

COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

INQUIRY INTO FIRE AND EMERGENCY SERVICES LEGISLATION

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 17 MAY 2006**

Members

Mr A.P. O’Gorman (Chairman)
Mr M.J. Cowper (Deputy Chairman)
Mr S.R. Hill
Ms K. Hodson-Thomas
Mrs J. Hughes

Hearing commenced at 9.45 am

POUSTIE, MR CAMERON

**Principal Solicitor, Environmental Defender's Office,
Level 2, 533 Hay Street,
Perth 6000, examined:**

SCHULTZ, DR BETH

**Conservation Council of Western Australia,
City West Lotteries House,
2 Delhi Street,
West Perth 6005, examined:**

The CHAIRMAN: Welcome to the hearing. Two other members of the committee are not here, Katie Hodson-Thomas is not coming, and Judy Hughes is running late. We need only two people to take evidence so there is a quorum. The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. Have you completed the details of witness form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes attached to it?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

The Witnesses: Yes.

The CHAIRMAN: We have received your submission. Do you have any amendments?

Mr Poustie: Just the one.

The CHAIRMAN: Before we ask any questions, do you wish to make any statements in addition to your submission?

Dr Schultz: I wonder whether you have received copies of the COAG report on the "Inquiry into Bushfire Mitigation and Management".

The CHAIRMAN: Yes.

Mr Poustie: I am speaking to the joint submission written by my predecessor. Primarily we are seeking to provide additional information to what we have provided in the submission. We are mostly talking to pages 11 and 12, the summary of the submission. At point 23 on page 12 we refer to independent monitoring against state principles that we propose be developed for fire management. On further consideration, we now suggest that rather than the Auditor General conducting those audits, the Conservation Commission would be more appropriate. The aim is essentially the same; namely, independent evaluation of the performance of the departments. Obviously, our key point of interest is the extent to which biodiversity is in the mix of considerations when fire management is undertaken.

Dr Schultz: Our first point was the objectives for protecting people and the community's assets, including biodiversity. We seem to be talking particularly about the south west. I refer you to Select Committee of the Legislative Assembly into Bush Fires 1984 and the Sandy Lewis inquiry 1994 ten years later - this should have been 2004. Numerous inquiries have been undertaken but it seems to us that nothing changes all that much in the south west. We must recognise that the south west corner of Western Australia is one of the world's 25 biodiversity "hot spots". The criteria for hot spot are, firstly, very high endemism and, secondly, being under serious attack. I say attack although the report says "threat", but threat suggests potential and attack means that it is happening. We submit that inappropriate fire regimes are one of the threats to biodiversity. I will give you a specific example: CALM is constantly talking about forests and fuel loads in the forests. It has a prescribed burn regime for jarrah forests on average of five to seven years and for karri forests, an average of six to eight years. This is a shorter time than it takes young jarrah, which is 10 years and young karri, which is 20 years, to become resistant to fire. CALM is burning not just state forest but the conservation estate on a regime that will inhibit the natural regeneration of the forests. CALM burns jarrah every five to seven years and karri six to eight, but the aboveground parts of young jarrah are fire sensitive for 10 years. It protects post-logging, immature jarrah regrowth for at least that time. As I said, young karri is fire sensitive for up to 25 years and CALM protects post-logging, immature karri regrowth totally from fire for 20 to 25 years in production forests; yet in the conservation estate, it is burning on the short regime and that will kill natural regeneration. So when the old trees die, there will not be many, if any, young trees to replace them.

The CHAIRMAN: Are you saying the two regimes are inconsistent with each other?

Dr Schultz: The regime CALM uses for forests - that is its particular interest because, remember, the people in charge of burning in CALM are almost all foresters; they come from a forest department or have a forestry background - is inimical to the natural regeneration of karri and jarrah forests. That would not matter if it was to be logged and then protected, but this is happening in the forest conservation estate. We have set aside magnificent national parks with magnificent old-growth forest, but the burning being conducted in them is not aimed at biodiversity. It is a logging fire regime. That is a serious problem for biodiversity. We have to look at other ways of managing the forest estate. We have some suggestions.

[9.55 am]

Mr M.J. COWPER: Are you talking about old-growth forest areas or those areas of regeneration? A karri tree regenerates differently from a *Eucalyptus marginata* in that they are competitive, not compatible, as are jarrah trees. The karris are a dominant species. Are you talking about the regime in old-growth karri forests or in the regenerated karri forests?

Dr Schultz: I am talking about the problem for biodiversity conservation of the burning regime in the conservation estate. In natural old-growth forests, a big old tree will fall down. It creates a gap. It will create disturbance and there is natural regeneration but because of this short burning regime, that will get killed. It has to be protected from fire for 20 to 25 years, but CALM is burning trees that are six to eight years old - the maximum being 10 years old. That natural, young regeneration will be killed.

Mr M.J. COWPER: CALM is saying that there are more karri trees now than there have ever been. Do you subscribe to that view?

Dr Schultz: I do not know whether they have counted them. There may be in the logged areas, the production areas, because they regenerate or they are planted thickly but they are little. If we are talking about protecting natural forest, that is not what the natural forest is. A natural forest has fewer big trees, not lots of little trees. That is not good for biodiversity because you need karri trees that are 150 years old to get hollows that are big enough for cockatoos and possums.

