

BUSH FIRES AMENDMENT BILL

Committee

The Deputy Chairman of Committees (Hon Helen Morton) in the chair; Hon Peter Collier (Minister for Energy) in charge of the bill.

Clause 1: Short title —

Hon ADELE FARINA: In his response to the second reading debate, the minister indicated that he had not provided answers to a number of issues and that I could raise further questions or we could explore issues during the committee stage. I trust it is appropriate for me to do it at this time. If not, I am sure you will give me some guidance on that, Madam Deputy Chairman.

I would like clarification from the minister whether the intention under this bill is that the Fire and Emergency Services Authority will have a role simply coordinating resources at a statewide level in the case of a complex multitenure fire, or whether the intention through the provisions of this bill are that the Fire and Emergency Services Authority's role will be much more extensive and can include taking control of a fire for the purpose of the actual suppression of the fire on the ground.

Hon PETER COLLIER: An authorised person will have authority and control for a complex fire. That person must have, obviously, competency and the appropriate skills, and that person may come from the Fire and Emergency Services Authority, from the Department of Environment and Conservation or from local government.

Hon ADELE FARINA: It is my understanding that the government has taken the counsel of the O'Gorman committee report on the drafting and introduction of this bill. In that report, at recommendation 48, four criteria were set out, which provided guidance for the circumstances in which FESA would take control of a fire. That very much narrowed down the occasions on which one could expect FESA would come in and take control of a fire. Those criteria have not been adopted in the provisions of the bill. Why has the government not sought to implement the recommendations in full as recommended by the O'Gorman committee report?

Hon PETER COLLIER: The criteria that the member is referring to from that recommendation are now in Westplan-Bushfire and they were agreed to by DEC, local government and FESA.

Hon ADELE FARINA: My concern with the course of action that has been taken is that the committee report recommended that those criteria be inserted in the legislation. Insertion of those criteria in the legislation would provide Parliament with an opportunity to scrutinise that the four criteria recommended were in the act and would provide some legal force to those arrangements. My concern is that by putting those criteria into the bushfire plan, Parliament will not have an opportunity to scrutinise them; they can be amended at any time without the scrutiny of Parliament. That raises a number of concerns, because the committee report was very clear in its recommendation that those four criteria be stipulated in the legislation. My understanding is that cabinet has endorsed that committee report and has sought that the recommendations in the committee report be implemented through legislation. But we now see a divergence between the committee's recommendations and the provisions in the legislation, yet there has been no explanation from government as to why it has diverted its course of action, given that there is cabinet approval endorsing the recommendations of the committee report.

Hon PETER COLLIER: During the drafting of the legislation it was agreed by all three parties—that is, FESA, DEC and local government—that putting it in the bill would be too restrictive. They agreed with the format; therefore, what will happen now is that there will be amendment only by agreement of those three parties—DEC, FESA and local government.

Hon ADELE FARINA: That is great, but a parliamentary committee has reported to Parliament, Parliament has endorsed the committee report, cabinet has endorsed the committee report, and now we are hearing that three government agencies have decided that they will ignore the endorsement of that report by Parliament and cabinet and do something quite different. The minister comes into this Parliament asking us to have faith in the three government departments and indicates that the criteria will be followed because they are in the bushfire plan.

Also, there is a lack of legal force with the criteria appearing in the plan, as opposed to appearing in the legislation. My understanding from my briefing with FESA officers is that a number of the changes that are to be introduced by this bill are required to clear up the legal circumstances regarding which one of the authorities has control of a fire. It seems to me that by not including those criteria in the legislation, we will be back in a situation of great uncertainty about when FESA may take control of a fire. Those criteria could change over time

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

without any scrutiny of Parliament, and those criteria do not have any legislative force, as they are not included in the legislation.

It concerns me also that we are hearing that FESA has expressed concern that it would be too restrictive to put the four criteria into the legislation. My understanding is that it was the intention of the parliamentary committee that that control would be exercised in only very limited circumstances. That intention was endorsed by Parliament through the endorsement of that committee report and it was endorsed by cabinet, yet we are seeing efforts already being made to avoid that. I do not believe the explanation given to date by the minister is sufficient, and I really require some better or fuller explanation of why government has diverged from the path it indicated it was going to take, which was to adopt the committee report in full.

I also ask the minister to provide me with a copy of the bushfire plan so that I can see that the criteria are included in that plan and how they have been included in the plan. My concern is that when I was briefed by FESA officers, they informed me that all four criteria would need to be satisfied before FESA would take control of a fire. However, recommendation 48 of the O’Gorman committee report refers to the four criteria in an “and/or” capacity. It is no longer clear to me the exact circumstances in which FESA will take control of a fire. I therefore ask the minister to table the bushfire plan so that I can see what is in the plan. I ask him to do so this evening before we progress any further consideration of this bill, as we cannot consider it in the absence of this information. Also, the minister should detail to Parliament exactly the circumstances in which FESA will be able to take control of a fire under this legislation.

Hon PETER COLLIER: I understand the honourable member’s point in regard to the scrutiny of Parliament et cetera, but in addition to having the consent of the three agencies—that is, the Fire and Emergency Services Authority, the Department of Environment and Conservation and local government—there was also advice from Parliamentary Counsel that it would be too restrictive and it would be problematic. There is the agreement between those three agencies. In relation to the honourable member’s second point about Westplan-Bushfire, we will make every attempt to get the draft document during the dinner break.

Hon ADELE FARINA: There was one further question that the minister has not addressed; that is, under what circumstances is it intended that FESA will be able to take control of a fire?

Hon PETER COLLIER: In answer to the honourable member’s question, in circumstances where the criteria is multi-tenure, multi-agency and where there is a serious threat, or a serious threat to infrastructure. It has to be a major fire for FESA to take that control.

Hon ADELE FARINA: The minister mentioned three criteria. I note that there were four criteria in recommendation 48 of the O’Gorman committee report. Do all three criteria need to be met before FESA will consider taking control of a fire, or can any one of those criteria be met?

Hon PETER COLLIER: No. It can be any one, or a combination of them.

Hon ADELE FARINA: During the briefing with FESA, FESA made it very clear to members on this side of the chamber—I understand also to the other side of the chamber—that as a result of the requirement for the four criteria to apply before FESA will take control of a fire, there would only be about four or five situations a year in which FESA would be in a position where it might exercise that power and take control of a fire.

Hon PETER COLLIER: That is correct.

Hon ADELE FARINA: The minister has now told me that there are going to be three criteria as opposed to four and that any one of those criteria applying will be sufficient for FESA to exercise the power that has been provided under the legislation for it to take control of a fire. That would suggest to me that there could be a greater number of fires that FESA could take control of during a year as a result of what is now a substantial downgrading of the criteria and the circumstances in which FESA would exercise that power. I again ask the minister: please clarify for this Parliament, because I am no longer clear, in exactly what circumstances FESA will take control of a fire, and for how many fires a year on average does the minister anticipate that FESA will use this lower level of criteria to take control of the fire?

Hon PETER COLLIER: I do not mean to trivialise this, but we will not have a perfect fire every time. It is not going to happen. We may have a major fire that will only have one of those criteria. I accept the honourable member’s point. We will get the fourth criteria for clarification during the break. The member is talking about half a dozen fires a year, but to say that we will not categorise a fire as a major fire because it does not have the four criteria is just sheer folly. It may be a major fire with one of those criteria.

Hon ADELE FARINA: Would the minister please explain to me how he and the legislation define “major fire”?

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

Hon PETER COLLIER: Westplan-Bushfire has that criteria. As I said, we will make every attempt to get the honourable member a copy of that during the break.

Hon ADELE FARINA: I am not too sure how to do this, but can I move that consideration of clause 1 be deferred until the end of the consideration of the provisions of the bill? If I am not going to have access to the plan until some time after the dinner break, there may be other issues that I want to raise after I have reviewed that plan. I obviously will not be in a position to do that if we conclude debate on clause 1.

The DEPUTY CHAIRMAN (Hon Helen Morton): Minister, before I make a ruling on this, have you got anything additional to say about that?

Hon PETER COLLIER: No. I think I have addressed all the issues raised. We have given a commitment to get the draft of Westplan-Bushfire.

