Please see paragraphs 2.94 through 2.109 above for details on RacingThePlanet's contact with El Questro staff prior to the event.

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Gibb River Road to see if he could gather any more information to relay back to Mr Stevenson.<sup>940</sup>

- 6.41 It appears that shortly after this phone call, Mr Stevenson spoke to the responding paramedic, Mr Sarel De Koker, on the advice of Mr Crumblin.<sup>941</sup> According to Mr Stevenson, Mr De Koker advised him that he had limited information but that he was heading towards Emma Gorge. Mr Stevenson subsequently advised him that—based on the information he possessed—the ambulance should head to the Tier Gorge area.<sup>942</sup>

- 6.42 In his police statement, Mr De Koker stated that:

*Tony Stevenson from FESA calls me; he says that he spoke to someone at El Questro, nothing going on there. I share the info that I have with him, he says there must be a mistake somewhere because he has different info, and he says that they will not be responding to this as there is not enough information.*<sup>943</sup>

- 6.43 Mr De Koker's statement places this call at 2:50pm. However, the Committee notes that the FESA Comcen did not provide Mr De Koker's number to Mr Stevenson until 3:11pm, with advice that Mr De Koker wanted to make arrangements to meet responding agencies.<sup>944</sup> The Committee believes Mr Stevenson contacted Mr De Koker shortly after this call. In the Committee's view, the different information that Mr De Koker is referring to is that which indicated an ongoing situation with potential burns injuries. At 2:57pm, Mr De Koker was advised by the SJA Operations Centre that the incident involved burns.<sup>945</sup> Subsequently, at 3:04pm, SJA Operations Centre advised Mr De Koker that FESA Comcen were now reporting that there were no injuries, but that there were still two people unaccounted for.<sup>946</sup> This information is obviously different to Mr Stevenson's, which is that there is 'nothing going on' at El Questro (6.42 above).

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940 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, p.2; See paragraph 6.162 below for details on Mr Crumblin's actions on this day. The Committee is satisfied that Mr Crumblin and Mr Stevenson engaged in several phone calls during the afternoon of 2 September 2011, but it has not been able to corroborate every detail of these calls.

941 Mr Tony Stevenson, Police Statement, 8 November 2011, p. 2.

942 Mr Tony Stevenson, Police Statement, 8 November 2011, pp. 2-3; Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 3.

943 Mr Sarel De Koker, Police Statement, 9 November 2011, p. 1.

944 Transcript of Call (Call No. 26) from FESA Comcen to Mr Tony Stevenson, (3:11pm), 2 September 2011.

945 Transcript of Call (Call No. 5) from St John Ambulance Operations Centre to Mr Sarel De Koker (2:57pm), 2 September 2011.

946 Transcript of Call (Call No. 7) from St John Ambulance Operations Centre to Mr Sarel De Koker (3:04pm), 2 September 2011.



- 6.44 Just prior to this, at approximately 3:00pm and after having spoken to Mr Stevenson and been advised of Mr Stevenson's conversation with El Questro, Mr Sears made contact with Ms Fanshawe again to try to ascertain what was happening. He informed her that the Police were attending and established an area for the Police to meet her. The direction Ms Fanshawe gave was that Ms Riitta Hanninen would be the contact and to proceed four kilometres down Dillon Springs Road off the Great Northern Highway. Mr Sears asked Ms Fanshawe to call him back with any further information. He then passed this information on to the Wyndham Police.<sup>947</sup> Wyndham Police reported that around this time Mr Sears indicated to them that he had a team on standby; available for deployment should a land search be required.<sup>948</sup>
- 6.45 When Ms Fanshawe called Mr Sears back, she informed him that there were:
- ... now seven persons unaccounted for, and again they were between checkpoints. Samantha did not report any injuries to me at this time.*<sup>949</sup>
- 6.46 Mr Sears updated the Wyndham Police and FESA Comcen at around 3:45pm.<sup>950</sup> At 4.27pm, Wyndham police called FESA Kununurra and informed them that two persons had been located and that five were still unaccounted for.<sup>951</sup>
- 6.47 At some time between 4:30pm and 5:00pm<sup>952</sup>, Mr Stevenson received a phone call from Mr Crumblin advising him that he had seen 10-12 race competitors at Gibb River Road who had been left there by race organisers with food and water while the organiser's went back to look for missing competitors. Mr Crumblin was informed by Mr Stevenson that 'staff at El Questro would look after the fire and if there was anyone injured a paramedic was on the way so he [Mr Crumblin] could be stood down from the incident'.<sup>953</sup>

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947 Mr Graham Sears, Police Statement, 8 November 2011, p. 3.

948 Acting Sergeant Adam Conwell, Wyndham Police Station, 'Racing the Planet, Kimberley Ultramarathon Incident 020911 1630 12234', Internal Police Memorandum, n.d., p. 2. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

949 Mr Graham Sears, Police Statement, 8 November 2011, p. 3. While the Committee did not confirm this conversation with Ms Fanshawe, it notes that Ms Fanshawe made numerous calls to local authorities after making her calls to 000. Ms Samantha Fanshawe, Police Statement, 4 September 2011, p. 7. In her call to 000 at 2:45pm, Ms Fanshawe advised that two people were unaccounted for, but that 'we're still accounting for the numbers'. Ms Fanshawe also stated in this call that 'there's nobody injured'. Transcript of Call (Call No. 16) from Ms Samantha Fanshawe to FESA Comcen, (2:45pm), 2 September 2011.

950 Mr Graham Sears, Police Statement, 8 November 2011, p. 4. In his police statement Mr Sears states this call took place at 3:58pm. However, FESA Call logs indicate Mr Sears contacted FESA Comcen at 3:47pm.

951 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 3.

952 Mr Mark Crumblin, Senior Ranger, Shire of Wyndham East Kimberley, Email Correspondence, 17 July 2012.

953 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, p. 2.

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- 6.48 At 5:00pm, Mr Phil Cribb, FESA Superintendent, Rural Operations Coordinator (North), telephoned Mr Stevenson requesting an update. Mr Stevenson relayed the most recent information that had been received by police and said FESA would try to make contact again with RacingThePlanet.<sup>954</sup>
- 6.49 Mr Sears then made several attempts to contact Ms Fanshawe again. At 5:35pm he was successful and was informed that two persons had been injured and were being taken to Kununurra Hospital.<sup>955</sup> Mr Sears telephoned Wyndham Police who confirmed that two persons were being flown by helicopter to Kununurra Hospital with severe burns and others were still unaccounted for but that 'they are believed to be between checkpoints two and three'.<sup>956</sup> Wyndham Police advised they were waiting for updates from their staff.<sup>957</sup>
- 6.50 At 5:48pm, Mr Stevenson attempted to call the ambulance but was unsuccessful. At 5:55pm, Mr Sears telephoned the Kununurra Hospital and was advised that 'two females had been admitted with 60-70% burns'.<sup>958</sup>
- 6.51 At 6pm, Mr Sears contacted Comcen and updated them on the situation. At the request of Mr Cribb, Mr Stevenson called Mr Craig Waters, District Manager, Fire Investigation and Analysis Unit, FESA, advised him of the situation and requested that a Fire Investigation and Analysis Unit officer attend to assist with the investigation.<sup>959</sup>
- 6.52 At 6:36pm, Mr Waters confirmed that he would be attending the incident to assist Mr Stevenson with a fire investigation. Mr Waters advised that he would fly to Kununurra on Saturday, 3 September 2011.<sup>960</sup>
- 6.53 At around 7:37pm, Mr Sears received a telephone call from Wyndham Police advising that two people were taken to Kununurra hospital with serious burns and that four people were taken to Wyndham hospital with minor injuries.<sup>961</sup> Mr Stevenson and Mr Sears then proceeded to update FESA management and other stakeholders. Mr

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954 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012 p. 2.

955 Mr Graham Sears, Police Statement, 8 November 2011, p. 4. While the Committee did not confirm this conversation, it is satisfied that Ms Fanshawe, or some other member of RacingThePlanet's staff, would have relayed the information regarding the evacuation of Miss Pitt and Miss Sanderson, that had occurred a short time prior.

956 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012 p.4.

957 *ibid.*

958 Mr Graham Sears, Police Statement, 8 November 2011, p. 4.

959 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012 p.4.

960 *ibid.*

961 Mr Graham Sears, Police Statement, 8 November 2011, p. 5.

Stevenson placed a call to Mr Crumblin at around 8:32pm to bring him up to date on the situation and advise him to call the SWEK CEO in the morning.<sup>962</sup>

### Post-race

- 6.54 Mr Stevenson's police statement states, that at about 1:47am on 2 September 2011, he received a phone call at his home from Ms Fanshawe of RacingThePlanet who advised him that 'she was now ready to fully cooperate with FESA in whatever way she could'.<sup>963</sup> Mr Stevenson pointed out to the Committee that in his opinion, these words were an admission that RacingThePlanet had not cooperated with FESA before the race.<sup>964</sup>
- 6.55 While RacingThePlanet has confirmed that this call took place, Ms Fanshawe has denied saying words to that effect.<sup>965</sup> The Committee cannot confirm the details of this conversation and makes no findings in this regard. However, the Committee is satisfied that during this conversation, Ms Fanshawe was advised that the Fire Investigation and Analysis Unit from Perth would be attending the incident and would like to speak with her. Ms Fanshawe agreed to this, and then provided Mr Stevenson with contact details so that a subsequent meeting could be arranged.<sup>966</sup>

### Fire investigation

- 6.56 Legislation allows an authorised officer of FESA to enter land or buildings—at any time—to investigate the cause and origin of a fire that has been burning on that land or building.<sup>967</sup> In accordance with this legislation, FESA instigated an investigation into the incident on 2 September 2011.
- 6.57 As noted in paragraph 6.51 above, the initial notification of the impact of the fire with respect to an investigation occurred when Mr Stevenson made contact with Mr Craig Waters and requested that an officer from the Fire Investigation and Analysis Unit (FIAU) attend the scene. Due to the serious nature of the injuries it was quickly determined that Mr Waters would attend the following day.<sup>968</sup>

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962 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 4.

963 Mr Tony Stevenson, Police Statement, 8 November 2011, p. 4.

964 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 11.

965 Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 11.

966 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 5; Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, pp. 11-12; Supplementary Item A, RacingThePlanet Events Limited, 25 May 2012, p. 11.

967 Section 14.1 *Bushfires Act 1954* (WA); Section 34 (i) *Fire Brigades Act 1942* (WA).

968 Fire and Emergency Services Authority of Western Australia, 'Fire Investigation Report 189412: Kununurra Bushfire, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 8.

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6.58 In accordance with ‘standard incident response arrangements between FESA’s Fire Investigation and Analysis Unit (FIAU) and the WA Police Arson Squad’,<sup>969</sup> Mr Craig Waters contacted the Arson Squad immediately and requested assistance to conduct a joint fire scene investigation. Mr Waters was subsequently joined by Detective Senior Constable Robert Seaman from the Police Arson Squad and together they flew to Kununurra, arriving at 11:30am, Saturday 3 September. Due to the potential for a formal coronial investigation into the incident, carriage of the fire scene examination was undertaken by WA Police.<sup>970</sup>

6.59 The focus of the investigation was to determine the origin and cause of the fire. The report specifically notes that:

*the overall “management” of the Kimberley Ultra-Marathon race is not within the scope of this fire investigation report and no comment will be made in relation to “RacingThePlanets” management of the event.*<sup>971</sup>

6.60 After Mr Waters and Det. Snr. Constable Seaman received a briefing from Mr Stevenson, they travelled by helicopter to the incident scene to do a flyover of the affected area. Small fires were observed to be still burning in the vicinity of The Barrels.<sup>972</sup> The investigators landed at El Questro station and spoke to Mr Michael Bass. He advised that ‘there had been many fires burning in the area and that he first noticed this initial fire on the NAFI website on Monday 29 August 2011 on the vicinity of the small indigenous Wuggubun Community’.<sup>973</sup>

6.61 Mr Bass told the investigators that he regularly monitors the NAFI maps ‘several times every day for fires approaching El Questro as there are numerous tourists on the property and the evacuation from the property needs to be timely and not into the path of any fires’.<sup>974</sup> Mr Bass observed that the fire then travelled in a westerly direction before branching in two directions—south-west along the Saw Ranges and north-west towards the Tier Range. This information was supported by Mr David Donald Cox, a Wuggubun Community member, who stated that a fire came towards the Community from the direction of El Questro on Monday 29 August 2011—and that

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969 Fire and Emergency Services Authority of Western Australia, ‘Fire Investigation Report 189412: Kununurra Bushfire, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 8.

970 *ibid.*

971 *ibid.*, p. 2.

972 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

973 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 9.

974 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011, p. 8. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

he used fire fighting equipment to extinguish fire from around some buildings in the Community.<sup>975</sup>

- 6.62 Investigators then flew over the Tier Gorge area and the helicopter pilot Mr Nathan Summers (who also piloted the media helicopter on the day of the race) indicated the area where the injured competitors had been located and the exact location where he attempted to land. This land was established as being a part of Doon Doon Station and is leased to the Aboriginal Lands Trust.<sup>976</sup>
- 6.63 Weather conditions on the race day, Friday, 2 September 2011, as reported in the WA Police Arson and FESA reports were that: at 9am the temperature was 29.7°C; (with a relative humidity of 11% and wind direction of E [east] at 20km/h); at 1:30pm, the temperature was 34.6°C (with a relative humidity of 10% and wind direction of WNW [west north-west] 9.5km/h). The temperature peaked at 35.3°C at 2:30pm.<sup>977</sup>
- 6.64 On Sunday, 4 September 2011, investigators travelled by four wheel drive vehicle to the area where competitors had been impacted by the fire. Investigators viewed many fire indicators to support witness statements that the fire travelled into the gorge valley from initially the east then a north east direction. The fire investigation report notes that the fuel loading in this area would have been greater than the open plain given it was more protected and had a greater water supply available to it due to the presence of a small creek. The report then makes the following observation about the movement of the fire over this terrain:

*The forward rate of the fire spread would have increased with the steep terrain and the high walls and cliffs of the Tier ranges. The high Tier range walls would have also influenced the prevailing easterly wind deflecting it off the sides creating a funnelling effect through the valley and gorge areas towards the competitors.*<sup>978</sup>

- 6.65 Investigators located the position previously indicated by the helicopter pilot as the area where the injured competitors were found, which was verified by the discovery of a number of burnt personal items such as a backpack and i-Pod. Investigators note that this area was located on the side of a steep sloped wall of approximately 30°- 40°. From

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975 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011, p. 9. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

976 *ibid.*, p. 2.

977 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011, p. 4. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*; Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 6.

978 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 10.

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witness statements, investigators learnt that competitors attempted to climb up the slope to escape the fire. The report states that because of fire behaviour when traveling uphill, it would have been very difficult (impossible) to avoid the path of the fire:

*The fires rate of spread doubles for every 10° increase in the slope making it impossible in this instance for competitors to outrun and escape the passage of the fire.*<sup>979</sup>

- 6.66 Over the course of their examination, the investigators viewed a NAFI map which showed fire hotspots for the previous seven days. The Police Arson report notes that the NAFI map 'is a useful investigative and intelligence tool of fire travel and fire speed.'<sup>980</sup> This map was corroborated by a fly over of the fire scar to match the hotspots on the map on Monday, 5 September 2011. Investigators GPS plotted the burnt edge of the fire, which showed the perimeter of the fire and an enclosed area of approximately 225km<sup>2</sup>.<sup>981</sup>
- 6.67 The investigation then proceeded to the Wuggubun Indigenous Community, located in the Saw Ranges approximately 12.5km to the south of the Tier Gorge.<sup>982</sup> The investigators spoke to Wuggubun Community member Mr Barry Trust, who stated that he first noticed smoke from a fire burning on the northern side of the Community travelling towards the Community from a north easterly direction. Mr Trust stated that he placed a back burn in two locations around the community to protect the houses from the approaching fire. Mr Trust then advised that 'the fire proceeded to spread up and over the Saw Range in a north westerly direction towards the Tier Ranges'.<sup>983</sup> Mr Steve Morris, another Wuggubun Community member corroborated this evidence and informed the investigators that he helped put a back burn in around the Community's power generator.<sup>984</sup>

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979 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 10.

980 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011, p. 8. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

981 Please see Figure 12, Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 11.

982 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011, p. 8. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

983 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 11. This fire path is indicated in Figure 20 of the Fire Investigation Report at p. 14.

984 *ibid.*

### Cause of Fire

- 6.68 The investigators determined that the 'general area of origin' for the fire was located within the boundary of the Wuggubun Community.<sup>985</sup> Specifically, the Community's waste disposal site and a small dump site both showed recent fire activity and were considered as potential areas of origin.
- 6.69 A number of ignition sources were considered and were unable to be eliminated by the investigators. These were:
- Waste at disposal site accidentally ignited by:
    - discarded cigarette;
    - spontaneous heating; or
    - refraction of light through glass.
  - Waste set on fire as part of the Community's waste disposal program;
  - Discarded cigarette in grass vegetation; or
  - Deliberate lighting of fire by ignition of material stored at the waste dump.<sup>986</sup>
- 6.70 Potential ignition sources considered and eliminated by the investigators were:
- Camp fire (a public camping ground is located within the boundary of the Wuggubun Community): evidence of a camp fire was contained within a previous burnt area with no other evidence of camp fires;
  - Deliberate lighting of fire by inappropriate fire lighting (Pastoralists have been known to light fires to assist with mustering or revegetation): no evidence of inappropriate fire lighting was identified by investigators;
  - Electrical infrastructure failure: no faults were reported by Community members or discovered by investigators; and
  - Lightning: there were no recorded lightning strikes between 28 August and 2 September 2011.<sup>987</sup>

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985 The fire investigation report notes that an 'area of origin' of a fire is the general geographical location within a fire scene, in which the 'point of origin' of the fire is reasonably believed to be located. Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 12 (Footnote 1).

986 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 13.

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6.71 A definitive point of origin for the fire could not be established. The WA Police and FESA reports therefore concluded that the official cause of the fire on 2 September 2011 is ‘undetermined’.<sup>988</sup>

6.72 The FESA report by Mr Waters further concluded:

*[I]t is my opinion that the fire originated within the boundary of the Wuggubun community on the 29 August 2011. Over the next four days the fire has meandered with a slow rate of spread through the region influenced by prevailing winds, available fuels and terrain. On 2 September 2011, whilst competitors in the Kimberley Ultra Marathon have been making their way in a north easterly direction... the fire has increased in intensity travelling quickly in a south westerly direction blocking competitors [sic] path and trapping them in the vicinity of the gorge valley.*<sup>989</sup>

6.73 The Committee spoke to Mr Waters about the fire investigation during the hearing of 23 April 2012. During this time, Mr Waters was questioned as to whether the path and severity of the fire was predictable—to which Mr Waters replied that it would not be predictable—and would depend on the prevailing wind conditions and available fuel load at that time.<sup>990</sup>

6.74 Mr Waters was also asked about the possibility of a controlled burn in the vicinity being the cause of the fire. Mr Waters replied that investigators did look into that but could not substantiate any report of a controlled burn. Mr Waters stated that the investigators specifically asked Mr Bass of El Questro if they were conducting any controlled burns to which Mr Bass replied that they were not.<sup>991</sup> Mr Waters indicated that the three back burns put in by the Wuggubun Community were ‘the only burns we knew were placed by human intervention at that point in time’.<sup>992</sup>

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987 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 13.

988 Western Australia Police, *Arson Squad Fire Report, I/R Number 020911 1630 12234*, 6 December 2011, p. 11. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*; Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, pp. 1, 25.

989 Fire and Emergency Services Authority of Western Australia, *Fire Investigation Report 189412: Kununurra Bushfire*, FESA Fire Investigation and Analysis Unit, Perth, 17 January 2012, p. 26.

990 Mr Craig Waters, District Manager, Fire Investigation and Analysis Unit, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 April 2012, p. 4.

991 *ibid.*, p. 7.

992 *ibid.* On this point, the Committee has further inquired of the local shire (SWEK) and DEC if they conducted, or gave permission for (in the case of SWEK) any controlled burns over this period to which all answered in the negative. Supplementary Item A, Department of Environment and



### Fire investigation meeting with RacingThePlanet 4 September 2011

- 6.75 The fire investigators, along with FESA's Mr Stevenson, met with representatives from RacingThePlanet on Sunday, 4 September 2011.
- 6.76 Present at this meeting was RacingThePlanet's Founder and CEO Ms Gadams, the Event Director Ms Fanshawe, the Operations Manager Ms Emma Ferguson and Mr Alasdair Morrison, (Ms Gadams' husband and a member of the course team).<sup>993</sup> Mr John Storey was also in attendance and has advised the Committee he was there in the capacity of an independent witness and not part of RacingThePlanet management.<sup>994</sup>
- 6.77 Mr Waters stated that RacingThePlanet were asked about the roles each person was meant to carry out on the day, their communications plan, their general preparedness for the event and details about their evacuation plans.<sup>995</sup>
- 6.78 Mr Stevenson stated that they 'discussed how the event unfolded, what actions they took and how they work'.<sup>996</sup> According to Mr Stevenson, Mr Morrison expressed his concerns about how RacingThePlanet had received no warning about any 'impending danger'.<sup>997</sup> Ms Gadams explained in detail her recollections of trying to escape the fire and how she sustained her injuries on the day.<sup>998</sup> RacingThePlanet also raised concerns about how someone from the race had attempted to get help from one of the pastoralists on site but had been refused any assistance. Another point raised by RacingThePlanet was that the police had arrived on scene stating that the fire was a controlled burn'.<sup>999</sup>
- 6.79 Mr Stevenson stated that he then expressed his concern to RacingThePlanet about why DEC had been contacted prior to the race but not FESA. Mr Stevenson stated that RacingThePlanet 'felt it was my obligation to contact them'.<sup>1000</sup> Mr Stevenson's file notes of this meeting indicate that Mr Morrison asked him what he would have done if he had been contacted by RacingThePlanet prior to the event, to which Mr Stevenson

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Conservation, 10 May 2012, p. 3; Supplementary Item A, Shire of Wyndham East Kimberley, 17 May 2012, p. 1.

993 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012. p. 10; Supplementary Item C, RacingThePlanet Events Limited, 1 June 2012, p. 235.

994 Submission No. 1(C) from Mr John Storey, 21 June 2012, p. 1.

995 Mr Craig Waters, District Manager, Fire Investigation and Analysis Unit, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 April 2012, pp. 5-6.

996 Mr Tony Stevenson, District Manager East Kimberley Fire, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012. p. 12.

997 *ibid.*

998 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012. p. 12; Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 10.

999 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012. p. 12.

1000 *ibid.*

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noted, 'I advised that given the fire in the area I would have recommended that the event be cancelled or taken on another route for safety'.<sup>1001</sup>

- 6.80 According to Mr Waters, with regard to evacuation plans, RacingThePlanet advised that they had arranged with Heliwork WA, the local helicopter company whose craft was on site as the media helicopter for the event, to be the first responder in the event of an emergency. Mr Waters then states that they [the investigators] questioned RacingThePlanet about how the helicopter was planned to be used in a number of different hypothetical emergency scenarios—the answers to which Mr Waters felt were inappropriate as they did not take into account the capacity of the helicopter to effectively undertake a rescue in the given set of circumstances.<sup>1002</sup>
- 6.81 The Committee has not received evidence from RacingThePlanet or any other party that contradicts the assertions made by Mr Waters and Mr Stevenson regarding the discussions at this meeting.

