

The honourable member then queried whether, under proposed section 352 (1) (b) the provision for the certificate of the judge of the Supreme Court or District Court, certifying that a case is fit for appeal, should be deleted. It is deleted because the trial judge can grant leave to appeal under subsection (3). The granting of leave to appeal has the same effect as certifying that a case is fit for appeal. The honourable member asks who is to give leave to appeal under section 352 (1) (a). It is the trial judge of the Full Court. Subsection (3), which is in the Bill anyhow, provides that it can be either the trial judge or the Full Court.

With respect to the honourable member's comment as to the provision in the Bill which says that no appeal may be brought against a sentence if the sentence is one fixed by law, that does not have any relationship to the Sentencing Act. The Sentencing Act does provide that, in certain circumstances, minimum penalties can be mitigated. However, in relation to the Sentencing Act (although it is the subject of some consideration in the Full Court and the Supreme Court at the moment), the intention of Parliament was to say that, where a specific Act dealing with a specific topic provided for a minimum penalty and made it clear that there was to be a minimum penalty, the Sentencing Act, which could provide for mitigation of that minimum penalty, would not apply.

In any event, that is not relevant to this Bill. The reference to a sentence being fixed by law (which, by the way, is included in the existing Act) does not change the law or, indeed, the wording in that respect. However, that would apply to any sentence that is fixed specifically by law, such as the sentence of life imprisonment for the offence of murder, which is a mandatory sentence fixed by law and, therefore, no appeal against it would be open under the amending Act which we are considering today, and neither is it open under the existing Act.

The Hon. K.T. GRIFFIN: I thank the Attorney-General for his answers. In relation to that last point, I know the words in parentheses referred to in the proposed subsection (1) are in the present Act, but, since the criminal law sentencing legislation became effective, it seemed to me that there may well be some conflict, particularly because that legislation does give a wider range of opportunities to a defendant to seek mitigation of a minimum penalty.

The matter has been considered by the Attorney. I have raised it and it is now a matter which, if it is ever raised, will obviously have to be considered by a court of appeal. My intention was really to draw attention to it, and I am satisfied that that is being done appropriately.

Clause passed.

Remaining clauses (2 to 10) and title passed.

Bill read a third time and passed.

LAW OF PROPERTY ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

COUNTRY FIRES BILL

Received from the House of Assembly and read a first time.

The Hon. C.J. SUMNER (Attorney-General): I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Country Fires Act 1976-1986 has been operative since September 1979. It empowers the Country Fire Services Board to regulate and supervise measures to prevent fire, and to organise firefighting resources and the training of personnel throughout the State.

The Country Fire Services itself is the largest volunteer organisation in the State with a current membership in excess of 19 000. These men and women provide an incalculable contribution to the protection of South Australia not only from bushfire and fires generally but increasingly, in the areas of road rescue and dangerous substance incidents.

The service has been involved in major incidents and events which have impacted significantly on this State and its people. The effects of such incidents on the CPS itself is profound.

The impact on the CFS of the Ash Wednesday fires in particular went beyond the immediate physical effects.

Inquiries including a coronial inquiry following Ash Wednesday II identified major organisational and operational deficiencies. The 1988 Mount Remarkable fire and subsequent coroner's report also identified some organisational weaknesses.

The Public Accounts Committee has also had cause to examine the finances and operations of the CFS and as a result has made a number of findings critical of the CFS and put forward recommendations for improvement.

Fire prevention has also been subjected to detailed scrutiny. In 1985 the Working Party Report on Bushfire Prevention and Electricity Distribution, known as the Lewis Report, recommended the adoption of stronger fire prevention measures. The CFS Board has implemented the recommendations of these Reports within the confines of existing legislation. Some changes have been adopted by local communities in an effort to improve their fire suppression and prevention capabilities.

A major step in overcoming the identified problems was the decision of the former Minister the Hon. J.D. Wright to restructure and reduce the size of the board. By doing so he brought to the board, direct volunteer and local government representation together with persons with financial and administrative expertise.

I take this opportunity to commend the work of the Country Fire Services Board since its restructuring in late 1984. The board's commitment to revitalising and strengthening the service does it great credit. The South Australian community can feel well served by the board and the service generally.