The DEPUTY CHAIRMAN: Rather than postpone the clause, given the time I think it would be more prudent to rise until the ringing of the bells to give the minister time to do what he needs to do. We will resume after the dinner break.

Sitting suspended from 5.57 to 7.30 pm

Hon PETER COLLIER: I would like to clarify some questions asked by Hon Adele Farina. As I mentioned earlier, all four conditions will not necessarily be met for a serious fire to be declared, and recommendation 48 of the Community Development and Justice Standing Committee report states that. It reads —

The power for FESA to take control of a fire from local government or CALM is to be restricted to when the fire:

- Is a multi-agency incident and State-level control is required; and/or
- Has escalated to a pre-determined, critical level; and/or
- Has moved from CALM-managed land and into FESA’s legislative jurisdiction; and/or
- Is threatening life and property.

The recommendation states that all the criteria will not necessarily be in unison and that it can be one or the other. I made an undertaking to provide a copy of the draft Westplan-Bushfire document, which I have, and I seek leave to table that document.

Hon GIZ WATSON: What is the status of that document?

Hon PETER COLLIER: It is titled “State Emergency Management Plan for Bushfire (Draft V4 23102009) (Westplan-Bushfire)”. I referred to that plan before the break.

Leave granted. [See paper 1502.]

Hon PETER COLLIER: Page 17 of that plan talks about FESA taking control of the fire, and reads —

FESA, in consultation with the other agencies may assume control of a fire(s) when:

- (a) a bushfire has assumed or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or agency in whose area or locality it is burning, or
- (b) a bushfire is not being effectively controlled or suppressed by the fire fighting authority or authorities in whose area or locality it is burning, or
- (c) a multi-agency or multi-tenure fire requires or may require the coordination of resources and community information.

I hope that goes some way to helping resolve members’ problems.

Hon ADELE FARINA: It is a bit hard to comment on this document when we do not have it in front of us. If I understood the minister correctly—please correct me if I am wrong—the introductory words that he read out said “in consultation with” the Department of Environment and Conservation and local government. Is the minister saying that FESA will take control of a fire only in consultation with DEC and the local government agency and that FESA does not have the power under the act to make that determination without any consultation or agreement?

Hon PETER COLLIER: There may be circumstances or situations in which, because it is a matter of urgency, it is not possible to contact the other agencies. The urgency of the situation may prevent the contact from occurring.

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon
Alison Xamon; Hon Max Trenorden

Hon ADELE FARINA: I do not know about other members, but now I am totally confused. We have been told that it is very unlikely that FESA will exercise this power except in the most extreme and complex fire, then we are told that only one of the four criteria needs to apply, which would indicate it is not an extreme fire.

Hon Peter Collier: That is not right.

Hon ADELE FARINA: Now we are being told that the wording is in the Westplan-Bushfire plan, and now that wording appears to be inconsistent with the legislation that we are considering, which clearly says that FESA can take control of a bushfire, basically, anywhere in the state. However, the wording in the Westplan-Bushfire document suggests that there is a requirement for FESA to consult with DEC and local government before exercising that power. It is just extraordinary that the government would bring a bill to Parliament in the circumstances that it has. The responsibility is not clearly specified in the legislation, as was recommended by the parliamentary committee, but we were told that it would be specified in Westplan. We are now being told that there is an apparent inconsistency between the power that is provided under the legislation and what has been written in the bushfire plan. How is anyone supposed to know in what circumstances —

Hon Peter Collier: What is the inconsistency?

Hon ADELE FARINA: The minister just read out—I am happy to be corrected—a preamble that said that consultation would take place before FESA took control of the fire. However, the legislation contains no requirement for consultation. I am confused. I do not how bush fire fighters —

Hon Peter Collier: They are all supportive of it.

Hon ADELE FARINA: — are supposed to understand what is going on in the event of a bushfire. We have been assured by the government of the need for this legislation to provide legal clarity of who has control of a bushfire. It seems that we have absolutely no certainty under what has been proposed about who has control of a bushfire and when that may or may not change.

Hon PETER COLLIER: With all due respect, the honourable member is being a little precious with this. We cannot predict what sort of fire a bushfire will be. It does not erupt based on the criteria of an act. We do not know. Essentially, we cannot determine the severity of a bushfire. FESA is going to consult wherever possible with the other agencies, but to suggest that there is something clandestine or underhand with the format or the process is to deny the fact that if we have a bushfire that is of such severity that FESA needs to take control, it will take control. However, wherever possible, it will make contact with the other agencies. It is as simple as that.

Hon GIZ WATSON: I want to comment on this matter since it has substantial bearing on the concerns raised with me about the legislation. I was thinking of raising it during a later clause, but now is as good a time as any. There seems to be an inconsistency between the public statements about what this bill does and does not do and the wording of the bill. The bill does not refer to consultation. I concur with the concerns raised by Hon Adele Farina about the public's perception. I think everybody is supportive of providing legal certainty regarding FESA's taking control in the event of a catastrophic or extreme fire. I do not think there is any debate about that aspect. The minister is right that there is a broad level of agreement between the different firefighting bodies that operate in the state at the moment. I am concerned that the legislation leaves it totally to the discretion of FESA to declare any fire under its control. What I have heard in this debate tonight does nothing to alter that fact.

I also share the concerns that Westplan-Bushfire is not under the control of Parliament and is subject to change. Although some of the concerns that have been raised in this debate have been answered, I do not think this fundamental one has been dealt with. I continue to receive communications from volunteer firefighters and people in DEC about their concerns in this regard. This is why I and others are suggesting that the legislation needs to be amended to make it clear. If it is intended that the bill only provide FESA with the power to step in when one or all of those four criteria are met, that is what it should say.

Hon PETER COLLIER: I understand the member's concerns. I clarify first of all that if FESA takes control or appoints an authorised person, it does not mean that FESA will impose itself. It may be that DEC or the local council appoints an authorised person. In addition, the Westplans, one of which we are looking at at the moment, have been approved by the State Emergency Management Committee. It is not a FESA compilation.

Hon GIZ WATSON: It still seems that the decision will rest solely with FESA, even though Westplan-Bushfire might indicate that, where circumstances permit, consultation will occur. I have enough understanding of bushfires and I have had a little bit to do with them to know that we need to act quickly at certain times. The main concern that continues to be conveyed to me relates to those other bodies that engage in bushfire fighting, particularly in country areas where FESA has very little experience, except in extreme and catastrophic fires. It is entirely logical that that level of command is deployed. The legislation does not say that it applies only in those

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon
Alison Xamon; Hon Max Trenorden

circumstances. When we get to clause 7, it will be clear that the powers are very broad. We might get some reassurance in *Hansard* tonight that that is not the intention.

To be quite blunt, I think this is poorly drafted legislation that has been put together in a hurry out of a natural concern about this season's bushfire potential. We have every sympathy for that, but that does not mean that Parliament should pass legislation that claims to do one thing and does not. That is why we have a committee system. I argue again that this bill should have gone to a committee so it could have been properly teased out and perhaps these answers could have been addressed and the passage of this bill would have been a lot smoother.

Hon PETER COLLIER: Again, I understand the member's point. The act gives FESA the power to appoint that authorised person. There will be consultation between DEC and local government wherever possible.

Hon GIZ WATSON: It just seems unfortunate that that has not found its way into the legislation. It is a fairly bare bones piece of legislation. I have amendments on the supplementary notice paper but not specifically on this matter. I reiterate again that the Greens, and I am sure all members and political parties represented in this place, are keen to get legislation through expediently, but it is not ideal to pass legislation that is not clear and does not reflect both the policy intent and the stated intent of a government. I am just trying to assist in this process. That is the role of this house. All I can say is that I think it is unsatisfactory in this regard.

Hon COL HOLT: There are a couple of issues I have noticed about consultation and input from volunteers in decision making. There is reference in the "State Emergency Management Plan for Bushfire (Draft V4 23102009) (Westplan — Bushfire)" to proposed section 13 and about what may happen. My understanding is that some judgement will have to be made about when those things happen and under what circumstances the Fire and Emergency Services Authority takes control. I take it that FESA can appoint anybody to the role of fire control officer.

Hon Peter Collier: What are you referring to?

