

6 The future

(Proposals for institutional and legislative change to help create a more secure future)

A more unified and independent emergency services organisation

The ACT has two firefighting organisations—the ACT Fire Brigade and the ACT Bushfire Service.

The ACT Fire Brigade, which is made up of full-time, paid employees, is based in Canberra. Its primary role is to protect buildings and people in the city, but it has a number of other functions:

- assisting at road accidents and rescues
- attending to the spillage of hazardous materials and incidents involving chemical, biological and radiological agents
- dealing with grass fires and other fires within the built-up area
- providing an initial response to grass fires and other fires outside the fire season when Bushfire Service crews are not immediately available
- providing staff who can ‘cross over’ to bushfire tankers.

Like most similar organisations in Australia, the ACT Bushfire Service, is crewed primarily by volunteers. It does, however, have a small group of full-time, paid employees in senior management and administrative support positions as well as two brigades of personnel employed by the Department of Urban Services agencies responsible for forests and parks and Cityscape and Canberra Urban Parks and Places. These people fight fires as part of their duties. In the forests brigade, membership is part of normal duties for specific positions; the parks brigade consists of paid volunteers from within the organisation.

The primary role of the Bushfire Service is to deal with bush and grass fires outside the gazetted urban areas, although it does assist with bushfire suppression within the city boundary and help the land management agencies conduct controlled burns on public lands.

The equipment operated by the two services is very different. Large, expensive urban pumper vehicles designed for use in built-up areas are the main units used by the Fire Brigade. These vehicles do not have an off-road capability and they largely rely on access to water from street mains. They are designed to

deal with a fire in a single building or a confined group of buildings, where the pumper is stationary in a safe position and not exposed to the fire. In contrast, the Bushfire Service uses smaller vehicles that are designed to be taken off-road. They are therefore much more mobile than the city pumps and, because they cannot rely on access to water from street mains, they carry more water.

Reflecting the particular roles, the equipment and the techniques used, staff in the two firefighting organisations have differing skills and their training differs significantly.

Although preventing a fire's spread is often important with fires in buildings, the firefighting task in this situation is typically more static and surgical, requiring intensive attack using sophisticated, specialised equipment. As well as being conversant with these circumstances, urban firefighters must also be trained in techniques for entering burning buildings to rescue people and dealing with the threats of hazardous and highly flammable materials.

In contrast, bushfires and grass fires are more unpredictable targets, strongly affected by weather conditions, terrain, and the amount of flammable material in their path. Dealing with these fires calls for a range of skills that are, in some ways, broader and more basic—using different means to control or extinguish fires, coordinating efforts with units dispersed over sometimes wide areas, and using different methods of suppressing or containing fires, including back-burning and the construction of firebreaks.

These differences help to explain why distinct bush and urban fire services have developed in Australia.

The development of the emergency services institutional arrangements in the ACT has matched the growth and development of Canberra. When the federal capital was created in 1911, its population was under 2000. It took 50 years to reach 50 000. Since 1960 the population of Canberra has increased more than sixfold, to its present level of over 320 000; that is to say, until the 1960s Canberra was a small city occupying a relatively small portion of the Australian Capital Territory.

When the city was smaller, the bushfire risk to dwellings and other buildings was more manageable. As the city expanded and its suburbs pushed out into what was previously bushland or open country, the risks expanded commensurately and a higher premium was attached to the need for coordination of bush and urban firefighting efforts. This higher premium has been expressed institutionally in numerous ways, including the following:

- establishment of the Emergency Services Bureau in 1995, to better coordinate the response of urban and bushfire services, ambulance and other emergency services to emergency-related incidents
- co-location of the headquarters of the various emergency services at Curtin and establishment of seven joint depots with unified management and command arrangements
- introduction of the Emergency Management Act in 2000, to provide an up-to-date statutory basis for dealing with emergencies, including a management structure for coordinating the response to and recovery from such events.

A critical question that arose in the course of the Inquiry is whether the current emergency services machinery and organisational arrangements can be further evolved to offer the ACT and its people better protection and security from the threat of bushfire, which will inevitably recur.

In many instances the personnel, skills and equipment of the Fire Brigade or the Bushfire Service will be adequate to deal with the risk posed, without the need to call on the support of the other. But when bushfires are likely to threaten built-up areas the coordinated effort of both services will be needed. Additionally, when large bushfires occur the Fire Brigade should have greater capacity than it currently has.

In January 2003 the various fires in the ACT eventually became a single problem. Once they reached their full power in the conditions of 18 January, they demonstrated that they were beyond the strength and resources of those who courageously and tenaciously fought them. Some risks were contained; others could not be. Considering the speed, breadth and ferocity of the fires when they reached the city, it is surprising and fortunate that more people did not lose their lives.

Of course, fires know nothing of boundaries, and when there is a chance that they might develop to an extent even approaching the dire circumstances of 18 January, it is vital that all available resources can be optimally deployed to either subjugate them or reduce the threat.

The mechanisms for the coordination of efforts to combat the January fires worked reasonably well for most of the time, and the dedication and commitment of all those involved were of the highest order. As described in Chapter 2, the urban Fire Brigade relieved the Bushfire Service of the task of responding to

fires around the fringe of Canberra, so that the Bushfire Service could concentrate on the fires in the hills. Nevertheless, practically all fire-suppression activity before 17 January was handled by the Bushfire Service; it was not until 17 January that the urban Fire Brigade became directly involved.

