

NANNUP FIRE — MORRIS FAMILY

Grievance

MR M.P. MURRAY (Collie–Preston) [9.43 am]: I raise my grievance with the Minister for Forestry. In March 2012 a fire occurred in the Nannup region that affected the Morris family. There has since been much toing and froing about who is responsible. The couple say they are about \$300 000 out of pocket due to the fact that uninsured parts around the house were burnt and also a blue gum plantation, which was to provide them with future money, allegedly worth around \$80 000. What has followed from this fire has been the blame game, where the finger has been pointed from one side to the other, yet the Morris family cannot get closure. I ask the minister to have a close look at this matter. I know he has already done some work on it because this issue is in his electorate, which is what disappoints the Morris family, but there does not seem to be any urgency to settle their claim against the Forest Products Commission or the contractor. The contractor is saying along the way that it is not his fault because FPC should have had insurance. The FPC says that the contractor should have had insurance. The contractor's insurance company, Lumley Insurance's lawyers, SRB Legal, say that the firm does not accept responsibility and has pointed out laws governing the FPC that it believes gives the contractor a complete defence. The FPC spokesman has said that the insurance claim should be pointed towards the Lumley Insurance group.

Where do the Morris family go from here other than putting up nearly all of their nest egg to fight the case about who is responsible? That is not right. The government departments involved are pointing the finger at each other and will not take responsibility. Clear guidelines that should have been followed were not followed in this case, including staying back after the work was done with the track-type machinery to ensure there were no fires and looking up and down the valley to ensure no smoke was visible, but these contractors left the site. I do not really care which group picks up the bill, but these people should be compensated one way or another. It is immoral that a government contractor and a department point the finger at each other with no settlement in sight. We must remember that these people are getting towards retirement age. They have done the right thing; they were not going to take a pension, and now they worry about what they will do in the future.

It has been brought to the minister's attention that some changes are needed to section 67 of the Forest Products Act 2000 that says that all work undertaken by the contractors falls to the FPC for liability. The FPC denies this. Therefore, we go backwards and forwards on the matter. It is time it was settled and it is time the act was tidied up so people do not run into the same problems again in future. That would be a small start.

Recently, a contractor started a fire in the Harvey area. Luckily it occurred in a state forest, but if it had happened on private property, we would have had the same problem again. The Morris family is pushing forward two requests: first, to get their claim settled, and, second, to change the act so other people do not have to go through this again. A person may have to spend \$100 000 to settle a claim of around \$300 000, which leaves a sour taste in anyone's mouth, especially when the Minister for Forestry lives in the same electorate. We were just talking about electorate margins: if the Minister for Forestry wants to win the next election, he had better start looking after people like this. The member for Girrawheen, Margaret Quirk, has also been working on this matter, and we hope that after this brief moment in Parliament today, something will happen. It will be interesting to see what the minister has to say.

I mentioned that the Morris family will have to pay \$100 000. Reading from one of their letters, I note that they have been quoted \$120 000 to take on the case. This is an extreme cost to these people for what is a bureaucratic bungle. We cannot have two groups within the same area, the Department of Environment and Conservation and the department of forestry, both responsible for the work done, whether it be back-burning or burning to reduce the forest loads—remembering that three or four major fires got away last year. We were lucky they were in national parks in the main, some of which involved government departments. There was a highly-publicised fire on the south coast that went for some weeks. We do not want to see this happen again. It is incumbent upon the government and the minister of the day to ensure that this does not happen again. Legislation must be changed and compensation must be paid to these people. It will be with interest that I listen to the minister's story because this has been going on for over 12 months. As has been said, the minister is part of the new government, and he is the local member for that area. I implore the minister to settle this case and to amend the legislation so that other people do not get caught up in this red tape.

MR D.T. REDMAN (Warren–Blackwood — Minister for Forestry) [9.49 am]: I thank the member for Collie–Preston for the grievance. He is quite right, and I am certainly sincerely sympathetic to the circumstances that the Morris family finds itself in. I want to go through a number of things, in the first instance about how these things should play out, and then some of the challenges with this case. As the member is well aware, the bushfire started in the Ellis pine plantation between Nannup and Balingup on 12 March 2012. An internal investigation by the Department of Environment and Conservation came to the conclusion that the probable cause of the fire was a contractor that was contracted to the Forest Products Commission for harvesting the

plantation. The Forest Products Commission, under its own internal investigation, also believed that the likely cause of the fire was the machinery operated by the contractor engaged by the FPC. The contractor was Waugh's Forest Services. Under the arrangements that the Forest Products Commission has for contractors doing contractual work for it, those contractors are formally required to have public liability insurance, and it is \$10 million in this case. Of course, the Morris family is one of a number of groups that have suffered loss and been impacted by this fire.