Mr M.J. COWPER: Primarily, we are not talking about the production of karri forests but more about the old-growth stuff.

Dr Schultz: The fire regime that is being applied to the old-growth forests in the conservation estate is not appropriate for the protection of biodiversity.

Mr Poustie: My next point is not an emphasis of our submission but it relates more to the administrative regime, not necessarily directly to the biodiversity consequences of the current FESA Act and FESA. I wanted to read briefly from an article that we have referred to in our submission that I recommend you include in your papers, entitled "Fire and the Law" by Sandra Boulter, a solicitor at the EDO in 2002. She stated -

Accordingly, the management of fire ranges across many statutes, regulations and policies. This too frequently results in the use of undefined, non-neutral terminology, which can colour issues, cause unnecessary conflict, or create false expectations and understandings:

...

Too frequently also there is overlapping of the powers and functions of government departments in relation to the management of fire, as defined by a variety of Acts. There are statutes that regulate specific entities or specific land tenures while other statutes can regulate the impact of wildfire and burning practices on a variety of land tenures in Western Australia.

Essentially, she sets the scene at the beginning of the article on page 303 for the complexity of the law as it relates to fire at the moment. You have probably heard from other stakeholders that that complexity causes different problems from the ones we are addressing today. I also take you to pages 319 and 320 of Sandra's article, which is a nice neat little matrix of all the different players and all the different acts that relate to fire. The two pages illustrate the complexity there. I have to concede that we have not focussed our energy on developing an alternative administrative framework but we want to emphasise that the legislation is a very real argument for the three key acts that you are looking at to be consolidated into one. There are lots of good arguments for improvements as well.

Dr Schultz: Our third recommendation relates to a risk assessment and management-based framework that reflects national principles. We believe that the requirement for proper risk assessment and risk management should be entrenched in statute. I refer the committee to recommendation 4.1 of the COAG report, which states, in part -

... a structured risk management process based on the Australian Standard for Risk Management be further developed and applied in all aspects of bushfire mitigation and management,

I think this applies not just to wildfire as a threat but to other natural hazards such as floods and sea surges that will become more frequent with climate change. CALM has a risk management policy that says that CALM's performance in risk management will be based on achievement in complying with the Australian Risk Management Standard AS/NZS 4360. Its recently released fire management policy also refers to the Australian standard. To my mind, there is no evidence that CALM actually complies with the Australian standard or that it does do risk assessment as per the Australian standard. Risk is hazard times the severity of the consequence. It seems that in managing the three forest management regions of Swan, south west and Warren, it assumes pretty much the same risk across the board. The risk of a fire occurring is not the same across the board so it does not need to be addressed in the same way across the board. CALM is attempting to keep the fuel load below a certain level virtually across the landscape. This does not seem to take into account the risk of a fire occurring. Black Point, for example, is a very popular camping ground. Wildfire emanated from there in 1994, yet in its current fire management plan, CALM is not protecting the Black Point area from fire from a national park or the national park from a fire

emanating from Black Point. Its burn plan is for a burn some distance from that so the fire could escape from Black Point or could get into Black Point. CALM needs to do what it says it is going to do and have proper risk management and risk assessment as per its policy statement 56.

The CHAIRMAN: Are those things you are referring to in the CALM Act?

Dr Schultz: No, they are not statutory. They are mostly policies developed in-house by CALM that are sometimes put out for public comment. Not too much notice was taken of the public comment on the fire management policy.

Also, the fire management policy, which was released in October of last year, does not seem to take into account the COAG report, yet the state government, as a member of COAG, has endorsed that report. To my knowledge, it is not reflected in its policy. Risk assessment is one of the things in COAG and it does not show up in its policy.

Recommendation 4 states -

Prescribed burning on public lands to be monitored independently, against State principles
...

The key performance indicator we constantly hear about is the annual target of 200 000 hectares of bush burnt in the south west every year. That would be about one-tenth of the burnable land that CALM manages in the south west, including the conservation state. We will not count sand dunes or lakes etc. At that rate, CALM would be burning at least every 10 years, if not more frequently for karri and jarrah, as I said before.

[10.05 am]

Yet the COAG report finding 6.1 indicates that comparing a gross area treated annually in fuel reduction burning with a published target is not a good basis for assessing performance and is likely to be counterproductive. I can suggest some ways that it is counterproductive. For instance, people may tend to think CALM has met its target, therefore they do not have to take precautions - they are safe. They are not safe. Look what happened in Tenterden, Bridgetown and Mt Barker. CALM said that no amount of prescribed burning would have made any difference to those fires. The Mt Barker fire went straight through some areas of jarrah that had been severely burnt five years earlier, and into the town. The target is one example of what is counterproductive; namely, people rely on it too much. If a burn is done in the wrong place, it does not help. We will talk about zoning, which is another recommendation of the COAG report. If we are looking at KPIs, a major inquiry was conducted into the Victorian bushfires in 2002-03, and it listed 13 measures to assess the effectiveness of prescribed burning. I would like to see those applied to our prescribed burning to see how effective it is. I have details of the Victorian inquiry that was conducted into the 2002-03 Victorian fires, the inquirers included Malcolm Gill, a major fire ecologist. We need to look independently at the effectiveness of this approach, which seems to be CALM's main approach.