It could be said that the urban Fire Brigade was waiting for the problem to come to it, so that it could apply its firefighting skills and specialised equipment to its primary task—extinguishing fires in buildings. When the fires reached the edge of the city, fire units within the boundaries, assisted by some bushfire units and many individuals who chose to stay, worked strenuously to suppress the fires in or threatening homes, and many were saved. By that time, though, the fires were so severe it was well beyond the Brigade's capacity to extinguish them. Indeed, it was probably beyond the capacity of any urban fire brigade in Australia.

As noted, the equipment, skills and abilities of staff in the Fire Brigade and the Bushfire Service are different. There are, however, significant overlaps in terms of their capacities; for example, Fire Brigade staff deal with bush and grass fires in the built-up areas and they can cross over to bushfire tankers. It is vital that in the future more urban Fire Brigade staff have sufficient skills and training to allow them to be deployed with their colleagues in the Bushfire Service to control or extinguish significant fires in the bush in the hope that risks to both the city and rural settlements and holdings will thereby be reduced.

The urban Fire Brigade's capacity to contribute to fighting fires outside the city was demonstrated when it assisted the Bushfire Service with back-burning operations at Tharwa and Tidbinbilla. This combined effort may well have saved Tharwa when fires moved through that area on the following day.

The January 2003 fire experience confirms the need for a relatively small community such as the ACT to have the capacity to mobilise all the local assets at its disposal when a crisis occurs. The institutional arrangements for provision of emergency services should be designed in such a way as to facilitate this.

There has been a sensible evolution towards this goal with the strengthening of coordination and planning and the benefits of headquarters co-location and sharing arrangements resulting from the creation of the Emergency Services Bureau. There remains, however, scope for these services to be better integrated. In the Inquiry's view, the next logical step in the evolution of emergency service management in the ACT should now be taken by fully integrating the services' operations.

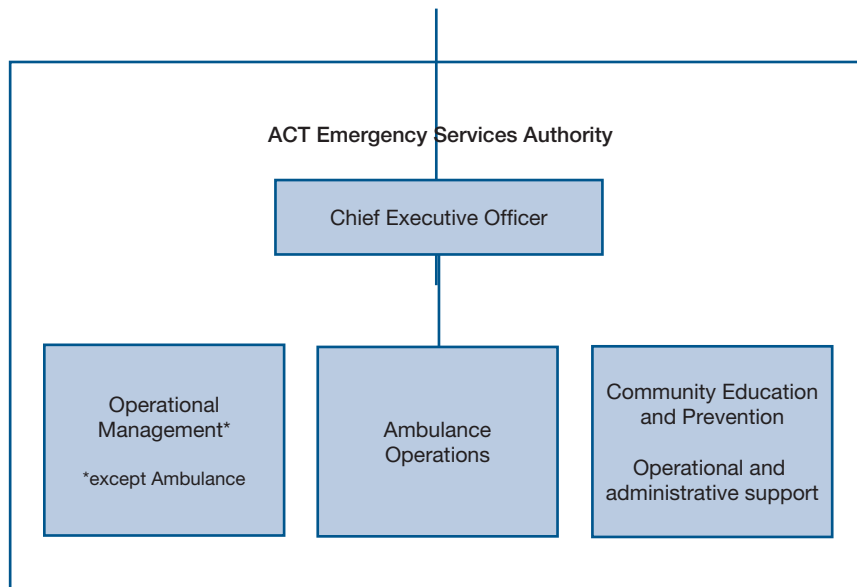
The question is: how can a more integrated and coordinated bush and urban fire effort best be achieved institutionally, in ways that preserve and enhance the distinct skills and abilities of both fire services, increase their combined power, and allow them to work more effectively with other related emergency services?

The Inquiry concluded that these objectives can best be achieved through the creation of a new statutory authority to replace the Emergency Services Bureau. This new authority would have the following characteristics:

- It would be separate from and independent of any department of state and would be outside the public service.
- It would be responsible for the overall strategic direction, management and operational control of the ACT Bushfire Service, the ACT Fire Brigade, the ACT Ambulance Service and ACT Emergency Services.
- It would report directly to the Minister responsible for emergency services.
- It would be headed by a full-time Chief Executive Officer.
- It would be structured in such a way as to
 - maximise the opportunities to improve the operational effectiveness and flexibility of all of the emergency services organisations
 - acknowledge the upgraded emphasis on community education and information and media relations
 - retain a degree of operational separation for the Ambulance Service, in recognition of the extremely limited opportunities it has for cross-over with other emergency service agencies.
- It would provide common planning, administrative and logistical support to all its component parts and would have a common communications facility, command and control centre, and headquarters.

The basic structure of the proposed Authority is shown in functional groupings in Figure 6.

Figure 6
Minister responsible for Emergency Services



Legislation is needed to support the establishment of the new Authority. Because the existing legislative instruments that create the urban fire brigade (the *Fire Brigade Act 1957* and the *Fire Brigade Administration Act 1974*), the Bushfire Service (the *Bushfire Act 1936*), the Ambulance Service and ACT Emergency Services (the *Emergency Management Act 1999*) will all require amendment and because a number of the provisions in this body of legislation are out of date or needing revision, a major exercise will be involved in developing modern legislation consistent with contemporary legislative practice.

In order to avoid delay in setting up the new Authority, it is proposed that if there is support for creation of such a body, an enabling piece of legislation be developed—with the minimum amount of prescription necessary to support its establishment, but with provisions to permit the new authority to be deemed the relevant authority for the purposes of these other Acts.

This would assist in getting the authority under way with a minimum of delay, and would enable it to contribute to the review of the existing legislation. There would be scope to simplify the legal framework considerably in time, but in the meantime the benefits that should be gained from integration of the services in this fashion, can start to be harvested more quickly.