The Country Fire Services Board, in its restructured form, has effectively established a framework on which the CFS in South Australia can proceed. The board is hampered in its efforts by the restrictions placed on it by the outdated existing CFS Act. When these problems were identified, a working party consisting of members from the CFS Board, the Local Government Association and the South Australian Volunteer Fire Brigades Association was established to provide a forum to discuss proposed changes to the legislation.

The working party agreed that the changes proposed would improve the efficiency of the CFS organisation. The Bill now before the Parliament has its basis in the work of the working party as well as the findings and recommendations of the various reports referred to earlier.

During the development of the Bill, each stage of drafting has been referred to the representatives of the South Australian Volunteer Fire Brigades Association and the Local

Government Association on the CFS Board. Minor changes which reflect the view of these two bodies have been made and included in the Bill. In addition, this Bill, in its draft form, was circulated to all of the parties with a principal interest in the provisions of the Bill.

A number of submissions were received and carefully considered. As a consequence, some alterations were made to the Bill which reflect the views of these organisations. Input has been sought from Government departments likely to be affected by the provisions incorporated in this Bill.

The Bill as it has emerged from the process of consultation provides an appropriate level of central responsibility for coordination and planning while maintaining a sufficient degree of local decision making. I am not, of course, suggesting that the Bill in its entirety has the universal support of interested parties. Certainly, however, the board, the volunteer association and other emergency services are anxious that the Bill be passed in its present form.

I turn now to a general discussion of the Bill, its objectives and major provisions. The size and composition of the board has altered to include an additional volunteer representative and an additional local government representative. While the Government is anxious to minimise the size of the board the Government has accepted representations from the volunteer and local government organisations that, as principal participants in rural fire prevention and protection, increased representation on the board is justified.

The Bill also requires that one of the Government appointed members of the board have expertise in land management. I point out that one of the existing members appointed by Government has such expertise. The Bill also requires that membership of the board include at least one person of each gender. The Bill overcomes major deficiencies and streamlines the command structure of the operations of the Country Fire Services.

The present Act does not provide for a chain of command. The Bill, before the House, establishes a sound command system from the chief officer through the ranks in a similar manner to that enjoyed by all other fire services. It simply means that those persons whom the community relies upon to attend incidents have the ability to make the necessary operational decisions. In concert with the above, the Bill strengthens the brigade group system to ensure a proper forum for the coordination of fire suppression activities in an area.

The Bill gives formal recognition to the South Australian Volunteer Fire Brigades Association as the body which represents the view of the volunteers. The Bill clarifies the functions of the board which were broadly stated in the 1980 Amending Act. These provisions include the regulation and control of measures necessary for the prevention and suppression of fire and the protection of life and property in case of fire or other emergencies.

The board requires appropriate legislative backing to ensure that all areas of the State under its jurisdiction are provided with the necessary equipment to perform the tasks required. The same powers are required to ensure that the equipment is maintained to a satisfactory level in all areas. Similarly, the responsibility of adequate training programs will be the responsibility of the board. The board has actively pursued the formation of CFS groups to provide efficient, cost effective delivery of service to the country areas of South Australia.

The current provisions relating to the lighting and maintaining of fires during the fire danger season have, to say the least, been confusing to the general public. The board has addressed these problems as best it can within the confines of the present legislation; however, many anomalies

still remain. This Bill clearly establishes the parameters within which the board will be able to regulate the use of fires during the fire danger season.

Considerable public confusion has existed over the terminology used to publicise days of 'Total Fire Ban'—or days of extreme fire danger—and thus the import of such days can be lost. In future, the broadcast of such warning will use the words, 'Total Fire Ban Day', thereby increasing its impact on the public.

The Bill does not alter the existing method of funding the service through a combination of a state government contribution and an insurance industry contribution. It is proposed however to strengthen this system of funding by providing some disincentives for those who fail to insure, under insure or insure with companies which fail to make a contribution to the CFS.

