BUSH FIRES AMENDMENT BILL 2016

Second Reading

Resumed from 23 August.

HON ADELE FARINA (South West) [2.24 pm]: I rise to speak to this bill on behalf of the opposition. In his second reading speech, the Minister for Emergency Services stated that the amendment bill seeks to implement recommendation 38 of the 2011 Keelty report, titled "A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review". I would like to say two things about this statement. First, it is disappointing and quite extraordinary that it has taken the government six years to implement recommendation 38 of the Keelty report. Second, I think it might be an overstatement to say that the bill implements recommendation 38 of the Keelty report. I will explain later why I say that. Recommendation 38 in the Keelty report states —

> Local governments institute a comprehensive program to assess fuel loads and bushfire preparedness on private properties. The program should give reference to the creation and maintenance of a Building Protection Zone, in line with FESA guidelines.
>
> This program should be implemented and managed under the Bush Fires Act 1954 in a manner similar to the fire break inspection program.

The intent of the bill is to permit property owners, local governments or government agencies to engage in bushfire mitigation treatments in accordance with the guidelines or standards stipulated in the bill, as issued by the Commissioner for Fire and Emergency Services and gazetted. The bill does this by exempting those engaging in these risk-reduction practices from sanctions under other laws. We may well ask: which other laws? The answer to that question is that we do not know, because the other laws are not listed in the bill. Members in this chamber have heard me say on numerous occasions that members of the community should be able to pick up an act and know what they need to do to modify their behaviour so that they do not fall foul of the law. This means that everything a person needs to know should be contained in the act, and they should not have to go to a number of other documents or websites to learn the full breadth of the law allegedly contained in the act. This bill is very much skeletal in nature. It effectively sets out an intention to implement, rather than gives effect to the intention of the government. The guidelines or standards have not been drafted, so we do not know what will be contained in the standards, and the bulk of the intent will be contained in the standards. In my view, this is less than satisfactory. Parliament should not be asked to implement laws blindly. We have a right and an obligation to know what we are implementing.

The other laws upon which this legislation is intended to impact are also not known, as they are not listed in the bill. Again, in my view, this is most unsatisfactory. The bottom line is that we do not know the real intent of the government with this bill. This bill will exempt those engaging in risk-reduction practices from sanctions and other laws, but we do not know which other laws the government intends to identify. We are being asked to pass a bill blindly, without being able to assess the impact of exempting these other laws. It concerns me that the example of the laws that may be impacted, provided, as I understand, to my colleague the shadow Minister for Emergency Services, appears to be different from the laws that I was informed at my briefing would be impacted. The minister may be able to clarify exactly which other laws we are talking about.

This practice of presenting skeletal bills and working out the details later is of concern to me, and I cannot stress this point enough. The reason the other legislation that will be impacted has not been listed in the bill is that discussions are still ongoing with other government agencies. Those other government agencies have not yet agreed to have sanctions under their laws exempted. This means that the government has introduced a bill into Parliament without being able to clearly state the intent of the bill, and this should not be tolerated by good legislators.

The level of uncertainty with the bill is significant, so to suggest that it implements recommendation 38 of the Keelty report is an overstatement. It may do so, in time, when the detail is worked out, but equally it may not. The government, six months from the election, has realised that it has failed to get these matters sorted and that it is running out of time to pass legislation. The government is seeking to protect its political hide by using the numbers in this house to ram through a piece of legislation, the details of which have not yet been sorted out.

Hon Michael Mischin: Vote against it then. We are not using our numbers to ram anything through.

Hon ADELE FARINA: The Attorney General should try listening. The bottom line is that the government has not yet completed its negotiations across its own government agencies about which laws will be exempted from the bill, and that is why that detail is not in this bill. Further, we all know that following the passage of a bill that requires regulations or guidelines to be drafted before enactment, on a best-case scenario this usually takes about 12 months so it is unlikely that the effective provisions of the bill will be enacted before the election and before this year's fire season, which is more than a little disappointing.

