

Draft Fire and Emergency Services (Industry Brigades)

Amendment Bill 2016

Explanatory Note

Synopsis

A Review of the *Fire and Emergency Services Act 2005* undertaken by the Hon Paul Holloway (the Holloway Review) in 2013 recommended that the Government:

'In consultation with stakeholders including Country Fire Authority (CFA), develop a Forest Industry Brigade (FIB) standard for inclusion in the Fire and Emergency Services Regulations'.

The *Fire and Emergency Services (Industry Brigades) Amendment Bill 2016* aims to fulfil this recommendation by establishing legislative "head power" to facilitate the CFS requiring the establishment of Industry Brigades within the country areas of SA. Subordinate legislation in the *Fire and Emergency Services Regulations* will subsequently also be amended to include detailed provisions specific to Forestry Industry Brigades (FIBs) requiring commercial plantation owners to establish and maintain brigades commensurate with the size of plantation holdings which provide capability for the suppression of fire within plantation holdings. This proposed legislative framework will provide a level of cross-jurisdictional consistency between South Australia and an established legislative framework in Victoria. It is envisaged that the framework will provide flexibility for establishment of industry brigades outside of the commercial forestry industry sector if necessary in the future.

In South Australia efforts to suppress fire within forestry plantations imposes a significant burden upon industry, the South Australian Country Fire Service (CFS) and the wider community. There are currently no legislative requirements for plantation owners to maintain fire suppression capability. The development of a new legislative framework for the establishment of FIBs is necessary due to a combination of factors including economic risk, climate change scenarios, the move toward private plantation ownership, proliferation of hardwood plantations and the concern of the CFS and wider community over the provision of fire suppression capacity by industry into the future. Without establishment of a new regulatory framework there exists a potential for inequity across the forestry industry sector regarding fire suppression capability.

Introduction

Previous analysis undertaken during the Holloway Review identified a number of issues which have emerged since the Act was last amended in 2009 including rapid growth in private forestry, particularly hardwood plantations. Stakeholder consultation undertaken during the Holloway Review led to the suggestion 'that efficiencies for the industry and improved outcomes for the community could be achieved if common firefighting standards and procedures could be developed for Victoria and South Australia'.

Victoria has previously introduced legislative provisions under the *Country Fire Act 1958 (Vic)* and *Country Fire Authority Regulations 2014 (Vic)* requiring establishment and maintenance of FIBs in 1998. Success of the regulatory framework in Victoria is illustrated by the current registration of over 20 FIBs across Victoria in 2015. Consultation with the CFA has indicated general satisfaction with the contribution made by these FIBs to fire suppression across the state of Victoria. Importantly, significant differences between CFS and CFA resources should be considered during the development of an appropriate model for South Australia. For example, CFS resources covering a land mass of 984,377 km² and population of 1.677 million comprise 434 stations, 13,500 volunteers and 133 Full Time Employees' (FTE's) compared to CFA resources covering a land mass of 237,629 km² and population of 5.791million which comprise 1,186 stations, 1,179 brigades and over 59,700 volunteers and 1,824 FTE's. These differences in resources are fundamental in determining points of difference between the Victorian and South Australian model. Whilst considering important differences in CFS resources compared to that of the CFA it is proposed that legislative provisions developed in South Australia still look to the established legislative framework in Victoria given its proven track record of success. This will have the added benefit of ensuring a level of cross-jurisdictional consistency between the two states which has been highlighted by industry during consultation as a key consideration when considering legislative reform in South Australia. Looking to the success of the Victorian model can also inform the appropriate preparation, implementation, monitoring and evaluation of the proposed regulatory reform in South Australia. Success of the Victorian model can be largely attributed to significant ongoing commitments by the Victorian Government to provision of resources within the CFA aimed at achieving the desired outcomes of the Victorian legislative framework.

Alignment with South Australian Strategic Plan (SASP) and CFS strategic priorities

The proposed regulatory reform aligns with several strategic priorities of the SASP and targets being pursued by the CFS for the Minister for Emergency Services:

- SP2: 'Safe communities, healthy neighbourhoods'
 - Minimise the frequency and impact of emergencies; and protect our community, economy and environment from the effects of fire and other emergencies.
- SP3: 'An affordable place to live'
 - Minimise the social and economic effects of emergencies; and plan to meet future community safety needs.

Reform also aligns with the "CFS 2012-2015 Strategic Plan" objective for "Frontline Services Support" Objective 1 in that the proposal seeks to introduce a new legislative framework in response to changes in the commercial forestry industry sector across SA by:

- 'Being agile and flexible in responding to industry change – catering for changes to the emergency services environment and structure'.