Hon COL HOLT: The bushfire plan and proposed section 13. Is that right or not? It states —

FESA, in consultation with the other agencies may assume control of a fire(s) when:

- (a) a bushfire has assumed or is likely to assume such proportions as to be incapable of control or suppression ...

That is what the minister read out earlier, is it not?

Hon Peter Collier: Yes, that is correct.

Hon COL HOLT: Those three things require someone to make a judgement. Someone has to make the judgement that whoever is in control of a fire is able to ascertain whether a fire is incapable of control or suppression. The feedback I am getting is that that cannot always be done by FESA, which may or may not have the necessary experience of local bushfires. I understand what the minister is saying about the requirement for FESA to consult, but he has also said it does not have to, either. Consultation that recognises local expertise needs to be included in the process, along with an assurance that such consultation will take place.

Hon PETER COLLIER: I understand the point; it has been made by several members. I have noted some raised eyebrows about FESA's capacity, but I can assure members that FESA has a presence across Western Australia. It has very good links with local government and with the Department of Environment and Conservation. As I have already said—I will put it on record again—as stated in the plan, FESA may, in consultation with other agencies, assume control, and that will happen wherever physically possible.

The DEPUTY CHAIRMAN (Hon Michael Mischin): I remind members that we are debating clause 1, which is a fairly narrow debate. If we are going to get into the specifics of the operation of clauses, we might well wait until we get to those particular parts of the bill.

Hon ADELE FARINA: I will try to take the Deputy Chairman's guidance on that. It is, however, a little difficult when we did not get answers to all our questions during the second reading response and were told to ask them during the committee stage. I ask some forbearance.

With regard to the criteria set out in the bushfire plan, who exercises the decision about when those criteria have been met so that FESA can take control of a fire? How does it come to make the assessments that need to be made in order to satisfy one or more of those criteria?

Hon PETER COLLIER: With regard to the first question, the chief executive officer of FESA makes the decision, acting under advice. The way in which the decision is made will be determined entirely through the network of regional staff, regional contacts and links with local government and DEC.

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

Hon ADELE FARINA: My concern with what is being outlined is that we will have a situation in which, under the legislation, if a fire occurs on DEC land, DEC will have primary responsibility for managing its suppression. However, under this legislation, FESA can determine at any time that it is a major bushfire and that it will take control. That seems to raise a question about the level of control that DEC officers have in the management and suppression of fires. The original legislation makes it very clear that if a fire occurs on DEC land, a DEC officer will have control, but under this legislation there will be a situation in which the DEC officer will be in control, but FESA will be looking over his shoulder and could pull control from him at any time. This raises some serious concerns about how this will be managed and whether we are blurring the lines about who has control of a fire at any given time. Under this legislation, I can see a situation arising in which a DEC officer who has control of a fire that has broken out on DEC land will be given instruction by FESA and told that if he does not manage it in a particular way, FESA will take control of the fire because it is concerned about the potential for the fire to get out of control. That really starts to undermine the authority of the person who has control of bushfire suppression on the ground. I will be interested to hear the minister explain how the government intends this to happen and how we can be sure that, by passing this legislation, this sort of problem will not arise.

Hon PETER COLLIER: I understand the point, but the member is assuming that FESA will appoint a FESA officer as the authorising person, which will not necessarily be the case. In some instances it will not be the case, because the authorising person could be someone from DEC. That authorised DEC officer will then have access to statewide systems, processes, resources and public warnings. The authorised person could be a DEC officer.

Hon ADELE FARINA: In a situation in which a DEC officer is appointed as the authorised person, what is the line of authority for that officer from that point on? Will the officer still be subject to instruction and direction by the Director General of the Department of Environment and Conservation, or will the authorised officer be subject to the direction of the CEO of FESA? What happens when there is a situation in which the officer is getting different instructions from the two senior officers? How is he or she supposed to work out the line of authority?

Hon PETER COLLIER: That person will ultimately be answerable to FESA, and must comply with the applicable principles and guidelines of the “State Emergency Management Plan for Bushfire (Draft V4 23102009) (Westplan — Bushfire)”, as outlined.

The DEPUTY CHAIRMAN: I might suggest that some of these questions might be more properly directed to clause 5 rather than clause 1. I do not want to pre-empt the question that the member was about to ask, if it was not along the same theme.

Hon ADELE FARINA: That is not a problem; I will ask a different question. Can the minister explain the process for amending the fire plan, and how frequently will it be reviewed and amended?

Hon PETER COLLIER: It will be reviewed after the current bushfire season, in consultation with DEC and WALGA.

Hon Adele Farina: So that is annually?

Hon PETER COLLIER: It will be done after the current bushfire season. It is usually done every five years. It is at the discretion of the organisation, so it may be done earlier if there is a necessity for it, but it will be reviewed after the current bushfire season.

Hon ADELE FARINA: It is extraordinary just how much power this government is happy to pass on to the public service, rather than have it come before this Parliament for scrutiny. It seems to me that this government is not at all concerned about the role and responsibility of this Parliament in scrutinising this legislation and any review of the bushfire plan. That really concerns me. It needs to be put on the record exactly what this government is doing in seeking to pass this legislation and remove the ability of this Parliament to scrutinise what is proposed in this legislation. That is an issue that should be of great concern to all members of Parliament.

The minister has assured members a number of times that FESA does have the expertise and the competence to deal with bushfire management and suppression. I have asked a question about this matter on a number of occasions and have been promised an answer on most of those occasions, but the question remains unanswered. The question I have asked is: how many FESA officers have level 3 bush firefighting and command experience, and how many of these officers are located in the south west region? If the minister is going to assure us that FESA does have the capacity to manage bushfires, and that the concerns that have been raised with me as a member for the South West Region are unfounded, then it is reasonable that the minister provide a response to that question.

Hon PETER COLLIER: Under Westplan-Bushfire, FESA will ensure that all FESA, DEC and local government level 2 and level 3 incident management staff are pooled on a rostered basis. FESA has a rigorous

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

process for the endorsement of incident managers and has around 30 level 3 managers and more than 100 level 2 managers spread across the state, from Kununurra in the north, to Kalgoorlie in the east and to Esperance in the south. FESA has developed and has been running for the past 18 months a leading “major incident management for incident controllers” course specifically designed to train level 3 incident managers. This course has attracted national interest and attendance from interstate emergency services.

Hon ADELE FARINA: Would the minister mind answering the last part of that question; that is, how many FESA officers with level 3 bush firefighting and command experience are located in the south west region?

Hon PETER COLLIER: I am sorry. I do not have that information.

Hon Adele Farina: Can the minister at least answer if there is at least one level 3 FESA officer with bush firefighting and command experience in the south west region?

Hon PETER COLLIER: Yes; there is more than one.

Hon Adele Farina: Will the minister be able to provide me with a reply to that question at some point in time?

Hon PETER COLLIER: I cannot get the member an accurate figure tonight, but I undertake to get the member that information.

Hon Adele Farina: Tomorrow?

Hon PETER COLLIER: Yes.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 13 amended —

Hon COL HOLT: I have a follow-up question to the one that was asked by Hon Adele Farina about trained level 3 officers. Obviously we want to build the capacity of our regional communities to respond to bushfires. Is there an undertaking—I know it is not in the legislation—that DEC and volunteer officers in the regions will be able to obtain that level 3 training so that we will have a greater pool of people to call upon as fire liaison officers?

Hon PETER COLLIER: The higher level of training in major incident management is made available to volunteers who have already attended other major courses and are deemed competent to manage level 2 or level 3 incidents. Volunteers will continue to be appointed to key roles within incident management teams during major fires, proportionate with their experience and capability. Yes, there is a commitment that adequate training will be provided for as many DEC, FESA and local government staff as possible. That undertaking is there.

Hon GIZ WATSON: This clause forms a substantial part of the bill, and this is where my concerns reside about the policy intention and the public statements about this bill and what the bill actually says. Despite the assurances that we have heard tonight from the minister, it is clear that this clause will give FESA the power to take control of any fire, subject to a number of provisos—that is, either at the request of the local government or if, because of the nature or extent of the bushfire, the authority considers that it is appropriate to do so. I have just had the opportunity, in the less than half an hour that has passed since we were given the draft of the new Westplan-Bushfire document that will accompany this bill, to look at page 17 of that document. That states, under the heading “Criteria for FESA Control under Section 13”, which is the section that will be amended by clause 5 —

FESA, in consultation with the other agencies may assume control of a fire(s) when:

- (a) a bushfire has assumed or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or agency in whose area or locality it is burning, or
- (b) a bushfire is not being effectively controlled or suppressed by the fire fighting authority or authorities in whose area or locality it is burning, or
- (c) a multi-agency or multi-tenure fire requires or may require the coordination of resources and community information.

