

Shire of Jerramungup

**Review of Emergency Management
Acts**

May 2014

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INTRODUCTION

The Department of Fire and Emergency Services (DFES) has undertaken a review of the *Fire Brigades Act 1942* (Fire Brigades Act), the *Bush Fires Act 1954* (Bush Fires Act) and the *Fire and Emergency Services Act 1998* (Fire and Emergency Services Act), with a view of merging them into one emergency services Act.

The Concept Paper: Review of the Emergency Services Acts (the Concept Paper) examines the high-level concepts for how emergency services can be better delivered to Western Australians under a single combined Act.

The paper has been drafted following widespread consultation undertaken since November 2012 with key stakeholder groups across the State including but not limited to:

- Volunteer Associations;
- Career DFES Staff;
- United Firefighters Union;
- State Government Agencies;
- Local Government Representatives;
- Industry Trade Groups; and
- Non-Government Organisations.

The full Concept Paper can be found at
<http://www.dfes.wa.gov.au/legislationreview/Pages/default.aspx>

The Council considered the initial consultation informally and responded by letter which stated

“Although a formal resolution was not considered by the elected group, the Councillors are generally satisfied with the Shire continuing to be responsible for the bush fire operations and administration.

The Shire is concerned that by transferring responsibility to a centralised department the rates of volunteerism would decrease in smaller rural areas. Without very high rates of volunteerism, our brigade would not operate “

REPORT OVERVIEW

The concept paper runs to 198 pages and has developed preferred options on a comprehensive range of issues under the following headings.

1. Emergency Services Levy;
2. Administration and Miscellaneous Provisions;
3. Risk Mitigation;
4. Volunteer Brigades, Groups and Units;
5. Response, Command and Control;
6. Emergency Services in the Built Environment;
7. Offences and Enforcement;
8. Protection from Liability; and
9. Fire and Rescue Service Operational Staff.

Not all issues are relevant to the Shire and some are minor. Sections 6 and 7 are not referenced in this report as the matters are felt to be minor or not applicable to the Shire.

This report deals with those issues considered relevant to Jerramungup and ensure the views of the Council are addressed.

This report is structured in the following way

- Under each main heading the relevant sub categories have an outline of the current situation.
- The preferred option of the Concept Paper appears in italics, and
- Officers comments are offered for each category (including whether the option is supported or not)

The main issues of this report will be reported to Council, and a formal response to the Concept Paper will result.

EMERGENCY SERVICES LEVY

Administration of Emergency Services Levy

Fire and emergency services in Western Australia are primarily funded through a property-based model known as the Emergency Services Levy (ESL) which was introduced in 2003-2004. Before the ESL was introduced, a number of differing, inequitable and non-transparent funding systems were in place.

The ESL provides a large portion of the funding for career and volunteer fire brigades, volunteer State Emergency Service (SES) units and other volunteer emergency service units throughout the State. More specifically, the ESL directly funds the operating costs of career and volunteer emergency services including running and maintaining vehicles and buildings, insurance, personal protective equipment and operational consumables. The ESL also funds capital equipment purchases including firefighting appliances, vehicles, buildings and major rescue equipment for volunteer brigades and units through a grants scheme.

The ESL is a State Government charge which is included on rates notices issued by local government. With the exception of vacant land owned by local government, declared contaminated areas and defined types of mining tenements, which are exempt from the ESL, the ESL applies to all property (including property owned by 'not for profit' organisations that may be exempt from local government rates).

Preferred option – Responsibility for Administration of the ESL to remain with the Department of Fire and Emergency Services (DFES)

DFES is currently responsible for the administration of the ESL. The consultation undertaken makes it clear that the ESL needs to be administered by a body with experience in emergency management to ensure appropriate factors are considered. This is in keeping with findings of the Community Development and Justice Standing Committee (CDJSC) Inquiry into Fire and Emergency Services Legislation 2006(CDJSC inquiry) which supported the administration of the ESL to remain with FESA [DFES] as the 'expert agency' in emergency services.

Comment

The current ESL levy and its funding model works well and it is considered that the preferred option is appropriate. The levy should not be expanded to include vehicle owners.

This option is supported

ADMINISTRATION AND MISCELLANEOUS PROVISIONS

Fire Districts

Emergency services in Western Australia are currently subject to two types of legislated boundaries:

1. Emergency Services Levy (ESL) category areas and
2. Fire Districts.

The concept of Fire Districts is included within the Fire Brigades Act 1942 (Fire Brigades Act). Under current legislation the Minister for Emergency Services may establish, alter, rename or abolish Fire Districts through the publication of notices in the Government Gazette. The FES Commissioner and fire brigades established under the Fire Brigades Act are empowered to respond within those districts.

Recommendations 68 - 71 of the Community Development and Justice Standing Committee (CDJSC) Inquiry into Fire and Emergency Services Legislation 2006 (CDJSC inquiry) were that Fire Districts and ESL category areas should be abolished and replaced by Emergency Service Areas.

Preferred option – Abolish Fire Districts

Fire Districts were originally formed to determine boundaries for the collection of revenue and the management of fire hydrants. These issues are no longer determined by Fire District boundaries. DFES currently uses Fire Districts as a means of determining operational responsibility only. During consultations, some stakeholders questioned the ongoing usefulness of Fire Districts. They reported occasions where a fire brigade was unable to respond to an incident within close proximity because it was not in their 'patch' as defined by gazetted Fire Districts. Stakeholders also reported that Fire Districts are not being expanded quickly enough to reflect population growth in urban centres which is impacting on response. It is proposed that in the absence of Fire Districts, Response Agreements will define operational response.

Comment

Abolishing Fire Districts would eliminate current legislated response barriers between career firefighters and volunteer emergency services personnel. This option would also bring response in line with the proposed all hazard approach in the new emergency services legislation.

The proposed Response Agreement and the all hazard response will outline the operational responsibilities.

This option is supported

Local Government's Power to Delegate

The 2002 amendment of the *Bush Fires Act 1954* (Bush Fires Act), made at the request of local government, provided a legislative basis for a formal delegation process. Section 48 of the Bush Fires Act provides that a *'local government may, in writing, delegate to its chief executive officer the performance of any of its functions under this Act'*.

Section 48(4) confirms that the limitation on sub delegation is not a limitation on the ability of local government to act through staff in the normal course of business. Section 59 of the Bush Fires Act permits a local government to delegate authority to its Bush Fire Control Officer (BFCO) or other officer in respect of offences and prosecutions.

Preferred option – Allow Local Governments to sub delegate powers as required.

Stakeholders requested the ability for local government to delegate its functions and have its powers broadened. The Local Government Act 1995 (Local Government Act) provides a more extensive power of delegation for local government.

Section 5.42 provides that a local government may delegate to the Chief Executive Officer (CEO). Section 5.44(3) then provides that the CEO may sub delegate these powers and duties to an employee of the local government subject to any conditions imposed by the relevant local government.

Under this option the new Emergency Services Act would provide local government with a similar power of delegation as provided in the Local Government Act and would apply to all hazards for which DFES is responsible

Comment

This option provides greater flexibility to local government with regards to who may undertake its functions, without removing its accountability.

