

REPORT

The Review of the *Fire and Emergency Services Act 2005*

Pursuant to Section 149 of the *Fire and Emergency Services Act 2005*

By

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March 2008

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14 March 2008

The Hon Carmel Zollo MLC
Minister for Emergency Services
Minister for Correctional Services
Minister for Road Safety
Minister Assisting the Minister for Multicultural Affairs
Level 6
45 Pirie Street
ADELAIDE SA 5000

Dear Minister

RE: *Fire and Emergency Services Act 2005*

I am pleased to present you with the Review of the *Fire and Emergency Services Act 2005* which has been prepared at your direction and in accordance with Section 149 of the *Fire and Emergency Services Act 2005*.

This review has addressed the provisions of Section 149 and the specific terms of reference that you determined.

Yours sincerely



John Murray APM
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EXECUTIVE SUMMARY

The *Fire and Emergency Services Act 2005* (FES Act) was proclaimed on 1 October, 2005. It brought the South Australian Metropolitan Fire Service (SAMFS), South Australian Country Fire Service (SACFS) and the South Australian State Emergency Service (SASES) under a single Act and in doing so introduced a major philosophical shift in terms of their governance but at the same time ensured retention of their operational autonomy. This Review is in accordance with Section 149 of the FES Act which provides: “The Minister must cause a review of the operation of the Act [to be] undertaken after the second anniversary of the commencement of this Act”.

The Terms of Reference set out by The Hon. Carmel Zollo MLC called for analysis and evaluation of the FES Act and its Regulations in order to appreciate how and to what extent there have been improvements in the management of the emergency services organisations (ESOs) and the provision of services to the community. This necessarily involved critical examination of the role of the Minister in ensuring compliance with government policy; the extent and limitations of the relationship between corporate governance and operational autonomy; the constitution and processes of boards; the role of the South Australian Fire and Emergency Services Commission (SAFECOM) and its Chief Executive (CE); and the extent to which legislation has protected and supported volunteers.

The changes brought about by this new FES Act introduced significant challenges to existing office holders since its provisions called for organisational changes and a major cultural shift. The most pertinent change for Chief Officers of the ESOs was a move from relative autonomy (allowed in previous Acts) to one which demanded shared responsibility in sector-wide governance for non-operational matters.

At the SAFECOM Board level, this challenge has certainly been met since the principles, protocols, plans and procedures adopted by the Board are entirely consistent with what the FES Act intended in terms of a coordinated governance model for the emergency services sector. However, it remains principally at that conceptual level since the Chief Officers have experienced some difficulty (or perhaps reluctance) in putting the concept into practice. The ESOs still, to some degree, present as independent agencies. Expressed colloquially, they demonstrated a tendency to remain as organisational ‘silos’. Since the FES Act calls for a coordinated approach in the governance of the emergency services sector, this proved to be an inhibiting factor in resolving and implementing major issues.

To understand why governance has still not been fully accepted and adopted in practice, three reasons might be proffered.

First, a major issue for some members of the Board was the ambiguity in the FES Act as to what constituted operational and non-operational matters. This is significant since it is the intent of the FES Act that operational matters remain the ‘ultimate responsibility’ of the Chief Officers whereas matters of policy, strategy and resource allocation are the province of the Board. The Chief Officers’ perceived lack of clarity allowed them to interpret many matters as being purely operational and as a consequence allowed them to retain the

status quo and its bias towards organisational autonomy. Recommendations in this Review, by way of amendments to the FES Act, have been made which address this anomaly.

Second, the constitution and processes of the SAFECOM Board have appeared to have presented a dilemma for Chief Officers in representing their organisational interests and at the same time attending to their fiduciary duties as Board members. The Review recommends changes to the constitution and processes of the Board which are more likely to meet the expectations of the FES Act. These include increasing the breadth of decision making of the SAFECOM Board; strengthening the link between the SAFECOM Board and the Advisory Board; increasing the accountability of the CE of SAFECOM without compromising the operational authority of the Chief Officers; confirming the legal status of the office of 'Commissioner'; and clarifying the role of the Minister.

Third, it might be said that the delay in putting into practice a shared model of governance should be understood and appreciated since the changes introduced in 2005 are significant and take time to absorb and accept. This is hardly acceptable since the Interim SAFECOM Board was set up four years ago and two years have passed since the introduction of the FES Act.

While the recommendations addressing the first two points referred to above will improve the current situation they are unlikely to interrupt the slow evolutionary process or effect any real change. To achieve the shared governance model intended by the FES Act, there is a need for intervention, essentially through legislation.

A major stumbling block has been that matters of governance require the Board, and the Board alone, to make decisions about policy, planning and the allocation of resources. This arrangement, with three stakeholders having specific organisational interests (even with the proposed changes in this Review for increased authority of other Board members) is not likely to achieve a truly sector-wide model of governance.

The Minister for Emergency Services appears to have identified this shortcoming by appointing the CE as the 'Commissioner of Fire and Emergencies' (currently as a working title), to "take on a key leadership role in the Emergency Services Sector". This is a necessary and sensible move but it has to be ratified in the legislation and the position given the relevant authority in terms of policy, strategy and resource allocation to the extent that it could formally drive government policy. Some fresh consideration should be given to the title so as to ensure that it does not give the false impression of being operationally superior to the Chief Officers.

Moves to increase authority in this position, even though it will relate only to non-operational matters is likely to meet with some resistance as it will be seen by some as requiring the Chief Officers to 'report' to the Commissioner but this would not be the case. Proposed increases to the authority of the Commissioner would be for matters of policy, strategy and resource allocation and would not compromise the operational autonomy of the Chief Officers.

There was overwhelming support for the shared services approach to governance and the establishment of SAFECOM and its Board. There was equal support, and indeed strong representations, that the operational independence of the three ESOs should not be removed or diminished.

Volunteers have always been a critical component of fire and emergency services. The nature or the ethos of volunteerism is the unselfish contribution of one's time for the benefit of the community. There is a certain irony in the fact that volunteers as the most active participants and the least rewarded are also the least outspoken and the least demanding. However, despite some communication problems which at times makes them feel vulnerable, there was no evidence to suggest that they have been taken for granted. On the contrary, there has been extensive support by SAFECOM and the ESOs in appreciation of their critical role. The Minister has taken the extra initiative to communicate directly with volunteers on matters of importance to them.

While the FES Act goes a considerable way towards providing support and protection to volunteers, particularly in the area of immunity, recommendations have been made for further improvement.

The Review after two years provides an opportunity to address anomalies and uncertainties in the FES Act that have been identified by its users. Notably some of these provisions at times have resulted in confusion. In an Act which prescribes roles, functions, powers and authority which are sometimes referred to in times of emergency there can be no room for uncertainty or the potential for prevarication, tension or conflict. Amendments have been recommended for several provisions which have been seen to be unclear or ambiguous.

The emergency services sector faces unique challenges. As one submission put it:

The industry regularly deals in high stakes (life, significant property and industry, critical infrastructure and environmental resources). There are often low margins for error, and the consequences of small errors or omissions may have far reaching legal and financial consequences.

RECOMMENDATIONS

Introduction and General Comment

1. The preamble of the FES Act be amended to include a stronger emphasis on the strategic and policy purposes of the Commission, highlighting its key role in the governance of the emergency services sector.

The Commission and Improvements to Service – TOR # 1

2. The FES Act be amended to include a definition of 'operations' and/or 'operational'.
3. The FES Act be amended to create the position which currently has the working title of 'Commissioner of Fire and Emergencies' to replace the position of CE and that the FES Act be amended in places where this position is mentioned.
4. Accountability for matters of policy, strategy and resource allocation for the emergency services sector, currently the province of the Board, be given to the position created in Recommendation 3 above.
5. Fresh consideration be given to the title of Commissioner of Fire and Emergencies so as to ensure it does not give the impression that it is operationally superior to the Chief Officers of the emergency service agencies.
6. The FES Act be amended so as to allow the CE to manage the Commission (SAFECOM) Office by removing provisions relative to the SAFECOM Board's managerial and administrative oversight of the Commission.
7. Consistent with the requirement for Emergency Service Organisations, the FES Act be amended to require SAFECOM to submit a workforce plan to the Board.
8. Crown law opinion be obtained to determine whether additional functions now undertaken by the Commission following the devolvement of the functions of the Security and Emergency Management Office (SEMO) require an amendment to the FES Act.

Principles of Prevention, Preparedness, Response and Recovery (PPRR) – TOR # 2

9. The comprehensive prevention, preparedness, response and recovery (PPRR) approach to the management of bushfires as recommended by the *Ministerial Review of Bushfire Management in South Australia* is supported: its implementation should consider issues raised by councils and should also be considerate of the recommendations of the Wangary Coronial Inquest.

Landowners – TOR # 3

10. Provisions in the FES Act relating to, “land management principles” be reviewed in consultation with appropriate agencies and having due regard to the recommendations of the Wangary Coronial Inquest.
11. Sections 56 and 83 be repealed and replaced with a single section which unifies their provisions.
12. Sections 56 and 83 (amended as suggested above) include the facility to issue a warrant for the relevant authority to break into land or buildings to carry out requirements regarding flammable undergrowth or material; and that costs and expenses in doing so are recoverable.
13. Section 92 include the facility to issue a warrant for the relevant authority to break into land or buildings for the purposes of determining what measures have been taken for the prevention, control or suppression of fire or for the prevention of, or for dealing with, the escape of hazardous materials; and that costs and expenses in doing so are recoverable.

SAFECOM Board and Government Policy – TOR # 4

14. Provisions in Section 11(1)(e)(i) and (ii) relating to appointments of volunteer associations to the SAFECOM Board be removed.
15. The presiding member of the Advisory Board appointed under Section 18(4) be also appointed as a member of the SAFECOM Board.
16. All members of the proposed reconstituted SAFECOM Board be given full voting rights.
17. Crown Law opinion be obtained to determine whether the FES Act gives the Minister power to direct and control individual Chief Officers and if that provision does not exist then the FES Act be amended to include that power.

The Advisory Board – TOR # 5

18. The UFU be given full voting rights on the Advisory Board.
19. So as to increase the pool of volunteers from which the Minister can appoint Advisory Board members, Section 18(3)(c) and (d) be amended to include nominations from the Group Committee (SACFS) and Unit Managers Advisory Group (SASES).
20. The Regulations be amended to include appropriate references to the Unit Managers Advisory Group (SASES) consistent with those of the Group Committee (SACFS).

Agencies as Legal Entities – TOR # 6

21. Provisions remain in the FES Act relating to the emergency service organisations being separate legal entities.

Elements of the FES Act Better Placed in the Regulations – TOR # 7

22. Section 79(1) – provisions relating to lighting or maintaining a fire in the open air during the fire danger season be retained in the principal FES Act; Section 79(2) be amended to provide that a fire may be lit or maintained in accordance with the Regulations; provisions specifying the conditions under which a fire can be lit or maintained, and currently under Section 79(2), be placed in the Regulations.
23. With the implementation of the *Ministerial Review of Bushfire Management in South Australia*, consideration should be given to provisions within Part 4, Division 7 of the principal FES Act which would be more appropriately placed in the Regulations.
24. Section 88 – requirement to carry fire extinguishers in a caravan be removed from the principal FES Act and placed in the Regulations.
25. Section 90 – provisions relating to smoking, and throwing burning material be removed from the principal FES Act and placed in the Regulations.
26. Sections 68 and 116 – provisions relating to the establishment/dissolution of SACFS Brigades and SASES Units be amended so as to retain the head of power in the principal FES Act and that the procedural provisions within each of these sections be placed in the Regulations.

Changes to Better Facilitate the Operation of Emergency Services – TOR # 8

27. The definition of ‘officer’ in Section 3 be amended to include reference to the designation being made by the Chief Officer.
28. Following the amendment to Section 79 as proposed above in Recommendation 22, a definition of, ‘properly constructed fire place’ and ‘properly constructed incinerator’ be included in the new Regulation.
29. Regulation 48 regarding prescribed offences be amended to include Section 79(2)(e) or its equivalent under the amendment proposed in Recommendation 22 above.
30. Expiation fees be reviewed so as to be consistent with the seriousness of the offences.
31. Where in the FES Act reference is made to, ‘an officer of the National Parks and Wildlife Service’ this be removed and replaced with, ‘an officer of the Department for Environment and Heritage’.
32. Where in the FES Act reference is made to ‘South Australian Volunteer Fire-Brigades Association’ this be removed and replaced with, ‘Country Fire Service Volunteers Association’.
33. SAFECOM re-evaluate and determine a more meaningful definition of fire districts.

34. All Regulations relating to constitutions be deleted; the FES Act be amended to allow the Chief Officers to prescribe the constitution; and the process for the management of a SACFS brigade/group and a SASES unit to be in the form of an administrative instruction.
35. Regulation 8(4)(b) be amended to allow persons of or above 16 years of age to register as fire-fighters.
36. Nominations for candidates for SACFS group elections be received both by written nomination and by oral nomination.
37. The selection procedures in the Regulations for SACFS officer positions be reviewed in terms of ensuring that appropriate skills and experience are considered.
38. Section 70(12) (relating to disciplinary action) be amended to include, where the officer is an employee of a government agency, the Chief Officer shall advise an appropriate representative of the agency prior to any disciplinary action being taken.
39. Divisions and Subdivisions and Regulations 22 and 62 headings relating to conduct and discipline be changed to have similar wording and should include, "Conduct, Discipline and Grievance Procedures for Members".
40. Regulations 22 and 62 be reviewed to ensure reports regarding conduct must be relevant to the enquiry.
41. Provisions be included in the Regulations for mediation in appropriate circumstances.
42. SAFECOM in consultation with SAMFS consider the merits of amending Sections 49-51 to replace the right to appeal from the District Court to the South Australian Industrial Relations Commission.
43. With the implementation of the *Ministerial Review of Bushfire Management in South Australia*, the provisions in Sections 84 and 85 be reviewed in terms of enforcing hazard reduction on council or Crown land.
44. A schedule for revocation of permits be included in the Regulations.

Volunteers – TOR # 9

45. Immunity be prescribed for persons (including volunteers) using force in the exercise of a power or function under the FES Act or carrying out any direction or requirement given or imposed at the scene of a fire or other emergency.
46. Liability and immunity as these provisions apply in Section 127 be reassessed in terms of burden of proof so as to ensure the best protection for volunteers.
47. As a matter of priority, SAFECOM examine what further measures can be taken to provide support and protection for volunteers as potential witnesses in public enquiries.

Initiatives Specific to the Wangary Coronial Inquest

48. Further to Recommendations 11 and 12 above concerning the joining of Sections 56 and 83 of the FES Act, that these existing provisions be examined to determine whether they provide sufficient authority to address Recommendation 29.9(4) of the Wangary Coronial Inquest so as to require the owners or occupiers of rural land to create fire breaks and/or the removal of flammable materials from the land, as measures for preventing the outbreak of a bushfire, or for preventing the spread or extension of a bushfire.
49. Crown law opinion be obtained as to what amendments, if necessary or appropriate, are required to satisfy Recommendation 29.9(7) of the Wangary Coronial Inquest, that a dedicated bushfire prevention officer be appointed.

OBJECTIVE, METHODOLOGY, RESOURCES AND LIMITATIONS

Objective

The objective of this Review is to provide a comprehensive review of the operation of the FES Act including:

- a) an assessment of the extent to which the enactment of this FES Act has led to improvements in the management and administration of organisations within the emergency services sector and to increased efficiencies and effectiveness in the provision of fire and emergency services within the community;
- b) an assessment of the extent to which owners of land, and other persons who are not directly involved in an emergency services organisation, should be able to take action to protect life or property from a fire that is burning out of control;
- c) addressing matters determined by the Minister as set out in the terms of reference (Appendix 'A'); and
- d) addressing other matters considered by the Review to be relevant to the operation of the FES Act.

Methodology

The Review incorporated five stages:

1. **Scoping** - understanding the background to the introduction of the FES Act by:
 - evaluating reports, reviews and submissions which saw the need for the introduction of a new FES Act and the repeal of the *South Australian Metropolitan Fire Service Act, 1936*, the *Country Fires Act, 1989*, and the *State Emergency Service Act, 1987*; so as to
 - establish appropriate emphasis and focus for the Review.
2. **Initial Engagement** - evaluating findings from key reviews and reports relative to fires and emergency services including:
 - intra departmental reviews;
 - independent reviews;
 - publications and other reports from experts in the field;
 - ministerial reviews; and
 - findings of Wangary Coronial Inquest.

Also appreciating legal and managerial matters that affect the operation of the FES Act including:

- statutory interpretation of key sections on governance, principal office holders and the role of the Minister;
- analysis of the role of boards and committees and their appropriate positioning in the FES Act;
- analysis of the shared services philosophy approach in the FES Act and the extent to which the organisations meet that expectation; and
- evaluation of initiatives taken at SAFECOM and ESO level so as to achieve the object and intent of the FES Act.

3. **Consultation** - making people/organisations aware of the Review and to encourage submissions by:

- establishing a communication plan which would make as many people as possible aware of the purpose of the Review and to allow those with specific interests or concerns to make these known to the reviewer;
- writing to key stakeholders;
- visiting city and regional areas so as to provide a forum for feedback from practitioners, volunteers, landowners and others;
- consulting key governing positions;
- consulting paid staff, volunteers, union, and association office holders;
- consulting present and past board members;
- attending planning days and conferences; and
- attending board and committee meetings.

4. **Analysis** – by critically examining and evaluating submissions and other representations and revisiting key organisations/people to test the hypothesis of findings and prospective recommendations.

5. **Documentation** – preparation of the report.

Resources and Limitations

The reviewer was provided with comprehensive support with the provision of an office, computer access and secretarial support. This proved to be extremely valuable and was greatly appreciated.

The Commissioner of Fire and Emergencies and the Chief Officers of the ESOs were particularly helpful in providing access to planning and other documents and also the facilitation of meetings with staff and volunteers. Departments, organisations, the United Fire Fighters Union of Australia–SA Branch, and many individuals provided worthwhile submissions and all were keen to discuss options for improvement. The Country Fire Service Volunteers Association (CFSVA) and the South Australian State Emergency

Service Volunteers' Association Incorporated (SASESVA) were particularly helpful in ensuring that the voices of the volunteers were heard.

In terms of support for the Review, special mention must be made of the volunteers themselves. Not only are they committed to the physical aspects of volunteerism but they also made extra efforts to contribute to this Review by taking extra time out to make sure the reviewer was fully conversant with the job 'at the front end'.

The first objective in (a) above, by stating, "[assessment of] the extent to which the enactment of this FES Act has led to improvements ..." implies a requirement to quantify or measure change. There are similar expectations in the Minister's Terms of Reference (Appendix A). To some degree this was done by examining initiatives, programmes, debriefings and the like but was never likely to arrive at empirical conclusions. The findings instead are concluded on the evidence gathered from observation and analysis and from the opinions/advice of others who work with the FES Act.

Section 149 essentially calls for an assessment of the extent to which improvements in the management and administration of organisations and the extent to which owners of and others should be able to take action to protect life or property from a fire that is burning out of control. The Review has been careful to examine these issues only insofar as they have a bearing on the "operation of the FES Act".

Inevitably after any Review there will be claims from some quarters that there had not been sufficient consultation. Anticipating this, the communication plan that was put in place (Appendix B) was comprehensive and sought to provide an opportunity for all interested parties to contribute. In response to letters of invitation to identified stakeholders, a public notice inviting contributions, and visitations to urban and country areas, 53 responses were received. Where these submissions have had a bearing on the operations of the FES Act and Regulations they have been considered.

ABBREVIATIONS

ACSES.....	Australian Council of State Emergency Services
AEMC	Australian Emergency Management Committee
AEMP.....	Australian Emergency Management Projects
AFAC	Australian Fire Authority Council
AFSM.....	Australian Fire Service Medal
AIIMS.....	Australasian Inter-Service Incident Management System
APY	Anangu Pitjantjatjara Yankunytjatjara
CBR	Chemical, Biological and Radiological
CE.....	Chief Executive
CERM	Community Emergency Risk Management
CFSVA.....	Country Fire Service Volunteers Association
COAC	Chief Officer's Advisory Council (SACFS)
DEH	Department for Environment and Heritage
DWLBC.....	Department of Water, Land and Biodiversity
ESAU	Emergency Services Administrative Unit
ESLG	Emergency Services Leadership Group
ESO	Emergency Services Organisation
FES Act.....	Fire and Emergency Services Act
LGA	Local Government Authority
MART.....	Multi-Agency Response Team
MRBM.....	Ministerial Review of Bushfire Management
NAFFC.....	National Aerial Firefighting Centre
PAR	Planning Amendment Review
PPRR.....	Prevention, Preparedness, Response, Recovery
RICAC.....	Remote Indigenous Communities Advisory Committee
SAAS	South Australian Ambulance Service
SACFS.....	South Australian Country Fire Service
SAFECOM.....	South Australian Fire & Emergency Service Commission
SAFERS	SA Fire & Emergency Services Resourcing Standards
SEMC	State Emergency Management Committee
SAMFS	SA Metropolitan Fire Service
SARAM.....	SA Risk Assessment Model
SASES.....	SA State Emergency Service
SASESVA	SA State Emergency Service Volunteers' Association Incorporated
SASP	SA Strategic Plan
SEMO	Security & Emergency Management Office
USAR.....	Urban Search & Rescue
UFU	United Firefighters Union of Australia – SA Branch
WCIWP.....	Wangary Coronial Inquest Working Party

BACKGROUND

Over many years, attempts have been made to improve the coordination of emergency services in South Australia but there has been considerable difficulty in producing a model that has met with general acceptance.

The *Review of the South Australian Bushfires, October, 1983* found, “one of the greatest weaknesses in the counter disaster operations of Ash Wednesday was the lack of a unified fire service ... There is no doubt that the State’s Fire Services should be integrated.” (Referred to in Dawkins, 2003:13)

In 1998, essentially with the view to providing an overall coordination of emergency services across the sector, the Emergency Services Administrative Unit (ESAU) was created. ESAU had its own chief executive officer and drew many of its staff from the SAMFS, the SACFS and the SASES.

Intended as an initiative to provide strategic direction across the emergency services sector, the Emergency Services Leadership Group (ESLG) was formed, constituted by the ESAU chief executive; Chief Officers of the three emergency service organisations (ESOs); the Chief Officer of the SA Ambulance Service; the Commissioner of Police; and the Chief Executive and Deputy Chief Executive of the Department of Justice.

These organisational arrangements proved unsuccessful in achieving a satisfactory level of integration, accountability or strategic focus.

In October, 2002 the (then) Minister for Emergency Services, The Hon. Patrick Conlon MP established a review to:

- a) examine the governance arrangement of emergency services;
- b) determine the best way to maintain and support the operational focus of the emergency service organisations; and
- c) ensure the highest priority in the allocation of resources to volunteers and staff attending fire and emergencies.

The *Dawkins Report* which addressed these issues was released on 13 May, 2003. It concluded, *inter alia*:

- the current structure of the emergency services sector was complex, confused and unclear;
- the relationships, reporting arrangements and accountabilities that existed between organisations and the Minister, and amongst the organisations themselves, were confusing and difficult to understand;
- the method of allocating resources lacked rigour and consistency, in that there was no single body or person, other than the Minister, with a government wide perspective; and

Review of the Fire and Emergency Services Act, 2005 - Background

- the almost unanimous perception of stakeholders that the hybrid governance model was not working.

The *Dawkins Report* recommended that ESAU be replaced with a new statutory body, which was to become the South Australian Fire and Emergency Services Commission (SAFECOM). The essential differences between SAFECOM and ESAU were that:

- SAFECOM would be responsible to a Board as the governing body of the commission; and
- whereas ESAU staff were responsible to the Chief Executive of ESAU the staff of SAFECOM would be an agent of the Board through the CE of SAFECOM.

On 4 July, 2003, which was after the tabling of the *Dawkins Report* and before the introduction of the *Fire and Emergency Services Bill*, the Government established an interagency Task Force (led by a full-time Chairman) with support from an Implementation Steering Committee and an Industrial and Volunteer Liaison Committee. The main purpose of these groups was to plan for the introduction of SAFECOM in preparation for the proposed FES Act which would draw together the three emergency services organisations under SAFECOM as a strategic umbrella without taking away their operational autonomy.

