

FIRE AND EMERGENCY SERVICES LEGISLATION AMENDMENT BILL 2001

Second Reading

Resumed from 17 September.

HON DERRICK TOMLINSON (East Metropolitan) [3.02 pm]: I am not sure how to characterise this Bill. Bearing in mind that the second reading speech summarises the intent of the Bill, if one reads the minister's second reading speech and loses sight of the Bill itself, it could be characterised as a "Mary Poppins Bill" - a spoonful of sugar makes the medicine go down in the most delightful way. If one is distracted by the eloquence of the second reading speech and does not pay attention to the contents of the Bill, it might be characterised as an "It will not hurt, did it Bill" because a person does not know what he is getting until after he has had it. It is only when the consequences are examined that the person knows what it is that he had. The third way of characterising this Bill -

The CHAIRMAN: Order, members!

Hon DERRICK TOMLINSON: I apologise to honourable members who are trying to carry on with their conversations. My voice does tend to intrude into their conversations but I shall try to reduce its timbre.

Hon Nick Griffiths: I can assure Hon Derrick Tomlinson that I was listening to his every word. I know that he, like I did, enjoyed the Mary Poppins movie many years ago and a spoonful of sugar does help the medicine go down. There is another long word I could use but I will not say it because I might get it wrong.

Hon DERRICK TOMLINSON: The minister cannot help but listen to what I have to say because the whole world hears what I say. I want to make sure he absorbs what I have to say.

The third way of characterising this Bill is as the "Little Red Riding Hood Bill".

Hon Nick Griffiths: And you are the big bad wolf.

Hon DERRICK TOMLINSON: No, I am Little Red Riding Hood. Members know what happened to Little Red Riding Hood. On her way to Grandma's house, with the express warning from her mother to beware of the wolf in the woods, poor Little Red Riding Hood was spied on by the wolf in the woods. Instead of the wolf jumping out and doing what wolves do to little maidens in the wood, he decided to go to Grandma's house and disguise himself as someone else. He disguised himself as Grandma and decided to impose an intelligence test upon Little Red Riding Hood.

Hon Nick Griffiths: You are the big bad wolf.

Hon DERRICK TOMLINSON: No, I am Little Red Riding Hood. As we all know, the big bad wolf did something to Grandma - stuffed her into the cupboard or under the bed - and then dressed himself in her nightclothes and jumped into her bed. Totally oblivious to this, Little Red Riding Hood came into the house, saw Grandma in bed and said "Oh Grandma, what big eyes you have." Grandma responded by saying "All the better to see you with, my dear." Little Red Riding Hood failed the first test. She then said "Oh Grandma, what big ears you have." Grandma responded "All the better to hear you with, my dear" and Little Red Riding Hood failed the second test. Can members imagine the situation; there is a wolf in the bed with more hair on his face than Hon Frank Hough or Hon Simon O'Brien and Little Red Riding Hood does not even twig that Grandma is a wolf; she must have been the original bimbo. Eventually Little Red Riding Hood said "Oh Grandma, what big teeth you have." At that stage the wolf jumped out of bed, exposed himself, Little Red Riding Hood screamed, the woodman came in, dispatched the wolf and carried off Little Red Riding Hood. This Bill is a "Little Red Riding Hood Bill".

The second reading speech characterised the Bill and said that it provides legislative recognition and protection from liability for fire and emergency service volunteers, which it does. Until now, the State Emergency Service has not had legislative recognition. As early as 1972, I am told, the SES was promised legislative recognition and since 1972, it has been agitating for legislative recognition. This Bill, at long last, gives the State Emergency Service recognition, and I commend the Government for that. Likewise, the organisations that until now have been called sea rescue groups and, in this Bill, will become Volunteer Marine Rescue Services - I wonder why the term "marine" was chosen rather than "maritime", but that is splitting hairs - will likewise get recognition. Again, the Government's statement of intent in the second reading speech and the functions of the Bill are consistent. I commend the Government for that.

The second point made in the second reading speech is that it provides protection from liability to those organisations. As we now stand, those four organisations - the fire services, the volunteer bushfire services, the State Emergency Service and the Volunteer Marine Rescue Services - have insurance provided by the Fire and Emergency Services Authority. However, they are not protected from liability, because, as incorporated associations, they are liable to civil action. The function of this Bill is to transfer those associations into or

under, or make them agents of, the Fire and Emergency Services Authority of Western Australia. As agents of that authority they are not liable to civil action; that authority is not liable to civil action; the minister is not liable to civil action; and those agencies that will now be incorporated in the Fire and Emergency Services Authority - that is, the bush fire brigades, the fire services, the state emergency services and the volunteer marine rescue services - will not be liable to civil action. Their members might be liable to criminal action if they do things that are contrary to a law governing their actions, but they are protected from civil action.

