

## Fire protection

- 7.1 This chapter looks at three interrelated areas – insurance, individual preparedness and liability. It begins by outlining the structure and operation of the Australian insurance industry in the context of disaster management and describes the broad types of insurance available for property protection. It then discusses the prevalent insurance issues raised to the Committee throughout the inquiry such as the cost, claims management and under and non-insurance. The chapter then addresses some of the measures that individuals can take to protect their assets from the threat of bushfires which extends to planning and building codes, evacuation and education. It then highlights the key liability issues based on the evidence received by the Committee.

### The structure and operation of the Australian insurance industry

- 7.2 The Insurance Council of Australia (ICA) is comprised of private sector insurance and reinsurance companies and is the representative body of the general insurance industry in Australia.<sup>1</sup> The ICA members supply 37.8 million insurance policies and handle three and a half million claims annually.<sup>2</sup>

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1 Insurance Council of Australia, *Submission no. 311*, p. 1.

2 Insurance Council of Australia, *Submission no. 311*, p. 1.

- 7.3 The ICA also works with the Insurance Disaster Response Organisation (IDRO) which was established in March 2000 to coordinate the services of the insurance industry and commonwealth, state, territory and local governments in the event of natural disasters.<sup>3</sup> For example, IDRO provides a central contact point for assisting with identifying the insurance companies of claimants and provides policy holders with advice on lodging claims.<sup>4</sup> This system is designed to enable more efficient response and recovery to disaster victims and to aid insurance companies placed under enormous pressure with the increased flow of enquiries.
- 7.4 Although the IDRO is activated as a central interface response and recovery unit on committees or taskforces established by the relevant government/s in the event of a natural disaster, it is a permanent organisation. It continually liaises with governments, response agencies, meteorological bureaus and the media<sup>5</sup> to develop effective disaster response and recovery mechanisms and reports to the Board of Directors of the ICA. The IDRO has a National Coordinator and State Coordinators and is a partnership of the following.<sup>6</sup>
- Insurers.
  - Reinsurers.
  - Brokers.
  - Loss adjusters.
  - Insurance Enquiries and Complaints Ltd (IEC).
- 7.5 The structure of the Australian insurance industry in the context of disaster management is illustrated graphically in Figure 7.1 (below).

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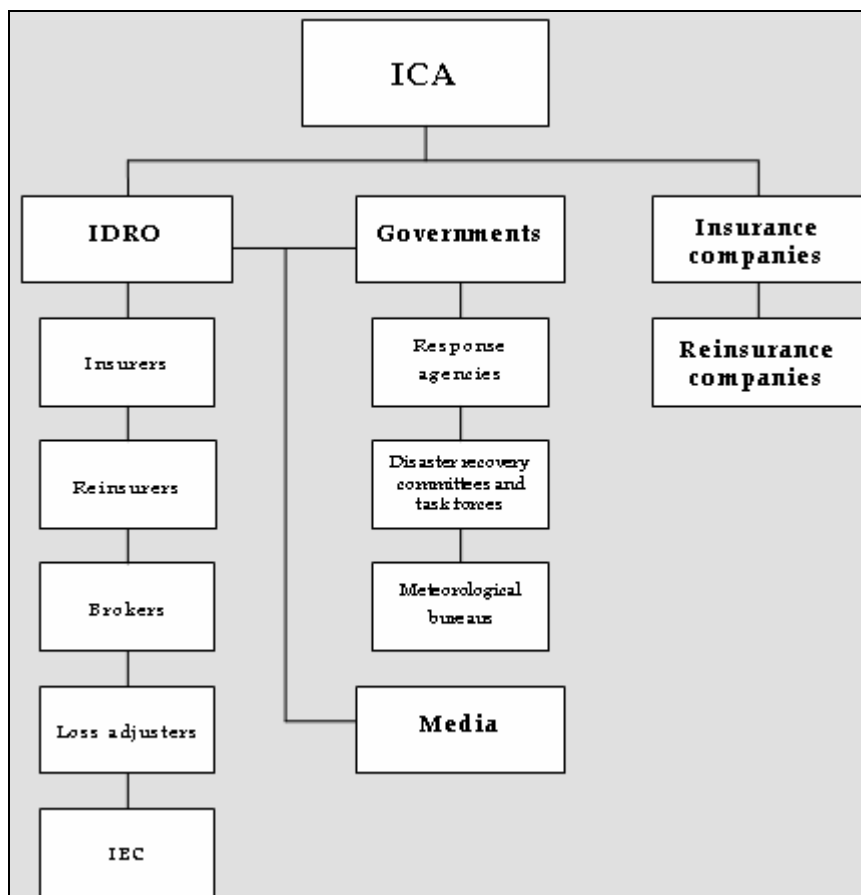
3 Insurance Council of Australia, *Submission no. 311*, p. 1.

4 Insurance Disaster Response Organisation, <http://www.idro.com.au/about/default.asp>, viewed 15 August 2003.

5 Insurance Disaster Response Organisation, <http://www.idro.com.au/about/default.asp>, viewed 15 August 2003.

6 Insurance Disaster Response Organisation, <http://www.idro.com.au/about/default.asp>, viewed 15 August 2003.

Figure 7.1 Structure of the Australian insurance industry in the context of disaster management



Source: Produced for this report.

- 7.6 From February 1967 to January 2003, IDRO and its predecessor – the Insurance Emergency Service – provided services to the insurance industry during 157 disasters (ie, cyclones, earthquakes, hailstorms, floods, bushfires, etc) in Australia.<sup>7</sup> Bushfires have accounted for about 10 percent of these disasters at an equivalent cost of \$1.062 billion.<sup>8</sup>
- 7.7 The Insurance Australia Group (IAG), Australia’s largest general insurer, claims that the highest three insurance losses from bushfires are Ash Wednesday (1983), Canberra (2003) and Hobart (1967) (in that order) being the sixth, seventh and seventeenth largest insurance losses recorded, respectively.<sup>9</sup>

7 Insurance Council of Australia, *Submission no. 311*, p. 6.

8 Insurance Council of Australia, *Submission no. 311*, p. 6.

9 Insurance Australia Group, chart detailing insured losses of natural disasters, n.d.

## Types of insurance for protecting properties

7.8 Home and business insurance are the two broad categories of property protection. The scope of coverage within such policies varies between insurance companies but is broadly summarised below.<sup>10</sup>

### Home insurance

7.9 There are generally two types of insurance required for protecting home property against the threat of bushfires – home building and contents.

#### Home building

7.10 This covers the following (up to the sum insured and subject to an assessment).

- Home replacement.
- Breakage of glass in doors, windows and skylights.
- Temporary accommodation.
- Public liability (ceasing upon payment of claim for total loss).

#### Home contents

7.11 This covers the following (up to the sum insured and subject to an assessment).

- New for old replacement of contents.
- Accidental breakage of glass items (including mirrors).
- Public liability.

### Business insurance

7.12 Business insurance is more complex but generally covers assets (building and contents), liability and workers compensation for various types of small to large businesses, including farms.

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10 AAMI, <http://www.aami.com.au>, GIO a Suncorp Company, <http://www.gio.com.au/gio/index.html> and NRMA Insurance, <http://www.nrma.com.au/pub/nrma/insurance/index.shtml> viewed 20 August 2003.

## Cost of insurance

- 7.13 Home and business insurance premiums naturally depend on the level of coverage sought but also reflect the level of risk (now determined through digital aerial photography and other means).<sup>11</sup> Properties in country areas are generally deemed to be of higher risk and therefore, attract higher premiums than those in metropolitan areas. To illustrate, public land that is not regularly hazard reduced is seen as high risk and this is reflected in the premiums of country policy holders who commonly adjoin such land. Having said this however, the IAG claims that less than one percent of premiums across Australia reflect bushfire risk.<sup>12</sup> Further to the expense associated with the levels of coverage and risk, although tax deductible, business insurance is more costly than home insurance and attracts higher Fire Levy tax (where applicable).
- 7.14 The issue of taxes on insurance premiums warrants review. According to the ICA, some Australian States have world record levels of taxing on insurance.<sup>13</sup> In New South Wales and Victoria there is a triple compounding tax (that is, Fire Levy, Goods and Services Tax (GST) and Stamp Duty) on home and business insurance premiums (and Tasmania for the latter only). For example, the first imposition (that is, Fire Levy) is included in the base when the second imposition (that is, GST) is calculated – the total of which is used for calculating the third imposition (that is, Stamp Duty).<sup>14</sup> This cascading effect facilitates a higher total than if each of these taxes were individually calculated as a percentage of the premium only. In Victoria the combination of taxes is as high as 77 per cent above the premium.<sup>15</sup>

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11 Graeme Adams, *Transcript of Evidence*, 22 August 2003, p. 4.

