



Government of **Western Australia**
Department of **Fire & Emergency Services**



Concept Paper: Review of the Emergency Services Acts

Department of Fire and Emergency Services

April 2014

Closed for Comment

©Department of Fire and Emergency Services

Department of Fire and Emergency Services, *Concept Paper: Review of the Emergency Services Acts*, April 2014

MINISTER'S FOREWORD

As the Minister for Emergency Services, I am committed to preparing and protecting Western Australians by providing well-resourced, high quality and responsive emergency services. This is however only one component of what is required to make Western Australians and the environment they live in, safer and more secure from the impact of emergencies.

To achieve a safer Western Australia we need to enhance our focus, capability and capacity across government agencies, local government, volunteers and private landowners.

Developing and implementing the new emergency services legislation is a key priority of this Government. It is intended that the new legislation will provide the framework, powers and protections necessary to foster shared responsibility at the state and local level and ultimately lead to more resilient communities.

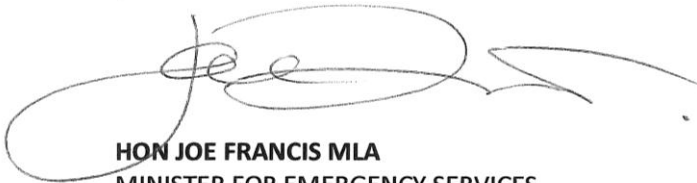
It is imperative that emergency services legislation is relevant to the challenges that we face today and flexible enough to meet the challenges of the future. This is an opportunity to simplify the current legislation and develop a single, contemporary and effective emergency services Act.

This concept paper allows for focussed discussion on specific issues that have been raised through the research and consultation process including potential legislative solutions.

As an emergency services volunteer I understand the need for effective legislation that supports emergency services personnel and agencies to carry out their functions, with the community and in the best interests of the community.

I want to ensure that every Western Australian has the opportunity to consider and comment on how the new emergency services legislation can contribute to their safety.

Your feedback is vital and I encourage you to participate in the review process and make your comments count.



HON JOE FRANCIS MLA
MINISTER FOR EMERGENCY SERVICES



THIS PAGE IS INTENTIONALLY BLANK

Closed for Comment

CONTENTS

EXECUTIVE SUMMARY	1
ACRONYM LIST	1
STATEMENT OF THE ISSUE	1
OBJECTIVES	2
CONSULTATION.....	2
SELECTION OF PREFERRED OPTIONS	5
DOCUMENT STRUCTURE	5
CHAPTER 1: EMERGENCY SERVICES LEVY (ESL)	6
ESL METHODOLOGY	7
LEGISLATIVE ISSUES AND OPTIONS	8
1.1 ADMINISTRATION OF THE ESL.....	8
1.2 ESL FUNDING MODEL AND REVENUE STREAMS	11
1.3 ADDITIONAL LEVIES	14
1.4 ESL ADJUSTMENTS.....	17
NON-LEGISLATIVE ISSUES.....	18
1.5 ESL SHOULD BE EXPANDED TO INCLUDE ADDITIONAL EMERGENCY RESPONSE EQUIPMENT	18
1.6 FUNDING MITIGATION ACTIVITIES THROUGH THE ESL.....	19
1.7 COMPOSITION OF THE LOCAL GOVERNMENT GRANT SCHEME COMMITTEE.....	19
1.8 ASSISTANCE PROVIDED TO RECIPIENTS TO ASSIST THEM TO DISBURSE FUNDS IN A TIMELY MANNER	19
1.9 REVIEW ESL RESOURCE TO RISK PLANNING PROCESS	20
1.10 REVIEW ESL BOUNDARIES.....	20
1.11 REVIEW THE APPLICATION OF THE ESL TO OWNERS WITH MULTIPLE LAND HOLDINGS	20
CHAPTER 2: ADMINISTRATION AND MISCELLANEOUS PROVISIONS	21
LEGISLATIVE ISSUES AND OPTIONS	21
2.1 FIRE DISTRICTS.....	21
2.2 LOCAL GOVERNMENTS' POWER TO DELEGATE	23
2.3 BUSH FIRE ADVISORY COMMITTEES IN LEGISLATION.....	25
2.4 STRUCTURE OF POWERS	26
2.5 ABILITY TO TAKE WATER.....	28
2.6 APPROVED INDUSTRY UNITS	29
2.7 INVESTIGATION POWERS.....	31
CHAPTER 3: RISK MITIGATION	34
LEGISLATIVE ISSUES AND OPTIONS	35

3.1	BINDING THE CROWN	35
3.2	DIRECTING THE CROWN (STATE AGENCIES)	38
3.3	RISK MITIGATION ON LOCAL GOVERNMENT LAND.....	39
3.4	DIRECTING LOCAL GOVERNMENT TO ENGAGE IN RISK MITIGATION	41
3.5	LEGISLATIVE BASIS FOR COMMITTEES	43
3.6	REPORTING.....	45
3.7	RISK MANAGEMENT PLANNING.....	47
3.8	MITIGATING THE EFFECTS OF OTHER NATURAL HAZARDS.....	49
3.9	HAZARD MANAGEMENT PLANS – PRIVATE LANDHOLDINGS.....	51
3.10	THE FES COMMISSIONER AND PRIVATE LANDOWNERS	53
3.11	PROHIBITED AND RESTRICTED BURNING TIMES	54
3.12	THE POWER TO ALTER A FIRE DANGER PERIOD	56
3.13	TOTAL FIRE BANS – EXEMPTIONS	58
3.14	FIRE DANGER FORECASTS.....	61
3.15	TOTAL FIRE BAN – GAZETTAL OF DECLARATION	62
3.16	PERMITS TO BURN	63
3.17	HAZARD MITIGATION STRATEGIES: PROTECTION FROM LIABILITY.....	66
3.18	HAZARD MITIGATION STRATEGIES: PRESCRIBED BURNING AS A SEPARATE CONCEPT	67
3.19	HAZARD MITIGATION STRATEGIES: REGULATION OF PRESCRIBED BURNING	69
3.20	HAZARD MITIGATION STRATEGIES: PRIMACY OF LEGISLATION	70
3.21	HAZARD MITIGATION STRATEGIES: ASSET PROTECTION ZONES	72
3.22	HAZARD PRONE AREA DECLARATIONS	75
	NON-LEGISLATIVE ISSUES.....	77
3.23	PUBLIC EDUCATION AND AWARENESS.....	77
	CHAPTER 4: VOLUNTEER BRIGADES, GROUPS AND UNITS	78
	LEGISLATIVE ISSUES AND OPTIONS	79
4.1	VOLUNTEER CHARTER.....	79
4.2	SEPARATION OF VOLUNTEER EMERGENCY SERVICES	81
4.3	ADMINISTRATION OF VOLUNTEER BGUS.....	82
4.4	CONDUCT AND DISCIPLINE	84
4.5	SETTING MINIMUM TRAINING STANDARDS FOR VOLUNTEERS.	86
4.6	GENERAL DIRECTION AND CONTROL OF BGU MEMBERS.....	88
4.7	EMPLOYMENT PROTECTION.....	90
4.8	RESPONSIBILITY FOR STATE EMERGENCY SERVICES.....	93

4.9	RESPONSIBILITY FOR BUSH FIRE BRIGADES.....	96
	NON-LEGISLATIVE ISSUES.....	102
4.10	NATURE OF TRAINING	102
4.11	ADDITIONAL VOLUNTEER SUPPORT	103
	CHAPTER 5: RESPONSE, COMMAND AND CONTROL	104
	LEGISLATIVE ISSUES AND OPTIONS	104
5.1	RESPONSE, COMMAND AND CONTROL ARRANGEMENTS	104
5.2	ENDORSEMENT OF INCIDENT CONTROLLERS.....	107
5.3	TRANSFER OF CONTROL OF INCIDENTS	109
5.4	NOTIFICATION OF INCIDENTS.....	112
5.5	PRESCRIPTION OF RANKS	113
5.6	BUSH FIRE LIAISON OFFICERS.....	114
	NON-LEGISLATIVE ISSUES.....	116
5.7	COMMUNICATION DURING INCIDENTS.....	116
5.8	RETENTION OF LOCAL KNOWLEDGE	116
	CHAPTER 6: EMERGENCY SERVICES IN THE BUILT ENVIRONMENT	117
	LEGISLATIVE ISSUES AND OPTIONS	118
6.1	FES COMMISSIONER'S POWERS AT THE BUILDING PERMIT APPLICATION STAGE	118
6.2	REQUIREMENT FOR FES COMMISSIONER APPROVAL PRIOR TO THE ISSUE OF AN OCCUPANCY CERTIFICATE	120
6.3	THE FES COMMISSIONER'S POWERS OF INSPECTION.....	122
6.4	REQUIREMENTS FOR OWNER/OCCUPIER TO TAKE CERTAIN STEPS	125
6.5	POWERS OF EVACUATION, CLOSURE AND USE OF FORCE	128
6.6	PUBLICATION OF DFES OPERATIONAL REQUIREMENTS.....	130
	NON-LEGISLATIVE ISSUES.....	131
6.7	INFORMATION SHARING WITH OTHER AGENCIES.....	132
	CHAPTER 7: OFFENCES AND ENFORCEMENT	133
	LEGISLATIVE ISSUES AND OPTIONS	133
7.1	DOLLARS VERSUS UNITS.....	133
7.2	ENFORCEMENT	135
7.3	OPTIONAL WARNING NOTICES.....	137
7.4	STRUCTURE OF PENALTIES FOR DAILY AND REPEAT OFFENDERS	138
7.5	INFRINGEMENT PROCEDURE WITHIN THE <i>CRIMINAL PROCEDURE ACT 2004</i>	141
7.6	OFFENCES THAT ALSO APPEAR IN OTHER LEGISLATION.....	142
7.7	DAMAGE TO CRITICAL INFRASTRUCTURE.....	145

7.8	OFFENCES RELATING TO DISPOSAL OF CIGARETTES, CIGARS OR MATCHES	146
7.9	THE LEVEL OF FINANCIAL PENALTY	149
7.10	ADDITIONAL OFFENCES	149
	NON-LEGISLATIVE ISSUES.....	150
7.11	SUPPORTING LOCAL GOVERNMENT TO UNDERTAKE ENFORCEMENT ACTIVITIES	150
7.12	INFORMATION SHARING BETWEEN AGENCIES.....	150
7.13	COMMUNITY EDUCATION AND AWARENESS.....	150
	CHAPTER 8: PROTECTION FROM LIABILITY.....	151
	LEGISLATIVE ISSUES AND OPTIONS	151
8.1	ACTIVITIES PROTECTED.....	151
8.2	SPECIFIC MENTION OF CERTAIN GROUPS	154
8.3	CIVIL AND CRIMINAL LIABILITY	156
8.4	ESTABLISHING A BAR TO ACTION AGAINST EMERGENCY SERVICES PERSONNEL.....	157
8.5	BURDEN OF PROOF IN A PROTECTION FROM LIABILITY CLAUSE	158
	CHAPTER 9: FIRE AND RESCUE SERVICE OPERATIONAL STAFF.....	161
	LEGISLATIVE ISSUES AND OPTIONS	161
9.1	ADMINISTRATIVE PROVISIONS.....	161
	IMPLEMENTATION.....	164
	CONCEPT CONSULTATION	164
	APPENDIX 1 – CONSULTATION SUMMARY	1

EXECUTIVE SUMMARY

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).

Although this review considered the impacts on the *Emergency Management Act 2005* (Emergency Management Act), the Emergency Management Act is not part of this review. The Emergency Management Act is administered by the State Emergency Management Committee Secretariat and was the subject of a recent and separate review by that body.

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. This 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 issues identified through this consultation have been thematically separated into the following topics to enable stakeholders to focus on areas of interest to them:

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.

The Concept Paper outlines the background information relevant to each topic and sub-topics and then identifies the preferred option or legislative intent to address the specific issue, along with other key options that were considered. Where possible, the benefits, potential costs and other impacts that may flow on from the preferred options that have been identified. The detailed mechanics of implementation and operation do not form part of this paper.

Stakeholders are asked to consider all of the options contained in the Concept Paper and, with the benefit of their knowledge and experience, provide constructive feedback. Some of the questions stakeholders may wish to address include:

1. Are there enhancements or modifications to the concepts that would better enable them to achieve their intent?
2. Are there any costs or community impacts that have not been identified? Where possible, provide details.
3. Where costs are provided, are they accurate?
4. If stakeholders do not agree with the preferred option, provide detail on how they would deal with the issue? Where possible, identify the benefits, potential costs and impacts of the solution put forward.
5. Are there any core legislative intents that appear to have been overlooked or omitted?

The Concept Paper has been developed to meet the requirements of a *Consultation Regulatory Impact Statement* set by the Regulatory Gate Keeping Unit¹. The comments provided through this consultation paper will enable the preparation of the *Decision Paper: Review of the Emergency Services Acts* (the Decision Paper).

COMMENTING ON THE CONCEPT PAPER

Although stakeholders will be able to make comments via traditional methods such as by post and email, stakeholders are strongly encouraged to provide comment through the Concept Paper consultation website www.dfes.wa.gov.au/legislationreview. The benefits of using the website are:

- Simple and quick registration process (less than 2 minutes);
- Safe, secure and confidential participation;
- The ability to stop and save your place, so you can work through the sections you want, when you want;

¹ The Regulatory Gatekeeping Unit (RGU) administers Western Australia's Regulatory Impact Assessment (RIA) process. This process is completed for both new and amended regulatory proposals and helps ensure regulatory proposals have undergone rigorous analysis and sufficient consultation has been undertaken. The process also assists in the identification of any unintended consequences of the regulatory proposal, – Department of Finance, Regulatory Gatekeeping Unit.

- Electronic confirmation that your submission comment has been received;
- Email and/or PDF copy of your comments for your records;
- Comments can be made, and linked, to a specific option. No need to reference your comments back to a section of the Concept Paper; and
- Keyword search to enable you to find all references to a particular word or phrase.

Stakeholders wishing to comment via email or post can do so via the following:

Email: legislation@dfes.wa.gov.au

Post: Review of the Emergency Services Acts
PO Box P1174 Perth, WA 6844

If you have any further questions call the Review of the Emergency Services Acts Project Team (the Review Team) on (08) 9395 9763.

The consultation period closes for comment on 31 July 2014.

Closed for Comment

ACRONYM LIST

AIIMS	Australasian Inter-Service Incident Management System
BCA	Building Code of Australia
BFAC	Bush Fire Advisory Committee
BFB	Bush Fire Brigade
BFCO	Bush Fire Control Officer
BFLO	Bush Fire Liaison Officer
BGUs	Brigades, Groups and Units
BRMP	Bushfire Risk Management Plans
CALM	Conservation and Land Management
CBFCO	Chief Bush Fire Control Officer
CDJSC	Community Development and Justice Standing Committee
CEO	Chief Executive Officer
CFA	Country Fire Authority
COMCEN	DFES Communications Centre
CPI	Consumer Price Index
DCBFCO	Deputy Chief Bush Fire Control Officer
DEMC	District Emergency Management Committee
DFES	Department of Fire and Emergency Services
ESA	Emergency Service Areas
ESL	Emergency Services Levy
ESO	Emergency Services Organisation
FDF	Fire Danger Forecast
FES	Fire and Emergency Services
FESA	Fire and Emergency Services Authority [Now DFES]
FS	Fire Service
GRV	Gross Rental Value
IMT	Incident Management Team
IRU	Industry Response Unit
LGGS	Local Government Grants Scheme
LEMC	Local Emergency Management Committee
RGU	Regulatory Gatekeeping Unit
RIA	Regulatory Impact Assessment
SAT	State Administrative Tribunal
SEMC	State Emergency Management Committee
SES	State Emergency Service
VMRS	Volunteer Marine Rescue Services
VFRS	Volunteer Fire and Rescue Service

STATEMENT OF THE ISSUE

BACKGROUND

Fire and emergency services in Western Australia currently operate in accordance with three distinct pieces of legislation, 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). These three Acts are known collectively as the emergency services Acts. As more than half a century has passed since the introduction of the Fire Brigades Act and the Bush Fires Act, some elements may be considered outdated.

In 2006 the Community Development and Justice Standing Committee (CDJSC) *Inquiry into Fire and Emergency Services Legislation 2006* (the CDJSC inquiry) was concluded. The CDJSC tabled its report, containing 88 recommendations, in the Legislative Assembly on 19 October 2006. One of the most significant outcomes was the recommendation to repeal the emergency services Acts and develop one comprehensive, consolidated piece of legislation.

In November 2008 Cabinet approved the drafting of the Emergency Services Bill. Drafting instructions were provided to the Parliamentary Counsel's Office, however, these instructions were deemed insufficient. Since 2009 several attempts have been made to continue the legislation review process however, due to changing business commitments and priorities, work on the new emergency services Act stalled.

In November 2012 the Department of Fire and Emergency Services (DFES) commenced a project to progress the Review of the Emergency Services Acts (the Review). The new Act is intended to consolidate the existing provisions; update the legislation to reflect contemporary emergency service practice; and, where appropriate, incorporate recommendations from major inquiries and reports.

WHY DOES THE LEGISLATION NEED REVIEWING?

The current legislation is confusing and incongruous² and does not reflect how emergency services organisations operate in today's modern communities. Although each Act has been amended from time to time, the Fire Brigades Act, the Bush Fires Act and the Fire and Emergency Services Act largely reflect the prevailing socio-political influences of when they were enacted.

² Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

As additional time passes, the current Acts will become even less reflective of the emergency services environment in Western Australia. This will hinder the ability of emergency service providers and the community to implement and effectively execute contemporary strategies to prevent; prepare; respond to; and recover from emergencies.