The Bill provides for a major restructuring of fire prevention responsibilities throughout the State. The bushfire prevention council which currently operates on a non-legislative basis will be formally established by statute. To support the work of the Council Regional and District Fire Prevention Committees are provided for under the Bill. These bodies will ensure the co-ordination of fire prevention activities.

These provisions, with the co-operation of all participants, will go a long way to reducing the danger to life and property from wild fire. Membership of such committees will be representative of local land users who will formulate fire protection plans at district and regional level. The powers of local government will be strengthened to ensure that local communities have improved fire protection as recommended by such committees.

In conclusion, the Bill represents a blue print for the efficient and effective delivery of fire protection and prevention services in South Australia's country areas. The adoption of the Bill will require local government to relinquish a modest amount of control in the interests of a clear chain of command and the better coordination of resources. I believe such a small sacrifice is warranted in the interests of the community's protection. I commend the Bill to the House.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 deals with various preliminary matters. Subsection (1) sets out the various definitions required for the purposes of the Act. Subsection (2) relates to bushfire prevention. Subsection (3) provides that the CFS and bushfire prevention organisations must have due regard to the impact of their actions on the environment.

Clause 4 empowers the board to declare any specified part of the State to be a CFS region. A CFS region cannot comprise any part of a metropolitan fire service district.

Clause 5 provides that the Act will not derogate from the Native Vegetation Management Act, or other Acts relating to fire prevention or safety.

Clause 6 establishes the Country Fire Service. The CFS is to be a body corporate.

Clause 7 provides that the CFS consists of the board, all CFS organisations, and all officers, employees and voluntary workers of the CFS.

Clause 8 provides that the CFS is responsible for the prevention, control and suppression of fires in the country and the protection of life and property in other emergencies in the country.

Clause 9 establishes the Country Fire Service board. The board will have seven members, six members being appointed by the Governor and the other being the Chief

Executive Officer of the board. The Chief Executive Officer will be appointed by the Minister on a full-time basis. One of the members of the board will be appointed by the Governor as the presiding member of the board.

Clause 10 provides that the board has the administration and control of the CFS. Various specific responsibilities are also set out. The board will be required to ensure that the CFS carries out its responsibilities effectively and efficiently. It will promote the formation of CFS organisations. The board will be responsible to the Minister for the administration of the Act.

Clause 11 allows the board and the Chief Executive Officer to delegate powers and functions under the Act.

Clause 12 relates to the establishment of CFS organisations. The board will be able to constitute CFS regional associations, CFS groups (made up of two or more brigades) and CFS brigades. Each CFS organisation is to have a constitution. The board will be able to dissolve a CFS brigade by notice in the *Gazette*.

Clause 13 provides that the mutual relationship of CFS organisations and their obligations to each other will, subject to the Act, be defined by the board.

Clause 14 provides for the recognition of the South Australian Volunteer Fire Brigades Association. The Association will represent the interests of members of CFS organisations.

Clause 15 relates to the offices of Chief Officer of the Country Fire Service, Deputy Chief Officer and Assistant Chief Officer. The Chief Officer will have the ultimate responsibility for CFS operations and will be able to assume supreme operational command at any time.

Clause 16 provides for the creation of other ranks of the CFS. Persons will be appointed to certain ranks by the board, or elected in accordance with prescribed procedures. The board will establish an appropriate command structure. The board will be able to demote a person in appropriate cases.

Clause 17 establishes the Country Fire Service Fund. The Fund will be applied by the board in the administration of the Act.

Clause 18 will enable the board to determine, on an annual basis, an amount to be contributed by insurers towards the cost of the administration of the Act. A prescribed association of insurers may apply to the Treasurer for a review of the amount.

Clause 19 sets out the method by which an insurer's contribution is to be calculated. The amount of a contribution will depend on the extent to which the insurer receives premium income in respect of the insurance of property in the country.

Clause 20 will allow the board to require an insurer to provide the board with such information as it may require to assess the insurer's contribution. An authorised officer will be entitled to visit an insurer's premises and obtain information relevant to the assessment.

Clause 21 provides that the board must keep proper accounts of the financial affairs of the CFS.

Clause 22 provides that a rural council (as defined) is responsible for providing adequate equipment for fire-fighting within its area.

