



SELECT COMMITTEE ON THE FIRE AND EMERGENCY SERVICES (MISCELLANEOUS) AMENDMENT BILL

FINAL REPORT

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First Session, Fifty-Fourth Parliament

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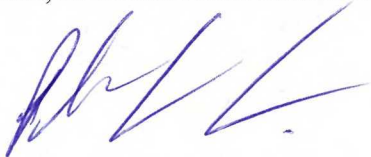
CHAIR'S FOREWORD

The Fire and Emergency Services (Miscellaneous) Amendment Bill was referred to a Select Committee by the House of Assembly on 5 December 2018. The Terms of Reference for the inquiry directed the Committee to inquire into proposed additional powers for the South Australian Country Fire Service (CFS) outlined in clause 23 of the Bill, which relate to section 82 of the *Fire and Emergency Services Act 2005*.

The Committee received 39 written submissions and heard from 62 witnesses over four public hearings in Adelaide, Port Lincoln, Balaklava and Keith.

I thank all those who made submissions and participated in the Committee's hearings for their important and considered advice, particularly as the inquiry was conducted over the busy holiday period. The Committee recognises and appreciates the insightful responses provided by so many South Australians on this important issue.

I commend the members of the Committee: Mr David Basham MP, Hon Leon Bignell MP, Mr Eddie Hughes MP, and Mr Josh Teague MP for their contributions to this report. I also thank Committee staff, Dr Joshua Forkert and Dr Monika Stasiak, for their assistance.



Mr Peter Treloar MP

Chair

4/4/2019

EXECUTIVE SUMMARY

The Select Committee on the Fire and Emergency Services (Miscellaneous) Amendment Bill (Committee) heard a range of concerns regarding the proposed changes to the powers for the Country Fire Service (CFS) set out in the Bill.

The Committee heard there is a need to ensure that there are adequate powers to prevent fires and keep South Australian communities safe. The Committee agrees that the introduction of such powers would assist in minimising the risk of fires across the state.

However, the Committee heard that the Bill as drafted does not provide adequate clarity on how the powers would operate in practice. This ambiguity has caused particular concerns for South Australian grain producers about the potential impact of the proposed powers on grain harvesting operations during the harvest season.

Exercise of powers

The Committee heard concerns about how the proposed powers would be exercised. CFS volunteers and primary producers agreed that the powers should only be exercised by CFS officers of a certain rank, police officers, or local government Fire Prevention Officers. The Committee heard strong support for directions to be issued by officers based in the local communities with knowledge and experience of local conditions.

The Committee heard particular concerns that the proposed powers could place undue pressure on CFS volunteers. The Committee observed high levels of goodwill, co-operation and community ethos among producers across regional South Australia. Multiple witnesses discussed the close relationships between the CFS and producers. Many primary producers are also CFS volunteers. The Committee observed that stakeholders are focussed on maintaining business and personal relationships within their communities, and the Committee is concerned to avoid any changes that would destabilise these.

The Committee recommends that the Bill specify who may exercise the proposed powers and that enforcement criteria and guidelines be developed to accompany the introduction of any additional powers to ensure consistency in enforcement.

Recognition and support for industry-led initiatives

The Committee heard that the Bill as drafted does not recognise existing voluntary, industry-led initiatives to minimise fire risk, particularly in the grain industry. The Committee acknowledges that since 2008 the grain industry has developed and implemented an effective process to monitor and manage fire risk through the *Grain Harvesting Code of Practice*.

Producers readily acknowledged that their activities can impact their own operations and those of their neighbours or the wider community if a fire breaks out and cannot be controlled. Overwhelmingly, evidence presented to the inquiry shows that the rate of non-compliance with voluntary management strategies is extremely low but does occasionally occur.

The Committee notes that primary producers are taking a pro-active approach to fire prevention through producer networks, SMS services, increased investment in on-farm equipment and data collection, and continuing education. Evidence presented to the Committee shows that producers are making use of localised data sources as these become more readily available. Given the micro-climates across South Australia, the Committee acknowledges the importance of localised data in responsible decision-making.

The Committee recommends that the exercise of the proposed powers must take into account existing industry-led codes of practice and makes a series of recommendations for the South Australian Government to better support communities to continue their effective fire prevention strategies. This includes developing more codes of practice for other activities, based on the grain industry model.

Need for further consultation

Many submitters and witnesses expressed concern that the South Australian Government did not consult with key stakeholders prior to introducing the Bill. The Committee recommends that any further changes should take into consideration the views of key stakeholders.

RECOMMENDATIONS

The Select Committee on the Fire and Emergency Services (Miscellaneous) Amendment Bill recommends that:

1. The proposed powers outlined in clause 23 of the Bill be introduced, subject to the amendments recommended by this report.
2. Clause 23 of the Bill be amended to clarify which officers will be authorised to exercise the proposed powers to direct that a prescribed activity be ceased or not commenced. This power should be limited to South Australia Police officers.
3. The South Australian Government develop enforcement criteria and guidelines for the exercise of the proposed powers. The South Australian Government should consult with industry bodies and relevant stakeholders in developing these criteria and guidelines.
4. Clause 23 of the Bill be amended to require that the exercise of powers in section 82 must take into account any relevant industry-led codes of practice, including the *Grain Harvesting Code of Practice*.
5. The South Australian Government support and encourage all relevant stakeholders, including industry peak bodies, to implement and review relevant codes of practice, including developing codes of practice for prescribed activities that may cause fires. This should include developing a mechanism to recognise codes of practice for the purposes of exercising the proposed powers outlined in clause 23.
6. The South Australian Government provide support for ongoing education to stakeholders and the broader community about fire prevention and relevant codes of practice.
7. The South Australian Government review existing community initiatives aimed at fire prevention, reducing fire risk and information gathering and sharing, and provide additional funding and support where appropriate, such as further developing local weather monitoring networks and SMS alert systems.
8. The Country Fire Service (CFS) consider measures to improve communication, engagement and consultation with regional communities in decision-making processes, particularly in relation to the exercise of the proposed powers set out in clause 23 of the Bill.
9. The South Australian Government review ongoing and periodic mental health and other wellbeing support services available to communities affected by fires and provide further support where appropriate.
10. The South Australian Government review whether further changes to the *Fire and Emergency Services Act 2005* may be appropriate, based on further consultation and drawing on evidence provided to this Committee.

COMMITTEE MEMBERSHIP

The Select Committee into the Fire and Emergency Services (Miscellaneous) Amendments Bill was referred on 5 December 2018.

Its membership for the duration of this inquiry was:

Mr Peter Treloar MP (Chair)
Mr David Basham MP
Hon Leon Bignell MP
Mr Eddie Hughes MP
Mr Josh Teague MP

Parliamentary Officer to the Committee:
Dr Joshua Forkert

Research Officer to the Committee:
Dr Monika Stasiak

TERMS OF REFERENCE

On 5 December 2018 the House of Assembly referred the Fire and Emergency Services (Miscellaneous) Amendment Bill 2018 to a Select Committee for inquiry and report by 19 March 2019 with the following terms of reference:

1. to examine Clause 23 – Amendment to Section 82 – Power to Direct; and
2. to give consideration to the views of all relevant stakeholders.

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ABBREVIATIONS

Act	<i>Fire and Emergency Services Act 2005</i>
Bill	Fire and Emergency Services (Miscellaneous) Amendment Bill 2018
BOM	Bureau of Meteorology
CFS	South Australian Country Fire Service
CFSVA	Country Fire Service Volunteers Association
Code	Grain Harvesting Code of Practice
Committee	Select Committee on the Fire and Emergency Services (Miscellaneous) Amendment Bill
FPO	Fire Prevention Officer
GFDI	Grassland Fire Danger Index
GPSA	Grain Producers South Australia
Holloway Review	Hon Paul Holloway, Review of the <i>Fire and Emergency Services Act 2005</i> , August 2013
MFS	Metropolitan Fire Service
SAPOL	South Australia Police

1 Introduction

1.1 Referral

On 5 December 2018, the House of Assembly referred the Fire and Emergency Services (Miscellaneous) Amendment Bill 2018 (the Bill) to a Select Committee for inquiry and report by 19 March 2019 with the following terms of reference:

1. to examine Clause 23 – Amendment to Section 82 – Power to Direct; and
2. to give consideration to the views of all relevant stakeholders.¹

On 19 March 2019, the House of Assembly agreed to extend the reporting date to 4 April 2019.²

1.2 Conduct of the inquiry

The Select Committee on the Fire and Emergency Services (Miscellaneous) Amendment Bill (the Committee) was appointed on 5 December 2018.³ The Committee elected Mr Peter Treloar MP as Chairperson on 6 December 2018.

The Committee advertised and wrote to key stakeholders inviting written submissions by 1 February 2019. Details of the inquiry were published on the Committee's website.⁴

The Committee received 39 submissions and held four public hearings in Port Lincoln on 31 January 2019, Adelaide on 4 February 2019, Balaklava on 7 February 2019 and Keith on 7 March 2019. The list of submissions is at Appendix A. The list of witnesses who appeared at the public hearings is at Appendix B. A summary of the evidence taken by the Committee is at Appendix C.

On 6 December 2018, the House of Assembly agreed to suspend Standing Order 339 to enable the Committee to authorise the disclosure or publication of any evidence presented to the Committee prior to such evidence being reported to the House.⁵ The Committee published all submissions and Hansard transcripts on the Committee's website.⁶

The Committee thanks all submitters and witnesses for their important contributions to the inquiry.

1.3 Background

The Bill was introduced to the House of Assembly on 28 November 2018.⁷ The Minister for Police, Emergency Services and Correctional Services, Hon Corey Wingard MP, explained that the key objectives of the Bill are to:

*...improve the ability of the emergency services to deliver public safety outcomes at minimal cost to the government and community and to demonstrate the government's commitment and appreciation of emergency services volunteers to the safety of our community.*⁸

The Bill seeks to implement recommendations from the 2013 review of the *Fire and Emergency Services Act 2005* (the Act) by Hon Paul Holloway (the Holloway Review).⁹

¹ House of Assembly, *Votes and Proceedings*, 5 December 2018, p. 317.

² House of Assembly, *Votes and Proceedings*, 19 March 2019, p. 380.

³ House of Assembly, *Votes and Proceedings*, 5 December 2018, p. 317.

⁴ See: www.parliament.sa.gov.au/scfesbill

⁵ House of Assembly, *Votes and Proceedings*, 6 December 2018, p. 324.

⁶ See: www.parliament.sa.gov.au/scfesbill

⁷ House of Assembly, *Votes and Proceedings*, 28 November 2018, p. 296.

⁸ House of Assembly, *Hansard*, 28 November 2018, p. 4014.

⁹ Hon Paul Holloway, *Review of the Fire and Emergency Services Act 2005*, August 2013.

1.4 Focus of inquiry

The Committee was asked to inquire into clause 23 of the Bill, which proposes changes to section 82 of the Act relating to ‘power of direction’ for the South Australian Country Fire Service (CFS).

The clause aims to provide CFS officers with ‘the power to direct the cessation of harvesting or any other actions that, due to weather conditions, may cause a fire if ignited to get out of control’.¹⁰ The Minister provided the following explanatory information to the clause:

This clause clarifies and extends the powers of direction under section 82. The existing power to direct someone to refrain from lighting a fire where weather conditions mean a fire may get out of control is extended to apply to a fire that is being maintained and is amended to make it clear that it applies even if the fire is being lit or maintained pursuant to a permit. A new power is added to allow an officer to direct a person to refrain from carrying on an activity (being an activity of a prescribed kind or any other activity that the officer is satisfied may cause a fire) during a specified period if because of weather conditions a fire caused by the activity might get out of control.¹¹

The clause seeks to implement recommendation 16 of the Holloway Review, which specifically examined the issue of grain harvesting.¹²

1.5 Current powers under section 82

The Act establishes the powers and functions of the CFS. This includes providing services with a view of preventing the outbreak of fires or reducing the impact of fires in the country. The country is defined in the Act and includes all parts of South Australia that are not part of the gazetted metropolitan fire district.

The current power of direction is set out in section 82 of the Act. The power enables an officer of the CFS who is satisfied that a fire may get out of control because of weather conditions may direct a person to:

- extinguish a fire;¹³ or
- refrain from lighting a fire.¹⁴

Failing to comply with a direction given under this section is an offence subject to the penalties outlined in section 82(3) of the Act.

Section 82(4) provides that the Chief Officer may determine that these powers may only be exercised by officers of or above a certain rank. Where no SACFS officer is present, the powers may be exercised by any member of the SACFS, or if no such member present, by any fire prevention officer, member of the SAMFS or member of the police force.¹⁵

In evidence presented to the Inquiry, the CFS and CFS Volunteers Association (CFSVA) noted that the CFS has a legislative obligation to prevent the outbreak of fires but the Act does not provide a mechanism through which this can occur. Whereas the Metropolitan Fire Service (MFS) has a range of powers to direct in assisting it to prevent fires, the current CFS power to direct does not take effect until a fire has been started.¹⁶

¹⁰ House of Assembly, *Hansard*, 28 November 2018, p. 4013.

¹¹ House of Assembly, *Hansard*, 28 November 2018 p. 4016.

¹² Holloway, Review of the *Fire and Emergency Services Act 2005*, p. 33.

¹³ *Fire and Emergency Services Act 2005*, section 82(1).

¹⁴ *Fire and Emergency Services Act 2005*, section 82(2).

¹⁵ *Fire and Emergency Services Act 2005*, section 82(5).

¹⁶ See: South Australian Country Fire Service (CFS), *Submission 9*, p. 1; CFS Volunteers Association (CFSVA), *Submission 30*, p. 5.

1.6 Proposed powers under clause 23

Clause 23 of the Bill proposes to introduce a new section 82(2a) to give an officer of the SACFS power to direct a person to refrain from an activity that may cause a fire. This extends the range of activities that could be subject to the power of direction under section 82.¹⁷

1.6.1 Definition of activity

Under the proposed amendment, the types of activities that the CFS could direct people to refrain from would be prescribed by regulations. The types of activities that could be prescribed would be broader than grain harvesting and could include other activities that have the ability to cause a fire, such as the use of drones. The CFS submitted that a number of activities are already prescribed in Division 4 of the Fire and Emergency Services Regulations 2005, including:

- Stationary engines (R37),
- Internal combustion engines (R38),
- Vehicles (R39),
- Aircraft (R40),
- Welders and other tools (R41),
- Bees (R42),
- Rabbit fumigators (R43),
- Bird Scarers (R44),
- Fireworks (R45), and
- Blasting (R46).¹⁸

The Bill further provides that CFS officers could direct a person to refrain from ‘any other activity that the officer is satisfied may cause a fire’.

1.6.2 Exercise of proposed powers

The Bill proposes that the new powers in 82(2a) could be exercised by an officer of the CFS. Clause 4 of the Bill proposes to introduce a definition of ‘officer of SACFS’ which ‘includes a reference to a member of an industry brigade designated as an officer of that brigade by the Chief Officer of SACFS’.¹⁹

An officer of the CFS may exercise the proposed power where the officer is satisfied:

- that a person proposes to carry on an activity of a kind prescribed by the regulations or any other activity that the officer is satisfied may cause a fire; and
- that because of weather conditions the fire, if caused by the activity, might get out of control.²⁰

Section 82(5) of the Act provides that where no officer of the CFS is able to exercise the powers in section 82, the powers may be exercised by any member of the CFS or, in the absence of any such member, any fire prevention officer, member of the Metropolitan Fire Service or a member of SAPOL.²¹

The CFS submitted that the exercise of the proposed powers would not be conferred on every volunteer and would be limited to:

- CFS operational staff members;
- senior CFS volunteers ranked Group Officer or Deputy Group Officer; and

¹⁷ Fire and Emergency Services (Miscellaneous) Amendment Bill 2018, clause 23(4).

¹⁸ CFS, *Submission 9*, p. 3.

¹⁹ Fire and Emergency Services (Miscellaneous) Amendment Bill 2018, clause 4(6).

²⁰ Fire and Emergency Services (Miscellaneous) Amendment Bill 2018, clause 23(4).

²¹ *Fire and Emergency Services Act 2005*, s 82(5).

- other authorised officers (council fire prevention officers, SAPOL).²²

1.7 Grain Harvesting Code of Practice

The Committee heard particular concerns from grain producers about how the proposed powers would interact with the voluntary, industry-led *Grain Harvesting Code of Practice* (the Code). The Code was developed by the CFS and the then SA Farmers' Federation in August 2008. The Code was reviewed and revised in 2016 following a series of crop fires in 2013, 2014 and 2015. In 2016, GPSA and the CFS launched the 'Know Your Code' campaign to reinforce the requirements of the Code.²³

The Code guides producers to safely undertake grain harvesting in the paddock. It links to specific provisions of the Fire and Emergency Services Regulations 2005, which compel compliance with Regulations 37 and 38.

In accordance with Regulation 37, an operator of a stationary engine being used to auger a crop must clear space around and above the engine to a distance of four metres, or ensure that a person who is able to control the engine is present at all times while it is being used. The operator must carry a shovel or rake and a portable water spray that is in good working order, and must ensure that their engine or exhaust system complies with Regulation 32.

In accordance with Regulation 38, an operator using an internal combustion engine to harvest or move a flammable crop must carry a shovel or rake and portable water spray, and must ensure that their engine or exhaust system complies with Regulation 32.

Compliance with Regulation 32(2) is demonstrated where:

- a) All engine exhaust emitted by the engine or vehicle exits through the system; and
- b) The system, or a device or devices forming part of the system, is designed to prevent the escape of burning material from the system; and
- c) The system, or a device or devices forming part of the system, is designed to prevent heated parts of the system from coming into contact with flammable material; and
- d) The system is in good working order.

While it is a voluntary provision that is not mirrored in legislation or regulation, the Code requires that grain harvesting operations be suspended when the local actual Grassland Fire Danger Index (GFDI) exceeds 35. The Code specifies that the local actual GFDI can be determined by a local committee in consultation with local farmers, or be measured or calculated by the harvesting operator.

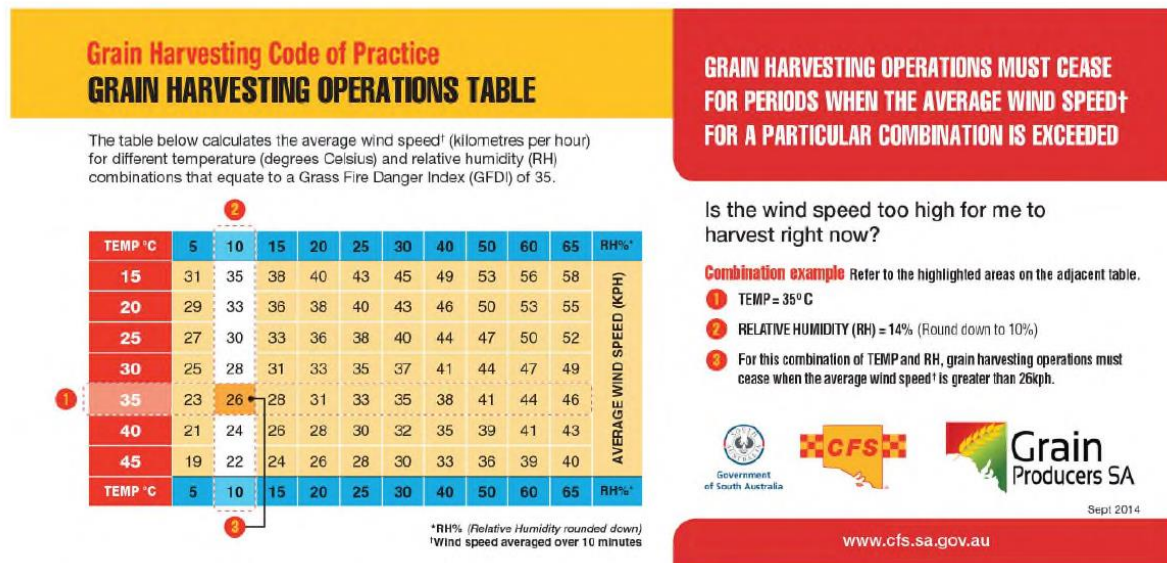
The table below (see Figure 1) is used to calculate when a GFDI of 35 is reached, using a combination of temperature, humidity and wind-speed. The GFDI relies on the parameters of air temperature, relative humidity, wind speed, and the curing condition of the vegetation being harvested. In evidence presented to the Inquiry, the Bureau of Meteorology described the numerical figure of 35 as 'relatively arbitrary', but there is widespread recognition among producers that figures of 35 or above are in a range where a fire is likely to get out of control.²⁴

²² CFS, *Submission 9*, p. 6.

²³ Grain Producers SA (GPSA), *Submission 19*, p. 4.

²⁴ Mr John Nairn, State Manager South Australia, Bureau of Meteorology, *Committee Hansard*, 4 February 2019, p. 58.

Figure 1 – Grain Harvesting Code of Practice



Source: Grain Producers SA, *Submission 19*, p. 4.

Additionally, the Code requires:

- that crop residues on machines be kept to a minimum, especially in areas of potentially high fire risk, such as engines, exhausts or brakes;
- that operators undertake a regular program of maintenance before and during grain harvesting activities;
- that operators take reasonable steps to reduce potential build-up of static electricity in harvesting activities;
- that operators have immediate access to a UHF CB radio or mobile phone.

Other recommended practices include seeking information on voluntary harvest bans, establishing fuel breaks of four metres around the perimeters of crops or paddocks to be harvested, and having fire-fighting material available on-site. It is recommended that a well-maintained and fully operational fire-fighting unit with a minimum of 250 litres of water is located in the paddock where harvesting or grain handling operations are occurring, in accordance with the *CFS Joint Guidelines for operating Farm Fire Units*.²⁵

²⁵ Grain Producers SA, *Submission 19*, p. 4.

2 Key issues

2.1 Lack of consultation

Many submitters and witnesses expressed concerns that the Bill was introduced to Parliament without consulting with parties who would be potentially affected. The Committee heard that as a result of the lack of consultation, the introduction of the Bill caused significant concern across a number of industries regarding the proposed powers for the Country Fire Service (CFS) set out in clause 23.²⁶ As noted in chapter 1, clause 23 proposes to give officers of the CFS powers to direct persons to refrain from an activity that may cause a fire.

The key concerns were raised by primary producers and CFS volunteers about how the proposed powers would be exercised, and by whom. Grain producers were particularly concerned that the Bill would give CFS officers and volunteers the power to direct producers to cease harvesting operations.²⁷ Mr Andrew McCabe, Vice Chairman of Grain Producers SA (GPSA), the peak body for the State's grain producers, told the Committee:

*GPSA's members were incensed at the potential for significant amendments to section 82 of the Fire and Emergency Services Act to be rushed through without any input from the ag sector.*²⁸

Similarly, the SA CFS Volunteers Association (CFSVA) expressed concerns that CFS volunteers were not consulted prior to the introduction of the Bill. Ms Sonia St Alban, Executive Director of the CFSVA, told the Committee:

*... there has been no consultation with the CFSVA nor CFS volunteers in relation to who will be the designated officers, and certainly there has been no discussion in relation to volunteers issuing fines.*²⁹

The Committee heard that in the absence of consultation, concerns about how the powers would operate were aggravated by media reports on the Bill. These reports speculated that the Bill would give all CFS members the power impose harvest bans and issue fines.³⁰ Ms St Alban told the Committee that these reports:

*... created considerable angst for CFS volunteers, both personally and within the communities they serve.*³¹

The Committee heard that the media reporting about CFS volunteers being required to direct producers to cease harvesting were not accurate and did not reflect how the proposed powers are intended to operate. CFS Chief Officer Greg Nettleton told the Committee that media reporting 'whilst somewhat technically correct, was potentially misleading and could give readers the impression that any CFS volunteer would be able to direct the cessation of harvesting activities'.

²⁶ See: Mr Kym Eagle, *Committee Hansard*, 31 January 2019, p. 22; Mr Deane Crabb, *Committee Hansard*, 4 February 2019, p. 51; Ms Sonia St Alban, *Committee Hansard*, 4 February 2019, p. 93; Mr Philip Earl, *Committee Hansard*, 7 February 2019, p.145; Livestock SA, *Submission 18*, p.1.

²⁷ Grain Producers SA, 'GPSA reinforces commitment to harvest code', 29 November 2018, <http://grainproducerssa.com.au/latest/media-releases/gpsa-reinforces-commitment-to-harvest-code/> (accessed 27 February 2019).

²⁸ Mr Andrew McCabe, Vice Chairman, Grain Producers SA, *Committee Hansard*, 4 February 2019, p. 44.