OBJECTIVES

The primary objectives of the Review are to:

- Increase community resilience through promoting a focus on shared responsibility for prevention, while also coordinating emergency preparedness and response delivery across government agencies, local government, volunteers and private landowners;
- Promote highly motivated, resourced and well trained emergency responders, both volunteers and career, that strive to keep themselves and others safe;
- Provide the framework, powers and protections necessary to allow all emergency services personnel and agencies to carry out their functions in the best interests of the community;
- Clearly identify the roles, functions, responsibilities and control mechanisms required to enable government agencies, local government and emergency services personnel to achieve effective interoperability; and
- Simplifying the current emergency services legislation and the provision of emergency services by eliminating duplication and overlap of effort.

While the enactment of a single contemporary emergency service Act will help address the problems identified and achieve the objectives outlined, it is acknowledged that legislation alone will not address all the issues that have been raised during the Review. It will be critically important that all emergency service sector participants continue to work cohesively and constructively towards achieving improved community outcomes.

CONSULTATION

To date, the Review Team has undertaken widespread consultation with a range of internal and external stakeholders. (See *Appendix 1 – Consultation Summary* for details of those consulted to date.)

The three stage consultation process utilised for the Review is outlined below.

STAGE 1 – PRELIMINARY CONSULTATION

The initial consultation phase was primarily an information gathering stage whereby stakeholders were asked to identify issues and opportunities that could be considered and addressed in a new Act.

The Review Team engaged with stakeholders through a range of activities which included a state wide call for submissions; the distribution of newsletters; the development of a project website; the facilitation of information sessions; and conducting meetings/workshops at various locations throughout the State. All the submissions received were assigned a reference number, analysed and categorised according to the specific subject matter.

During this stage the Review Team conducted research into legislative provisions and service delivery models in other jurisdictions, both throughout Australia and internationally.

STAGE 2 – EXPERT PANEL DISCUSSIONS AND WORKSHOPS

The issues identified during Stage 1 activities were categorised into eleven (11) key topics for the purpose of focused consultation and analysis. This included expert panel discussions and workshops involving stakeholders targeted for their specific expertise, knowledge or interest in the subject matter.

The goal of the expert panel discussions and workshops was not to achieve consensus on a way forward, but rather to identify strengths, weaknesses, opportunities and threats in the current emergency services Acts that could be addressed through the Review.

The expert panel discussions centered on the following categories³:

1. Legislative Aspects of the Emergency Services Levy (ESL);
2. Emergency Service Areas;
3. Prescribed Legislative Functions and Responsibilities;
4. Protection of Volunteers;
5. Volunteer Brigades, Groups and Units;
6. Offences and Enforcement;
7. Risk Treatments;
8. Built Environment;
9. Emergency Service Powers;
10. Command and Control; and
11. Administration of Career Firefighters.

³ The expert panel discussion titles do not align with the titles of the Concept Paper chapters. This is due to the interdependencies of the themes discussed by the panels.

A detailed discussion paper was completed on each of the eleven topics and provided to the expert panel members prior to the workshops.

STAGE 3 – CONCEPT PAPER

As a result of the analysis of the information gathered during Stages 1 and 2, the Concept Paper was developed. The objectives of the Concept Paper are to:

- Highlight key concepts for how certain issues will be dealt with in the future;
- Ensure that all stakeholders can understand the future direction of the legislation and provide meaningful feedback; and
- Provide a focus on areas where there are:
 - Significant shifts in the future direction;
 - Changes in how the legislation is applied; and
 - Where key aspects of the existing legislation have been retained.

The Concept Paper focuses on those options that have been identified as the most appropriate to address the identified issues and, where possible, the impact of these options. It is not a line-by-line comparison between the old legislation and the proposed new emergency services Act. Some aspects of the current legislation, that will remain the same, have not been dealt with in the Concept Paper.

SELECTION OF PREFERRED OPTIONS

During the period between November 2012 and November 2013, employees from DFES engaged with over 1500 individuals including volunteers, local government representatives, State Agencies and non-government organisations. This was done through phone, email, direct meetings, group presentations, formal submissions and expert panel discussions.

The options and ideas that surfaced through this process were researched and analysed by the Review Team, internal DFES staff and the DFES Corporate Leadership Team. Consideration was given to factors including, but not limited to, findings and recommendations from other reviews, cost implications, available resources, expertise, impacts to volunteers and communities and the diverse geographical landscape in Western Australia. DFES then identified the option believed to best achieve the intended outcome for the issue being considered.

DOCUMENT STRUCTURE

The Concept Paper is divided into a number of chapters that deal with elements of the proposed emergency services legislation. The document outlines the relevant background information for each chapter and sections and then identifies the preferred option or legislative intent considered to address the specific issue, along with other key options that were considered. Where possible, the benefits, potential costs and other impacts that may flow from the preferred options have been identified. The detailed mechanics of implementation and operation do not form part of this paper.

CHAPTER 1: EMERGENCY SERVICES LEVY (ESL)

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 State⁴. 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 funds some volunteer training, fire investigations, building inspections, community safety programs, emergency management planning and the Department of Fire and Emergency Services (DFES) corporate support costs. Buildings and appliances for career fire brigades are funded through capital funding processes.

It should be noted that whilst legislation sets out provisions in relation to the ESL, a number of the defining features of the ESL, such as activities funded through the grants scheme, are set out in the Local Government Grants Scheme (LGGS) Manual⁵ approved by the Minister for Emergency Services. Although the establishment of a grants scheme is enabled by s 36Y of the *Fire and Emergency Services Act 1998* (Fire and Emergency Services Act), the contents of the LGGS Manual are developed as policy. It emerged during consultation that many of the concerns raised regarding the ESL were related to the application of the LGGS policy. Whilst these policies are not part of the Review, some of the concerns raised by stakeholders are discussed at the end of this chapter.

Under the topic of ESL, the legislative issues that have emerged and been canvassed through consultation include:

- Who should be responsible for the administration of the ESL?
- Should there be any change to the current ESL funding model or revenue streams?
- Should any additional levies be introduced?
- Under what time frame should ESL billing adjustments be allowed?

⁴ Department of Fire and Emergency Services, *Emergency Services Levy Question & Answer Guide 2013/14*

⁵ Department of Fire and Emergency Services, *Local Government Grants Scheme: Manual for Capital and Operating Grants*, November 2013

ESL METHODOLOGY

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 ESL⁶, the ESL applies to all property (including property owned by 'not for profit' organisations that may be exempt from local government rates). How much ESL a property is charged depends on:

1. the location of the property (the ESL Category it is in);
2. the declared ESL rate for that category;
3. the property's Gross Rental Value (GRV)⁷; and
4. minimum and maximum charges, which are based on what the property is used for.

There are 5 ESL categories that apply, depending on the type and level of emergency services available to a property (refer to *Table 1*). A different ESL charging rate is declared for ESL categories 1 to 4, and a standard (minimum) ESL charge is declared for ESL category 5 and assessable mining tenements. The ESL charge for properties located in ESL Categories 1 to 4 is calculated using GRV. The GRV is multiplied by the ESL rate for that category⁸.

Properties with more services available to them are charged more. The core services funded by the ESL include responding to: structural fires and bushfires; road crash rescue; hazardous and toxic material spills; storms; cyclones; floods; earthquakes; tsunamis; searches for missing persons; and cliff and cave rescues.

⁶ *Fire and Services Regulations 1998*, r 5

⁷ Gross Rental Value 'is a conservative estimate of the gross annual rental income that the land might reasonably be expected to realise if let on a tenancy from year to year.' Landgate, *Property Report-Frequently Asked Questions*, accessed on 14 March 2014.

⁸ Department of Fire and Emergency Services, *Emergency Services Levy Question & Answer Guide 2013/14*

Table 1. Current ESL Categories

ESL CATEGORY	LOCATION DESCRIPTION	SERVICES PROVIDED ^a
ESL Category 1	Perth Metropolitan Fire District	Permanent fire brigades and SES units.
ESL Category 2	Regional Cities	A permanent fire brigade, a volunteer fire brigade and SES units.
ESL Category 3	Urban Metropolitan Area	A private fire brigade, or a bush fire brigade, supported by permanent fire brigades; or A volunteer fire brigade supported by permanent fire brigades or by members of staff; and SES units.
ESL Category 4	Country Towns	A volunteer fire brigade; or A private fire brigade; or A bush fire brigade equipped with breathing apparatus; or A FES Unit equipped with breathing apparatus; and SES units.
ESL Category 5	Pastoral/Rural Areas	A bush fire brigade, a FES unit or members of staff; and SES Units.

^a Fire and Emergency Services Regulations 1998 r 6

LEGISLATIVE ISSUES AND OPTIONS

1.1 ADMINISTRATION OF THE ESL

DFES is currently responsible for ESL administration under pt 6A of the Fire and Emergency Services Act. Recommendation 48 of the *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review* (Report on the Perth Hills Bushfire)⁹ was that the responsibility for the management and distribution of the ESL be moved to the Department of Finance.

⁹ M. J. Keelty AO APM, *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*, June 2011

The options covered under this heading are:

- Responsibility for administration of the ESL to remain with DFES;
- Responsibility for administration of the ESL to be handed over to another government agency; and
- Responsibility for administration of the ESL to be handed over to an independent third party.

1.1.1 PREFERRED OPTION: Responsibility for administration of the ESL to remain with 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 services¹⁰.

Proposed Benefits

Under this option DFES will be able to continue to apply its expertise in emergency services and emergency management to the ESL and involve volunteers and local government in the LGGS committee. The ESL is specifically for the funding of emergency services and, as such, those administering it require appropriate knowledge of emergency services and emergency management. Without the appropriate knowledge base guiding administration and the associated policies and processes, the ESL may become less effective.

Other Impacts

As DFES administers the ESL, whilst also being a beneficiary, some stakeholders raised concerns of a possible conflict of interest; however, the Review notes that DFES is accountable to Treasury for the expenditure of ESL funds. It is acknowledged that the preferred option differs from the recommendation in the Report on the Perth Hills Bushfire which recommended that responsibility for the management and distribution of the ESL be moved to the Department of Finance (as discussed in *option 1.1.2*)¹¹.

¹⁰ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*, para 5, p191.

¹¹ M. J. Keelty AO APM, *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*, June 2011

Costs

This option would not be associated with any increase or decrease in costs. The anticipated costs associated with the administration of the ESL by DFES going forward are summarised in *Table 2*.

Table 2. ESL Administration Costs – Forward Estimates

ITEM	2016/17 (\$)	2017/18 (\$)	2018/19 (\$)	2018/19 (\$)
Salaries, Superannuation, Worker Compensation Insurance and other on costs	134 202	137 557	140 996	144 521
Administration Fee paid to local government	2 250 000	2 250 000	2 250 000	2 250 000
Fee paid to Landgate for the provision of valuation services	3 400 000	3 500 000	3 600 000	3 700 000
Fee paid to the Department of Finance for processing ESL concessions	310 000	320 000	330 000	340 000
ESL Brochure, printing and distribution	43 000	44 075	45 177	46 306
Other	10 000	10 250	10 506	10 769
Total	6 147 202	6 261 882	6 376 679	6 491 596

Source: The Department of Fire and Emergency Services¹²

OTHER OPTIONS CONSIDERED

1.1.2 Responsibility for administration of the ESL to be handed over to another government agency

In order to address any real, or perceived, conflict of interest the Review considered whether the legislation should be amended to shift administration of the ESL to another government agency, such as the Department of Finance, who are not a recipient of ESL funds. Extensive liaison with various functional areas of DFES would still be required if the administration of the ESL was handed to another agency. It is envisaged that this option would result in additional administrative burden only to achieve a similar outcome as the status quo of DFES being responsible for the administration of the ESL.

¹² Internal DFES modelling.

1.1.3 Responsibility for administration of the ESL to be handed over to an independent third party

A further option is to amend the legislation to shift administration of the ESL to an independent third party. This would address stakeholder concerns about any perceived conflict of interest in the current arrangements and may partially address concerns about the ESL being administered by an agency without expertise in emergency management. The independent body could be comprised of individuals with experience in emergency management. There would likely be significant costs associated with identifying and resourcing an appropriate body, potentially reducing the amount of ESL funding available. In addition, it may prove challenging to identify and retain individuals with the required emergency management and financial experience to maintain effective administration.

1.2 ESL FUNDING MODEL AND REVENUE STREAMS

A key part of the ESL methodology outlined above is the division of land into different ESL category areas based on the services available in that area.

Currently there are two types of boundaries in the emergency services legislation 1) ESL category areas; and 2) Fire Districts. The potential abolition of Fire Districts is discussed in *Chapter 2 Administration and Miscellaneous Provisions*. This section deals with ESL category areas.

The options covered under this heading are:

- Retain the current ESL funding model;
- Abolish ESL category areas;
- Abolish ESL category areas and create 'emergency service areas' in line with CDJSC inquiry recommendations 68, 69 and 70;
- An additional ESL category to cover Unallocated Crown Land; and
- Higher ESL rates for high-risk areas.

1.2.1 PREFERRED OPTION: Retain the current ESL funding model

Under this option the legislation would remain fundamentally unchanged. Currently the amount of ESL charged to landowners is directly tied to the cost of providing emergency services across the state, with the amount varying each year depending on requirements¹³. At the time of establishment, this method was deemed to be the most equitable option available. An alternative model has not been identified that would improve on the current arrangements.

¹³ Department of Fire and Emergency Services, *Emergency Services Levy Question & Answer Guide 2013/14*

Proposed Benefits

In general, the ESL is viewed as a standard household expense along with local government rates. Any changes to the ESL model would add to household financial pressure. Leaving the ESL funding model unchanged would limit any costs associated with rolling out a change that has significant state wide implications.

Other Impacts

Some stakeholders expressed concerns that the current ESL funding model may be failing to keep up with demand. These concerns are two-fold. The first relates to the desire to see additional activities funded by the ESL such as mitigation and recovery. The second was a view that local government may feel it is being required to supplement the ESL for the operational and capital costs of the response function.

The Review noted that currently ESL charges are calculated to recover a budget approved by Parliament prior to the determination of ESL charges. As a result the funding required to be collected is pre-determined before the charging rates are calculated.

Costs

This option would not be associated with any change in costs as it maintains current arrangements.

OTHER OPTIONS CONSIDERED

1.2.2 Abolish ESL category areas

This option proposes a complete abolition of ESL category areas without replacing them with a new funding boundary. This would represent a fundamental change to the ESL funding model. In the absence of funding boundaries, an alternative ESL funding model would be needed.

One alternative would be to spread the ESL equally across all properties however the levies charged under this model would not reflect the services available in a particular area. Based on the 2013/2014 ESL funding requirement of \$271.184 million¹⁴ and the number of properties required to pay ESL (approximately 1 176 061 properties)¹⁵ the ESL fee for each property would be \$230¹⁶. This funding model

¹⁴ Department of Fire and Emergency Services, *Emergency Services Levy Question & Answer Guide 2013/14*

¹⁵ Internal DFES data.

¹⁶ Based on \$271.184 million ÷ 1 176 061 properties

would have resulted in an increase of the State Government's ESL assessment to \$21.410 million compared to the approved amount of \$16 million in the 2013/14 budget¹⁷. Initial modelling by DFES indicates that nearly 80% of all properties assessed as needing to pay a higher amount under this funding model.

1.2.3 Abolish ESL category areas and create 'emergency service areas' in line with CDJSC inquiry recommendations 68, 69 and 70

Recommendation 68, 69 and 70 of the CDJSC inquiry provide that ESL category areas (and Fire Districts) should be abolished and replaced with 'emergency service areas'¹⁸. The option would align ESL category areas and Fire District boundaries to create an arrangement that is more straightforward and more efficient to administer.

This option was not selected as the preferred option as the basis for the CDJSC inquiry recommendation was to create a single set of boundaries for operational response (currently Fire Districts) and revenue collection (currently ESL category areas). A preferred option discussed elsewhere in this paper is to eliminate Fire Districts as a boundary to response (as discussed in *Chapter 2 Administration and Miscellaneous Provisions*). This would effectively remove the need to abolish ESL category areas to create a single set of legislated boundaries.

1.2.4 An additional ESL category to cover Unallocated Crown Land

It was suggested that a new ESL category be created specifically for Unallocated Crown Land to increase the funds available. The State Government currently contributes \$16 million in ESL charges for properties that it manages¹⁹, including Unallocated Crown Land. If the purpose of this option is to raise additional revenue it is counterproductive as this new ESL category would be paid exclusively out of the budgets of other State Government agencies, which is likely to reduce the amount of consolidated revenue made available to DFES.

1.2.5 Higher ESL rates for high-risk areas

In order to increase the availability of ESL funds some stakeholders suggested that the rate at which ESL is charged could be increased for properties located in higher risk areas. This option is inconsistent with the 'budget driven' structure of the ESL funding system. In addition, an increase in ESL in certain areas may result in an

¹⁷ Department of Fire and Emergency Services, *Emergency Services Levy Question & Answer Guide 2013/14*

¹⁸ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

¹⁹ Department of Fire and Emergency Services, *Emergency Services Levy Question & Answer Guide 2013/14*

expectation of a higher level of service in those areas, which would not necessarily be practical.

Some stakeholders felt that other strategies to mitigate risk, such as building requirements and town planning strategies, are a more appropriate method to address increased risk. These mitigation strategies aim to limit the risk whereas an increase in ESL would largely serve to support response to incidents.

1.3 ADDITIONAL LEVIES

The ESL is property based and as a result only landowners are required to pay the levy. Some stakeholders raised the possibility of charging additional levies, not tied to property ownership, to ensure more users of emergency services contribute to funding services. In addition these levies should increase the overall available revenue pool.

The options covered under this heading are:

- Collect an emergency services levy from vessel owners; and
- Collect an emergency services levy from motor vehicle owners.

