

BUSH FIRES AMENDMENT BILL 2009

Second Reading

Resumed from 22 September.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [8.26 pm]: I rise tonight to make a few comments in support of the Bush Fires Amendment Bill 2009. This bill seeks to amend the Bush Fires Act 1954 and it has four key planks that it seeks to change—namely, the introduction of total fire bans; new arrangements for the control of major fires; the definition of property to include crown land and bush; and the inclusion of a new fire danger rating system. I will make some more comments on those four key areas a little later on.

I firstly thank the advisers I met with last week, who were very helpful and provided a very good explanation on the background of this bill. A number of the changes introduced in this bill arose from a report by the Assembly's Community Development and Justice Standing Committee on its inquiry into fire and emergency services legislation. I will comment further on that report later. It was indeed a very thorough and detailed report with about 88 recommendations, which I understand both the former and current governments have been working through to make changes to legislation in this area. I note that recommendation 2 in the report was that at some point one comprehensive emergency services act be developed. The bill that we are dealing with tonight is not that piece of legislation, and I regard the Bush Fires Amendment Bill as an interim piece of legislation. I understand from the advice I have received that over the next 12 to 18 months there will be extensive consultation on and drafting of that legislation, which would pick up on all the concerns and issues that were brought forward in that 2006 committee report. I would imagine, given that a bit of correspondence has been floating around from a couple of groups expressing concerns about this legislation—I am sure we will hear more about that later—that that time period will also provide for ample opportunity for extensive consultation with all the interested parties.

I know that this bill has been a while in the making. Our shadow minister, Margaret Quirk, put out a press release earlier this year calling on the government to expedite this legislation. That was in February this year just after those tragic fires in Victoria. I suppose that that event has pretty much raised everyone's consciousness of the serious impact of bush fires. I was actually in Melbourne on that weekend; I had taken my daughter and one of her friends for a pseudo-leavers weekend. It was very interesting because on the Saturday that the fires commenced, even though it was such unusual weather in Melbourne, I do not know whether anyone really appreciated until very late that evening what was actually happening. At that point the number of people who had perished was very small, but by Sunday night we certainly had a much better idea of the extent of the tragedy.

The interim report that has come out of the inquiry into the Victorian bushfires is interesting. I think there are more than 80 recommendations for change in that state. It will serve as a very interesting model for other states for how they pull together and better coordinate to deal with these types of issues. Although these types of events happen from time to time, we must do whatever we can to ensure that we minimise the level of damage, not merely damage to property but damage to humans and loss of human life. I understand that several thousand fires happen in our state throughout the year. The bill that we are dealing with pertains to only a very small proportion of those fires.

One of the key elements of the bill is to ensure there is proper management of these situations, and that is an important change. Having grown up in the bush, I know that from time to time when these situations occur they can be quite horrific. I remember that when I was a teenager I used to go to Northam and Merredin for my school holidays, for my sins. I remember during my holidays looking after my young cousins at my aunt and uncle's place. There was once a bushfire working its way around town. It was quite unnerving to try to work out whether to stay or go on that day. As a teenager it was not a decision that I really wanted to be in a position to have to make.

It was unfortunate, but the Victorian experience has woken everybody up. There is now a degree of urgency about being better coordinated and better organised, and putting into place measures that will improve the safety of people who may be exposed to these situations. I know that the government is keen to get this legislation through the house prior to the advent of the bushfire season, which I understand is 1 December. We will raise a number of issues. I have only just become aware of a proposed amendment that we will make. It was flagged in the Assembly and is to amend the definition of the word "bush". I will go through that in more detail. The minister in the other place encouraged the opposition to raise that amendment here. I do not know whether that minister has alerted this minister to that. However, it is something that we might flag in committee. I am happy to read in a moment the quote from him in *Hansard* just to reinforce his amenability to that change.

The bill stresses the importance of coordination. I was flicking through the Assembly Community Development and Justice Standing Committee Inquiry into Fire and Emergency Services Legislation report, which is extensive and covers a range of areas. I want to share with members a couple of quotes that really encapsulate the reason that we would want to put mechanisms in place to ensure a new way of coordination for dealing with these types of bushfires that have caused great concern. On page 127 of the Assembly report is a quote from the submission of the Bushfire Front Incorporated. It reads —

There are two serious problems:

1. *When it comes to bushfire management in WA, **there is no-one in charge**. This allows a plethora of uncoordinated policies amongst state government agencies and LGAs [local government authorities]. It means that no-one is accountable for outcomes, nor responsible for inputs such as developing policy, legislation, performance standards, targets, template for best practice or for seeing that there is an effective program of community education.*

2. *On top of this, it is impossible for anyone to know **how things are going**. CALM and FESA report on themselves; there is no independent audit of systems, monitoring of performance against goals, nor any independent annual public reporting on outcomes...*

I thought that that makes sense, because over the page there is a comment from Bob Mitchell, the then chief executive officer of the Fire and Emergency Services Authority of Western Australia. He is reported on page 129 of the committee report as saying —

...Although 124 agencies are involved in fire, —

He is referring to the local government groups —

I am not sure who should have the capacity to determine whether the system is operating effectively ... but while there are 124 agencies involved in this business, somewhere along the line the government has to know that the whole thing is working, and working adequately, in the 124 locations. I think if I were the government of the day, I would want to know that the industry and all its players were performing at an appropriate standard.

That was a very good comment from Mr Mitchell. It is very good evidence of why there needs to be a change, so that instead of a range of different organisations operating in their own area or at a particular level, one organisation manages the situation. Although I have not been through the detail of the Victorian bushfire inquiry, it is fairly clear that people talked about problems with coordination and communication and the management of the incident. It is anticipated that if one body is in charge in these types of circumstances—that is, the small number of extreme bushfires—and manages them effectively, people will be able to work through the urgency of the problem in a coordinated fashion and communicate with the people who are at risk of harm in a variety of ways and in an expedient manner so that those people can make the appropriate decision for their circumstances. It is very sensible to put these arrangements in place.