At the briefing, I raised yet another of my standard concerns with legislation from this government, in particular that the standards are not disallowable instruments and therefore not subject to parliamentary scrutiny. At that briefing, I was assured that they were. I explained to those at the briefing that on my reading of the bill,

standards are not disallowable instruments. I understand that the Attorney General will be seeking to amend the bill to make these standards disallowable. The amendment, if moved and passed, will allow for oversight by the Joint Standing Committee on Delegated Legislation of this Parliament on a very limited basis, but nevertheless will improve the bill and make true what the government says was its intent, which is to provide some level of scrutiny. In my view, this is secondary to proper scrutiny by the Parliament had the other bills been listed in the bill. We continually see this government putting up legislation that it has not yet finished doing the negotiation on, and that is a problem.

The bill provides that guidelines or standards will be issued by the Fire and Emergency Services Commissioner and approved by the minister. There is no provision for public consultation on the making of the standards. The intention is that the standards will not be compulsory. This means that what is set out in the standards will not be mandated. I understand that the standards will complement existing legislation, which provides for a firebreak enforcement scheme conducted by local government through which property owners may be directed to take risk-reduction measures. The reason for the legislation, as I understand it, is to try to encourage property owners to take fire mitigation or risk-reduction measures. I understand that property owners often use the hassle of red tape and cost to secure approvals or licences to clear as the reason for failing to take risk-reduction measures. This bill seeks to address that. The extent of the validity of these explanations has been questioned by some. Perhaps when the Attorney General replies to the second reading he can explain what this bill will achieve that is not achievable under existing legislation.

The other thing I would like to point out is that under clause 4 there is the ability to prescribe written laws that will not be overwritten by the standards to be published by the Department of Fire and Emergency Services. This provision came about as a result of consultation that revealed situations in which it may not be appropriate to override other written laws in all circumstances. This will provide the ability to balance the need to protect buildings and other assets from bushfires with the need to ensure that, where appropriate, other matters such as ecological protection of particular areas in the state are maintained. That balance is great but, yet again, we are not aware of exactly how that will be achieved. As we consider the bill, that is something that will be sorted out later, possibly through regulations.

I was concerned to learn that local government has not been consulted on the bill, especially given that these measures purport to complement the existing scheme for firebreaks and may have an impact on local government. The Barnett government's ingrained objection to consulting with people who are impacted by legislation defies any comprehension. We would think that if the resources of local government are being called on, they might be consulted prior to a bill being considered in this place.

The bill also fails to address a critical aspect—that is, the failure of the government to implement adequate fire mitigation and risk reduction on crown land. Members in this place know only too well—we have debated it on a number of occasions—that fuel loads on crown land in our national parks and other parks are extremely high in many cases. Our capacity to get those fuel loads down has failed. The government has not implemented any measures to address that. We saw the devastating impact of the Waroona fires just recently. That scenario has been repeated many times throughout this state when we do not ensure that those fuel loads are within manageable levels. It is frightening that so many areas of the state continue to contain very high fuel levels. After the winter we have had just had, when there has been a fair bit of rain and it has been fairly cool, we can expect that bushfires will be very difficult this summer if particular weather conditions present themselves.

The government needs to explain what it is doing about fuel load reduction on crown land. It is fine to continue to implement a whole lot of measures that are required to apply to private property owners on their land. Certainly, the opposition fully supports those measures as we all need to do everything we can to address fire mitigation issues. However, the government cannot keep ignoring the biggest problem—that is, the fuel loads on crown land. It really needs to present a proposal on how it is going to address those problems. If we do not address those problems, we will continue to see the sorts of bushfires that we experienced just recently in Waroona. Although we have all moved on since those fires, I can assure members that many people in my communities in the south west who were impacted by those fires have not moved on and they continue to live with the consequences of that fire daily. Many are still effectively homeless. They are staying with friends or in temporary accommodation while decisions are made about whether Yarloop will be rebuilt and whether they will rebuild. It will be a number of years before all those issues that have arisen through the loss of Yarloop are sorted out. We need to consider the devastating impact on communities. Many of our firefighters, particularly throughout country WA, are volunteers. They put their lives at risk every time they fight a fire. Sometimes while they are fighting fires, their own properties and families are in peril. We all need to take fire mitigation very, very seriously and we all need to address fuel loads, be it on private land or crown land. Although we welcome the government's measures relating to private property, it really needs to address the issues relating to crown land as well.