1.3.1 Collect an emergency services levy from vessel owners

It was suggested that a charge should be levied on owners of vessels in acknowledgment of the expenditure that is related to emergency service organisations' role in marine search and rescue. Currently the Volunteer Marine Rescue Services (VMRS) is funded through consolidated revenue and not the ESL. This policy position would require reconsidering if an additional levy was introduced on vessels.

Proposed Benefits

This additional levy would provide an additional revenue stream that could be used to fund emergency services.

Other Impacts

This option would likely result in people paying multiple levies where they are both landowners and vessel owners. There is also likely to be an expectation that funds collected from vessel owners are quarantined for funding of marine rescue services, rather than being distributed across emergency services as occurs with the ESL.

It is recognised that the implementation of a levy on vessels would require resources and a considerable number of details still need to be determined.

Costs

The cost of implementing this additional levy could be substantial and would require ongoing additional administration. The amount of revenue raised through a vessel levy would vary greatly depending on the model selected.

Models on which a vessel levy could be based include a scaled fee model based on vessel size, a percentage model based on registration fee and a flat fee model. Example yields across these models are summarised in *Table 3*.

Table 3. Vessel Levy Yields

MODEL	LEVY PER VESSEL	YIELD (N=98,144 ^a)
Scaled Fee Model (low yield)	\$5 for a vessel up to 5m to \$50 for a vessel over 20m	\$ 786 225
Scaled Fee Model (high yield)	\$25 for a vessel up to 5m to \$450 for a vessel over 20m	\$ 3 931 125
Percentage Model (low yield)	5% of registration fee	\$ 784 097
Percentage Model (high yield)	50% of registration fee	\$ 7 840 970
Flat Fee Model (low yield)	\$5 flat fee	\$ 500 735
Flat Fee Model (high yield)	\$50 flat fee	\$ 5 007 350

^a Recreational vessels only

Source: Raw data sourced from Department of Transport^{20 21}

Revenue available from any model selected would be reduced by subtraction of the costs associated with the administration and collection of the levy.

1.3.2 Collect an emergency services levy from motor vehicle owners

Stakeholders raised the possibility of charging an emergency services levy to all motor vehicle owners, possibly as part of registration fees, to raise additional revenue to fund emergency services.

²⁰ Email from the Department of Transport, 5 February 2014

²¹ Department of Transport, *Marine Fees and Charges*, July 2013

Proposed Benefits

This additional levy would provide an additional revenue stream that could be used to fund emergency services.

Other Impacts

This option would result in people paying multiple levies where they are both landowners and vehicle owners.

Some stakeholders also raised concern over collecting a levy for vehicles when a significant portion of emergency services provided to road users such as police and ambulance, are funded through alternative methods.

Costs

The cost of implementing this additional levy could be substantial and would also require ongoing additional administration. The amount of revenue raised through a vehicle levy would vary greatly depending on the model selected.

Models on which a vehicle levy could be based include a percentage model based on registration fee and a flat fee model. Example yields are summarised in *Table 4*.

Table 4. Vehicle Levy Yields

MODEL	LEVY PER VEHICLE	YIELD (N=2,035,314 ^a)
Percentage Model (low yield)	5% of registration fee ^b	\$ 47 739 865
Percentage Model (high yield)	50% of registration fee ^b	\$ 477 398 653
Flat Fee Model (low yield)	\$ 5 flat fee	\$ 10 217 645
Flat Fee Model (high yield)	\$50 flat fee	\$ 102 176 450

^a Excludes special purpose vehicles such as ambulances.

^b Indicative registration fees only (excluding administration fees and third party insurance).

Source: Raw data sourced from Department of Transport²² and Australian Bureau of Statistics²³

²² Department of Transport, *Vehicle Licence and Examination Fees 2013/2014*

²³ Australian Bureau of Statistics, *9309.0 - Motor Vehicle Census, Australia, 31 Jan 2013*

1.4 ESL ADJUSTMENTS

Under current legislation it is unclear as to what the time limit is to appeal an ESL billing error and seek an adjustment. Established procedure is that an ESL adjustment can only be made in the current financial year for the current financial year. This view is consistent with the adjustment methodology applied by most other government agencies that have a revenue function.

The options covered under this heading are:

- Provide clarification that adjustments will only be permitted in the current financial year; and
- Allow adjustments to be made in the current year and a set number of previous years.

1.4.1 PREFERRED OPTION: Provide clarification that adjustments will only be permitted in the current financial year

This option is consistent with current procedure that allows adjustments to ESL billing errors when the error is identified in the current financial year. However, the legislation is ambiguous in specifying this limitation. It is suggested the new emergency services Act maintain the current position and clearly set out the 'current financial year' time limitation.

Proposed Benefits

This option would remove any administrative burden of researching older billing enquiries to identify and refund/collect miscalculated payments. In addition, the arrangements established under this option would be consistent with accepted practice in other government agencies.

Other Impacts

Some ratepayers may be dissatisfied that they have been over billed in previous years and are unable to recoup overpayments. The converse of this is that there may be ratepayers who have underpaid and would not be required to pay the under billed balance.

Costs

Given that this is predominately how the system is operating currently, it is not anticipated there would be any additional costs associated with this option.

OTHER OPTIONS CONSIDERED

1.4.2 Allow adjustments to be made in the current year and a set number of previous years

The current arrangements in respect to rectifying errors could be made more flexible by specifically allowing for errors within the current year and a set number of previous years to be rectified. The *Local Government Act 1995* s 6.39(2) provides local government the discretion to backdate council rates for five years preceding the current financial year. However this option could equate to a significant increase in the administrative costs associated with researching and verifying billing errors and may not be consistent with the practices of other government agencies who limit the timeframe in which such adjustments can be made to the current year.

NON-LEGISLATIVE ISSUES

A number of issues identified to this Review in relation to the ESL could be addressed through non-legislative options and therefore are not in the scope of this Review. An undertaking was given to all stakeholders that the Review would pass on information on non-legislative issues raised to the relevant DFES business area or other government agency responsible.

One issue raised by a number of stakeholders was concern over the distribution of ESL and in particular the type of items or activities on which ESL funds could be spent. As mentioned at the start of this chapter the distribution of ESL funds is currently subject to the LGGGS Manual that is approved by the Minister for Emergency Services. Any extension of the activities or items eligible for grant funding would either reduce the funding available for the activities that are currently eligible or require additional ESL funding to be granted through an increase in the ESL budget.

1.5 ESL SHOULD BE EXPANDED TO INCLUDE ADDITIONAL EMERGENCY RESPONSE EQUIPMENT

Feedback received indicates that there is a desire to expand the parameters around what ESL funding can be spent on. Concerns were raised about the inability of some ESL recipients to fund their requirements, leaving them vulnerable. As per s 3.4.2 of the LGGGS Manual²⁴ the following items are not eligible for LGGGS Capital Grant funding:

²⁴ Department of Fire and Emergency Services, *Local Government Grants Scheme: Manual for Capital and Operating Grants*, November 2013

- Land;
- Hydrants in non-gazetted areas;
- Earthmoving plant and equipment;
- SES Road Crash Rescue hydraulic equipment;
- Privately owned assets and equipment; and
- Other assets as determined ineligible by the Grants Committees.

Items with a value of \$5 000 or less are not eligible for funding through the Capital Grant arrangements, however may be funded through the Operating Grant if an eligible item²⁵.

1.6 FUNDING MITIGATION ACTIVITIES THROUGH THE ESL

It was submitted that many of the same resources are used for mitigation and emergency response and, as such, the policy should be amended to allow ESL funds to be spent on any mitigation activities. The primary reasoning put forward by stakeholders was that additional expenditure on mitigation activities would have a savings correlation on the response side. Research indicates that there is a strong correlation between the dollars spent on mitigation, prevention and preparation and the subsequent reduction in the risk, frequency, intensity and impact of natural disasters.²⁶

1.7 COMPOSITION OF THE LOCAL GOVERNMENT GRANT SCHEME COMMITTEE

It was suggested that local government should have a greater representation on the LGGs Committee to ensure that the needs of local government is fairly represented and it has an equitable voting capacity. The LGGs Committee is currently made up of seven members including two representatives from local government. The two representatives are selected from four nominations put up to the Minister for Emergency Services.

1.8 ASSISTANCE PROVIDED TO RECIPIENTS TO ASSIST THEM TO DISBURSE FUNDS IN A TIMELY MANNER

Some stakeholders requested that support be provided to recipients of ESL funding, including local government, to assist them with the administration and disbursement of funds. The nature and provider of such assistance has not been determined and the source of funding to provide this service was not identified in submissions.

²⁵ Example: communications equipment, vehicle running costs and protective equipment.

²⁶ Deloitte Access Economics, *Building our Nation's Resilience to Natural Disasters*, June 2013

1.9 REVIEW ESL RESOURCE TO RISK PLANNING PROCESS

The feedback received in relation to the ESL indicated that there is a need to review the ESL process, particularly with regard to planning. There was some criticism from stakeholder groups that the Resource to risk model appeared to result in inequities surrounding capital expenditures, particularly with respect to the replacement of apparatus. It should be noted that the Resource to risk model is designed to ensure that the States resources are targeted in strategic areas. The intent is not to provide identical apparatus in each local government, but rather to make certain that specialist equipment is located where it can service the widest possible area ensuring the most efficient use of levy funds. The current process is the subject of regular audits with the process itself being reviewed every five years.

1.10 REVIEW ESL BOUNDARIES

Whilst legislation sets out the methodology behind the determination of ESL category areas the effectiveness of the system is in part dependant on the regular review of the ESL boundaries to ensure they remain consistent with current service provision. Stakeholders provided examples of land development and expansion resulting in land in Category 5 having increased services similar to Category 4. Contrasting examples were also of where areas have been recategorised in line with development. Consideration may need to be given to a more formal review process to ensure ongoing recategorisation occurs as required.

1.11 REVIEW THE APPLICATION OF THE ESL TO OWNERS WITH MULTIPLE LAND HOLDINGS

Some stakeholders raised concern of the practice of some local government in issuing a single consolidated rates notice to owners of multiple land holdings. It was reported that when this occurs the ESL is only charged once rather than for each property owned.

As the administration of the ESL generally follows local government rating practices and procedures, where a 'group rating'²⁷ of a number of properties occurs then the ESL charging arrangements follows suit and those properties will be assessed as if they are one property. In such cases, it would be administratively complicated if the ESL charging arrangements differed from local government rating practices.

²⁷ Landgate, *Valuer General's Guide to Rating And Taxing Values*, February 2012

CHAPTER 2: ADMINISTRATION AND MISCELLANEOUS PROVISIONS

During the consultation process stakeholders have raised a number of issues in relation to the administration and other specific miscellaneous provisions of the emergency services Acts. These issues, and the options considered to address them, are discussed in this chapter.

Under the topic of Administration and Miscellaneous Provisions, the legislative issues that have emerged and been canvassed through consultation include:

- Should Fire Districts be removed from the legislation?
- Should local government have the ability to sub delegate powers?
- Is there a need to legislate Bush Fire Advisory Committees?
- Should emergency service powers be structured into general classes of powers?
- Should the legislation allow for water to be taken from any source as required?
- Should the legislation provide for approved industry brigades to be directed by the FES Commissioner?
- Should investigation be established as a function of the FES Commissioner?

LEGISLATIVE ISSUES AND OPTIONS

2.1 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*²⁸. The FES Commissioner and fire brigades established under the Fire Brigades Act are empowered to respond within those districts²⁹.

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

²⁸ *Fire Brigades Act 1942*, s 5(2)

²⁹ *Fire Brigades Act 1942*, s 5A

abolished and replaced by Emergency Service Areas³⁰. ESL category areas are discussed in *Chapter 1 Emergency Services Levy (ESL)*.

The options covered under this heading are:

- Abolish Fire Districts;
- Replace Fire Districts with Emergency Service Areas; and
- Retain Fire Districts in their current form.

2.1.1 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 only³¹. 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. For more information on Response Agreements, refer to *Chapter 5 Response, Command and Control*.

Proposed Benefits

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.

Other Impacts

Once Fire Districts are removed from legislation, operational boundaries will need to be determined by an alternative method.

Stakeholders are familiar with the current terminology and it may take time for them to adapt to any new terms introduced. In addition, all materials and documents that use the current terminology will require amendment.

³⁰ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

³¹ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

Costs

The costs associated with this option include those related to any administrative changes plus conducting an awareness campaign to ensure stakeholders are informed.

OTHER OPTIONS CONSIDERED

2.1.2 Replace Fire Districts with Emergency Service Areas

Under this option Fire Districts would be abolished, with 'Emergency Service Areas' (ESA) established in their place. This was a recommendation of the CDJSC inquiry³². These ESA boundaries would be used to define the overall service provided by emergency services to the communities within the determined area. The proposed ESA would not necessarily correspond to ESL boundaries or to local government areas. Whilst some stakeholders supported this option, others were of the opinion that an ESA system is unnecessary and would, in practical terms, not alleviate the issue of jurisdictional barriers to response.

2.1.3 Retain Fire Districts in their current form

Fire Districts could be maintained in their current form for determining operational boundaries. Some stakeholders favour this option due to the delineation of responsibilities it provides. The current position, however, does not alleviate the barriers to response nor does it take into account the proposed all hazard approach of the new emergency services legislation.

2.2 LOCAL GOVERNMENTS' 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 process³³. 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.

³² Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

³³ *Fire and Emergency Services Legislation Amendment Bill 2001 – Explanatory Memoranda*

The options covered under this heading are:

- Allow local government to sub delegate powers as required; and
- Maintain the limit on sub delegation by local government.

2.2.1 PREFERRED OPTION: Allow local government 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.

Proposed Benefits

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

Other Impacts

There is a potential that sub delegation could occur in a piece-meal fashion across local government which could impact DFES and other stakeholders' ability to maintain clear communication at higher levels of responsibility in regards to emergency services matters. This could be alleviated through regular communication between stakeholders.

Costs

No increase in cost has been identified for this option.

OTHER OPTION CONSIDERED

2.2.2 Maintain the limit on sub delegation by local government

The current limited legislative arrangements in relation to local government delegations could be maintained in the new legislation. This option may ensure that the powers which have a significant impact on emergency services within this State remain with roles at the highest levels in local government (i.e. the CEO and/or the Council). However, stakeholders have clearly indicated that the current legislative arrangements hinder the effectiveness of local government when taking action and responding to emergency situations, as it is unable to delegate the necessary functions under the existing emergency services Acts to those officers who need to perform those functions.

2.3 BUSH FIRE ADVISORY COMMITTEES IN LEGISLATION

Bush Fire Advisory Committees (BFACs) are voluntarily formed by local government in accordance with s 67 of the Bush Fires Act. The provisions of s 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.

The options covered under this heading are:

- Bush Fire Advisory Committees are removed from legislation and local government form hazard advisory committees to suit local needs; and
- Maintain reference to Bush Fire Advisory Committees in legislation.

2.3.1 **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. As discussed in *Chapter 3 Risk Mitigation*, BFACs will not be required to perform any additional roles in the new legislation.

Proposed Benefits

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.

Other Impacts

Some stakeholders are of the opinion that BFACs would carry more weight if retained in legislation and that the provisions allow for some uniformity across the State in respect of its operation. It is evident however, not all local government choose to form a BFAC and the ongoing utilisation of this committee should be determined by local government itself.

Costs

No cost impacts have been identified for this option.

OTHER OPTIONS CONSIDERED

2.3.2 Maintain reference to Bushfire Advisory Committees in legislation

As mentioned previously some stakeholders believe a BFAC would carry more weight if retained in legislation. However, the fact a BFAC currently has legislative support has not shown to be a factor in whether or not it's formed or whether it meets expectations in the performance of its roles.

2.4 STRUCTURE OF POWERS

The emergency services Acts are structured in such a way that individual emergency service bodies are each provided with a separate and distinct legislative identity. Each body is then given its own powers. This results in an overlap between the powers provided to the respective bodies. In addition, each of the current Acts uses slightly different language resulting in subtle differences in the powers that each body has.

The options covered under this heading are:

- Emergency service powers are structured into general classes of powers;(e.g. prevention; response; inspection; investigation and recovery) and
- Continue to provide each individual emergency services body with its own powers.

2.4.1 PREFERRED OPTION: Emergency service powers are structured into general classes of powers (e.g. prevention; response; inspection; investigation and recovery)

Stakeholders have suggested that the new emergency services legislation should be structured with general classes of power, in order to avoid repeating powers in various parts of the Act.

These general classes would then be provided to the relevant emergency services body or authorised officers. Where necessary to perform a particular function, specific powers could also be provided.

For example, general powers would be provided to all authorised officers responding to an incident; then an investigation officer would have those same general powers, by way of reference to the section containing them, plus additional investigation-specific powers.

Proposed Benefits

This option would reduce the duplication of powers set out in legislation and make the new emergency services Act simpler.

Other Impacts

Some stakeholders may view this way of structuring powers as a dilution of the individual character of each service. This is not the intention as each emergency service will be individually identified in the legislation. The option merely allows for specified common powers to be mentioned only once.

Costs

No cost impact has been identified.

OTHER OPTION CONSIDERED

2.4.2 Continue to provide each individual emergency services body with its own powers

Some stakeholders prefer the current structure in relation to the provision of powers, in particular when dealing with volunteer services. The primary disadvantage of this approach is that it involves the unnecessary duplication of powers and makes the legislation more difficult to navigate.

2.5 ABILITY TO TAKE WATER

Section 61 of the Fire Brigades Act allows the FES Commissioner and officers and members of brigades to use water and water infrastructure, free of charge, for extinguishing a fire or ending a hazardous material incident, or for the purposes of drills, competitions, and practice.