Another point I raise about this target is that CALM does not include in its target areas burnt in wildfires. I have a table, which I can give the committee, of the area burnt and prescribed burns in the south west over the past 11 years, and the area burnt in wildfires. Added together, CALM met or exceeded its target in seven out of the last 11 years and in only four years did it not meet its 200 000 hectare target. It is a strange phenomenon that, in assessing its target, CALM does not include the area burnt in wildfires. I will leave with you the paper I drew from CALM's annual reports.

Mr M.J. COWPER: In the D'Entrecasteaux fire that occurred years ago, I understand that areas were set aside for prescribed burning that did not include those in CALM's prescribed burning. It must set out a claim for prescribed burns for the preceding 12 months. I understand there were areas of D'Entrecasteaux that burnt. Are you saying that CALM did not subsequently include them in the burnt area?

Dr Schultz: In assessing whether CALM met its annual target of 200 000 hectares, which includes state forest and conservation reserves, it does not include the area which is burnt in wildfires. It refers only to the area it actually lights itself. However, the area actually burnt is much greater because there are considerable areas - it varies from year to year - that are burnt in wildfires. As I pointed out, in most years CALM's target of 200 000 hectares has been either met or exceeded if we include the area burnt by wildfires. Surely that area should be included if we are thinking about biodiversity protection and the amount of burning going on down there. It is burnt whether it is burnt in a prescribed area or by wildfire.

The CHAIRMAN: The information you are giving us now is particularly about CALM. We need to discuss the three acts that we have been asked to review. We will be caught for time. At page 3, paragraph 3, of your submission you refer to the first two acts; that is, the Bush Fires Act 1954 and the Fire and Emergency Services Authority of Western Australia Act 1998 being consolidated to reduce overlaps and to increase efficiency. The majority of stakeholders who have commented on consolidation of the acts have referred to consolidation of the existing three pieces of legislation. Is there a particular reason you limit it to two acts?

Dr Schultz: It might have printed out differently on our submission.

Mr Poustie: I must confess that I read past that. I had taken it that all three acts would be consolidated.

The CHAIRMAN: There is no confusion there.

Mr Poustie: Thanks for picking that up.

The CHAIRMAN: You have probably addressed this already in some of your opening statements about monitoring. At page 3, paragraph 3, you note that there is currently no monitoring or performance review function in relation to the performance of emergency services agencies. You support the COAG report recommendation regarding regular performance reviews of agencies measured against a set of national bushfire principles, and possibly state principles and you mention the Auditor General carrying out this regulatory role. You also mention review by an independent assessor of the efficiency of the legislation at page 12, paragraph 23. That is the one you changed this morning I take it.

Mr Poustie: We are saying that in the context of the performance management review - at least to the extent to which our primary concern is the way biodiversity is factored into this equation, both in the management sense, which is what we are concentrating our comments on now, and in response to emergencies - if that performance is monitored by a separate agency, we consider that the Conservation Commission is the most appropriate body to consider those factors.

The CHAIRMAN: Do you have any structure or criteria in mind for that?

Mr Poustie: I think we have tabled the "Indicative National Bush Fire Principles". I presume our position is that we are looking for a state process to develop an appropriate set of state principles. To some extent, those principles relate to practicalities, community consultation and various other things. To the extent they relate to biodiversity conservation, we recommended at a number of points in the submission that the clearing principles under the amended Environmental Protection Act are the relevant principles. As a general thematic comment, we are often saying that, in some cases there are no principles that, in our opinion, were appropriate guides for management, and we are looking for those principles to be developed. In some cases, those principles or policies do exist, but they are non-binding. We make the point at page 11 that local planning and building laws should be consistent with the WAPC document "Planning for Bush Fire Protection". That is a pretty progressive document. It points in the right direction in essentially getting people to live in a safe way that is cognisant of the fire risk where they are placed, but that is a non-binding document. It is one overarching submission.

Mr S.R. HILL: Would you like that planning policy to have more teeth?

Mr Poustie: Yes, essentially, that is right - I refer to the state principles, clearing principles under the EP act and that WAPC document in particular. If it is not possible to make those three areas binding principles to which the relevant agencies might be held to account, at the very least, the status of some of the key aspects of those policies should be elevated into regulations or legislation as part of the consolidation of the other acts the committee is looking at.

The CHAIRMAN: I introduce Judy Hughes, the member for Kingsley.

Dr Schultz: COAG report finding 6.1 refers to land-use planning that takes into account natural hazard risks, and that is not just wildfire. It is the single most important mitigation measure: land use planning and development controls and it recommends that the states and territories continue to make their statutory measures more effective.

The CHAIRMAN: Is planning for bushfire protection a response to that?

Dr Schultz: Yes; it is one of the ways. We must enforce it more effectively through legislation and regulation because we hear of examples of developers wanting to put a development into fire risk areas; CALM recommends against it, local government recommends against it, yet it goes ahead. People are consciously and knowingly placing themselves at risk, and then they expect to be protected. Insurance policies do not seem to reflect it. Chris Tallentire, our director, has a house up at Giddegannup. He pays less insurance than I do in Perth but he is more likely to be burnt by wildfire. That does not come into account either. There are lots of things that need to be looked at in terms of wildfire mitigation.