### Local Emergency Management Committee meeting

- 6.82 A meeting of the Kununurra LEMC was held on Tuesday, 6 September 2011. Mr Tony Stevenson and Mr Lincoln Hearing (SES) attended as FESA's representatives.<sup>1003</sup> At this meeting, Mr Stevenson told the Committee that with WA Police, FESA was currently undertaking a fire investigation into the 'course of and point of origin of the fire',<sup>1004</sup> and that it had been determined that the fire started on Monday 29 August 2011.<sup>1005</sup>
- 6.83 Mr Stevenson told the Committee that FESA had not been contacted prior to the race, despite DEC's Mr Luke Bentley passing on his details. He explained the contact he had with the KVC, through which he had asked the race organisers to contact him. He also explained the difficulty FESA had in communicating with the race organisers on the day due to poor reception on the satellite phones and not knowing the correct prefix to dial in the first instance.<sup>1006</sup>
- 6.84 St John Ambulance (SJA) raised the concern that their volunteers went into an active fire site on the day. It questioned how to get the SES involved in such a situation. Mr Stevenson replied that 'no notification was received by FESA that a rescue from hight

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1001 Supplementary Item B, Fire and Emergency Services Authority of Western Australia, 5 June 2012, p. 10.

1002 Mr Craig Waters, District Manager, Fire Investigation and Analysis Unit, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 April 2012, p. 5; Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 12.

1003 Other agencies represented were the DEC; WA Police; St John Ambulance (SJA); Western Australian Country Heath Service (WACHS) and SWEK. Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, Attachment, p. 1.

1004 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, Attachment, p. 2.

1005 *ibid.*

1006 *ibid.*, pp. 2, 6.

[sic] needed to be done'.<sup>1007</sup> SJA paramedic Sarel De Koker then asked why, if the information received by SJA stated that there were fires in a mountainous region with injuries—no other agency was there when he arrived. Mr Stevenson replied that FESA was never told exactly what the situation was.<sup>1008</sup>

### Positive aspects of FESA's performance

- 6.85 The Committee commends FESA for the timeliness in which it instigated the fire investigation. The information contained within Mr Waters' report, and that of Det. Snr. Constable Seaman from WA Police, was thorough and positively contributed to the Committee's understanding of the fire event that occurred during the 2011 Kimberley Ultramarathon.
- 6.86 The Committee is satisfied with the conclusions drawn by the fire investigation.
- 6.87 The Committee would also like to highlight that the investigation underscored the risk that fires pose—particularly given a fire's vulnerability to prevailing weather conditions (and therefore unpredictability)—in the Kimberley. This is a fact that should never be underestimated or discounted—by any party—when considering the risk management planning for future events in the Kimberley.

### Other aspects of FESA's performance

- 6.88 FESA's legislative responsibilities, as defined under the *Fire and Emergency Services Authority of Western Australia Act 1998*, include:
- the prevention, control and extinguishment of fires;
  - the prevention and control of other incidents;<sup>1009</sup> and
  - the carrying out of rescue or search and rescue operations.<sup>1010</sup>
- 6.89 The Committee is satisfied with FESA's response to the fire incident on the day, as it was in regular contact throughout the response with Mr Crumblin, SWEK's Chief Bush Fire Control Officer, whose role it is to liaise with pastoral lessees to determine whether fire assistance is required on their land.<sup>1011</sup>

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1007 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, Attachment, p. 4.

1008 *ibid.*

1009 With 'incidents' defined as including fires or other accidents that might require rescue or search and rescue operations. Section 3 *Fire and Emergency Services Authority of Western Australia Act 1998*, (WA).

1010 Sections 3, 18(K) *Fire and Emergency Services Authority of Western Australia Act 1998*, (WA).

1011 Submission No. 16 from Fire and Emergency Services Authority of Western Australia, 3 April 2012, p. 9.

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- 6.90 The Committee is also satisfied with the fact that FESA (SES) advised Wyndham Police that it had put its volunteer team on standby in the event that a land search was required (6.44 above). With Wyndham Police en route to the scene, it was reasonable to await direction as to whether these volunteers would be required.
- 6.91 The events of the day further show that the FESA's Kununurra office was providing an important communication link between WA Police, SJA, SWEK's Mr Crumblin, and the event organisers: particularly in providing other agencies with updated information on the whereabouts of the incident as those agencies travelled to the site.
- 6.92 In terms of its legislated responsibilities, it is only FESA's apparent lack of response to the potential for a rescue operation that is of concern to the Committee. This issue will be discussed in further detail at 6.99 below.

### **Negative aspects of FESA's performance**

- 6.93 As stated at 6.18 above, the Committee does not accept the statement submitted by FESA that it was 'only made aware the event was underway during the afternoon on 2 September 2011'.<sup>1012</sup> Its own evidence suggests that FESA in Kununurra knew of the event at least three days prior to it occurring. By his own words, Mr Stevenson, upon receiving the message from Mrs Donnelly at the KVC, took the time to inform himself about the event by doing an internet search. This search also provided him with the information that the RacingThePlanet had experienced some difficulties with dehydration in the previous year's event and contributed to his concerns about the 2011 race (6.20 above). In this way the Committee finds that FESA was made aware on the 30 August 2011, via the Kununurra Visitors Centre, and by Mr Stevenson's own efforts, that the Kimberley Ultramarathon was going to occur on 2 September 2011.

### **Finding 24**

**FESA in Kununurra was made aware on 30 August 2011 that the Kimberley Ultramarathon was going to occur on 2 September 2011.**

- 6.94 The Committee heard that Mr Stevenson was confident that RacingThePlanet was going to make direct contact with him with some urgency; and hopefully provide him with a course map and some indication of their emergency preparedness for the event (6.23 above). Mr Stevenson also considered the matter should be treated as urgent by RacingThePlanet (6.22 above).
- 6.95 Accordingly, it is reasonable to expect that Mr Stevenson would have taken the necessary steps to speak directly with RacingThePlanet when they failed to make contact with him. Mr Stevenson was aware that the KVC was in direct communication

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<sup>1012</sup> Submission No. 16 from Fire and Emergency Services Authority of Western Australia, 3 April 2012, p. 3.

with the organisers. It is the Committee's view that it would have been possible for Mr Stevenson to obtain RacingThePlanet's contact details and attempt to speak to them before the race commenced.

- 6.96 The Committee has not been made aware of any requirement imposed on Mr Stevenson in his professional role that would obligate him to make contact with RacingThePlanet. Therefore, the Committee seeks to make a comment only on what a person in Mr Stevenson's position might be able to do, in view of his prior knowledge of RacingThePlanet and his understanding of the potential risks an event such as the 2011 Kimberley Ultramarathon might face.
- 6.97 While any contact he made would have been at short notice, at the very least it would have furnished Mr Stevenson with the opportunity to ask, and hopefully obtain, a course map and a copy of RacingThePlanet's Management and Risk Assessment Plan. Had this occurred, the emergency response to the incident on the day may have been markedly different—and in the Committee's view—improved. Indeed, it is arguable that the emergency response would not have been required. Based on his own evidence, Mr Stevenson confirmed that if FESA had been brought into the planning process, it would have advised that the race be cancelled or re-routed.<sup>1013</sup>
- 6.98 In making its finding, the Committee is not in any way diminishing the view it stated at 2.39 above, that the primary responsibility for communicating and consulting around risk management planning rests with the organiser. It remains highly critical of RacingThePlanet's failure to contact FESA after being given Mr Stevenson's contact details by DEC and KVC.

### Finding 25

While the primary responsibility for establishing contact rested with RacingThePlanet Events Limited, FESA in Kununurra could have attempted to contact the organiser when no call was forthcoming prior to the 2011 Kimberley Ultramarathon.

- 6.99 As noted above at 6.92 above, the Committee is concerned by FESA's apparent lack of response to the potential for a rescue operation on the day of the race. Crucial to its lack of response at the incident site is FESA's argument that it did not have any confirmation of the nature or location of the event until after the event had occurred—and that it would not have been sensible to leave the office and travel out to the general vicinity, some distance from the office, without knowing the circumstances:

*We never had confirmation of what had occurred. If we had a picture of where that incident occurred that would be 70 kilometres from my office. For me to take off and just direct myself out into that area, I do*

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<sup>1013</sup> Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, pp. 9-10.

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*not think would serve any purpose. We were trying to establish whether it was a search for missing persons or we had persons injured or it was a fire that we were dealing with. We had no confirmation of any of those three things until well after the event. We were not aware of the race route. We were also not aware of the impending danger that had been identified there early in the morning. We had never been notified.*<sup>1014</sup>

- 6.100 While this argument has some validity— given FESA’s limited resources—it is still the case that other agencies such as SJA and WA Police were heading out to the site of the incident before they could determine whether a search or rescue operation was actually required. Evidence shows that SJA was surprised when it learned en route that FESA was not responding, and later questioned why, when it arrived at the incident site, no other agencies were present (6.84 above). SJA’s responding paramedic, Mr De Koker, stated in evidence to the Committee that knowing neither FESA nor SES were going to arrive on the scene caused him concern when he arrived about how he was going to be able to evacuate the injured people.<sup>1015</sup>
- 6.101 From its examination of the FESA Comcen transcripts, the Committee is aware that there were discrepancies in the information received and conveyed through the 000 call system about people being ‘possibly injured’. The 000 calls made by RacingThePlanet contained conflicting information on this point. Evidence shows that in the original call put through to 000, Dr Brandee Waite, Medical Director for the 2011 Kimberley Ultramarathon, clearly stated that people are injured. However, in a subsequent call at 2:11pm, Ms Fanshawe’s description introduced ambiguity to the situation, and in her later call at 2:45pm, she stated that ‘there are no injuries’ (see 2.339, 2.340 and 2.349 above).
- 6.102 It is a mitigating factor for Mr Stevenson that the latter piece of information conveyed by Ms Fanshawe to the FESA Comcen would likely have influenced his decision not to immediately order rescue resources to the scene.
- 6.103 Mr Stevenson was asked what would have been his response if he has been advised, based on the earlier call from RacingThePlanet—that there were injured people. Mr Stevenson responded:

*It very well could have changed our response, depending on the level of injury. If it was a broken arm or leg, no, but certainly if it was notification that these poor persons were burnt as severely as they*

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1014 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 6.

1015 Mr Sarel De Koker, Community Paramedic, St John Ambulance, *Transcript of Evidence*, 23 April 2012, p. 7.

*were, it would have changed our response. I would have immediately contacted our regional coordinator to have approval to provide assistance in terms of aerial support to get these people out of there and worry about the rest later.*<sup>1016</sup>

6.104 It is unclear whether FESA had some expectation that the quality of information it was receiving was going to improve to a point whereby it could definitively determine whether to respond to the incident. It is the Committee's view that, rather than advise Mr De Koker that FESA would not be responding because it did not have enough information, that Mr Stevenson could have begun to prepare FESA's rescue resources to attend the scene, if required, given the following factors:

- the potential risks and requirements at the scene;
- the appropriate expertise of FESA to respond to these risks and requirements; and
- the knowledge that other agencies, less equipped to deal with some of the potential risks the incident posed, were responding.

#### **Finding 26**

Notwithstanding mitigating circumstances including limited resources, information, and communications, FESA in Kununurra could have begun to prepare its rescue resources to attend the scene if required.

#### **FESA Comcen 000 Calls**

6.105 The Committee has examined the calls made to and from the FESA Comcen relating to the 2011 Kimberley Ultramarathon and has serious concerns over the processes it has observed.

6.106 At 2.02pm RacingThePlanet's, Dr Waite, placed the first call to 000. The full transcript this call follows:

**000 Caller:** *Hello, yes this is ... I'm in the ... Kimberley this is Doctor Waite I'm with the RacingThePlanet group that's running through the ... outback here and we're at the edge of a fire we've got a couple of people who've been who've been burnt the fires come across them and they've been burnt we need some help with the evacuation.*

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<sup>1016</sup> Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 13.

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**Operator:** *So where are you exactly, what's the address*

**000 Caller:** *Where not ... there there's not an address here I'll have to get I can get you the GPS coordinates*

**Operator:** *... yes*

**000 Caller:** *We are literally out in the bush*

**Operator:** *Are you at a camp site or anything*

**000 Caller:** *We're not at a camp site*

**Operator:** *Ok (Interrupted)*

**000 Caller:** *There's (Talking in the background) So I'll give you the GPS coordinates here*

**Operator:** *Yep*

**000 Caller:** *S5 (Talking in background) calling it up on the GPS, (long pause) Of course now the GPS has gone quiet*

**Operator:** *Ok so do you actually need the fire brigade or do you need the ambulance*

**000 Caller:** *We need the ambulance*

**Operator:** *Oh ok coz you have actually come through to the fire brigade so we're completely not associated with the ambulance*

**000 Caller:** *Ok um*

**Operator:** *So do you need the fire brigade at all?*

**000 Caller:** *Um well we are out in the bush bushfires been going around, now what we need is the ambulance*

**Operator:** *Ok*

**000 Caller:** *This is not the SES?*

**Operator:** *Sorry?*

**000 Caller:** *We are trying to contact SES.*

**Operator:** *But if you've got people that need medical treatment do you need the ambulance?*



**000 Caller:** Yes

**Operator:** Ok so what do you need the SES for?

**000 caller:** Is that not is that not the ambulance?

**Operator:** No the SES are volunteers who assist so you'll need to hang up um and ring 000 again and ask for ambulance in WA are you in WA?

**000 Caller:** Ah yes

**Operator:** Yes yes so you will need to hang up ring 000 again and ask for ambulance in WA if that's all you need is medical treatment um they may the ambulance they may call the SES to assist them but they will be the primary um person to treat if you have injuries.

**000 Caller:** Ok

**Operator:** Ok

**000 Caller:** Ok thank you

**Operator:** No worries bye bye

**000 Caller:** Ok bye.<sup>1017</sup>

- 6.107 This call suggests that RacingThePlanet's Medical Director was not familiar with the roles of each of the emergency services agencies. Given this, and the fact that Dr Waite originally reported burns injuries, fire, and the possible need for evacuation, the Committee finds that the response of the FESA Comcen was not appropriate. The Committee is of the view that Dr Waite should have been kept on the line while the FESA Comcen organised contact with the other relevant emergency services.
- 6.108 The Committee visited the WA Police Communications Centre in Midland as part of the Inquiry and was advised that Police operators always keep a caller on line while they establish contact with other agencies. The Police stated that they do this so they can maintain contact with the original caller—and take responsibility for ensuring that any other agency is fully apprised of the emergency situation.<sup>1018</sup>
- 6.109 The Committee acknowledges that FESA Comcen placed a call to the Ambulance Communications Centre shortly after the call from Dr Waite to see if she had made contact. However, by this time, the opportunity to maintain a consistent line of

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1017 Transcript of Call (Call Nos. 1 and 2) from Dr Brandee Waite to FESA Comcen (2.02pm), 2 September 2011.

1018 WA Police Communications Centre Midland, Committee Site Visit, 1 June 2012.

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communication was lost. As reported earlier at 2.339 through 2.341 above, the information that came through from subsequent calls from RacingThePlanet conflicted with the original call made by Dr Waite. The Committee believes that this confusion may have contributed to the confusion by agencies in the response that ensued (including FESA).

- 6.110 As to Ms Fanshawe's call to 000 at 2.11pm, the Committee notes the failure of the FESA Comcen to pass on the '+' prefix provided by Ms Fanshawe when she gave her satellite phone number during this call.<sup>1019</sup> Mr Stevenson later confirmed that had he received this prefix, it would have allowed him to immediately dial the correct number.<sup>1020</sup> As it was, Mr Stevenson and Mr Sears were delayed in their attempts to contact RacingThePlanet because they were not aware that the satellite phones had overseas prefixes.<sup>1021</sup>
- 6.111 The Committee is concerned with how the FESA Comcen in Perth received and distributed information on the day, and is of the view that the process followed negatively influenced FESA's response to the 2011 Kimberley Ultramarathon.
- 6.112 The Committee therefore finds that FESA's Comcen response on the day was not ideal and that its 000 call protocols for multiple agency response scenarios should be reviewed as a priority.

### Finding 27

The response of the FESA Communication Centre to the emergency call made by RacingThePlanet Events Limited (RacingThePlanet) at 2:02pm was surprising. In particular, the Committee was surprised that RacingThePlanet were advised to hang up and call 000 a second time to request an ambulance.

### Finding 28

A uniform approach should be adopted by all 000 agencies to minimise the risk of a message becoming distorted when retold. The approach adopted should be based on that of WA Police where the caller is kept on the line while other relevant agencies are contacted.

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1019 Transcript of Call (Call No. 5) from Ms Samantha Fanshawe to FESA Comcen (2.11pm), 2 September 2011; Transcript of Call (Call No. 8) from Mr Graham Sears to FESA Comcen (2.32pm), 2 September 2011.

1020 Mr Tony Stevenson, Fire Services Manager, East Kimberley, Fire and Emergency Services Authority of Western Australia, *Transcript of Evidence*, 23 May 2012, p. 5.

1021 *ibid.*, p. 4.

**Recommendation 8**

FESA, WA Police and St John Ambulance establish a uniform protocol for handling multiple agency emergency responses that does not involve callers having to make multiple calls to 000.

**Western Australian Police****Roles and Actions**

- 6.113 WA Police first received notification of the 2011 Kimberley Ultramarathon via a telephone call (date unconfirmed, but thought to be 15 August 2011<sup>1022</sup>) made to Senior Constable Tony Watson 7341 of the Permits and Parade Section, from a female requesting advice on whether ‘runners require a permit to cross a bridge as part of a foot race in the north west.’<sup>1023</sup> Senior Constable Watson stated that during this phone conversation he advised the caller that provided there are no signs prohibiting pedestrians, pedestrians are entitled to walk or run in single file on the right side of the carriageway facing oncoming traffic—and that ‘[t]his can be done lawfully – without any special approval from police.’<sup>1024</sup> Senior Constable Watson further stated that there was no discussion about ‘approval for access to private property or National Parks, nor was there any discussion in regard to comprehensive risk management, or contingencies in the event of a bushfire.’<sup>1025</sup>
- 6.114 This telephone conversation was subsequently mentioned in an email sent by RacingThePlanet’s Ms Hanninen on 16 August 2011 to the Kununurra Police Station. The email also contained information about the date, general location, race distance, and number of competitors taking part in the 2011 Kimberley Ultramarathon. It concluded with a request for the Police to contact Ms Hanninen should further information about the event be required.<sup>1026</sup>
- 6.115 This email was subsequently forwarded on to other Police Officers on Thursday 1 September by Acting Senior Sergeant (A/SS) Peter Janczyk, Officer in Charge of the Kununurra Police Station. The forwarding email included the body text of ‘[f]or info and

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1022 Submission No. 13(B) from RacingThePlanet Events Limited, 22 May 2012, p. 82.

1023 Submission No. 2 from Western Australian Police, 29 March 2012, p. 6.

1024 Memo from Senior Constable Watson 7341, Permits and Parades Officer, Traffic Coordination Unit, to Sergeant Sutton, OIC Traffic Coordination Unit, Western Australia Police, 5 September 2011, p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

1025 *ibid*.

1026 Email from Riitta Hanninen to Kununurra Pol Stn SMAIL, 16 August 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

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attention of day shift on Sunday next'.<sup>1027</sup> The race was due to start the following day, Friday, 2 September.

### Race Day

- 6.116 The Police Assistance Centre (PAC)<sup>1028</sup> received a phone call at 2.33pm on Friday, 2 September 2011 from FESA Comcen. By this time, the FESA Comcen had received two calls from RacingThePlanet. The Comcen operator advised that FESA had received a phone call from a lady taking part in the Kimberley Ultramarathon stating that there is a bushfire and people in the group have been separated and possibly lost. The FESA Comcentre operator then provided the PAC with RacingThePlanet's satellite phone number, and explained that originally the caller had given the impression that 'there had been a fire and there were people with burns' so the operator had passed her on to the ambulance—but the caller has subsequently rung back stating 'there actually is a fire and there is like, people separated'.<sup>1029</sup> The Operator then informed PAC that the caller is intending to call back with GPS coordinates and that PAC will be advised as soon as that happens. The PAC then initiated the job on Police's Computer Aided Despatch System (CAD) with the following text:

*Fem in group of adventurers hiking in El Questro have been separated by a bush fire. FESA contacting El Questro station for further details. Number of persons unknown. Caller was on satellite phone #[number redacted].*<sup>1030</sup>

- 6.117 At approximately 3.00pm, Wyndham Police First Class Constable (1/C) Wolfe searched the CAD and saw the job. He immediately tried to call the satellite phone number but could not get a line.<sup>1031</sup> He then brought the incident to the attention of Acting Sergeant (A/Sgt) Conwell, and both then proceeded to make calls to ascertain as much information as they could about the incident.<sup>1032</sup>

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1027 Email from Riitta Hanninen to Kununurra Pol Stn SMAIL, 16 August 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

1028 The centre through which 000 calls requesting Police services are received.

1029 Transcript of Call (Call No. 9) from FESA Comcen to Western Australia Police Assistance Centre (PAC), (2.33pm), 2 September 2011.

1030 Submission No. 2 from Western Australian Police, 29 March 2012, p. 6.

1031 First Class Constable Robert Wolfe, Police Officer, Wyndham Police Station, WA Police, *Transcript of Evidence*, 23 April 2012, pp. 2-3.

1032 Acting Sergeant Adam Conwell, Wyndham Police Station, 'Racing the Planet, Kimberley Ultramarathon Incident 020911 1630 12234', Internal Police Memorandum, n.d., p. 1. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

- 6.118 A/Sgt Conwell spoke to Mr Graham Sears at the Kununurra FESA office. Mr Sears informed A/Sgt Conwell that he was aware of the job and that he had a team on standby; available for deployment should a land search be required.<sup>1033</sup>
- 6.119 According to A/Sgt Conwell's report, 1/C Wolfe telephoned El Questro to see if they had any information about the incident. El Questro advised 1/C Wolfe that an extreme marathon was being run in the area by an organisation called RacingThePlanet.<sup>1034</sup>
- 6.120 A/Sgt Conwell then conducted an internet search on RacingThePlanet. He found information about the Kimberley Ultramarathon being a 100km footrace that was starting at Emma Gorge and ending in Kununurra. He noted that '[a]ll the contact details listed on the website were for Hong Kong or the United Kingdom'.<sup>1035</sup> Disregarding these phone numbers, A/Sgt Conwell stated that he tried calling the listed satellite phone again. A/Sgt Conwell then made the decision to send police out to the area so that they could ascertain what the situation was.
- Still being unable to contact anyone at the scene and obtain a SITREP, I made the decision to send First Class Constable [Robert] Wolfe and First Class Constable [Krystle] Duckett to the vicinity and see if we could get a more accurate picture of what was happening.*<sup>1036</sup>
- 6.121 At 3.40pm Officers Wolfe and Duckett left Wyndham Police Station and headed towards the scene. A/Sgt Conwell stayed at the station to maintain communications. He contacted Kununurra Police and made them aware of the incident and requested staff numbers from them so he could begin coordinating a search if it was required.<sup>1037</sup>
- 6.122 At 4:15pm A/Sgt Conwell managed to reach Ms Fanshawe on the satellite phone. She provided him with information on how to reach the easiest checkpoint (which the evidence suggests was a reference to The Barrels). According to his notes, the connection was too bad to ascertain any other information. A/Sgt Conwell then relayed directions to Officers Wolfe and Duckett, who arrived at The Barrels at 4.45pm. From there, the officers were informed that they needed to proceed overland to get to the incident. After some confusion, and with the help of Mr Storey in his Gyrocopter

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1033 Acting Sergeant Adam Conwell, Wyndham Police Station, 'Racing the Planet, Kimberley Ultramarathon Incident 020911 1630 12234', Internal Police Memorandum, n.d., p. 2. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

1034 *ibid.*

1035 *ibid.*

1036 *ibid.*

1037 *ibid.*, pp. 2-3.

