



**PARLIAMENT OF NEW SOUTH WALES**  
**LEGISLATIVE ASSEMBLY**

**SELECT COMMITTEE ON**  
**BUSHFIRES**

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**REPORT**

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*November 1994*  
*Parliament House, Sydney*

***SELECT COMMITTEE***  
***ON***  
***BUSHFIRES***

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Hon. P Anderson, MP (resigned on 11 October 1994)  
Mr A Humpherson, MP (appointed on 14 April 1994)  
Mrs F Lo Po', MP  
Mr I McManus, MP  
Mr J Price, MP  
Mr B Rixon, MP  
Mr R Smith, MP  
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## **CHAIRMAN'S FOREWORD**

The Report presented by this Committee should not be interpreted as a complete summary of events during the 1994 Sydney fires, nor should it be considered to be complete in its findings and recommendations.

Restraints placed on the Committee due to consideration of "Cabinet Paper" conventions, Deputy Coroner requests for limitations on evidence and the demand for tabling prior to the House rising for a General Election have rendered the Report incomplete.

The unanimous view of the Committee is that a Standing Committee on Natural Disasters be formed to continue the process of monitoring programs of successive Governments in relation to recommendations for the improvement of Emergency Services.

Committee Members wish to express thanks to Catherine Watson, Daniel Wright and Mark Swinson for the efficient and professional standard of advice in preparing this Report.

Finally I express my appreciation of Committee Members for their amicable and bipartisan approach to a potentially controversial issue.

A handwritten signature in black ink, reading "Peter Cochran". The signature is written in a cursive, flowing style.

**Peter Cochran MP**  
**Chairman**

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# **1. OVERVIEW OF THE COMMITTEE'S WORK**

## **1.1 Background to the Inquiry**

In early January of 1994 New South Wales experienced a series of bushfires, the like of which the State had not seen for many years. Adding to the intensity of the fires was their close proximity to major suburban areas. This brought to the attention of many people issues connected with bushfire fighting.

The Government appointed a Cabinet Committee on 18 January to investigate issues arising from the bushfires.

The Cabinet Committee issued an interim report in March of 1994 making recommendations on matters that could be immediately resolved.

On the 17 March 1994 the Legislative Assembly established this Select Committee to further inquire into a number of specific and broader issues connected with bushfire management.

The Committee consisted of five members supporting the Government, Mr Peter Cochran MP (Member for Monaro), who was elected Chairman of the Committee, Mr John Turner MP (Member for Myall Lakes), Mr Bill Rixon MP (Member for Lismore), Mr Andrew Tink MP (Member for Eastwood) and Mr Russell Smith MP (Member for Bega); four members supporting the Opposition, Mr Peter Anderson MP (Member for Liverpool), Mr Ian McManus MP (Member for Bulli), Mrs Faye Lo Po' (Member for Penrith), and Mr John Price MP (Member for Waratah); and one independent member, Mr Tony Windsor MP (Member for Tamworth). Mr Tink was discharged from the Committee on 14 April 1994, and Mr Andrew Humpherson MP (Member for Davidson), was appointed to the Committee on the same day. Mr Anderson resigned from the Committee on 11 October 1994, and was replaced by Mr Paul Whelan MP (Member for Ashfield), on 12 October 1994.

## **1.2 Conduct of the Inquiry**

The Committee publicly called for submissions on any or all of the terms of reference. A copy of the terms of reference appear at Appendix 1.

The Committee received 151 submissions from both individuals and organisations. A full list of submissions appears at Appendix 3. However, Government departments having some interest in or responsibility for bushfire management or related responsibilities did not make submissions to the Committee, although some Departments did appear before the Committee to give evidence.

The Committee held public hearings on 22 and 23 August, 17 October and 16 November 1994. A full list of those organisations and individuals who appeared before the Committee appears at Appendix 4.

### **1.3 The Coroner**

#### **1.3.1 Co-operation with the Committee**

At the outset of the Committee's inquiry the Chairman of the Committee, Mr Peter Cochran MP and Mr Peter Anderson MP, met with the Senior Deputy State Coroner, Mr John Hiatt to discuss the respective operations of the Coronial and Parliamentary inquiries. The terms of reference of the inquiry require the Committee to avoid, where possible, the duplication of the taking of evidence currently before the Coroner's inquiry.

#### **1.3.2 Overlapping examinations**

As the work of both inquiries progressed, an overlap developed between the witnesses the Committee intended to call and those witnesses still to give evidence before the Coroner. The Committee wrote to the Crown Solicitor seeking advice as to whether there was any legal impediment to the Select Committee taking evidence from witnesses yet to appear before the Coroner.

The Crown Solicitor's advice appears at Appendix 5 along with correspondence from the Senior Deputy State Coroner. This advice states:

*"There is no legal impediment to the Select Committee continuing to take evidence in the face of the objection raised by the Senior Deputy State Coroner.*

*By virtue of Section 9 of the Bill of Rights, Houses of Parliament and their committees cannot be held guilty of contempt of court by reason of their proceedings.*

*In a hypothetical consideration of what the situation would be if the Committee were not a Parliamentary Committee, I do not consider that the issues before the Inquiry would necessarily be prejudged by reason of the Committee's investigations or that the Inquiry would otherwise be 'embarrassed'."*

However, to obtain this advice the Committee had to postpone the calling of a number of significant witnesses. Not counting the Crown Solicitor's advice, the Committee was still sensitive to the Coroner's concerns as he is charged with the investigation of the deaths of the four persons killed in the January bushfires.

### **1.4 Travel**



Due to the scope of the issues involved in the inquiry the Committee thought it appropriate to travel to some of the areas affected by the January fires and also areas which have a high risk of bushfires.

On 8, 9 and 10 November the Committee travelled to Kempsey, Wauchope, Kiama, Moruya and the Blue Mountains to meet with local Fire Control Officers.

When visiting these towns, the Committee was able to gather valuable information from those at the coalface of bushfire fighting. Discussions were held not with only Fire Control Officers, but bushfire officers and members of the local council as well.

The evidence obtained at these meetings complimented the submissions made by the Committee. Points only briefly mentioned in submissions were investigated in greater depth. An integral part of this report is based upon the knowledge acquired by the Committee in travelling to these places.

### **1.5 Previous coronial reports**

The Committee briefly examined three previous coronial reports on bushfires in NSW to discover if similar issues had arisen in those inquiries compared with those that have arisen out of the January 1994 bushfires. Following is a brief summary of those coronial inquiries.

#### ***Grays Point Bushfire (Jan 1983)***

Between 9 and 11 of January 1983, a bush fire occurred in the Royal National Park (RNP) burning 337 hectares of the Park before it was extinguished. During the afternoon of January whilst fighting the fire some volunteer bushfire fighters of the Heathcote Bush Fire Brigade were overwhelmed by flames. Keith Campbell, Thomas Anthony Bielecke and Gregory John Moon died and six other members were severely burnt.

A coronial inquiry was conducted into the deaths by Mr B J Wilson. The coroner's findings reveal a number of problems similar to those that arose during January of 1994. The coroner's findings and recommendations include:

#### **Finding:**

- Confusion appeared as to the meaning of radio code signals used during the fire.

*"When a volunteer bush fire brigade is fighting a fire, either alone or in co-operation with other brigades or authorities different understandings of such signals can lead to disaster."*

#### **Coroner's Recommendation:**

- The authorities should agree on a uniform system of radio signals and the situations in which they are to be used.

**Finding:**

- No explanation why volunteer fire fighters did not use the radio to advise of their predicament or seek help.

**Coroner's Recommendation:**

- The Bush Fire Council should draw to the attention of all bush fire brigades the need to emphasise in survival lectures the importance of the use of radio in a life threatening situation.

**Finding:**

- Evidence showed inadequacies with the current tankers used by the Bush Fire Brigades. What is required is a short-wheelbase, multi-drive vehicle of great rigidity and strength to traverse narrow, steep and rough trails.

**Coroner's Recommendations:**

- New tankers should be made available to all brigades as soon as possible.
- Training in simulated emergency situations should be incorporated into training programs for bush fire fighters.
- Every effort should be made to convert both engines and water pumps to diesel because of the increased safety it provides with its higher flash point.
- Council should consider the development and manufacture of a lightweight and flame proof blanket for fire fighters and ensure that instructions in its use are incorporated into training.
- The Bush Fire Council should investigate if helmets which comply with the standard it recommends provide sufficient protection for bush fire fighters and should conduct an immediate survey to ascertain the make and Australian Standard number (if any) of all helmets on issue to fire fighters.

**Findings:**

- For whatever reason it is quite clear that National Parks and Wildlife Service (NPWS) resources during the time of the fire were inadequate to control or suppress anything other than a very minor fire in the most favourable circumstances.

- Section 41F of the Bush Fires Act is not free from problems. These occur up until the stage that the Chief Co-ordinator of Bush Fire Fighting taking charge of fire fighting operations involving several authorities.
- Another matter of public importance raised by the evidence is that dissension has arisen between the Sutherland Shire Council and the NPWS about entry to the Council's brigades onto National Park land. The evidence indicates that volunteer fire fighters are concerned about their safety in the Royal National Park because of lack of hazard reduction and the poor condition of trails.

**Coroner's Recommendation:**

- The safety of the community residing in areas adjoining the Royal National Park, and the safety of the many visitors to the Park, require that any doubt concerning the instant and unfettered entry of the volunteer brigades into the Park should be immediately resolved.

**Finding:**

- Evidence revealed that hazard reduction was not carried out because of a lack of funds.

**Coroner's Recommendation:**

- It may be possible for members of the Sutherland Bush Fire Brigade to conduct hazard reduction in the National Park. This would be cost effective and provide ideal training for volunteer brigade members in all aspects of bush fire fighting, including safety and administration.

***Byadbo Bushfire (Jan 1988)***

**Background:**

This was an inquiry under section 15(1) of the Coroner's Act into four separate bush fires during January of 1988 within the Kosciusko National Park.

**Findings:**

- NPWS refused to allow a fire retardant known as "Phoscheck" to be used to suppress the fires due to a blanket policy against the use of fire suppressants. However, phoscheck was used successfully against the fire with the permission of Victorian officers when the fire approached the State border under the ambit of the Border Fire Agreement.

- Deputy 41F Controller's Report was manufactured by the Deputy 41F Controller and National Parks Officers to conceal the blanket policy restriction on the use of suppressants under whatever circumstances.
- NPWS did not take any direct action for five days to contain the fire. This action is inexcusable considering the weather conditions at the time.

*"One wonders what would be the reaction of the NPWS if a fire was ignited on private property with a potential to escape into National Park and no action to contain and extinguish the fire was taken for a period of five days by the Brigades or the occupier of the private land."*

- NPWS witnesses were unreliable and not much weight could be attached to their evidence.
- Difficulties were experienced with radio communication after the radio transmission tower for the Bombala Shire frequency was destroyed by fire. NPWS refused to assist the fire control officer with the use of their radio facilities.
- NPWS did not do everything within their power to contain and extinguish the fires at an early stage, due in no small part to the fact that they did not co-operate fully with outside fire-fighting agencies such as the Forestry Commission of NSW and the Local Bush Fire Brigades. NPWS should have exhausted the local avenues of help and resources available to it before drawing on resources from other areas of the State.

**Coroner's Recommendations:**

- The Fire Control Officer for the Bombala Shire and all other Fire Control Officers for Shires surrounding the Kosciusko National Park in NSW be issued with a radio accessing the frequency used by the National Parks and Wildlife Service on a full time basis.
- NPWS should review their policy on the use of fire retardants such as "Phoscheck" within the Kosciusko National Park, and the approval to use it to be more readily available and quicker to obtain.
- NPWS consult with others on the possibility of constructing addition fire trails within the Park, thereby enabling early back-burning operations to be undertaken and also providing more fall-back positions for personal undertaking those operations.
- NPWS should re-create the positions of Ranger stationed in Bombala which was recently abolished. This would allow for a quicker and more effective on-ground liaison between NPWS and other fire-fighting agencies.

## ***Kenthurst Bushfire (Oct 1991)***

### **Background:**

The deaths and the fire to these premises arose out of what has been referred to as "the Kenthurst bushfire" on 16 October 1991.

### **Findings:**

- The Court is satisfied that the fire control centre at Kenthurst was at the time properly resourced with appropriate personnel and equipment to direct the operation to control the bushfire.
- There was evidence of considerable fire fighting efforts of others, including the police and residents and other members of the community in assisting the fire fighting brigades.
- More than adequate liaison and communication existed at the centre between the fire control officer, the fire brigade, the police service and other emergency services.
- Exceptional circumstances led to the deaths. Sheltering in a house should only be done when it is properly prepared for the purpose. In this case, the evidence establishes that the house was not properly prepared, by cleaning vegetation to a reasonable distance from the house and there was an absence of a non-flammable windbreak on the exposed elevation. There was also evidence of combustible material having been stored under the house.
- A consideration of the total evidence before the court shows that those in charge acted in a professional and efficient manner to co-ordinate all the resources then available at the various stages during the fire in an endeavour to save lives and property and bring the fire under control in very extreme conditions.

### **Coroner's Recommendations:**

- Need for some mechanism to be built into the organisation by a fire control officer or the bushfire service or the Baulkham Hills Council to have a person available in the high risk residential areas during bushfires to account for all persons in the area.
- Need for better liaison between authorities and members of the community on restrictions on hazard reduction through environmental controls.
- Members of the community should be encouraged to furnish information about particular risk areas for bush fires.
- A bush fire prevention officer should be appointed.

- Department of Bushfire Services and the Baulkham Hills Shire Council should make available sufficient funds to appoint:
  - a) a prevention officer at the Baulkham Hills Shire Council; and
  - b) to provide additional funds for training and use of volunteer fire brigade personnel in major hazard reduction works so that hazard reduction can be carried out during the week when conditions are favourable.
- The prevention officer should confer and operate at the direction of the District Fire Committee and the Fire Control Officer. The prevention officer will have three principle functions:

Firstly:

- a) to identify and rate bushfire risk areas in the Shire;
- b) to liaise with the district Fire Committee Bushfire Brigade Captains to assess the major hazard reduction works considered necessary to be carried out;
- c) to be available to landholders in the community to confer and educate on hazard reduction in respect of private property, and of course in high bushfire risk areas other agencies such as those in control of Crown Lands;
- d) to confer, liaise, and programme with the voluntary bushfire brigades, back burning and fire hazard reduction works;
- e) to supervise control of hazard reduction;
- f) to prepare maps of the bushfire risk areas and place on those maps the positions of houses, fire trails and identify thereon exceptional high risk areas which require regular reduction action, maintenance and inspection. To visit householders in these areas at least once during a relevant period to tender advice or information on fire hazard reduction and to identify to private landholders and others, any fire hazard in need of reduction. And to accept information for such residents and other persons to assist in the performance of his duties.

Secondly:

To be available at the direction of the fire control officer at major bushfires:

- a) to liaise and provide information as to the positioning of houses in risk areas; and
- b) to be available for or to delegate to other persons the duty of accounting for people in houses in bushfire affected areas as the need arises.

Thirdly:

To report to the Minister through the District Fire Committee on the state of bushfire hazard management and preventive measures at least once per year at an appropriate time.

These recommendations are not exhaustive, but clearly there is a need to have a prevention officer to properly implement the prior hazard reduction plan and the fire control officer to carry out his duties in respect of fire control.

## **2. HAZARD REDUCTION**

### *(a) hazard reduction and other fire prevention measures*

#### **2.1 History of Hazard Reduction in New South Wales**

The nature of hazard reduction, prior to and since European settlement in New South Wales, was an issue raised in submissions to the Committee.

In particular, submissions to the Committee justified present hazard reduction because the aboriginal people had used similar practices to control their environment. The submissions argued that the aboriginal people used fire-stick farming to clear bush land areas to make hunting easier.

Other submissions to the Committee countered or qualified this proposition. The Royal Botanic Gardens Sydney rejected the idea that aboriginal people used fire-stick farming regularly in all vegetation areas arguing that the scientific literature does not support such a claim. Similar arguments were made by Mr M Tulau to the Committee who submitted that aboriginal "fire-stick farming" did not apply to steep or heavily-forested areas.

From the Committee's perspective, it may not be so constructive to verify what were the fire practices of the aboriginal people.

Of course since European settlement dramatic changes have taken place to the environment. Today vastly different circumstances exist, which raise a multitude of factors to be taken into account in assessing the appropriateness of hazard reduction.

The Committee considers it inappropriate to make a comment on this issue.

#### **2.2 Current Hazard Reduction Practices**

The issue of hazard reduction was significant with almost all of the submissions addressing the matter. Following are just a few of the comments made:

The Mooney-Cheero Progress Association submitted:

"[H]azard reduction , particularly by burning, should be carried out in a responsible, strictly limited way and only at appropriate times, so that the impact upon our local wildlife is kept to a minimum."

The Forest Protection Authority submitted:



"The use of hazard reduction burning must be carried out at times that are appropriate and is a decision that should be made at a local level in consultation with forest users."

The CSIRO advised the Committee that:

"All fire regimes need to be planned as an integral part of overall land management.

It has long been recognised that the only factor influencing the behaviour and spread of bushfires that can be modified by man is the fuel available for combustion. However, from the point of view of conserving the natural flora and fauna, CSIRO research has indicated that, for some plant communities, a long term regime of relatively low frequency, moderate intensity wildfires enhances forest habitat complexity, while a regime of relatively high frequency, low intensity prescribed fires reduces complexity."

Mr G J Armstrong suggested that bushfire management strategies and problems be treated differently. He submitted that areas be divided into three categories:

- "(i) Bushfires at the interface with major urban areas;
- (ii) Those at the interface with minor urban areas and settled rural communities; and
- (iii) Fires in remote natural areas."

The Kurrajong Heights Volunteer Bush Fire Brigade submitted:

"It is our proven experience that the most effective means of managing fire risk in bushland is to systematically hazard reduce strategic areas. Such practice, planned with local knowledge of fire paths and terrain, implemented on a rotational basis and by brigade personnel, is the most effective method of preserving the bushland environment and protecting the urban villages closeby."

The Committee received evidence from State Forests of New South Wales on their hazard reduction programs:

"Over the last 12 years we have averaged in the order of 100,000 hectares of hazard reduction burning each year. In this season just past I think we will have achieved something like 150,000 hectares. To us that is a fairly substantial and significant level of hazard reduction burning. It is fairly strategically located and we feel that that is an appropriate level. Achieving hazard reduction burning in a planned manner, given the weather conditions that are prevailing, is something that is very much constrained by climatic conditions from year to year." (Report of Proceedings 1994a:3).

When Commissioner Koperberg of the Department of Bush Fire Services, appeared before the Committee, he was asked to comment on the issue of hazard reduction:

**CHAIRMAN:** Our terms of reference specifically require that we assess a number of matters relating to hazard reduction and other fire prevention measures and this is of importance to all the bush brigades and all other land management authorities involved in fire prevention and firefighting. Could you give us your assessment of the level of fire hazard reduction that has taken place in the State, say, over the last year or so, whether you think it is adequate? Do you think that we should be looking at other methods of fire or hazard reduction and fuel reduction? Your general comments on those issues please?

**MR KOPERBERG:** Mr. Chairman, there has certainly been a re-emergence of focus on hazard reduction, particularly by burning. Indeed, it is symptomatic of what occurred in the mid seventies following the destructive fires which impinged upon much of eastern New South Wales during 1968/69. The science of hazard reduction by fire was then embryonic, although essentially, of course, its value had been known for decades, but, with the evolving technology the method of implementation was, as I said, embryonic. During the mid seventies we saw probably the highest incidence of areas treated since settlement, and that was as a direct result of what occurred in 1968/69.

What is occurring now is not unlike that but, of course, it has being prompted by some very effective legislation which has been introduced by the government. Indeed, the legislation which now governs the manner in which rural fire affairs are managed is probably the most advanced of its type in the world in as much as that it recognises onus and accountability and the need to treat land, or the need for land to be treated by its owner, its occupier, its lessee or its manager, in such a manner as to minimise the risk of fire being able to spread readily from it or producing fires of such intensity as to be uncontrollable. So, together with the experience of January 1994, and of course the things that lead up to January 1994, and the legislation which provides the legislative clothing and the framework for this to occur, there has been a pleasing increase of focus on matters related to hazard reduction. There are of course limitations.

In much of the State the framework to bring into focus the accountabilities, didn't exist before, and some establishment time will be necessary before all of the players are familiar with precisely what it is that is required of them. In the eastern part of the State, the Great Dividing Range to the coast, where this framework has been in place since 1970, subject to amendments between then and now, there is a better understanding of how it is designed to work and the reaction is good. There is also, needless to say, a renewed consciousness so far as the need to maintain lands in the manner which is going to prevent the spread of fire or give rise to high intensity fires, I think on the part of most that manage owner occupied lands.

If the focus does not diminish, and of course it is harder for it to diminish now because of the legislation which is in place, and the whole issue now becomes both qualitative and quantitative in terms of monitoring it and auditing it and so forth, then

I suspect that the community will probably be well served in the longer term as a result of the recognition to be more pragmatic about hazard reduction works. (Report of Proceedings 1994a:17-18).

**From all the submissions and evidence received, the Committee recommends that appropriate hazard reduction programs are best developed at a local level by District Bushfire Committees.**

### **2.3 Hazard Reduction in National Parks**

The Committee received submissions criticising the lack of effective hazard reduction undertaken by the National Parks and Wildlife Service (NPWS).

The Committee received evidence from the Director General of the NPWS on their current and past hazard reduction burning.

"In relation to hazard reduction burning, there has been a significant increase in hazard reduction burning over the years. In 1982-86, there were only 36,000 hectares of hazard reduction whereas in the four years from 1989 to 1993 there were 81,000. In the year 1993-94, which is obviously just one year, we have treated approximately 50,000 hectares. That is a significant increase over the last ten years." (Report of Proceedings 1994a:90).

Some submissions called for a statewide hazard reduction policy. NPWS clearly stated to the Committee that a blanket approach to hazard reduction for National Parks is inappropriate.