[10.15 am]

Mr S.R. HILL: Obviously, government agencies are asked for comment on a subdivision application. Are you saying that if FESA came back and said, "No, we do not allow this to go any further", that could be the overriding -

Dr Schultz: That should be the end of it but it is not.

Mr S.R. HILL: So it is still left to the local authority and the WAPC?

Dr Schultz: CALM will say no and the local authority will say no. It comes up to Perth and it goes through the appeal process, it is approved and the development proposal goes ahead. We have development after development in places where there is a frightening risk of fire. There is coastal heath down at Margaret River that we cannot prescribe burn because it is all or nothing with coastal heath. It is either there or it is not there. We have all this development going through that coastal heath. There will be a major disaster down there one day.

Mr S.R. HILL: Maybe we should be looking at making a FESA position on the WAPC.

Dr Schultz: That is FESA in conjunction with CALM. Who has the last say? There is tension between the two agencies. If there is a serious fire risk, developments should not be allowed to go ahead because they invite disaster. If people put an inappropriate dwelling in an inappropriate place, they should not expect people to risk their lives saving it, especially if they are volunteers, and they are doing that.

Mr Poustie: There should be a number of ways of getting to the same result. One might be to introduce a FESA element onto the WAPC. That would not necessarily legally ensure that particular developments that were inappropriate would not go ahead but it would strengthen the position.

Mr S.R. HILL: Obviously now you are providing comment.

Mr Poustie: Other options would be to make the biodiversity-related principles and the actual policy binding on the commission so that decisions contrary to that would be unlawful.

The CHAIRMAN: Is it the commission or the State Administrative Tribunal?

Mr S.R. HILL: It is the commission.

Mr Poustie: It would be binding on whatever decision is made. So the WAPC makes the first decision. If SAT was asked to review it, it would be subject to the same constraints.

Mr M.J. COWPER: I find that an interesting point. I subscribe to the view that you give. A classic example that comes to mind relates to Denmark, where I lived for a number of years. There are some beautiful places along the estuary. Cedar wood homes have been built in the karri forests, with fuel loadings around 90 tonnes per hectare. I always thought that if there was a fire, I would not commit my fire troops into that area. On the other hand, when I raised the issue with the people who live there, they say they keep a bag near the door during the fire season. They are happy to let everything burn and take only what they can carry in an emergency. On the one hand, people want the amenity of living in that beautiful forest but there is a risk associated with that. One could argue that that is the decision process of that individual. The point you make about sending people in to try to save life and property is a very valid one.

Dr Schultz: If they go ahead in spite of the recommendations against it, as happens -

Mr M.J. COWPER: Should there be a caveat on the title?

Dr Schultz: If you own a piece of private land and want to build a house on it for yourself, that becomes a difficult one - whether you are allowed to or not. If you go ahead and build it, it should be noted that you have been warned of the risk and you have taken the risk and your house may burn down.

Mr M.J. COWPER: Realistically speaking, not only the area that I am talking about but the entire town of Denmark, Walpole and other areas would never exist under that proviso.

Dr Schultz: That brings me to another recommendation of COAG related to zoning. Instead of the approach of reducing the hazard across the board, it recommends three zones so there is a zone close to dwellings and infrastructure of importance and the hazard is reduced there. It may mean repeated burning and loss of biodiversity but that is the situation that we are in. There is further zoning beyond that with different objectives and strategies and a zone beyond that where biodiversity conservation may be an equal priority. But we are not doing that.

The other issue is community preparedness. A classic example was the Mt Barker fire where authorities took people out of the hospital and put them on an oval where it was raining with burning embers. There are professional risk assessors. They could go into a town and educate the people by saying, "When a fire comes, this is what you do - close your windows, turn off your airconditioning, clean your gutters, take your hoses inside so they don't melt, don't have plastic pipes." Communities and individuals need to be encouraged. Maybe if individuals get a reduction in their insurance premiums, it would encourage them to do it. It is not being done, and Mt Barker was an absolute classic.

The CHAIRMAN: There are a couple of other interesting points that we wanted to get to. Before I ask a question, I want to put this in context. Your comments on page 3, paragraph 4, relate to there being no explicit provision at all for fire risk management across crown land and the problems associated with fires on those types of lands. I would like to ask some questions about that. We have received numerous submissions requesting that the state government be bound by the same fire prevention legislation as private landowners. For instance, where private property owners are compelled to install firebreaks, state governments should be compelled to do the same on crown land. Currently, the state government is exempt from having to install firebreaks on crown land. Would you like to comment on that? I have a couple of other follow-up questions.

