

FIRE AND EMERGENCY SERVICES LEGISLATION AMENDMENT BILL 2012

Second Reading

Resumed from an earlier stage of the sitting.

HON GIZ WATSON (North Metropolitan) [5.07 pm]: I will just continue from where I was before we broke for questions. I was referring to the fact that the special inquiry was influenced by a couple of reports and had just referred to those two reports.

For this reason, the special inquiry sought to separate emergency management policy and planning functions from the operational functions to ensure a whole-of-government focus and compliance with the current state emergency management policies and plans. It is also worth noting in relation to recommendation 46 that back in 2006 the Community Development and Justice Standing Committee made its recommendation 60 that consideration be given to a review of whether the Fire and Emergency Services Authority should remain a statutory authority or a restructured department, so this committee was obviously on the ball quite a long time before this bill was drafted. In relation to recommendation 44, the bill amends the Emergency Management Act 2005 so that the state emergency coordinator can declare an emergency situation if she or he feels it is appropriate and if a hazard management agency has not already done so. The relevant hazard management agency will then have to act upon the declaration. In relation to recommendation 46, the bill replaces the Fire and Emergency Services Authority with a department.

The minister's function under fire and emergency services legislation will be performed via a ministerial body corporate. Assets and liabilities of the defunct statutory authority will go to that body and the emergency services levy and other funds raised through the operation of emergency legislation will go to the department, not to consolidated revenue. Day-to-day operations will be managed by the chief executive officer, who will be called the Fire and Emergency Services Commissioner. Staff will be either public servants with an administrative role in the department, operational staff who assist the community during emergencies or wages staff such as mechanics or technicians. Regarding the volunteers who respond to emergencies, the minister will be required to establish a volunteer advisory committee for each volunteer service that exists under emergency services legislation. The minister will also be required to prescribe in regulations which associational body will represent each of the volunteer services. The majority of the volunteer advisory committees will have to comprise people nominated by that prescribed association or body. Most of this relates to this restructure but the bill also makes a further amendment to the use of police powers to move and evacuate people in or near an emergency. I note that the bill took quite a long time to be debated in the other place and that the government moved one amendment to clause 7 to insert new section 9 into the FESA act to clarify the minister's powers to borrow money. That power is limited to borrowing from the Western Australian Treasury Corporation, not borrowing at large. That brings us to the bill in front of us.

It is worth noting that this bill obviously deals with two of the 55 recommendations in the Keelty report. The government's progress on the recommendations is included in the Community Development and Justice Standing Committee's November 2011 report "Western Australia's Readiness for the 2011–12 Bushfire Season" and the government's response to that report. I note that in the other place the shadow minister criticised the level of implementation of the remainder of these recommendations to date, and I will probably share those comments.

Clause 14 of the bill deals with the delegation of responsibilities. Section 15 of the Fire and Emergency Services Authority of Western Australia Act contains provisions regarding the delegation of responsibilities. Apart from the changes being consequential on the restructuring of FESA to a department, the bill contains one substantive change in the delegation powers. In place of subsection 2(a), which currently permits FESA to delegate the performance of any function to the CEO, clause 14 of the bill provides that FESA's successor—the FES commissioner—can delegate any of his or her functions under the emergency services acts to another member of staff, an advisory committee or a public service officer not employed by the department. Hence there appears to be quite an expansion of the potential recipients of delegated functions. I would like to explore the extent of that delegation and particularly the question of responsibility. Under section 58 of the Western Australian Interpretation Act, when the performance of a function is dependent upon a person's opinion, belief or state of mind, it is the opinion, belief or state of mind of the person to whom the power has been delegated, not of the person doing the delegating, which counts. In addition, clause 9, which inserts proposed section 11(1), provides that the FES commissioner, subject to the control of the minister, is responsible for the provision and management of emergency services.

Sorry, Mr Deputy President, this is somewhat unusual, but I am supposedly addressing these comments to the minister who is in charge of the bill, who is deep in conversation at the back of the chamber with his advisers so that I might as well be talking to thin air.

The DEPUTY PRESIDENT (Hon Brian Ellis): I think the minister has taken note of your comments. It is not unusual for a minister to seek advice.

Hon GIZ WATSON: I am making a fairly detailed point, and if the minister is not interested in listening, I do not know what I will do, but it is pretty poor form, in my opinion.

The DEPUTY PRESIDENT: You will have an opportunity to raise it in committee.

Hon GIZ WATSON: I might as well wait and do it at the committee stage. I thought I would give the minister the benefit of having the opportunity to respond in his second reading reply. I have no doubt that he will not be able to do that. Regardless, I will keep going.

My understanding is that although the person to whom a function is delegated by the FES commissioner will have the freedom to make up his or her mind when the performance of the function is dependent upon it, it is only the function, not the overall responsibility, that can be delegated. It is my understanding that responsibility will remain with the FES commissioner, subject to the control of the minister, as per new section 11(1). There was some discussion in the other place on this matter but I would like to make sure that my understanding is correct. Will the minister please either confirm or correct the accuracy of this interpretation, which he might or might not have heard. I will repeat it when we get to clause 14.

Hon Peter Collier: During committee?

Hon GIZ WATSON: I think that it will probably have to be in committee, yes.

My next question regards clause 24, which is the preservation of rights or entitlements of career firefighters. Clause 24 inserts proposed section 21 into the FESA act, which states in part —

- (3) The remuneration of, and other terms and conditions of service of, operational staff and wages staff are not to be less favourable than provided for in —
 - (a) an applicable award, order or industrial agreement under the *Industrial Relations Act 1979*;

I understand that many of the people who will be covered by this section are on paid rates awards, not minimum rates awards. In my consultation on this bill, concerns were expressed about whether the proposed section preserves the remuneration and other terms and conditions of those operations or wages staff who are on paid rates awards. I am aware that this was also raised in the other place but I understand that the answer given was not adequate. I have made some further inquiries of the minister's office and understand that the intention of this clause is that no-one will be paid less than they are currently and that the intention is instead to provide a safety net of minimum conditions for people who are not on any kind of award at all. For the record, I request that the minister confirm that the intention is that the remuneration and other terms and conditions of those operational and/or wages staff who are on paid rates awards are preserved.

Immediately beneath that provision, clause 24 also inserts proposed section 21(4) into the FESA act. Two queries have been raised with me about that during my consultation of the bill, again in respect of career firefighters. Proposed section 21(4)(a) provides that the operational staff may be engaged on a full-time or part-time basis. I understand that all active firefighters are full-timers because of the amount of time on the job that is necessary to maintain competencies. Part-timers cannot be active firefighters but they can do other duties. I understand that these are the terms used in the relevant industrial agreement. The reasons, as I have said, relate to competencies or, in other words, safety. I have made further inquiries of the minister's office and understand that the intention is that the limitations in the enterprise bargaining agreement about the types of jobs that can be done by part-timers will continue to apply. Again, I ask the minister to confirm that the intention is that the limitations in the EBA about who can work part time will not be overridden by this clause.