A new and independent authority along these lines offers the following benefits:

- a stronger, more cohesive strategic and operational direction for fire, ambulance and emergency services
- decision-making authority resting more in the hands of those with the technical and specialist experience, skills and abilities to give it practical effect
- a unity of command that is currently lacking in the emergency services area
- a stronger operational culture for all its components by virtue of removing its functions from the public service environment
- direct access to the relevant Minister
- improved operational ties and cooperation between the Bushfire Service and the Fire Brigade through the creation of a pool of firefighters who will have the opportunity to be more broadly skilled, in both urban and rural firefighting disciplines. This will increase the flexibility to use personnel in scaling-up during a large crisis, as well as increase the options available for an initial attack on bushfires
- a better working environment for the members of all services, both full-time employees and volunteers, and greater identification of one with the other.

The proposed Authority would bring with it the incidental prospect of some efficiencies. This is not a specific objective behind the recommendation; it would therefore be appropriate for the new Authority to be able to retain any savings it is able to realise as a result of different management arrangements.

As far as the two fire services are concerned, in the vast majority of cases it could be expected they would continue to deal with specific incidents in much the same way as they now do. In more serious circumstances, though—when bushfires are likely to threaten buildings in the urban area or when urban fires might cause other fires in the bush—operations could be expected to be more joint and the boundaries of responsibility regarded more flexibly, so that efforts to eliminate the danger can be maximised.

It will be a particular objective of the head of the Authority to develop a common operational culture within the firefighting elements of the Authority.

Although the ACT must devise fire services that best suit its needs, experience and developments in the Australian states provide a measure of reassurance in relation to a recommendation that a new, independent statutory authority be established. For example:

- Most fire services are established outside public service structures.
- As urban encroachment has become a pronounced feature of the expansion of most capital cities, there has been a gradual move towards some multi-skilling of staff in most fire services.
- Both the Tasmanian Fire Service and the Country Fire Authority in Victoria are examples of the successful merger of bush and urban fire services; they would be good models to follow. In most other states stronger links between the fire services have progressively been developed at higher management levels, although without amalgamation.

It is worth noting that the land area of the ACT is about 3.5 per cent of that of Tasmania and about 1 per cent of that of Victoria. Moreover, there is only one level of government in the ACT, whereas in all states there are both state and local levels of government. These facts add weight to the wisdom of moving towards full integration in the ACT.

The proposed Authority, through its direct access to the Minister, would be able to provide advice to government on matters that directly affect its operational responsibilities. It will still be necessary, though, for the department that supports the Minister responsible for emergency services to have a small policy-advising cell covering the government's interests in the shape and form of the formal emergency management arrangements across the Territory and in the Territory's involvement with the Commonwealth and the other state governments in planning and exercising the national emergency management and anti-terrorism plans.

The position of Executive Director and its statutory responsibilities under the Emergency Management Act, are, with only very minor modification, ones that in the future should be undertaken in the relevant department. Upon the abolition of the Emergency Services Bureau, the Executive Director position should transfer to the department and continue to undertake the planning, monitoring and policy formulation functions envisaged in the present Act.

Consideration will need to be given to the role of the Bush Fire Council if the Authority is established along the lines proposed. This is dealt with later in this chapter in the section entitled, 'The *Bushfire Act 1936* and other legislation'.

Consolidating separate functions into a single organisation is never easy. Long-held and valued cultural norms and ways of doing things are inevitably affected. This would need to be dealt with directly, sympathetically and realistically. The professionalism and esprit de corps of the full-time employed workforce and the strong sense of community service and motivation of volunteers must be protected and encouraged, so that in combination the two groups make up something greater than they do separately.

In the longer term it should be remembered that fighting bushfires is an essential public service which is needed in most parts of Australia, and our society's ability to deal with emergencies will always be hindered so long as responsibility is spread among a multiplicity of authorities. We think an umbrella organisation able to draw members as needed from all existing control authorities, and with statutory powers to call upon Commonwealth and interstate resources when emergency conditions exist across borders, should be the way to go.

— Queanbeyan resident.

It cannot be expected that all this will happen overnight: it will take time, dedicated resources and effort to bring it about. It is one thing to establish a new organisation through legislation, to define its organisation chart and to staff it; it is quite another thing to make it work well and allow it to realise the potential envisaged for it. This would be a special initial responsibility of the person appointed as the inaugural Chief Executive Officer and their senior team, with the support and backing of the ACT Government and the relevant Minister.

The Inquiry suggests that the Chief Executive Officer position be advertised and filled on a contract basis before the passage of the enabling legislation, to begin the process of managing the transition to a new structure as soon as possible.

It would help if the Government assured the existing staff of the emergency service bodies that creation of a statutory authority would not prejudice the rights of tenure they currently enjoy. This would allay personal fears about the future as well as obviate the possibility of any suggestion that the proposal is a disguised cost-cutting exercise. Volunteers would also appreciate being given an early assurance that their role will not diminish in any way under

the new arrangements. Indeed, the new arrangements will probably create greater opportunities for career and personal development, for both employed staff and volunteers.

Because a recommendation to create a new authority will generate expectations, and a degree of uncertainty in the minds of some staff and volunteers, it is highly desirable that the Government reach an 'in principle' decision on the recommendation as quickly as possible.

It would also be of substantial benefit if there were bipartisan political support for the proposal.