Dr Schultz: I do not know whether the CRC into bushfires is looking at the effectiveness of firebreaks. In the main, they tend to be access tracks rather than firebreaks. They are not, in fact, firebreaks; they are fuel-reduced buffers. The distinction needs to be made. What is an access track? In 80-metre karri forests, a six-metre firebreak is not much use. Even in other vegetation types, I hope the CRC is looking into the effectiveness of firebreaks. In certain areas of the Nannup

shire where I have a property, they exempt private landowners so not all private landowners are required to do it. Firebreaks as currently constructed are a threat to biodiversity. There are problems of erosion, weeds and access for foxes and cats. Do they really do much good? Rather than imposing these on the Crown, we should be looking at them in terms of enforcing them on landowners. If you have a major road with a clearing, do you still need to clear a strip inside your fence? Maybe you want to do it to protect your fence line. There is that whole issue of their effectiveness and need. As part of COAG's zoning proposal, there would be strategic firebreaks rather than having them around every little plot, especially with two and a half hectare subdivisions. The amount of land that gets turned to wasteland by putting a firebreak on both sides of a fence is disastrous. A firebreak is not a good land use. It would not be much help anyway. Rather than imposing it on the Crown, I would like to see the whole issue of their effectiveness and their strategic use looked at from the point of view of both private landowners and the Crown.

[10.25 am]

Mr M.J. COWPER: I agree. The strategic firebreak policy is the way to go. However, the decision about what is a strategic firebreak and what is not is subjective. We can see the problems faced by councils and every other authority in becoming involved in debate with landowners about what is a strategic break and what is not. I take your point. You are right; however, it can become difficult, particularly for a committee considering ways of trying to legislate across the board.

Dr Schultz: The recommendation is that zoning be done with community consultation. CALM does not consult; it decides what it will burn and when. In the case of the hills fire, I went to a meeting of very angry orchardists who said that CALM had left them in the lurch. That is a problem with an annual target. CALM can burn 5 000 hectares in a remote area as part of its target, but it does not do the little burns around orchards that should be done. We must include the community in developing these plans rather than leave it to an agency to do it and then impose it on the community. That might help overcome that problem.

The CHAIRMAN: Firebreaks are one method. FESA has suggested that it be empowered to request the development of fire management plans from landowners when the land is CALM managed land, plantation land or land used for pastoral or grazing purposes. The fire management plan would be requested only if FESA considered this to be necessary to mitigate the risk of fire to life and property. For instance, in the areas of high risk where CALM land abuts private land or where a eucalypt plantation is located near a housing development. Can you comment on that?

Dr Schultz: I think fire management plans are necessary. However, at the landscape scale they should involve everybody and take into account the recommendation for zoning. Then it should be down to the individual community and the individual landowner manager. I am not sure whether they should be required by law.

Mr Poustie: If it were the case that there be a requirement, FESA could impose that requirement. Consistent with the second bullet point on page 12, we believe that that imposition could potentially be quite significant; therefore, there should be an opportunity for the owners to take that decision to the State Administrative Tribunal. We are seeking that opportunity also for burn orders. The committee should note that there is capacity under section 36ZF of the FESA act to take an objection to the emergency services levy to the State Administrative Tribunal. Similarly, landholders should have an opportunity to take their objections to the State Administrative Tribunal if they consider that some of the requirements are potentially onerous.

The CHAIRMAN: Do you have any further comments about what consideration the state government might need to give to including in legislation fire mitigation and management plans on crown land? Do you have any suggestion for how we should be dealing with it?

Dr Schultz: I think there were 29 recommendations in the COAG report. We need fire management plans but the community must be involved in their development; and it should not be

given token involvement. CALM claims that it consults with its neighbouring landowner, but that consists of letters saying that it will burn on the next door property, as required under the Bush Fires Act 1954, and that is about it.

The CHAIRMAN: What do you think a fire management plan should contain? How far should it go? Should it go to the issue of what happens in case of a fire or should it just be about mitigation?

Dr Schultz: It should encompass what to do in the case of a fire because people need a lot of education on that point. I notice that FESA is conducting a very big education campaign on whether people should stay in their homes or leave, which is an excellent move. Research shows that the houses that are saved are the ones in which people stay. Not everybody can stay because they are not in a position to do what is necessary. The pictures we used to see in the past of the police arresting people and dragging them from their homes were appalling. FESA's education program informs people of what to do if they intend to stay in their home, or leave it. If they intend to leave, they must leave early rather than try to get out when trees are falling, smoke is billowing and fire trucks are on the road. A management plan should encompass what to do in the case of wildfire. With the drying climate in the south west, fire is becoming more of a problem.

Mrs J. HUGHES: I refer to paragraph 6 on page 4. Would you like to comment further on your proposal that a set of state fire management principles operating as a framework within each agency could be developed to deal with its agency's responsibilities?

Mr Poustie: It builds on the national principles we have attached to appendix 1, and we will then bring those down to a higher level of detail on a state basis. This is one of the areas in which the principles we are suggesting should be legally binding. Given they will be quite significant, we are not suggesting a department manifest them out of thin air and that they might be subject to fairly significant community consultation. We reserve the right to take an interest in the development. We do not have a set developed already.

Mrs J. HUGHES: Within that paragraph you indicate that the state principles should include the protection of human life of course and the community assets, including biodiversity. It is interesting that biodiversity becomes one of the assets that we should protect. In most discussions we have had with people, biodiversity has figured on the lower end of the scale if mentioned at all. Can you provide further explanation? I understand that biodiversity is important. Should it be of equal value?