Hon Paddy Embry: Who will be liable?

Hon DERRICK TOMLINSON: That is an interesting question, and something that I will explore during the committee stage of the Bill. So those two things that the minister's second reading speech says will be done, the Bill does. There is the spoonful of sugar that has made the medicine go down. Both of those things - the legislative recognition of the associations and the protection from liability - are desirable and necessary. The Bill does that in the same way that we would treat a pill that might be bitter.

We need to understand what is happening. I have referred to voluntary organisations, which can be and probably are required to be incorporated associations - the bush fire brigade in Kalamunda associated with the Shire of Kalamunda, or the Wellstead bush fire brigade associated with the Shire of Wellstead and so on - each being independent, functionally autonomous units. I use the term "independent" but I add a rider to their independence, because they are very heavily dependent upon the public purse for their financial support. Their independence is constrained by their financial capacity; they are dependent upon the State for a large portion of their resources. Not only are they dependent upon the State for a large portion of their financial and physical resources, but also they are protected by the State through the insurance provided by the Fire and Emergency Services Authority. It is important to acknowledge that their independence is a constrained independence, but in terms of their functions and governance they are independent, localised, voluntary associations. That applies to the bush fire brigade, the sea rescue groups, the state emergency service groups and the fire and emergency groups. In that situation they are exposed and are liable to civil action.

This Bill creates a new organisation - or it restructures - the Fire and Emergency Services Authority. Each of those previously independent, functionally autonomous units are subject to the governance of FESA - not necessarily the direction of FESA, because the Bill provides for the delegation and the sub-delegation of powers, but there is a different structure. We will now have a major centralised authority over all emergency services - fire, SES, marine rescue and bush fire. The question is: is that desirable? It may have been possible to give legislative recognition to the SES by legislation similar to the Fire Brigades Act or the Bush Fires Act. We could have had a state emergency services Act or a volunteer marine rescue services Act, just as we have the Fire Brigades Act and the Bush Fires Act, which provide legislative recognition to those organisations. Separate legislation would have provided legislative recognition to the SES and the VMRS. That legislation could have done what the Bill before us does, which is make it quite clear that these are the powers and the authorities of those organisations. For example, they may enter property, remove property or destroy property, all in the proper functioning of their services; that is, fighting fires, engaging in rescues or emergency services and so on. Those same protections and authorities that are contained within the Bill before us could have been contained in separate Acts.

We should then ask the question: is there any advantage doing it the other way? When setting up the centralised authority the danger is not to take away some of the autonomy of the local organisations. Local autonomy is extremely important when dealing with volunteer groups. By their very nature, volunteer groups thrive on self-governance, on their own initiative. A centralised authority can minimise or detract from the driving power of those organisations. There are dangers in that, and those dangers must be balanced against the advantages of a centralised organisation. The advantage of the centralised organisation, as structured in this Bill, must be acknowledged. There will be the opportunity for the standardisation of services. Members can rest assured that the services offered by the SES in Kalamunda, Wellstead, Wyndham or Bunbury will be standardised, but appropriate to the local communities. The SES in Kalamunda will have different demands from the SES in Bunbury. Forest fires that occur in Kalamunda, which will engage all organisations, will not be the same sort of emergencies that will be confronted in Kununurra. Neither will they be the same sorts of emergencies that will be confronted elsewhere. However, there can be a standardisation of services. More importantly, there can be a standardisation of training, or uniform or minimum standards and conformity with those minimum standards. There is an advantage with standardisation in centralised control.

There can also be coordination and the more efficient use of resources. Is it really necessary, with a State as diverse as ours, to have all State Emergency Service, fire brigade, volunteer bush fire brigade and volunteer marine rescue units structured and resourced in the same way? Do we need duplication? Does the Kalamunda SES need, for example, a capacity for rock climbing and cliff face rescue? Can the statewide structure include specialised units which are mobile and which could be relocated fairly quickly? Through the coordination and centralised management of these organisations, there can be a much more efficient use of resources. If the

centralised organisation is so structured, the standardised and coordinated, but functionally autonomous, units can be retained by the delegation of authority. The Bill does this, and it is an important structure.

Finally, a centralised organisational structure can become a dictatorial organisational structure in which authority is passed down, or it can be a consultative organisational structure in which each of the units, through delegated representation, participates in the decision making. Although the Bill changes the organisational structure of the fire and emergency services, and imposes a centralised management upon those voluntary organisations, it has the virtue of taking advantage of the opportunities for standardisation and coordination while at the same time providing for a consultative organisational structure and the important delegation of functions.