**MS KRUK:** We do not have a blanket policy which says that a 12-year burn cycle is ideal or that a 6-year burn cycle is ideal. It depends very much on the topography, it depends very much on the terrain, but it also depends incredibly significantly on the ecological values involved. (Report of Proceedings 1994a:91).

For these reasons, NPWS consider it more desirable to have a strategic hazard reduction policy rather than a blanket policy of broadacre burning.

The Royal Botanic Gardens (Melbourne) submitted to the Committee that:

"the blanket adoption of a single hazard reduction burning policy over a large area will probably lead to inappropriate management of vegetation from a conservation viewpoint, resulting in irreversible change in the composition of plant and animal communities, and very likely to extinctions of plant and/or animal species. In some areas hazard reduction burning may not be an appropriate management tool for either nature conservation or for fire reduction and may be a waste of natural, human and financial resources. At worst, hazard reduction burning may actually contribute to

the propagation and carriage of wildfires through areas which may have had inherently, low fire-prone characteristics."

However, numerous other criticisms were directed at NPWS's inability to work with other agencies, or to implement adequate hazard reduction.

The submission by the Kurrajong Heights Bush Fire Brigade stated that:

"Contrary to the post January fire press releases by the NPWS our experience is that the Service is reluctant to hazard reduce. The press release dated 13/1/94 states in 1992 - 1993 the Service burned 18,000 hectares - apparently 40% of the States hazard reduction. The release does not state this area represents less than .5 of 1% of the area the Service could have hazard reduced. At this rate it will take 300 years to hazard reduce the area for which the Service is responsible."

The Hon Duncan Gay MLC, conveyed to the Committee his concern that:

"the lack of fire hazard reduction in the [Wollemi] National Park added to the ferocity of the fire."

Mr D Jensen of Wentworth Falls submitted:

"Hazard reduction has been at the absolute discretion and willingness, of National Parks and Wildlife Service. Its record in land management is a proven disaster."

The Anna Bay Bobs Farm Bush Fire Brigade expressed their concern to the Committee that the NPWS is ill-equipped and poorly trained to effectively fight bushfires within National Park land.

The Committee took these concerns seriously and asked Commissioner Koperberg for his comments:

**CHAIRMAN:** We have had criticism in the evidence given to the Committee that the National Parks and Wildlife Service is not fulfilling its obligations, and has been tardy at times in response to requests by district fire management authorities and district committees to conduct hazard reduction. Is that the current case or do you think there is improvement there? Would you like to make a comment on those observations?

**MR KOPERBERG:** I think there is a very significant improvement in terms of reacting to perceived needs. One has to take account of the fact that any deficiencies may not necessarily be attitudinal but hazard reduction in sensitive areas is a very exacting science and it needs to be done within a very narrow window of opportunity. The ability to carry out these sorts of works are governed, as you know very well, by a range of meteorological factors and topographical factors and, of course, the

immediate availability of the necessary resources, particularly human resources. But to answer your question directly, I have no concerns over the reaction to the need on the part of the National Parks and Wildlife Service since the legislation, since the fires. (Report of Proceedings 1994a:18).

#### **2.4 Hazard Reduction on Private Land**

The *Bush Fires Act 1949* expressly deals with hazard reduction on private land. Section 13 (1) of the Act states:

1. *The council of an area may, by notice in writing, require the occupier or owner of any land within the area:*
  - (a) *to plough, burn, clear or otherwise establish fire breaks on such land in the manner, within the time or at such times and at the places and to the widths specified in such notice and thereafter to maintain such fire breaks;*
  - (b) *to remove, burn or destroy any inflammable matter or other material upon such land where the council is satisfied that the removal, burning or destruction thereof is necessary for the prevention of the outbreak, spread or extension of a bush fire or other fire.*

*For the purposes of this section the expressions "occupier" and "owner" shall not include a public authority.*

This section came under the consideration of the Cabinet Committee on Bushfire Management and Control. The Interim Report of the Cabinet Committee recommended that the *Bush Fires Act* be amended to require:

- (i) Local Councils to monitor hazard reduction work on private land;
- (ii) Local Councils to implement remedial action in accordance with the relevant section 41A Plan;
- (iii) and enable Local Councils to charge the owner or occupier the cost of such work.

The Cabinet Committee further considered that Councils should be required to include in their Annual Reports information about action taken by them pursuant to section 13. The Cabinet Committee also recommended that the *Bush Fires Act* be amended so that, where any property owner or occupier or council fails to carry out hazard reduction in accordance with the relevant s41A Plan, the Commissioner of Bush Fire Services will be empowered to carry out the necessary work and charge the owner or occupier or council (as the case may be) for

the cost of such work.

These recommendations were given legislative enforcement in the *Bush Fires (Further Amendment) Act 1994*. One of the objectives of this Act is to require local councils to enforce and to monitor the carrying out on private land of bushfire hazard reduction work in accordance with approved bushfire management plans, and to provide for the carrying out of such work by the local council or the Commissioner of Bush Fire Services if other persons fail to carry it out in accordance with such a plan and for the recovery of costs incurred in carrying out such work.

From the submissions received by the Committee and other evidence taken, the Committee believes the recommendations made by the Cabinet Committee and the recent amendments to the *Bush Fires Act* deal sufficiently and adequately with the problem of hazard reduction on private land.

## 2.5 Hazard Reduction on Land Owned by Public Authorities

The Committee received submissions critical of the hazard reduction measures taken on land owned by public authorities such as the State Rail Authority, the Water Board and the Department of Conservation and Land Management. For instance, the Mooney-Cheero Progress Association submitted to the Committee that:

"most of the land in our area that was overgrown with lantana, which provided so much fuel for the recent fire, is owned by Gosford Council, the Roads and Traffic Authority and Conservation and Land Management."

When the Committee visited Kempsey, it was shown a fire site where massive destruction had occurred. This fire, the Committee was informed, started from work conducted by contractors on a State Rail site. Proper precautions had not been taken by the contractors. Furthermore, they had inadequate capacity to extinguish any fires that were started from their work.

Generally, the Committee received information that many fires start from rail lines. The Committee believes that State Rail needs to take further precautions and develop better fire prevention programs.

The Committee took evidence from two public authorities responsible for land management in New South Wales. The Chairman of the Committee, Mr Peter Cochran MP, put the following question to the Managing Director of State Forests of New South Wales.

**CHAIRMAN:** A considerable number of the submissions presented to the Committee have related to hazard reduction, which you have covered briefly. Constructive criticism with regard to plans and policies relating to protection of the biodiversity and ecosystems in the State forests and National Parks has been received from environmental groups. Could you outline the way in which State Forests of New

South Wales provide for the protection of the biodiversity of ecosystems in planning and in conducting hazard reduction work?

**Dr DRIELSMA:** All of State Forests' hazard reduction work goes through a detailed planning process. Hazard reduction is not undertaken in the absence of a documentary plan for that hazard reduction. Documentary plans are based on prevailing weather and climatic conditions at the time to ensure that specific conditions—characteristics such as flame height and rate of spread—in terms of fire intensity are met. The objective is to contain the effects of the fire within planned limits as much as is possible. In addition, planning is followed in terms of where the burning is undertaken, so as to avoid those environmental assets that we consider to be particularly susceptible to fire. Hazard reduction burning would be routinely planned so as to be excluded from rainforest areas and to minimise impact on riparian zones, filter strips, wildlife corridors and those sorts of areas. Other areas that might have identified rare and endangered plants or animals considered to be susceptible or sensitive to fire would be taken into account in the planning process.

In addition—to consider the overall program in its total context—State Forests manages about 3.5 million hectares of native forest. The average program involves about 100,000 hectares in any one year. State Forests' aim in undertaking hazard reduction is to achieve within an area that is burned something in the order of 30 to 50 per cent coverage. That is the level of coverage required to break up the fuels and attain the advantages from hazard reduction burning. When one looks at it in that context, the actual physical area impacted upon in any one year by hazard reduction burning is a fairly small proportion of the total State forest. To summarise my answer to your question, Mr Chairman, it is the balance between the relatively small area physically burned, and the planning that locates that so as to avoid environmental assets. (Report of Proceedings 1994a:4-5).

Dr Drielsma highlighted another factor which has placed restrictions on hazard reduction.

**Dr DRIELSMA:** It is acknowledged that the general context of environmental planning and concern in recent years has provided an environment of constraint for hazard reduction burning. The actual effect is one more in terms of perception. There is no doubt that one can point to specific instances, specific provisions of licences that we hold from various regulatory agencies and specific conditions applied as a result of environmental impact assessment processes that do provide some constraint on hazard reduction. The general effect is more to encumber the whole process of planning and operations rather than to prohibit or specifically restrict operations in any particular instance. What does happen though, in terms of the general community perception in relation to hazard reduction burning, is that we start to become encompassed in an aura or an environment that makes it more difficult to plan and implement a hazard reduction program such that the incentives are in favour of not doing it rather than doing it. It is that sort of environment that we would be concerned about in the total context of hazard reduction burning, more than pointing

to specific restrictions currently in place. (Report of Proceedings 1994a:5).

A further point was made to the Committee by Dr Drielsma concerning the different objectives of the individual public authorities which manage land in New South Wales.

**DR DRIELSMA:** I should say that I think the policies applied by State Forests of New South Wales on our estate are designed to give the best mix of results for the sorts of management that we have in place on our lands. We manage our lands for different purposes than do the National Parks and Wildlife Service or other owners. State Forests of New South Wales has specific objectives both in terms of producing timber and protecting nature. The balance we might strike there might be different from that struck by another owner who has different objectives. While one needs to recognise that difference, there is no doubt that as far as State Forests is concerned hazard reduction is a very significant part of our management and we would stand by it quite strongly. (Report of Proceedings 1994a:6).

The Director General of the Department of Conservation and Land Management also appeared before the Committee. Again, hazard reduction was an issue which was canvassed during the Department's evidence.

**CHAIRMAN:** Could you outline current CALM fire hazard reduction plans and policies, how they are formulated, and how you ensure that the existing ecosystems and biodiversity are maintained?

**Mr WATKINS:** CALM has been a member of the Bush Fire Council. I am aware, as the Committee is, that that is under review and we have been proposed as a member of the future committee. We have also provided strong input into the coordinating committee. With respect to our Crown reserves, there are plans of management which are statutorily prepared and approved by the Minister. Those plans of management traverse the broad range of responsibilities of managing those lands from a broad ecological point of view through to meeting the needs of the dedication or the reservation, depending on the original purpose for which the Crown land was set aside under that tenure. So, at that level there is input. Secondly, input occurs in the broadest context from being the land steward and interacting with neighbours. I believe we have to appreciate that the Crown estate, unlike National Parks or State Forests, is extremely scattered. It can cover a reserve parcel of land that may be one or two hectares right through to vast areas of Crown land that may be in one tenure. So, the effort has been in ensuring that lessees or the licensees are broadly aware of their responsibilities and, secondly, that the reserve trusts, in this case predominantly councils, are aware of their responsibilities; hence the responsibility that was handed over on 14 March. (Report of Proceedings 1994a:17).

The Chairman of the Committee then asked Mr Watkins to advise on the effects of hazard reduction and wildfires on soil erosion.



**Mr WATKINS:** Soil erosion, as we know, has been one of the major environmental problems facing this nation for many decades, manifested in vast areas of gully erosion, various other forms of salinity and siltation of harbour streams and the like. Not only do we see the loss of soil but we see the eutrophication of rivers, streams and harbours and the blue-green algae problems significantly exacerbated by the nutrients that are attached to soil particles which wash into the water bodies. Any action that denudes the surface of vegetation is going to predispose an area to erosion hazard. Certainly with the bushfires that occurred during January and that have historically occurred over the landscape—wild bushfires—particularly when there is a very heavy fuel load and they are very intense, you end up with a scorched earth type of result. The moment you end up with that result you are ending up with a complete exposure of the surface to the impact of raindrops. You are then ending up with very little protection against runoff. You end up not only with significant soil erosion occurring on site but the transportation of that sediment then blocking up drains and waterways results in the types of problems that I alluded to earlier.

So a wildfire does predispose the area to significant soil erosion hazard, particularly if it coincides with a time of intense rainfall. Looking at the rainfall intensities over the State, certainly the further north you go in New South Wales the higher the intensity, particularly during the summer rainfall period. So it was of some concern to my organisation that there was significant potential for soil erosion as a result of the January fires. Indeed, we were all very fortunate to see a fairly gently falling rain occur over that period which allowed the seed source that was still within the soil to come away at a much earlier time. At that point in time I had an officer fortuitously in America. We drew on the work and the results from California and compared the results of the problems that they experienced there. The results of that and our own results have indicated that you can have 400 to 500 tonnes per hectare of material eroded from bushfires if those circumstances arise.

If we then transfer ourselves into a fire hazard reduction program, because they are being controlled they are normally undertaken during a cooler or moister period. The intensity of the fire burn is much lower. You are leaving greater material cover on the ground as far as tilth is concerned, therefore, you are going to end up with some protection. So the comparison is: any bushfire, particularly the devastating ones we have seen over January and the very bad ones in the Bredbo and Albury areas, have devastated the land, predisposed the land to massive soil erosion problems, particularly if it coincides with heavy rainfall, compared to a hazard reduction program which is controlled and you basically do not end up with the scorched earth policy. (Report of Proceedings 1994a:18-19).

**Under section 13(1) of *Bush Fires Act 1949*, public authorities are not included in the jurisdiction of a council to require an owner and occupier of the land to conduct hazard reduction. The Committee recognises that there may be good reasons for exempting public authorities from the requirements of section 13(1). However, the Committee also recognises that bushfires do start on land owned by public authorities. The Committee**

recommends that all public authorities accept the responsibility to conduct adequate hazard reduction and the provision and maintenance of fire trails on their land. The Committee also recommends that the Department of Bush Fire Services establish a minimum standard for fire trails, directing all government and public authorities to provide a fire trail maintenance schedule to all relevant fire control officers.

## **2.6 Restrictions on Hazard Reduction**

The Committee received evidence which highlighted the little understood fact that often hazard reduction is planned in a certain area but cannot be carried out because of certain restrictions. These restrictions may be caused by either the weather, restrictions because of air pollution or lack of resources.

### *Weather*

The ability to conduct controlled hazard reduction necessarily depends upon the weather conditions. If there are strong winds or wet conditions, hazard reduction cannot take place. In any given period when hazard reduction normally takes place, that is, normally in the winter months, there may only be a certain number of days when weather conditions are favourable for hazard reduction. For instance, States Forests of New South Wales pointed out to the Committee:

**DR DRIELSMA:** There are only very narrow windows of opportunity, if you like, in any one season that give the conditions in which you can achieve hazard reduction burning within the environmental constraints and parameters that you would like to maintain in terms of damage to the forests and that sort of thing. In any year those climatic conditions will put a limit on what can be achieved. In this current year we have had some excellent conditions, in this autumn-winter period, which have allowed us to achieve in excess of 150,000 hectares. In 1991-92 moisture conditions were such that we achieved somewhat less than 50,000 hectares. It does vary from year to year. (Report of Proceedings 1994a:3-4).

The Committee notes this fact to balance criticisms that certain agencies have not conducted hazard reduction. The fact is that hazard reduction may have been planned, but nature prevented it taking place.

### *Air Pollution*

The Committee received submissions alleging hazard reduction had not occurred because of restrictions imposed by the Environment Protection Authority (EPA). To examine whether this had in fact occurred, the Committee requested the EPA to appear before the Committee to give evidence.

Dr Colin Grant, Executive Director of the EPA outlined to the Committee the effect of its

operations on hazard reduction and matters connected with bushfire fighting.

**DR GRANT:** The EPA's role, as it impacts on fire management practices, is limited to in and around the metropolitan areas. The EPA's prime objective is to maintain air quality while permitting hazard reduction burning. The EPA acknowledges that hazard reduction burning is an effective management practice for reducing the potential for bushfires. The EPA's role in regard to air quality is governed by the Clean Air Act of 1961 and the subsidiary *Clean Air (Control of Refuse Burning) Regulation* of 1988.

The *Clean Air Act*, specifically with regard to backyard burning regulation, allows for controls to be placed on open burning of refuse, or backyard burning as it more commonly is called. This is permitted in designated local government areas, and has been widely applied in metropolitan areas of Sydney, Wollongong and Newcastle. Rural areas are largely unaffected by the regulation. The reason for prohibiting such burning is that it was found in the early 1980s that about a third of all fine particles in Sydney's air originated from backyard burning, and there were strong community concerns regarding air quality, especially in urban areas.

The regulation specifically exempts hazard reduction burning and burning for agricultural purposes from its provisions, and total bans under the regulation have only been implemented in urban areas. However, there appears to be some misunderstanding of the regulation relating to hazard reduction burning, and work is in progress to make the regulation abundantly clear in its exemption of hazard reduction burning. The much more important provisions of the Act in relation to hazard reduction burning are, however, contained in section 24A of the *Clean Air Act*, which allows the EPA to ban, through the issuing of what is known as a "no-burn" notice, any open air burning, including hazard reduction burning, specifically when meteorological conditions could result in poor air quality.

Ironically, the conditions that are suitable for hazard reduction burning are the same as those that cause problems in terms of air quality, that is, light winds and cool winter conditions. These conditions often prevail until stronger winds come along and blow the particles away that might be caused by burning. No-burn notices are, however, used very sparingly and only after consultation with the Department of Bush Fire Services in order to minimise the impact of the no-burn provisions on the planned activities of Bush Fire Services. Over recent years there have been no cases of the EPA prohibiting an organised burn planned by the Department of Bush Fire Services without its concurrence. In 1993, for example, only one ban, covering two days, was issued, and it specifically excluded the Blue Mountains at the request of the Department of Bush Fire Services.

In fact, over the last four years there have only been 15 no-burn notices issued by the EPA, two of which have covered two days duration, making a total of 17 days in the last four years. This represents 2 per cent of the 732 available days for burning

between 1 April and 30 September. Indeed, if weekend days were taken into account when volunteer firefighters were available, then there would be 188 such days over the same period of four years. Of those, no-burn notices were issued on only four days, again representing 2 per cent of the time available. (Report of Proceedings 1994b:2-3).

It became apparent to the Committee that some confusion existed between the role of the EPA and Local Councils in restricting burning. This point was clarified by Dr Grant:

**DR GRANT:** What we are talking about is the difference between a no-burn notice in terms of hazard reduction burning, which is the only provision that prevails in terms of any control that the EPA might place on hazard reduction burning; that is, the underbrush largely in wooded areas. That is very clear and that is under section 24A of the *Clean Air Act*. The other area is what is known as refuse burning, sometimes called backyard burning. In consultation with councils a large number of council areas have implemented refuse burning bans under the 1988 regulations controlling refuse burning. So the two are quite separate issues. But there is some confusion in the minds of the community, and sometimes in the minds of the councils, about the apparent controls that the EPA places on the councils. But controls of refuse burning that have been put in place in certain local government areas—and it is the majority in the metropolitan area—are there at the behest of the local government area. (Report of Proceedings 1994b:17).

The EPA finally outlined actions which are being taken to dispel this confusion and create a more effective system of air pollution control on burning practices.

**DR GRANT:** In this regard, the EPA, guided by the recommendations of the Cabinet Committee on Bushfire Management and Control, is undertaking the following actions. Firstly, we are redrafting the guidelines issued to councils regarding backyard burning to make it clear that controlled burning carried out in accordance with the *Bush Fires Act* is not prohibited by the backyard burning regulation.

Secondly, we are redrafting no-burn notices to make the intent clear in regard to omitting specific essential hazard reduction burns, following consultation with the Department of Bush Fire Services. Thirdly, we are redrafting the backyard burning regulation to again clarify that hazard reduction burns are exempt from the provisions of the regulation. The redrafted regulation will be submitted to Parliament subject to the normal procedures and protocols. Finally, we are enhancing the effective and productive working relationship between the EPA and the Department of Bush Fire Services through an exchange of letters, which will formalise the consultative mechanism which already exists. (Report of Proceedings 1994b:4-5).

**The Committee recommends that the Department of Health provide the community with quantitative information as to the effects of controlled burning on human health.**

### *Lack of Resources*

Even if weather conditions and air pollution controls permit hazard reduction, it cannot take place without available personnel. Bushfire Brigades rely upon volunteers to carry out hazard reduction programs. Those volunteers would obviously not be available during the week to assist with hazard reduction because of work commitments. This leaves only the weekends and the Committee was informed that due to family commitments, volunteers are sometimes not available.

However, the Committee believes that although situations may arise where hazard reduction cannot take place because of lack of resources, this is generally not the case. From the evidence received by the Committee it can be seen that Bushfire Brigades are able to achieve adequate levels of hazard reduction, although, of course, individual areas may require more work done than others.

### **2.7 Fire Permits**

The Committee received a number of submissions which criticised the adoption of a 21 day permit for conducting burns. These permits must be obtained where a private property owner or occupier wishes to burn off during a bushfire danger period which usually runs from October through to March. The private property owner or occupier must apply to Local Council for a permit under s10 of the *Bush Fires Act* and abide by the conditions set out in the permit.

The Cabinet Committee on Bush Fire Management examined the issuing of permits by Council and fire brigades and recommended that the *Bush Fires Act* be amended to provide the fire permit issued under s10 will remain in force for a period of 21 days after it is issued. This permit would only be subject to the declaration of a total fire ban or the issuing of a "no burn" notice.

The Committee received submissions from New South Wales Agriculture, the Cooma-Monaro Council, the North Coast Environmental Council and the Nambucca Shire Council which all argued that the 21 day burning permit outlined by the Cabinet Committee was excessive and more discretion should be given to specify the term of the permit based on prevailing forecast and weather conditions.

To the Committee's knowledge, amendments will be soon introduced by the Government to reduce the period for which a permit may be granted from 21 days to up to 14 days.