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providing directions from overhead, they arrived at the incident site at some time between 5:00 and 5:15pm.<sup>1038</sup>

- 6.123 People at the scene advised that two injured parties had been removed by helicopter and were en-route to Kununurra Hospital. The Police made contact with Ms Hanninen, who revealed that 41 competitors were in the race: 18 of whom have been confirmed past Checkpoint Three; 9 competitors returned to Checkpoint Two; 2 injured and evacuated, which left 12 unaccounted for.<sup>1039</sup>
- 6.124 Officers Wolfe and Duckett advised A/Sgt Conwell that the remaining competitors still at the incident site were heading back to The Barrels with the remaining ambulance volunteers and RacingThePlanet staff, including Ms Emma Fergusson. The Officers noted a number of small fires still burning. 1/C Wolfe took a number of photographs and obtained GPS coordinates of the scene. The officers then ensured that everyone had left the scene before heading back to The Barrels themselves. A/Sgt Conwell rang the Kununurra hospital to confirm that they were treating four people for burns.<sup>1040</sup>
- 6.125 At 6.45pm, Officers Wolfe and Duckett arrived back at The Barrels where Ms Fergusson advised that all competitors had now been accounted for and gave a breakdown of where they all were. A/Sgt Conwell advised Officers Wolfe and Duckett to remain on scene until all the other parties had left.<sup>1041</sup>
- 6.126 A/Sgt Conwell then contacted WA Police Inspector Cave and updated him on the incident. It was agreed that because of 'the terrain, darkness and the fact that all parties had been accounted for there is no need for the police to remain at the scene'.<sup>1042</sup>
- 6.127 A/Sgt Conwell noted that the initial response was for possible missing people and it was only after arrival at the scene that WA Police were made aware that people had been injured by fire. He states that Wyndham Police were never made aware of this event until the initial call for assistance was received by PAC; which, when coupled with

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1038 First Class Constable Wolfe, Western Australian Police, *Transcript of Evidence*, 23 April 2012, p. 15. Officer Wolfe did not provide the exact time that he and Officer Duckett arrived on the scene. The Committee has placed the officers' arrival at between 5:00pm and 5:15pm, as Officer Wolfe observed the helicopter evacuating Miss Pitt and Miss Sanderson from the ridge. The Committee is satisfied that the helicopter that took Miss Pitt and Miss Sanderson to Kununurra District Hospital had left the incident site by 5:15pm

1039 Acting Sergeant Adam Conwell, Wyndham Police Station, 'Racing the Planet, Kimberley Ultramarathon Incident 020911 1630 12234', Internal Police Memorandum, n.d., p. 3. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

1040 *ibid.*

1041 *ibid.*

1042 *ibid.*

the poor communication and information about the event, made the Police response to this incident 'extremely dynamic'.<sup>1043</sup>

### **Post Race**

- 6.128 The Police promptly undertook an inquiry into the incident, which included the joint fire investigation conducted with FESA (see 6.58 above).<sup>1044</sup>
- 6.129 Police from Wyndham and Kununurra, with the assistance of policing agencies in New South Wales, Victoria and Queensland, also gathered police witness statements in the event that a coronial investigation was required. In this process, 48 statements were collected including 21 from competitors, RacingThePlanet staff and race volunteers.<sup>1045</sup>

### **Positive aspects of WA Police's performance**

- 6.130 Officers at the Wyndham Police station responded promptly on the day of the race as soon as they received information generated through the PAC. Once A/Sgt Conwell realised that poor communications were hampering Police efforts to ascertain what was happening at the incident, he sent Officers Wolfe and Duckett directly to the scene. While the officers did not arrive until the injured parties had already been evacuated, they remained at the site until organisers confirmed that all competitors had been accounted for.
- 6.131 The processes undertaken by the responding officers, and A/Sgt Conwell coordinating this response, are commended by the Committee. With the information available to them, the timing of the response of these officers was appropriate.
- 6.132 Similarly, the Committee commends the initiative of the Kimberley Police Superintendent Michael Sutherland, for the manner in which he promptly directed a substantial number of statements to be taken from key witnesses. These statements have been vital to reconstructing the events of the day and would have been essential to a coronial inquiry. The speed with which these statements were taken was particularly pertinent, as many of those submitting statements were based overseas and were due to leave the country soon after the event.
- 6.133 The joint fire investigation has also been a vital to informing the Committee on the details of the source and movement of the fire.

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1043 Acting Sergeant Adam Conwell, Wyndham Police Station, 'Racing the Planet, Kimberley Ultramarathon Incident 020911 1630 12234', Internal Police Memorandum, n.d., p. 4. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

1044 *ibid*.

1045 Western Australia Police, 'Unified Witness List', n.d. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

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### Other aspects of WA Police's performance

6.134 The Committee has considered whether the response of Kununurra Police to the email received from RacingThePlanet's Ms Hanninen was appropriate. In this respect, it is important to note that the information provided in the email conveyed the impression that the organisers were not seeking any assistance regarding the event.

6.135 Notably, RacingThePlanet's email advised that:

- The 2011 Kimberley Ultramarathon was 'a small running event of 40 Australian and international competitors that run or walk a 100 kilometre distance on off-roads'.
- Ms Hanninen had 'discussed any permission matters [roads and traffic] with Tony Watsons [sic]' in Perth.
- 'Regardless of the fact that permission for the bridge [crossing the Diversion Dam] or roads are not needed, I wanted to inform you about the event' [emphasis added]. Importantly, no reference is made to the fact that parts of the race were being conducted on the Gibb River Road.
- The event medical team has been approved by the Department of Health'.
- RacingThePlanet were in the process of applying for the permit to use Celebrity Tree Park.
- 'Private land owners had been contacted separately for land permits'.<sup>1046</sup>

6.136 Based on this information, the Committee finds it reasonable that Kununurra Police treated this email as 'advice only'<sup>1047</sup> and that no further follow-up with the organiser was made regarding the use of police resources.

6.137 The Committee notes that A/SS Janczyk forwarded the email to the other Kununurra officers with some confusion around the starting date. However, Ms Hanninen's email providing the correct details was attached. Moreover, A/SS Janczyk's reference to 'Sunday next' (6.115 above), can be construed as Sunday, 4 September, the day the race was scheduled to conclude in Kununurra.

6.138 The Committee acknowledges that it would have been appropriate for Wyndham Police to have received notification of the event, as they had jurisdiction over sections of the race course, including the early stages near El Questro. However, the Committee holds that the responsibility for advising Wyndham Police rested with the race

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<sup>1046</sup> Email from Riitta Hanninen to Kununurra Pol Stn SMAIL, 16 August 2011. Included in *Western Australia Police Report on Kimberley Ultra Marathon 2-4 September 2011 in Kununurra*.

<sup>1047</sup> Supplementary Item B, Western Australia Police, 29 May 2012, p. 2.



organisers, not Kununurra Police. While no phone contact details (or course information) were provided in the notification email from RacingThePlanet to Kununurra Police, it is still arguable that the basic information provided, may have assisted Wyndham Police in preparing their response to the incident.

### **Negative aspects of WA Police's performance**

- 6.139 It would have been better if A/SS Janczyk had brought the email he received from RacingThePlanet to the attention of the Kununurra LEMC, given that the Police have representation on that Committee. The Minutes of the post-race LEMC meeting of 6 September 2011 state that A/SS Janczyk advised those present 'that Police had received an email around 1 September 2011 that the race would be held'.<sup>1048</sup> This information is incorrect, as A/SS Janczyk was the officer who had received the original email advice from RacingThePlanet's Ms Hanninen on 16 August 2011.<sup>1049</sup>
- 6.140 Had the Kununurra LEMC received advice of the event at around this time from Kununurra Police, there would have been an opportunity for the LEMC to request a meeting with race organisers to discuss appropriate risk management planning requirements. This would also have provided an opportunity for all relevant emergency services agencies to establish direct contact with RacingThePlanet. The Committee concedes these scenarios are speculative, particularly given the apparent confusion among Kununurra LEMC members as to when the LEMC process should be triggered to assess events.<sup>1050</sup>
- 6.141 Chapter 7 looks at measures which might ensure that the LEMC processes are more clearly defined in the future so that organisers of higher risk and adventure sport activities are brought in to communicate and consult with relevant local authorities regarding event risk management.

### **Finding 29**

With the information available to its officers on the day, the response to the incident by Wyndham Police officers was appropriate and thorough.

### **Finding 30**

It would have been reasonable and prudent for Kununurra Police to forward the email received from RacingThePlanet Events Limited on 16 August 2011 through to Wyndham Police station and to the Kununurra Local Emergency Management Committee (LEMC).

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1048 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, p. 6.

1049 Superintendent Michael Sutherland, Kimberley Police District Officer, Western Australia Police, *Transcript of Evidence*, 23 April 2012, p. 4.

1050 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, p. 9.

## Shire of Wyndham East Kimberley

- 6.142 As outlined in the introduction to this Chapter, a local government authority has a dual responsibility with regard to events within its local government district. Under the *Health Act 1911* it has a responsibility to approve applicable events with regard to the health, safety and amenity of people attending an event;<sup>1051</sup> while the *Emergency Management Act 2005* invests responsibility on a local government to ensure that local emergency management committees (LEMCs) are established and made aware of circumstances (such as, for example, a higher risk sporting event) that may impact upon local emergency management resources.
- 6.143 The Shire of Wyndham East Kimberly (SWEK) is the local government authority responsible for the management of these Acts within the area that the 2011 Kimberley Ultramarathon was run. As to whether this race (or the 2010 race) was an event subject to either of these Acts is a matter of some conjecture. Both the Department of Health and SWEK argue that this event currently falls outside the realm of these Acts.<sup>1052</sup> In the limited time available for the Inquiry, the Committee has recognised that ambiguity exists in the operation and administration of these Acts.<sup>1053</sup>
- 6.144 Nonetheless, the supports provided in these Acts appear to provide a platform for the approval, monitoring and oversight of higher risk events occurring in local government areas, particularly where geographical location and/or size of a district may limit the ability to mobilise at short notice local emergency management resources in response to unforeseen or unplanned events—or planned (known) events to which no scrutiny has been applied.
- 6.145 The Committee believes that the benefits gained by applying the protections afforded in these Acts to adventure sport activities in a local government district, whether strictly required or not, is a common sense and reasonable approach that should be encouraged.

### Roles and Actions

- 6.146 Senior SWEK officials acquired knowledge of RacingThePlanet's 2010 event through a number of avenues. Mr Fred Mills, Shire President at that time, worked for the company that volunteered its buses for the event. Mr Mills was a bus driver who drove

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1051 Department of Health, *Guidelines on the Application of the Health (Public Buildings) Regulations* 1992, 2002, p. 11. Available at: [www.public.health.wa.gov.au/cproot/1718/2/Public%20Buildings%20Guidelines%20Final.pdf](http://www.public.health.wa.gov.au/cproot/1718/2/Public%20Buildings%20Guidelines%20Final.pdf). Accessed on 16 May 2012.

1052 Submission No. 4 from Department of Health, 2 April 2012, p. 2; Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, pp. 8-9.

1053 This matter is discussed further in Chapter 7.

competitors to the start line and ‘picked up the cripples at Emma Gorge at the end of it!’<sup>1054</sup>

- 6.147 Mr Gary Gaffney, CEO, Shire of Wyndham East Kimberley, gave evidence that he was aware of the 2010 event through general publicity and that it was finishing at El Questro station. After the event, Mr Gaffney stated that he was made aware of some of the dehydration issues, from staff at El Questro, the hospital and the local chemist.<sup>1055</sup>
- 6.148 Mr Mills stated that as a result of the 2010 event, he was on a mailing list for RacingThePlanet and became aware of RacingThePlanet’s intention to hold a shortened version of the event in the Kimberley in 2011, through a newsletter, not long after the 2010 event concluded.<sup>1056</sup> Mr Mills was also informed of the event by general publicity, and specifically by Mr John Storey, who had ongoing communications with RacingThePlanet prior to the 2011 event.<sup>1057</sup>
- 6.149 Mr Storey, having knowledge of the proposed 2011 course route, contacted Mr Mills (in the latter’s capacity as Shire President) twice prior to the event to express his concern about fires on the course. The first was via email on 27 August advising Mr Mills about fires in the Dunham Valley section of the course and urging that fire suppression be undertaken. Describing the fires in this particular area, Mr Storey said:
- Its present position and rate of travel will put it on the track that they will be running on in the Dunham Valley on about Friday when they [competitors] would be coming through.*<sup>1058</sup>
- 6.150 The second contact by Mr Storey was over coffee on the morning of 30 August 2011, where Mr Mills was again informed about fires and the course of the 2011 event.<sup>1059</sup>
- 6.151 When queried about these contacts Mr Mills stated that he could not specifically recall the email, as he had received many emails from Mr Storey about fires over the last few years, and that his computer had recently crashed causing him to lose all of his records. This meant he was not able to track the specific email down. However, Mr Mills did recall discussing the fire and the course over coffee with Mr Storey.<sup>1060</sup>

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1054 Mr Fred Mills, *Transcript of Evidence*, 24 April 2012, p. 6.

1055 Mr Gary Gaffney, Chief Executive Officer, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 7.

1056 Mr Fred Mills, *Transcript of Evidence*, 24 April 2012, p. 8.

1057 See Chapter 2 for Mr Storey’s account of his involvement with the 2011 event.

1058 Mr John Storey, Farmer, *Transcript of Evidence*, 24 April 2012, Supplementary Item, p. 2.

1059 Mr John Storey, Police Statement, 7 September 2011, p. 3.

1060 Mr Fred Mills, Former Shire President, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 11.

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- 6.152 Mr Mills was asked if he ever contacted RacingThePlanet prior to the 2011 event to suggest that they put a proposal to the LEMC so that the event could be reviewed, to which Mr Mills responded that he did not. When asked if, as Shire President, Mr Mills had the power to direct RacingThePlanet to submit a proposal to the LEMC, Mr Mills stated that he was unsure if he would have had the power to do that or what the protocol was about directing an event organiser to speak to the local authority. Mr Mills then stated that such a protocol, if in place, should dictate that event organisers speak to the local authority in the first instance, which would then be responsible ‘to bring the agencies together.’<sup>1061</sup>
- 6.153 On being queried if Mr Mills thought there was flaw in the process because the event organisers did not sit down with the local emergency service providers like the Shire and FESA to go through the shire’s risk management strategy, Mr Mills responded that ‘[i]n hindsight there were a number of shortcomings.’<sup>1062</sup> These shortcomings included the event organisers knowing that fires were in the area and not making sure that local people and emergency services were informed about the event. With regard to his own actions, Mr Mills stated ‘I guess I worked on the assumption that they [RacingThePlanet] have organised these races over a wide variety of terrain, they would have had this sort of thing in place.’<sup>1063</sup>
- 6.154 Mr Gaffney stated that the Shire first became aware of the 2011 event on the 17 August 2011, through a telephone call from RacingThePlanet requesting a booking to use Celebrity Tree Park as the finish line. While Mr Gaffney’s account of SWEK’s first direct contact is consistent with the evidence provided by RacingThePlanet, the Committee notes that a March 2011 Calendar of Events—coordinated by SWEK and the KVC—had the 2011 Kimberley Ultramarathon listed for 2-3 September.<sup>1064</sup>
- 6.155 In response to the telephone call from RacingThePlanet on 17 August, the Shire emailed through the forms required to book the park for the finish line. Ms Riitta Hanninen responded to this email on 26 August, returning the facility booking form and providing additional information about the event. In her email, Ms Hanninen stated, ‘I haven’t included risk assessment documents in this application. If they are required, could you please email me the forms’.<sup>1065</sup>
- 6.156 During his evidence Mr Gaffney stated that RacingThePlanet indicated that the course was going to run along a specifically designed running track from a bridge on the outskirts of Kununurra into Celebrity Tree Park in town and that this information:

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1061 Mr Fred Mills, Former Shire President, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 11.

1062 *ibid.*

1063 *ibid.*

1064 The Committee believes this information came to be in the Calendar of Events after the KVC received contact from RacingThePlanet in March 2011. See paragraph 6.181.

1065 Supplementary Item A, Shire of Wyndham East Kimberley, 17 May 2012, Attachment, p.5.

*did not raise any high things on our radar because they were off road so they were using a running track which had been designed for running ... so that did not raise any high priority in the person's [who received the application] mind.*<sup>1066</sup>

6.157 The Shire did not subsequently request a copy of any risk assessment documents, 'as these were not required for the type of use for the Park facility.'<sup>1067</sup>

6.158 Mr Gaffney stated that in a normal circumstance, Australian event organisers know to contact the Shire and present a risk management plan so that the Shire can review and assess it. The Shire has a checklist that it uses to assess events.<sup>1068</sup> Staff at the Shire are able to look at a plan for an event and determine if any other requirements exist:

*So we are quite used to seeing them, and our guys, if they do the checklist, go, "Check, check, check, check, bang; this is what you need; these are the other things you may need for this event; maybe you need more in the risk management plan; maybe you need more in your health plan."*<sup>1069</sup>

6.159 Mr Gaffney contended that—should RacingThePlanet have contacted the shire and asked for advice regarding the event some months prior to the event occurring—the shire would have put RacingThePlanet 'through a full process and we [the shire] would have asked for risk management plans.'<sup>1070</sup>

6.160 This process would have included taking the plan to different government authorities for advice and feedback. This would also have heightened the awareness of these authorities about the event and 'a greater knowledge would have come to bear on the application.'<sup>1071</sup>

6.161 When asked by the Committee what the Shire would have done with a risk management plan had it received one by even as late as the 30 August 2011, Mr Gaffney stated that Shire staff would still have 'assessed it immediately and tried to

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1066 Mr Gary Gaffney, Chief Executive Officer, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p7.

1067 Supplementary Item A, Shire of Wyndham East Kimberley, 17 May 2012, Attachment, p. 3.

1068 These are largely based on the Event Risk Classification Tool as published by DoH in the *Guidelines for concerts, events and organised gatherings*. Access these guidelines at the following link:  
[www.public.health.wa.gov.au/cproot/1718/2/Public%20Buildings%20Guidelines%20Final.pdf](http://www.public.health.wa.gov.au/cproot/1718/2/Public%20Buildings%20Guidelines%20Final.pdf).

1069 Mr Gary Gaffney, Chief Executive Officer, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 8.

1070 *ibid.*, p. 10.

1071 The Committee has assumed that 'the process' Mr Gaffney is referring to here is the events approval application process under the Health Act 1911. Mr Gary Gaffney, Chief Executive Officer, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 10.

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give immediate feedback.<sup>1072</sup> Feedback would have been given about fires at that time, in addition to the Shire ensuring that they had appropriate permissions to run across an asset (the diversion dam) that has no pedestrian access.<sup>1073</sup> As it was, the risk management plan was not brought to the Shire (or the LEMC) prior to the 2011 event.

### Race Day

6.162 SWEK submit that the Shire first became aware of 'an incident regarding participants 2011 Kimberley Ultramarathon at 2.25 PM on 2 September 2011.'<sup>1074</sup> According to SWEK, the events that followed on the day of the race are as follows:

- At 2:25pm, Mr Mark Crumblin, Senior Ranger for SWEK (and East Kimberley Chief Bush Fire Controller) , received a phone call from FESA communication centre Perth informing him that a satellite phone call had been received reporting a fire and that two people were unaccounted for and maybe injured.<sup>1075</sup>
- At approximately 2:30pm, Mr Crumblin telephoned FESA in Kununurra and spoke to Mr Graham Sears. Mr Crumblin was informed that Mr Sears would contact FESA Communication's Centre directly to obtain more information.<sup>1076</sup>
- Mr Crumblin then received a call from Mr Stevenson of FESA who informed him that he had spoken with El Questro staff who reported that three four wheel drive vehicles involved in the race had been seen leaving the Tier gorge area; two runners were unaccounted for, and all information is unconfirmed.<sup>1077</sup>
- Mr Crumblin then informed Mr Stevenson that he would obtain a satellite phone and drive out to the Gibb River Road to see if he could gather any more information to relay to FESA.<sup>1078</sup>
- At 2:51pm, FESA communications telephoned Mr Crumblin relaying GPS coordinates of the location of the incident.<sup>1079</sup>
- Mr Crumblin directed FESA Communications to call Mr Stevenson of FESA and relay the GPS information, and continued to proceed to Gibb River Road.<sup>1080</sup>

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1072 Mr Gary Gaffney, Chief Executive Officer, Shire of Wyndham East Kimberley, *Transcript of Evidence*, 24 April 2012, p. 10.

1073 *ibid.*

1074 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 2.

1075 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 2; Transcript of call (Call No. 7) From FESA Comcen to Mr Mark Crumblin (2.23pm), 2 September 2012.

1076 Mr Graham Sears, Police Statement, 8 September 2011, p. 1.

1077 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 2.

1078 *ibid.*

1079 *ibid.*

- Upon arrival, Mr Crumblin found 10-12 competitors and organisers gathered in the location. He was informed that other race organisers had left them there with food and had gone back in search of the missing runners.<sup>1081</sup>
- Mr Crumblin attempted to contact FESA via his satellite phone. He experienced communication difficulties so continued towards Wyndham as the closest town so that he could pick up telephone reception to allow him to relay the information he gathered at Gibb River Road to Mr Stevenson.<sup>1082</sup>
- On speaking to Mr Stevenson from Wyndham between 4.30 and 5pm, Mr Crumblin he was told that 'staff at El Questro would look after the fire and if there was anyone injured a paramedic was on the way and he could be stood down from the incident'.<sup>1083</sup>
- At 8:32 pm Mr Crumblin received a telephone call from Mr Stevenson informing him that two people were seriously injured and that others were receiving treatment.<sup>1084</sup>

**Post-race:**

- 6.163 On Saturday, 3 September Mr Crumblin phoned SWEK CEO Mr Gaffney and informed him of his involvement. Mr Crumblin was asked to document all issues regarding the incident. At 9:37am, Mr Damian Jolly, Operations Manager Kununurra District Hospital, rang Mr Gaffney and requested that the LEMC be convened to discuss the events regarding the Ultramarathon.<sup>1085</sup>
- 6.164 The LEMC held this meeting at 9:00am Tuesday, 6 September 2011. A number of people representing the Shire were present at this meeting. Notably, Shire CEO Mr Gary Gaffney and Chair of the meeting left the room after 10 minutes<sup>1086</sup> and neither Mr Mark Crumblin (Senior Ranger for SWEK and East Kimberley Chief Bush Fire Controller) nor Ms Karyn Apperley, Director Community Development (the SWEK department that had contact with RacingThePlanet through the application for hire of Celebrity Tree Park from 17 August 2011) were present. During this meeting there was a discussion about the event and a general debrief by relevant agencies as to their actions or role with regard to the event.<sup>1087</sup>

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1080 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 2.