12 Graeme Adams, *Transcript of Evidence*, 22 August 2003, p. 2.

13 Insurance Council of Australia, *Submission no. 311*, p. 7.

14 Insurance Council of Australia, *Submission no. 311*, Appendix C, p. 11.

15 Insurance Council of Australia, *Submission no. 311*, p. 7.

- 7.15 This means that insureds are not only financially penalised but, through paying the Fire Levy, are also protecting those who are not insured.<sup>16</sup> The taxing system on insurance acts as a deterrent to protecting assets because there is no preferential treatment in the deployment of response services (funded through the Fire Levy) and financial support is, to an extent, nevertheless provided to the un-insured through various relief funds. Further, only those covered by Australian based insurers pay the Fire Levy (where applicable) which raises questions about the effectiveness of paying this tax through insurance premiums.<sup>17</sup>
- 7.16 The impact (as a percentage) of this 'tax on a tax on a tax' on home and business insurance products (in metropolitan areas) is illustrated below in Tables 7.1 and 7.2, respectively, using a hypothetical premium.

**Table 7.1 Impact of taxes on home insurance in metropolitan areas**

State	Premium	Fire Levy		GST	Stamp Duty \$		Total Cost	Impact (approx)
	\$	%	\$	\$	%	\$	\$	%
VIC	100.00	13	13.00	11.30	10	12.43	136.73	37
NSW	100.00	17	17.00	11.70	5	6.44	135.14	35
SA	100.00	NIL	NIL	10.00	11	12.10	122.10	22
WA	100.00	NIL	NIL	10.00	10	11.00	121.00	21
QLD	100.00	NIL	NIL	10.00	8.5	9.35	119.35	19
TAS	100.00	NIL	NIL	10.00	8	8.80	118.80	19
ACT	100.00	NIL	NIL	10.00	10	11.00	121.00	21
NT	100.00	NIL	NIL	10.00	10	11.00	121.00	21

Source: Adapted from Insurance Council of Australia, Submission no. 311, Appendix B and *Burden on insurance policies leaving Australians exposed to major risk*, available at [http://www.nrma.com.au/pub/nrma/about\\_us/media\\_releases/20020213a.shtml](http://www.nrma.com.au/pub/nrma/about_us/media_releases/20020213a.shtml).

16 Peter Webb, *Transcript of Evidence*, 14 July 2003, p. 9.

17 NSW Rural Fire Service Association Central East Conference, *Submission no. 386*, p. 11.

**Table 7.2 Impact of taxes on business insurance in metropolitan areas**

State	Premium	Fire Levy		GST	Stamp Duty \$		Total Cost	Impact (approx)
	\$	%	\$	\$	%	\$	\$	%
VIC	100.00	28	28.00	12.80	10	14.08	154.88	55
NSW	100.00	30	30.00	13.00	5	7.15	150.15	50
SA	100.00	NIL	NIL	10.00	11	12.10	122.10	22
WA	100.00	NIL	NIL	10.00	10	11.00	121.00	21
QLD	100.00	NIL	NIL	10.00	8.5	9.35	119.35	19
TAS	100.00	28	28.00	12.80	8	11.26	152.06	52
ACT	100.00	NIL	NIL	10.00	10	11.00	121.00	21
NT	100.00	NIL	NIL	10.00	10	11.00	121.00	21

Source: Adapted from Insurance Council of Australia, Submission no. 311, Appendix B and *Burden on insurance policies leaving Australians exposed to major risk*, available at [http://www.nrma.com.au/pub/nrma/about\\_us/media\\_releases/20020213a.shtml](http://www.nrma.com.au/pub/nrma/about_us/media_releases/20020213a.shtml).

7.17 The differing levels of Fire Levy tax on home and business insurance in metropolitan and country areas are illustrated in Table 7.3 below.

**Table 7.3 Fire Levy tax on home and business insurance in metropolitan and country areas**

State	Home Fire Levy		Business Fire Levy	
	Metropolitan	Country	Metropolitan	Country
VIC	13%	19%	28%	47%
NSW	17%	17%	30%	30%
SA	NIL	NIL	NIL	NIL
WA	NIL	NIL	NIL	NIL
QLD	NIL	NIL	NIL	NIL
TAS	NIL	NIL	28%	28%
ACT	NIL	NIL	NIL	NIL
NT	NIL	NIL	NIL	NIL

Source: Adapted from Insurance Council of Australia, Submission No. 311, Appendix B, n.p.

7.18 To address the issue of heavy taxes on insurance premiums, the New South Wales Government has decreased the level of Stamp Duty on insurance products to five per cent and the Western Australian Government has made the Fire Levy payable through local council rates rather than insurance premiums.<sup>18</sup> However, the Fire Levy saving in Western Australia has been offset (to an extent) by

<sup>18</sup> Insurance Council of Australia, *Submission no. 311*, p. 7 and Gregory Marsh, *Transcript of Evidence*, 5 August 2003, p. 23.

a rise in Stamp Duty on insurance products from eight to ten percent.<sup>19</sup> This has an effect of adding \$40 to \$100 to the cost of an insurance premium.<sup>20</sup>

- 7.19 Of concern to the Committee is evidence received about insureds paying a double Fire Levy in some States. For example, in some parts of New South Wales, Fire Levies are not only paid through insurance premiums but also through local council rates.<sup>21</sup> Despite this, in country areas where the Fire Levy is at its highest, there is not as much response assistance with brigades as there is in metropolitan areas.<sup>22</sup>

## Recovery phase

- 7.20 The IDRO positioned itself on the various state and territory government taskforces after the recent bushfires. As an example, in the Australian Capital Territory, IDRO worked with the Bushfire Recovery Taskforce to provide post-fire claims management to policy holders.<sup>23</sup> This included identifying their insurers and providing assistance on the process involved in making a claim.<sup>24</sup> Some insurance companies undertook positive claims processing where they initiated contact with their affected policy holders (identified through their geocoded databases).<sup>25</sup>
- 7.21 Usual practice is for insurers to appoint a loss adjuster to assist them in assessing claims. They may calculate the home building value by multiplying the area of the home in square metres by a rate dependent on the type of construction (ie, materials and nature) and calculate the replacement value of contents through an inventory completed by the policy holder.<sup>26</sup>

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19 Insurance Council of Australia, *Submission no. 311*, p. 7.

20 Graham Fellows, *Transcript of Evidence*, 5 August 2003, p. 49.

21 Allan Hansell, *Transcript of Evidence*, 22 August 2003, p. 20.

22 Allan Hansell, *Transcript of Evidence*, 22 August 2003, p. 20.

23 Insurance Australia Group, *Submission no. 339*, p. 5.

24 Insurance Disaster Response Organisation, <http://www.idro.com.au/about/default.asp>, viewed 20 August 2003

25 Insurance Council of Australia, *Submission no. 311*, p. 6.

26 ACT Bushfire Recovery Taskforce: *Insurance: Lessons Learnt from the January Bushfires*, pp. 2–3, available at [http://www.bushfirerecovery.act.gov.au/word/Insurance\\_article@30April2003.doc](http://www.bushfirerecovery.act.gov.au/word/Insurance_article@30April2003.doc).



- 7.22 An issue of concern to the Committee is that with some companies, insurance payments do not exceed the value insured when the replacement cost is greater.<sup>27</sup> Yet on the other hand, insurance payments do not exceed the replacement value when it is less than the amount insured.<sup>28</sup> Therefore, those who undervalue their home and/or contents bear some of the replacement costs yet those who overinsure are unlikely to receive the full insured value (despite paying higher premiums).
- 7.23 Further, policy holders sometimes fail to read the fine print concerning the scope of their coverage, believing they are protected for items that are excluded from their policy. On the other hand, sometimes there is a belief that certain products are not covered by insurance when in fact they are. This was evident after the Canberra bushfires where the Australian Capital Territory Government entered into negotiations (on behalf of those who lost their homes) with a demolition company not realising that this 'product' is actually covered by one of the major insurers in its home building contracts.<sup>29</sup>
- 7.24 Upon having their claims processed, many residents discovered that their home and contents were (unwittingly) undervalued. To ensure building insurance is adequate, policyholders should regularly assess the value per square metre of their home against the rates applicable to the building industry in their state or territory and allow for additional items such as separate garages, pergolas, retaining walls.<sup>30</sup> To adequately insure home contents, householders need to regularly conduct an inventory of their items and associated value for each room in line with the Consumer Price Index.<sup>31</sup> This can be done prior to receipt of the renewal notice.

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27 ACT Bushfire Recovery Taskforce: *Insurance: Lessons Learnt from the January Bushfires*, p. 2, available at

[http://www.bushfirerecovery.act.gov.au/word/Insurance\\_article@30April2003.doc](http://www.bushfirerecovery.act.gov.au/word/Insurance_article@30April2003.doc).

28 ACT Bushfire Recovery Taskforce: *Insurance: Lessons Learnt from the January Bushfires*, p. 2, available at

[http://www.bushfirerecovery.act.gov.au/word/Insurance\\_article@30April2003.doc](http://www.bushfirerecovery.act.gov.au/word/Insurance_article@30April2003.doc).

29 Insurance Australia Group Ltd, *Submission no. 339*, p. 5.

30 ACT Bushfire Recovery Taskforce: *Insurance: Lessons Learnt from the January Bushfires*, p. 2, available at

[http://www.bushfirerecovery.act.gov.au/word/Insurance\\_article@30April2003.doc](http://www.bushfirerecovery.act.gov.au/word/Insurance_article@30April2003.doc).