Another area of change is the introduction of total fire bans. I understand that the changes that are being made include that no fire can be lit and that no activity likely to set fire to bush may be undertaken within a declared area for a specified period. As we know, there are certain times during the year when extreme heat is experienced. As people drive along Albany Highway or in some country areas, they will see the fire signs that show the level of potential danger on a particular day. It is also not uncommon for people driving in regional areas to hear on the radio the heat extremity warning for a particular day, so that people are fully aware of the potential danger if they light a fire. I understand that the use of the words “total fire ban” will make it easier to communicate the message to members of the public, rather than talking about a bushfire emergency. That might evoke other types of images for people; I am not sure. Currently, there are difficulties for some industries in that the use of certain equipment may ignite a spark. I understand that they are currently prevented from using that type of equipment during a bushfire emergency. Under this change, they will be able to apply for an exemption so that they can use that equipment during the total fire ban period, as long as they comply with the conditions of the exemption. While these changes are not final, in the interim, they are sensible and practical in trying to accommodate the needs of the community in this situation.

The next change relates to the definition of property. I understand that this has come about as a result of an incident of arson on crown land, and from memory, a fellow by the name of Spooner was acquitted in court because he was able to argue that crown land was not actually property. It is always interesting whenever we move to close a gap because people have been able to skirt around an issue or find a loophole. I understand that is why the definition will be changed to include crown land and bush land. The member for Gosnells proposed a further amendment in the other place to broaden the definition of “property” to include natural ecosystems. The opposition will put the formal amendment on the notice paper, if we get to committee later tonight or tomorrow, so that the minister understands the words that are proposed. I will share with the minister the comments of the

Minister for Emergency Services in the other place, Minister Johnson. Is the minister aware that Minister Johnson supported this amendment?

Hon Peter Collier: No, he is not.

Hon KATE DOUST: The minister has obviously changed his mind. On 17 September in the other place, the minister stated —

... I promise you that I will give you an assurance that, if you do not move it, we will look into it. If you want to get one of your colleagues in the upper house to move it on your behalf, it may have more success.

Hon Peter Collier: I understand that he sought advice and that advice was that it was not necessary.

Hon KATE DOUST: He went on to say —

However, I will say to you in good faith that if you leave the amendment today so that we can get through this business very quickly, I will give you an assurance that FESA will go away and discuss this with the appropriate people.

I do not think the Minister for Emergency Services explains why that is not going to happen. I do not know whether Hon Peter Collier wants to provide an explanation for the rejection of that amendment in his reply to the second reading debate or whether he wants us to formally move the amendment and deal with it in committee. I will leave that to the minister, but we thought we would flag that. It is disappointing that the minister in the other place was prepared to make a commitment, and we got all excited thinking that we might be able to improve the legislation up here, as we are wont to do, and the minister has just blown that one away. We will come back and see how we go with that.

The other change was the inclusion of new fire danger ratings. As I understand it, as a result of these new ratings the words “severe” and “catastrophic” will be included in section 24C of the act. I went through the bill and I could not find the definitions of those words. I had a quick look through and I even went back through the Bush Fires Act 1954 to see whether those words were included in the definitions, but, again, I could not find them. I would appreciate if the minister could point me to where those two words are defined. Those words provide for a greater degree of urgency and a greater understanding of the type of impact that particular fires can have and the manageability of fires. They also define the type of exposure that householders can expect and the degree of urgency about whether they should leave their property. They would also describe whether a person’s property is of a standard that it can sustain the oncoming fire. I would be interested in having the minister provide a clearer definition, so that it can be put on the record if he cannot find the relevant definitions in the bill. I could not find them.

When I had a quick look through the Victorian bushfire inquiry’s recommendations, I noted a couple of references to the Council of Australian Governments looking into these processes. I imagine that in due course there will be more work done at a national level to try to deal with these issues.

Members would be aware of the serious bushfires that have occurred over the past few years. For example, there was the bushfire around Canberra, which had a catastrophic impact there. Recently there was the Victorian bushfire and the very tragic bushfire in Boorabbin, which is currently being addressed by the coroner. There has been a series of examples of devastating bushfires around the country. The states will become better organised in the sharing of knowledge and will put in place better management procedures to deal with those outbreaks of fire that have the potential to cause harm to life or damage to property.

I note there is reference in the bill to using Landgate to map fires. Having seen the system used by Landgate, it was fascinating to learn about the number of fires that occur on a daily basis throughout the state. It is not something we think about. We only become aware of fires when we are either in one or hear about it when it is reported by the media. To actually witness the satellite mapping of bushfires and to be made aware of how Landgate can disperse information about bushfires is interesting. It is a very sensible way to go. We should always be looking to use or develop new technology to monitor, manage and communicate information about bushfires.

I note that a number of members received a letter from the Association of Volunteer Bushfire Brigades of Western Australia Inc expressing its concerns about a range of aspects of this legislation. One of those concerns was about the level of consultation and the timing of the consultation that was available to the brigades. I am sure they would have appreciated more time to consider this legislation. The minister might be able to provide some information about that process.

Hon Peter Collier: I think those issues have been resolved.

Hon KATE DOUST: I look forward to the minister providing that information in his response.

The Association of Volunteer Bushfire Brigades refers in its letter to its concerns about proposed section 14C of the bill. I will read part of that letter, so that the minister is aware of what it said. It states on page 2 that —

There is a great deal of concern in relation to section 14c, where it would seem that a bushfire fighter, if unwilling to obey an instruction, for any reason, including the safety of his/her crew, may be open to prosecution. There is no mention of or clear protection for volunteers in what is being proposed, whilst verbally it has been stated that this would never or is unlikely to happen, this can not be ruled out given the litigious environment the nation is now moving to.

That is an interesting point, because it is also, as I understand it, a concern that has been raised by Hon Giz Watson regarding householders. I know that I talked about this with the advisers. Even though the minister in the other place gave assurances that in some of these situations the penalty would never be imposed, I would be interested to get the minister's response on that aspect, because I think that people working in this situation need to know that they are fully protected and that in performing their job in good faith they will not be penalised. Just having someone say that it is never going to happen may not be good enough, especially if they are looking down the barrel of a fine.

It is interesting that although the minister in the other place said, "Look, don't worry about it; it's never going to happen", the response that the Association of Volunteer Bushfire Brigades got from the Fire and Emergency Services Authority states, in part, according to the association's letter —

In reality it means anyone who fails to comply with those type of instructions could incur a 25k fine. This is the current legislation in the EM Act.