Recommendations

- The separate organisations that make up the emergency services group, that is coordinated by the Emergency Services Bureau, and the associated arrangements, should be replaced by a statutory authority, the ACT Emergency Services Authority.
- The proposed Authority should be headed by a Chief Executive Officer.
- The position of Chief Executive Officer should be advertised and filled on a contract basis before the enactment of the legislation. In this way the person appointed can contribute to formulating the legislation and the transition process can begin without delay.
- Upon the abolition of the Emergency Services Bureau, a small policy formulation unit should be established in the department that supports the Minister responsible for emergency management.

The Emergency Management Act

The current organisational arrangements in the emergency services area arose from a series of decisions taken in the early 1990s with the purpose of strengthening coordination and cooperation between the various emergency service organisations. This reflected similar policy directions in most other Australian states.

A program of major change began, the central elements of which involved the following:

- a strong focus on creating a top management group comprising the executive heads of the various bodies involved in emergency management—the police, the urban and rural fire brigades, the emergency services body, and the Ambulance Service. The heads of the government agencies responsible for managing forests and national and Territory parks were also included
- the collective involvement of these agencies in emergency management, encompassing an all-hazards approach to disaster planning
- a consultative approach to change through various mechanisms that were established
- a commitment to achieving some efficiency improvements in the process.

The Emergency Services Bureau was formed to provide an overarching management structure to lead the coordination and strategic planning of all emergency service activities. It was located at a former school in Curtin, and the chief executives of the urban fire brigade, the bushfire and emergency services organisation and the Ambulance Service were co-located there. The intention was to strengthen the capacity for overall coordination and planning and to achieve greater synthesis between these hitherto separate organisational elements. The Bureau was headed by an Executive Director, whose role was to take the lead in providing strategic direction.

A common command and control centre was established at the Curtin complex for the three separate services, whose operational command was, and remains, the responsibility of each of the component chiefs.

ACT Policing—the other important element in the ACT emergency management structure—is not represented at Curtin, but it is included as an equal partner in all the planning arrangements. ACT Policing headquarters is at the

Winchester Centre in Belconnen, some 10 kilometres away. For reasons of practicality, the Police operate their own command and control centre there.

The passage of the *Emergency Management Act 1999*, which came into operation on 1 January 2000, formalised these arrangements and set out the emergency management support mechanisms, including providing the legal framework for the development of the ACT Emergency Plan, the establishment of high-level arrangements covering the management of emergencies, and arrangements associated with the declaration of a state of emergency in the Territory.

The Act provides that on a day-to-day basis the Executive Director of ESB is responsible for emergency management in the ACT. Among the Executive Director's responsibilities are conducting vulnerability analyses, providing education programs and coordinating public information, developing preparedness plans, and establishing and monitoring communications networks.

The Emergency Plan is developed through an Emergency Management Committee, chaired by the ACT Chief Police Officer and consisting of the executive heads of the major ACT government departments and agencies. Meetings are held regularly and are usually attended by the executive heads themselves.

The Emergency Plan contains a series of sub-plans dealing with different aspects of the management of emergencies—such as medical, flood, hazardous materials, and exotic animal diseases—but, interestingly, there is no sub-plan for bushfire emergencies, presumably because, unlike other kinds of emergencies, management of bushfire-related emergencies is already well covered from the legislative, policy and management viewpoints by the *Bushfire Act 1936* and associated arrangements.

At government level, the Emergency Plan and amendments to it are approved by the Minister responsible for emergency management.

In a serious event, the Chief Minister may declare by instrument a state of emergency in the ACT. Considerations for such a declaration may be that the event or situation:

- has the potential to overwhelm existing personnel, facilities, equipment and capabilities
- requires a significant and coordinated response

- is or could be an escalating multi-agency, multi-jurisdiction event
- could disrupt both the structure and function of the community
- requires emergency powers to manage it.

The Emergency Management Act provides that when a state of emergency is declared the Emergency Plan is automatically activated and a Territory Controller is appointed to manage the emergency in accordance with the Plan. The ACT Chief Police Officer automatically becomes the Territory Controller.

The Minister can assign to the Territory Controller a number of functions, among them managing the response by ensuring that agencies, organisations, people and other resources are deployed appropriately and coordinating the immediate recovery to restore the ACT to normal operations. The Minister can also assign to the Territory Controller wide-ranging powers to reduce the risk to life and property in an emergency; this includes the power to evacuate people from an emergency area.

The Act provides that, at the instigation of the Territory Controller and with the approval of the Minister an Alternate Controller can also be appointed; this office has the same functions and powers as that of Controller.

During an emergency, ACT government agencies continue to operate within the boundaries of their legislated or agreed roles and responsibilities. However, the Controller has authority to direct the head of an agency, including an emergency service agency, to carry out response or recovery operations. The agency head determines how the action will be taken.

The basic purpose of these arrangements is to replace the normal, and sometimes complex, government administrative arrangements that involve many different players—Ministers, departmental and agency heads, Cabinet, interdepartmental committees, and so on—with much simpler and more direct decision-making processes and to permit the assumption of a range of special coercive powers that would not normally be able to be exercised by an official without being accompanied by a range of checks and balances. The management of emergencies often requires quick and firm decisions, which would be substantially inhibited if it were necessary to adhere to normal governmental processes.

Declaration of a state of emergency

At 2.45 pm on 18 January 2003, the Chief Minister declared a state of emergency throughout the ACT. This was the first occasion in the Territory's history that such a declaration had been made. The immediate effect was to vest in the Chief Police Officer of the ACT, Mr John Murray, the special powers of Territory Controller under the Emergency Management Act. Shortly after, with the approval of the Chief Minister, the Controller appointed Mr Peter Lucas Smith, the Director of ACT Bushfire and Emergency Services, to be the Alternate Controller. These actions were in accord with the provisions of the Act and were designed to meet the Chief Minister's wish that Mr Lucas Smith's responsibility for operational management of the fires continue uninterrupted, while extending to him the range of additional coercive and directional powers under the Act should they need to be exercised.