31 ACT Bushfire Recovery Taskforce: *Insurance: Lessons Learnt from the January Bushfires*, p. 2, available at

[http://www.bushfirerecovery.act.gov.au/word/Insurance\\_article@30April2003.doc](http://www.bushfirerecovery.act.gov.au/word/Insurance_article@30April2003.doc).

- 7.25 From the evidence received, it would appear that many policy holders had (unwittingly) failed to review both their home cover to allow for rapid escalation in the cost of rebuilding and their contents cover to allow for additional items and inflation. The Committee was told that the average building insurance policy covers about \$1000 per square metre when realistic building costs commonly vary between \$1500 to \$1700 per square metre<sup>32</sup> and are rapidly rising. Further, insurance companies will only insure for what they consider a reasonable value<sup>33</sup> of which, in the event of a claim, may no longer provide sufficient coverage.
- 7.26 Lack of prior building experience adds to the trauma associated with losing a home to fire and being underinsured – which was the case for many of the people who lost their homes, including the elderly.<sup>34</sup> The Committee heard evidence that quotations can vary between \$295,000 and \$500,000 for building a 40-square home and that some of those who choose to rebuild believed they were the subject of unprecedented market forces but were in fact, also the subject of profiteers.<sup>35</sup> There are also many hidden costs that impact heavily on those who have limited experience with rebuilding.
- 7.27 Businesses also found that their insurance did not cover everything. An example relates to Kosciusko Thredbo Pty Ltd losing direct tangible revenues after the fires that were not covered in its insurance claim.<sup>36</sup> Further, the cost of goods and services provided free of charge by the company to those involved in the response and recovery and the loss of five developments (resulting from the bushfires) were not covered by its insurance policy.<sup>37</sup>
- 7.28 In the aftermath of fire disasters, it is not uncommon for the disaster recovery taskforces to assist policy holders resolve disputes with their insurance companies.<sup>38</sup> Alternatively, claims disputes can be reviewed internally by the insurance companies and failing this, matters of dispute can be referred to the IEC. After the Canberra fire storm, the

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32 Mark Douglas, *Transcript of Evidence*, 15 July 2003, p. 62.

33 Mark Douglas, *Transcript of Evidence*, 15 July 2003, p. 62.

34 Peter Lawler, *Transcript of Evidence*, 15 July 2003, p. 4.

35 William Rooney, *Transcript of Evidence*, 22 August 2003, p. 4.

36 Kim Clifford, *Transcript of Evidence*, 10 July 2003, p. 82.

37 Kim Clifford, *Transcript of Evidence*, 10 July 2003, p. 82.

38 ACT Bushfire Recovery Taskforce: *Insurance: Lessons Learnt from the January Bushfires*, p. 1, available at [http://www.bushfirerecovery.act.gov.au/word/Insurance\\_article@30April2003.doc](http://www.bushfirerecovery.act.gov.au/word/Insurance_article@30April2003.doc).

Bushfire Recovery Taskforce is claimed to have expressed concern about its role in handling the full array of insurance disputes.<sup>39</sup> Claims that were trivial in nature (such as shrunken curtains from an insurance claim for dry cleaning) diverted attention and resources from assisting people who had suffered total loss.<sup>40</sup> It has been suggested that in future, insurance disputes be prioritised with those of a trivial nature being referred to the insurance company in question.<sup>41</sup>

## To insure or not to insure

7.29 A prevalent theme during the recent bushfires is under-insurance and non-insurance. Following the 2003 firestorm in the Australian Capital Territory, under-insurance was estimated to be at 40 per cent for replacement of house structures and between 30 and 50 per cent for replacement of contents.<sup>42</sup> Further, up to one in four households in Australia carry no insurance.<sup>43</sup> Under-insurance and non-insurance are most prevalent in the lower socioeconomic groups, particularly among tenants.<sup>44</sup> This situation places economic strain on governments providing cash grants to victims of which are generated from public and public contributions to relief funds.

7.30 High premiums and taxing on insurance are said to be key contributing factors to the high level of non-insured households. The Committee has heard that the high cost of insurance has necessitated property owners to justify whether the risk of loss outweighs the expense of insurance.<sup>45</sup> An example of the cost was provided by a property owner in Wulgulmerang who lost everything in the 2003 fires. She claimed that the insurance premium for her property was \$2880, plus a Fire Levy of \$347 and Stamp Duty of \$355 – totalling over \$3500.<sup>46</sup> Fortunately she had justified this expense, however, it is one that some property owners can only partially

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39 Insurance Australia Group Ltd, *Submission no. 339*, p. 6.

40 Insurance Australia Group Ltd, *Submission no. 339*, p. 6.

41 Insurance Australia Group Ltd, *Submission no. 339*, p. 6.

42 Insurance Council of Australia, *Submission no. 311*, p. 6.

43 Insurance Council of Australia, *Submission no. 311*, p. 6.

44 Alan Mason, *Transcript of Evidence*, 22 August 2003, p. 15.

45 Peter Webb, *Transcript of Evidence*, 14 July 2003, p. 9 and Stephen Angus, *Transcript of Evidence*, 15 July 2003, p. 84.

46 Heather Livingstone, *Transcript of Evidence*, 29 July 2003, p. 48.

afford<sup>47</sup> (and even then, it may cost around \$20,000 per year).<sup>48</sup> For others, property insurance is a financial impediment and is consequentially, unaffordable.<sup>49</sup>

7.31 ‘You can lead a horse to water but you can’t make it drink.’<sup>50</sup> According to the ICA, the bottom line regarding protecting property is about personal prioritising.<sup>51</sup> An example relates to the cost of insuring a pay by the month policy on a \$300,000 home in the Canberra suburb of Duffy being about as little as a carton of beer.<sup>52</sup> The ICA believes that individuals need to take responsibility for insuring their home and contents, despite the high cost.

7.32 The Committee has received evidence that ill-education<sup>53</sup> coupled with a ‘won’t happen to me’ mentality<sup>54</sup> – particularly among those living in urban areas where the threat of bushfires is not seen as high – may also be attributed to the lack of insurance. This situation has frustrated parts of the community as Mr David Melville, from the Manyana District Citizens Association, succinctly said

Another item that gets up my nostrils is insurance.<sup>55</sup>

To overcome this, it has been suggested that community education be undertaken and the concept of implementing compulsory insurance be investigated.

7.33 Numerous initiatives aimed at encouraging people to insure their home and contents – most of which are aimed at reducing its cost – have been suggested to the Committee. Many of these initiatives are outlined below.

- Abolishing the Fire Levy imposed on insurance premiums (and incorporating it into council rates).<sup>56</sup> Aside from the direct savings, this would also eliminate the costs (to the insurance companies)

47 Anne Strang, *Transcript of Evidence*, 28 July 2003, pp. 21–22.

48 Colin Nicholl, *Transcript of Evidence*, 6 August 2003, p. 94.

49 John Scales, *Transcript of Evidence*, 25 July 2003, p. 41 and Maurie Smith, *Submission no. 58*, p. 3.

50 William Rooney, *Transcript of Evidence*, 22 August 2003, p. 6.

51 William Rooney, *Transcript of Evidence*, 22 August 2003, p. 6.

52 William Rooney, *Transcript of Evidence*, 22 August 2003, p. 6.

53 Jim Clark, *Submission no. 363*, p. 2.

54 Graeme Adams, *Transcript of Evidence*, 22 August 2003, p. 6 and David Melville, *Transcript of Evidence*, 8 July 2003, p. 26.

55 David Melville, *Transcript of Evidence*, 8 July 2003, p. 26.

56 Insurance Council of Australia, *Submission no. 311*, p. 8.

associated with administering this tax, thereby facilitating a possible reduction in premiums.<sup>57</sup>

- Calculating the cost of each type of insurance tax (that is, Fire Levy, GST and Stamp Duty) based on the amount of the premium only.<sup>58</sup> This would eliminate the cascading effect of the taxes, thereby, reducing the total cost of insurance.
- Introducing a rebate scheme similar to that offered to those who have private health insurance.<sup>59</sup>
- Introducing tax deductibility of insurance premiums for home and contents insurance for principal places of residence.<sup>60</sup>
- Increasing the excess on the insurance policy to discourage small claims, thereby, facilitating a reduction in the premium.<sup>61</sup>
- Exempting registered fire fighting volunteers from paying the Fire Levy on insurance,<sup>62</sup> whether it be through insurance premiums or council rates. This is discussed in more detail in chapter 6.
- Reducing premiums according to the level of risk reduction performed in and surrounding the homes of policy holders.<sup>63</sup>

## The Committee's conclusions

7.34 The structure and operation of the Australian insurance industry facilitates collective and centralised coordination of disaster management, which the Committee believes is the right approach. The high levels of under- and non-insured are not attributed to the structure and operation of the industry, but rather, the high cost and lack of consumer awareness.

7.35 Although there are many factors contributing to the high cost of insurance, the Committee believes that taxing on premiums is an

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57 Graeme Adams, *Transcript of Evidence*, 22 August 2003, p. 7.