Therefore, it would be interesting to know who is right. Is the minister right when he says that it will never happen, or is FESA right and is there still the potential in that situation for the volunteer fire brigade worker to be fined? I will be interested in the minister's response on that. A number of other concerns are expressed in this letter, but I think I will let one of my regional colleagues raise these matters, because I know that they have an interest in this issue and have been talking to the volunteer bush fire brigades.

I must say, and I want to put on record, that I believe that people who put up their hands to become volunteer fire brigade officers do an outstanding job and are very important people, particularly in the rural and regional communities. Quite often they do not hesitate to put themselves in the line of danger to protect others or to protect property. Their concerns need to be listened to, because these people are a very important component in our regional areas. We cannot afford to replace them with paid employees. The work they do, the knowledge they build up and their experience and skills are highly valued. Again, having grown up in Coolgardie, I know that my dad was a volunteer bush fire brigade worker. On a regular basis he would be called out. I know that as a result of his engagement in this line of work, we, as a family, have a permanent reminder of his activity in this area. Quite often, although these people are prepared to give up their time freely and do the right thing, they do not always come out of it unscathed. Therefore, they are indeed very highly regarded and very valuable people. I hope that the minister has been able to allay the concerns that have been raised in this correspondence and, I think, by a couple of other groups involved in this area. I look forward to the minister providing an explanation of how he has gone about doing that, noting that in due course there will be a total overhaul of this legislation, and hopefully those people will have ample opportunity to have input into that process.

Today a question about the bushfire readiness review was posed in this house by Hon Matt Benson-Lidholm. It was a question to the Leader of the House, of which some notice had been given. I understand that this review was tabled today in the regional sitting of the Assembly in Bunbury. I am very keen to read this review. I understand that it was finalised in April this year and was tabled only today. We were keen to get a copy of the tabled review so that we could look at it and hopefully comment on it during the second reading debate. Unfortunately, although the review was tabled in the Legislative Assembly, no copies were made available to the Legislative Council and there are no copies available on the website. I do not know whether the minister can obtain a copy for us to give us an opportunity to go through it and make appropriate comment during the second reading debate, but I know that the Legislative Assembly sometimes forgets that there is an upper house and that we would like to participate in the debate. I would appreciate it if the minister would mention to the appropriate minister that a copy should also have been provided to this chamber, or if he would ask that a copy be placed on the website so that it can be accessed. I place on record that it was disappointing that Legislative Assembly members in Bunbury had the opportunity to read the review while Legislative Council members—who are actually dealing with the legislation today—did not. If we could have a copy of the review by tomorrow, we may be able to read it and pose some questions before we go into the Committee of the Whole House. A number of issues have arisen in this legislation, including questions about the point at which people should leave their

properties when threatened by bushfire, who has responsibility for different situations, and in what situations the Fire and Emergency Services Authority takes control. All those questions have been worked through.

A very good, thorough report entitled “Inquiry into Fire and Emergency Services Legislation” was tabled by the Community and Justice Standing Committee in 2006. Given the number of submissions to the committee, the number of hearings held, the amount of feedback received and the overall engagement with the inquiry, it is a very good baseline document for these legislative changes. There is a very good quote at the beginning of the report in the chairman’s foreword. It sums up who has responsibility for the management and control of out-of-control bushfire situations, and it also sums up the spirit of these changes. I think it is a quote from the Executive Director Development Services of the City of Albany, Robert Fenn. It states —

Whether it be a red truck, a white truck or a blue truck that arrives to put the fire out is irrelevant. Let us put the fire out, but, more importantly, let us have an appropriate management regime in place so that we can manage the hazard and the fire...

That is a very clever way of putting it. I do not think people really care who puts out a fire as long as it is put out, that they are safe, that their property is safe and that no harm comes to them. It is a very succinct and sensible way of putting the proposition that change had to happen, given that there were so many players involved in the management of fires. There may be some concerns about the technical aspects of this bill and issues about penalties that may or may not be imposed in certain situations, but what happened in Victoria sent a very clear message that we have to be on the ball and prepared to get our act together, to get organised and make sure that there are not dozens of people running around trying to manage things during a bushfire. We need to be able to pull things together and have one organisation running the show and ensuring that everything runs smoothly in such situations so that we can reduce the impact that bushfires can have.

I think I have covered some of those areas. I have a couple of questions to raise in committee. They are not extensive questions; just a couple of points to be clarified. I would appreciate some information from the minister on how he has dealt with the volunteer issues and concerns and the clarification of those two definitions. If the definitions are in the bill, I would like to know where; and, if not, I would like to know why the definitions have not been put in, and I would appreciate some response to why the definition of “bush” cannot be further amended to include the words “natural ecosystem”. As I said, the opposition would be happy to move that amendment formally in committee so that we can have a bit more engagement with the minister on why those words should be included.

The opposition will support this bill. We understand the need to have this bill proceed through this place fairly quickly so that this legislation can be in place for the opening of the bushfire season. Given that the weather is starting to warm up quite rapidly, I imagine that it will be a lot warmer long before 1 December. I think it is going to be one of those summers.

It is a shame that we could not have dealt with this legislation earlier in the year, but I suppose that is how things work out in terms of timing and getting legislation into this place. However, given that there will not be a full rewrite and an amalgamation of all the legislation that deals with this area until another 12 to 18 months, it is appropriate that interim measures be in place to deal with issues about who will be in control; the capacity to put in place a total fire ban; and amendments to the definition of “property” to deal with issues of arson. Sadly there seem to be more and more firebugs. There have been a number of fires in the southern part of my electorate in the past couple of years when the freeway had to be closed down and parts of Atwell and Baldivis and surrounding areas went up in flames because of arson-related issues.

It is important that we are upping the ante on the new danger rating system by including the words “severe” and “catastrophic”. I believe that will drive home not just to the reader of the legislation, but also to the community the level of severity and the importance of urgency when dealing with bushfires and clarifying the events that they could become.

The only other thing I would ask the minister, given that this change will hopefully go through the Parliament fairly swiftly, is: what type of education program and advertising program will be conducted so that the public know about these changes? It is all very well for the information to filter through the Fire and Emergency Services Authority, the Department of Environment and Conservation and the volunteer organisations, but how will the general public know about these changes? Is a media campaign proposed? If there is—I will ask the standard question—how will it be paid for? Has an allocation already been made or will the minister have to seek additional funding to provide this information?

With those few words, the opposition looks forward to the passage of this bill and supports the legislation.