Declaration of the state of emergency also had an important symbolic value in publicising the extreme seriousness of the threat and putting the community on notice that a very significant event was happening. This was an incidental consequence, however: it was explained to the Inquiry that the main motivation in declaring the state of emergency was to have available the power under the Act to evacuate people from the emergency area if this became necessary. In the event, the special evacuation powers were not used. The Police relied on their traditional Common Law powers in seeking to evacuate people, as they had done so in the 2001 fires.

As subsequent events demonstrated, the appointment of an Alternate Controller exposed a weakness in the Act. The Chief Police Officer was of the view that his powers as Controller were not extinguished upon the appointment of the Alternate Controller and that they both had available to them the same array of powers, provided by the Act. The evacuation power was important to the Chief Police Officer since it was the power most likely to be of greatest significance if conditions deteriorated. He had legal advice that supported his view.

Although it may be that the Act, as it is written, legally allows this to happen, the Inquiry is of the view that it was never contemplated that more than one person might be in charge of the management of an emergency at a particular point in time. The Inquiry considers it more likely that the Alternate Controller provision was intended to provide the flexibility of permitting, with government approval, the appointment of a person other than the Chief Police Officer to in effect be the Controller if the circumstances warranted it—as appeared to be the case on 18 January 2003.

It seems highly improbable that it was envisaged that two 'El Supremos' could exist at the same time, with identical powers, in the absence of any reference in the Act as to how they would relate to each other and how any disagreement between them would be resolved.

The Controller (or the Alternate Controller if one is appointed) is required to establish a Management Executive as soon as practicable after the declaration of a state of emergency, to provide support in managing the crisis. The members of the Emergency Management Committee and anyone else the Controller (or Alternate Controller) considers appropriate, make up the Management Executive.

In the event, the Chief Police Officer saw his role as concentrating on the recovery task, leaving Mr Lucas Smith to devote his attention to managing the firefighting operation. This arrangement was agreed at a meeting of the Management Executive, chaired by the Alternate Controller on the morning of 19 January. This was a very sensible sharing of responsibility in the circumstances, but it still created some uncertainties and vagueness in terms of precise roles and the relationship between these two key players.

On 20 January the Chief Police Officer convened at police headquarters in Belconnen, the first of a subsequent series of daily meetings of what was described in some contexts as the Management Executive and in others as the Emergency Management Committee, to deal with matters associated with the recovery task. The accurate identification of the committee is of more than semantic significance because of the different purposes each have under the Emergency Management Act.

The Emergency Management Executive exists to provide close support to the Territory Controller (or the Alternate Controller when one is appointed) whereas the Emergency Management Committee is a permanent committee also set up under the Emergency Management Act, with an ongoing planning and policy formulation role unrelated to the declaration of a state of emergency. The Chief Police Officer is the permanent chair of the Emergency Management Committee, whereas the Management Executive exists only while there is a state of emergency. If it was in this latter role that the Committee sat, for the Committee to have been properly constituted there needs to be acceptance of the validity of two Controllers functioning at the same time, with the same formal powers under the Act.

Whatever the legal position, the convening of the Committee while the state of emergency was in force—involving as it did basically the same people who needed to be available at Curtin for Management Executive meetings convened by Mr Lucas Smith—necessitated travel between the two centres at a difficult time. It also raised questions about the relationship between the two centres and the respective roles of the Controller and the Alternate Controller and added another layer of ambiguity to the management arrangements.

The Inquiry is not suggesting that the matters that were discussed were not germane to the situation and that they did not need to be dealt with at the time. What it does point out though, is that the structure of the Act and the purpose and intent of its provisions need to be clarified. An unambiguous line of authority and description of roles and responsibilities should be contained in the legislation, so that in the pressure of a crisis, leadership and operational decision making can proceed with the maximum possible certainty and clarity.

For the future, it is especially important to remove any ambiguity in the Act about the role of an Alternate Controller. The principle the Inquiry believes should be followed is that, where it is necessary to declare a state of emergency and to introduce the special management arrangements that follow, government should have full discretion in appointing as Controller a person who is considered best qualified to take the leadership role, given the character of the emergency and the demands likely to be involved. It may be the Chief Police Officer; it may be the head of the lead agency, having regard to the nature of the emergency; or it may be someone from elsewhere inside or outside government. To provide the maximum flexibility in choice of the best person for the particular task, the Inquiry believes that the option and the responsibility for making this choice should rest with the government of the day and not be pre-determined by the Act. There is no difficulty with a provision in the Act that nominates the Chief Police Officer, ‘subject to the discretion of the Minister (that is, the government) to determine otherwise’.

The appointed Controller should then have the capacity to delegate his or her special powers to others to assist in the management of parts of the emergency and for them to have, by delegation, the capacity to exercise whichever of the available powers are necessary for that purpose.

The Inquiry has less concern about leaving the ACT Chief Police Officer as chair of the Emergency Management Committee, which is essentially an ongoing planning body that carries out its tasks away from the management of a specific emergency. It is the role of the Management Executive to provide assistance to

the Controller during an actual emergency—not the Emergency Management Committee, which has (or should have) a distinct and different role under the Act, notwithstanding the close similarity in the membership of both groups.

The Chief Police Officer submitted to the Inquiry that since the events of September 11, the link between law enforcement and consequent management of large-scale natural disasters or terrorist incidents is seen to be artificial and counter-productive. He pointed to the inclusion of Emergency Management Australia on the National Counter Terrorism Committee as an indication of this reasoning.