Proposed section 21(4)(b) provides that operational staff are to be engaged either indefinitely as permanent officers or for a period not exceeding five years. I understand that it is not unusual for a person to be temporarily appointed to a higher or other position. Currently, such a person would return to their substantive position without loss of their original rank or permanency. Concern was expressed to me during my consultations about whether this proposed section will change that arrangement so that the return of a person to their original position will no longer be possible and instead they will be out the door. From my further inquiries of the minister's office, I understand that the key word is "engage" and that parliamentary drafters nowadays have a convention whereby they say "engaged" when they mean newly employed from the outside, and "designated" or

Extract from Hansard

[COUNCIL — Tuesday, 14 August 2012]

p4764d-4778a

Hon Giz Watson; Deputy President; Hon Col Holt; Hon Peter Collier; Hon Kate Doust; Deputy Chair; Hon Adele Farina; Chair

“appointed” when they mean a change of function for a person who is already employed within. Thus permanent staff who are temporarily removed, that is, “designated”, to another position—for example, if they are seconded or employed in an acting position—will continue to be able to revert to their substantive position. Similarly, permanent staff who are appointed to the senior executive service will have a right of return. These provisions are contained in the Public Sector Management Act. My understanding is that the proposed section is intended to ensure that it is possible to employ new people in non-permanent positions for a position, for example, that has funding for only a couple of years. An existing permanent employee is not expected to apply for such a position, as the advertising wording will make it clear, but if an existing permanent employee did apply, they would know that they would not be able to revert to their previous position. Again, I am asking the minister to confirm whether or not my understanding of this is correct.

Clause 24 inserts proposed part 5, “Advisory committees”, into the FESA act. Part 5 permits the minister to establish advisory committees and mandates that the minister at least establishes certain volunteer advisory committees. There is no matching requirement that an advisory committee be established through which career firefighters will have a voice. The minister can create such an advisory committee if he or she likes, but it is not mandated. During consultation, concerns were again expressed that the minister is not required to establish an advisory committee through which career firefighters can provide advice or assistance regarding the operation or administration of the emergency services legislation. These are, after all, people who have considerable expertise, and, because of the dangerous nature of their work, the way in which the legislation operates or is administered will have a direct impact on their health and safety. I will be moving an amendment to ensure the minister hears the voices of the representatives of these career firefighters, and also of the union representatives, as I understand that almost all career firefighters are union members.

With regard to the management and distribution of the emergency services levy, recommendation 48 of the Keely report is that the state government move to the Department of Finance the responsibility for the management and distribution of the emergency services levy. The reason for this recommendation was that the special inquiry questioned the appropriateness of an agency funded by the ESL to also be responsible for its distribution. Under the bill, FESA will be replaced by a department and, under proposed section 36UA, the levy will be paid to an operating account of the department. I assume this is because it is considered that the restructure sufficiently addresses the concerns expressed in the Keely report. Again, if this is correct, are there any other reasons; and, if so, what are they?

Clause 33 of the bill, which will replace section 38 of the FESA act, will, as I read it, have the effect that the emergency services levy funds that have been collected will not revert to consolidated revenue at the end of the financial year. However, during consultation, some queries were raised about this matter, and I was asked to obtain confirmation of this. The concern expressed to me is that the funds are desperately needed for more career staff in the south west tourist areas. This is not only because fires at tourist sites put at risk the lives and properties of many more people than a count of the permanent population would suggest, but also because career staff are needed to respond to serious motor vehicle accidents. There is a particularly large number of motor vehicle accidents in the south west, particularly in the Vasse area, and I understand that too often local volunteers are being called out to respond to traumatic road accidents involving people whom they know. It is not fair to keep asking these people to do this.

I have made further inquiries of the minister’s office to double-check this matter, and I understand that the money will not revert to consolidated revenue. The clause that will effect this is clause 33, proposed section 38(3). Also, proposed section 38(1) provides that the money can be used only for the purposes of the emergency services act, regardless of whatever other unrelated functions the department might have. For example, if a fire truck is bought with those funds and later sold, the proceeds are to be retained and can be spent on a new fire truck, instead of going to either unrelated functions the department might have, or consolidated revenue. For the record, I ask the minister to please confirm that unspent emergency services levy funds will not revert to consolidated revenue at the end of each financial year.

Clauses 49 and 109 of the bill deal with the expansion of police powers. Clause 49 amends section 14B of the Bush Fires Act 1954. Under that act, currently FESA can authorise a particular person to take control of all operations during a bushfire. That authorised person can then direct or prohibit the movement of people, animals or vehicles in the area, including directing evacuation, and can direct that roads and access routes in the area be closed. Failure to comply with such a direction attracts a penalty of \$25 000. Clause 49 amends this section to provide that, during the period of authorisation, police officers will also be given those powers of direction. The explanatory memorandum states that the intent is to improve the level of assistance police can provide at a bushfire by ensuring that they can give such directions independently of FESA or its successor. The powers are limited to a particular set of circumstances and to particular directions that can be given.

Extract from Hansard

[COUNCIL — Tuesday, 14 August 2012]

p4764d-4778a

Hon Giz Watson; Deputy President; Hon Col Holt; Hon Peter Collier; Hon Kate Doust; Deputy Chair; Hon Adele Farina; Chair

Clause 109 of the bill amends section 71 of the Emergency Management Act 2005. Under that act, currently the most senior police officer present at an emergency scene can direct a person in charge of a business, place of worship or place of entertainment to close it for a specified time, and can also exercise the same powers as a hazard management officer—that is, direct or prohibit movement of people, animals or vehicles in the area, including directing evacuation, and direct that roads and access routes in the area be closed. Failure to comply will attract a \$50 000 penalty, plus a further \$5 000 for each separate and further offence, under section 86 of that act. Clause 109 of the bill amends this to provide that any police officer can exercise this power provided it is for the purpose of emergency management during an emergency situation or state of emergency. The explanatory memorandum states the reason is to cover situations, particularly in remote areas, in which the most senior officer in the declared area is not in town to exercise the powers, or the incident command post set up for emergency response is outside the emergency area. I would have thought that in that case, the person would not be present, and the powers would be exercisable by the most senior police officer who was present. I wonder whether the minister could give some explanation in that regard. I will raise this matter again when we get into committee, but I flag it now so that the minister will have a chance to respond.

Some concerns were expressed to me during consultation that clause 49 in particular might lead to disaster if, for example, the police, not knowing what the fire was doing, were to direct evacuating people into the path of the fire, or if the police were to prevent firefighters or support personnel from using roads. I have raised this concern with the minister's office, and I understand the following—I am quoting here from my notes —

- Volunteer firefighters currently hold that power and there is potential for a similar scenario to occur in any case;
- The function of police in a fire is to deal with road blocks and evacuations and they need this power to exercise that function. While volunteer firefighters currently have that power, their main function is firefighting;
- Currently, police on the scene have problems with not knowing who has given an order, whether they have authority to do so, etc. So sometimes they're not sure about who is and isn't allowed through a road block, for example;
- While police do have individual discretion, in practice when multiple officers are involved as in a fire situation (ie police at command post and police on the scene at road blocks) they act in coordination under a hierarchical command structure. Police at the roadblock act under instructions from their command post. The command post is informed by FESA;
- It is still possible that the situation described could arise, but police training and command structures are designed to protect against it.