HON MATT BENSON-LIDHOLM (Agricultural) [9.04 pm]: I welcome the opportunity to speak on the Bush Fires Amendment Bill 2009. I particularly welcome this opportunity given that my electorate goes from basically

Kalbarri in the north to Bremer Bay in the south. As members realise, I live in the south coastal town of Albany, so I certainly believe this bill covers a significant part of the state. If I go outside those particular localities, apart from the Perth metropolitan area, as I see it, this bill has significant implications for the number of volunteer firefighters in this state. I take note also of the fact that this amendment bill will replace the 1954 act. Dare I say it, there has been a lot of water under the bridge, or certainly a lot of bush fires, since that time. Since that time, many things in society have changed, particularly the technology available to us and how we manage land issues. I think members would acknowledge from the very outset that this is perhaps very timely legislation for a number of reasons. One reason is the fact that we are rapidly approaching the bushfire season. From what I have read thus far, that season starts about mid-December.

Before I go too much further, I acknowledge also the comments of Hon Kate Doust as our lead speaker. I do not intend to speak at length outside the fact that I want to talk about my electorate and to indicate that we have a significant component of volunteer firefighters in Western Australia. Other regional members want to speak and will no doubt say similar things about their regions. Hon Kate Doust mentioned regional volunteer firefighters. She also mentioned that I asked a question today in question time about the review. The fact that we have not had a chance to look at the report is disappointing regardless of whether the other house was sitting in Bunbury today.

Getting back to the point I was making a minute or two ago, this is a very timely bill. I acknowledge there is a certain level of urgency associated with it given we are approaching the bushfire season. Already in the past month or so, we have heard of bushfires as far north as Broome that I know of, and on Muttonbird Island near Albany in the past week or so. It is fairly obvious that, across the length and breadth of Western Australia, this state is predisposed to bushfires. My family has suffered at the hands of bushfires, albeit many years ago. Members who know the history of the area between Denmark and Walpole will know that in the mid-1930s that area was just about incinerated by a bushfire that I am reliably informed was in 1937 when not even I was around —

Hon Jon Ford: The leader was!

Hon MATT BENSON-LIDHOLM: That was a very keen observation by Hon Jon Ford. I do not think he would have been in that part of the world to observe that fire. If members look even today at the karri forest around the western parts of Denmark, they will see spectre-like trees that were killed, not because of ringbarking, but because the fire was so intense. Western Australians did not know much about clearing litter off forest floors in those days. The issues that prevailed then were perhaps not quite as serious, although in the fullness of time, with the Europeanisation of Australia, the litter on forest floors presents big problems for us. The fact that in many parts of the state we have wet and dry sporiferous woodland forests, and we have an accumulation of forest floor litter, means that we may have a tinderbox environment. I put it to members that these issues are a significant cause of the problems that we are facing. Another issue is lightning. Certainly in the northern part of Western Australia—I see Hon Ken Baston nodding; this is obviously an issue that he would have much knowledge about—and also in the Northern Territory and into Queensland, lightning is probably the most significant issue when it comes to bushfires. There is not much that we can do about bushfires, but certainly in terms of this particular bill it is a matter of making sure that the right strategies and techniques are put in place to deal with the sorts of issues that I have mentioned.

Obviously in the built-up areas of the state, arson is of particular concern in this day and age. But honestly, members, because of the isolation and the lack of physical and human resources across most of Western Australia, and also because of our terrain and our climate, certainly at this particular time of the year, and moving on into the real part of the summer, with the easterlies and north-easterlies that are often experienced in the southern part of Western Australia, there is a powder-keg environment every year. I dare say that this year will be no different. In fact, it may even be worse. We have had good rainfall. I will not say the rainfall was necessarily above average, but it certainly came at the right time of the year to generate regrowth in the forests. However, we have certainly been having extremes of temperature. The weather is already starting to get warm and dry. I was in Geraldton over the weekend, and on Friday in Geraldton the maximum temperature reached 39 degrees. I think that on Saturday or Sunday Perth had one of its hottest October days ever. So things are not looking good, even given the fact that we have such good rainfall.

Hon Robyn McSweeney: It certainly was not that hot in Mt Barker!

Hon MATT BENSON-LIDHOLM: I understand, though, minister, that Mt Barker gets very hot in summer. As the minister may know, only about three or four years ago, a bushfire threatened the very existence of Mt Barker. It skirted around the northern and western parts of the town, and it then came back in via the southern edge once the sea breeze came in, so people were very much on edge in Mt Barker—as they were in Dwellingup back in the 1960s; and I have already mentioned the Denmark-Walpole area in the 1930s.

I want to talk more about fire control and about some of the other issues as I see them. I also want to address some of the points made by Hon Kate Doust. In the city, there is certainly not a heavy reliance on volunteer fire brigade units, because obviously FESA is at hand very quickly. I had a property some years ago in Sawyers Valley, and I know that there are volunteer units in that part of the state, and certainly further east. However, the existence of FESA in the regional, rural and remote parts of Western Australia is not quite what it is in the city. Given that I really want to talk about the regional, rural and remote parts of Western Australia, the point I want to make here is that the people in those areas rely basically, certainly initially, anyway, on volunteers. As a consequence, it is vital that people who live in the non-metropolitan parts of the state develop their own fire protection plans. Having worked around the Mt Barker area, I know for a fact that both the Department of Environment and Conservation and the former Department of Conservation and Land Management have played a significant role in that particular part of the world, certainly in the Porongurup Ranges.

I will make a point or two about the volunteer bushfire brigades in Western Australia, because most of the concerns that have come across my office desk, in emails I have received and the information I have managed to glean have been from organisations concerned with the existence of our volunteer bushfire brigades. Some interesting facts need to be brought to the attention of members. There are approximately 25 000 volunteer bushfire fighters in Western Australia, whereas there are approximately 1 000 Fire and Emergency Services Authority career firefighters. There are something like 750 brigades; 1 988 Volunteer Fire and Rescue Service workers; 1 863 State Emergency Service workers; and 1 074 Volunteer Marine Rescue Service workers. Of all the registered firefighters in Western Australia, 97 per cent are volunteers. In some of the rural and remote areas of the state, where the firefighters are mainly volunteers, there will be big issues associated with resourcing, training and just getting people on site when bushfires break out. Those figures are quite compelling.