²⁹ Ms Sonia St Alban, Executive Director, CFS Volunteers Association, *Committee Hansard*, 4 February 2019, p. 93.

³⁰ 'Farmers would be banned from harvesting on high-risk fire danger days under proposed law changes', *The Advertiser*, 27 November 2018, <http://www.adelaidenow.com.au/news/south-australia/news-story/ce1f51c2b32e382d77ad4ca7546a8e95> (accessed 27 February 2019).

³¹ Ms Sonia St Alban, *Committee Hansard*, 4 February 2019, p. 93.

Chief Officer Nettleton advised that the intention that the powers would not be conferred on every volunteer and would be limited to specific authorised officers:

Unfortunately, the impression in the article in the paper was that, if someone joined the CFS and had been be in for a week, they would have those powers; I suggest that that would not necessarily be the case.³²

However, most of the concerns the Committee heard during this inquiry were a result of these media reports. At each of its public hearings around the State, both grain producers and CFS volunteers told the Committee of their concerns about reports that under the proposed powers, CFS volunteers could be required to direct grain producers to cease harvesting. For example, Mr Kym Eagle, Group Officer for the Lower Eyre Peninsula CFS, told the Committee in Port Lincoln that following the release of the media reports, he and fellow CFS volunteers:

.... were getting phone calls about, 'How dare you try to stop us from harvesting?' and that sort of thing. We basically had to say, 'No, that's not what it's about. That's not the intention of the bill but the way it's been reported and worded.'³³

The Committee heard that the proposed powers were based on recommendation 16 of the review of the *Fire and Emergency Services Act 2005*, conducted by Hon Paul Holloway in 2013 (Holloway Review). The CFS submitted that the Holloway Review involved 'significant consultation' with a range of stakeholders, including: the CFS and other emergency service organisations; government agencies (including the then Department of Primary Industries, Forestry SA, the then Department of Environment, Water and Natural Resources and the Attorney-General's Department); local governments; members of Parliament; volunteer and member associations and unions; and individuals.³⁴

However, given the delay between the Hollow Review in 2013 and the introduction of the Bill in 2018, some witnesses suggested a new round of consultation is warranted to consider changes over the past five years. Ms St Alban from the CFSVA told the Committee:

Given that it has taken five years for these amendments to come through, there has been a change of mind, a shift of direction and so on which hasn't been taken into account as part of this process.³⁵

Some submitters and witnesses suggested that a more recent round of consultation could have assisted in assuaging many of the concerns raised throughout this inquiry. Mr Eagle from the CFSVA suggested to the Committee that:

... I would have thought that, with some consultation first, we could have, hopefully, worded it a little bit better and maybe got our heads around a media release or something like that and made it understandable to the everyday person out there who has to work within it.³⁶

Committee view

The Committee recognises the concerns raised by submitters and witnesses about the lack of consultation on the Bill prior to its introduction, particularly in relation to the proposed powers outline in clause 23.

³² Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 100.

³³ Mr Kym Eagle, *Committee Hansard*, 31 January 2019, p. 26.

³⁴ SA Country Fire Service (CFS), *Submission 9*, pp 1–2.

³⁵ Ms Sonia St Alban, *Committee Hansard*, 4 February 2019, p. 93.

³⁶ Mr Kym Eagle, *Committee Hansard*, 31 January 2019, p. 26.

The Committee recognises that the Bill seeks to implement the recommendations from the 2013 Holloway Review, which was based on thorough consultations with key stakeholders. However, the Committee notes that a period of five years elapsed between the Holloway Review occurring and the Bill being introduced.

The Committee considers that more recent consultation could have helped to address the key concerns raised about the Bill and corrected misconceptions about how the proposed powers would operate.

2.2 Need for proposed powers

The Committee heard concerns about the rationale for the proposed powers. At public hearings around the State, witnesses questioned why the proposed powers were being introduced. For example, Ms Jain Menteith asked the Committee in Port Lincoln:

*... why is the amendment proposed? What has happened to bring this forward? ... Is there a major problem somewhere that has caused this to be put up as an amendment?*³⁷

In particular, the Committee heard concerns from grain producers about how the proposed powers would interact with the voluntary, industry-led *Grain Harvesting Code of Practice* (Code). As noted in Chapter 1, the Code provides guidance for producers on how to minimise fire risk and how to determine when to cease harvesting based on weather conditions. The Committee heard that the Code is widely accepted across the State. At public hearings in Port Lincoln, Balaklava and Keith, grain producers told the Committee that over the past 10 years of the Code operating, multiple networks of producers have formed whereby decisions to cease harvest are made by local experts and communicated through established communities.³⁸ Mr Adrian McCabe from GPSA told the Committee:

*South Australian grain growers are leaders in this field. We have developed a culture of fire risk safety in a community environment, which is backed by peer pressure. When conditions become marginal, grain growers jump on the phone and talk to their neighbours. By and large, we make decisions as a community to manage risk.*³⁹

Grain producers highlighted that through the Code, the grain industry is effectively regulating itself and questioned why it was necessary to give the CFS and other authorities the power direct producers to cease harvesting. GPSA suggested that regulation of the day-to-day activities of producers, as proposed by clause 23 of the Bill, ‘sends a clear and unwelcome signal that the government has lost faith in the ability for producers to manage their own risk’.⁴⁰ GPSA expressed concern that the Bill:

*... appears to incorporate grain harvesting in a ‘catch all’ approach to reduce the fire risk for any number of activities that the CFS deems risky. There is no acknowledgement of the level of mitigation of fire risk, and it does not account for an individual’s ability to manage fire risk.*⁴¹

As noted in chapter 1, the proposed powers set out in clause 23 of the Bill seek to implement recommendation 16 of the Holloway Review, which specifically addressed grain harvesting.⁴² The Holloway Review found that the Code ‘has been widely accepted around the state’. However, it noted

³⁷ Ms Jain Menteith, *Committee Hansard*, 31 January 2019, p. 16.

³⁸ See, for example: Ms Jain Menteith, *Committee Hansard*, 31 January 2019, p. 15; Mr Darren Rule, *Committee Hansard*, 31 January 2019, p. 23;

³⁹ Mr Adrian McCabe, *Committee Hansard*, 4 February 2019, p. 44.

⁴⁰ GPSA, *Submission 19*, p. 8.

⁴¹ GPSA, *Submission 19*, p. 8.

⁴² Holloway, *Review of the Fire and Emergency Services Act 2005*, p. 33.

evidence from the South Australia Police (SAPOL) that, at that time, the Code was not ‘leading to the level of behavioural change required to maintain public safety’ and that ‘there were still a few who continue to harvest in unacceptably high risk weather conditions’. In order to ‘deal with a few recalcitrants’, the Holloway Review recommended ‘extending the powers of direction to order the cessation of harvesting where weather conditions are unacceptably dangerous’.⁴³

The CFS highlighted that while the Holloway Review focussed specifically on harvesting, it has a ‘much broader perspective’ on the application of the proposed powers ‘to achieve the legislated intent of Section 59’.⁴⁴ Chief Officer Nettleton told the Committee the proposed powers seek to address a wide range of activities that may cause a fire:

*So I am not looking at this just from the grain harvesting point of view but in terms activity in the future; the greater use of drones, for instance, for a range of activities. A drone that crashes on a day of total fire ban, because it has energy associated with batteries, could be a possible source of fire.*⁴⁵

The Committee heard that across communities there is a small minority of ‘recalcitrant’ producers who continue to harvest in dangerous conditions. In evidence to this inquiry, SAPOL submitted that ‘there are still cases of farmers who continue to harvest in unacceptably high risk weather conditions’.⁴⁶ SAPOL officers told the Committee that of the 102 farm machinery fires recorded during the 2017/18 fire danger season, 44 (or 43%) were started by harvesters or headers, eight of which occurred on a total fire ban day.⁴⁷ Assistant Commissioner Noel Bamford told the Committee that SAPOL supports the introduction of powers to prevent fires:

*It is all very well for the police to come along afterwards and take enforcement action if a fire has been lit negligently. It's a bit late if there's been significant damage and loss of life. We would far sooner see people who are qualified and in the right position at the right time to take some preventative action and, if that means giving a direction, we entirely support that.*⁴⁸

Grain producers highlighted that the vast majority of producers abide by the Code. However, producers also acknowledged that across communities there is a small minority who may continue to reap in dangerous conditions after other producers have agreed to cease, in line with the Code. As one grain producer from the Yorke Peninsula, Mr Lyall Schulz, summarised: ‘It’s really only one or two who need to be dealt with, not thousands.’⁴⁹

GPSA told the Committee that over the course of this inquiry, its members had shifted from opposing the proposed powers outright, to recognising the need for powers to direct growers who refuse to abide by the Code to cease harvesting:

We went out to our members after the newspaper informed us of this change, and I was certainly of the case that, no, we don't need it. It's a load of rubbish; let's get rid of it completely. But the more we talked and the more we got out around our GPSA members, the more they went, 'No, there is a guy here that just won't do the right thing.' So, peer pressure is one thing that's worked really well ... But there is the odd recalcitrant guy that will just not stop, apparently, in other areas.

⁴³ Holloway, Review of the *Fire and Emergency Services Act 2005*, p. 33.

⁴⁴ SACFS, *Submission 9*, p. 4.

⁴⁵ Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, pp 101–102.

⁴⁶ South Australia Police (SAPOL), *Submission 7*, p. 2.

⁴⁷ Assistant Commissioner Noel Bamford, *Committee Hansard*, 4 February 2019, p. 103.

⁴⁸ Assistant Commissioner Noel Bamford, *Committee Hansard*, 4 February 2019, p. 103.

⁴⁹ Mr Lyall Schulz, *Committee Hansard*, 4 February 2019, p. 87.

*So this is where we have changed our position a little bit. We want those guys out. We want them named and shamed. We would like to see them dealt with.*⁵⁰

The Committee heard anecdotal evidence that, in cases where a producer continues to harvest, the CFS, police and other authorities have limited power to direct them to cease.⁵¹ Chief Officer Nettleton told the Committee:

*There is often local pressure applied to the group officer, either local council fire prevention officer or members of SAPOL, to direct the offending producer to cease harvesting. However, the group officer, council prevention officer and SAPOL officers don't have power to do so because there is no legislative power to do that.*⁵²

The Committee heard strong support for the proposed powers from the CFS and the CFS Volunteers Association for the proposed powers to enable the CFS to better prevent the outbreak of fires. The Committee heard that the proposed powers set out in clause 23 of the Bill seek to address a gap in the current *Fire and Emergency Services Act 2005* (the Act). Both the CFS and the CFS Volunteers Association (CFSVA) noted that under section 59 of the Act, the CFS has a legislative requirement to 'provide services with a view to preventing the outbreak of fires, or reducing the impact of fires, in the country'.⁵³ However, the CFS and CFSVA highlighted the Act does not provide a mechanism for this to occur.⁵⁴ The CFS submitted:

*...current legislation gives officers powers to direct **once a fire has been lit** but no similar powers are conferred to prevent a fire becoming lit.*⁵⁵

The CFS submitted that the proposed powers in clause 23 are 'compatible and consistent with the strategic intent' of the Act to prevent the outbreak of fires.⁵⁶ The CFS compared this with the powers of the Metropolitan Fire Service (MFS), which has a range of powers under Division 5 of the Act to direct persons to take action to address conditions 'that are likely to be a source of danger to life or property in the event of fire, or likely to cause an outbreak of fire'.⁵⁷ CFS Chief Officer Greg Nettleton told the Committee:

*The same powers don't exist for buildings in the country or for vehicles in the country or in places in the country, so I contest that, if a person decided that they wanted to use an angle grinder on a day of total fire ban around Cobbler Creek, they could do so, but the MFS officer has the power to direct that activity to cease. The CFS doesn't have a similar power in the country.*⁵⁸

The CFSVA stressed the importance of introducing powers that would enable the CFS to better prevent fires in order to better protect the safety and wellbeing of CFS volunteers. The CFSVA submitted that reports from its members highlight that:

*... CFS volunteers and community members lives and property being placed at risk due to someone else negligence. These reports are extremely concerning and shows how little regard some people have for others, which is why legislative change is necessary.*⁵⁹

⁵⁰ Mr Adrian McCabe, *Committee Hansard*, 4 February 2019, p. 49.

⁵¹ See: Senior Sergeant Russell Dippy, SAPOL, *Committee Hansard*, 4 February 2019, p. 106.

⁵² Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 100.

⁵³ *Fire and Emergency Services Act 2005*, Section 59(1)(a).

⁵⁴ SACFS, *Submission 9*, p. 1; CFSVA, *Submission 30*, p. 5.

⁵⁵ SACFS, *Submission 9*, p. 4.

⁵⁶ SACFS, *Submission 9*, p. 7.

⁵⁷ SAFCS, *Submission 9*, p. 5.

⁵⁸ Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 100.

⁵⁹ CFSVA, *Submission 31*, p. 8.

Committee view

The Committee recognises that the proposed powers outlined in clause 23 of the Bill would assist in preventing fires, which furthers the aims of the *Fire and Emergency Services Act 2005* to 'provide for the prevention, control and suppression of fires.' The Committee acknowledges that the MFS already has similar powers to prevent fires in the metropolitan area.

The Committee recognises that the powers are aimed at a broad range of activities, but that the main concerns have been raised by grain producers about the impact on harvesting operations.

The Committee recognises and acknowledges that the majority of grain producers are abiding by the voluntary *Grain Harvesting Code of Practice*. The Committee applauds the efforts of South Australian grain producers in developing and implementing an effective mechanism to mitigate fire risk during the fire season.

However, the Committee also acknowledges that there is a small minority of producers who do not abide by the Code and continue to harvest in dangerous conditions. The Committee acknowledges that the proposed powers would enable appropriate officers to direct these producers to cease harvesting and better protect other grain producers and the broader South Australian community.

2.3 Exercise of proposed powers

The key concerns raised by submitters and witnesses were about how the proposed powers would be exercised and by whom. The Committee heard concerns that the current drafting of section 82 does not explain which officers of the CFS would be empowered to exercise the power to direct, and does not explain which other officers would be authorised to exercise the power. For example, Mr Peter Hitchcock, Deputy Mayor for the District Council of Elliston, told the Committee in Port Lincoln:

It's very vague. It says 'a person', who can be a CFS person, 'may direct that person', which is 'a person'. It doesn't say anything about groups, farmers or anything, so, to me, it's very vague and will be an economic godsend to a group of lawyers, I think, if they [get] around to discussing it.⁶⁰

The CFS highlighted that the proposed powers would only be introduced by specific CFS officers, local government Fire Prevention Officers (FPOs) and SAPOL officers.⁶¹ Chief Officer Greg Nettleton told the Committee:

If section 82(2)(a) is adopted, those powers would be limited to CFS operational staff members within a regional office to very senior CFS volunteers who hold the rank of group officer or deputy group officer, and to other authorised officers, such as council fire prevention officers and members of SAPOL.⁶²

The range of evidence the Committee heard on how the proposed powers could be exercised is outlined below.

2.3.1 Exercise of proposed powers by CFS

The Committee heard a range of concerns about the role of the CFS in exercising the proposed powers to direct, from both grain producers and CFS volunteers.

As noted above, some concerns arose from a media article published in November 2018 which stated that any officers of the CFS, including volunteers, would be able to use the proposed powers.

⁶⁰ Mr Peter Hitchcock, *Committee Hansard*, 31 January 2019, p. 35.

⁶¹ CFS, *Submission 9*, p. 6. See also: SAFECOM Board, *Submission 28*, 31 January 2019, p. 3.

⁶² Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 100.

Witnesses agreed that it would not be appropriate for the powers to be conferred on any member of the CFS. Mr Peter White, who was involved in developing the Code, told the Committee in Balaklava:

*Under the legislation amendments that are written at the moment, an 18-year-old lad who has been a member of the CFS for one week can make that decision. I don't think anybody would accept that as a good idea.*⁶³

Likewise, the Committee heard from a range of CFS volunteers who were concerned about being required to exercise the proposed powers. Mr Kym Eagle, the Lower Eyre Peninsula CFS Group Officer, told the Committee in Port Lincoln:

*I would like to note that we are volunteers with a capital V. We do have jobs and businesses outside of our life with the CFS. If volunteers are asked to do this, it's another impost on our time. As I said, every minute of the day that we volunteer with the CFS we are away from our main wage-earning capacity.*⁶⁴

The Committee heard that there are several specific reasons why CFS volunteers are concerned about the potential exercise of powers under section 82. Firstly, any person exercising the power will carry the burden of 'directing' the actions of a fellow community member. In a small regional community, this burden is difficult and may impinge on future person and or business relationships. Ms Jain Menteith explained 'I don't think it's fair on the volunteer to do that to them. That would be my concern. As a volunteer, it would be incredibly uncomfortable to be in that position.'⁶⁵ Mr Dean Mortimer, a CFS volunteer from Woodchester, affirmed Ms Menteith's view in stating that CFS volunteers do not want to be perceived as 'policing officers' within their communities.⁶⁶

Further, many farmers are also CFS volunteers. The Committee heard that empowering CFS volunteers to direct their neighbours risks causing tension between neighbours and local communities. Farmer Mr Andrew Kitto referred to this difficulty, paraphrasing feedback provided to him from another farmer: 'As a captain and farmer I don't want to be the one who has to carry the big stick!'⁶⁷ The Mayor of Port Lincoln, Mr Brad Flaherty, highlighted the likely community tension if local CFS volunteers were required to give directions under the proposed powers:

*My discussions and inquiries have shown a reticence for local volunteer officers to direct farmers to cease activities that may cause a fire, with concerns over farmer versus farmer and neighbour versus neighbour in directions to cease an activity. Usually in these circumstances there are great amounts of money or great amounts of risk to be involved from a financial perspective for the farmers. Some of these decisions can be a make-or-break situation for farmers and can definitely cause angst between neighbours and locals.*⁶⁸

Another element of the dual relationship between farmers and CFS volunteers is the role of on-farm fire fighting units. Mr Andrew Cadd, Group Officer, CFS stated in evidence, 'we don't want to cause any harm to the relationship between CFS and farmers with their farm firefighting units'.⁶⁹ The Committee heard that many producers have purchased ex-CFS fire fighting units for on-farm use. Agronomist Mr Leighton Wilksch noted that farmers have made 'an incredible amount of investment' in their on-farm units.⁷⁰ The on-farm units are usually the first responders to a paddock fire. The

⁶³ Mr Peter White, *Committee Hansard*, 7 February 2019, p. 135.

⁶⁴ Mr Kym Eagle, *Committee Hansard*, 31 January 2019, pp 21–22.

⁶⁵ Ms Jain Menteith, *Committee Hansard*, 31 January 2019, p.19.

⁶⁶ Mr Dean Mortimer, *Submission 31*, 1 February 2019.

⁶⁷ Mr Andrew Kitto, *Committee Hansard*, 7 February 2019, p. 147.

⁶⁸ Mr Brad Flaherty, *Committee Hansard*, 4 February 2019, p. 7.

⁶⁹ Mr Andrew Cadd, *Committee Hansard*, 4 February 2019, p. 83.

⁷⁰ Mr Leighton Wilksch, *Committee Hansard*, 7 February 2019, p. 132.

resources of nearby on-farm units can be co-opted by neighbours to ensure that a fire is extinguished quickly. Mr Peter Cockburn and Ms Toni-Louise Cockburn submitted that the 2014 Bangor fire was only able to be extinguished through a joint effort between CFS resources and on-farm fire-fighting units.⁷¹ Evidence to the Committee demonstrates that producers are aware of the significance of having these resources available in a local area, and are not willing to jeopardise or undermine the arrangement.

Some witnesses also suggested that divisions may arise between the CFS and local communities if the CFS is permitted to direct landholders to cease activities. GPSA suggested that community motivation to continue self-regulatory activities 'is unlikely to continue if government, through the CFS, becomes the arbiter of when to conduct certain farm activities.'⁷² Other submitters suggested that requiring volunteers to exercise the powers could result in farmers leaving the CFS. Councillor Bryan Trigg, Chair of Regional Development Australia – Whyalla and Eyre Peninsula, told the Committee in Port Lincoln:

*To have someone from the CFS tell them to stop reaping will have the effect of farmers leaving the CFS in droves, leaving quite a few of our current brigades with very few members.*⁷³

Grain producers also expressed particular concerns about the powers being exercised by CFS officers with no knowledge of local conditions. The Committee heard that the introduction of the powers may invoke a perception that government intervention is being used to override and therefore demonstrate a lack of faith in, an individual landholder's ability to use discretion and experience in making a decision that is appropriate for localised conditions.⁷⁴

2.3.2 Exercise of proposed powers by SA Police

The role of South Australia Police (SAPOL) in enforcing the proposed powers to direct was frequently discussed during the inquiry. Multiple stakeholders were in favour of SAPOL having an enforcement role, and several witnesses presented models for how this could operate. The Committee heard that while SAPOL already has a range of powers to maintain community safety, it does not currently have a specific power to directing a person to cease an activity even when the circumstances are clearly presenting a high fire risk.⁷⁵

The Committee heard support for SAPOL having a role in exercising the proposed powers. Submitters and witnesses suggested that police involvement creates a more urgent type of peer pressure, and that most community members are likely to respect police authority. Ms Karen Baines submitted that many producers would feel ashamed if SAPOL contacted them to cease harvesting and would likely respond to a simple phone call without the need for a site visit.⁷⁶ The Committee heard that SAPOL are active in regional areas conducting enforcement activities associated with Operation Nomad, so are more likely to be available if required.⁷⁷

Some submitters and witnesses suggested that SAPOL's role should be as a back-up to enforce and directions issued by the CFS. Former police superintendent and now Mayor of Port Lincoln, Mr Brad Flaherty, proposed that SAPOL might provide a backup or escalation strategy if a person ignored a direction from the CFS in the first instance. Similarly, the Hon Rob Kerin, Chair of Primary Producers

⁷¹ Peter and Toni-Louise Cockburn, *Submission 22*, 31 January 2019, p. 2.

⁷² Grain Producers South Australia, *Submission 19*, p.8.

⁷³ Cr Bryan Trigg, *Committee Hansard*, 31 January 2019, p. 4.

⁷⁴ Grain Producers South Australia, *Submission 19*, p. 5.

⁷⁵ Mr Andrew Cadd, *Committee Hansard*, 4 February 2019, p. 88.

⁷⁶ Ms Karen Baines, *Submission 33*, 31 January 2019, p. 2.

⁷⁷ Mr Brad Flaherty, *Committee Hansard*, 31 January 2019, p. 12.

SA, suggested that SA Police should play an escalation role in the event that a person does not comply with the Code and does not respond to peer pressure.⁷⁸

Mr Flaherty noted that one important rationale for providing SAPOL with the power to direct is related to their skills and experience in enforcing legislation. Mr Flaherty stated that, ‘police officers have a high level of training in dealing with people of all different characters and types’.⁷⁹ Mr Flaherty also drew the Committee’s attention to the police powers to expiate a continuing offence where a person has been directed to cease an activity but ignores that direction; SA Police can issue an additional expiation for a continuation of the offence.

The Committee heard that stakeholders do not intend SA Police to take technical measurements of GFDI or make a technical decision related to the fire risks of prevailing local conditions.⁸⁰ SA Police emphatically rejected that they have a role to play in taking local measurements.⁸¹ Representatives from SAPOL supported the role of police officers as enforcers, noting that they do not believe the police should be the first party to exercise the power to direct. Assistant Commissioner Noel Bamford told the Committee that, ‘we don’t see it as a police role to be the first people to turn up and tell someone to stop using a header’. However, the Assistant Commissioner acknowledged that SA Police would best play a role as a ‘fall back’ once the requisite technical decisions have been made.⁸²

Other submitters and witnesses suggested that it should be SAPOL, rather than the CFS, that should issue the directions under the proposed powers. Some stakeholders would view the police role as essential because the community understands that the police are the main enforcement body for laws in South Australia. Cr Bryan Trigg told the Committee in Port Lincoln: ‘we can only have one law in South Australia and that’s the police.’⁸³

The Committee also heard that having SAPOL exercise the proposed powers could assist in mitigating the potential tension in regional communities discussed above where CFS volunteers of a certain rank may be required to exercise the proposed powers.⁸⁴ Assistant Commissioner Noel Bamford told the Committee that even though the police form part of regional communities, they are able to differentiate the roles required by their job from their relationships outside of work. He stated that, ‘police officers still live in the same community...but when it comes time the job’s on, job’s on.’⁸⁵

The Committee heard that one limitation involved in using SA Police as an enforcement body for the proposed power to direct is that they cannot enter a paddock to conduct enforcement activities. This is primarily because their vehicles are likely to ignite a fire.⁸⁶

2.3.3 Exercise of proposed powers by fire prevention officers

The Committee heard a range of view on the role of fire prevention officers (FPOs) in exercising the proposed powers. Under Section 105 of the Act, each rural council must appoint at least one FPO to exercise a range of fire prevention measures set out in the Act.⁸⁷ Under Section 105C, one of the functions of FPS is to ‘provide advice to owners of property in respect of bushfire prevention and

⁷⁸ The Hon Rob Kerin, *Committee Hansard*, 4 February 2019, p. 52.