The *Dawkins Report* provided a template for the *Fire and Emergency Services Bill* which was tabled in Parliament on 26 May, 2004 and proclaimed on 1 October, 2005.

EMERGENCY SERVICES SECTOR

The emergency services sector comprises: SAFECOM, the SACFS, the SAMFS and the SASES.

SA Fire and Emergency Services Commission

SAFECOM is subject to the control and direction of the Minister for Emergency Services. The Board which governs SAFECOM is composed of the Chief Officers of the three emergency services, two non-voting members who are appointed because of certain skills or experience and two who are members of the volunteers' associations.

The SAFECOM Office provides strategic and organisational support to the three emergency services in the areas of financial management, health safety and welfare, project management, human resource management, volunteer management, information and technology services, risk assessment services, and strategic and knowledge services.

SAFECOM was established by the FES Act which was assented to on 14 July 2005. SAFECOM came into operation on 1 October 2005 replacing ESAU, which was dissolved from 31 December 2005.

SAFECOM has the following main objectives:

- To develop and maintain a strategic and policy framework as well as sound corporate governance across the emergency services sector.
- To provide adequate support services to the emergency services organisations and to ensure the effective allocation of resources within the emergency services sector.
- To ensure relevant statutory compliance by the emergency services organisations.
- To build a safer community through integrated emergency services organisations.
- To liaise with the peak body responsible for managing emergencies as well as to report regularly to the Minister about relevant issues.

SA Country Fire Service

SACFS is a community based fire and emergency service dedicated to protecting life, property and environmental assets in rural and semi-urban South Australia.

The SACFS Board was established pursuant to the *Country Fires Act, 1989* and was responsible to the Minister for Emergency Services for the administration of that Act. On 1 October 2005, the FES Act came into operation. The FES Act repealed the *Country Fires Act, 1989* and dissolved the SACFS Board. The SACFS, which was the operating entity under the repealed legislation, continues in existence under the current legislation.

The SACFS has the following functions:

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- To provide services with a view to preventing the outbreak of fires, or reducing the impact of fires, in the country.
- To provide efficient and responsive services in the country for the purpose of fighting fires, dealing with other emergencies or undertaking any rescue.
- To protect life, property and environmental assets from fire and other emergencies occurring in the country.
- To develop and maintain plans to cope with the effects of fires or emergencies in the country.
- To provide services or support to assist with recovery in the event of a fire or other emergency in the country.

The rank structure of SACFS is as follows:

- Chief Officer
- Deputy Chief Officer
- Assistant Chief Officer
- Regional Commander
- Regional Officers (Regional Training Officer, Regional Prevention Officer)

The SACFS volunteer structure is:

- Group Officer
- Deputy Group Officer
- Brigade Captain
- Lieutenant
- Senior Firefighter
- Firefighter

SA Metropolitan Fire Service

The SAMFS is committed to the protection of life, property and the environment from fire and other emergencies in urban and regional South Australia.

The SAMFS was established under the *South Australian Metropolitan Fire Service Act, 1936*. On 1 October 2005, the FES Act came into operation and repealed the *South Australian Metropolitan Fire Service Act, 1936*. The SAMFS continues in existence as a body corporate under the current legislation.

SAMFS has the following functions:

- To provide services with a view to preventing the outbreak of fires, or reducing the impact of fires in any fire district.

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- To provide efficient and responsive services in any fire district for the purpose of fighting fires, dealing with other emergencies or undertaking any rescue.
- To protect life, property and environmental assets from fire or other emergencies in any fire district.
- To develop and maintain plans to cope with the effects of fires or emergencies in any fire district.
- To provide services or support to assist with recovery in the event of a fire or other emergency in a fire district.

The rank structure of the SAMFS is as follows:

- Chief Officer
- Deputy Chief Officer
- Assistant Chief Officer
- Commanders
- District Officer
- Station Officer
- Senior Firefighter
- Firefighter

SA State Emergency Service

The SASES is a community based emergency service that responds to incidents including vehicle accidents, searches, cliff rescues, and flood and storm damage.

The SASES was established as a body corporate under the FES Act on 1 October 2005. Prior to the enactment of this legislation, the SASES was an operating unit within the Emergency Services Administrative Unit (ESAU).

The FES Act provided for the continuation of the SASES and dissolved ESAU.

The functions of the SASES are as follows:

- To assist the Commissioner of Police in dealing with any emergency.
- To assist the SAMFS and SACFS in dealing with any emergency.
- To assist the State Co-ordinator, in accordance with the State Emergency Management Plan, in carrying out prevention, preparedness, response or recovery operations under the *Emergency Management Act, 2004*.
- To deal with any emergency:
 - where the emergency is caused by flood or storm damage; or
 - where there is no other body or person with lawful authority to assume control of operations for dealing with the emergency.

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- To deal with any emergency until such time as any other body or person that has lawful authority to assume control of operations for dealing with the emergency has assumed control.
- To respond to emergency calls and, where appropriate, provide assistance in any situation of need whether or not the situation constitutes an emergency.
- To undertake rescues.

The rank structure for the SASES is as follows:

- Chief Officer
- Deputy Chief Officer
- Assistant Chief Officer
- Regional Commander
- Senior Regional Officer
- Regional Officer

The SASES volunteer rank structure is:

- Unit Manager
- Deputy Unit Manager
- Rescue Officer
- Team Leader
- Rescuer

INTRODUCTION AND GENERAL COMMENT

In drafting a Bill for Parliament every attempt is made to use language which conveys to the reader exactly what is intended but there may be occasions when the provisions are open to different interpretations. As with the FES Act, this can cause confusion for those who are bound by these provisions and can also bring about delays if the courts are called in to rule on their interpretation.

In this Review the recognised procedure for statutory interpretation has been adopted.

When reading a statute, the general practice is to apply the 'literal approach' in the first instance where words will be given their plain and ordinary meaning unless the contrary is shown. "The natural and ordinary meaning of what is actually said in the FES Act must be the starting point" Cook J said in *Reid v Reid* [1979] 1 NZLR 572 at 594 (referred to in Pearce & Geddes, 2006:25).

The Review found, when examining certain provisions of the FES Act, that the literal approach was unable in itself to provide a clear and unambiguous meaning leaving them open to more than one interpretation. After interviewing members of the SAFECOM Board, and others who have to deal with the FES Act in accordance with their role, it was found that they too had the same difficulty. These provisions are referred to specifically under the Terms of Reference, but broadly speaking these included: the extent and limitations of the authority and responsibility between the Commission and the Chief Officers; the reporting responsibilities of the three ESO Chief Officers; and the role and authority of the Minister.

Where ambiguities or lack of clarity occurs the law sets a 'purposive approach' to statutory interpretation. Section 22 (1) of the *Acts Interpretation Act, 1915* with the short title, 'Construction that would promote purpose or object of an Act to be preferred,' states:

Subject to subsection (2), where a provision of an Act is reasonably open to more than one construction, a construction that would promote the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) must be preferred to a construction that would not promote the purpose or object.

In explaining the limitation of the Commonwealth equivalent of this section, Dawson, Toohey and Goudron JJ in the High Court decision in *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249; 95 ALR 481 (referred to in Pearce & Geddes, 2006:36) said:

The choice directed by s 35(a) of the *Interpretation of Legislation Act* is not as to the construction which 'will best achieve' the object of the Act. Rather, it is a limited choice between 'a construction that would promote the purpose or object [of the Act]' and one 'that would not promote that purpose or object'.

This Review has attempted to identify those provisions which lack clarity and where the 'literal approach and the 'purposive approach' have been largely unsuccessful. While every Act should strive for clarity and certainty of purpose, the FES Act has a special case since paid staff and volunteers will look to the FES Act for their authority or role in times of

emergency. Accordingly, there can be no room for prevarication or conflict. If the provisions are not clear, office holders in the emergency services sector might be inclined to retain roles assumed under former Acts. The Review found that the lack of clarity referred to above could well give rise to this unacceptable situation.

When it was first introduced in October, 2005 the broad object and intent of the FES Act was twofold: a) the continuation of the SAMFS, SACFS and the SASES as distinct and operationally independent organisations; and b) the establishment of a Commission to provide governance across the emergency services sector in the provision of a framework for policy, strategic direction and the allocation of resources.

When the FES Act was proclaimed, the preamble included only a brief reference to the Commission. This preamble provides:

An Act to establish the South Australian Fire and Emergency Service Commission: to provide for the continuation of a metropolitan fire and emergency service, a country fire and emergency service, and a State emergency service; to provide for the prevention, control and suppression of fires and for the handling of certain emergency situations; and for other purposes.

Not every Act of Parliament has a preamble. In fact, it is a practice that waned but then regained usage in more recent times. Where, as with the FES Act, the legislature has chosen to include one, its general purpose has been to provide the reader with some information relating to the reason for the enactment of the legislation and to place its provisions in context.

The legal significance of a preamble is that where the:

‘... enacting part of a statute is clear and unambiguous it cannot be cut down by the preamble. But this does not mean that a court cannot obtain assistance from the preamble in ascertaining the meaning of an operative provision. The particular section must be seen in its context; the statute must be read as a whole and recourse to the preamble may throw light on the statutory purpose and object.’

Wacando v Commonwealth (1981) 37 ALR 317 per Mason J at 333 (referred to in Pearce & Geddes, 2006:153).

Where the text is clear and unambiguous the preamble cannot affect the interpretation of the words, but where there is ambiguity in the text, the text may be clarified through reference to the preamble (Winckel, 1999:187).

Given the findings of this Review that some provisions were open to different interpretations, the preamble can be a useful instrument in clarifying the object, intent and focus of the FES Act. For the FES Act, this is particularly pertinent since it replaced other Acts and prescribed new roles for office holders. Moreover, the Review identified that some key office holders had difficulty (or perhaps reluctance) in conforming with the governance provisions of the FES Act, to some extent based on perceived ambiguities.

The preamble which is amendable would better serve users of the FES Act if it were extended to include the key role of the Commission and highlight its function of sector-wide governance.

Recommendation 1: The preamble of the FES Act be amended to include a stronger emphasis on the strategic and policy purposes of the Commission, highlighting its key role in the governance of the emergency services sector.

ADDRESSING THE TERMS OF REFERENCE

TOR # 1

Analyse plans, policies, workforce plans, systems of work, budgets, and Board Minutes to assess the extent to which the creation of the Commission has:

- a) improved the management and administration of organisations within the emergency services sector; and**
- b) increased efficiencies and effectiveness in the provision of fire and emergency services within the community.**

Initiatives Prior to Proclamation of the FES Act

To simply start at 1/10/05 to assess the extent to which the creation of the Commission has “improved” the management and administration of ESOs or has “increased efficiencies and effectiveness” in the provision of fire and emergency services across the sector would be incomplete since this would:

- not take into account the issues which prompted the demise of ESAU and the repeal of previous legislation;
- fail to recognise initiatives that took place in preparation for the proposed FES Act;
- fail to recognise initiatives that were taken following ‘lessons learnt’ from the Wangary Fires and subsequent reviews; and
- not recognise models that were set up in preparation for the proposed FES Act and which had already demonstrated improvements, efficiencies and effectiveness.

It is appropriate therefore to go back some years prior to 2005.

Given the challenges that Dawkins had identified, making the organisational and cultural changes necessary to meet the provisions of the new FES Act were going to be difficult, as the Interagency Task Force identified at its early meetings in July, 2003 when it recognised that it would have to address:

- a pervading silo mentality;
- underlying tension between paid professionals, volunteers, administration and operations;
- the negative image of the existing Emergency Services Administrative Unit (ESAU);
- failure of some agencies to accept the need for change; and a
- perception that resource allocation was inequitable.

In March, 2004 an Interim Board of SAFECOM was established which saw the devolvement of the former ESAU. The Interim Board at this point comprised the Chief Executive SAFECOM, Chief Officers of the SAMFS, SACFS, SASES and a nominee from the Justice Department.

The preparatory work done in the 17 month life of the Interagency Task Force and the Interim Board effectively put in place the foundation for the official SAFECOM Board at the proclamation of the FES Act on 1/10/05.

At the inaugural meeting of the SAFECOM Board in October, 2005, comprehensive organisational and managerial protocols were already in place. These initiatives included:

- written Vision, Mission and Values statements for SAFECOM and a framework for a link to ESOs' Vision, Mission and Values statements;
- a strategic planning process;
- a fully functioning SAFECOM office with established organisational and administrative structure;
- a SAFECOM Board Protocol;
- a Governance Policy for the SAFECOM Board; and
- a Code of Conduct for the SAFECOM Board.

Each ESO brought to the Board established strategic and other plans, annual reports and audit reports relative to their own organisation.

Initiatives Post 1 October 2005

The work of the Interagency Task Force and the Interim Board essentially ensured a smooth transition towards the formal introduction of the SAFECOM office and the SAFECOM Board. It is clear too that the focus of the work already done was consistent with the intent and object of the FES Act for a shared services approach to governance. This was achieved, it appears, as a result of a commitment of the key office holders to produce a model which best achieved the provision of emergency services across the sector.

While the concept of the Commission has been generally accepted and a model put in place, actually putting it into practice has not yet been fully achieved. Most observers have said that the move towards the Commission accomplishing its statutory obligations is still in transition. One SAFECOM Board member described the Board as achieving, "moderate, incremental progress".

In an environment which appears to be resistant to change, the work already done by the Commission is commendable. There have been improvements in the management of the ESOs through the Commission, and as a consequence, better services to the community. It is generally recognised, however, that there is still some way to go.

One submission suggested that a major obstruction to the Commission's progress is the structure of the FES Act since:

The governance model that was created by the current iteration of the FES Act, is structurally flawed and so is not conducive to implementing the changes that were recommended by the Dawkins Review or expected from the Minister or Government.

The submission stressed:

Despite Government direction and some improved outcomes, Agencies still continue to operate in isolation and resist efforts at centralisation. This is accentuated by the structure of the FES Act which requires the Chief Officers (as CEs) to put the needs of their Agency above the needs of SAFECOM.

These issues are dealt with in this Review below. Before doing so it is appropriate to consider the Commission's achievements since its inception through the establishment of a governance framework.

A guide towards measuring the progress of the Commission is to align its initiatives/activities against its legislated functions which are set out in Section 8 of the FES Act. Table 1 was submitted by SAFECOM.

Aligning Commission Functions (Section 8) Against Achievements	
S. 8(a) develop and maintain a strategic and policy framework across the emergency services sector	
<ul style="list-style-type: none"> • SAFECOM Strategic Plan aligned to SASP • SAFECOM specific emergency sector SASP targets under development • "Way Forward Annual Plan" • Policies 	<ul style="list-style-type: none"> • In place but not aligned in all Agencies • Being developed through Government processes • Quarterly reporting has commenced • In place and SAFECOM sector-wide policies are approved by the Board: <ul style="list-style-type: none"> ○ HR (fraud; disability; dignity and equity) ○ Financial management ○ Risk management ○ Workforce Plan ○ Occupational Health and Safety (more work needed) ○ Response
S. 8(b) develop and implement a framework of sound corporate governance across the emergency services sector.	
<ul style="list-style-type: none"> • Audit and Risk Management Committee • Strategic Plan • Workforce Plan • Standard policies • Risk register • Budget management • Charter 	<ul style="list-style-type: none"> • Internal Audit Plan developed • In place and reviewed by Board but are all ESO plans aligned? • In place and approved by Board • In place (see 8 (a)) • In place and reviewed by Audit Committee • In place and controlled by agencies, Sector Finance Committee and Board reporting • In place
S. 8(c) ensure that appropriate strategic, administrative and other support services are provided to the emergency services organisations.	
<ul style="list-style-type: none"> • SAFECOM office (administration support) covering HR; Finance; Risk 	<ul style="list-style-type: none"> • Services delivered to sector outlined in Annual Report

Aligning Commission Functions (Section 8) Against Achievements	
<ul style="list-style-type: none"> • Management; Payroll; OH&S; IT Management; Volunteer Management • SAFECOM office (strategic support): Strategic Plan, Risk and Resource Model • Corporate Governance Strategies implemented 	<ul style="list-style-type: none"> • SAFECOM embedded staff in agencies • Strategic Plan implementation underway • Board endorses Commission Workforce Plan • As per 8 (b)
S. 8(d) ensure that appropriate strategic and business plans are developed, maintained and implemented across the emergency services sector.	
<ul style="list-style-type: none"> • Covered in (a) + (b) + (c) 	<ul style="list-style-type: none"> • As above (note duplication in Section 8) • Note alignment is an issue
S.8(e) provide for the effective allocation of resources within the emergency services sector.	
<ul style="list-style-type: none"> • SARAM modelling underway • Bilateral budget process • "Way Forward" Annual Business Plan tabled in 2006 and implementation currently underway • Strategic Plan for IMS • Sector IT Committee • Workforce Plans 	<ul style="list-style-type: none"> • Board endorsed "Top 12" approach • Commission facilitated bilateral process • Contains implementation strategies for: <ul style="list-style-type: none"> ○ Consolidated Public Affairs (completed) ○ Consolidated Training/Education – Coordinator appointed ○ Consolidated IT and Communications Engineering sector ○ IT Committee Strategic Plan in place ○ Consolidate Community Safety and Education – ToR developed ○ Risk and resource model – to be tabled at December 07 Board ○ Ministerial and Cabinet liaison (completed) ○ Integrated Asset Management – common asset management system under review ○ Risk Leaders identify Hazard/Risk Leader/Custodian • In place and is complemented by central funding model • In place: <ul style="list-style-type: none"> ○ Risk based, whole of sector plan matches funding to priorities ○ Member Justice ICT Committee ○ SAFECOM Chair, Emergency Management Information Working Group ○ SAFECOM represent SA in National Spatial and Information Management Group ○ Electronic Document Record Management System (EDRMS) being implemented • All Agency plans and variations approved by Board
S. 8(f) ensure that the emergency service organisations have appropriate systems and practices in place – <ol style="list-style-type: none"> to provide for effective management and planning; and to monitor management performance against plans and targets, and to take corrective action as necessary. 	

Aligning Commission Functions (Section 8) Against Achievements	
<ul style="list-style-type: none"> • Sector Audit and Risk Committee • Records management • Development of EO policies and procedures • Capital expenditure • Shared standard design for fixed assets • Resourcing based on risk modelling • Board reporting cycle • BCP Planning • EDRMS project implemented 	<ul style="list-style-type: none"> • In place • Masterpiece and Finance reports • Improved operating standards • Regular reporting to Finance Committee and Board • Panel contract for appliances • CFS/SES Standard Building Specifications • SARAM project underway • In place • Work in progress • Work in progress
S. 8(g) ensure that the emergency services organisations maintain appropriate risk-management systems and practices.	
<ul style="list-style-type: none"> • Risk framework, methodology and policy 	<ul style="list-style-type: none"> • Risk Manager working within ESOs and their risk committees (including updates) • One risk register • Single database
S. 8(h) ensure ESOs review and revise plans, structures, systems etc	
<ul style="list-style-type: none"> • Board reporting • Business excellence process • Workforce Plan • Assets of Significance and Critical Infrastructure Register • SARAM • Annual Business Plan 	<ul style="list-style-type: none"> • Monthly reports from ESOs, including budgets and risks • Quarterly and mid year budget reviews • Supported by sector but implemented ad hoc by individual agency • Workforce Plans (annual) are approved by the Board • Whole of sector ASCI register regularly reviewed and updated • Risk Plan to December 2007 Board meeting • Quarterly reporting against "Way Forward"
S. 8(i) ensure that ESOs meet their statutory responsibility.	
<ul style="list-style-type: none"> • Not yet a sector-wide approach i.e. agencies doing it independently • Sector-wide Audit and Risk Committee now responsible 	<ul style="list-style-type: none"> • Auditor General's report • Three meetings (work in progress)
S. 8(j) ensure high ethical standards in ESOs.	
<ul style="list-style-type: none"> • SAFECOM Charter • Charter for volunteers • Standard policies • Public Sector Code of Conduct 	<ul style="list-style-type: none"> • Developed • Work in progress • In place (e.g. consistent policy for workplace employee behaviours; volunteer use of vehicles; new policy for group budgets) • Government Mandate
S. 8(k) foster and support career development within ESOs.	

Aligning Commission Functions (Section 8) Against Achievements	
<ul style="list-style-type: none"> • Seconded people across sector – driven by Chiefs • OD Framework in Strategic Plan 	<ul style="list-style-type: none"> • Has occurred infrequently • Work in progress
S. 8(l) support and encourage voluntary participation and personnel development in ESOs.	
<ul style="list-style-type: none"> • Volunteer recognition • Volunteer Policy Officer • Volunteer Support Branch 	<ul style="list-style-type: none"> • Recognition, Raising profile, Recruiting and Retention (RRRR) Project • Position advertised • Review of VSB underway
<ul style="list-style-type: none"> • Review of administrative workload 	<ul style="list-style-type: none"> • Tender process underway • Numbers and trends monitored
S. 8(m) recognise outstanding achievements.	
<ul style="list-style-type: none"> • Minister's Emergency Service medals and commendations • Australia Day and Queen's Birthday Awards 	<ul style="list-style-type: none"> • Recently presented – In place yearly • AFSM • National Medal • Various Agency recognition programs • RRRR Project is reviewing recognition systems throughout the sector
S. 8(n) ensure effective consultation with the community.	
<ul style="list-style-type: none"> • Community Cabinet • Review of FES Act • Bushfire Review • Board meetings with community • Board review exercise 	<ul style="list-style-type: none"> • Occurring • Occurring • Occurred – implementation underway • Regional Board meetings • This report
S. 8(o) disseminate knowledge in the field in order to advance community safety.	
<ul style="list-style-type: none"> • Joint approach to community safety message • Restructuring SAFECOM office to refocus on prevention and enhancing community safety • Website – bushfire information • Hotline – bushfire information • SEMC • Remote Indigenous Communities, Emergency Management Policy 	<ul style="list-style-type: none"> • Media releases • Workforce Plan for Commission office restructure – Board approved November 2007 • In place • In place • Updates, briefings, SAFECOM Chair State Mitigation Advisory Committee • Adoption of the National Policy endorsed
S. 8(p) maintain appropriate level of strategic liaison with the peak body responsible for the management of emergencies in the State.	
<ul style="list-style-type: none"> • Chief Officers, Commissioner • Liaison 	<ul style="list-style-type: none"> • SEMC representation • AFAC, ACSES, AEMC, NAFFC, RICAC, etc
S 8(q) provide regular reports to the Minister.	

Aligning Commission Functions (Section 8) Against Achievements	
<ul style="list-style-type: none"> Regular reporting to the Minister 	<ul style="list-style-type: none"> Commissioner meets with the Minister weekly Board papers to Minister Commissioner reports to Minister: <ul style="list-style-type: none"> broad picture of the performance of the sector fund (ES levy) Annual Report Regular Chief Officer Ministerial Briefings Productivity Commission
<ul style="list-style-type: none"> Ministerial requests 	<ul style="list-style-type: none"> Ministerial Liaison procedures in place
S. 8(r) provide to the Minister reports or advice regarding the FES Act.	
<ul style="list-style-type: none"> Board has met with Minister 	<ul style="list-style-type: none"> As per 8 (q)
S. 8(s) Perform any other function assigned to the Commission by this or other Act.	
<ul style="list-style-type: none"> Community ES Fund Emergency Management Act 	<ul style="list-style-type: none"> SAFECOM is responsible for administration of fund By administrative arrangement, SAFECOM is responsible for natural hazard emergency management; developing workforce plans for emergency services; and coordination of Commonwealth grants

Table 1

Specific examples of how the management and administration of the ESOs have improved include:

- ICT – the roll-out and support provided by the Commission to individual Agencies has improved the ESO IT capabilities considerably, as well as assisting the development and implementation of sector-wide standards and procedures;
- OHSW – the support and coordination provided by Commission (in conjunction with initiatives from WorkCover Corporation) has significantly improved OHSW for ESOs, providing standardisation across the sector;
- Public Affairs – centralisation of resources and responsibilities under the Commission has the potential to provide resource savings and facilitate consistent and balanced sector-wide messages and Agency profiles;
- Deputy Chief Officers' forum – regular, fortnightly meetings of the Deputy Chief Officers are ensuring better consultation and collaboration between the Agencies; and
- the establishment of the Senior Consultative Forum with the Commissioner, three Chief Officers, representatives from the volunteers associations and the union, has provided a platform for open and frank deliberations towards moving to a genuine shared services approach for the benefit of the sector.