Bushfire brigades have obviously been formed and managed by local government authorities and need to be supported. As I will indicate shortly, support for these brigades is something that the government perhaps needs to look at. The brigades are supported by the Fire and Emergency Services Authority of Western Australia, which manages the funding arrangements and provides technical and operational support as well as a training framework. In my particular region, my hometown and the area where my family comes from around Nornalup, the volunteer issue is most significant. These firefighters need to be on the ground because no matter where bushfires occur, the enormous damage, personal hardship and tragedy that they can cause in these areas are quite amazing. I spoke to members earlier this year about the Victorian bushfires, in which some very close personal friends of mine sat in their car in Marysville while the fire razed their house to the ground. Somehow or other the car in the garage stayed there, and the family survived after having bade each other farewell. These are horrendous events, and that underpins my concern about similar things happening in regional, rural and remote parts of Western Australia. Marysville is one of the areas in Victoria controlled by the Country Fire Authority.

I know that members will understand this, but I need to make these points. The issues include enormous damage, loss of life; serious injury; destruction of property and personal possessions; destruction of unique flora and fauna; closure of national parks and tourist locations; huge costs of rebuilding homes and towns, and rehabilitating natural environments; costs of pursuing arsonists in court; and massive release of carbon dioxide into the atmosphere. Obviously, we will never be able to stop bushfires completely; however, members, we need legislation, and accompanying regulations, that will facilitate as best as possible some sort of seamless management of bushfires. I think that is the very issue that Hon Kate Doust was talking about in relation to non-metropolitan Western Australia, but obviously in relation to the metropolitan area as well; I am sure metropolitan members would agree with me there.

As Hon Kate Doust mentioned, the Bush Fires Amendment Bill 2009 basically has four elements to it. The opposition will propose some amendments with respect to the four elements, but I think there is broad agreement from the opposition on the need for the four elements—namely, the idea of a total fire ban; the development of a fire danger rating system; provision for the control and management of major fires; and the definition of “property”, stemming from the crown land issue. The opposition certainly does not consider any of those particular issues to be overly contentious, but I have a few, if members like, administrative and organisational issues that need to be mentioned, particularly given the area I represent.

I have received information, questions, suggestions and requests from many different sources about this legislation, and I will now quote from an ABC website story that featured the concerns of farming groups. I would like the minister to note these concerns, and it would be very useful if he could give an indication as to how they could be addressed. The story reads —

Farming groups say a new bushfire warning system will not be effective without a major upgrade to the state’s mobile phone network.

As a personal example of that, just before last year's election—in about July or August 2008—I could not even get reception in Denmark on my relatively new Telstra Countrywide mobile phone. I do not know how we will be able to put in place some sort of a mechanism or structure to address those issues, but one of the recommendations of the 2009 Victorian Bushfires Royal Commission related to that. It is great in theory, and I am sure Hon Ken Baston, who works in the more far-flung parts of the north of Western Australia, understands exactly where I am coming from, but I do not like his chances if Denmark is out of bounds, and not everybody can afford a satellite phone—certainly not poor parliamentarians!

I will also quote from Rob Gillam of the Pastoralists and Graziers Association. He believes that these sorts of ideas are excellent in theory, but he states that there are still serious problems with mobile phone coverage. He stated —

The use of it will be very, very good, but of course it will depend on the coverage, particularly of mobiles ...

He suggested that we have much to do on that issue.

I have another comment from the Western Australian Local Government Association, which states that —

... the state's volunteer firefighters are using outdated and inappropriate equipment.

If I apply that to areas where I do a lot of my work—certainly east of Albany—I fear for some of the workers out in those areas who are using outdated equipment. In the same article it is stated that according to Bill Mitchell —

... \$11 million in funding is needed to rectify the situation and he will be taking up the issue with the Minister for Emergency Services, Rob Johnson.

Maybe there is an issue there for the royalties for regions program.

The Australian Workers' Union's website lists some very, very relevant points, and if members will bear with me, I will quickly go through them. The Australian Workers' Union suggests that Western Australia needs more, better paid, forest firefighters for the bushfire season around the corner. It also suggests that the state is having trouble getting firefighters for this dangerous work, which might be an issue that the minister can advise us on. Certainly, wages and conditions are an issue in that regard. The AWU also suggests that relying on forest firefighters with limited experience seems to be becoming the norm in this day and age. The AWU states —

This will result in either insufficient staff to man all equipment, or a high ratio of forest firefighters with limited experience.

It also states that Western Australia is now facing a dangerous loss of experience in the service, particularly because of the age of members in the service, and it suggests that in the next five to 10 years we will face significant issues as a result. Finally, the union suggests that there is a need to attract and retain a younger workforce for the long term, which is a matter to which I would like the minister to give some consideration.

I think most members have had some communication with the Association of Volunteer Bushfire Brigades of Western Australia. Tonight I spoke to the state president, Terry Hunter, who re-emphasised the point that he made in an email he sent to members on 12 October. Mr Hunter stated that we —

... must ensure they —

That is, volunteers—

have a clear understanding of any proposed legislation changes —

He is talking about communications —

and the consequences of those proposed changes on the day to day operations of our volunteers in the field, which at this stage can not be demonstrated.

That is a bit of an indictment of the process.

I have gone on for longer than I intended, but in conclusion I honestly hope and expect that the provisions outlined in the bill will assist in the best possible management of bushfires in Western Australia. Certainly, our amendments and questions during the committee stage will focus on those issues. I believe that we have learnt much from the Victorian disaster, and fairly obviously this legislation focuses significantly on that. I certainly look forward to reading both the complete Victorian royal commission report and, as I indicated before, the Western Australian Premier's bushfire readiness review. If the minister can organise for that review to be in the house over the next day or so, it would be very much appreciated.

HON COL HOLT (South West) [9.28 pm]: I picked up on something that Hon Matt Benson-Lidholm talked about—that is, mobile phone coverage. I know from talking to people in Balingup, where they also had a fire experience in the not-too-distant past, that they do not have a mobile phone tower and they do not have mobile phone coverage, which was a real drawback and a limitation to their communications when they tried to tackle that fire. I know that the Shire of Donnybrook-Balingup is looking at a project that might allow it to bring in a mobile tower. I am certainly interested in talking to the Minister for Emergency Services about how the community and state government can work together to ensure that we get a mobile phone tower to assist with fighting fires in the future.