⁷⁹ Mr Brad Flaherty, *Committee Hansard*, 31 January 2019, p. 7.

⁸⁰ Cr Ben Browne, *Committee Hansard*, 7 February 2019, p. 118.

⁸¹ Assistant Commissioner Noel Bamford, *Committee Hansard*, 4 February 2019, p. 104.

⁸² Assistant Commissioner Noel Bamford, *Committee Hansard*, 4 February 2019, p. 105.

⁸³ Cr Bryan Trigg, *Committee Hansard*, 31 January 2019, p. 11.

⁸⁴ Mr Brad Flaherty, *Committee Hansard*, 31 January 2019, p. 7.

⁸⁵ Assistant Commissioner Noel Bamford, *Committee Hansard*, 4 February 2019, p. 104.

⁸⁶ Cr Bryan Trigg, *Committee Hansard*, 31 January 2019, p. 12.

⁸⁷ *Fire and Emergency Services Act 2005*, Part 4A – Fire Prevention, Sections 105A–105K.

management'.⁸⁸ Mr Alex O'Loan from the Owen Agricultural Bureau told the Committee in Balaklava of the role FPOs play in fire prevention:

*Prevention of fire is more a council responsibility, or a fire prevention officer responsibility. In my experience, the CFS generally, certainly at a volunteer level, only gets involved once a fire has started.*⁸⁹

The Committee heard that FPOs are already involved in issuing burning permits during fire ban periods. In some council areas, such as on Yorke Peninsula, FPOs are also involved in ensuring that local producers comply with the Code.⁹⁰ Mr Phil Herrmann, an FPO from the Yorke Peninsula Council, told the Committee that where producers are not complying with the Code, FPOs may issue notices as 'an educational tool':

*If they don't comply and they are a common offender, maybe down the track there will be an expiation as an educational tool. We don't issue many expiations on Yorke Peninsula Council, but it's just an educational tool. It's the same with dog control and people burning off. If they continue to offend, it's just a tool to try to say, 'Hey, you are not doing the right thing.'*⁹¹

The Committee heard many stakeholders were in favour of FPOs being able to exercise the proposed power to direct. Currently, FPOs do not have powers to direct a person to cease harvesting, so that even where a Council receives a complaint that a person is not complying with the Code, the FPO has no formal power to issue a 'cease harvest' direction.⁹² Like SAPOL, the Committee heard that FPOs are perceived as trained in enforcement functions and accustomed to using enforcement powers. Mr Neil Ellis, President of the Eyre Peninsula CFS Volunteers' Association, stated, 'it's part of their job'.⁹³ The Committee heard that in the same way that SAPOL is viewed as fulfilling the functions of their role when the need arises, FPOs are viewed as having sufficient autonomy to be able to use an enforcement power without impinging on personal or business relationships.⁹⁴

Other submitters expressed concerns about FPOs being required to exercise the powers. Mr Roger Babolka from Wattle Range Council and a CFS volunteer told the Committee in Keith it should be SAPOL, rather than FPOs or the CFS, involved in issuing directions:

*I would not, from the CFS members' point of view and also the council's point of view, want a CFS member or a council FPO to have to enforce this arrangement. We would rather see that left up to other organisations, i.e. SAPOL. We would be happy to raise that with SAPOL in terms of the situation where you might have a member of the public who was not compliant or who was undertaking a risky activity. At that point, we would not want to be involved.*⁹⁵

The Committee also heard that certain challenges may confront FPOs, for example if an FPO is required to undertake enforcement action against a Councillor.⁹⁶ Fire prevention officers are responsible for enforcement of 15 – 16 pieces of legislation in their roles as general inspectors, so any additional roles allocated via the proposed amendments would add to their workload. Fire prevention officers also work only during standard business hours, so that a power to direct issued outside of business hours would need to be issued by an alternative party.⁹⁷

⁸⁸ *Fire and Emergency Services Act 2005*, s 105C.

⁸⁹ Mr Alex O'Loan, *Committee Hansard*, 7 February 2019, p. 152.

⁹⁰ Mr Phil Herrmann, *Committee Hansard*, 7 February 2019, p. 123.

⁹¹ Mr Phil Herrmann, *Committee Hansard*, 7 February 2019, p. 124.

⁹² Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p.100.

⁹³ Mr Neil Ellis, *Committee Hansard*, 31 January 2019, p. 25.

⁹⁴ Mr Lyall Schulz, *Committee Hansard*, 4 February 2019, p.86.

⁹⁵ Mr Roger Babolka, Manager, Economic Development, Wattle Range Council, *Committee Hansard*, Keith, 7 March 2019, p. 161.

⁹⁶ Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 101.

⁹⁷ Mr Phil Herrmann, Yorke Peninsula Council, *Committee Hansard*, 7 February 2019, p. 127.

2.3.5 *Enforcement criteria and guidelines to accompany exercise of proposed powers*

The Committee also heard concerns about how a decision to issue a direction may be determined. As noted in Chapter 1, the Bill proposes that a direction may be issued where a CFS officer is ‘satisfied’ that ‘a person proposes to carry on an activity of a kind prescribed by the regulations or any other activity that the officer is satisfied may cause a fire’ or ‘that because of weather conditions the fire, if caused by the activity, may get out of control’.⁹⁸ Some witnesses expressed concern about how a CFS officer could be ‘satisfied’ that the activity may cause a fire, particularly in relation to grain harvesting. Mr Corbin Schuster, President of the Freeling Agricultural Bureau, told the Committee:

*Is this satisfaction purely subjective or will they be using the same system of objective measurement that we use? We can all agree that if a farmer is still harvesting once conditions have exceeded the safe harvesting limit, or FDI 35, then they should be strongly given advice to stop.*⁹⁹

The Committee also heard concerns about the broad inclusion of ‘any other activity’, in addition to those activities prescribed by regulation. Mr Peter White, the Primary Producers SA representative on the State Bushfire Coordination Committee, told the Committee in Balaklava:

*It is pretty broad-based and it is open to interpretation what that might be. For example if somebody decides, on a fire ban day, that the electric fence might cause a problem and tells them to turn it off, then who is responsible if that is the only means of restriction of livestock? Cabling is another one. It is an accepted practice by primary industries, if you want to get rid of snails, to drag a cable around on a hot day to knock them on the ground to kill them, but is that seen as ‘any other activity’, and at what level should they stop doing that?*¹⁰⁰

The Committee heard there is a need for guidelines to better define why and how the proposed powers could be exercised. GPSA recommended that Standard Operating Procedures be developed to accompany amendments to the Act, and that these be consulted upon before being introduced. GPSA suggests this would ensure that stakeholders are aware of who can exercise the powers outlined in section 82 and under what circumstances.¹⁰¹ Similarly, the Adelaide Hills Council stated that ‘easily understood and simple to use enforcement criteria and guidelines’ would assist in consistent enforcement of proposed powers.¹⁰² Mr Tim Kelly, CFS volunteer, agreed with the need to produce guidelines to assist in enforcement of the proposed powers at a state level, regional level, and local or property level.¹⁰³

Submitters also highlighted the need for training on the guidelines for all officers authorised to exercise the proposed powers. Councillor Ben Browne from Northern Areas Council recommended that additional training for anyone using the power to direct would need to accompany the relevant guidelines, and would provide the adequate skills and knowledge to fulfil the role effectively.¹⁰⁴

2.3.5 *Role of section 82(5) in enforcement of proposed powers*

As noted above, the Committee heard significant concerns about CFS volunteers being authorised to exercise the proposed powers. The Committee also heard concerns that the Act, as currently drafted, may enable CFS volunteers or other authorised officers (SAPOL and FPOs) to exercise the proposed powers where CFS officers are not available. Section 82(5) of the Act currently provides that where a CFS officer who has been authorised to exercise the power to direct is not available, any CFS officer may exercise the power. The Committee heard that this provision is usually used where a volunteer is

⁹⁸ Fire and Emergency Services (Miscellaneous) Amendment Bill 2018, clause 23(4).

⁹⁹ Mr Corbin Schuster, *Committee Hansard*, Adelaide, 4 February 2019, p. 57.

¹⁰⁰ Mr Peter White, *Committee Hansard*, Balaklava, 7 February 2019, p. 136.

¹⁰¹ Grain Producers SA, *Submission 19*, p. 9.

¹⁰² Mr John Macarthur, Adelaide Hills Council, *Committee Hansard*, 4 February 2019, p. 69.

¹⁰³ Mr Tim Kelly, *Committee Hansard*, 4 February 2019, p. 77.

¹⁰⁴ Mr Ben Browne, *Committee Hansard*, 7 February, 2019, p. 122.

a first responder to an incident, but as drafted, does allow *any* CFS officer to exercise the power. Chief Officer Nettleton told the Committee:

*In the implementation of it I would not see every volunteer having those powers. However in saying that, elsewhere in the act a first-arriving person can take charge of an incident until someone with the appropriate skills or authority can take charge. So there are provisions in the act for a volunteer to take charge of something until such time as the appropriate person arrives, but in this case I would see this not being a power that every volunteer would have.*¹⁰⁵

Committee view

The Committee recognises and shares the concerns of submitters and witnesses that the Bill as drafted does not clearly state who will exercise the proposed powers. The Committee agrees that it would not be appropriate for the proposed powers to be conferred on all CFS officers, including volunteers. The Committee recognises the significant contribution made by CFS volunteers and agrees that requiring volunteers to give directions could cause significant tension and conflict in regional communities, and place undue pressure and responsibility on volunteers.

The Committee agrees that clause 23 of the Bill should clearly state which officers are authorised to exercise the proposed powers to direct that a prescribed activity be ceased or not commenced.

The Committee heard a range of views on who should be authorised to exercise the proposed powers. The Committee agrees that SAPOL, as the chief authority for law enforcement in SA, has an important role in delivering and enforcing any directions under the proposed powers. The Committee considers that SAPOL, in consultation with local communities, should issue directions.

The Committee acknowledges the definition in clause 23 of the types of activities that may be subject to the proposed powers is broad and the circumstances in which the powers may be exercised are subject to the 'satisfaction' of individual officers. This highlights the need for clear enforcement criteria and guidelines for the exercise of the proposed powers. The Committee recognises the important contribution industry bodies and other stakeholders could make to developing these criteria and guidelines.

The Committee is concerned section 82(5) of the Act may introduce some ambiguity as to who may exercise the power. The Committee considers that some re-drafting may be required to clarify that only a person who has been delegated the authority to exercise the power to direct should be able to exercise that power.

2.4 Recognition of existing codes of practice

As noted in chapter 1, the *Grain Harvesting Code of Practice* (Code) was developed by Primary Producers SA and the CFS and came into operation in 2008. It is a voluntary Code, the enforcement of which relies on peer enforcement and community goodwill. A key tenet of the Code is the requirement to cease harvesting when the local actual Grassland Fire Danger Index (GFDI) reaches 35. The 'cease harvest' decision can be made by a committee of local producers or by a single producer making a decision to cease activities based on their own observations and calculations.

The Committee heard that stakeholders view the Code as a successful and effective means of regulating grain harvesting activities to minimise fire risk. The Committee heard that stakeholders are strongly supportive of the Code. For example, the Eyre Peninsula Advisory Group, which represents farmers and agricultural support industries on the Eyre Peninsula, told the Committee: 'Our industry is totally committed to the Code'.¹⁰⁶

¹⁰⁵ Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 101.

¹⁰⁶ Mr Peter Scott, *Committee Hansard*, 31 January 2019, p. 2.

Overwhelmingly, evidence presented to the Inquiry indicates that the rate of non-compliance with the Code is extremely low. Multiple witnesses to the Inquiry explained that one of the important roles of the Code is in facilitating behaviours that support community wellbeing and set community values. Where one landholder is perceived as ‘recalcitrant’, community members can apply the pressure of community sentiment. Mr Peter Hitchcock commented that:

*The pressure there to stop reaping is unbelievable. It’s not like it was. This idea of the rogue operators, I don’t think it exists anymore...there is just too much pressure financially and from other people just to stop. People are just too worried about it all.*¹⁰⁷

Over the 10 years that the Code has operated, multiple networks of producers have formed whereby decisions to cease harvest are made by local experts and communicated through established communities. To support decisions to cease harvest, producers have also readily taken advantage of available technologies that provide an evidence base for decision making. Producers have established a network of weather stations across the State, accompanied by data that is uploaded to the internet and made available to local farmers. Some farmers have purchased portable weather stations or hand-held meters that enable them to calculate localised conditions.

The Committee heard that stakeholders are supportive of the objective measure adopted within the Code, that is, the GFDI 35. Paired with information that assists producers to calculate and use the GFDI such as local weather stations, and a network where peers give the GFDI credence, the GFDI appears to offer a sound tool for making an important decision. Harvester fire expert Ben White, Kondindin Group, Western Australia, has commented that:

*The objective GFDI 35 measure is an incredibly useful tool and growers know how to use it. It far outweighs any subjective measure and forms a benchmark for a stop/go decision.*¹⁰⁸

The Committee heard that farmers have become increasingly cautious with their harvesting behaviours in the past 10 years since the Code was developed. This has been heavily influenced by several significant fires in South Australia, including those originating at Wangary, Pinery, and Bangor. The incidence of fire has resulted in many producers ceasing harvest well before the GFDI in their local area reaches 35.

The Committee heard concerns from grain producers that the proposed powers do not recognise the measures that the industry has undertaken through the Code to minimise fire risk during the harvest season. GPSA recommended that in exercising the proposed powers for a primary production activity, officers must take into consideration the usual practice and any relevant codes of practice. GPSA submitted that this would ensure the powers:

*... properly target producers who operate outside of community values and to ensure that fire-risk-aware producers are not unfairly captured by these new powers.*¹⁰⁹

The Committee heard that the proposed powers, if framed appropriately, could support the Code and provide a mechanism to deal with the small minority of producers who do not comply and continue to harvest in dangerous conditions.¹¹⁰ Mr Neil Ellis, President of the Eyre Peninsula CFS Volunteers’ Association stated:

¹⁰⁷ Mr Peter Hitchcock, *Committee Hansard*, 31 January 2019, p. 37.

¹⁰⁸ Grain Producers SA, ‘GPSA reinforces commitment to harvest code’, 29 November 2018, <http://grainproducerssa.com.au/latest/media-releases/gpsa-reinforces-commitment-to-harvest-code/> (accessed 27 February 2019).

¹⁰⁹ GPSA, *Submission 19*, p. 9.

¹¹⁰ Mr Peter Scott, *Committee Hansard*, 31 January 2019, p. 2.

*This part of the legislation will allow that to be further reinforced. We see that as a reinforcement of the Code of Practice. That's the main thing.*¹¹¹

Mr Kym Eagle, Group Officer for the Lower Eyre Peninsula CFS emphasised that the proposed powers should provide for a means to take action on non-compliance with the Code. Mr Eagle told the Committee that discussions among stakeholders on the proposed powers have erroneously focussed on the powers of the CFS, but if the powers are re-framed as a means of enforcing the requirements of the Code, the scope of the powers would be much more clearly defined.¹¹²

The Committee also heard evidence that the Code would benefit from regular review to ensure that it remains relevant to current practices. The Code was most recently reviewed in 2016 following a series of crop fires¹¹³. Mr Paul Daniel observed that the Code does not contain review provisions that schedule periodic reviews, nor does it refer to any circumstances that would trigger a review. Mr Daniel noted that the Code does not contemplate high-volatility crops such as lentils, vetch and chickpeas.¹¹⁴ Ms Jain Menteith commented that the Code 'needs some tweaking', particularly as it relates to fire-breaks.¹¹⁵ Mr Mark Modra agreed that a review of the Code needs to investigate fire break requirements.¹¹⁶ Mr Darren Rule affirmed this view, stating that farming technology and machinery is constantly changing, which provides the impetus to review any documents that regulate farming activities.¹¹⁷ Ms Karen Baines submitted that a review of the Code could take into account issues including fire breaks, the recent uptake of technology among producers, and changes to farm structures such as paddocks.¹¹⁸

The Committee heard that any review of Code should be led by the grain industry. The Eyre Peninsula Agricultural Advisory Group emphasised the importance of any reviews being industry-led,¹¹⁹ and Regional Development Australia Yorke Peninsula and Mid-North also supported collaborative, continuous and objective review of the Code.¹²⁰ Ms Karen Baines recommended that a review be led by Grain Producers SA.¹²¹ Mr Neil Ellis noted that a committee has been formed to undertake reviews of the Code of Practice, and that this committee meets regularly;¹²² however the Committee heard that it does not comprise representation from the CFS Volunteers Association (CFSVA). Mr Kym Eagle submitted that representation from the CFSVA in any reviews of the Code would provide 'input from people on the ground that are actually implementing it'.¹²³

The Committee heard that there are a range of other activities that pose a fire risk, and several other Codes of Practice are in use or are being developed. For example, the *Broad Acre Burning Code of Practice* has been in force in 2015 and regulates the activity of broad acre stubble burning outside the fire danger season. The Code expects that:

- producers will not undertake stubble burning when the GFDI exceeds 20; and
- appropriate water must be available; and
- burning methods must be tested; and

¹¹¹ Mr Neil Ellis, *Committee Hansard*, 31 January 2019, p. 21.

¹¹² Mr Kym Eagle, *Committee Hansard*, 31 January 2019, p. 22.

¹¹³ Mr Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 100.

¹¹⁴ Mr Paul Daniel, *Committee Hansard*, 7 February 2019, p. 136.

¹¹⁵ Ms Jain Menteith, *Committee Hansard*, 31 January 2019, p. 16 – 17.

¹¹⁶ Mr Mark Modra, *Committee Hansard*, 31 January 2019, p. 34.

¹¹⁷ Mr Darren Rule, *Committee Hansard*, 31 January 2019, p. 26.

¹¹⁸ Ms Karen Baines, *Submission 33*, p. 2.

¹¹⁹ Mr Peter Scott, *Committee Hansard*, 31 January 2019, p. 3.

¹²⁰ Mr Bill Vandeppeer, *Committee Hansard*, 7 February 2019, p. 126.

¹²¹ Ms Karen Baines, *Submission 33*, p. 2.

¹²² Mr Neil Ellis, *Committee Hansard*, 31 January 2019, p. 27.

¹²³ Mr Kym Eagle, *Committee Hansard*, 31 January 2019, p. 27.

- neighbours and nearby road users should be notified that stubble burning is being undertaken.¹²⁴

The Committee heard that the *Grain Harvesting Code of Practice* could be used as a model to develop codes of practice for a range of other activities that pose a fire risk. Mr Rocky Warren told the Committee that local government and fire prevention officers (FPOs) have worked over a number of years to influence the CFS to develop a code of practice to regulate hazard management on private properties, but this has not yet occurred. Mr Warren noted that section 105F of the Act provides for a code of practice to be prescribed in relation to burning permits.¹²⁵

At its hearing in Keith, the Committee heard that a Code of Practice could be developed for electric fences, based on the harvesting code. Representatives from the Sherwood Fire Local Recovery Committee, set up by local governments and landholders following the Sherwood fire which was started by an electric fence in 2018, wrote to the CFS suggesting that a code could be developed for electric fences.¹²⁶ Ms Tracey Strugnell from the Coorong District Council told the Committee:

*The response came back that they decided not to progress with the development of a code of practice for electric fences as they felt that a code of practice works best when done in partnership with industry, like the grain harvest code of conduct, otherwise they lose their effect.*¹²⁷

The Committee heard that the CFS State Bushfire Committee and Livestock SA is currently working on a code of practice to manage the use of electric fencing during extreme weather conditions, supported by a series of fact sheets.¹²⁸

Committee view

The Committee recognises the leading role South Australian grain producers have taken in developing and implementing the *Grain Harvesting Code of Practice* (Code). The Committee recognises that the Code is widely accepted across the State and that the GFDI provides an effective measure to monitoring and mitigating fire risk.

The Committee is impressed by the measures that producers have undertaken to support and enforce the Code across all regions of the State. The Committee recognises that vast majority of producers comply with the Code, with non-compliance limited to a small minority.

The Committee acknowledges and shares the concerns of grain producers that the proposed powers, as drafted, do not adequately recognise the existing industry-led initiatives such as the Code. The Committee is concerned that the introduction of the proposed powers may be perceived as a lack of confidence in the ability of producers to manage risk.

The Committee affirms its support for industry-led initiatives and congratulates the producers on their effective implementation of the Code. The Committee recognises that the proposed powers could assist producers and the CFS in addressing non-compliance with the Code.

The Committee also recognises there may be scope to review the Code and to develop other codes for activities that pose a fire risk. The Committee strongly supports the development of new codes of practice, based on the success of the grain industry model.

¹²⁴ SA Country Fire Service (SACFS), CFS Codes of Practice, *Broad Acre Burning Code of Practice*, https://www.cfs.sa.gov.au/site/prepare_for_a_fire/cfs_codes_of_practice.jsp (accessed 27 February 2019).

¹²⁵ Mr Rocky Warren, *Committee Hansard*, 7 March 2019, p. 159.

¹²⁶ Ms Anne Champness, *Committee Hansard*, Keith, 7 March 2019, p. 161.

¹²⁷ Ms Tracey Strugnell, *Committee Hansard*, Keith, 7 March 2019, p. 170.

¹²⁸ *Committee Hansard*, 7 March 2019, p. 171.

The success of the Code in the grain industry highlights the important role that industry-led codes of practice can play in minimising fire risk across the State. The Committee strongly supports the development of more codes of practice, based on the grain industry model, for other activities that may cause fires. The Committee recommends that the Bill recognise that current codes of practice should be considered in exercising the proposed powers and make provision to recognise other codes that may be developed in future.

2.5 Support for industry and community-led initiatives

The Committee observed high levels of goodwill, co-operation and community ethos among producers across the regions of South Australia. The Committee noted that individuals are aware of the impacts of their actions for their own operations and for surrounding landholders. Vice Chairman of GPSA, Mr Adrian McCabe, pointed out that ‘[i]t is in a farmer's best interest to manage their risk to an activity to prevent the outbreak of fire.’¹²⁹ The impacts of a fire may include destruction of property, risks to life, and loss of crops. Additionally, it may not be possible to claim these losses on insurance where it can be shown that harvesting activities were being undertaken on the property in conditions likely to result in high fire risks.¹³⁰

Some of the industry and community-led initiatives highlighted to the Committee are outlined below.

2.5.1 Proactive responses to risk

The Committee heard that producers have worked proactively in recent years on industry and community-led initiatives that support the *Grain Harvesting Code of Practice*. These have included:

- forming producer networks to make decisions about when to call a voluntary cease harvest;
- developing an SMS alert system within a community of producers, supported by a dial-in hotline with a recorded message once a decision to cease harvest has been made;
- increased investment in on-farm and local networks of weather stations;
- increased investment in on-farm firefighting units;
- workshops discussing best practices; and
- the ‘Know Your Code’ education campaign.¹³¹

A successful network of over 400 producers is active within the Yorke Peninsula region which, according to local community members, is ‘highly valued and regarded with integrity’.¹³² The Committee heard that similar networks also exist across the Eyre Peninsula, Mid-North and South East. Panels of producers make decisions based on local conditions and communicate among the network. This service operates across seven days of the week at all hours, and the time spent by involved parties is voluntarily given, as is the cost of associated phone use. The network can also be used to advise when a fire has broken out, or when there is an infrastructure failure in the area, for example a SA Water outage.¹³³ In central Yorke Peninsula, the grain terminals are also part of the SMS network so that when a ‘cease harvest’ is called, the grain terminals are aware of producers’ progress and can adjust their operations accordingly. Figure 2 highlights an example of an SMS sent within the network advising producers to cease harvesting:

¹²⁹ Mr Adrian McCabe, *Committee Hansard*, 4 February 2019, p.45.

¹³⁰ Mr Bryan Trigg, *Committee Hansard*, 31 January 2019, p. 5.