Clause 23 provides that a council may extend any portion of its revenue in defraying its costs under this Act, contributing to CFS activities in its area, and purchasing equipment by land owners for use by the CFS.

Clause 24 will allow the board to make grants to any council or CFS organisation for the purpose of defraying the cost of equipment reasonably required for the purposes of the CFS, or to purchase any such equipment.

Clause 25 provides that a council or CFS organisation must not sell or dispose of any building or equipment constructed or purchased with the assistance of a grant from the board, or sell or dispose of any equipment provided by the board, without the consent of the board.

Clause 26 grants CFS organisations exemptions from local government rates, water and sewerage rates, and land tax.

Clause 27 will enable the CFS to recover costs from an owner of property in the country if the person is not insured (or is not adequately insured) against loss or damage caused by a fire at which a CFS brigade attends.

Clause 28 is designed to enable the board to recover amounts from persons who insure with an insurer located outside the State where the insurer does not pay the appropriate contribution to the Fund.

Clause 29 establishes the South Australian Bushfire Prevention Council.

Clause 30 sets out the functions of the Council, which include to advise the Minister on bushfire prevention in the country and to provide a forum for discussion of issues relating to bushfire prevention.

Clause 31 provides that the board may establish a regional bushfire prevention committee in relation to a CFS region.

Clause 32 provides that the functions of such a committee include assessing the extent of fire hazards within its region, preparing plans, and making recommendations, in relation to major bushfire prevention work, and coordinating fire prevention planning in its region.

Clause 33 provides that the board may establish a district bushfire prevention committee in relation to the area or areas of one or more rural councils.

Clause 34 provides that the functions of such a committee include assessing the extent of fire hazards in its area, preparing bushfire preparation plans, and providing advice to the board, the Council, and any relevant regional committee.

Clause 35 will require each rural council to appoint a suitably qualified fire prevention officer. The board will be able to exempt a council from this requirement in appropriate cases.

Clause 36 authorises the board to fix a fire danger season in relation to the whole, or any part, of the State.

Clause 37 regulates the lighting and maintaining of fires in the open air during the fire danger season.

Clause 38 authorises the board to impose a total fire ban for any purpose on a specified day or days, or during a specified part or parts of a day or days, in the State or a part of the State. The ban must be broadcast from a broadcasting station in the State.

Clause 39 relates to permits authorising persons to light or maintain a fire in circumstances that would otherwise constitute a breach of the Act.

Clause 40 empowers a CFS officer to control a fire that has been lit contrary to the Act, or that is burning out of control or is likely to burn out of control. The CFS officer will also be able to prohibit the lighting of a fire in conditions where the fire could get out of control.

Clause 41 provides that it is the duty of the owner of private land in the country to take reasonable steps to protect his or her property from fire and to prevent the outbreak of fire on the land, or the spread of fire through the land. An owner who fails to do so may, by notice in writing, be required to take action to comply with the section. The provision sets out a right of appeal against such a notice.

Clause 42 places a responsibility on a rural council to protect land in its care or control from fire.

Clause 43 places a responsibility on a Minister, agency or instrumentality of the Crown to protect land in its care or control from fire.

Clause 44 will empower an authorised officer, in relation to premises of a prescribed kind, to require the owner of the premises to protect them from fire.

Clause 45 will allow the board or a council to control the removal of debris from any work left on or in the vicinity of a road.

Clause 46 will make it an offence to use a caravan unless an appropriate fire extinguisher is carried in the caravan.

Clause 47 will allow the regulation of the use of certain prescribed engines, vehicles, appliances or materials during the fire danger season.

Clause 48 creates various offences relating to the release of burning objects and material in the country.

Clause 49 requires a person who finds an unattended fire on land in the country to take reasonable steps to report the fire to an appropriate authority.

Clause 50 will allow a council to delegate any power or function in relation to fire prevention to its fire prevention officer.

Clause 51 empowers the board to take action if it considers that a council has failed to exercise or discharge its powers or functions under the Act in relation to fire prevention. The board will (if necessary) be able to recommend to the Minister that the relevant powers or functions be withdrawn from the council and vested in an officer of the CFS.