I think we would all agree that that is a very good set of criteria. Certainly in the brief time that I have had to consider them, I think that these are exactly the sort of circumstances in which FESA should take control. It is good to note that it talks about “in consultation”. I intend to move an amendment to this clause, which I will pass up to you, Mr Deputy Chairman (Hon Michael Mischin), in a minute. I move —

Page 3, line 27 — To delete all words after “(b)” and substitute —

FESA, in consultation with the other agencies may assume control of a fire(s) when:

- (a) a bushfire has assumed or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or agency in whose area or locality it is burning, or
- (b) a bushfire is not being effectively controlled or suppressed by the fire fighting authority or authorities in whose area or locality it is burning, or
- (c) a multi-agency or multi-tenure fire requires or may require the coordination of resources and community information.

For the information of members, this amendment would simply lift the detail from the draft Westplan-Bushfire and put it into the legislation. I have heard the argument from the minister—I appreciate that the minister is dealing with a bill that is not in his portfolio, so I have some sympathy for the challenge that that presents—but if the intention of the legislation is to operate only under those criteria, there should be no objection to this amendment. It would simply make that explicit. I have heard the minister say that he has had State Solicitor’s advice that any changes would make the bill complicated or whatever. Quite frankly, I have heard that comment previously from State Solicitors, and sometimes it has weight and sometimes it does not. Again, because we do not have the capacity to interrogate that advice, I ask members to consider this amendment. I think it is totally in keeping with the bill and does not do anything other than give more clarity and certainty to the circumstances in which FESA would take control.

However, I would consider a further change. If the words “in consultation with” in the amendment are problematic or are seen as an impediment, we could say “where possible” or “where practicable in consultation with”. I think this amendment would simply fix the problem that has been raised by many people. I know many people have raised this issue with not only the Greens (WA), but also other members in this place. I will offer the words to you, Mr Deputy Chairman, for your assistance. I indicate that I have circulated the amendment to a few members but more copies can be provided.

The DEPUTY CHAIRMAN (Hon Michael Mischin): I will make a couple of observations about the amendment. First, I think the member is going to have problems with the paragraph numbering. I am informed that that is a clerical matter that can be dealt with.

Hon GIZ WATSON: Mr Deputy Chairman, I might point out that paragraphs (a), (b) and (c) would become subparagraphs (i), (ii) and (iii) to accommodate that concern.

The DEPUTY CHAIRMAN: I also point out the use of the term “fire(s)”.

Hon GIZ WATSON: I have every confidence that the Clerk will be able to assist us in that matter. I apologise that I am doing it in this manner, but, as I am sure the Deputy Chair will appreciate, these words were provided to us only half an hour ago.

Hon KATE DOUST: While the minister is seeking advice, I indicate that I have listened to the debate and to the members who spoke about the need to provide in the legislation clarity and certainty about who will have management of these situations in certain circumstances. I have learnt from dealing with legislation that it is important that that detail be in the legislation. Although the detail is in the draft plan, these things can be changed from time to time. I appreciate that this is interim legislation, but it is just as important to have clarity for the people who will use this legislation in the short term. Removing these words and substituting the words from the Westplan-Bushfire document will provide that clarity, and so the opposition will support this amendment.

Hon PETER COLLIER: The government will not support the amendment. We feel that it is impractical. Essentially, proposed section 13(4)(b) refers to the “nature or extent of the bush fire”. That is a very broad term that allows the criteria to be determined within the plan. Currently, the bill allows for flexibility to change criteria within the plan. If there is a necessity to change the criteria, it can be done when the plan is reviewed. If the criteria are put in the bill, that flexibility is then removed. For those reasons, the government will not support the amendment. The current provision allows the three agencies, in consultation, to determine whether the criteria need to change due to changing circumstances.

Hon GIZ WATSON: I thank the minister. My question then is: what is the nature and extent that is envisaged in this legislation that is not encompassed in Westplan-Bushfire?

Hon PETER COLLIER: The criteria have been established as a result of consultation between the Fire and Emergency Services Authority, the Department of Environment and Conservation and local government. As I have said, if there is a necessity to change or build upon the criteria after the current bushfire season, the provision in the bill allows for the flexibility to make those changes. If the criteria are embedded within the bill,

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

it will make it very restrictive. The whole point of the bill in its current form is that it does not have that restrictive aspect.

Hon GIZ WATSON: I think the minister is making a brave go at this, but I am not convinced. I do not think that the words in the draft Westplan-Bushfire document are limiting; they are pretty broad in and of themselves. Westplan-Bushfire states that a bushfire has assumed or is likely to assume such proportions as to be incapable of control or suppression. It seems to me that that encapsulates the extreme or catastrophic fires that we are attempting to be better prepared for. For other fires that do not assume that proportion or are capable of control or suppression by the firefighting authority or agency that is in the area, we would not want FESA to step in. It seems to me also that if these words have already been discussed between the three key agencies, and I would assume in consultation with the relevant local government authorities as well, these words will already have the support and approval of other participating firefighting authorities. We would hope so, because that would be the level at which this had been discussed.

My next suggestion is that this part of the bill is so important to get right that I propose not to delay debate on other aspects of this bill. Clause 5 could be postponed, and I would like to have further consideration of this amendment. As the minister who has carriage of this bill in this house, the minister is probably reluctant to agree to something on the run. I understand that, but it has been the practice of this chamber that if there is a level of support for the improvement of an important piece of legislation, the Committee of the Whole has the capacity to postpone this clause and have further conversations about it before resuming tomorrow. That would be my proposition, because I sense that there is a lot of sympathy for this amendment in this place, and I am offering that as a way in which the minister can seek advice from the minister whose bill this is.

Hon PETER COLLIER: The Minister for Emergency Services will not agree to any amendments. I stand by the points that I made earlier; that is, that the wording of this clause was agreed to as a result of consultation with the Department of Environment and Conservation, local government and the Fire and Emergency Services Authority. The criteria were also agreed by the three agencies. The whole point of the exercise is that the nature and the extent is a broad term so that the ability exists to make those changes where they are deemed necessary. For that reason, the government will not support the amendment.

Hon GIZ WATSON: I want to get this really clear: is the minister actually saying, on behalf of the Minister for Emergency Services, that he is not entertaining any amendments, even though they do not transgress the spirit and intent of the bill, and that this bill is intentionally cast in such a way that the Fire and Emergency Services Authority can take control of any fire at any time?

Hon Peter Collier: What I am saying is that we will not support this amendment.

Hon GIZ WATSON: Can I have an answer to that specific question? Does FESA wish to be able to take control of any fire at any time it chooses in this state under the legislation? That is what the legislation says.

Hon PETER COLLIER: That is probably playing the devil's advocate, and it is the worst possible scenario, as I said. The intent of the exercise is always that FESA will consult with the other agencies wherever that is physically possible.

Hon ADELE FARINA: We have just heard from the minister that there has been wide consultation and an agreement about the words that are included in the bushfire plan. However, he is also now saying, and expecting us to accept that, despite the fact that there has been widespread consultation and agreement, for some reason it will be too limiting to put these words into the legislation, which was the intention of the Economics and Industry Standing Committee, the intention of Parliament when it endorsed the committee's report, and the intention of cabinet when it endorsed the committee's report. I find it very difficult to understand the reasoning that is being put before this chamber. Surely, if there has been widespread consultation and agreement, and it was always the intention to provide some limiting capacity for FESA to exercise these powers—FESA has said repeatedly that it does not intend to exercise these powers unfettered—why does it need unfettered power under the act? Surely it would be reasonable to make this amendment as proposed by Hon Giz Watson. That way there is some clarity for everyone about how and when FESA will exercise these powers.