HON ROBIN CHAPPLE (Mining and Pastoral) [2.37 pm]: The Bush Fires Amendment Bill 2016 was drafted in response to the special inquiry entitled "A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review", undertaken by Mick Keelty, APM, AO, commonly referred to as the Keelty review. Recommendation 38 of the Keelty review stated —

> Local governments institute a comprehensive program to assess fuel loads and bushfire preparedness on private properties. The program should give reference to the creation and maintenance of a Building Protection Zone, in line with ... guidelines.

Evidence shows that fuel load reduction can reduce the exposure of assets to bushfires, assist in firefighting efforts and increase the likelihood of a building or other asset surviving a bushfire.

This bill allows the Fire and Emergency Services Commissioner, after consultation with the minister, to publish standards that will specify measures to prevent the outbreak, spread or extension of a bushfire or to mitigate the effects of a bushfire. It is important to note that undertaking the measures specified in the standards will not be compulsory. Under section 33 of the Bush Fires Act 1954, local governments bear primary responsibility for determining the requirements for bushfire risk treatments to be undertaken by occupiers of land within local government areas, commonly referred to as firebreak notices. That is something that I have to do on my property in the Kimberley. The concern is that complying with firebreak notices may leave occupiers of land open to prosecution for breaching other acts that are inconsistent with the terms of the firebreak notice insomuch as they prohibit clearing of vegetation. The standards are disallowable and will be sympathetic to native vegetation. This Bush Fires Amendment Bill 2016 does not change the onus on local governments to implement bushfire mitigation measures in the areas but complements this responsibility by clarifying the circumstances in which owners and occupiers of land can undertake mitigation works to protect their properties without the risk of breaching other laws. Thus, owners and occupiers of land who undertake the measures specified in the standards will be afforded protection from breaching other written laws except in the circumstances set out in this bill. Currently, the guidelines on bushfire risk treatments issued by the Department of Fire and Emergency Services for occupiers of land have no legislative standing and require a landowner to comply with provisions of other acts. This may act as a disincentive to undertake mitigation measures; therefore, proposed section 35AB(2) will be inserted by the bill to enable laws to be prescribed that will not be overwritten by the standards to be published by the Fire and Emergency Services Commissioner. This provision came about as a result of consultation that revealed situations in which it may be appropriate to override other written laws in all circumstances. This will provide the ability to balance the need to protect buildings and other assets from bushfires with the need to ensure that, where appropriate, other matters such as ecological protection of particular areas of the state are maintained. The changes set out in this bill are in line with the Premier's building protection zones policy. This bill defines an owner or occupier of land for the purpose of the standards to include a department of the public service that occupies land or a state agency or instrumentality that owns or occupies the land. This will ensure a consistent approach to the carrying out of bushfire risk treatment measures for all owners and occupiers of land in the state.

It needs to be noted that other written laws that may be prescribed will be subject to further consultation. During consultation for this bill, other agencies indicated that they may not seek to have prescribed any laws that they administer. This will depend on the matters set out in the standards, such as the size of the area that can be cleared around an asset or the severity of the mitigation measures. I might want to touch on a little bit of that if we get to the Committee of the Whole House stage. Obviously, it is not uniform legislation, so we are dealing with it now. Does the bill go far enough to prevent an outbreak spread or extension of a bushfire or to mitigate the effects of a bushfire? Are local governments resourced and supported well enough to prevent and mitigate bushfires? The illegal clearing of native vegetation will continue to be legislated and protected under other acts, despite this bill.

A number of comments have been made, and the first one I want to turn to is in paragraph 3.6, "Bush Fire Hazard Mitigation and Planning", of the Western Australian Local Government Association's advocacy policy statement 2016 where it indicates that the state council supports a statewide minimum bushfire mitigation standard specifically to, and I quote —

- Give legislative effect to bushfire guidelines;
- Improve guidance on design of subdivision and buildings;
- Provide policy guidance, model subdivision and development conditions;
- Establish an accreditation system for BAL assessments, and
- Establish a training and education program.

At paragraph 3.6, WALGA states —

> The Association is concerned that the entire planning for bushfire risk management policy framework has been undertaken in a fragmented manner. Therefore, the effectiveness of the entire policy

> framework has not been properly assessed and it is not clear how the various policy components and the planning and building framework will interact.

WALGA also went on to identify that the provisions came about as a result of consultation that revealed situations that may not be appropriate to override other written laws in all circumstances. This will provide the ability to balance the need to protect buildings and other assets from bushfires and the need to ensure, where appropriate, ecological protection.