I am satisfied with that answer. It seems to me that in such a dangerous, changing situation, there are potential difficulties both with the police, as well as authorised persons, having the power, and also with them not having it. To give them the power in a context in which they are likely to follow the instructions of an informed command post, unless there is clear reason not to do so, seems to me to strike the right balance in difficult circumstances. I do ask, however, that the minister carefully monitor the success or otherwise of the change so that further changes can be made in the future if necessary. Given the nature of the issue, I assume the minister will want to identify any problems and will be doing so anyway.

I turn now to clauses 88, 94, 113 and 147 of the bill. Clauses 88 and 94 together amend sections 54 and 55 of the Fire Brigades Act 1942. These amendments are consequential, mostly changing the word "Authority"—as in FESA—to "FES Commissioner" or "Minister" or "State" as appropriate. Similar changes are made by clause 113 to the Country Areas Water Supply Act 1947 and by clause 147 to the Water Boards Act 1904.

However, during consultation an issue to do with fire hydrants was raised with me that I would like to draw to the attention of the house, and particularly to the attention of the Minister for Commerce, whose department incorporates WorkSafe, and to the minister representing the Minister for Water. One matter that is not changed by this bill is the fact that the water authority is responsible for installing or abolishing fire hydrants as requested by the now FES commissioner, and also for keeping fire hydrants in effective working order. However, property in the fire hydrants belongs to FESA—now to be the minister—not the water authority.

Under section 55 of the Fire Brigades Act, fire hydrants can be placed only on or under the surface of streets, paths or roadways with the sanction of the Fire and Emergency Services Authority—when this bill is enacted it will be with the sanction of the Fire and Emergency Services Commissioner. However, the Water Services Bill 2011, which is yet to be debated in this house, contains provisions that will transfer the ownership of fire hydrants to the water authority. Those provisions are contained in clause 96 and schedule 1, clause 13(4) of that

bill. These provisions are pursuant to recommendation 50 of the Keelty report, and also recommendation 72 of the 2006 Community Development and Justice Standing Committee report to which I referred earlier.

Again I have been advised during consultation that in the suburbs most hydrants are underground, rather than the pillar-type of hydrant. However, Perth soil is acidic and sandy and causes underground hydrants to rust out. This means that underground hydrants need to be replaced each decade, and until then they require an annual service to clear out the corrosion to ensure they work properly. Clearly hydrants that do not deliver full flow endanger the health and safety of firefighters and do not assist with their work of protecting the lives and properties of other people. Currently, basic annual servicing of fire hydrants is done by FESA, and if anything more is needed, a work order is submitted to the Water Corporation. Unfortunately, however, and as indicated by recommendation 51 of the Keelty report, the Water Corporation is not keeping up with work orders. I was also told that on occasion the Water Corporation mistakenly puts in mains of insufficient size for the required flow.

The United Firefighters Union would like there to be a review prior to the implementation of recommendation 50 of the Keelty report. Understandably, it is very worried about any arrangement that would mean it would no longer be able to carry out basic annual maintenance of underground fire hydrants to ensure they are adequate to meet safety and work needs. Failing that, it would like to be sure that the minister is kept informed of the number of outstanding work orders relating to fire hydrants and the date when a fire hydrant was last checked and confirmed to be in effective working order, so that remedial action can be taken if needed. This issue is another reason the minister needs to hear from the representatives of career firefighters through an advisory committee, so that he or she will know whether there are safety issues or other problems with water flow from fire hydrants on which firefighters are dependent.

At the time of the Keelty report the Water Corporation made a submission indicating that it had about 1 000 outstanding work orders on fire hydrants. I am interested to know whether there is any capacity to give an update on how many of these remain outstanding; what arrangements are in place to ensure that the Minister for Emergency Services is kept informed of the number of outstanding work orders and other issues relating to water flow from fire hydrants, so that he or she can take appropriate action to protect the health and safety of operational staff; and whether any or all of the following provisions enable FESA and its successor to sanction only the fixed-pillar type hydrant rather than the underground fire-plug type—that is, to specify the sort of hydrant to be installed according to section 55 of the Fire Brigades Act, section 37(3) of the Country Areas Water Supply Act and section 63(3) of the Water Boards Act. I am flagging this issue now, but I indicate to the minister that I am aware that the substantive debate on this matter, I am sure, will be covered by the Water Services Bill 2011, as and when that gets debated. I am just taking this opportunity to link the two matters because there is a kind of crossover with the provisions of the Water Services Bill and they have a very strong impact on the operation of our fire and emergency services.

With those comments, I conclude by saying that the Greens are happy to support this bill, I flag that there is an amendment standing in my name on the supplementary notice paper, which I ask the house to support, and I look forward to the committee stage of the bill.

HON COL HOLT (South West) [5.33 pm]: I rise on behalf of the National Party to say that we will also support the Fire and Emergency Services Legislation Amendment Bill 2012. I want to make a couple of comments about consultation since the changes to the Bush Fires Act that we approved in this place about three years ago. The greatest amount of feedback that I get in my office from volunteer bush fire brigade officers and chief fire officers is about the level of consultation. A commitment was given by the then minister to ensure consultation was done properly and thoroughly and that their views would be respected, collated and implemented. I have to say that concerns continue to come into my office around the level of consultation. We can set up all sorts of advisory groups and systems for feedback from the grassroots level to ministers or commissioners, but unless we really truly listen to the feedback that is provided from people at the grassroots level, I will continue to get people coming into my office to talk about their voices not being heard. I have raised this issue with the minister and the commissioner before, and I will continue to do so. Again, it is about a commitment from the government to listen to those concerns. If we are to set up systems that provide the opportunity for decent and proper consultation at the grassroots level, we need to listen to them. I am not so naive that I believe when the opinion of some people is disagreed with it means that consultation has not been done properly. However, I also believe there are instances when people have entered into consultation groups or have provided feedback in the right way and not had their voices heard and their concerns addressed. As we move into a different system of providing emergency services to this state, I would encourage those sorts of concerns to continue to be listened to.

With those brief words and a word of encouragement to the government to continue to listen, we will be supporting the bill.

Hon Giz Watson; Deputy President; Hon Col Holt; Hon Peter Collier; Hon Kate Doust; Deputy Chair; Hon Adele Farina; Chair

HON PETER COLLIER (North Metropolitan — Minister for Education) [5.36 pm] — in reply: I will make a few brief comments because we will go into committee. I appreciate that a number of concerns and questions need clarification, particularly from Hon Giz Watson, and I apologise to her as I did not mean any disrespect. I was actually trying to get some clarification on one of the points she raised. As I said, I prefer to deal with the points fundamentally in committee.