We have heard from the minister that this is the first step of the implementation of the Economics and Industry Standing Committee report, so more legislation will come before Parliament for the implementation of the rest of those recommendations. That means that there will be opportunities for Parliament to amend this section if, after this bushfire season, there is concern that the criteria need to be broadened or tightened. To suggest that by putting the criteria into the legislation we are somehow stopping any further review or amendment of those criteria is absolutely ridiculous. It is quite insulting that the minister would actually make that argument, because we all know that that is what we are here for, and legislation is amended all the time. As I said, we are expecting further amendments as a result of the Economics and Industry Standing Committee recommendations. The

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon
Alison Xamon; Hon Max Trenorden

minister has said in this place that this is the first part of the implementation of all of those committee report recommendations, so there will be opportunities to review the amendment proposed by Hon Giz Watson, should there be some concern at some future time about the proposed words.

I urge members to consider this amendment very carefully. This is what was intended by the O’Gorman committee report, by Parliament when it endorsed that committee report, and by cabinet when it endorsed that committee report. As advised by the minister, there has been wide consultation and agreement with all the relevant bodies in relation to the wording in the bushfire plan, which Hon Giz Watson is proposing to insert into the bill. I can therefore see absolutely no reason why we should not support this amendment.

Hon PETER COLLIER: I want to just clarify something. There was not broad agreement only on the plan; there was also broad agreement on this clause of the bill.

Hon Adele Farina: There isn’t; we’ve all received lots of emails.

Hon PETER COLLIER: I listened to the member in silence.

The DEPUTY CHAIRMAN: Order! The minister has the call.

Hon PETER COLLIER: There was broad agreement about the terms, as in the nature and extent of the bush. To suggest that we are ignoring the view of all three agencies is ignoring the truth. The three agencies agreed to have this general term within the bill in order that the criteria can, where appropriate, be changed. That is the whole point of the exercise. That is what they want. As I have said, and I will state again, it is not some clandestine attempt to push something through. The whole point of it being there in its current form is so that if there is a need to change the criteria, we do not have to bring it back to Parliament every time. We can have that broad understanding and broad terminology, and then that can be embraced through the criteria in the plan. I want to clarify that. For that reason, the government is comfortable with the bill as it currently stands, and we will not support the amendment.

Hon GIZ WATSON: I want to put on the record that I believe that many members in this place who represent country constituencies are well aware of what has been raised by way of this amendment. It is disappointing to me that that is not being reflected in this debate. There is a difference of view and a difference of understanding about the nature of trying to combat bushfires in the country areas. I have lived on the south coast and I know a little bit about the issues and tensions over the control and management of bushfires. Despite the fact that the minister is saying people believe that all those agencies have put their support behind this legislation, I continue to receive information that people remain concerned about it. I just want to put on record that I do not believe it is accurate to say that those concerns have been allayed. It is unfortunate that because the government has the numbers in this place, an amendment that reflects the wishes that have been conveyed to us—as I said, to not only the Greens (WA), but also other members—cannot be considered. I again put it to the minister that we have time to consider this proposed amendment and pass this bill tomorrow. It is not unusual for this chamber to take the time to do that. I do not believe that we should be rushing legislation just because the minister has decided he will not contemplate any amendments. I do not believe that that is good process or that we, as members of Parliament who are tasked with making sure that legislation reflects the stated policy intent, should be steamrolled by a minister who has simply made a statement that he will not entertain any amendments. It is up to this place to decide whether we want to make amendments. I appreciate that the minister is under instruction, and that is his role. However, it is the role of this place to look at amendments to improve legislation and to have them reflect the stated intent of the legislation. I again put it to the minister that country members know very well that there is some considerable unease about the breadth of powers that clause 5 will give to the Fire and Emergency Services Authority.

Hon PETER COLLIER: I have raised the government’s points and I have articulated them now on several occasions. The government will not support the amendment.

Hon COL HOLT: I know that this is painful, minister, but I would like some clarification. I have been given plenty of feedback and have spoken to the peak fire control organisations. I understand that they are happy with the bill. However, there was always going to be an issue about the critical component of the procedures that accompany the bill. I want to be reassured and I want the minister to tell us what he believes the problem would be in accepting this amendment.

Hon PETER COLLIER: I thank the honourable member. As I said earlier, the agreed position on this clause is that it provides an avenue to make changes through the establishment of the criteria in the plan through having the broad context of the nature and extent of the bush; that is, the broader context and the actual criteria can be changed through the plan. If there is a shift or a change in the criteria, it does not have to be done through the

Extract from Hansard
[COUNCIL - Tuesday, 10 November 2009]
p8564c-8581a

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

legislative component; that can be dealt with in the broad terminology. The criteria itself can be changed through the plan. The plan will be reviewed at the end of this bushfire season, and if it is deemed necessary to change the criteria, they will be changed.

Amendment put and a division taken with the following result —

Ayes (12)

Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Adele Farina
Hon Jock Ferguson
Hon Lynn MacLaren

Hon Ljiljana Ravlich
Hon Sally Talbot
Hon Ken Travers

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman

Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden
Hon Col Holt

Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Sue Ellery
Hon Jon Ford
Hon Matt Benson-Lidholm

Hon Brian Ellis
Hon Nigel Hallett
Hon Liz Behjat

Amendment thus negated.

Hon GIZ WATSON: I notice that under proposed new section 13(4) authorisation is to be in writing. How is that written document to be transmitted to the appropriate person?

Hon PETER COLLIER: This relates to a major fire, so there will be a major fire control centre that will have access to faxes et cetera, and the appropriate form is on page 31 of Westplan-Bushfire.

Hon GIZ WATSON: Do they require confirmation that that document has been received?

Hon PETER COLLIER: Yes, they will.

Hon GIZ WATSON: Does that confirmation also have to be in writing?

Hon PETER COLLIER: No. It is assumed it will be, but it is not compulsory to have it in writing.

Hon GIZ WATSON: I could envisage a situation in which a written document could not be conveyed—for example, a power failure. I assume that the minister is talking about conveying a fax or an email, not a physical letter from one part of the state to another. I appreciate the level of control that is involved in a written instruction, but it seems it is somewhat questionable whether limiting the authority in that way would be advisable. I could envisage a circumstance in which the only communication possible would be by oral direction either by radio or some other means that was not reliant on power supply.

Hon PETER COLLIER: Again, we are talking about the most extreme fires. I understand the member's point. If it gets to a catastrophic point and the lines of communication are simply not there, the CEO will be able to use radio and other communication to verify that authority has been given. However, that would be an extreme situation.

Hon GIZ WATSON: That seems somewhat perplexing, because if we are legislating that this be put in writing, the authority will not have effect unless that communication is received in writing. It will not have the protections and authority that this legislation seeks to give it.

Hon PETER COLLIER: The bill does not say that the written authority must be served; it just says there must be written authority. That is the case, unless it was a catastrophic situation in which it was not possible to have those communication levels, but, again, I get back to my original point that the bill does not say the authority must be served with that written notification.

Hon GIZ WATSON: I am not a lawyer, but I would have thought that “in writing” is pretty clear. I want an understanding of a potential scenario. Let us consider that a decision is made, I assume centrally—I do not know where FESA's headquarters are—but let us say a fire in the south west is getting out of hand and a decision is taken to authorise that another person take control of all operations in relation to that fire. Someone might want to convey something in writing to somewhere in the south west forest region, but powerlines are already down in

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

that area and the particular centre that is trying to deal with the fire is not able to receive anything in writing. As much as I have concerns about this bill, my concern with this proposed new subsection is that it should say “wherever possible in writing, but that an oral direction is sufficient”. In some points I think this legislation is too broad; in this case it is too restrictive. If the bill explicitly says “in writing”, there is a reason for that, and I assume that is what the minister wants. I have not read anything in the bill that says that in an extreme case an oral communication is adequate.

Hon PETER COLLIER: I understand that, but it also does not state that it has to be served. There must be written confirmation, but that written confirmation can be confirmed verbally and the written confirmation will arrive, but it does not say that it has to be served.

Hon ADELE FARINA: This is getting more interesting each minute. Now it does not have to be served and it can be verbal.

Hon Peter Collier: I did not say that. The member twists my words all the time.

Hon ADELE FARINA: The minister said that it can be verbal.

Hon Peter Collier: No—verbal confirmation.