58 Insurance Council of Australia, *Submission no. 311*, p. 8.

59 Insurance Council of Australia, *Submission no. 311*, p. 9.

60 Insurance Council of Australia, *Submission no. 311*, p. 9.

61 William Mason, *Transcript of Evidence*, 22 August 2003, p. 21.

62 Graham Fellows, *Transcript of Evidence*, 5 August 2003, p. 49.

63 Graeme Adams, *Transcript of Evidence*, 22 August 2003, p. 5.

impediment to its affordability. The numbers, levels and calculation of taxes requires review.

#### **Recommendation 42**

- 7.36 The Committee strongly recommends that the New South Wales, Victorian and Tasmanian Governments abolish the Fire Levy tax they impose on home and business insurance premiums (wherever applicable), making it payable through household rates instead.**

**Any cost savings gained by the insurance industry through relief from collecting Fire Levies should be passed on to policyholders through reduced premiums. At the same time the Committee urges the Insurance Council of Australia to run ongoing education campaigns to increase public awareness on bushfire preparedness, including the need for insurance.**

- 7.37 The cost savings to policyholders flowing from abolishing Fire Levy tax as proposed in the preceding recommendation should not be offset by a subsequent increase in the amount of Stamp Duty tax paid on insurance premiums.**

#### **Recommendation 43**

- 7.38 The Committee recommends that taxes on insurance premiums be calculated only on the premium in order to eliminate the current cascading cost.**

#### **Recommendation 44**

- 7.39 The Committee suggests that registered volunteer fire fighters be exempt from paying Fire Levy tax to help offset some of the expense they incur during active duty. The exemption could be for a period of 12 months following each bushfire season in which they are proven to have fought fires.**

- 7.40 Lack of consumer awareness has impacted upon the level of under- and non-insured households. The recent bushfires highlighted an apparent unawareness of both the need for insuring assets and the extent to which it is required.

#### **Recommendation 45**

- 7.41 **The Committee recommends that the Insurance Council of Australia coordinates a public education campaign aimed at illustrating the importance of asset protection and how this can be achieved (that is, insurance products).**

#### **Recommendation 46**

- 7.42 **The Committee recommends that insurance companies ensure that potential and existing policyholders are aware of the need to regularly review their insurance policies to prevent undervaluing. This could be done through renewal notices and quarterly reminders. This should include a list of bushfire risk reduction measures that policyholders can implement to decrease the cost of their premium.**

## **Individual preparedness**

- 7.43 With about 80 per cent of the Australian population residing in urban and semi rural areas, the potential for loss and damage to life and property are high.<sup>64</sup> This highlights the need not only for adequate insurance, but individual preparedness on the home front.
- 7.44 There is no single strategy that individuals can adopt to reduce the risk of loss and damage to life and property resulting from the embers, radiant heat and direct flames of bushfires.<sup>65</sup> However, individuals can use a combination of the available preparedness measures appropriate to their physical and financial capacity, value systems and level of risk.

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64 Peter Bentley, *Submission no. 143*, p. 2.

65 CSIRO, *Submission no. 434*, p. 65.

7.45 The Committee received evidence that houses can survive the initial impact of the fire front yet may later ignite because of a subsequent ember shower<sup>66</sup> and this was experienced by a resident of the Canberra suburb of Duffy.

I would tend to agree with that. The house next door to us, No. 94, did not start to burn until sometime after the initial fire front went through. I believe that was caused by embers in their gutters and also the fact that none of the gas was turned off.<sup>67</sup>

Alternatively, an ember shower may arrive well before the bushfire front. The ways in which embers and flying burning debris ignite buildings include the following.<sup>68</sup>

- Combine with combustible materials at or near ground level.
- Lodge in gaps in and around combustible materials used in building structures.
- Gain entry to the interior of buildings, igniting combustible materials.

## Building maintenance

7.46 ‘Good management, not miracles, saves property and people.’<sup>69</sup> It is possible to reduce the impact of embers (and direct flame) by minimising the amount of combustible materials on a property and by returning to it after the initial fire front has passed to extinguish ignitions.<sup>70</sup> Some of the ways of reducing the fuel load on a property are listed in Table 7.4 (below).

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66 CSIRO, *Submission no. 434*, p. 66.

67 Paul Garrett, *Transcript of Evidence*, 15 July 2003, p. 53.

68 CSIRO, *Submission no. 434*, p. 66.

69 Joan Webster, *Essential Bushfire Safety Tips*, 2001, p. 20.

70 Joan Webster, *Essential Bushfire Safety Tips*, 2001, p. 20.



Table 7.4 Individual preparedness – building maintenance

Area	Preparedness measures
Building surrounds	<ul style="list-style-type: none"> <li>▪ Removing, thinning and pruning vegetation, particularly if highly flammable and within close proximity to building structures.</li> <li>▪ Removing hazardous material such as timber, clippings, dead leaves, twigs and rubbish.</li> <li>▪ Stripping and disposing of loose bark on trees.</li> <li>▪ Maintaining lawns and raking grounds.</li> <li>▪ Maintaining timber fences (ie, replacing rotted crossbeams, staining and securing loose posts).</li> <li>▪ Ensuring access points are not obstructed including those to hoses.</li> <li>▪ Clearing powerlines.</li> <li>▪ Storing gas tanks, bottles and other combustible substances at a distance from the expected fire path and main building and covering in metal mesh.</li> <li>▪ Storing firewood in metal or brick boxes.</li> <li>▪ Ensuring water reserve tanks are full and hoses are in working order.</li> </ul>
Building	<ul style="list-style-type: none"> <li>▪ Clearing gutters, under the house and in the ceiling.</li> <li>▪ Closing doors and windows and sealing any crevices.</li> <li>▪ Cleaning chimney.</li> <li>▪ Maintaining paint work on timber.</li> <li>▪ Replacing rotten boards and loose roof tiles.</li> <li>▪ Positioning furnishings a good distance from windows and doors.</li> <li>▪ Purchasing commercial products such as fire blankets and chemical technology.</li> </ul>

Source *Better Living DCP for Single Dwellings and Subdivision Developments, C4.1: Bushfire, pp. 1–8; CSIRO, Submission 434, pp. 65–66, and Joan Webster, Essential bushfire safety tips, 2001, chapters 13 and 19.*

## Building design

7.47 Further to building maintenance, building design has an important affect on a property withstanding the impact of a bushfire.<sup>71</sup> Below (see Table 7.5) are some of the ways in which building design can help protect life and property in the event of a bushfire.

Table 7.5 Individual preparedness – building design

Item	Design
Windbreaks	<ul style="list-style-type: none"> <li>▪ Incorporating a series of windbreaks into the design of the building to reduce the speed at which fires travel including planting low combustible trees around buildings (that would also capture embers) and positioning non-combustible outbuildings on the likely fire front side of the main building.</li> </ul>
Radiant heat barriers	<ul style="list-style-type: none"> <li>▪ Installing non-combustible radiant heat barriers (ie, masonry walls, steel panel fences, earth mounds, dense non-combustible trees, etc) between the building and likely direction of hazards.</li> </ul>
Vegetation	<ul style="list-style-type: none"> <li>▪ Providing appropriate vegetation barriers using fire resistant species.</li> </ul>
Building construction	<ul style="list-style-type: none"> <li>▪ Using simple designs throughout (to limit crevices) with non-combustible materials and easy access points.</li> <li>▪ Erecting low walls to avoid wind turbulence.</li> <li>▪ Constructing and enclosing decks, trellises and other decorative structures with non-combustible materials.</li> <li>▪ Sanding and painting or staining external timber structures and surfaces.</li> <li>▪ Installing leaf guards on gutters or rather than gutters, installing surface drain collectors at ground level.</li> <li>▪ Using downpipes of a minimum of 100mm x 75mm.</li> <li>▪ Using solid core timber external doors with metal framed wire security doors.</li> <li>▪ Installing draught seals on external doors and screening vents and other openings.</li> <li>▪ Glazing glass to enhance protection against radiant heat cracking.</li> <li>▪ Installing wire mesh or close-fitting metal shutters on all opening windows to reduce the levels of radiant heat impacting in the glazing, prevent ember entry and contain broken glass.</li> <li>▪ Erecting colour bond or masonry fences.</li> </ul>
Access and egress	<ul style="list-style-type: none"> <li>▪ Positioning and, where appropriate, signposting gates to allow efficient access and egress for fire fighting personnel and evacuees.</li> </ul>
Water	<ul style="list-style-type: none"> <li>▪ Installing exterior sprinkler systems, hoses sufficient in length to reach all ends of the building and a static water supply of around 10 000 litres (ie, pool, dam or tank).</li> </ul>

Source Blue Mountains City Council, *Better Living DCP for Single Dwellings and Subdivision Developments, C4.1: Bushfire*, pp. 1–8; CSIRO, *Submission 434*, pp. 66–69 and Joan Webster, *Essential bushfire safety tips, 2001*, chapters 10, 12, 16, 17 and 19.