Some of the initiatives which demonstrate increased efficiencies and effectiveness in the provision of services within the community include:

- Call Response and Despatch (CRD) system – centralisation of CRD at MFS headquarters, progressed in close collaboration with the SASES, is more efficient

than the previous system of separate communications centres at each of the Agencies and has provided considerable resource savings;

- Urban Search and Rescue (USAR) training – the concept of lead-agency training at Angle Park training centre is working well and is an effective utilisation of resources;
- Training – increased efficiencies and economies have been achieved through collaboration between the Agencies which, provided the centres of excellence and lead agency capacity are recognised, maintained and extended, should provide flow-on effects in terms of resources and efficiencies. More recently, the SAFECOM structure has facilitated consensus on the appointment of a training coordinator, which has the potential to achieve a more unified approach to training;
- Community safety – there have been a number of effective cross-sector initiatives over the past two years, such as the Road Accident Awareness Program, the Juvenile Fire Lighters Prevention Program, the joint CFS/MFS “Change Your Clock, Change Your Battery” campaign and the Bushfire Awareness initiative;
- Centre for Lessons Learned – comprising membership from all emergency services, DEH, ForestrySA – considers recommendations from internal, other agency and external reports and changes in policy and procedure are discussed between the agencies prior to SACFS adopting operationally related changes;
- Heads of Agreement - between SA Water, DEH, ForestrySA and SACFS (signed in 2004) – collaboration between fire management agencies, but in particular with SA Water - improvements have been made in the areas of: AIIMS adoption and training; mapping support; provision of summer fire crews for fires in DEH and SA Water controlled land; upgrading of appliances in SA Water land; and training and conduct of prescribed burns in forest and bushland areas;
- Enhanced mutual aid arrangements - between SACFS and SAMFS in the outer Adelaide and provincial cities;
- Multi-Agency Response Team (MART) - for inter agency response to Chemical, Biological and Radiological (CBR) incidents; and
- Joint agency task forces - for Urban Search and Rescue (SAMFS, SAAS and SASES).

Evaluation of the Commission and the Way Ahead

Many of the submissions expressed concern about the operation of the SAFECOM Board. Comments from present and past Board members were made in a constructive way to address what were seen as obstacles that had to be overcome so as to achieve the intent of the FES Act. The concerns in relation to the Board were that:

- legislative provisions relative to governance are unclear; and
- even if clarified, governance which relies on the current composition and processes in the SAFECOM Board will continue to falter.

To understand these issues requires an appreciation of the current legislated structure of the Commission, the SAFECOM Board and the Chief Executive.

The Commission is established under Section 6 as the South Australian Fire and Emergency Services Commission and is a body corporate.

The Commission is subject to the control and direction of the Minister and such direction must be in writing and laid within six sitting days in both Houses of Parliament (Section 9).

Broadly outlined, the functions and powers of the Commission are to:

- provide a framework for strategy and policy;
- develop and implement a framework for corporate governance;
- provide strategic and administrative support;
- ensure strategic and business plans are developed, maintained and implemented;
- provide for the effective allocation of resources; and
- ensure the ESOs meet their statutory obligations.
(Section 8)

If required, the Commission in the performance of its functions can direct the ESOs (Section 9 (1)).

Apparently with the intention of distinguishing between policy and operational matters, the FES Act limits that direction by excluding matters relating to:

‘emergencies’:

The Commission may not give a direction in relation to any matter concerning the procedures that are relevant to responding to an emergency situation or to dealing with any matter that may arise at the scene of an emergency.
(Section 9 (2))

and ‘operations’:

In addition to the Chief Officer’s responsibility for the management and administration of [SAMFS, SACFS, SASES], the Chief Officer has ultimate responsibility for the operations of [SAMFS, SACFS, SASES] and may therefore (it goes on to set out how this can be applied).
(Sections 27(4), 60(4), 109(4))

The Commission is managed and administered by the Board (Section 10) and constituted by four voting members, being the CE of SAFECOM (Chair) and the three Chief Officers of the ESOs; and four non-voting members (Section 11(1)(e)). This effectively means the Commission’s functions under Section 8 are really the functions of the Board.

The CE of the Commission is responsible for (a) managing the staff and resources of the Commission; and (b) giving effect to the policies and decisions of the Board insofar as they relate to the management of the Commission (Section 16 (3)).

Apart from their broad fiduciary duties as Board members, the three Chief Officers of the ESOs have specific duties towards the Commission. These relate to finance (Sections 43, 101, 121); annual reports (Sections 53, 101, 121), and workforce planning (Sections 32, 65, 114).

In turn, the Commission must prepare an annual report for the Minister which incorporates the annual reports of the ESOs (Section 22); consolidate statements of account for the

ESOs (Section 21(1)(b)); and approve the workforce plans (Sections 32, 65, 114). The Commission's Annual Report to the Minister must incorporate the information contained in the annual reports of the emergency services organisations for the relevant financial year (Section 22).

The legislative provisions, as outlined above, are generally clear and the establishment of the Board meets the expectation of the FES Act that there be coordinated emergency services across the sector. However, the inability on occasions to distinguish between policy and operations was a constant source of concern for some Board members.

While 'emergency' is described in Section 3, 'operations' is not. The difficulty, as pointed out by a voting Board member, is that while it is clear that the FES Act intends Chief Officers be unimpeded in their operational responsibilities, the lack of definition of what 'operational' means makes it undistinguishable from what is meant to be non-operational. This, he pointed out is made even more complicated with the wording of Section 9(2):

The Commission may not give a direction in relation to any matter concerning the procedures that are relevant to responding to an emergency situation or to dealing with any matter that may arise at the scene of an emergency.

This, it is believed (at least by some), restricts the exemption to a specific single emergency situation/incident rather than having a wider, more general operational meaning.

This is an important issue since the intention of the FES Act is to distinguish on one hand, matters that are operational so that Chief Officers retain 'ultimate responsibility' (Sections 27, 60, 109) and, on the other, policy and strategic matters which are the province of the Board (Section 8).

Observations of the proceedings of the SAFECOM Board provided signs of this dilemma on more than one occasion. When it was an issue it was handled sensibly and the matters were resolved, but not without some tension. Settling the issue required tact and diplomacy from the chair and an exercise of good faith by the other Board members.

One non-voting member of the Board considered 'operational' to have no limitation as virtually everything the ESOs do is operational and this would include, for example, the purchase and fitting out of a vehicle for a specific operational purpose. While that might be stretching its meaning, it demonstrates the perceived ambiguity. The effect of interpreting 'operations' in the broadest terms is that it has the potential to inhibit the scope of the work undertaken by SAFECOM and in turn the SAFECOM Board. At the same time it has the potential to have Chief Officers interpret their work in a narrow operational sense inconsistent with the general intent of the FES Act.

While members of the SAFECOM Board have a duty to promote the purposes for which the Board exists, the differences of opinion over what constitutes an 'operational' matter, and therefore seen to be outside of the jurisdiction of the Board, leaves the situation unclear and results in a potential impediment to achieving the intent of the FES Act.

One volunteer association, in noting this anomaly, saw the negative consequences of this in that its members "[with the blurring of the boundary] were concerned with what we see as an increasing trend for the Commission to want to direct the services in areas that are the responsibility under legislation of the service chiefs". This is certainly not the case.

There is a definite need to clarify the distinction between operations and policy and the remedy lies in an amendment by providing a definition of 'operations'. While some difficulty is anticipated in doing so, determining the delineation is essential so that the Chief Officers have a clear understanding of ESO's responsibilities and their obligations to the sector through the Board.

Recommendation 2: **The FES Act be amended to include a definition of 'operations' and/or 'operational'.**

The SAFECOM Board

It has been said by present and past voting and non-voting members of the Board that considerable progress has been made in setting up a model of governance that represents the best interests of the emergency services sector overall. To achieve that, it was said that the Chief Officers demonstrated a genuine commitment to their Board responsibilities and have tended to resist temptations of bias towards their own organisational interests.

To some extent this is true and is commendable given the cultural shift that had to be made when the three ESOs were required by the FES Act to move from managing a relatively autonomous agency to a shared services model. It has been a long and challenging task to put the governance structure in place and it has not been without its problems, especially given the different interpretations of what can be decided unilaterally for an agency (operations) and what must be decided by the Board (policy).

It was generally felt that the Board 'had come a long way' but 'still had some way to go'. Progress that the Board has made over two years, since the introduction of the FES Act, can be put down to initiative, drive and goodwill.

In terms of addressing the journey towards 'getting it right' there were several areas identified as hurdles the Commission will have to address if it is to meet the FES Act's intention of providing a coordinated approach to emergency management across the sector. In this regard, some of the more obvious areas that will have to be addressed include the budget, annual reports and planning.

The Budgetary Process

The SAMFS, SACFS and SASES are required to keep proper accounting records and have annual statements of account prepared in respect of each financial year (Sections 52, 100, 120).

The Commission must also keep proper accounting records and have annual statements of account prepared in respect of each financial year (Section 21(a)) but the Commission has the added responsibility to cause consolidated statements of account for the emergency services sector to be prepared in respect of each financial year (Section 21(b)).

The requirement for the Commission (meaning the Board) to consolidate the statement of accounts of the ESOs is consistent with the spirit of the FES Act for an approach to accounting which represents the whole of emergency services.

The budgetary process that takes place includes:

- SAMFS, SACFS, SASES and SAFECOM as part of the General Government sector make budget submissions as part of the Government Budget process. The Budget process is dependant on Government time frames and usually commences in November and budget bids are submitted in February from agencies in the General Government sector and concludes in June when the State Budget is handed down;
- Ministers are able to present the merits of their bids at the bilateral meetings with the Treasurer before the Budget is approved by Cabinet;
- all successful emergency services bids and any other initiatives approved by Cabinet (i.e. savings strategies) are added to the base expenditure budget of the Community Emergency Services Fund;
- the Treasurer is required under section 10(5) of the *Emergency Services Funding Act 1998* to provide a written statement to the Economic and Finance Committee setting out determinations that the Treasurer proposes to make in respect to the levy for the relevant financial year;
- the function of the Economic and Finance Committee is to enquire into, consider and report on the Treasurer's statement within 21 days of it being referred to the Committee, pursuant to section 10(5a) of the *Emergency Services Funding Act 1998*. Section 10(4) of the FES Act requires these determinations to be made in respect of:
 - the amount that, in the Treasurer's opinion, needs to be raised by means of a levy to fund emergency services;
 - the amounts to be expended for various kinds of emergency services; and
 - the extent, to which it can be practically determined, the various parts of the State will benefit from the application of that amount.
- under section 10(5) of the *Emergency Services Funding Act*, the Treasurer is precluded from making recommendations to the Governor until the Committee has reported to Parliament or has failed to report within the aforementioned time frame;
- the Minister for Emergency Services then formally writes to the emergency service organisations to advise them of their budget; and
- approved budget bids are factored into agencies' budgets.

The expectations of the FES Act that there be a consolidated approach to budgeting for the sector overall does not appear to have been achieved. This is reflected in the annual portfolio statements which report each agency's actual and budgeted expenditure under separate and distinct financial entities. Similarly individual agency targets, objectives and highlights are reported separately in the Portfolio Statements (Portfolio Statement 2007-08 Budget Paper 4 Volume 1).

Attempts have been made by the Commission to improve strategic and sector-wide approaches through the use of out-posted SAFECOM staff to manage the finance function of each agency. However, the Finance Branch of the Department of Treasury and Finance reports that, "whether it is because of anomalies in the FES Act or for some other reason, something appears to have inhibited SAFECOM's ability to provide advice to Treasury that truly reflects an across the sector allocation of resources".

The difficulties expressed by the Finance Branch of Treasury and Finance are to some extent brought about by 'anomalies' of the FES Act (which are referred to in other parts of this Review), but there are other reasons which have given rise to these difficulties. It was noted that:

- budgetary plans are decided by the Board and despite good intentions of its members to contribute to the overall benefit of the sector, the Chief Officers (perhaps understandably) tend to show a bias towards their own organisation, making it difficult to determine 'what is best for the sector' - consequently, the final budgetary plan from Board does not always represent sector-wide considerations;
- the CE of the Commission has no authority other than to 'give effect to the decisions of the Board' and only insofar as these decisions relate to the management of the Commission;
- the difficulties experienced by the Chief Officers in determining a truly sector-wide budgetary plan cannot be reviewed, re-addressed or resolved by a single person/office since the decision is a collective decision of the Board;
- there is no power to reallocate resources to meet the Minister's priorities;
- if a cost pressure emerges in one area of the sector there is no ability to require the organisation to find the funds to meet it;
- individual Chief Officers have made separate representations to the Minister on the basis that the bid is 'operational'; and
- without a single person/office having the responsibility to reason through and decide on the final budgetary document, it is, in effect, presented as four distinct silos (SAFECON, SAMFS, SACFS, SASES).

If the provisions of the FES Act remain exactly as they are now, there is nothing to suggest that the problems identified by Treasury are going to be resolved.

Annual Reports

The ESOs are required to deliver their annual reports to the Commission (Sections 53, 101, 121) and in turn the Commission must, on or before 31 October in each year, provide to the Minister an annual report for the emergency services sector for the preceding year (Section 22(1)). The Commission's annual report must incorporate the information contained in the ESOs annual reports (Section 22(2)(a) and (b)).

At the time of writing this Review there has only been time to consider the annual reports for 2006-07 which were published after the introduction of the FES Act. Four separate annual reports have been prepared, that is, one for SAFECON and one for each of the three ESOs. Specifically in the context of the intention of the FES Act for the 'incorporation' of the activities of the emergency services sector, it was noted that:

- each of the four annual reports were of the highest quality demonstrating keen organisational pride and commitment;
- the three ESO annual reports were essentially 'territorial' with little emphasis on their links to the Commission and the broader sector;
- the SAFECON annual report, while having appropriate goals and references to sector-wide initiatives tended to be in concept only since they failed to fully

incorporate the activities of the ESOs with the only references being their 'highlights' which tended to make them appear as mere appendices;

- there was no consistency in the format across the four annual reports; and overall
- the reports tended to show a lack of emergency sector cohesion and common purpose.

While the concept/model is in place for a coordinated approach to annual reports, the actual reports, though excellent in their preparation, are still geared towards a single agency. As with the budgetary process referred to above there are few signs of this changing.

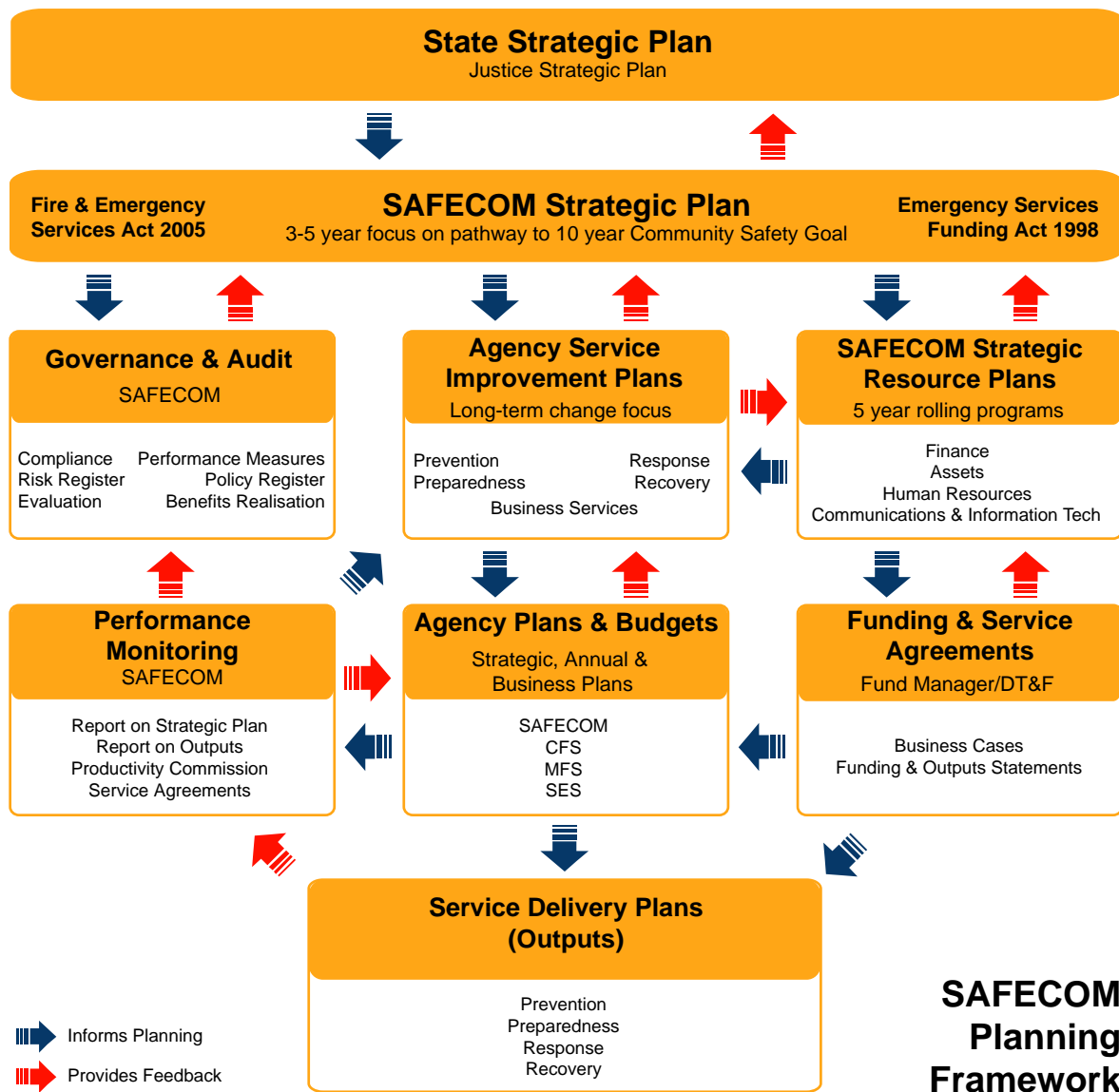
Planning

Conceptually, impressive models were seen to be in place in the Commission strategic management and planning systems to monitor management performance against plans and targets as required by Section 8(f).

The extent of planning that has taken place generally reflects well on the good intentions of the SAFECOM Board. However, there are many examples of the concept being in place for a consolidated approach to planning but the processes and practices to implement them being at odds, showing a tendency towards the retention of organisational autonomy. This becomes plain when examining the Strategic and Workforce Plans for SAFECOM and the difficulty in aligning these with the ESO plans. This is outlined below.

The SAFECOM Strategic Plan prepared in September, 2007 presents a model for planning across the emergency services which is entirely consistent with the object and intent of the FES Act. Figure 1 shows the hierarchy of the relevant plans and their linkages. Specifically it uses the 'overarching' State and Justice Strategic Plan as the top tier which informs the SAFECOM strategic plan which in turn is an 'overarching' plan for the SAFECOM Office and the ESOs.

Figure 1



There are four strategic themes:

- Sustaining Corporate governance
- Engaging Communities and Aligning Services to their Needs
- Developing Our Capacity
- Integrating Service Delivery

These guide SAFECOM strategies for the achievement of SAFECOM's Vision for a Safer Community. They are captured in the model below in Figure 2 and are referred to in the strategic plan as the cornerstone for managing SAFECOM strategies, organising KPI reporting and managing business process improvement.

Figure 2



This approach is consistent with the requirements of the FES Act and since it was approved by the SAFECOM Board confirms it is appropriately focused. However, while voting Board members from individual ESOs take a sponsorship role for each of the four themes there are only tentative links between the ESO plans and the SAFECOM strategic plan. In fact, there is a distinct separation between the three ESO plans, not just from the SAFECOM plan, but also from each other's plan.

Table 2 below, which shows the Tables of Contents for each graphically shows the different approaches and emphasis to each strategic plan.

Tables of Contents for Strategic Plans

SAFECOM	SAMFS	SACFS	SASES
Chairman's Message	Introduction	Safety First – Safe Operating Principles	From the Chief Officer
Introduction	About the MFS	Vivid Description of SACFS	Background
Vision, Mission etc	MFS Planning	CFS at a Glance	Objective 1 – Building Strategic Capacity of the Organisation
Strategic Themes	Alignment	Vision, Mission etc	Objective 2 – Aligning the Activities of SES with PPRR
Action Plans	MFS Strategic Direction	The Environment in Which We Operate	Objective 3 – Finalising "The Case for Change"
Sustaining Corp Governance	Community Service Framework	Our Approach	
Engaging Communities & Aligning Services to Needs	KRAs 1 – 7	Our Key Stakeholders	
Integrating Service Delivery	Our Department's Corporate Services	KRAs	
Developing Our Capacity	MFS Finances	Code of Conduct	
	MFS Governance Systems	Functional Chart	
	MFS Projects		
	MFS Station Locations		

The Tables of Contents in Table 2 demonstrate:

- different interpretations of emphasis and focus;
- at best, tenuous links to a consolidated SAFECOM strategic plan;
- a lack of consistency in format towards a common emergency services wide theme; and
- evidence of the organisations not working to the intention of the FES Act (perhaps even a resistance to do so).

As a consequence, the Commission (and therefore the Board) would find it extremely difficult to formulate plans which link organisational plans to a sector-wide plan.

Similar observations were made of the Workforce Plans which each ESO is required to forward to the Commission for approval (Sections 32, 65, 114). They demonstrate the same problems as listed immediately above.

Resource Allocation

Resource allocation, so as “to provide for the effective allocation of resources within the emergency services sector” (Section 8(1)(e)), proved to a difficult task for the Board. As one Board member put it:

The single most important way that SAFECOM can create improvement relates to the development of a Sector wide model for the effective and equitable allocation of resources. Since the SAFECOM Board was established, there have been a number of attempts and only partial success in developing a resource allocation model. Thus, we have seen plans for “SAFERS” (the SA Fire and Emergency Services Resourcing Standard); followed by “SARAM” (the SA Resource Allocation Model); which has been supplemented by “The Way Forward” (which was focussed mainly on the Southern Suburbs) and most recently, “The Top Twelve” (focussing on a resource model for the top 12 locations in SA where there is a perception of duplication of service delivery). All concepts have been well intended and have progressed decision making. However a single comprehensive model is still urgently required.

The submission goes on to recommend that Section 8 be amended to require the Board to develop and maintain a system that provides for the effective allocation of resources in the emergency services sector. That it can be improved is acknowledged, but legislating for a system is unlikely to resolve that.

The SAFECOM submission, although acknowledging difficulties, was more optimistic in its consideration of the way the Commission approaches resource management:

SAFECOM has developed an assessment tool, SA Risk Assessment Methodology (SARAM), which matches services to community risks. SARAM facilitates community involvement and provides services on an equitable basis, which does not necessarily equate to equal services e.g. Community Response Teams and the Anangu Pitjantjatjara Yankunytjatjara (APY) project.

The aim is a safer and more resilient community and opportunities exist for enhanced efficiencies across the emergency services sector. A Director Community Resilience being created to support community development so that communities are more engaged with their own safety.

This is a multi-faceted and complex issue, which does not lend itself to a formula based resource allocation system. The aim is to work with communities to gain their involvement and ensure decisions are supported by appropriate research based on community risk assessment, e.g. SARAM and community emergency risk management projects (CERM) which go beyond the emergency services sector and involve Local Government and other agencies such as the SA Ambulance Service.

Even with the best of formula for resource allocation, the difficulties currently experienced are unlikely to be resolved. These need to be addressed together with the problems identified with the other matters mentioned immediately above.

Addressing the Issues Relative to Coordination

The separateness of the ESOs, evident in the examples given above, indicates that some expectations of the FES Act are not being met in that the Board has been unable to bring about consolidated sector-wide budgeting, planning and resource allocation. There is a demonstrable need for this to be done. Changing the composition of the board and allowing voting rights for all members (as recommended in TOR #4) will improve the situation but it is unlikely to cure it completely.