Hon ADELE FARINA: I am happy to take that correction. The minister might be interested to know that the police ran an operation in Bunbury a week or so ago, and 10 kilometres out of the centre of Bunbury, in Picton, the mobile phones were not operating. The police had enormous problems during that operation because of the lack of mobile phone coverage. City members are making assumptions that all this sort of technology works right across the state. Let me assure members that it does not, and it will present a lot of problems. That is not the reason I got to my feet; that was an aside.

Having had this authorisation letter brought to my attention, it reads —

Pursuant to section 13 of the Bush Fires Act 1954, you are authorised to take control of all operations in relation to the bushfire burning in [insert locality description] within the local government(s) of [insert local governments] commencing at the time and date of this letter, until revoked.

In the event that two local authorities are stated in this authorisation and the fire extends to a third local authority, which is not specified in this authorisation, does the officer in control—that is, the authorised person—not have the authority to fight the fire in that third local authority because it is not listed in this authorisation?

Does that mean that authorisations need to be continually updated as the fire moves from one local authority to another? It just seems to me that we are creating a bit of a problem for ourselves with that level of specification in the authorisation. I would be interested to hear the minister’s comments on that.

Hon PETER COLLIER: The intent is to initially make it as broad as possible. We may need to amend it. It depends on the fire. I cannot give a definitive response because of the nature of the body that we are talking about.

Hon ADELE FARINA: I have a real concern about the minister’s lack of concern about what we are passing in this place. Under the act, an unauthorised person has control of the fire. It is also required that that authorisation be in writing. That authorisation specifies exactly what the authorised person has authority for. If we are going to specify the local authorities within which the fire is currently burning—say there are two local authorities listed and the fire spreads to a third local authority—according to the legislation and the bushfire plan, the authorised officer does not have the authority to fight the fire in that third local authority area because it is not listed in the authorisation letter. This is starting to get a little ridiculous. Surely our primary aim is to suppress the damn fire.

Hon PETER COLLIER: We need to be as practical as we possibly can. If there is an extension of the fire, there will be an amendment. That is just the norm. No-one can predict the extent of a catastrophic bushfire. No-one can say that it will only burn in particular shires or particular councils. We cannot do that. We may need to make an amendment. That is the simple part of the process.

Hon ADELE FARINA: I hope that this is the last time I stand up. I want to drive this point home a little further. It is extraordinary. We have been told that we need to introduce this legislation urgently before the next bushfire season because, under the current system, there is a lack of clarity. For example, no-one understands what “on or near DEC land or CALM land” means because “near” is too broad, nobody really knows, and if we are looking at a fire from miles away, how can we determine whether it is on or near DEC land or somewhere else and who has authority? It seems to me that the very system we are proposing to introduce via this legislation has as much uncertainty and lack of clarity as the current system. For all the arguments that we have received that we need to

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

make these amendments because we need legal clarity, the reality is that we are not delivering on that legal clarity with the legislation that is before us and what is currently in the draft bushfire plan. It galls me that we are told one thing by this government—that the legislation is urgent and we need legal clarity—yet the government is not prepared to acknowledge that it is not delivering this legal clarity. To the extent that it does, it says that we cannot do certain things or we need to have that flexibility. Why change the system and make an argument that we need legal clarity when we are producing a system that lacks as much clarity as the current system?

Hon GIZ WATSON: Subclause 5(2)(4) states —

... may, in writing, authorise a bush fire liaison officer or another person to take control of all operations in relation to that fire —

Could the minister indicate what is envisaged or why it is felt necessary to include the words “or another person”?

Hon PETER COLLIER: It is saying that it does give the authority permission to appoint a bushfire liaison officer or another person of appropriate competency. Again, there is that flexibility.

Hon GIZ WATSON: That is good but it does not actually say that. It just says “or another person”. I would hope it would be somebody with competency. That may be a very useful amendment. Since we are not going there tonight, I gather, I will not move that amendment. I simply point out what we can do to improve legislation if a little thought is applied to it. I might leave that as a comment.

I move to subclause (2)(6) on page 4 of the bill, which states —

... a bush fire liaison officer or another person ... is authorised to take control of all operations in relation to a fire, all —

- (a) bush fire control officers; and
- (b) bush fire liaison officers; and
- (c) authorised CALM Act officers; and
- (d) officers and members of a bush fire brigade.

Is it intentional that that does not include police officers who might be engaged in circumstances surrounding a fire? I am just wondering whether they are deliberately not included.

Hon PETER COLLIER: This subclause deals specifically with those people who are dealing with the bushfires, not ancillary officers such as police officers. It only relates to those who are fighting the fires.

Hon GIZ WATSON: I guess I am just trying to get a sense of this. I appreciate that there has to be authority to control all those categories of officers, but there are circumstances in which, for example, a fire might affect a major highway and the police may play a role in controlling traffic. I am interested in the coordination between these officers and police officers that may be involved. If we are dealing with the sort of catastrophic event for which this legislation is designed to provide a framework, will police officers effectively operate completely outside the legislation? This also touches on an area of the bill we will deal with later on about directions to evacuate and control the movement of people, which are areas where the police already have specific powers. I am trying to work out what part of this legislation deals with police officers playing a role in the management of a catastrophic fire.

Hon PETER COLLIER: The police must cooperate with bushfire liaison officers. That is in the existing legislation, so that does not actually change.

Hon GIZ WATSON: Can I just clarify whether that is in the Bush Fires Act?

Hon PETER COLLIER: Yes, it is.

Clause put and passed.

Clause 6: Sections 14A, 14B and 14C inserted —

Hon GIZ WATSON: I have an amendment standing in my name on the supplementary notice paper to insert some words at page 7, line 4. It is to provide a defence for a person who has been ordered to evacuate or to obey a certain direction. Before I formally move that amendment, I might make some broad comments about my concerns with this clause. Apart from the issue we have just dealt with in relation to the breadth of powers provided to FESA to take control of fires, people have also raised the issue of the powers provided under this legislation to require people to comply with certain directions. People have put it to me that this legislation lifts the current provisions for emergency situations such as suspected terrorist activities. There are some strong

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

provisions in this state to allow for the direction of people to leave an area or to stay in an area, or to declare an area. Those powers apply to specific areas. This legislation will lift those significant powers and penalties and insert them into the management of bushfires. As we now know, the powers could be applied in any fire situation, even though we have had an assurance from the government that that is not its intention.

On top of that, if a person fails to heed a direction, he can be subject to a fine of \$25 000. It has been expressed to me by constituents—I am sure it has happened to other members—that \$25 000 is a very significant fine to apply to somebody who may simply be concerned about defending his property or his stock, or chooses to stay in his house for some other reason. I have heard the argument from the advisers that this provision has to be strong because the officer giving such a direction will not be in a position to make an assessment on a case-by-case basis as to whether a house can be defended, or whether a person is capable of staying and defending his property. I am not seeking to deal with that circumstance, but I want an assurance that if and when one of these cases comes before a court, a series of criteria will have to be considered by the court if the court is to make a decision on whether a fine is to be imposed on an individual. That would reflect the intent of this legislation as expressed by the government. The government said that it does not intend to use this legislation to coerce individuals who might wish to stay and defend their properties; it wants to use it in cases where there is a hospital, an aged-care facility or school, and it is necessary to direct people to leave or to not move about in an area where there is a fire.

The only problem I have with that argument is that I think it is highly improbable that anyone in a hospital, aged-care facility or school would choose to not follow such a direction. The people who are likely to be affected by this legislation are individuals who have made a judgement that they are fire-ready, that they are prepared and that they have the necessary equipment to stay and defend their property. This legislation is basically saying that if people make such a choice, and in so doing disobey a direct order, they are liable to a \$25 000 fine on top of whatever else might occur to their property in a fire. Those are the concerns about this particular clause that have been put to me by constituents. Why was \$25 000 considered to be the appropriate level of fine, rather than anything less?

Hon PETER COLLIER: Was Hon Giz Watson's original question about the \$25 000 fine?

Hon Giz Watson: Yes.

Hon PETER COLLIER: That lines up with the Bush Fires Act; it is appropriate to fines within that act. It is half the amount of the fine in the Emergency Management Act, which deals with such things as cyclones and floods et cetera. That is why that decision was made. Does the member want to ask another question about that, or does she want me to comment on the amendment?