**The Committee recommends that the amendment to the *Bush Fires Act* to reduce the period for which a fire permit may be granted from 21 days up to 14 days be introduced into the Parliament without delay.**

### 3. WELFARE MEASURES

*(d) treatment of victims, including the nature and speed of the provision of assistance and follow up assistance in the medium and long term*

Submissions received by the Committee dealing with welfare matters were generally positive.

Following are comments made by different organisations to the Committee.

The Family and Youth Support Services of Wyong Shire Inc. submitted that:

1. "Community based organisations have the capacity to provide a range of services to victims e.g. counselling, referral, advocacy and group activities, organisational and management skills.

These could have a crisis focus or be ongoing as needs developed and were identified.

2. Family and Youth Support Services need to be financially resourced to provide these services immediately on an emergency basis.
3. Community based organisations such as ours should have some input into local disaster welfare committees. Membership of these committees seems to be historic and based on traditional departmental lines not acknowledging the community based non-government sector which has an enormous range of skills and expertise, to say nothing of premises etc. This traditional base of disaster welfare committees has not allowed for the ongoing trauma disaster creates in communities."

The Churches of Christ in New South Wales submitted that greater attention needs to be paid to the emotional trauma and suffering of the victims.

The Family Support Services Association of New South Wales (Inc.) urged greater use be made of existing services, based on or near affected communities, to provide quick and effective assistance to families for personal support and counselling.

To ensure that proper and adequate measures had been taken to assist the victims of the bushfires, the Committee requested the Department of Community Services to give evidence on the relief work conducted during and after the bushfires.

The legislative framework under which the Department of Community Services operates includes: the *State Emergency and Rescue Management Act 1989*, which provides the broad policy role of the department.

This Act requires the development of a State Disaster Plan and the Welfare Services Supporting Plan, which set out the ways in which the department is to co-ordinate welfare services in the event of disasters.

The second relevant Act is the *Community Welfare Act 1987*, which relates to disaster welfare assistance to victims, requiring dispersal of monies to victims as well as administering the Community Disaster Relief Trust.

When the bushfires reached their heights on 6 to 9 January, there was an immediate mobilisation of welfare resources in the community. Two evacuation centres were established which catered for a large number of people. Immediate payments were made to people for food, clothing temporary accommodation and transport in accordance with the Disaster Welfare Plan.

Under this Plan the Department of Community Services acts in conjunction with major non-governmental welfare agencies. The Disaster Welfare Plan assigns particular responsibility to individual agencies: the Salvation Army having responsibility for catering; St Vincent de Paul for clothing; and the Red Cross for personal services and support. The Department estimates that over 8,000 persons received immediate assistance in the first few days.

Long term assistance mainly took the form of payments for the restoration and repair of homes. Payments of this kind are usually made according to an industry formula. However, with the amount of money raised in this case, the amount of assistance exceeded normal levels.

Fundraising was co-ordinated through a central committee, chaired by the Director-General of the Department of Community Services. Overall there were 22 separate fundraising efforts. To avoid lack of equity and duplication, a co-ordinating Committee was seen as appropriate without restricting the actions of individual agencies to raise money by prescribing for a single fundraising body.

After the initial welfare work, local recovery centres were established replacing earlier evacuation centres. The local recovery centres were directed by local recovery committees, chaired by the Department of Community Services area manager and members of the Committee included all local community groups, local government and victims.

The central committee established criteria for financial assistance to the victims, with the assistance of consulting groups. The criteria related a to house destroyed or badly damaged, where there was no insurance; when the house was destroyed or badly damaged but insured; and the contents lost where the people were insured.

An immediate flat rate payment of \$8,000 was made where the houses destroyed were the principal place of residence.

The central committee worked closely with insurance companies. Fully insured victims received an additional standard payment of \$22,750. Care was taken to ensure that for people who were insured the amount covered all out-of-pocket expenses, but did not mean that they would make a profit from the situation. The payments made to underinsured persons posed greater difficulty, therefore a standard payment was adopted.

Learning from previous bushfire disasters in other States, the central committee ensured that payments were made as quickly as possible. By March-April, all the money had been distributed to people. This compared favourably with the Ash Wednesday fires when relief payments were made 6-8 months after the fires. Finally Arthur Anderson gave of their time freely to conduct an internal audit of the fundraising passing the process as being very satisfactory.

**The Committee wishes to commend the Department of Community Services on their extraordinary efforts performed under most difficult circumstances.**

**However, the Committee wishes to express concern at the number of properties damaged or destroyed in the January bushfire that were underinsured or not insured at all. The Committee believes that the payments made to those persons who were inadequately insured should not be seen to set a precedent for future disasters.**



## 4. COMPENSATION FOR FIREFIGHTERS

### *(e) compensation for firefighters killed or injured fighting fires*

From the submissions received and evidence taken by the Committee, there was little criticism of the present system of compensation for firefighters killed or injured fighting fires.

At present any firefighter killed or injured during a bushfire is covered by Workers Compensation provisions. Claims are processed quickly and efficiently.

The Sutherland Shire Council submitted that:

"the Council believes the current Workers Compensation provisions are adequate. The administration by WorkCover is efficient and a vast improvement over the previous years, the WorkCover Authority should be complimented on their managements of the *Workers Compensation Act*."

**The Committee, therefore, believes that the present system is satisfactory.**

## **5. SYSTEMS FOR ALERTING THE PUBLIC OF DANGER**

- (f) the adequacy of systems for alerting the public of impending fire danger and the level of that danger*

### **5.1 The Media's Role**

The Committee had to consider a number of submissions which criticised the role of the media during the January bushfires. For instance Voterlobby submitted:

"The media, particularly television played a disgraceful role, putting entertainment well in front of the dissemination of important factual information. The fact that a state-wide disaster was perceived by the media as the basis for entertainment for viewers indicates that complete freedom of the press may not be in the best interests of the Australian community."

From The Society for Growing Australian Plants (Canberra Region) Incorporated:

"The role of the media during the fires in many cases was nothing short of deplorable. There was no doubt that the natural events of January provided them with a feeding frenzy of great proportions.

The media concentrated, as was to be expected, on the sensational aspect of the fires. Television in particular replayed a thousand times the few short feet of spectacular fire scenes. These images gave a very false impression to the rest of Australia and the world."

However, all submissions were not critical with praise coming for individual radio stations such as 2UE. Mr Victor Pickering submitted to the Committee that:

"the use of local radio stations, 2EC (commercial) and the ABC Regional Station at Bega, was of considerable value in alerting the residents of various isolated communities of impending fire danger. In the most dangerous period, one of the stations had one of their announcers located in the fire control office."

During circumstances like the January bushfires, the Committee is of the firm view that the media should play a constructive rather than an impeding role. The media has the ability to convey information in an accurate and timely manner to the public in times of emergencies.

The Senate Committee report on Disaster Management notes:

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"A cursory examination of relevant state legislation suggests that it is possible in some states to require the electronic media to issue warnings, but not so in other states. The fact that in northern Australia there is a comprehensive and frequently used cyclone warning system indicates that the electronic media can be used effectively to inform the public in times of emergencies and such a system clearly needs to be extended to cover other types of emergencies." (Senate Standing Committee 1994:95).

**The Committee recommends the adoption of a standard emergency warning signal, which is sounded to get the attention of listeners before the warning is read. The sound can be used from vehicles to alert people in their homes that a police car was coming past with an important message. At present there is no such system operating in New South Wales.**

**The Committee recommends that the media be approached with the view to establishing a formal "Situation Report" in the form of a regular bulletin delivered by an authorised officer at the Fire Control Centre.**

## **5.2 Police Evacuations**

Criticism of the actions of some police officers in the execution of evacuations during the January bushfires were made to the Committee.

Mr John Price MP, asked Commissioner Koperberg for his views on the manner in which evacuations were carried out by Police in January:

**MR PRICE:** I am just concerned if there are any difficulties with communication in cooperation with police in terms of evacuations. From my own experience in my own area, I noticed there appeared to be some friction between how the police were advised to assist in evacuations and how effective those evacuations would be. Is that a common problem, my area is the Hunter, and is it being accomplished to your satisfaction now throughout the State?

**MR KOPERBERG:** Through you, Mr. Chairman, I expect the Coroner will be expecting me to give evidence in the matter of that issue extensively, so I am bound to confine my remarks to the process rather than any philosophical views.

Australia has always faced the dilemma of whether or not to evacuate people in the face of bushfire because of its various configurations, intensities and a multitude of differentials, so far as soundness of the structure is concerned, to protect life. After many years of research it is generally conceded that, providing that the occupants are able bodied and are psychologically capable of withstanding the trauma which goes with the firestorm conditions, and provided that the house is so sited and so constructed and so maintained as to have a reasonable chance of withstanding the

onslaught of fire, the onset of fire, then the house provides a relatively safe haven. However, that depends upon all parts of the equation holding up, and they don't always hold up.

Following the 1977 fires in the Blue Mountains, occupants were found in their houses in a state of shock despite the fact they had done everything that was required of them, except to leave at the appropriate time. So this opened up a whole new area of concern. The process is that in New South Wales the police have the statutory responsibility and authority to forcibly evacuate people if, in their view, the event constitutes a direct threat to the safety of those persons. In the case of bushfires, it is the procedure that where the officer in charge of the bushfire regards evacuation as being necessary, he shall advise the police. In the absence of police the fire officer may take the steps, although it does so without the statutory authority to forcibly evacuate. He can advise people to evacuate but he cannot force that evacuation - the police can.

Despite the best will in the world, there will be occasions when a police officer has to act unilaterally in the absence of having contact with a fire officer. Fire impinges suddenly upon an area and the police officer has to make a judgment, and an instantaneous judgment often, as to whether that event constitutes a threat to peoples' wellbeing, and it would be very difficult, socially, to adjust that ability because if we adjusted of course the police officer is likely to be faced with the dilemma of not having the weight of law on his or her side, and being frustrated in whatever attempts they believe are necessary to evacuate people.

During an event such as occurred in January 1994, quite clearly there are going to be occasions when communication simply fails, whether it fails because of technological reasons or whether it fails because a fire or event moves so rapidly as to completely change the environment within a matter of minutes, and what might appear safe at 3 o'clock could well be perilous by 4 o'clock and it could happen quite unexpectedly as a result of a wind change or any number of things.

So whilst the whole question of whether evacuation in the face of fire should or should not occur is a vexing problem, the system to accommodate what is the current philosophy is in place, is not without fault, but that fault lies only in the ability to communicate the requirements, the philosophy, the need, the time and the method, it generally works fairly well.

What will happen in a circumstance such as this is that people will err on the side of caution and they will not be conservative in forming a view as to whether or not people should be evacuated. The corollaries of that are the issues which I am sure the Coroner wishes to pursue. (Report of Proceedings 1994d:28-30).

**Unfortunately, as the Coronial inquiry is not yet concluded, the Committee was not able to call the Police Service to comment upon their role in the January bushfires. The**

**Committee is aware that the Coroner will make comment on this issue in due course and therefore declines from making any comment of its own.**

## 6. EQUIPMENT, COMMUNICATION AND TRAINING

### (g) *the adequacy of equipment available to, and training of bushfire brigades*

#### 6.1 Equipment

##### 6.1.1 Adequacy of Present Equipment for Bushfire Brigades

A number of general criticisms were made in submissions to the Committee concerning the adequacy of equipment available to bushfire brigades.

The Cessnock City Council stated:

"The extent of the fires . . . show up an inadequacy in both the number and type of equipment available."

The Forest Protection Society Ltd submitted:

"Some Bushfire Brigades have outdated equipment, especially firetankers and little funding to purchase new equipment or upgraded parts of the old equipment. In the case of some brigades, the tanks do not carry sufficient water and the carrying capacity needs to be increased to make it an effective firefighting unit. Some additional funding for equipment for those brigades with outdated equipment should be considered by Governments."

Mr Graham Tait informed the Committee in his submission that even current equipment may not be as good as that possessed by other States.

"Because the volunteer organisation has been used to such a low level of equipment over the years, they hail the current equipment as the latest and greatest available, however, with the recent fires, equipment from South Australia and Victoria stood side by side with the New South Wales equipment and whilst the New South Wales vehicles have some good features, they cannot be compared to the technology currently being used elsewhere in Australia and overseas. New South Wales vehicles on the whole lack the basic ability to effectively fight high intensity bush fires or large building fires."

The Kurrajong Heights Bush Fire Brigade stated that all aspects of fire fighting equipment require urgent attention, not only to improve fire management, but more importantly crew safety.

The Hon. Duncan Gay MLC, forwarded to the Committee the Jerry's Plains Bush Fire Brigade submission to the Cabinet Committee. There the Brigade submitted that:

"The available equipment has proven totally inadequate to face the recent fire threat for a number of reasons:

- (i) The tankers in our Brigade are both two wheel drive units which can only operate in flat country.
- (ii) The 500 litre trailer tanks proved extremely dangerous when being used on the perimeter trail because:
  - The vehicle and trailer could not be turned around if confronted by a fire because the perimeter trail is too narrow with no turning areas on some sections.
  - The units were caught in some steep sections of the perimeter trail where they could not get up the trail or be reversed to get down.
- (iii) Knapsack sprays and green branches were totally inadequate for the fire threat being faced with spot fires that jumped the perimeter trail. The perimeter trail was too narrow and had no cleared safety margin hence the crowns of trees joined over the top of the trail."

Also the Mogendoura Volunteer Bush Fire Brigade and the Williamstown-Salt Ash Volunteers Bush Fire Brigade called for the upgrading of equipment.

On the Committee's visit to Kempsey, Moruya, Kiama, Wauchope and the Blue Mountains, repeated statements were made concerning the inadequacy of equipment in those areas. For example in Wauchope, the Committee heard that orders for clothing for volunteers take over 12 months to be delivered.

Commissioner Koperberg was asked to comment on this problem:

**CHAIRMAN:** With regards to the adequacy of equipment, we have heard evidence that there is difficulty with the availability of supply of some basic equipment - boots and overalls - is that a supplier's problem that they are having difficulty keeping up with the demand or are you not aware of it?

**MR KOPERBERG:** I am aware of it. It varies from year to year. Most, if not all, bushfire fighting equipment is procured on a contractual basis. Most contracts from two to four years, depending on the particular item. At this stage of contract renewal there is a tender process to be engaged in. Notwithstanding that we normally let suppliers know what our anticipated needs are well before the tender is let so whoever wins the tender has got some idea of what the requirements will be.

However, much of the equipment is imported. For arguments sake cabs and chassis for all vehicles are imported from Japan. Mazdas, Toyotas, Izuzus, whatever they

might be, because there is no equivalent Australian vehicle that can be procured for the cost capable of doing the job. Imported equipment which includes, I might add, things like pump motors, the majority of pump motors even though the pumps themselves are manufactured here, most of them in Melbourne, they are, in the main, Japanese. There are some American, for instance, Brooks & Stratten, but the rest are all Japanese so there is considerable lag time and that lag time can be anything up to nine months.

All protective clothing is locally manufactured but, of course, once the State budget has been approved by the Parliament and the Minister has approved the Estimates that is the time when we start ordering; so naturally there is going to be lag.

One of the least understood managerial aspects of the whole business is that when Councils put in their bids they do so for the ensuing financial year and it is exactly the same as everybody else works. But there is this tendency to assume that the bid is for the forthcoming fire season. Logic will dictate, as the State budget comes down in September/October and legally therefore purchases can not be made, even though the Treasury guarantees us liquidity to at least 50 per cent of the previous year and we act on that and order.

When orders start to be placed in July, August or September of any given year then it is obvious that the equipment which is the subject of those orders is not going to be in the field by 1 October of the fire season. Some good planning on the part of local government would, in fact, ensure that the equipment is estimated and procured on a financial year basis is then always adequate to the forthcoming fire season. We have published much on that subject and the level of planning is improving.

If I could make a final comment on boots and overalls particularly, it is the Department's policy, no matter what the financial constraints are, not to cut protective clothing from Council's requirements. If there are cuts they are made at the local government level and not at the State level.

**CHAIRMAN:** What you are effectively saying is that any delay in the supply of boots, overalls and helmets is the result of the lack of forward planning, not the lack of money?

**MR KOPERBERG:** It is certainly not as a result of lack of money except in the case where new recruits come on the scene. You can imagine after the January 1994 fires there was a rush of people wishing to join up. Boots, overalls or any item of equipment for that matter is not pulled off the shelf so there is always a lag time before these people are properly fitted out. But our instructions to local government Councils is that under no circumstances should protective clothing be jeopardised in favour of something else. (Report of Proceedings 1994d:24-25)

In some areas, Councils are willing to make greater contributions to the purchasing of

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equipment, while in other areas there are more pressing demands for a Council's limited resources. Generally, the state of equipment for bushfire brigades throughout New South Wales varies. The Committee notes that a number of bushfire brigades are having to use equipment that is over 40 years old. Not only do these brigades have to put up with out-dated equipment, but spare parts for repairs are increasingly hard to come by.

Furthermore, over 10 years ago, the Coroner inquiring into the deaths of 3 bushfire officers at Grays Point in The Royal National Park, recommended, amongst other things, that every effort should be made to convert both engines of firetrucks and water pumps to diesel because of the increased safety it provides with its higher flash point. From the evidence received by the Committee, it appears that all petrol firetrucks still have not been converted to diesel. **The Committee recommends that immediate action should be taken to convert all petrol driven firetrucks used by bushfire brigades to diesel.**

**The Committee notes that more work is being done to bring all areas up to approximately the same standard of equipment. The Committee recognises this cannot be achieved overnight, but would hope that it could be achieved as soon as possible.**

**The Committee recommends that the proposed Standing Committee on Natural Disasters (see Chapter 12) should be charged with the responsibility of monitoring the standard of bushfire fighting equipment throughout the State.**

### **6.1.2 Compatibility with Other Emergency Services**

When an emergency occurs, such as that experience in the January bushfires, many different emergency services will have to work together, both inter and intrastate services. In these situations, it is essential that there be a high level of compatibility between the equipment used by different services. The New South Wales Fire Brigade Employee's Union made comment to the Committee that breathing apparatus used by Bushfire Services and the New South Wales Fire Brigades are incompatible.

The Committee was able to verify this as a fact. Further, the Committee discovered that breathing equipment used by the NSW Fire Brigades was out of line with other equipment used throughout Australia and by Bushfire Services. Since January, NSW Fire Brigades have undertaken a program to replace all incompatible breathing equipment.

### **6.1.3 Funding**

**The Committee recognises that a number of submissions have raised complaints about funding for equipment. However, the Committee is of the view that there is little concern with the method of funding and this system should be retained.**

## **6.2 Communications**

From the submissions and evidence received by the Committee a serious problem was

revealed with the adequacy of communications during the January bushfires.

The New South Wales Fire Brigades Volunteers' Federation submitted to the Committee:

"[Communications] seemed to pose the largest problem in co-ordinating a large number of different agencies when they are called together. It doesn't matter whether the Brigades are from the same state, interstate or interservice, the co-ordination of information between services appeared to be lacking when units were sent to fires only to arrive and find other agencies already in attendance, or on the other hand being sent to areas with major problems only to find difficulty in obtaining assistance."

From the Mogendoura Volunteer Bush Fire Brigade there was criticism that the:

"Radio network overload caused confusion."

In fact, the inability to communicate became so dramatic that mobile phones had to be used in some cases.

Other persons or bodies noting problems with communications included: Graham Tait, Glenhaven Volunteer Bush Fire Brigade; Kurrajong Heights Bush Fire Brigade; Cabonne Council; and Donald Atkinson.

A number of calls were made to expedite the adoption of the State Government Radio Network.

The Commissioner of Bush Fire Services appeared before the Committee and was questioned by Mrs Faye Lo Po' MP, on this issue:

**MRS LO PO'**: Communications was a big issue when we were talking to people in the field. One of the reasons that prompted us to invite you here, we needed to hear what your time frame was for smartening up their communication ability because we all have a firm view of what our time frame is. We wanted to hear what you have planned for smartening up the communications with these small brigades.

**MR KOPERBERG**: Mr Chairman, the perceived incompatibility so far as communications are concerned, is nothing new, no matter which disaster you visit anywhere on the globe, one of the first things will arise will be assertions of inadequate communications. The gravity of those deficiencies is directly related to the magnitude of the disaster to which they are applied. One of our problems in New South Wales has been that we have in effect had 142 separate fire services. In the early days it was common for local government councils to have a radio network which it shared with its brigades. Some years ago - and indeed much of this would be funded from the State - we changed the practice to eventually bring out a position where brigade communications were autonomous with those of council, and therefore

you would have dedicated networks, but we still effectively had 142 separate frequencies.

Recognising the need for both intra and inter council units to speak to one another a number of measures were taken. The first of these was to introduce what is colloquially known as the fireground network. It is a VHF frequency, a very high frequency and the high band which is hand held, which is readily available all through New South Wales, so that tankers or vehicles of different frequency persuasions can in fact communicate with each other if they are in each other's territory.

The second measure was to introduce a third or a common channel, which was a VHF mid band channel, and this was available to all councils for installation. Those who used it - may I add at this point, Mr Chairman, that the State is about evenly divided in its use of VHF high band and mid band, so those that were using mid band, in any event, were not at a financial disadvantage because they could simply insert the frequency into their existing equipment. Those that were on high band, of course, were.

The third measure was to introduce a strategic network, again this time in the UHF the ultra high frequency range, predominantly designed for command vehicles and agencies so that agencies of different persuasions could talk to one another, control centres could talk to one another, fire control officers could talk to one another, and so forth.

Four years ago we embarked upon a philosophy to have a single set of frequencies available for bush fire fighting.

**CHAIRMAN:** Single frequency band?

**MR KOPERBERG:** Single frequency band. We approached the Commonwealth Department of Transport Communications with a view to getting 40 frequencies which were within switching range of each other in either the VHF high band or VHF mid band. These would eventually be fitted to all firefighting appliances so that they could all talk to each other by switching frequencies.

**MRS LO PO':** That is current or in the future?

**MR KOPERBERG:** No, that event, has been overtaken by other events which I will come to in a moment. Four years further down the track we are no further advanced, because whilst ultimately we were granted frequencies, it became our responsibility to move from the frequencies, the primary users, which in other words meant that we were given frequencies but people were still using them, and we were given the task of moving those people off on to alternatives. In fact that was a mission impossible.