I have incredible respect for all the professionals in the Fire and Emergency Services Authority and the Department of Environment and Conservation, who have a lot of experience in fighting bushfires. I have great respect for the people who, although they are called volunteers, really are professional firefighters in our communities. I think they are a really important component of our communities, especially in regional WA. As a member for the South West Region, I think they are incredibly important in areas where possibly catastrophic fires might occur in the future. We need to make sure that we protect the interests of volunteers and ensure that they are valued and respected throughout the process of developing a legislative approach to bushfires. We need to make sure that we support them in such a way that volunteers will continue to be recruited. We need to send the right message so that the volunteer sector, which provides such an incredible service, continues to grow and develop skills that the community can call upon when it most needs them.

Concerns have already been expressed in the house about the level of consultation with all sectors of the bush firefighting community. I have had conversations with volunteers and also friends in the Department of Environment and Conservation who have expressed concern about the level of consultation. I would like to ensure that they have a voice in this process. It may be that the consultation has not been as good as it could have been up to this point. I know that some discussions have taken place in the past few days with a view to ameliorating those concerns. I would like to ensure that volunteers have a fair bit of consultation and input into what happens after the legislation is passed when procedures are developed, so that we can ensure that their experience and passion is reflected in those consultation processes.

The bill is very important. In all the briefings we have, we understood the need for it. As Hon Kate Doust said, it is probably an interim measure until we get to a bigger bill down the track. In the urgency of a fire event we do not really want to create a bun fight. My understanding is that one component of the bill is to create a smooth transition of who is in control of a fire and not inhibit it. This already happens in most circumstances in which the three groups involved in bushfires in this state—the volunteers, the Fire and Emergency Services Authority and the Department of Environment and Conservation—already work very closely. There is never any issue about who will be in control of a fire. This legislation is really about making those sorts of things clear. It involves passionate people who are committed to their vocation, whether they be paid professionals or volunteers. The concerns that have been raised in discussions, emails, letters and phone calls are really about making sure that the bill is clear and that it gets it right. I am confident that those three groups can work together to make sure that we get it right into the future.

Some concern has been expressed to me that although the bill gives a lot of power to FESA, FESA does not necessarily have the necessary experience in some bush firefighting circumstances, so that the responsibility is not matched with its experience. These are real concerns for people. The intent of the bill is not really about FESA taking control but making sure that the right person in those circumstances is in charge of a fire. It is really about ensuring that they have the right experience and the right training. It is to ensure that they have the right legislative power and the right support, and that it is in the hands of the right person. FESA officers are trained professionals to levels 2 and 3. I hope that those skills and training are also available to other sectors of the bush firefighting community, including volunteers and DEC officers. What we want is not just formalised training but also to ensure that those people are exposed to on-the-job training and are not excluded from some of the decision-making processes. We want to ensure that they are involved in fighting fires at that level so that they can build their skills and knowledge about how they might respond in the future when they are called upon when maybe no-one else is there to take control of the fire. They should have the experience, skill and training to be the right persons to take control of a fire. I hope that other officers besides FESA officers are exposed to that training. We want our communities to have the capacity to fight any fire and make the right decisions about that fire; and, if someone is indisposed, we want there to be a number of people who are able to step into the breach and take control.

I am interested in the total fire ban provision in the bill. In the briefing, we found that some exemptions will be established for certain industries and companies. I seek some clarification about how that might apply to, for example, paddock movements for animal welfare needs. It is clear in the bill that if a person does something that causes a fire, that person could be prosecuted, but where does it stop and when does commonsense apply? I would like some clarification on that matter.

Obviously, the Nationals will support this bill, but we want to ensure that the intent of the changes in the legislation are reflected in operational and procedural aspects, especially for the coming fire season, to ensure that the three organisations that are clearly involved in firefighting in this state have a clear role and that they know that they play a major part in it. I look forward to further discussions during the committee stage.

HON GIZ WATSON (North Metropolitan) [9.36 pm]: The Greens (WA) will support the Bush Fires Amendment Bill 2009, but we have some reservations and plenty of questions about it, plus a couple of amendments that I will foreshadow. The purpose of this bill is to amend the Bush Fires Act 1954 and to make a consequential amendment to the Environmental Protection Act 1986. The amendment proposes changes in the following areas: new arrangements for the control of major fires, the introduction and clarification of the instrument of a total fire ban, the definition of “property” to be changed to include crown land and bush, and the inclusion of new fire danger rating categories of severe and catastrophic.

By way of background to this bill, the changes are based on the report of the Community Development and Justice Standing Committee on the inquiry into the fire and emergency services legislation. The inquiry commenced on 24 August 2005 and the report was tabled in October 2006. The report made 88 recommendations that were, according to the information we received from the Fire and Emergency Services Authority of Western Australia via the briefing that we were kindly provided in September, all accepted by the government. The report recommended the amalgamation of the Fire Brigades Act 1942, the Bush Fires Act 1954 and the Fire and Emergency Services Authority of Western Australia Act 1998. A new bill is currently being drafted and it has been indicated that it will come into Parliament in about two years. I appreciate that this bill is kind of a stopgap in the interim before we get more comprehensive legislative change.

This bill addresses some major issues ahead of the introduction of that bill to clarify the lines of authority and to provide a statutory basis for orders and directions made during major fires. The issue has gained some prominence, obviously, after the major bushfires in Victoria earlier this year in which there was the loss of 173 lives. According to the briefing, 120 of these tragic deaths were people who died in their homes. The bill was drafted after wide consultation with both public and private organisations, including the Western Australian Local Government Association liaising with all 122 local governments that have bushfire management responsibility. The bill also took into consideration two coronial investigations, the 1994 Darling escarpment review, the 2004 report by the WA Auditor General entitled “Performance Examination: Responding to Major Bushfires” and the 2004 Council of Australian Governments’ report entitled “National Inquiry on Bushfire Mitigation and Management”. It is interesting that the state bushfire emergency management plan, or Westplan-Bushfire, will be updated following the passage of this bill. FESA is confident that regulations in the new Westplan-Bushfire will be completed by commencement of the bushfire season, which as members probably will be aware starts on 1 December, if not earlier. That is an ambitious time line. As much as the Greens (WA) consider that this bill is based on considerable work and consultation in its development, I nevertheless foreshadow that I will move that the bill be referred to a committee. That is because I do not think that the level of consultation that has occurred, particularly with the voluntary bushfire sector, is adequate. I understand that in recent times they have had some of their concerns addressed by way of a meeting with Fire and Emergency Services Authority people, but we have to get the details right—in particular, who takes control and in what circumstances. From correspondence and conversations I have had with the sector, there are unanswered questions. It is an important bill, and it has a degree of urgency to it, but that urgency is not such that it should override getting this bill right.