71 Joan Webster, *Essential Bushfire Safety Tips, 2001*, p. 67.

## Planning and building codes

7.48 Despite the existence of national building standards endorsed by state and territory governments, the Committee has received evidence that:

Houses in bushfire prone areas are often not located, constructed, or maintained to minimise the risk of their ignitions when there are bushfires in the surrounding bushland.<sup>72</sup>

7.49 The Australian Building Codes Board (ABCB) is comprised of representatives of all levels of Australian government and the building industry. Its mission is:

To achieve community expectations of safety, health and amenity in the design, construction and use of buildings through nationally consistent, efficient and cost effective technical building requirements and regulatory systems.<sup>73</sup>

7.50 The Building Code of Australia (BCA) contains technical provisions for acceptable building design and construction throughout Australia and is produced and maintained by the ABCB.<sup>74</sup> The BCA incorporates Australian Standards (AS) that detail how its provisions can be implemented. For example, BCA Part G5 and Part 3.7.4 (respectively containing provisions on commercial and housing construction in bushfire prone areas) both incorporate AS3959–1999: Construction of Buildings in Bushfire Prone Areas.

7.51 The key feature of AS3959–1999 is methodology for bushfire hazard assessment resulting in four categories of risk (low, medium, high and extreme) with four corresponding construction levels (n/a, Level 1, Level 2 and Level 3).<sup>75</sup> Anything exceeding 'extreme' is beyond the scope of this standard but may be the subject of performance-based design (that is, an alternative approach that still meets the performance requirements of the BCA). The AS3959–1999 is currently under review but will not be completed for 2003 publication.

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72 CSIRO, *Submission no. 434*, p. 71.

73 Australian Building Codes Board, <http://www.abcb.gov.au/content/codes/>, viewed 8 September 2003.

74 Australian Building Codes Board, <http://www.abcb.gov.au/content/codes/>, viewed 8 September 2003.

75 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., p. 2.

- 7.52 Interestingly, evidence presented to the Committee states that the ‘extreme’ category is only contained in the draft proposed version of AS3959–1999 of which, if implemented, will be outside the scope of the Standard’s authority.<sup>76</sup> This highlights inconsistencies with the interpretation (and possibly application) of AS3959–1999.
- 7.53 These inconsistencies may be attributed to the way AS3959–1999 is presented as the Committee has been informed that some practitioners have difficulty using the classification methodology because of poor illustrations and inclusion of extraneous material in some parts.<sup>77</sup> Likewise, the effectiveness of the performance-based design approach has been questioned because of inconsistent interpretations on what building designs comply with relevant performance requirements.<sup>78</sup> From the evidence received by the Committee, it is apparent that there is great confusion about the current building codes.
- 7.54 Another feature of AS3959–1999 is prescribed minimum separation distances between new developments and native bushland in ‘bushfire prone’ areas based on expected radiant heat levels according to the vegetation type and slope.<sup>79</sup> A concern with the application of this is that in some circumstances, the expected radiant heat level could still exceed required design standards (where only the minimum separation distance has been adopted).<sup>80</sup> For example, buildings constructed to higher standards can lawfully be sited closer to native bushland which inevitably increases exposure of people and property to radiation and heat.<sup>81</sup> Further, AS3959–1999 does not prescribe minimum separation distances between houses to reduce the risk of house-to-house spread of fire.<sup>82</sup>

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76 National Association of Forest Industries, *Submission no. 420*, p. 25.

77 Fire Protection Association Australia, *Submission no. 382*, p. 7.

78 John Briginshaw, *Transcript of Evidence*, 1 August 2003, p. 23.

79 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., p. 3.

80 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., pp. 2–3.

81 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., p. 3.

82 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., p. 3.

- 7.55 The BCA enables building regulatory legislation in each state and territory – fulfilling technical requirements that have to be satisfied for approval of building proposals.<sup>83</sup> Compliance to these laws is interpreted and administered by the building and development authorities in each state and territory<sup>84</sup> therefore, there are no consistent processes for ensuring that the system is effective. Further, although the BCAs pertaining to construction in bushfire prone areas are enforceable under the various building regulatory legislation, this is **only where the states and territories have declared an area as bushfire prone**. This indicates that, with the changing nature of the urban-rural interface, constant reviewing of land is required to ensure that bushfire prone areas are accurately identified and appropriately developed and managed.
- 7.56 The Committee has received evidence that some authorities/councils have been imprudent in their land planning by approving urban development in bushfire prone areas.<sup>85</sup> An example relates to reticulated development, particularly on ridgetops to which fire travels rapidly.<sup>86</sup> Such dispersed development reduces the size of reserves and makes fuel reduction and access difficult, thereby, increasing the risk to life and property. The majority of this high fire damage risk development approval was made prior to the introduction of current risk assessment techniques, building standards and native vegetation retention policies. Hard edge interface between urban development and bushland is preferred<sup>87</sup> because it enables prominent separation distance, thereby, facilitating better protection.
- 7.57 The BMCC claims to have taken a constructive approach through implementing a development control plan to provide for the bushfire prone environment in which it exists.<sup>88</sup> This plan, *Building in Bushfire Prone Areas*, is designed for single residential developments, prescribing pre-development bushfire assessments in bushfire prone areas and detailing the building and landscaping standards based on

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83 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., p. 3.

84 CSIRO, *The Adequacy of the Australian Standards AS3959–1999 Construction of Buildings in Bushfire-Prone Areas*, n.d., p. 3.

85 Rob Whelan, *Submission no. 351*, p. 6.

86 Rob Whelan, *Submission no. 351*, p. 6.

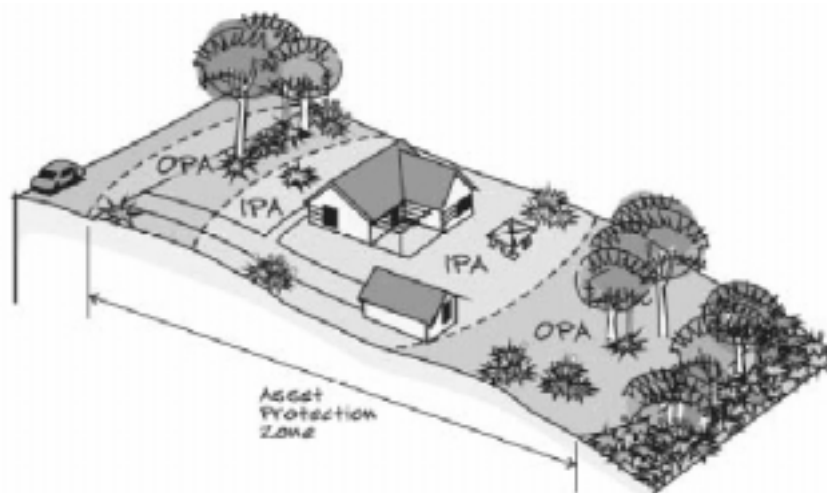
87 Ken Taylor, *Transcript of Evidence*, 14 July 2003, p. 42.

88 Blue Mountains City Council, *Submission no. 329*, p. 4.

various guidelines including the BCA and AS3959–1999.<sup>89</sup> The Council claims that every residential property built in adherence to these codes has withstood the impact of bushfires in the area.<sup>90</sup>

7.58 As required under recent amendments to the *NSW Rural Fires Act 1997*, the BMCC has continued with its asset protection zone inspections to new and existing properties located in bushfire prone areas.<sup>91</sup> As discussed in chapter 2, the concept of asset protection zones is to reduce radiant heat or flame contact through hazard reduction, while providing areas where burning debris can fall without great risk of creating further outbreaks. This is illustrated on a property in Figure 7.2 below (where IPA is an Inner Protection Area and OPA is an Outer Protection Area).

Figure 7.2 Asset Protection Zoning



Source Blue Mountains City Council, *Better Living DCP for Single Dwellings and Subdivision Developments, C4.1: Bushfire*, p. 4.

7.59 It has been put to the Committee that lack of compliance, not lack of codes, is the underlying issue in the area of land planning and building.<sup>92</sup> Failure to comply with the asset protection zone requirements results in the Council issuing a 'section 66 notice' whereby, upon a second inspection 30 days later, non-compliance ramifications of a \$500 fine and final warning are issued.<sup>93</sup> If this final warning is not acted upon, the Council contracts the required work at

89 Blue Mountains City Council, *Building in Bushfire Prone Areas*, n.d., p. 5.

90 Blue Mountains City Council, *Submission no. 329*, p. 4.

91 Frank Garofalow, *Transcript of Evidence*, 9 July 2003 (Katoomba), p. 2.

92 Saturn Corporate Resources Pty Ltd, *Submission no. 171*, p. 1.

93 Christopher West, *Transcript of Evidence*, 9 July 2003 (Katoomba), p. 3.

the expense of the property owner.<sup>94</sup> The principals of this system have been adopted in various States throughout Australia but the Committee was told in Manjimup that it can be ‘an administrative nightmare and it is very expensive.’<sup>95</sup> Perhaps this accounts for the apparent reluctance of some local governments declaring bushfire prone areas.<sup>96</sup>

- 7.60 It has been suggested that a scheme be implemented to assist low-income residents in meeting the asset protection zone requirements as they can not afford to upgrade their existing properties to make them more resistant to bushfires.<sup>97</sup> Further, the expense of building new properties in the area in conformity with the development control plan (DCP) has deterred many land owners (such as retirees) from building on their land<sup>98</sup> – compliance can add up to \$30,000 to the cost of building a new home.<sup>99</sup> Additionally, if DCP compliance for a development proposal is impractical, landowners are prevented from building.<sup>100</sup> In this instance compensation from councils to landowners may be appropriate.
- 7.61 Although the planning powers of some councils apply to new and existing development, others only apply to the former – yet tree clearing is classified as a form of development.<sup>101</sup> Failure to address current compliance may stem from AS3959–1999 requiring that the classification system only be applied during the approval and construction stages of building, thereby, not considering the possibility that the category of risk may change over time.<sup>102</sup> The absence of planning powers covering *existing* properties coupled with landowners’ inability to freely remove hazardous trees has resulted in properties being ill-prepared for bushfire attacks.