I turn now to page 57 of WALGA's state council meeting minutes of May 2016 and "WALGA Submission—Public Inquiry into the January 2016 Waroona Fire" where it states —

> Local Governments acknowledge that they are a key stakeholder in assessing and mitigating risks across hazards, as well as playing a significant role in supporting response delivery across the State to combat the ongoing threat of bushfires. Unfortunately at present the sector is not adequately supported to develop the necessary skills, expertise or resources to achieve this.

Further on it states —

> Further, reference was made to the need for clarity on the roles and responsibilities of DFES, and DPaW and Local Governments for the development and delivery of training for Local Government volunteers.

Quite clearly, there are still some concerns and it states also that these comments were —

> … in line with previous submission to the Department of Fire and Emergency Services Legislation Review 2013.

The Community and Public Sector Union—Civil Service Association also made a submission to the Waroona bushfire inquiry and at recommendation 8, its submission states —

> ***That there are specific and adequate budget appropriations for bushfire fuel management on public lands so that land managers, including local governments, DPaW and other agencies with land management responsibilities in rural areas have the resources necessary to meet fuel management targets. This should be linked to outcomes and efficiency indicators on bushfire fuel management.***

It is quite clear that, notwithstanding the passage of this legislation, which we support, there are concerns that the level of funding necessary may not be provided to bring these agencies together to work in a meaningful way.

I think it also might be worthwhile noting that the value of bringing all these agencies together is expressed in a letter that I received from Tony Pedro in response to the Ferguson inquiry into the Waroona wildfire. I will not read the whole correspondence, but he pointed out in paragraph 5 —

> Had the Landgate Fire watch website been monitored by DPaW and DFES staff on Tuesday night 5th January and an effective rapid response team deployed, these two fires could have been extinguished avoiding this shocking wild fire developing and its consequences avoided.

We support the bill. I hope that the funding provisions behind the intent of this bill will be enough to deal with the issues that arose from the pretty horrendous situations that were experienced during those fires.

HON RICK MAZZA (Agricultural) [2.49 pm]: The Shooters, Fishers and Farmers Party welcomes the Bush Fires Amendment Bill 2016. A Premier's note that has been around for some time provides for clearing within 20 metres of buildings. In those cases, the Department of Parks and Wildlife would not follow up the illegal clearing of that vegetation, except for environmentally sensitive areas, or ESAs. I do not know how houses or buildings in an environmentally sensitive area are any less at risk than a property in another area. In any case, we welcome this bill because it gives clarity to people who may be very concerned about removing vegetation from around buildings in an effort to mitigate bushfire risk. I take on board what Hon Adele Farina said about prescribed burning because a lot of this has come about because of the fact that Western Australia is so far behind with its prescribing burning—decades in fact—we are now looking at other ways to try to prevent bushfires from destroying property and from taking lives.

Earlier this year we passed legislation relating to bushfire-prone areas that require bushfire attack level—BAL—assessments. That could be BAL-12.5, BAL-19, BAL-40 or BAL-FZ—fire zone. When someone wants to build or extend their home in a fire-prone area, the building application will be referred to the relevant council's planning department for it to assess whether that property needs to have a BAL. The BAL will determine what people need to do with their property. That is required before building approval will be granted. That comes at a cost. A pretty basic BAL would cost about $400. If a fire management plan is needed, that could cost anywhere between $2 000 and $5 000 depending on what is required. A great impost has been put on people with properties in bushfire-prone areas. When insurance companies get hold of this information and start to look at

properties in bushfire-prone areas, they will look at the amount of vegetation that surrounds it. This legislation will allow people to clear, but Google Earth is a wonderful thing—it makes me wonder whether insurance companies will start to look at properties that have trees crowning over the house and require the owner to either remove that vegetation or cop a pretty hefty levy on their premiums.

Part of the bushfire attack level issue is that property owners may have to do some clearing. That could be quite expensive, depending on the extent of that clearing. There are also certain building requirements. That could add a significant amount of money to the cost of someone building a new house. I have been told that it could cost anywhere between $30 000 and $70 000 or more, depending on the size of the property. I welcome the fact that there is clarity around clearing around houses. It is very important that people protect their properties from bushfire. There has been a lot of confusion in the past about whether removing trees close to a house may mean that property owners are taken to task by Parks and Wildlife or some other environmental agency and that they could be fined and penalised very heavily.