Dr Schultz: Human life is the top priority whether it be the inhabitants or the firefighters. As I pointed out earlier, we live in one of the world's 25 biodiversity hotspots which means high endemism, under serious attack. Inappropriate fire regimes are one of the attacks on our biodiversity. Under this zoning approach there is a zone in which dwellings and infrastructure need to be protected. Property can be anything from a power plant to a fence; if you are tossing up between a fence and an endangered species, perhaps the fence should go. In this first zone, protection of life and property is the prime objective and we reduce the hazard by whatever means it takes. Biodiversity might need to go out the window then. However, another zone might mean there is more of a balance and less focus on risk to life and property, and that will mean there are different objectives and strategies. The next zone would be one involving a wilderness area in which biodiversity is equal with human life and there are different objectives and different strategies for wildfire mitigation and management.

Mr M.J. COWPER: You were saying that the south west corner is one of the 25 hotspots in the world, and fire is one of those. Where does that rate on the hit list of influences on our biodiversity in the south west?

Dr Schultz: I do not think anyone has assessed it. I think the first one is land clearing, which means that everything is gone. As anyone who drives from Perth to Augusta knows, clearing is going on at a massive rate. Interestingly, the new mapping by Steve Hopper shows that the Perth

region is on a level with Mt Lesueur, Stirling Range and Fitzgerald River National Park for high endemism, and that has not been noted before. We are putting biodiversity at risk as a result of what is happening around the Perth metropolitan area. I do not think anyone has assessed which of the attacks on biodiversity is the worst. There is clearing, salinity, acid sulfate soils, phytophthora dieback, invasive plants and animals. Fire interacts with all of them.

[10.35 am]

Mr M.J. COWPER: But there is also a place for fire. It is a natural phenomenon that is pivotal to that sustained biodiversity.

Dr Schultz: It is a big argument. Professor Steve Hopper has done a lot of work on whether our flora and fauna are adapted or whether they cope with it. If we clear-fell a forest, it will come back. We would not say it is adapted to clear-felling. The idea is that our flora and fauna are adapted to disturbance. Fire is one of those disturbances. The same mechanisms that enable our flora and fauna to recover from fire are those that enable them to recover from clearing or being stomped on by animals or being eaten or hit by disease. What is the adaptation? Is it specifically to fire or is it to disturbance?

Mrs J. HUGHES: There is a lot of talk about suppression and mitigation and so forth but what about the effects of a fire going through a particular area where biodiversity is an important thing, albeit quite close to town sites or those types of things? Can you comment on the actions that should be taken after a fire? We talk about getting to the fire but very little mention is made about weed invasion and those types of things where particular areas are denuded, leaving them open to a loss of regrowth biodiversity through sparse areas or areas that have burnt out completely. It is a clean-up, basically.

Dr Schultz: One thing that has to be addressed is management. Back-burning on a broad front is quite damaging to biodiversity. The fire starts in one area and they back-burn from there on a very, very broad front. The research seems to show that that is not good for biodiversity. Also, the introduction of bulldozers does enormous soil damage. It is a balancing act. In certain areas CALM will let the fire run rather than take a bulldozer in because of the risk of introducing phytophthora dieback. After a fire has been through, there is the serious risk of weed invasion and fox invasion. They tend to do a lot of baiting to allow the fauna to recolonise. These things need to be looked at after a fire or at any time. If you do not want to have weed invasion, you have to be on the alert for that after a fire, and also for fox and house mice and things that you do not want in the bush. You need to watch out for these and then basically stand back and hope nature will repair the damage.

Mrs J. HUGHES: Do you believe that these principles should also be set in motion as part of the whole fire procedure?

Dr Schultz: That would be part of fire management, fire response.

Mrs J. HUGHES: That is what I am saying. Should that be part of those duties?

Dr Schultz: Yes, what the response would be after a fire would be set out in management plans.

The CHAIRMAN: On page 9, paragraph 19, of your submission you mention private landowners returning to properties to find them burnt out by local governments as a result of non-compliance with burn orders. What would you like to see happen?

Dr Schultz: We suggested that more effort be made to contact the landowner. E-mail is becoming somewhat easier, although not everybody is on e-mail. I had this very distressed landowner from the north of Perth say that he had not received notice of the burn order. He went back and found that bolt cutters had been used to open his gate. The area had been burnt. The bush fire brigade had burnt beehives, piles of wood and his bush. He was sent a bill for the bush fire brigade conducting the burn and a fine for not doing it himself. How you contact absentee landowners is a serious problem.

Mr Poustie: Presumably there are precedents within the law relating to civil procedures. When you start legal action against someone, you cannot just send a letter and hope that they receive it. You have to demonstrate that they received the letter. We would be seeking something similar. In some cases, those burn orders are considered to be particularly onerous and the need for them is challenged and that should be taken to SAT.

Mr M.J. COWPER: Would that be something along the lines of the local fire chief going around hand delivering?

Mr Poustie: If they can demonstrate a signed receipt of the letter.

The CHAIRMAN: So you are suggesting it has to be a registered letter or something like that. How do you contact absentee landowners? If I own a property in Augusta, for argument's sake, that is all the local council down there would know about me - Tony O'Gorman, from such and such a street in Augusta.

Mr M.J. COWPER: They seem to be able to find you when you want to pay your rates.

The CHAIRMAN: I am not too sure about that either. How does that happen?

Dr Schultz: With something as draconian as a burn order, there should be an onus on the person proposing to carry it out to make sure that the landowner is aware of it.