The Bill is to be supported for those reasons. However, I wanted to characterise it in the way I did to ensure that the House understands that this Bill does more than simply give legislative recognition and protection from liability to the SES and the volunteer marine rescue services volunteers; it restructures the Fire and Emergency Services Authority of WA and the management of the volunteer emergency services across the whole of the State. It is also necessary for the House to understand that the Bill does much more than those two things. I draw members' attention to the very carefully crafted language of the second reading speech. The introductory paragraph states -

The Bill includes amendments to the Fire and Emergency Services Authority of Western Australia Act 1998 to provide legislative recognition and protection from liability for fire and emergency services volunteers.

It includes those amendments. "Include" is a very important word, because the rest of the second reading speech focuses upon those amendments but they are only "included" in the Bill. What else does the Bill do? Another paragraph of the second reading speech states -

In addition to legislatively establishing the SES, VMRS and FESA units, this Bill also establishes penalties for the obstruction of their operations. Further, the Bill provides for increases in penalties under the Bush Fires Act 1954 to assist local governments in encouraging compliance with fire prevention measures and to make our communities safer from bushfires.

Finally, this Bill introduces -

I will use the words in the second reading speech, and I, too, giggled when I read them -

minor amendments to the Fire and Emergency Services Authority of Western Australia Act 1998, the Bush Fires Act 1954, the Fire Brigades Act 1942 and the Fire Brigades Superannuation Act 1985. These amendments are necessary to ensure the effectiveness of the emergency services legislation.

What are those minor amendments? I know this is not the time to go through the Bill in detail, but I signal that these minor amendments will require close scrutiny. The House needs to be aware of what the amendments will do, because they are there to provide legislative recognition and protection from civil liability for SES and VMRS volunteers. They are not the focus of the Bill; they are "included" in the Bill. The amendments that are the focus of the Bill are contained in clause 5, which amends section 6 of the Act. Some of the amendments in clause 5 are consequential on the recognition of the SES and VMRS and on the organisational and consultative structure of the new FESA. However, others are of quite different import; for example, the Bill will amend section 6 of the Act by inserting proposed new paragraph (cd), which provides that in the authority there will be one person who, in the minister's opinion, represents members of staff. There also will be representatives of the volunteer fire brigades, volunteer firefighters and SES and VMRS units. That is consequential on the new organisational structure. I inform the minister that I will explore that matter and I hope he will provide an explanation in his response to the second reading debate and at the committee stage.

Clause 14 of the Bill inserts new sections 38A, 38B and 38C. Those proposed new sections refer to offences in relation to SES and VMRS operations, the improper use of names, symbols etc, and the impersonation of a member of staff or a volunteer. That is a new departure. The Bill now imposes penalties where there were previously volunteer organisations. That is not a minor amendment; that is a substantial shift in philosophy. That substantial shift in philosophy probably is a justifiable amendment, but it is the pill that the spoonful of sugar helps go down. The second reading speech was careful in focusing on other amendments.

Clause 20, which amends section 14 of the Act, gives a bush fire liaison officer or a member of the Police Force exercising the power conferred by subsection (1)(e) the power to remove evidence from the land. That is not a matter of great import, but it is more than a minor amendment. Clause 24 is entitled "Sections 24C to 24G inserted". If these are minor amendments, I am a wolf. I think, however, that I am Little Red Riding Hood and the minister is the wolf. These minor amendments impose prohibitions on the burning of garden refuse at rubbish tips and during limited burning times. These are quite substantial changes to the Bushfires Act which seem to be hidden, though not intentionally, and were not mentioned in the second reading speech, which refers to other things. They are not minor amendments; they are major shifts in philosophy.

I will go through now and indicate the matters the Opposition will be looking at in more detail. Clause 30 inserts a new section 38A, "Authority may appoint Chief Bush Fire Control Officer". Clause 35 amends section 48 by repealing it and replacing it with a new section 48, "Delegation by local government". The new section 48 is in no way related to the section which is repealed. They are two quite different matters of law. This is not a minor amendment as it is characterised in the second reading speech; it is a repeal and a replacement with a different principle of law. Clause 39 amends various sections related to penalties. Section 26A of the Act is amended by clause 48, giving the authority further powers. Clauses 60 and 61 repeal the first and third schedules respectively.