It is important that there is clear communication in the process of delegation and that it is applied consistently.

The option is supported.

Bush Fire Advisory Committees

Bush Fire Advisory Committees (BFACs) are voluntarily formed by local government in accordance with section 67 of the Bush Fires Act. The provisions of sections 67 and 68 deal solely with the formation of BFACs by local government, its make-up and function and its relationship with the local government. The *Emergency Management Act 2005* deals with the various risk planning obligations that are placed on local government.

Preferred option - Bush Fire Advisory Committees are removed from legislation and local government form hazard advisory committees to suit local needs

Some stakeholders are of the opinion that BFACs, being an optional advisory committee formed for and by local government, should be formed in accordance with local government legislation at its discretion and not as part of emergency services legislation. BFACs will not be required to perform any additional roles in the new legislation.

Comment

This option allows local government to determine the nature and function of the advisory committees it forms. It may be that it wants to determine alternative functions for its advisory committee such as advising on other hazards, just fire, or that it wants to determine its own reporting structure. Additionally, the removal of provisions that do not have an explicit legislative function will be consistent with the objective of simplifying the new legislation.

The proposed advisory committee must be allowed to have the same power as the current Bush Fire Advisory Committees have under legislation and advice and guidance is given on the formation of these committees is given by the state to ensure consistency.

The preferred option is supported with the assistance of the government in establishing the committees to ensure consistency.

RISK MITIGATION

Risk Mitigation on Local Government Land.

Local government currently has the power to ensure that risk mitigation activities are carried out by private landowners within its local boundaries (e.g. fire breaks). However, there are no equivalent provisions to ensure that local government undertakes risk mitigation on its own land.

Preferred option – Making provision for local government responsibilities in respect of risk mitigation activities on its land or land it manages, controls or is under its care

Through consultation, many stakeholders indicated a preference for the option that local government has obligations to take practicable steps to prevent and minimise the occurrence and/or spread of bushfires or other natural hazards on any land directly under its control, care, or management.

These steps can include, for example, prescribed burns and the establishment of Asset Protection Zones or firebreaks.

Comment

This change in the legislation would be consistent with the State's focus on mitigation strategies and ensuring all stakeholders are made aware of its responsibilities in this regard. It is envisaged that the mitigation strategies will be encompassed within risk management plans and local government would be closely involved in the drafting of the plans.

Risk management is increasingly becoming a function of all corporations and this provision reflects this industry trend.

The Concept Paper also suggests that the Fire and Emergency (FES) Commissioner will have the power to ensure compliance in this area.

There will be a minimal cost to the Shire, however risk management is important and the cost can be absorbed. As the FES commissioner will oversee the program, the State should be required to provide tools and assistance to ensure consistency across Local Government areas.

The option is supported with assistance in implementing the activities to ensure consistency.

Prohibited and Restricted Burning Times

Under the current legislation there are two main categories of limited burning times in the Bush Fires Act: Prohibited Burning Times under section 17 and Restricted Burning Times under section 18. Each of these sections, and the related regulations, provide for conditions under which burning may take place, when permits are required and who may issue, suspend, vary and add conditions to permits.

Preferred Option – Replace Restricted and Prohibited Burning Times with a single Fire Danger Period

A common concern expressed by both members of the wider community and emergency services personnel were that the conditions surrounding Restricted and Prohibited Burning Times were difficult to understand. This is especially the case with Prohibited Burning Times, as over time the prohibited period has had numerous exceptions added, resulting in a blur of the distinction between Prohibited and Restricted Burning Times.

A new system of burning times would be developed, consistent with current standards and land management practices. A single Fire Danger Period is in line with contemporary fire and emergency practice in other States with this term, or similar, being used in Queensland, New South Wales and Victoria.

The Fire Danger Period would be set by the FES Commissioner after consultation with stakeholders in the affected region. The declaration could be different for individual regions of the State.

The Fire Danger Periods would normally remain fixed and any high fire risk, at any time of the year, would be dealt with through Total Fire Bans. This option would not limit the ability to declare a Total Fire Ban where local or regional conditions warrant it.

A person would not be allowed to light a fire in the open during a Fire Danger Period or a Total Fire Ban unless in accordance with legislation. Any contravention of this would be an offence. The regulations will contain the conditions under which a fire may be lit with the requirements being set out in detail. The regulations will also set out the cases where a permit will be required.

Comment

A new single Fire Danger Period system would make the new emergency services Act more understandable to all stakeholders and the wider community. It will also allow for streamlining the permit process and assist with enforcement. Providing for differing regional dates will cater for the difference in weather conditions across the State.

The Shire would need to update its business operations in respect of the applications processes and notices to implement these changes. Again it is required that the state develop some guidelines to ensure the issuing of permits is consistent.

With the establishment of guidelines this option is supported.

The Power to Alter a Fire Danger Period

Sections 17 and 18 of the Bush Fires Act outline the legislative framework for the declaration and variation of the Prohibited Burning Time and Restricted Burning Time periods. Section 17(7) of the Bush Fires Act provides that a local government may, if the conditions warrant, shorten, extend, suspend or re-impose a period of Prohibited Burning Times. This provision is mirrored by s 18(5) of the Bush Fires Act for Restricted Burning Times.

Section 17(7B) provides that:

A variation of Prohibited Burning Times shall not be made under subsection (7) if that variation would have the effect of shortening or suspending those Prohibited Burning Times by, or for, more than 14 successive days.

Preferred Option – Local Government is not permitted to Alter Fire Danger Periods

With the recommendation of a region-specific declaration of Fire Danger Periods the need to alter the periods at a local level is significantly reduced.

Any requirement to make an alteration can be referred to the FES Commissioner.

Comment

The preferred option will provide some certainty to the community, especially those who conduct business across multiple regions of the state.

The current system allows the Shire some flexibility to cater for changes to local weather conditions. For this system to work at a local level the FES Commissioner needs to respond in a reasonable and timely manner.

However, the Shire would like to retain the discretion to alter periods as it is appropriate. Weather conditions, particularly on the south coast can alter quickly and significantly. There needs to be local ability to implement appropriate measures.

This option is NOT supported.

Total Fire Bans – Exemptions

The current exemptions to a Total Fire Ban are:

- Gas appliances under certain conditions;
- The Minister for Emergency Services may issue an exemption to the Total Fire Ban subject to conditions; and
- Any exemptions provided in the regulations.

Over time the conditions for an exemption have become standardised. Stakeholders considered whether the new emergency services Act should continue to provide for the granting of specific exemptions or whether an automatic exemption could apply by complying with a Total Fire Ban exemption section of the regulations, where all the mandatory requirements and conditions would be set out.

Preferred Option - Allow for an automatic exemption to undertake an activity during a Total Fire Ban if the prescribed conditions are met. The person must notify DFES and local government of their intent to undertake the exempted activity.

This option would simplify the approach and there is a move away from procedures that add unnecessary red tape and administrative burden. The new emergency services Act will allow for exemptions under the regulations and there is no reason why all Total Fire Ban exemptions should not be dealt with in that way. This is especially the case when it is considered that Total Fire Ban exemptions follow standardised conditions.