1081 *ibid.*

1082 *ibid.*

1083 *ibid.*

1084 *ibid.*

1085 *ibid.*

1086 Mr Kevin Hannagan, Director Infrastructure, SWEK, took over the Chair's role and was a notable contributor throughout the meeting.

1087 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, Attachment.

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- 6.165 Concern over the lack of coordinated information and action from agencies surrounding the event was of primary concern. There was clear confusion expressed by agencies as to how and when the LEMC—even individual agencies—should become involved in a higher risk event such as the 2011 Kimberley Ultramarathon. The meeting concluded with an undertaking to discuss new procedures to ensure that the LEMC is appropriately mobilised under similar circumstances in the future.<sup>1088</sup>
- 6.166 On either 11 or 12 of September, Mr Gaffney received a copy of letter sent to Premier Mr Colin Barnett from Mr Storey in which Mr Storey stated that he had twice reported these fires to the Shire President and nothing was done to suppress them.<sup>1089</sup> Mr Gaffney enquired of Mr Mills about this contact. Mr Mills confirmed that he had a conversation regarding fires over a coffee but Mr Storey did not ‘make a formal report that required any action or response from Mr Mills or the Shire.’<sup>1090</sup> On the 13 September Mr Gaffney requested that Mr Mills comment on Mr Storey’s letter, to which no response was received.<sup>1091</sup>
- 6.167 In correspondence dated 17 May 2012, Mr Gaffney informed the Committee that the LEMC had met again and discussed the events of the 2011 race but that they ‘have not yet instigated a procedure or practice in the event of a similar emergency’.<sup>1092</sup>

### **Positive aspects of SWEK’s performance**

- 6.168 Upon receiving the initial notification from the FESA Communications centre, SWEK Senior Ranger Mr Crumblin acted promptly to both alert FESA to the incident and travel to a location near the incident to gather further information so that FESA could be further updated.
- 6.169 The Council promptly responded to the request from Mr Jolly to convene a special LEMC meeting after the event for all relevant agencies to discuss what had happened. At this meeting it was recognised that ‘there [was] a lot of learning to come out of the incident for all agencies’<sup>1093</sup> and that subsequent meetings will examine procedures as to how the LEMC can be utilised in the future for similar events.

### **Other aspects of SWEK’s performance**

- 6.170 The Committee has considered the discussions between Mr Storey and Mr Mills regarding fire risk on and near the course in the lead-up to the race. It would have been a reasonable and prudent response by Mr Mills and Mr Storey to take this information about the race and the possible risk any fire may pose to runners of the Ultramarathon

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1088 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, Attachment, p. 6.

1089 Submission No 1 from Mr John Storey, 14 March 2012, pp. 75-76.

1090 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 3.

1091 *ibid.*

1092 Supplementary Item A, Shire of Wyndham East Kimberley, 17 May 2012, p. 2.

1093 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, Attachment, p. 6.



to the Shire. Arguably, this action may have triggered the LEMC process—however inadvertent—or at least have raised some local awareness about the event prior to the race. At the very least, both gentlemen could have raised the issue with SWEK’s Chief Bush Fire Control Officer, Mr Crumblin. The assumption that Mr Mills drew that RacingThePlanet would have adequately consulted all relevant local agencies and stakeholders (6.153 above) was ill-founded. It is important to note, however, that Mr Storey was in constant contact with RacingThePlanet throughout this time and it would have been better for him to have advised RacingThePlanet to contact Mr Crumblin and Mr Gaffney to discuss and determine what actions could be taken by SWEK in response to Mr Storey’s concerns.<sup>1094</sup>

### Shortcomings of SWEK’s performance

- 6.171 Given the legislative responsibilities of SWEK under both the *Emergency Management Act 2005* and the its role in the administration of public buildings under *the Health Act 1911*, it should have been aware of the potential risks associated with the 2011 Kimberley Ultramarathon from both a risk management and emergency services planning perspective. While the Committee is aware that the Shire was not required to apply any of these functions to the 2011 Kimberley Ultramarathon, it notes that by the Shire’s own admission, it would have been preferable for the Shire to review and assess the risk management plans of the event—and to discuss the event with the organisers—prior to the event occurring. The Committee contends that SWEK could have done more to trigger this process with the knowledge of the event that it had acquired from two sources in particular.
- 6.172 Firstly, it is likely that the impact of the dehydration issues on local health services from the 2010 race was known to more SWEK staff than just the CEO, Mr Gaffney. As it was, Mr Gaffney had acquired this information from the local chemist, hospital and staff at El Questro (see 6.147 above).
- 6.173 Even if this fact was not widely known by SWEK staff, the completed facility hire request form that was sent to the Shire from RacingThePlanet confirmed that RacingThePlanet was a Hong Kong-based company that was holding a 100km endurance footrace event between El Questro and Kununurra. Given this knowledge and responsibility of SWEK with regard to assessing local events and its advisory and administrative duties within the LEMC, the Committee is concerned that SWEK did not:
- ask for the event’s risk management plan—despite being offered one in writing by RacingThePlanet;

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1094 The fires in the Dunham Valley area of the course that were the source of Mr Storey’s concerns in his email to Mr Mills had burnt out before the race was staged. Mr John Storey, Police Statement, 9 September 2011, p. 2.

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- attempt to apply guidelines for public building (events) to the race even though the information provided by RacingThePlanet indicated that a level of inherent risk was associated with the event; and
- attempt to alert the LEMC members about the event and its possible impact on local emergency management resources—despite being the convenor of the LEMC and in a strong position to raise awareness among members at short notice.

6.174 A mitigating factor for SWEK is the fact that RacingThePlanet did not make a direct approach to the executive of SWEK for assistance and comment on its risk management planning requirements as a stand-alone issue. Nor was RacingThePlanet timely in its approach to SWEK regarding its requirements for the event (the hire of Celebrity Tree Park). Given that RacingThePlanet staff were in the district in February 2011 conducting an on-site review of the course, this would have been an appropriate time to commence discussions with SWEK.

6.175 While the Committee accepts that confusion exists around how and when the LEMC process and the public buildings approval process can be used to oversee higher risk events, it is of the view that the process is an important one and should be used for events such as group adventure sport activities.

6.176 To this end, the Committee agrees with the observations made during the LEMC meeting that future event organisers need to in some way be informed that it is necessary to contact appropriate agencies such as FESA and provide a risk assessment to the LEMC—so that the LEMC may be able to determine whether the organisers have considered the risks properly—and take action to ask the organisers to remedy the situation if they have not.<sup>1095</sup> It is the Committee's view that had RacingThePlanet been directed to submit a risk management plan, most probably through the Shire, to the LEMC, then the appropriate local emergency service agencies would have been made aware of the event, where and when it was occurring, and the potential risks associated with the event.

6.177 This could have facilitated open lines of communication between the event organisers and emergency services and may have allowed any emerging issues, such as the risk of bushfire on course, to be identified and addressed. It is also reasonable to assume that had the local emergency services been provided with adequate information, then the time it took for agencies to coordinate a response to the incident would have been reduced. The Committee observes that any amended procedure to trigger the LEMC so that events such as the 2011 Kimberley Ultramarathon are captured in the future is a

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1095 Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 10.

reasonable step and one that should be reviewed and implemented with priority. This idea is discussed in further detail in Chapter 7.

### Finding 31

Notwithstanding the late notification it received, with the information available, it would have been reasonable and prudent for the Shire of Wyndham East Kimberley (SWEK) to make further enquiries of RacingThePlanet Events Limited regarding the company's risk management planning for the 2011 Kimberley Ultramarathon.

### Kununurra Visitors Centre

- 6.178 The Kununurra Visitors Centre (KVC) was a point of contact with RacingThePlanet in Kununurra, having established links with the company prior to the first race in 2010. The centre was contacted again by RacingThePlanet in the lead up the 2011 Kimberley Ultramarathon—resulting in it facilitating some contact between relevant government agencies and RacingThePlanet prior to the 2011 event. The substance of this contact proved to be quite pivotal to events surrounding the 2011 race. The role of the KVC has been referred to in various sections of this report, but will now be outlined in further detail.
- 6.179 The KVC is a non-profit organisation comprising approximately 150 to 200 members at any one time. The KVC is not a government agency and has no direct links with Tourism WA. Funding is applied for annually through SWEK. In addition, the KVC raises funds through commissions and membership fees. The KVC is not a member of the local emergency management committee<sup>1096</sup>—but is an initial point of contact for many tourists to the area.<sup>1097</sup>
- 6.180 The KVC had contact with RacingThePlanet prior to 2010 race—providing them with visitor books on the region and supplying RacingThePlanet with some local contacts. In addition, a staff member of the KVC volunteered for the length of the 2010 RacingThePlanet event.<sup>1098</sup>
- 6.181 The next contact the KVC had with RacingThePlanet was in March 2011. Mrs Donnelly informed the Committee that Ms Gadams advised her that RacingThePlanet would be in touch with the visitors centre when they got to Kununurra and that 'they would like to sit down with us again to get our help with contacts and any local on-the-ground

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1096 Mrs Nadia Donnelly, General Manager, Kununurra Visitors Centre, *Transcript of Evidence*, 23 April 2012, pp4-5.

1097 According to the KVC website it provides local, regional, state and NT brochures and maps, booking services for tours and accommodation and sells souvenirs and locally made produce. Information available from [www.visitkununurra.com/contact-us/about-the-kvc](http://www.visitkununurra.com/contact-us/about-the-kvc). Accessed on 1 June 2011.

1098 Mrs Nadia Donnelly, General Manager, Kununurra Visitors Centre, *Transcript of Evidence*, 23 April 2012, p. 1

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information that we could help with.<sup>1099</sup> While not confirmed by the Committee, it is feasible that the Shire's Calendar of Events entry referred to at 6.154 above emanated from this contact.

- 6.182 In mid-August Ms Gadams contacted Mrs Donnelly again and suggested they meet. This meeting occurred at the Kimberley Grande Resort on 30 August 2011, with Mrs Donnelly, Ms Gadams and Ms Hanninen present.<sup>1100</sup> During the meeting Mrs Donnelly was asked about organising some free gifts and prizes for the race. In addition, she was asked about a crocodile that RacingThePlanet had heard might be on the race course and about whom RacingThePlanet should speak to 'about possible bushfires'.<sup>1101</sup> Mrs Donnelly told RacingThePlanet that she would make a few calls about the various issues raised and get back to them.
- 6.183 At around 2pm that afternoon, Mrs Donnelly contacted DEC and FESA to advise them about the race occurring on 2 September and to discuss the relevant matters that were raised during the meeting with RacingThePlanet. Mrs Donnelly spoke in person to Mr Luke Bentley of DEC<sup>1102</sup>, who stated that he would like a map of the race so that DEC staff could check the risk of any crocodiles on course. Mrs Donnelly then proceeded to leave a message with Mr Tony Stevenson of FESA about the race, requesting that he call her back.<sup>1103</sup>
- 6.184 At 4:08pm, Mrs Donnelly emailed RacingThePlanet and provided phone and email contact details of both Mr Bentley and Mr Stevenson, and informed RacingThePlanet that Mr Bentley had requested a course route so that he could assess any risk associated with crocodiles or fires on DEC land. Mrs Donnelly also stated in this email that Mr Stevenson of FESA would likely need the 'route so he can look at the current fires burning'.<sup>1104</sup>
- 6.185 At about 4:30 in the afternoon Mr Stevenson returned Mrs Donnelly's call. Mrs Donnelly stated that Mr Stevenson expressed disbelief that the race was occurring so soon, and had conducted an on line search when he received Mrs Donnelly's message to check that the race was actually happening. Mr Stevenson proceeded to ask Mrs Donnelly a series of questions about the race. He enquired whether the organisers had

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1099 Mrs Nadia Donnelly, General Manager, Kununurra Visitors Centre, *Transcript of Evidence*, 23 April 2012, p. 2.

1100 *ibid.*

1101 *ibid.*

1102 See 6.225 through 6.228 below for Mr Bentley's account.

1103 Mrs Nadia Donnelly, General Manager, Kununurra Visitors Centre, *Transcript of Evidence*, 23 April 2012, p.2; Ms Nadia Donnelly, Police Statement, 7 September 2012, p2.

1104 Mrs Nadia Donnelly, Police Statement, 7 September 2012, Exhibit, p. 3.

a risk management plan, and told Mrs Donnelly to ‘make sure they contacted the hospital, St John’s Ambulance, the chemist and a local helicopter company’.<sup>1105</sup>

- 6.186 Mrs Donnelly emailed Ms Gadams and Ms Hanninen with this information the following morning (31 August 2011) at 8:27am, and stated clearly that Mr Stevenson was aware that RacingThePlanet would be contacting him.<sup>1106</sup> Mrs Donnelly had one final contact with RacingThePlanet the following day (1 September 2011) when she arranged for some complimentary items for the race to be delivered to their hotel. She enquired if anything else was required by way of prizes and gifts for the racers.
- 6.187 Mrs Donnelly received a call from Mr Stevenson of FESA at around 4:40pm on the day of the race, seeking further information about the race and informing her that no one from RacingThePlanet had contacted him. She advised Mr Stevenson that the KVC had ‘no involvement in organising the event’.<sup>1107</sup>
- 6.188 Mrs Donnelly received three further contacts with respect to the event; two from media on the days after the event, and one from Stevenson requesting RacingThePlanet contact details which Mrs Donnelly emailed through to him on Monday 5 September 2011.

#### **Positive aspects of KVC’s performance**

- 6.189 Despite having no legislative requirement to do so, Mrs Donnelly contacted DEC and FESA and informed them about the approaching race—and relayed the message for RacingThePlanet to make contact with these agencies.
- 6.190 In the case of DEC, this resulted in direct communication between the race organisers and Mr Bentley of DEC, who was subsequently provided with a black and white course map. Mr Bentley was then able to provide some accurate advice on the race route with specific regard to crocodiles—importantly informing RacingThePlanet of a section of the course that would not be safe to cross on foot. He was also able to inform RacingThePlanet that they needed to contact FESA for information about fires in the area because the course did not cross over DEC-managed land, and provided relevant contact details for Mr Stevenson.<sup>1108</sup>
- 6.191 Unfortunately, the efforts by Mrs Donnelly did not result in any direct contact between FESA and RacingThePlanet.
- 6.192 Given that the role of the KVC did not require it to perform any particular role or action with respect to the event and the protection and rescue of people involved in the 2011

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1105 Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 3.

1106 Mrs Nadia Donnelly, Police Statement, 7 September 2011, Exhibit, p. 1.

1107 Mrs Nadia Donnelly, Police Statement, 7 September 2011, p. 3.

1108 Mr Luke Bentley, A/East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, Legislative Assembly, 20 April 2011, pp. 3-4.

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Kimberley Ultramarathon, the Committee finds that KVC carried out its duties appropriately.

### Finding 32

The failure of RacingThePlanet Events Limited to contact FESA Kununurra directly should not be attributed to any communications made by the Kununurra Visitors Centre on either party's behalf.

## Western Australian Department of Health

### Roles and Actions

- 6.193 As noted at 6.11 through 6.14 above, Part VI of the *Health Act 1911* (WA) prescribes the health and safety aspects of public buildings—where a public building is defined as a building or place or part of a building or place where persons may assemble for various reasons—including for entertainment, recreational or sporting purposes; and any whole or part of a building, structure, tent, gallery, enclosure, platform or other place in or on which numbers of persons are usually or occasionally assembled.<sup>1109</sup> The definition is sufficiently broad to capture a large variety of ‘buildings’ which, as contemplated by the above definition, is not limited to a physical structure or place and can include many types of events. Under this Act, Local Government has responsibility for these events—particularly the responsibility for assessing and approving public events with respect to public health and safety. This matter, with regard to SWEKs role, was identified at 6.142 above.
- 6.194 The Department of Health (DoH) is not absent from this process as it is charged with assisting local governments through a number of avenues, largely administered through its Public Health and Clinical Services Division. Some of the functions that DoH performs in this regard include:
- Publishing the *Guidelines for Concerts, Events and Organised Gatherings*;<sup>1110</sup>
  - Reviewing risk management plans when provided by the event organisers;
  - Administering the *Health Professionals (Special Events Exemption) Act 2000* for applicable events attracting international health practitioners;
  - Liaising with the contracted first aid providers to review medical plans, when medical plans are provided;

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<sup>1109</sup> Section 173 *Health Act 1911* (WA).

<sup>1110</sup> Submission No. 4 from Department of Health, 2 April 2012, Attachment B. These guidelines can also be accessed at:  
[www.public.health.wa.gov.au/cproot/2705/2/Concerts%20and%20Mass%20Gathering%20Guidelines.pdf](http://www.public.health.wa.gov.au/cproot/2705/2/Concerts%20and%20Mass%20Gathering%20Guidelines.pdf)

- Attending the event organisers and or local government event planning meetings when invited;
- Assisting and advising organisers, local government and agencies when requested; and
- Attending events when requested.<sup>1111</sup>

6.195 DoH states that it identifies events like the 2011 Kimberley Ultramarathon as having ‘significant health risks due to the harsh environment, remote location and the difficulty in retrieving casualties for medical treatment’.<sup>1112</sup> Nonetheless, DoH submit that the Kimberley Ultra Marathon was not classified as a public building because there was no spectator element and as such was not subject to any of the provisions under the Act. DoH was therefore not requested (by either SWEK or RacingThePlanet) to provide any assistance with respect to public events legislation.<sup>1113</sup> While this is statutorily permissible, the department asserts that in most cases, the legislative intent of the Act is still met through DoH being requested to assist local government and event organisers—even where ‘there is no legal requirement for them to do so.’<sup>1114</sup>

6.196 DoH submitted that they were currently unaware of any legislation that governed the management of higher risk events like the Australasian Safari and the Kimberley Ultramarathon.<sup>1115</sup> The Heath Act is currently under review with a new Public Health Bill planned to be introduced to Parliament this year. In its submission DoH noted that:

*There is potential under the Bill that specific legislation could be developed as part of Policy or Regulations pertaining to health requirements of sporting, high risk or other public events, and mass gatherings.*<sup>1116</sup>

6.197 At the hearing on 20 April 2012, Dr Andrew Robertson, DoH’s Executive Director, Disaster Management, Regulation and Planning, added that regulations under the Bill could be such that it is a requirement for event directors to present a medical plan and or a risk assessment plan to health prior to the event taking place.<sup>1117</sup> The relative merits of this proposal are discussed later in this chapter (see 6.223 below). For now it is noteworthy that despite having considerable resources available to advise local

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1111 Submission No. 4 from Department of Heath, 2 April 2012, p. 2.

1112 *ibid.*, p. 1.

1113 Submission No. 4 from Department of Heath, 2 April 2012, p. 1. RacingThePlanet did contact DoH to arrange for their international health practitioners to be registered under *the Health Professionals (Special Events Exemption) Act 2000*. This is discussed in paragraph 6.206 below.

1114 Submission No. 4 from Department of Heath, 2 April 2012, p. 1.

1115 *ibid.*

1116 *ibid.*

1117 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 2.

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government and event planners about the health and safety aspects of public events, DoH was largely uninvolved in this capacity with the 2011 Kimberley Ultramarathon. The actions that DoH did take with respect to the race are briefly outlined below.

- 6.198 Regarding RacingThePlanet's 2010 Kimberley event, Dr Robertson informed the Committee that DoH was first made officially aware that the event was occurring when 'we were notified by the hospital in Kununurra that they had multiple casualties who were coming in. Many of them were quite badly dehydrated and had other injuries'.<sup>1118</sup> Dr Robertson stated that this placed considerable strain on the hospital service in Kununurra. He also informed the Committee that the largest concern about this event was that 'we discovered that they were utilising a number of overseas doctors none of whom were registered in Australia at the time'.<sup>1119</sup>
- 6.199 Dr Robertson advised the Committee that the department raised its concerns with the medical board about this matter and told RacingThePlanet that, while a warning had been given this time it may consider prosecution in the future. Dr Robertson stated that the department had numerous conversations about this matter with RacingThePlanet after the event and further advised RacingThePlanet that DoH was unhappy about the lack of notification that was provided to them (and Kununurra Hospital) about the potential for injuries.<sup>1120</sup>
- 6.200 Dr Robertson stated that DoH was initially concerned when RacingThePlanet advised that they were organising another race in 2011, but that ultimately, 'they [RacingThePlanet] did follow the requirements, and they certainly addressed the issues we had been mainly concerned about'.<sup>1121</sup> Dr Robertson was largely referring to a letter from RacingThePlanet addressed to DoH on 26 January 2012 which marked the first official contact RacingThePlanet made with the department concerning the 2011 race.<sup>1122</sup>
- 6.201 In the letter, information is specifically requested about potential requirements for the registration of overseas Doctors to be able to work at the event and about the importation of medical supplies and their subsequent distribution to participants on the day. The correspondence included general information about the race and alerted DoH to the fact that the event would be occurring in the Kimberley—as a shortened version on the 2010 event—in September 2011.<sup>1123</sup> RacingThePlanet concluded by

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1118 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 2.

1119 *ibid*, p. 3.

1120 *ibid*.

1121 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 3.

1122 Submission No. 4 from Department of Health, 2 April 2012, Appendix D.

1123 Dr Robertson clarified in the hearing that while the regulation of the importation of substances is a federal responsibility, the administration of therapeutic substances in WA is prescribed



enquiring whether ‘there [is] anything else that we need to do from a medical standpoint in order to stage this event?’<sup>1124</sup>

- 6.202 The Committee asked Dr Robertson whether, in his response to RacingThePlanet, he advised them to make contact with FESA or any other emergency services. Dr Robertson stated that he did not. Nonetheless, Dr Robertson emphasized that the letter did direct RacingThePlanet to the URL link for the DoH publication *Guidelines for Concerts, Events and Organised Gatherings* containing detailed information about the process for holding such events—including advice to liaise with local government, WA Police, the Department of Environment and Conservation and WA Health. Dr Robertson stated that, ‘[w]e wrote to RacingThePlanet to suggest that they consult those guidelines and we gave them the link. Whether or not they did, I do not know, but we certainly encouraged them strongly to do that.’<sup>1125</sup> The Committee notes that this direction from DoH was made specifically to Section 4, Guideline 6 of the DoH publication.<sup>1126</sup>
- 6.203 Dr Robertson advised the Committee that this event had been directly raised in a Health Services Subcommittee (HSS) meeting on the 14 February 2011. This was a sub-committee of the State Emergency Management Committee (SEMC),<sup>1127</sup> and representatives from WA Police, FESA, St John’s Ambulance, Royal Flying Doctor Service (RFDS) and the Local Government Association of WA (WALGA) attended. Dr Robertson gave evidence that at that this meeting ‘we actually stated that we had received this letter and [that RacingThePlanet] are going to be running this event in September... we actually highlighted that we had had a few problems with the previous [RacingThePlanet event] and just to be aware of that. Whether that message was actually passed back to those agencies, I cannot say’.<sup>1128</sup>
- 6.204 Dr Robertson emphasised that the 2011 Kimberley Ultramarathon was an information item, rather than an action item, on the agenda, so no recommendation was made by DoH for other agencies to follow the event up.<sup>1129</sup> The Committee requested the minutes of this meeting from DoH, which confirmed that this item was a discussion item only, whereby Dr Robertson appraised attendees about the issues experienced

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within the Poisons Act 1964 and is the responsibility of the Department of Health. Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 4.