Clause 52 will allow a CFS brigade to enter into an agreement to clear flammable material from land. Money received under such an agreement will, after deducting expenses, be used by the brigade for the purpose of providing fire fighting services in its area.

Clause 53 will make it an offence to light a fire in circumstances where the fire endangers, or is likely to endanger, the life or property of another. It will be a defence to a charge of an offence against this section to prove that the fire was lit on land owned or occupied by the defendant, or at the direction of such a person, or that the danger was caused by unforeseen weather conditions, and that the defendant took all reasonable precautions to prevent the spread of the fire.

Clause 54 will empower a member of the CFS to take control of a fire or other emergency in the metropolitan area until a metropolitan fire brigade arrives. It will also provide that all persons at the scene of a fire or other emergency in the country will be subject to the control of the most senior member of the CFS in attendance.

Clause 55 sets out powers of a CFS officer in relation to fire-fighting or for the purpose of protecting life or property in any other emergency. A CFS officer will be required to consult (where practicable) with the owner or occupier of any land in relation to which a power is to be exercised. If a fire or other emergency is on land in, or in the vicinity of, a government reserve, or is likely to threaten a government reserve, the CFS officer must consult with the person who is in charge of the reserve. The powers of a CFS officer under this provision will be able to be exercised, in the absence of any such officer, by any other member of the CFS.

Clause 56 relates to the powers of appropriate officers to enter and inspect land for the purpose of determining the cause of a fire or other emergency and to remove and retain any object or material that may tend to prove the cause of a fire or other emergency.

Clause 57 will allow appropriate officers to enter land or premises at any reasonable time to inspect the measures

taken in relation to fire prevention or the control of dangerous substances.

Clause 58 will allow appropriate officers who have reasonable cause to believe that a person has committed an offence against the Act to ask the person to state his or her name and address.

Clause 59 will make it an offence to hinder a person in the exercise of a power or function under the Act.

Clause 60 relates to the provision of sirens by a council or CFS organisation.

Clause 61 will make it an offence to interfere with a fire plug or hydrant.

Clause 62 will make it an offence to destroy, damage or interfere with a fire alarm, or to give a false alarm. The CFS will be able to recover the cost of attending at any place in response to a false alarm.

Clause 63 empowers the board to appoint fire control officers for designated areas of the State. These officers will assist in the preparation of fire prevention plans for their particular areas and fight fires or act in other emergencies until a CFS brigade arrives. A fire control officer will, pending the arrival of a CFS brigade, be able to exercise the powers of a CFS officer under the Act.

Clause 64 authorises a member of a recognised interstate fire-fighting organisation fighting a fire in the vicinity of a border of the State to exercise the powers of a CFS officer under the Act.

Clause 65 relates to the liability of officers performing functions under the Act.

Clause 66 will ensure that the board, the South Australian Bushfire Prevention Council, the regional and district committees, and local government councils will not be liable by virtue only of the fact that they have not prepared or implemented bushfire prevention plans under the Act.

Clause 67 prevents the establishment of unauthorised fire brigades in the country.

Clause 68 relates to offences by bodies corporate.

Clause 69 relates to the onus of proof in certain proceedings.

Clause 70 is an evidentiary provision.

Clause 71 provides that an offence against the Act is a summary offence.

Clause 72 relates to minimum penalties.

Clause 73 will allow any fine recovered from a defendant to a charge laid by a council to be paid into the general revenue of the council.

Clause 74 will require an officer of the Engineering and Water Supply Department to attend at the scene of a fire or other emergency and assist in the provision of water.

Clause 75 will empower a CFS officer to direct a competent person to take action to control, remove or shut off any dangerous substance in the vicinity of a fire or other emergency.

Clause 76 relates to regulations under the Act.

Clause 77 provides for the repeal of the Country Fires Act 1976.

Schedule 1 sets out supplementary provisions relating to the board and the South Australian Bushfire Prevention Council.

Schedule 2 sets out supplementary provisions relating to Regional and District Bushfire Prevention Committees.

Schedule 3 sets out various transitional provisions.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.