The FES Commissioner would retain the power to issue an exemption for an activity that is not catered for in the regulations.

The FES Commissioner would be able to declare and revoke all exemptions in any Total Fire Ban area or add conditions.

Comment

This option reduces red tape. The regulations would contain clear rules that would need to be followed in the event of any allowable activity being carried out during a Total Fire Ban. It would also provide clarity to individuals and organisations so that they are aware of the conditions that need to be met from the outset and will be able to plan their business well in advance of any potential Total Fire Ban declaration.

The provision for compulsory notification will assist with the monitoring of compliance, taking into account resource demands that may be occurring in regions, and any risk associated with Total Fire Ban exemptions across the State.

A failure to notify will be treated in the same way as a breach of the Total Fire Ban.

This option will also eliminate the need for Bureau of Meteorology to issue general Fire Danger Forecasts. It will also remove the need for gazettal of a Total Fire Ban declaration. The gazettal will be replaced with a simpler certificate of proof.

However the requirement to notify the Shire of an exempted activity could result in a large number of applications resulting in a significant amount of paperwork and delays.

The Shire supports automatic exemptions (such as agricultural activities) but does not support the notification of DFES and the local government of an individual's intent to undertake an exempted activity.

Permits to Burn

Currently permit requirements are set out in the emergency services Acts as well as in the regulations. There is also provision for the issuing authority to add requirements to the permit conditions. Stakeholders have indicated that the new emergency services Act should look to simplifying this process to make it easier for the wider community to understand their obligations by reducing the variations in permit conditions across the State.

There was also a view that in some cases, where the requirements are clearly identifiable in the regulations, there should be no need for a permit. This is particularly relevant to stakeholders requiring permits in multiple local government areas or those who move between local government areas on a regular basis

Preferred option - Permits will be required for burns that pose a higher risk, with conditions for most burns set out in the regulations

During consultations, some stakeholders suggested that the permit system needs to be more streamlined and simplified. The introduction of a single Fire Danger Period will assist with this.

The preferred option is to remove the many 'permit type' requirements from the emergency services Acts and include them in regulations, where necessary.

Stakeholders support the establishment of a permit regime where, for many burn types, the requirements will be set out in the regulations and will not require a permit to be issued.

There will be an obligation to notify the relevant authority in certain cases, either DFES and/or local government, depending on the type of burns.

The type of burn and the relevant requirements will be set out in the regulations. There would

be strict requirements during Fire Danger Periods and then some lesser minimum requirements for the same activities during other times of the year. This would enable stakeholders to have a very clear understanding of their obligations with regard to high risk activities and when those obligations would apply. Conversely, in the current system, the undertaking of high risk burns require the individual to be cognizant of the time of year and the conditions specific to the local government area.

There will be certain burn types that will require a permit in every case, while others will have the requirements set out in the regulations, including notification provisions.

In cases where the authority issuing the permit is of the opinion that the burn may be of an extent that require a specially qualified person to manage it, then this could be added as a condition.

Comment

The reduction of red tape will free up local government staff so they can focus on areas of monitoring and compliance and will also have the added effect of improved monitoring of high risk burn types. This approach will also lead to a uniform set of rules in the regulations in respect of various burn types, making the requirements more understandable for officials, businesses and the community.

The retention of a permit system for high risk activities would assist in the monitoring of burning and provide important data to assist with risk planning across the State.

Due to the reduction in the number of permits that need to be issued, there could be less record keeping in respect of the various types of burning that is being conducted across the State.

This option will also allow people to operate in a uniform manner without having to be concerned about accommodating different permit conditions across different jurisdictions.

The regulations need to be clear in defining what a high risk is and the method of application needs to be simple.

This option is not supported. In the Shire's opinion, the regulations should prescribe minimum requirements for a burn, with the local authority or permit issuer able to build upon the minimum requirements based upon local circumstances and conditions.

Hazard Mitigation Strategies: Protection from Liability

The question considered under this section relates to the application of the protection from civil liability clause (the Protection Clause) in cases of the performance of risk mitigation activities, in good faith and under the Act.

Except for those parties specifically mentioned in the emergency services legislation as having a risk mitigation function or acting under direction of the FES Commissioner, State agencies,

local government and private landowners may not be covered by section 37 of the Fire and Emergency Services Act when engaged in risk mitigation activities on their land or land they manage or control. For private landowners, this is the case even if acting under a section 33 notice (firebreak notice) or if they are using fire in terms of a permit.

Preferred Option – State agencies, local government and private landowners should not be afforded protection from civil liability in cases of risk mitigation activities.

This option reflects the current position under the emergency services legislation. Protection for risk mitigation activities is only afforded to someone who is, in good faith, performing that activity as a function or purported function under the emergency services Acts, when the damage occurred.

Comment

This issue is complex one and as a rule of thumb, parties are protected if they are carrying out functions prescribed under legislation, such as the establishment and maintenance of fire breaks.

Authorities and private landowners should be held accountable for negligence.

This option maintains the Status Quo and is supported.

Hazard Mitigation Strategies: Prescribed Burning as a Separate Concept

Prescribed burning is not dealt with specifically under the current emergency services legislation.

Preferred option – Prescribed Burning is Defined and Referred to as a Distinct Mitigation Strategy.

The need to reduce fuel loads coupled with the potential for a disaster arising out of burning, suggests the need for specific legislation in this regard.

For the purposes of the new emergency services Act the concept of Prescribed Burning could be defined as ‘the intentional burning of vegetative fuels by prescribed persons (such as State agencies) under specified environmental conditions, and over a pre-determined area, while following appropriate measures to guard against the spread of fire beyond the predetermined area, and in accordance with the emergency services regulations.’

By being able to prescribe the bodies that would need to meet all the Prescribed Burn requirements, it allows for Prescribed Burning to be distinguished from burns that a private landowner may want to carry out. It is not envisaged that the provisions relating to Prescribed Burning will apply to private landowners but the Minister for Emergency Services would be able to prescribe certain private landowners where it is deemed necessary.

Comment

This option will provide clear reference to Prescribed Burning as a fuel reduction tool. The regulations will provide for strict requirements in undertaking the activity.

Prescribed Burning will form part of Bushfire Risk Management Plans (BRMPs) across the State and it may be in the interest of the State, as a whole, that State agencies and local government reduce fuel loads utilising this mitigation strategy. By using the term Prescribed burning as a defined activity it could be incorporated as a tool in any State or Local Risk Management Plan while having specific legislative significance.

The FES Commissioner will issue regulations which need to be complied with when performing a prescribed burn.

Prescribed Burning is an important practice in rural areas and to have it defined in the Act will assist in its execution and control.

This option is supported.

Hazard Mitigation Strategies: Asset Protection Zones

The Bush Fires Act contains two distinct subsections relating to bushfire risk mitigation:

- Section 33(1)(a) empowers local government to issue firebreak notices; and
- Section 33(1)(b) empowers local government to issue notices requiring the owner/occupier to do things in respect to anything on the land which *'is or is likely to be conducive to the outbreak of a bush fire or the spread or extension of a bush fire'*.