1124 Submission No. 4 from Department of Health, 2 April 2012, Appendix D.

1125 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 5.

1126 Submission No. 4 from Department of Health, 29 March 2012, Appendix E, p. 1.

1127 This is a committee prescribed under section 13 of the *Emergency Management Act (2005)* and is the overarching management committee under which District and Local Emergency Management Committees sit.

1128 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 4.

1129 *ibid.*, p. 5.

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with the 2010 event and advised that RacingThePlanet had consequently contacted DoH who was in the process of 'clarifying Special Exemption issues in relation to [clearing] Medical teams and medications'.<sup>1130</sup>

- 6.205 On 15 June 2011, DoH sought this approval from the Minister for Health by way of recognising the RacingThePlanet event as a "Special Event", so as to allow the registration of the visiting RacingThePlanet medical practitioners in accordance with the *Health Professionals (Special Events Exemption) Act 2000*. This is an Act to allow for visiting health professionals to provide health care services to visitors to WA in connection with a special event. The Kimberley Ultramarathon was deemed a Special Event for the purposes of this Act by the Minister for Health on 21 June 2011.<sup>1131</sup>
- 6.206 On 26 July 2011, DoH received exemption applications for the RacingThePlanet doctors that would be working at the Kimberley Ultramarathon. On 2 August 2011, these exemptions were granted and the RacingThePlanet doctors were temporarily registered with Australian Health Professionals Registration Agency (AHPRA).<sup>1132</sup>
- 6.207 On 25 August 2011, Muriel Leclercq, Manager of DOH's Disaster Preparedness and Management Unit, sent an email to numerous Western Australian Country Health Service (WACHS) staff, RFDS (Medical and Operations) and SJA (Manager State Ambulance Service) advising them of the 2011 Kimberley Ultramarathon. Within this email Ms Leclercq provided information about the date, duration and nature of the event, including information about the RacingThePlanet medical team and the competitors. The email concluded by stating that '[s]hould any athletes or support staff become ill or injured, normal processes apply'.<sup>1133</sup>
- 6.208 This email was subsequently forwarded to Senior WACHS staff at the Kununurra Hospital; in addition to on-call duty officers in the State Health Incident Coordination Centre; state health coordinators and various Emergency Department consultants at different hospitals.<sup>1134</sup> The recipients included Ms Lianne Macpherson, Clinical Nurse Manager at Kununurra District Hospital—who subsequently advised Ms Leclercq via email on 29 August 2011 that she will be the hospital's liaison person for the event and requested contact details for RacingThePlanet.<sup>1135</sup>
- 6.209 Kununurra Hospital staff then made contact with RacingThePlanet and arranged a meeting at the hospital on 31 August. Dr Robertson advised the Committee that during this meeting Ms Macpherson 'received assurances regarding the medical planning and

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1130 Department of Health, Supplementary Item B, 17 May 2012, Attachment 1a, p. 7.

1131 *ibid.*, Attachment 2.

1132 Submission No. 4 from Department of Health, 2 April 2012, Appendix F, p. 1.

1133 Supplementary Item B, Department of Health, 17 May 2012, Attachment 5f.

1134 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 9.

1135 Submission No. 4 from Department of Health, 2 April 2012, Attachment 5h, p. 3

support for the event.<sup>1136</sup> RacingThePlanet were asked if it had made improvements from the previous year's race and confirmed that they had 'their own registered medical team, sufficient medical supplies, communications, and evacuation facilities.'<sup>1137</sup> Dr Robertson advised the Committee that RacingThePlanet made verbal assurances only as to these improvements and that no medical or risk assessment plan was provided at this meeting.<sup>1138</sup> This was the last contact DoH had with RacingThePlanet prior to the event.

### Race Day

- 6.210 DoH involvement on the day was primarily limited to the Kununurra and Wyndham District Hospitals' medical response once the injured competitors arrived into the hospitals. Prior to the admission of injured patients, DoH notes the following contact on the day:
- At 4:50pm, the Kununurra Hospital switchboard received a telephone call from a helicopter pilot requesting a stretcher on arrival for incoming casualties with burns. At 4:53pm, SJA volunteers also called Kununurra Hospital requesting a stretcher to meet the helicopter on arrival. At approximately 5pm, SJA volunteers arrive at the hospital to pick up the requested stretcher to take to the helicopter. At 5:30pm, the helicopter was heard overhead.
- 6.211 It subsequently landed on a road outside the hospital with two female patients (Miss Pitt and Miss Sanderson), both with 60-70% burns to their bodies. They were received by the emergency department at approximately 5:45pm.<sup>1139</sup>
- 6.212 A total of six patients were taken to Kununurra Hospital. Five were suffering burns (Miss Pitt, Miss Sanderson, Mr Hull, Mr Van Der Merwe and Ms Gadams) and legs, and a male with severe dehydration (who the Committee believes to be Mr Richard Avery). A further two runners were taken to Wyndham Hospital for treatment of smoke inhalation, both of whom were discharged Friday evening, 2 September 2011.<sup>1140</sup>
- 6.213 In the early hours of the following morning, the RFDS flew Miss Pitt and Miss Sanderson to Darwin Hospital, while Mr Hull and Mr Van Der Merwe were flown out later to Royal Perth Hospital. According to DOH's records, Ms Gadams was formally discharged at around 1:30pm later that day. Soon after WACHS Kimberley liaised with event organisers regarding the health insurance coverage of the injured competitors.<sup>1141</sup>

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1136 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 8.

1137 *ibid.*

1138 *ibid.*

1139 Supplementary Item B, Department of Health, 17 May 2012, p. 2.

1140 Submission No. 4 from Department of Health, 2 April 2012, Appendix F, p. 3.

1141 *ibid.*, p. 4.

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- 6.214 On the 6 September 2011, WACHS East Kimberley Operations Manager, Mr Damian Jolly, contacted SWEK and requested that a meeting of the LEMC be convened to so that 'an inter-service debrief regarding the Kimberley Ultramarathon could be undertaken.'<sup>1142</sup> Dr Erik Beltz, Senior Medical Officer, and Ms Ruth Bath, WACHS District Director of Nursing, attended the LEMC meeting with Mr Damian Jolly as representatives of DoH.<sup>1143</sup>

### **Positive aspects of DoH performance**

- 6.215 The Committee recognises the efforts of Kununurra Hospital staff in proactively contacting and meeting with RacingThePlanet prior to the race. This meeting allowed the hospital staff to acquire first-hand awareness of the event and the medical resources available, and would have presumably enabled the hospital staff to make some provision for any potential medical issue that they may have identified as a result of this meeting.<sup>1144</sup>
- 6.216 It was DoH staff who requested that the LEMC meeting (that occurred on the 6 September) be convened to discuss the events of the 2011 Kimberley Ultramarathon. This meeting provided an opportunity for the relevant agencies to discuss what happened. It also promoted discussion around how the LEMC process might be mobilised under similar circumstances in the future.
- 6.217 It was largely through the efforts of DoH, and their follow-up of the 2010 event, that RacingThePlanet were made aware of the requirement to register their international doctors planning to treat and potentially administer medication at the 2011 event. The resulting communication provided the Department of Health with detailed and early information about the Kimberley Ultramarathon 2011.

### **Negative aspects of DoH performance**

- 6.218 As a result of the efforts made by DoH to follow-up on the 2010 race, RacingThePlanet were in communication with the department about the 2011 Kimberley Ultramarathon. While the Committee acknowledges the efforts made by DoH to receive the information in the first instance, it suggests that more could have been done to share the information DoH had with other agencies. It also contends that DoH could have done more to ensure that RacingThePlanet were made aware of which agencies they could contact with respect to the 2011 event.

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1142 Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, p. 2.

1143 See Submission No. 15 from Shire of Wyndham East Kimberley, 5 April 2012, pp. 5-10, for the minutes of the LEMC meeting.

1144 The Committee does not have any evidence indicating whether, as a result of this meeting, staff at Kununurra Hospital did in fact take any additional actions in preparation for this event. It is reasonable to assume that this meeting did nonetheless provide staff at Kununurra Hospital with the opportunity to assess whether additional preparations were necessary.

- 6.219 Firstly, it is apparent that the Health Services Subcommittee meeting on the 14 February 2011 provided one of the initial opportunities for emergency service agencies to be made aware of the 2011 Kimberley Ultramarathon. Given the matter was raised with a summary of concerns held by DoH about the 2010 event, it is unfortunate that no other agency saw this information item as an opportunity to look into this event further. It is equally unfortunate that DoH, given these same concerns, did not make the issue a discussion item and explain to emergency service agencies present that some follow up might be appropriate.
- 6.220 Secondly, the Committee notes that while DoH did circulate information about the event to a number of relevant stakeholders via email, the notification did not come until a matter of days before the event was due to commence (the email was originally sent on 25 August 2011). Given the knowledge DoH had about the event the year before, the Committee finds it surprising that this email was not sent earlier—to a wider group of emergency service agencies in Kununurra. DoH was critical of the lack of notification that it had from RacingThePlanet about the 2010 event, stating that earlier notification would have allowed the Kununurra District hospital to be more prepared for the medical events that occurred.<sup>1145</sup> The Committee is of the view that earlier notification of the 2011 event would have similarly assisted local emergency response agencies in coordinating and planning for a potential emergency.
- 6.221 Finally, the Committee believes DOH could have placed greater emphasis on its *Guidelines for Concerts, Events and Organised Gatherings* when corresponding with RacingThePlanet. These guidelines provide thorough and detailed advice about how to determine what health and safety issues may arise from any particular event—and what government agencies an event organiser should contact to help mitigate these issues.
- 6.222 The Committee recognises that DoH were not required to provide this information to RacingThePlanet, particularly as in DoH's estimation the 2011 Kimberley Ultramarathon was not subject to the provisions of the *Health Act 1911* (WA) that underpin these guidelines. However, given DOH's experiences with RacingThePlanet from 2010, the Committee is of the view that this was another key missed opportunity for RacingThePlanet to be made aware explicitly of who they should contact and what factors they should consider when planning to hold an event of the nature of the 2011 Kimberley Ultramarathon.

#### **Other aspects of WA Health's role**

- 6.223 As noted at 6.194 above, DoH's Public Health and Clinical Services Division has a range of risk assessment functions that are available if requested by event organisers and

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<sup>1145</sup> Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 3.

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local governments. The experience of the 2011 Kimberley Ultramarathon highlights the importance of ensuring that DoH is drawn into the process—either by the local government or the event organiser. The Committee sees the current review of the *Health Act 1911* (WA) referred to by Dr Robertson (at 6.196 above) as the ideal opportunity to consider measures that may make it a requirement for organisers of adventure sport activities, such as trail ultramarathons, to provide their risk management plans to DoH for assessment.<sup>1146</sup> This could occur by way of redefining what constitutes a public building—and therefore what type of events are captured—under the Act.<sup>1147</sup> This initiative is one of several measures discussed by the Committee in Chapter 7.

- 6.224 This is a particularly important way of capturing similar events that do not attract financial support from Tourism WA, as the Committee has already recommended that the independent vetting of risk management plans be incorporated as a contractual term of future sponsorship agreements.

### Finding 33

Other local agencies in Kununurra would have benefited from the information that the Department of Health had acquired regarding the 2011 Kimberley Ultramarathon.

## Department of Environment and Conservation

### Roles and actions

- 6.225 The Department of Environment and Conservation (DEC) was limited in its roles with regard to the Kimberly Ultramarathon 2011. Following the advice provided by KVC, RacingThePlanet's Ms Fanshawe phoned Mr Luke Bentley, Acting East Kimberley District Manager for DEC, on 31 August 2011. Ms Fanshawe requested specific advice about the risk of estuarine crocodiles in the waters around parts of the course. Mr Bentley requested that he be provided with a course map so that he could provide this information.<sup>1148</sup>
- 6.226 RacingThePlanet complied with this request, and a black and white A4 copy of the course map was hand-delivered to the DEC office in Kununurra. Mr Bentley reviewed

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1146 The Committee notes that the LGA is the responsible agency to assess these plans under the relevant legalisation, but that DoH is available to assess these applications on behalf of the LGA—and that the LGA would at a minimum be assessing the event for approval based on the DoH Guidelines for Concerts, Events and Organised gatherings, which is based on this legislation.

1147 Please see paragraphs 6.193 through 6.195 for information on what constitutes a public building under the Act and why the current definition may be problematic.

1148 Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 2.

the map and noting that the course was not crossing any DEC-managed land,<sup>1149</sup> he contacted Ms Fanshawe at her accommodation. They discussed one crossing at the Dunham River and Mr Bentley advised that it would not be safe for competitors to cross that section of the course on foot. He suggested that competitors be ferried across that section and Ms Fanshawe agreed.<sup>1150</sup>

6.227 Ms Fanshawe then enquired twice about fires in the area. Mr Bentley advised that he 'was not aware of any fires, and as the route did not cross any DEC managed land, that [DEC] could not provide any advice on that and that she would need to contact the FESA office in Kununurra'.<sup>1151</sup> Mr Bentley proceeded to provide Ms Fanshawe with the phone number and name of the FESA's Mr Stevenson. Mr Bentley stated that this was his last contact with Ms Fanshawe or RacingThePlanet prior to the race.<sup>1152</sup>

6.228 DEC has submitted that, at this time, Mr Bentley was 'not aware of any fire within the vicinity of Doon Doon Station or El Questro Station as there is no DEC managed land within the immediate area'.<sup>1153</sup> Because of this, DEC did not have any 'operational or other role' in the fire that caused injuries to the competitors of the Kimberley Ultramarathon.<sup>1154</sup>

### Post Race

6.229 Mr Bentley stated he had heard that an incident had occurred during the 2011 Kimberley Ultramarathon late on that on the evening of Saturday, September 3 2011.<sup>1155</sup> The following morning Mr Bentley rang Mr Ed Hatherley, DEC's Regional Fire Coordinator, Kimberley Region, and provided an update on the contact he had with Ms Fanshawe on 31 August 2011. On 5 September 2011, Mr Bentley rang Mr Daryl Moncrieff, DEC's Regional Manager for the Kimberley, and provided a similar update. Mr Bentley stated what the conversation was about, and emphasised that they had discussed crocodile safety and that he had directed RacingThePlanet to talk directly

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1149 Submission No. 14 from Department of Environment and Conservation, 5 April 2012, p. 2.

1150 Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 2

1151 *ibid.*, p. 3.

1152 Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, pp. 2-3.

1153 Submission No 14 from Department of Environment and Conservation, 5 April 2012, p. 2. The Department of Environment and Conservation (DEC) is responsible for fire preparedness on DEC-managed lands and unallocated Crown land outside of metropolitan and town site areas in Western Australia. DEC notes in its submission that fire preparedness includes 'the implementation of an annual burning program by DEC on these lands.' DEC states that in 2011, all prescribed burning by DEC in the Kimberley region was completed by June.

1154 Submission No. 14 from Department of Environment and Conservation, 5 April 2012, p. 3.

1155 Mr Bentley's evidence did not go into detail as to what it was that he has actually heard. Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 3.

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with FESA regarding fire.<sup>1156</sup> On 6 September 2011, Mr Daryl Moncrieff, and Ms Carmen Standing, DEC's Environmental Officer Industry Regulation, attended the LEMC convened by SWEK in response to the fire incident at the event.

### Positive aspects of DEC's performance

- 6.230 Mr Bentley provided appropriate advice to Ms Fanshawe regarding the identification and mitigation of risks associated with the estuarine crocodiles at the Dunham River crossing. The Committee is also satisfied with the advice and information Mr Bentley provided to Ms Fanshawe regarding the need to contact Mr Stevenson at FESA.
- 6.231 The Committee is generally satisfied with the actions of DEC and Mr Bentley, but notes that it would have been beneficial had Mr Bentley followed-up with FESA to see if RacingThePlanet had made contact about fire risk in the area of the course—particularly given that Ms Fanshawe twice sought advice on the issue during their phone call.

## Department of Regional Development and Lands

- 6.232 The Department of Regional Development and Lands (DRDL) had minimal involvement with the 2011 Kimberley Ultramarathon. Mr Paul Rosair, Director General of DRDL, told the Committee that the role of the department was limited to two areas of activity:
- jointly recommending (with Tourism WA) the approval for funding the Sponsorship Agreement with RacingThePlanet from the Royalties for Regions Regional Events Program (REP); and
  - ensuring that activities undertaken on crown land is managed appropriately under the *Land Administration Act 1977*.<sup>1157</sup>

### DRDL's role in Regional Events Program funding

- 6.233 As noted at 4.16 above, approval was obtained to funding for the Sponsorship Agreement between RacingThePlanet and Tourism WA out of the Royalties for Regions' REP. The REP is a \$40 million program funded over four years to 2014/2015 and administered by Tourism WA. The aims of the program include generating national and international promotion of regional WA while simultaneously delivering economic benefits to regional communities.<sup>1158</sup>

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1156 Mr Luke Bentley, Acting East Kimberley District Manager, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 4.

1157 Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 2.

1158 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 1.



- 6.234 All event funding proposals must be put forward by Tourism WA and proposals over \$100,000 per annum must be approved by the Board and CEO of Tourism WA as well as the Director General of DRDL. The Minister for Tourism and the Minister for Regional Development must then refer the proposal to Cabinet for approval. As part of the Cabinet approval process, Tourism WA must provide a feasibility study or event summary that outlines the financial aspects of the proposed event and how it aligns with the REP objectives.<sup>1159</sup>
- 6.235 Sponsorship funding of \$930,000 over three years for the Kimberley Ultramarathon was approved on 17 August 2011.<sup>1160</sup> This figure comprised a \$310,000 annual allocation, which was broken down as follows: \$275,000 for event funding (for 2011 this included the \$105,000 maximum payment to RacingThePlanet and the \$170,000 to Beyond Action to produce a documentary of the event); \$25,000 for event research; and \$10,000 for event costs (e.g. signage).<sup>1161</sup> The department made clear in its submission that the funding arrangements between DRDL and Tourism WA are such that, from this point, Tourism WA was responsible for entering into a sponsorship agreement with the event holder. DRDL stated that it is 'at this level that due diligence issues in relation to the conduct of the event would be addressed'.<sup>1162</sup>
- 6.236 Given the flaws the Committee has already identified in Tourism WA's due diligence practices (see 4.75 above), it holds concerns about the quality of the information that would have been provided to DRDL for the considering the REP funding decision and, to a lesser extent, for determining whether any approvals were required for this event under the *Lands Administration Act 1977* (WA) (LAA).

#### **DRDL's role in approving activities undertaken on Crown land**

- 6.237 DRDL is responsible for administering the LAA. It is under this Act that pastoral leases are issued. This is important as, contrary to much of the evidence received by the Committee, the land over which a significant portion of the 2011 Kimberley Ultramarathon was being run was not privately-owned land—but Crown land on which a number of pastoral leases are held.<sup>1163</sup> The assumption that the race was a private event run on private land caused government agencies, including the Police<sup>1164</sup>, to

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1159 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, pp. 1-2.

1160 *ibid.*, p. 2.

1161 Figures taken from the funding proposal ratified by the Board of Tourism WA on 29 July 2011. Submission No. 11 from Tourism WA, 4 April 2012, Annex 12. For information on the breakdown of event funding in 2011 see page 12 of same reference.

1162 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 3.

1163 The specific pastoral leases are detailed in Submission No. 23, from Department of Regional Development and Lands, 23 April 2012. Attachment 1, p. 3.

1164 Superintendent Michael Sutherland, Kimberley Police District Officer, *Transcript of Evidence*, 23 April 2012, p. 4; Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, Attachment, p. 5.

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assume that no permission was required for the use of that land—other than from the land owner/lessee. Indeed, it appears from evidence that the lessee's were also unaware that permission other than their own needed to be sought.<sup>1165</sup>

6.238 Contrary to this assumption, evidence received from DRDL clearly shows that specific permission was required from the department, in accordance with the LAA, for large parts of the race that were conducted over Crown land.<sup>1166</sup> The areas over which most of the race was run (or planned to be run), including Salerno Gorge<sup>1167</sup> are held under leases that are of 'non-exclusive tenure' and for which 'the lease conditions only allow the pastoral lessee to use it for pastoral related activities.'<sup>1168</sup> Any activity that falls outside the named activities on the pastoral lease requires additional approval by DRDL.<sup>1169</sup> The Committee was informed that the lease instrument makes it clear about what activities lease holders can and cannot authorise. While it does not specifically state that a lessee cannot authorise an event like the 2011 Kimberley Ultramarathon—it is clear that a lessee cannot authorise a third party to use the land for non-pastoral related activities.<sup>1170</sup>

6.239 In this respect, DRDL stated that:

*If a party wishes to conduct a public event over Crown land, it is required to contact RDL to apply for appropriate tenure or instrument which could be in the form of a lease, license or permit which can be granted under various sections of the LAA.*<sup>1171</sup>

6.240 DRDL confirmed that the appropriate tenure for the 2011 Kimberley Ultramarathon was a non-exclusive license issued under section 91 of the LAA—which is the most common form of tenure granted for short-term tourism events on Crown land.<sup>1172</sup> The

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1165 It is clear that RTP contacted the pastoral lease owners and sought permission to run the event—and yet the Committee has not received any evidence that a lessee directed RTP to contact DRDL to seek further approval.

1166 Mr Declan Morgan, Director State Land Services, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, pp. 8-9.

1167 Salerno/Tier Gorge is held under a pastoral lease known as Doon Doon Station, pastoral lease CL14/1975; the lessee of Doon Doon Station is the Aboriginal Lands Trust; a sublease is registered to Doon Doon Pastoral Aboriginal Corporation. Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 3.

1168 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 4.

1169 Mr Declan Morgan, Director, State Land Services, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 3.

1170 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 4.