Section 39(1)(e) of the Bush Fires Act states that a BFCO may, in the exercise of his/her functions, take and use water, other than that for use at a school, or the domestic supply of an occupier contained in a tank at his/her house, whether private property or not. It is believed that the origin of this provision related to essential water supplies in isolated areas at a time when replenishment was not feasible.

The options covered under this heading are:

- Water may be taken as required to perform a function under the Act, but will be replenished as soon as practicable, in certain cases; and
- Continue to protect specified water sources.

2.5.1 **PREFERRED OPTION: Water may be taken as required to perform a function under the Act, but will be replenished as soon as practicable, in certain cases**

Stakeholders have suggested that the current provisions of s 39(1)(e) of the Bush Fires Act needs to be expanded to allow for the use of water from any source in order to perform a function under the Act free of charge. This option allows this but also requires the replenishment of a private landowner's/occupier's private stored water supply as soon as practicable, on request, if it was taken under the Act.

Proposed Benefits

This option provides unrestricted access to water which would assist in emergency response while taking into account the potential hardship in regional areas where water may be scarcer, by requiring replenishment, as soon as practicable.

Other Impacts

The possible delay between requesting water replenishment and it being replenished, would need to be addressed.

Costs

As the replenishment, upon request, of private stored water taken under the Act is current practice, it is not anticipated that there would be any additional cost implications.

OTHER OPTION CONSIDERED

2.5.2 Continue to protect specified water sources

The provisions in the Bush Fires Act protect specified water sources from being taken by emergency services for emergency response. This restriction, however, could have a negative impact on an effective response to an emergency situation.

2.6 APPROVED INDUSTRY UNITS

Private fire brigades are currently established under the Fire Brigades Act. In accordance with s 31 these brigades are under the '*immediate order and control of the FES Commissioner*'³⁴ and are obliged to conform to regulations which can include registration requirements and subject them to inspections by an authorised DFES employee.

Members of private brigades also derive powers from the Fire Brigades Act to perform functions such as extinguishing fires.

Currently, industry brigades are formed by private industries, such as mining or forestry, for the purposes of providing services in respect of their organisation's premises and land. This service may include firefighting, road crash rescue or

³⁴ Fire Brigades Act 1942, s 31

another type of rescue. Industry brigades may or may not be registered as private brigades according to s 26(a) of the Fire Brigades Act.

The CDJSC inquiry recommended the formation of 'emergency service units' by agreement between DFES and industry, which the FES Commissioner may approve and dissolve³⁵. Consistent with the all hazards approach, this paper refers to these industry formed units as Industry Response Units (IRUs). The use of the phrase 'Industry Response Units' differentiates this type of unit from FES Units and private brigades.

The options covered under this heading are:

- Provide for approval of IRUs to act as directed; and
- Keep current provisions that only allow for industry brigades to be registered as private fire brigades.

2.6.1 PREFERRED OPTION: Provide for approval of Industry Response Units to act as directed

During consultations stakeholders have promoted the use of IRUs, outside of their industry boundaries, to assist in emergency response. A major consideration of the formation of IRUs would be the relationship between the service they are able to provide to a local community and the commercial obligations of the employing body.

This option seeks to provide legislative recognition to IRUs in cases where agreement is reached between the FES Commissioner and the entity that employs the unit. The agreement with the IRU would encompass required training standards and would deal with the turn out of the unit outside of its industry boundary. The arrangements with IRUs would be subject to the terms of the agreement and not to specific provisions of the Act and regulations.

Proposed Benefits

This option would extend the number of units that could respond to incidents and utilise the considerable resources of private industry. It could provide Protection from Liability to those IRUs which operate under the new emergency service legislation and in accordance with their agreement with the FES Commissioner.

³⁵ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

Other Impacts

The FES Commissioner would be required to monitor performance of the IRUs to ensure compliance and, where necessary, termination of the agreement should there be a failure to meet performance standards or other obligations.

Costs

The potential cost impact of this option would relate to resources required for training of IRU members. Although specific costs arrangements could be agreed to with the industry body concerned, as part of any agreement, there may still be an impact on the required resourcing at training facilities. In addition to any resource costs, there would be a potential cost for the State in providing insurance coverage for any IRU, its members and equipment.

Based on DFES's current insurance costs and the current number of individuals captured within DFES's policy, if there were an additional 200 personnel covered, there would be an increased annual cost of between \$3 000 and \$4 000, plus GST. This coverage would capture general liability and personal accident coverage. To provide coverage for an additional 5 vehicles, there would be an estimated annual increase in cost of approximately \$2 600, plus GST. This cost would rise or fall if there were a greater or lesser number of individuals or vehicles captured, or if a differing level of coverage was provided.³⁶

OTHER OPTION CONSIDERED

2.6.2 Keep current provisions that only allow for industry brigades to be registered as private fire brigades

Although this option avoids the introduction of another type of brigade and thus does not increase the requirements to monitor brigades, it may also have the negative effect of reducing the resources available to respond to emergencies.

2.7 INVESTIGATION POWERS

The current provisions utilised for the purposes of fire, hazardous material and rescue investigations are set out piece-meal across various parts of the current legislation. Examples of these are:

³⁶ Internal DFES modelling

- section 34(i) of the Fire Brigades Act which provides the powers to search premises and remove and keep possession of materials which may tend to prove cause or origin of fire or hazardous material incident;
- sections 14(1)(a), (b) and (e) of the Bush Fires Act which provide the authority to enter land or premises to investigate a fire; and
- section 14(2) of the Bush Fires Act which provides for the confiscation of evidence, but only by Bush Fire Liaison Officers or police.

Each of these powers has their own limitations and issues.

The options covered under this heading are:

- Establish investigation as a function of the FES Commissioner and provide specifically for investigation powers; and
- Maintain investigation powers as set out in current legislation.

2.7.1 PREFERRED OPTION: Establish investigation as a function of the FES Commissioner and provide specifically for investigation powers

Stakeholders have suggested that the powers of investigation need to be clarified both in relation to the purpose of the investigation and the powers that are provided. Under this option, the new emergency services Act would have a specific section dealing with investigations and would set out the FES Commissioner's powers in that regard.

Investigation powers would apply in respect of any incident for which the FES Commissioner is responsible and for the purposes of determining cause and origin, for research or any post incident analysis.

The following powers would need to be covered (this list may be expanded upon):

- to enter and inspect premises or place and debris after an incident;
- to enter and inspect occupied premises with consent (although DFES does have the power of forced entry for emergency response, it does not have this power for investigation purposes);
- to require identification details of interviewed people such as name and address;
- to remove and retain items and the consequences of this;
- to provide receipt for seized items, as well forfeiture and return of the items;
- to make copies of documents;
- to require another party, including other government agencies, to provide any materials as required to determine cause and origin; and

- to cause the examination or testing of items (including where further damage may be caused as a result of such tests).

Proposed Benefits

The preferred option would consolidate contemporary investigation powers under a single section and provide for investigation of incidents other than fires. It could also provide for additional investigation powers, allowing investigators to properly perform their functions under the Act.

Other Impacts

Care would need to be taken to provide clarity on powers and details of the manner in which they may be utilised.

Costs

It is anticipated that these functions can be carried out using existing resources, resulting in no increase in costs.

OTHER OPTION CONSIDERED

2.7.2 Maintain investigation powers as set out in current legislation

Stakeholders do not support this option as current investigation provisions are not consolidated, are not clearly set out, and don't give sufficient powers to investigators to enable them to effectively and efficiently perform their role.

CHAPTER 3: RISK MITIGATION

The current *Bush Fires Act 1954* (Bush Fires Act) contains a number of provisions in relation to the mitigation of bushfires including those related to bans, restrictions and risk mitigation activities. Additional provisions in the *Fire Brigades Act 1942* (Fire Brigades Act) provide broad powers to the FES Commissioner, and other authorised persons, to require owners and occupiers to take action to limit danger posed to life and property.

Consultation undertaken to date has raised a number of issues and stakeholders have repeatedly expressed concern in relation to fire mitigation, prevention and preparedness, in particular in relation to fuel loads across the State. There is a need to provide for a clear process in respect to risk mitigation from a State planning level down to local planning and operations.

The principle underpinning the proposed changes to the current legislative position is that every piece of land needs to have the level of natural hazard risk identified in respect of that land, with a treatment plan where required. The process must be transparent and visible, and there must be clarity of roles and accountability.

The new emergency services legislation will seek to provide a strong mandate for shared responsibility with regard to risk mitigation strategies.

Under the topic of Risk Mitigation, the legislative issues that have emerged and been canvassed through consultation include:

- Should the legislation bind the Crown to the new emergency services Act?
- Who should be responsible for directing the State agencies in risk mitigation?
- Should local government be bound to conduct risk mitigation on its land and who should be responsible for directing local government if necessary?
- Are any new committees required, in particular relating to coordination and management of risk mitigation for all hazards in which DFES are responsible?
- Should risk mitigation activities be reported, if so, to whom do they report?
- To what extent does risk management planning need to be addressed in the new emergency services Act?
- Should local government have the power to ensure landowners perform mitigation activities for other hazards?
- Is there a need for hazard management plans to be formulated specifically for private land where there is a high risk?

- Is there a need for the FES Commissioner to require a private landowner to take some action in respect of risk mitigation?
- Can Prohibited and Restricted Burning Times and the conditions regarding these times be simplified?
- Should the exemption process for Total Fire Bans continue on an application basis?
- Should Fire Danger Forecasts remain in legislation?
- Should Total Fire Bans continue to be published in the *Government Gazette*?
- Should the permit to burn conditions and process be simplified?
- Should landowners/managers be protected from liability for carrying out mitigation activities in accordance with the Act?
- Should Prescribed Burning be included as a specific activity in the Act, if so what system is required to promote a safe Prescribed Burn?
- Should the new emergency services Act have primacy over any another Act?
- Should Asset Protection Zones be set out in the new emergency services Act as a separately identified risk mitigation strategy?
- Should hazard prone areas be designated by the FES Commissioner?

LEGISLATIVE ISSUES AND OPTIONS

3.1 BINDING THE CROWN

Binding the Crown refers to the extent to which, if at all, State Government agencies are bound by the provisions of the emergency services legislation in respect to any vested land or land that it controls or manages. The *Fire and Emergency Services Act 1998* (Fire and Emergency Services Act) does bind the Crown, such as to the provisions dealing with the Emergency Services Levy (ESL), whilst the Bush Fires Act and Fire Brigades Act do not.

Recommendation 4 of the Community Development and Justice Standing Committee (CDJSC) *Inquiry into Fire and Emergency Services Legislation 2006* (CDJSC inquiry) report provided 'the emergency services Act is to bind the Crown'³⁷.

³⁷ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

The options covered under this heading are:

- Binding the Crown to the entire Act;
- Binding the Crown in respect of risk mitigation activities; and
- Do not bind the Crown.

3.1.1 PREFERRED OPTION: Binding the Crown to the entire Act

A common thread throughout stakeholder comments, in regard to risk mitigation on land, was the lack of parity or balance between the obligations of landowners/occupiers on the one hand and government bodies on the other. It was also suggested that the lack of binding legislation creates ambiguity in respect to responsibilities for risk management across land tenures.

As already mentioned, it was recommended by the CDJSC inquiry that the new emergency services Act bind the Crown³⁸.

In terms of this option the Crown, this would mean 'the State and all its agencies', would be bound by the provisions of the new emergency services Act. In general, the Crown would have to meet any obligations placed on 'landowner/occupiers' unless specifically excluded. This could include risk planning, risk mitigation and obligations to put out fires on State land. New regulations could contain details of the codes of practice to assist in determining the required standard and could link into policies issued under the *Emergency Management Act 2005* (Emergency Management Act).

In their 2013 report, *Building Our Nation's Resilience to Natural Disasters 2013*, Deloitte Access Economics found that funding pre disaster mitigation activities greatly reduces future response and recovery outlays³⁹.

It should be noted that this option would not apply to Commonwealth land as the State cannot create legislation that would bind the Commonwealth.

Proposed Benefits

Binding the Crown to the entire Act would make it clear what responsibilities lay with the Crown. It would also increase consistency across landholders and, with appropriate funding, could also lead to significant reduction in fuel loads.

Many stakeholders raised concerns that by not obligating the Crown to undertake certain activities, such as fuel reduction, there is a significant increased risk to the wider community. Binding the Crown would address this concern.

³⁸ Community Development and Justice Standing Committee, *Inquiry into Fire and Emergency Services Legislation 2006*

³⁹ Deloitte Access Economics, *Building our Nation's Resilience to Natural Disasters*, June 2013

Other Impacts

There are significant costs and resource implications associated with binding the Crown. The extent of the financial impact is largely dependent on the outcome of any risk analysis on Crown land that is conducted across the State.

Costs

This option would place substantial cost pressures upon the Crown. It is currently difficult to assess the exact resource impact as the extent of the risk mitigation required on Crown land throughout the State has not been measured.

OTHER OPTIONS CONSIDERED

3.1.2 Binding the Crown in respect of risk mitigation activities

An alternative to binding the Crown to the entire Act is to do so only in respect of certain parts of the Act. The expectation amongst stakeholders is that the State should be bound to mitigation activities in the same way as an individual landowner. The situation for the State is however vastly different, not least of all because of the size of the State's land holdings.

For example, this option would seek to bind the Crown to taking 'reasonable steps' to mitigate the risk of the outbreak or spread of fire on its land, while at the same time recognising the challenges that the State would face. The concept of 'reasonable steps' would need to have some legislative definition to guide the State.

New regulations could contain details of codes of practice to assist in determining the required standard and could link into policies issued under the Emergency Management Act.

Applying such a principle to the binding of the Crown would provide flexibility whilst ensuring the highest risks are appropriately addressed. It could also alleviate some stakeholder concerns relating to the perceived failure of the State to engage in risk mitigation activities.

Although this option puts obligations on the State while maintaining the necessary flexibility it could be argued that, by having the Crown bound only to selected sections of the Act with no specific obligations with regard to risk mitigation, the practical result may be that the status quo is maintained.

3.1.3 Do not bind the Crown

As mentioned previously, except for the Fire and Emergency Services Act, current emergency services legislation does not bind the Crown. The new legislation could maintain the status quo. This option does not address the concerns raised by stakeholders such as the perceived lack of risk planning and reduction of fuel loads on Crown land.

3.2 DIRECTING THE CROWN (STATE AGENCIES)

In the event the Crown is bound by the new emergency services Act, the legislation would need to empower a party to direct State agencies in respect of any obligations they may have in terms of the binding provisions.

The options covered under this heading are:

- The FES Commissioner can direct State agencies;
- The Minister for Emergency Services can direct State Agencies with the FES Commissioner performing a compliance role; and
- Local government can direct State agencies.

3.2.1 PREFERRED OPTION: The FES Commissioner can direct State agencies

Stakeholders have suggested that the FES Commissioner, who is involved in the day-to-day business of the emergency services, should be the person who can issue directions.

Due to the potential impact of the direction on other State agencies, stakeholders have also suggested that if, in the opinion of the FES Commissioner, there has been non-compliance, then the matter may be referred to the Minister responsible for that State agency.

Proposed Benefits

The FES Commissioner is best placed to make informed decisions on when such directions are needed as it is in line with the position's overall functions under the Act. The FES Commissioner's decisions will be informed by any existing risk management plans.

Other Impacts

This option provides one State entity with the power to prescribe to other State agencies on matters that could require substantial resource commitment.

Costs

The cost of binding the Crown has been considered in the previous section. Initial DFES costing indicates that two additional staff members, at a combined annual cost of approximately \$250 000 (salary and associated costs)⁴⁰, would be required to undertake the monitoring of compliance activities required to implement the preferred options in this chapter.

OTHER OPTIONS CONSIDERED

3.2.2 The Minister for Emergency Services can direct State agencies with the FES Commissioner performing a compliance role

Although this option allows for matters of significant cost impact to be dealt with at a Ministerial level, stakeholders have indicated that it is not the usual function of a Minister to be responsible for the day-to-day business of a department. Although the Minister for Emergency Services could have the ability to delegate the function to the FES Commissioner, the Minister for Emergency Services would still be the responsible party in respect of these matters. By not involving the Minister for Emergency Services in the first instance, it allows for easier discussion and possible reconsideration of directions given to a State agency.

3.2.3 Local government can direct State agencies

This option is in line with the primary role of local government to enforce mitigation activities in its area; however, it is not in accordance with the usual government hierarchy. This bottom up approach could be a burden on the State, with agencies being subject to diverse directions from numerous local government with no statewide perspective.

3.3 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. However, there are no

⁴⁰ Internal DFES modelling

equivalent provisions to ensure that local government undertakes risk mitigation on its own land.

The options covered under this heading are:

- 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; and
- No legislative requirement for local government to undertake risk mitigation on its land.

3.3.1 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.

Proposed Benefits

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 (as discussed in *section 3.7 Risk Management Planning*) and local government would be closely involved in the drafting of the plans.

Any increased cost of the local government mitigation activities should lead to a decrease in cost in relation to response and recovery.

Other Impacts

For some local governments, the costs of risk mitigation could be prohibitive and it may not be able to meet standards and obligations that are set at a State level in a timely manner. There could be a strain on the relationship between State and local government should the State not be bound to engage in similar risk management activities on Crown Land.

Costs

Provisions compelling local government to engage in mitigation activities on its land could have a significant cost impact on local government. The extent of the impact will depend on what steps each will be required to take.

OTHER OPTION CONSIDERED

3.3.2 No legislative requirement for local government to undertake risk mitigation on its land.

This option is not supported as there are no specific provisions dealing with the responsibility of risk mitigation over local government land. Risk mitigation activities at the local government level would therefore remain inconsistent across the State.