The value of developing the capacity of ACT Policing's Winchester Centre as a multi-functional operational command and control facility for big emergencies, whatever their character (including for the ACT's involvement in counter terrorism incidents and exercises), is also seen by the Chief Police Officer as an option government should consider.

He informed the Inquiry that flexibility in appointing a Controller on a case-by-case basis may result in a system that provides little scope for rehearsed or well-exercised channels of command and control. Such a scenario, he claimed, may have major impacts on the fluid operation of agencies and on cooperation during a major emergency, especially between police and other services, at a time when the community least needs confusion in its services.

Against this background the Chief Police Officer argued that his role under the Emergency Management Act should not change and that while clarification of the operation of parts of the Act was needed, the capacity for the Territory Controller to continue to exercise powers in a state of emergency, notwithstanding the appointment of an Alternate Controller, should also be confirmed.

These are valid considerations.

Because the Emergency Management Committee is a planning body that involves many of the heads of the ACT government service, and because its role is to formulate and refine a robust Emergency Plan, it could be argued that the appropriate person to chair the committee is the Chief Executive of either the Chief Minister's Department or the Department of Justice and Community Safety (the department responsible for supporting the Minister for Police and Emergency Services).

On balance, the Inquiry's preference would be for the Emergency Management Committee to be chaired by the head of the Department of Justice and Community Safety since the role is in keeping with the policy-advising role of that official and it emphasises that the function of the Committee is to help develop and monitor the Territory's emergency management structure and arrangements from a policy standpoint. In other words, its function is policy development and support to government, rather than being basically operationally focused.

Selection of the chair is a matter for government.

A tiered approach to emergencies

It was suggested to the Inquiry that it would be helpful if the Emergency Management Act contained provisions for notification of the escalation of an emergency through different stages or levels. This was considered to offer more options for a government to choose differing arrangements appropriate to emergencies of varying levels of seriousness or as a particular emergency either increases or decreases in intensity.

Some states have emergency management legislation of this kind; South Australia is an example. The declaration of a state of emergency is an 'all or nothing' proposition in the ACT. The value of a more graduated framework, with different arrangements for management and the exercise of powers appropriate to the different levels of emergency events, has appeal.

Care is needed, however, to avoid blurring the distinctions between different degrees of emergency, which could create confusion within the community. It would also be unfortunate if the psychological value and impact that the declaration of a state of emergency currently has in alerting the community, were to be weakened.

Nevertheless, emergencies come in many guises and can change character during their course. The Inquiry concluded that a government should have the option of being able to select the type of management structure it considers best fits the situation at hand. The Inquiry therefore favours amendment of the Act to allow more flexibility of choice in this regard.

Executive government authority during a state of emergency

It was also suggested to the Inquiry that the current Act does not sufficiently recognise the continuing role and responsibility of the executive government during a state of emergency. In the Inquiry's view this is worth reconsidering when examining how the Act stood up to the bushfire crisis.

Governments are elected to govern and—short of situations where there is a total breakdown of authority, when normal governmental institutions and arrangements are unable to function—the handing across of political control and authority to a public official to manage an emergency, with substantial coercive powers and few checks and balances, should normally be contemplated only in the most extreme of situations. This is probably why in the state government arena the extant powers to declare a state of emergency have rarely been exercised. They have never been exercised in New South Wales, for example, despite the occurrence of numerous large-scale emergencies such as severe floods, earthquakes, major bush fires and railway disasters.

Although the declaration of a state of emergency under ACT legislation does not completely remove the government's capacity to influence the manner in which the emergency is managed—for example, the Act allows the Minister to give a written direction to the Controller—it is the Inquiry's view that the design and expression of the Act would benefit from a re-think. The aim would be to see whether it is possible to achieve a better balance between acknowledging the executive government's retention of ultimate power and authority while allowing an appointed official considerable discretion to manage a situation quickly and decisively, unhindered by normal bureaucratic controls.

Other provisions of the Act

Apart from the uncertainties associated with the appointment of an Alternate Controller, the opportunity to provide for a graduated scaling of emergency management arrangements, and the need for stronger recognition of the continuing responsibility of the executive government during declared states of emergency, the provisions of the Emergency Management Act, covering the way in which preparation and planning for emergencies occurs, generally worked very well and confirmed that in other respects the Act is not in need of change.

Recommendation

The ACT's *Emergency Management Act 1999* should be reviewed with the aim of preparing legislation that provides as follows:

- In a declared state of emergency, the ACT Government should have the capacity to appoint as Territory Controller a person who is considered to be best qualified to take this role, having regard to the nature of the emergency or event giving rise to the declaration.
- The Controller shall have the capacity to delegate to a nominated person any or all of the powers that have been assigned under the instrument of appointment as Controller.
- The chair of the Emergency Management Committee shall be appointed by the Minister responsible for the administration of the Emergency Management Act.
- There should be a capacity for different levels of special powers and the capacity for escalation to be invoked to assist in the management of emergencies, having regard to the differing scales or types of emergencies that may arise or the changing nature of an emergency during its course.

The Bushfire Act and other legislation

The *Bushfire Act 1936* (as amended) expresses in legislative form the fire management arrangements that have evolved in the ACT since the original enactment in 1936. It is, however, out of date in a number of respects, and there is general acknowledgment that it needs revision and re-expression in a contemporary context. The Government's consideration of this report and other matters associated with the January 2003 bushfires should provide the stimulus for a major overhaul of the legal framework governing the manner in which the ACT responds to its obligations to protect the Territory, its citizens and assets, and the natural environment held in its trust.