The solicitors for the Waughs have denied liability on two arguments. They have denied liability on the basis that the facts of the case show that they are not negligent, and they are saying that even if they are found to be negligent, they believe they have protection under section 67 of the Forest Products Act, which is the issue that the member also raised. The purpose of liability insurance is exactly for the circumstances in which we find the Morris family—that is, if something goes wrong and the contractor makes a mistake and is negligent, the liability insurance should settle with anyone who is affected by that. That is the very reason that we insist on having that insurance in place. Of course, if there is a disagreement with the liability arrangements, the court is the appropriate place to resolve that.

Member, that is how things should play out. We insist on insurance for a contractor. If something goes wrong and someone is affected by that act that goes wrong, they then make a claim against the insurance company of the contractor—that is how it should play out—and they get recompense through that process. Sadly, the member has highlighted that in this case the Morris family finds itself in a position in which it cannot afford to respond to the claim, simply because of the cost of it. I have met with the Morris family; I met with them down in Nannup. Quite rightly, the member mentioned that they are constituents of mine. They walked me through the issues that they had. I have sought State Solicitor's advice, and just recently there have been meetings between the FPC, the State Solicitor and RiskCover to seek pathways for resolution of this issue. They are trying to engage with the contractor's insurers. I might add that in this case, and I am sure in a number of other cases in which insurance companies are involved with claims, the first point of the insurance companies is to say no. They are being a little difficult and are not being cooperative in the discussions in this case.

The member talked about section 67 of the act. Both the government and, by extension, the FPC believe that the purpose of section 67 is to provide protection for the FPC employees and its agents in their personal capacity. It provides no such protection to FPC in its corporate agency capacity and, by extension, provides no such protection for its contractors under contractual responsibilities. That is the position of government. I am doing everything in my power under the complex circumstances here and the complex legal liability issues that present for both government and all the parties involved to try to resolve this issue. I believe what we have in place as a matter of process in government is sufficient—that is, I believe that section 67 is appropriate for the purposes for which it was put in the act. Therefore, government's position is that that does not provide a defence for someone making a claim against a contractor to the Forest Products Commission as having protection under that section. That has been reviewed and we hold that position. Therefore, we do not believe that a legislative change is something that is necessary to change the circumstances in which we believe it should play out. Interestingly, that section of the act has not been tested in court. I guess that is the ultimate test, as the member for Girrawheen, being a lawyer, will be aware.

Ms M.M. Quirk: Except the Morris family does not have the time, the expertise or the money to do that. Minister, can't you just heavy the contractors and say, "You're not going to get any more employment from us unless you take responsibility for the damage you've done"?

Mr D.T. REDMAN: Just to go back, the way in which FPC engages contractors is that when it gets contractors to do this work, it insists on them having public liability insurance for that very reason. The purpose of us insisting on that is for claims such as this. The member has cited to me in this grievance that the Morris family has a quote of \$120 000 to do that. Does the member know how much their likely claims are?

Mr M.P. Murray interjected.

Mr D.T. REDMAN: So it is a fair chunk of what their likely claims are, so I can understand how they might err on that. We are working as closely as we can with advisers to us—the State Solicitor and also RiskCover—to engage with the contractor's insurers to try to get a pathway for resolution. We must bear in mind that the Morris family is not the only claimant. Also, the FPC itself has liabilities as a product of the fire. We have costs that we need to pay back to the Department of Environment and Conservation as a product of fire control, and those are also potential claims in the legal matters that fall out of this.

I strongly sympathise with the circumstances in which these people find themselves. That was my position when I met with them, and that position remains. I am doing whatever I can, with the powers that I have as a minister, to get resolution, but also preserve the integrity of the legal arrangements that we must have in place. All good governments do that, including the member's government when it was in office, to have good processes to have protections for those who are affected by circumstances such as this.