It is also good to see a little more clarity around being able to engage volunteer firefighters in assisting landholders to get rid of some of the vegetation around their place, particularly elderly people who may be unable to undertake some of those tasks. People can contact their local government, which in turn will get in contact with the volunteers, and they can help in trying to mitigate some of the fuel loads around their property. I welcome that.

On Saturday night, I had the pleasure to attend the Association of Volunteer Bush Fire Brigades of WA Inc dinner. I was fortunate enough to be on a table with Hon Jim Chown, who was representing the Minister for Emergency Services.

Hon Stephen Dawson: Not everybody would say it is fortunate to be sitting next to Jim at a dinner!

Hon RICK MAZZA: That is a very nasty thing to say, Hon Stephen Dawson.

In any case, it was a very interesting dinner. Euan Ferguson was a guest speaker. He went into great detail about the challenges that surround bushfire mitigation in this state. He went on to say that there is a real need to have a separate rural fire service in Western Australia. Of course, that was greatly supported by all those present, being volunteers. I have to take my hat off to these volunteers—they are not paid; they put a lot of time into their training and they put in a lot of effort and take a lot of risks to help protect us. Legislation such as this is of great assistance to them when they fight fires. For example, if the trees are not all crowning over a house and there is a bit of a zone around the place, they can actually get in and help control that fire. It not only provides them with the ability to fight that fire efficiently, but also lessens their risk —

Hon Robin Chapple: They could still have a tree crowning a house.

Hon RICK MAZZA: There is that issue, Hon Robin Chapple. This legislation does not compel people to remove trees from around their house. As I said earlier, I think that, over time, insurance companies will start to recognise the people who are making an effort to reduce fuel loads around their house and those who are not.

Hon Robin Chapple: I will not remove my thousand-year-old boab tree, I can tell you.

Hon RICK MAZZA: That is the member's choice.

It is a little disappointing that it is fairly late into the year. The fire season is coming up and we are yet to have the regulations. I understand that a lot of negotiation with other agencies will be required on environmental impacts and what can and cannot be done. This legislation basically overrides other legislation as far as clearing is concerned. I would say that fairly lengthy negotiations will be required on those regulations. It might be a bit late for this fire season. As I discussed with someone earlier today, the middle of summer is not a good time to clear; it is probably better to do it about this time of the year. It may take some time for those regulations to come through. I am glad to see there is a proposed amendment under which those regulations can be disallowed so that Parliament can go through and scrutinise those regulations as required. In closing, I am pleased to say that we support the bill.

HON MARTIN ALDRIDGE (Agricultural) [2.57 pm]: I rise to indicate the National Party's support for the passage of the Bush Fires Amendment Bill 2016. In doing so, I will make a brief contribution to the debate on the concise but important bill that is before us this afternoon. Much has been said already about recommendation 38 of the 2011 Keelty report into the Perth hills bushfires. I want to reiterate that the bill before us deals with an issue arising from that recommendation. That recommendation obviously goes to local government's control under the Bush Fires Act 1954 related to the assessment and mitigation of fuel loads and other bushfire risk treatments on private property in Western Australia. One issue that has caused some confusion for a time amongst property owners or occupiers of land is the extent to which they are required to comply with orders issued under the Bush Fires Act 1954 and how they may interact with other regulatory instruments or laws of the state, particularly environmental regulations. Others speakers have talked about the

recommendation of the Department of Fire and Emergency Services and the government for a 20-metre protection zone around buildings. That policy has been adopted for public buildings. It is interesting to note that in the Perth hills bushfires on 6 February 2011, of the 71 homes that were destroyed that day, 61 were noncompliant in this respect. Quite a large number of properties lost on that day in February 2011 had fuel within 20 metres of a building, which is referred to as the protection zone. There is obviously a range of measures used to mitigate risk around properties. We have talked about firebreaks, which have a number of uses. One is that they allow vehicular access, whether that be vehicular access for a property owner escaping or a fire brigade advancing. They also provide control points when a fire is burning up to a firebreak, but more commonly they are great control lines from which to do back-burns or hazard-reduction burns. There are obviously other strategies that local governments can employ such as fuel load reduction and other matters that they might address in what is commonly referred as their firebreak notice, which they issue consistent with section 33 of the Bush Fires Act 1954.