We were then told by the Department of Transport and Communications that there

was another option and that is to move UHF Statewide. With the advent of the government radio network GRN, which of course is UHF, and is beginning to be established around Sydney - In fact, broadly speaking, in the areas bounded by Nowra in the south, Wyong in the North, Bathurst in the west - We decided that in the interests of long term compatibility we would move to UHF. We did extensive field tests to show that UHF was as effective, if not better than, either VHF mid band or high band, and the proposal now, is to progressively introduce ultra high frequency radios right across the board which will be compatible with the GRN system.

**MRS LO PO'**: How long will that take?

**MR KOPERBERG**: Probably five years. Depending upon the ability of GRN to migrate into those areas which are now not covered. We have been allocated all of the frequencies.

**MR PRICE**: Forty of them, 60 of them?

**MR KOPERBERG**: I think it is 40, I can not be positive of that, and that process has commenced. Migration to GRN is a very expensive project. The standards imposed understandably by the GRN philosophy are a lot higher than might be imposed elsewhere. As a consequence to be compatible to allow migration to GRN as and when it becomes available technologically in other parts of the State, the equipment we have to buy is going to be of the same standard, and hence it is expensive.

So far as our migration State-wide on UHF is concerned, I would estimate five years; so far as GRN is concerned, I can not tell you, I do not know. (Report of Proceedings 1994d:18-21)

During discussions with Fire Control Officers on the Committee's visits to areas throughout New South Wales, concern was expressed over the consequences of a delay in the full adoptions of the Government Radio Network. These concerns were put by the Chairman of the Committee to Commissioner Koperberg:

**CHAIRMAN**: From my observations it is fairly recognised that GRN is a very welcome relief to fire fighters and there is a very firm direction being said by the Government and yourself that GRN will provide all of the Brigade Units with the opportunity to inter react on the same frequency bands. There is some concern expressed to us that obsolescence is a threat to GRN if the process is to take an extended period of time, would you like to comment on that?

**MR KOPERBERG**: Other than to say that as far as we are able to purchase equipment which is going to remain GRN compatible now and into the foreseeable future - I am sorry, at the rate that information technology is changing it makes it impossible to say what is going to be down the track three or four years from now,

let alone five to ten years from now. But the best technical advice that we have is that the GRN would be an all encompassing information median which would be capable of not only voice transmission but data transmission and a whole range of other things.

I do not expect that obsolescence will play a major part because if you look at the specifications for GRN they are fairly wide and they certainly do take account of enhanced technology down the road. I do not have the fears about obsolescence in that arena that some have expressed. (Report of Proceedings 1994d:21)

The delay of five years for the introduction of the Government Radio Network was a concern for the Committee. Mr Tony Windsor MP, sought to discover the reason behind this delay:

**MR WINDSOR:** You said that this program could be brought in over five years. When you are putting that time frame on it, how much of that relates to financial restraints and how much to the availability of infrastructure?

**MR KOPERBERG:** Well, the infrastructure, of course, takes time to establish. If you would take account of the fact that with every radio network of what persuasion surveys need to be done and they are painstakingly slow - physically you have to walk around the countryside or drive around the countryside to determine what the radius of reception and transmission is to enable you to place your transmitters in the best possible place.

A good proportion of that would be related to the provision of infrastructure but there is also a monetary consideration, of course. We have not yet calculated the total cost of either the State wide UHF program and its subsequent migration to GRN but it will be multi millions. The Government has consistently increased the level of funding for the Bush Fire Service and our estimates for Government consideration are being prepared in a manner so as to take account of the additional costs related to an improved and enhanced communication system. But there are many issues still to be sorted out in that regard. (Report of Proceedings 1994d:21-22).

**The Committee believes that the problem experienced with communications during major bushfires is a most pressing concern. Communications problems have arisen continually with almost every major bushfire in Australia in the last 30 years. Improvements in communications have not been adequate enough to resolve difficulties to a level which could be considered satisfactory. The Committee, therefore, wholeheartedly supports any measure taken to expedite the implementation of an effective and universal communications system in New South Wales.**

**The Committee recommends that the proposed Standing Committee on Natural Disasters (Chapter 12) closely monitor the implementation of the Government Radio Network.**

### **6.3 Training**

Generally, the submissions and evidence received by the Committee endorsed the current training procedures for members of the bushfire brigades. Commissioner Koperberg at the request of the Chairman of the Committee, Mr Peter Cochran MP, detailed the current training problem developed by the Department of Bushfire Services.

**CHAIRMAN:** If we can move on to training, you might first give some background. You were a fire control officer in the Blue Mountains for some time. You might give us some comparison between standard training when you first started and what it is now, and what levels of expertise there is amongst training officers and how the training facilities benefit the bushfire brigades and make some comment as to whether they are adequate?

**MR KOPERBERG:** Well, essentially, pre 1985, there was effectively no formal training process. There was some training, but it was largely by the dint of experience what you picked up. I was a volunteer fire fighter myself in the early days and whatever you learnt you learnt because you watched somebody else doing it and occasionally you would go to a Saturday afternoon lecture. You were in the business yourself, Mr Chairman, you know how it worked - it was very informal.

In 1985, or thereabouts, we took account of the high attrition rate in the movement - fatalities, serious injuries, and it was unacceptably high. We embarked upon a more formal training programme at a number of levels - basic fire fighter and then crew leader and group leader and a whole range of specialist courses. That is now firmly entrenched and despite some early fears, and resulting opposition, by those who feared that the process might be too formal, the demand for training now almost exceeds our ability to supply it. In other words, the volunteers have taken very well to the need to be trained, and there has been a demonstrative reduction in the number of fatalities and serious accidents as a result of it.

I am pleased to say that we lead Australia in competency based training. In fact the models created by us are being used extensively throughout Australia and, indeed, internationally and our training, our manager of training, is a key player in the determination of Commonwealth standards, and we are quickly reaching a stage where a good percentage - I won't put a figure on it - but a good percentage of our firefighters, both new and those who have been in the business for some considerable time, will have attained a formal state of competency.

Certainly any recruits which now join are required to complete basic training before they are allowed to embark upon firefighting. We are finding that firefighters are handling the basic training with relative ease and are progressing quickly through the other levels of training and becoming qualified well in excess of the task that they are currently performing,

There are courses and formal training agendas, itineraries and curriculae in areas such as incident management, aviation, meteorology, fire science and a whole range of issues. We expect, Mr Chairman, by the year 2000 the Department of Bush Fire Services will be a accredited institute which means that it will in fact be able to issue diplomas based on the competency based training philosophy. (Report of Proceedings 1994d:25-26)

### *Central Training School*

One suggestion for the improvement of training for bushfire officers was the development of a central training academy. Some people the Committee spoke to thought this was a worthwhile idea, while others considered that a central training school would not sit well with volunteers who would have to leave their areas for training taking them away from their work and families.

The Chairman of the Committee sought the views of Commissioner Koperberg on the central training school proposal:

**CHAIRMAN:** There has been suggestions made to, or against, with regards to the establishment of a central bushfire training school or academy, call it what you will, would you like to make a comment as to what the proposed future is for establishment of such a facility or whether you intend to use existing resources, such as TAFE, or the like?

**MR KOPERBERG:** Clearly, in the time to come and I would hope that we would not do this in isolation, the need for some centralised training facility will be necessary. Currently it is very much decentralised, albeit that we have use of the excellent facilities at the Police Academy at Goulburn, which we use extensively. I would expect that as accountabilities increase, and as expectations for professionalism begin to dominate the business, which they will, there would need to be some formal facility, even though the process is now quite formal. One would expect that this would be done in unison with, say, the New South Wales Fire Brigade, and one day we might see a Fire Services Training Academy or some such facility. However, its absence is not impeding in any shape or form the level of training which is now required. If it comes, it will be evolutionary. (Report of Proceedings 1994d:27)

## **7. BUILDING REGULATIONS FOR BUSHFIRE PRONE AREAS**

### ***(h) the adequacy or otherwise of building regulations currently in operation in New South Wales with particular emphasis on the Australian community bushfire safety standards for houses***

The principal safety standard for the design and construction of houses in bushfire prone areas is Australian Standard 3959. This standard was developed by Standards Australia primarily for the inclusion within the Building Code of Australia. However, AS3959 only applies to planning areas designated by legislative authority as bushfire prone.

Research shows that a number of factors affects the chances of a building surviving a bushfire, including:

- the construction of materials;
- the design;
- the location with respect to surrounding countryside; and
- the proximity and type of adjacent vegetation

There are four principle modes of attack by bushfire on houses:

#### **Burning Debris**

- This is regarded as the major means of ignition of houses. Burning debris is produced as the result of the burning of vegetation, buildings and other ignitable materials. It may ignite buildings in a number of ways. Many houses survived the fire, but are destroyed afterwards by fires initiated by burning debris.

#### **Radiant heat**

- This will depend upon the amount and type of fuel load and its proximity to the building. Heat radiated from a bushfire may assist ignition by heating the building and its contents by breaking the blazing windows, allowing burning debris to enter the building.

#### **Flame contact**

- Direct flame content also depends on the fuel and the proximity of the fuel to the building. Vegetation and other material close to the building produce the greatest risk.



## **Wind**

- Strong wind can have a great effect on the destruction of buildings in a bushfire. Winds intensify a bushfire, carry burning debris and can damage the building when particularly strong. The nature of the winds in a particular area will influence the plan and siting of a building.

To date, Australian Standard 3959 has not been adopted in New South Wales. The Building Code of Australia was adopted by Cabinet on 21 March 1989. However, part G5 (covering AS3959) was not incorporated into the Code. The Government did not adopt AS3959 because the New South Wales Building Regulation Advisory Council recommended against it on the grounds that the standard was incomplete. In particular, the Council found AS3959 to be deficient in addressing measures to reduce the impact of radiant heat or direct flame contact on a building.

The Cabinet Committee on Bush Fire Management and Control noted the fact that AS3959 had not been in New South Wales and accordingly recommended:

"that the Department of Local Government liaise with Standards Australia to develop a comprehensive version of AS3959. When a comprehensive standard has been developed, the Minister for Local Government and Cooperatives should give consideration to that standard becoming the minimum standard in New South Wales."

**Almost all submissions to this Committee have endorsed the adoption of Australian Standard 3959. The Committee therefore, recommends the adoption of this standard into the Building Code of New South Wales.**

## 8. COMMONWEALTH'S ROLE

(i) *the use of Commonwealth resources in the recent fires and future fires*

### 8.1 Role in January

Bushfire fighting and prevention is wholly a State responsibility, except, of course, on Commonwealth property such as army reserves. The Commonwealth was involved in the January bushfires in two principle ways:

1. through the responsibilities of Emergency Management Australia (EMA); and
2. through payments made by the Department of Social Security to people suffering hardship as a result of the disaster and to volunteers suffering economic losses.

The EMA (formerly the National Disasters Organisation) was formed by a Cabinet Directive in 1974 and has no legislative basis. Funded through the Department of Defence the EMA has two primary roles:

1. disaster preparedness and response, conducted through its headquarters in Canberra; and
2. education, training and the dissemination of information, which it does through the Australian Emergency Management Institute at Mount Macedon, Victoria.

During the recent New South Wales bushfires EMA received a number of requests for assistance from the State Government. The Minister for Defence first had to approve those requests for equipment and personnel. Requests made through the established system of communication between the NSW Bushfire Control Operations Centre and EMA worked basically as planned and were quickly processed. Some problems were experienced when groups outside the NSW Control Centre sought Commonwealth assistance and attempted to do so outside the established framework.

#### Role of the Armed Services

EMA after assessing the request for assistance relies upon the Australian Defence Force (ADF) to provide the necessary resources.

The ADF is, obviously, well suited to provide assistance in circumstances like the January bushfires. However, the ADF has publicly stated that no units or elements of the defence force are specifically structured or manned for disaster relief operations.

The Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure report on Disaster Management (1994) notes the involvement of the Armed Services in the January bushfires:

"During the crisis period there were 23 formal requests for Commonwealth assistance made by the New South Wales Government, two of which were not met. All 21 requests which were met were done so by the Department of Defence and at the height of the emergency more than 1,000 personnel, 30 helicopters, as well as water tankers, bulldozers and other plant were used. In addition, RAAF Richmond base provided aviation fuel, aircraft staging, accommodation, meals and, under local emergency arrangements, cared for more than 500 sick and elderly evacuated patients." (Senate Standing Committee 1994:100).

This Select Committee received submissions noting the importance of formalising the arrangements for the provision of assistance from the ADF during major bushfires. In particular, it was proposed that armed services personnel should be specially trained for bushfire fighting. However, as the Senate Committee highlights in its report it is not the policy of the ADF to train personnel in such a manner. The Senate Committee concluded:

"the current arrangements for the use of ADF forces is appropriate and that any attempt to specially train and equip emergency units within the defence forces to respond to civil emergencies would result in unnecessary costs and would probably add to the confusion of what are already complex coordination arrangements during an emergency." (Senate Standing Committee 1994:40).

This Select Committee wishes to draw attention to two problems arising in this area and noted by the Senate Committee in its report.

Firstly, the EMA submitted to the Senate Committee that Commonwealth/State response arrangements were hampered during the January bushfires by apparent organisational problems in New South Wales.

"The relationship between Bushfire Headquarters and the [State Emergency Operations Centre] appeared to be less than satisfactory. Often the latter appeared to be short of information and did not receive requests for Commonwealth assistance until long after [Australian Defence Forces Headquarters] has been advised by the ADF forward liaison officers that they were expected." (Senate Standing Committee 1994:98).

Secondly, criticism was made at the local level of undue bureaucratic delays because requests from Bush Fire Headquarters had to firstly pass through the State Emergency Operations

Centre.

## **8.2 CSIRO Bushfire Research Unit**

The National Bushfire Research Unit was established in 1985 as an independent unit with 13 staff and the aim of being self-funding within 5 years. This object was not achieved. Currently the unit is funded through the CSIRO budget, with an external funding component of about 20% and now has only 6 staff.

The Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure ascribes this lack of funding to reluctance by the States to make contributions to the unit on a continuing basis, although they are not hesitating to use the research produced by the Unit.

The Unit is recognised as having conducted research of world standard. Yet there is still more work to be done in the areas such as fire behaviour and the prediction of fire spread, advance warning systems, fire meteorology and smoke chemistry.

The Senate Committee received, like this Committee, calls for increased support for national bushfire research. Commissioner Phil Koperberg of the Department of Bushfire Services stated before the Senate Committee:

"One of the areas that has caused us some concern, and indeed our colleagues in other states, is the extent to which the resources of the National Bushfire Research Unit . . . have diminished. I regard the NBRU as a vital component in the bushfire machinery in this country. It is responsible for a range of research projects dealing with fire behaviour, at one end of the spectrum, to the physiological affects on firefighters, at the other end of the spectrum, . . . stage that, because of this syndrome we have about having to be self-funding, it is competing - and, I suspect, to its detriment." (Senate Standing Committee 1994:86).

The Senate Committee observed that:

"Given that the Commonwealth at times spends quite large amounts of money after major bushfires, both through Department of Social Security (DSS) payments to individuals and through NDRA payments to state governments, and given that bushfire is one of the few types of disasters which can be prevented or mitigated to a high degree, it would seem prudent for the Commonwealth to spend more money on fire prevention and suppression research than on compensating victims after the event." (Senate Standing Committee 1994:86).

The Senate Committee concluded by recommending that funding for the National Bushfire Research Unit be increased.

**This Committee would endorse that recommendation and recommends that the State Government review its contributions to the National Bushfire Research Unit.**

**9. ROLE OF THE NEW SOUTH WALES FIRE BRIGADES**

*(j) the role of the New South Wales Fire Brigades in bushfire fighting*

Due to the overlap of jurisdictions with the Coroner, the Committee was unable to call New South Wales Fire Brigades to give evidence on their involvement in the January bushfires and bushfire fighting generally. However, from the submissions and the evidence received in this inquiry, it appears that the present arrangements for New South Wales Fire Brigade co-operation in fighting bushfires are satisfactory.

## 10. AIRCRAFT

### *(k) use of aircraft in firefighting*

#### 10.1 Introduction

After the January fires the issue of using aircraft to fight bushfires arose again. For instance *The Bulletin* published an article arguing that Australia needs to address its airborne firefighting capacity. A number of other articles touted the benefits that aircraft, in particular water-scoopers, would have brought to fighting the fires.

Australia has one of the worst bushfires problems in the world. However, unlike other countries such as Canada, USA, Spain and Italy, Australia does not have a significant aerial firefighting capacity.

"[A]erial firefighting is used to help at the critical urban fringe - homes close to bushland areas, as in Sydney's Blue Mountains and national park country to the north and south of the metropolitan area, Melbourne's Dandenong and Adelaide's Mt Lofty Ranges. These are the typical residential areas adjoining dense, flammable vegetation with narrow residential access roads that can become clogged with evacuees, blocking and endangering firefighters and equipment and the high probability of depleted water pressure for the surface firefighting in an emergency." (Phelan, 1994:15)

However, not all media coverage offered whole hearted support for the use of large fixed wing aerial water-bombers. The *Australian Business Monthly* reported that one of the principle objections against the use of large aircraft is the cost.

"To buy a fleet of four aircraft, train the crews, buy in spares and support and establish the national control network that would use them would cost more than \$200 million." (Stackhouse, 1994:46)

#### 10.2 Types of aircraft

When the issue of aerial firefighting is discussed one type of aircraft is discussed more often than others. This is the Canadian manufactured fixed wing water-scoopers. Although these planes, of which there are two models, the Canadair CL-215 and CL-415, are specially designed for firefighting, there are other kinds of aircraft which can and have been used to fight fires.

For instance during the January bush fires aircraft were used by firefighting authorities.

Commissioner Koperberg has stated that over 1 million litres of water was dropped by both rotary and fixed-wing aircraft. (ibid) "We didn't use [large capacity fixed wing aircraft] because the type of fire and vegetation was different from those areas that do employ high capacity water-bombers." (ibid)

Types of aircraft which could be used for firefighting include:

Land-based aircraft

- The Thrush Commander:* retardant tank volume 1500 litres. Large modern agricultural aircraft.
- Grumman Tracker:* previously used by the Australian Navy. Also used in Canada and USA for water-bombing.
- DC6B:* must be structurally altered to allow water-bombing.
- Hercules C-130:* can be fitted with a fire fighting system.
- AT-802 and AT-502:* single engine airtankers used primarily for agriculture purposes.

Water-scoopers

- Twin Otter:* has been used in Australia, but widely used in America.
- Canadair CL-215 & CL-415:* discussed separately below.

Helicopters

- Bell Helicopters,  
Squirrel Helicopters,  
Eurocopters,  
Kamoff Helicopters* all helicopters have the advantage of being multipurpose, with great manoeuvrability and accuracy. Single and twin engine helicopters have both been used in bushfire fighting, with twin engine helicopters having greater reliability.

### 10.3 Cost

Of course an aerial fire fighting capacity does not come cheaply. Aircraft cost millions of dollars to purchase and thousands to run. A current quote estimates the cost of a new Canadair CL-415 at \$A23 million. Helicopters can cost between \$750,000 to \$5 million and \$1.2 million for AT-802 single engine air tankers.

Benefits for the cost outlaid are difficult to measure. Particularly difficult to estimate are environmental costs due to losses of timber, flora and fauna; let alone estimating the cost of



a human lives that may be tragically lost.

#### **10.4 Project Aquarius**

The Commonwealth Government established Project Aquarius in the early 80's to look into the cost effectiveness of aerial suppression of bushfires.

The study looked at about 900 summer fires that broke out in Victoria between 1978\79 and 1982\83 and, using a computer model of fire behaviour, it compared the damage the fires inflicted with the damage that might have resulted had particular water-bombing aircraft been available. The difference was tabulated against the operating cost of each type of aircraft.

The study concluded that aircraft were of marginal advantage, only giving good results with small fires. Planes used in other countries may be effective there because of different demographic and vegetation conditions. Specifically, the Canadair 215 water-bombers have a greater access to lakes in Canada allowing maximum exploitation of their principal advantage.

The principal advantage of aircraft in suppressing fires is quicker access to fires that ground crews cannot reach easily.

The cost benefit study therefore looked at the benefits of spending money on more fire-fighters instead of on aircraft. According to the computer model, this course of action would produce about the same savings as the best fire-suppression bombers.

#### **10.5 Critics of Project Aquarius**

The most vocal critics of Project Aquarius have been the Canadian manufacturers of the Canadair water-scoopers. The following points are made by Mr Lloyd Johns, Canadair's agent in Australia, in his submission to the Committee

- *"Canadair rejects that the CL 215 and 415 cannot scoop from the open sea.*

At the end of 1993, Canadair Amphibious Fire Fighting Aircraft had completed 1,010,000 sea scoops in various parts of the world.

The open sea operating capabilities for the aircraft show that the minimum requirements for scooping are for wave height of 2 metres, wave length must be a minimum of 25 metres.

- *Canadair rejects the argument that big planes are inappropriate for fire fighting because their loads could actually damage houses when dropped.*

This may occur when large airtankers make drops of water mixed with a chemical fire retardant. The use of retardant gives a higher viscosity to the load, therefore making it more cohesive, which contributes to the significant velocity on impact.

The Canadair CL 215 and 415 aircraft are not designed as retardant delivery vehicles, nor have the planes been used for this purpose. The planes are designed for direct attack at the head of the fire.

- *Canadair rejects the argument that the planes are not effective in conditions of humidity, heat and high winds.*

The fact is that the Canadair aircraft have been specifically designed for flying and operating in this type of weather."