The fact that the Board after sitting for almost four years (including its time as an Interim Board) has been unable to effectively bring the ESOs together in the way the FES Act intends, suggests the need for intervention.

The current role of the CE of SAFECOM in Section 16 is restrictive, and it appears deliberately so. The function can be divided into two simple components – a) management of the staff and resources of the SAFECOM office and b) to give effect to the policies and decisions of the Board insofar as they relate to the management of the Commission. This restriction is enforced by Section 10 which provides that the Commission (and therefore the CE) is managed and administered by the Board. It follows that the CE has no general authority to exercise the powers and functions of the Commission (as that authority lies solely with the Board). The CE of SAFECOM is, in effect, a facilitator.

Commissioner of Fire and Emergencies

The Minister for Emergency Services appears to have considered something more than a facilitating role for the office of the CE when she created the position of 'Commissioner of Fire and Emergencies'. On the appointment on 1 October, 2007 she said:

He will take on the key leadership role in the Emergency Services sector and will be responsible for providing the Government with advice about Emergency Management policy and strategy [and] will also be responsible for spearheading the implementation of Government policy initiatives in the Emergency Services Sector. (Premier and Cabinet of South Australia Media Release, September 6, 2007)

The 'leadership' role and 'spearheading' policy presumably comes from his position as chair of the Board but only acting on the Board's direction for there is no specific authority for him to do otherwise.

Certain assumptions were made on the appointment of the Commissioner. For example, the Human Services Directorate report on the 'Activities and Statistics for September, 2007, at page 2): tabled at the 25 October, 2007 SAFECOM Board Meeting, records:

The appointment of the Commissioner of Fire and Emergencies brings with it a range of new and/or refined business imperatives, one such imperative being 'high level emergency services policy'.

It is not clear what prompted the writer to ascribe this higher level of authority for there is none in the FES Act.

It is not sufficient that the appointment of Commissioner remain without that role being prescribed in the FES Act. I refer above to the difficulty there has been in distinguishing between operational/non-operational and the role ambiguities that can arise because of that. Simply adopting a title that has no legal basis but implies (especially given the type of assumptions made above) that it has higher authority than the title it replaces, can only introduce the potential for more uncertainty and increased tension. This was evident in more than one submission where there were references to confusion about accountability.

The position should be confirmed with amendment to the FES Act. At the same time the inability of the Board to consolidate sector-wide issues like the budget, planning and resource allocation could be addressed by increasing the authority currently with the CE and provide the new position with sufficient powers to consolidate sector-wide issues and to act as the Board's advocate.

There would be protests from some quarters, especially the volunteer associations since they would see this as moving towards a long term-plan to have a single position in charge of the three ESOs. But it should not be seen in this light and indeed it should not be seen as intruding into operational areas at all. The increased authority should be prescribed for those policy areas which have presented difficulties to be Board such as those mentioned above.

There tended to be no objection to the position of Commissioner if it were clearly defined in terms of its non-operational function.

With a strong rider that the position of CE/Commissioner has "no further expansion of the current statutory role and functions," the Chief Officer of SAMFS supported the establishment of the office of Commissioner but opposed references to "Fire" in the title:

MFS contends that the title of Commissioner of Fire and Emergencies is incompatible with the current chain of command in the three operational agencies, as "Commissioner" is globally recognised as the most superior rank within operational fire and emergency service agencies.

In suggesting that the title be either "Commissioner of Emergencies" or "Director General," the SAMFS submission (supported by the Chief Officer of SACFS) suggested this would recognise the operational autonomy of the ESOs and would also appropriately "parallel the Minister for Emergency Services portfolio title."

The reviewer is aware of the significance of rank in a quasi military organisation and appreciates the sensitivities of the Chief Officer of the SAMFS. It is not simply a case of status. Being unambiguously recognised as the operational head of an organisation is important in terms of intra-organisational responsibility and interagency relationships. Having the position of Commissioner of Fire and Emergencies could give the false impression that it is a position higher in the operational hierarchy than the Chief Officers.

In supporting the appointment of the position of Commissioner and in the expanded role outlined above, fresh consideration should be given to the title which addresses the concerns of the SAMFS.

Recommendation 3: The FES Act be amended to create the position which currently has the working title of 'Commissioner of Fire and Emergencies' to replace the position of CE; and that the FES Act be amended in places where this position is mentioned.

Recommendation 4: Accountability for matters of policy, strategy and resource allocation for the emergency services sector, currently the province of the Board, be given to the position created in Recommendation 3 above.

Recommendation 5: Fresh consideration be given to the title of Commissioner of Fire and Emergencies so as to ensure it does not give the impression that it is operationally superior to the Chief Officers of the emergency service agencies.

Managing the SAFECOM Office

The Board has two broad functions – a) management of the Commission and b) deliberating and enforcing resolutions of the Board. In noting these two distinct areas of accountability, consultants in 2004 when providing advice on the proposed structure of the Commission, recommended that the Board recognise this division and devote time to being a) a management board; and b) setting policy, strategic direction and the allocation of resources across the sector (Locher, 2004:5). While this accords with the intent of the FES Act it may not be the most effective and efficient use of the Board.

It is obviously a key component of the FES Act for the Board to provide strategic and policy direction and the allocation of resources across the emergency services sector, but to have the Board occupied in the pure management of the SAFECOM office (and that is what the FES Act requires) appears duplicative and unnecessary. In fact, observations of the Board meetings as well as its minutes, show that the practice of dividing the Board meetings into two parts and devoting specific time to the management of the Commission has never been done. It was assumed, quite correctly, it appears, that the CE was regarded as being quite capable of managing the SAFECOM office without oversight of the Board.

To allow the Board to focus on its prime task of providing strategic and policy direction and the efficient allocation of resources across the sector, the Board's responsibility for the pure management of the Commission should be removed. This could be done without adversely impacting on the purpose and intent of the FES Act and would cause no

disruption to the Board proceedings. As currently exists with the three ESOs, the CE could simply report to the Board on the management of the SAFECOM office.

Recommendation 6: **The FES Act be amended so as to allow the CE to manage the Commission (SAFECOM) Office by removing provisions relative to the SAFECOM Board's managerial and administrative oversight of the Commission.**

Although not specifically required to do so, the Commission has adopted the practice of preparing a Workforce Plan which is also placed before the Board. For the sake of consistency that requirement, as with the ESOs, should be placed in the FES Act.

Recommendation 7: **Consistent with the requirement for Emergency Service Organisations, the FES Act be amended to require SAFECOM to submit a workforce plan to the Board.**

SAFECOM and the Link to Broader State Emergency Management Arrangements

With the devolution of the Security and Emergency Management Office (SEMO) formerly within the Department of the Premier and Cabinet, some of its functions were transferred to SAFECOM. Pointed out in the SAFECOM submission, these were:

- facilitating intergovernmental liaison in emergency management;
- providing secretariat and other support to the State Emergency Management Committee (SEMC) sub committees - notably the State Mitigation Advisory Group;
- providing senior official support to the Minister for Emergency Services at the Ministerial Council for Police and Emergency Management;
- maintaining the State Emergency Management Plan;
- developing a State Training Plan and contributing to SA Government 'Climate Change' response in SA Emergency Management Projects;
- representing South Australian Government in key national emergency management projects (Emergency Management Projects (AEMC));
- administering national grant programs and managing the incorporation of Regional Flood Mitigation Program and Bushfire Mitigation Program into the National Disasters Mitigation Program;
- strengthening and developing emergency management capacity in local government;
- maintaining an Emergency Management Public Information website; and
- supporting the development of the State Urban Search and Rescue Capability (USAR)

The SAFECOM submission makes the point that these additional functions now being undertaken by SAFECOM were not contemplated at the time of the introduction of the FES Act. To cure this, the submission recommended amendments to the FES Act, which it contended would involve an additional function of the Commission being included in Section 8 and for a definition of 'emergency management' being included in Section 3 (Interpretation).

It could be argued that the current provisions of the FES Act and specifically the breadth of the Commission's functions in Section 8 of the FES Act would be sufficient to deal with each of the functions listed above. Put another way, there appears to be nothing in the FES Act which would preclude the Commission from undertaking these additional tasks.

SAFECOM considers this an important matter in terms of the defining the extent and limitations of the role of the Commission. It should, therefore, be clarified.

Recommendation 8: **Crown law opinion be obtained to determine whether additional functions now undertaken by the Commission following the devolvement of the functions of the Security and Emergency Management Office (SEMO) require and amendment to the FES Act.**

TOR # 2

Assess whether there has been improvements, and if so to what extent, in the provision of fire and emergency services within the community in terms of prevention, preparedness, response and recovery.

Principles of PPRR – The Comprehensive Approach

Across Australia, the principles of emergency management have been constantly under review so as to ensure that emergency service organisations maximise their preparedness to deal with structure fires, bushfires, accidents, flooding, human and animal diseases, and dramatically over recent years the impact of terrorism. Strategic plans with SAFECOM and the ESOs demonstrate a commitment to the adoption of contemporary programs and practices consistent with meeting expectations of a community in terms of its safety and security.

SAFECOM and ESOs in South Australia, consistent with a national model promoted by Emergency Management Australia, have adopted a comprehensive and integrated approach to emergency management which involves the principles of prevention, preparedness, response and recovery (PPRR):

- encompassing all hazards in recognising that dealing with risks to community safety creates a range of prevention/mitigation, preparedness, response and recovery and other risk management treatments; and
- integrating programs of all relevant organisations and agencies, and the community (as a prepared community) in a coordinated way.

SAFECOM has adopted this comprehensive and integrated approach and PPRR components are identified in all SAFECOM and ESO plans.

Prevention/mitigation involves action which is put in place with the purpose of eliminating or reducing the impact of a hazard and/or the reduction of a community's susceptibility to emergencies or hazards and at the same time increasing the community's resilience.

Preparedness involves planning and putting in place educational and advisory programs for the community that effectively prepare that community to deal effectively with emergencies or disasters should they occur.

Response is the activation of prearranged plans as effective measures to deal with emergencies and hazards when they occur.

Recovery involves putting in place processes after an emergency or hazard which assists the community in the restoration of physical, social and economic well-being.

Initiatives Consistent with PPRR

The SAMFS submission provided examples of a number of improvements in the provision of fire and emergency services within the community in terms of PPRR. These included:

- day staffing of the Mount Gambier station, effective from 2006, which was facilitated through close consultation with SAFECOM;
- the introduction of cross-sector community safety group meetings, facilitated through support and collaboration with SAFECOM;
- the Memorandum of Understanding between SAMFS, SACFS and SASES, signed in January 2007, on the principles of despatch and response to emergency incidents; and
- expansion of MFS coverage to Seaford, which is being progressed in collaboration with SAFECOM, together with the promulgation of response protocols developed jointly between SAMFS and SACFS.

In relation to the SACFS, in 2006 the Minister for Emergency Services, in adopting the comprehensive approach in the management of bushfires, directed a review of bushfire prevention and management, the terms of reference for which included consideration of options for a planning framework that ensures a seamless transition from simply prevention to PPRR. The *Ministerial Review of Bushfire Management* (MRBM) Reference Group, Chaired by the CE SAFECOM, included representatives from Minister for State and Local Government Relations; Minister for Emergency Services, State and Government Relations; Local Government Association; SA Farmers Federation; CFSVA; Forestry SA; Department for Environment and Heritage; Department for Water, Land and Biodiversity Conservation; and SACFS.

The MRBM identified the need for the comprehensive approach of PPRR in bushfire management since, “it recognise[d] that reducing risk and building resilience is brought about by a combination of different elements of bushfire management [and] the success of one of these strategies is often reliant on the implementation of another”.

The MRBM drew attention to the inadequate focus of the FES Act which tended to concentrate on ‘prevention’ through a three-tiered framework of Bushfire Prevention Advisory Committee (Sections 71, 72); regional Bushfire Prevention Committees (Sections 73, 74); and district Bushfire Prevention Committees (Sections 75, 76).

The MRBM found:

- there was a lack of appropriate integration between the committees;
- there was inconsistent and/or poor relationships between the committees and relevant organisations, agencies and the community at large;
- there was limited community contribution to bushfire prevention plans;
- there was inconsistent use of bushfire management data in planning decisions;
- resources (human, physical and financial) were not aligned with need;
- legislation, policy and practices were generally not understood or where inconsistently applied; and
- there was insufficient community support consistent with the need to be sustainable and resilient to bushfire.

Consequently, the MRBM found the current legislation relative to bushfire management does not achieve the desired bushfire safety behaviours.

To resolve this, the MRBM, *inter alia*, saw the need to:

- provide a statutory body to develop policy and to act as a single reference point for a strategic, coordinated and cooperative approach to bushfire management;
- address the inappropriate focus on prevention alone and the need for an integrated PPRR approach; and
- provide a more effective committee structure which has clear lines of reporting and information exchange and which is appropriately aligned with State Committees and Advisory Groups established under the *Emergency Management Act 2004* and to conform with the Australian Standard for Risk Management – AS/NZS 4360:2004.

The MRBM Report is quite comprehensive. In broad terms it recommends:

- replacing the current three-tiered bushfire prevention framework with a two-tiered committee structure;
- prescribing the role of these committees which would accommodate an integrated approach to PPRR – i.e. changing from simply prevention to a comprehensive approach in the management of bushfires;
- replacing the provisions relating to the establishment of the SA Bushfire Prevention Advisory Committee in Section 71 with the State Bushfire Coordination Committee;
- removing provisions relating to the establishment of the Regional Bushfire Prevention Committees and District Bushfire Prevention Committees (Sections 73, 75) and replacing them with Bushfire Management Committees;
- changing the membership of the committees to include a broader representation; and
- removing the requirement for a rural council to appoint a suitably qualified Fire Prevention Officer (Section 77).

The MRBM was distributed widely and attracted particular interest from district councils and several submissions were put forward. While there was either support or no comment from some councils, others expressed concern about the impact of some of the recommendations.

Without challenging the concept of PPRR in bushfire management, some councils objected to the removal of a committee at district level on the basis that this would diminish (or even remove) local knowledge which is a key factor in the prevention of bushfires. This would, it was suggested, undermine the confidence of the community. There were strong representations to this effect from some volunteers in the country with some suggesting that this might even see a withdrawal of volunteers.

The reviewer was strongly urged to examine the proposal for the Bushfire Management Committees to replace the Regional and District Bushfire Prevention Committees since it would, “frustrate fire prevention activities rather than enhancing them.” This protest was made essentially on the basis of a reduction in local council involvement and the diminishment (or even loss) of local knowledge.

There was also objection regarding the proposal to remove the provisions relative to the appointment of a suitably qualified Fire Prevention Officer by a rural council. A submission referred to the “... ten years [that] Fire Prevention Officers have been the

corner-stone of fire prevention activities in South Australia,” and consequently argued that they should be retained. There was concern that the MRBM Report was silent on what would replace the Fire Prevention Officers. Front line volunteers reminded the reviewer of the trust and cooperation they have gained with the community and the irreplaceable local knowledge they have. They would see any change to this arrangement as being counterproductive.

In one submission, the point was well made that rural council districts can include townships, coastal settlements, farm land and national parks which require fire prevention strategies specific to these characteristics and which would vary across regions. It warned, therefore, in the changing of boundaries to accommodate the new committee framework could disengage volunteers with local knowledge and specific skills.

Some councils also rejected the centralisation of bushfire management strategies even though a MRBM recommendation included “... Local Government to be maintained as an important component of bushfire management in South Australia because of the link with the community”. One submission put it this way:

One of the reasons bushfire prevention plans are successful, is that local people take ownership of a local plan developed by local people. The broader the plan the less opportunity you have for local anomalies to be considered. In addition you run the risk of plans being discarded because the people using the plans may not understand the topography of the area being discussed. By having plans with a local element, dealing with local issues, the majority of your community can understand the content. When plans were first introduced it was suggested that the local element of the plan was paramount to its success and this seems to have been overlooked in the recommendations.

Another stated:

This recommendation [relating to State Bushfire Coordination Committee/Bushfire Management Committees role and composition] lacks detail and structure and without local government input, raises concern for the community at large as to what these structures will look like once formed. ... Local Government is being moved away from its monitoring role and ensuring fire safety and management is maintained and so other alternative structure is being flagged to replace this process other than visionary proposals that lack detail.

And another:

[With the proposed disbanding of District Bushfire Prevention Committees] the expertise and much local knowledge will be lost to many bushfire management issues. There are also concerns that whilst the make up of Bushfire Management committees appear extensive there will be a lack of representation from district level.

A District Bushfire Prevention Committee submission also had reservations about some of the recommendations since they would be:

Removing or rolling back the extent of direct local and volunteer input from the process of district prevention planning, communication and on ground works.

To the Minister for Emergency Services and to SAFECOM these responses are totally unexpected given the extensive consultation (including community forums) during the MBMR project and the public disclosure of its findings where there were no objections as outlined above. On the contrary, it was pointed out to the reviewer that there was overall support. Moreover, the reviewer noted that the Local Government Association was a member of the MRBM team. This highlights the complexity of policy development in local government areas.

In general terms, the recommendations of the MRBM are eminently sensible in that they provide for a comprehensive (PPRR) approach to bushfire management, centralise strategic issues, streamline the framework for the committees and look to a broader committee membership.

At the time of writing this Review the implementation process is well under way. That should not be interrupted but the concerns expressed above should be resolved.

Subsequent to the Report of the MRBM, the findings and recommendations of the Wangary Coronial Inquest have been handed down. These are referred to under "Initiatives Specific to the Wangary Coronial Inquest" in this Review. Many of the issues raised in the recommendations of the Inquest have direct bearing on the MRBM. Notably, specific comments are made about the need to appoint dedicated 'bushfire prevention officers'.

Recommendation 9: **The comprehensive Prevention, Preparedness, Response and Recovery (PPRR) approach to the management of bushfires as recommended by the *Ministerial Review of Bushfire Management in South Australia* is supported: its implementation should consider issues raised by councils and should also be considerate of the recommendations of the Wangary Coronial Inquest.**

Interagency Cooperation in PPRR

In the submissions received there were references to climate change and the consequent expectation of the increasing number of heatwaves, bushfires, floods, storm surges and other extreme weather events which will increase the demands on the resources of the State. One submission suggested that provisions be included in the FES Act to address this. This has been considered. While an important matter it tends to be a policy rather than a legal issue. Moreover, there is evidence from SAFECOM Board meetings and other documentation to confirm that SAFECOM and the ESOs, in adopting a PPRR approach, are addressing climate change.

The Department of Water, Land and Biodiversity Conservation (DWLBC - through the Minister for the River Murray, Water Security, Regional Development, Small Business and for Industry and Trade – The Hon. Karlene Maywald MP) believed there should be greater emphasis on mitigation in the planning system:

While the importance of incorporating appropriate safety measures on individual housing is recognised the adoption of a more strategic approach at the early planning stages would ensure that there is appropriate and better integration between fire safety, flooding, development planning and the management of natural resources.

The submission goes on to recommend that provisions be included in the FES Act to:

Provide the opportunity for expert comment on the fire and flood risk associated with new developments. This provision should also provide an opportunity for expert comment on the natural resource management implications of the development proposal, including any required fire or flood prevention works that may need to be implemented if a new development were approved.

A strategic planning approach together with the use of expert advice are integral to the efficient management of emergency services. That it would be more likely to be improved through provisions in the FES Act is, however, extremely doubtful. The reviewer found that initiatives taken by SAFECOM and the ESOs, to a large extent, incorporated the expert views of others in strategic planning. As the SACFS submission pointed out under the heading "CFS works with natural resource management agencies":

In 2004 a Heads of Agreement between SA Water, DEH, ForestrySA and SACFS was signed. Since that time there has been substantially improved collaboration between fire management agencies. Improvements have also been made in the Areas of: AIMS adoption and training; mapping support; provision of summer fire crews for fires in DEH and SA Water controlled land; upgrading of appliances in SA Water land; and training and conduct of prescribed burns in forest and bushland areas.

CFS also consults with the Government Agencies Fire Liaison Committee, the State Emergency Management committee and the Chief Officers Advisory Council (CFS) before implementing strategic policy changes.

These initiatives seem to be acknowledged by DWLBC when in their same submission there is reference to coordination, cooperation and improvement:

The DWLBC considers that the coordination of whole of government emergency management activities is a vital function. With recent changes to the Security and Emergency Management Office (SEMO), the role of SAFECOM as a coordinating body increases in importance. Without effective coordination there is a danger of fragmentation and/or duplication of effort across government, and there is lesser opportunity to deliver integrated mitigation, response, and recovery. For example, the hazard leader programme established by SEMO and continued under SAFECOM, is beginning to show significant results. For example, the consultative approach taken to the development of the Flood Hazard Plan and associated documents has received very positive feedback from SAFECOM as an exemplar for other hazard areas.

The SA Water submission (through the Hon. Karlene Maywald MP) also refers to the initiatives leading to improved planning and responses:

During the past two years there has also been a more integrated approach to bushfire management and prevention, particularly in the Mt Lofty Ranges land holdings, with greater cooperation between the key government agencies.

In terms of recovery, a submission from the Department of Trade & Economic Development (through the Hon. Karlene Maywald MP) drew attention to the support from the SA Government following the Eyre Peninsula bushfires in 2005 through an allocation of \$6m, including Emergency Assistance Grants, Farm Business Assistance Grants, Small Business Grants, transport subsidies for donated fodder and a Special Assistance Package to support community recovery initiatives. An important dimension of this response, the submission pointed out, was the coordinated approach to maximise the disaster recovery effort.

TOR # 3

Evaluate the capacity to which landowners and other people outside the emergency services sector can take action to protect life and property from a fire burning out of control.

‘Proper Land Management Principles’

Section 83(3) requires the owner of private land in the country to take reasonable steps to protect the property from fire etc. and to “... take into account proper land management principles”. Section 84(2) in relation to councils, and Section 85(2) in relation to Crown land, make similar references to “proper land management principles”. As one submission points out, there is no definition or interpretation of what this means. It appears that there is a working definition at policy level but as the submission also pointed out, it is in need of updating.

It was suggested that the references to “proper land management principles” be replaced with a more relevant and contemporary term such as, “sustainable land management principles” and that a definition of this term be included in the FES Act.

The SA Farmers Federation submission referred to Section 83 and contended that subsection (3) referring to the owner of private land in the country being required to “... take into account proper land management principles” conflicted with subsection (4)(b) of the same section which relates to the issuing of a notice if a responsible authority believes that, “... conditions on private land are such as to cause an unreasonable risk of the outbreak of fire on the land, or the spread of fire through the land”. On the face of it they do not appear to conflict as subsection (3) requires a certain standard of land management to take place and subsection (4)(b) provides the authority to issue a notice if conditions present an unreasonable risk of the outbreak of fire.

It would appear that this whole area requires fresh examination especially in light of the balance that has to be struck in terms of balancing fire safety measures with good farming practices. The SA Farmers Federation put it this way:

It is important that farmers are not penalised for normal farming practices, even though these may not be the most effective for bushfire prevention.

As an example, a majority of grain growers have moved to minimum tillage rather than the previous practice of fallowing. This usually includes stubble retention, which is now considered a good agronomic practice though the fire risk increases.

It must also be noted that farming practices are continuously changing, sometimes with State Government encouragement such as with Natural Resource Management and Native Vegetation legislation, which conflicts with minimising fire risks.

Where landholders have scrub, they are increasingly being restricted on what they can do, including periodical burning. These restrictions could well maximise the fire risk.

This part of the FES Act will need to be examined closely to ensure that a balance is found between good farming practices and reducing the risks of fire.

Whether the FES Act has to be changed or whether the issues mentioned above can be resolved through policy and procedure is not entirely clear. It is critical though that this be resolved.

The Wangary Coronial Inquest considered these issues at length and handed down its findings and recommendations on 18 December, 2007. The Deputy Coroner recommended:

29.9(1) ... The Minister for Emergency Services, the Chief Officer of the South Australian Country Fire Service, the President of the Farmers' Federation of South Australia and the Minister for Local Government, with a view to developing a Code of Practice, establish a body to investigate the impact of existing farming practices on bushfire risk and prevention.