The Bush Fires Amendment Bill will, as I said in the beginning, help to clarify things legally, and I think help address the community's confusion about what a landowner can and cannot do to mitigate bushfire risk. From that perspective, the Nationals support the bill; we think it is an important one for the house to deal with. The speakers before me reiterated the point that the bill simply sets a standard that may be complied with, but that does not have to be complied with and provides that the FES commissioner has the ability to apply the standard to the whole of the state or regions within the state, recognising that different standards may be published depending on the region and its different risks, such as its vegetation.

Proposed section 35AA(1) allows the commissioner to publish the standards and proposed section 35AA(2) refers to the specified activities outlined in section 33(1)(a) and (b), which are obviously existing provisions of the Bush Fires Act. Under the heading "Local government may require occupier of land to plough or clear fire-break", section 33(1)(a) of the Bush Fires Act reads —

> to plough, cultivate, scarify, burn or otherwise clear upon the land fire-breaks in such manner, at such places, of such dimensions, and to such number, and whether in parallel or otherwise, as the local government may and is hereby empowered to determine and as are specified in the notice, and thereafter to maintain the fire-breaks clear of inflammable matter;

Section 33(1)(b) reads —

> to act as and when specified in the notice with respect to anything which is upon the land, and which in the opinion of the local government or its duly authorised officer, is or is likely to be conducive to the outbreak of a bushfire or the spread or extension of a bushfire, …

That obviously covers off two of the most common things we see in notices issued by local governments with respect to firebreaks and the reduction of fuel. Firebreak notices often vary within a local government depending on the location of the land, its zoning and its use, and, as quite often is the case, the size of the land may also determine the types of treatment that a landowner is required to use subject to section 33 of the Bush Fires Act.

In considering this relatively concise and targeted bill, it was introduced in the Legislative Assembly on 6 June 2016. Following that time, on 10 June I wrote to a number of people who I thought might have an interest in this matter. Those people included Mr Tony Seabrook, president of the Pastoralists and Graziers Association; Mrs Lynne Craigie, president of the Western Australian Local Government Association; Mr Dave Gossage, president of the Association of Volunteer Bush Fire Brigades; and, Mr Tony York, president of the Western Australian Farmers Federation. In my correspondence to them I outlined what the bill intends to do, provided them with relevant documents and sought their feedback on this matter. One of the previous speakers talked about consulting local government. I am not sure to what extent the minister or his department has done that, but I certainly sought to, and with respect to those four letters that were sent on 10 June, my office informs me that as of today being 13 September, I have not received correspondence from those four people. One can only assume that they are relatively happy with the provisions of the bill. I think in many respects the bill will help to deal with some confusion in the community and give greater authority to local government when issuing notices to landowners about the treatments they are required to undertake on their land to mitigate risk.

One of the other important provisions of the bill that I want to discuss is the definition of an owner or occupier of land, which is as follows —

> ***owner or occupier of land*** includes a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.

I think this is important. Members have talked about the Keelty report that has been published. One of the recommendations of Keelty was a tenure-blind approach to bushfire risk assessment. Obviously, the important question is to what extent we bind the Crown in bushfire risk mitigation. I know that that was flagged in the

review by the state of the consideration of the amalgamation of the emergency service acts. That process is ongoing. I think an important question that the state will need to consider in time is how it manages bushfire risk within its estate. Obviously, the state is a significant landowner in Western Australia. We have the ability to direct private landowners to mitigate risk on their property. I think this amendment bill is a small step in the right direction because it will allow land owned or managed by the public service to have the same protections that are applied to private landownings. The greater question as to what extent the Crown should be bound in implementing bushfire risk mitigation on its estate is a question that largely remains unresolved, and is one that I know people in the south west land division are doing significant work on in planning and understanding the risk in regional communities—a risk that quite often sits within the crown estate. It will be an important question for government to deal with in coming years, but for now I think this bill will certainly allow those agency land managers or landowners to use provisions of this bill that will exist in the Bush Fires Act 1954 to allow the same protections that exist for private landowners. In saying that, the National Party supports the bill. Thank you for the opportunity, Mr President.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [3.08 pm] — in reply: I thank honourable members for their contribution to the debate. I thank the Nationals, the Greens (WA) and the Shooters, Fishers and Farmers Party for their indications of support. At the end of Hon Adele Farina's address, I was in little doubt as to whether she supports it. There seemed to be everything wrong with the bill.