Mr Poustie: Again, in the civil procedure context, presumably those exact things happen if there is a neighbourly dispute with an absentee landowner. For example, if trees are growing over the property or something, presumably at some stage attempts to notify that person are made under the normal civil procedure rules.

Mr M.J. COWPER: Spoken like a lawyer!

Mr Poustie: I am not aware of that being particularly burdensome in that context.

The CHAIRMAN: How much time do you take, particularly in the context of a fire that is deemed by the local council to be a high risk? The risk is now; it is not in four or five months' time or even three weeks' time.

Dr Schultz: But the risk did not occur now. The risk has been building up over years and years. It is a perceived risk. That is the point at which contact should be made before it builds up to the point where it is a crisis.

Mrs J. HUGHES: On page 10, point 20, you talk about challenging the burn order and the owner having a capability to put management plans into place so there is no need to burn in order to keep the property intact and so forth. What are your ideas other than to burn or to put in place a firebreak? Is it just fuel reduction measures that are carried out by owners?

Dr Schultz: I have seen one property in Northcliffe where the owner has picked up all the sticks and used them for firewood. There are a range of measures, including pruning, raking and slashing. Fireweed, whether native or introduced, responds prolifically so you have a build-up of fuel very quickly after a fire. The time duration of the protection given by a prescribed burn may be very short. A fire can sometimes go through again the same year. If you get leaf scorch and all the leaves drop on the ground, there is fuel again the same year. The D'Entrecasteaux fire went through an area that had a prescribed burn two years previously. Burning is not the panacea. Some of these other means such as raking, pruning and slashing may be less environmentally damaging and provide more protection. On a broad scale, that is not possible.

Mr M.J. COWPER: Mitigation, not prevention.

Dr Schultz: As the introduction of the COAG report says, we can no more fireproof Australia than we can droughtproof it. We have to be ready for it to happen, live through it and then recover afterwards.

[10.45 am]

The CHAIRMAN: Do I take it that you completely object to fire as a method of fuel reduction?

Dr Schultz: Absolutely not. As I said, in the zone of areas that must be protected, fire may be the only way to go. If we are burning for biodiversity reasons and we want to create a special habitat in a remote area, fire may be the most effective way of doing it. It is not a case of no burning; it is a case of smarter burning.

Mrs J. HUGHES: Is that prescriptive by zones?

Dr Schultz: Yes.

The CHAIRMAN: The following matter has been mentioned in all the hearings we have conducted. The coroner and the Auditor General both expressed concern at current fire control arrangements in Western Australia. Both criticised the fact that local government, CALM and FESA could all be in control of a fire. FESA considers it to be necessary that it take control of a fire from a local government and CALM. CALM supports FESA being given this power in relation to local government but not in relation to CALM land. Do you have any views on that?

Dr Schultz: I would not like to see FESA in control of a fire on CALM-managed land. CALM's legislative responsibility is to protect biodiversity. FESA does not have that legislative responsibility. If we are looking at CALM-managed land, it should be CALM in control.

Mr Poustie: Overall, I do not think we got to the point of developing a precise position on emergency response and who might carry the can. Essentially, it is beyond our primary consideration, which is the extent to which biodiversity is factored into the mix.

Dr Schultz: It is a problem. Who is in charge? There could be chaos.

The CHAIRMAN: That is the issue that both the coroner and the Auditor General raised about the Tenterden and Gingin fires. The question asked was: who ultimately is responsible?

Dr Schultz: One would think FESA would be in control but then there is the problem of FESA directing volunteers and volunteers saying, "Get lost; we'll do what we like." I recently heard that the paid firefighters would not go in to fight a fire because it was too dangerous, but the volunteers went in. I am a volunteer myself. Who do we take orders from?

Mr M.J. COWPER: Knowing who to take instructions from as a volunteer is difficult.

Dr Schultz: Yes.

Mrs J. HUGHES: Did you not feel secure in taking orders due to local knowledge issues?

Dr Schultz: I have not been involved in fighting a fire. I was thinking of my own work at the Conservation Council. I am one of the unpaid workers.

Mrs J. HUGHES: Is that a confidence issue?

The CHAIRMAN: To put it a bit differently, when we say FESA should take control of a fire, what do you envisage happens? Clearly, FESA relies heavily on volunteers throughout the state for all sorts of emergencies, not just fire. FESA does not have the staff to come in over the top, so what do you think the process should involve if FESA is in command?

Dr Schultz: FESA has the liaison responsibility with other agencies such as police and CALM, which the volunteers probably would not have. FESA would have the overview and the access to other resources. A lot would be in the preparation. Volunteers must be trained. Part of the training is that, in the event of a fire, there is a hierarchy. For everybody's safety and wellbeing, someone must be in control. We cannot have multiple heads of control. I do not know how you do that other than through cooperation, goodwill, mateship and all those things.

The CHAIRMAN: They are telling us now that the system commonly used is the incident management system. That generally means that the most senior person who fronts up to the fire

first should take control of the incident. Even when that incident is getting quite large and spreads across different areas, that person is in control of the incident and FESA just feeds information and supports the attack on the fire. I cannot see that anything much will change from that other than FESA will have ultimate responsibility for the extra resources, as you said. Can you see a problem in that situation becoming the norm?