Hon Peter Collier: Have you spoken to them in the past couple of days?

Hon GIZ WATSON: Yes, I have.

Hon Peter Collier: And do they still have some issues?

Hon GIZ WATSON: They still have a swag of questions they wish to have answered.

Hon Peter Collier: I was under the impression that they had those questions answered.

Hon GIZ WATSON: Perhaps when I put those questions forward, the minister might be able to assist in that. I put on record that as a Parliament we have to make that judgement between the case that is made for urgency versus not rushing something. I appreciate that this has had a very good engagement in its formative process, but I argue that the final words probably need some further work.

The bill also leaves any powers under the Emergency Management Act 2005 unaffected. Currently that act does not apply to fire hazards. We are happy to see that a fire will be included in that way.

The Greens (WA) are supportive of the bill, but we will raise some issues, particularly about the effects of climate change. We have raised these sorts of issues for a long time, and it is well understood now that one of the

consequences of a drying climate and more variability in weather patterns is the increased likelihood of catastrophic fires and, for that matter, other storm events like floods and severe storms. The statistics tell us that. We know that there have been significant and increasing numbers of wildfires in the Northern Hemisphere, in California in particular, throughout Europe and in the tundra. I think the two catastrophic fires in recent times in Canberra and Victoria are a portent of what we must prepare for in dealing with fires that will be a consequence of a drying climate. Rising temperatures due to human activity are making fire events more frequent and more intense.

I refer to an article in the UK *The Guardian* online of 8 February 2009, which reads as follows —

Bob Brown, a senator who leads the Australian Greens, said the bushfires showed what climate change could mean for Australia.

“Global warming is predicted to make this sort of event happen 25%, 50% more,” he told Sky News. “It’s a sobering reminder of the need for this nation and the whole world to act and put at a priority our need to tackle climate change.”

Models suggest global warming could bring temperature rises as high as 6C for Australia this century,

According to the briefing we received from the Fire and Emergency Services Authority, only about six of the 6 500 fires in Western Australia would currently be classified as major fires. Major fires are fires that go beyond the capacity of the local fire brigade and this bill gives FESA the authority to take control of a fire in two cases: firstly, when a local authority requests FESA to do so; and, secondly, when FESA considers it appropriate to do so due to the nature and extent of the bushfire.

It is interesting that if members read this legislation carefully—I will go into this in more detail in the committee stage—they will find that it does not state that FESA will only take control of a fire when the fire fits into either of those two categories of extreme or catastrophic, because the discretion is solely with FESA. It is one of the concerns that the volunteer fire brigade sector has.

We have been led to believe that this legislation allows FESA to take control of severe category fires. If members read the legislation they will find that it does not say that. It says that FESA can take control for two reasons; that is, when either a local government or a Conservation and Land Management Act officer asks FESA to take over. That is great and the Greens support that. It is a very appropriate way to ensure that, once a fire reaches a certain point, FESA can take control.

However, the next part of those two clauses provides a third circumstance—situations in which, in the view of the authority, the fire has reached a point where FESA needs to step in. It could be a small fire, a medium fire or any sort of fire, but the legislation does not state, “only in these two categories”. That is one of my concerns. I think the legislation is badly worded and members need to be aware that despite what we have been told—that is, that this provision will only be used in the circumstances of these two categories—that is not what the legislation says. I invite member to read those clauses again before we get to the committee stage.

This provision clarifies the lines of command and authority in major fires. It will also provide a much-needed statutory base for local government to hand over firefighting responsibilities when the fire can no longer be managed by mainly local and volunteer firefighting crew. However, that is not the only circumstance in which FESA can take control.

A similar provision is included in this bill for fires burning on conservation reserves requiring a request from the chief executive officer of the Department of Environment and Conservation or a decision being made due to the extent of the fire. Again, that is not limited to the extreme categories of fires.

With regard to orders and directions by FESA in the case of major fire, new powers are proposed as a statutory basis for directions for access to property or the usage of roads as well as evacuation orders made by the incident controller representing FESA. This provision is contained in clause 6 of the bill. Making such orders is at the discretion of the authorised person and this discretion is not limited. Again, it is not limited to those two severe categories of fires and members need to be aware of that. Anyone disobeying such an order risks a fine of \$25 000. The fine for lighting a fire is significantly higher, being \$250 000 and up to 14 years’ imprisonment under section 2 of the Bush Fires Act. I have no problem with that level of fine for somebody who is lighting fires. Having spent some time voluntarily putting out fires on the south coast, I know exactly how catastrophic and frightening those events are.

The bushfire awareness slogan that FESA will be promoting this year has changed to “Prepare, Act, Survive” and the Greens are concerned that people who have a good fire management plan for their property will be ordered to leave in the case of a fire. These people risk being charged with a hefty fine if they disobey that order. Although FESA has assured us both in the briefing and publicly that these fines are not to be widely used in fire management, I argue that that is only what has been given by way of an indication. There is nothing in the

legislation to say that this policy or this fine cannot be applied in many circumstances. The fact is that that discretion will lie with FESA, hence the two amendments I have on the supplementary notice paper do not limit the application of an authorised officer to direct somebody to evacuate or cease to move within an area, which are the two powers within the bill. However, if it comes to a court case, a person who has been so charged will have a reasonable defence to use in the court. I will get on to that when we go into the committee stage. I want to be clear that I am not saying that the authorised officer will have to negotiate with someone who has been directed to evacuate or to not go down a certain road at that time, because I understand that there needs to be the capacity to ask people to respond pretty much immediately. However, if it turns out that the person decides to disobey that order and stay at his property, and he is well prepared, he has firefighting gear, he has a plan, he is fit and he wants to stay and defend his property, he has a defence that he can argue in the court. When we are considering a fine of \$25 000, I think it is only reasonable that we put in the legislation clear guidance to the court. It must be remembered that this kind of model for legislation has primarily been lifted from the Emergency Management Act, which is a pretty hefty, high-powered bit of legislation that envisages terrorist acts in this state. I remember very well debating it in this place. Therefore, we should be careful when we lift provisions that envisage having to direct people who might well be terrorists, and then apply the same kind of principle to people who are property owners and who might have an enormous amount of experience and capacity to deal with a fire approaching their property. If they are going to be under threat of a significant fine, that might come on top of the fact that they have already lost their property, their stock, all their fences and everything else. If they are going to be hit with a charge of having disobeyed an order, we think that it is only reasonable that we install in the act a capacity for them to have their reasonable excuses for staying considered by the court. I have digressed into that particular clause, but it is the most significant one for us, I believe, in this bill.