¹³¹ Grain Producers SA, ‘GPSA reinforces commitment to harvest code’, 29 November 2018, <http://grainproducerssa.com.au/latest/media-releases/gpsa-reinforces-commitment-to-harvest-code/> (accessed 27 February 2019).

¹³² Mr Lyall Schulz OAM, *Committee Hansard*, 4 February 2019, p. 84.

¹³³ Mr Lyall Schulz OAM, *Committee Hansard*, 4 February 2019, p. 84.

Figure 2 – Grain Harvesting Code of Practice SMS alert



Source: Grain Producers SA, *Submission 19*, p. 6.

2.5.2 Localised solutions

Ready access to localised technologies such as mobile weather stations and local methods for communicating within a network of producers are imperatives for managing local risks. Evidence presented to the Inquiry suggests that mobile coverage is increasingly more reliable, and digital weather stations are becoming more readily available in new harvesting equipment.

Alert systems

Several witnesses recommended that further Government investment should be made into bolstering the initiatives that are already proven to be successful. The Committee notes that not all regions of South Australia are using an SMS alert system or relying on networks of producers. Mr Lyall Schulz OAM was one of the originators of the SMS alert system and recommended that:

...it's probably more beneficial that we get support for creating cells within our communities to send out messages to support, often, what is either being done voluntarily or is being funded by other arrangements, by sponsorship or whatever else, if we can get the systems working.¹³⁴

Paskeville farmer Mr Malcolm Meier quantified the yearly cost of the Yorke Peninsula SMS alert system at approximately \$2000. He suggests that Government investment in this system and analogous systems across the state would be worthwhile.¹³⁵

Agronomist Mr Leighton Wilksch suggested that some form of reimbursement would be appropriate for community leaders who have voluntarily taken on the role of communicating among producer networks. The task of communicating among the networks is time-consuming and occurs on week days and weekends. It also requires confidence in decision-making. That is, a decision to cease harvest should be based on reliable local data sources. As these are not available comprehensively in all areas, community networks and local champions are less likely to form.¹³⁶

¹³⁴ Mr Lyall Schulz OAM, *Committee Hansard*, 4 February 2019, p. 90.

¹³⁵ Mr Malcolm Meier, *Submission 20*, p. 1.

¹³⁶ Mr Leighton Wilksch, *Committee Hansard*, 7 February 2019, p. 130.

Automatic weather stations

The Committee heard that an extensive network of privately-funded or community-funded weather stations has developed across many regions of South Australia to assist in measuring local conditions. Each weather station is valued at approximately \$5000 - \$6000.¹³⁷ Multiple witnesses explained the proliferation of microclimates, sometimes in relatively small areas. For example, Mr Don Gilbertson commented that conditions can be severe in Naracoorte and subject to a fire ban, while sea breezes are prevailing at the same time in nearby Millicent and Mount Gambier.¹³⁸ Similarly, Cr Bryan Trigg explained that a small location such as Arno Bay can have several sets of prevailing conditions depending on which side of a bitumen road a property is located, whether coastal or inland.¹³⁹

The Committee heard that producers use portable or stationary weather stations within a network of locations to determine prevailing conditions on their property. Mr Max Wilksch emphasised that farmers have largely self-funded the weather stations in an effort to ensure that harvesting is undertaken responsibly:

*It is the price we are prepared to pay to enable safe, uniform, reliable, predictable harvesting conditions for our own businesses, for our neighbours and for the larger community.*¹⁴⁰

The Committee heard that there are some differences in measurements generated by the Bureau of Meteorology (BOM) and those generated by the local weather stations, which may contribute to differences of opinion about whether to cease harvest. Mr Leighton Wilksch explained that the private automatic weather stations supplied by AgByte take measurements at a height of two metres from the ground, which is more appropriate for an agricultural application of the relevant information.¹⁴¹ Mr John Nairn explained that the BOM calculates fire bans based on the McArthur Index, which was originally developed to undertake controlled burn-offs and manage assets, and was not intended to be used to calculate the fire risks associated with activities such as harvesting. Mr Nairn explained that the Bureau will cease using the McArthur Index within the next two years with development of a national fire danger ratings system, supported by the Cooperative Research Centre for Bushfires and Natural Hazards.¹⁴² New models for calculating fire danger are likely to take into account more nuanced local structures and vegetation. Mr Nairn further explained that it derives its forecasts from a grid of satellite sources at six-kilometre intervals across the entire country. Its wind measurements are taken at a height of 10 metres, which are likely to produce higher Fire Danger Index readings than measurements taken lower to the ground would produce. In Mr Nairn's view, numerical model systems such as the Bureau's Australian Prediction Scheme offer continual assimilation of data and provide a higher density of observations than would be obtained through automatic weather stations. While data is not currently shared between the Bureau of Meteorology and local weather stations, Mr Nairn noted that the BOM plans to facilitate data sharing commencing in 2019. He considers that the current networks of automatic weather stations provide beneficial data for local communities, but that these benefits would be amplified if the data could be inputted into a larger numerical model and combined with the range of data collected through the Australian Prediction Scheme. The outcomes of this type of data sharing would be greater awareness of the state's atmosphere and a higher quality of forecast.¹⁴³

The Committee recognises the human and environmental costs of fires, which could be avoided or minimised by investing in preventative measures. At the current juncture, ensuring that all producers have ready access to reliable sources of technology may be one of the important ways that the Government can offer support to producers in proactively managing fire risks and engaging in

¹³⁷ Mr Mark Modra, *Committee Hansard*, 31 January 2019, p. 31.

¹³⁸ Mr Don Gilbertson, *Committee Hansard*, 4 February 2019, p. 73.

¹³⁹ Mr Bryan Trigg, *Committee Hansard*, 31 January 2019, p. 6.

¹⁴⁰ Mr Max Wilksch, *Committee Hansard*, 31 January 2019, p. 31.

¹⁴¹ Mr Leighton Wilksch, *Committee Hansard*, 7 February 2019, p.

¹⁴² Mr John Nairn, *Committee Hansard*, 4 February 2019, p. 61.

¹⁴³ Mr John Nairn, *Committee Hansard*, 4 February 2019, p. 66.

meaningful fire prevention initiatives. Given the success of the community-based initiatives, further funding to support their development may be beneficial.

Committee view

The Committee recognises the range of measures that producers, often at significant personal cost, have implemented to monitor and mitigate fire risk, in support of the *Grain Harvesting Code of Practice*.

The Committee considers that these measures make a significant contribution to community safety and warrant further support.

The Committee considers there is scope for the South Australian Government to review the supports available to producers to develop and improve fire mitigation initiatives such as SMS alerts and local weather monitoring networks.

2.6 Consideration of further changes

The Committee welcomed stakeholders' active engagement in the Inquiry. It notes that stakeholders provided a wealth of information about the practical impacts of the proposed power to direct, and is appreciative of stakeholders who provided their inputs and time to the process.

The Committee received a number of submissions relating to other aspects of Bill beyond the Committee's terms of reference relating to several issues that may warrant more detailed consideration.¹⁴⁴ The Committee recommends that the South Australian Government review the following issues to assess whether further changes to the Act may be appropriate.

2.6.1 Review of the Fire Ban districts to assess whether these adequately take into account microclimates

The Committee heard that there are wide variations in weather conditions across South Australia even in small areas such as one township or according to geographic features. This is accentuated in some regions where the Fire Ban Districts cover large areas. Mr Don Gilbertson recommended that the Fire Ban Districts that cover the South East region should be reviewed, with a view to establishing a third district. Mr Gilbertson stated that the South East experiences large variations in local conditions, with some districts being affected by 'raging' high temperatures and others simultaneously enjoying sea breezes. He explained that other parts of regional communities' lives are affected by Fire Bans, such as school children attending activities and local contractors being able to work.¹⁴⁵ Mr Gilbertson noted that the Wangary bushfires prompted a review of Fire Ban Districts on the Eyre Peninsula but that the South East boundaries were not reviewed.¹⁴⁶

2.6.2 Review of section 105F in relation to powers of fire prevention officers

Rural councils are required to employ a fire prevention officer who represents their council and district, and who undertakes property inspections of every property in the area to ensure that fire hazards are reduced and managed appropriately. The Committee heard that the *Fire and Emergency Services Act* does not provide any guidance about the standards that apply to private properties. Section 105F(3) provides that the Governor can prescribe a code of practice in relation to the reduction of hazards on a property. Currently fire prevention officers (FPOs) attend a training course which specifies that grass on private land should be cut to a length of 10 centimetres but there is no

¹⁴⁴ Submissions that included information beyond the Terms of Reference included: Mr Tim Kelly, *Submission 3*; Mr Don Gilbertson, *Submission 11*; Mr Rocky Warren, *Committee Hansard*, 7 March 2019; Mr Phil Hermann, *Committee Hansard*, 7 February 2019; Mr Kym Eagle, *Committee Hansard*, 4 February 2019; Ms Sonia St Alban, *Committee Hansard*, 4 February 2019; Mr Neil Ellis, *Committee Hansard*, 31 January 2019.

¹⁴⁵ Mr Don Gilbertson, *Committee Hansard*, 4 February 2019, p. 73.

¹⁴⁶ Mr Don Gilbertson, *Committee Hansard*, 4 February 2019, p. 74.

mechanism for enforcing this standard. The Fire Prevention Officer Reference Group and Authorised Persons Association have sought to influence the CFS to develop a code of practice to specify a standard for hazard management but have not been successful in achieving this outcome. Mr Rocky Warren, President of the Local Government Authorised Persons Association, told the Committee that if a code of practice could be developed for the purposes of section 105F, property owners would have a clear understanding of the standards that they must observe to comply with section 105F, and thus facilitate safety on their property. Mr Warren explained that under current arrangements, FPOs issue expiations and breach notices but that these would be contestable in a court because there is no code of practice specifying a standard¹⁴⁷. Mr Warren sought assistance from the Committee to recommend that a code of practice be adopted in accordance with section 105F as part of the review of the Act. The Committee also heard this issue being discussed at the Balaklava hearing of the Inquiry, where Mr Phil Herrmann from the Yorke Peninsula Council raised the same issues as Mr Warren.¹⁴⁸

Mr Tim Kelly recommended that section 105F should include provision for a Code of Practice and also require that any Code adopted in accordance with that section *must* be applied in decision-making related to that section.¹⁴⁹ Mr Kelly also suggested that section 105F, section 105G, section 105H and section 105I should all explicitly incorporate Codes of Practice, relating to private land, council land, Crown land and Commonwealth land, respectively. These amendments would provide an impetus to prepare Codes of Practice that enable hazard management and prevention of fire.¹⁵⁰

2.6.3 Separating the CFS Volunteers Charter and SES Volunteers Charter from the Bill

The Committee heard disappointment from CFS volunteers regarding lack of recognition for the CFS Volunteers Charter and SES Volunteers Charter. Mr Kym Eagle explained that the volunteers' charter governs the relationship between the South Australian Government, the South Australian Fire and Emergency Services Commission and CFS volunteers. It provides for an informal arrangement whereby stakeholders will be consulted on relevant changes that affect them, including legislative changes or changes to processes and practices. Mr Eagle expressed the view that this arrangement should be legislated to ensure that consultation with stakeholders is mandatory.¹⁵¹ Ms Sonia St Alban, Executive Director of the CFS Volunteers Association, advised that stakeholders would also prefer that the two volunteer charters be tabled separately before Parliament rather than being included in this Bill. Ms St Alban suggested this would demonstrate respect for South Australia's 15,000 volunteer fire and emergency services responders.¹⁵²

The Committee heard that the charters could also be recognised for the purposes of making changes to relevant codes of practice, for example if a review of the *Grain Harvesting Code of Practice* was undertaken. Mr Neil Ellis explained that it would be appropriate for volunteers to have inputs to documents that affect their safety and welfare.¹⁵³

¹⁴⁷ Mr Rocky Warren, *Committee Hansard*, 7 March 2019, p. 160.

¹⁴⁸ Mr Phil Herrmann, *Committee Hansard*, 7 February, p. 125.

¹⁴⁹ Mr Tim Kelly, *Submission 3*, p. 12.

¹⁵⁰ Mr Tim Kelly, *Submission 3*, p. 2.

¹⁵¹ Mr Kym Eagle, *Committee Hansard*, 4 February 2019, p. 25.

¹⁵² Ms Sonia St Alban, *Committee Hansard*, 4 February, p. 94.

¹⁵³ Mr Neil Ellis, *Committee Hansard*, 31 January 2019, p.

2.6.4 *Proposed changes to other parts of the Bill*

Mr Tim Kelly provided a detailed submission enclosing comments on many aspects of the Bill. These are beyond the scope of the Terms of Reference for the inquiry and are not analysed in detail but are listed below:

- establish a fire risk Development Assessment Service to inform planning decisions (section 59(1)(a));
- establish a Bushfire Management Planning Unit to investigate and assess bushfire risks evolving risk profiles in a changing climate, and to support the work of the State Bushfire Coordination Committee (section 59(1)(a));
- CFS to inform the content for annual bushfire media and education campaigns for community bushfire prevention and preparedness;
- include annual reporting on incidents that describes probable causes of fires (section 59(1)(f));
- provide that SA CFS will not subsidise equipment and appliances and their maintenance for other organisations but may provide short term sharing arrangements (section 59(3));
- insert a new Division 5B that describes the paid brigades that are not currently included within the Act;
- amend section 71 to describe the role of the Executive Officer to support the State Bushfire Coordination Committee;
- amendments to section 71A(1)(e) and (f) are not supported on the basis that there is not a need to change the name of the State Bushfire Management Plan;
- insert a duty in section 91 for a person who has lit a fire to remain in attendance or transfer control of the fire to another person;
- amend section 105F to clarify that landholders must be contacted before a section 105F notice is issued by a fire prevention officer;
- review the need to repeal Part 4 Division 7A. This should be restored in recognition of the role played by the State Bushfire Coordination Committee;
- ensure that section 73 clearly states that the standards of a Bushfire Management Area Plan must be prepared by the State Bushfire Coordination Committee; and
- amend section 101 to include Annual Reporting of statistics of incidents attended and rural fire cause data.¹⁵⁴

Committee view

The Committee recognises the wide range of suggestions on further amendments to the Bill. As the Committee's terms of reference were focussed on the proposed powers in clause 23, it has not had an opportunity to examine these issues in detail.

However, the Committee considers that these suggestions warrant further consideration, particularly as there was no formal consultation process on the Bill prior to its introduction to the Parliament.

¹⁵⁴ See: Mr Tim Kelly, *Submission 3*.

3 Conclusions

3.1 Support for proposed powers under section 82

Based on the evidence provided to the Inquiry, the Committee considers that a power to direct should be introduced to section 82 of the *Fire and Emergency Services Act 2005* (the Act). The Committee acknowledges that there is a need for a legal mechanism to support the work of the Country Fire Service (CFS), South Australia Police (SAPOL) and local government in preventing fires and maintaining the safety of South Australian communities. The Committee also acknowledges the important contribution primary producers, particularly Grain Producers SA (GPSA), have made to fire prevention and community safety through the development and implementation of the *Grain Harvesting Code of Practice*. (the Code). The Committee agrees that the proposed amendments to section 82 provide a means to assist in minimising the risk of fires across the state.

The Committee recognises that the proposed amendment to section 82 facilitates powers being held by the CFS that are currently held by the MFS, and therefore ensures that country areas are subject to equivalent standards for certain high-risk activities as apply in the metropolitan area.

While the Committee recognises that the proposed amendment to section 82 allows for regulation of activities beyond grain harvesting, the Committee acknowledges the particular concerns of grain producers. The Committee recognises that the voluntary Code is widely accepted across the State and that non-compliance with the Code is rare. However, the Committee shares the concerns of grain producers, CFS and police that there are limited legal powers to effectively deal with those ‘recalcitrants’ who don’t comply with the Code. Introducing a power to direct would provide a legal mechanism to cease harvesting when conditions are increasingly likely to result in a fire occurring.

The Committee therefore recommends that the proposed powers under section 82 be introduced. However, the Bill as drafted does not adequately clarify how the powers would be exercised. This has resulted in a range of concerns being raised by stakeholders through the inquiry process. The Committee’s recommendations aim to address these concerns.

Recommendation 1:

The proposed powers outlined in clause 23 of the Bill be introduced, subject to the amendments recommended by this report.

3.2 Exercise of powers

The Committee recognises that the extension of current powers to direct arose from a recommendation from the 2013 review of the Act (Holloway Review). In response to the evidence presented to the Inquiry, the Committee recommends that the exercise of powers under the proposed section 82 should be further clarified.

The Committee found the evidence about the on-ground implications of the power to direct compelling. It is sympathetic to the concerns of stakeholders as these relate to the need to maintain well-functioning relationships within regional communities and also between the CFS and producers.

The Committee shares concerns of submitters and witnesses that CFS volunteers should not be required to exercise the powers, as this may place undue pressure and responsibility on volunteers, and risks causing tension within regional communities. The Committee recognises and supports the vital role our CFS volunteers play in keeping South Australian communities safe.

The Committee recognises that CFS officers, SAPOL and local government fire prevention officers (FPOs) all have a role to play in fire prevention. The Committee recognises that the proposed powers would provide the CFS with a legislative mechanism to support its role in fire prevention set out in

Section 59 of the Act. However, the Committee considers that SAPOL, as the primary law enforcement authority in the State, should be chiefly responsible for enforcing and delivering any directions.

Recommendation 2:

Clause 23 of the Bill be amended to clarify which officers will be authorised to exercise the proposed powers to direct that a prescribed activity be ceased or not commenced. This power should be limited to South Australia Police officers.

3.3 Need for supporting enforcement criteria and guidelines

The Committee also recognises that the powers, as drafted, give broad discretion to authorised officers in exercising the proposed powers.

The Committee considers that easily understood and simple enforcement criteria and guidelines would assist officers who are exercising the proposed power to direct contemplated by amendments to section 82. The Committee agrees that there is a strong need to exercise the proposed powers using objective criteria and to ensure that the power is exercised consistently across South Australia.

The supporting guidelines would also need to include information relating to:

- who makes the decision to use the power to direct;
- what sort of consultation occurs in making that decision;
- which parties are involved in making that decision;
- how the decision is formulated;
- who delivers the decision once it is made; and
- how long the decision remains valid once it has been exercised, e.g a certain number of hours.

Recommendation 3:

The South Australian Government develop enforcement criteria and guidelines for the exercise of the proposed powers. The South Australian Government should consult with industry bodies and relevant stakeholders in developing these criteria and guidelines.

3.4 Recognition of Codes of Practice

The Committee recognises that the *Grain Harvesting Code of Practice* has operated very successfully since 2008. Notably, it is a voluntary initiative that is enforced through community values and peer pressure. The Committee heard that where one landholder is perceived as ‘recalcitrant’, community members can positively change behaviour through peer pressure.

The Committee heard that the voluntary nature of the Code and its reliance on peer pressure as an enforcement mechanism has led to a reduction in the incidence of harvest-related fires. Grain producers told the Committee that the rate of non-compliance with the Code is extremely low. The Committee heard that the GFDI measure appears to operate as an effective decision-making mechanism when paired with information that assists producers to calculate and use it, and a network of peer support.

The Committee is deeply concerned by suggestions that the introduction of the proposed powers may have been perceived as indication of a lack of confidence in an individual landholder’s ability to use their discretion and experience in mitigating fire risk. The Committee congratulates the industry in its development and implementation of the Code.

The weight of evidence presented to the Inquiry indicates that producers are eager for the Code to continue as an instrument for managing harvest-related fire risks. The Committee therefore supports

GPSA's recommendation that the exercise of powers under section 82 of the Act should take into account any relevant industry-led codes of practice, including the *Grain Harvesting Code of Practice*.

The success of the Code in the grain industry highlights the important role that industry-led codes of practice can play in minimising fire risk across the State. The Committee recommends that the Bill recognise that current codes of practice should be considered in exercising the proposed powers, and make provision to recognise other codes that may be developed in future.

Recommendation 4:

Clause 23 of the Bill be amended to require that the exercise of powers in section 82 must take into account any relevant industry-led codes of practice, including the *Grain Harvesting Code of Practice*.

To give effect to recommendations 2, 3 and 4, the Committee suggests that clause 23 could be amended to reflect the following:

(2a) If an officer of SAPOL is satisfied—

- (a) that a person proposes to carry on an activity of a kind prescribed by the regulations or any other activity that the officer is satisfied may cause a fire; and
- (b) that because of weather conditions the fire, if caused by the activity, might get out of control, the officer may direct that person to refrain from carrying on the activity during a period specified in the direction.

(2b) For the purposes of subsection (2a) the officer may be satisfied to direct a person only after having had regard to:

- (a) any relevant industry or other code of practice;
- (b) advice of an officer of SACFS or fire prevention officer; and
- (c) any enforcement criteria and guidelines.

3.5 Need for review and implementation of Codes of Practice

The Committee received multiple submissions which suggested that the *Grain Harvesting Code of Practice* may require review. The Committee notes that the Code was last reviewed in 2016, accompanied by the 'Know Your Code' advertising campaign.

The Committee agrees that in light of recent changes such as the 'unprecedented' availability and uptake of on-farm technology, introduction of high volatility crops and a need to address potentially redundant aspects of the existing Code (for example requirements relating to firebreaks), a review of the Code should be considered.

The Committee also heard that a range of activities beyond harvesting are likely to fall within the ambit of proposed section 82 powers to direct. The Committee heard that other codes have been developed to regulate activities such as stubble burning, and that codes may be developed for other fire risks, such as electric fencing. The Committee strongly supports the development of more codes of practice for other prescribed activities that may cause fires, based on the grain industry model. The Committee considers that industry groups and relevant stakeholders should be supported to develop and implement codes of practice. This should include a developing mechanism to have any codes of practice developed by industry formally recognised for the purposes of exercising the proposed powers outlined in clause 23.

The Committee considers that standards should be reviewed regularly to ensure ongoing relevance, enforceability and applicability for use. The Committee considers this should apply to all codes of practice taken into account when the power to direct is exercised, in accordance with Recommendation 4. The Committee recognises that any new codes of practice must be developed in conjunction with the affected stakeholders prior to the standards being adopted.

Recommendation 5:

The South Australian Government support and encourage all relevant stakeholders, including industry peak bodies, to implement and review relevant codes of practice, including developing codes of practice for prescribed activities that may cause fires. This should include developing a mechanism to recognise codes of practice for the purposes of exercising the proposed powers outlined in clause 23.

3.6 Need for ongoing education

The Committee heard that initiatives such as the ‘Know Your Code’ campaign have been effective in communicating with stakeholders informally. Several Councils noted that they provide producers with periodic information about fire risks and fire prevention measures. In an acknowledgement of their benefits, stakeholders recommended that education materials be provided on an ongoing basis.

With the introduction of the proposed amendments to section 82 of the Act, the Committee recommends that education resources should be made available to stakeholders who are using that standard to make decisions about their daily practices.

Recommendation 6:

The South Australian Government provide support for ongoing education to stakeholders and the broader community about fire prevention and relevant codes of practice.

3.7 Support for industry and community-led initiatives

The Committee heard that local farm groups operate in some areas of South Australia whereby panels of producers make decisions based on local conditions and communicate among their networks. The Committee heard that a successful network of over 400 producers is active within the Yorke Peninsula region, and similar networks are operating across other grain producing regions. The wealth of evidence to the Inquiry reflected on the success of the community networks being used to implement the voluntary *Grain Harvesting Code of Practice*. Evidence repeatedly referred to the SMS alert system and committee-led decision-making models as community success stories. The Committee urges the Government to support these initiatives where possible. Further development of local networks, SMS alert systems, or other effective means of communicating would be beneficial.

The Committee recognises the human and environmental costs of fires, which could be avoided or minimised by investing in preventative measures. Evidence presented to the Inquiry emphasised the importance of micro-climates and reliance on localised data. Ready access to localised technologies such as mobile weather stations and local methods for communicating within a network of producers are imperatives for managing local risks. Evidence suggests that mobile coverage is increasingly more reliable, and digital weather stations are becoming more readily available in new harvesting equipment. The Committee was encouraged by evidence which demonstrated that farmers have swiftly taken up opportunities to access localised data. At the current juncture, ensuring that all producers have ready access to reliable sources of technology may be one of the important ways that the Government can offer support to producers in proactively managing fire risks and engaging in meaningful fire prevention initiatives.

The Committee recommends that the South Australian Government review the existing community initiatives aimed at fire prevention and reducing fire risk, and provide additional support where applicable.

Recommendation 7:

The South Australian Government review existing community initiatives aimed at fire prevention, reducing fire risk and information gathering and sharing, and provide additional funding and support where appropriate, such as further developing local weather monitoring networks and SMS alert systems.