1171 *ibid.*

1172 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 4; Mr Declan Morgan, Director, State Land Services, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, pp. 8-9; Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 4.

license itself is for access to Crown land—to manage competing interests on that land—not for the running of an event.<sup>1173</sup>

- 6.241 Nonetheless, DRDL, as the Crown land administrator, would on receipt of a section 91 license application, conduct legal and consultative due diligence to assist the department in ‘addressing mitigation of identifiable risks, and ensuring the appropriate party has legal responsibility for the activities which it is undertaking on crown land.’<sup>1174</sup> This would include formal referral to appropriate government agencies and local government authorities; consultation with pastoral lessees; provisions for public liability insurance and ensuring compliance with relevant legislation, particularly provisions under the *Native Title Act 1993* (Cth).<sup>1175</sup>
- 6.242 It is important to note that, in addition to the above requirements, a section 91 license application must include a detailed map of the proposed license area so that DRDL can determine who the interested parties may be. In short, DRDL would have required a course map of the 2011 Kimberley Ultramarathon had a section 91 license been applied for. In the case of that event, no such approval was sought by RacingThePlanet, Tourism WA, or any lessees of the Crown lands over which the race crossed.<sup>1176</sup>
- 6.243 Mr Rosair reiterated in evidence to the Committee that it is the proponent’s responsibility to apply for the appropriate license. Mr Rosair further suggested that given 93 per cent of the state is covered by Crown land—and the potential use of this land is so vast—the onus must remain with the proponent to apply for a license, in the same way that an individual is required to apply for a driver’s license.<sup>1177</sup>

#### **Negative aspects of DRDL’s performance**

- 6.244 It is unfortunate that DRDL’s internal processes did not recognise that a section 91 license would be required from the information provided to it through its role in jointly approving Royalties for Regions funding for sponsoring 2011 Kimberley Ultramarathon. DRDL stated that the proposal put to them from Tourism WA included only limited information about the date and proposed venue whereby it indicated that the race would be held between Kununurra, Gibb River Road and El Questro Wilderness Park. DRDL added that ‘there were no particular maps or sites provided with the submission.’<sup>1178</sup> It has been surmised therefore by DRDL that staff processing the application may

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1173 Section 91, (1) *Land Administration Act 1977* (WA) states that the Minister may grant a license or profit à prendre in respect of Crown land for any purpose.

1174 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 4.

1175 *ibid.*

1176 *ibid.*

1177 Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 2.

1178 Mr Colin Slattery, Director, Regional Investment, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 6.

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have thought the race was being run on gazetted roads for which a section 91 license would not be required:

*if the event was held on Main Roads' gazetted roads or local government gazetted roads, a section 91 would not be required, and, as such, there may have been a misunderstanding that it was being held on those roads.*<sup>1179</sup>

- 6.245 The Committee noted, and questioned DRDL about, the reference in the Tourism WA sponsorship proposal to the event being held in the 'outback' between Kununurra and Gibb River Road and El Questro Wilderness Park, and whether this should have triggered questions as to whether section 91 approvals might be required. Mr Rosair agreed and stated that:

*I think our processes internally should have been adequate enough to pick up that fact and, probably, reflecting on it, we need to go back and improve our processes as far as this exercise is concerned.*<sup>1180</sup>

- 6.246 Mr Rosair also acknowledged that, given the department had early notification that the event was occurring, it should have been able to advise the proponents of the need for a section 91 license.<sup>1181</sup>

- 6.247 Had DRDL informed Tourism WA of the requirement for a section 91 license approval, it is reasonable to expect that RacingThePlanet would have been made aware of this requirement by Tourism WA. Had this happened, it is likewise reasonable to assume that RacingThePlanet would have taken steps to obtain a license. The Committee notes and accepts the argument made by RacingThePlanet that it was never informed by anyone that a section 91 license was required.<sup>1182</sup>

- 6.248 Had a section 91 license been subsequently applied for, Mr Rosair stated that DRDL processes would have ensured that the appropriate consultation was carried out with all relevant bodies.<sup>1183</sup> The Committee has evidence from DRDL that demonstrates the veracity of this claim with other events.<sup>1184</sup> While DRDL may not have necessarily contacted emergency services agencies as part of this process<sup>1185</sup>, it would have been

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1179 Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 6.

1180 *ibid.*, p. 7.

1181 *ibid.*, p. 2.

1182 Submission No 13(B) from RacingThePlanet, dated 23 May 2012, p. 99.

1183 Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p4.

1184 Submission No 23, Supplementary Item B, from Department of Regional Development and Lands, 24 May 2012.

1185 There was some conjecture during the Committee's hearing with DRDL as to whether the department would contact FESA and DEC, for example, as a matter of course when processing a

statutorily obliged to contact both the pastoral lease holders and the Shire of Wyndham East Kimberley.<sup>1186</sup>

- 6.249 Even though the contact with the lease holders may not have amounted to a different response, it is at least reasonable to assume that this would have raised awareness among the lease holders that they are not able to provide the equivalent permission themselves. It is also reasonable to expect that had SWEK received a formal notification from DRDL, the Shire would have been prompted to monitor, assess and or approve the 2011 Kimberley Ultramarathon through its own processes—particularly with regard to assessing the risk management of the event.<sup>1187</sup>
- 6.250 In conclusion, it is the Committee’s view that DRDL were provided with enough information through Tourism WA’s sponsorship funding proposal to assess that the race was being conducted over Crown land. As such, it should have contacted either Tourism WA or the proponents to inform them that a section 91 license would be required. DRDL’s failure to provide this advice meant that an opportunity to ensure that appropriate consultation occurred between RacingThePlanet and relevant agencies prior to the 2011 Kimberley Ultramarathon was missed.
- 6.251 The Committee believes that the knowledge and awareness of the requirement for section 91 licenses outside of the DRDL appears to be relatively poor among event organisers and relevant government agencies. DRDL should address this issue promptly so that future events can benefit from the rigour of the application process available. The Committee welcomes DRDL’s acknowledgment of this point:

*We need to put in place procedures to ensure that people who are undertaking events of this nature are aware that they need to apply for a section 91 licence. Maybe that would also include informing our proponents such as Tourism, the regional development commissions and local governments that hold events as well that are funded under royalties for regions. It has highlighted a process weakness.*<sup>1188</sup>

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section 91 License. Subsequent information received by the Committee from DRGL indicates that while it may contact DEC where relevant to the Crown land in question, it would not normally contact FESA—as FESA is ‘not an interest holder in Crown land for the purposes of grants of a section 91 Licenses.’ Submission No 23, Supplementary Item B, from Department of Regional Development and Lands, 24 May 2012 p. 3.

1186 Mr Declan Morgan, Director, State Land Services, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 11.

1187 This could have been done through either an ‘events application’ in line with the Public Buildings regulations or by raising the matter with the local LEMC members..

1188 Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 14.

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### **Finding 34**

A significant portion of the 2011 Kimberley Ultramarathon was conducted over pastoral leases that are on Crown land. Accordingly, permission for use of this land should have come from the Department of Regional Development and Lands, which issues section 91 licenses under the *Land Administration Act 1977* for short-term non-pastoral related uses.

### **Finding 35**

With the information provided to it by Tourism WA, the Department of Regional Development and Lands (DRDL) should have recognised that the RacingThePlanet Events Limited required a section 91 licence to stage the 2011 Kimberley Ultramarathon. Had this process been observed, it would likely have resulted in RacingThePlanet's risk management plans for the event being considered by DRDL and the event being formally referred to the Shire of Wyndham East Kimberley.

### **Recommendation 9**

The Department of Regional Development and Lands should ensure that event organisers and government agencies responsible for sponsoring and approving events have a greater level of awareness about the requirements of section 91 licences under the *Land Administration Act 1977* (WA).

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### Concluding thoughts

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**Whether there are measures that should be taken by government to ensure the risks including bushfires in remote areas in the context of extreme sporting events are adequately identified and assessed**

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#### **Future measures**

- 7.1 The final term of reference has asked the Committee to consider measures that government (and its agencies) can take to ensure that risks (including bushfires in remote areas) are adequately identified and assessed when extreme sporting events are staged in the future. The Committee believes that any initiatives identified for this purpose should extend to include higher risk sporting events and adventure sport activities.
- 7.2 When an event is being sponsored by a government agency, as Tourism WA (Eventscorp) did with the 2011 Kimberley Ultramarathon, that agency should make sure that organisers are aware of the relevant stakeholders with whom risk identification and mitigation plans need to be discussed. Clearly, Tourism WA's processes are currently deficient in this area. The Committee has made several recommendations throughout Chapter 4 to address these deficiencies, of which Recommendations 2 and 3 are most pertinent to this discussion.
- 7.3 In this final chapter, the Committee explores several measures within the existing legislative framework that may be successful in bringing organisers and government together to identify and mitigate risks, both those inherent in the event, and local environmental factors of which an organiser may not have sufficient knowledge.
- 7.4 The Committee stresses that it has not been able to fully investigate the logistical implications of these measures, whether implemented as individual options or as a collective strategy. Nonetheless, it raises them as issues worthy of consideration by the relevant departments cited.
- 7.5 The Committee sees the potential for improvement across three main areas:
  - 1) **Local Emergency Management Committee (LEMC):** Ensuring that the input of local emergency management services is incorporated into the planning of higher risk events and adventure sport activities;

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- 2) **Health Act 1911 (WA):** Ensuring that appropriate event approval processes that consider public health and safety of participants, spectators, staff and volunteers capture the risk management planning stage of higher risk events and adventure sport activities; and
- 3) **Land Use Approvals:** Ensuring that higher risk events and adventure sport activities—whether sponsored by a government agency or not—are subject to legislated land use (and associated risk management) requirements.

### Local Emergency Management Committees

- 7.6 As highlighted in the previous chapter, *the Emergency Management Act 2005* vests responsibility with local government authorities to ensure that local emergency management committees (LEMCs) are established and that procedures are in place to inform these LEMCs of any circumstances that may impact upon local emergency management resources. In the Committee's view it is reasonable to argue that this would include circumstances such as the occurrence of an adventure sporting event—like the 2011 Kimberley Ultramarathon—which, by its very nature, could reasonably be assumed to have some risk to participants, or others associated with it.
- 7.7 LEMCs are inherently valuable under such circumstances as they can bring together the relevant government agencies to discuss the potential emergency management resource requirements for an event. As importantly, they are a vehicle through which an event organiser—particularly one unfamiliar with an area—can have its risk management practices assessed and receive advice on local risk issues.
- 7.8 In the case of the 2011 Kimberley Ultramarathon, it is clear that a level of uncertainty existed between the local emergency agencies and SWEK staff and councillors as to how the LEMC could or should be triggered. It is the Committee's view that it is therefore possible that other local government districts may be unaware as to how the LEMC process can be used to provide advice on and a response to high risk events in these districts.
- 7.9 To this end, the Committee corresponded with the Department of Local Government to enquire what support or information it provided to its LGA's with respect to managing LEMCs. While the Committee acknowledges that the administration of the *Emergency Services Act 2005* does not fall to the Department of Local Government, the Committee felt it was nonetheless reasonable that the Department would provide some uniform support as to how individual LGAs are to achieve these functions. The Committee was advised that with respect to these legislated functions the Department 'has had no involvement in relation to guidelines for local governments in these areas.'<sup>1189</sup>

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1189 Ms Jennifer Mathews, Director General, Department of Local Government, Letter, 6 June 2012.



- 7.10 The Committee is of the view that local governments would benefit from clearer information about how and when to administer their LEMC functions. This advice could be formulated by a state wide review of existing LEMC procedures within individual LGAs; and could be done in conjunction with FESA (who administers the *Emergency Services Act 2005* and supporting policy development) and the Department of Local Government, to ensure that processes are relevant to both local emergency service requirements and the existing administrative and secretariat resources of the LGA.<sup>1190</sup> Any review would have to ensure that resultant processes are ultimately determined on a local level so that arrangements are responsive to local emergency management capabilities.
- 7.11 The Committee also believes that the benefits gained by enabling the functions prescribed to LEMC's under the *Emergency Management Act 2005* to include consultation with organisers of higher risk events and adventure sport activities in a local government district is worthy of consideration as part of any review of LEMC procedures.
- 7.12 The Committee also agrees with the observations made during the Kununurra LEMC meeting on 6 September 2011 that future event organisers need to in some way be informed that it is necessary to provide a risk assessment to the LEMC. This may enable the LEMC to determine whether the organisers have considered the risks properly—and to ask the organisers to remedy the situation if they have not.<sup>1191</sup>

### Finding 36

Ambiguity appears to exist around the procedures to trigger the Local Emergency Management Committees (LEMCs). This process should be reviewed and clearer procedures developed and implemented with priority.

### Recommendation 10

Local Emergency Management Committee (LEMC) processes should be reviewed to ensure that:

- Local government authorities, emergency service organisations, other government agencies and event organisers are made aware of the requirements of a LEMC, and that
- Consideration is given to extending LEMC abilities to review and advise on proposals for higher risk and adventure spotting events.

<sup>1190</sup> As previously mentioned in Chapter 6, the LGA must provide secretariat and administrative support to the LEMC.

<sup>1191</sup> Submission No. 15 from Shire Wyndham East Kimberley, 5 April 2012, p. 10.

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### ***Health Act 1911 (WA) - “eligible” event approval processes***

- 7.13 As mentioned at 6.14 above, an event must first be considered a ‘public building’ under the *Health Act 1911 (WA)* (Health Act) before the requirement for the events approval process is triggered.
- 7.14 This process has at least two valuable aspects. Firstly, it requires the relevant local government authority to approve applicable events with regard to the health, safety, and amenity of people attending the event (6.142 above). Secondly, DoH can also provide assistance to local governments and event organisers during this process, including in relation to the review of risk management plans (6.194 above).
- 7.15 Since the Health Act was amended in 1992, the definition of a ‘public building’ has been the cause of debate.<sup>1192</sup> As it stands, the Act states that a public building can include a place where people usually or occasionally assemble for entertainment, recreation or sporting events.
- 7.16 In DOH’s view, the term ‘assemble’ is at the core of whether an event is deemed eligible for a public building approval. In accordance with its interpretation,<sup>1193</sup> an event with spectators (as opposed to participants) is more likely to require public building approval because the risk to public health is greater than those events where there is no spectator element.<sup>1194</sup>
- 7.17 SWEK<sup>1195</sup>—and DoH—determined that the 2011 Kimberley Ultramarathon was not a public building under the Health Act (because of the lack of spectators) and therefore the approval processes that would normally apply to such an event were not required.<sup>1196</sup>
- 7.18 The Committee does not make a finding contrary to the Department of Health’s interpretation of what constitutes an eligible event under the Health Act—and whether the 2011 Kimberley Ultramarathon should have been an eligible event under the Act.
- 7.19 It does nonetheless assert that the potential risks associated with the running of the 2011 Kimberley Ultramarathon would have been more adequately addressed—by

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1192 Dr Andrew Robertson, Department of Health, Electronic Mail, 29 May 2012.

1193 It should be noted that the DoH provided to the Committee copies of two legal opinions on this point, prepared soon after the Act was amended and intended to provide some clarification on the definition of a public building.

1194 Dr Andrew Robertson, Department of Health, Electronic Mail, 29 May 2012.

1195 As referred to in Chapter 6, LGA’s are responsible for administering public building approvals in accordance with the *Health Act 1911, Part VI (Public Buildings)*.

1196 Submission No. 4 from Department of Health, 2 April 2012, p. 2; Submission No 15 from Shire of Wyndham East Kimberley, 5 April 2012, pp. 8-9.

event organisers and appropriate government agencies—had the event approval process under the Health Act (see 7.14 above) been undertaken.

- 7.20 With reference to the public building definition, the Committee notes the following concluding statement made in one of the legal opinions provided by the DoH about this definition:

*In general, this definition is sure to be an ongoing source of contention and administrative confusion until it is amended.*<sup>1197</sup>

- 7.21 The Committee agrees that this definition is problematic and finds that it should be reconsidered as part of the current review of the Health Act<sup>1198</sup> in order to include high risk and /or adventure sporting events as eligible events under the prescribing legislation. This will allow these events to be regulated under the Act with respect to the potential public health risks these events attract.

- 7.22 In addition, further amendments could be made to the Act to ensure that relevant authorities are provided with medical and risk assessment documents—to the satisfaction of those relevant authorities—prior to any event approval process being completed. On this point, the Department of Health submitted that *‘[t]here is the potential under the [public health] Bill that specific legislation could be developed as part of Policy or Regulations pertaining to health requirements of sporting, high risk or other public events, and mass gatherings.*<sup>1199</sup>

- 7.23 Dr Andrew Robertson expanded on this point at a hearing with the Committee:

*Under the draft public health bill... what we can do is to have some basic requirements outlined as part of that, so that may be, for example, from a health point of view the provision of a medical plan by the planners or the provision of a risk assessment by the planners as a requirement prior to an event going ahead.*<sup>1200</sup>

- 7.24 Dr Robertson added that there is currently no statutory or regulatory requirement for event organisers to provide a medical or risk assessment plan to DoH.<sup>1201</sup> Similarly, there appears to be no requirement under the Health Act for organisers to provide

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1197 Dr Andrew Robertson, Department of Health, Electronic Mail, 29 May 2012. Copy of correspondence from Crown Solicitors Office to the Health Department of Western Australia, 16 September 1992.

1198 The review of the *Health Act 1911* (WA) is described in further detail at paragraphs 6.196 and 6.197.

1199 Submission No 4 from Department of Health, 2 April 2012, p. 1.

1200 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p. 2.

1201 *ibid.*

## Chapter 7

these materials to the LGA responsible for approving the application.<sup>1202</sup> When asked if the draft Public Health Bill would be the appropriate pathway by which event organisers could be required to provide these documents prior to an event being approved, Dr Robertson stated that:

*I think it is actually probably an appropriate vector in these circumstances. Our concern is less about the effective running of the actual event or its economic or other benefits, but about the safety of either participants in that event or, in some cases, the spectators... Our interest is to make sure of the safety and wellbeing of all the people concerned. So I think it is probably an appropriate place to put it.*<sup>1203</sup>

- 7.25 As mentioned at paragraph 6.194 above, DoH has already developed substantial medical and risk assessment tools as a part of its ‘*Guidelines for concerts, events and organised gatherings*’ that in part assist local governments in considering health risks when approving events. DoH can also provide direct advice to LGAs and event organisers about the medical and public health risks associated with eligible events under the Act. However, many of these services, including the ability to review risk management plans, are only provided upon request (by either the LGA or the organiser depending on the service requested (see list at 6.194 above)).
- 7.26 The Committee believes that the current review of the Health Act should consider ways to enable high risk and adventure sport activities to be captured under the Act’s event approvals process. Consideration should then be given to amending the subsidiary legislation to ensure that organisers of eligible events are required to provide relevant authorities with copies of medical and risk planning documentation. This will improve the future likelihood of a robust risk identification and mitigation process being applied by relevant local authorities to events such as trail ultramarathons.

### Recommendation 11

The review of the *Health Act 1911* (WA) should include the following amendments:

- enabling high risk or adventure sport activities to be subject to the events approval process currently applicable to ‘public buildings’ and;
- that a requirement be introduced for organisers of eligible events to provide medical and risk management plans to relevant authorities for assessment—prior to any event approval being completed.

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1202 For example, under Section 176 (2), public building applications ‘shall be accompanied by ... such plans, certificates and other information as are specified by the local government’.

1203 Dr Andrew Robertson, Executive Director, Disaster Management, Regulation and Planning, Department of Health, *Transcript of Evidence*, 20 April 2012, p2.

**Land use approvals (DRDL and DEC)**

- 7.27 Mr Keiran McNamara, Director General, Department of Environment and Conservation (DEC), made the following observation to the Committee:

*You do not go on land that you do not own or control and run an event without some form of contact with and permission from the responsible authority. That is the logical starting point.*<sup>1204</sup>

- 7.28 The process of seeking permission for land use from a responsible authority should have been followed in the lead up to the 2011 Kimberley Ultramarathon—a fact that appears to have been widely misunderstood throughout the planning process for the event.
- 7.29 As established in paragraphs 6.237 and 6.238 of this report, the land over which a significant portion of the 2011 Kimberley Ultramarathon was planned to be run was not privately-owned land—as was commonly thought to be the case—but on pastoral leases, which are Crown land. Consequently, permission was required to be sought from the Department of Regional Development and Lands (DRDL), as this activity fell outside the specified activities for the pastoral leases.
- 7.30 In the case of the 2011 Kimberley Ultramarathon, DRDL confirmed that the appropriate approval process would have been achieved through the application for a Section 91 License under the *Lands Administration Act 1977* (WA).<sup>1205</sup>
- 7.31 The Committee is satisfied that had a section 91 License application been received by DRDL, the department's processes would likely have ensured that appropriate agencies and interested parties would have been made aware of this event. The Committee finds it feasible that this would have improved the risk mitigation planning for the event.
- 7.32 DRDL informed the Committee that, in addition to DRDL's own due diligence to 'address mitigation of identifiable risks',<sup>1206</sup> a formal referral of the event to the LGA would have occurred (see 6.241 above). It is arguable that had this referral occurred, SWEK would have had a greater awareness that the event was being run off road and over terrain which posed some risk to competitors. This may have prompted SWEK to bring the event to the attention of the LEMC—or to request from RacingThePlanet a copy of their risk management plan, so that the Shire could inform itself as to the

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1204 Mr Keiran McNamara, Director General, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 8.

1205 See paragraphs 6.254 & 6.255 for more detail on Section 91 Licenses.

1206 Submission No. 23 from Department of Regional Development and Lands, 23 April 2012, p. 4.

## Chapter 7

potential risks associated with the event. At a minimum it would have alerted SWEK to the fact that it had to consider the event as part of its function to assist the state in administering Crown land within its region.<sup>1207</sup>

- 7.33 Notably, in terms of future measures, with Crown land covering 93 per cent of the state,<sup>1208</sup> the land use permission process administered by DRDL would capture the majority of events being run on land that is not privately owned.
- 7.34 Some sections of Crown land administered by DRDL under the Land Administration Act, are managed by DEC.<sup>1209</sup> The Committee asked DEC what approval process would be required for an event to be run on land it manages. Mr McNamara responded that under the CALM regulations,<sup>1210</sup> DEC has a rigorous—and widely published<sup>1211</sup>—approval processes for all events conducted on DEC managed lands.<sup>1212</sup> Mr McNamara informed the Committee that DEC require a number of conditions to be met before approval for the use of the land can be given.

*In the types of conditions that we issue for permission to carry out such events, we require event management plans; we require emergency response plans; we require identification of emergency vehicles; we require the carriage of appropriate communication equipment; we require that organisers and participants are all appropriately briefed about those matters; we have requirements in terms of the advance notice of those sorts of documents; and so on so they can be looked at properly. On our website, in terms of some of the guidance for the sorts of things that people need to be conscious of, we have mention of the fact that we do carry out a range of operations, prescribed burning being one of those. But aerial feral animal control, for example, is another sort of operation, and those are the logical reasons why people need to seek prior permission and so on .... we certainly do have requirements for a proper event plan and a proper emergency*

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1207 Mr Declan Morgan, Director, State Land Services, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 12.

1208 Mr Paul Rosair, Director General, Department of Regional Development and Lands, *Transcript of Evidence*, 9 May 2012, p. 2.

1209 DEC manages a little over 10 per cent of the land area in Western Australia. Department of Environment and Conservation, 'Land', n.d. Available at: [www.dec.wa.gov.au/content/section/25/1618/](http://www.dec.wa.gov.au/content/section/25/1618/). Accessed on 9 August 2012.

1210 Conservation and Land Management Regulations 2002.

1211 Department of Environment and Conservation, *Conducting events in WA's parks and reserves*, nd. Available at: [www.dec.wa.gov.au/content/view/5356/2232/](http://www.dec.wa.gov.au/content/view/5356/2232/). Accessed on 27 July 2012.

1212 Mr Keiran McNamara, Director General, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 4. For more information on the requirements of this approval process, see Supplementary Item A, Department of Environment and Conservation, 10 May 2012, pp. 1-3.