Additionally the proposal is considered a key priority for implementation by government for the following reasons:

- Provides certainty to industry, government and the community on fire suppression efforts across regions with significant commercial forestry plantations;
- Facilitates strong partnerships between the South Australian forestry industry, government and the community in the provision of high-level fire suppression across regions;
- Provides cross-jurisdictional consistency with other states that have already established legislative frameworks regarding industry fire brigades; and
- Implements a key recommendation of the Holloway Review.

Background

This paper provides background information on how Industry Fire Brigades are currently established under the *Fire and Emergency Services Act 2005* and how the draft Bill has been developed. This paper also outlines the functionality of the draft Bill and key reforms, and provides an explanation of each clause within the Bill.

Drivers of reform

There are numerous drivers for legislative reform to the *Fire and Emergency Services Act 2005*. Predominately these drivers arise from within the Forestry industry where numerous forestry industry brigades have been recognised by the CFS for a considerable time. Currently several mining industry brigades are also recognised by the CFS. Importantly, proposed legislation is not intended to establish requirements for industry brigades other than within the forestry industry. Any future requirement for regulation of these brigades will be assessed on a risk basis as required. Such brigades will remain able to seek registration with the CFS under the *Fire and Emergency Services Act 2005* as is currently the status quo.

Drivers for legislative reform of the forestry industry

Significant plantation holdings in SA – financial risk

Recent trends in ownership of plantation holdings across South Australia show transitioning toward predominantly private enterprise. Plantation holdings across SA total 188,500Ha comprising 59,700Ha hardwood, 128,500Ha softwood and 300Ha of other⁵. Fire within plantations represents a significant risk to not only plantation owners but the wider South Australian community through risk to life and property and economic stability and resilience. On a regional basis the Green Triangle and Victoria represents the largest area of aggregated holdings in South Australia with 154,400Ha, compared to the Mount Lofty Ranges, Mid North and Kangaroo Island with a combined plantation area of 34,100Ha⁵.

The economic risk to regional South Australia and the South Australian economy of significant fire events within commercial forest plantations is significant. For example: \$2.6 billion of goods and services were produced by the South Australian forest and forest products industry during 2006-07 (11.3% of Australia's total¹); 13,000 people are directly and indirectly employed in timber and wood processing activities (10.8% of Australia's total²); 28% of the Limestone Coast's Gross Regional Product is attributed to

¹ Australian Bureau of Statistics (2009), Manufacturing Industry South Australia, Industry Class by State and Region 2006-07, Canberra.

² ForestWorks (2006), Forest and Wood Products Industry Workforce and Industry Data Collection Survey Report, Melbourne

the forest and forest products industries³; and 200,000 people visit the State's forest reserves for recreation each year. The economic benefit from organised recreation and tourism in the Mount Lofty Ranges and Mid North forests is estimated to be between \$4 million and \$6 million per annum⁴.

Risk to water security in Mount Lofty Ranges

Water quality impacts in the Mount Lofty Ranges (MLR) associated with post-fire sediment runoff into drinking water reservoirs has been identified as a risk to Adelaide's water security and requires careful management⁵. Increased severity of fires in water catchments of the MLR including commercial plantations could increase the probability of sediment movement by up to 52%⁵. Sediment barriers can reduce but not prevent post-fire charcoal rich sediment and debris reaching water reservoirs after significant rainfall events⁵.

To mitigate against increased water quality impacts reducing the severity of fires in water catchments is a key management requirement and is an important consideration when considering future fire suppression capacity to combat plantation fires in the MLR.

Increased risk associated with plantation fires under predicted climate change

Increased risk associated with plantation fires under predicted climate change scenarios is an important consideration when considering future fire suppression capacity to combat plantation fires. A national report on amplified fire risk associated with climate change in six plantation regions across Australia (Green Triangle, Murray Valley, Central Tablelands and Southeast Queensland) predicted the following based on a series of nation-wide workshops⁶:

Four of the six study areas, including the Green Triangle region will experience a significant increase in the occurrence of Very High to Extreme bushfire danger days. This factor is particularly significant as there is a very strong historical correlation of large plantation fire loss events with fire events occurring on days of Very High to Extreme fire danger. In all six study areas reductions in annual rainfall are predicted to be significantly more likely than increased annual rainfall. These changes are projected to be in combination with increased temperature and evaporation. All are associated with reduced seasonal rainfall in winter or spring, or both. These changes are likely to result in early starts to the fire season occurring more often. This has the potential to increase fire preparedness costs, and lengthen the period over which dry fuel conditions can coincide with severe fire weather. In three out of six study areas including the Green Triangle, rural population decline across most of the region is considered likely to present future problems for the resourcing of localised forest industry and volunteer bushfire brigades. This same concern was highlighted in a national study of community attitudes toward plantation forestry⁷. This existing trend may be further exacerbated if climate change reduces the economic viability of family farm enterprises in the drier parts of those regions.