Hon Adele Farina: I stated quite clearly on the record that the opposition supports the bill. You need to get lessons in listening.

Hon MICHAEL MISCHIN: I heard that bit, but given that there is nothing right about it—it is skeletal, apparently there is no consultation underpinning it and the opposition does not know what might emerge in terms of standards—the opposition seems to be supporting it. I will not look a gift horse in the mouth. I accept that it will support the bill when push comes to shove.

The need for the bill has been identified as one that is necessary to clarify the issue for owners and occupiers of land who may wish to be part of the coordinated effort to undertake bushfire mitigation and protection strategies but who have difficulty in navigating their way around other legislation that may impede their ability to comply with minimum standards of protection. This was highlighted in the Keelty report; that is, there is a need for a coordinated effort in undertaking bushfire risk treatments on private properties and, indeed, on government-owned properties. The intent will be achieved with the proposed amendments to the Bush Fires Act 1954 simplifying the ability for landowners and occupiers to undertake mitigation activities, such as the removal of vegetation, in line with the government's shared responsibility theme. Local governments currently bear responsibility for determining requirements for bushfire risk treatments to be undertaken by occupiers of land. The Department of Fire and Emergency Services can issue guidelines for this as well, but the guidelines have no legislative basis and may leave an occupier of land open to prosecution in the event of some inconsistency between those guidelines, which, even if followed in good faith, may in fact impinge upon either a local law or some other statute of the state. The measures published by the Fire and Emergency Services Commissioner pursuant to the bill will not be compulsory, but they must be followed if persons who undertake works pursuant to them wish to be afforded protection from other written laws, and further consultation will necessarily need to take place to determine an appropriate balance between the need for fire mitigation strategies and the standards that are to be set by the commissioner as against the need for other matters of public interest, such as environmental protection issues and the like. The bushfire risk treatment standards have been considered by government to be a disallowable instrument and would therefore be subject to the same processes as regulations and the like. They are able to be published by the Fire and Emergency Services Commissioner in a variety of ways—by way of newspapers, websites and other appropriate means—so that they are available to members of the community. However, it has been mentioned in the other place and in the course of briefings held with members of Parliament on the bill that the question of review and disallowance of the standards—the review of the standards by Parliament—may be not beyond doubt. In order to put the matter beyond doubt, I propose to make an amendment to clause 4 at the Committee of the Whole stage by way of a proposed subsection in proposed section 35AA to provide that section 42 of the Interpretation Act 1984 will apply to it in relation to the bushfire risk treatment standards as though they were regulations. That should provide an extra level of oversight of those standards and the ability for Parliament to examine those through its Joint Standing Committee on Delegated Legislation and to disallow them as necessary. That should allay any concerns that the standards are not reviewable.

Otherwise, there is another amendment I propose to move, and I will just outline the purposes of it now to facilitate understanding of the issue and how the government proposes that it be addressed. Currently, section 35A of the Bush Fires Act 1954 states —

> ***normal brigade activities*** means the following activities when carried out by a volunteer fire fighter —

…

(c) any bush fire prevention activity including the burning, ploughing or clearing of fire-breaks or any other operation, including but without being limited to, the inspection of fire-breaks or other works and the survey of areas for the purpose of detecting fire or ascertaining the need for precautions against the outbreak of fire, but not including the activities of an owner or occupier providing a fire-break or fire prevention works on his own property in order to comply with a notice given under section 33(1) or a local law made under section 33(5a);

The bill amends the last portion of that paragraph to read —

> … not including the activities of an owner or occupier providing a fire-break or fire prevention works on his own property in order to comply with a notice given under section 33(1), 34(2) or 35(1), a local law made under section 33(5a) or bush fire risk treatment standards published under section 35AA(5);

The bill, as passed through the other place, made that proposed amendment to the current Bush Fires Act.