29.9(2) ... The Minister for Emergency Services cause independent scientific or other research to be undertaken to identify the effects of continuous cropping, minimum tillage, direct drilling seeding practices and of the retention of cropping stubble, in respect of bushfire risk and prevention.

29.9(3) ... The Minister for Emergency Services cause independent scientific or other research to be undertaken to establish means by which risk of bushfires, as created by continuous cropping, minimum tillage, direct drilling seeding practices and the retention of cropping stubble across the landscape, can be minimised.

These are issues which are now being addressed by the Wangary Coronial Inquest Working Party.

Recommendation 10: Provisions in the FES Act relating to “land management principles” be reviewed in consultation with appropriate agencies and having due regard to the recommendations of the Wangary Coronial Inquest.

Initiatives for the Benefit of Landowners

Bushfire mitigation and building community resilience to bushfire occupy a significant part of the FES Act (Divisions 7 and 9). As the SACFS submission pointed out, following the Wangary bushfires both the CFS Project Phoenix and the Independent Review by Dr Bob Smith highlighted the fact that the fire prevention legislative framework needed review. As a result, the Minister for Emergency Services instituted a review of the bushfire prevention and mitigation in SA. This review and its recommendations in terms of prevention, preparedness, response and recovery (PPRR) has been dealt with under TOR # 2.

The SACFS submission referred to specific initiatives for the benefit of landowners.

CFS has continuously improved the provision of information into the community. Through new funding in 2005, CFS extended the successful “Community FireSafe” and “Bushfire Blitz” programs to more rural communities, particularly in the Lower Eyre Peninsula and the Lower South East. CFS continues to grow its relationship with the national broadcaster, ABC. Each year a formal MoU is reviewed and improved processes adopted between CFS media and the ABC. ABC plays a key role in the provision of real time bushfire information messages and bushfire warnings.

More recently, CFS has moved to convene public meetings in and around bushfire areas whilst the fire is still burning. The result has been a community that is better informed, understands the actual risks and takes their own action to mitigate that risk.

A core philosophy for bushfire risk management is the implementation and promulgation of the "Prepare to Stay and Defend, Or Go Early" policy. This is a national community bushfire safety policy that is based on many post fire and human behavioural research papers. The philosophy and policy are endorsed through the Australasian Fire Authorities Council and by the State Emergency Management Committee (SEMC).

Three further specific areas are of note:

Firstly: since the Premier's Bushfire Summit, CFS and Planning SA have jointly worked to define a new Planning Amendment Review (PAR) to increase the number of 'Bushfire Prone Areas' in SA. (Within 'Bushfire Prone Areas' the requirements of AS 3959 – construction standards for dwellings in bushfire prone areas – can be called up by the planning authority.) In 2003, there was only one 'Bushfire Prone Area' in SA (the Mt Lofty Ranges). By early 2008 'Bushfire Prone Areas' have been extended to parts of the Eyre Peninsula; Mid North; Kangaroo Island; Lower South East and Fleurieu Peninsula. The provisions of the Australian Standard go to the heart of instilling community resilience to bushfire and reducing the reliance on emergency services.

Secondly: CFS has worked with the SA Farmer's Federation to develop guidelines for the operation of farm fire units at bushfires. These have been implemented, had a post implementation review and continue to be promulgated through a number of avenues. This is another example of increasing community resilience.

Thirdly: CFS has also worked with SA Farmer's Federation and Agricultural Bureaus to develop specific guidelines for minimising the risk of fires during harvesting operations. A draft set of guidelines has been issued and these will be reviewed after a trial this fire season.

Each of the above examples typifies a systematic risk based approach to fire risk management in the State. Moreover, these examples highlight the time consuming and highly consultative and collaborative approach that is necessary when considering changes of this nature in the community.

Finally, CFS has been working with SAFECOM Emergency Management staff to improve the level of community safety in indigenous communities. Progress in this area has been slower than desired. However CFS has formed a new brigade at Nepabunna Community and in conjunction with SAFECOM, risk assessments are being carried out in a number of other communities. A future challenge in this area is to obtain additional resources to implement the findings of risk assessments.

It is the CFS view that individual private landowners can, and will, play a greater role in protecting life and property through better resourcing (in particular, of public education and community awareness programs).

Current Provisions and the Need for Amendments

Several submissions were received about the confusion and administrative difficulties brought about by the provisions of Sections 56 and 83.

Both sections are directed at addressing exactly the same problem and there is no reason why they should be separate. The need to resolve this by bringing them together becomes even more obvious when it is noted that while addressing the same problem they provide different approaches and remedies.

Section 56 with the short title 'Fire prevention on private land' provides powers to persons appointed under the *Local Government Act, 1999* to give notice to owners of private land to take specific action to remedy conditions on that land that cause an unreasonable risk of the outbreak of fire due to the presence of flammable undergrowth or other flammable or combustible materials or substances.

Section 83 with the short title 'Duties to prevent fires – Private land' provides powers to a council (within a council area) and to the SACFS (outside of a council area) to give notice in similar circumstances to those mentioned above in Section 56. Section 83 has an additional provision which requires the owner of private land in the country to take reasonable steps to protect property on the land from fire and to prevent or inhibit the outbreak of fire on the land, or spread of fire through the land.

The sections are unnecessarily duplicative. They should be brought together under one section so as to have uniform provisions relative to: penalty for non-compliance relative to taking reasonable measures on the land; power to direct; the process of delivery of the notice; failure to respond to the notice; the power to enter land; and the appeal process.

Recommendation 11: Sections 56 and 83 be repealed and replaced with a single section which unifies their provisions.

Powers of Entry

Practitioners in the field called for powers of entry into premises to be included in Sections 56 and 83 so as to allow the relevant authorities to enter land after a failure of a landowner to comply with formal requirements relative to flammable undergrowth and flammable combustible materials/substances. The point is made that the sections only empower an authorised officer to enter and inspect the land and do not give the power to break into land or to buildings which might be storing dangerously flammable material.

This makes sense. As a formal control over this power it was also suggested that the power to break into land or a building should be under the authority of a warrant signed by a justice of the peace.

Recommendation 12: Sections 56 and 83 (amended as suggested above) include the facility to issue a warrant for the relevant authority to break into land or buildings to carry out requirements regarding flammable undergrowth or material; and that costs and expenses in doing so are recoverable.

A similar situation exists with Section 92 which provides that an authorised officer after giving reasonable notice to the occupier of land or premises can enter the land or premises for the purpose of determining what measures have been taken for the prevention, control or suppression of fire or for the prevention of, or for dealing with, the escape of hazardous materials. There is no power to break into the land or premises.

Recommendation 13: **Section 92 include the facility to issue a warrant for the relevant authority to break into land or buildings for the purposes of determining what measures have been taken for the prevention, control or suppression of fire or for the prevention of, or for dealing with, the escape of hazardous materials; and that costs and expenses for doing so are recoverable.**

Other Issues

The CFSVA submission expressed serious concern that landowners would seek amendments which would allow them to 'light up' a fire break to protect their properties if they had reasonable grounds for anticipating that fire might impact on their property. The CFSVA is strongly opposed this believing that such provisions would result in the potential for uncontrolled fires and as a consequence increased risk to life and property.

One District Bushfire Prevention Committee in its submission put it this way:

We do not support the involvement of landholders in fire fighting (i.e. Response). We believe the appropriate involvement for landholders is in Prevention and Preparedness. From our perspective Prevention and Preparedness should evolve in a structured manner in appropriate contexts [i.e. certain rural areas] to incorporate community involvement in prescribed burning. However, that is an all together different concept from allowing landholders to undertake 'last minute burns' in an emergency situation, which we believe to be inappropriate and unsafe for both landholders and CFS volunteers.

The submission concluded:

The concept of prescribed burning involving landholders is a complex issue arising from the Prevention Management Review. It has implications for other legislation, including the Native Vegetation Act.

This, of course, is true and that is why it occupied a significant part of the Wangary Coronial Inquest and was the subject of several recommendations of the Deputy Coroner. These are referred to in 'Initiatives Specific to the Wangary Coronial Inquest' in this Review.

TOR # 4

Analyse the constitution of the Commission Board the ability of the current arrangements to implement Government policy and reforms implicit in the legislated power and functions of the Commission.

Current Provisions

In terms of governance, it is clear that the legislature intended that the non-operational aspects of emergency services sector be conducted on a philosophy of shared services. This is done through the establishment of a Commission (Section 6); prescribing the Commission's non-operational functions (Section 8); and establishing the SAFECOM Board to govern the Commission (Section 10).

The Board is constituted by four voting members and four non-voting members. The voting members are:

- the CE of the Commission as presiding member; and
- the three Chief Officers of the ESOs.

The non voting members are:

- a person nominated by SAVFB (now CFSVA);
- a person nominated by SASESVA Inc.; and
- two persons appointed by the Minister because of their knowledge/experience in commerce, economics, finance, accounting, law or public administration. (Section 11)

The extent and limitations of the Board's authority are set out in Section 8. They are clear and unambiguous so that Board members are in left in no doubt about their role, function and expectations. This has allowed the Board to establish goals and targets to meet the Board's purpose and there is evidence (as shown above under previous TORs) of the progress.

SAFECOM Governance Principles and Protocols

The SAFECOM Board has well established principles consistent with its role and function under the FES Act:

Principles established by SAFECOM are:

- ensuring governance and accountability of the sector;
- providing a properly integrated network of emergency services based on equitable assessment of community risk;
- consolidating support services within a unified emergency services sector;
- establishing strategic alignment of the emergency services with the common goal of enhanced community safety;

- enhancing community safety by providing balanced focus on prevention, preparedness, response and recovery services by the Emergency Service Organisations, i.e. CFS, MFS and SES;
- pursuing opportunities for efficiencies and reforms and reinvesting savings within the sector; and
- enhancing participation and support of volunteers from within local communities.

These principles of corporate governance are consistent with the object and intent of the FES Act. The SAFECOM Board has facilitated these principles through a Governance Policy and a Commission Charter.

The stated purpose of the Board's Governance Policy is to:

- provide a framework of sound corporate governance across the emergency services sector in accordance with Section 8 (1)(b) of the FES Act;
- identify and articulate the responsibilities for making and implementing decisions of the Commission;
- identify and articulate requirements for reporting to the Board;
- ensure the governance framework provides for control structures, risk management, strategic planning and business planning;
- provide for a risk and audit committee; and
- establish the Commission's values and code of conduct.

The Commission is required to prepare a charter relating to its functions and operations and present a copy to the Minister which will then be publicly available (Section 8 (3) and (4)). Though not defined in the FES Act, an organisational charter should:

- set out its principles;
- define the role, purpose and function especially in relation to the community it serves;
- include its authority and limitations; and
- provide focus and aligned properties.

The SAFECOM Charter, dated 23/07/07 has been prepared and sent to the Minister. It clearly meets all of the expectations of an appropriate and relevant charter. It includes The Minister's Message; SAFECOM Chairman's message; SAFECOM Governance Framework; Vision; Mission; Guiding Principle; Goal; Strategic Themes; Functions; Values; Approach; and Commitment to the Community, Government, Emergency Service Organisations, Staff and Volunteers.

Features of the SAFECOM Charter are its clarity and focus.

There are, however, issues that arise which need to be addressed. While the governance principles and procedures are in place, the composition of the SAFECOM Board appears illogical and confusing since it comprises both governing and advisory elements. It is in effect a hybrid.

Principles of a Board of Governance

Corporate governance is the way in which an organisation is directed and controlled in order to achieve its objectives in an environment of an acceptable degree of risk. This is certainly the basis of an understanding of the concept as outlined in the *Dawkins Report*.

Dealing specifically with corporate governance of statutory authorities and office holders, including government boards, the *Review of Corporate Governance of Statutory Authorities and Office Holders* (Uhrig Review), stated while there is no universally accepted definition of corporate governance:

Governance encompasses the arrangements by which the power of those in control of the strategy and direction an entity is both delegated and limited to enhance prospects for the entity's long-term success, taking into account risk and the environment in which it is operating.
(Uhrig, 2003:9)

An advisory function and the role of advisory board's role on the other hand, the *Uhrig Review* pointed out:

Should be to contribute a business and broader community perspective to improve the implementation of government policy [and] should report directly to the Minister with its findings.
(Uhrig, 2003:72)

Conceptually, the distinction between governing and advising is quite clear and it seems odd that the SAFECOM Board should comprise a combination of the two, especially when ideally the advisory function should be independent and separate. (The Advisory Board is specifically addressed under TOR # 5.)

Evaluation of the SAFECOM Board

While the four voting members on the SAFECOM Board, because of their voting rights, have a distinct role in the governance of the Commission, the function of the non-voting members is less clear. The two persons appointed because of their knowledge/experience might logically be expected to be advisors to the four decision makers on the Board just as the two members nominated by the voluntary associations might be assumed to be appointed so as to provide a volunteer's perspective. However, their functions are not set out in the relevant section.

The role of the four non-voting members has simply been assumed and never specifically addressed in the operation of the SAFECOM Board. Interestingly, minutes of the Interim Board at a meeting on 29/8/05 referred to the four non voting members as, "... two ministerial appointments and the *two observers*." The FES Act in establishing a separate Advisory Board (Section 18) and its apparent duplication of the advisory function of the non-voting members on the SAFECOM Board may have given rise to this confusion.

Notwithstanding (and subject to what is set out below) submissions relative to the appointment of the non-voting members have been positive and there have been worthwhile contributions by them to the Board. The two members appointed because of their knowledge/experience have been helpful in using their skills to present informal advice at the table, chairing sub-committees and presenting formal papers on matters

outside the expertise of the four voting members. Volunteer association members too have been of significant assistance in providing a volunteer's perspective.

Several aspects of the operation of the Board, specifically in relation to its constitution, have been raised by present and past Board members and others who have witnessed its proceedings since the introduction of the FES Act. These tend to confirm the reviewer's observations which are summarised below.

- The reasoning and decision-making process being left to the four voting members (despite having experts on the Board) fails to make full use of a wider perspective and gives the impression of a board of management rather than a board of governance.
- Some non voting members get the impression that issues brought to the table have been pre-decided.
- There was evidence of tension felt by Chief Officers about their difficulty in separating their statutory duties to serve the best interests of their organisation against their fiduciary duties to the Board – it was not uncommon to hear comments like, “If I were to put on my Chief Officer's hat ...”.
- There is the potential for non voting members to be marginalised and rather than being involved in reasoning and debate leading to a resolution being simply referred to for advice or opinion.
- Some non voting members noted a lack of rigour in the agenda which allows operational and lower level matters to be introduced.
- Having association members on the Board brought about a situation where important issues were not brought to the table because of their sensitivity.
- Some non voting members believed that if they had full voting rights they would have demanded more information/evidence to substantiate some of the resolutions.
- There was a feeling of frustration by some non voting members about not being able to contribute to the final decision.
- There is a serious communication gap between the SAFECOM Board and the Advisory Board.

These observations, together with concerns raised in some submissions, give rise to considerations of the title of the Board; the chair; its composition; voting rights; and size.

Title

Section 3 – Interpretation provides: “Board means the board established as the governing board of the commission under Part 2 Division 3” (The SAFECOM Board).

Under Part 2, Division 3, Section 10 refers to the Commission being “... managed and administered by a board established as the governing body of the Commission under this Division”.

Section 3 does not provide a definition of the Advisory Board.

Under Part 2, Division 5, Section 18 provides for the establishment of the, “Fire and Emergency Services Advisory Board (the Advisory Board)”.

The word 'Board' is referred to in several places in Part 2, Division 3 and by virtue of the definition in Section 3 means the SAFECOM Board. Where in Part 2, Division 5 there are references to the Advisory Board that full title is used.

From a pure statutory interpretation point of view the distinction between the two boards is clear, but to a reader not entirely familiar with the general provisions of the FES Act, references to 'Board' when there are provisions for two Boards in the FES Act could cause some confusion. In terms of the expectations of the FES Act in terms of governance the title Board is entirely appropriate for the SAFECOM Board. It implies an established structure and process, so designed to empower its members to fulfil their statutory obligations.

If it were considered appropriate to change the title of the SAFECOM Board or the Advisory Board it would make much more sense to change the latter. This is discussed in TOR # 5 below.

Whereas there were several submissions relating to the composition and other aspects of the SAFECOM there were none which specifically took issue with its title.

The Chair

The CE is the chair of the SAFECOM Board (Section 11(1)). Direct observations of the conduct of SAFECOM Board proceedings, and also by reference to its minutes, support the appointment of the CE as chair. Mr. Vince Monterola AFSM JP, as chair of the Interim Board and the inaugural Board, demonstrated extraordinary skills, sensitivity and diplomacy in introducing and developing the new governance model for the sector. This was a particularly difficult task in light of the issues referred to above. Credit too must be paid to the three chief officers in the way they approached their new roles as Board members, especially since there was a lack of clarity (as they saw it) in their new governance role.

The succeeding chair has also enjoyed some significant achievements, a task made much easier because of the foundations set up by his predecessor. The appointment of the CE as 'Commissioner of Fire and Emergencies' produced some tensions on the Board because of what some of the Board members considered as an increase in authority without legislative support. Again, to the credit of the chair, this has been managed extremely well. Reference is made above in TOR # 1 about confirming the position of Commissioner.

While there were many submissions calling for changes to the composition of the Board, few called for changes to its concept or the chair. The provisions as they currently exist for the presiding officer should remain.

Composition

While the advisory role is critical in meeting the spirit and object of the FES Act it is best separated from the governance function and allowed its independence and ability to report direct to the Minister. As the *Uhrig Review* noted:

Another common basis for appointment to public sector boards has been the representation of stakeholders ... Such appointments are said to help the board

ensure that it is well briefed on all interests in evaluating the strategies of management. ... The review considers that while these types of appointments are appropriate for advisory boards, for governance boards they fail to produce independent, critical and objective thinking.
(Uhrig, 2003:37)

Accordingly, I do not agree with one submission which proposed the Board place governance entirely in the hands of stakeholders who, it was suggested, could include Local Government Association, Justice Portfolio, Department of Treasury and Finance.

Both from a conceptual and practical level the provisions for the two volunteer association representative appointments should be removed. The CFSVA submission is well made in that:

Volunteer representation throughout the SAFECOM structure has and will continue to bring a crucial perspective that must not be allowed to be eroded.

However, this is best achieved as members of the Advisory Board and not as the CFSVA would prefer in retaining the volunteer associations on the SAFECOM Board (together with a UFU representative).

Given the observations above about the lack of breadth in decision-making, there would be benefit in introducing another independent voting Board member to take the size of the Board to seven. The perceived shortcomings of the link between the SAFECOM Board and the Advisory Board are discussed under TOR #5 later and conclude that this additional member be the presiding member of the Advisory Board.

Voting Rights

A further, and most obvious way to increase the breadth of decision-making, is to remove the limitations of the non voting members so as to allow them full voting rights and the unfettered ability to exercise their skills and experience in the deliberation of all matters before the Board.

Size

The removal of the two association positions would reduce the size of the Board to six. If the Chair of the Advisory Board, as discussed above, is included, there would be seven. In terms of numbers on a Board, the *Uhrig Review* noted there is no set formula to determine the right size and that considerations should include the size, complexity and risk of the entity's operations and the needs of the Board.

Boards operate best with numbers between six and nine as members within this range seem to be more easily able to create an environment for the active participation of all members. Boards with less than six members may have difficulty in meeting their statutory responsibilities due to workload pressures and the potential lack of breadth of views.
(Uhrig, 2003:74)

With the positions for the volunteer associations removed and the inclusion of the Chair of the Advisory Board, the SAFECOM Board would then comprise:

- the Commissioner of SAFECOM as presiding member;
- three Chief Officers of the ESOs;
- two members outside of emergency services appointed according to their knowledge of, or experience in the fields currently stated in the legislation; and
- the presiding member of the Advisory Board.

Recommendation 14: Provisions in Section 11(1)(e)(i) and (ii) relating to appointments of volunteer associations to the SAFECOM Board be removed.

Recommendation 15: The presiding member of the Advisory Board appointed under Section 18(4) be also appointed as a member of the SAFECOM Board.

Recommendation 16: All members of the proposed reconstituted Board be given full voting rights.

Reconciling the Role of Government with Legislative Intent

The Minister is responsible to Parliament for the administration of organisations in the emergency services sector and for the proper administration of the FES Act. The Minister is also responsible to Parliament for the proper discharge of such powers as are committed to him/her in the role as Minister. (Selway: 1997:80)

The extent to which the Minister can direct or influence the activities of a governance board depends on the legislative framework of the FES Act and enabling legislation. Under Section 7 the Commission is subject to the control and direction of the Minister. A direction given to the Commission must be in writing, and within six sitting days a copy must be laid before both Houses of Parliament. Since the Commission is managed and administered by the SAFECOM Board as its governing body (Section 10), a direction to the Commission can be assumed to be a direction to the SAFECOM Board (but not to individual members). Generally speaking, a 'direction' is seldom used by Ministers. Since the FES Act has been in operation there has been no direction by the Minister to the Commission.

As a general practice and so that the SAFECOM Board members understand the expectations of Government including the outcomes for which they will be held accountable, the *Uhrig Review* recommended that a "Statement of Expectations" should be prepared by the Minister so as to:

Provide greater clarity about government policies and objectives relevant to a statutory authority, including the policies and priorities it is expected to observe in conducting its operations. A statement would, not however, seek to impinge on the level of independence or objectivity provided to an authority under legislation, and accordingly would need to be consistent with the power provided to a Minister under the legislative framework of the relevant authority.
(Uhrig, 2003:49)

This is eminently sensible and consistent with the Minister's role in providing a governing board with policy advice, strategic direction and use of resources. Though not expressed in terms of a 'Statement of Intentions,' there is evidence that the Minister for Emergency Services has adopted this practice on at least one occasion. For example, she reminded the SAFECOM Board and the ESOs in August, 2006 of the specific issues they would have to address to consolidate corporate functions.

While the Minister's authority to direct the Commission is clear and specific, the FES Act is silent in relation to such an authority in relation to the Chief Officers of the three ESOs. In interviews with the CE, SAFECOM and the Chief Officers, it was evident there were different interpretations about the power of the Minister to direct Chief Officers. While it was abundantly clear to them that the Minister could direct the Board but only insofar as it related to matters of the Board, there was less certainty about a direction by the Minister to a Chief Officer.

With a view to determining the Chief Officers' understanding on this point the following question was put to each of them:

If Section 7 provides that the Commission can be subject to the control and direction of the Minister, where, if at all, is there a provision for the Minister to direct and control a Chief Officer?

The answers varied considerably. They included:

In short the answer is 'no' but I assume if you can appoint, you may be able to 'unappoint'.

I can find no direct reference to the Minister giving direction to a Chief Officer or exercising control over that officer. However, since the Chief Officer "will be appointed by the Minister" surely that implies control and direction.

There is no provision for the Minister to direct and control a Chief Officer. Indirectly there is some influence by the Minister in that the Chief Officer is, "... appointed by the Minister after taking into account the recommendation of the CE of the Commission" (S.60(2)) The Minister may however, by virtue of the employment agreement and arrangements influence some indirect control (either implied or explicitly) [and] the Position Information Document [states that the incumbent] "... reports to the Minister for Emergency Services [and] whilst not implying that the incumbent is subject to direction, it is clear that the Chief Officer will have a regular reporting relationship with the Minister.

I believe this comes through the agencies being statutory authorities or crown corporations. As the Minister is the corporation by definition ... the Minister may also delegate this authority to the Chief Officers and through the process of delegation, also direct the Chief Officers.

The important message from this is that there is a significant degree of uncertainty about whether (or the extent to which) the Minister can direct and control a Chief Officer. Given the Chief Officers at times find themselves in situations where prompt decisions have to be made, there should be no uncertainty about the extent to which they can be directed or controlled by the Minister.