I thank all members for their contributions and for their indication of support. This bill is of course a response to the Perth hills bushfire in February 2011. We want to make sure that we have the best response and emergency management team possible to ensure that, in the event of further emergencies, we are better placed to respond to those emergencies. The bill, in essence, will amend the Fire and Emergency Services Authority of WA Act 1998 by abolishing the authority and removing its board of management, which will in essence be replaced by a department with the amended act being called the Fire and Emergency Services Act. Ideally this bill will improve the ability to respond to emergencies by ensuring there is proper oversight of the new department and that volunteers will be more engaged in the process. I think we all understand that, and that is ultimately what we want to achieve from the bill.

Hon Kate Doust made some good points. She asked specifically about the recommendation by Mick Keelty that the emergency services levy should be transferred to the Department of Finance, why this had not occurred and whether the recommendation was accepted. Recommendation 48 of the Keelty report into the Perth hills fires has been carefully considered and will not be implemented. It relates to concerns put to Mr Keelty about the process by which the funds collected through the ESL have been distributed to volunteer brigades and shires, and it is felt that these concerns can be adequately dealt with without incurring the expense and risk inherent in transferring this function to the Department of Finance.

There are some issues with the amendment foreshadowed by Hon Kate Doust. The amendment would include the volunteer sea rescue group in clause 37 of the bill but would not actually give the group any power. However, I will explain that more fully at the committee stage. In essence, therefore, the government will not support that foreshadowed amendment. I understand the intent of the amendment but there are some issues with it.

As always, Hon Giz Watson gave a very expansive and well-informed commentary on the bill. I will go through most of the issues she raised in committee. The member asked why police need powers outside the emergency area. We will go through this more fully, but fundamentally the incident controller may be outside the emergency area. That is the information that has been provided to me. Hon Giz Watson also asked how many outstanding work orders for fire hydrants the Water Corporation has. We do not have that information available, but ideally we might be able to get that for the member.

The government will not support Hon Giz Watson's amendment on the notice paper. I will go through that a bit more fully in committee, but suffice it to say that existing organisational structures provide capacity for advice to be considered from all staff, including career staff and rescue personnel. Therefore, the amendment is felt to be unnecessary. That is not a philosophical issue; it is just felt that the amendment is not necessary.

As I said, other issues were canvassed by both Hon Giz Watson and Hon Kate Doust that will be dealt with in committee. I thank Hon Col Holt for his indications of support for the Fire and Emergency Services Legislation Amendment Bill 2012. Again, there is collective indication from around the chamber that we want improved emergency management throughout Western Australia. Ideally, this bill will provide just that. Having said that, I conclude my comments, as brief as they are, and will deal with these matters in perhaps a more expansive fashion at the committee stage. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Brian Ellis) in the chair; Hon Peter Collier (Minister for Education) in charge of the bill.

Clauses 1 to 5 put and passed.

Clause 6: Section 3 amended —

Hon KATE DOUST: I move —

Page 4, after line 14 — To insert —

VSRG in section 37 means a private volunteer sea rescue group which has entered into a service agreement with the Department to perform certain sea rescue functions in accordance

Extract from Hansard

[COUNCIL — Tuesday, 14 August 2012]

p4764d-4778a

Hon Giz Watson; Deputy President; Hon Col Holt; Hon Peter Collier; Hon Kate Doust; Deputy Chair; Hon Adele Farina; Chair

with that agreement. All remaining sections of this Act have no application to volunteer sea rescue groups.

I alluded to this amendment and the follow-up amendment in the second reading debate to give the minister an opportunity to seek advice on this. As I explained in the second reading debate, this is a very narrow amendment that inserts a new definition into the Fire and Emergency Services Legislation Amendment Bill to deal exclusively with the three volunteer sea rescue groups in Cockburn, Fremantle and Whitfords. I may have said Joondalup in my second reading contribution, but I meant Whitfords. This new definition would link directly with section 37 of the principal act. It is a very restricted and narrow amendment that seeks to afford some sort of protection to those volunteer groups. Although those volunteer groups are currently, and may choose in the future to remain, independent of FESA or FES, they still perform sea rescue functions with funding from the department and hope to continue to do so. However, the groups are now aware of issues with liability for their volunteers and the view is that the insertion of this amendment and hopefully the second amendment in clause 32 may provide them with a degree of protection in that area. I am interested in the advice that the minister will provide on this issue. If it is not possible to achieve that outcome for those three groups, which are very important in our community, can the minister provide us with some advice about what the government will do to address that issue, which the groups are now aware of?

Hon PETER COLLIER: I understand that the honourable member's aim is to seek protection for these volunteer sea rescue groups, but they do not have a role under the act as it currently stands, which is an issue. That is the biggest issue that we have and it makes this amendment virtually unworkable because the definition uses different terms than those used in the act. The amendment does not bestow functions upon a VSRG under the act; therefore, a VSRG is not captured under section 37(1). As a result, under section 37(1a)(d), which is the second part, they must still be taking part in the performance of volunteer marine rescue service group functions. Unfortunately, it is not possible to achieve the intention of the amendment with this amendment.

Hon KATE DOUST: I will explain. I became aware of this issue only today. I sought some advice from outside the chamber; therefore, I was aware that there may have been some issues. It is good that the minister put that on the record, but I think he still acknowledged that there is an issue for these volunteer sea rescue groups. Although the amendment may not fit into the scope of this bill as it stands now, what I seek from the minister is some sort of solution or outcome that can be provided for these three volunteer groups. If that cannot be done in this legislation, there must be another vehicle or way to resolve this matter. I hope that the minister will be able to give some comfort in that way; that the government will either look at, or has, an alternative option. If there is another form of words than can be applied in this bill to resolve the matter, I am happy to take that on board. This amendment is really about raising this issue so that the minister is aware of it and the government can take action to provide some assistance.

Hon PETER COLLIER: Ultimately, the act, as I am sure the member is aware, makes every attempt to provide protection for volunteers; that is the aim of the exercise and the aim of the amendment bill, ultimately. These groups can actually get protection if they agree to be approved by the Fire and Emergency Services Authority, but I have been advised that they do not actually want to move down that path.

Hon KATE DOUST: So they do not want to move down that path. As the legislation stands now and they are out there being funded by FESA—out there doing their job with sea rescue as required—do they currently get picked up under that definition in the act of a “VMRS Group”, meaning a group of persons approved by the authority?

Hon Peter Collier: No, they don't.

Hon KATE DOUST: So they simply receive funding to perform the task but do not have approval under FESA?

Hon Peter Collier: By government, not by FESA; and they do not want the approval from FESA, apparently.