3.4 DIRECTING LOCAL GOVERNMENT TO ENGAGE IN RISK MITIGATION

Establishing provisions in the new emergency services Act obligating local government in respect of risk mitigation on its land, requires a subsequent provision dealing with who could give directions when the obligations are not fulfilled.

The options covered under this heading are:

- Local government will have an obligation to take such mitigation steps as required by the FES Commissioner; and
- Local government will have an obligation to take such mitigation steps as required by the Minister for Emergency Services.

3.4.1 PREFERRED OPTION: Local government will have an obligation to take such mitigation steps as required by the FES Commissioner

In the event there is to be risk mitigation obligations upon local government, there needs to be a centralised body that can monitor and, where necessary, require implementation of the obligations. This may arise out of a need identified by the FES Commissioner or out of local government responsibilities flowing from policies and/or plans under the Emergency Management Act or any other Act.

Stakeholders have suggested that the FES Commissioner, as the head of fire and emergency services across the State, should have the power to require a local government to take mitigation steps.

Under this option the FES Commissioner could require a local government to take certain mitigation steps such as to create a firebreak or establish an Asset Protection Zone in cases where a clear risk has been identified. Certain steps could also be required where a local government has failed to implement obligations arising out of a risk management plan or other plans and/or policies pertaining to any land under its control, care or management.

If, in the opinion of the FES Commissioner, there has been non-compliance, then the matter may be referred to the Minister for Emergency Services. The FES Commissioner would have the power to attend to any obligations on behalf of a local government, and charge for work done, if the local government fails to comply within a time required by the Minister for Emergency Services.

Proposed Benefits

This option would ensure that a central agency was empowered with enforcement capabilities in regards to the statewide implementation of mitigation strategies.

Other Impacts

It could impact upon DFES's relationship with local government if these powers were utilised. This option could have a significant cost and administrative effect on local government and anybody tasked with monitoring compliance.

Costs

There would be additional administrative costs incurred by DFES to monitor the performance of the mitigation steps required by the FES Commissioner (as discussed in *preferred option 3.2.1*). Additionally, local government could incur costs associated with carrying out the mitigation steps that they would not have otherwise completed.

OTHER OPTION CONSIDERED

3.4.2 Local government will have an obligation to take such mitigation steps as required by the Minister for Emergency Services

This option provides for the responsibility of compelling a local government to be attended to at a higher level, which may alleviate any strain that it could cause at an operational level. The Minister could have the power to delegate this power to the FES Commissioner but would retain overall accountability for each decision made.

This approach is not supported as it is not the usual function of a Minister to be responsible for the day-to-day business of a department.

3.5 LEGISLATIVE BASIS FOR COMMITTEES

The current emergency services legislation provides for the formation of various committees with different functions:

- The Bush Fires Act s 67 and 68 currently provides for the formation of Bush Fire Advisory Committees by a local government. Options regarding this type of committee have been considered under *section 2.3 Bush Fire Advisory Committees in Legislation*.
- The Fire and Emergency Services Act s 24 provides for advisory committees that may be established by the Minister for Emergency Services on matters relevant to the operation or administration of the emergency services Acts.
- The Fire and Emergency Services Act s 25 provides for Volunteer Advisory Committees that must be established by the Minister for Emergency Services on matters relevant to the operation or administration of Volunteer Brigades, Groups and Units (BGUs).

Certain State agencies and local government have obligations in regards to the development and implementation of risk management plans. These obligations are based on policies issued under the Emergency Management Act. The Emergency Management Act provides for the formation of the State Emergency Management Committee (SEMC); District Emergency Management Committees (DEMCs); and Local Emergency Management Committees (LEMCs).

The FES Commissioner, working with local government, is currently undertaking the Bushfire Risk Management Planning Project. This project will see the development of Bushfire Risk Management Plans (BRMPs) promoted at a local scale. The first stage of the project includes 45 local governments in southern Western Australia.

The current emergency services legislation does not provide for any committees tasked with overseeing and enforcing the development and implementation of risk management plans.

The options covered under this heading are:

- No further committees;
- Form a State-level committee and make BFAC formation by local government compulsory, with an obligation to draft and implement the risk management plans for its area; and
- Form a State-level committee and local committees to develop and implement the risk management plans, with BFACs remaining as advisors to local government and the local committees.

3.5.1 **PREFERRED OPTION: No further committees**

No further committees are legislated to be involved in the development and implementation of risk management plans or for any other purpose.

Proposed Benefits

This option introduces no further layers of bureaucracy or red tape. Established State Emergency Management structures remain in place whilst the Minister for Emergency Services retains the ability to form advisory committees.

Other Impacts

There is a perception that some of the current committee structures do not ensure the development and execution of risk mitigation plans. Other stakeholders are of the opinion that the tightening of SEMC policies, the introduction of stronger legislation and the involvement of the FES Commissioner will properly address any issues there may be in this regard.

Costs

There is no anticipated cost impact of this option.

OTHER OPTIONS CONSIDERED

3.5.2 Form a State-level committee and make BFAC formation by local government compulsory, with an obligation to draft and implement the risk management plans for its area

This option provides for the compulsory formation of BFACs in the legislation with the role to draft and implement risk management plans. It could also provide for the formation of a Natural Disaster Advisory Committee to fulfill a similar function. This option is not supported as any anticipated benefit would be outweighed by the cost. These new committees would conflict with, or duplicate, the existing structures under the Emergency Management Act.

An increase to the number of committees may create difficulties in some areas, where the pool of appropriately qualified individuals is limited, resulting in the same people participating in multiple committees.

3.5.3 Form a State-level Committee and local committees to develop and implement the risk management plans, with BFACs remaining as advisors to local government and the local committees

As with the previous option, the potential cost impact, in respect of the formation of these new committees, outweighs any perceived benefits.

3.6 REPORTING

Section 50 of the Bush Fires Act provides for limited recordkeeping and potential reporting, by local government if set out in regulations.

The options covered under this heading are:

- Local government and specified State agencies must report to the FES Commissioner on items specified in the legislation and additional matters as may be required by the FES Commissioner;
- Local government and specified State agencies must report to the FES Commissioner on items specified in the Act or in the regulations only;
- Local government and State agencies must report on specified items following receipt of notice from the FES Commissioner; and
- No additional reporting requirements.

3.6.1 **PREFERRED OPTION: Local government and specified State agencies must report to the FES Commissioner on items specified in the legislation and additional matters as may be required by the FES Commissioner**

Stakeholders have expressed the need for better communication and flow of information from State agencies and local government to the FES Commissioner. This will assist in determining the success of strategies, allow for the formulation of new strategies, assist with post incident analysis and help to identify high risk areas as early as possible. Reporting would also provide evidential support for resource allocation and funding options. It was suggested that the reporting requirements be set out clearly to aid compliance.

Examples of some possible reporting matters are:

- performance in respect of hazard mitigation activities in the area;
- post burn information and documentation in respect of prescribed burns;
- occurrence of incidents and losses caused; and
- information required for post incident analysis.

Proposed Benefits

With the reporting mechanism and requirements clearly set out in legislation, local government and State agencies can plan for the collation of necessary data well in advance. This mechanism is a proactive approach to data collection and analysis; it allows for the FES Commissioner to collect vital statistics and monitor strategies and risk areas. This option also provides some flexibility for the FES Commissioner to require additional reporting when necessary.

Other Impacts

This option could mean that local government and State agencies may need to report on items without the flexibility to determine whether some items are less relevant and therefore not required, unless this flexibility is built into the process.

Costs

There would be a cost impact on local government, State agencies and DFES in that administrative staff would be required to send and/or collate data. The impact on agencies and bodies outside DFES cannot be quantified at this stage. DFES estimates an increase in its resourcing requirements at one fulltime staff member

(Level 6) at an annual cost of approximately \$130 000 per year in salary and associated costs⁴¹.

There may also be a need for software to facilitate the collection and analysis of data to provide the FES Commissioner with meaningful statistics and an early alert system to identify risks.

OTHER OPTIONS CONSIDERED

3.6.2 Local government and specified State agencies must report to the FES Commissioner on items specified in the Act or in the regulations only

This option is not supported as a single mandatory list removes the required flexibility to cover other matters that arise that may require urgent attention.

3.6.3 Local government and State agencies must report on specified items following receipt of notice from the FES Commissioner

This option would provide the FES Commissioner with the flexibility to only require reporting on items where issues have come to DFES's attention. Although this approach would reduce the amount of reporting required by local government and State agencies, stakeholders have indicated that this is a reactionary approach and that, by the time that issues come to the FES Commissioner's attention, some of the risk may have escalated or eventuated. This approach would also not allow for the uniform collection of data from every local government and relevant State agency over a period of time.

3.6.4 No additional reporting requirements

This option is not supported as the current position is very limited in the types of information that needs to be reported upon by local government and it does not provide a reporting regime that compels State agencies.

3.7 RISK MANAGEMENT PLANNING

A recurring theme in relation the prevention of fire, and other hazards, arising out of consultation, is the importance of undertaking comprehensive risk management planning.

⁴¹ Internal DFES modelling

The overall risk management planning for the State is conducted in terms of the Emergency Management Act. The obligations of the Crown and local government in respect of risk mitigation will, in part, be determined by the risk management plan for each local government area (as discussed in *section 3.3 Risk Mitigation on Local Government Land*).

Risk management planning is policy driven through the Emergency Management Act with DFES as one of the primary participants in the process.

The options covered under this heading are:

- Maintain current risk management planning arrangements; and
- Legislative requirement to undertake risk management planning.

3.7.1 PREFERRED OPTION: Maintain current risk management planning arrangements

Consultation with stakeholders has raised the question as to whether there is a need for risk management planning to be specifically addressed in the new emergency services Act. The preferred option retains current risk management planning arrangements, with no specific legislative requirement to undertake such planning in the new Act.

Proposed Benefits

Using a policy-driven approach is more flexible and allows for amendments to be introduced quickly in the event of a change in circumstances. DFES participates in the development of policy under the Emergency Management Act which addresses risk management planning.

Other Impacts

Currently there is limited ability to compel agencies and bodies to undertake risk management planning. The implementation of the preferred options in relation to binding the Crown and local government would promote reporting and implementation of all required risk mitigation strategies.

Costs

There are no additional costs specifically identified with this option.

OTHER OPTION CONSIDERED

3.7.2 Legislative requirement to undertake risk management planning

Providing a statutory basis for requiring risk management planning could assist in ensuring that all agencies who should undertake this planning complete it. State risk management planning is already undertaken in accordance with policy issued under the Emergency Management Act and some stakeholders believe it is unnecessary for there to be any specific legislation in regard to risk management planning.

3.8 MITIGATING THE EFFECTS OF OTHER NATURAL HAZARDS

Under the Bush Fires Act, prevention of bushfires is a function of local government and there are specific powers that are provided to local government for this purpose.

Although local government, under the Emergency Management Act, is empowered to require property owners to clean up in preparation for cyclones, it does not have the power under this Act to consider other natural hazards.

The options covered under this heading are:

- Empower local government to issue notices to owners and occupiers to require them to mitigate the risk associated with other specified natural hazards; and
- Do not provide local government with additional powers to mitigate the risk associated with other specified natural hazards.

3.8.1 PREFERRED OPTION: Empower local government to issue notices to owners and occupiers to require them to mitigate the risk associated with other specified natural hazards

Some stakeholders have indicated that it is not clear when the powers of local government under the Emergency Management Act become available and whether the power to issue a direction is conditional on an emergency having first been declared.

On the other hand, the powers currently provided to local government in the emergency services legislation are focused on fire. In terms of this option the new emergency services Act would provide additional powers to local government to issue notices to private landowners and occupiers in order to mitigate the risk associated with specified natural hazards.

The types of powers that are contemplated would be similar to those currently available under s 33 of the Bush Fires Act, such as the power to give a landowner notice to remedy something that is creating a risk to life or property. Under this option the FES Commissioner will also be able to require a local government to issue such notices on private landowners.

Proposed Benefits

This option provides clarity in relation to local government powers to order certain activities, regardless of whether or not a State of Emergency or Emergency Situation has been declared and regardless of whether or not a specific event is imminent. The powers will apply in respect of any specified natural hazard.

These powers will enable local government to prepare its community prior to the onset of seasonal conditions and this could be extended to marinas as well as land.

Other Impacts

The potential for inconsistencies with the Emergency Management Act and any related policies would need to be monitored and resolved if required.

Costs

There may be a cost to non-complying owners or occupiers either to undertake the mitigation activity or to challenge the notice. The increase in property compliance would significantly reduce risks within the community, with distinct advantages and possible savings on the costs to local government and the community associated with recovery.

OTHER OPTION CONSIDERED

3.8.2 Do not provide local government with additional powers to mitigate the risk associated with other natural hazards

Although the local government would still have some powers in respect of cyclones under the Emergency Management Act, the concerns of stakeholders in those areas that experience high risk of damage and danger to life from natural hazards other than fire would not be taken into account in emergency services legislation.

3.9 HAZARD MANAGEMENT PLANS – PRIVATE LANDHOLDINGS

While risk management planning may be dealt with under the Emergency Management Act and related policies (as discussed at *section 3.7 Risk Management Planning*), some stakeholders have suggested a need for hazard management plans to be formulated on specific private land where there is an identified high risk. This would most likely be for land that is identified in a local risk management plan.

In this context the 'hazard management plan' would deal with privately owned land where the requirements of firebreaks or Asset Protections Zones alone are not sufficient.

The current s 33(1)(b) of the Bush Fires Act may be read as empowering local government to issue notices to landowners requiring private hazard management plans. This option seeks to clarify the position.

The options covered under this heading are:

- Local government may require the development and implementation of a hazard management plan on private land;
- Local Emergency Management Committees (as opposed to local government) may require a hazard management plan on private land; and
- No requirement for a hazard management plan on private land.

3.9.1 PREFERRED OPTION: Local government may require the development and implementation of a hazard management plan on private land

Most stakeholders are of the view that requiring risk mitigation on private land should remain a function of local government who has more detailed knowledge of its area. The preferred option retains local government as the primary party dealing with private landowners. By providing for a separate concept of 'hazard management plans', it allows for the incorporation of private land into the overall risk management planning for a particular area. Under this option the FES Commissioner will also be able to require a local government to issue notices on private landowners in this regard.

Hazard management plans would capture a broader range of hazards as opposed to the current focus on bushfire. This option could provide guidance for local government and the wider community as to what may be expected of them with regards to risk mitigation and applicable minimum standards. Templates would be provided by the FES Commissioner.

Proposed Benefits

The reporting mechanism to the FES Commissioner (as discussed at *section 3.6 Reporting*), would include data relating to hazard management plans. No additional reporting mechanisms would need to be implemented. In addition local government is engaged in risk mitigation for its communities and should there be a need for hazard management plans on private land then this could be accommodated within local government's existing structures. The requirement of developing hazard management plans is part of making risk mitigation a shared responsibility.

Other Impacts

Local government may not want, or may be unable, to take on this added responsibility.

Costs

There could be an additional administrative cost to local government, although the existing structures in respect of implementation and enforcement of firebreaks and Asset Protection Zones could be utilised.

OTHER OPTIONS CONSIDERED

3.9.2 Local Emergency Management Committees (as opposed to local government) may require a hazard management plan on private land

Some stakeholders suggested that in line with the overall functions of a LEMC, this committee should be able to require hazard management plans on private land where a high risk exists. This option is not supported as these plans are best dealt with at a local government level in a similar way to other risk management strategies on private land such as firebreaks and Asset Protection Zones.

3.9.3 No requirement for a hazard management plan on private land

Local government could deal with private landowners as it is currently doing, dealing with any risk through the use of firebreak and Asset Protection Zone notices. If the general wording of s 33 is retained it may provide sufficient flexibility for local government to develop its own strategies for its area. Stakeholders have suggested that, due to the significant areas of high risk land owned by private individuals and entities, it is necessary for legislation to provide specifically for hazard management plans to ensure consistencies in their application.

3.10 THE FES COMMISSIONER AND PRIVATE LANDOWNERS

Sections 33 and 35 of the Bush Fires Act provides certain powers to the Minister for Emergency Services and the FES Commissioner to approach private landowners, but only in cases where local government has defaulted on a requirement by the Minister for Emergency Services to issue a notice in terms of s 33 of the Bush Fires Act.

The options covered under this heading are:

- The FES Commissioner may require private landowners to conduct risk mitigation on private land; and
- The FES Commissioner may require private landowners to conduct risk mitigation only after a local government has failed to require it.

3.10.1 PREFERRED OPTION: The FES Commissioner may require private landowners to conduct risk mitigation on private land

While local government has, and will retain, the primary task of ensuring that risk mitigation is carried out on private land, there may be occasions when it is necessary for the FES Commissioner to require a private landowner to take some action in respect of an identified risk. Some stakeholders have suggested that this power needs to be available without necessarily having to first go through local government.

Proposed Benefits

This option is consistent with the preferred options set out in other sections of this chapter which empower the FES Commissioner to require risk mitigation on all Crown and local government land.

Other Impacts

This option does not intend to diminish local government responsibilities with regards to risk mitigation in its area but is rather a back-up position for cases of extreme risk that may require the FES Commissioner's intervention.

Costs

There would be additional administrative costs incurred by DFES to monitor the performance of the mitigation steps required (as discussed in *preferred option 3.6.1*). The cost to the landowner would depend on the steps required to be taken.

OTHER OPTION CONSIDERED

3.10.2 The FES Commissioner may require private landowners to conduct risk mitigation only after a local government has failed to require it

The current position allows for the FES Commissioner to require risk mitigation by a private landowner only after a local government, when requested by the Minister for Emergency Services, has failed to require it of a landowner. This may be restrictive when urgent attention is required to an identified risk.

3.11 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 s 17 and Restricted Burning Times under s 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.