The Bush Fire Council

The Bush Fire Council was set up in 1939, following the damaging bushfires that occurred in that year. It has a statutory existence under the Bushfire Act with responsibility to take action it considers necessary to 'prevent or control the outbreak or spread of fire and to protect from the outbreak or spread of fire life and property in any part of the ACT other than a part that is a built-up area'. It also is empowered to 'acquire firefighting equipment, employ workers, organise fire prevention and control associations and distribute literature relating to fire prevention and control'.

Despite the appearance that the Council is the controlling body of bushfire organisations in the ACT, for many years it has not performed this role. After some years of uncertainty as to its role, the Council in recent years, with the agreement of successive governments, has developed into an advisory body that undertakes a program of research activities and prepares reports on selected topics of interest and concern to the Bushfire Service. Its role has been defined as 'to provide strategic information rich, expert advice on bushfire matters for the benefit of the people of the ACT'.

Its members all accept office on a voluntary basis and comprise a range of people with varying expertise in different matters of relevance to bushfire management.

In its submission to the Inquiry ESB acknowledged the need to review and modernise the role of the Council and to have the legislation amended so as to more accurately reflect the council's current (or future) role. The Council also agrees with this view. ESB is supportive of the Council and believes it has been operating very successfully in its current advisory capacity.

The Inquiry considers it important that if a new authority is to be established, as is recommended, the Council should continue to exist in its current role and the Chief Executive Officer of the Authority should have the discretion to establish other advisory bodies to support the Authority's activities. Bodies of this kind that tap outside expertise and strengthen broader relationships are important to an organisation that has close links to the community through its reliance on volunteer support and its charter to build a strong partnership with the community in developing new fire-protection and mitigation strategies.

Recommendation

The *Bushfire Act 1936* should be reviewed and redesigned to reflect contemporary needs, and the ACT Bush Fire Council's role should be re-expressed in the Act to more accurately describe its current activity.

Review of emergency management legislation generally

Establishment of the proposed Authority would generate the need for more legislative change—the Emergency Management Act, the Bushfire Act, the Fire Brigade and Fire Brigade Administration Acts, would all need to be changed. This should present an opportunity to review all the relevant provisions. Placing those that have a continuing validity into a single emergency management act would seem to the Inquiry to be a desirable outcome to work towards.

Bushfires and land planning

Notwithstanding the set of circumstances that combined to create bushfires of such ferocity on 18 January 2003, the speed and ease with which the fires travelled across the tract of land between the Murrumbidgee River and the city surprised many experienced observers. Corridors of highly volatile vegetation, such as the Stromlo pine plantation, obviously aided the passage of the fires, but even paddocks and pasture land with very little apparent surface vegetation as a result of the drought failed to cause the fires to falter.

The physics of the fires and how they became such a lethal force is still being studied by experts. One aspect that does seem clear, though, is that the bulk of the property damage was caused by airborne embers¹ resulting from the huge amount of combustible material. Embers were being spread widely and quickly by an extremely strong wind, which most probably had been generated by the enormous convection column that formed when the fires were at their fiercest.

If this explanation is accepted, the wisdom of having a pine plantation—or any kind of plantation, for that matter—very close to the edge of a large city is highly questionable. It is recognised, of course, that the Stromlo pine plantation's existence precedes by a number of years the extension of the urban edge of Canberra to Weston Creek. The homes along Warragamba Avenue and Eucumbene Drive in Duffy and Holder, which bore the brunt of the fires coming out of the plantation, were about 100 metres from the plantation. On any reasonable test, this would appear to be an adequate distance; in New South Wales for example, the laws relating to bushfire-prone areas that attract more stringent building requirements exclude all properties more than 100 metres from the edge of the adjoining forest or bush.

Although the danger of spot fires is greater close to a fire front, embers are known to be capable of starting spot fires large distances away from the fire source. When gale-force winds or convection currents are present, spotting has been known to occur up to 35 kilometres away.² Eucalypt forests are notorious for being the world's most dangerous forests in terms of spreading spot fires. Pine trees also spot dangerously, although over shorter distances than eucalypts.³

Spotting over long distances is a phenomenon connected with bushfires that crown—that is, where fire reaches the tree canopy. This is more likely to occur where trees are closely packed, as in dense forest or in plantations. Fires are generally less likely to crown in a sparsely wooded landscape, with a

consequent likelihood that spotting, if it results from surface fires, will only extend over quite short distances. In a PhD thesis dealing with spotting, Peter Ellis, from the CSIRO Division of Forestry and Forest Products, estimated that when flames from a surface fire are less than 1 metre high there will be no spotting; with flames 2.5 metres high, spot fires can start up to 20 metres away.⁴

The most serious bushfire threats are likely to continue to come from the north-west and west of Canberra because of the weather conditions that generally prevail during periods of high fire danger and the nature of the bushland vegetation in the Brindabella Range and surrounds.

Against this background, the Inquiry considers there are some principles the authorities should keep in mind when determining and planning land use between the vulnerable western perimeter of Canberra and the foothills of the mountains further west. One of the primary planning considerations should be to treat this area in such a way as to maximise its value as a fire-abatement zone. In this way, land use will be consistent with the aim of providing a protective belt around the city as a central part of a fire-mitigation strategy. By deliberately creating an area where fires can be attacked more easily and where the intensity of the fires can be moderated by the relative absence of high-density fuel loads—which is difficult or impossible to achieve in the more mountainous, forested country—Canberra’s vital assets will be better protected.