The general provisions contained in s 33(1)(b) could cover a notice issued in respect of various types of hazard mitigation activities including Asset Protection Zones.

The CDJSC inquiry recommendation 45 stated:

Local government should retain its ability to issue fire-break and hazard reduction notices, and exercise enforcement powers under the legislation (Section 33 Bush Fires Act 1954), but only where there is no procedure under any other Act or Regulation that is more appropriate in the circumstances to address that fire threat.

The question that arises is whether Asset Protection Zones should be set out in the new emergency services Act as a separately identified risk mitigation strategy.

Preferred option - Include provisions that deal specifically with Asset Protection Zones

Notwithstanding any requirements for risk mitigation that may arise out of risk management plans, there is an identified need for the local government to be able to require private landowners to conduct certain preventative work as a strategy to protect the community. This is especially the case where private landowners have not been required to have Hazard Management Plans.

As pointed out by the A Shared Responsibility: Report on the Perth Hills Bushfire February 2011 (Perth Hills Bushfire Report), there is a need for a co-ordinated effort in bushfire mitigation on private properties.

Recommendation 38 of this report states:

Local governments institute a comprehensive program to assess fuel loads and bushfire preparedness on private properties. The program should give preference to the creation and maintenance of a Building Protection Zone, in line with FESA guidelines. This program should be implemented and managed under the Bush Fires Act 1954 in a manner similar to the firebreak inspection program.

Under this preferred option, a separate section would be included in the new emergency services Act which provides for Asset Protection Zones in a similar way to the current provisions that deal with 'firebreaks'. In addition the FES Commissioner would have the power to issue an 'Asset Protection Zone notice' template, standards or guidelines.

Local Government would be required to report to DFES on implementation and enforcement of hazard mitigation strategies. This reporting would be required to include data relating to firebreaks and Asset Protection Zones.

Comment

Asset Protection Zones can be issued by the FES Commissioner as well as the local authority. It is considered that this would augment the current fire break notices and the powers conferred to the Shire under the current Bush Fires Act are sufficient to protect assets.

The inclusion of these zones would give the Shire more power of enforcement.

This option is supported.

Hazard Prone Area Declarations

Certain locations or areas of development are prone to impact from specific hazards. Recognition of the risks in these areas is an important step in the mitigation of these hazards.

The Western Australian *Town Planning Regulations 1967* (Town Planning Regulations) require local government to consider several factors when considering development applications, including *'whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bushfire, or any other risk.'*

With increasing residential development in locations prone to specific hazards, combined with the anticipated future effects of climate change, the need for application of appropriate standards in new developments is becoming more critical.

For example, bushfire is recognised as a particular risk in Western Australia with some areas being subject to higher risk and impact. The Building Code of Australia (BCA) recognises that houses located near bushland require additional protection from flame contact, radiant heat and ember protection. The BCA requires all residential buildings in areas designated as bushfire prone to be designed and constructed in accordance with its minimum requirements. It references an Australian Standard (*AS 3959 - Construction in Bushfire Prone Areas*) which provides minimum construction practice for building materials. Additional bushfire mitigation measures are only mandated where there is a bushfire risk present.

The BCA contains a definition for 'designated bushfire prone area which states:

"means land which has been designated under a power in legislation as being subject, or likely to be subject, to bushfires"

Local government was previously empowered to declare bushfire prone areas within its jurisdiction under section 433 of the *Local Government (Miscellaneous Provisions) Act 1960* (Local Government (Misc. Provisions) Act). This power was removed from local government when the Local Government (Misc. Provisions) Act was amended in April 2012 by the *Building Act 2012*.

Preferred option - Empower the FES Commissioner to designate hazard prone areas

Most stakeholders were of the opinion that the FES Commissioner is best suited to be empowered to designate hazard prone areas. This function requires expertise in ascertaining hazard risk. The FES Commissioner is already tasked with establishing a single data standard for mapping bushfire prone areas and over time this could be expanded to include other hazards.

Comment

The efficient designation of hazard prone areas is important to allow for the activation of the stricter building requirements such as those contained in AS 3959 for bushfire. This in turn, will improve the safety to the communities that live in these areas of higher risk.

The designation of such areas will be an issue of some contention as the cost of conforming to the building code may be high and insurance premiums may be impacted.

However recent experience has shown that the impact of bushfires is significant and the construction of better designed homes will alleviate that impact.

This option is supported.

VOLUNTEER BRIGADES AND UNITS

Volunteer Charter

The 2011 Community Development and Justice Standing Committee (CDJSC) report *Western Australia's Readiness For The 2011-12 Bushfire Season* recommended the development of a Volunteer Charter that 'recognises the important work undertaken by the State's volunteer bushfire and emergency services personnel'.

The Victorian Country Fire Authority (CFA) Volunteer Charter is enshrined in legislation through sections 6G to 6H of the *Country Fire Authority Act 1958* (Vic). The legislative amendments recognised the role of volunteers, gave legislative backing to the Volunteer Charter and required the CFA to recognise the Volunteer Charter.

In Western Australia, following strong representations from the W.A. Volunteer Fire and Rescue Services Association (Inc.) a Volunteer Charter was signed on 23 November 2013 by the Association with the support of the Minister for Emergency Services and FES Commissioner.

Preferred option - Recognise a single Volunteer Charter in the new emergency services Act

Stakeholders have suggested that the new emergency services Act give recognition to a single Volunteer Charter which would be supported by all Volunteer Brigades Groups and Units (BGUs) and the FES Commissioner.

Comment

The recognition of a Volunteer Charter in legislation would provide a statement of the commitment to volunteers by the State and DFES, set the framework for consultation with Volunteer BGUs and their members and promote the contributions made by volunteers to the safety of their communities.

It would standardise the commitment of these personnel.

This option is supported

Separation of Volunteer Emergency Services

The emergency services legislation currently provides for five distinct volunteer emergency services

- Bush Fire Brigades (BFBs),
- Volunteer Fire and Rescue Services (VFRS),
- Brigades,
- State Emergency Service Units (SES), and
- Fire and Emergency Services and Marine Rescue Units.

Each have their their own distinct identity and legislative character.

Preferred option - Retain the current legislative separation of the volunteer emergency services

This option recognises the unique historical and operational character of the separate volunteer emergency services. While the roles and functions of some of the volunteer services overlap they also have their own recognised role within the State's overall emergency service.

Comment

This option maintains the status quo. The council has previously expressed its concern that the new legislation may adversely affect the volunteer culture of emergency service. This assists in alleviating that concern.

This option is supported.

Administration of Brigades, Groups and Units (BGUs)

Currently the administration arrangements for Volunteer BGUs are diverse for different services depending on the governing legislation. Stakeholders raised concerns with the current disparity between different volunteer emergency services.

Preferred option – Provide a set of administrative requirements that apply to all BGUs

Some stakeholders suggested that there should be identical provisions that apply to all BGUs that govern administration to ensure consistency state wide. Under this option a set of minimum administrative requirements that apply to all BGUs would be set out. These requirements would cover areas such as registration requirements and restrictions; member conduct; accounts and audit requirements; compulsory reporting and recordkeeping; and election of office bearers and officers.