3.8 Improving CFS relationships

The Committee was particularly concerned by evidence that suggested a possible disconnect between the CFS administration and regional communities.¹⁵⁵ Such a disconnect may explain the contrast between the CFS administration's support for the introduction of powers the subject of clause 23 of the bill on the one hand,¹⁵⁶ and the evidence of local CFS volunteers to the contrary.¹⁵⁷

The Committee was concerned to hear witnesses express a lack of confidence in the CFS administration which suggested that decisions made, or views held, at senior levels of the CFS did not take into account the knowledge and experience of local communities, including CFS volunteers and primary producers. The Committee was particularly concerned that CFS volunteers were not consulted prior to the introduction of the Bill.

The Committee recognises the vital role the CFS plays in protecting South Australian communities and greatly appreciates the significant contribution of officers and volunteers across all levels of the CFS. However, the Committee is concerned by suggestions that the CFS may not have the full support and confidence of communities across South Australia.

The Committee suggests that any measures to improve relationships between the CFS administration and regional communities, including primary producers and local CFS brigades, should be considered, particularly in relation to the exercise of the proposed powers to direct outlined in the Bill.

Recommendation 8:

The Country Fire Service (CFS) consider measures to improve communication, engagement and consultation with regional communities in decision-making processes, particularly in relation to the exercise of the proposed powers set out in clause 23 of the Bill.

3.9 Need for ongoing and periodic wellbeing measures

The Committee heard that bushfires in South Australia have created a continuing and significant legacy among regional communities. Notably, the Committee recognises the psychological and emotional impacts of fires to the ongoing wellbeing of affected communities. The Committee also recognises the significant financial impact of fires on individuals, business and communities.

While immediate services are made available during fire events, ongoing and periodic services may be less readily available. It would be beneficial for the Government to prioritise reviews of mental health and community support services available to communities affected by fire events.

The Committee acknowledges that a Government response to the psychological legacy of bushfires by providing stronger support services in affected communities is one way that the Government can demonstrate a commitment to more effective recovery.

¹⁵⁵ See: Mr Max Wilksch, *Committee Hansard*, 31 January 2019, p. 30; Mr Don Gilbertson, *Committee Hansard*, 4 February 2019, p. 75.

¹⁵⁶ Chief Officer Greg Nettleton, *Committee Hansard*, 4 February 2019, p. 43

¹⁵⁷ See: *Committee Hansard*, 31 January 2019, p. 25 and pp 50–51.

Recommendation 9:

The South Australian Government review ongoing and periodic mental health and other wellbeing support services available to communities affected by fires and provide further support where appropriate.

3.10 Need for additional changes to the *Fire and Emergency Services Act 2005*

The Committee heard evidence in response to its Terms of Reference, and also received evidence about other proposed amendments to the Bill. The Committee recommends that this additional evidence be considered during the Bill debate process to ascertain whether further changes to the Act are appropriate.

Recommendation 10:

The South Australian Government review whether further changes to the *Fire and Emergency Services Act* may be appropriate, based on further consultation and drawing on evidence provided to this Committee.

APPENDIX A – SUBMISSIONS

The following individuals and organisations made submissions to the Select Committee.

No.	Name	Date received
1	Mr Leighton Wilksch	13/12/2019
2	Mr Tom Fielke	14/12/2019
3	Mr Tim Kelly	9/01/2019
4	District Council of Orroroo Carrieton	10/01/2019
5	Sherwood Fire Recovery Committee	11/01/2019
6	Stock Feed Manufacturers' Council of Australia	17/01/2019
7	South Australia Police (SAPOL)	22/01/2019
8	Confidential	
9	South Australian Country Fire Service (CFS)	24/01/2019
10	Mr Ken Klopp	24/01/2019
11	Mr Don Gilbertson	24/01/2019
12	Conservation SA	25/01/2019
13	Ms Jain Menteith	28/01/2019
14	City of Marion	29/01/2019
15	Mayor Brad Flaherty	29/01/2019
16	Mr Max Wilksch	29/01/2019
17	Adelaide Hills Council	31/01/2019
18	Livestock SA	31/01/2019
19	Grain Producers SA	1/02/2019
20	Mr Malcolm Meier	31/01/2019
21	Mid Murray Council	31/01/2019
22	Mr Peter Cockburn & Mrs Toni-Louise Cockburn	31/01/2019
23	Rural City of Murray Bridge	31/01/2019
24	Eyre Peninsula Agriculture Advisory Group	31/01/2019
25	Light Regional Council	31/01/2019
26	Mr Newton Lines	1/02/2019
27	Mr Geoffrey Lamshed	1/02/2019
28	SAFECOM Board	1/02/2019
29	Mr Fraser Ellis MP	1/02/2019
30	CFS Volunteers Association	4/02/2019
31	Mr Dean Mortimer	1/02/2018
32	District Council of Ceduna	5/02/2019
33	Ms Karen Baines	4/02/2019
34	Yorke Peninsula Council	6/02/2019
35	Barunga West Council	6/02/2019
36	Mr Ashley Pridham	30/01/2019
37	Mr Ron Grosser	12/02/2019
38	Mr Neville Jericho	14/02/2019
39	Northern Areas Council	18/02/2019

APPENDIX B: PUBLIC HEARINGS

The following witnesses appeared before the Committee at four public hearings.

Thursday 31 January 2019, 10.30am – 2.30pm **Port Lincoln Hotel, Port Lincoln**

Regional Development Australia – Whyalla and Eyre Peninsula

Cr Bryan Trigg AFSM, Chair

Mr Peter Scott, Economic Development Manager

City of Port Lincoln

Mayor Brad Flaherty

District Council of Lower Eyre Peninsula

Mr Rod Pearson, Chief Executive Officer

CFS Volunteers Association

Mr Neil Ellis, Eyre Peninsula Branch President

Mr Kym Eagle, Group Officer, Lower Eyre Peninsula CFS

Mr Darren Rule, Captain, Cummins CFS

Individuals

Ms Jain Mentieth

Mr Max Wilksch

Mr Peter Hitchcock

Mr John Zerk

Mr Mark Modra

Mr Chad Glover

Mr Jordan Wilksch

Monday 4 February 2019, 9.30am – 3.00pm **Constitution Room, Parliament House**

Grain Producers South Australia

Mr Adrian McCabe, Deputy Chairman

Mr Peter Cousins, Board Director

Ms Caroline Rhodes, Chief Executive Officer

Mr Leighton McDonald-Stuart, Communications Officer

Primary Producers South Australia

Hon Rob Kerin, Chair

Livestock SA

Mr Deane Crabb, Policy Officer

Agricultural Bureau of South Australia

Mr Mark Grossman, Chairman

Mr David Edwards, Board Member, Yorke Peninsula representative

Mr Corbin Schuster, President, Freeling Agricultural Bureau

Bureau of Meteorology

Mr John Nairn, State Manager – South Australia

Adelaide Hills Council

Mr John McArthur, Manager Waste and Emergency Management

Individuals

Mr Don Gilbertson

Mr Tim Kelly

CFS Volunteers Association

Mr Andy Wood, State President

Ms Sonia St Alban, Executive Director

Mr Andrew Cadd, Group Officer

Mr Lyall Schulz OAM, Deputy Group Officer

South Australian Country Fire Service (CFS)

Chief Officer Greg Nettleton

South Australia Police (SAPOL)

Assistant Commissioner Noel Bamford

Senior Sergeant Russell Dippy

Primary Industries and Regions SA (PIRSA)

Mr Tim Goodes, Deputy Chief Executive

Thursday 7 February 2019, 10.30am – 3.00pm**Wakefield Regional Council, Balaklava**Member for Frome

Hon Geoff Brock MP

Wakefield Regional Council

Mr Steven Griffiths, Acting Chief Executive Officer

Regional Council of Goyder

Deputy Mayor John Neal

Northern Areas Council

Cr Merv Robinson, Councillor

Cr Ben Browne, Councillor

Yorke Peninsula Council

Mr Phil Herrmann, Senior Compliance Officer

Adelaide Plains Council

Ms Jenny Ireland, General Inspector

Regional Development Australia – Yorke Mid North

Mr Bill Vandepeer, Chair

Agbyte

Mr Leighton Wilksch, Director and Agronomist

CFS Volunteers Association

Mr Philip Earl, Light Group Officer

Mr Jeff Clark, Lower North Branch President & CFSVA Deputy Vice President

Mr Steve Conwell, South Yorke Group Officer and Yorke Peninsula Branch President

Individuals

Mr Paul Daniel
 Mr Peter White
 Mr Andrew Kitto
 Mr Maurice Wiech
 Mr Alex O'Loan

Thursday 7 March 2019, 10.30am – 2.30pm
Keith Memorial Institute, Keith

Tatiara District Council

Cr Maureen Oliver, Councillor
 Ms Anne Champness, Chief Executive Officer

Mid Murray Council

Mr Rocky Warren, Regulatory Services Coordinator

Wattle Range Council

Mr Roger Babolka, Manager Economic Development

Sherwood Fire Local Recovery Committee

Mr Charlie Crozier
 Mr Steven Jaescke
 Ms Tracey Strugnell, Senior Sustainability Officer, Coorong District Council

Individuals

Mr Brian Wiese
 Mr Garry Hansen
 Mr Alan Morcom

Tabled documents

- 1 Ms Caroline Rhodes, Chief Executive Officer, Grain Producers South Australia, *Broad Acre Burning Code of Practice*, Monday 4 February 2019, Adelaide.
- 2 Mr Lyall Schulz OAM, CFS Volunteers Association, *Examples of SMS alert system*, Monday 4 February 2019, Adelaide.
- 3 Mr Leighton Wilksch, Director and Agronomist, Agbyte, *Examples of Automatic Weather Station readings*, Thursday 7 February 2019, Balaklava.
- 4 Mr Brian Wiese, *Grassland Fire Suppression Calculator*, Thursday 7 March 2019, Keith.

APPENDIX C: SUMMARY OF EVIDENCE

The Committee received 39 written submissions and held four public hearings. These are summarised below.

Public hearing 1 – Port Lincoln – 31 January 2019

Local government representatives

Mayor Brad Flaherty (submission 15)

Mr Brad Flaherty is Mayor of Port Lincoln and a retired Superintendent of Police. Mr Flaherty provided evidence in his private capacity at the Port Lincoln hearing and provided a written submission to the Inquiry.

Mr Flaherty commented that there may be significant financial outcomes where one neighbour directs another to cease harvesting. Personal and business arrangements underpin relationships between neighbours in regional communities, so that one neighbour directing another to cease harvesting could put these at risk.

Mr Flaherty stated that the power to direct should be vested with the CFS and also with SA Police. In Mr Flaherty's view, it would be appropriate to have the CFS involved as a 'first touch', which could be escalated to involve SA Police if the CFS advice is ignored. There are a limited number of SA Police personnel in regional areas, so that it may be more logistically practical to use the 'eyes and ears of the CFS' in the first instance. If police involvement is required, the offender could receive an expiation for continuing the offence if they continue to harvest after being directed to cease.

Mr Flaherty noted that regional police have been involved in enforcing Operation Nomad, which targets deliberately lit fires occurring on high fire danger days. Police are therefore well equipped to be able to calculate the GFDI in a local area if required. Police officers are also required to enforce many laws regularly and there is less concern for 'upsetting the neighbours'.

Mr Flaherty's submission distinguishes between activities occurring prior to a fire and events during a fire or emergency. It states that discretion is required to determine or classify an activity as 'a likely cause of fire' or 'dangerous due to weather conditions'. This involves a subjective determination.

Cr Bryan Trigg AFSM, Chair Regional Development Australia Whyalla and Eyre Peninsula

Mr Bryan Trigg AFSM is Chair of Regional Development Australia Whyalla and Eyre Peninsula. He has been a CFS member since 1961 and a Group Officer since 1990. Mr Trigg is a Councillor for the District Council of Cleve. Mr Trigg provided evidence to the Port Lincoln hearing.

In Mr Trigg's local area, a committee of three decision-makers operates to call a voluntary ban on harvesting once conditions pose a high fire risk and communicate this to relevant local producers.

Mr Trigg does not support the proposed amendments being included in the Bill. He commented that the rate of non-compliance with the *Grain Harvesting Code of Practice* is around one per cent. These non-compliant producers seem to be motivated by an urgency to harvest their crop and do not seem to be susceptible to peer pressure when their neighbours voluntarily cease harvesting. In Mr Trigg's view, the most effective solution to address non-compliance is increasing the monetary penalty that would apply. A level of maximum \$20,000 would be appropriate. This is the fine that applies in Western Australia. Once the penalty has been applied through the court process, this would create a precedent and provide a realistic warning to producers to comply with the Code or risk a heavy penalty.

Mr Trigg expressed concern that producers may leave the CFS if told by a CFS member that they need to cease harvesting. This would likely affect seven of the 10 current brigades due to the composition of these brigades with members who are also primary producers. Mr Trigg does not view the CFS as the appropriate party to deliver the message to cease harvesting.

Mr Trigg noted that he has been in the situation of talking with a farmer who has continued to harvest despite a fire having occurred in a location that is close to the farmer's property. In that case, Mr Trigg sought assistance from SA Police to attend. The farmer was embarrassed that the police attended his property. Mr Trigg suggested that the Police are the appropriate authority to direct a cease harvest because they are recognised as such. He commented that: '[w]e can only have one law in South Australia, and that's the police'.

Mr Trigg also explained how the McArthur Index is used to calculate fire danger risk.

Mr Rod Pearson, Chief Executive Officer, District Council of Lower Eyre Peninsula

Mr Pearson provided evidence to the Port Lincoln hearing.

Mr Pearson expressed concerns that the proposed amendments to section 82 as they are currently drafted seem to provide any officer of the CFS with the power to direct. The District Council would like to specify that certain officers only be able to exercise this power, namely an authorised person from the local brigade.

Mr Peter Scott, Regional Development Australia, Whyalla and Eyre Peninsula and Eyre Peninsula Agricultural Advisory Group

Mr Scott is Economic Development Manager for Regional Development Australia (RDA) Whyalla and Eyre Peninsula. Mr Scott provided evidence to the Committee at its Port Lincoln hearing on behalf of the RDA and the Eyre Peninsula Advisory Group. The Eyre Peninsula Advisory Group provided a written submission to the inquiry (see below).

Mr Scott provided a written submission to the hearing, which included some ideas for implementing a process to enforce compliance with the proposed power to direct in section 82. An anonymous complaint would be made to the relevant CFS Regional Commander about a producer ignoring a 'cease harvest' decision. The offending farmer would be put on a 'watch' list and called by the Regional Commander. More than one incident would attract a visit from the Regional Commander, who would issue an expiation notice. Mr Scott explained that monetary penalties are a meaningful way of creating behaviour change among producers. Community condemnation would also arise if it becomes well known that a particular producer has been fined or been subject to a cautionary discussion with a Regional Commander.

Mr Scott also suggested that a fact sheet could be produced and promoted by producers and CFS volunteers reminding producers about the Code of Practice. This could be an alternative to introducing statutory provisions, reminding producers that voluntary self-regulation measures are preferable to regulatory enforcement. An example message would be 'abuse it and you lose it'. Another element that would be useful to include in a fact sheet would be a reminder to producers that in cases where lives and properties are lost due to fire, Coronial Inquiries take into account a range of evidence about conditions that were in place at the time of the fire. This could include measures of the GFDI and other factors preventing the ignition of fire.

Eyre Peninsula Agricultural Advisory Group (submission 24)

The Eyre Peninsula Agricultural Advisory Group provides advice to the Whyalla and Eyre Peninsula Regional Australia Board. The Eyre Peninsula Agriculture Advisory Group comprises approximately 30 farmers and representatives from agricultural support industries, such as agronomists, agricultural retail and suppliers and local government departments. It is concerned to maintain producer autonomy

and would prefer that the *Grain Harvest Code of Practice* remains the key document for managing fire risk during the harvest period.

The submission states that local farmers are committed to complying with the Code of Practice. The increasing network of weather stations is a critical resource in local decision-making.

If the power to direct is vested in the CFS, the Eyre Peninsula Agricultural Advisory Group recommends that this be exercised only at regional commander level. Local volunteers are often family members or friends of other farmers, which could potentially destabilise community relationships. CFS is largely comprised of farmers in some areas, so that powers being used against peers could cause divisions between farmers and the CFS and potentially result in farmers leaving the CFS. As on-farm fire fighting units are usually the first responders to a fire, it is wise to maintain respectful relationships between farmers and the CFS.

The Eyre Peninsula Advisory Group recommends that the legislation make reference to the Code of Practice so that the power to direct may only be exercised where a person is acting in a way that contravenes the Code.

Ms Jain Menteith (submission 13)

Ms Jain Menteith provided a written submission to the inquiry and provided evidence at the Port Lincoln hearing. Ms Menteith is the Primary Producers' representative on the Lower Eyre Peninsula Bushfire Management Committee, Coordinator of the Tumby Bay and Districts Bushfire Working Group, former CFS Volunteer Support Officer, CFS volunteer, and local government employee with experience in fire prevention. Ms Menteith emphasised that her submissions are provided from a personal perspective rather than as a representative of any organisation, but that her contributions summarise conversations and input from the Tumby Bay and Districts Bushfire Working Group and Tumby Bay Harvest Coordinators.

The Tumby Bay and Districts Bushfire Working Group comprises approximately 30 farmers from across the Tumby Bay district. A local network of 16 Harvest Coordinators operates across the Tumby Bay local area. The coordinators discuss local conditions and communicate any decisions to cease harvesting via phone and radio with producers. They also advise the relevant council fire prevention officers. The coordinators meet with the council fire prevention officer(s) pre- and post-harvest to discuss any relevant issues.

In eight years, Ms Menteith could name one instance where a producer did not comply with the voluntary ban on harvesting. In that case, SA Police were engaged to visit the property and there have been no repeat incidents from that person.

Ms Menteith's conversations with producers regarding the Bill since November 2018 have elicited responses to the effect that the *Grain Harvesting Code of Practice* is working well, the system of local coordinators for the Tumby Bay area is working extremely well, the CFS and SA Police are involved in conversations at the local level concerning fire risks, and that there is no need to initiate an additional statutory power to direct. Ms Menteith stated that,

... if you bring in another layer of legislation in it could disrupt that good balance that we've got happening if it's not done properly.

Ms Menteith also reflected that recent experience with bushfires including the Pinery and Wangary fires, has made farmers more cautious in their fire prevention practices. She mentioned that producers have, 'seen the damage and the heartache that is caused [by bushfires].'

Ms Menteith stated that another concern relates to the uncertainty within the current drafting of section 82, which does not define 'SACFS officer'. If any officer is able to exercise the power to

direct, this would place significant pressure on that person. Ms Menteith is concerned that this would not be ‘fair’ on the volunteer, and stated that, ‘as a volunteer, I would be incredibly uncomfortable to be in that position.’ Further, there are no processes accompanying the proposed section, so some further issues requiring clarification include whether there is a selection process for eligible officers, whether officers are able to decline the power, the authorisation process for officers, any relevant delegations, whether any appeal rights apply to a person who is directed to cease an activity, and whether the CFS officer will be required to demonstrate a farming background or any technical knowledge. According to Ms Menteith, the ‘general consensus’ among local stakeholders with whom she has communicated is that the person giving the direction to cease harvesting should not be a CFS volunteer. If any levels of the CFS are involved in giving a direction to cease harvest, Ms Menteith would favour this being done at the higher levels of the organisation, including group officers and deputy group officers.

Ms Menteith expressed concern that the current drafting of section 82 establishes a ‘one size fits all’ situation that is not appropriate for the range of activities being undertaken across South Australia.

Ms Menteith provided her view on firebreaks, which do not seem to be as prevalent in farming practice as they once were. She noted that other fire prevention measures are more prevalent, such as on-farm fire fighting units and the use of clearance areas around machinery, silos, and augers. She suggested that a review of fire break requirements could be included in a review of the *Grain Harvesting Code of Practice*.

Eyre Peninsula grain producers

Mr Max Wilksch (submission 16)

Mr Max Wilksch is a grain grower from Yeelana, who has participated in 54 consecutive grain harvests during his career. Mr Wilksch provided a written submission to the inquiry and provided evidence to the Port Lincoln hearing.

Mr Wilksch explained that, ‘not burning out our own crops, nor those of our neighbours, is the key frontal-lobe priority at the beginning of each harvest day.’ He noted that machinery valued at multi-millions of dollars is being operated on a daily basis, in addition to well-equipped on-farm fire-fighting units being used, and weather stations being consulted. This indicates that there are powerful imperatives for farmers to act responsibly as a matter of course.

He described the current system as, ‘a masterpiece of co-operation and goodwill and a common cause.’ He notes that the *Grain Harvesting Code of Practice* is an initiative that has recognised a risk and its contingencies, and has responded with a system that works, is scientifically and empirically based, that continues to evolve, and that has embraced all possible technological innovations to assist with decision-making.

Mr Wilksch argued that the proposed section 82 should be deleted, or exemptions be provided for areas where the *Grain Harvesting Code of Practice* is in place.

Mr Wilksch argued that the identity of the CFS has changed and become more bureaucratic. In Mr Wilksch’s view, the CFS catastrophises fire risks and uses unnecessary rhetoric in delivering its messages. Mr Wilksch does not support the CFS being given a power to direct as is proposed under section 82.

In relation to fire breaks, Mr Wilksch commented that paddocks are increasingly difficult to define due to the size and lack of fencing used on grain growing properties. This is because crops are not liable to escape if left unfenced, as stock would be. Mr Wilksch contended that the amount of fire fighting equipment that farmers have ready to deploy via their on-farm fire-fighting units negates the

need for firebreaks. He also noted that firebreaks will not be effective against a significant bushfire, such as the Wangary fire which affected the Eyre Peninsula region in 2005.

Mr Mark Modra

Mr Mark Modra is a farmer from Lower Eyre Peninsula, a CFS volunteer and a CFS captain. Mr Modra provided evidence at the Port Lincoln hearing.

He explained that 90 per cent of farmers in his area usually stop reaping well before the GFDI hits 35. He describes them as 'increasingly conservative'. In his view the *Grain Harvesting Code of Practice* is 'fantastic' and 'works very well'.

In assessing whether it is necessary to introduce a statutory power to direct as is proposed under section 82 within the Bill, Mr Modra asked whether there is any data to support a provision being introduced. He would be interested to know how many fires have occurred as a result of contravening the Code. Further, he pointed to a lack of supporting material for the implementation of the proposed provisions. He stated that the Bill should provide information about the practical issues associated with implementation. He expressed the view that farmers 'don't want over-regulation and more rules that make life more difficult.'

Instead of implementing the proposed section 82, Mr Modra would be eager for the government to invest in a more comprehensive system of weather stations. This would place greater power in the hands of farmers and ensure that there are 'no excuses' for non-compliance. He explained that one of the weather stations on his properties initiates an SMS warning when the GFDI in that area reaches 30, so that Mr Modra can be prepared to cease operations as the GFDI increases. As most farmers cease harvesting as the GFDI climbs, and are already participating in a local ban by the time their own equipment shows a GFDI at 35 or above, their own measurements are really just a backup measure or last resort. In Mr Modra's view, the Government would derive more from its investment efforts with more weather stations being available.

Mr Modra discussed the role of firebreaks in creating erosion, which is undesirable from a sustainability perspective.

Mr Peter Hitchcock and Mr John Zerk

Mr Peter Hitchcock and Mr John Zerk provided evidence to the Port Lincoln hearing. Mr Hitchcock and Mr Zerk were originators of the local voluntary ban system. At that juncture, Mr Hitchcock was president of the SA Farmers' Federation at Lock and Mr Zerk was managing the CFS at Lock. Currently Mr Hitchcock is a Councillor and Deputy Mayor for the District Council of Elliston.

Mr Hitchcock explained that there are three people who have formed a local committee involved in administering the voluntary ban in the district. Those people are recognised by the local community as being competent in fulfilling the role. There is also a switchboard that producers can call to find out whether a ban is operating in the area, but that this operates intuitively because most producers know that if they are in the position of making a decision based on a switchboard message, it's highly likely that they already know that they should have ceased harvesting. He further noted that the local council sends all residents a fire preparation letter, enclosing a copy of the Code of Practice. This is effective and does not involve a cost being met by the state government. With the current system being so efficient, he 'doesn't see that there's any real need to change it at the moment.' Mr Hitchcock also pointed to a measure of common sense being used by some producers, whereby if a person cannot control a fire in their paddock with their own ute, then they should not be reaping in that paddock.