## 10.6 The Place of Aircraft in Firefighting

Aircraft can not be seen as the total solution to bushfire fighting. All commentators regard aircraft of whatever kind, as only a part of an overall firefighting strategy. For instance, Mr Max Irvine-Brown on behalf of Canadair highlighted this fact for the Committee:

"I think what I would like to put forward are some very fundamental observations with regards to fire fighting with aircraft, and that is basically that each piece of fire fighting equipment that is provided to any fire service, whether it be a wet sugar bag, to personnel, to a fire fighting truck, to a helicopter or a small fixed wing aircraft, to the Canadair CL415, each piece of that equipment has its own peculiar paramount importance in fighting fires effectively." (Report of Proceedings 1994c:3)

The Committee believes that the development of a co-ordinated and effective firefighting system must always be the primary objective in any discussion of the use of aircraft in firefighting.

Mr Col Adams of Col Adams Aerial Services emphasised to the Committee that fire bombing is not the entire answer to fire control.

Simply considering which type of aircraft to use in a given situation and for a specific purpose requires thoughtful consideration. As Mr Kerry Robinson, of Hevi Lift Pty Ltd put to the Committee:

"You have got to have a mixture of aircraft because each aircraft or helicopter has their own specific role to play.

I stress that it is neither one aircraft or another aircraft, it is a combination of aircraft and a combination of trained personnel, and the bottom line is that these only support the man on the ground. In the type of terrain that we have, the man on the

ground is the one who is going to have to put the fire out. It's the right tool for the right job.

Light helicopters are not the tool for water bombing.

Aeroplanes and helicopters fit into different pictures in the fire environment. If you've got turn time, and we talked about cost-effectiveness and water on the fire, it all comes down to turn time: Water source to fire ground to water source, and then capacity comes into it. The bottom line factor there is the accuracy or quality of the crews or company that's delivering that water to the fire ground and their experience.

If we just talk about water on the fire, most helicopters or most operations or fires in the east coast of Australia, the turn time in a helicopter will be faster than any fixed wing." (Report of Proceedings 1994c:29,32)

The preceding comments have highlighted the complexities that confronted the Committee in dealing with this issue. On the one hand, the Committee was faced with the findings of Project Aquarius and on the other hand, arguments that this study is now out-of-date and aerial bushfire fighting has developed to such an extent that it would be negligent to fight bushfires without aircraft.

Mr Phil Cheney of the CSIRO, Director of Project Aquarius gave evidence before the Committee that Project Aquarius, in his opinion, may now, considering technology changes be incomplete.

**The Committee, therefore, recommends that the State Government request the Federal Government to establish and fund a new review of all current aerial technology suitable for use in bushfire fighting in Australia.**

### **10.7 Current Use of Aircraft**

On each of its visits to Kempsey, Wauchope, Moruya, Kiama and the Blue Mountains, the Committee discussed the reluctance of Local Councils to engage aircraft to fight bushfires short of a s41F declaration under the *Bush Fires Act* because of the cost involved for the Council. The Chairman of the Committee, Mr Peter Cochran MP, put this concern to Commissioner Koperberg.

**CHAIRMAN:** In evidence given to us over the past three days as we travelled around, we were referred to the reluctance of Councils to engage aircraft in an initial attack at a fire source on the basis of that it was the cost; that, in effect, if they had State resources available and were able to attack the fire at an earlier stage, they would have a greater likelihood of suppressing the fires when they were small.

It seems to the Committee that because of this reluctance we are missing out on opportunity of early suppression. Would you like to make comment on how we can overcome that problem? Is it possible, for example, for the Regional Officer to be granted authority to engage on behalf of Bush Fire Services aircraft for the suppression of fires at the very early stage following a request from the local government fire control officer?

**MR KOPERBERG:** The issue has already been addressed. In fact, we have formally advised local government fire control officers that a degree of unilateralism does exist for them to engage aircraft when they believe that is necessary. We have made every attempt to shorten the process. In fact, the only thing we require is advice to the effect that this is necessary, bearing in mind that we have got to pay the bill at the end of the day, and we have to have some accountability.

The fighting of fires on estates within a local government boundary, providing they are not the responsibility of the National Parks, State Forests or Water Supply Authorities, generally are the responsibility of local government and local government jealously guard that responsibility. With that responsibility comes some financial responsibility not the least of which is ensuring that there is an infrastructure in place to deal with fires that might occur.

Notwithstanding that we have introduced a procedure which allows a local government council's fire control officer to engage aircraft. That officer has been given 24 hour access to the State Operation Centre. In fact, he can bypass the Regional Officer, it will shorten it even more than that. If a Regional Officer is of the view that aircraft needs to be applied to a particular fire, he also has the authority to authorise that.

The extent to which aircraft are used and who pays for them, of course, becomes a matter of consultation and negotiation but we do not under any circumstance deprive local government the ability to engage aircraft, and that is pre-41F. Post a 41F appointment, the 41F appointee is simply required according to procedure to requisition whatever it is he or she needs to deal with the fire and that order is processed by us in Sydney on a 24 hour day basis. So any impediments which may in the past have perceived to have existed have been addressed.

**CHAIRMAN:** That is certainly good news. This is a perception which we have established as we travel around, Council fire control officers certainly were under a misunderstanding, apparently, that they were not able to engage aircraft because of the cost to the Council. What you are saying now is that they can engage aircraft and the State will pick up the tab under the Bush Fire Emergency Fund?

**MR KOPERBERG:** No, I am saying that they have the authority to engage aircraft in the first instance if the need is clearly established, check it with us, and in the first instance we pick up the cost where we are satisfied that the need is there. The

ongoing use of those aircraft and the associated costs will inevitably be the subject of negotiation but we may well have a differing view. If I could cite an example, for arguments sake, if a Brigade in the grassland part of the State had a serious grass fire running, the Brigade knows very well that it can go to its local operator, engage an aircraft, talk to us and we would look pretty silly if we said "No, you can not use the aircraft." (a) we do not want to look silly and (b) we recognise they need to put the fire out.

**MR WINDSOR:** How do you make that assessment though? If a fire breaks out and there is an acre alight, surely it would be more cost effective to get an aircraft in there early to get the thing out but if it does not become a big fire, you do not know what you have saved, do you?

**MR KOPERBERG:** Sure, but the way in which we assess it is largely based on the meteorological conditions that are prevailing, the amount of fuel there is to burn and the other resources available, and what is threatening, of course. If it is a benign day and it is 2.00 o'clock in the afternoon and somebody wants 14 aircraft, we know that that is another way of saying "We are not going to commit any people to this fire, it is easier simply to fly aircraft around" and we are going to question it seriously.

If, however, the fire weather is severe, there is a very real threat to life and property, there is fuel on the ground and topography dictates a very rapid spread of that fire, then we would consider it a legitimate request, and do. (Report of Proceedings 1994d:22-24).

The Committee sought Crown Solicitor's advice on this issue. The Committee asked advice on three questions:

- "1. Under the Bushfires Act 1949, which officers or bodies named in that Act have the power to engage aircraft for the suppression of fire or the protection of life or property in the case of fire?
2. If an officer or body has the power to engage aircraft under the Act and moneys are expended by that officer in so doing, where shall the funds come from for paying for the moneys expended?
3. Will the source of those funds differ depending on whether s41F of the Act has come into operation or not?"

The Crown Solicitor's advising appears at Appendix 6.

**The Committee recommends that the Department of Bush Fire Services educate Fire Control Officers and s41F nominees as to their authority to engage aircraft prior to and after a s41F declaration.**

**11. LANDUSE DECISIONS, DEVELOPMENT PLANNING  
AND THE RESPONSIBILITY OF PROPERTY  
OWNERS**

- (m) the casual factors of the bushfires including an investigation of landuse decisions, development planning, and the responsibilities of property owners that will reduce bushfire risk and the environmental impact of bushfire management*

This term of reference cannot be satisfactorily commented upon by the Committee. However, the Committee does note that some submissions dealt with this issue expressing concern over certain matters. This is without doubt an area which requires a great deal of further attention. Unfortunately, due to the nature of Parliamentary Select Committees, complex issues of this kind cannot always be given the consideration they are due.

**The Committee, therefore, recommends that this issue be investigated further by the proposed Standing Committee on Natural Disasters (see Chapter 12) in the next Parliament.**

**12. STANDING COMMITTEE ON NATURAL DISASTERS**

- (o) *any other relevant matters arising from evidence taken before the Committee*

There are many matters covered by this Select Committee's terms of reference that require further work. A Select Committee simply does not have the time or resources to research such areas as the environmental impact of bushfire management and control on biodiversity and biophysical processes. However, this does not mean that issues like this one should not be investigated and reported upon.

The Committee recommends that the Parliament establish a Standing Committee on Natural Disasters. This Committee would be able to examine in greater depth the issues which this Committee could not resolve. Also there were issues which arose out of the January bushfires relating to the general area of disaster management that are more appropriately considered by the proposed Standing Committee.

## **13. OTHERS ISSUES**

- (b) reviewing the proposals and findings of the Cabinet Committee established to inquire into the bushfires*
- (c) reviewing the findings and recommendations of the Ministerial Committee on methods of fire service funding*
- (l) the environmental impact of bushfire management and control on biodiversity and biophysical processes and the application of research, technology and management techniques to minimise the impacts*
- (n) the progress of the joint arson committee*

### **13.1 Cabinet Committee**

The Cabinet Committee to date has not published a final report on its terms of reference. This fact prevents this Parliamentary Committee from reviewing the proposals of the Cabinet Committee. The Committee suggests that the Standing Committee on Natural Disasters as recommended in Chapter 12 of this report be charged with examining the final report of the Cabinet Committee on Bush Fire Management and Control.

### **13.2 Ministerial Committee**

To this date, the Ministerial Committee has not reported its proposals on methods of fire service funding. This fact prevents this Select Committee from reviewing those proposals.

### **13.3 Environmental Impact of Bushfires**

This term of reference cannot be satisfactorily commented upon by the Committee. The evidence received by the Committee shows that inadequate scientific research has been done in this area. The Committee, therefore, considers that any statements it may make in this area would be overly general and simplistic. The Committee has urged the Federal and State Government to give more resources to the National Bushfire Research Unit. If more resources are devoted to this Unit, the Committee believes a better understanding would be had of the environmental impact of bushfire management.



#### **13.4 Arson**

Many bushfires are without doubt started by acts of arsonists. The Committee condemns persons who act with a total disregard for the consequences of their actions.

The Committee was informed that in some areas up to 80% of all bushfires are deliberately lit or arise through acts of neglect.

The Committee supports any reasonable initiative undertaken to curb the incidence of arson in the community. However, as the workings of the Joint Arson Committee have not been made public, the Committee cannot satisfactorily comment upon this term of reference.

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# **APPENDIX 1**

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## **TERMS OF REFERENCE**

## SELECT COMMITTEE ON BUSHFIRES

*Extract of Terms of Reference from Votes and Proceedings No. 9, Entry 7, 17 March 1994.*

Mr Anderson moved, pursuant to notice,

(1) That a Select Committee be appointed to consider and report upon the recent bushfires with particular regard to the following matters:

- hazard reduction and other fire prevention measures;
- reviewing the proposals and findings of the Cabinet Committee established to inquire into the bushfires;
- reviewing the findings and recommendations of the Ministerial Committee on methods of fire service funding;
- treatment of victims, including the nature and speed of the provision of assistance and follow up assistance in the medium and long term;
- compensation for firefighters killed or injured fighting fires;
- the adequacy of systems for alerting the public of impending fire damage and the level of that danger;
- the adequacy of equipment available to, and training of, bushfire brigades;
- the adequacy or otherwise of building regulations currently in operation in New South Wales with particular emphasis on the Australian community bushfire safety standards for houses;
- the use of Commonwealth resources in the recent fires and in future fires;
- the role of the New South Wales Fire Brigades in bushfire fighting;
- the use of aircraft in firefighting;
- the environment impact of bushfire management and control on biodiversity and biophysical processes and the application of research, technology and management techniques to minimise the impacts;
- the causal factors of the bushfires including an investigation of landuse decisions, development planning, and the responsibilities of property owners that will reduce bushfire risk and the environmental impact of bushfire management;
- the progress of the joint arson committee; and
- any other relevant matters arising from evidence taken before the committee.

(2) That the committee, where possible, shall not duplicate examination of the evidence currently before the Coroner's inquiry.

(3) That the committee consist of ten members, as follows:

- (a) five from the Government;
- (b) four from the Opposition;
- (c) one unaligned independent

who shall be nominated in writing to the Clerk of the Legislative Assembly by the relevant party leaders and the unaligned independents respectively.

(4) That at any meeting of the committee five members shall constitute a quorum.

(5) That such committee have leave to sit during the sittings or any adjournment of the House; to adjourn from place to place; have leave to make visits of inspection within New South Wales; have power to take evidence and send for persons and papers; and to report from time to time.

(6) That should the House stand adjourned and the committee agree to any report before the House resumes sitting:

- (a) the committee have leave to send any such report, minutes and evidence taken before it to the Clerk of the House;
  - (b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and
  - (c) the documents shall be laid upon the Table of the House at its next sitting.
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**APPENDIX 2**

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**MINUTES OF THE  
COMMITTEE'S MEETINGS**

## PROCEEDINGS OF THE COMMITTEE

No. 1

Thursday, 21 April, 1994  
at 10.30 a.m. Parliament House, Sydney

### MEMBERS PRESENT

Mr P.L. Cochran	The Honourable P.T. Anderson
Mr A. Humpherson	Mrs F. Lo Po'
Mr B.W. Rixon	Mr J.C. Price
Mr R.H.L. Smith	Mr I. McManus
Mr J.H. Turner	Mr A.H.C. Windsor

In the absence of the Clerk of the Legislative Assembly, the Deputy Clerk opened the meeting and called the attention of Members to a copy of the Committee's terms of reference. The Deputy Clerk said he had been appointed Clerk to the Committee and that Catherine Watson had been appointed Project Officer and that Kendy McLean had been appointed Assistant Project Officer.

### ELECTION OF CHAIRMAN

Mr Cochran was nominated as Chairman by Mr Smith and the nomination was seconded by Mr Price.

Question - That Mr Cochran be declared elected - put and passed.

Mr Cochran made his acknowledgments to the Committee.

### PROCEDURAL MOTIONS

The Chairman proposed a series of motions dealing with the Committee's operations which were considered *in globo*.

Motion No. 10 was amended by leave to add after "visits of inspection", the words "and the taking of evidence".

Resolved, on motion of Mr Anderson, seconded by Mr McManus, That the following motions be agreed to:

1. That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chairman and the Clerk to the Committee.
2. That, unless otherwise ordered, parties appearing before the Committee shall not be represented by any member of the legal profession.
3. That, unless otherwise ordered, when the Committee is examining witnesses, the press and public (including witnesses after examination) be admitted to the sitting of the Committee.
4. That persons having special knowledge of the matters under consideration by the Committee may be invited to assist the Committee.

5. That press statements on behalf of the Committee be made only by the Chairman after approval in principle by the Committee or after consultation with Committee members.
6. That, unless otherwise ordered, access to transcripts of evidence taken by the Committee be determined by the Chairman and not otherwise made available to any person, body or organisation: provided that witnesses previously examined shall be given a copy of their evidence; and that any evidence taken in camera or treated as confidential shall be checked by the witness in the presence of the Clerk to the Committee or an Officer of the Committee.
7. That the Chairman and the Clerk to the Committee be empowered to negotiate with the Presiding Officers through the Clerk of the Legislative Assembly for the provision of funds to meet expenses in connection with advertising, operating and approved incidental expenses of the Committee.
8. That the Chairman be empowered to advertise and/or write to interested parties requesting written submissions.
9. That upon the calling of a division or quorum in either House during a meeting of the Committee, the proceedings of the Committee shall be suspended until the Committee again has a quorum.
10. That the Chairman and the Clerk to the Committee make arrangements for visits of inspection and the taking of evidence by the Committee as a whole and that individual Members wishing to depart from these arrangements be required to make their own arrangements.
11. That, pursuant to Standing Order 367, evidence taken by the Committee and documents presented to the Committee which have not been reported to the House not be disclosed or published by any Member of the Committee or by any other person.

#### COMMITTEE OPERATION AND TIMETABLE

The Committee discussed the following matters relating to its operation and timetable -

##### Meeting with the Coroner

Resolved, on motion of Mrs Lo Po', seconded by Mr McManus, That the Chairman, Mr Anderson and the Committee Secretariat meet with the Coroner to discuss his and the Committee's roles in relation to the bushfires issue and that the Chairman report back to the Committee on the meeting.

##### Advertising

The Committee approved the draft advertisement and agreed that it should appear in major metropolitan and regional newspapers and in The Land.



### Briefing at Bushfires Headquarters

The Committee agreed that it should receive a briefing from Bushfire Services, preferably at Bushfire Headquarters, Parramatta, on Monday 9 May 1994 at 2.00 p.m.

### Evidence

The Committee agreed that, if possible, evidence should be taken in the week of 20 June or 27 June 1994.

There being no further business the Committee adjourned at 11.20 a.m. until Monday, 9 May 1994.

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### No. 2

**Monday, 9 May, 1994  
at 2.00 pm., Bushfire Headquarters, Rose Hill**

### MEMBERS PRESENT

Mr P.L. Cochran (Chairman)  
Mr A. Humpherson                      The Honourable P.T. Anderson  
Mr B.W. Rixon                          Mrs F. Lo Po'  
Mr R.H.L. Smith                        Mr J.C. Price  
Mr J.H. Turner                          Mr I. McManus  
Mr A.H.C. Windsor

The Committee received a briefing from Mr A. Gates, Assistant Commissioner, Operations and Mr T. Anderson, Assistant Commissioner, Corporate Services, Department of Bush Fire Services on the December/January 1994 fires. The Committee was also taken on a tour of the headquarters premises.

At 3.00 p.m. the Committee commenced a deliberative meeting -

The Chairman reported on the meeting held earlier this afternoon between himself, Mr Anderson, the Project Officer and the Deputy Coroner (Mr Hyatt).

The Committee agreed that it would be desirable for Members of the Committee to receive the daily transcript (on computer disk) of the Coronial enquiry.

The Committee agreed that in view of the discussion with the Deputy Coroner, the Chairman and Mr Anderson should prioritise the Committee's terms of reference so that the matters which are to be dealt with by the Coroner would not be dealt with as a priority by the Committee.

The Committee agreed that the Chairman should formally approach the Cabinet Committee on Bushfire Management and Control for a copy of submissions received by it or, as an alternative, for a list of the names and addresses of those who made submissions.

There being no further business the Committee adjourned at 3.20 p.m.,  
sine die.

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No. 3

Friday, 19 August, 1994  
at 9.00 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr P.L. Cochran (Chairman)  
The Honourable P.T. Anderson  
Mrs F. Lo Po'  
Mr I. McManus  
Mr A.H. C. Windsor

APOLOGIES

Apologies were received from Messrs Humpherson, Price, Rixon,  
Smith and Turner.

PREVIOUS MINUTES

Resolved, on motion of Mr Anderson, seconded by Mrs Lo Po': That  
Minutes Nos 1 and 2 be adopted.

CORRESPONDENCE

The Chairman circulated the following list of correspondence received  
to date.

K. Moss	2 May and 22 July	Warringah Shire Council
Top Notch Video	10 May	Complimentary video
Rural and Volunteer Fire Fighters Association	9 May	Submission enquiry
Department of Courts Administration	30 May	Coronial inquiry transcripts
C. Moore, MP	14 June	Hazard burning reduction
C. McDonald	22 June	F.C.O. Submission
Department of Bush Fire Services	28 June	Submission request response
South Sydney Council	1 July	Hazard reduction and air quality
S. Neilly, MP	28 July	Singleton Council
Hon K. Chikarovski, MP	4 August	Willoughby City Council

The Committee noted that the letters had been acknowledged and the  
correspondent informed that copies had been circulated to Members of the Committee.

## HEARINGS

The Chairman circulated a list of witnesses for public hearings to be held on 22/23/29 August, 1994 (which the Committee adopted) and invited Members to nominate additional witnesses for 30 August 1994.

The Committee agreed that witnesses for 30 August 1994 include Wollongong Council, the Defence Forces, the Nature Conservation Council, CHANGE, Mr P. Koperberg (Commissioner, Department of Bush Fire Services) and witnesses who failed to conclude any evidence on an earlier day.

## DEPARTMENTAL SUBMISSIONS

Resolved, on motion of Mr Windsor, seconded by Mr Anderson: That the Chairman write to the Premier requesting his personal intervention to allow Government agencies to make submissions to the Committee.

## LIAISON WITH CORONER'S OFFICE

The Project Officer briefed the Committee on arrangements put in place to liaise with the Bushfires Coronial Inquiry.

The Committee agreed that the Secretariat should produce a paper on whether or not recommendations which had come out of recent coronial enquiries in Australia on bushfires had been addressed.

## INTERIM REPORT

The Committee agreed that it should aim to table an interim report in the sitting week commencing 22 November 1994.

## INSPECTIONS

The Committee agreed that it should inspect the following bushfire affected areas in the period 8 November to 10 November 1994:

Newcastle/Wauchope  
North Coast, specifically Kempsey and Coffs Harbour  
The Illawarra  
The Blue Mountains  
Royal National Park

## HEARING PROCEDURE

The Committee agreed that witnesses be allowed five minutes to make an initial statement and that the television media be allowed to film for file footage purposes (no sound).

## PRESS STATEMENT

It was agreed that the Chairman should prepare a Committee press statement outlining the number of submissions received to date and the Committee's future plans.



Evidence concluded the witnesses withdrew.

The press and public withdrew -

Helen Ferns, Secretary, West Lindfield Killara Residents Group, sworn and examined in camera.

At 2.00 p.m.

The Committee resumed.

Grahame Bruce Douglas, Senior Vice-President (sworn) and Andrew Spencer Cox, Project Officer, National Parks Association (affirmed) and examined.

A paper by Grahame Douglas "Responsibilities, Perceptions and Objectives" was tabled for incorporation into evidence.

Evidence concluded the witnesses withdrew.

Guy John Paroissien, Manager, Parks and Landscape, Ku-ring-gai Council, sworn and examined.