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94 Christopher West, *Transcript of Evidence*, 9 July 2003 (Katoomba), p. 3.

95 Thomas Muir, *Transcript of Evidence*, 5 August 2003, p. 15.

96 Mark Gribble, *Submission no. 345*, p. 4.

97 Hugh Paterson, *Transcript of Evidence*, 9 July 2003 (Katoomba), p. 21.

98 Kevin Browne, *Transcript of Evidence*, 9 July 2003 (Katoomba), p. 37.

99 National Association of Forest Industries, *Submission no. 420*, p. 25.

100 Christopher Brogan, *Transcript of Evidence*, 9 July 2003 (Katoomba), pp. 4–5 and NSW National Party, *Submission no. 405*, p. 6.

101 Ian Mott, *Planning for Disaster. Regulations Precluding Reasonable Precautions*, p. 2, available at <http://www.ipa.org.au/pubs/special/bushfires/mott.pdf>, and Helen Ferns, *Submission no. 328*, p. 8.

102 Forest Industries Association of Tasmania, *Submission no. 258*, p. 3.

- 7.62 It has also been suggested to the Committee that a Commonwealth and State Government national strategy be devised to handle issues pertaining to urban planning, building design and construction, maintenance, education and enforcement.<sup>103</sup> This strategy should be devised taking a holistic approach with the expertise from the areas of forestry, building, science, engineering and urban planning and implemented at a federal level.

## Fight or flight?

- 7.63 Insurance and building maintenance and design will certainly mitigate the risk of loss and damage to life and property in the event of a bushfire. However, these need to be combined with an appropriate individual active defence because ultimately, this will have the greatest impact on the amount of loss or damage incurred.
- 7.64 The Committee received evidence that initial community based attack is an important first line of defence that can provide a successful outcome.<sup>104</sup>

It is the job of communities to protect their own properties. It is the job of the fire service to prevent the spread of the fire front. It is mathematically and morally wrong to expect a fire unit for every threatened house.<sup>105</sup>

- 7.65 The CSIRO claims that according to its research, no attended houses have been lost where people endeavoured to extinguish spot fires and embers and that unattended houses are commonly lost.<sup>106</sup> Statistics reveal that 80 to 90 per cent of attended houses are saved and 99.9 per cent are saved where householders employ proven effective defence techniques.<sup>107</sup>

The occupant of No. 96 told his wife and son to leave and he stayed. He saved his house. Mr Douglas and his son, Simon, who were on the other side of our house, saved their house as well and possibly saved some of our house because the wooden fence dividing our houses was very close.<sup>108</sup>

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103 Terry Edwards, *Transcript of Evidence*, 1 August 2003, p. 33.

104 David Packham, *Submission no. 395*, p. 4.

105 Joan Webster, *Submission no. 89*, n.p.

106 Tim Vercoe, *Transcript of Evidence*, 14 July 2003, p. 76.

107 Joan Webster, *Essential Bushfire Safety Tips*, 2001, pp. 22–22.

108 Paul Garrett, *Transcript of Evidence*, 15 July 2003, p. 54.



- 7.66 In contrast though, one Canberran witness believed that attempts to save his property from the ember showers would have been futile.<sup>109</sup> This is however, considering other factors such as the severity of the ember shower, his age, failing water pressure, inadequate equipment and official calls to evacuate.<sup>110</sup>
- 7.67 Further, in the event of a bushfire, the chance of *survival* is greater for those who attend their house<sup>111</sup> because evacuation, particularly last minute, bears greater risk to life than remaining in the home.<sup>112</sup> This is supported by the AFAC.

Research into Australian bushfire fatalities shows that last minute evacuations from bushfires contributed to the majority of deaths. Late evacuation is inherently dangerous and can cause greater risks than remaining in the fire area.<sup>113</sup>

As indicated above though, it must be recognised that the decision to ‘fight or flight’ depends on the circumstances of the situation – the benefits of staying must be weighed against the risks, also considering the advice of emergency services.<sup>114</sup> For example, there is less risk to an able person whose house is well prepared than to an impaired person with limited defence capabilities but sufficient time and means to evacuate to a designated community refuge.

- 7.68 As unattendance can lead to a loss of property, it has been suggested to the Committee that the Victorian approach to evacuation be adopted nationally.<sup>115</sup> This involves the prevention of forced evacuation of a person from any land or building if they have pecuniary interests in it.

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109 Peter Lawler, *Transcript of Evidence*, 15 July 2003, p. 2.

110 Peter Lawler, *Transcript of Evidence*, 15 July 2003, p. 2.

111 Joan Webster, *Essential Bushfire Safety Tips*, 2001, p. 22.

112 Ron McLeod, *Inquiry into the Operational Response to the January 2003 Bushfires in the ACT*, August 2003, p. 188.

113 Australasian Fire Authorities Council, *Position paper on community safety and evacuation during bushfires*, AFAC Limited, 2001, p. 2.

114 CSIRO, *Submission no. 434*, p. 65.

115 Institute of Foresters Australia, *Submission no. 295*, pp. 3-4.

- 7.69 The AFAC agrees with the basis of this suggestion. It believes that authority to evacuate should reside with the lead fire combat authority and that, where legislation enables forced evacuation, an exclusion protocol be developed by the relevant authorities preventing forced evacuation where there is pecuniary interest and where there is no imminent danger of death or serious injury.<sup>116</sup>
- 7.70 An emergency escape plan based on this system has been adopted in Tasmania that also allows for residents in an area to be put into fire groups to deal with emergency matters such as defence strategies and evacuation.<sup>117</sup> The success of this is largely dependent on having people with like minds who can work together before, during and after a bushfire.

## Community awareness

Recent Australian bushfires have clearly and tragically demonstrated that Australians still, by greater percentage, remain poorly educated and ill informed as to how to prepare for and deal with a bush fire attack. The result has been horrific loss of property and lives.<sup>118</sup>

- 7.71 In contrast, the VNPA believes that the relatively low loss of houses during the fire season in Victoria can perhaps be attributed to the success of the bushfire protection mechanisms implemented in that State including public preparedness programs.<sup>119</sup>
- 7.72 The issues discussed in this chapter need to be understood by all sectors of the community to reduce the impact of bushfires. It has been suggested that a high profile, proactive and continual national education program be undertaken<sup>120</sup> to ensure that current bushfire preparedness information is effectively relayed to a wide audience.

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116 Australasian Fire Authorities Council, *Position paper on community safety and evacuation during bushfires*, AFAC Limited, 2001, pp. 4–5.

117 Brian Smith, *Transcript of Evidence*, 1 August 2003, p. 24.

118 Cease-fire Technologies Pty Ltd, *Submission no. 413*, p. 1.

119 Victorian National Parks Association, *Submission no. 176*, p. 21.

120 Victorian National Parks Association, *Submission no. 176*, p. 21.

7.73 A number of councils publish and distribute guidelines but it is unknown whether these reach all residents in bushfire prone areas<sup>121</sup> and are read, understood and executed. The January 2003 bushfires in Canberra illustrated that even people who do not live in declared bushfire prone areas need to be aware of the need for insurance, building maintenance and design and defence strategies, again, highlighting the need for a national education program. Features of a national campaign could include the following:

- Introducing bushfire skills training to schools and libraries.<sup>122</sup>
- Training various categories of emergency services personnel on their specific role in the event of a bushfire.<sup>123</sup>
- Ensuring that those in the fields of building, engineering, urban planning,<sup>124</sup> forestry and science have a clear understanding of bushfire risk management including current related regulatory codes and legislation.
- Running adult education courses on protective planning<sup>125</sup> (including insurance, building design and maintenance and defence techniques) in the context of bushfires.
- Broadcasting protective planning issues through the media, television,<sup>126</sup> Internet, radio and publications.
- Structuring the community into groups and providing them with guidelines for launching an initial attack on a bushfire.<sup>127</sup>
- Enclosing brochures about bushfire protection with rates notices.<sup>128</sup>
- Counselling prospective land developers in bushfire prone areas on the risks and necessary protective planning.<sup>129</sup>

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121 Engineers Australia, *Submission no. 401*, p. 2.