All BGU constitutions and/or rules, both new and existing, would need to meet these minimum standards, with some variation of implementation allowed to cater for the differences between services.

Comment

This option would provide for minimum requirements whilst providing a level of flexibility to BGUs to address their individual needs and circumstances. Having a level of uniformity across Volunteer BGUs would make it easier to work with multiple services at once as each would have similar structures, reporting requirements and rules.

There is an underlying concern that the requirements may be onerous, brigades do not want additional paperwork and bureaucracy. It would be appropriate for the shire to have more detail on what the administrative requirements are.

This option is supported if the nature of the minimum requirements and the level of support offered are made clear

Conduct and Discipline

The emergency services Acts, and associated regulations, currently provide limited direction on matters of conduct and discipline in respect of Volunteer BGU members. To a certain extent BGUs are responsible for disciplining their own members for any breach of conduct. Some BGUs have formal processes in place in the form of a constitution, BGU rules or policies. While this approach may have been appropriate at a time when BGUs were much more isolated, the state

wide funding and interoperability requirements of today's emergency services necessitates further consideration of this issue.

Preferred Option - Discipline and conduct matters handled at a BGU level are in line with minimum specified requirements with some matters to be escalated to the FES Commissioner

This option would allow for the FES Commissioner to set minimum conduct and discipline requirements for all BGUs. It is expected that most discipline matters could be handled internally at a BGU level. Where an incident of misconduct or breach of discipline was deemed sufficiently serious, or where the BGU (and/or responsible local government) felt it necessary, the FES Commissioner would be able to step in and, if necessary, issue sanctions.

It is proposed the FES Commissioner would specify escalation requirements in policy and the BGU would reflect these standards in their constitution, BGU rules or policy.

Comment

Providing minimum specified requirements would assist in ensuring a consistent level of conduct and discipline standards across all brigades. At the same time, this option would allow some flexibility for the brigade to determine the most appropriate mechanism for implementing the minimum standards. The FES Commissioner would also have the opportunity to examine higher risk conduct issues or to intervene where a matter was not appropriately addressed

The Brigades would still deal with conduct and discipline with major matters referred to the commissioner. The commissioner would have the expertise and resources to effectively deal with these major issues.

This option is supported

Setting Minimum Training Standards for Volunteers

The Fire Brigades Act section 26A (2) (h) provides the FES Commissioner with the power to establish facilities or courses of instruction to provide training to any person not employed by DFES, in the skills required. However, there is no provision that supports this power, whereby the FES Commissioner may set minimum training standards for emergency services volunteers.

Preferred option - Legislation sets out that the FES Commissioner has the power to set training standards and those standards are set out in policy

Under this option the new emergency services Act would provide the FES Commissioner with

the power to set training standards for members of all Volunteer BGUs. These standards would be specified in policy published by DFES.

Stakeholders indicated that it would be important to ensure volunteer training programs continued to offer recognition of prior learning; were accessible to volunteers with a range of commitments; and were presented in a manner that was conducive to their needs.

Comment

This option would allow for a legislative basis for setting training requirements for all BGUs while at the same time providing flexibility to respond to changing operational needs and expectations over time. In addition it would allow for the differentiation of standards for the various BGUs. Training standards for all BGUs would foster better interoperability, increase the collective skills of the State's valuable volunteer resources and align with the community expectations of all emergency services

A key consideration is balancing the time commitments of individuals with the need for a safe and skilled volunteer service. There is a need for volunteer training, but it must not be a simple replication of the career Fire and Rescue Service training program. The training developed would also need to be, wherever possible, specific to the needs of each volunteer service. The training should also recognise prior learning.

The Shire has already indicated its support of this option.

This option is supported.

General Direction and Control of Brigades Groups and Units

Under section 31 of the Fire Brigades Act permanent and volunteer brigades and their officers and members fall under the immediate control of the FES Commissioner. Currently the FES Commissioner only has 'general responsibility' for SES units, VMRS groups and FES units under the Fire and Emergency Services Act.

Preferred option - Where DFES is responsible for managing BGUs, all members fall under the immediate order and control of the FES Commissioner

This option would place all BGUs that are managed by DFES under the order and control of the FES Commissioner. This would allow the FES Commissioner, or delegate, to direct BGUs and their members in areas such as incident command and control, training and general management matters. The circumstances where this immediate order and control would apply include:

- **Career Brigades, VFRS, SES, VMRS and FES:** members fall under the immediate order and control of the Commissioner.
- **Bush Fire Brigade:** If the BFB is the responsibility of the local government then members would fall under the immediate order and control of the local government. If the BFB is the responsibility of DFES then members fall under the immediate order and control of the FES Commissioner.

Comment

The preferred option provides increased uniformity across BGUs. While the day-to-day oversight over BGU members would largely remain unchanged, the FES Commissioner will have the power to step in when required.

The Shires' Bushfire Brigades would not be affected and control would still rest with us. The Council has previously determined that it should retain control of the Brigades.

Other emergency services will have control transferred from DFES to the FES Commissioner. It is not envisaged that this will have any significant impact.

This option is supported

Employment Protection

There is no employment protection currently provided to volunteers within the Fire and Emergency Services Act, the Fire Brigades Act and the Bush Fires Act. Part 9 of the *Emergency Management Act 2005* (Emergency Management Act) outlines employment protection for volunteers responding to emergency situations declared under that Act. Part 9 of the Emergency Management Act protects employment rights, including remuneration, as well as

preventing victimisation of the volunteer. A number of stakeholders raised concerns in relation to providing volunteers with broader employment protections to support and promote volunteerism. The provision of additional leave for volunteers was raised as an issue.

A similar model as the one which applies to Defence Reservists was suggested as an option. The entitlements for employees and employers associated with participation in Defence Reserve activities is set out in Commonwealth Legislation, the *Defence Reserve Service (Protection) Act 2001*. Implementing such arrangements for emergency service volunteers may require legislation at a Commonwealth level to ensure it was binding on all employers.

DFES has considered whether some or all of the employment protection provisions contained in part 9 of the Emergency Management Act should be applied to volunteers that perform functions in terms of the new emergency services legislation.

Preferred option - No Employment Protection for Volunteers Provided in the New Emergency Services Act

Under the preferred option volunteers would continue to have employment protection when undertaking response activities under the Emergency Management Act, with no additional protection provided under the new emergency services legislation.

Stakeholders indicated that the issue of absenteeism from paid employment to attend volunteer activities needs to be negotiated between the employee and the employer to achieve the best outcome for all parties.

Comment

Limiting employment protection to that provided in the Emergency Management Act would ensure that employers would not be obligated to accept active volunteers being away from work to attend volunteer commitments, reducing the impact on the business.

This option maintains the status quo. The needs of the emergency service must be balanced with the needs of business, currently the issue is a matter between the volunteer and employer. If there was further employment protection it may increase the number of volunteers.

Currently volunteers have protection for when attending to declared emergency situations.