Proximity of plantations to large semi-urban population growth centres is considered likely to see a continuation of 'tree-change' trends in which lands formerly under production agriculture are increasingly sub-divided into smaller lots (not viable for agricultural production) with land use converting to 'amenity' use or infrequently occupied by absentee owners, with the result that both woody and grassy vegetation cover will increase. An additional consequence of this trend is likely to be increased fire ignition which was also considered a potentially significant problem around Mount Gambier in the Green Triangle.

A concern expressed during workshops in all regions was declining profitability in the plantation forestry sector, and in particular the recent collapse of Managed Investment Scheme companies would likely result in fire protection expenditure reductions and therefore declining fire suppression capacity. This was seen to be occurring independently of climate change.

Community Gains

The South Australia Community in areas with significant commercial plantations will gain the following benefits from legislative reform:

- Reduced risk to life and property from plantation fires;

³ EconSearch (2008), The Timber Industry and Lower Limestone Coast Water Allocation Planning: Socio-Economic Aspects, Adelaide.

⁴ EconSearch (2010), Economic Impact of Timber Industry in Mount Lofty Ranges and Mid North Regions of South Australia 2008-09, Adelaide.

⁵ Morris R, Calliss S, Frizenchaf J, Blason M, Dragovich D, Henderson M and Ostendorf B (2008). Controlling sediment movement following bushfire- a case study in managing water quality, Mount Bold, South Australia. Proceedings of Water Down Under 2008 incorporating 31st Hydrology and Water Resources Symposium and 4th International Conference on Water Resources and Environment Research, 14-17 April 2008, Adelaide, Australia, 1937-1947.

⁶ Department of Agriculture, Fisheries and Forestry (2011). Report for climate change amplified plantation fire risk study. GHD

⁷ Williams, K. 2008. Community attitudes towards plantation forestry. CRC for Forestry Technical Bulletin 194. CRC for Forestry Hobart, Tasmania.

- Reduced burden on the CFS and ancillary organisations volunteer resources incurred in fighting plantation fires;
- Reduced severity of commercial plantation fires;
- Certainty that commercial forestry plantation owners will contribute fire suppression capability commensurate with the size of commercial plantation holdings within SA;
- High-level of collaboration between CFS and FIBs in suppression of fires;
- Reduced economic risk associated with losses of plantation due to fires;
- Job creation through provision of FIB personnel, equipment and service provisions; and
- Increased water supply security in the Mount Lofty Ranges.

How has the Bill been developed?

Considerable engagement targeted at CFS members, the Forestry industry and state government agencies has been undertaken during the development of the draft amendment Bill. The concept for the development of an *F&ES (Industry Brigades) Amendment Bill* was endorsed by state Cabinet in October 2015 following consideration of a Regulatory Impact Statement (RIS) including detailed cost benefit analysis and outline of engagement undertaken. Engagement included public release of a discussion paper which followed a workshop to develop discussion points held in the South East and a further a series of workshops across the key commercial plantation areas of SA including the Mount Lofty Ranges, South East and Mid North to discuss technical requirements of forestry industry brigades. The draft RIS and Cabinet Submission were also provided to all government agencies required under the agency referral requirements outlined in the SA Government "Better Regulation Handbook".

The CFS has worked closely with the Office of Parliamentary Council to develop the Amendment Bill which will provide for any possible requirements to consider regulation of further industries within SA in addition to forestry to establish industry fire brigades within Country SA into the future.

Support from the CFS

The CFS will support industry in its transition to compliance with requirements of Forestry Industry Brigades under the proposed legislative framework.

The CFS will provide industry the following:

- Access to training with CFS members to foster collaboration
- Access to equipment purchasing through CFS established contracts (e.g. communications).
- Integration into South Australian Computer Aided Dispatch System
- Development of a series of Forestry Industry Technical specifications in support of legislative framework

Key elements of the *Fire and Emergency Services (Industry Brigades) Bill 2016*

The guiding principle of the draft Bill is that it establishes "head power" to enable the CFS to require the formation and maintenance of industry brigades in areas of country SA based on a risk based approach. It is the immediate intention of the CFS to formulate Regulations under the *Fire and Emergency Services Regulations 2005* requiring the formation of Forestry Industry Brigades in regions with significant areas of commercially harvested forest plantations. This legislative framework will not only provide for a fair and equitable playing field but will provide clarity and certainty to the CFS, forestry industry and community as to ongoing provision and responsibilities for fire suppression in such regions. The regulatory framework also seeks to build on already strong affiliations between the forestry industry and the CFS and provide the community with the greatest level of fire suppression in areas with significant plantations through a collaborative approach.

It is not the intention of the CFS to formulate regulations, at this point in time, requiring the establishment of industry brigades by other industry sectors in SA. The structure of the Bill will not prevent such brigades already formed or to be formed into the future from being registered with the CFS and recognised under the *Fire and Emergency Services Act 2005*. Any future requirement for regulation of industry brigades outside the forestry sector will be considered on a risk basis as required and subject to parliamentary amendment of the *Fire and Emergency Services Regulations 2005*.