Hon KATE DOUST: So where do they stand? If they do not want the approval by FESA, can the minister explain the process they have to take to have this issue resolved in terms of the liability for their volunteers?

Hon PETER COLLIER: Essentially the process would be to gain approval by FESA. Apparently it is a historical issue between these groups and FESA. But there is a simple solution—to gain approval by FESA—but, as I said, there is this disconnect or void between the two.

Hon KATE DOUST: Sorry, I cannot help but ask the obvious questions: Why is there a disconnect? What is it? What is the barrier that exists historically between the two organisations, or FESA and the other groups?

Hon PETER COLLIER: For want of a better term, I think we would call it internal politics. Apparently there were originally 10 groups; seven of them did come over and gain approval from FESA, but these three have been intransigent. I suggest that it really is, ideally, an issue of perhaps getting together with a coffee or something. I

do not mean to trivialise it, but from advice I have received it does appear to be the personalities who have been involved that has led to this disconnect between the two groups—the stand-off.

Hon KATE DOUST: It is interesting that the minister puts it that way, and I do not know whether it is internal politics from the FESA side or the community group side. After the creation of these new volunteer advisory boards, will they be able to participate in those advisory boards; and could that be used as a mechanism, perhaps, to rebuild the relationships or something? Or are they excluded because they are not recognised as an authority?

Hon PETER COLLIER: The minister can appoint anyone from the advisory board, but it is from within the act—that is what it is—so it is going to be very, very difficult while they are not included within the act. As I said, it is a bit of a disconnect. From the advice I have been provided, it is a bit of a shame; I would like to think that wiser heads can prevail, and that, ultimately, if these groups want to be approved by FESA, those communications can take place.

Hon KATE DOUST: I am obviously deviating, but when we look at the areas those three groups cover—Fremantle, Cockburn and Whitfords—they are significant parts of our coastline, and I imagine they would have a large number of volunteers working with their various groups.

Hon Peter Collier: Yes.

Hon KATE DOUST: I imagine that covers 80 per cent of the metropolitan coastline—other than Cottesloe, I do not know what other volunteer sea rescue groups we have. I would have thought that having those three significant groups involved in some way with an advisory body or some sort of relationship with this new structure would have been advantageous and desirable. I just think it is very unusual that they are isolated from the way —

Hon Peter Collier: What the member says seems eminently sensible to me.

Hon KATE DOUST: I suppose my question is: what steps are going to be taken to have them included in some way? I would have thought their experience and expertise would be valuable in terms of how the fire and emergency services operate in that environment in the state.

Hon PETER COLLIER: I think the honourable member makes a very sensible point, and FESA would be very pleased to approve them. Apparently dialogue has taken place and FESA has written to these groups in an attempt to bring them into the tent, and that will continue. Ideally it is just an approval, and FESA is willing to approve them; ideally they want them in the tent, as I said, and that dialogue will continue.

Hon KATE DOUST: I suppose I just want a formal ruling. The minister is of the view that the amendment I have proposed is perhaps outside the scope of the Fire and Emergency Services Legislation Amendment Bill 2012; I would appreciate a formal ruling on that from you, Mr Deputy Chair (Hon Brian Ellis), because that will then impact on the other amendment I have on the supplementary notice paper.

Ruling by Deputy Chair

The DEPUTY CHAIR (Hon Brian Ellis): Members, the advice I have is that it is in agreement with what has been said—that is, it is outside the terms of the bill. That would be my ruling; that it is outside the scope of the purpose that was intended, and it would be best to withdraw it.

Hon ADELE FARINA: Mr Deputy Chair, would you be able to provide reasons for your ruling, please?

The DEPUTY CHAIR: The main issue, members, is that there is no reference in the bill to volunteer sea rescue groups, and no connection through that to the bill.

Hon KATE DOUST: I cannot talk on the ruling, can I?

The DEPUTY CHAIR: Noting the time, it is probably opportune for me to leave the chair until the ringing of the bells.

Sitting suspended from 5.59 pm to 7.30 pm

Further Ruling by Deputy Chair

The DEPUTY CHAIR (Hon Brian Ellis): Before we proceed, I have a ruling on the previous ruling I made on an amendment that was moved. Hon Kate Doust sought a ruling on whether the amendment standing in her name was in order. Standing order 134 provides that any amendment may be moved to any part of a bill, provided the amendment is within the subject matter of the bill. Further, schedule 3 of the standing orders defines “subject

matter of a bill” to mean the provisions of the bill as printed, read a second time and referred to the Committee of the Whole House—also referred to as the scope of the bill.

As the explanatory memorandum states, the purpose of the bill is to —

Implement recommendations of the Keelty Review, and other legislative amendments relating to emergency management response in Western Australia. Recommendation 46 of *The Report of the Perth Hills Bushfire February 2011 Review* (the Keelty Review) recommended FESA cease to be a statutory authority and be restructured as a department of state.

- The Bill amends the *Fire and Emergency Services Authority of Western Australia Act 1998* to vest functions and powers currently residing in the Authority, in the Chief Executive Officer (Fire Services Commissioner) of the new department subject to appropriate oversight by the Minister.
- Powers of the Authority relating to dealing in property and borrowing money have been vested in the Minister.
- The role of volunteers in emergency management in the State is recognised by the requirement to establish volunteer advisory committees.
- The integrity of the emergency services levy is maintained by provisions directing that funds resulting from the operation of the emergency services Acts shall be credited to the Department’s operating account and applied only for the purposes of the emergency services Acts.
- Recommendation 44 of Keelty Review recommended the *Emergency Management Act 2005* be amended so the State Emergency Coordinator could declare an emergency situation. The Bill amends section 50 to allow this to occur.
- The *Bush Fires Act 1954* and the *Emergency Management Act 2005* have been amended so police officers may exercise powers in those Acts that relate to the movement of persons in or around an emergency incident.

Clause 6 of the bill provides for definitions in the principal act to be amended or deleted and new definitions to give effect to the purpose of the bill, as outlined in the second reading speech. The proposed amendment is to include a new definition; however, the definition is subject to the principal amendment being agreed to in clause 32 in the name of Hon Kate Doust, at amendment 3/32. This amendment proposes to amend section 37 of the principal act, headed “Protection from liability”, to include a member of a volunteer sea rescue group. Section 37 provides that certain specified persons do not incur a civil liability for anything that the person has done in good faith in the performance or purported performance of a function under the emergency services acts.

The bill before the house does not amend section 37 other than to make a change to delete the word “authority” consistent with the purpose of the bill. To insert a new specified body into section 37 would provide that body with protection from liability, which has nothing to do with the scope and purpose of the bill. This in effect is a new subject matter. It would have been a different matter if the member was intending to insert a new definition into clause 23 of the bill to include the proposed VSRG, where the scope of the bill deals with advisory committees that represent the volunteer brigades, units or groups. I therefore rule the amendments out of order, including proposed amendment 3/32 in clause 32.

Committee Resumed

Amendment ruled out of order.