122 JH Wickett, *Submission no. 341*, p. 5.

123 JH Wickett, *Submission no. 341*, p. 5.

124 ICS Group, *Submission no. 202*, p. 7.

125 JH Wickett, *Submission no. 341*, p. 5.

126 JH Wickett, *Submission no. 341*, p. 6.

127 ICS Group, *Submission no. 202*, p. 6.

128 Cooma District Council of the NSW Farmers Association, *Submission no. 353*, p. 3.

129 Peter Smith, *Submission no. 378*, p. 8.

- Having a Bushfire Awareness and Preparedness Day (similar to Clean Up Australia Day) where the community is encouraged to undertake risk reduction with local governments coordinating the disposal of hazardous material.<sup>130</sup>

## Property protection products and programs

- 7.74 The Committee has received submissions promoting the use of property protection products and packages for private and commercial use including the following.
- Barricade Fire Protection Pty Ltd's fire suppression chemical technology, designed to act as a protective coating (to surfaces to which it is applied) against the impact of flames and radiant heat.<sup>131</sup>
  - Firebloka's external sprinkler systems.<sup>132</sup>
  - Cease-Fire Technologies' Australian Bushfire Home Protection Information Program Awareness Pack.<sup>133</sup>
  - Environmental Hazard Management F-500.<sup>134</sup>
- 7.75 Although the Committee has been made aware of these products and program, it is not in a position to evaluate and make recommendations – rather, this is an avenue of research that the Bushfire Cooperative research Centre should undertake.

## The Committee's conclusions

- 7.76 Although there is no 'one size fits all' strategy to bushfire risk reduction, there is a range of building maintenance and design measures that can be taken to reduce the likelihood of damage suffered through ember showers, radiant heat and direct flame. However, it appears that appropriate building maintenance is not widely performed and that despite the existence of national building standards, buildings are nevertheless, not located and constructed to minimise the risks associated with bushfires. It also appears that the

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130 East Gippsland Shire Council, *Submission no. 387*, p. 15.

131 Patrick Harrington, *Transcript of Evidence*, 30 July 2003, pp. 66–67.

132 Firebloka, *Submission no. 2*, p. 5.

133 Email from Cease-Fire Technologies to Ian Dundas, 22 September 2003.

134 Environmental Hazard Management, *F-500 CD-Rom*.

community as a whole is not aware of the ways in which it can contribute to minimising the loss of lives and properties in the event of a bushfire.

- 7.77 The Committee believes that the lack of building maintenance can be attributed to regulations that focus specifically on construction and only in bushfire prone areas. From analysing the evidence, the Committee is of the opinion that imprudent planning and building design is attributed to inconsistencies in the interpretation and application of the BCA, specifically AS3959–1999: Construction of buildings in Bushfire Prone Areas.

#### **Recommendation 47**

- 7.78 **The Committee recommends that Standards Australia incorporate building maintenance into AS3959–1999: Construction of buildings in Bushfire Prone Areas, perhaps renaming it as AS3959–1999: Construction and maintenance of buildings in Bushfire Prone Areas.**

#### **Recommendation 48**

- 7.79 **The Committee recommends that state and territory governments be required to regularly performs risk assessments to the land within their jurisdictions to ensure that bushfire prone areas are accurately identified and can be appropriately managed. This should include possibly prohibiting, or at least limiting, reticulated development in these areas. If building is effectively prohibited on land previously zoned for residential or commercial building, state and territory governments, in conjunction with local councils, should adequately compensate the affected landholders.**

#### **Recommendation 49**

- 7.80 **The Committee recommends that Standards Australia review the clarity of AS3959–1999: Construction of buildings in Bushfire Prone Areas to ensure that all relevant stakeholders can interpret and apply the Standard in the way it is intended.**

**Recommendation 50**

- 7.81 **The Committee recommends that Program D of the Commonwealth Bushfire Cooperative Research Centre examines the (pending) outcome of the ABCB's review of the existing Building Code of Australia bushfire provisions (including Standard AS3959-1999) to determine their adequacy and the ways in which compliance can be better managed. This should include extending its scope to cover existing buildings and those that are not in areas declared as bushfire prone, yet still on the urban-rural interface and therefore, potentially at risk.**
- 7.82 The Committee concludes that the recent Australian bushfires demonstrated a general lack of community awareness about the active role that it can play in reducing the severity of the impact of bushfires.

**Recommendation 51**

- 7.83 The Committee recommends that (under Programs C and E) the Bushfire Cooperative Research Centre considers the following items as part of a national education program.
- Introducing bushfire skills training to schools and libraries.
  - Training various categories of emergency services personnel on their specific role in the event of a bushfire.
  - Ensuring that those in the fields of building, engineering, urban planning, forestry and science have a clear understanding of bushfire risk management including current related regulatory codes and legislation.
  - Counselling prospective land developers in bushfire prone areas on the risks and necessary protective planning.
  - Running adult education courses on protective planning (including insurance, building design and maintenance and defence techniques) in the context of bushfires.
  - Broadcasting protective planning issues through the media, television, Internet, radio and publications.
  - Structuring the community into groups and providing them with guidelines for launching an initial attack on a bushfire.
  - Enclosing brochures about bushfire protection with rates notices.
  - Having a Bushfire Awareness and Preparedness Day (similar to Clean Up Australia Day) where the community is encouraged to undertake risk reduction with local governments coordinating the disposal of hazardous material.

**Recommendation 52**

- 7.84 The Committee recommends that the Australasian Fire Authorities Council's suggested evacuation protocol be adopted by all of the Australian States and Territories.

### Recommendation 53

- 7.85 **The Committee recommends that the Commonwealth Bushfire Cooperative Research Centre’s research and recommend property protection products and programs under Program D.**

## Liability

- 7.86 The evidence received by the Committee clearly illustrates the angst among many sectors of the community.

It is just not fair. If I caused a fire on my land and it was by my negligence or lack of foresight, I would be liable. But the state is not.<sup>135</sup>

- 7.87 The issue of liability is complex and although the Committee does not seek to implicate anyone, it does seek to highlight the key issues based on the evidence it has received.
- 7.88 Unfortunately the Committee has not received evidence from the Victorian, New South Wales and Australian Capital Territory Governments. This has caused speculation, with at least one submitter believing that the Victorian Government fears liability for improperly managing public land and that it demonstrates its unwillingness to change existing policies.<sup>136</sup>
- 7.89 According to the evidence, there has been an apparent shift of priorities concerning land management practices among some of the state and territory governments.<sup>137</sup> Protecting conservation values appears to be the underlying land management priority – but this has been at the expense of life and property.<sup>138</sup> The arguments for and against hazard reduction on public land are discussed in chapters 2 and 3 but the issue of one’s ‘duty of care’ warrants further discussion.

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135 Robert Richardson, *Transcript of Evidence*, 24 July 2003, p. 10.

136 Out ‘n’ About, *Submission no. 390*, p. 2.

137 Institute of Foresters of Australia, *Submission no. 295*, pp. 20-1.

138 Institute of Foresters of Australia, *Submission no. 295*, pp. 20-1.



- 7.90 Private and public landholders have a duty of care to ensure that reasonable precautions are taken to protect their own assets and prevent any foreseeable detriment to their adjoining lands.<sup>139</sup> Currently, the issue of liability appears to be an impediment to this.

## Compensation

- 7.91 The Committee has been informed that public landholders prosecute private landholders when fires (be it wildfires or escaped controlled burns) originating on private holdings cross onto public land.<sup>140</sup> Despite this, the reverse appears to be the exception rather than the norm.<sup>141</sup> This situation has caused grief to many private landholders, particularly those who are under or not insured – the public liability of which, if fully insured, may not cover damage caused by privately performed controlled burns breaking containment lines.<sup>142</sup>
- 7.92 The Committee has been told that
- We are convinced also that the Government should be responsible for compensation.<sup>143</sup>
- similar to the South Australian Government, Telecom, power transmission companies and State Rail for causation of fires.<sup>144</sup> There is an apparent reluctance by private landholders to pursue litigation though, not only because of the costs at such an inopportune time but also in fear of subsequent repercussions.<sup>145</sup>
- 7.93 Damage caused to private land by fire fighting operations is an issue that has been raised throughout the inquiry. An example relates to private landholders providing access (for fire fighters) to adjacent burning public land<sup>146</sup> where bulldozing buffer zones, demolishing fences and outbuildings, destroying roads and depleting water supplies occur without subsequent compensation.

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139 Edward Stuckey, *Submission no. 70*, p. 3 and Ian Mott, *Planning for Disaster. Regulations Precluding Reasonable Precautions*, p. 3, available at <http://www.ipa.org.au/pubs/special/bushfires/mott.pdf>.