Mr Hitchcock stated that the pressure to stop reaping is 'unbelievable'. He doesn't believe that there are any rogue operators left. There may have been a few 10 years ago, but he believes that the force of community and financial pressure to stop reaping are such that there are no incentives to continue

harvesting activities in the face of a voluntary ban. In view of such a low rate of non-compliance, he would see the proposed legislation as ‘draconian’.

Mr Zerk discussed the tight-knit community relationships in regional areas, which are diminishing in number due to population decreases. He argued that the person who delivers a message to their neighbour to stop harvesting would be at risk of ruining that relationship. He contended that SA Police are the most appropriate party to enforce a law because law enforcement is their chosen career. He commented that, ‘It’s not the career of a volunteer to go and tell his mates what to do.’

Mr Chad Glover

Mr Chad Glover is a fifth generation farmer at Yeelana and has been a CFS captain for over 25 years. Mr Glover provided evidence to the Port Lincoln hearing of the Inquiry.

Mr Glover explained that his father is one of the committee members involved in making a decision whether to voluntarily cease harvesting on high fire risk days.

Mr Glover noted that the only farmers who are still reaping by the time a ban comes into place when the GFDI reaches 35 are larger operators with comprehensive on-farm fire-fighting capacity. Such operators might have 10 people working in a paddock at one time and have multiple fire-fighting units available for use. A fire started under these circumstances would be ‘out before anyone else can get there’. He affirmed evidence provided by other witnesses to the effect that most farmers cease harvesting well before the GFDI reaches 35.

He argued that the current system could be improved with greater mobile phone coverage across the Eyre Peninsula. There are still some regions where coverage is limited. He also advocated for a Bureau of Meteorology weather radar to be located on the Eyre Peninsula, to assist residents to prepare for weather arriving from the west.

Mr Jordan Wilksch

Mr Jordan Wilksch is a grain grower at Yeelana and CFS volunteer. He provided evidence to the Port Lincoln hearing.

Mr Wilksch reflected that traditional firebreaks are used less often now, but have been replaced by internal farm driveways, raceways and access tracks. Mr Wilksch described these as being bare mineral earth formed roads of four to eight metres in width that dissect ‘virtually every property nowadays’.

CFS volunteers

Mr Neil Ellis, Eyre Peninsula Branch President, CFS Volunteers Association

Mr Neil Ellis provided evidence to the Port Lincoln hearing. Before becoming branch president of the Eyre Peninsula Branch of the CFS Volunteers’ Association, Mr Ellis was a regional commander of the West Coast and Eyre Peninsula for 10 years and has been a member of CFS for 50 years. He is also a farmer near Coffin Bay.

Mr Ellis emphasised that the discussion about the proposed amendments to the Bill have centred on harvesting activities but that a much wider range of activities could be included in the power to direct under section 82.

According to Mr Ellis, the *Grain Harvesting Code of Practice* has been well accepted across the farming community. If a power to direct is included in section 82, Mr Ellis would view it as a reinforcement of the Code. If the Code was adopted within legislation, it would have more import and would be enforceable. Currently, the Code is voluntary and relies on peer pressure for enforcement.

From the perspective of volunteers, Mr Ellis would like the Committee to recognise that CFS volunteers are putting their own lives at risk when fighting fires. When the fires could have been avoided, this is an unnecessary risk to health and safety.

If the section 82 amendments come into place, Mr Ellis considers that SA Police and or fire prevention officers would be able to enforce these effectively because enforcement is already part of their usual role and they receive specific training about conducting enforcement activities. In contrast, enforcement of offences is not part of a volunteer's usual duties and volunteers do not currently receive any training in undertaking enforcement activities.

Mr Kym Eagle, Group Officer, Lower Eyre Peninsula, CFS Volunteers Association

Mr Kym Eagle provided evidence to the Port Lincoln hearing. Mr Eagle has been the Group Officer for Lower Eyre Peninsula CFS for the last five years and was previously deputy group officer, brigade captain and CFS member for 31 years. He is the chair of Region 6 volunteer management committee and Region 6 COAG representative. He is also a local farmer.

Mr Eagle is disappointed that the proposed section 82 has not specifically differentiated between grain harvesting and other activities. In Mr Eagle's view, this would have been simple to achieve. He would also like the proposed amendments to have focussed on the small minority of producers who do not comply with the Grain Harvesting Code of Practice.

He noted that the proposed CFS powers substantially mirror those vested in the MFS, and considers that there are multiple positive aspects to the Bill such as ensuring that the same standards apply for events in both regional and metropolitan areas, for example. Having the same powers is a positive step for greater public safety outcomes, in Mr Eagle's view.

Mr Eagle explained that most volunteer CFS officers have careers or professions within regional communities, so that impost on their time fighting fires takes them away from their main wage-earning activities.

To substantiate the points made by other witnesses, Mr Eagle commented that putting volunteers in the position of directing their neighbours to cease harvesting is 'untenable' for relationships. He stated that community members know each other, and any forms of unhealthy conflict can create 'them against us' situations and divided alliances as well as potential impacts on local businesses.

Additionally, the CFS are reliant on private fire fighting units to assist with fighting local fires, so it would be unwise to risk relationships between the CFS and landholders. Mr Eagle views the on-farm fire units as 'absolutely invaluable'. Further, the workload of CFS volunteers seems to be increasing all the time, so that volunteers are now doing tasks that may once have been undertaken by a paid staff member. This has poor mental health and wellbeing outcomes.

In relation to which parties should hold the power to direct under section 82, Mr Ellis favours SA Police being involved and or extending the powers held by local council fire prevention officers. He comments that he is concerned about CFS volunteers 'get[ting] roped into something that they haven't had any input into the discussions about in the first place'.

Mr Darren Rule, Captain, Cummins CFS

Mr Darren Rule has been Captain of Cummins CFS for several years and a CFS member for at least 15 years.

He notes that only incident has occurred in his local area over the period during which the Code of Practice has been in operation. He states that the system in place to manage fire risks among producers works, 'very, very well.' However, he is in favour of some type of authority being appointed so that non-compliance can be enforced effectively. In his view, SA Police are probably the

best option. He notes that the workload associated with non-compliant producers would be very low, perhaps one or two phone calls at most.

Affirming Mr Ellis' evidence, Mr Rule noted that there are a wide range of activities being undertaken in agricultural areas that could cause as much harm as a producer undertaking harvesting activities in a way that does not comply with the *Grain Harvesting Code of Practice*. These activities also need to be taken into account, as fire fighters are putting their lives and safety at risk when fighting fires.

In relation to the use of firebreaks, Mr Rule notes that large properties are divided into fewer paddocks than they may have previously been. Fences may be used around property boundaries rather than fencing specific paddocks. Firebreaks can be created through tracks or roads traversing a farm rather than a constructed firebreak.

Public hearing 2 – Adelaide – 4 February 2019

Primary producer peak bodies

Grain Producers SA (submission 19)

Grain Producers SA (GPSA) is the peak industry for approximately 3000 grain producing businesses across South Australia. GPSA worked with the Country Fire Service (CFS) in developing the *Grain Producers Code of Practice* (Code of Practice), which guides producers on minimising fire risks while undertaking harvest activities.

GPSA provided a written submission to the inquiry via Chief Executive Officer, Ms Caroline Rhodes. Staff also appeared as witnesses to provide verbal evidence at the Adelaide hearing of the Committee on 4 February 2019 at Parliament House. These staff included Mr Adrian McCabe, Vice Chairman, Mr Peter Cousins, Board Director, Ms Caroline Rhodes, Chief Executive Officer, and Mr Leighton McDonald-Stuart, Communications and Research Officer.

GPSA contends that the Code of Practice allows producers to operate effectively without the need for additional regulation being implemented. GPSA emphasised that primary producers already take a pro-active approach to fire management, and their voluntary initiatives already exceed legislative requirements.

To support its position, GPSA recommended that the following activities would complement an approach where no additional legislative provisions are introduced:

- government and CFS conducting advertising and marketing campaigns to continue to build community awareness of fire risks and the relevant Codes that apply to producers;
- government and CFS providing funding to support fire prevention initiatives led by farm groups, such as an SMS alert system and assist in the development of new communication networks in farming districts during harvest;
- appropriate protocols and operating procedures should be developed which require SAPOL to communicate any direction in relation to the cessation of harvest activities, on the advice of appropriate CFS personnel; and
- CFS personnel who are empowered to direct should contact and interact with farm groups to encourage weather monitoring and self-imposed bans, and engage with those groups when deciding to direct that a primary production activity be stopped.

GPSA alternatively contended that if the proposed powers are introduced, they could be strengthened by recognising the existing Code(s) of Practice, and suggested that a provision could be inserted to the effect that:

Where an officer intends to direct that a person refrain from carrying on a primary production activity, the officer must have regard to: 1) the usual practice and 2) any relevant codes of practice.

Livestock SA (submission 18)

Livestock SA represents beef cattle, sheep, and goat producers across South Australia. It has approximately 3500 members. The Livestock SA submission expressed concern that very little consultation occurred on the Bill before its introduction to Parliament in 2018. It noted that Grain Producers SA was not consulted, Primary Producers SA was not consulted, and the State Bushfire Coordination Committee had not discussed the Bill.

The submission also draws the Committee's attention to the timing of debate on the Bill being undertaken immediately prior to a bushfire season. It suggests that amendments could have been considered outside of bushfire season.

Livestock SA considers that section 82 of the Bill as drafted could operate to override the provisions of the *Grain Harvesting Code of Practice*. By extension, it could also operate to override any other documents, sources of guidance or agreements among industry stakeholders about safe practices in relation to any other activities. This is concerning as it does not provide sufficient recognition to the years of agreement, networks, and experience that producers demonstrate as being an important part of their daily operations.

Livestock SA also queried which activities would be regulated under the term ‘any other activity’. Further clarity is needed about whether ‘any other activity’ would encompass any aspects of farm management, for example the operation of electric fencing.

Livestock SA recommended that clarity is needed in the exercise of powers under section 82. The provision as it is currently drafted does not specify which CFS officers are vested with the ability to direct the cessation of an activity.

Primary Producers South Australia

Hon Rob Kerin, Chair of Primary Producers SA provided evidence to the Adelaide hearing. Mr Kerin noted that the farming community are greatly appreciative of the work of the CFS.

Mr Kerin stated that mandating the power to direct via legislation is counter to the advances made through the voluntary Code of Practice and weather monitoring made in recent years. In Mr Kerin’s view, retaining the current system but allowing the SA Police to play a back-up enforcement role would provide a better outcome. Mr Kerin commented that, ‘...if peer pressure is not working then I think that’s where the police come in.’ He also felt that SA Police enforcement would be appropriate for ‘repeat offenders.’

Agricultural Bureau of South Australia

The Agricultural Bureau of South Australia is a rural networking organisation which has 1200 members across the state. It provided evidence to the Adelaide hearing of the Inquiry held at Parliament House on 4 February 2019, represented by Mr Mark Grossman, Chair, Mr David Edwards, Board member, and Mr Corbin Schuster, President Freeling Agricultural Bureau.

Mr Grossman highlighted that microclimates operate across the regions so that enforcing the power to direct as a blanket directive that accompanies a fire ban would probably produce an outcome where some harvesting could otherwise be safely undertaken. There is an issue of liability inherent in this scenario. If a directive has been given to ‘cease harvest’ but that conditions are actually safe to continue, does a liability arise against the person who gave the directive to cease?

Mr Grossman also queried whether the Bureau of Meteorology would be involved in developing the regulations, and whether the CFS personnel who would be involved in exercising the power to direct would hold appropriate qualifications to enable them to exercise the powers effectively.

Mr Schuster noted that the *Grain Harvesting Code of Practice* recommends that one approved farm fire unit must be located in the paddock where harvesting is being undertaken. Usual practice is for farm fire units to assist adjoining properties if required, so that any farm fire units within the proximity of a fire are able to attend promptly before the CFS arrives. Mr Schuster noted that in most cases, local farm fire units will be able to extinguish and or control a fire before the CFS arrives. It is not a legislative requirement that farm fire units be present while harvesting, but producers adhere strictly to this recommendation and do not undertake harvesting activities without farm fire units being available.

Mr Schuster stated that one advantage of the *Grain Harvesting Code of Practice* is the operating table that is used by all harvesters. It provides a clear and objective measure. Where the GFDI exceeds 35, harvesting ceases.

Mr Schuster reflected positively on the advent of recent technology such as mobile weather stations. Some are portable and multi-purpose. The mobile weather station provides the producer with real-time information relating to temperature, humidity and wind speed. The data can also be linked to a mobile phone app. Mr Grossman confirmed that funding of mobile weather stations on each farm would be a useful investment.

The usual practice is for local networks to communicate with each other via phone messages during harvest. Where conditions become unsuitable for harvesting, messages are sent among the networks providing advice to stop harvesting. In Mr Schuster's view, this system works effectively. To disregard this system completely and vest complete power in the CFS would be 'a step in the wrong direction', according to Mr Schuster.

CFS volunteers would also be concerned about shouldering the burden of the power, especially where there are existing relationships with people against whom they are exercising the power to direct. Mr Schuster recommended that the provision as currently drafted should be clarified. It currently states that the power to direct can be exercised in circumstances where a CFS officer is 'satisfied'. This seems ambiguous in comparison with the GFDI 35 measure.

Mr Schuster described the GFDI 35 measure as 'conservative', but that most producers err on the side of caution. Farmers who have been affected by bushfires are particularly conservative.

Bureau of Meteorology

Mr John Nairn, state manager of Bureau of Meteorology provided evidence to the Adelaide hearing of the Inquiry held at Parliament House. Mr Nairn provided evidence about the Bureau's methods for calculating forecasts and fire danger indices, and the Bureau's plans for upgrading radars around South Australia. He responded to information presented by producers to the Inquiry regarding the merits of automatic weather stations. In his view, more comprehensive information can be obtained from a network of weather stations across a region if data can be agglomerated from multiple sources with more frequent readings being produced.

Local government

Adelaide Hills Council (submission 17)

The Adelaide Hills Council provided a written submission and Mr John McArthur, Manager Waste and Emergency Management, provided evidence to the Adelaide hearing.

The Adelaide Hills Council submission seeks that any requirements placed upon voluntary CFS officers as a result of the Bill are kept to a minimum. The Council states that 'the load on our volunteers is significant already'.

The submission further recommends that any new powers must be supported by easily understood and simple enforcement criteria and guidelines that will assist CFS Officers to exercise any new powers. This will ensure that subjectivity in decision-making is minimised and that the powers are consistently applied across South Australia.

The Council notes that certain activities could create a fire risk if undertaken on fire ban days. This includes the use of bird scaring devices, chainsaws, brush cutters, mowers and slashers. The Council would like to see the CFS being engaged to review evidence of any activities that have previously caused fires, and potentially being included in a legislative review of activities over which powers to direct could apply. In contrast to grain harvesting activities, Adelaide Hills Council recommends that

activities such as slashing or using certain machinery would be better directed by reference to a forecast rather than localised data. This is for reasons of accessibility for stakeholders who are not primary producers. The Council raised the example of block slashing, whereby the power would apply automatically to any persons undertaking that activity and any other activities within a prescribed class, where the forecast is for catastrophic fire danger conditions.

The Council further emphasised the role of including stakeholders such as CFS and grain harvesters in developing options to minimise fire risks from grain harvesting activities. This may result in non-regulatory or hybrid regulatory-non regulatory solutions being adopted. Any new controls that are adopted should reflect on and include positive elements from existing success stories.

The Council submitted that it is important to make decisions about ceasing grain harvesting activities in response to localised conditions. Because these vary so widely and are constantly changing, the Council does not support an approach which imposes a blanket ban on harvesting that is linked to a forecast rather than data provided at a point in time in a localised area.

It contends that any extended powers for the CFS should ideally be exercised by paid Officers only. This would partially mitigate the personal dimensions of many peer-based community relationships. If the logistics of enforcement require that volunteers must be involved in delivering the message to cease harvesting, the Adelaide Hills Council submission suggests that Group Officer is the appropriate level for volunteer involvement.

The Council noted that, as it is drafted, clause 23(4) of the Bill does not provide a definitive point at which a decision should be made to cease harvest. In all likelihood, the decision would therefore be made based on the experience, knowledge and understanding or beliefs about fire risks held by individual CFS staff. As a consequence, the power could be exercised inconsistently. The Council argued that an objective measure should be adopted, as is demonstrated through the GFDI of 35 adopted in the *Grain Harvesting Code of Practice*. Whatever measure is adopted, it should be based on real time conditions as opposed to forecast conditions. The Bill should be redrafted to include an objective measure.

The Council further recommended that the use of regulatory powers should only occur where a producer is not complying with the Code of Practice. This could result in a framework whereby voluntary aspects of the Code would apply until the regulatory trigger point is reached. Once the regulatory trigger point is reached, all harvesting taking place in the area must cease. Any producers who do not comply with the requirement to cease would be directed to cease in accordance with clause 23 and potentially be liable for additional penalties.

Mr Don Gilbertson (submission 11)

Mr Don Gilbertson is a resident of Millicent and has been involved in fire prevention activities across the region since 1971.

Mr Gilbertson emphasised the variations in climate across the South East region. This highlights the importance of local data in making a decision to cease harvesting.

Mr Gilbertson's evidence included recommendations about the Bill that were beyond the scope of the inquiry's Terms of Reference, which are discussed in Chapter Two.

Mr Tim Kelly (submission 3)

Mr Tim Kelly is a volunteer fire fighter with 36 years of experience. He serves on the State Bushfire Coordination Committee as the Deputy nominee of the Conservation Council of South Australia.

Mr Kelly strongly supports the proposed amendments to section 82 of the Act. Mr Kelly supports the additional powers as drafted in section 82 on the basis that 'there are situations where despite all other

codes, guidelines and conditions being complied with, that it is just not safe to undertake certain activities or to light fires.’

Mr Kelly suggested that further clarification could be included in the Bill related to whether or how the direction to cease harvesting would apply at a state level for defined activities during periods of extreme risk, at a regional level for defined activities during periods of extreme risk within a defined area, and at a local level for activities on a particular property. Mr Kelly also suggested that the clause could include provision for an authorised officer to refer direction to an independent officer where there is a conflict of interest.

Mr Kelly’s submission included recommendations about the Bill that were beyond the scope of the inquiry’s Terms of Reference, which are discussed in Chapter Two.

CFS volunteers

South Australian Country Fire Service Volunteers Association (submission 30)

The Country Fire Service Volunteers Association (CFSVA) represents 13,500 professional fire and rescue volunteers. Its mission is to ensure that the welfare and interests of volunteer members are respected and protected. The CFSVA is established under section 69 of the *Fire and Emergency Services Act 2005*, which recognises the Volunteers Association as a representative body for the CFS organisations and is empowered to take such steps as may be reasonable to advance the best interests of CFS volunteers.

Mr Andy Wood, State President and Ms Sonia St Alban, Executive Director provided evidence at the Adelaide hearing.

Mr Wood cited the examples of using an oxy torch and operating an entertainment event (a drag meet) as two activities that he has been involved in responding to, which are not currently prescribed as being subject to the power to direct.

Mr Andrew Cadd, Group Officer CFS and Mr Lyall Schulz OAM, Deputy Group Officer CFS

Mr Andrew Cadd and Mr Lyall Schulz provided verbal evidence to the Adelaide hearing.

Mr Schulz is a farmer whose property is located near Maitland. Mr Schulz has been a deputy and captain within the CFS and an SES unit manager. Mr Schulz was involved in the establishment of a regional SMS network which communicates pertinent weather information to producers.

Mr Cadd is a farmer, CFS volunteer, Member of the Flinders, Mid North and Yorke Peninsula Bushfire Management Committee, Deputy Chair of Region 2 CFS Volunteer Management Committee, and past member of the CFS Chief Officers Advisory Committee. Mr Cadd also provided a written submission to the Inquiry.

Mr Cadd stated that an extension of powers to direct the cessation of certain high-risk activities does not currently exist, and would be helpful. Mr Cadd used the example of chainsaws being used in inappropriate locations and inappropriate conditions. Mr Schulz spoke about slashing and rolling for snails. Lentil harvesting can also carry a high risk as lentil dust combusts at a lower temperature than other types of grains.

Mr Cadd noted that the proposed power as currently drafted creates a risk of introducing tension to relationships in regional areas, particularly between the CFS and farmers. As farmers often assist with local firefighting efforts using their own on-farm fire units, it is imperative that all parties are able to work together smoothly.

Mr Cadd suggested that one effective way of removing the risk of creating tense relationships, would be to vest the power to direct in the Fire Prevention Officer of the local council, as well as police and

possibly a select few CFS officers. In his view, a simple phone call from an authorised person would be sufficient to result in a person ceasing an activity that could result in a fire. Mr Schulz also recommends that the power to direct is best exercised by a council Fire Prevention Officer, because that position is independent from the CFS and from farmers. The Fire Prevention Officer is fulfilling a role specifically related to fire prevention and therefore has a degree of autonomy in delivering their message.

Mr Schulz discussed the formation of the SMS network, which comprises 420 members on the Yorke Peninsula. The service is used to communicate with producers about harvesting conditions but is also used to provide advice on fire locations and other weather events, such as lightning strikes or other relevant events. While Mr Schulz acknowledges the role of mobile weather stations and the need for localised data, he would see government support to develop communication networks such as the SMS alert system as a priority.

Mr Schulz also spoke about the strengths of the peer- and community- based system of accountability. Mr Schulz noted that much farming activity takes place out of public view, so that the best way to achieve universal compliance is for neighbours to communicate with each other. In the case of serial offenders, a neighbour could report the offender to a local committee who would be able to advise that person of the risks associated with continuing their activities.

In his written submission, Mr Cadd argued that CFS do need powers to direct, but that powers to direct should be exercised by Council Fire Prevention Officers (FPOs), SA Police (SAPOL) officers, or Authorised Officers under the Act. If drafted in this way, certain CFS officers could become Authorised Officers under the Act. However, Mr Cadd recommended that Council Fire Prevention Officers and SAPOL Officers should be able to exercise the power, with CFS personnel appointed as Authorised Officers only exercising the power where an FPO or SAPOL staff member is not available, and where the CFS member acting as an Authorised Officer has the support of the local community.

Mr Cadd expressed the view that many CFS members don't have the relevant background knowledge or the interpersonal skills to be able to use the proposed powers effectively. Where the power is not exercised appropriately, conflicts between neighbours may occur or antagonism could arise between the CFS and farmers.

Mr Cadd is in favour of maintaining the Code of Practice in its current format because it operates whenever weather conditions deteriorate, regardless of the time day or night. In contrast, fire bans rely on forecast conditions. Mr Cadd highlighted the immense variation in weather conditions between districts. Mr Cadd recommended maintaining the Code of Practice and suggested that a network of local experts be appointed to manage the text message alert system. To enforce the Code of Practice, a producer who observes their neighbour harvesting after the GFDI has been exceeded and after a text message has been received from the local network advising producers to cease harvesting, should contact the relevant FPO or SAPOL. Mr Cadd suggested that on most occasions, a phone call from the FPO or SAPOL to the producer directing them to cease harvesting will be effective.

Emergency Services sector

South Australia Police (SAPOL) (submission 7)

SAPOL provided a written submission to the Inquiry and also provided evidence to the Adelaide hearing of the Inquiry held on 4 February 2019 at Parliament House, represented by Assistant Commissioner Noel Bamford and Senior Sergeant Russell Dippy, Emergency Management Coordinator.

SAPOL submitted that CFS officers need the power to direct a cessation of harvesting or any other actions that may cause a fire, if ignited, to get out of control because of weather conditions. It therefore supports the proposed amendments to the Bill.

SAPOL notes that 100 fires were recorded during the Fire Danger Season in 2017-2018 that were attributed to farm machinery, of which 43 were directly linked to harvesters or headers. In verbal evidence, SAPOL clarified that eight farm machinery fires took place on a day of total fire ban.

Assistant Commissioner Bamford explained that enforcement is a last resort, as opposed to prevention. He commented that,

*It's all very well for the police to come along afterwards and take enforcement action if a fire has been lit negligently. It's bit late if there's been significant damage and loss of life. We would far sooner see people who are qualified and in the right position at the right time to take some preventative action...*¹⁵⁸

SAPOL contends that SACFS are best placed to determine at what level the powers are used, and whether staff receive specific training. SAPOL does not see its role as being the first authority arriving at a property directing a person to cease using a header, for example. SAPOL does not see its role as determining the fire danger at a particular place and time and is also opposed to enforcing a decision that has been made by a group of farmers voluntarily, that is, the local committees used as part of the Code of Practice. SAPOL sees its role as a fall-back rather than as a primary enforcement agency.