The question of whether there is power in the FES Act for the Minister to direct is a matter of law, but if there is no power it emerges as a matter of policy whether the Minister should have that authority. In concluding that the Minister should have this power, the following observations were made:

- as a fundamental principle, since the Minister is accountable for the performance of departments, the power to direct and control (except for those distinctly operational matters) is essential.
- it is not sufficient for the Minister to have the authority to direct and control through the Board only, since there are many non-operational matters considered and decided by the Chief Officers which never reach the Board;
- emergency service matters are notoriously difficult in being identified as either operational or non-operational and even with amendments to the FES Act to define this delineation (as recommended above in TOR # 1) there will always be situations where the division is open to different interpretations. It is likely, for example, that some matters will be interpreted as operational by a Chief Officer and non-operational by the Minister (or vice versa).
- relying solely on an employment contractual agreement for an authority to direct and control (through the power to appoint and dismiss) is too loose an arrangement as it has no statutory foundation.

This aspect of the FES Act remains unclear, certainly to the key decision makers on the SAFECOM Board and it needs to be addressed. Crown Law opinion should be obtained to determine whether the Minister has the power to direct and control individual Chief Officers and if it is found that this is not the case then the FES Act should be amended to include this provision.

Recommendation 17: Crown Law opinion be obtained to determine whether the FES Act gives the Minister power to direct and control individual Chief Officers and if that provision does not exist then the FES Act be amended to include that power.

TOR # 5

Evaluate the degree to which the Advisory Board contributes to the achievement of the Commission's goals.

Current Provisions

The Fire and Emergency Services Advisory Board is established by the Minister (Section 18(1)) to provide to the Commission and ESOs advice on matters relating to prevention, preparedness, response and recovery (Section 18(2)(a)); advice to the Minister, Commission and ESOs on matters within the emergency services sector, particularly in relation to matters affecting volunteers (Section 18(2)(b)); and advice to the Minister, Commission and ESOs on any matter referred (Section 18(2)(c)(i)-(III)).

The Minister appoints all Advisory Board members:

- 1 presiding member who must be independent of the Commission, the emergency services and the Associations;
- 1 retained firefighter on the joint nomination of the Chief of SAMFS and UFU;
- 2 members nominated by SAVFBA (now CFSVA);
- 2 members nominated by SASESVA;
- 1 member nominated by Local Government Association (LGA); and
- 1 member nominated by United Firefighter Union of Australia – SA Branch (UFU). (Section 18 (3)(a)-(f) and (4))

All of the members excluding the UFU representative have full voting rights (Section 18(12)).

The Advisory Board had its inaugural meeting in March 2006 and has met once a month since. During that time, the Chair advises that it has considered a number of issues that have been referred to it by the Minister for Emergency Services and the Commission, and has, "... of its own volition considered a wide range of issues that it considered to be within its remit".

The Advisory Board submission attached minutes from the meetings and a table of contents which refers to agenda items. Unfortunately, these did not summarise the total amount of matters referred nor the number of matters actually resolved.

Principles of an Advisory Board

Ideally an advisory board should comprise representatives from key parts of the industry so as to provide the governing body a genuine perspective that can contribute to final corporate decisions. An advisory board, therefore, should be independent of a governing board but sufficiently close in time and space so as to provide advice when required.

A Government Advisory Board should:

... contribute a business and broader community perspective to improve the implementation of government policy. An advisory board would assist a Minister in testing the potential impact of policies on the community and identify opportunities to implement policy more effectively. Where an advisory board is appropriate (a decision depending on the nature of policy being implemented and on whether other policy consultative mechanisms are in place and are working effectively) the board should operate based on references from a Minister and should report directly to the Minister with its findings.
(Uhrig, 2003:72)

As discussed under TOR # 4, the advisory role is distinct from the governance role and there is a need to separate them. It was recommended, therefore in TOR # 4 that the provision for the two association representatives on the SAFECOM Board be removed since they are more appropriately placed in the Advisory Board.

Membership of the Advisory Board should include those persons or organisations who have a legitimate interest in the emergency services sector and who are able to contribute a relevant and worthwhile perspective that can assist the Minister in the application of policy and the SAFECOM Board on matters of governance.

Evaluation of the Advisory Board

By every test the Advisory Board since its inception has neither met the expectations of the FES Act nor satisfied staff and volunteers in terms of its advocacy. It must be said that blame was not entirely directed at its members since the Chair/s and the Board's appointed members were seen by most to have acted to the best of their ability. This Review, therefore, examined the provisions of the FES Act and the processes of the Advisory Board in an attempt to uncover why there were so many deriding comments which included that the Advisory Board "... has had little or no impact on the Commission goals," or "... has been dysfunctional".

Consultation with current and past members of the Advisory Board, its current chair and many others who have had dealings with the Board, uncovered a strong view that changes are urgently needed if it is to provide meaningful contributions to the deliberations of the SAFECOM Board. From these representations and observations it was noted that:

- the composition of the Board is inequitable since the UFU has no voting rights and excludes a worthwhile perspective;
- references by the SAFECOM Board to the Advisory Board have been infrequent and irregular;
- providing advice or raising issues from the Advisory Board to the SAFECOM Board have been infrequent;
- there is no formal process which insists on advice before governance decisions are taken in the SAFECOM Board;
- matters referred by the Advisory Board to the SAFECOM Board are rarely pitched at the appropriate corporate level;
- Advisory Board members are not sufficiently informed about proceedings before the SAFECOM Board;

- communication between the SAFECOM Board and the Advisory Board is slow and cumbersome with issues taking many months to be considered and resolved;
- there was over emphasis on protocol and procedure at the expense of concentrating on the provision of advice; and
- proceedings in the Advisory Board tend to have members inappropriately focus on individual ESO issues rather than the emergency services sector. One submission suggested “The Advisory Board is almost entirely representational, therefore it is not unexpected that members would tend to bring their ‘own agency’ interests to the Board (as distinct from a Governance Board who should think as a Board first”).

Every person and organisation that contributed a point of view about the Advisory Board believed that the advisory function is a critical part of the governance model in emergency services. The submission which suggested the Advisory Board be ‘disbanded’ went on to explain that this referred to its current form and that it should be changed so as to provide meaningful advice to the SAFECOM Board.

Suggestions for improvement related to: its title; appointment of the chair; its relationship to the SAFECOM Board, its composition; voting rights; and process for nominations.

Title

Regarding its title, one submission suggested the Board be renamed as a council with a view to raising its status while another preferred it to be a committee (in effect a sub-committee) of the SAFECOM Board. Someone who is not familiar with the FES Act would be confused about references to the two boards (with SAFECOM in the FES Act often simply referred to as the Board). As one submission put it “At the outset, the existence and name of the Advisory Board has potential to create confusion about governance responsibilities in the sector and the role of the Advisory Board versus the Commission Board.”

Given the reasoning for the distinction between a board of governance and an advisory board, it would seem inappropriate to provide the advisory function to the SAFECOM Board through a sub-committee. Instead, the advisory function should be separate and its chair should have the facility to deal directly not just with the SAFECOM Board, but also with the ESOs and the Minister (as it is with the current FES Act).

Re-naming it an Advisory Council has some merit if this imputes high status but in essence there is not much difference in the meaning of the two terms – the general dictionary meaning of ‘counsel’ includes an assembly or meeting for consultation, advice or discussion; and the meaning of ‘board’ includes a group of persons having managerial, supervisory, investigatory or advisory powers. To change the title could be seen as change for change’s sake.

The Chair

The chair, or the presiding member of the Advisory Board, is appointed as a person who, in the opinion of the Minister, is independent of the Commission, the emergency services organisations, and the associations that represent the interests of members of the emergency service organisations (Section 18(4)). The intent of the FES Act is clear in that the presiding member be free from potential bias or a specific organisational interest. The CFSVA submitted:

The [appointment of an independent chair] has resulted in appointments of Chairpersons who, through no fault of their own, have little knowledge or experience of the services, the sector, or the emergency services volunteers and career staff. This has been to the detriment of the Advisory Board, which has achieved little since its inception eighteen months ago.

It would be wrong to attribute weaknesses in the operation of the Advisory Board to the chair. Indeed, CFSVA's view was certainly not supported in other submissions and there were complimentary comments about the chair. That the CFSVA recommended the chair be elected from the committee on a two year rotational basis is ironic since a significant problem identified with the Advisory Board was its inordinate focus on single ESO issues at the expense of the sector. Having an independent chair introduces objectivity and essential draws together the inevitable disparate points of view.

Relationship to the SAFECOM Board

There were numerous concerns about the link between the SAFECOM Board and the Advisory Board to the extent that many felt that the Advisory Board had been relatively ineffectual. A major cause was the time it took for referred matters to be resolved. The two Boards each meet only once a month and communicate formally by report or letter resulting in huge delays in the resolution of issues. This was a serious area of concern from Advisory Board members and as a consequence considered that their role and purpose was undervalued by the SAFECOM Board. To add to that there seemed to be no regular process from which the SAFECOM Board as a matter of form would refer matters to the Advisory Board for comment. These seemed to be *ad hoc* and without any established criteria. Once again the reason for this may have been largely due to the delay this would have caused in getting from one to the other.

One sensible way of providing a meaningful and timely link between the two Boards would be to have the presiding member of the Advisory Board appointed as a full member of the SAFECOM Board. That way there would be not just a timely representation of advice on behalf of the Advisory Board but also a formalised process which would provide advice as a matter of course for all matters decided.

There is merit too, as suggested in one submission, that there be a standing item on the SAFECOM Board for advice from the Advisory Board – in effect, an impact statement. Advice from the Advisory Board should not be restricted in any way and its chair should be encouraged to provide advice not just on the issue at hand but also its emphasis, importance and focus.

In terms of providing advice there is no doubt that the (SACFS) Chief Officer's Advisory Council (COAC) has been extremely successful in terms of its energy, commitment, and relevance. It would be difficult, however, to agree with the submission from SACFS that since this has proven to be an excellent forum that each ESO adopt the same model. To do so would reinforce the propensity towards maintaining organisational silos.

Composition

Regarding composition and membership, with the CFSVA and the SASESVA having two positions each on the Advisory Board implies intent in the FES Act that a principal area of attention should be on volunteers. It effectively increases their voting rights and

consequently a greater chance of resolutions in their favour being carried. That volunteers are duly represented is, of course, critical and since they represent the greater part of the service, the provisions should be left as they are.

Voting Rights

The voting rights of the Advisory Board lack logic and was the subject of criticism in every submission received. Specifically, the reason for excluding the UFU is difficult to understand. In terms of not just equity, but also allowing a relevant perspective would insist on allowing the UFU to vote.

Recommendation 18: **The UFU be given full voting rights on the Advisory Board.**

Nominations

Section 18(3)(c) and (d) provide that the two volunteers association members on the Advisory Board will be appointed by the Minister on the nomination of [CFSVA/SASESVA]. There were strong representations to the effect that these provisions, and the process that accommodates it, effectively overlook eminently suitable candidates. For a more comprehensive list of suitable volunteers, it was recommended that nominations be received from the Leaders Advisory Group (SACFS) and the Unit Managers Advisory Group (SASES). That the recommendations came from volunteers themselves adds weight to this proposal. The proposed changes appear appropriate, sensible and fair.

Recommendation 19: **So as to increase the pool of volunteers from which the Minister can appoint Advisory Board members, Section 18(3)(c) and (d) be amended to include nominations from the Group Committee (SACFS) and Unit Managers Advisory Group (SASES).**

Relevant to the above recommendation is the observation that while the Group Committee (SACFS) is recognised in Subdivision 2 of the Regulations there is no reference at all to the Unit Managers Advisory Group (SASES). It is possible at the time of drawing up the legislation that this group did not exist. However, it does now and it has an equivalent role and purpose with the SACFS group and should be recognised in the Regulations.

Recommendation 20: **The Regulations be amended to include appropriate references to the Unit Managers Advisory Group (SASES) consistent with those of the Group Committee (SACFS).**

TOR # 6

Examine the structure and the relationship between the individual agencies as legal entities and the Commission and make recommendations for improvement.

Unanimous Support for the Concept

This was seen by many as the most critical consideration of the Review and there was unanimous support for the retention of the ESOs as separate legal entities. Apart from this ensuring dedicated operational responsibility it also allows the Chief Officer as Chief Executive to exercise a number of statutory responsibilities, such as OHSW, WorkCover and audit.

Maintaining the separateness of these agencies was seen as being critically important for the ongoing effectiveness of operations and the management of specific skills relative to each ESO. In the FES Act the Chief Officer (SAMFS, SACFS, SASES) is responsible for the management and administration of (SAMFS, SACFS, SASES) and will, in undertaking this responsibility, also be the Chief Executive of (SAMFS, SACFS, SASES) (Sections 25, 58, 107). To have these provisions removed or reduced was seen by one submission to have “far reaching legislative, operational and organisational consequences”.

Supporting the retention of individual agencies as legal entities, one submission referred to the Coroner in the Inquest into the Canberra Bushfires, who in 2006 warned that:

Placing an agency within a government department puts unnecessary layers of bureaucracy between the agency and the responsible Minister, and the bureaucrats concerned usually have no special knowledge or experience in emergency management, regardless of their seniority in the bureaucracy.

Another submission stated:

It would be entirely inappropriate to integrate a full paid service with two volunteer services into a single emergency service. Apart from the resourcing issues, the mode of operation and culture of the services is significantly different and the conflict resulting from such an attempted integration would be highly counter-productive.

It would be unwise and impractical at this stage to interfere with the operational independence of each of ESOs. This distinct separateness in operational matters works well and is, in fact, a continuous feature from previous Acts.

The structure and relationship as it currently exists has been used to the advantage of the sector overall through the adoption of a lead agency model, notably the Call Response and Despatch system at SAMFS, Wakefield Street; the Urban Search and Rescue training facility at Angle Park Training Centre; CFS live fire training centre at Brukunga; and SES high angle rescue capabilities. With these successes it is anticipated that the lead agency model will be expanded, after due consultation and collaboration between the agencies, providing further improvements in emergency management planning and practice across the sector.

In the field, despite obvious cultural differences between the agencies, there was a keen sense of common purpose and appropriate interagency cooperation. This was evident despite:

- a strong cultural affiliation with one agency and seen as being 'different from the others';
- tasks being undertaken by one agency that sometimes overlapped with another;
- occasional informal demarcation disputes;
- personalities at times causing friction between brigades/units; and
- remuneration/reward disparities when volunteers worked alongside paid and retained staff.

As initiatives are undertaken to address issues like resource and work allocation duplications, they will have to be tempered against the impact this will have on volunteers and their strong territorial culture which makes them extremely fearful and resistant to change. With volunteers at the 'sharp end' this is understandable and approaches to maximise the use of resources through changes in work practices and boundaries will have to be cautious and duly consultative. This factor has obviously impacted on Board decisions where changes have been slow and deliberate.

In the field, most volunteers were found to be apprehensive, not just about changes generally, but also the prospect 'being taken over' by another agency. This figured prominently in the associations' submissions in their support for the retention of the separate entities, where they contended that volunteers considered initiatives in SAFECOM as being steps towards there being a "one fire service" model.

Effective communications is always a key component in an organisation if it is to be successful. Proposed changes have the potential to influence volunteer recruiting and retention and call for special consideration of how staff and volunteers are informed.

The only submission to recommend a single service was from the UFU:

The UFU believe the future of the South Australian Fire and Emergency sector is the consolidation of Emergency Sector Organisations. In doing so the UFU believes the South Australian Community will be best served by one single service; Fire, Emergency and Rescue Services operating through one operational entity.

In consultation with the UFU this was explained as their long-term vision rather than an immediate practicality.

Recommendation 21: Provisions remain in the FES Act relating to the emergency service organisations being separate legal entities.

TOR # 7

Analyse whether any of the elements of the FES Act could be more effectively established as subordinate legislation.

Use of Regulations

The provisions of the *Acts Interpretation Act, 1915* apply to both a principal Act and the regulations made under that Act (Sections 3A and 4 of the *Acts Interpretation Act, 1915*). An expression used in a regulation has, unless the contrary intention appears, the same meaning as in the Act under which it was made (Section 14 of the *Acts Interpretation Act, 1915*).

As Pearce and Argument outline in *Delegated Legislation in Australia*, the use of regulations as delegated legislation is (subject to certain safeguards) generally considered to be both legitimate and desirable since:

- **it saves pressure on parliamentary time** – on the basis that parliamentary sitting time is relatively scarce and as a result has limited time in which to debate/pass essential legislation - parliaments therefore tend to set the parameters of a particular area of legislative activity in an empowering Act, leaving the details to be worked by the executive in delegated legislation;
- **highly technical or detailed matters are not considered suitable for parliamentary consideration** –parliaments have neither the time nor the expertise to consider highly technical or scientific matters (although often use parliamentary committees) and this is left to delegated legislation; and
- **legislation is unable to deal with rapidly changing or uncertain situations** – where the amendment of primary legislation is ill-suited to situations requiring flexibility and responsiveness and where the environment in which the legislation operates is uncertain and rapidly changing – having delegated legislation allows the situation to be dealt with promptly.
(Pearce and Argument, 2005:6)

Pearce and Argument point out:

There have always been critics of the use (particularly the increased use) of delegated legislation and the fundamental notion that the parliament may delegate the power to make legislation to another body or person. The primary arguments directed against the use of such legislation have been, first that if the executive has power to make laws, the supremacy or sovereignty of parliament will be seriously impaired and the balance of the Constitution altered. Second, if laws are made affecting the subject, it can be argued that they must be submitted to the elected representatives of the people for consideration and approval.

They add:

The exercise of power can be checked and, if it is being misused, it can be withdrawn. There can be mechanisms to monitor the use of delegated powers. It

must be remembered that legislative power can only be delegated with the express authority the parliament.

(Pearce and Argument, 2003:6-7)

Submissions from agencies, organisations and individuals, particularly those operating in the field, drew attention to parts of the principal FES Act which might be better placed in the Regulations. These were considered in light of the above criteria.

Fires During Fire Danger Season

Section 79(1) provides that subject to subsection (2), a person must not light or maintain a fire in the open air during the fire danger season.

Section 79(2) provides that a "... fire may, subject to any other restrictions imposed under this or any other Act, be lighted or maintained in the open in the following circumstances". It then sets out several provisions which prescribe the circumstances under which a fire may be lit or maintained during the fire danger season. These are regulatory in nature and as pointed out by SACFS, circumstances under which the lighting or maintaining a fire could be allowed, could alter over time.

Recommendation 22: **Section 79(1) – provisions relating to lighting or maintaining a fire in the open air during the fire danger season be retained in the principal FES Act; Section 79(2) be amended to provide that a fire may be lit or maintained in accordance with the Regulations; provisions specifying the conditions under which a fire can be lit or maintained, and currently under Section 79(2), be placed in the Regulations.**

Fire Prevention Authorities

Sections 71–77 under Part 4, Division 7 set out the establishment and functions of the State, regional and district bushfire prevention committees and the appointment of fire prevention officers. Some of these provisions appear purely regulatory. Moreover, they have been the subject of the *Ministerial Review of Bushfire Management* (MRBM) which recommended several changes to the FES Act. There were also several recommendations in the Wangary Coronial Inquest which will have a bearing on this Division (See Recommendation 8 of this Review) and "Initiatives Specific to the Wangary Coronial Inquest" in this Review.

The implementation of the *Ministerial Review of Bushfire Management* should consider those provisions which are more appropriately placed in the Regulations.

Recommendation 23: **With the implementation of the *Ministerial Review of Bushfire Management*, consideration should be given to provisions within Part 4, Division 7 of the principal FES Act which would be more appropriately placed in the Regulations.**

Fire Extinguishers to be carried on Caravans

“A person must not use a caravan in the country unless an efficient fire extinguisher that complies with the regulations is carried in the caravan.” (Section 88)

SACFS believes this provision should be in the Regulations as it is predominantly regulatory and that additional conditions relative to caravans or similar vehicles may be necessary in the future.

Recommendation 24: **Section 88 – requirement to carry fire extinguishers in a caravan be removed from the principal FES Act and placed in the Regulations.**

Burning Objects and Materials

Section 90 provides penalties for persons (under specified circumstances) smoking in the open air; dropping or throwing a burning object or material from a vehicle; dropping or throwing any material capable of causing a fire in the country.

Again, this was seen by SACFS as a regulatory matter and more suitably placed in the Regulations.

Recommendation 25: **Section 90 – provisions relating to smoking, and throwing burning material, be removed from the principal FES Act, and placed in the Regulations.**

Establishment/Dissolution of SACFS Brigades/SASES Units

While the power to establish the SACFS Brigade/SASES Unit is appropriately placed in the principal FES Act, it has been recommended that the FES Act carry only the head of power for their establishment and dissolution and that the procedural aspects be placed in the Regulations. This appears well founded.

Recommendation 26: **Sections 68 and 116 – provisions relating to the establishment/dissolution of SACFS Brigades and SASES Units be amended so as to retain the head of power in the principal FES Act and that the procedural provisions within each of these sections be placed in the Regulations.**

TOR # 8

Recommend changes to the FES Act and the operation of the Emergency Services to better facilitate SAFECOM's role in Emergency Management planning and policy across the sector and from a whole of Government perspective.

Issues Giving Rise to Proposed Amendments

In the course of consultation with organisations and individuals, several submissions were received which referred to provisions that should be repealed or amended. These are outlined below.

Definition of Officer

The SASES submission was concerned that the position of 'officer' is too broad and should only refer to officers who are appointed to that position by the Chief Officer. The definition of an 'officer' under Section 3 – Interpretation provides:

Officer of an emergency services organisation means a person who is designated as an officer of that organisation within the command or organisational structure of the organisation.

It was suggested by SASES, and supported by SACFS, that a more appropriate definition should include reference to the officer being designated by the Chief Officer so that it would read:

Officer of an emergency services organisation means a person who is designated as an officer by the Chief Officer of that organisation.

Recommendation 27: The definition of 'officer' in Section 3 be amended to include reference to the designation being made by the Chief Officer.

Definition of 'Fire Place' and 'Incinerator'

Section 79 makes it an offence to light or maintain a fire in the open air (subject to certain specified circumstances) during a fire season. Section 79(2) refers to "... properly constructed fire place" and "... properly constructed incinerator".

Practitioners in the field have found it difficult to police this provision because of the lack of definition of, 'properly constructed fire place, and 'properly constructed incinerator.'

Recommendation 28: Following the amendment to Section 79 as proposed above in Recommendation 22, a definition of 'properly constructed fire place' and 'properly constructed incinerator' be included in the new Regulation.

Expiation Notices

It is an offence for a person to light or maintain a fire in the open air during the fire danger season (Section 79(1)). An expiation fee applies if the offence is a 'prescribed offence'. Section 79(2) allows a fire to be lit or maintained in the open air if it is lighted and maintained in accordance with the Regulations. Regulation 34 details the necessary provisions for gas and electric cooking appliances for the purposes of Section 79 (2). In order for a breach of the gas fire and electric element conditions in Regulation 34 to be expiated, contrary to Section 79(1), the offence must be a 'prescribed offence'. Regulation 48 lists the offences within Section 79(2) that have been prescribed but this does not include a breach of Section 79(2)(e). Consequently, breaches of conditions regarding gas and electric cooking fires listed in Regulation 34(1) cannot be expiated.

Recommendation 29: Regulation 48 regarding prescribed offences be amended to include Section 79(2)(e) or its equivalent under the amendment proposed in Recommendation 22 above.

Several practitioners in the field pointed out that many of the expiation fees are disproportionately small relative to prescribed penalties. Section 79 relating to lighting or maintaining a fire in the open air during the fire danger season, for example, has a penalty for a first offence of \$5,000 or imprisonment for a year yet has an expiation fee of \$210.

Recommendation 30: Expiation fees be reviewed so as to be consistent with the seriousness of the offences.

National Parks and Wildlife Services now DEH

Relating to Division 7 - Fire prevention authorities, where there is reference to 'an officer of the National Parks and Wildlife Service' (Sections 71(2)(b)(vii); 73(2)(b)(v); 75(2)(b)(iii); 91(2)(a) and 97(12)(b)(v)) that this be replaced with 'an officer of the Department for Environment and Heritage'.

Recommendation 31: Where in the FES Act reference is made to 'an officer of the National Parks and Wildlife Service' this be replaced with, 'an officer of the Department for Environment and Heritage'.