*response plan as part of the process of seeking permission to carry out such events on DEC-managed lands.*<sup>1213</sup>

- 7.35 While the Committee does not make any finding with respect to the type of permission a private land owner may give to run an event on their property, the Committee is satisfied that the legislative framework within the state is sufficiently rigorous to capture permissions required for events run on DEC and DRDL managed lands—lands which cover 93 per cent of the state. These permissions, when sought, require sufficient information to be provided to the relevant Department for the risks associated with these events to be adequately identified and assessed. However, the Committee also sees this process as a means by which organisers should be able to receive advice on environmental risks applicable to the area in which the event is being conducted (including bushfires).
- 7.36 Notably, these agencies involve relevant LGAs in the approval process, which provides another means by which local emergency service agencies can be incorporated into the approval process.
- 7.37 The Committee has recognised that, with specific regard to Section 91 Licence applications, an inherent weakness exists where event organisers and other government agencies may be unaware of the requirement for this approval. This was evident in the case of the 2011 Kimberley Ultramarathon. In its critique of DRDL in Chapter 6, the Committee has made a recommendation that is aimed at addressing this weakness.
- 7.38 It is also critical that Tourism WA gives specific regard as to whether land use approvals need to be sought, particularly from DRDL, when conducting due diligence for event sponsorship proposals that require sign off by both departments.

### **Finding 37**

Current land use approval processes administered by both Department of Regional Development and Lands and the Department of Environment and Conservation provide appropriate vehicles through which the identification and mitigation of risk can be addressed by event organisers in consultation with relevant government agencies.

These processes are applicable to Crown land, which covers 93 per cent of the land in Western Australia.

Consideration should be given as to how these processes can be used to ensure that the input of Local Emergency Management Committees is sought during risk assessments for organisers of high risk and adventure sport activities.

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<sup>1213</sup> Mr Keiran McNamara, Director General, Department of Environment and Conservation, *Transcript of Evidence*, 20 April 2012, p. 4.

## Chapter 7

### **Recommendation 12**

Department of Regional Development and Lands and Department of Environment and Conservation should consider how their respective land use approval processes can incorporate the input of Local Emergency Management Committees (LEMCs) as part of risk assessments for high risk events and adventure sport activities.

### **Recommendation 13**

Tourism WA must give specific regard as to whether land use approvals need to be sought, particularly from Department of Regional Development and Lands, when conducting due diligence for event sponsorship proposals that require sign off by both departments.



## Chapter 8

### Compensation

- 8.1 The Committee has not made any findings of legal liability, nor sought to apportion blame on any party for the injuries sustained by competitors in the 2011 Kimberley Ultramarathon.
- 8.2 However, the Committee does recognise the tragic outcome of the fire that swept through the Tier Gorge on 2 September 2011. For Miss Pitt and Miss Sanderson in particular, the long-term consequences of this incident and their resulting injuries cannot be truly comprehended by the Committee.
- 8.3 Their physical and emotional recovery is likely to be arduous and to come at a significant financial cost.
- 8.4 Had the race been a success, the State government would no doubt have leveraged off its success. The event was sponsored by Tourism WA, and the event was filmed in the expectation that it could be used to promote Western Australia.
- 8.5 There is therefore a strong moral case that as the event resulted in terrible injuries to Miss Pitt and Miss Sanderson, the State should consider some form of financial compensation to assist with their ongoing treatment.
- 8.6 Accordingly, the Committee requests the Attorney General give urgent consideration to determining an ex-gratia payment for Miss Pitt and Miss Sanderson.
- 8.7 The Committee also requests the Attorney General give urgent consideration to determining an ex-gratia payment for Mr Michael Hull and Mr Martin Van Der Merwe who also suffered injuries requiring hospitalisation for skin graft surgery.

#### **Recommendation 14**

The Attorney General gives urgent consideration to determining an ex gratia payment for:

- Miss Turia Pitt and Miss Kate Sanderson; and
- Mr Michael Hull and Mr Martin Van Der Merwe



## Chapter 9

### Jurisdiction of the Coroner to investigate bushfires

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**This Chapter puts forward a recommendation that the Western Australian Coroner should have the jurisdiction to conduct investigations into bushfires and make recommendations even if no death results.**

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#### **Coroner's inquest was a distinct possibility**

- 9.1 As previously noted, given the life-threatening nature of Ms Sanderson and Miss Pitt's injuries, the WA Police collected witness statements for a possible coronial inquest in the event that either woman died.
- 9.2 As the two women survived, the Coroner had no jurisdiction under the *Coroners Act 1996* to investigate and inquire into the matters covered in this Report.<sup>1214</sup> Prior to 1996, the Western Australian Coroner would have had jurisdiction to inquire into this matter, because under *the Coroners Act 1920* the Coroner had jurisdiction to investigate the cause and origin of any fire where "life of man endangered".
- 9.3 The combined FESA / WA Police report found no evidence of criminality, hence the WA Police did not investigate the matter further.
- 9.4 The State government, via the Minister for Tourism Hon. Dr Kim Hames, initially sought advice from the Public Sector Commissioner and Tourism WA on the options by which an inquiry might be undertaken. The advice received was that the State government was limited in the powers it had available to it to conduct a sufficiently thorough investigation into the matter.<sup>1215</sup> However, the Committee notes that the Public Sector Commission subsequently commenced an investigation. On 28 March 2012 the Public Sector Commissioner advised the Committee that this investigation had been put on hold due to the Committee's Inquiry.<sup>1216</sup>
- 9.5 The matter was raised during a sitting of the Legislative Assembly. At the end of the ensuing debate, it was decided that a parliamentary inquiry would be used to

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1214 Minister for Tourism, Supplementary Item B – Response to Question on Notice, 23 May 2012 (Closed Evidence).

1215 Hon. Colin Barnett, Premier; Hon. Dr Kim Hames, Deputy Premier, Minister for Tourism; Hon. Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 February 2012, pp. 26-32.

1216 Briefing with Mr Mal Wauchope, Public Sector Commissioner, 28 March 2012.

## Chapter 9

investigate the event and its aftermath. Both government and opposition parties agreed to bring the matter back before the House when time had been given to consider an appropriate Terms of Reference.<sup>1217</sup>

- 9.6 On 1 March 2012, the Legislative Assembly directed the Economics and Industry Standing Committee to investigate and report to the House on the 2011 Kimberley Ultramarathon.

### **Is a Parliamentary Committee an appropriate body to conduct an investigation of this nature?**

- 9.7 If it were not for the ability of the House to refer this matter to the Committee, there was every likelihood that the matters uncovered by this Committee would not have seen the light of day. The Committee is of the view that it performed a vital role in addressing a gap in the present legislative framework to investigate fires causing injury.
- 9.8 The Committee is a Standing Committee of the Legislative Assembly tasked with the oversight of Government portfolios that, as the name suggests, pertain to economics and industry. In that role the Committee has a high level of expertise. The House directed inquiry into Gas Pricing in Western Australia is an excellent example of the quality of work that the Committee, ably assisted by its Secretariat, is capable of producing.
- 9.9 This inquiry, which bears all the hallmarks of a coronial inquest save for the absence of a fatality, is entirely different to the work normally performed by the Committee.
- 9.10 This inquiry ideally required the combined services of a team of experienced investigators and lawyers.
- 9.11 In this regard, the Committee considers that the Coroner and his office has the appropriate experience and expertise in conducting inquests and investigations.

### **Analysis of Australian jurisdictions**

- 9.12 The Committee informed itself as to whether Coroners in other Australian States and Territories have the jurisdiction to investigate fire, without a death. The table below summaries the Committee's research.

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<sup>1217</sup> Hon. Colin Barnett, Premier; Hon. Dr Kim Hames. Deputy Premier, Minister for Tourism; Hon. Michelle Roberts, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 February 2012, pp. 26-32.

## Jurisdiction of Coroners to investigate fire

State or Territory	Does the Coroner have jurisdiction to investigate fires	
Western Australia	No	
New South Wales	Yes	A coroner has jurisdiction to hold an inquiry concerning the cause and origin of a fire or explosion if the coroner is satisfied that the fire or explosion has destroyed or damaged any property within the State. <sup>1218</sup>
Victoria	Yes	A person may request a coroner to investigate a fire. <sup>1219</sup>
Queensland	No	The Queensland Coroner does not have the power to investigate a fire unless there is a death.
South Australia	Yes	The Coroner's Court must hold an inquest to ascertain the cause or circumstances of the following events... If the State Coroner considers it necessary or desirable to do so, or the Attorney-General so directs ... a fire or accident that causes injury to person or property. <sup>1220</sup>
Tasmania	Yes	A coroner has jurisdiction to investigate a fire or an explosion if the fire or explosion occurs in the State and the coroner believes it is desirable to conduct an investigation. <sup>1221</sup> A coroner may comment on any matter connected with the fire or explosion including public health or safety or the administration of justice. <sup>1222</sup>
Northern Territory	Maybe	A coroner has jurisdiction to investigate a disaster, or to hold an inquest into a disaster. <sup>1223</sup> Disaster means an occurrence due to natural or other causes that: (a) causes or threatens to cause: (i) substantial loss of life or property; or (ii) substantial injury to persons or property; or (b) in any way substantially endangers the safety of the public in any part of the Territory. <sup>1224</sup>
Australian Capital Territory	Yes	The ACT Coroner has the jurisdiction to investigate a fire if the coroner is of the opinion that the inquiry "should be held."

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1218 Coroners Act 2009 (NSW), s 30.

1219 Coroners Act 2008 (Vic), s 31(1).

1220 Coroners Act 2003 (SA), s 21(1)(b)(iv).

1221 Coroners Act 1995 (Tas), s 40(1).

1222 Coroners Act 1995 (Tas), s 45(2).

1223 Coroners Act (NT), s 6(1).

1224 Coroners Act (NT), s 3.

## Chapter 9

9.13 The Committee is attracted to the Tasmanian jurisdiction model where:

- A coroner has jurisdiction to investigate a fire or an explosion if the fire or explosion occurs in the State and the coroner believes it is desirable to conduct an investigation; and
- A coroner may comment on any matter connected with the fire or explosion including public health or safety or the administration of justice.

### **Committee's view**

9.14 It is the Committee's view that the Western Australian Coroner, had it been seised of jurisdiction, would have been the most appropriate body to conduct the investigation the subject of this Report; and accordingly makes the following recommendation:

#### **Recommendation 15**

The Coroner's Act 1996 should be amended to give the Coroner jurisdiction to investigate fires that do not cause death, and that the Coroner should be suitably resourced to undertake investigations of the kind the subject of this Report.

# Appendix One

## Satellite Imagery

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### **Bushfire monitoring websites**

The Committee is aware of three websites that display satellite imagery of bushfire activity in the Kimberley region. They are:

- the Firewatch website - [firewatch.landgate.wa.gov.au](http://firewatch.landgate.wa.gov.au)
- the NAFI website - [www.firenorth.org.au](http://www.firenorth.org.au)
- the Sentinel website - [sentinel.ga.gov.au](http://sentinel.ga.gov.au)

The Committee is aware that the NAFI website and the Firewatch website were available to any member of the public to access on 2 September 2011 (the day of the race).

The evidence of Mr Michael Bass of El Questro is that he regularly accessed the NAFI website to monitor fire activity.

### **Satellite Remote Sensing Services and Firewatch**

Satellite Remote Sensing Services (SRSS) is a section of Landgate. SRSS operate and maintain the Firewatch website.

With the assistance of the SRSS, the Committee learned how to interrogate the Firewatch website, and retrieve and analyse satellite data relevant to the Tier Gorge region for the day of the fire, being 2 September 2011.

SRSS's assistance to the Committee has been limited to the provision of the technical data that is discussed in this Appendix. The Committee has not relied upon SRSS for any commentary or opinion as to the movement of fires on the day of the race, or what may have been apparent to RacingThePlanet on the day of the race.

The Committee collected the following datasets from the Firewatch website for the Terra (morning) and Aqua (afternoon) passes over Australia on 2 September 2011:

Hotspot datasets:

2 9 2011 at 9.55 (WST) Terra from Alice Springs

2 9 2011 at 12.38 (WST) Aqua from Perth

## MODIS Daytime Imagery

2 9 2011 at 09.57 (WST) Terra from Perth Band 721<sup>1225</sup>

2 9 2011 at 12.38 (WST) Aqua from Perth Band 721

SRSS advises that:

- the morning Terra satellite on 2 September 2011 was close to overhead in the Kimberley.
- the afternoon Aqua satellite pass was centred over the central Northern Territory, but would not have created any panoramic distortion.<sup>1226</sup>
- The Band 721 image from the Terra satellite pass on 2 September 2011 at 9.57am was available on the Firewatch website at 10.35am<sup>1227</sup>; and
- the Band 721 image from the Aqua satellite pass on 2 September 2011 at 12.38pm was available on the Firewatch website at 1.00pm.

## Hotspot and Band 721 satellite imagery on the day of the race

The Committee requested maps from SRSS portraying:

- contours of the Tier Range and nearby topographic features from the State's topographic database; and
- the race route as digitized based on the map provided by RacingthePlanet;

overlain on:

- a georectified image showing the hotspot and Band 721 spectrum satellite information for the 9.57 am pass over of the morning Terra satellite; and
- a georectified image showing the hotspot and Band 721 spectrum satellite information for the 12.38 pm pass over of the afternoon Aqua satellite.

This was done in ArcGIS. These two images are reproduced on the next two pages.

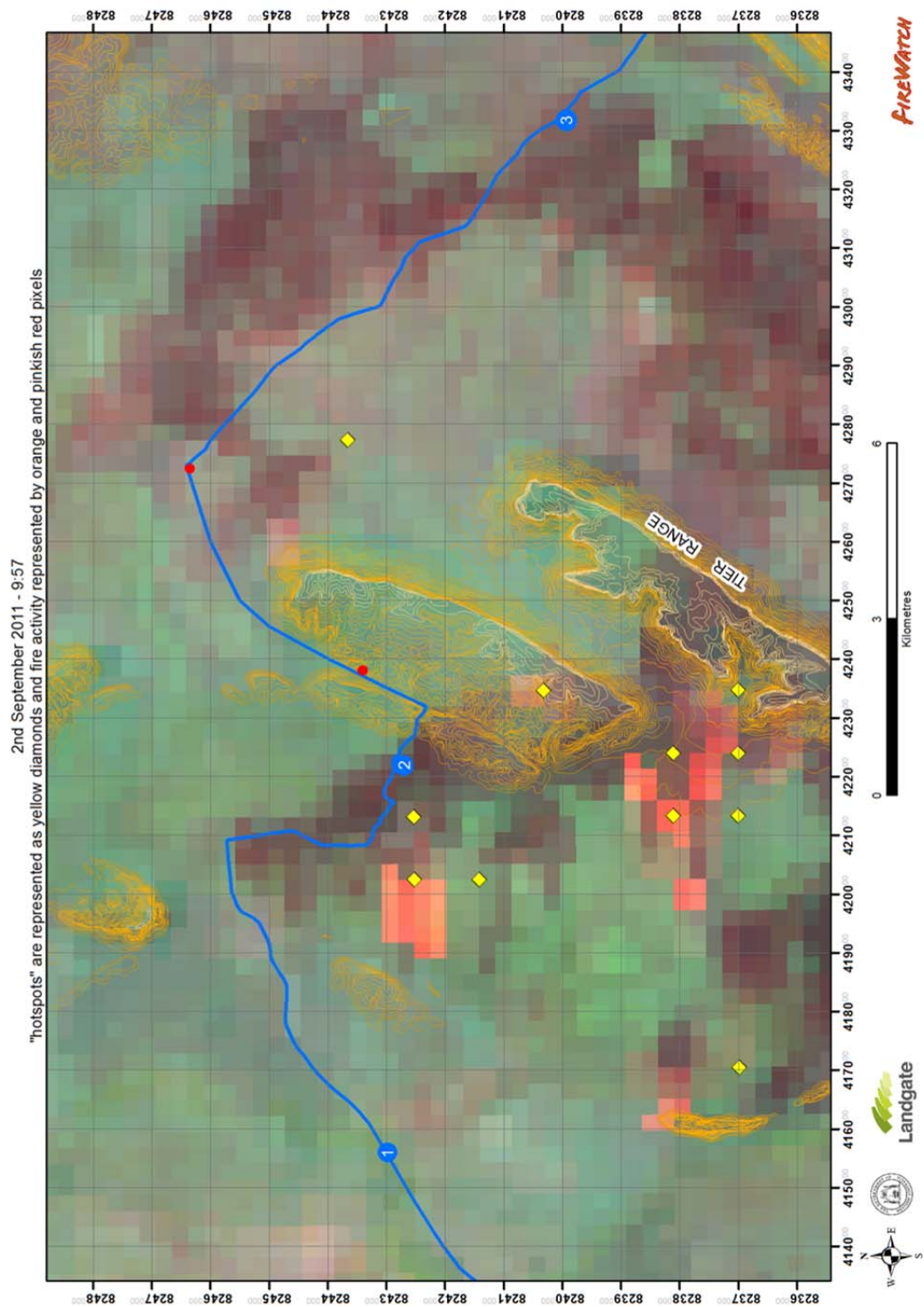
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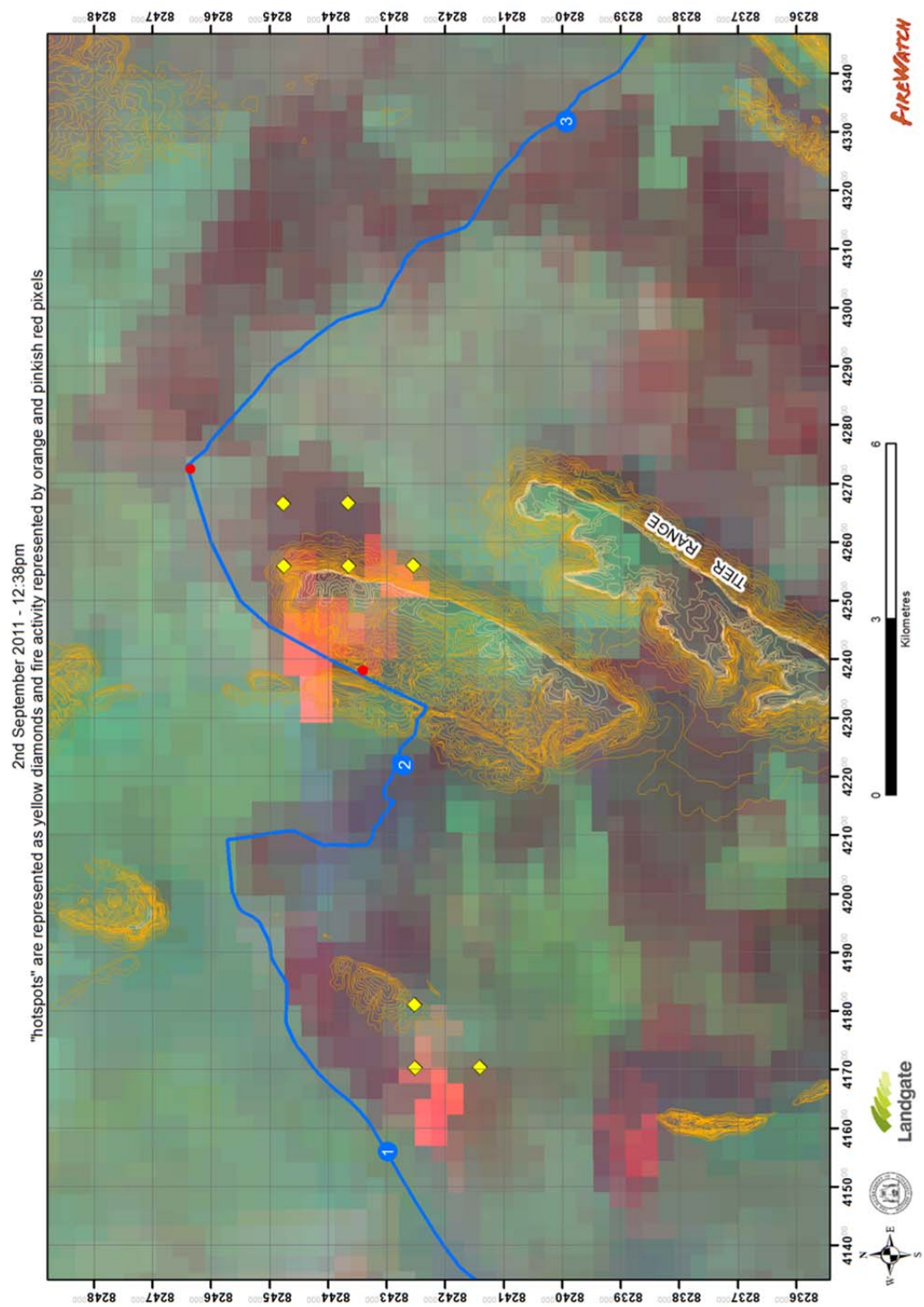
1225 721 is shorthand for channels 7, 2 and 1 of the MODIS sensor with 500 metre ground resolution

1226 Firewatch website advises that the accuracy of the hotspot location is +/- 2 km and that at the edge of satellite images the position of the hotspots can be up to 5 kms out and spread in an east / west direction due to panoramic distortion.

1227 The times to website may be +/- 5 minutes due to differences in computer clocks – email from SRSS to Committee dated 11 July 2012.







**Committee's analysis of this satellite imagery**

SSRS advise that the Band 721 imagery is a combination of channels 7, 2 and 1 of the MODIS sensor with 500 metre ground resolution. This combination is more sensitive to active fires and will give orange to pink colour at an active fire.

Comparing the 9.57 am Band 721 imagery and the 12.38 pm Band 721 imagery the Committee was struck by how the faint orange pixel at the northern entrance to Tier Gorge changed to a profusion of red pixels engulfing the northern half of Tier Gorge.