South Australian Country Fire Service (SACFS) (submission 9)

The SACFS provided a written submission to the Inquiry. Chief Officer Greg Nettleton provided verbal evidence to the Adelaide hearing of the Inquiry, held at Parliament House on 4 February 2019.

SACFS highlighted that, currently, CFS officers have powers to direct once a fire has been lit, but does not contain any powers to prevent a fire becoming lit. It also noted that neither a council fire prevention officer nor an officer of SACFS has any power to direct a person to refrain from undertaking an activity that the officer is satisfied may cause a fire during the period specified in the direction. SACFS emphasised that it applies a broad interpretation of the proposed amended section 82, which could be used to regulate a number of activities beyond grain harvesting, which are either currently prescribed or that could be prescribed by Regulation in future.

SACFS provided a chronology of the development of the *Grain Harvesting Code of Practice*, noting that it was initially developed in 2008 and reviewed in 2016. SACFS noted that most producers comply with the Code but a small minority continue harvesting where local weather conditions exceed the GFDI of 35. When a producer continues harvesting under these conditions, SACFS noted that there is often pressure applied to the SACFS Group Officer, the local council Fire Prevention Officer or SAPOL officers to direct the producer to cease harvesting. Currently no legislative power to direct this outcome is provided to these parties. Existing provisions give SACFS officers and authorised officers power to direct cessation of an activity once a fire has been lit, but no powers to direct the cessation of an activity that may cause a fire that might get out of control because of prevailing weather conditions.

SACFS supports the proposed amendments and considers that they are consistent with the objects of the Act in facilitating the role of SACFS in 'preventing the outbreak of fires'. SACFS commented that the proposed legislation has benefits to ensure improved community safety by preventing the potential for outbreak of fires caused by prescribed activities. SACFS noted that proposed amendments to

¹⁵⁸ Assistant Commissioner Noel Bamford, SAPOL, *Committee Hansard*, 4 February 2019, p. 103.

Division 6A of the Act would provide powers that are analogous to those provided to the SA Metropolitan Fire Service in Division 5 of the Act.

SACFS clarified confusion that has arisen about which CFS officers could exercise the proposed powers. The Chief Officer stated that the powers would not be conferred on every CFS officer. The powers proposed in section 82(2)(a) would be limited to SACFS operational staff members, to very senior SACFS volunteers who hold the rank of Group Officer or Deputy Group Officer, and to other authorised officers including local council Fire Prevention Officers and SA Police officers.

In evidence presented to the Inquiry, Chief Officer Nettleton agreed that section 82(5) as currently in force, allows volunteers to exercise these powers where an officer at an agreed level is not available. Chief Officer Nettleton conceded that removing the words, 'despite subsection (4)' and 'any member of the SACFS' would clarify that the power to direct cannot be used by any parties other than those who are authorised by their CFS rank or their position with another organisation.

SACFS asserted that further clarity is needed to resolve outstanding uncertainties, including:

- Can a person be held partially or fully responsible where they are aware of an activity being undertaken that could result in a fire getting out of control but do not exercise the power to direct that activity to cease?
- Would SACFS or other authorised officers be expected to patrol areas of responsibility where weather conditions are approaching a level that the power of direction may be needed to be exercised?
- The close relationships between people in regional areas and the risk of community members' relationships becoming tenuous or unsustainable where the powers to direct cessation of an activity are required to be exercised.
- Management of a situation where a local council employee is required to exercise the powers to direct against a Councillor.

Department for Primary Industries and Regions South Australia

The Department for Primary Industries and Regions South Australia provided evidence to the Adelaide hearing of the Inquiry, held at Parliament House on 4 February 2019, represented by Mr Tim Goodes, Deputy Chief Executive.

The Committee discussed whether there is a need to develop any codes of practice beyond those currently being used, to manage the risks of undertaking activities that have a potential to cause a fire. Mr Goodes suggested that discussion with the CFS and any other relevant peak bodies would be useful to determine whether further guidance documents should be developed.

Public hearing 3 – Balaklava – 7 February 2019

Hon Geoff Brock MP, Member for Frome

Hon Geoff Brock is the Member for Frome which encompasses Port Pirie, Hamley Bridge, Balaklava and the Clare Valley. Mr Brock provided evidence to the Committee at its Balaklava hearing.

Mr Brock expressed concerns about ‘uncertainty’ within the Bill relating to the viability and legality of a CFS volunteer being provided power to ‘chat to or chastise or direct a fellow farmer or fellow volunteer’. In Mr Brock’s view, the Bill ‘needs a bit of tweaking’ to clarify the powers proposed and gave an undertaking to convey local opinions to the House of Assembly when debate on the Bill resumes.

Mr Fraser Ellis MP, Member for Narungga (submission 29)

Mr Fraser Ellis MP is the Member for Narungga. Mr Ellis provided a written submission to the Inquiry which represents a summary of constituent concerns that his office has received. Mr Ellis attended the Committee’s public hearing in Balaklava.

Mr Ellis’ submission indicates that a majority of feedback received has been supportive of the *intent* of the proposed amendments whereby any recalcitrant parties should receive a direction to cease acting irresponsibly. However, constituents consider that volunteer CFS officers should not enforce the regulations. This would be better achieved by local Council Fire Prevention Officers or SA Police officers.

Mr Ellis’ submission provided several reasons why Fire Prevention Officers or SA Police officers are more appropriate authorities to exercise a power to direct, including:

- The unfair logistical, geographic and financial impost of CFS officers being required to attend a property to use the power to direct. This would occur in addition to their fire-fighting duties, which are already undertaken on a volunteer basis beyond their paid employment.
- Undermining the good relationships existing between CFS and farmers, who work side by side in fighting fires.
- Concerns about potential legal implications or community impacts if a CFS volunteer erroneously uses the power to direct.
- The SMS alert system is working well and is supported by the majority of farmers.
- While monetary penalties would be an effective deterrent, the loss of community and industry respect caused by non-compliance with the *Grain Harvesting Code of Practice* is an equally powerful deterrent.
- Unnecessary loss of production time through the imposition of a blanket ban in other jurisdictions.
- The need to consider local climate variations.
- Significant financial loss caused by unnecessary delays in completing harvesting activities.

Local government panel

Mr Steven Griffiths, A/g CEO Wakefield Regional Council

Mr Steven Griffiths is the Acting Chief Executive Officer at Wakefield Regional Council. He provided evidence at the Balaklava hearing.

Mr Griffiths provided evidence about the strength of the peer pressure system among producers. He stated that, ‘people learn not to make the same mistake’ (after being pressured by their peers to cease harvesting). Further, producers are very conscientious and, ‘actually do the best they absolutely can to control the fire risk.’ This includes relying on the farmer networks that are in place, and using

technology where it is available. Mr Griffiths notes that some farmers have access to a smartphone app which calculates the GFDI.

Mr Griffiths stated that the stakeholders with whom he has spoken have objected to legislative controls being put in place; they would prefer the industry to continue to have control of its itself with recognition of the industry members who exercise responsibilities currently. He wonders whether the Code of Practice was developed specifically to alleviate pressure being placed on the CFS, and to provide farmers with greater tools and skills to determine when to stop harvesting. Mr Griffiths suggests that recognition of the farmer networks within legislation could be an option, and any financial support being provided to the networks to assist them in carrying out the roles undertaken through the networks would be welcome.

Concomitantly, Mr Griffiths contended that CFS volunteers are reluctant to take on the responsibilities envisaged under proposed section 82. This is mainly due to the close personal and business relationships that operate in rural communities.

An alternative solution could be differentiating harvesting from the other activities covered by the ambit of proposed section 82. An ideal approach would be to quantify the risks posed by each of the activities that are contemplated as being included within the proposed section 82. Guidelines or other guidance documents could be developed to accompany each activity.

If the legislation is adopted, Mr Griffiths seeks further clarity about whether it would be applied to a person or single operation, or more widely to an area or an entire region. More information is needed about how any decisions would be conveyed to all affected stakeholders in a simple way. While farmers have recognised networks in many cases, these networks are less formal for peri-urban dwellers undertaking high risk activities such as using ride-on lawnmowers. More information is also needed about any penalties that would apply. Providing farmers with education about how the legislation will be implemented is also necessary.

Deputy Mayor John Neal, Regional Council of Goyder

Mr John Neal is the Deputy Mayor of the Regional Council of Goyder. Mr Neal provided evidence at the Balaklava hearing.

Mr Neal commented that ‘this Bill is a great idea, unless you are a grain farmer’. Mr Neal brought the Committee’s attention to the urgency of harvesting, which must be undertaken in a short time to avoid crops being ruined by rain and at the right stage of maturation. Mr Neal stated that farmers don’t want to have to stop harvesting unless there is a need to do so. Any powers that direct producers to cease harvesting must be exercised with this urgency being taken into account.

Mr Neal explained that in his community, peer pressure operates very efficiently. Farmers who do not cease harvesting when neighbouring properties have, are ‘shamed’. Some communities have a nominated decision-maker, while others make a collective decision. The *Grain Harvesting Code of Practice* is the standard that producers adhere to. In Mr Neal’s view, this should be referenced in the Bill as the benchmark. Many farmers carry the handheld Kestrel device or use the smartphone app which provides information about whether the GFDI on their property is being exceeded. With this information in hand, producers can make a quick decision based on an agreed standard.

Cr Merv Robinson, Northern Areas Council (submission 39)

Mr Merv Robinson provided evidence at the Balaklava hearing. Mr Robinson is a councillor for the Northern Areas Council, a group officer with the Hallett CFS, and a farmer.

Mr Robinson would prefer the Code of Practice to remain in place as the standard that is required to cease harvesting. If legislative powers are needed, the CFS role should be reporting any non-compliance with the Code to the police. The relevant CFS personnel undertaking the report should be

either the group officer, deputy group officer, and captain. The police would then be the appropriate party to enforce a fine or penalty with the non-compliant party. Mr Robinson clarified that the police should act on a report from the relevant CFS officer rather than reports from public individuals. This would reduce the chance of vexatious reporting and minimise the workload for police if this model of enforcement is adopted.

Cr Ben Browne, Northern Areas Council (submission 39)

Mr Ben Browne provided evidence at the Balaklava hearing. Mr Browne is a councillor on the Northern Areas Council, deputy group officer with Hallett CFS, farmer, and an authorised officer to issue permits to light or maintain a fire during the fire danger season.

Mr Browne expressed concern that if powers to direct are granted to CFS officers, there is a risk that the CFS will become an overly risk-averse organisation that is exercising the power too soon. There is an accompanying risk that the CFS will become politicised and people being elected to leadership positions will be seen as the controllers of ‘when you harvest and when you don’t’. Mr Browne sees this as detrimental for an organisation like the CFS.

Mr Browne also stated that his discussions with CFS personnel have revealed that many do not want the powers that are proposed. They would be more comfortable if the powers are vested in SAPOL, and exercised after SAPOL has consulted with the CFS about whether there is a need to direct a person to cease their activities. The Committee discussed whether the local farming networks should be recognised in the decision-making process so that a three-way conversation could be undertaken before the power to direct is exercised. Mr Browne expressed reservations about this idea as the farmer networks would need to be ‘formalised’. They are currently a community initiative based on consensus.

In Mr Browne’s view, there is also a need to incorporate regular review of any decision made in accordance with section 82. Weather conditions are constantly changing and also vary according to location, such as the placement of sheds or geographical features such as terrain. If a power to direct is used, it should be subject to review ‘every few hours’.

If adopted in legislation, the proposed powers to direct would apply to producers as well as the general public who are undertaking high risk activities. Mr Browne therefore recommended that an extensive public education campaign accompany the introduction of the legislation.

Mr Phil Herrmann, Yorke Peninsula Council (submission 34)

Mr Phil Herrmann provided evidence at the Balaklava hearing. He also provided a written submission for the Yorke Peninsula Council. Mr Herrmann is a senior compliance officer, ranger, and fire prevention officer with Yorke Peninsula Council.

Mr Herrmann reflected on the achievements of the Yorke Peninsula Region in developing the producer network SMS alert system, which updates producers on local conditions in relation to the *Grain Harvesting Code of Practice*. He explained that councils receive complaints where a local resident believes that a person may be breaching the Code of Practice. The authorised officer or fire prevention officer monitors the activity, by reference to a weather app or local data. Mr Herrmann indicated that his usual practice is to visit the property and assess the situation, which may include an informal conversation about the requirements of the Code of Practice and the GFDI.

Providing a formal power to direct the cessation of high risk activities is a positive initiative, in Mr Herrmann’s view. His written submission notes that fire prevention officers try to educate farmers to stop harvesting on bad fire days, but have no authority to request them to stop farming activities. He states that CFS volunteers are not the correct parties to exercise the power to direct. If given this power, ‘big division[s]’ would occur between the CFS and local communities. He believes that SAPOL officers and Fire Prevention Officers should have the power to direct, because they already

hold many powers under multiple pieces of legislation and are well trained to undertake the power to direct. If the power is given to the CFS, group captains and more senior officers are the correct levels of authority to exercise the power, rather than volunteers.

In practice, it may be a matter of a simple phone call to a recalcitrant party advising them that their activity is causing concern if the GFDI has been exceeded, and that party should therefore review their activities temporarily.

Mr Herrmann described the roles of Fire Prevention Officers, who aim to reduce the impacts of fire. On the Yorke Peninsula, fire prevention officers are proactive about reducing fuel loads on properties and issue around 2000 notices each year for vegetation management. The Committee noted that section 105F of the *Fire and Emergency Services Act 2005* enables a code of practice to be prescribed as a standard for assisting authorised officers to perform enforcement roles. Mr Herrmann then discussed the burning permit system, which publishes publicly available information about which properties are undertaking permitted burning activities and provides contact details if enforcement by an authority is required to be undertaken. The burning permit system has recorded a gradual decline in the number of properties undertaking burning activities during the fire danger season.

One concern that Mr Herrmann brought to the Committee's attention was related to the wide powers held by council authorised officers, who are empowered to perform various roles under at least 15 pieces of legislation. Mr Herrmann stated that he is comfortable with the ambit of the powers held, but practically responding to these may be difficult due to workload, and not possible where the officer is on leave or an incident occurs on a weekend. Mr Herrmann considers that the breadth of the workload could be shared among SA Police, CFS, and authorised officers.

Ms Jenny Ireland, Adelaide Plains Council

Ms Jenny Ireland is the general inspector and fire prevention officer for Adelaide Plains Council. Ms Ireland appeared at the Balaklava hearing.

Ms Ireland explained that the producers collectively decide when to cease harvesting in the Adelaide Plains area. If a person is contravening the collective decision, either the council or SA Police would attend the property. In two years performing the role, Ms Ireland has attended a property once under these circumstances. SA Police also attended and advised the producer that they needed to cease cleaning grain, due to the risk of a fire igniting from the machinery being used.

Mr Bill Vandeppeer, Chair, Regional Development Australia Yorke and Mid North

Mr Bill Vandeppeer operates an agribusiness in the Gilbert Valley, is a CFS volunteer, and is also chair of Regional Development Australia Yorke and Mid North. Mr Vandeppeer appeared at the Balaklava hearing.

Mr Vandeppeer brought the Committee's attention to the economic impacts of CFS involvement in local incidents. Many small non-farming businesses voluntarily close down or operate at a reduced capacity so that volunteers can fight fires. This results in lost income for businesses. Some employers subsidise their employees' attendance at fire fighting activities.

Regional Development Australia supports the power to direct and recommends that it be linked to the objective measures provided in the *Grain Harvesting Code of Practice*. Where a person is not complying with the Code of Practice, the power should exist to direct that person to comply. Regional Development Australia also supports a process of regular review being included in the Code of Practice.

Mid-North primary producers

Mr Leighton Wilksch, AgByte (submission 1)

Mr Wilksch provided a written submission to the Inquiry and provided evidence at the Balaklava hearing.

Mr Wilksch has been involved in developing a large network of private weather stations across South Australia. There are over 170 sites in this network, which distribute data to over 700 farming businesses and community stakeholders. Mr Wilksch notes that practice change has reduced fires started by harvesters where the weather stations are in place. The following image shows a weather station at Malinong, supplied by Mr Wilksch:



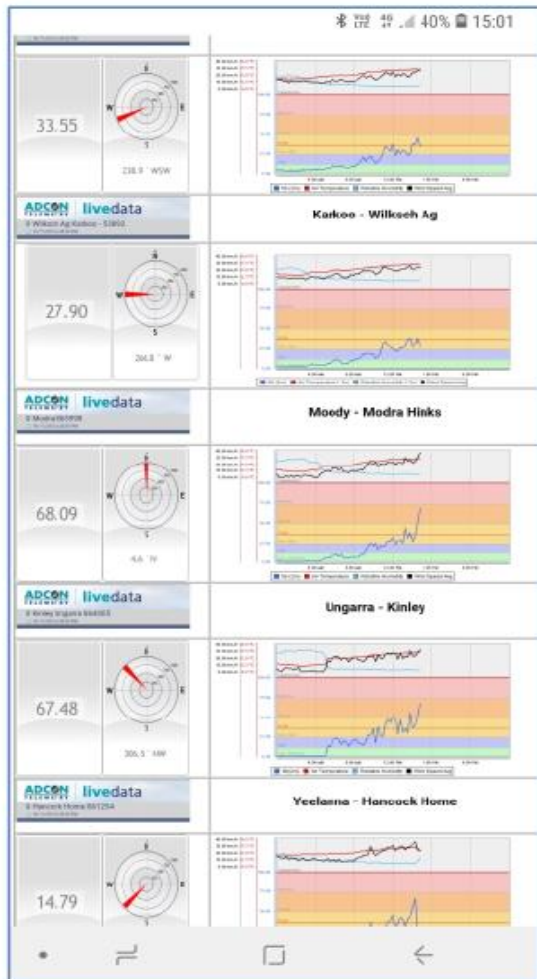
The systems use a local network of data and a person or persons ('local champion') to make informed decisions. Aggregated GFDI data is gathered from multiple weather stations in a region and provided to the local champion to make a decision when to alert local producers via SMS. Mr Wilksch makes the point that positive practices are adopted where there is trusted data and a trusted person responsible for the SMS alert system. Making a decision that impacts on the business practice of one's neighbours and community can be demanding, therefore identifying a person or persons who are willing to take on this responsibility is significant. It may even be worthwhile offering these people reimbursement for their time and effort, taking into account that the alert system also operates on weekends. Having locally based reliable data empowers communities to make decisions that are best for local conditions. Therefore, it is imperative that locations which currently do not have an optimum number of data collection points should be identified and this lack of sources rectified.

Sensor heights should be also be consistent across the data collection points and data produced, and displayed at consistently regular intervals. Mr Wilksch's submission refers to ongoing confusion related to calculation of GFDI based on Bureau of Meteorology sources and the Bureau's calculation methodology. The Bureau gathers data at sites that are 10 metres in height, while the *Grain Harvesting Code of Practice* refers to a measurement of body height, approximately equivalent to 1.6 metres. The Bureau provided evidence to the Inquiry stating that it will be adopting a new national methodology over the next two years. Mr Wilksch recommends that all producers receive ongoing education about calculating the GFDI.

Mr Wilksch also suggested that insurance companies may play a role in promoting greater responsibility among producers by imposing as a condition of insurance a requirement that a source of data about fire danger must be operating every time the harvester is in operation. If it could be shown that the harvester was being operated under conditions where the GFDI was being exceeded, this could nullify an insurance claim.

Mr Wilksch is concerned that wider and more scale restrictions being put in place that are based on forecasts rather than local data, would result in producers losing faith in decision-makers. Mr Wilksch emphasised the wide local variations that occur in weather conditions. Where a decision to harvest is based on local data and the Code of Practice, the decision is likely to maximise the amount of harvesting time available. Maximising the amount of safe harvesting time should be an outcome of the Act, in Mr Wilksch's view.

The following images show local variance in FDI across a region with some stations close to or exceeding the GFDI and others showing a lower risk of conditions conducive to fire:



The Committee sought Mr Wilksch's view on the validity of the GFDI 35 standard. Mr Wilksch agreed that the standard provides an appropriate parameter for fire danger and is the correct standard. He stated that the Code of Practice has been effective in encouraging producers to institute on-farm fire units, commenting that, 'an incredible amount of investment has gone into private fire trucks.' Ongoing education and awareness about the most effective methods of fire prevention would further assist.

Mr Paul Daniel

Mr Paul Daniel is a grain and livestock producer from Bowmans. He provided evidence at the Balaklava hearing.

Mr Daniel agrees that the CFS should have the power to direct certain activities under certain circumstances and is supportive of this being included in the proposed legislative amendments. Mr Daniel would favour the power being used when:

- a significant fire is underway in the district to prevent further fires breaking out;
- an operator continually or repeatedly contravenes the *Grain Harvesting Code of Practice*;
- the forecast for the day is for catastrophic conditions or conditions that would result in the GFDI being significantly exceeded. Mr Daniel clarified this by saying that the CFS should be able to direct that no activities occur even when the GFDI has not exceeded 35, on the basis that conditions on a catastrophic forecast day can worsen; and
- resources, weather conditions and circumstances put lives and property at risk.

Mr Daniel agreed with the CFS having a power to direct so long as the power is used based on good weather data sources, the personnel making the decision to direct have the appropriate background and skills, the *Grain Harvesting Code of Practice* is clear and updated, and decisions are a result of collaboration with the wider community.

Mr Daniel recommended that the *Grain Harvesting Code of Practice* be urgently reviewed to address:

- specific provisions for high volatility crops such as lentils, vetch and chickpeas;
- SMS services and data should be coordinated from a statewide perspective in a statewide platform with local data elements, led by local representative committees;
- review provision that will trigger a periodic review;
- the need for an automatic cease of harvesting on forecast catastrophic days until the catastrophic conditions pass over with wind and temperature drops and improvements in conditions; and
- provisions that any person working on a farm who may be exposed to fire risk should be required to undertake appropriate training.

Mr Daniel further recommends that the forecasts issued by the Bureau of Meteorology should include a GFDI calculation for local weather observation points.

Mr Peter White

Mr Peter White is a grain producer from Spalding in the Northern Areas Council region, active CFS member, primary producers' representative on the State Bushfire Coordination Committee, committee member Mid North Yorke Peninsula regional bushfire committee, past president South Australian Farmers' Federation, and chair of the South Australian Farmers' Federation bushfire task force. Mr White was a major architect of the original *Grain Harvesting Code of Practice*. He provided evidence at the Balaklava hearing.

Mr White explained how the GFDI 35 was derived. The Cooperative Research Centre for Bushfires in Canberra advised that 35 was a measure representing the point above which a fire would be difficult to extinguish using regular head attack. In other words, it is:

... the upper limit at which, if you start a fire, there is a reasonable chance of keeping that fire under control by a direct act.

In Mr White's view, it is important to leave the GFDI at a level where the farmer has a reasonable chance of controlling it him/herself so it should not be revised.

Mr White stated that one of the 'gaps' in the Code of Practice has always been lack of enforcement capacity where a person does not comply. In relation to the proposed amendments, Mr White recommended that further clarity is needed in relation to who makes the decision to use the power to direct, what sort of consultation occurs in making that decision, which parties are involved in making that decision, how the decision is formulated, and who delivers the decision once it is made.

Mr Andrew Kitto

Mr Andrew Kitto is a farmer from Gladstone, contract harvester, and CFS member who has been involved in farming-related groups and communities at the local and state level, including the Natural Disaster Resilience Program committee member 2015, Agricultural Bureau State Committee executive member and state treasurer, Gladstone Viterra Strategic Site Committee, Upper North Farming Systems Strategic Board, and Nelshaby and Laura Agricultural Bureaus. He provided evidence at the Balaklava hearing.

Mr Kitto relayed comments made by farmers to him to the Committee, which included:

- If the CFS is going to tell us when to stop why should we bother looking at the weather stations?

- As a captain and farmer I don't want to be the one who has to carry the big stick!
- 96% of farmers are doing the right thing but 4% is still too high doing it wrong.
- CFS don't need to be policing this, it should be the police but who is going to train them?

A CFS captain who is not a farmer commented to Mr Kitto:

Why do we need this? It will harm the excellent working relationship in our northern area between the CFS and Farm Fire Units...I think we'll see farmer members leave the CFS.

Mr Kitto reflected on 57 harvesting contract experiences since 2010, of which 40 included a harvest-related fire on the property being harvested or a neighbouring property. None of these were a direct result of harvest activities on a fire ban day. In Mr Kitto's contracting business, five harvest-related fires have occurred. None of these occurred on a fire ban day and none required a 000 call.