We want to strike the right balance for people who want to stay and defend their property. *The West Australian* reported on 14 September 2009, in an article entitled “New fire laws give police evacuation power”, that FESA would be able to instruct police to forcibly remove people from their properties once an evacuation order was made. The paper further reported that these powers would not be used against adults who wanted to stay, but could be exercised in extreme cases for children and the elderly who needed evacuation. I have a bit of a problem with this picture that is being painted. I cannot imagine that anyone who was in charge of a school or an old persons’ home and who had an evacuation order presented to him, with or without any significant authority or fine attached to disobeying it, would not heed those instructions, accept the assistance and evacuate. The case that is being skirted around is that an individual or a group of people who are making a decision based on their own pre-existing knowledge and their own capacity are now going to be put in jeopardy of a fine. Therefore, I do not think it is right to say, “Well, these powers may be broad, but we’re going to use them only in these circumstances.” If the government wants to use them only in those circumstances, it should put that in the legislation, otherwise it is really sloppy drafting, quite frankly.

We, as parliamentarians, have an obligation to make sure that the law does what the policy and the second reading speech claim it will do. Therefore, either there is something wrong in what has been presented, in which case we might as well get that clear, or we need to modify the legislation. We understand that, contrary to what is being reported, the bill does not include such a provision. An order cannot be enforced by police, for example—I will seek the minister’s response to that—although existing police powers are still available under the Criminal Investigation Act. That is another problem with this bill. As much as it provides the capacity for a fine, it does not provide the capacity for an officer to detain or physically restrain someone who disobeys an order, whereas a police officer, as we know, who is directing an order can do that. This bill does not provide for that. I do not think it should provide that capacity, but let me again make it clear: the bill does not provide for that. I would like the minister to put on record that my interpretation is correct and that police will not assist the Fire and Emergency Services Authority to implement evacuation orders through forcible removal of residents or anybody else.

The bill does not make any provisions for the forcible implementation of orders, and FESA assured me that rather than insisting upon the enforcement of an evacuation order on a resident who is well-prepared and unwilling to comply, it would turn its attention to the other 30-odd people living in the area. FESA’s priorities are nursing homes and schools, but the bill does not make provision for differentiation between properties that are well-prepared and those that lack preparation. We would like to know how other states are dealing with the evacuation orders, whether any differentiations exist in other jurisdictions, and what penalties for breaches of order apply in other jurisdictions. We would be interested to make the comparison.

With regard to penalties, breaching a bushfire order carries a civil penalty of \$25 000. As we know, civil penalties are financial penalties determined by the court and do not involve criminal liability. The maximum penalty can be set only by the court. Under the existing provisions of the Fines, Penalties and Infringement Notices Enforcement Act, people would usually receive an infringement notice. An infringement notice is a

financial penalty that can be issued to a person for failing to comply with an obligation under the law. FESA can issue infringement notices under section 59 of the Bush Fires Act 1954 and the Bush Fires (Infringements) Regulations 1978. These statutes have schedules of offences that prescribe penalties administered through infringement notices. These are the existing provisions that will change under this legislation.

The Australian Law Reform Commission, in a report on the sentencing of corporate offenders, made some general observations about the setting of fines. Foremost amongst the principles is the principle of proportionality. Courts are required to examine the objective seriousness of an offence and then look at other variables to ensure that the penalties do not exceed what is required by the seriousness of the crime. These variables include the degree to which the offender was responsible for the offence and other subjective factors that relate to the offender, such as character and response to the occurrence of the offence. Some of the most important factors relevant to setting the penalties for corporate offenders are canvassed in chapter 4 of the report. It advances the view that the principle of proportionality operates to restrain excessive arbitrary and capricious punishment, and at the same time requires that the sentence is not excessively lenient. In short, the objective is to obtain a punishment that is just under the circumstances of each case.

The Greens (WA) argue that a fine of \$25 000 is excessive and does not meet the requirements of proportionality. The penalty needs to fit the breach; if people have good reason to disobey an evacuation order, they should not be fined. If people have lost their homes or have been injured in a fire, the authority setting the fine should take this into consideration. When we get to my amendment, these are the matters I will ask that the court be required to consider.

The issue of forced evacuations was the subject of an ABC Online report of 19 June. Naomi Brown, chief executive officer of the Australasian Fire and Emergency Service Authorities Council, said, when comparing the Australian and US experience of forced evacuations, that forced evacuations would not work in Australia. I quote from a transcript of that ABC Online report. She stated —

The time to evacuate is extremely limited and extremely dangerous. So if we can get better at giving people triggers of when to leave early, which we'll work very hard on doing, then people evacuating themselves is the safest thing to do, as long as it's early enough.

But I don't think we'll ever be at the point of forcing thousands of people to evacuate. I don't think that our road systems or our culture is at that point.

I will touch on the experiences in Victoria. The 2009 Victorian Bushfires Royal Commission has handed down its interim report and has made 51 recommendations. In making these recommendations, the commission focused predominantly on changes that can be implemented prior to the 2009-10 bushfire season to enhance the protection of human lives. The recommendations deal with bushfire warning systems, including the use of sirens and the establishment of a single multi-agency portal for bushfire information; a new proposed fire danger rating scale, to include ratings for severe and catastrophic bushfires; a change in terminology to evacuation instead of relocation; incident and emergency management; and safe refuges for schools and community safe places. Chapter 7.1 deals with the issue of whether people should stay or go during a major fire. When people make up their mind that they want to stay, in my view it is impossible to make them go. Such a view is shared by the Victorian senior police personnel. I will quote from an article in *The Age* newspaper of 14 October, 2009—but I might pause for breath.

Debate adjourned, pursuant to standing orders.