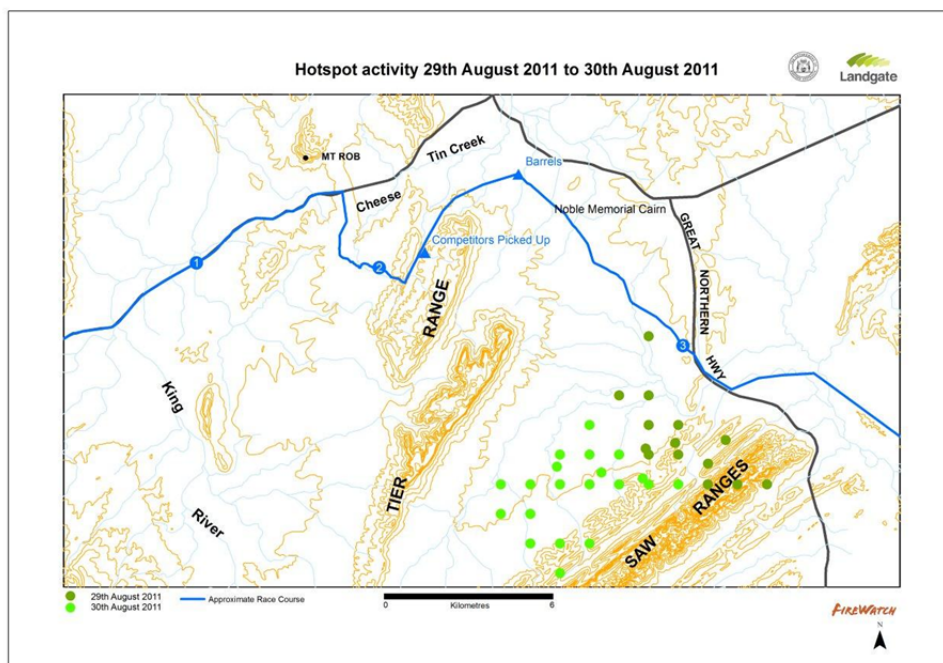
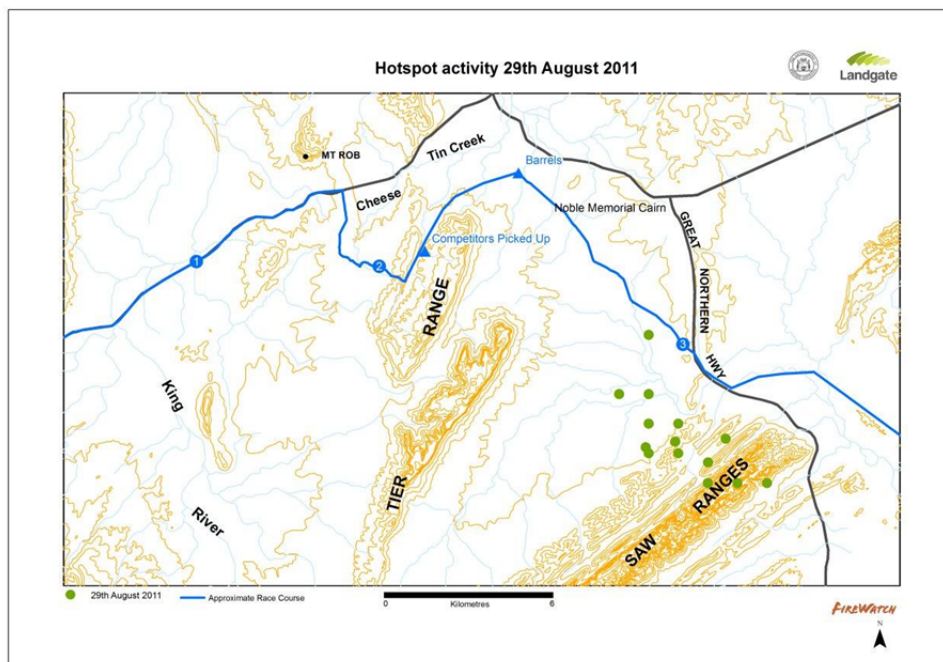
It appears to the Committee that by equating orange and red with fire activity it seems that between 9.57 am and 12.38 pm, that there was a rapid expansion of fire activity at the northern end of the Tier Gorge.

**Hotspot satellite imagery in the days leading up to and including the day of the race**

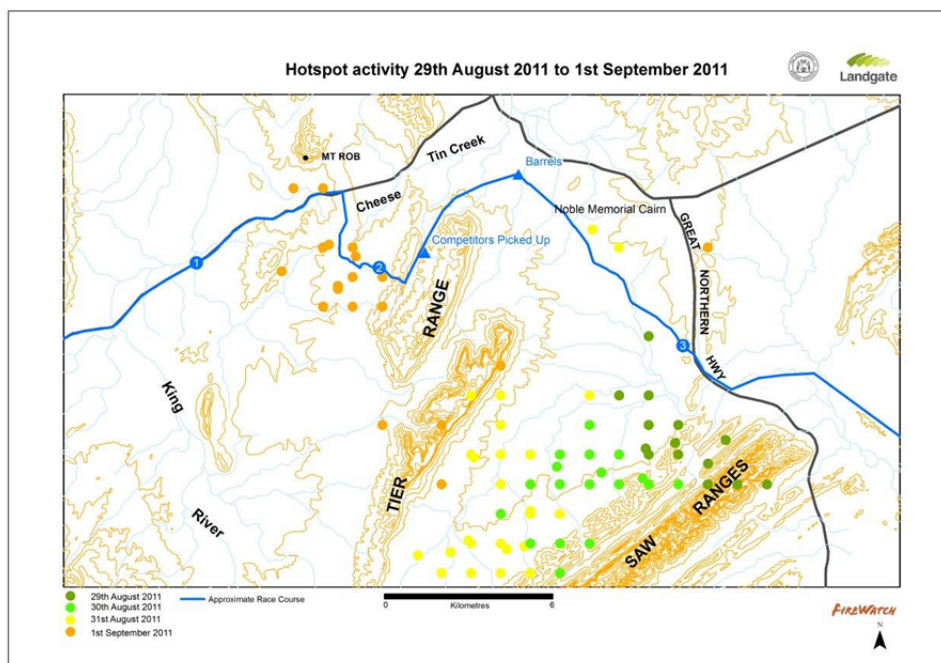
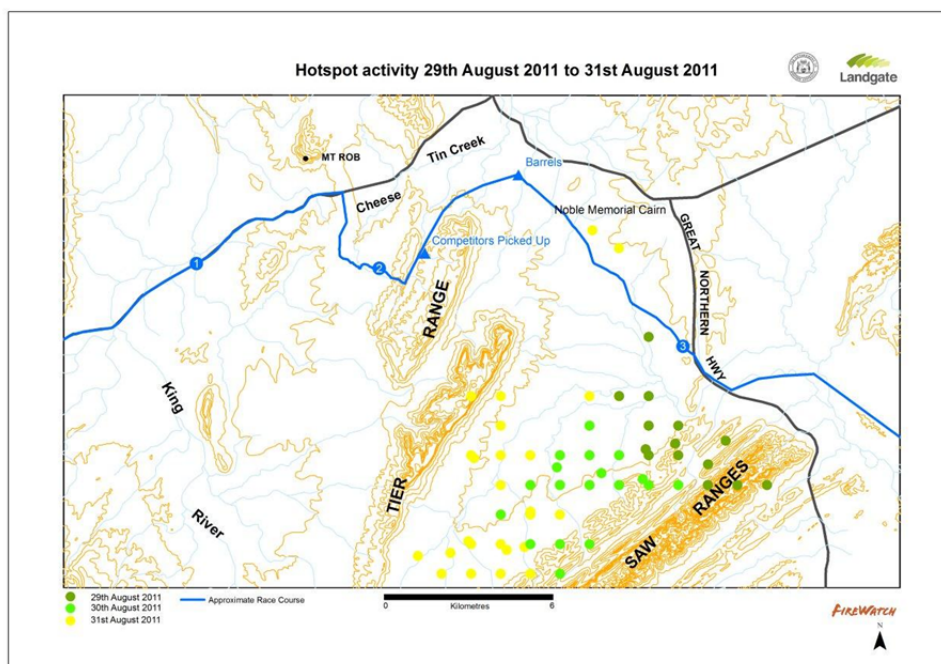
The Committee also requested maps from SRSS portraying the race route as digitized based on the map provided by RacingthePlanet overlain on a georectified image showing the hotspot satellite information for each of the following days:

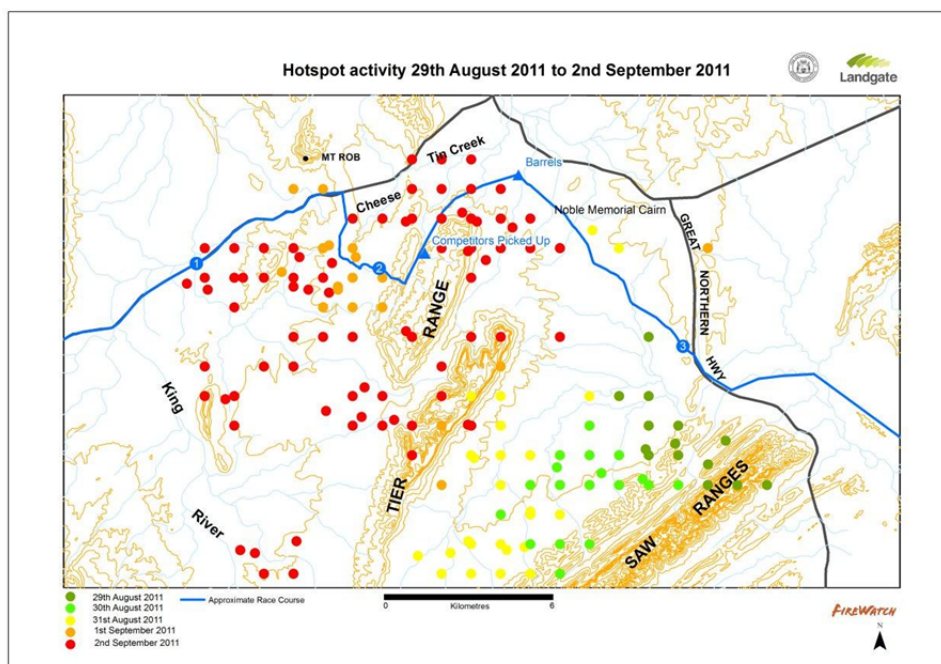
- 29 August 2011 (entire 24 hour period)
- 30 August 2011 (entire 24 hour period)
- 31 August 2011 (entire 24 hour period)
- 1 September 2011 (entire 24 hour period); and
- 2 September 2011 (entire 24 hour period)

These images are reproduced below.









### Use of bushfire monitoring websites by Kimberley pastoralists

The evidence of Mr Michael Bass of El Questro is that he regularly accessed the NAFI website to monitor fire activity.

What is useful about the websites is that the hotspots and other images derived from information streamed by the Terra and Aqua satellites are uploaded to the websites in 'near' real time. As noted above, the Band 721 image from the Terra satellite pass on 2 September 2011 at 9.57am was available on the Firewatch website at 10.35am ; and the Band 721 image from the Aqua satellite pass on 2 September 2011 at 12.38pm was available on the Firewatch website at 1.00pm.

According to an information brochure<sup>1228</sup> the Firewatch and Sentinel fire-tracking sites are both excellent websites, however, unlike these sites, the NAFI website is tailored to meet the needs of north Australian fire managers who have to manage savanna grass or woodland fires over large area often with limited resources. These fire managers are often pastoralists or Indigenous ranger groups rather than fire management agency staff. The NAFI website was developed with, and for, these end-users and consequently has a number of distinctive features:

- The hotspots are colour-coded to show 6hr, 12hr, 24hr, 48hr and weekly intervals to reflect the pace of these large but often slow-moving fires

1228 [http://savanna.cdu.edu.au/savanna\\_web/information/downloads/NAFI-Doco.pdf](http://savanna.cdu.edu.au/savanna_web/information/downloads/NAFI-Doco.pdf).

- Fire scars, mapped from MODIS satellite images using recognition software, are updated weekly during the northern fire season. These are colour coded by month and are used as a guide to the likely path of fires and as a guide to the effectiveness of fuel-reduction burns.
- The viewing settings of the site (when hotspots and fire scars and other map features appear as you zoom in and zoom out) have been tailored to the needs of landscape-scale fire managers who want to see fire behaviour at the scale of 10-100s of km.
- The site has a number of pre-set map views, suggested by end-users to enable quick access to fire maps. The website has also been developed to allow quick access to maps for users with low connection speeds.

The Committee was informed by SRSS that the Firewatch website has been under significant redevelopment for the past several years and many of the features noted above for NAFI are in new Firewatch, which is due to be launched at the end of August 2012.

## **MODIS**

The Committee has informed itself of the following.

MODIS (or Moderate Resolution Imaging Spectroradiometer) is a key instrument aboard the Terra<sup>1229</sup> and Aqua<sup>1230</sup> satellites.

One of the unique features of the MODIS instrument is its Direct Broadcast capability – in addition to storing data for later download at designated intervals, MODIS immediately broadcasts the raw data it collects on the chance that someone on the ground below is listening. The Terra MODIS instrument was one of the first satellites to constantly broadcast data for anyone with the right equipment and software to download, free of charge.

Terra's orbit around the Earth is timed so that it passes from north to south across the equator in the morning, while Aqua passes south to north over the equator in the afternoon.<sup>1231</sup>

Terra MODIS and Aqua MODIS are viewing the entire Earth's surface every 1 to 2 days, acquiring data in 36 spectral bands, or groups of wavelengths.

MODIS detects fire hotspots by using a contextual algorithm that exploits the strong emission of mid-infrared radiation from fires. The MODIS fire detection algorithm,

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<sup>1229</sup> Terra successfully launched on 18 December 1999.

<sup>1230</sup> Aqua successfully launched on 4 May 2002.

<sup>1231</sup> <http://modis.gsfc.nasa.gov/data/directbrod/index.php>.

known as MOD 14 or M14 for short, can detect fires because fires have a recognizable thermal signature.<sup>1232</sup> Whenever the M14 algorithm detects a "hot spot," it flags the signal's location in the data set. When the data get turned into an image, the fire-detection locations from the product are added as an overlay on the image.<sup>1233</sup>

Under near-ideal conditions - nadir (straight-down) look with no clouds in the way, not too much smoke, relatively cool background terrain for comparison, etc. - the M14 algorithm can detect fires as small as 50m<sup>2</sup>. For instance, a small, very hot fire in a cold area, such as an oil-well fire during the winter, would be detectable under the above criteria. But considering that about 70 percent of the planet's surface is covered in clouds at any given time, these ideal circumstances are hard to come by.<sup>1234</sup>

MODIS can routinely detect fires at an average size of 30 meters by 30 meters (900m<sup>2</sup>) under a variety of conditions: differing satellite positions, all MODIS scan angles, and both relatively hot and cool fires. Under these more typical circumstances, the algorithm can detect a fire about the size of a quarter acre.<sup>1235</sup>

MODIS completes one orbit around the earth every 98 minutes, which makes it well suited for gathering data about time-sensitive events like fires. Add to that the fact that there are two MODIS instruments in orbit, and the differences in fires between morning and afternoon can be detected. Having morning and afternoon looks at the same area also allows for monitor changes in fire frequency, intensity or location over the course of the day.<sup>1236</sup>

The Firewatch website contains the option to display hotspots using the M14 algorithm as well as a proprietary algorithm developed by SRSS. The Committee asked SRSS why this was so. The SRSS advised the Committee that the M14 algorithm used to detect fire hotspots was more conservative than it needed to be and was underreporting known fire events (by comparing M14 fire hotspots to mapped fire scars). By working with FESA and the then CALM, the SRSS tuned the algorithm to be more sensitive. This has resulted in reportedly less errors of omission (not reporting a fire hotspot when there is one) in the northern part of Australia.

SRSS advised that the increased sensitivity of the algorithm, however, can create errors of commission in the southern part of Western Australia (reporting a fire hotspot when there isn't one), particularly in urban environments where building rooves can be highly reflective in the mid infrared. SRSS train DEC and FESA staff every so often on interpreting fire hotspot information from Firewatch (or Sentinel).

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1232 A background on the physics and on the algorithms used to detect hotspots can be found at [http://modis.gsfc.nasa.gov/data/atbd/atbd\\_mod14.pdf](http://modis.gsfc.nasa.gov/data/atbd/atbd_mod14.pdf).

1233 *ibid.*

1234 *ibid.*

1235 *ibid.*

1236 *ibid.*



As SRSS is not a research agency and most of the validation data is located in northern Australia, SRSS have never performed a rigorous comparison of M14 to SRSS hotspots to known active fires. SRSS do assess its proprietary algorithm against mapped fire burnt areas. SRSS also relies on customer feedback (primarily from DEC and FESA) with respect to accuracy of detection. Accuracy is a two sided question between errors of omission and errors of commission. SRSS are unable to make a categorical statement that SRSS fire hotspots are more “accurate” than M14, even in the north of Australia. Given the increased sensitivity, SRSS’s proprietary algorithm will report more fire hotspots than M14.

The Committee elected to use the SRSS’s propriety hotspot dataset instead of the M14 hotspot dataset.

SRSS advised the Committee that the science of detecting hotspots comes with certain other limitations and caveats:

- hotspots (whether detected by the M14 or SRSS proprietary algorithm) are based on looking for pixels that are thermal anomalies relative to the surrounding pixels;
- it is the average thermal energy in these 1 km by 1 km squares that is being measured and compared by the algorithm;
- thus a perfectly contained campfire is capable of being reported as a fire hotspot, but a slow burning grass fire in springtime may not b reported as a fire hotspot;

the accuracy of the hotspot location is +/- 2 km.



## Appendix Two

### Terms of Reference

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That the Economics and Industry Standing Committee investigate and report by 21 June on the 2011 Kimberley Ultramarathon event held by RacingThePlanet (RTP) which resulted injuries to a number of participants. The investigation will include:

- a) whether RTP took all reasonable steps to identify and reduce risks and maintain the safety of competitors, employees, contractors, spectators and volunteers in the preparation for and the running of the event and in responding to the fire and the injuries, including access to medical support and evacuations;
- b) the extent to which the terms and conditions applied by an event organiser to employees, volunteers and competitors and any associated sponsorship agreement with WA Tourism should reasonably protect the safety and interests of competitors, employees, contractors, volunteers and spectators;
- c) insurance and civil liabilities matters and the appropriateness of the *Civil Liability Act 2002* (Western Australia) provisions regarding liability of operators and organisation of recreational activities particularly of a high risk nature;
- d) the extent to which WA Tourism adequately assessed the qualifications, capability, experience, and capacity of RTP to organise, promote and run the event safely and with appropriate protections to competitors, employees, contractors, volunteers and spectators and the extent to which these should be assessed for future events;
- e) the role and actions of Western Australian government departments and agencies, including WA Tourism, DEC, FESA, Police and Health departments and local governments in respect of the event and the protection and rescue of competitors, employees, contractors, volunteers and spectators; and
- f) whether there are measures that should be taken by government to ensure the risks including bush fires in remote areas in the context of extreme sporting events are adequately identified and addressed.



## Appendix Three

### Submissions received

Name	Position	Organisation
Mr John Storey		
Superintendent Mick Sutherland	Kimberley Police District Officer	WA Police
Mr John Jacoby	Director	Rapid Ascent Pty Ltd
Mr Kim Snowball	Director General	Department of Health
Ms Beverley Puls		
Mr Greg Walsh	Solicitor	Greg Walsh & Co (On behalf of Miss Turia Pitt, Mr Michael Hull, Mr Shaun Van Der Merwe, Mr Martin Van Der Merwe and Mr Hal Benson).
Mr Lon Croot		
Mr Matt Meckenstock		
Mr Greg Robinson	President	Victorian Rogaining Association Inc
Mr William Southey	Special Counsel	Gadens Lawyers (On behalf of Delaware North El Questro Pty Ltd)
Mr David Lowe	Acting Chief Executive Officer	Tourism WA
Mr Len Fiori	Ambulance Services Director	St John Ambulance WA
Ms Mary Gadams	Founder/Chief Executive Officer	RacingThePlanet Events Limited
Mr Keiran McNamara	Director General	Department of Environment and Conservation
Mr Gary Gaffney	Chief Executive Officer	Shire of Wyndham East Kimberley
Mr Wayne Gregson APM	Chief Executive Officer	Fire and Emergency Services Authority of Western Australia
Mr Paul Cripps		
Mr Geoff Taylor		
Mr Andrew Baker		
Mr Ian Sanderson		
Mr Andrew Hewat	Race Director, Great Ocean Walk 100s and Bogong2Hotham	Trail Running Company Pty Ltd
Miss Kate Sanderson		
Mr Paul Rosair	Director General	Department of Regional Development and Lands

Mr Evan Hall	Chief Executive Officer	Tourism Council Western Australia
Mr Nathan Summers		
Mr Simon Rimmer	Director	Karunjie Event Management
Mr David Malone	Executive Director	Healthway
Dr Julie Brahm, MD, FRCPC	Medical Team Volunteer 2011 Kimberley Ultramarathon	
Mr Carlos Garcia Prieto		

## Appendix Four

### Hearings

Date	Name	Position	Organisation
20 April 2012	Mr Glenn Hamilton	Director Events, Eventscorp	Tourism Western Australia
	Mr David Lowe	Acting Chief Executive Officer	
	Mr Gwyn Dolphin	Executive Director, Eventscorp	
20 April 2012	Mr Keiran McNamara	Director General	Department of Environment and Conservation
	Mr Luke Bentley	Acting East Kimberley District Manager	
20 April 2012	Dr Andrew Robertson	Acting Executive Director, Public Health and Clinical Services	Department of Health
23 April 2012	Mr Craig Waters	District Manager, Fire Investigation and Analysis Unit	Fire and Emergency Services Authority of Western Australia
23 April 2012	Assistant Commissioner Michael Burnby	Police Officer	Western Australia Police
	Superintendent Michael Sutherland	Kimberley Police District Officer	
	Detective Senior Constable Robert Seaman	Police Officer, Arson Squad	
	First Class Constable Krystle Duckett	Police Officer, Wyndham Police Station	
	First Class Constable Robert Wolfe	Police Officer, Wyndham Police Station	
23 April 2012	Mr Gary Gaffney	Chief Executive Officer	Shire of Wyndham East Kimberley
	Mrs Nadia Donnelly	General Manager	Kununurra Visitors Centre
23 April 2012	Mr Sarel De Koker	Community Paramedic	St John Ambulance

	Mr Matthew Maywald	Operations Manager	
	Mr Philip Strapp	Regional Manager	
23 April 2012	Mr Paul Cripps	Operations Manager/Pilot	Heliwork WA
	Mr Bryn Watson	Pilot/Paramedic	
24 April 2012	Mr John Storey	Farmer	
	Mrs Ann-Marie Storey	Farmer	
24 April 2012	Mr Lon Croot	Volunteer	
	Mr Frederic Mills	Former Shire President	Shire of Wyndham-East Kimberley
24 April 2012	Mr James Salerno	Cattle Operator/Landowner	Salerno Pastoral
30 April 2012	Miss Turia Pitt	Competitor, Racing ThePlanet 2011 Kimberley Ultramarathon	
	Miss Kate Sanderson	Competitor, Racing ThePlanet 2011 Kimberley Ultramarathon	
	Mr Michael Hull	Competitor, Racing ThePlanet 2011 Kimberley Ultramarathon	
	Mr Shaun Van Der Merwe	Competitor, Racing ThePlanet 2011 Kimberley Ultramarathon	
2 May 2012	Ms Mary Gadams	Founder/CEO	RacingThePlanet Events Limited
9 May 2012	Mrs Stephanie Buckland	Chief Executive Officer	Tourism Western Australia
	Ms Kate Lamont	Chairman (Board)	
9 May 2012	Dr Kim Hames, MLA	Minister for Tourism; Health	
9 May 2012	Mr Andy Hewat	Race Director	Great Ocean Walk 100, Bogong2Hotham
9 May 2012	Mr Paul Rosair	Director General	Department of Regional Development and Lands
	Mr Declan Morgan	Director, State Land Services	
	Mr Colin Slattery	Director, Regional Investment	
9 May 2012	Mr Robert Boyce	President	Australian Ultra



	Miss Bernadette Benson	Vice President	Runners Association (AURA)
10 May 2012	Mr Frank Chidiac	Executive Producer	Beyond Action
10 May 2012	Mr Evan Hall	Chief Executive Officer	Tourism Council Western Australia
23 May 2012	Mr Tony Stevenson	Fire Services Manager, East Kimberley	Fire and Emergency Services Authority of Western Australia

## Appendix Five

### Functions and Powers

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The functions of the Committee are to review and report to the Assembly on:

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee received or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.