Clause put and passed.

Clauses 7 to 13 put and passed.

Clause 14: Section 15 amended —

Hon GIZ WATSON: I want to reiterate the issue I raised during my contribution to the second reading debate regarding this clause. I will just repeat what I said so the minister has an opportunity to hear it again. Section 15 of the Fire and Emergency Services Authority Act contains provisions regarding the delegation of responsibilities. Apart from changes consequential on the restructuring of FESA to a department, the bill contains one substantive change in delegation. In the place of subsection (2)(a), which currently permits FESA to delegate the performance of any function to the CEO, clause 14 of the bill—this clause—provides that FESA’s successor, which we assume will be the Fire and Emergency Services Commissioner, will be able to delegate any of his or her functions under the Fire and Emergency Services Act to another member of staff, an advisory

committee or a public service officer not employed in the department. Hence, there appears to be quite an expansion of potential recipients of delegated functions. I would like to explore the extent of that delegation, and particularly the question of responsibility under section 58 of the Interpretation Act of Western Australia by which if the performance of a function is dependent on a person's opinion, belief or state of mind, it is the opinion or belief or state of mind of the person to whom the power has been delegated, not of the person doing the delegating, which counts. In addition, clause 9 of the bill inserts proposed section 11(1), which provides that the FES commissioner, subject to the control of the minister, is responsible for the provision and management of emergency services. From that, my understanding is that although the person to whom authority is delegated by the FES commissioner will have the freedom to make up his or her own mind where the performance of a function is dependent on it, it is only the function, not the overall responsibility, that can be delegated. Responsibility will remain with the FES commissioner and be subject to the control of the minister, as per the case with proposed section 11(1). There was some discussion in the other place on this matter, so I assume that there is some familiarity with this question. Can the minister confirm my understanding that the delegation is only in terms of the function and not the overall responsibility?

Hon PETER COLLIER: I confirm that the commissioner has the overall responsibility. The delegation is only of particular functions. The overall responsibility still rests with the commissioner.

Hon GIZ WATSON: So the delegation cannot include a delegation of responsibility. I guess that is the flip side of that question. Can the minister confirm that?

Hon PETER COLLIER: Yes; it must be a specific function under the act.

Clause put and passed.

Clauses 15 to 22 put and passed.

Clause 23: Section 18M amended —

Hon KATE DOUST: I move —

Page 17, after line 15, to insert —

(f) the volunteer sea rescue groups.

Prior to the dinner break we had a discussion about those three volunteer sea rescue groups not being under the authority of FESA whilst receiving FESA funding. The minister made reference to how there had been some longstanding —

The CHAIR: Order, members, I think there is a slight error here. I am in receipt of an amendment to clause 23 but I believe it is an amendment to clause 24. I apologise about that.

Hon KATE DOUST: It is to clause 23.

The CHAIR: I am getting mixed messages here. I ask you to bear with me for a minute or two and we will try to sort this out. I think we have got it right now, members. I will put the question on clause 23.

Clause put and passed.

Clause 24: Parts 4 and 5 replaced —

Hon KATE DOUST: I knew what I was talking about; I just had the wrong numbers. I thank the Clerk for his great assistance on this occasion. I move —

Page 17, after line 15, to insert —

(f) the volunteer sea rescue groups.

Prior to the dinner break we had a discussion about the volunteer sea rescue groups and the fact that although they do receive some funding from FESA to perform their functions, they are not actually under the authority of FESA. The minister explained that there had been some longstanding internal political issues that prevented the two groups from working more closely together. We then had a discussion about how to get them engaged. I thank the Deputy Chair for his ruling on the two amendments that I had formerly proposed. The amendment that I am now putting forward is to try to find a mechanism that will not exclude that very significant group of sea rescue organisations up and down our metropolitan coast and to find a way of having them included in those advisory committees for volunteer groups. I note that the definition of “prescribed association”, in which we are seeking to include the volunteer sea rescue groups, picks up on all the other types of groups that would be involved or that the minister would want to have an advisory group focused around. I know that the minister is listening to his advisers.

Hon Peter Collier: I am listening.

Hon KATE DOUST: We talked about how to practically get the two groups together and what we could do to break the ice. I do not think that it is in the best interests of the community to have those very significant rescue groups outside the tent, in the minister's words. I am just trying to find a mechanism to get them more involved and to help break down some of the longstanding barriers that the minister referred to. I thought that if we included these words in the definition so that they could at least participate in an advisory body to engage with the new structure, the new department, and also with the minister, then that might actually build better relations and assist with communication and perhaps with improving management of these types of emergency situations. I just see this as being an opportunity that might facilitate that. I will be interested in the minister's response. It does not involve those other issues I canvassed earlier; it is separate from them. This is simply about how we can reconnect in perhaps a more formal way with those very important rescue groups to try to rebuild that relationship so that perhaps we will then be able to find a way to address those other issues they have.

Hon PETER COLLIER: There are a couple of issues here. I understand the honourable member's honourable intent on this issue. The issue remains, though. The VMRS do actually have functions. We would end up having groups without any functions under the act. That is the biggest issue we have. That is problematic. The best way, as I mentioned earlier, would be for these groups to be approved as VMRS groups. That is the most seamless way forward. In terms of the advisory committees, the minister will be able to appoint representatives of these groups to advisory committees. That is established through proposed section 25(4).

Hon KATE DOUST: I want to pick up the comment that the minister made about the VMRS groups and their functions, and about how changes could be made to incorporate these other groups into that. Would that be done by way of regulation?

Hon PETER COLLIER: Yes. It would need to be gazetted.

Hon KATE DOUST: My second question is: given that the minister now knows about this issue, would it be the government's intention to gazette it so that we can rectify that issue?

Hon PETER COLLIER: Yes. The government has been trying to do that, as I said. There has been communication, and those lines of communication will remain open and every attempt will be made to ensure that does occur.

Amendment put and negatived.

Hon GIZ WATSON: I am still very confused about why this says clause 23 when we are dealing with clause 24. It does not make any sense on the piece of paper I was provided with. It is very confusing, because we have gone past clause 23. I move amendment 1/24 standing in my name on the supplementary notice paper —

Page 19, after line 28, to insert —

26. Career fire fighter advisory committee

(1) In this section —

career fire fighter means operational staff working in fire and rescue services or bush fire services.

(2) Without limiting section 24(1), the Minister must establish and maintain an advisory committee under that provision in respect of career fire fighters to provide advice or assistance to the Minister or FES Commissioner or both of them on matters relevant to the operations or administration of emergency services.

(3) A career fire fighter advisory committee is to consist of the people the Minister thinks fit to appoint, but at least one member is to be appointed from the union that represents career fire fighters and the majority of members are to be career fire fighters elected by other career fire fighters to represent them for this purpose.

(4) Notwithstanding any other section of this Act, the term of each person who serves as a member of a career fire fighter advisory committee shall not exceed 3 years.