South Australian Volunteer Fire-Brigades Association now Country Fire Service Volunteers Association

Section 69 recognises the South Australian Volunteer Fire-Brigades Association as an association that represents the interests of members of SACFS organisations. Since the introduction of the FES Act this Association has changed its name to 'Country Fire Service Volunteers Association'.

Recommendation 32: Where in the FES Act reference is made to 'South Australian Volunteer Fire-Brigades Association' in Section 69 this be removed and replaced with, 'Country Fire Service Volunteers Association'.

Clarifying the Extent of Immunity

A submission from ForestrySA noted that while volunteers are appropriately protected in terms of liability, staff from a Government department, who are not members of an emergency services organisation, are not afforded the same protection when undertaking tasks in the management of bushfires. While these relate mainly to roles in incident control, the submission points out that there have been a number of incidents in Australia and overseas in the last few years where managers of incidents have been brought to court in either criminal or civil suits for the actions they have taken in managing fires. ForestrySA seeks endorsement that staff mentioned in the above circumstance are covered.

Section 127 provides:

- (1) No civil or criminal liability will attach to a member of an emergency services organisation, a person appointed or authorised to act under this FES Act by the Commission, or other person for an honest act or omission –
 - (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this FES Act; or
 - (b) in the carrying out of any direction or requirement given or imposed at the scene of a fire or other emergency.

It is not clear what the FES Act intended by including, “other person”.

To address the issue raised by ForestrySA, a change to the FES Act appears unnecessary as there are two valid administrative solutions to the problem identified. The first option is for these individuals, knowing that they may be performing these functions in the future, to become members of an emergency services organisation or alternatively obtain specific authorisation from the Commission.

Fire Districts and Country Areas – Definitions

Section 3(2) provides: “For the purposes of this FES Act, bushfire prevention relates to any reasonable action that may be taken in the country areas of the State” (and then goes on to that action).

Section 3(1) provides: “... country means any part of the State outside an SAMFS fire district”.

As the SAMFS submission pointed out it has responsibilities for bushfire prevention and is not restricted to areas outside of an SAMFS fire district.

Recommendation 33: **SAFECOM re-evaluate and determine a more meaningful definition of fire districts.**

Constitutions

The SACFS Chief Officer may establish a brigade/group and the SASES Chief Officer may establish a unit (Sections 68, 116) and for each there is a requirement to have a constitution that accords with any requirements prescribed by the Regulations or

determined by the Chief Officer (Sections 68(2), 116 (4). On the principle of each of these brigades/groups/units being independent entities a practice has been adopted where each has developed a constitution relevant only to that single brigade/group/unit.

Since the FES Act requires that the Chief Officer prescribe the requirements for a constitution it would be more practical for a single template for a constitution. Without this requirement being in the FES Act, volunteers in the brigades/groups/units will continue with the situation as it is (with wide ranging content) which has resulted in difficulties for the Chief Officers governing compliance.

Recommendation 34: All Regulations relating to constitutions be deleted; the FES Act be amended to allow the Chief Officers to prescribe the constitution; and the process for the management of a SACFS brigade/group and a SASES unit to be in the form of an administrative instruction.

Recruitment of Young Volunteers

Fire-fighters can be registered at the age of 16 if they have been a cadet fire-fighter (Regulation 8(4)(a)). If a person has not been a cadet fire-fighter then they cannot register as a fire-fighter until 18 years of age (Regulation 8(4)(b)). The Volunteer Management Branch of SAFECOM consider this provision to be unreasonable and unnecessary.

Recommendation 35: Regulation 8(4)(b) be amended to allow persons of or above 16 years of age to register as fire-fighters.

Nominations for Office

Under Schedule 6 – Standard constitution of an SACFS group, elections may be made by a) written nomination lodged with the group administrative co-ordinator at least 21 days before election day; or b) if no written nominations are received under paragraph (a), by oral nomination made immediately before the commencement of the relevant election (Schedule 6, Part 8 (3)(a) & (b)).

A group leader in a submission made the point that the preclusion of nominations from the floor when written nominations have been received is unnecessary and ‘undemocratic’ and suggested the ‘or’ between paragraphs (a) and (b) be changed to ‘and’. This appears appropriate.

Recommendation 36: Nominations for candidates for SACFS group elections be received both by written nomination and by oral nomination.

Several submissions from SACFS volunteers referred to the concern they had about the selection process for Brigade Officers. Pointing out that management/supervisory skills are inherently important in these selections, there were strong representations to the effect that the current process lacks proper evaluation resulting in inappropriate appointments, especially in regard to elected officers having no management/supervisory experience or skill.

Section 70 (3) provides: "A group officer will be elected, in accordance with procedures prescribed by the regulations, by representatives of the various brigades that make up the group".

Section 70(4) provides: "A brigade captain will be elected, in accordance with procedures prescribed by the regulations, by the members of the brigade".

Regulation 18 – Group elections, despite comprehensive provisions relative to selection procedures make no reference to pre-requisite skills or experience in management/supervision. As one submission put it:

I feel we need some form of staff evaluation for the applicants for the Officers positions and then maybe an election as the Brigade selection from those evaluated as best suited for the position. I feel this requires review as nomination and election can and often is based on mateship alone and not the overall ability of a person to carry out the job required.

Especially since there were not just strong, but many representations in this area, the selection process should be reviewed.

Recommendation 37: **The selection procedures in the Regulations for SACFS officer positions be reviewed in terms of ensuring that appropriate skills and experience are considered.**

Conduct and Discipline

Division 6 – Command structure. Section 70(12) provides that before taking disciplinary action against officers they must be given reasonable opportunity to appear before the Chief Officer to make submissions. Two separate government agencies suggested this be amended to include, 'where the officer is an employee of a government agency, the Chief Officer shall consult with an appropriate representative of that agency prior to any disciplinary action being taken'. Rather than 'consult' it would be sufficient that 'advice' be given.

Recommendation 38: **Section 70(12) (relating to disciplinary action) be amended to include, where the officer is an employee of a government agency, the Chief Officer shall advise an appropriate representative of the agency prior to any disciplinary action being taken.**

The SASES and the SASESVA in their submissions analysed the disciplinary provisions and made recommendations for change, some of which are included below. These proposed changes to Regulation 62 for SASES would apply equally to Regulation 22 for SACFS.

The introductory headings and short titles to Regulations 22 and Regulation 62 deal with essentially the same issues but are different.

Regulation 22 dealing with SACFS provides:

Subdivision 4 – Conduct and discipline of members
22 – Conduct and discipline of members

But Regulation 62 dealing with SASES provides:

Division 4 – Discipline of members
62 – Discipline of members

Apart from making these uniform, the submission from SASESVA suggested the short title include “Grievance Procedures” since mediation and informal resolution are sensible alternatives to a strict rule enforcement and should be included.

Recommendation 39: Divisions, Subdivisions and Regulations 22 and 62 headings relating to conduct and discipline be changed to have similar wording and should include, “Conduct, Discipline and Grievance Procedures for Members”.

The SASESVA submission drew attention to the conduct and disciplinary provisions relative to the SASES in Regulation 62 (which would also apply to Regulation 22 – SACFS) and the reference to the commanding officer sending a report regarding conduct, “together with such comments ... as the commanding officer thinks fit” (Regulation 22(5) and Regulation 62(4)(a)(i)). Even though there are specific provisions relative to natural justice, the point made is that the commanding officer may interpret the Regulation literally.

Recommendation 40: Regulations 22 and 62 be reviewed to ensure reports regarding conduct are relevant to the enquiry.

The SASESVA submission when referring to conduct and discipline also suggested mediation be allowed in appropriate cases rather than adopting a purely punitive approach. This is entirely appropriate.

Recommendation 41: Provisions be included in the Regulations for mediation in appropriate circumstances.

Other issues raised in the SASESVA submission were considered but are not supported. These included:

- changing the burden of proof to proof beyond reasonable doubt - this is not supported as it is the usual practice for disciplinary hearings to use the balance of probabilities;
- including a person with legal procedural knowledge on the disciplinary panel – this is not supported – again disciplinary proceedings tend to avoid the strict enforcement of the rules of evidence and work more effectively with a flexible procedure as long as it conforms with natural justice;
- requiring reasons to be set out for suspension – this is not supported as there are provisions in the regulations to ensure natural justice; and
- shifting the final decision from the Chief Officer to the Disciplinary Panel – this is not supported as accountability for the standards and conduct for brigades/units should remain with the Chief Officer.

The UFU drew attention to Section 49 of the FES Act which provides that "... an officer or firefighter who is aggrieved by a decision of the Disciplinary Committee or the Chief Officer pursuant to Subdivision 2 may appeal to the District Court." The UFU considers the most appropriate body for an appeal is the South Australian Industrial Relations Commission especially given that it is "... burdensome and costly to both the worker and the SAMFS".

Recommendation 42: **SAFECOM in consultation with SAMFS consider the merits of amending Sections 49-51 to replace the right to appeal from the District Court to the South Australian Industrial Relations Commission.**

Council and Crown Land

The responsibilities for hazard reduction on council and Crown land are set out in Sections 84 and 85 of the FES Act. One submission contended that there are no specific provisions for inspection or enforcement in relation to the management of the land in terms of fire prevention. It pointed out that while the reduction of bushfire hazard on these lands is not generally an issue for the agencies who are members of Bushfire Prevention Committees it is a common problem for those who are not represented. Consequently, the submission recommended that hazard inspection and enforcement processes be introduced into Sections 84 and 85.

Where a rural council has, in the opinion of the Chief Officer (SACFS), failed to take reasonable steps to protect property on the land from fire or to prevent or inhibit the outbreak of fire on the land, or the spread of fire through the land, the matter can be referred to the Minister who can enforce action to be taken (Section 84(3)).

With Crown land a similar provision exists for compliance where the Minister, agency or instrumentality of the Crown to which the land applies must appoint an appropriate person to be responsible to ensure compliance (Section 85(3)).

The existing provisions seem strong enough as long as practices and procedures are in place consistent with expectations of the FES Act. More than one submission contended that this is not always the case. The *Ministerial Review of Bushfire Management in South Australia* implementation in setting up the State Bushfire Coordination Committee could adequately address these issues.

Recommendation 43: **With the implementation of the *Ministerial Review of Bushfire Management in South Australia*, the provisions in Section 84 and 85 be reviewed in terms of enforcing hazard reduction on council or Crown land.**

Permit Burns

One submission referred to the notification process of permit burns under Regulation 33(4)(f)(iv) being "unworkable" since the requirement to notify an officer of the SACFS Brigade for the area is not possible as there is no public telephone number for Brigade officers and the Brigade station is generally unattended. The publicised Brigade telephone number is generally only for call out for response to an incident.

The submission calls for an amendment to replace the requirement to give notice be generalised with words to the effect that “notification by a process to be determined by the Chief Officer”.

As the same submission points out, SACFS is currently exploring options to resolve the issue and it is considered that the solution is more appropriately dealt with at that level.

Revocation of Permits

Section 81(9) empowers an authorised officer or the Chief Officer (SACFS) to revoke permits but there is no scheduled document in the Regulations.

Recommendation 44: **A schedule for revocation of permits be included in the Regulations.**

TOR # 9

Comment on the ability of the legislation to protect and support volunteers.

Current Provisions for Protection and Support for Volunteers

The South Australian Volunteer Fire-Brigades Association (now Country Fire Service Volunteers Association (CFSVA)) and the South Australian State Emergency Services Volunteers' Association Incorporated (SASESVA) are each recognised as an association that represents the interests of its members, CFSVA as a body corporate (Section 69) and the SASESVA as an incorporated body (Section 123). Both associations are funded by Government.

One submission summarised the importance of volunteers this way:

CFS and SES are entirely dependent on volunteers. Volunteers are not paid, but they do not come for free. Volunteers (rightly) demand to be involved in decisions that affect them and their interests.

CFS and SES volunteers are community based. In most cases, these units and brigades exist not because of a decision or funding provided by government, but because of individual and collective community initiative.

Volunteers are motivated because they want to protect their own and their neighbours properties; and because they want to give some service back to the community.

There is absolutely no doubt about the spirit and commitment of the volunteers and the critical place they have in emergency services. They deserve special consideration in terms of support and protection.

By any test the provisions relating to the protection of volunteers from liability are comprehensive:

Section 127:

- (1) No civil or criminal liability will attach to a member of an emergency services organisation, a person appointed or authorised to act under this FES Act by the Commission, or other person for an honest act or omission—
 - (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this FES Act; or
 - (b) in the carrying out of any direction or requirement given or imposed at the scene of a fire or other emergency.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Immunity and its Real Effect

The CFSVA submission expressed this concern about subsection (2):

... In the *Country Fires Act 1989*, the liability extinguished with the person. It is the Association's concern that this subsection would encourage a volunteer to be named as a party to a civil action, with any liability incurred increasing the liability to the Crown ... If a volunteer is ever named as a party to a civil action, this would be a very large disincentive to volunteers to take on leadership positions either in an officer role or as part of an incident management team.

This is addressed in the following subsection which specifically prevents volunteers from being named/sued (with an appropriate proviso):

- (3) A person (the ***injured person***) who suffers injury, loss or damage as a result of the act or omission of a member of an emergency services organisation who is a volunteer may not sue the member personally unless—
 - (a) it is clear from the circumstances of the case that the immunity conferred by subsection (1) does not extend to the case; or
 - (b) the injured person brings an action in the first instance against the Crown but the Crown then disputes, in a defence filed to the action, that it is liable for the act or omission of the member.

(Section 127)

These provisions offer significant protection to a volunteer in that they would not be named in any suit. Action would be taken in the first instance against the Crown. The proviso too is necessary in that it envisages the commission or omission of acts outside of a volunteer's ordinary duties and could include, for example, unlawful assault or larceny.

The CFSVA also looked to stronger protections for volunteers in terms of burden of proof:

The *Queensland Fire and Rescue Services Act 1990* appears to give stronger protection. Section 129(3) of that Act places the burden of proof of negligence and the absence of good faith upon the person alleging to the contrary. Mr Damian Bugg QC, former Commonwealth DPP spoke to a recent Australasian Fire Authorities Council (AFAC) Conference on this issue. He stated that it was his opinion that the Queensland protection from liability legislation was superior to that of the other states as a result of the burden of proof clause.

The relevant part of the Queensland Act provides:

129 Protection for acts done pursuant to Act

- (1) No matter or thing done or omitted to be done by any person pursuant to this Act or bona fide and without negligence for the purposes of this Act subjects that person to any liability.
- (2) A person (and any assistant) who discharges a function or exercises a power under this Act in order to avert or reduce actual danger to any person or property or to the environment may use force to a person that is reasonable in the circumstances and that does not cause and is not likely to cause death or grievous bodily harm and is not liable to be charged with any offence in respect of the use of that force.

- (3) Where any question arises as to whether a person's liability for any act or omission, the subject of any proceedings, is negated under subsection (1) and the person claims to have acted pursuant to or for the purposes of this Act, the burden of proof of negligence and the absence of good faith lies upon the person alleging to the contrary.
- (4) If a person against whom proceedings are taken in any court for an act or omission alleges that the act was done or omission made for the purposes of this Act, the court may, on application, order a stay of proceedings if satisfied –
 - (a) that there was no reasonable ground for alleging either negligence or want of good faith; or
 - (b) that the proceedings are frivolous or vexatious.
- (5) This section does not take away any defence a person has independently of this section.

Table 3 below examines and compares the provisions of both Acts.

<i>Fire and Emergency Services Act 2005</i>	<i>Queensland Fire & Rescue Services Act 1990</i>	<i>Comments/Comparison</i>
No criminal or civil liability will attach to member acting honestly.	No liability for person acting bona fide and without negligence.	Similar provisions but FES Act is more encompassing since it might (in certain circumstances) cover a person acting negligently but honestly.
Liability against Crown and not against individual.	Not provided.	FES Act manifestly better in that it stops action against an individual.
Volunteer cannot be sued (unless not acting honestly within the FES Act).	No provision to prevent individual or volunteer being sued.	As above.
No explicit provision regarding immunity for reasonable use of force but immunity for volunteers covers injury sustained by another when acting honestly and arguably includes use of reasonable force.	To avert danger a person may use reasonable force not likely to cause death or grievous bodily harm and not liable to be charged with an offence in respect of use of that force.	The explicit exemption in the Q Act for reasonable use of force offers significant protection. There are no specific powers in FES Act for use of force.
Persons (including volunteers) are presumed to be acting without liability since any action must be taken against the Crown in the first instance.	Where the question of whether a person's liability is negated under 129 (1) the burden of proof re negligence or absence of good faith lies with the person alleging the contrary.	Advantage of FES Act in that action is against Crown. No real advantage in burden of proof since this principle applies as a general rule.
Proceedings are against the Crown in the first instance and not against the individual who would only have to appear in court if not acting honestly and within the provisions of the FES Act.	Where proceedings are in court a stay of proceedings can follow if no reasonable ground for alleging negligence or want of good faith or is frivolous or vexatious.	FES Act much superior since it prevents the individual going to court and the Q Act relates to proceedings in court after action is taken against the individual.

Table 5

With the comparative tests applied above it appears (subject to what is stated below) that the FES Act provides sufficient and even better protection to the *Queensland Fire and Rescue Services Act*. The burden of proof provision in the Queensland Act does not appear to add any extra protection to those in SA since:

- action cannot be taken against a volunteer in the first instance;
- by implication of the above the volunteer is presumed to be acting without liability; and
- if a proviso applies and the individual is taken to court, the burden of proof lies with the person/authority taking the action.

While the provision in the Queensland Act provides immunity for the use of reasonable force, the FES Act is silent on this issue. Protection against the use of force is not included in the extensive powers for the SACFS and the SASES in Sections 97 and 118. It could be argued that since the provision for immunity includes 'injury' caused in the legitimate use of power and authority, this could cover situations where a person is injured when moved forcibly from (say) a dangerous situation. However, this is not clear, and would appear not to be covered in the FES Act. The immunity in the FES Act seems to apply only to those situations where a person is injured when accidentally (rather than deliberately) the subject of such force.

Inclusion of provisions for the specific use of force and the consequent provisions for immunity when acting honestly and in good faith is a matter of policy. It has not been brought to the Review's attention in any of the submissions received. However, such immunity should be considered so as to provide the fullest protection for a volunteer acting in good faith.

Insofar as provisions relating to the burden of proof are concerned, the comparative analysis outlined above should be examined in a legal context so as to determine whether provisions like those in the Queensland Act would provide extra protection for volunteers.

Recommendation 45: Immunity be prescribed for persons (including volunteers) using force in the exercise of a power or function under the FES Act or carrying out any direction or requirement given or imposed at the scene of a fire or other emergency.

Recommendation 46: Liability and immunity as these provisions apply in Section 127 be reassessed in terms of burden of proof so as to ensure the best protection for volunteers.

Due Sensitivity and Further Considerations

A matter of significant concern, which was made known to the reviewer on visits to country regions, was the not just the inconvenience but also the embarrassment and trauma that follows when volunteers are called to give evidence. The impact from the Wangary Coronial Inquest, for example, has caused concern across the volunteer community and anguish for those who were directly involved.

Volunteers who were required to give evidence made the following valid points:

- when they joined as volunteers it was never envisaged that they would ever be called to give evidence;
- the publicity given to inquiries into bushfires and hints of legal action has made them cautious (perhaps overcautious) about what they do in the field;
- the intensity of the cross examination by counsel in the inquiry was demanding and at times seen as unfair especially since they had voluntarily given their service to the community;
- being named in newspapers, even if there was no criticism, was embarrassing since they believed others in their neighbourhood/community would infer that they had done something wrong; and
- the thought of being required to give evidence in the future is a disincentive to existing and prospective volunteers.

Most of the issues above cannot be redressed since the societal need to closely examine causes of death or major damage must always remain. Courts proceedings, coronial inquests and other major examinations of facts will inevitably follow and will require evidence from those who were involved.

As demonstrated above, the trauma of the proceedings was highlighted by volunteers as a major concern. Most of the volunteers are unassuming and simply want to just, 'get on with the job', so as participants in a coronial inquest, thought by volunteers to be looking for blame as a precursor to civil action, being named was seen as embarrassing, intimidating and unnecessary.

The SA Farmers Federation submission put it this way:

As the Coronial Inquest into the bushfires on Lower Eyre Peninsula has shown, the reputation of CFS members can be ruined. There is no protection for this. As this can reflect on volunteers who acted with the best of intentions, it is not a way to attract volunteers to join or stay in CFS.

This point is well made. However, addressing this to the satisfaction of those affected is difficult.

It is within the discretion of a court to suppress names, but by any test, the preconditions set out in legislation for this to be granted are quite strict. Section 69A of the *Evidence Act, 1929* enables a court to grant suppression to an alleged victim of crime, a witness or a child where it is satisfied that this is required to prevent:

- prejudice to the proper administration of justice; or
- undue hardship.
(Section 69A(1)(a) and (b))

Before making this decision, the court:

- must recognise that a primary objective of justice is to safeguard the public interest in open justice and the consequential right of the news media to publish information relating to court proceedings; and

- may only make a suppression order if satisfied that special circumstances exist giving rise to a sufficiently serious threat of prejudice to the proper administration of justice, or undue hardship, to justify the making of the order in the particular case.
(Section 69A(2)(a) and (b))

It is unlikely, as a general principle, or even having specific regard to the circumstances under which the volunteers gave evidence in the Wangary Coronial Inquest, that suppression would be granted.

However, it would be unsatisfactory to simply leave it at that. There should be a close examination of how volunteers as potential witness can be supported and protected. This is not likely to involve legislative change and it would be highly unlikely that a blanket suppression order could be given to this category of witness. Some volunteers have spoken of the support they receive from the Volunteer Management Branch in SAFECOM. Any solutions tend to lie in this administrative area. As a matter of priority, SAFECOM, with appropriate assistance, should pursue possible avenues of support and protection to volunteers, in addition to what they already do, to address the anxiety and discomfort they experience as potential witnesses.

Recommendation 47: As a matter of priority, SAFECOM examine what further measures can be taken to provide support and protection for volunteers as potential witnesses in public enquiries.

INITIATIVES SPECIFIC TO THE WANGARY CORONIAL INQUEST

The Wangary bushfires of 10 and 11 January, 2005 burnt over 77,000 hectares of agricultural and forest lands on Lower Eyre Peninsula, claiming nine lives, destroying 93 homes and killing 46,000 stock. A coronial inquest was conducted into the deaths and the cause and origin of the fires. The findings and recommendations were handed down on 18 December, 2007.

As the Minister for Emergency Services pointed out when making a ministerial statement to the Legislative Council on 12 February, 2008, significant initiatives were taken after the Wangary bushfires without waiting until the findings were handed down by the Deputy Coroner. Immediately following the Wangary bushfires, the Chief Officer of SACFS initiated a review called “Project Phoenix” to identify “lessons learnt” from that tragic event and to put in place appropriate changes to practice and procedure. A further Independent Review of the Wangary bushfires by Dr Bob Smith in 2005 was initiated by the The Hon Carmel Zollo MLC, Minister for Emergency Services.

These are referred to in other parts of this Review.

The Deputy Coroner in his findings made specific reference to these initiatives:

It is also worth observing that the conclusions and recommendations reached and made by Dr Smith were closely aligned to those conclusions and recommendations expressed in the Phoenix Report, which also seems to have been embraced as a template for change.

Thus it is that much of the work that I might have otherwise had to perform as far as recommendations for change are concerned has been done. Attached to this report is a schedule that was current as at January 2007 that outlines the actions taken by the CFS as against the recommendations from the Phoenix Report and the Smith Report. As it happens, I agree with all of those recommendations and applaud the SACFS hierarchy and its Chief Officer Mr Euan Ferguson in particular for having quickly implemented those recommendations. In fact, it would be remiss of me not to say that in my opinion the performance of the CFS since the Wangary incident in terms of its recognition of the need for change and the implementation of that change has been exemplary.

(Findings of Inquest 29.5, 29.6)

The Deputy Coroner made 34 recommendations. The scope of this Review is to examine them in terms of how they relate to the “operation of the FES Act” and the specific terms of reference set out by the Minister for Emergency Services. Many of the observations, findings and recommendations will therefore fall outside this scope.

Each of the recommendations is examined below.