This option is supported

Responsibility for State Emergency Services

In 2002 the SES, along with Volunteer Marine Rescue (VMR) and multi-purpose FES units were brought under the emergency services legislation, primarily to afford them the protection provided by liability provisions. This brought the SES in Western Australia in line with the arrangement for the

SES in other Australian States in that they are included in emergency services legislation, although the structure across other States is diverse. A number of SES volunteers have suggested that the SES should be regarded as a separate, standalone volunteer service as is the case in Victoria.

In Victoria the SES operates as a separate body, the Victoria State Emergency Service (SES) Authority. This Authority manages 3,317 volunteers who during the 2012-2013 financial year responded to over 18 000 requests for assistance. The Authority employs 48 permanent operational staff and 128 permanent support staff. The total expenses of the Authority for the year ending 30 June 2014 was \$50 million against an income, including grants and fees for service, of \$57 million.

In South Australia, the Fire and Emergency Services Act 2005 (SA) brought the SES, Metropolitan Fire Service and Country Fire Service under a single Act. However, it retained the operational autonomy of the three services.

Preferred Option - Retain the SES as a volunteer emergency service under DFES

This option would retain the SES as a designated volunteer emergency service under the new emergency services legislation. The administration and management of SES units would remain largely unchanged, in this regard. It is important to note that within a continuation of the current arrangements, the retention and promotion of the SES identity remains. It would be responsible to the FES Commissioner.

Comment

The SES would be maintained within the current overall structure of DFES. There would be little change to operations in this area. It was considered that the SES could be a separate volunteer organisation and that may happen in time.

This option is supported

Responsibility for Bushfire Brigades

Currently the power to establish, maintain and disband BFBs lies with local government in accordance with the Bush Fires Act.

The Community Development and Justice Standing Committee (CDJSC) *Inquiry into Fire and Emergency Services Legislation 2006* (CDJSC inquiry) recommendations 55 and 56 stated that:

(55) *The emergency services legislation is to provide for FESA [DFES] and local government to enter into an agreement for the purpose of local government transferring the following responsibilities to FESA [DFES] on a permanent basis:*

- *emergency incident control;*
- *Bushfire Brigade operations and administration; and*

- *the determination and administration of the ESL, in relation to the capital and recurring costs associated with the Bushfire Brigades.*
- (56) *Such an agreement is only entered into if both FESA [DFES] and the local government agree to terms and conditions.*

As part of the Review DFES surveyed 140 local governments to determine interest in any change to the current arrangements for BFBs. A total of 121 local governments responded and 53 indicated that they would consider handing over responsibility for their BFBs, or be willing to explore it further, if the option was made available in legislation. Many of the preliminary responses, both in support of and in opposition to this option, stated that further consideration would be contingent on the details of the model proposed.

For the purposes of the options discussed in this chapter ‘responsibility’ can be taken to include:

- Administration and Management;
- Command and Control;
- Training;
- Equipment; and
- Capital Funding Program (e.g. fleet, equipment and communications).

Preferred option A – Local Government may, by agreement with DFES, hand over responsibility for a Bushfire Brigade to DFES

Under this option local government could request that DFES take responsibility for a BFB. Handover would occur through negotiation and agreement between DFES and the local government to determine the terms of the handover, including the possibility of any future return of a BFB to local government.

Where the responsibility for a BFB is transferred to DFES the role of Bush Fire Control Officer would need to be considered as the role encompasses both permit issuing on behalf on the local government and close involvement with BFBs.

Comment

Local governments, who may not be able to supply the necessary support and resources to their local BFB could hand over responsibility, if agreed to by DFES. This would allow the local government to focus on other activities, such as mitigation, within their area while DFES ensured that the BFB was adequately supported.

A number of municipalities have indicated they would consider this. The handover would only occur with the consent of the municipality.

This option is supported; the Shire will retain responsibility for BFB’s

Preferred option B - DFES may take responsibility for a BFB under certain circumstances without agreement from local government

This option is to allow DFES to take responsibility for BFBs under certain circumstances without agreement from local government. For example, where DFES had concerns that the local government was not meeting its responsibilities in relation to the BFB. If DFES felt it necessary to take action, it would first look to working with the local government to address any issues however, where no agreement could be reached, DFES would be able to assume responsibility, as a last resort.

Local government could have the opportunity to appeal any decision by DFES to assume responsibility for a BFB where it felt it was not warranted, through established channels. In addition, the local government could request that DFES return responsibility for the BFB at a later date, once it was in a position to meet its commitments.

Comment

Providing the option for DFES to take over responsibility for BFBs where it was deemed necessary may help ensure that communities continue to be provided with high quality service even where the local government was not positioned to adequately support the local BFB.

This action would only be initiated in extreme circumstances, the municipality has a right of appeal.

This option is supported

Preferred option C – The FES Commissioner may establish or disband a Bushfire Brigade

Currently the power to establish a BFB sits with local government. The FES Commissioner could be given the power to establish a BFB where one was deemed necessary and local government is unable or unwilling to establish one. If DFES elected to establish a BFB, it would first consult with local government. Unless otherwise agreed to with the affected local government, DFES would be responsible for the BFB on an ongoing basis.

The FES Commissioner could also be given the power to disband any BFB where it was deemed necessary. This power would only be exercised in limited circumstances where no other option was identified and could include the ability to merge BFBs to rationalise resources.

Comment

Providing this ability to the FES Commissioner would enable him to act in circumstances where an unmet need was identified. In addition, the FES Commissioner would be able to ensure communities continued to be provided with vital services.

The municipality needs to be consulted and have a right of appeal

This option is supported with the addition of consultation and a right of appeal.

Preferred option D - Local government cannot establish (or disband) a BFB without the approval of the FES Commissioner

Under this option where a local government identified a need to set up a new BFB the local government would be required to obtain the approval of the FES Commissioner first. The primary purpose for this option is to recognise the fiscal impacts of the formation of a new BFB. ESL funding is a finite resource and any establishment of a brigade would need to be done in full understanding of the impacts that it would have on other resources throughout the State.

Local government could also be required to obtain the FES Commissioner's approval prior to disbanding any BFB. Where a local government sought to disband a BFB and the FES Commissioner did not agree then DFES could opt to take over responsibility for the BFB.

Comment

The Shire would not act in this area unless there were sound reasons; it is assumed the FES Commissioner would approve the Shire's action.

This option is supported

RESPONSE, COMMAND AND CONTROL

Response, Command and Control Arrangements

As discussed previously the current emergency services Acts each set out their own provisions for command and control arrangements. The development of a consolidated Act provides the opportunity to provide clarity around the matter.

Response, command and control arrangements, including establishing and determining command and control at incidents are a longstanding area of concern amongst emergency service staff and volunteers.

Preferred option A - Introduce Response Agreements (that include agreement on the primary responder for an area, and details of command and control at incidents)

Proposed Response Agreements established between DFES and local government, or other bodies who provide emergency service response, would set out all parties' responsibilities for incident response within an area (e.g. local government area) including details of emergency response as well as command and control. The specific details of these Response Agreements would vary depending on the area to which they applied. Response Agreements would be established in relation to prescribed hazards.