Mr Paroissien tabled the following for incorporation into evidence -

Fire Management Program Information Kit  
"Bushcare" pamphlet  
"Landscape and Planting Guidelines for Fire Prone Areas of Ku-ring-gai" pamphlet.

Evidence concluded the witness withdrew.

Brian Williams, Captain; Raymond Andrew Lewis and Warren Maxwell Pennell, Kurrajong Heights Bushfire Brigade affirmed and examined.

Pamphlet "Hazard Reduction" by Bushfire Council of New South Wales was tabled for incorporation into evidence.

Evidence concluded the witnesses withdrew.

Robyn Caroline Kruk, Director-General, and Alastair Hamilton Willis Howard, Deputy Director - National Parks and Wildlife Service, affirmed and examined.

Evidence concluded the witnesses withdrew.

There being no further business the Committee adjourned at 5.29 p.m. until 10.00 a.m. , Tuesday, 23 August, 1994.

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## CORRESPONDENCE AND SUBMISSIONS

The receipt of the following correspondence was noted on motion of Mr Smith, seconded by Mr Price.

1. Supplementary material provided by Helen Ferns, dated 7 September 1994.
2. Letter dated 7 June 1994 received by I. McManus, MP from Woronora Heights residents.
3. Letter dated 23 August 1994 from R.J. Cockbaine.
4. Letter dated 25 August 1994 from the Premier (previously distributed to Members).
5. Letter dated 29 August from R. Wilkins, Director General, Cabinet Office (previously distributed to Members).
6. Letter dated 5 September 1994 from Hawkesbury City Bush Fire Captains.
7. Letter dated 25 August 1994 from Cabonne Council.
8. Letter and attachment dated 26 August 1994 from the Minister for the Environment.
9. Submissions Nos.

145 National Heart Foundation

146 James D. McCredie

147 G.A. Kaye

## CONSIDERATION OF CROWN SOLICITOR'S ADVICE

The Chairman formally reported receipt of Crown Solicitor's advising LGAO87/64 dated 9 September 1994.

## MEETING WITH DEPUTY STATE CORONER

The Chairman reported on his and Mr Anderson's meeting with Mr Hiatt, the Deputy State Coroner on 12 September 1994.

The Committee endorsed the view reached at the abovementioned meeting that the Committee hearings should only recommence after Mr Hiatt had completed taking evidence (which was expected to be within the next two weeks).

In this regard the Committee resolved, on motion of Mr Anderson and Mrs Lo Po': That the Committee take evidence on Monday 17 October 1994 from 10.00 a.m. to 3.00 p.m. and that the list of proposed witnesses be sent to the Deputy State coroner.

## DELIBERATIVE MEETING

The Committee agreed to hold a deliberative meeting from 3.30 p.m. on 17 October 1994 following its hearings.

To be discussed at this meeting -

- draft program for field trips scheduled for 8/9/10 November 1994
- items for Interim Report.

## TRANSCRIPTS OF EVIDENCE

Resolved, on motion of Mr Price and Mrs Lo Po': That the corrected transcripts of hearings held on 22 and 23 August 1994 be published in accordance with the Parliamentary Papers (Supplementary Provisions) Act, 1975.

There being no further business, the Committee adjourned at 9.00 p.m. until 17 October 1994 at 10.00 a.m.

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No. 8

**Monday 17 October, 1994  
at 10.00 a.m., Parliament House, Sydney**

### MEMBERS PRESENT

Mr P.L. Cochran (Chairman)  
Mr A. Humpherson                      Mr J.C. Price  
Mrs F. Lo Po'                              Mr J.H. Turner  
Mr I. McManus

### APOLOGIES

Apologies were received from Messrs Rixon, Smith and Windsor.

Resolved, on motion of Mr McManus, seconded by Mr Turner, That, pursuant to the provisions of the Parliamentary Papers (Supplementary Provisions) Act 1975, submission nos. 19, 32, 44 and 148 be published.

Maxwell Irvine-Brown, General Manager (Sales), National Jet Systems Pty Ltd and Lloyd Charles Johns, Manager, Amphibious Fire Fighting Services, National Jet Systems Pty Ltd, sworn and examined.

Mr Maxwell tabled a document entitled "Canadair's Firefighting Aircraft for Australia"

Evidence concluded the witnesses withdrew.

Col Adams, Managing Director, Col Adams Aerial Services, sworn and examined.

Mr Adams tabled a document entitled "Single engined Airtankers at 802 and at 504 compared with Canadair LL 415"

Evidence concluded the witness withdrew.

Kerry Robinson, Marketing Manager and Ralph Garrett Buck, chief Pilot, both of Hevi Lift (PNG) Pty Ltd, sworn and examined.

Evidence concluded the witnesses withdrew.

David John Redmond, Fire Fighter, New South Wales Fire Department, sworn and examined.

Mr Redmond tabled a copy of the evidence given by him to the Coroner's Inquiry, dated 13 September, 1994.

At 2.40 p.m.

The public withdrew and the Committee commenced a deliberative meeting.

The Chairman reported that Mr Whelan had replaced Mr Anderson on the Committee from 12 October 1994.

The Committee decided to defer consideration of the draft outline for the Interim Report and to meet again on the first Tuesday or Thursday of the next sitting period.

There being no further business the Committee adjourned at 2.50 p.m. sine die.

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No. 9

**Wednesday, 16 November 1994  
at 5.15 p.m., Parliament House, Sydney**

MEMBERS PRESENT

Mr P.L. Cochran (Chairman)	
Mr B.W. Rixon	Mrs F. Lo Po'
Mr R.H. Smith	Mr J.C. Price
Mr A.H. Windsor	

Apologies were received from Messrs Humpherson, McManus, Turner and Whelan.

The Committee agreed to allow filming for file footage purposes.

The press and the public were admitted.

Noel David Cheney, Principal Research Scientist, CSIRO National Bushfire Research Unit, sworn and examined.

Evidence concluded, the witness withdrew.

Phillip Christian Koperberg, Commissioner, Department of Bush Fire Services, sworn and examined.

Evidence concluded, the witness withdrew.

The press and public withdrew.

The Committee deliberated.

The Committee agreed that it would report before the end of the present sittings.

There being no further business, the Committee adjourned at 7.20 p.m., until a date to be advised by the Chairman.

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No. 10

**Wednesday, 23 November, 1994  
at 5.00 p.m., Parliament House, Sydney**

MEMBERS PRESENT

Mr P.L. Cochran (Chairman)	
Mr A. Humpherson	Mr J.C. Price
Mrs F. Lo Po'	Mr J.H. Turner
Mr B.W. Rixon	

APOLOGIES

Apologies were received from Messrs McManus, Smith, Whelan and Windsor.

MINUTES OF PREVIOUS MEETINGS

Resolved, on motion of Mrs Lo Po', seconded by Mr Price, That Minutes Nos 7, 8 and 9 be adopted.

CORRESPONDENCE

The Chairman reported receipt of correspondence from -

C. Henri, NSW and ACT Regional Manager, Insurance Council of Australia, dated 9 November 1994 - noted.

N. Selway, Councillor, City of Blue Mountains, dated 13 November 1994 - noted.

The Chairman brought up his draft report which had been previously circulated to Committee Members.

The Committee agreed to consider the Report by page.

Pages 1 to 3 - agreed to, as amended.  
Pages 4 to 10 - agreed to.  
Page 11 - agreed to, as amended.  
Pages 12 and 13 - agreed to.  
Page 14 - agreed to, as amended.  
Pages 15 to 18 - agreed to.  
Page 19 - agreed to, as amended.  
Page 20 - agreed to.  
Page 21 - agreed to, as amended.  
Pages 22 and 23 - agreed to.  
Pages 24 and 25 - agreed to, as amended.  
Page 26 - agreed to.  
Pages 27 and 28 - agreed to, as amended.  
Pages 29 to 31 - agreed to.  
Page 32 - agreed to, as amended.  
Pages 33 to 35 - agreed to.  
Page 36 - agreed to, as amended.  
Pages 37 and 38 - agreed to.  
Page 39 - agreed to, as amended.  
Pages 40 to 42 - agreed to.  
Page 43 - agreed to, as amended.  
Pages 44 to 50 - agreed to.  
Pages 51 and 52 - agreed to, as amended.  
Page 53 - agreed to.  
Pages 54 and 55 - agreed to.

Resolved, on motion of Mrs Lo Po', seconded by Mr Price, That the Committee seek the urgent advice of the Crown Solicitor on the following questions.

1. Under the Bushfires Act 1949, which officers or bodies named in that Act have the power to engage aircraft for the suppression of fire or the protection of life or property in the case of fire?
2. If an officer or body has the power to engage aircraft under the Act and moneys are expended by that officer in so doing, where shall the funds come from for paying for the moneys expended?
3. Will the source of those funds differ depending on whether s41 F of the Act has come into operation or not?

The Committee agreed that, in view of the abovementioned resolution, it meet again on Tuesday 29 November to consider a second draft of the Chairman's Report.

There being no further business the Committee adjourned at 6.00 p.m., until Tuesday 29 November at 5.00 p.m.

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No. 11

Tuesday, 29 November, 1994  
at 5.00 p.m., Parliament House, Sydney

MEMBERS PRESENT

Mr P.L. Cochran (Chairman)  
Mr R.H.L. Smith  
Mr I. McManus  
Mr J.C. Price  
Mr A.H.C. Windsor

APOLOGIES

Apologies were received from Mrs Lo Po' and Messrs Humpherson, Rixon, Turner and Whelan.

MINUTES OF PREVIOUS MEETINGS

Resolved, on motion of Mr Price, seconded by Mr Windsor, That Minutes No 10 be adopted.

The Chairman reported receipt of advice from the Crown Solicitor dated 29 November 1994 "Re: Power to engage aircraft for suppression of bush fires". The Committee agreed that a copy of the advice be included as an Appendix to the Report.

The Committee then considered certain pages of the Second Draft of the Chairman's Report.

Page 20 - agreed to, as amended.

Page 57 - agreed to, as amended.

Resolved, on motion of Mr Price, seconded by Mr Windsor, That the Draft Report, as amended, be adopted by the Committee and tabled in the House by the Chairman, together with the Minutes of Evidence and submissions.

There being no further business, the Committee adjourned at 5.25 p.m., sine die.

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## **APPENDIX 3**

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### **LIST OF SUBMISSIONS**

## List of Submissions

### Number

1. R.A. Walsh
2. Voterlobby Pty Ltd (Greg Bloomfield, Executive Director)
3. Barbara Eldershaw
4. G.R. Swanston
5. Ku-ring-gai Council (W.I. Taylor, Acting General Manager)
6. Claire Aman, Secretary, Kangaroo Creek Bushfire Brigade via Grafton
7. Paul Maher, Retained Firefighter, NSW Fire Brigade Deniliquin
8. C.H. Spurgeon
9. Gosford City Council
10. New South Wales Government (Cabinet Committee Interim Report)
11. Kelvin Hawkins
12. State Emergency Service (B.W. Howard, Director General)
13. Mountain Cattlemen's Association of Victoria (Sue Silvers, Secretary)  
See also submission 104
14. Doug Sawtell (Cobargo Bush Fire Brigade)
15. Allan Cameron
16. Mary Shaw
17. Hunter Environment Lobby
18. The Wilderness Society (Gosia Dybka, Project Officer).  
See also submission 118
19. Col Adams Aerial Services
20. Anna Bay Bobs Farm Bush Fire Brigade
21. Family and Youth Support Services of Wyong Shire Inc.
22. K.E. Park
23. Ruth Ley
24. Lyndal Sullivan



25. Mrs A.L. Jefferson
26. Bruce Frazer
27. Myles M. Kehoe
28. Robert L. Pulsford
29. Gosford District Environment Foundation (Allen A. Strom, Secretary)
30. Mr K.W. Cremer
31. Mr Stan Neilly, MP
32. Canadair (C. Garneau, Director of Marketing, Amphibious Aircraft Division)
33. The Honourable D. Gay, MLC and Jerry's Plains Bushfire Brigade
34. William Powell, District Officer Fire Investigation, New South Wales Fire Brigades
35. Paul McRoberts
36. Ian Thomas
37. Frank Buttfield
38. Associate Professor A.K. Milne, University of New South Wales
39. Clive Flack
40. Ted Foster
41. Paul O'Shea
42. Dr K.R. Makinson
43. Kurrajong Heights Bushfire Brigade (Ray Lewis, Secretary)
44. Lloyd Johns, Consultants (for Canadair Amphibious Aircraft Division)
45. Royal Botanic Gardens, Melbourne (Dr Philip Moors)
46. R.O. (Bon) Makinson
47. G.E. Green
48. D. Jensen
49. Victor Pickering
50. Michael S. Harewood

51. R & E Steinhoff
52. The Colong Foundation for Wilderness Ltd. (Keith Muir)
53. Terrence Mackaness
54. Local Government and Shires Associations of NSW (Murray Kidnie, Secretary and D.J. McSullea, Deputy Secretary)
55. Jeff Larsen
56. Bob Jackson
57. Country Club Volunteer Bush Fire Brigade (Sue Bower)
58. Dr R.A. Curtin
59. The Range Rover Club of Australia (NSW) Limited
60. John J. Hood
61. Donald K. Atkinson
62. Graham Tait
- 62A Clarence Valley Conservation Coalition
63. The Australian National University (Dr Chris Trevitt)
64. The Effective Action Group (Mike Bolan and Terry Lay)
65. John Hill
66. Trans Adelaide Airlines (R. Sadri, Director)
67. Helen Ferns
68. Jocelyn Howell
69. Fire Control Officers' Association of N.S.W. (K. McKellar, Chairman)
70. Felicity McGregor
71. Cooma-Monaro Council (N.A. Watt, General Manager)
72. A. H. Staines
73. Tamworth-Namoi Branch - National Parks Association (Ron Webster, President)
74. Peter Dormer
75. Institute of Foresters of Australia (D.G. Ryan, President, NSW Division)

76. Three Valleys Branch - National Parks Association (Marshall Hodgekiss, Hon. Secretary)
77. Green Alliance Network (Margaret Heidemann)
78. National Parks Association of ACT (Beverley Hammond)
79. EDAW (Aust) Pty. Ltd. (John van Pelt, Director)
80. National Association of Forest Industries Ltd (R.G. Appleton, Fire Research Director)
81. Professor R.J. Whelan and Mr Ian Tait, University of Wollongong
82. Kurrajong Heights Volunteer Bush Fire Brigade (R.A. Lewis, Secretary)
83. Cabonne Council (G.L.P. Fleming, General Manager)
84. G. J. Armstrong
85. Robert Zuill
86. Ian Bell
87. Coastwatchers Association (Jenny Edwards, Hon. Secretary)
88. Mitch Tulau
89. Family Support Services Association of NSW (Margaret Farmer, Project Officer)
90. Ms Kathleen Smith
91. Chatswood West Ward Progress Association (Terry Fogarty, President)
92. NSW Fire Brigades Volunteers' Federation (P. Hinchcliffe, Hon. Secretary)
93. NSW Fire Brigade Employees' Union (Chris Read, Secretary/Treasurer)
94. NSW Forest Products Association (Michael Taylor, Assistant Director)
95. Society for Growing Australian Plants (Canberra Region) Incorporated (Edwina Barton, President)
96. Laurie S. Davidson
97. National Parks Association of New South Wales (Anne Reeves, President)
98. Terrence Mackaness
99. Keith J. Macready
100. Williamstown-Salt Ash Volunteer Bushfire Brigade (Mrs Rebecca Russell, Honorary Secretary)

101. Dr B.D. Morley, Director Royal Botanic Gardens of Adelaide
102. CSIRO Australia (Dr John Stocker, Chief Executive)
103. Patricia Egan
104. Mountain Cattlemen's Association of Victoria  
See also submission 13
105. Michael Lonergan
106. Nambucca Shire Council (W.F. Kelly, Fire Control Officer)
107. Country Fire Service South Australia (A.D. Macarthur, Chief Executive Officer)
108. National Association of Forest Industries Ltd (Robert Bain, Executive Director)  
See also submission 80
109. Helitrek Pty Ltd (Peter Muddle, General Manager)
110. Armidale Branch - National Parks Association of New South Wales (Beth Williams)
111. Australian Fire Authorities Council (L.G. Lavelle, Chief Executive Officer)
112. Mogendoura Volunteer Bush Fire Brigade (E.C. Clout, Secretary)
113. Bundeena Maianbar Water Access Association (John Fallon, Convenor)
114. North-East Forest Alliance (Barrie Griffiths, Co-ordinator)
115. Forest Protection Society Ltd (Rhondda O'Neill, NSW Co-ordinator)
116. Timber Development Association (NSW) Ltd (Andrew Dunn, Manager Engineering Services)
117. Hunter Koala Preservation Society (Jan Dunbar (Mrs), Secretary)
118. The Wilderness Society (Sydney) Inc. (Tom McLoughlin, NSW Campaign Officer)  
See also submission 18.
119. Greening Australia ACT & SE NSW (Inc.) (Ms Val Wiseman, Manager)
120. The Bushfire Regenerators' Society (Carol Bentley, President)
121. The Council of Sutherland Shire (J.W. Rayner, General Manager)
122. North Coast Environment Council Inc (James Tedder, Honorary Secretary)
123. Mrs Betty Thatcher

- 124 Mooney Mooney and Surrounding Communities Bush Fire Committee (John Gamble, Chairman)
- 125 The Tamworth Environment Centre (Philip Spark, Secretary)
- 126 Churches of Christ in New South Wales (Wendy Parish, Crisis Centre Co-ordinator)
- 127 Geoffrey Ferguson
- 128 Mooney-Cheero Progress Association (Rigmor Berg, President)
- 129 New South Wales Coal Association (Meredith Hellicar, Executive Director)
- 130 Council of the City of Cessnock (C.L. Cowan, General Manager)
- 131 Sydney Coastal Councils (Michael Chanell, Secretary)
- 132 Wollongbar Agricultural Institute (J.D. Williams, Regional Director of Agriculture and Chairman, North Coast Rural Producers Consultative Committee)
- 133 Canberra Ornithologists Group, Inc. (Jenny Bounds, President)
- 134 Julia A. Vincent, Agricultural Consultant
- 135 Royal Botanic Gardens Sydney (John Benson, Senior Plant Ecologist)
- 136 Mr R.E. Scammell
- 137 Bundeena Firesafe Committee (Dennis F. Bullivant, Convenor)
- 138 Wollongong City Council (R.J. Oxley, General manager)
- 139 New South Wales State Cancer Council (Anne Jones, Director ASH)
- 140 The Non-smokers' Movement of Australia Inc (Dr Arthur Chesterfield-Evans, President)
- 141 City of Blue Mountains
- 142 Rockdale Council
- 143 Dr M.E.B. Lorang
- 144 Nature Conservation Council of New South Wales
- 145 National Heart Foundation
- 146 James D. McCredie
- 147 G.A. Kaye
- 148 Woronora Heights Residents (Tom White and Dave Redmond)

149 Mr Jack Pollard

150 Mr Bob Ostini (via NSW Farmers' Association, Orange Branch)

151 David Kesby, Volunteer Air Patrol

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## **APPENDIX 4**

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### **LIST OF WITNESSES EXAMINED**

## ***WITNESSES***

Monday, 22 August 1994

Johannes Hendrik Drielsma, Managing Director; Anthony John Howe, Manager, Forest Planning Branch and Peter Francis Moore, Fire Protection Officer - State Forests of New South Wales

Warwick Arthur Watkins, Director General; and Geoffrey William Washington, Senior Policy Analyst - Department of Conservation and Land Management

Warwick Arthur Watkins, Director General; and Geoffrey William Washington, Senior Policy Analyst - Department of Conservation and Land Management

Bruce Guthrie Noble, Delegate; and Douglas John McSullea, Deputy Secretary - Local Government Association of New South Wales and Shires Association of New South Wales

Helen Ferns, Secretary, West Lindfield Killara Residents Group

Grahame Bruce Douglas, Senior Vice-President and Andrew Spencer Cox, Project Officer, National Parks Association

Guy John Paroissien, Manager, Parks and Landscape, Ku-ring-gai Council

Brian Williams, Captain; Raymond Andrew Lewis and Warren Maxwell Pennell, Kurrajong Heights Bushfire Brigade

Robyn Caroline Kruk, Director-General, and Alastair Hamilton Willis Howard, Deputy Director - National Parks and Wildlife Service

Tuesday, 23 August 1994

Stephen Malcolm McPhail, Manager Air Quality, and Colin James Grant, Executive Director, Technical Services - Environment Protection Authority

Thomas Joseph McLoughlin, Campaign Officer, Wilderness Society

John Wilfred Rayner, General Manager, Sutherland Shire Council

Desmond Lloyd Semple, Director-General and Peter John Olney, Deputy State Disaster Welfare Manager - Department of Community Services

Keith Reginald McKellar, Chairman; John Garry Hojel, Fire Control Officer; Bruce Russell Holz, Fire Control Officer; Terence Robert Toll, Fire Control Officer - Fire Control Officers Association

Christopher Scott Read, Secretary-Treasurer and Clive Emanuel Hook, Firefighters Trustee, New South Wales Fire Brigades Employees Union



Donald Stuart Farleigh, State Vice President and Donald George Spence, State President - New South Wales Fire Brigades Volunteers Federation

Monday, 17 October 1994

Maxwell Irvine-Brown, General Manager (Sales), National Jet Systems Pty Ltd and Lloyd Charles Johns, Manager, Amphibious Fire Fighting Services, National Jet Systems Pty Ltd

Col Adams, Managing Director, Col Adams Aerial Services

Kerry Robinson, Marketing Manager and Ralph Garrett Buck, Chief Pilot, both of Hevi Lift (PNG) Pty Ltd

David John Redmond, Fire Fighter, New South Wales Fire Department

Wednesday, 16 November 1994

Noel David Cheney, Principal Research Scientist, CSIRO National Bushfire Research Unit

Phillip Christian Koperberg, Commissioner, Department of Bush Fire Services

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## **APPENDIX 5**

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### **CROWN SOLICITOR'S ADVICE - CORONER**



# CROWN SOLICITOR'S OFFICE

NEW SOUTH WALES

Your ref: P.L. Cochran  
Our ref: LGA087/64  
A4:L. Armstrong  
Tel: (02) 228-8086  
Fax: (02) 228-8034

Goodsell Building  
8-12 Chifley Square  
Sydney, N.S.W. 2000  
G.P.O. Box 25  
Sydney N.S.W. 2001  
D.X. 19 Sydney

9 September 1994

Mr P.L. Cochran  
Chairman  
Select Committee on Bushfires  
Legislative Assembly  
Parliament of New South Wales  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

FACSIMILE: 230-2087

Dear Sir

RE: TAKING OF EVIDENCE BY SELECT COMMITTEE ON BUSHFIRES.