Much of the country to the west of the city is already being used for purposes consistent with this aim—for example, grazing properties, equestrian parks, agistment paddocks, golf courses and playing fields. What needs to be done is to fill in the gaps with a sensitivity to the value of the proposed zone as a fire-suppressant area that is more effective than the current landscape.

The landscaping of the zone should be in sympathy with the zone’s purpose, as well as with its public and private uses. For example, tree plantings can serve a positive purpose from a fire-mitigation viewpoint if the species used and the location are carefully selected. Some tree species can slow the rate of spread of bushfires, and dense foliage can trap radiant heat and stop the spread of burning embers, thus limiting a fire’s reach and intensity.

In the Inquiry’s view, a number of principles warrant consideration before any substantial new structures are proposed for or land use decisions are taken in relation to the area north-west and west of Canberra.

A bushfire-abatement zone: planning principles

1. The history of bushfire behaviour in the ACT, and the knowledge that Canberra will continue to be exposed to bushfire and grass fire threats of varying degrees of severity on a fairly regular basis, should be factored into future planning decisions affecting the use of land on the vulnerable western and north-western edge of the city.
2. A fire-abatement zone to the west and north-west of the city should be identified for use as a planning tool when considering future development proposals that fall within the zone. The zone should be defined and gazetted after further detailed examination.⁵
3. The ACT bushfire authorities should have an opportunity to express their views on the risk of bushfire impacts and the degree of seriousness of the threat associated with proposed new land use developments in the zone.
4. High-bushfire risk developments, such as commercial plantations, should not be located in the zone.
5. Suitably developed recreational parks and woodlands could be permitted, provided that the density and nature of tree planting and vegetative growth are such as to minimise the risk of crown-fire spotting should a fire break out in extreme conditions. The choice of flora planted in the zone should be made having regard to the species' value in complementing the fire-mitigation purpose of the zone.
6. The abatement zone should be a declared bushfire-prone area. Public and private buildings and infrastructure constructed in the zone should conform to the requirements of the Building Code of Australia, which contains standards for bushfire-prone areas.
7. All public areas in the zone should be subjected to a rigorous maintenance regime, to minimise the risk of uncontrolled fire. The Bushfire Fuel Management Plan should be the vehicle for government endorsement of the program of fuel management, to be carried out in the zone by public land managers. Private leaseholders are already obliged to enter into land management agreements covering, among other things, fuel management plans. These agreements should be the vehicle for inclusion of any additional requirements that are needed following the introduction of a fire-abatement zone planning concept. The fuel management plan should reflect a stepping-up of the scale and intensity of fuel reduction where the zone approaches the edge of Canberra.

8. Any proposal for an extension of the city's boundary or any other residential or business development in the zone should specifically take account of, and publish the results of, an assessment of the bushfire risks associated with the development—noting that any decision to approve a change to the Territory Plan is a disallowable instrument and would therefore open the change up to scrutiny by the Legislative Assembly.



The impact of the fires and tornado strength winds on pine forest. Photo courtesy Pat Barling.

If the abatement zone is declared a bushfire-prone area, the Inquiry considers there is no need to place a similar declaration on the western and north-western outer suburbs. Undoubtedly, the outer suburbs face a greater threat than the rest of the city—particularly the first couple of streets closest to the bushland—but the Inquiry favours an approach whereby recommendations are made to householders in relation to desirable building features and garden landscaping, rather than creating a mandatory building and landscaping code of practice.

The question of whether existing areas of Canberra should be declared bushfire-prone is being considered as part of the ACT Planning Authority's Urban Edge Review. That Review might be taking into account factors this Inquiry has not specifically considered, since there has been no opportunity to consult on this matter. However, the Inquiry draws the Review's attention to the comments made here.

The Building Code of Australia is being reviewed following the 2003 fire events in south-eastern Australia. That review is due for completion by September 2003 and the results should be published before the coming fire season. Any recommended changes should be acted upon in the ACT as a matter of course.

Adoption of a planning approach that is more bushfire conscious should not impose unreasonable restrictions on government or the community in determining a mixture of land uses that satisfy the ACT's economic, recreational and environmental needs. The aim is to achieve a comfortable synthesis between the different objectives, which, in the Inquiry's view, are not necessarily incompatible.

Finally, similar measures have some relevance to the north, east and south of Canberra. Although serious fires are less likely to affect these areas and measures may not need to be as rigorous as those proposed for the west and north-west, it would be unwise to ignore the risks of bush or grass fire affecting all approaches to Canberra.

Recommendations

- A fire-abatement zone should be defined between the north-west and western perimeter of Canberra and the Murrumbidgee River and the foothills of the Brindabella Range.
- A set of Bushfire Protection Planning Principles in relation to fire mitigation and suppression should be adopted and applied to future developments in the designated abatement zone.
- The abatement zone should be declared a bushfire-prone area, and the requirements of the Building Code of Australia—in particular, its standards for bushfire-prone areas—should be applied to all future developments in the zone.

Notes

- 1 Embers are small, glowing particles, often in dense aggregations. Large, usually isolated particles, often flaming, are sometimes termed 'burning brands'. These can be responsible for spot fires that ignite many kilometres from the source. For the purposes of this Inquiry, 'embers' covers both forms.
- 2 Webster, J 2000, *The Complete Bushfire Safety Book*, 3rd edn, Random House, Sydney, p. 15.
- 3 *ibid.*, p. 11.
- 4 *ibid.*, p. 14.
- 5 The NSW Rural Fire Service guide *Planning for Bushfire Protection* is a useful starting point from which to develop a set of planning requirements for application to the proposed abatement zone.