Dr Schultz: In individual situations I can see a problem if someone turns up and says I am in charge, but is completely incompetent. If that person took over and was not the right person, then what should happen?

The CHAIRMAN: That is where the training comes in so that people become competent.

Mrs J. HUGHES: I found your submission interesting at paragraph 21 on page 10 that refers to the Conservation Council's role in managing land and assisting the community with managing land. Perhaps this falls into some of the fields you referred to in how to mitigate fire without having to be involved necessarily. Does the Conservation Council not have a role in Western Australia at this time?

Dr Schultz: No. I understand that New South Wales in the 1990 act introduced a section that gives the Nature Conservation Council of New South Wales a specific role in community liaison. The Conservation Council is very well placed to interact with the community. There is often more trust in an NGO than in a government agency. Networks have been built up in a range of areas. It should be a paid position. We cannot expect unpaid people to do this sort of thing. The Conservation Council could form a link between the community and the agencies that would be beneficial to both, and beneficial to the outcome that we are seeking, which is safety.

Mrs J. HUGHES: You suggest that it become a provision within the act.

Mr Poustie: At Appendix 3, we quoted the New South Wales legislation. If that was adopted here, it would give the Conservation Council one of a number of seats among a number of key stakeholders.

Mrs J. HUGHES: As a consultancy?

Mr Poustie: Effectively, yes, representing different interests across the bushfire groups.

Dr Schultz: I was trying to find out from our counterparts in New South Wales who the committee could contact within the bureaucracy that would endorse this as a good proposal. The committee has only our word for it. It is ongoing. Apparently it has been successful in NSW. NSW has not repealed that section of the act. Quite a large team is engaged across the community in New South Wales in this work. I see a similar role being played in Western Australia by the Conservation Council for the reasons I gave; namely, the council is trusted and there is less trust in some government agencies. We have networks of people who we can work through, plus we have the on-ground knowledge. Because of who we are, we have access to almost any expert you would like to name in any area who will give us advice and information free of charge because of who we are.

Mr M.J. COWPER: The Conservation Council has had a working relationship with CALM. If FESA become the overarching authority, do you have concern that your ability to establish a relationship would be hampered, given you would have to start almost from scratch to establish new networks and new communication systems?

[10.55 am]

If that was the case, the organisation responsible would be become even bigger and your organisation's ability to express your concerns may be lost in the great wash-up of what is going on in that rather large organisation.

Mr Poustie: We see that the key ways the concerns might be addressed in a new framework would be through those state principles and clearing principles that you mentioned. Rather than those not

being factored into CALM's particular burn plans, they could be imposed as requirements. Secondary to that is the audit function of the Conservation Commission. The Conservation Council and the EDO currently have a very good relationship with the commission anyway. I do not think any relationship rebuilding issues would come from that.

Dr Schultz: We are recommending that the commission be involved in auditing, but it is just so poorly resourced that it is pathetic. It has one auditor and it is supposed to audit CALM's management of the national parks, all nature reserves and all state forests. To give it this other role, it would have to be properly resourced.

I want to throw in two quick things. In support of CALM's repeated burning at short intervals, it promotes the "Believing the Balga" theory, where grasstrees, blackboys, have black rings around them that show that the Nyoongah burnt the jarrah forest every three to five years. Has that been raised with the committee?

The CHAIRMAN: No.

Dr Schultz: That is the hypothesis that has been comprehensively rebutted by some reputable scientists. I have their report here. The other issue I wanted to raise very briefly is the economic issue. Wildfire can be an economic bonanza for a country town. It is also of benefit to the firefighters because if a fire burns over weekends or through the night, which it usually does, they get a lot of money. There is the economic aspect coming into it, and I do not know how you address it. It is the same with prescribed burning. Down south on the weekend, thousands of hectares were getting burnt on Saturday and Sunday. The contractors who were working were earning good money. When we look at the economic pressures to burn more, it complicates what is already a very complicated issue.

Mr M.J. COWPER: I understand what you are saying. It is an industry but it would have been pretty hard to sell that in Canberra a couple of years ago when there was literally millions of dollars' worth of damage.

Dr Schultz: They had not done their risk assessment or risk management and they were not prepared and they thought it could never happen to them.

Mr M.J. COWPER: That could happen in many towns throughout Western Australia.

Dr Schultz: We have to do the risk assessment and the risk management. Putting houses right beside a pine plantation was probably not a good idea. It was bad land use planning. There was no risk assessment and no risk management and that was the consequence - disaster.

The CHAIRMAN: That goes back to the early 1930s. We visited Canberra and looked at the fire path. Back in the 1930s and 1940s - I will be corrected if I am wrong - there was a lot of land clearing done and a lot of pines planted. The pine plantations virtually exploded.

Mr M.J. COWPER: And they are doing the same with blue gums.

The CHAIRMAN: It does go back to decades of mismanagement. Thank you for your contribution to the committee's inquiry. A transcript of this hearing will be forwarded to you for correction of typographical errors or errors of transcription or fact. New material cannot be introduced in the sense that the evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, you should submit a supplementary submission for the committee's consideration. If the transcript is not returned within 10 days of you receiving it, we will deem it to be correct. Again, thank you very much.

Hearing concluded at 10.59 am