Each of the amendments is probably justified, but they are not minor amendments. In some instances, they represent quite substantial shifts in philosophy, authority and the structure of emergency services in Western Australia. I characterised this Bill as one of three things - a Mary Poppins Bill, a will-not-hurt-did-it Bill, or a Little Red Riding Hood Bill. I think it is a Little Red Riding Hood Bill. It contains more under the disguise. I do not think it is an intentional disguise. This is something that bureaucrats are often wont to do. They give Parliament part of the truth. The Bill contains the whole truth, but the second reading speech is written for the minister in such a way that it can obscure the real intent of the Bill. The real intent of the Bill is in these minor amendments, rather than in the legislative recognition and the protection from liability. Both of those things are admirable, but they could have been done in another way. The consequence of those two things is a major reorganisation, restructuring and redistribution of authority over volunteer services in Western Australia. The minor amendments are major amendments and the major amendments are the real intent of the Bill.

The Opposition will support this Bill. All the matters contained in it are worthy of that support, but it is incumbent on government to explain the intent, purpose and reasons for the Bill before proceeding.

HON JIM SCOTT (South Metropolitan) [3.35 pm]: I will be dealing with this Bill in the absence of my colleague Hon Robin Chapple. I have had very little time to peruse the Bill, but I had come discussion with Hon Robin Chapple about some issues within the Bill. Hon Derrick Tomlinson raised some interesting issues, in particular relating to the different type of relationship with a more centralised body and how that might affect the people on the ground. Overall, that will be of great benefit, in the light of some of the incidents that have occurred around the city in recent times. I refer specifically to the Bellevue toxic waste fire which was attended by professional firefighters who knew it was a chemical fire, but the volunteers who were putting out bushfires on the other side of the site did not know that. I understand there have been some health impacts for those people. That simply should not happen. It is inappropriate, and there should be better coordination. This Bill should help to address situations such as that.

I take on board what Hon Derrick Tomlinson said, because volunteer organisations rely on a certain spirit of people having a feeling of some control over what they are doing, because they are doing it through their own free will. I hope there is an effort to put in place hierarchies that work in ways that allow local volunteer groups to work as much as possible in the local way, while at the same time assisting them both in raising their professional level and making their jobs safer through providing them with more information. Having been around government for some time now, I note that hierarchies and bureaucracies can become very thick and obtuse, and there is a tendency to keep the information at certain levels. I hope the minister takes note and ensures that communications systems work at the grassroots level, without being too hierarchical, and that there is a good exchange of information all the way through the services. That is the key to the success of this Bill. Every piece of legislation comes along with good intentions, but it depends on a culture, and a culture change in some cases, to ensure that the best results are achieved from the framework that is put in place.

A couple of the voluntary marine rescue services were opposed to the legislation. Thirty-four other groups support the Bill. I have noted in the past that certain sea rescue groups have been at loggerheads over different issues, such as radio frequencies, so it may have something to do with that. I have not been given the reasons for the concerns of the Fremantle and Cockburn volunteer sea rescue groups. However, I note that the Government has listened to the concerns of voluntary marine rescue services and has said that it will have further discussions with those groups about whether they will become part of the centralised body. The passage of this legislation should mean a much better outcome for all concerned. The organisation will be better for those people who participate in the firefighting and emergency services. Also, the public and public property should be better protected as a result of this legislation. I stress that the minister must follow up to ensure that the systems of communications between services work well and that the volunteers are listened to. If they are not listened to, we could end up with fewer volunteers. The minister must be very careful how he manages that balancing act.

This is a good Bill. I have not yet had the opportunity to examine the minor amendments to which Hon Derrick Tomlinson referred. I will be interested to hear him discuss those amendments during the committee stage. At this stage, we support the Bill and hope that it will improve the fire and emergency services and ensure that volunteer groups are properly consulted.

HON DEE MARGETTS (Agricultural) [3.42 pm]: I will put on the record some questions that the Minister for Racing and Gaming might answer when he responds. I would like the minister to clarify matters involving increased penalties and the increased authority that will be given to some local authorities under the powers of this legislation. Have the rural guidelines for fire control been released? I recall asking questions about this matter some months ago and was advised that there were guidelines for prescribed burning in urban bushland clearing only. A number of constituents have informed me that the guidelines are diverse. Some shires suggest that up to 50 metres of land along a boundary should be cleared. I have been told that in one case, a shire fire officer wrote to someone and asked him to clear 4 000 acres of land over two years. Of course, that would destroy the habitats of the animals that lived on the land. What would be the purpose of clearing that amount of land as a safety measure when, in effect, it would destroy all the land? Are the guidelines for regional fire controls available? I hope that we do not accidentally empower some shires to use prescribed burning as a de facto land clearing device or provide for greater penalties against people who resist inappropriate fire regimes by some overzealous fire authorities.

Debate adjourned, on motion by Hon Nick Griffiths (Minister for Racing and Gaming).

Sitting suspended from 3.45 to 4.00 pm