

ACT 'jumped gun' on coroner

By Megan Doherty

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The ACT and nine of its employees had "jumped the gun" by applying to the Supreme Court to have Coroner Maria Doogan barred from the inquiry into the January 2003 bushfires, an expert in coronial law said yesterday.

Australian National University academic Hugh Selby said the Government knew right from the start of the inquiry that Mrs Doogan was going to conduct an investigation far beyond her legal powers. This was denied by Chief Minister Jon Stanhope.

Mr Selby also raised concerns about the manner in which coroners were appointed to inquiries in the ACT, saying it was simply the magistrate rostered on at the time of an incident who conducted the subsequent investigation. Mrs Doogan was the duty magistrate on the weekend of the firestorm.

"It's absurd we enter into multi- million-dollar inquiries conducted by people who've never had any training or experience in conducting such an affair," he said.

"It certainly helps to appoint experienced counsel assisting - as happened here - but it's time we had coroners legislation that reflected the realities of broad-ranging inquiries into disaster causes and prevention."

But Mr Selby, who has edited two books on coronial law, says arguments the Government is politically interfering in the inquiry are baseless and claims that a breach of the separation of powers is occurring are nothing more than a red herring.

The \$6million bushfire inquiry is on hold indefinitely after the ACT and nine of its employees successfully applied to the Supreme Court that Mrs Doogan show cause why she should not be removed from the inquiry on the ground of reasonable apprehension of bias. If the action, to be heard next year, is successful, Mrs Doogan will be asked to step aside and a new coroner appointed and another inquiry started.

Mr Selby said the ACT and its employees had jumped the gun and unnecessarily stalled the inquiry because there was a condition built into the Coroners Act that allowed anyone facing an adverse finding from a coroner to respond to it before it was published. That reply would also be published in a coroner's final report.

Mr Selby said it was "amazing" the Supreme Court action had been taken before a draft report had been produced by Mrs Doogan.

"So if they were going to make this application, the time to make it was when they got the draft report and then they could say, if it was true, 'She is so prejudiced against us that our ability to comment is not a real opportunity to correct the unfairness to us,'" he said.

Lawyers for the nine individuals, including former Emergency Services Bureau executive director Mike Castle and former chief bushfire control officer Peter Lucas-Smith, have argued in their submission that the safeguard is not guaranteed.

They claim "the fair-minded lay observer may reasonably apprehend" that Mrs Doogan had delegated the function to counsel assisting and that "the submissions

to be made by counsel assisting will be treated by [her] differently, and more favourably, than the submissions to be advanced by counsel for interested parties and, in particular, counsel for officers of the territory and the territory itself".

Despite his belief that the Government moved too soon, Mr Selby said there was nothing wrong in the Government or its present or former employees seeking to protect their interests in the Supreme Court and such action did not amount to political interference in the judiciary.

"There is no separation of powers problem in this issue. It's a complete red herring and stuff and nonsense," he said.

Mrs Doogan said in a press statement six days after the January 18 firestorm last year killed four people and destroyed 491 homes that because of the "enormous scale of the disaster" and its devastating impact, "the parameters of the investigation will be very broad".

"The office of the coroner has a legal duty to investigate all aspects of the manner and cause of deaths of those persons who lost their lives, as well as the cause and origin of the fires that destroyed and damaged property," she said. "In addition, there will be ample opportunity to fully and publicly examine the emergency management and response arrangements, and to make any recommendations if necessary in that area."

Mr Selby said the coroner made her intentions clear about conducting a broad investigation well before the start of the inquiry and "nobody quibbled". That was despite a precedent in Victoria where a coroner investigating deaths in a Pentridge jail fire was directed by the Supreme Court to not extend his inquiry beyond the letter of the law - that is not to go beyond the date, manner and cause of the deaths.