140 Access for All Inc, *Submission no. 104*, p. 7.

141 Access for All Inc, *Submission no. 104*, p. 7 and Philip Read, *Submission no. 76*, p. 5.

142 Alan Harris, *Submission no. 289*, p. 3.

143 Heather Livingstone, *Transcript of Evidence*, 29 July 2003, p. 49.

144 Peter Webb, *Submission no. 317*, p. 12.

145 Andrew Duncan, *Transcript of Evidence*, 6 August 2003, p. 93.

146 Access for All Inc, *Submission no. 104*, p. 7.

- 7.94 Further to this, a recurring theme during the inquiry was the issue of damage to privately owned fences through fire fighting operations, suppression activities or bushfires igniting on public land. ‘The issue of fencing has been the only thorn in everyone’s side’.<sup>147</sup> The Committee received reports that in Victoria, only boundary fences shared by the Government are compensated for and even then, it is partial with exclusions.<sup>148</sup> Internal fences are not covered in these circumstances<sup>149</sup> so unless one can afford to insure kilometres of fencing, there is no protection, making farmers face a replacement cost ranging from \$50 000 to \$450 000.<sup>150</sup>
- 7.95 Overall, fencing is a risk borne by private landholders which ‘provides no imperative for public landholders to manage their side of the fence.’<sup>151</sup> The interim report of the Esplin inquiry into the 2002–03 Victorian bushfires highlights the need for a clear and consistent fencing policy to eliminate the confusion about entitlements and anger regarding the current inequities.<sup>152</sup>
- 7.96 The report recommends a review of the existing fencing policy for boundary and internal fences damaged as a result of fire. This should result in a revised policy, perhaps with public consultation and with consideration to the following.<sup>153</sup>
- It is not a substitute for insurance.
  - It provides an imperative for appropriate land management.
  - It should be equitable, predictable and transferable between different areas and situations.

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147 John Costello, *Transcript of Evidence*, 24 July 2003, p. 59.

148 Philip Reid, *Submission no. 76*, p. 5 and Robert Richardson, *Transcript of Evidence*, 24 July 2003, p. 10 and Indigo Shire Council, *Submission no. 285*, p. 5.

149 Philip Reid, *Submission no. 76*, p. 5.

150 John Costello, *Transcript of Evidence*, 24 July 2003, p. 37 and Anne Strang, *Transcript of Evidence*, 28 July 2003, p. 19.

151 Bruce Esplin, *Interim Report of the Inquiry into the 2002–2003 Victorian Bushfires*, August 2003, p. 11.

152 Bruce Esplin, *Interim Report of the Inquiry into the 2002–2003 Victorian Bushfires*, August 2003, p. 11.

153 Bruce Esplin, *Interim Report of the Inquiry into the 2002–2003 Victorian Bushfires*, August 2003, p. 11.

- 7.97 The report also recommends that the Victorian Government develops a consistent policy for the repair/replacement of private assets damaged or destroyed in authorised suppression activities. This includes fencing and water stores.<sup>154</sup>
- 7.98 It has been suggested to the Committee that councils be held liable for loss and damage incurred to properties in bushfire prone areas if it can be established that development was imprudently approved (ie, reticulated development in bushfire prone areas).<sup>155</sup> Further, it has been suggested that councils be held liable for authorising the sale of land in bushfire prone areas that is subsequently identified as being inappropriate for development.<sup>156</sup> It must be remembered, however, that it is the responsibility of the individual to become aware of the risks associated with living in bushfire prone areas including the relevant building maintenance and design requirements.

### Avoiding liability

- 7.99 Fear of liability is such that the New South Wales regulations require private landholders to perform the ignition for a controlled burn on their property, even if RFS personnel are present.<sup>157</sup> This is to protect the RFS from liability should the burn break containment lines<sup>158</sup> and has caused private landholders to ignite fires without using the expertise of RFS or discouraged them from performing hazard reduction burns. In either case, the chance of loss and damage to life and property is increased.
- 7.100 Likewise, this situation has caused grief for government agencies, with the VNPA expressing the State Government's position being 'damned if it burns and damned if it doesn't'.<sup>159</sup> It fears the legal consequences for both controlled burns on public land escaping to private land and increased fuel loads from failing to perform controlled burns.<sup>160</sup> It was said to the Committee that liability should not be imposed on public land managers for damage to adjacent private land if the legislative requirements for the management of that

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154 Bruce Esplin, *Interim Report of the Inquiry into the 2002–2003 Victorian Bushfires*, August 2003, p. 12.

155 Helen Ferns, *Submission no. 328*, p. 9.

156 Helen Ferns, *Submission no. 328*, p. 9.

157 Alan Harris, *Submission no. 289*, p. 3.

158 Alan Harris, *Submission no. 289*, p. 3.

159 Victorian National Parks Association, *Submission no. 176*, p. 8.

160 Victorian National Parks Association, *Submission no. 176*, p. 8.

land have been met.<sup>161</sup> This is despite public land management 'preservation' policies being a significant contributor to the neglect of hazard reduction<sup>162</sup> and therefore, damage caused to its adjoining private land – indicating that these policies require review.

- 7.101 Sadly, liability implications encourage spontaneous fires of an 'unknown origin'<sup>163</sup> potentially causing more damage than those performed with expertise of fire fighting personnel under a well designed hazard reduction program.
- 7.102 In Victoria, rural industries are required to form fire brigades with company directors assuming liability for all incidents involving fire crews, even when operating under the direction of the CFA.<sup>164</sup> Such incidents increase workers' compensation premiums making insurance unaffordable.<sup>165</sup> They also discourage some companies from engaging in fire suppression activities because 'There is a fine line between safety [liability] and getting water on fire.'<sup>166</sup> but, depending on the nature of the business, others are forced to accept the risk<sup>167</sup> (often to their detriment).
- 7.103 It has been said that supervisors responsible (under New South Wales occupational health and safety laws) for the safety of fire fighters have tried to protect themselves against litigation by developing broad policies<sup>168</sup> however, this is difficult when fighting an 'unpredictable enemy'<sup>169</sup> because 'what may be fair and reasonable policy in one situation may be downright dangerous in another'.<sup>170</sup> For example, the RFS occupational health and safety policy requires a minimum of two officers on board a fire vehicle for increased protection. However, this may result in a driver being unable to rescue his/her fellow officers performing a nearby ground attack because he/she cannot legally manoeuvre the vehicle unaccompanied.<sup>171</sup>

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161 Colong Foundation for Wilderness Ltd, *Submission no. 243*, p. 5.

162 David Melville, *Transcript of Evidence*, 8 July 2003, p. 26.

163 Alan Harris, *Submission no. 289*, p. 4.

164 Hancock Victorian Plantations Pty Ltd, *Submission no. 358*, p. 8.

165 Hancock Victorian Plantations Pty Ltd, *Submission no. 358*, p. 8.

166 Mervyn Holmes, *Transcript of Evidence*, 24 July 2003, p. 67.

167 Malcolm Tonkin and Mr Philip Lloyd, *Transcript of Evidence*, 30 July 2003, pp. 9–10.

168 Garry Owers, *Submission no. 81*, p. 2.

169 Mervyn Holmes, *Transcript of Evidence*, 24 July 2003, p. 67.

170 Garry Owers, *Submission no. 81*, p. 2.

171 Garry Owers, *Submission no. 81*, p. 2.

- 7.104 In Hobart, the Committee heard evidence that paid and volunteer fire fighters are uncertain as to whether or not they should 'break the door down' because they may be sued for property damage.<sup>172</sup> Emergency services personnel work under unique circumstances with inherent risks and, if they are to partake in fire suppression activities to save lives and properties, perhaps require an exclusive insurance policy offering them sufficient protection.<sup>173</sup> This may include compensation for lost wages (if applicable) and for both injuries sustained and loss to unattended property while on active duty.<sup>174</sup> It has been suggested that this be extended to land management staff to protect them against the risks associated with fuel reduction burning.<sup>175</sup> This issue is dealt with in more detail in chapter 4.
- 7.105 It must be noted that failing to act may on the surface, appear to provide protection from liability, but in actual fact may have the adverse affect because fire fighting personnel are legally bound to act in a way that will help save lives and property.

## The Committee's conclusions

- 7.106 Private and public land owners have an equal duty of care to ensure that reasonable precautions are taken to protect their own assets and prevent any foreseeable detriment to their adjoining lands. Ironically, the legal implications of taking such precautions can be an impediment to accepting this duty of care. Based on the evidence, the consensus is that private landholders are liable for their mistakes, yet public landholders are not and that avoiding liability amounts to avoiding active duty on the fire front – the latter of which is debatable. The bottom line is that extinguishing bushfires requires the expertise of fire fighters and control officers and until they are protected from the inherent risks of their work, lives and properties will remain in danger during bushfires.

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172 Reuben Radford, *Transcript of Evidence*, 1 August 2003, p. 64.

173 Hancock Victorian Plantations Pty Ltd, *Submission no. 358*, p. 8 and NSW National Party, *Submission no. 405*, p. 7.

174 Stanthorpe Shire Council, *Submission no. 338*, p. 2.

175 Edward Stuckey, *Submission no. 70*, p. 3.

**Recommendation 54**

**7.107 Further to recommendation 21 in chapter 4, the Committee recommends that the Commonwealth seeks to ensure that the proposed Council of Australian Governments review of the bushfire management, initiate with the states and territories, as a priority, a review of the duty of care of public and private landowners and their potential liability. This should be done with a view to developing clear and consistent principles that cover (but are not limited to) the following:**

- **Timely replacement/ repair of loss/damage (including to fences) resulting from fire fighting operations, suppression activities or wildfires.**
- **The liability of councils that imprudently approve the sale of land.**
- **The responsibilities and potential liabilities of fire controllers with a view to developing principles of indemnification for reasonable, responsible and informed decision making (including occupational health and safety).**