The options covered under this heading are:

- Replace Restricted and Prohibited Burning Times with a single Fire Danger Period; and
- Keep existing categories of burning limitations.

3.11.1 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.

Proposed Benefits

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.

Other Impacts

Local government and other stakeholders across the state would need to update its business operations in respect of the applications processes and notices to implement these changes.

Costs

The initial cost associated with this option could potentially be significant as a result of implementation costs such as administrative changes by local government and other affected stakeholders. This cost would however be short term and once off. The new system will ensure reduced administrative costs over the longer term.

OTHER OPTION CONSIDERED

3.11.2 Keep existing categories of burning limitations

A number of stakeholders expressed the opinion that the current arrangements for limited burning times are effective and do not require amendment. Under this option the provisions in the current legislation would be transferred to the new emergency services Act.

Stakeholders also suggested that the wider community is already familiar with the current periods and it may be possible to simplify and redefine the current periods to revert back to their original intent and purpose. This option is not supported due to the confusion and lack of clarity inherent in the current legislation. The current system makes it very difficult to get a consistent application of the Restricted and Prohibited Burning Times as both their interpretations and accompanying conditions at the local level can be quite different.

3.12 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 days⁴².

⁴² Bush Fires Act 1954, s 17(7B)

Section 18(5B) of the Bush Fires Act contains a similar provision for Restricted Burning Times.

In this section Fire Danger Periods is used to refer to Prohibited and Restricted Burning Times as per *preferred option 3.11.1*.

The options covered under this heading are:

- Local government is not permitted to alter Fire Danger Periods;
- Remove the stipulation that any shortening of a Fire Danger Period shall not be for the amount of more than 14 successive days; and
- Retain existing ability to shorten, extend, suspend or re-impose a Fire Danger Period and clarify that adjustments cannot exceed 14 days on a cumulative basis.

3.12.1 PREFERRED OPTION: Local government is not permitted to alter Fire Danger Periods

With the recommendation of a region-specific declaration of Fire Danger Periods as specified in *preferred option 3.11.1*, 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.

Proposed Benefits

The preferred option provides certainty to the community, especially to those who conduct business across multiple regions of the State.

Other Impacts

The flexibility that existed at a local level is removed. Some stakeholders may be of the opinion that the flexibility is needed to cater for changes to weather conditions, however the permit regime would provide any flexibility that may be needed.

Costs

There is no identified cost implication associated with this option.

OTHER OPTIONS CONSIDERED

3.12.2 Remove the stipulation that any shortening of a Fire Danger Period shall not be for the amount of more than 14 successive days

This option gives local government flexibility to vary Fire Danger Periods in response to local, seasonal conditions. However, if such a provision was removed, local government could conceivably shorten its Fire Danger Periods to zero days. The removal of this limitation on the alteration of burning times would detract from the Minister for Emergency Services and FES Commissioner's power to actually declare these periods as local government could shorten or lengthen them without approval.

3.12.3 Retain existing ability to shorten, extend, suspend or re-impose a Fire Danger Period and clarify that adjustments cannot exceed 14 days on a cumulative basis

This option would retain DFES oversight to ensure that Fire Danger Periods are not altered too drastically. This would also clarify whether the 14 day limit is cumulative. The clarity provided by the preferred option is favoured.

3.13 TOTAL FIRE BANS – EXEMPTIONS

The current exemptions to a Total Fire Ban are:

- Gas appliances under certain conditions⁴³;
- The Minister for Emergency Services may issue an exemption to the Total Fire Ban subject to conditions⁴⁴; and
- Any exemptions provided in the regulations⁴⁵.

Over time the conditions to a s 22C 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.

⁴³ *Bush Fires Act 1954 s 22B(4)*

⁴⁴ *Bush Fires Act 1954 s 22C*

⁴⁵ *Bush Fires Act 1954 s 22B(1)(a)*

The options covered under this heading are:

- 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 the applicable local government of its intent to undertake the exempted activity;
- The new emergency services Act will allow for automatic permission to conduct an activity during Total Fire Ban if conditions in the regulations are met (no notification);
- The new emergency services Act will NOT allow for exemptions from a Total Fire Ban; and
- Exemptions to Total Fire Bans will continue to require an application to DFES.

3.13.1 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.

Proposed Benefits

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.

Other Impacts

It may prove difficult to monitor compliance with the notification requirement.

Costs

Currently between 50 and 100 Total Fire Ban exemptions are received by DFES annually. On average, it is estimated that each exemption costs \$750 to process (15 hours at \$50 per hour). As such in an individual year, the current cost for processing Total Fire Ban exemptions is between \$35 000 and \$75 000⁴⁶.

Whilst there will be an ongoing administration requirement for maintaining records and monitoring notifications, overall there should be a reduction in cost to DFES.

OTHER OPTIONS CONSIDERED

3.13.2 The new emergency services Act will allow for automatic permission to conduct an activity during Total Fire Ban if conditions in the regulations are met (no notification)

This option has similar advantages to the preferred option. In addition, the absence of a notification requirement will reduce the administrative cost even further, essentially allowing for greater self regulation. This option is not supported as the removal of the notification requirement means that there is no way to track the number of people or organisations that conduct certain activities during a Total Fire Ban. This in turn means there is no record to assist the monitoring of risk in the State during times of high fire risk and reduces the ability to monitor compliance with the legislation.

3.13.3 The new emergency services Act will NOT allow for exemptions from a Total Fire Ban

This option would clarify the operation of Total Fire Bans. It would also return Total Fire Bans to their original intent which was to be a period of such extreme risk where any activity that would be likely to cause a fire would be banned. Doing this would also ease the administrative burden associated with exemption requests. This option is not supported due to the negative effect this would have on business and government departments who rely on exemptions to ensure ongoing activities during a Total Fire Ban.

⁴⁶ Email from Department of Fire and Emergency Services, 28 February 2014

3.13.4 Exemptions to Total Fire Bans will continue to require an application to DFES

The current provisions retain the dual benefit of allowing the declaration of a Total Fire Ban, but still retain an oversight of all entities and persons who wish to continue potentially risky activities during that time. There is however an administrative impact in managing Total Fire Bans and their exemptions while in practice the conditions for exemptions have become standardised.

3.14 FIRE DANGER FORECASTS

The concept of a Fire Danger Forecast (FDF) is used in the Bush Fires Act and the *Bush Fires Regulations 1954*. It is issued by the Bureau of Meteorology and provides ratings of 'catastrophic', 'extreme', 'severe' or 'very high'.

The FDF triggers additional requirements in respect of certain activities and in some cases prohibits the activity.

The options covered under this heading are:

- Remove all reference to Fire Danger Forecasts; and
- Retain reference to Fire Danger Forecasts.

3.14.1 PREFERRED OPTION: Remove all reference to Fire Danger Forecasts

Stakeholders have indicated that the mechanism of declaring Total Fire Bans adequately deals with the circumstances under which FDFs have been used.

Proposed Benefits

The preferred option uses the Total Fire Ban declaration as the means of advising the community of the danger from certain activities on days of significant risk. These declarations are well known as are the restrictions that come with them.

Other Impacts

There are no other impacts anticipated.

Costs

There is no cost impact anticipated.

OTHER OPTION CONSIDERED

3.14.2 Retain reference to Fire Danger Forecasts

Some stakeholders do not favour this option and have indicated that FDFs are not as well known in the communities as Total Fire Bans. There is also an overlap between a Total Fire Ban declaration and the issuing of a FDF.

3.15 TOTAL FIRE BAN – GAZETTAL OF DECLARATION

Currently s 22A(5) of the Bush Fires Act provides that the Minister for Emergency Services must publish each Total Fire Ban declaration in the *Government Gazette*. Due to the timing of a Total Fire Ban declaration and the administration required to have the publication placed, the Gazettal usually occurs after the Total Fire Ban has already commenced, especially when there is a weekend declaration.

The options covered under this heading are:

- Replace Gazettal requirement with the FES Commissioner's certificate of proof; and
- Retain Gazettal requirement for Total Fire Bans.

3.15.1 PREFERRED OPTION: Replace Gazettal requirement with the FES Commissioner's certificate of proof

It has been suggested that the requirement to gazette a Total Fire Ban declaration be removed and that the new emergency services Act provide for the FES Commissioner, if required, to prove a broadcast of the Total Fire Ban through issuing the details on a signed certificate. Any challenge to the contrary will have to be proven. The methods of broadcast in s 22A(2) of the Bush Fires Act would be retained.

A certificate would be issued as soon as possible after the declaration and utilised for evidentiary purposes when required.

Proposed Benefits

This option reduces administration requirements for Total Fire Ban declarations.

Other Impacts

No other impacts have been identified.

Costs

This will reduce costs due to the reduced administration and will also reduce the costs payable to the *Government Gazette* printers.

OTHER OPTION CONSIDERED

3.15.2 Retain Gazettal requirement for Total Fire Bans

Although the use of the *Government Gazette* is a familiar procedure, it serves no practical purpose in this particular case.

3.16 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.

The options covered under this heading are:

- Permits will be required for burns that pose a higher risk, with conditions for most burns set out in the regulations;
- Permits required in most cases; and
- Permits are not required, with all burns types prescribed in regulations.

3.16.1 **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 (as discussed in *preferred option 3.11.1*).

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 cognisant 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.

Proposed Benefits

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.

Other Impacts

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.

Costs

The reduction in the number of permit applications will mean lower costs to both the State and local government in respect of processing and administration.

It could also lead to decreased costs for applicants due to simplification and reduces administration.

OTHER OPTIONS CONSIDERED

3.16.2 Permits required in most cases

Under this option the new emergency services Act would state that a permit is required for most burn types and would confirm the authority for issuing the permit for the type of burn. The regulations would then set out the minimum standards to be met, the permit application process and the forms.

Permit applications lead to increased red tape, which in turn can cause a delay in issuing permits.

3.16.3 Permits are not required, with all burn types prescribed in regulations

A further option is that no permits are required and that all relevant burn conditions are set out in regulations. Although this would have a benefit of reduced red tape and administrative costs, it would lead to increased risk to the community.

3.17 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)⁴⁷ in cases of the performance of risk mitigation activities, in good faith and under the Act. Other issues relating to the Protection from Liability are discussed in *Chapter 8 Protection from Liability*.

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 s 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 s 33⁴⁸ notice (firebreak notice) or if they are using fire in terms of a permit.

The options covered under this heading are:

- State agencies, local government and private landowners should not be afforded protection from civil liability in cases of risk mitigation activities; and
- State agencies, local government and private landowners should be afforded protection from civil liability in cases of 'prescribed' risk mitigation burning only.

3.17.1 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.

Proposed Benefits

Some stakeholders have indicated that an extension of the Protection Clause to 'activities' instead of retaining the link to 'functions' only could increase the risk of negligence in the performance of those activities.

⁴⁷ *Fire and Emergency Services Act 1998*, s 37

⁴⁸ *Bush Fires Act 1954*, s 33

Other Impacts

Some stakeholders consider this position to be too narrow and are of the view that there are circumstances where a landowner should be afforded the same Protection from Liability as people authorised under the FES Commissioner when engaged in risk mitigation activities under strict controlled circumstances.

Costs

There are no anticipated cost impacts for this option.

OTHER OPTION CONSIDERED

3.17.2 State agencies, local government and private landowners should be afforded protection from civil liability in cases of 'prescribed' risk mitigation burning only

As the reduction of fuel loads through the use of fire is considered the most efficient strategy, some stakeholders have submitted that it is necessary to provide any party with Protection from Liability if they act strictly in accordance with the legislation. Others have stated that it would not be in the interest of the State as a whole to allow landowners to avoid liability for negligence.

This option is not supported although it is acknowledged that private landowners and their contractors will require insurance cover if they desire protection.

3.18 HAZARD MITIGATION STRATEGIES: PRESCRIBED BURNING AS A SEPARATE CONCEPT

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

The options covered under this heading are:

- Prescribed Burning is defined and referred to as a distinct mitigation strategy; and
- Prescribed Burning is not outlined as a distinct mitigation strategy but forms part of a general clause that covers all forms of risk mitigation.

3.18.1 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.

Proposed Benefits

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

Prescribed Burning will form part of 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.

Other Impacts

There are no other impacts that have been identified.

Costs

There are no anticipated additional costs arising from this option.

OTHER OPTION CONSIDERED

3.18.2 Prescribed Burning is not outlined as a distinct mitigation strategy but forms part of a general clause that covers all forms of risk mitigation

This option is in line with the current position in the emergency services legislation which only deals with firebreaks in particular. A general clause would provide for various forms of risk mitigation activities that could be required of State agencies, local government and private landowners/occupiers. Some stakeholders, although in favour of a general clause, still require Prescribed Burning to be specifically treated in the new emergency services Act as it is an important and commonly used strategy for reduction of fuel loads.

3.19 HAZARD MITIGATION STRATEGIES: REGULATION OF PRESCRIBED BURNING

If Prescribed Burning is included as a distinct risk mitigation strategy in the new emergency services Act, then there are options as to the manner in which this activity could be regulated.

The options covered under this heading are:

- The FES Commissioner has the power to provide a system that must be complied with in the case of every Prescribed Burn; and
- Prescribed Burn conditions remain set in policy only.

3.19.1 PREFERRED OPTION: The FES Commissioner has the power to provide a system that must be complied with in the case of every Prescribed Burn

The FES Commissioner will be able to issue regulations which sets out a compulsory system that needs to be complied with should any person want to perform a Prescribed Burn. The system would include requirements relating to planning, carrying out and reviewing the burn.

Proposed Benefits

This option ensures that Prescribed Burns are conducted under strict conditions to minimise risk.

Other Impacts

In the event that any non-prescribed person wants to use burning as a method of reducing fuel loads then this will be treated in the same way as any other burn; subject to the new emergency services Act and regulations, with a permit when required.

Costs

A Prescribed Burn system is already being applied in the State. However, with an increase in the utilisation of this fuel reduction strategy there would be additional costs relating to carrying out the burns, as well as the administration of monitoring and reviewing. The extent of the cost impact will depend on the number of burns that will be required in terms of the BRMPs.

OTHER OPTION CONSIDERED

3.19.2 Prescribed Burn conditions remain set in policy only

Under this option, all conditions relating to Prescribed Burns remain set in policy. Although this provides flexibility in respect of any changes required, the preferred option of legislating all requirements, will allow for the clear and compulsory application of the regulations by all prescribed parties.

3.20 HAZARD MITIGATION STRATEGIES: PRIMACY OF LEGISLATION

The current emergency services legislation provides for certain sections taking precedence over the provisions of any other specified Acts:

- Section 14A of the Bush Fires Act in relation to the Emergency Management Act; and
- Section 14B(3) of the Bush Fires Act in relation to the *Road Traffic Act 1974*.

There is the potential for a conflict between an obligation imposed by, or an ability to perform an action in compliance with, the new emergency services Act on the one hand, and obligations imposed by other Acts on the other.

An example of this is a requirement to conduct hazard mitigation activities which could open up possible prosecution for a breach of the *Environmental Protection Act 1986* and local government by-laws or planning schemes in respect of the clearing of natural vegetation.

The options considered under this heading:

- In the case of any conflict between the new emergency services Act (including any legislated guideline, notice or direction issued in terms of the Act) and any other prescribed Act, the new emergency services Act will prevail; and
- Emergency services legislation will remain silent on primacy of legislation.

3.20.1 PREFERRED OPTION: In the case of any conflict between the new emergency services Act (including any legislated guideline, notice or direction issued in terms of the Act) and any other prescribed Act, the new emergency services Act will prevail

Some stakeholders have suggested that a person who complies with the provisions of the new emergency services legislation, or a legislated guideline, direction or notice issued under the legislation, should not be open to prosecution if the activity is at the same time an offence under another Act.

The Acts over which the new emergency services Act could have primacy could be listed or prescribed under the new Act. These Acts could include:

- *Local Government Act 1995;*
- *Planning and Development Act 2005;*
- *Transfer of Land Act 1893;*
- *Environmental Protection Act 1986; and*
- *Soil and Land Conservation Act 1945.*

Proposed Benefits

This option provides certainty for all stakeholders, in particular for those people who are conducting activities in terms of a hazard mitigation notice. In this way the potential for committing an offence under another Act does not deter people from conducting hazard mitigation.

Other Impacts

There is the potential for the abuse of notices to effect clearing of native vegetation in the absence of any real fire threat. Some communities may rather retain the aesthetics of their neighborhoods regardless of the fire threat.

Costs

There is no cost impact identified with this option.

OTHER OPTION CONSIDERED

3.20.2 Emergency services legislation will remain silent on primacy of legislation.

This option is not supported. It could be argued that this option allows for the continued balance of competing priorities so that, for example, a hazard mitigation notice would not automatically override planning scheme rules for an area. Most stakeholders are however of the opinion that considerations relating to protection of life and property should take precedence.

3.21 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 threat⁴⁹.

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.

The options covered under this heading are:

- Include provisions that deal specifically with Asset Protection Zones; and
- Asset Protection Zones are not outlined as a distinct risk mitigation strategy.

3.21.1 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 discussed in *section 3.9 Hazard Management Plans- Private Landholdings*).

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 properties⁵⁰.

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 program⁵¹.

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

⁴⁹ *Community Development and Justice Standing Committee Inquiry into Fire and Emergency Services Legislation 2006*, p90

⁵⁰ M. J. Keelty AO APM, *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*, June 2011, p20

⁵¹ M. J. Keelty AO APM, *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*, June 2011, p20

Commissioner would have the power to issue an 'Asset Protection Zone notice' template, standards or guidelines.

In terms of the *preferred option 3.6.1*, 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.