The Minister for Emergency Services has already taken the initiative to address the recommendations of the Deputy Coroner. She has established the Wangary Coronial Inquest Working Party (WCIWP), chaired by the Commissioner of Fire and Emergencies.

Review of the Fire and Emergency Services Act, 2005 – Initiatives Specific to Wangary

It was convened for the first time on 7 January, 2008 and at the time of preparing this Review the Working Party was meeting regularly in the preparation of advice to Government. The Working Party is reporting through the Minister for Emergency Services to the Emergency Management Council.

Membership of the Working Group comprises representatives from the following agencies:

- SAFECOM
- SACFS
- SAMFS
- SASES
- South Australia Police
- Department for Environment and Heritage
- Forestry SA
- Department of Primary Industries and Resources SA
- Local Government Association
- Office of Local Government
- South Australian Farmers Federation
- Department of Treasury and Finance
- Attorney Generals Department
- Department of Transport Energy and Infrastructure
- Country Fire Service Volunteer Association
- Department of Water, Land and Biodiversity Conservation

Initial meetings have identified eight themes which effectively canvass all of the Deputy Coroner's recommendations. These are:

- Farming practices and bushfire management
- Local government fire management
- Community warnings
- Community education
- SACFS operational policies and procedures
- Public advice
- After market vehicle mufflers
- Native vegetation code of practice

In terms of the operation of the FES Act, each theme is examined below in terms of their potential impact on the operation of the FES Act.

Farming Practices and Bushfire Management.

The Deputy Coroner recommended:

- 29.9(1) ... the Minister for Emergency Services, the Chief Officer of the South Australian Country Fire Service, the President of the Farmers' Federation of South Australia and the Minister for Local Government, with a view to developing a Code of Practice, establish a body to investigate the impact of existing farming practices on bushfire risk and prevention.
- 29.9(2) ... the Minister for Emergency Services cause independent scientific or other research to be undertaken to identify the effects of continuous cropping, minimum tillage, direct drilling seeding practices and of the retention of cropping stubble, in respect of bushfire risk and prevention.
- 29.9(3) ... the Minister for Emergency Services cause independent scientific or other research to be undertaken to establish means by which risk of bushfires, as created by continuous cropping, minimum tillage, direct drilling seeding practices and the retention of cropping stubble across the landscape, can be minimised.

The WCIWP is also addressing this. TOR # 3 in this Review in referring to, "proper land management" as set out in Sections 83, 84 and 85 of the FES Act, identified the balance that has to be struck between fire safety measures and good farm practices. This is a difficult area and it is only through the independent research referred to above in the recommendation that the balance will be obtained. Recommendation 10 of this Review under TOR # 3 is that the provisions in the FES Act relating to "proper land management principles" as outlined in Sections 83, 84 and 85 of the FES Act be re-examined in consultation with relevant agencies and to draw from independent scientific research. Amendments to the FES Act can only be determined after this is done.

- 29.9(4) ... the Minister for Emergency Services and the Minister for Local Government consider the enactment of legislation that would empower Local Government to require the owners or occupiers of rural land to create fire breaks on the land of a kind that Local Government may determine and/or to require the removal of flammable materials from the land, as measures for preventing the outbreak of a bushfire, or for preventing the spread or extension of a bushfire.

Broad provisions exist in Sections 56 and 83 of the FES Act which require landowners to take appropriate measures for fire prevention and give the Local Government (Section 56) and the council/SACFS (Section 83) authority for enforcement. Recommendation 11 of TOR # 3 of this Review recommends bringing these two sections together and for them to have uniform provisions as they address exactly the same issues relative to penalty for non compliance regarding taking reasonable measures on the land; power to deliver a notice; failure to respond to the notice; power to enter land; and the appeal process.

In addition to the consideration of bringing Sections 56 and 83 together, the WCIWP should consider whether the provisions adequately cover the circumstances envisaged in Recommendation 29.9(4) of the Wangary Coronial Inquest.

Recommendation 48 : Further to Recommendations 11 and 12 above concerning the joining of Sections 56 and 83 of the FES Act, these existing provisions be examined to determine whether they provide sufficient authority to address Recommendation 29.9(4) of the Wangary Coronial Inquest so as to require the owners or occupiers of rural land to create fire breaks and/or the removal of flammable materials from the land, as measures for preventing the outbreak of a bushfire, or for preventing the spread or extension of a bushfire.

29.9(5) ...the President of the South Australian Farmers' Federation of South Australia draws these recommendations and findings to the attention of its members and constituents.

29.9(6) ...the South Australian Farmers' Federation encourage its members and constituents to keep and maintain on rural land in proper working order machinery that is capable of removing, modifying or reducing cropping stubble at short notice in order to minimise or mitigate bushfire risk.

Neither of these recommendations contemplates legislative amendment.

Local Government Fire Management

Relative to Local Government, the Wangary Coronial Inquest recommended:

29.9(7) ...the Minister for Local Government cause rural councils to appoint an Officer whose duties consist entirely of bushfire prevention, such Officer being required to become a trained, operative member of the South Australian Country Fire Service during the currency of his or her appointment.

At the time of preparing this Review, an audit of fire prevention officers is being carried out, the results of which will be made known to the WCIWP, following which consideration will be being given as to whether a legislative amendment is needed.

Section 77 of the FES Act provides that subject to an exemption from the Chief Officer (SACFS) "... each rural council must appoint a suitably qualified fire prevention officer for its area". The position is not solely dedicated to bushfire prevention and the office of fire prevention officer may be held "... in conjunction with any other office or position on the staff of the council".

Regulation 31 provides that for the purposes of Section 77 "... a person who has successfully completed a course of training for fire prevention officers provided by SACFS or approved or recognised by the Chief Officer is suitably qualified to be appointed by a council as a fire prevention officer". Again, the Regulation refers to fire prevention generally.

The Deputy Coroner's findings and corresponding recommendation that there be a dedicated officer for bushfire prevention is based on a thorough examination of the circumstances of the Wangary bushfires which included critical issues of prevention and preparedness. This recommendation is supported. To accommodate this may require

an amendment since the appointment of a dedicated “bushfire prevention officer” is not within the current provisions. On the other hand such an appointment may not be considered inconsistent with the provisions of the FES Act as it could be made purely as an administrative arrangement.

Recommendation 49: Crown law opinion be obtained as to what amendments, if necessary or appropriate, are required to satisfy Recommendation 29.9(7) of the Wangary Coronial Inquest, that a dedicated bushfire prevention officer be appointed.

Community Warnings

Relative to community warnings, the Wangary Coronial Inquest recommended:

- 29.9(8) ... the Minister for Emergency Services in conjunction with the Chief Officer of the South Australian Country Fire Service, the Chief Officer of the South Australian State Emergency Services and the Commissioner of South Australia Police develop policies and practices regarding the issuing of public warnings that address the risk posed to the public by an existing fire incident with a view to disseminating such warnings to the public at a time before the escalation of an existing fire incident occurs.
- 29.9(9) ... the Minister for Emergency Services, the Chief Officer of the South Australian Country Fire Service, the Chief Officer of the South Australian State Emergency Services and the Commissioner of Police establish a panel to develop policies and practices to ensure that at the time bushfire warnings are created and delivered, all such warnings are made known to all emergency service entities, and to ensure that warnings of an approaching fire are delivered in a timely manner with detailed and specific information relevant to the circumstances of the section of the public to whom they are directed.
- 29.9(10) ... the South Australian Country Fire Service create and develop the role of a Regional Public Warnings Officer as a member of the paid staff of the SACFS whose role it would be to identify the need for, and to deliver, timely bushfire warnings to the public during the course of a bushfire incident.
- 29.9(11) ... the South Australian Country Fire Service empower the Regional Public Warnings Officer to create and deliver public warnings on that Officer's initiative without the necessity of seeking the approval of personnel at State Headquarters.
- 29.9(31) ... the Chief Officer and the Editors of all newspapers and other media outlets develop a Memorandum of Understanding that ensures that all CFS press releases concerning total fire ban days and ongoing bushfire incidents are published in full.

Appropriate and timely warnings about bushfires figured prominently in the Deputy Coroner's recommendations. These relate to policy and procedure and do not call for legislative amendment.

At the time of preparing this review the WCIWP is considering the above recommendations in terms of:

Review of the Fire and Emergency Services Act, 2005 – Initiatives Specific to Wangary

- endorsing a bushfire warning system across an ‘all hazards’ approach within all of the emergency services;
- directives issued by the Chief Officer of CFS to empower regional coordinators to create and deliver public warnings and fulfil the role of Regional Public Warning Officer;
- increasing awareness of risk assessment process employed by the SACFS in line with national standards.

The introduction of administrative measures to achieve the outcomes recommended would not require legislative amendment.

Community Education

29.9(12) ... the Minister for Emergency Services in conjunction with the South Australian Country Fire Service conduct tuition courses to be made available to the general public to enable members of the public to acquire the necessary knowledge and skills to implement their preparation and planning for bushfires.

29.9(13) ... the Minister for Emergency Services and the South Australian Country Fire Service implement programs to develop in the minds of citizens a heightened awareness of bushfire risk, and in particular to encourage citizens to listen for radio announcements relating to the progression of a fire during the course of a bushfire incident.

Both recommendations can be achieved through administrative action without legislative amendment.

SACFS Operational Policies and Procedures

Regarding the risk to private firefighters, the Wangary Coronial Inquest recommended:

29.9(14) ... the Minister for Emergency Services, the South Australian Country Fire Service, the South Australia Police and the South Australian Farmers’ Federation together continue to develop strategies to reduce the risk of harm to private firefighters and in particular:

- a) Formulate a code of practice to ensure that the South Australian Country Fire Service and the South Australia Police are aware of the presence of private firefighters and private fire appliances at a fireground so as to discourage the ad hoc deployment of private firefighters and private farm appliances.
- b) Develop an education program for private firefighters dealing with implementation of safe practices for private firefighters, with emphasis on but not limited to, consideration of the effect of wind changes and the dangers associated with proceeding into a fireground with lack of information about the existing circumstances pertaining to that fireground.
- c) Formulate a structure whereby private firefighters at a fireground act in conjunction with, and not separately from, South Australian Country Fire Service resources.

- d) Develop protocols relating to minimum requirements in respect of reliability of private firefighting units, dress for private firefighters, the need for appropriate radio communication, but not limited to those issues.
 - e) Develop a position within the structure of Level 2 and Level 3 Incident Management Teams of a Private Firefighting Liaison Officer.
- 29.9(19) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service reinforce in the minds of those Officers who perform the role of Regional Duty Officer the duties and responsibilities attaching to that position insofar as they apply to an ongoing fire incident, and in particular to recognise the need to conduct a risk assessment in relation to an incident and the need to scrutinise, evaluate and validate the strategies and Incident Action Plans of Incident Management Teams.
- 29.9(20) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service reinforce in the minds of those Officers who perform the role of Regional Duty Officer the need to deliver to the Deputy State Coordinator timely, accurate and relevant information pertaining to an ongoing fire incident.
- 29.9(21) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service reinforce in the minds of all Incident Management Team members, in particular but not limited to the Incident Controller and Planning Officer, of the need to conduct a full risk assessment that not only addresses operational risk, but the risk posed to the general public by an existing incident and at all times to consider and identify the 'worst case scenario' outcome.
- 29.9(22) ... the South Australian Country Fire Service develop as part of competency for inclusion on a Level 2 or Level 3 Incident Management Team a minimum requirement of demonstrated skill and competency in risk assessment.
- 29.9(23) ... the South Australian Country Fire Service design tuition courses aimed specifically at developing among its members skill and competency in risk assessment.
- 29.9(24) ... the South Australian Country Fire Service develop as part of competency for inclusion on a Level 2 or Level 3 Incident Management Team a minimum requirement of demonstrated skill and competency in identifying and implementing feasible and appropriate containment measures designed to bring control to a fire incident so as to minimise the risk posed to the general public.
- 29.9(25) ... the South Australian Country Fire Service design tuition courses aimed specifically at developing among its members skill and competency in identifying and implementing feasible and appropriate containment measures designed to bring control to a fire incident so as to minimise the risk posed to the general public.
- 29.9(26) ... the South Australian Country Fire Service establish pre-planned Level 2 Incident Management Teams in each Region for deployment to Level 2 incidents.

- 29.9(27) ... the South Australian Country Fire Service utilise wherever possible the skills of paid, professional staff to perform the roles of Incident Controller and/or Planning Officer in Level 2 Incident Management Teams.
- 29.9(28) ... the South Australian Country Fire Service identify and impart minimum skills and competencies to members who fulfil the roles of the four core AIIMS functionaries of a Level 2 Incident Management Team.
- 29.9(29) ... the South Australian Country Fire Service create as part of a Level 2 and 3 Incident Management Team Logistics Division an Officer whose function it is to seek out, locate and identify sources of water, be they on land or provided by carrier.
- 29.9(30) ... the Minister for Emergency Services give further consideration to acquiring a firefighting helicopter to be permanently or primarily stationed in South Australia.
- 29.9(34) ... the Minister for Emergency Services and the Minister for Local Government cause local council plant and equipment that is suitable for use in bushfire fighting be fitted with radios connected to the Government Radio Network.

Each of these issues can be addressed by administrative action without legislative amendment.

Public Advice

Ongoing liaison between the Incident Management Teams and landowners in terms of drawing on their local knowledge was recommended by the Wangary Coronial Inquest:

- 29.9(15) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service cause to be included among the SACFS' Standard Operating Procedures (SOPs) a requirement that Incident Management Teams responsible for the management of bushfire incidents make all reasonable attempts to contact and maintain contact with the owners and/or occupiers of rural land on which a fire is situated.
- 29.9(16) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service cause to be included among the SACFS' Standard Operating Procedures (SOPs) a requirement that Incident Management Teams responsible for the management of bushfire incidents seek information from the owners and/or occupiers of rural land on which a fire is situated as to the topography, vegetation, existing fire breaks, accessibility and local weather conditions pertinent to that land.
- 29.9(17) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service cause to be included among the SACFS' Standard Operating Procedures (SOPs) a requirement that Incident Management Teams responsible for a bushfire incident seek advice from the owners and/or occupiers of rural land on which a fire is situated as to the possible firefighting strategies and possible containment measures that might be implemented in order to bring a fire on the land under control, and to take such advice into consideration in the management of the incident.

29.9(18) ... the Minister for Emergency Services and the Chief Officer of the South Australian Country Fire Service consider the creation of a position within an Incident Management Team of a Landowner Liaison Officer the duties and responsibilities of whom is to establish contact with and liaise with the owner and/or occupiers of rural land on which a fire is situated.

Each of these issues can be addressed by administrative action without legislative amendment.

After Market Vehicle Mufflers

The Deputy Coroner found a link between a faulty vehicle muffler and the start of the fires. It was recommended:

29.9(32) ... the Minister for Transport, in conjunction with any other relevant authority, conduct research in relation to the question as to whether or not after-market, non-standard mufflers are suitable devices to be fitted to vehicles that are used in rural environments.

Any proposed legislative change would be outside the FES Act. Appropriate measures are being taken by the WCIWP.

Native Vegetation Code of Practice

The management of native vegetation in the Wangary Coronial Inquest saw the need for code of practice relative to its management as it affects bushfire prevention. It recommended:

29.9(33) ... the Minister for Emergency Services, the Minister for Environment, the Chief Officer of the CFS and the Native Vegetation Council, together develop a Code of Practice relating to the management of native vegetation as it affects bushfire prevention.

This issue can be addressed by administrative action without legislative amendment.

SUMMARY

The SAFECOM model of governance as provided in the FES Act has a sound philosophical and practical base. It is eminently sensible to draw together the ESOs under a corporate umbrella and for each to work towards a common goal so as to provide the best possible service for the people of South Australia. At the same time the FES Act appropriately recognises the need for each ESO to retain operational autonomy.

Prior to the enactment of the FES Act, every report, review or enquiry relative to the proposed coordination of emergency services referred to the complexity in achieving this end. They referred to the pervading silo mentality of emergency services, underlying tensions between paid staff and volunteers and a consequent resistance to change. Accordingly, embracing new and significantly different expectations of governance that this FES Act introduced, presented a challenge to all.

In these circumstances, the Chair of both the Interim SAFECOM Board and the Inaugural SAFECOM Board must be commended for his diplomacy and skill. Through his guidance the framework of a governance model was put into place and the policies, protocols and practices that were introduced were consistent with the intention of the FES Act. The contribution of the Chief Officers must also be appreciated in the light of the dilemmas they sometimes faced in reconciling organisational and Board responsibilities and also what they saw as anomalies in the FES Act which made it difficult for them to distinguish between operational and policy matters. Being acutely aware of these conditions, the Chair of the SAFECOM Board carefully steered a sensitive and diplomatic course towards meeting the expectations of the FES Act.

It has, however, been a slow evolutionary process. Four years have passed since the Interim Board was first set up and there is still evidence of significant impediments in achieving a truly shared process of governance. To continue to rely on the current arrangements to get it right is not enough as the inhibitors referred to in this Review will continue to frustrate attempts to effectively coordinate critical governance matters like budget, planning and resource allocation. Intervention is required. To some extent the recommended changes in the composition and authority of the SAFECOM Board members will be an improvement, but it needs more. To achieve the full expectations of the FES Act there is a need to confirm in legislation the position which has the current working title, 'Commissioner of Fire and Emergencies' and for that position to have specific authority to ensure that these sector-wide (non-operational) matters of policy, strategy and resource allocation are fully and appropriately addressed.

This will probably be seen as a bold move as there will be perceptions that this is part of a takeover of SAFECOM or that Chief Officers will have to report to this position on operational matters. It should not be seen in that light. The increased authority would relate to specific non-operational matters and the ESOs would, most emphatically, retain their 'ultimate authority' for operations.

Review of the Fire and Emergency Services Act, 2005 - Summary

As expected with the introduction of a new FES Act, the two years of its operation have identified several provisions that are unclear or ambiguous and recommendations have been made to change these. Other issues which key office holders regard as being necessary but which are missing in the FES Act have also been included in the recommendations.

While the industry at large has been said to be highly sensitive to change, the volunteers as key players in emergency services require special consideration. Communication with them, especially relative to significant change, is extremely difficult and key issues are often distorted by the time they reach them. Implementation for any change should involve a carefully prepared communication plan which is duly sensitive to their unique position.

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APPENDIX A

Terms of Reference

REVIEW OF THE *FIRE AND EMERGENCY SERVICES ACT 2005*

The FES Act commenced on 1 October 2005.

Section 149 of the FES Act requires that the Minister conduct a review of the operation of the legislation two years after the commencement of the FES Act.

149 – Review of FES Act

- (1) The Minister must cause a review of the operation of this FES Act to be conducted and a report on the results of the review to be submitted to him or her.
- (2) The Minister must ensure that a review under this section is conducted by a person who has, in the opinion of the Minister, appropriate knowledge and experience to undertake the review but who is not a member or former member of an emergency services organisation.
- (3) The review must include -
 - a) an assessment of the extent to which the enactment of this FES Act has led to improvements in the management and administration of organisations within the emergency services sector and to increased efficiencies and effectiveness in the provision of fire and emergency services within the community; and
 - b) an assessment of the extent to which owners of land, and other persons who are not directly involved in an emergency services organisation, should be able to take action to protect life or property from a fire that is burning out of control, and may address other matters determined by the Minister, or by the person conducting the review, to be relevant to a review of the operation of this FES Act.
- (4) The review must be undertaken after the second anniversary of the commencement of this FES Act and the report must be submitted to the Minister within 6 months after the second anniversary.
- (5) The Minister must, within 12 sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.

The Terms of Reference for the Review are:

1. Analyse plans, policies, workforce plans, systems of work, budgets, and Board Minutes to assess the extent to which the creation of the Commission has:
 - a) improved the management and administration of organisations within the [emergency services sector](#); and

- b) increased efficiencies and effectiveness in the provision of fire and [emergency](#) services within the community.
- 2. Assess whether there has been improvements, and if so to what extent, in the provision of fire and emergency services within the community in terms of prevention, preparedness, response and recovery.
- 3. Evaluate the capacity to which landowners and other people outside the emergency services sector can take action to protect life and property from a fire burning out of control.
- 4. Analyse the constitution of the Commission Board the ability of the current arrangements to implement Government policy and reforms implicit in the legislated power and functions of the Commission.
- 5. Evaluate the degree to which the Advisory Board contributes to the achievement of the Commission's goals.
- 6. Examine the structure and the relationship between the individual agencies as legal entities and the Commission and make recommendations for improvement.
- 7. Analyse whether any of the elements of the FES Act could be more effectively established as subordinate legislation.
- 8. Recommend changes to the FES Act and the operation of the Emergency Services to better facilitate SAFECOM's role in Emergency Management planning and policy across the sector and from a whole of Government perspective.
- 9. Comment on the ability of the legislation to protect and support volunteers.
- 10. Draft a report, making recommendations for change.

APPENDIX B

Communications Plan – Review of the Fire and Emergency Services Act 2005

Target date for publicising the Review set at Friday, 12 October, 2007.

Create a 'call to action' for submissions from the public, associations and other interest groups to inform the review process. Close date for submissions set for Friday 23 November 2007 (allows six weeks).

Public Notice	South Australian print media advertising blitz recommended.
Media Release	Attract editorial interest and create talkback radio opportunities.
Direct Mail	Letter targeting interest groups, service clubs, local government, key associations which may involve communities/individuals with specific interest and perspectives.
Interest publications	Association newsletters, internal publications.
Website	Direct people to website for more information and ability to send contribution from that page.

All facets of the communications (advertising, PR and community engagement) need to be integrated and occur in parallel.

Public Notice - advertising

Suggest whole-of-state print media blitz. Starcom advice indicated value in reasonable-sized ad (quarter page) in EGN to seek public input (the initial quote has been worked on these sizings but can be negotiated depending on budget).

Direct Mail - community engagement

Develop a generic letter from John Murray which can be top and tailed differently depending on the receiver. Aim to have in the post by COB Wednesday 10 October.

Identify and target relevant organisational newsletters or publications which reach memberships - phone call follow up to ask for their support in editorialising the Review process and encouraging people to have input if they so desire.

Media Release

Develop media release for issue week starting 15OCT07. Determine date of issue through consultation with Minister Zollo's media adviser, Astra Dadzis, and other news considerations broadly. Ensure radio producers are also emailed the release.

Review of the Fire and Emergency Services Act, 2005 – Appendix B

Follow up calls to media - create radio talkback opportunities through phone interviews with John Murray, including and especially regional radio.

In addition to radio targets, also ensure approach to other key print journalists including Matt Williams from Statewide/Tiser, Rex Jory/Tiser and Messenger.

Website

Content to be considered and developed if necessary. Public notice needs to point people to SAFECOM website, as does media release.

Media release posted to the site.

Ability for people to provide comment through email address link direct to John Murray.

APPENDIX C

Formal Submissions and Contributions to the Review

Hon. Bob Such
Mr Kris Hanna
The Hon. Karlene Maywald MP
Chief Officer's Advisory Council (SACFS)
City of West Torrens
Commissioner of Fire and Emergencies
Country Fire Service Volunteers Association
Deaf SA
Department for Environment and Heritage
Department of the Premier and Cabinet
Department of Trade and Economic Development
Department of Treasury and Finance
Department of Water, Land and Biodiversity Conservation
District Council of Lower Eyre Peninsula
District Council of Grant
District Council of Yorke Peninsula
Earle, Phillip
ForestrySA
Local Government of South Australia
Marshall, Allan
McKay, Sally
Monterola, Vince AFSM JP
Morgan, Lee
Naracoorte Lucindale Council
Onkaparinga City Council
United Firefighters Union-SA Branch
SAFECOM Board, Presiding Member
SAFECOM Advisory Board, Presiding Member
SAFECOM Board Members
SAFECOM Staff
SA Country Fire Service
SA Country Fire Service staff and volunteers
SA Metropolitan Fire Service
SA Metropolitan Fire Service staff and retained staff
SA State Emergency Service
SA State Emergency Service staff and volunteers
SA State Emergency Service Volunteers Association Incorporated
SA Farmers Federation
SA Police
SA Water
Southern Mallee District Council
Volunteers through group sessions and individual meetings