1. Advice Sought

1.1 By letter dated 29 August 1994 you request advice as to whether there is any legal impediment to the Select Committee on Bushfires continuing to take evidence in the face of the objection raised by the Senior Deputy State Coroner outlined in his letter to the Committee dated 24 August 1994.

1.2 I note that you have attached to your letter of instructions a copy of the letter received from the Senior Deputy State Coroner, Mr Hiatt, the Select Committee's Terms of Reference and proposed schedule of witnesses. The view of the Senior Deputy State Coroner, Mr Hiatt, is that witnesses giving evidence at public hearings being conducted by the Select Committee on Bushfires, prior to those persons giving evidence before the NSW Bushfire Inquiry being conducted by the Coroner, has the potential to interfere with the role of the Coroner in the administration of the Coroners Act 1980, and that the material to be given by those witnesses should not be given or publicised prior to their evidence being given before the Bushfire Inquiry.

2. Advice

2.1 Pursuant to the Parliamentary Evidence Act 1901, the Select Committee may summon any person to attend and give evidence before the Committee (s.4(2)). The Act provides for the manner in which persons may be summoned to attend and give evidence before Parliamentary Committees. Amongst other things, it speaks

A4.LGA087.64.1a

of witnesses "attending to give evidence", empowers the chairman of such a committee to administer an oath, and provides for the punishment of a witness' refusal to answer a lawful question as a contempt of Parliament (ss.10-11). It is thus clear that the Committee has power to summon witnesses to give evidence as to matters within its Terms of Reference in its current bushfire investigation. This power is not inconsistent with the powers given to the Coroner in the administration of the Coroners Act 1980, so that it cannot be said that the later 1980 Act overrides in any way the provisions of the 1901 Act.

2.2 I now turn to the question whether any contempt of court can be committed by the NSW Parliament or persons appearing before the Select Committee in the present context. *Sub judice* contempt involves dissemination of material which will prejudice existing curial proceedings. While not influencing the outcome of a trial or judicial inquiry, dissemination of material may constitute contempt where it has a tendency to prejudge issues at stake or "embarrass" the court involved, thereby impeding the administration of justice.

2.3 The Crown Solicitor has previously advised (CSO 94/1/206) that the Houses of Parliament and their committees cannot be held guilty of contempt of court by reason of their proceedings, because of s.9 of the Bill of Rights<sup>1</sup>. Case law makes clear that criminal proceedings (such as proceedings for contempt in the form of interference with the judicial process) will not lie for acts done by Members as part of the proceedings of Parliament<sup>2</sup>. The Bill of Rights is declared by the Imperial Acts Application Act 1969, s.6 and Part 1 of the Second Schedule, to be in force in New South Wales. Section 9 provides that "the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of parliament". The proceedings of a committee of the Parliament are taken as included within the phrase "proceedings in parliament"<sup>3</sup>.

2.3 However, in Attorney General v. Times Newspapers Ltd [1973] 1 QB 710 (Court of Appeal), Lord Denning MR said:

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<sup>1</sup> The position of the media, of course, raises different issues. I assume that material aired before the Select Committee would receive wide coverage by the media if published by the Committee to them. What account the media would give of the material is, of course, something as to which I can only speculate.

<sup>2</sup> See the cases referred to in Lord Denning's memorandum, "The Case of Parliamentary Privilege", referred to in R v. Murphy (1986) 5 NSWLR 1 at 31; and the observations of Hunt J. in that case, at pp.30-32.

<sup>3</sup> See per Hunt J. in R v. Murphy (1986) 5 NSWLR 18 at 25, with reference to a Senate Select Committee.

"It is desirable that the convention of Parliament as to matters sub-judice should, so far as possible, be the same as the law administered in the courts. The object of each is the same - to prevent prejudice to pending litigation and the parties to it ..."

Any attempt to follow that advice requires necessarily hypothetical consideration of what the situation would be if the Select Committee were not a Parliamentary committee, but were a statutory body having substantially the functions of the Committee (devoid of their Parliamentary context). It should be borne in mind that the Bushfire Inquiry is not "pending litigation" in the usual sense of the phrase. It is not a criminal trial, with attendant potential for finding of guilt and administering of punishment. Neither is it civil litigation, affecting rights between two or more parties. Thus, the obiter dictum in Attorney General v. Times above cited does not have the same force in its application to the Bushfire Inquiry.

2.4 I turn now to the hypothetical question of whether a non-Parliamentary tribunal would be restrained from proceeding with an investigation of the matter in question. In that spirit, it is relevant to point out that the courts will restrain the holding of inquiries by non-Parliamentary bodies, such as Royal Commissions, where the conduct of the inquiry during the pendency of court proceedings would result in "an actual interference with the administration of justice, or 'a real risk, as opposed to a remote possibility' that justice will be interfered with" (per Gibbs CJ in Victoria v. Australian Building Corporation Construction Employees' and Builders Labourers' Federation<sup>4</sup>). There is an exception where the specific inquiry is authorised by statute<sup>5</sup>.

2.5 One question is what detrimental effect, if any, such an investigation might have on the court itself. It might be suggested, for example, that the Bushfire Inquiry may be influenced by the publication at the instance of the Select Committee of certain information, by any proceedings by the Select Committee, or any report made by it to the two Houses. In Victoria v. BLF, however, a majority of the High Court was unconvinced that publication of the proceedings in the relevant Royal Commission, whose task it was to inquire into breaches of law by the Federation, could influence the minds of judges of the Federal Court on the issues before them. In that case the

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<sup>4</sup> (1982) 152 CLR 25 at 56. His Honour was citing John Fairfax & Sons Pty Ltd v. McRae (1955) 93 CLR 351 at 372.

<sup>5</sup> Lockwood v. The Commonwealth (1954) 90 CLR 177 at 185; dist. in Victoria v. Australian Building Construction Employees' and Builders Labourers' Federation, above, per Gibbs CJ at 54-5; Stephen J. at 69-70; Mason J. at 94. Aickin J. at 199, and Wilson J. at 130-1 expressed no final opinion on the point; and Murphy J. expressed no opinion on it.

Judges' task was to determine issues arising under industrial legislation as to whether the Federation had contravened its rules or had engaged in industrial action inimical to the provision of a public service<sup>6</sup>. After reviewing the Royal Commissioner's terms of reference, Gibbs CJ said at 55-56:

"... There is, as is conceded, some common ground between the matters subject of inquiry and those relating to the proceedings in the Federal Court. However, the inquiry by the Commissioner is not an inquiry into the matters that fall for decision in the Federal Court. The Commissioner is not concerned to inquire whether any of the grounds set out in s.143(1) of the Conciliation and Arbitration Act 1904 (Cth) as amended, have been made out. His report is not required to pre-judge any of the issues that arise in the Federal Court, and the evidence before him should not be - and there is no reason to suppose that it will be - directed to those issues.

There is a contempt of court of the kind relevant to the present case only when there is an actual interference with the administration of justice, or 'a real risk, as opposed to a remote possibility' that justice will be interfered with: cf. Attorney General v. Times Newspapers Ltd, at p.299. The essence of this kind of contempt is a 'real and definite tendency to prejudice or embarrass pending proceedings': John Fairfax & Sons Pty Ltd v. McRae (1955) 93 CLR 351, at p.372. The law as to contempts of court of the kind now under consideration reflects two conflicting principles of public policy: on the one hand, the need to safeguard the proper administration of justice and on the other the protection of freedom of speech (and this principle must extend to freedom of inquiry). This question has recently been discussed in Attorney General v. Times Newspapers Ltd, although similar views had earlier been expressed in New South Wales: Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd (1937) 37 SR (NSW) 242 at pp.249-50; Ex parte Dawson; Re Consolidated Press, [1961] SR (NSW) 573 at p.575. The law strikes a balance; in the interest of the due administration of justice it will curb freedom of speech, but only to the extent that is necessary to prevent a real prejudice to the administration of justice." (emphasis added)

2.6 For a sub judice contempt to occur the specific issues to arise for determination by the Inquiry would have to be the same as those determined by the Select Committee in its investigation. It would appear that there may be an overlap between the issues in the Inquiry and the issues investigated by

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<sup>6</sup> See per Gibbs CJ at 58; Mason J. at 100-102; Wilson J. at 136; contra, Stephen J. at 74.

the Select Committee. However, that does not necessarily result in a real risk that the Inquiry would be influenced or embarrassed, and the administration of justice thereby jeopardised. I have not been provided with the terms of Reference of the Bushfire Inquiry. I draw your attention to that the risk that there may be some prejudgment of the issues before the Inquiry. However, in this regard, I refer to the Committee's Terms of Reference which states relevantly:

"(2) That the Committee, where possible shall not duplicate examination of the evidence currently before the Coroner's inquiry."

Such term shows that Parliament is mindful of the undesirability of overlap with its investigation and the Bushfire Inquiry.

2.7 Another issue which sometimes arises in such cases is the potential effect of the inquiry on persons who will be witnesses in the court proceedings. The effect of the publication of views of the witnesses before they appear as witnesses to the Inquiry needs to be considered, but I think it unlikely that a substantial interference with the course of justice would occur. It would seem that no contempt would occur by reason that evidence which might be given by witnesses to the Inquiry would have first been given to the Select Committee in its investigation. In Victoria v. BLF (supra) Mason J. said at 103:

"In argument it was suggested that the Federation would be prejudiced by having witnesses which it might call in the deregistration proceedings initially examined and cross-examined in the inquiry. No doubt there is some disadvantage to the Federation in having its prospective witnesses first called to give evidence in the inquiry but that disadvantage does not amount to pressure or prejudice in the relevant sense. Although it is an inconvenience and it results in advance knowledge of what witnesses will say in court, this in itself does not amount to an interference with the administration of justice."

### 3. Conclusion

3.1 There is no legal impediment to the Select Committee continuing to take evidence in the face of the objection raised by the Senior Deputy State Coroner.

By virtue of s.9 of the Bill of Rights, Houses of Parliament and their committees cannot be held guilty of contempt of court by reason of their proceedings.

3.2 In a hypothetical consideration of what the situation would be if the Committee were not a Parliamentary Committee, I do not consider that the issues before the Inquiry would necessarily be prejudged by reason of the Committee's investigations or that the Inquiry would otherwise be "embarrassed".

3.3 No doubt your Committee will be sensitive to the concerns of the Senior Deputy State Coroner and, in accordance with term (2) of your Committee's Terms of Reference avoid, wherever possible, duplication of the evidence before the Inquiry.

Yours faithfully



K G GABB  
Senior Advisings Officer  
for Crown Solicitor

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## **APPENDIX 6**

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### **CROWN SOLICITOR'S ADVICE - AIRCRAFT**



# CROWN SOLICITOR'S OFFICE

NEW SOUTH WALES

Your ref:  
Our ref: LGA087/69  
A9 PLA  
Tel: (02) 228-7381  
Fax: (02) 228-8034

Goodsell Building  
8-12 Chifley Square  
Sydney, N.S.W. 2000.  
G.P.O. Box 25  
Sydney N.S.W. 2001  
D.X. 19 Sydney

29 November 1994

Mr P Cochran, MP  
Chairman  
Select Committee on Bush Fires  
Legislative Assembly  
Parliament of New South Wales

Dear Mr Cochran

RE: Power to engage aircraft for suppression of bush fires

1. Advice sought

1.1 By your letter of 24 November 1994 you say that the Select Committee on Bush Fires resolved to seek my urgent advice on the following three questions:

- "(1) Under the Bush Fires Act 1949, which officers or bodies named in that Act have the power to engage aircraft for the suppression of fire or the protection of life or property in the case of fire?
- (2) If an officer or body has the power to engage aircraft under the Act and moneys are expended by that officer in so doing, where shall the funds come from for paying for the moneys expended?
- (3) Will the source of those funds differ depending on whether s.41F of the Act has come into operation or not?"

My advice is required by 29 November 1994 to facilitate tabling of the Committee's report.

1.2 The issue apparently arises from evidence given to the Committee by the Commissioner of Bush Fire Services. The Commissioner was asked about the authority for, and cost of, engaging aircraft for the suppression of fires before the Chief Co-ordinator of Bush Fire Fighting ("the Chief Co-ordinator") had formed an opinion that a bush fire had assumed or was likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or authorities in the area it was burning, or that the prevailing conditions were conducive to the outbreak of a bush fire likely to assume such proportions under s.41F of the Bush Fires Act 1949 ("the Act"). The Commissioner indicated in his evidence that the relevant fire

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fighting authorities had "authority to engage aircraft in the first instance if need is clearly established, check it with us, and in the first instance we pick up the cost where we are satisfied that the need is there. The ongoing use of those aircraft and the associated cost will inevitably be the subject of negotiation but we may well have a different view."

#### Summary of Advice

I would summarise my advice as follows:

2.1 Provided that the use of aircraft for the suppression of fire or for the protection of life or property in the case of fire is not otherwise unlawful (e.g. because it may constitute a trespass), no statutory authorisation is required for any person to use such aircraft for that purpose.

2.2 In cases where the use of aircraft for the suppression of fire etc. would involve an unlawful act, such as trespass, s. 22 of the Act authorises such use in accordance with its terms.

2.3 Bush fire brigade officers (as referred to in s.21 of the Act) may authorise the use of aircraft in the circumstances described, but subject to the matters referred to below.

2.4 Emergency fire controllers, deputy emergency fire controllers and fire control officers also have authority to engage aircraft, but subject to the matters mentioned in para. 2.6 below. The Chief Co-ordinator has authority to engage aircraft in cases where s. 41F of the Act applies.

2.5 The authority of a bush fire brigade officer to engage aircraft will be subject to:

- Any direction given to that officer by an emergency fire controller or deputy emergency fire controller;
- The provisions of any applicable bush fire management plan (this condition also applies to other persons or bodies involved in the prevention, control or suppression of bush fires);
- The supervision and direction of fire control officers in respect of bush fire districts;
- The superintendence and direction of, or other measures taken by, the Chief Co-ordinator where s.41F of the Act applies;

2.6 The authority of all councils, bush fire brigade officers, fire control officers, deputy fire control officers, fire patrol officers, and the other persons referred to in s.41F(3) to engage aircraft is also subject to the superintendence and direction of, or other measures taken by, the Chief Co-ordinator where s.41F applies.

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2.7 The costs incurred when an aircraft is engaged by a council, bush fire brigade, fire control officer may, with the approval of the Minister, or upon his certificate, be paid from the New South Wales Bush Fire Fighting Fund.

2.8 The Minister has a discretion as to whether to pay those costs. In the ordinary course, however, where such costs are properly incurred it could reasonably be assumed that the Minister would approve such payment.

2.9 Where the costs of engaging an aircraft are incurred by or on behalf of a council, that council is authorised, if it so approves, to pay such costs from its Consolidated Fund.

2.10 Where the costs of engaging the aircraft are incurred in the exercise of the powers or functions of the Chief Co-ordinator, the costs must be paid from the Fund.

2.11 The costs of engaging the aircraft will be incurred in the exercise of the Chief Co-ordinator's powers and functions when the Chief Co-ordinator has taken charge of fire fighting operations, or taken measures to suppress any bush fire, in accordance with s.41F of the Act.

2.12 Accordingly, the source of funds to pay for the costs of engaging aircraft may differ according to whether the aircraft is engaged by the Chief Co-ordinator, or some other person.

I set out my reasons below.

### 3. Advice

#### Question 1: Which officers or bodies have power to engage aircraft

3.1 There are various categories of persons and bodies referred to in the Act which have powers and responsibilities with respect to the control or suppression of bush fires depending upon the area in which the fires are burning and/or the nature of such fires or the potential nature of such fires.

#### Bush Fire Brigade Officers

3.2 Under s.19 of the Act bush fire brigades may be formed or organised by the bodies or persons referred to in paras.(a)-(f)<sup>1</sup>. Under s.20 of the Act the council, or Minister, or the Minister and the relevant council or councils, or the Co-ordinating Committee, by whom any bush fire brigades are formed

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<sup>1</sup> Briefly these bodies are a council in respect of its area, not being an area within a fire district constituted under the Fire Brigades Act 1909; two or more councils jointly within their areas; the Minister in certain circumstances; the Co-ordinating Committee in certain circumstances.

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or organised shall determine the territory in respect of which such bush fire brigades may operate, and may appoint a captain and deputy captains, or in the case of any two or more bush fire brigades formed within an area, a group captain and deputy group captains.

3.3 Under s.21 of the Act the captains, deputy captains, group captains and deputy group captains have and may exercise such powers, authorities, duties and functions as are conferred and imposed upon them under the Act or the regulations. Section 22(1) sets out particular powers of specified bush fire brigade officers as follows:

"22.(1) A bush fire brigade captain or group captain, or in the absence of the bush fire brigade captain or group captain the deputy bush fire brigade captain or deputy group captain or the senior deputy bush fire brigade captain may, for the purpose of the control or suppression of a bush fire or the protection of life or property from any existing or imminent bush fire danger and with such persons as he may deem necessary for the purpose:

- (a) enter any land or building for any person;
- (b) cause any road or public place in the vicinity of the bush fire to be closed to traffic, other than traffic of the Naval, Military or Air Forces of His Majesty, or of any power which is allied or associated with His Majesty in any war in which His Majesty is engaged;
- (c) pull down, cut and remove or cause to be pulled down, cut and removed, fences on any land;
- (c) destroy, pull down or remove or cause to be destroyed, pulled down or removed any buildings or structures on any land;
- (e) destroy or remove or cause to be destroyed or removed any living or dead vegetation;
- (f) burn, plough or clear fire breaks on any land or cause fire breaks to be burnt, ploughed or cleared on any land;
- (g) take and use free of charge any water from any source whatsoever on any land;
- (h) use free of charge all or any water mains, water plugs, valves, pipes and works of water supply vested in or under the management or control of any water supply authority, public authority or body whatsoever;
- (i) do any other act, matter or thing which is necessary for or incidental to the control or

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suppression of a bush fire or the protection of life or property from any existing or imminent bush fire danger or the effective exercise of any of the powers conferred by this subsection."

3.4 Section 22(1) should not be read as itemising the only powers which a bush fire brigade officer may exercise. The proper construction of s.22(1) is set out in the judgment of Mason JA (as the Chief Justice of the High Court then was) in Stephens v Stephens<sup>2</sup> as follows:

"Section 22(1), as appears from its introductory words and an examination of its individual paragraphs, is addressed to the matter of conferring authority for the doing of acts in aid of the control and suppression of bush fires and the protection of life and property from bush-fire dangers. It does not in terms authorize the putting out of bush fires, evidently for the reason that the extinguishment of bush fire is not in itself an unlawful act which requires an authorization by statute. Paragraphs (a) to (h) enumerate a series of acts the doing of which would, apart from the authority conferred by the subsection, be unlawful. For the most part, the acts described would constitute trespasses; in some instances they would involve the destruction of property and interference with proprietary rights, whilst par.(b) would involve a deprivation of the right of the citizen to use a public highway.

It is against this background that par.(i), upon which the defendant relies, is to be read. That paragraph, having regard not only to its language but also to its position in the scheme of the subsection as an entire provision, cannot be regarded as conferring power to extinguish a bush fire; it extends to acts, matters or things which are essential or incidental to the attainment of the main objects of the section or to the effective exercise of the powers otherwise conferred, but it does not extend to the very activity which is a main object of the section.

Nor is it correct to regard the provision as extending to all manner of acts which are necessarily or incidental to the attainment of the main objects. There is no reason why par.(i), which is a residuary provision designed to comprehend other acts, matters and things not already the subject of a particular description, should in its nature and character be considered to extend to the whole range of incidental activities the performance of which would be lawful in any event without the conferment of statutory authority.

Indeed, there are persuasive grounds for coming to the opposite conclusion. First, it would have been superfluous to include a power conferring an authority larger than that

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<sup>2</sup> (1970) 92 WN (NSW) 810 at 813; (1970) 72 SR 459 at 463.

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required to meet situations in which there was an absence of legal authority to do an act, matter or thing necessary or incidental in the respects already mentioned. Secondly, it is clear that the provision should be construed strictly or jealously, as it involves an interference with private rights, without providing any remedy in relation to that interference (see *Board of Fire Commissioners of New South Wales v Ardouin* (1961) 109 CLR at 116, per Kitto J), in particular when it operates in conjunction with s.48. Thirdly, the apparent purpose of the section, as manifested by its introductory provisions and its principal paragraphs, is to provide legal authority for the performance of those acts which would otherwise be unlawful."

3.5 It is clear, in my opinion, that the extinguishment of a bush fire is not of itself an unlawful act requiring authorisation by statute. That being the case, it follows that the means by which a bush fire is extinguished does not require legislative authorisation if it is otherwise lawful. The act of engaging an aircraft for the suppression of a bush fire or for the protection of life or property is not something which of itself would require legislative authorisation. While there is no requirement for statutory authority to be conferred on a person to engage an aircraft for fire fighting activities, the use of such aircraft for such purposes may, in some circumstances, constitute a wrongful act. Thus, while no action will lie in respect of trespass or in respect of nuisance by reason only of the flight of an aircraft over any property at a height which is reasonable in the circumstances,<sup>3</sup> liability may arise in respect of things dropped from the aircraft.<sup>4</sup> In addition to causes of action based on trespass or nuisance,<sup>4</sup> a statutory cause of action is conferred by s.2(2) of the Damage by Aircraft Act 1952 in respect of (among other things) material loss or damage caused to any person on land or water by, or by a person in, or an article falling from, an aircraft while in flight.<sup>5</sup> In this context, I think that s.22(1) of the Bush Fires Act will be construed as conferring authority on bush fire brigade officers to use aircraft in fire fighting where such might otherwise involve an unlawful act.