Mr Kitto recited a provision from his contractor's insurance policy which would deny a claim if a fire escapes, is lit, is allowed to remain alight or is not properly extinguished in contravention of the provisions of any statute, by-law, or regulation imposed by a public authority. If the *Grain Harvesting Code of Practice* was included in legislation, it is likely that insurers would take this into account in liability claims.

Mr Kitto provided three recommendations to the Committee: 1) that the current Code of Practice be continued; 2) that the Government offers a subsidy for moveable weather stations like those from Agbyte to establish a statewide network of local data; and, 3) that continuing education focussing on harvester and fire prevention be offered to farmers through local networks.

Mr Maurice Wiech

Mr Maurice Wiech is a farmer from Blyth Plains who provided evidence at the Balaklava hearing. Mr Wiech posed a question to the Committee:

What message does the government send to an industry, which has made enormous improvements towards fire safety and wants to continue that process, by imposing blanket legislation, disadvantaging already very experienced and responsible operators?

Mr Alex O'Loan, Owen Agricultural Bureau

Mr O'Loan is the president of the Owen Agricultural Bureau, Captain of the Mallala CFS brigade and farmer from Grace Plains. He provided evidence to the Balaklava hearing.

Mr O'Loan stated that the Code of Practice has been in place for many years and is well adhered to in the local area. In Mr O'Loan's view, the legislation needs to include reference to industry codes of practice because the provision as drafted does not provide an objective standard against which an officer can exercise the power to direct. Mr O'Loan commented that, 'As the current proposal stands, it is only the opinion of the CFS officer that counts...they need something to base their judgement against.' He agrees that the legislation should provide a mechanism by which operators who are not doing the right thing can be stopped, but is unsure whether this should be the job of a CFS volunteer. If the code of practice is referenced in the legislation, this would give a basis for responsible decision-making. Alternatively the current provisions could be left unchanged.

Mr O'Loan explained to the Committee that fire prevention is currently the role of local government through fire prevention officers. The CFS usually becomes involved once a fire starts, so the CFS lacks experience in fire prevention measures. In Mr O'Loan's view, the power is better vested in higher level CFS officers or officers who have education in fire prevention.

CFS volunteers

Mr Jeff Clark, CFS Volunteers Association

Mr Jeff Clark is the CFS Volunteers Association Lower North Branch President and state deputy Vice President. Mr Clark provided evidence at the Balaklava hearing.

Mr Clark acknowledged the currently voluntary status of the *Grain Harvesting Code of Practice* and views the inclusion of a power to direct within legislation as a strengthened position. Preventing fire is the paramount concern, to protect public safety and the safety of fire fighters. If the power is used to direct someone to stop acting in a way that is unsafe, then this is a step in the right direction to protect communities.

He affirmed that the CFS Volunteers Association do not intend that its 13,500 members be able to exercise powers to direct. In Mr Clark's view, the enforcement of a power to direct would 'probably be a combined effort between local government fire prevention officers, SA Police and maybe some senior CFS personnel: group officers or deputy groups, but nothing below that.' As it is currently drafted, the Act allows the 'next available person' to use the power to direct where a senior officer is not available. Mr Clark does not support this position. He recommended that if the appropriate senior officer is not available, the default position should be SA Police exercising the power.

Mr Steve Cornwell, CFS Volunteers Association

Mr Steve Cornwell is the South Yorke Group Officer and Yorke Peninsula Branch President of the CFS Volunteers Association. Mr Cornwell provided evidence at the Balaklava hearing.

Mr Cornwell explained that the increased use of weather stations has assisted producers in their knowledge and understanding of local conditions. Data from some of the weather stations is available online so that producers are able to log in to view data from the weather stations surrounding their local area. Mr Cornwell stated that there are no instances of farmers 'doing the wrong thing' in his area, and therefore he does not see a need to include a power to direct within legislation.

If a power to direct was provided to CFS officers, Mr Cornwell stated that he would probably not use it, as it would be likely to provoke ire. He has spoken with local fire prevention officers, who 'are happy to take on that role'. In Mr Cornwell's view, the appropriate role for the CFS is one of observation/assessment, whereby the CFS could observe local conditions and a person undertaking a high risk activity, then report that to the local fire prevention officer for them to take action. If the power to direct is provided to fire prevention officers within the proposed amendments, Mr Cornwell recommends that additional education and training should be provided to these officers. SA Police would be another logical choice for exercising the power to direct, in Mr Cornwell's view. This is because they would be ultimately involved in any resulting prosecutions.

Mr Phillip Earl, CFS Volunteers Association

Mr Earl is the Light Group Officer at the CFS Volunteers Association and provided evidence at the Balaklava hearing of the inquiry.

Mr Earl emphasised that the current wording of proposed section 82 in the Bill allows all members of the CFS to use the power to direct, and does not limit the exercise of that power to higher level officers. He noted that all members of the CFS have the community's best interests at heart, but not all have the people skills necessary to exercise the powers envisaged. The current drafting of the Bill also means that any member of the public will be able to make a 000 call and have the CFS respond to it, whether or not a response is warranted. Mr Earl is concerned that this will impose unnecessary workload on the CFS.

Mr Earl affirmed the benefits of having data from local weather stations available online and would support more sources being accessible via the webpage.

Public hearing 4 – Keith – 7 March 2019

Local government panel

Tatiara District Council

Cr Maureen Oliver, Councillor and Ms Anne Champness, CEO, Tatiara District Council presented evidence to the committee at the Keith public hearing.

Cr Oliver discussed three concerns about the scope of the Bill:

- that there was a risk of blanket bans being inadvertently introduced;
- that there was a need for decisions to be local and to consider local fire danger indices; and
- the impact on volunteers to have to make ‘such a call’.

Cr Oliver further pointed out that there was a potential for liability on whoever had responsibility for making such decisions.

Finally, Cr Oliver explained that improved use of communications and data from local weather stations would potentially ‘be more beneficial than enacting such an act’.

Wattle Range Council

Mr Roger Babolka, Manager, Economic Development, presented to the Committee at the Keith public hearing.

Mr Babolka explained to the Committee that while the council supports, in principle, the proposed legislation, he is concerned about the ability of authorised officers within the CFS to actually enforce the legislation. He explained that with the proposed legislation, there is a need for clear guidelines and procedures for authorised officers.

Mr Babolka further explained that there would need to be in place some sort of arrangement to provide training and accreditation to authorised officers. He also expressed concern that although authorised officers would be appropriate to raise issues with farmers, enforcement should be vested in an enforcement agency.

Mr Babolka, while engaging in discussions with the committee, confirmed Ms Champness’ point that ‘there needs to be some definition on what is considered to be a risky activity, and that needs to be managed or controlled ... We don’t want to see people put in the position of having to enforce something which is too grey or too open to further action on their behalf’.

Mid Murray Council (submission 21)

The Mid Murray Council provided a written submission and Mr Rocky Warren, Regulatory Services Coordinator, Mid Murray Council, appeared at the public hearing in Keith.

The Mid Murray Council strongly supports the proposed amendments to section 82 of the Fire and Emergency Services Act, on the basis that the amendments clarify the powers of Authorised Officers when dealing with persons lighting and maintaining fires, and no longer restrict these directions to the person who had lit the fire.

Mr Warren wished to highlight an industry issue ‘within the provisions of fire prevention officers and ... the ability for us to enforce those provisions with the legislation that we are entrusted with’.

According to Mr Warren, the provisions of section 105F of the *Fire and Emergency Services Act 2005* do not provide sufficient ‘regulatory guidance to assist fire prevention officers in determining exactly what the appropriate standard is for private property owners.’ He further went on to explain that each council’s fire prevention officers actively visit properties to ensure that hazards are reduced, however,

although officers can issue orders in accordance with section 105, there is no code of practice that is prescribed. Mr Warren's concerns are that while officers are empowered to make sure properties reduce hazards, there is no code identified within the legislation, which creates uncertainty should the orders be contested in the courts.

Sherwood Fire Local Recovery Committee (submission 5)

Ms Tracey Strugnell, Secretary, Mr Charlie Crozier, Member and Mr Steven Jaeschke, Member, Sherwood Fire Local Recovery Committee (SFLRC) presented evidence to the committee at the Keith public hearing.

Ms Strugnell introduced the SFLRC and explained that it was set up in response to the Sherwood fire that occurred on 6 January 2018. The SFLRC provided practical assistance to the affected communities post-fire and ensure that state agencies could provide coordinated assistance.

According to Ms Strugnell, the main areas of concern for the SFLRC are the role of the officer in providing direction in accordance with the Act, but also that current technology and on-farm and community activities can be expanded upon to help improve fire safety and prevention.

Mr Jaeschke explained to the Committee that, as a business, he relies upon the grassfire danger index (which is a measure of temperature, wind speed and humidity) to inform decisions about activities on fire danger days. Mr Jaeschke noted that it is important to be well informed and well versed in understanding the fire danger index. Mr Jaeschke highlighted that there is a complexity to the decision-making process, and that community needs to be well educated to make good decisions. Mr Jaeschke further advised that a newly-installed weather station on his property has made relevant information available to the community to help inform good decision-making.

Mr Brian Wiese

Mr Wiese discussed with the committee the work he has undertaken in calculating 'the amount of resources required to contain or control a fire with really bad weather.' The calculation includes a measure of the amount of water loss from drift. Mr Wiese's conclusions are that the distance from the ground and the nozzle configuration influences the amount of water that is lost from drift.

Mr Garry Hansen, Hansen Farms

Mr Hansen, Principal, Hansen Farms informed the committee of the extensive work undertaken by his business in mitigating fire risk on his property. In particular, he pointed out that he makes decisions on day-to-day activities using the FDI, as well as subjective knowledge about time of day and local conditions. He also pointed out that 'probably half of the fires that we have had, we have started, and they have been started by an auger rather than a harvester.'

Mr Alan Morcom

Mr Morcom provided evidence to the committee of the challenges of recruiting volunteers who are keen to take on responsibility within the CFS. He pointed out that putting further responsibility on volunteers is likely to reduce recruitment rates even further.

Written submissions

2 Mr Tom Fielke

Mr Tom Fielke is a farmer based at Loxton. Mr Fielke provided a written submission to the Inquiry.

Mr Fielke's submission explains that, in accordance with the *Grain Harvesting Code of Practice*, local practice is for the CFS deputy captain to make a call on when to cease harvest. Four to five other local producers communicate this message within the community. On the basis that the current system is working effectively, Mr Fielke is not in favour of additional regulation applying to farmers and would prefer that the amendments to section 82 of the Bill are not brought into effect.

To affirm the points made in multiple submissions, Mr Fielke's submission states that farmers understand the risks involved in undertaking harvesting while weather conditions are extreme and are vigilant about avoiding these risks: 'The last thing we want is to burn ourselves and our neighbours out during harvest.'

4 District Council of Orreroo Carrieton

The District Council of Orreroo Carrieton provided a written submission to the Inquiry. The submission states that the Council is opposed to any changes to current practice and does not support the extension of powers to the CFS as is contemplated by proposed amendments to section 82.

6 Stock Feed Manufacturers' Council

The Stock Feed Manufacturers' Council provided a written submission to the Inquiry.

The Council supports proposed modifications to the Bill to provide the CFS with additional powers, on the basis that these facilitate work place safety and environmental sustainability. The Council views the CFS as an essential support to the people and businesses of South Australia.

10 Mr Ken Klopp

Mr Ken Klopp is a farmer on Central Yorke Peninsula. Mr Klopp provided a written submission to the Inquiry.

Mr Klopp reflected that the whole district has embraced the 'exceptional' service provided through the SMS alert system that operates on the Yorke Peninsula. Mr Klopp suggested that the system should be replicated in all districts. Mr Klopp considered that the GFDI measure is an exceptionally good indicator for fire safety.

In Mr Klopp's view, blanket bans imposed by parties who are not connected to the farming industry should not be countenanced.

12 Conservation Council of South Australia (Conservation SA)

The Conservation Council of SA provided a written submission to the Inquiry. Conservation SA is an independent and non-party political peak body that represents approximately 60 environment and conservation organisations. Conservation SA provides nominees to the State Bushfire Coordination Committee and Regional Bushfire Management Committees.

Conservation SA supports the proposed amendments to section 82 of the Fire and Emergency Services Act but submits that further clarification is required in relation to situations where a person is acting in accordance with a relevant Code of Practice, and where a direction is being made in the context of a small community where the two parties have an existing relationship or are known to one another.

Conservation SA submits that the relevant Codes of Practice should be recognised within the Regulations that accompany the proposed amendments, so that operators who are acting in accordance with a Code of Practice can be assured that their actions will continue to be officially sanctioned.

In relation to the issue of relationships within regional areas, Conservation SA suggests that a protocol be developed to ensure that these are not jeopardised when an authority exercises the power to direct contemplated within section 82. One option may be for other authorities to give ‘necessary jurisdictional weight’ to decisions made under section 82.

14 City of Marion

The City of Marion provided a written submission to the Inquiry.

The Council supports the proposed amendments to section 82 of the Fire and Emergency Services Act and recommends that the wording be clarified so that a CFS officer can either direct ‘a person’ [singular] or ‘persons’ [plural] to cease an activity.

20 Mr Malcolm Meier

Mr Malcolm Meier is a farmer based in Paskeville. Mr Meier provided a written submission to the Inquiry.

Mr Meier’s submission is opposed to the vesting of the power to direct in CFS volunteers. It cautions that the proposed powers ‘may be just a power grab from CFS headquarters in Adelaide’.

Mr Meier’s submission contends that the Yorke Peninsula SMS alert system is the most effective solution as it is ‘working brilliantly’. It has been embraced by farmers and has been successful in virtually eliminating harvest-related fires. Mr Meier’s submission notes that peer pressure has been a key catalyst in the success of the system. It recommends that the Government should investigate funding or providing assistance to fund the SMS alert system, which Mr Meier estimates costs around \$2000 per year in SMS charges.

Mr Meier’s submission argues that the local fire and emergency services captain should not have a policing role attached to his duties. If a statutory power is deemed necessary, Mr Meier’s submission suggests that the role could be undertaken by local council Fire Prevention Officers.

22 Peter and Toni-Louise Cockburn

Peter and Toni-Louise Cockburn are farmers in the Wirrabara Forest area and provided a written submission to the Inquiry.

The submission notes that the Fire Danger Index used as part of the *Grain Harvesting Code of Practice* is a scientifically derived figure that is used successfully by a majority of farmers currently. The submission emphasises that most farmers act in a responsible way, and that the proposed amendments will operate to impede the business decisions of a body of people who have previously demonstrated their ability to manage risk. The Cockburns do not support the CFS being given powers to restrict the business activities of responsible farmers. The existing system of self-regulation using the *Grain Harvesting Code of Practice* should be retained without any further need for statutory provisions.

The Cockburns further submitted that the proposed amendments do not take into account an individual property owner’s capacity to manage their own fire risk. The Cockburns’ experience of the 2014 Bangor fire was that this was only contained by the CFS with the assistance of local on-farm fire fighting units and local expertise.

23 Rural City of Murray Bridge

The Rural City of Murray Bridge provided a written submission to the Inquiry.

The submission urges the Government to provide more information about how the proposed clause would be enacted. It suggests that a further engagement stage with regional communities should be undertaken to explain implementation issues.

The submission also states that the power to direct should not be vested in Council Fire Prevention Officers on an unfunded basis. This would impose additional workload.

25 Light Regional Council

Mr Brandon Elliott, Compliance Coordinator, provided a written submission to the inquiry on behalf of Light Regional Council.

Mr Elliott's submission contends that council Fire Protection and Authorised Officers receive complaints about persons who are conducting activities that require the power to direct to be exercised under section 82 of the Act. Additionally, most CFS officers are volunteers and are not often available to attend an incident, while council officers are more likely to be available. Therefore, the power to direct should be provided to council Fire Protection and Authorised Officers via a delegation from the CFS.

Mr Elliott's submission comments that many CFS personnel lack the experience to provide enforcement directions and would feel uncomfortable doing so.

26 Mr Newton Lines

Mr Newton Lines is a farmer based in Wasleys. Mr Lines provided a written submission to the Inquiry.

Mr Lines' submission states that nearly all farmers 'do the right thing' and cease harvest activities before the GFDI reaches 35. Western Australia has introduced a blanket ban, but Mr Lines considers that South Australian farmers have the knowledge and experience to be able to determine their harvesting activities on a day to day basis. There may be some days in which harvest activities would be safe during limited hours.

Mr Lines suggests that a heavy penalty would be an effective deterrent for a farmer who continues to harvest once the GFDI reaches 35 and this results in a fire. A fine of up to one million dollars could be appropriate, depending on the severity and damage caused by the fire.

27 Mr Geoffrey Lamshed

Mr Geoffrey Lamshed is a farmer based in Port Hughes. Mr Lamshed provided a written submission to the Inquiry.

Mr Lamshed's submission explains that local farmers receive a text message when the GFDI is approaching 35. All farmers are watching for these text messages. Mr Lamshed also reflected on the variance between conditions at different locations, which requires that a measure of common sense be applied by keeping in contact with neighbouring farmers, GFDI alerts and Bureau of Meteorology predictions. A blanket approach to ceasing harvest that is linked to a fire ban is thus not appropriate.

28 South Australian Fire and Emergency Services Commission (SAFECOM)

The South Australian Fire and Emergency Services Commission (SAFECOM) Board provided a written submission to the Inquiry.

The SAFECOM Board supports the proposed amendments to section 82 of the *Fire and Emergency Services Act 2005*. The proposed amendments to section 82 are consistent with the strategic intent of section 59 of the Act, which states that the CFS ‘provides services with a view to preventing the outbreak of fires.’ The inclusion of the amendments would enable the CFS to prescribe by a Regulation an activity that occurs now or a new type of activity occurring in the future, for the purpose of preventing fires being lit under weather condition that are likely to see the fire get out of control.

The SAFECOM Board noted that the power to direct under section 82 would be vested only in SA CFS staff with operational rank and senior volunteers ranked Group Officer or Deputy Group Officer. Authorised officers would include council fire prevention officers and officers of SAPOL.

31 Mr Dean Mortimer

Mr Dean Mortimer has served with the Woodchester CFS Brigade for over 30 years. Mr Mortimer provided a written submission to the Inquiry.

Mr Mortimer is opposed to the proposed amendments to section 82 on the basis that CFS officers are volunteers rather than enforcement officers. In Mr Mortimer’s view, there is a risk that a direction given under section 82 could cause a long-lasting rift that can divide a community and or a CFS brigade.

Further, Mr Mortimer assumes that officers who are vested with the proposed power to direct would be provided with training and equipment initially and on an ongoing refresher basis, to fulfil this ‘special’ role. In Mr Mortimer’s view, this investment would be better spent for greater effect on the education of front-line personnel.

Mr Mortimer emphasises that his local brigade has a strong relationship with SA Police, which would be the most appropriate party to manage ‘unwise behaviour’ on days of high fire risk. Additionally, the self-regulation that already occurs among producers in following the *Grain Harvesting Code of Practice* is acceptable, rendering the powers proposed in section 82 unnecessary.

32 District Council of Ceduna

The District Council of Ceduna provided a written submission to the Inquiry.

The Council expresses concerns that the Bill provides power to CFS officers without defining which officers would have this power. The Council is further concerned about the *Grain Harvesting Code of Practice* becoming a legislated instrument. It urges the Government to consider these issues while drafting the Bill.

33 Ms Karen Baines

Ms Karen Baines is a grain farmer near Ungarra on Eyre Peninsula, farm safety consultant, Farmsafe committee member and Grain Producers South Australia Transport Committee member. Ms Baines provided a written submission to the Inquiry.

Ms Baines’ submission describes fire as ‘the most fundamental concern to a grain grower when readying to harvest’. Ms Baines explains that fire poses a risk to lives, potential loss of valuable equipment, and potential loss of a valuable crop.

In Ms Baines’ experience over 15 years, one fire ignited as a result of harvest machinery and was quickly extinguished. The remaining fires of concern have been caused by lightning strike or

controlled burn-offs. Fires caused by lightning strike are random and difficult to predict, whereas producers who are harvesting are aware of the risks involved and have on-farm fire equipment readily available.

Ms Baines recommended that section 82 should recognise persons who are undertaking activities in compliance with the Grain Harvesting Code of Practice. If additional powers are introduced within section 82, Ms Baines' submission suggests that either the CFS Commander of the Region or SA Police are the appropriate parties to enforce non-compliance with the *Grain Harvesting Code of Practice*, for several reasons including:

- by making the CFS a quasi-regulator, the balance between CFS and farmers would be upset, which would be detrimental to the CFS volunteer network;
- close relationships between CFS volunteers and their neighbours/communities;
- SA Police are trained to manage confrontational situations; and
- Most producers would find a phone call from SA Police embarrassing and be willing to modify their behaviour.

Ms Baines suggested that for repeat offenders, a monetary penalty such as is applied in Western Australia (maximum penalty \$20,000 fine) would be appropriate. Ms Baines' submission suggests that most younger farmers have an increased awareness of safety so that any truly rogue operators are unlikely to be active.

Ms Baines recommended a review of the *Grain Harvesting Code of Practice*, to be led by Grain Producers SA. Technology such as weather stations are now widely available and have been taken up at an unprecedented rate in the last two years. Additionally, the Code discusses fire breaks, which are less commonly used than in previous generations as they have been replaced by on-farm roadways. The definition of a paddock has also changed in recent years: one paddock could be several hundred acres or more.

Ms Baines' submission supports the recommendation made by the Eyre Peninsula Agricultural Advisory Group to produce a fact sheet focussing on the main elements of the Code and reiterating its voluntary and self-regulatory nature.

Ms Baines' submission also recognises that the powers proposed in section 82 are not exclusively directed towards grain harvesting activities. Further education could be provided by industry peak bodies such as Business SA about the need for clearances around any types of machinery being operated under extreme weather conditions.

35 Barunga West Council

The Barunga West Council provided a written submission to the Inquiry.

The submission expresses strong opposition to proposed section 82 of the Bill. It states that the self-regulating system is working well, particularly with the increased uptake of weather stations and on-farm fire-fighting units.

With the introduction of section 82 as it is drafted, the Council submission expresses concern that the CFS would be able to exercise power over farmers' livelihoods, and that this power would be open to abuse.

The proposed section 82 also increases the risk of experienced CFS officers leaving the organisation. The Council submission states that:

No rural area in South Australia can afford to lose these volunteers and trained Incident Management personnel.

36 Mr Ashley Pridam

Mr Pridam provided a written submission to the inquiry. He is a current CFS volunteer and farmer located at Paskeville.

Mr Pridham opposes the proposed changes to the Bill because the current methods for decision-making, SMS messages and FDI, are working well and people in his area adhere to safe practices. Mr Pridham argued that implementing the proposed changes will create a division between local farmers and the CFS, which may impact on recruitment of volunteers for the CFS.

37 Mr Ron Grosser

Mr Grosser provided a written submission to the inquiry. He is a recently retired farmer from Arno Bay, life member of the CFS and member of the Arno Bay Brigade.

Mr Grosser supports the notion that farmer groups are best placed to monitor the GFDI and call harvest bans via harvest committees in accordance with the *Grain Harvesting Code of Practice*.

Mr Grosser provided an example where harvest ban committees have worked successfully to monitor and manage high fire risk activities.

38 Mr Neville Jericho

Mr Jericho provided a written submission to the inquiry. He is a retired farmer from Mount Damper, Eyre Peninsula.

Mr Jericho opposed the proposed changes that would extend the authority of the CFS to direct people to stop activities. Mr Jericho argued that the voluntary *Grain Harvesting Code of Practice* works well and is opposed to further government intervention. Mr Jericho highlighted that conditions are highly variable on the Eyre Peninsula, which creates difficulties in implementing harvest bans.

Mr Jericho concluded that decisions on bans is best left to local farmers who can utilise local knowledge to make the best decisions.

39 Northern Areas Council

The Northern Areas Council provided a written submission to the inquiry. The Council considered the matter at its council meeting on 22 January 2019 and passed a resolution that ‘the police should have the ultimate authority to stop farmers from reaping, in consultation with the local CFS brigade captain’.

APPENDIX D: REFERENCES

Grain Producers SA (2018). ‘GPSA reinforces commitment to harvest code’, *Media release*, 29 November 2018, <http://grainproducerssa.com.au/latest/media-releases/gpsa-reinforces-commitment-to-harvest-code/> (accessed 27 February 2019).

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