Hon Giz Watson: I have not formally moved the amendment yet. Could the minister indicate what offences attract that level of fine under the Bush Fires Act?

Hon PETER COLLIER: If we go to section 21 of the Bush Fires Act, which deals with a bushfire emergency period, the penalty under subsection 2(a) is \$20 000 or 12 months' imprisonment, or both. That is what this is replacing.

Hon Giz Watson: For what offence?

Hon PETER COLLIER: Subsection 2(a) states —

Subject to section 64 whilst the declaration remains unrevoked a person shall not set fire to bush on land within the area without the permission in writing of the Minister or of an officer acting with the authority of the Minister.

So the offence is setting a fire.

Hon GIZ WATSON: Yes. However, I would have thought that such a person is considerably different from a person who may, in extreme circumstance, decide not to obey a direction that has been given to him. A fine such as that is probably very appropriate for a person who has deliberately set a fire. I am talking about a person who may decide, for whatever reason, whether it is well advised or not, to do other than what he has been directed to do. Again, with the level of anxiety and adrenalin and all the other things that are likely to happen during a bushfire, it is highly likely that a person will decide not to obey a direction. People do not necessarily always act rationally even in a small bushfire, let alone in an extreme fire event. I appreciate that the Bush Fires Act contains a fine of that quantum. However, it applies to quite a different matter.

Hon PETER COLLIER: The Bush Fires Act contains a number of similar fines, most of which are for illegal activity—for example, a fine of \$10 000 for the burning of garden refuse at rubbish tips. What needs to be

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

remembered is that if a resident were to, dare I say it, dig in during a fire, that person would be putting at risk the lives of a number of other people, particularly the firefighters.

Hon GIZ WATSON: Well, I would challenge that. If there was a very fast-moving fire, the firefighting officers would not be knocking on every person's door. My understanding is that this legislation envisages that in such a circumstance, a direction could be given by way of a radio announcement, or over the phone. The minister can correct me on this if I am wrong, but I thought that the whole point of these new powers is to enable the firefighting officers to anticipate where people will be so that if there is a very fast-moving fire, they can get people moving well ahead of the fire. I do not think it is correct to say that, in every circumstance, a person who does not obey direction will be endangering any other person. The only person who may be endangered in that circumstance is the person who has chosen to make that decision.

Hon PETER COLLIER: I think that would be a difficult judgement to make. Also, it is not just about the evacuation. It is also about prohibiting the movement of people within an area. If people are on roads that are being used by firefighters, that in itself will pose an added burden or risk.

Hon GIZ WATSON: I appreciate the difference between the two scenarios. I am probably not as concerned about the powers as I am about the quantum of the fine. A significant danger may be posed to others if people do not obey a direction about movement on the roads. However, if a person is on his own property, and he has a sprinkler system on his roof and an 80 000-gallon water tank on the hill, and if his house is likely to withstand a fire front, he might choose to stay, wholly and solely for his own reasons, and not endanger anybody else. I know very well that there are situations in which firefighters will come to a property, take a look at it and ask the owner whether he will be staying or going, and if the resident says that he will be staying, the firefighters get out of there as quickly as they can. It is the person's choice. That is how it operates currently. This is very much about not giving people the capacity to make that decision themselves. I appreciate that we are trying to anticipate what may happen in the most extreme type of fire. However, the proposed penalty for a person who chooses to disobey an order is disproportionate to what people may find reasonable in terms of defending what may be their only property in the entire world, or their family or some particularly valuable stock. I will leave my comments at that.

I have a further question about who may be directed under this clause. It seems to me that there is no limitation. Concerns have been raised about what will happen if a voluntary bush fire fighter is unwilling to obey an instruction for any reason, such as concern about the safety of his or her crew. As I read the legislation, such a person may be liable to prosecution. There is no mention in this legislation of a clear protection for volunteers. Although it has been stated verbally that a prosecution is unlikely, I would ask the minister to indicate where in the legislation this assurance is actually expressed.

Hon PETER COLLIER: The volunteer firefighters and the firefighters themselves, of course, have not been ordered to leave the area, so they will not be liable to a fine. We are talking here about residents who refuse to leave the area.

Hon GIZ WATSON: It does not say that this will apply only to residents.

Hon PETER COLLIER: Proposed section 14B(2), which is in clause 6—we are moving forward again—refers to persons who have been directed to leave the area. It states in part —

During the authorised period, an authorised person may do all or any of the following —

- (a) direct, or by direction prohibit, the movement of persons, animals or vehicles. . .
- (b) direct the evacuation and removal of persons or animals . . .

Hon GIZ WATSON: That is pretty broad. It does not specify whether it is referring to residents or locals, or anybody else. It simply refers to "persons". I assume that a volunteer firefighter is a person.

Hon PETER COLLIER: The member is talking about the volunteers. I will find her the provision that refers to the volunteers. At page 4 of the bill, proposed section 13(6)(a), (b), (c) and (d) refer to the persons who are under the authority of the authorised person, and so they are not liable to the fine because they are acting under the orders of the authorised person.

Hon GIZ WATSON: If a volunteer firefighter is to be encompassed by proposed section 13(6), what are the consequences if that volunteer firefighter or, for that matter, any other officer listed in the legislation disobeys an order?

Hon Peter Collier: Are you asking what will happen if one of the volunteers or firefighters refuses to leave the area?

Hon GIZ WATSON: Yes, exactly.

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

Hon Peter Collier: Do you mean while they are under the authority of the authorised person?

Hon GIZ WATSON: Let us say that this provision has come into effect and that the volunteer firefighter or officer is under the control of the authorised person. If that person declines to take that direction and says, “No, I want to knock on those houses because I think that people are still in there”, will that person be subject to a similar level of fine?

Hon Peter Collier: No, he will not. That is an operational order. That is not a direction, so he will not be subject to the fine.

Hon GIZ WATSON: What would that person be subject to?

Hon Peter Collier: I imagine that there would be internal disciplinary processes.

Hon GIZ WATSON: I just want to be clear because, again, this is an issue that has been conveyed to me.

Hon Peter Collier: Yes, and it is one that has been raised with me as well. That is why I sought clarity on it.

Hon GIZ WATSON: That is good. So the minister is saying that there is no fine or specific penalty but it would be a disciplinary matter that carries no further —

Hon Peter Collier: That is correct, yes.

Hon GIZ WATSON: I move —

Page 7, line 4 — To insert —

- (4) In proceedings for an offence under subsection (1) regarding an order to evacuate persons from the affected area made under section 14B(2)(b) (“**evacuation order**”), the following circumstances must be taken into account —
 - (a) the person’s preparedness for fighting the bush fire;
 - (b) the impact of the fire on the person; and
 - (c) any other relevant information.
- (5) A person is not to be fined for the breach of an evacuation order if the enforcement of the order was or would have been unreasonable in the particular case.

The purpose of this amendment is to provide the court with a guideline for setting the fine. It must take into consideration all the circumstances of an individual’s case. I have included a number of circumstances that must be taken into account in deciding whether a penalty is appropriate and the sort of penalty that might be appropriate. They include taking into account a person’s preparedness for fighting the fire, the impact of the fire on the person and any other relevant information. As I said a little while ago, a person might be given a direction to evacuate, but declines to go and stays throughout the fire—I understand that this legislation does not provide any capacity for a person to be detained or forcibly removed—and that person might lose all his property and stock and be left with just the clothes he is standing up in, but the next thing that happens is he is charged with breaching the legislation. Those are the circumstances that I have envisaged in trying to ensure that the decision-making authority takes into consideration the impact of the fire on the person. I think we would all agree that it is not the intention of this Parliament or anybody in this place to allow a circumstance in which a person who has made that decision, rightly or wrongly, and has lost all his worldly possessions is then expected to pay a \$25 000 fine.

I understand that a court would have the capacity to look at relevant information, but, as we know, if the legislation makes it specific that certain matters must be taken into consideration, that is a direction to the court to do so. I have steered away from my first instinct, which is to say that the officer must consider at the time whether it was reasonable for a person to obey the order. This amendment would give a clear direction to the court that these matters must be considered. It would provide a level of fairness and the capacity for a person to argue his case, possibly in very difficult circumstances. I find the notion of a fine like this totally offensive and my first instinct is to oppose it outright. However, with this amendment I have attempted to reflect what has been stated in the public debate about the intention of this legislation and to accommodate the concerns I have heard from people who are horrified by the prospect of being compelled to leave their property, even if they believe that they are prepared and ready for, and capable of, dealing with a fire, that they will be faced with a substantial fine equivalent to that which could be imposed if they had lit the fire themselves, as the minister just said. That is the comparative scale of the fine that we are talking about.