Clause-by-clause explanation of the *Fire and Emergency Services (Industry brigades) Amendment Bill 2016*

Below is a clause-by-clause explanation of the draft *Fire and Emergency Services (Industry Brigades) Amendment Bill* which is to be read alongside the draft Bill.

Part 1 Preliminary

Clause 1: Short title

Clause 1 names the Bill.

Clause 2: Commencement

Clause 2 provides that the proposed Act will come into operation on a day to be fixed by proclamation.

Clause 3: Amendment provisions

Clause 3 specifies that any reference to amendment of any other Act in Bill is there for enacted.

Part 2 Amendment of the *Fire and Emergency Services Act 2005*

Clause 4: Amendment of Section 3 Interpretation

Clause 4 provides specific explanations as necessary for the proper interpretation of the legislation.

Clause 5: Amendment of Section 68- Establishment of SACFS

Clause 5 provides for correction of repeated terms

Clause 6: Insertion of Part 4 Division 5A

Clause 6 provides for insertion of clauses 69A-69F after Part 4 Division 5 of Act

Clause 69A: Preliminary

Clause 69 A provides for insertion of specific explanations as necessary for proper interpretation of amended legislation.

Clause 69B: Designated areas for industry brigades

Clause 69B enables the Chief Officer of the SACFS to designate areas in country South Australia (not within a fires district), in which it is appropriate that industry brigades be established through gazettal. This will ensure the SACFS retains its current position as the primary agency responsible for fire outside of gazetted fire districts with the power to require establishment of industry brigades where appropriate. This clause also allows for variation of a designated area by the Chief Officer upon gazettal.

Clause 69C: Establishment of industry brigades

Clause 69C enables the Chief Officer to require a prescribed person in a designated area, at their own expense to form a suitable industry brigade for that area; and apply to the SACFS for registration of the industry brigade. It also requires the provision of such officers and members for the industry brigade as are determined by the SACFS and the provision and maintenance of the industry brigade with operational equipment for the prevention or suppression of fires, saving of life and protection of property at fires as is determined by the SACFS. This will provide legislative power for the SACFS to require a prescribed person in a designated area to form and maintain an appropriately staffed and equipped fire brigade and penalty provisions for instances of non-compliance.

Clause 69D: Registration of industry brigades

Clause 69D enables the Chief Officer of the SACFS to register an industry brigade upon application and enrol the officers and members of the brigade into the SACFS. This clause does not preclude the registration of an industry brigade should there be no legislative requirement for the formation of that brigade upon the request of the brigade to the CFS. Registration of Industry brigades with the SACFS will provide parity with other SACFS brigades and equal standing under the Act and Regulations.

Clause 69E: Chief Officer may give directions

Clause 69E (1)

This clause enables the Chief Officer of the CFS to give directions to the responsible person for an industry brigade relating to—

- (a) the supply of members of the industry brigade; and
- (b) the provision, operation, maintenance and inspection of any plant, equipment, apparatus or device of the industry brigade for use in the prevention or suppression of fires; and

(c) the responsibilities of the industry brigade in relation to fire prevention and suppression in the designated area, including directions—

(i) requiring immediate reporting of a fire or other emergency; and

(ii) requiring ongoing reporting of a fire or other emergency, in accordance with any procedures determined by the Chief Officer; and

(d) the requirements applying to the industry brigade in attending a fire; and

(e) the functions and duties of the industry brigade in relation to the prevention or mitigation of, or the means of dealing with, other emergencies; and

(f) the operations of the industry brigade, and any related organisational or administrative matters, including directions relating to the relationship between the industry brigade and SACFS organisations; and

(g) the training requirements that are appropriate for members of the industry brigade and the provision of reports on training provided; and

(h) the submission to the Chief Officer on an annual basis (before the commencement of the fire danger season) of a fire management plan; and

(i) any other matter the Chief Officer thinks fit.

Clause 69E (2)

This clause enables the Chief Officer to give directions to a member of an industry brigade in connection with the member's performance of his or her functions and duties as a member of the industry brigade.

Clause 69E (3)

This clause provides a penalty provision for instances of non-compliance

Clause 69F: Related matter

This clause prevents any claims for compensation against Crown for any notice, direction or requirement given under this Division, or on account of any act or omission undertaken or made in good faith in the exercise (or purported exercise) of a power under this Division.

Clause 7: Amendment of Section 70- Command structure

Clause 7 provides for amendment of section 70 to include reference to SACFS

Clause 8: Amendment of Section 97- Powers

Clause 8 provides for amendment of Section 97 to remove subsection (8) and (9) of section 97 which refer to powers of direction by South Australian Forestry Corporation personnel at fires within forest reserves.