The existence of a Response Agreement would not be a barrier to the closest available emergency service responding to an incident, but would confirm who the primary responder would be for an area.

The FES Commissioner would retain the power to authorise a person to take control of a bushfire where deemed necessary. The power would also be extended to any incident for which DFES has responsibility for the hazard.

The new emergency services Act would also make it clear that all emergency responders who are present at an incident are in all respects subject to the Incident Controller's direction.

Comment

Response Agreements would allow for more flexibility rather than having response arrangements set out in legislation that applies across the State. The individual circumstances of each area could be reflected in the corresponding Response Agreement.

The establishment of Response Agreements would require all relevant parties to reach an agreement. To ensure that Response Agreements are established in a timely manner it would be beneficial to place a time limit on the establishment of Agreements. Until a Response

Agreement is established, alternative arrangements would be required to ensure appropriate response to incidents continued.

It is not envisaged that the response agreements would differ substantially from Brigade to Brigade and once established would give a local influence on the agreement.

This option is supported

Preferred Option B - Until a Response Agreement has been established current arrangements will continue

One of the limitations of Response Agreements is that they require the involved parties to come to an agreement. Until such time as an agreement has been established, alternative response and command and control arrangements would be required.

The established arrangements will continue in the absence of a Response Agreement. This includes those arrangements established outside of legislation such as WESTPLAN Fire. Some adjustment will be required however to address the abolishment of Fire Districts

Comment

This is a prudent measure and is supported

Endorsement of Incident Controllers

Currently Incident Controllers are endorsed through a state wide process that includes DFES staff, Parks and Wildlife staff and volunteers. This process includes both formal training and practical competency assessments and endorsement is provided through DFES and Parks and Wildlife. The current approach was adopted following the release of *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review* (Report on the Perth Hills Bushfire) where Recommendation 54 of stated that:

'The Interagency Bushfire Management Committee develops a consistent program of education, training (including media), testing and review of Level 3 Incident Controllers.

This should include provision for a formal review of the performance of individual Level 3 Incident Controllers after every incident'

Preferred option - The FES Commissioner may endorse certain people as 'Incident Controllers'

A recurring theme during consultation was the competency of individuals to carry out the function of Incident Controller. A great deal of discussion was had in relation to the need for a consistent state wide approach that takes into account training, qualifications as well as the critical importance of practical experience. Some stakeholders were concerned that a certain qualification or training course alone would signal competency as an Incident Controller, without consideration of appropriate experience. Many stakeholders were in favour of maintaining a focus on ensuring proper competencies prior to endorsement and also providing for a hazard- specific endorsement.

The current process for endorsing Incident Controllers could be enshrined in legislation to provide stronger backing and more permanently establish the process. In terms of this option, only the FES Commissioner would have the power to endorse people as Incident Controllers for specified hazards for which they are responsible under the emergency services legislation. This power could be delegated by the FES Commissioner.

Comment

By making the FES Commissioner the single point of endorsement it would be easier to ensure consistent standards.

This option is supported

Prescription of Ranks

Section 43 of the Bush Fires Act provides for specific ranks in respect of Bush Fire Brigades. The ranks of members of other Brigades, Groups and Units (BGUs) are not referred to in the emergency services Acts. The *Fire Brigades Regulations 1943* refers to rank in respect of volunteer fire brigades

Preferred option - The new emergency services Act gives the Minister for Emergency Services the power to set out the rank structures, for all BGUs, in the regulations

The current position is not uniform in its approach. Stakeholders have suggested that the issue of ranks should be legislated but that it is best set out in the regulations. The preferred option is therefore to provide the Minister for Emergency Services with the power in the new emergency services Act to be able to prescribe the ranks for all BGUs in the regulations.

Comment

This option would provide for uniformity in the way that rank is dealt with in the legislation. It would also provide additional recognition to the various BGUs. It is important that there is no perceived “demotion” in this process

This option is supported with the consideration of a process where there is no perceived “demotion” of specific officers.

PROTECTION FROM LIABILITY

Activities Protected

Currently neither a private landowner and/or their contractor, nor government bodies vested with care and control of land, are likely to have liability protection under section 37 of the Fire and Emergency Services Act when conducting risk mitigation activities, as they are not regarded as performing a function under the emergency services Acts.

A person wanting to rely on the Protection Clause would have to show that they are vested with powers under the Acts in respect of the activity, and were using those powers when causing the loss.

Preferred option - Retain existing coverage for anything a person has done in good faith ‘in the performance or purported performance of a function under the emergency services Acts’

Any perceived gaps in protection are not due to the current wording of the Protection Clause, but rather because the particular activity was not performed by a person with a ‘function’ under the emergency services Acts in respect of that activity.

Many of the responsibilities that are set out in the emergency services Acts arise from an obligation imposed by the law, such as acting in accordance with the terms of a notice issued under section 33 of the Bush Fires Act. These responsibilities do not arise from the vesting of power and are thus excluded from Protection from Liability.

Following consultation with a range of stakeholders it was determined that the current legislation provides sufficient protection where the activity is undertaken in the performance of a function under the emergency services Acts.

Comment

There has been some discussion around this issue with a number of stakeholders wanted the protection clause extended.

One intent of the legislation is to mitigate risk and ensure that qualified and experience personnel are carrying out duties under the Act.

Acting under a permit or a landowner responding to a notice is not subject to this protection from liability. Only those things which directly vest power in a person or persons to perform a function under the Act are protected from liability. Private landowners can take out their own insurance.

The maintains the status quo and is supported

Specific Mention of Certain Groups

Currently, in order to be afforded the Protection from Liability a person must be performing a function under the emergency services Acts. If a person has a function and power under any of the emergency services Acts, it is likely that they are captured by the Protection Clause if they were using those powers in good faith when the loss was caused.

In order to make it even clearer to whom section 37(1) applies, section 37(1a) provides a list of the persons covered. This list includes:

- members of a volunteer or private fire brigade under the Fire Brigades Act;
- volunteer fire fighters under the Bush Fires Act;
- persons undertaking an SES Unit's functions under part 3A of the Fire and Emergency Services Act;
- persons undertaking a VMRS Group's functions under part 3B of the Fire and Emergency Services Act; and
- persons undertaking a FES Unit's functions under part 3C of the Fire and Emergency Services Act.

Section 37(1a) of the Fire and Emergency Services Act confirms that the list provided is not intended to limit the general statement within section 37(1). As such there are classes of people who undertake a function under the emergency services Acts that are not listed within section 37(1a).

Preferred option - Do not include specific groups (as specified in section 37(1a) of the Fire and Emergency Services Act) in the new emergency services Act

Stakeholders have suggested that the specific list of persons be removed. This is in line with the aims to simplify the new emergency services Act.

Comment

These specific provisions add no value as the persons listed are already covered in the general provision. The deletion assists in streamlining the Act.

This option is supported

Civil and Criminal Liability

Civil Liability is in respect of damages for injury or loss to a person. Criminal Liability refers to a prosecution, ordinarily by the State, for the alleged committal of an offence under a written law.