I raised this issue during my second reading contribution. The purpose of this amendment is to address the concerns raised with me by the United Firefighters Union with regard to the provision of professional advice to the minister and the new FES commissioner on matters on which, in their view—I agree with them—they have experience and knowledge that is unique to their body. So I again ask the chamber to consider this amendment. It

is important to ensure that there is a specific advisory committee made up of career firefighters. I commend the amendment to the chamber.

Hon PETER COLLIER: I thank the honourable member for moving the amendment. As I mentioned in my précis of the second reading debate, the government will not be supporting the proposed amendment. I understand the intent of the amendment, but we feel it is not necessary. The amendment seeks to include an advisory committee for career firefighters. The existing organisational structure of the Fire and Emergency Services Authority of Western Australia provides the capacity for advice to be considered from all staff, including career fire and rescue personnel. More specifically, there are already existing processes by which advice can be considered from career fire and rescue staff, including monthly meetings with the United Firefighters Union of Australia, WA branch, and FESA operations command; monthly occupational safety and health meetings between the UFU and FESA; quarterly OSH committee meetings; and industrial representation on project advisory teams. Notwithstanding these existing forums, there is an overarching industrial requirement to consult with all staff, including career firefighters, under the Western Australian Industrial Relations Commission general order, in relation to workplace change. Volunteer advisory committees are considered necessary as volunteers and others do not have the same avenues to air their concerns as employees.

Hon GIZ WATSON: Given that the minister is suggesting that the government is not going to accept this amendment, I ask: under the existing provisions of proposed section 24, “Advisory committees”, what role do professional career firefighters play in those advisory committees; is there provision for more than one committee; and what is the intent and composition of those committees?

Hon PETER COLLIER: Proposed section 24(1) provides that the minister may establish committees to provide advice on any matter. That may include staff. So staff will have the opportunity to be involved in those advisory committees.

Hon GIZ WATSON: Sure, but I am seeking a bit more detail. Will there be just one committee, or will there be several; and who will be on those committees? I concede that the bill provides for that, but I am sure some thought must have gone into what those committees will look like, considering that this legislation is almost through the Parliament.

Hon PETER COLLIER: No specific number has been decided. That is not established in the legislation.

Hon GIZ WATSON: I realise that the legislation leaves that open-ended. Has there been any consideration at this stage as to how many committees will be established?

Hon PETER COLLIER: Not at present.

Hon GIZ WATSON: So there has not been any consideration as to how many committees the government is going to have, and there has not been any consideration as to who will be on those committees?

Hon PETER COLLIER: No, there has not. That will be at the discretion of the minister. As I said, it will be possible for employees to be a component of those advisory committees. This does provide an avenue for that involvement.

Hon GIZ WATSON: But as this provision is discretionary, it would also be possible not to form an advisory committee?

Hon PETER COLLIER: Yes.

Hon GIZ WATSON: That is the reason I want to put in place a requirement to establish a specific advisory committee that will provide the minister with advice from the career firefighting section, because the concern is that because this is discretionary, there might not be such a committee; or, if there is, the career firefighters might or might not be on that committee. It seems to me extraordinary that in this area of very specialised knowledge there is not a specific commitment within the legislation that that advice will be provided to the minister or the new commissioner. That advice is there, and it is possible to provide it, but, as I understand it, there is no commitment to it.

Hon PETER COLLIER: I do not think I can add any more to what I have already offered.

Amendment put and negatived.

Hon GIZ WATSON: I am not quite sure that I am doing this in the right order, but I also have some general questions regarding this clause.

Hon Peter Collier: Sure.

Extract from Hansard

[COUNCIL — Tuesday, 14 August 2012]

p4764d-4778a

Hon Giz Watson; Deputy President; Hon Col Holt; Hon Peter Collier; Hon Kate Doust; Deputy Chair; Hon Adele Farina; Chair

Hon GIZ WATSON: I raise the question of the preservation of rights and entitlements of career firefighters in regard to this clause. This clause inserts proposed section 21(3)(a) into the Fire and Emergency Services Authority of Western Australia Act, which states —

The remuneration of, and other terms and conditions of service of, operational staff and wages staff are not to be less favourable than provided for in —

(a) an applicable award, order or industrial agreement under the *Industrial Relations Act 1979*;

I understand that many of the people covered by this proposed section are on paid rate awards, not minimum rate awards. In my consultation for this bill, concerns were expressed over whether the proposed section preserves the remuneration and other terms and conditions of those operational and/or wages staff on paid rate awards. I am aware that this issue was also raised in the other place, but there was some dissatisfaction with the answer provided. Therefore, my question is: can the minister please confirm that the intention is that the remuneration and other terms and conditions of those operational and/or wages staff who are currently on paid rates awards are to be preserved?

Hon PETER COLLIER: Yes, I can.

Hon GIZ WATSON: Immediately beneath that provision, clause 24 also inserts proposed section 21(4) into the FESA act. Two queries have been raised with me about career firefighters. Paragraph (a) provides that operational staff may be engaged on a full or part-time basis. I understand that all active firefighters are full-timers because that amount of time on the job is necessary to maintain competencies. Part-timers cannot be active firefighters, but they can do other duties. I understand that these are terms of the relevant industrial agreement, and the reasons, as I have said, relate to competency or, in other words, safety in particular. I have made further inquiries of the minister's office and I understand that the intention is that the limitations in the enterprise bargaining agreement as to which jobs can be done part time will continue to apply. Again I seek confirmation as to whether the intention is that the limitations of the EBA about who can work part time will not be overridden by this clause.

Hon PETER COLLIER: Yes, there will be no change whatsoever to the current arrangements.

Hon GIZ WATSON: Paragraph (b) provides for operational staff to be engaged either indefinitely as permanent officers or for a period not exceeding five years. I understand that it is not unusual for a person to be temporarily appointed to a higher or other position, and currently the person would then return to their substantive position without loss of their original rank or permanency. The concern expressed to me during consultation was whether this proposed subsection will change that, so that return by the person to their original position would no longer be possible and, instead, they would be out of the door. I then inquired further of the minister's office, and I understand that the keyword is “engaged” and that the parliamentary draftsmen nowadays have a convention that they say “engaged” when they mean newly employed from outside, and “designated” or “appointed” when they mean a change of function for a person who is already employed within. Thus, permanent staff who are temporarily moved to another position will continue to be able to revert to their substantive position. Similarly, permanent staff appointed to the senior executive service will have a right of return. My understanding is that the proposed section is intended to ensure that it is possible to employ new people in non-permanent positions—for example, a position that has funding for only a couple of years. An existing permanent employee is not expected to apply for such a position, as the advertising wording would make it clear; and, if they did, they would not be able to revert to their previous position. Is my understanding of that correct also?

Hon PETER COLLIER: I can confirm once again that the current situation will not be changed at all.

Hon GIZ WATSON: I have dealt with the amendment. I think that is all I need to say.

Clause put and passed.