The Association of Volunteer Bush Fire Brigades received a briefing on the bill at the minister's office on 23 August. The association advised that currently bush fire brigades will often help landholders clean up, as it were, around their homes to mitigate bushfire risk in a similar manner to the anticipated treatments under the new commissioner standards. To address the association's concerns, the bill is to be amended to remove the reference to the bushfire risk treatment standards in the definition of "normal brigade activities". The references to sections 34(2) and 35(1) will therefore be added to the definition of "normal brigade activities" to include the activities referred to in section 34(2), under which the Department of Parks and Wildlife may give notice to an owner whose land is adjacent to DPaW land to clear a firebreak, or section 35(1), under which the Fire and Emergency Services Commissioner may give notice to a landowner to clear a firebreak. That will now provide that normal brigade activities, including assistance that volunteer bush fire brigades may provide to landowners to clear land by means other than burning, will be covered. The amendment was agreed to by the Minister for Emergency Services as a means of allaying the concerns of the Association of Volunteer Bush Fire Brigades, and I propose to move that amendment in the Committee of the Whole.

Regarding the question of the skeletal nature of the bill, as a matter of practicality, any standards will have to be easily changed if they prove to be impractical. Standards may vary from time to time as circumstances change, and it would be difficult to manage a system that needs to be changed in order to meet changing circumstances if every time that happened, it were to be amended by both houses of Parliament before it could be given effect to either ameliorate a problem identified in the standards or address by new standards a problem that has arisen. Hence, it would seem to the government to be eminently sensible that instead of an overly prescriptive set of standards being introduced into law, as Hon Adele Farina seems to suggest, it be done by way of instruments that must be settled not only by the commissioner, but also done in consultation with the minister of the day and with those standards available to be scrutinised by Parliament and disallowed as necessary. If that is her idea of skeletal legislation, so be it, but it is also pragmatic legislation giving effect to policy in the most appropriate way given the circumstances and the mischief that is meant to be addressed by the legislation.

I thank members for their support for the bill and its ability to address an issue that is of difficulty and troubling to occupiers, some who may have been deterred from taking appropriate measures to take responsibility for their properties because of their fear of impinging on other laws and making themselves open to prosecution or simply those who have used that as an excuse not to undertake appropriate mitigation strategies. Of course, the detail of the laws that will still need to be complied with will be determined through consultation with local governments and other agencies with an interest in how our bush is maintained, but that is a work in progress. On that note, I commend the bill to the house and move that it be read a second time.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Amber-Jade Sanderson) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 1 put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Part III Division 7 inserted —

Hon ROBIN CHAPPLE: Quite clearly, potentially there will be a further impost on local government. Has the Department of Fire and Emergency Services or the minister anticipated what those extra costs may be and has there been any evaluation around that?

Hon MICHAEL MISCHIN: The information I have is that there is no expected cost or financial implications to either the Department of Fire and Emergency Services, local governments or the community arising out of the

proposed amendments. The amendments will provide a relief from reliability should owners and occupiers avail themselves of and comply with those standards; they will simply be relieved from sanction from some other law, unless it is a prescribed law to which they will remain subject. I cannot see how there would be a financial impost. I suppose, theoretically, the only effort, and perhaps that can be translated into monetary terms, is in the consultation process in determining what those standards ought to be.

I move —

> Page 3, after line 22 — To insert —
>
> (7) The *Interpretation Act 1984* section 42 applies to and in relation to the bush fire risk treatment standards as if they were regulations.

I have already spoken on the purpose of that amendment, which is quite self-evident from the words that have been chosen. They will treat the standards in the same manner as if they were regulations. They will not be regulations, but for the purposes of the Interpretation Act and the Joint Standing Committee on Delegated Legislation will be treated as if they were regulations.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Section 35A amended —

Hon MICHAEL MISCHIN: I move —

> Page 4, lines 27 to 29 — To delete "35(1), a local law made under section 33(5a) or bush fire risk treatment standards published under section 35AA(5);" and insert —
>
> 35(1) or a local law made under section 33(5a);

I have already outlined the purpose of this amendment in my second reading reply.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 6 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

Remaining Stages — Standing Orders Suspension — Motion

On motion without notice by **Hon Michael Mischin (Attorney General)**, resolved with an absolute majority —

> That the standing orders be suspended so far as to enable the bill to pass through its remaining stages in this sitting.

Third Reading

Bill read a third time, on motion by **Hon Michael Mischin (Attorney General)**, and returned to the Assembly with amendments.