Section 37 of the Fire and Emergency Services Act only provides coverage from Civil Liability. In South Australia both the Fire and Emergency Services Act 2005 (SA) and the Emergency Management Act 2004 (SA) provide protection from criminal liability as well as civil liability.

Preferred option – Protection is Limited to Civil Liability

Stakeholders considered whether the current Civil Liability provisions should be extended to cover Criminal Liability as well. Some stakeholders raised concerns over creating a perception of protecting people from possible criminality. It was determined that the protection is sufficient in its current form. In addition, section 25 of the Criminal Code provides that a person is not criminally responsible if a person believes there is an emergency, the act is a necessary and reasonable response to the emergency, and there are reasonable grounds for those beliefs. This provision may operate to cover any ‘good faith’ actions at an emergency.

Comment

This provision is consistent with the majority of ‘Protection from Liability’ provisions in Australian emergency services legislation.

This option is supported

Establishing a Bar to Action Against Emergency Services Personnel

Section 129(4) of the *Fire and Rescue Service Act 1990* (Qld) provides that a court may order a stay of proceedings if satisfied that there is no reasonable ground for alleging either negligence or lack of good faith.

There is no similar provision in the emergency services legislation in Western Australia.

Preferred option – A new section is included stating that a Court may order a stay of proceedings if satisfied that there is no reasonable ground for alleging that the Protection from Liability would not apply

Some stakeholders have suggested a legislative measure to ensure that only those cases that have reasonable grounds will be able to proceed to a trial.

Such a provision does not prevent court action from being commenced. It allows the State to seek the stay of a claim if there is no reasonable ground for alleging either negligence or lack of good faith.

Comment

The preferred option will be a legislative measure to ensure that only those cases that have a prospect of success against those who perform duties under the emergency services legislation will be able to proceed to a trial. This measure will add to other measures which allow emergency personnel and volunteers to carry out their duties without fear of being subject to litigation that has no chance of success.

This option is supported

ADDITIONAL ISSUES

Some issues that have not been addressed by the Concept Paper

Timing

There is no indication of timing; the introduction of new legislation is a long process. However it is important that stakeholders are given some indication of the when the rollout of the changes will take place, this will assist in planning for the introduction of these changes.

When available this timetable should be advised to the Shire

Equipment

The issue of insurance of equipment used in a function under the Act is unclear. Respondents often use personal equipment, including heavy machinery as a necessary part of operations.

An indication as to whether this equipment is covered by the Act is needed.

Protection in non-fire situations

Bush fire Brigades are often first respondents to non-fire situations, there should to be clarity in whether these events are covered by the Act.

CONCLUSIONS

The consolidation of the Acts makes good sense and should result in simpler and streamlined legislation.

Overall the preferred options of the Concept Paper are supported with some qualification and some are not supported, the relevant options are summarised below.

Bush Fire Advisory Committees are removed from legislation and local government form hazard advisory committees to suit local needs

This option allows local government to determine the nature and function of the advisory committees it forms. It may be that it wants to determine alternative functions for its advisory committee such as advising on other hazards, just fire, or that it wants to determine its own reporting structure. Additionally, the removal of provisions that do not have an explicit legislative function will be consistent with the objective of simplifying the new legislation.

The proposed advisory committee must be allowed to have the same power as the current Bush Fire Advisory Committees have under legislation and advice and guidance is given on the formation of these committees is given by the state to ensure consistency.

The option is supported with the assistance of the government in establishing the committees to ensure consistency

Local Government is not permitted to Alter Fire Danger Periods

The preferred option will provide some certainty to the community, especially those who conduct business across multiple regions of the state.

The current system allows the Shire some flexibility to cater for changes to local weather conditions. For this system to work at a local level the FES Commissioner needs to respond in a reasonable and timely manner.

However, the Shire would like to retain the discretion to alter periods as it is appropriate. Weather conditions, particularly on the south coast can alter quickly and significantly. There needs to be local ability to implemented appropriate measures.

This option is NOT supported.

Allow for an automatic exemption to undertake an activity during a Total Fire Ban if the prescribed conditions are met. The person must notify DFES and local government of their intent to undertake the exempted activity.

This option reduces red tape. The regulations would contain clear rules that would need to be followed in the event of any allowable activity being carried out during a Total Fire Ban. It would also provide clarity to individuals and organisations so that they are aware of the conditions that

need to be met from the outset and will be able to plan their business well in advance of any potential Total Fire Ban declaration.

The provision for compulsory notification will assist with the monitoring of compliance, taking into account resource demands that may be occurring in regions, and any risk associated with Total Fire Ban exemptions across the State.

A failure to notify will be treated in the same way as a breach of the Total Fire Ban.

This option will also eliminate the need for Bureau of Meteorology to issue general Fire Danger Forecasts. It will also remove the need for gazettal of a Total Fire Ban declaration. The gazettal will be replaced with a simpler certificate of proof.

However the requirement to notify the Shire of an exempted activity could result in a large number of applications resulting in a significant amount of paperwork and delays.

This option is supported only if the number of exemption applications is reduced

Permits will be required for burns that pose a higher risk, with conditions for most burns set out in the regulations

The reduction of red tape will free up local government staff so they can focus on areas of monitoring and compliance and will also have the added effect of improved monitoring of high risk burn types. This approach will also lead to a uniform set of rules in the regulations in respect of various burn types, making the requirements more understandable for officials, businesses and the community.

The retention of a permit system for high risk activities would assist in the monitoring of burning and provide important data to assist with risk planning across the State.

Due to the reduction in the number of permits that need to be issued, there could be less record keeping in respect of the various types of burning that is being conducted across the State.

This option will also allow people to operate in a uniform manner without having to be concerned about accommodating different permit conditions across different jurisdictions.

The regulations need to be clear in defining what a high risk is and the method of application needs to be simple.

This option is supported with well drafted regulations

Provide a set of administrative requirements that apply to all BGUs

This option would provide for minimum requirements whilst providing a level of flexibility to BGUs to address their individual needs and circumstances. Having a level of uniformity across Volunteer BGUs would make it easier to work with multiple services at once as each would have similar structures, reporting requirements and rules.

There is an underlying concern that the requirements may be onerous, brigades do not want additional paperwork and bureaucracy. It would be appropriate for the shire to have more detail on what the administrative requirements are.

This option is supported if the nature of the minimum requirements and the level of support offered are made clear

The new emergency services Act gives the Minister for Emergency Services the power to set out the rank structures, for all BGUs, in the regulations

This option would provide for uniformity in the way that rank is dealt with in the legislation. It would also provide additional recognition to the various BGUs. It is important that there is no perceived “demotion” in this process

This option is supported with the consideration of a process where there is no perceived “demotion” of specific officers.

Additional Issues

Further information is requested for the following

- Timing of implementation
- Insurance of equipment
- Protection in non-fire situations

The Burden of Administration

There is an overall concern with the level of administrative burden being placed on the Shire and the Brigades themselves.

Experience has shown that a centrally controlled process with have a high degree of compliance and Brigade constitutions, policies and procedures will have to be changed.

This will place a large workload on Council officers and Brigade members.

The Department should be made aware that it has a role to play in making this process as simple and streamlined as possible