Clauses 25 to 31 put and passed.

Clause 32: Section 37 amended —

Hon GIZ WATSON: Clause 32 replaces section 38 of the FESA act and has the effect that emergency service levy funds that have been collected will not revert to consolidated revenue at the end of the financial year. However, during consultation some queries were raised and I am asking for some clarification regarding this. I spoke in the second reading debate about funds being desperately needed for more career staff, particularly in the south west of the state. I have made some further inquiries again of the minister's office to double-check, and I understand that the money raised in this way cannot revert to consolidated revenue. The clause that affects this clause is clause 33. Proposed section 38(3) and proposed section 38(1) say that the money can be used only for the purpose of the emergency services acts—that is, regardless of whatever other unrelated functions the department might have. For example, if a fire truck is bought with those funds and later sold, the proceeds are to

be retained and can be spent on a new fire truck instead of going to unrelated functions of the department or back to consolidated revenue. Again, minister, I am seeking some confirmation that unspent emergency services levy funds will not revert to consolidated revenue.

The CHAIR: Member, can I just interrupt you for a second or two? I understood you wanted to speak to clause 32.

Hon GIZ WATSON: That is what I understand this relates to.

Hon Adele Farina: It's clause 33.

Hon GIZ WATSON: Is that right? It is clause 33. I apologise.

The CHAIR: It is all right. It is only seven minutes past eight. I will put the question, unless anybody else wishes to argue the toss, that clause 32 do stand as printed.

Clause put and passed.

Clause 33: Section 38 replaced —

Hon GIZ WATSON: My apologies; my notes are lacking complete numbers. Mr Chair, I might suggest that I do not repeat what I just said.

The CHAIR: I think the minister has a pretty good idea.

Hon GIZ WATSON: I am sure he can read what I just said. I am asking for confirmation that those unspent funds will not be able to be reverted into consolidated revenue at the end of the financial year.

Hon PETER COLLIER: Yes, I can confirm once again that the money will stay with the department and will not go back to consolidated revenue.

Clause put and passed.

Clauses 34 to 48 put and passed.

Clause 49: Section 14B amended —

Hon ADELE FARINA: I understand that the intent of the amendment covered by clause 49 is to enable police officers to exercise powers independently of the authorised person who has been placed in overall charge of a fire incident.

Hon Peter Collier: That is correct.

Hon ADELE FARINA: I understand that when the chamber considered the amendments to the Bush Fires Act 1954, it was argued very strongly that we need a single line of command and that a whole bill be set up relating to “authorised person” and people being authorised by that person to undertake certain activities and only those people who were authorised by that person could undertake those activities, to ensure that there was a clear line of command because in the past there have been issues with a lack of communication and miscommunication. I am concerned that this decision to allow the police to act independently of any instruction issued by the authorised officer, particularly in regional WA, and not even needing to get an instruction from the authorised officer could mean that police could direct an evacuation without knowing what the fire is doing. Everyone knows that that could lead to quite a disastrous outcome and they could very well end up directing people into the path of fire. It could also be possible that police may, for reasons of their own, prevent firefighters from using certain roads which could impact on the ability to manage a fire.

I have a real concern that this amendment could lead to a more disastrous outcome than if the police could act under the instructions of the authorised officer, as they currently do in the legislation that was recently passed by this Parliament. This indicates quite a significant change of policy tack, which is a bit different from the administrative technical issues that are covered by this bill. I would really like an explanation from the government as to why this decision has been made and how it will ensure that police officers are making informed decisions on the ground and not putting people's lives in peril. The whole point of having an authorised officer in overall charge of a fire is because that person would have the knowledge and expertise to guide what needs to happen on the ground. The police officer, who could be in a very isolated area of the state, will not necessarily have access to that information and could be providing directions that could lead to a disastrous outcome.

Hon PETER COLLIER: The member has brought up some good points. I acknowledge that. As she would be well aware—this will not provide the member with any solace—police have that chain of command. A police officer has the capacity to make that decision, say in isolation, now. That will not change. He is answerable to a senior officer in the incident control centre. He is literally working next to the authorised person. That is the

chain of command that will exist. The power that the police will have as a result of this bill is exactly the same as volunteer firefighters have, so there is no difference. The circumstances will be the same for volunteer firefighters as they are for police.

Hon ADELE FARINA: I understand that the whole point of sections 13 and 14B of the Bush Fires Act is to ensure that people do not act independently—they act under the instructions of the authorised officer, which seems to be in conflict with what the minister is saying. To say that there is a line of command in the police force is great. We accept that and I do not dispute that. However, the issue that we are dealing with here relates to a fire emergency. The whole point of the amendments that we made to the Bush Fires Act was to ensure that there was one line of command, so people were not giving conflicting directions. It was determined by this Parliament that that person would be the authorised officer. A police officer working alongside the authorised officer is not the authorised officer. Under the Bush Fires Act as it currently stands, the authorised officer is not in a position to give a police officer an instruction. Only the authorised officer can give the police officer an instruction in a fire and emergency situation in which an authorisation has been given. The explanation that the minister has provided is not quite accurate in the circumstances that we are talking about. It may very well be accurate in day-to-day life. When we are talking about an emergency in which an authorisation has been issued and an authorised person has been appointed, things are very different.

My concern is that not too long ago this Parliament made a decision about that single line of command. We were told about the importance of that single line of command to ensure that conflicting instructions and directions were not being given. Now the minister is coming back to the same Parliament asking it to provide for police officers to act independently in these circumstances, despite the fact that after every analysis of a bushfire that has happened in this state and other states, an issue that has come up time and again is that too many people are issuing instructions—they are conflicting instructions—which has led to mass confusion. It concerns me that we seem to be heading down the same path with this amendment, with no real justification as to why it is needed.

Hon PETER COLLIER: I appreciate the member's concerns. Authorised persons are those persons authorised to take control of operations and include a bushfire control officer, a bushfire liaison officer, authorised CALM act officers and officers and members of a bushfire brigade. They have exactly the same authority as a police officer. The police officer is no different from them. An authorised officer can give authorisation to each of those persons that I just mentioned to fulfil those obligations, exactly the same as an authorised officer. A police officer is no different from any of those officers that I mentioned. In some circumstances they can give those people that I mentioned that authority. The police officer is no different from any of those officers or any of those people that I have just mentioned. It is not like he is out there by himself and he has this special responsibility that these other officers do not have.

Hon ADELE FARINA: As I understand the definition of “authorised person” as it currently stands, it means a bushfire liaison officer or another person who is given an authorisation, and includes a person acting under an authorised person's orders and directions under section 13(6) of the Bush Fires Act. If it is the minister's contention that that includes police officers, why do we need the amendment?

Hon PETER COLLIER: Because police officers are not captured by “authorised person”, but they have the same powers as those persons under section 14B(2)(a), (b) and (c).

Clause put and passed.

Clauses 50 to 147 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Peter Collier (Minister for Education)**, and passed.