Although provisions which purport to authorise invasions of private rights will be construed strictly,<sup>6</sup> regard may be had

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<sup>3</sup> s. 2 (1), Damage by Aircraft Act 1952.

<sup>4</sup> See Fleming, Law of Torts, 7th Ed., p.43.

<sup>5</sup> The provision binds the Crown - s.2(4).

<sup>6</sup> See Mason JA in *Stephens* supra - such provisions "should be construed strictly or jealously"; this approach was also taken in the recent decision of the High Court in *Coco v R* (1994) 120 ALR 415, a case involving entry onto premises in order to place a listening device. The Court confirmed that "clear and unambiguous language"

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to the "apparent purpose of the section, as manifested by the introductory provision and its principal paragraphs, [which] is to provide legal authority for the performance of those acts which would otherwise be unlawful."

3.6 In my opinion, the combined operation of the introductory words to s.22(1), the power conferred by para.(a) thereof to enter any land and the power to do any thing which is "necessary for or incidental to the control or suppression of a bush fire ..." provides ample authority for the use of aircraft for the purposes referred to in those provisions, where such use would otherwise be unlawful.

3.7 Bush fire brigade officers may also engage in fire fighting activities outside their respective territories or in national parks, State forests, etc., in some circumstances.<sup>8</sup>

3.8 The powers conferred by s.22(1) are, however, subject to the restrictions set out in sub-sec. (2). Thus, the powers conferred by sub-sec. (1) can be exercised despite any of the provisions of the Act except s. 22 (2)(b)<sup>9</sup> and ss.16, 17, 41A, 41F and 51. Of particular relevance here are the provisions of ss.17, 41A and 41F.

#### Section 17: Emergency fire controllers

3.9 Under s.17, where an emergency fire controller or deputy emergency fire controller has been appointed<sup>10</sup> all councils, captains, deputy captains, group captains and deputy group captains of bush fire brigades, fire control officers, deputy fire control officers, fire patrol officers, officers of New South Wales Fire Brigades and members of any permanent or volunteer Fire Brigade, officers and employees of the Forestry Commission of New South Wales, members of the police force and other persons shall comply with any directions given to them by such emergency fire control officer or deputy emergency fire control officer in connection with the prevention, control or

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is required to authorise tortious conduct (per Mason CJ, Brennan, Gaudron and McHugh JJ at 418).

<sup>7</sup> Per Mason JA in Stephens supra.

<sup>8</sup> See s.22(3) and s.51 (1D), (1E) of the Act.

<sup>9</sup> Section 22(2)(b) provides that the powers conferred by sub-sec.(1) may not be exercised in relation to land or property vested in or under the control of the State Rail Authority without the permission of the Authority or a person authorised by the Authority to give permission.

<sup>10</sup> In brief, emergency fire controllers are appointed in cases where there is a state of emergency and it is necessary or expedient in the interest of public safety to appoint such a person.



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suppression of any fire in the territory in respect of which such emergency fire controller or deputy emergency fire controller has been appointed.<sup>11</sup> Accordingly, in cases where emergency fire controllers are appointed, the authority of a bush fire brigade officer to engage aircraft for the suppression of fire or for the protection of life or property in the case of fire is subject to the compliance with any directions given to that officer by such emergency fire controllers<sup>12</sup>. It should also be noted that emergency fire controllers and deputy emergency fire controllers have and may exercise all the powers conferred on a bush fire brigade captain by s.22, but without being subject to the proviso in sub-sec. (2) and without limitation as to the territory within which such powers may be exercised. It accordingly follows, I think, that such emergency fire controllers may themselves use aircraft for the suppression of fires etc where such use might otherwise be unlawful.

#### Section 41A: Bush fire management plans

3.10 Under s.41A, where a bush fire management plan has been communicated to a "prescribed organisation"<sup>13</sup> to which the plan relates the plan shall be adopted by that organisation and, as far as practicable, be carried into effect by that organisation in the circumstances indicated by the plan. Accordingly, if a bush fire management plan deals with the question of the engaging of aircraft for the suppression of fire or for the protection of life or property, the bush fire brigade (and other prescribed organisations) to which the plan relates and to which the plan has been communicated must carry into effect the terms of such plan.

#### Section 41F: The Chief Co-ordinator

3.11 Section 41F provides that the Chief Co-ordinator shall either personally, or through regional officers, officers of New South Wales Fire Brigades and the members of any permanent or volunteer fire brigade, officers of the Forestry Commission of New South Wales or other persons:

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<sup>11</sup> See s.17(9) of the Act.

<sup>12</sup> A person failing to observe a direction given by an emergency fire controller or deputy emergency fire controller is liable on conviction to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 12 months; s. 17 (10) of the Act.

<sup>13</sup> "Prescribed organisation" is defined to mean a council, New South Wales Fire Brigades, the Forestry Commission of New South Wales, the National Parks and Wildlife Service or any body of person, corporate or unincorporate, associated with the prevention, control or suppression of bushfires.

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- "(a) take charge of fire fighting operations, and fire prevention measures, where he is of the opinion that any bush fire has assumed or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or authorities in whose area or locality it is burning or that the prevailing conditions are conducive to the outbreak of a bush fire likely to assume such proportions;
- (b) take such measures to control or suppress any bush fire as he deems necessary, where he is of the opinion that:
- (i) the fire is not being effectively controlled or suppressed by the fire fighting authority or authorities in whose area or locality it is burning; or
  - (ii) the fire is burning in a place which is not the responsibility of any fire authority,

and that it is necessary or expedient that the fire should be controlled or suppressed."

3.12 Sub-section (3) is also relevant and provides as follows:

"(3) Where the Chief Co-ordinator, either personally or through some person referred to in subsection (1), takes charge of any fire fighting operations or fire prevention measures under subsection (1) (a) or takes any measures under subsection (1) (b), all councils, captains, deputy captains, group captains and deputy group captains of bush fire brigades, fire control officers, deputy fire control officers, fire patrol officers, officers of New South Wales Fire Brigades and the members of any permanent or volunteer fire brigade, members of the Police Force and other persons, shall comply with any directions given to them by the Chief Co-ordinator or that firstmentioned person (which directions they are hereby respectively empowered to give) in connection with the prevention, control or suppression of any bush fire in the area or locality in which the Chief Co-ordinator has so taken charge or is taking those measures.

In addition to, and without limiting, the power conferred on the Chief Co-ordinator or any other person by the foregoing provisions of this subsection, the Chief Co-ordinator and that person shall have and may exercise all the powers conferred on a bush fire brigade captain by section 22, without being subject to any proviso to section 22(2) and without limitation as to the territory within which they may exercise such powers."

3.13 By sub-sec. (4) any person failing to observe any direction given under s.41F by the Chief Co-ordinator or any other person is liable to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 12 months.

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3.14 Accordingly, the ability of a bush fire brigade officer to engage aircraft in the relevant circumstances is also subject to any directions given to that officer in relation to such engagement of aircraft by the Chief Co-ordinator when he is acting pursuant to either s. 41F (a) or (b). In this regard, I note that in circumstances where s.41F applies, the Chief Co-ordinator is to "take charge of fire fighting operations" or is to "take such measures ... as he deems necessary". As regards a situation in which the Chief Co-ordinator has taken charge or operations under s 41F (1)(a), it would appear that fire brigade officers in their conduct of such fire fighting operations are subject to the general superintendence of the Chief Co-ordinator or the officers through whom the Chief Co-ordinator is acting and I think that such would include obtaining the approval of the Chief Co-ordinator before aircraft were engaged. In cases where the Chief Co-ordinator is taking measures that he or she deems necessary, I think the authority of bush fire brigade officers to engage aircraft will depend upon the measures taken and any directions the Chief Co-ordinator gives.

3.15 There is no doubt that the Chief Co-ordinator may engage aircraft for the suppression of fires where s. 41F has been invoked. Further, s. 41F (3) makes plain that s. 22 of the Act also applies to the Chief Co-ordinator so as to authorise use of aircraft for such purposes which may otherwise be unlawful.

#### Fire Control Officers

3.16 Fire control officers are appointed by the council of an area which, or part of which, has been constituted by the Governor as a bush fire district<sup>14</sup>. Deputy fire control officers may also be appointed.

3.17 Under s.27(1) of the Act a fire control officer so appointed has all the powers and immunities which are conferred on any captain of a bushfire brigade by Part 3 of the Act.<sup>15</sup> However, sub-sec. (2) provides as follows:

"(2) Despite anything contained in Part 3 a fire control officer:

- (a) shall have the supervision and direction of all bush fire brigades in the bush fire district to which he has been appointed and of the captains, deputy captains, group captains or deputy group captains of such brigades;
- (b) shall have the right to use any fire fighting apparatus in such bush fire district;

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<sup>14</sup> See ss.25 and 26 of the Act.

<sup>15</sup> Part 3 of the Act contains s.22.

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- (c) shall inspect, or cause to be inspected, at least once each year all fire fighting apparatus in such bush fire district;
- (d) shall take or cause to be taken all necessary measures for extinguishing fires in such bush fire district and protecting and saving life and property in case of fire;
- (e) shall perform such other duties as are imposed upon him by the council by whom he has been appointed; and
- (f) may, in relation to land referred to in subsection (3), exercise such of the functions of the captain of a bush fire brigade as are exercisable in relation to that land."

3.18 It follows from what I have said in relation to the powers and authorities of bush fire brigade officers above that, because a fire control officer has the same powers and immunities as a bush fire brigade officer, such fire control officers will have the authority to engage aircraft for the suppression of fire or the protection of life or property in the case of fire. Further, the authority of a bush fire brigade officer to engage aircraft in respect of a bush fire district for which a fire control officer has been appointed will be subject to the supervision and direction of that fire control officer because of s.27(2)(a).

3.19 As with the bush fire brigade officers, the authority of fire control officers to engage aircraft will be subject to the restrictions imposed by s.17 and ss.41A and 41F.<sup>16</sup>

#### Fire Patrol Officers, Inspectors and Police

3.20 The functions of fire patrol officers, honorary fire patrol officers<sup>17</sup>, inspectors<sup>18</sup> and police officers<sup>19</sup> referred to in the Act do not expressly extend to the general suppression of fire. I will accordingly leave to one side whether or not these people would in any particular circumstances have authority to engage aircraft to suppress a bush fire.

#### Question 2: Funds for use of aircraft

3.21 Section 23 of the Act provides as follows:

<sup>16</sup> As to these matters see paras. 3.9 - 3.15 above.

<sup>17</sup> See ss.42, 43 and 44 of the Act for provisions dealing with appointment and powers of these officers.

<sup>18</sup> See s.46 of the Act.

<sup>19</sup> See s.55 of the Act.

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"23. A captain, deputy captain, group captain or deputy group captain or any member of a bush fire brigade shall not, merely by reason of the authority granted him to exercise any powers or carry out any duties under this Act, be deemed to be a servant of a council or of the Minister, as the case may be."

3.22 This provision applies, mutatis mutandis, to emergency fire controllers<sup>20</sup> and to fire control officers<sup>21</sup>. Section 53(1) of the Act provides as follows:

"53.(1) Any of the following purposes shall be deemed to be a general purpose within the meaning of section 107(2) of the Local Government Act 1919:

- (a) the purchase, distribution, maintenance and storage of fire fighting apparatus for the prevention, control and suppression of bush and other fires;
- (b) the organising of bush fire brigades and such matters as are relevant thereto, including the establishment of fire stations and fire control centres;
- (c) the establishment and maintenance of fire breaks;
- (d) the removal or destruction of inflammable matter;
- (e) the taking of measures generally for the prevention, control or suppression of bush fires."<sup>22</sup>

3.23 The reference to s 107 (2) of the Local Government Act 1919 should now be read as a reference to s. 409 (2) of the Local Government Act 1993.<sup>23</sup> Section 409 (2) of that Act provides that money held in the Consolidated Fund may be applied towards any purpose allowed by the Local Government Act 1993 or any other Act. Costs in respect of engaging aircraft are therefore

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<sup>20</sup> See s.17 (11) of the Act.

<sup>21</sup> See s.26 (2) of the Act.

<sup>22</sup> Sub-sec. (2) of s.53 of the Act provides that for the purposes of s.120 of the Local Government Act 1919 (to be read now as a reference to s.495 of the Local Government Act 1993) any work relating to the prevention and suppression of bush and other fires shall be deemed to be a purpose which may be lawfully undertaken by a council in respect of which special rates may be made and levied by a council.

<sup>23</sup> see cl. 4 of Schedule 7 to the Local Government Act 1993.

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authorised to be paid from such fund. The council itself would, of course, have to approve and expend the money.

3.24 Part 6 of the Act deals with the New South Wales Bush Fire Fighting Fund ("the Fund"). By s.29(1) of the Act there is established and kept in the Treasury an account in the Special Deposits Account under the name of the New South Wales Bush Fire Fighting Fund. By sub-sec. (2) all money received under Part 6 must be paid into the fund and the cost of administration of the Part and all expenses incurred by the Minister in the exercise of his powers, authorities and functions pursuant to the Part, in addition to all expenditure on bush fire fighting in the Eastern and Central divisions, shall, subject to the provisions of the Act, be paid out of the Fund. Section 32 of the Act sets out the contributions which are required to be made to the Fund by the Treasurer, various councils and insurance companies. It is not necessary in the context of this advice to set out those provisions in detail.

3.25 Section 37 of the Act deals with the application of the Fund and provides as follows:

"37.(1) Moneys to the credit of the Fund may be applied in the Eastern and Central Divisions by the Treasurer in or towards:

- (a) the purchase of fire fighting apparatus of all kinds for bush fire brigades formed or organised under this Act, the Co-ordinating Committee, the Chief Co-ordinator, fire control officers or the occupiers of supervised parks;
- (b) the maintenance of fire fighting apparatus in the possession of or available to such bush fire brigades, Co-ordinating Committee, Chief Co-ordinator, fire control officers or occupiers of supervised parks;
- (c) the erection and maintenance of buildings for the storage of fire fighting apparatus of such bush fire brigades, Co-ordinating Committee, Chief Co-ordinator, fire control officers or occupiers of supervised parks;
- (d) the construction and maintenance of water storage tanks and lookout towers;
- (e) the purchase, maintenance and storage of reserves of fire fighting apparatus for use in any emergency;
- (f) subject to the provisions of section 41J, the payment of salaries, allowances, travelling and other expenses of:

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- (i) fire control officers, deputy fire control officers or inspectors appointed under this Act;
  - (ii) the Chief Co-ordinator;
  - (iii) regional officers;
  - (iv) officers and temporary employees of the Bush Fire Council in respect of that portion of their time spent in assisting the Chief Co-ordinator and performing any functions for or on behalf of the Co-ordinating Committee;
  - (v) officers, employees and servants of any Government Department, statutory corporation or council, with which an arrangement has been made under section 41G, in respect of that portion of their time spent in assisting the Chief Co-ordinator and performing any functions for or on behalf of the Co-ordinating Committee;
- (g) the payment of such expenditure by or on behalf of councils, bush fire brigades, the Co-ordinating Committee, the Chief Co-ordinator, fire control officers or the occupiers of supervised parks for or in connection with the prevention, control or suppression of bush fires as is approved by the Minister;
- (g1) the establishment of fire breaks and the reduction of fire hazards;
- (h) any measures generally for the prevention, detection, control and suppression of bush fires including aerial reconnaissance;
- (i) the costs of publicity and educational and training programmes directly related to the functions of the Co-ordinating Committee;
- (j) the payment of fees to members of the Co-ordinating Committee for attendance at meetings of that Committee and travelling and other expenses incurred by such members in carrying out the business of that Committee."

3.26 Sub-section (2) provides that the Treasurer may pay the monies referred to in sub-sec. (1) out of the Fund upon the certificate of the Minister. Sub-sec. (3) provides that all fire fighting apparatus, buildings, water storage tanks or look out towers purchased or constructed wholly or partly from monies to the credit of the Fund shall be vested in the council of the area

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for or on behalf which such apparatus, etc., had been purchased or constructed, as the case may be.<sup>24</sup>

3.27 Section 41J provides as follows:

"41J.(1) Any moneys payable in connection with the exercise of the duties imposed upon the Co-ordinating Committee by section 41B(1)(a) and (b) and the construction and maintenance of fire trails and other fire prevention works and hazard reduction works carried out by Fire Prevention Associations shall be paid out of moneys provided by Parliament.

(2) Except as provided by subsection (1), any moneys payable in connection with the exercise or discharge of the powers, authorities, duties and functions conferred or imposed upon the Co-ordinating Committee or the Chief Co-ordinator by or under this Act shall be paid out of the Fund."

3.28 Where aircraft are used for the suppression of fire or the protection of life or property in the case of fire at the instigation of, or under the authority of, one of the officers referred to in the Act other than the Chief Co-ordinator,<sup>25</sup> the costs of such are able to be met from the Fund pursuant to s.37(1)(g) on the approval of the Minister. The costs of engaging aircraft would be expenditure by or on behalf of councils, bush fire brigades, etc., for or in connection with the prevention, control or suppression of bush fires. Such costs would also be capable of being costs in relation to measures generally for the prevention, detection, control and suppression of bush fires "including aerial recognisance" as referred to in s.37(1)(h) of the Act. I note that the authority for payment out of the Fund conferred by para. (h) is not expressed to require the approval of the Minister as is the payment referred to in para (g). However, I think that it is clear from the terms of s.37 (2) that any payment from the Fund requires the Minister to certify such payment before the Treasurer may pay. In that sense, I think that all payments from the Fund require Ministerial approval. I also note that I do not think the specific reference in s.37(1)(h) to "aerial recognisance" means that payments from the Fund for users of aircraft other than for recognisance are not authorised. The reference to "aerial recognisance" should be construed as intended to expand upon the type of matters referred to in para. (h) and should not, in my

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<sup>24</sup> "Fire fighting apparatus" is defined in s.6 of the Act as including "all engines, vehicles, horses, reels, buckets, hoses, pumps, ladders, escapes, tanks, tools, radio equipment, implements and things used for or in connection with the prevention or suppression of fire or the protection of life or property in the case of fire".

<sup>25</sup> In this regard, I take it that the Co-ordinating Committee would not be considering itself engaging aircraft.



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opinion, be construed as limiting the broad range of things which may ordinarily fall within the matters referred to in either para. (h) or para. (g).

3.29 It follows from what I have said that the Minister has a discretion as to whether or not he or she shall pay from the Fund the costs incurred when an aircraft is engaged other than by the Chief Co-ordinator.<sup>26</sup> Where an aircraft is engaged for the purpose of suppressing a fire or for the protection of life or property in the case of fire, the primary responsibility for the cost thereof will fall on the person or body responsible for so engaging the aircraft. As I have noted, a bush fire brigade officer, and emergency fire controller and a fire control officer are not, merely by reason of the authority granted to them to exercise any powers or carry out any duties under the Act, deemed to be servants of a council or of the Minister, as the case may be. Accordingly, if those persons are not otherwise employees of the council or of the Minister, they will not, merely by virtue of their position under the Act, be employees. Thus, the council or the Minister would not, for that reason, be vicariously liable for the acts of such officers. It may be, however, that the extent of the control over the appointment of such officer, the constitution of bush fire brigades, and the way in which brigades or such officers carry out their responsibilities, in any particular case, would mean that liabilities and costs incurred by those officers or brigades would become those of the relevant council or Minister, as the case may be. Much will depend on the facts in each particular case, including the extent of any actual or usual authority granted to an officer by a council or the Minister. Costs incurred in fire prevention by a council may be properly paid from a council's Consolidated Fund under s. 409 (2) of the Local Government Act 1993.<sup>27</sup>

3.30 Where the aircraft has been used pursuant to the exercise or discharge of powers, authorities, duties and functions conferred on the Chief Co-ordinator under s.41F, then the costs of such use are, by s.41J(2), to be paid out of the Fund. There is apparently no discretion in the Minister as to such costs as the terms of s.41J(2) are mandatory.<sup>28</sup>

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<sup>26</sup> In this regard, see s.41J(2) of the Act to which I shall refer to in more detail below.

<sup>27</sup> see para. 3.23 above.

<sup>28</sup> The provision also applies to the exercise or discharge of the powers etc., of the Co-ordinating Committee. In addition to functions relating to the approval of bush fire management plans, the Co-ordinating Committee has the functions conferred by s.41B. Sub-section (2)(d) provides that the Co-ordinating Committee shall ensure as far as practical that equipment in such sufficient quantity, and of such approved standards of operation and efficiency, as a Co-ordinating Committee determines, is

3.31 I note that s.29(2) of the Act refers to all expenditure on bush fire fighting in the Eastern and Central divisions being paid out of the Fund. That requirement is, of course, subject to the provisions of the Act, and I think it must be read with s.37, and in particular the requirement for the Minister's approval in s.37(1)(g) and for the Minister's certificate in s.37(2).

Question 3: Will the source of funds differ depending on the application of s.41F

3.32 I have assumed that this question is directed to whether the source of funds differs depending on whether the Chief Co-ordinator is purporting to act pursuant to s. 41F of the Act. I think it follows from what I have said above in answer to question 2 that the source of funds for meeting the costs of use of aircraft may differ according to whether such aircraft is used pursuant to the exercise of the functions of the Chief Co-ordinator under s.41F, or whether the aircraft is used under some other person's authority. In the former case, the costs of the use of such aircraft must be met from the Fund. In the latter case, the costs may be met from the Fund but need not be.

Yours faithfully

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available to and properly maintained by fire fighting authorities. It would be possible, therefore, for the Co-ordinating Committee to make arrangements for the provision of aircraft to fire fighting authorities and the costs of such would be met out of the Fund.