Proposed Benefits

These amendments will effectively ensure that Asset Protection Zones are implemented and enforced by local government; set standards are achieved and guidelines adhered to; and bushfire risk mitigation is achieved on private property. It will also provide for more uniformity across local government boundaries.

Other Impacts

Some stakeholders submitted that Asset Protection Zones were not effective or in the best interest of the environment.

Costs

There will only be an increase in cost to the community if the new provisions resulted in an increased amount of firebreaks or Asset Protection Zones being required. There may be some additional cost to local government in order to administer the new provisions.

OTHER OPTION CONSIDERED

3.21.2 Asset Protection Zones are not outlined as a distinct mitigation strategy

Another option is that the current arrangements be maintained; a provision dealing specifically with firebreaks and another that has a general clause, which allows for other forms of bushfire risk mitigation. Stakeholders are of the opinion that this option provides no guidance for local government and the wider community as to what may be expected of them with regards to risk mitigation, and no minimum standards are set. Although a general risk mitigation clause needs to be retained, this option is not supported as Asset Protection Zones are sufficiently important as a risk mitigation strategy to merit separate attention.

3.22 HAZARD PRONE AREA DECLARATIONS

Certain locations or areas of development are prone to impact from specific hazards⁵². 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*⁵³.

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*⁵⁴,

Local government was previously empowered to declare bushfire prone areas within its jurisdiction under s 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*.

⁵² In this section 'hazard' is limited to those hazards for which the FES Commissioner is the Hazard Management Agency under r 17 of the *Emergency Management Regulations 2006*.

⁵³ *Town Planning Regulations 1967*, Appendix B, Clause 10.2(m)

⁵⁴ *The Building Code of Australia*

The options covered under this heading are:

- Empower the FES Commissioner to designate hazard prone areas; and
- Do not empower the FES Commissioner to designate hazard prone areas.

3.22.1 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.

Proposed Benefits

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.

Other Impacts

Some stakeholders have indicated that the designation of hazard prone areas may have a negative impact on insurance premiums and the cost to build a home. The benefit to the safety of the community was weighed up against this impact.

Costs

There could be an additional cost relating to the power of designating areas as hazard prone. The mapping of some areas and hazards is already taking place however, the inclusion of additional hazards will result in the need to expand these activities.

OTHER OPTIONS CONSIDERED

3.22.2 Do not empower the FES Commissioner to designate hazard prone areas

This option is not favoured as the designation of hazard prone areas is an important tool for minimizing the impact of hazards on 'at risk' communities. It is unlikely that increased consistency in the declaration of hazard prone areas will be achieved if a single body is not given the necessary designation powers and it is timely for a more direct approach in declaring hazard prone areas.

NON-LEGISLATIVE ISSUES

Some of the issues identified in relation to risk mitigation are best addressed by non-legislative options and therefore are not in the scope of this Review. An undertaking was given to all stakeholders that the Review would pass on information on non-legislative issues raised to the relevant DFES business area or other government agency responsible.

3.23 PUBLIC EDUCATION AND AWARENESS

The importance of adequate public education and awareness was raised consistently by stakeholders across many of the topics outlined in this Concept Paper. This is particularly important in light of the current 'Shared Responsibility' approach underpinning emergency services in Western Australia.

CHAPTER 4: VOLUNTEER BRIGADES, GROUPS AND UNITS

Volunteer Brigades, Groups and Units (BGUs) operate under different legislation depending on the emergency service. The existing emergency services legislation deals with the Volunteer BGUs differently and sets out separate guidelines for their establishment and ongoing operation and administration.

The majority of State Emergency Service (SES) units, Volunteer Marine Rescue Service (VMRS) groups and Fire and Emergency Service (FES) Units established under the *Fire and Emergency Services Act 1998* (Fire and Emergency Services Act) are incorporated associations, and are administered in accordance with their individual constitutions. There is no obligation to follow a model constitution or address any specific matters in their constitutions other than those required under the *Associations Incorporation Act 1987*.

Volunteer Fire and Rescue Service (VFRS) brigades established under the *Fire Brigades Act 1942* (Fire Brigades Act) have comprehensive administration provisions contained in the *Fire Brigades Regulations 1943* (Fire Brigades Regulations) including the setting out of specified officers.

The *Bush Fires Act 1954* (Bush Fires Act) provides for the establishment of Bush Fire Brigades (BFBs) with specified officers and the enactment of local government by-laws to govern the administration of BFBs.

The development of a single emergency services Act presents an opportunity to review provisions relating to Volunteer BGUs, in full recognition of their valuable contribution.

Under the topic of Volunteer BGUs, the legislative issues that have emerged and been canvassed through consultation include:

- Should a Volunteer Charter be included in legislation?
- How should volunteer emergency services be structured?
- What should be the administration requirements for Volunteer BGUs?
- Should conduct and discipline standards be legislated?
- Should there be legislated training standards?
- Who should have the power to direct BGU members?
- What employment protections do volunteers need?
- How should the SES operate going forward?
- Who should be responsible for BFBs?

LEGISLATIVE ISSUES AND OPTIONS

4.1 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'⁵⁵.

The Victorian Country Fire Authority (CFA) Volunteer Charter is enshrined in legislation through s 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.

The options covered under this heading are:

- Recognise a single Volunteer Charter in the new emergency services Act;
- Recognise individual Volunteer Charters for each volunteer service in the new emergency services Act; and
- Do not include reference to a Volunteer Charter in the new emergency services Act.

4.1.1 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 BGUs and the FES Commissioner.

Proposed Benefits

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

⁵⁵ Community Development and Justice Standing Committee, *Western Australia's Readiness For The 2011-12 Bushfire Season*, 2011

with Volunteer BGUs and their members and promote the contributions made by volunteers to the safety of their communities.

Other Impacts

The Volunteer Associations, with the support of DFES, would be required to develop a single Charter for all Volunteer BGUs. Although the existing W.A. Volunteer Fire and Rescue Services Association (Inc.) Charter could be used as a basis, the new single Charter would need to be a document that has the input and support of all Volunteer BGUs.

Costs

There would be some costs involved in negotiating terms of the Volunteer Charter that are acceptable to all stakeholders.

OTHER OPTIONS CONSIDERED

4.1.2 Recognise individual Volunteer Charters for each volunteer service in the new emergency services Act

An alternative to the preferred option is that individual Volunteer Charters are developed for each volunteer service. This option is not supported as it does not meet the objective of simplifying the legislation. The commitment that volunteers have to the protection of their communities is uniform across all volunteers. The required principles and commitments that would be included in a Charter, which is to have legislative recognition, would also be uniform. Stakeholders have indicated that a single Charter would foster closer cooperation and understanding between all BGUs.

4.1.3 Do not include reference to a Volunteer Charter in the new emergency services Act

Stakeholders have indicated that there is a need to provide legislative acknowledgement of the contribution made by volunteers to the safety of their communities while also enhancing the framework for meaningful communication between volunteers and all stakeholders.

4.2 SEPARATION OF VOLUNTEER EMERGENCY SERVICES

The emergency services legislation currently provides for five distinct volunteer emergency services (BFBs, VFRS Brigades, SES Units, VMRS Groups and FES Units⁵⁶) each with their own distinct identity and legislative character.

The options considered under this heading are:

- Retain the current legislative separation of the volunteer emergency services; and
- Establish a single volunteer service under the responsibility and management of the FES Commissioner.

4.2.1 PREFERRED OPTION: Retain the current legislative separation of the volunteer emergency services

Maintaining the current distinct volunteer emergency service identities in the new emergency services legislation would allow many of the current arrangements in place to continue, with the exception of those identified for change elsewhere in this paper.

Proposed Benefits

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.

Other Impacts

Some stakeholders have suggested that maintaining separate uniforms and badging for multiple groups is unnecessarily costly. Maintaining separate volunteer emergency services continues the duplication of effort and resourcing to manage and equip them on an ongoing basis. If changes suggested elsewhere in this paper are adopted this issue should be reduced.

⁵⁶ Terminology taken from current emergency services legislation. Commonly used terminology may differ.

Costs

This option maintains the current arrangements and is not associated with any change in cost.

OTHER OPTION CONSIDERED

4.2.2 Establish a single volunteer service under the responsibility and management of the FES Commissioner

There have been suggestions from some stakeholders that there should be a single volunteer emergency service under the authority of the FES Commissioner, with a set of rules governing its administration and function. This option would allow for streamlined administration and clearer command and control and there could also be significant long term savings in having a single volunteer service. This option is not favoured by the majority of members of BGUs who, over many decades, have established separate identities. Associated with these identities has come a focus on certain emergency service areas. Stakeholders have indicated that there is a real danger that by removing the separate identities, it will remove the backbone of the volunteer emergency services movement with a substantial decrease in volunteerism.

There would be substantial upfront costs relating to re-branding, new uniforms and the like. For example the cost to rebrand the uniforms of current registered volunteers is estimated at \$1.85 million, based on 22 555 volunteers. In addition it would cost approximately \$100 000 to rebrand all volunteer fleet vehicles⁵⁷.

4.3 ADMINISTRATION OF VOLUNTEER 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.

The options covered under this heading are:

- Provide a set of minimum administrative requirements, that apply to all BGUs; and
- Maintain separate arrangements for different BGUs.

⁵⁷ Internal DFES modelling.

4.3.1 **PREFERRED OPTION: Provide a set of minimum 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.

Proposed Benefits

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.

Other Impacts

Feedback from some stakeholders indicates that some BGUs would be reluctant to see provisions in legislation that required them to change the way in which they operate. This option may impose new requirements on some BGUs and the volunteers involved in BGU administration.

Costs

There may be increased costs associated with this option, depending on what actions BGUs needed to take to implement the new provisions.

OTHER OPTION CONSIDERED

4.3.2 **Maintain separate arrangements for different BGUs**

The new consolidated Act could be developed in such a way that all current provisions relating to the administration of BGUs are retained. This option would allow BGUs to continue to operate as they currently do. However, continued

inconsistency across services would mean that many of the issues that currently arise as a result of these inconsistencies, such as difficulties with interoperability, would not be addressed.

4.4 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.

The options covered under this heading are:

- Discipline and conduct matters handled at a BGU level in line with minimum specified requirements with some matters to be escalated to the FES Commissioner;
- Discipline and conduct handled at a BGU level; and
- The FES Commissioner has responsibility for all conduct and discipline matters for Volunteer BGUs.

4.4.1 **PREFERRED OPTION: Discipline and conduct matters handled at a BGU level 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.

Proposed Benefits

Providing minimum specified requirements would assist in ensuring a consistent level of conduct and discipline standards across all BGUs. At the same time, this

option would allow some flexibility for BGUs 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.

Other Impacts

Some stakeholders hold a view that setting conduct and discipline standards should be left up to BGUs and that there is no role for the FES Commissioner in this matter.

Costs

There may be some administrative costs associated with this option depending on the changes each BGU or service needs to make to implement the standards. In addition depending on the number of matters that were escalated to the FES Commissioner, DFES may require additional resourcing to adequately investigate and action these matters.

OTHER OPTIONS CONSIDERED

4.4.2 Discipline and conduct handled at a BGU level

The existing conduct and discipline provisions could remain and be rolled into the new consolidated emergency services legislation unchanged. This option would allow Volunteer BGUs to continue to manage these matters in the established manner, with which they are familiar. This option would however allow the inconsistencies across BGUs to continue with no uniformity in matters of conduct and discipline.

4.4.3 The FES Commissioner has responsibility for all conduct and discipline matters for Volunteer BGUs

It was suggested that the FES Commissioner assumes responsibility for overseeing all conduct and discipline matters for Volunteer BGUs. This option would allow the FES Commissioner to have supervision of how BGU members conduct themselves and any resulting discipline processes. This may provide a greater level of consistency in conduct matters, but it does not enable BGUs to have a shared role in this important issue.

If DFES was to take responsibility for all conduct and discipline matters for all Volunteer BGUs it would require additional resources. Initial estimates place this cost at approximately \$250,000 per annum to employ two additional (Level 6) officers to investigate and action these matters⁵⁸.

4.5 SETTING MINIMUM TRAINING STANDARDS FOR VOLUNTEERS

The Fire Brigades Act s 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.

A key consideration for the development of minimum training standards is balancing the time commitments of individuals with the need for a safe and skilled volunteer service. Many stakeholders recognise the need for volunteer training, but were also adamant that 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 options covered under this heading are:

- Legislation sets out that the FES Commissioner has the power to set training standards and those standards are set out in policy;
- The regulations prescribe minimum training standards for Volunteer BGUs; and
- Legislation to remain silent on volunteer training standards.

4.5.1 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.

⁵⁸ DFES internal modelling.

Proposed Benefits

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.

Other Impacts

Some stakeholders indicated that they did not wish to see training included in legislation in any way, while others indicated they did not wish to see training standards set at all. It was suggested that volunteers may perceive set standards as too onerous and therefore walk away from the service. In contrast some stakeholders provided anecdotal evidence that the introduction of contemporary training standards promotes volunteerism with a number of BGUs already choosing to adopt training standards.

Costs

Any expansion or increase in training requirements would have significant costs associated with it, both one off and ongoing, depending on the training required. Initial DFES costing, including administration support, to provide training to all volunteers across the state on an ongoing basis are summarised in *Table 5*.

Table 5. Volunteer Training Costs

ITEM	COST
System Upgrades	Up to \$525 000
Ongoing System Costs	Up to \$101 500 annually
Additional Staff	\$6.5 million annually
Facilities and Equipment	\$20 million

Source: The Department of Fire and Emergency Services⁵⁹

⁵⁹ Internal DFES modelling

OTHER OPTIONS CONSIDERED

4.5.2 The regulations prescribe minimum training standards for Volunteer BGUs

Under this option the regulations that accompany the new emergency services Act would prescribe minimum training standards that apply to BGU members. This option is similar to the preferred option, except that the standards are set out in the regulations instead of policy. This option would allow for a legislative basis for setting training requirements for all BGUs and ensure members have adequate training to undertake their roles, but would be less flexible in how it is administered. Under this option any change in training standards would require an amendment to the regulations rather than policy. As mentioned in the preferred option, some stakeholders indicated that prescribing minimum training standards would have a detrimental effect on volunteers and may lead to a decrease in volunteering.

4.5.3 Legislation to remain silent on volunteer training standards

Feedback received by the Review suggests that some stakeholders feel that there should be no minimum training required in legislation as it would be too onerous on volunteers. Inconsistency in training across the services contributes to difficulty in the management of responders at incidents, including the ability of those in command to have confidence in the level of competency of the available responders. Maintaining the current arrangements will result in the continuation of these issues.

4.6 GENERAL DIRECTION AND CONTROL OF BGU MEMBERS

Under s 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.

The options covered under this heading are:

- Where DFES is responsible for managing BGUs, all members fall under the immediate order and control of the FES Commissioner; and
- The FES Commissioner continues to have 'general responsibility' for SES units, VMR groups and FES units.

4.6.1 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 includes:

- **Career Brigades, VFRS, SES, VMRS and FES⁶⁰:** members fall under the immediate order and control of the Commissioner.
- **BFB:** If the BFB is the responsibility of the local government then members would fall under the immediate order and control of the local government (except as set out as preferred options elsewhere in this paper). If the BFB is the responsibility of DFES then members fall under the immediate order and control of the FES Commissioner.

Proposed Benefits

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.

Other Impacts

BGUs have enjoyed self-regulation for a long time and are likely to be reluctant for the FES Commissioner to have the ability to direct members. Some stakeholders have indicated that some volunteers may leave if the BGU came under the order and control of the FES Commissioner.

Costs

Any increase in costs would largely be limited to those associated with any administrative changes required to accommodate the new arrangements.

⁶⁰ Terminology taken from current emergency services legislation. Commonly used terminology may differ.

OTHER OPTION CONSIDERED

4.6.2 The FES Commissioner continues to have 'general responsibility' for SES units, VMRS groups and FES units

A number of stakeholders indicated a preference for retaining the current system of self-regulation. This would allow a continuing disparity across the BGUs. In addition, the FES Commissioner would be limited in the action that can be taken in response to any member or BGU whose actions raised concerns.

4.7 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.

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.

The options considered under this heading are:

- No employment protection for volunteers provided in the new emergency services Act;
- Provide volunteers with employment protection in respect to all response activities authorised in the Act, excluding remuneration;
- Provide volunteers with employment protection for response activities, in the same way as contained in the Emergency Management Act, including remuneration; and
- Provide for additional leave for emergency service volunteers.

4.7.1 **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.

Proposed Benefits

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.

Other Impacts

Some stakeholders indicated that without employment protection volunteers may be reluctant to respond to incidents during their scheduled work hours, impacting on the State's overall response capabilities.

Costs

This option is not associated with any change in cost as it maintains the current legislative setting.

OTHER OPTIONS CONSIDERED

4.7.2 **Provide volunteers with employment protection in respect to all response activities authorised in the Act, excluding remuneration**

This option would provide extra employment protection to volunteers. Although most employers appreciate the necessity of volunteer assistance in the case of emergencies, this additional protection may further promote volunteerism and give current volunteers peace of mind. Some stakeholders raised concerns that employers may be hesitant to hire volunteers if they are required to allow volunteers additional time away from work.

It has been estimated that every day of leave taken by an employee costs business an average of \$385⁶¹ which, based on a 7.5 hour work day, equals \$51 per hour. It is estimated that emergency services volunteers log over 50 000 hours in attending incidents around the State⁶² each year. This equates to a cost of over \$2.5 million to business⁶³. The actual cost would vary greatly depending on the number of volunteers who were employed and whether attendance at incidents took place during volunteers' scheduled work hours.