Secondly, the amendment provides that a person is not to be fined for the breach of an evacuation order if the enforcement of the order was or would have been unreasonable in the particular case. I ask for the support of members for this amendment. It will not impede the operation of the delivery of an order to evacuate or for

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

people to move out of an area, but it will ensure that there is a requirement for a court to consider the particular circumstances of each case.

Hon PETER COLLIER: As I stated in my comments in reply to the second reading debate, the government will not support this amendment. I will go through the reasons again, but, essentially, the whole point of the exercise is fundamentally the welfare of people. That needs to be understood at the outset. We are dealing with houses that are very unlikely to survive. The Victorian experience showed us exactly what it means when a firestorm sweeps through an area—people just cannot defend their homes. As I said, firefighters will make that decision on evacuation only where lives are most at risk. It needs to be established that the authorised person needs to have these powers to make that determination to evacuate. In fact, there are already powers under the Emergency Management Act 2005 to force evacuations, so they currently exist. As I mentioned in my response to the second reading debate, parliamentary counsel has advised against the amendment, saying that it is technically flawed. Aside from that, the government will not support this amendment on the basis that we are genuinely looking after the welfare of people. We are dealing with people most at risk during a firestorm.

Hon ALISON XAMON: I support the proposed amendment. The issue of forced evacuation has been raised with me by a number of my constituents who are alarmed at the prospect that they may have no defence should they decide to stay and defend their homes and ignore an order to evacuate. I am very aware that, following the devastation of the Victorian bushfires, there were grave concerns about what happened to a number of people who had chosen to stay and defend their homes but were clearly incapable and not adequately prepared to do so. The effect of this amendment is not to provide a defence for those people who are standing there with a mop and a kiddies' wading pool but to acknowledge that sometimes people who have chosen to set up their homes in bushland have also taken it upon themselves to be appropriately equipped to tackle fires as they come through.

I am aware that a number of people living in my region—for example, in the hills—are well equipped to defend their own properties and those of their neighbours. It would be inappropriate if these people found themselves in a situation after a fire of facing court and the prospect of massive fines. Consideration should be given to the kind of preparation they had, such as whether they have the appropriate hoses, independent generators and independent water sources, whether they had appropriate bushfire shelters on their properties, and also, significantly, their level of training. I am aware that a lot of people are current or former volunteer bushfire fighters and are well aware of how to protect their properties.

Some of the concerns that have been relayed to me by these people are that if they had been forced to evacuate in previous fires they would have lost their properties. They also would not have been able to defend their neighbours' properties as well. As has been previously stated, this amendment does not seek to force people to make a decision at the time of the emergency; it simply provides an appropriate level of defence after the fact. That will mean that the courts are better equipped to mete out justice, and to make sure that a penalty, if it must be applied, is appropriate under the circumstances. It is very important that we realise that one size does not fit all when it comes to people protecting their properties, and perhaps their livestock and their businesses—any number of things. There may be circumstances in which it could be justified under the circumstances to ignore an order that has been issued.

Hon KATE DOUST: We appreciate the sentiment behind the amendment moved by Hon Giz Watson, but on this occasion the opposition will not support that amendment.

Hon PETER COLLIER: I will respond to one of the points raised by Hon Alison Xamon. These powers will apply only to an authorised person in a major fire—a catastrophic fire, which is what we are talking about here. We are talking not about day-to-day bushfires, but about catastrophic fires.

Hon GIZ WATSON: My response is simply to say that that is the stated intent, but it is not what the legislation says. It is not limited to catastrophic fires. I did not want that to rest there, because that is what has been purported, but if that is what the government means, then that is what the legislation should say. It should specify the case of extreme or catastrophic fires. It does not say that, so let us not be under any illusion about it.

Hon ALISON XAMON: I also want to comment that that is not what the legislation says. One of the concerns that keeps getting raised since the Victorian tragedies is that there is a concern that we might look at moving to a culture in which people might call for evacuations when they otherwise would not have done so. That is one of the big concerns. Although it might be the intent of the legislation that, should we see something as devastating and as terrible as what we saw in Victoria, we would want householders to get up and get out, the legislation is not clear on that. Therefore, we could go down the path whereby, for the sake of expediency, a decision is made to clear everyone out anyway. Under those circumstances, people who are familiar with their local environment may consider that they are appropriately equipped to be able to stay put. Again, this amendment will allow them

Hon Adele Farina; Hon Peter Collier; Hon Giz Watson; Deputy Chairman; Hon Col Holt; Hon Kate Doust; Hon Alison Xamon; Hon Max Trenorden

the opportunity, after the fire, to put that case in the court. If we produce legislation that is spectacularly unclear and does not actually articulate what it purports to mean, we need to look at precisely these sorts of amendments, so that people can be afforded some sort of protection.

Amendment put and a division taken with the following result —

Ayes (4)			
Hon Lynn MacLaren	Hon Giz Watson	Hon Alison Xamon	Hon Robin Chapple (<i>Teller</i>)
Noes (25)			
Hon Liz Behjat	Hon Phil Edman	Hon Col Holt	Hon Sally Talbot
Hon Helen Bullock	Hon Donna Faragher	Hon Robyn McSweeney	Hon Ken Travers
Hon Peter Collier	Hon Adele Farina	Hon Michael Mischin	Hon Max Trenorden
Hon Mia Davies	Hon Jock Ferguson	Hon Norman Moore	Hon Ken Baston (<i>Teller</i>)
Hon Ed Dermer	Hon Philip Gardiner	Hon Helen Morton	
Hon Kate Doust	Hon Nick Goiran	Hon Simon O'Brien	
Hon Wendy Duncan	Hon Alyssa Hayden	Hon Ljiljana Ravlich	

Amendment thus negated.

Clause put and passed.

Clause 7: Part III Division 4 replaced —

Hon GIZ WATSON: We have no problem with this clause and its intention to give the minister the ability to declare a total fire ban, because that is a reasonable amendment to the Bush Fires Act. However, I have a question about a breach of a total fire ban declaration. I raise this question because I happen to have been speaking to a staff member of a country council who has had quite a lot of experience with bushfires. He told me that currently when someone breaches the conditions of a total fire ban that has been declared by a shire, which is usually the circumstance, the shire brings the prosecution. He is concerned to know who or which department will be responsible for prosecuting any breaches that might occur under this provision if the minister makes the declaration. The minister might just clarify that for me. I understand that this provision does not override the ability of a local council to declare a total fire ban at any particular time or locality. As I understand it, it is an additional provision. If the minister declares a total fire ban under the provisions in this bill, who would be responsible for prosecuting any breaches that might occur?

Hon PETER COLLIER: I direct the honourable member to section 59(2)(a) of the Bush Fires Act 1954, which states —

A person authorised by the Minister, a member of the Authority, an officer of the Authority, an authorised CALM Act officer, a member of the Police Force, or a local government, may institute and carry on proceedings against a person for an offence alleged to be committed against this Act.

Does that answer the member's question?

Hon GIZ WATSON: Will that not change, in effect?

Hon PETER COLLIER: No.

Hon GIZ WATSON: Will any one of those authorities be responsible for bringing a prosecution?

Hon PETER COLLIER: That is correct; that section is not being amended.

Clause put and passed.

Clause 8: Section 24C amended —

Hon MAX TRENORDEN: This will be my only contribution to the debate. The extension in the bill to the ratings of "very high" and "extreme" are commendable. However, it is even more important to give a figure rating of 50, 80 or 100 and beyond. Members who have been to places close to Marysville, which I have visited recently, know that the people who live in those areas understand the rating system. Those types of places receive a rating of not only "very high" or "extreme", but also a figure. The point I make is that that figure will be different for each community, depending on the fuel that has built up and the different geographic conditions of the area. The simple question I am asking the minister is will the message on the day be "extreme" alone, or "extreme" and a rating of 100, for example?

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Peter Collier (Minister for Energy).

[See below.]