4.7.3 Provide volunteers with employment protection for response activities, in the same way as contained in the Emergency Management Act, including remuneration

The Emergency Management Act rarely applies to the response activities to which Volunteer BGU members respond. Most response activities are undertaken in accordance with the emergency services Acts. This option would provide significant employment protection to volunteers taking part in response activities, including coverage for otherwise lost income. Due to the potential for a high number of incidents to be covered by these protections this option places a significant burden on employers, both private and public sector. The new emergency services Act could provide financial assistance for employers who are impacted by a volunteer attending an incident.

In addition to the costs outlined in *option 4.7.2*, there would also be the cost of covering the wages of emergency services volunteers whilst they attended incidents during working hours. The average full-time adult weekly ordinary time earnings in Western Australia are \$1 620⁶⁴, which equals approximately \$43 per hour. Based on the volunteer hours outlined previously the cost of covering volunteer wages for these hours is estimated at \$2.16 million⁶⁵. The actual cost would vary greatly depending on the number of volunteers who were employed and whether attendance at incidents took place during volunteers scheduled work hours.

4.7.4 Provide for additional leave for emergency service volunteers

This option would provide additional leave to employees to undertake designated emergency services volunteer activities. Some larger private companies already provide leave for this purpose in an effort to encourage volunteerism. This leave is usually limited to approximately five days a year. This amount of leave is unlikely to be sufficient to cover all activities undertaken by emergency services volunteers.

⁶¹ Health Direct Solutions as quoted in J. Adonis, *Sick and tired of absenteeism*, 17 February 2012, <http://www.smh.com.au/small-business/blogs/work-in-progress/sick-and-tired-of-absenteeism-20120217-1tcdy.html>

⁶² Internal DFES data

⁶³ Internal DFES modelling

⁶⁴ Australian Bureau of Statistics, *6302.0 - Average Weekly Earnings, Australia, Nov 2013*

⁶⁵ Internal DFES modelling

Limiting additional employment protection to additional leave would not protect volunteers from being victimised where they required leave outside the supplied days.

As outlined in *option 4.7.2*, a day of leave has been estimated to cost a business an average of \$385. The cost of providing five days leave would be \$1 925 per emergency services volunteer. The cost of providing leave to the current 27 877⁶⁶ operational volunteers would be over \$26 million a year⁶⁷. The actual cost would vary greatly depending on the number of volunteers who were employed and whether attendance at incidents took place during volunteers scheduled work hours.

4.8 RESPONSIBILITY FOR STATE EMERGENCY SERVICES

In 2002 the SES, along with 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 million⁶⁸.

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.

The options considered under this heading are:

- Retain the SES as a volunteer emergency service under DFES;
- Create the SES as a separate organisation; and
- The SES remain within DFES with a dedicated Deputy Commissioner.

⁶⁶ Department of Fires and Emergency Services, *Inaugural Report 2012/13*

⁶⁷ Internal DFES modelling

⁶⁸ Victorian State Emergency Service, *Building Community Resilience: Annual Report 2012-2013*

4.8.1 **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, subject to other changes set out in this paper. It is important to note that within a continuation of the current arrangements, the retention and promotion of the SES identity remains.

Proposed Benefits

The SES would be maintained within the current overall structure of DFES. This would maintain a level of consistency with other Volunteer BGUs that also fall within the overall DFES structure. This approach is consistent with DFES's emphasis on an all hazards approach and a united structure that promotes interoperability.

Other Impacts

Some stakeholders have indicated that they feel the unique role/function of the SES is not recognised or clear under the current arrangements. A preference has been expressed by some SES members for changing the current arrangements to better emphasise the unique role, training needs and the national branding of the SES.

Costs

As this option will maintain current arrangements it is not associated with any change in cost.

OTHER OPTIONS CONSIDERED

4.8.2 **Create the SES as a separate organisation**

Separating the SES from DFES has been expressed as the preferred option by some stakeholders. It was felt that such arrangements would serve to recognise the individual role the SES plays within emergency services and emphasise the national brand of the SES.

In the *Review of the Emergency Services Act 2005 (SA)* by the Hon. Paul Holloway in August 2013, the following comments were made:

*'...South Australia remains one of the only states which does not have one person who takes ultimate responsibility for all fire and emergency services. While other states retain separate urban and rural firefighting services largely comprising paid staff and volunteers respectively, most states now have one Chief Executive for all fire and rescue services to ensure the allocation of resources across and within all emergency services is optimised.'*⁶⁹

In the conclusions of the report, Hon. Paul Holloway goes on to say:

*'Interstate experience has demonstrated that a departmental structure with ESOs (Emergency Services Organisations) reporting to one Chief Executive has provided the most successful model for emergency services management.'*⁷⁰

Creating the SES as a separate organisation will add an additional layer of bureaucracy that requires negotiation in order to undertake multi-service response activities. There is also likely to be significant costs associated with setting up and running a separate organisation. A standalone SES is not consistent with a coordinated all hazards approach that is the preferred future model for DFES.

4.8.3 The SES remain within DFES with a dedicated Deputy Commissioner

As an alternative to creating the SES as a separate organisation it was suggested that it remains under DFES but with a dedicated Deputy Commissioner. Some stakeholders felt that this would raise the profile of the SES within DFES and emphasise the role the SES plays within emergency services. Many SES stakeholders also felt that this option would better promote training and recruitment initiatives specific to the functions of the SES.

The Deputy Commissioner position is the second highest rank within the DFES operational structure and the current Deputy Commissioners are responsible for the Operations, Support and Capability for the all emergency services within DFES. Creating a dedicated position for one volunteer service would create a considerable disparity between the SES and other volunteer services. Additionally, a separate section within DFES is inconsistent with the preferred all hazards model.

⁶⁹ Hon. P. Holloway, *Review of the Fire and Emergency Services Act 2005: Pursuant to Section 149 of the Fire and Emergency Services Act 2005*, August 2013, p6

⁷⁰ Hon. P. Holloway, *Review of the Fire and Emergency Services Act 2005: Pursuant to Section 149 of the Fire and Emergency Services Act*, August 2013, p48

The cost of employing an additional Deputy Commissioner plus support staff is approximately \$450 000 per year⁷¹. It is not clear that this additional spend would achieve any benefit or increase operational efficiency.

4.9 RESPONSIBILITY FOR BUSH FIRE 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 Brigades⁷².*

(56) Such an agreement is only entered into if both FESA [DFES] and the local government agree to terms and conditions⁷³.

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 responded⁷⁴ and 53 indicated that they would consider handing over responsibility for their BFB(s), 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.

⁷¹ DFES internal modelling

⁷² *Community Development and Justice Standing Committee Inquiry into Fire and Emergency Services Legislation 2006*, p149

⁷³ *Community Development and Justice Standing Committee Inquiry into Fire and Emergency Services Legislation 2006*, p149

⁷⁴ The letter was sent to local government however only 108 currently have at least one registered BFB.

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).

The options covered under this heading are:

- Local government may, by agreement with DFES, hand over responsibility for a BFB to DFES;
- DFES may take responsibility for a BFB under certain circumstances without agreement from local government;
- The FES Commissioner may establish (or disband) a BFB;
- Local government cannot establish (or disband) a BFB without the approval of the FES Commissioner;
- DFES to take responsibility for all BFBs; and
- Local government to retain responsibility for BFBs (without the option to transfer).

4.9.1 PREFERRED OPTION PART A: Local government may, by agreement with DFES, hand over responsibility for a BFB 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.

Proposed Benefits

Local government, 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.

Under this option, DFES would establish an infrastructure throughout each region that would support the running of brigades that were transferred to DFES. This

structure would look to closely monitor the ratio of front line operation managers, district officers and support staff. The support staff would include business managers, training coordinators and occupational health and safety coordinators. Although DFES would have a direct role in turning out BFBs as well as the command structure for larger incidents, it is anticipated that the day-to-day response of the local BFB would remain largely unchanged.

Other Impacts

Allowing local government and DFES to negotiate an agreement for the handover of a BFB(s) may result in diverse arrangements for BFBs across the state. Some stakeholders raised concerns that allowing this inconsistency would add to, rather than address, current issues.

Some stakeholders have suggested that some BFB members would walk away if DFES took over responsibility and that removing BFBs from local government would result in a reduction of the local knowledge that is seen as vital to the successful functioning of BFBs.

Costs

This option would result in a cost shift from local government to DFES. The Emergency Services Levy (ESL) funding currently given to local government to run BFBs would instead be given to DFES, where a local government has transferred responsibility. DFES would require additional staff to manage the transferred BFBs (a cost currently absorbed by local government). Depending on the location of the responsible DFES staff and the BFBs there is also likely to be some regional travel costs not currently experienced by local government.

The data gathered during stakeholder consultation in relation to local government interest in handing over BFBs to DFES suggested that approximately 50% of local government with registered BGUs may explore this option. However, at this stage it is impossible to determine the exact number and location of the BFBs that will be transferred on agreement between DFES and local government.

DFES has estimated that the cost to transfer all BFBs to DFES would be approximately \$23 million per year in additional staff across the state to support BFB administration. This cost represents personnel, vehicles, training, accommodation and associated costs to manage the transferred BFBs.

The actual cost of this option would be dependent on how many BFBs transferred to DFES.

4.9.2 PREFERRED OPTION PART B: DFES may take responsibility for a BFB under certain circumstances without agreement from local government

Another 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.

Proposed Benefits

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.

Other Impacts

Transferring responsibility for a BFB to DFES due to the local government being unable to meet its obligations may be viewed as a punitive measure.

Costs

In addition to the costs discussed under *4.9.1 preferred option part A* above, there may be costs associated with any appeal process that may be available.

4.9.3 PREFERRED OPTION PART C: The FES Commissioner may establish (or disband) a BFB

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.

Proposed Benefits

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.

Other Impacts

A number of stakeholders indicated that a key component of a successful Volunteer BGU, was involvement from the community. If a BFB was established by the FES Commissioner it would be vital to establish community involvement otherwise the BFB may not be successful.

Costs

In addition to the ongoing management costs, similar to those outlined in *preferred option part A*, DFES would be responsible for the costs associated with setting up the BFB. This cost has previously been estimated at between \$500 000 and \$2 million⁷⁵.

4.9.4 PREFERRED OPTION PART 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.

⁷⁵ *Community Development and Justice Standing Committee Inquiry into Fire and Emergency Services Legislation 2006*, p38

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.

Proposed Benefits

This would provide the FES Commissioner with oversight of the establishment of BFBs, as is the case with other BGUs.

This option is also consistent with recommendations 27 and 28 of the CDJSC inquiry⁷⁶.

Other Impacts

This option could be seen as limiting local government discretion to determine what resources are required to meet the needs of the local community, including the ratepayers to whom local government is accountable.

Costs

There may be some administration costs associated with the introduction of this requirement however they are expected to be minimal.

OTHER OPTIONS CONSIDERED

4.9.5 DFES to take responsibility for all BFBs

In addition to the CDJSC inquiry recommendations outlined at the start of this chapter, a number of stakeholders suggested that DFES should assume responsibility for all BFBs. This model would be consistent with other jurisdictions throughout Australia. Western Australia is currently the only state where local government administers BFBs. Bringing BFBs under DFES may allow local government to focus often limited resources on other issues as well as facilitating a higher level of strategic coordination of BFBs as part of the State's overall emergency service.

⁷⁶ *Community Development and Justice Standing Committee Inquiry into Fire and Emergency Services Legislation 2006*, p43

DFES taking responsibility for BFBs would represent a significant change from current arrangements. It has been suggested that any move to transfer wholesale responsibility for BFBs to DFES would result in the loss of volunteer membership, although it is not possible to accurately determine the size of any reduction that may occur. This option may also be viewed as inconsistent with the shared responsibility model of emergency management.

4.9.6 Local government to retain responsibility for BFBs (without the option to transfer)

Some stakeholders indicated that the current arrangement in relation to the responsibility for and management of BFBs works well and should not be changed. These stakeholders reasoned that local government is better able to deploy local knowledge and local priorities in the management of BFBs.

A common sentiment raised by these stakeholders was that local government administration of BFBs best fostered community resilience and volunteerism as there was a direct link between the local government and residents. However, some local governments reportedly struggle to manage their BFBs. Maintaining the current arrangements would mean that these local governments will continue to struggle, affecting the quality of service provided to the community.

NON-LEGISLATIVE ISSUES

A number of the issues raised by stakeholders in relation to Volunteer BGUs relate to policy or processes and are therefore not in the scope of this Review. An undertaking was given to all stakeholders that the Review would pass on information on non-legislative issues raised to the relevant DFES business area or other government agency responsible.

4.10 NATURE OF TRAINING

Concerns in relation to training for volunteers were raised repeatedly by stakeholders as an issue. Specific concerns were in relation to the availability and accessibility of training, and the level of training that was required by volunteers. Stakeholders felt it was important that the level of training required aligned appropriately with the requirement for volunteers to effectively carry out their roles safely.

Some stakeholders indicated that requiring volunteers to undertake formal training in skills or competencies that they already possessed was unfair and would lead to dissatisfaction amongst volunteers. A system that recognises prior learning is currently being used to address this issue.

4.11 ADDITIONAL VOLUNTEER SUPPORT

Appropriate support for volunteers was raised multiple times in consultation. A range of additional support for volunteers was suggested by stakeholders including:

- Travel expenses cover that recognises additional expenses of regional and remote based volunteers;
- Interim payments to cover time delays in progressing insurance claims;
- Financial support to volunteers whose insurance claims proceed to dispute resolution;
- Financial assistance to relocate family and dependents as a result of an injury to a volunteer;
- Increase in maximum payment for lost wages as a result of injury;
- Payments for assistance with domestic activities where injured volunteer is unable to undertake activities; and
- Coverage for out of pocket expenses.

Closed for Comment

CHAPTER 5: RESPONSE, COMMAND AND CONTROL

Currently the *Bush Fires Act 1954* (the Bush Fires Act), the *Fire Brigades Act 1942* (the Fire Brigades Act) and the *Fire and Emergency Services Act 1998* (the Fire and Emergency Services Act) each have their own provisions regarding response to an incident and how command and control issues are dealt with. Both the Bush Fires Act and the Fire Brigades Act spell out which officers have powers, when they can use the powers and how those officers relate to each other when utilising powers under those Acts.

Currently a number of elements of command and control are prescribed outside of legislation, including WESTPLAN Fire, DFES doctrine and policy and the Australasian Inter-Service Incident Management System (AIIMS).

A basic principle of incident control is that only one person should be in command at any time. Whilst other persons will have responsibilities and provide advice, the person controlling the incident must have a legal basis of authority, and be provided with guidance on what can and cannot be delegated. An incident controller should also have appropriate experience, skills and training and is not necessarily appointed on seniority⁷⁷.

Transfer of control can take place during an incident and any exchange of this nature must be done in a manner that is easily achieved, but at the same time in a way that ensures accountability.

Under the topic of Response, Command and Control, the legislative issues that have emerged and been canvassed through consultation include:

- How should response, command and control arrangements be handled in the new legislation?
- Should endorsement of Incident Controllers be legislated?
- What aspects, if any, of transfer of control should be in legislation?
- What notifications should be mandated in legislation?

LEGISLATIVE ISSUES AND OPTIONS

5.1 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.

⁷⁷ Department of Fire and Emergency Services, *Western Australia Fire & Emergency Services Manual*, 28 October 2013

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.

The options covered under this heading are:

- Introduce Response Agreements (that include agreement on the primary responder for an area, and details of command and control at incidents);
- Until a Response Agreement has been established current arrangements will continue; and
- Response, command and control arrangements not defined in legislation.

5.1.1 PREFERRED OPTION A: Introduce Response Agreements (that include agreement on the primary responder for an area, and details of command and control at incidents)

As discussed in *Chapter 2 Administration and Miscellaneous Provisions* a preferred option is to abolish Fire Districts. 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.⁷⁸ 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.

Proposed Benefits

Response Agreements would allow for more flexibility rather than having response arrangements set out in legislation that applies across the State. The individual

⁷⁸ *Bush Fires Act 1954*, s 13

circumstances of each area could be reflected in the corresponding Response Agreement.

Other Impacts

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 (as discussed in *preferred option 5.1.2*).

Where an incident occurs on land managed by the Department of Parks and Wildlife (Parks and Wildlife) they would maintain responsibility as outlined in current legislation.

Managing a potentially large number of Response Agreements, that may differ from jurisdiction to jurisdiction, could impose an administrative burden on parties subject to the Agreements.

Costs

There will be costs associated with the establishment of Response Agreements depending on the time and effort required to establish or negotiate each agreement. Currently there are 138 local governments across the State⁷⁹. In addition, Response Agreements may be required with other parties with response responsibilities such as Parks and Wildlife and private fire brigades.

5.1.2 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 as discussed in *Chapter 2 Administration and Miscellaneous*.

⁷⁹ Department of Local Government, *Annual Report 2012-2013*

OTHER OPTIONS CONSIDERED

5.1.3 Response, command and control arrangements not defined in legislation

Under this option, current arrangements in place could continue, with no further response, command and control arrangements specified in legislation. The option would allow arrangements to be flexible as required. However, failing to provide any detail in legislation would not address the multitude of issues raised within the Review including the lack of clarity regarding multi-service incidents or multi-service responses to a single incident.

5.2 ENDORSEMENT OF INCIDENT CONTROLLERS

Currently Incident Controllers⁸⁰ 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** incident⁸¹,*

The options covered under this heading are:

- The FES Commissioner may endorse certain people as 'Incident Controllers';
- Retain current endorsement of Incident Controllers through policy; and
- Prescribed parties may endorse certain people as 'Incident Controllers'.

⁸⁰ This section refers to Incident Controllers in the context of an endorsed position. It is not referring to every person who assumes control of an incident.

⁸¹ M. J. Keelty AO APM, *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*, June 2011

5.2.1 **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.

Proposed Benefits

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

Other Impacts

Currently Parks and Wildlife also has the ability to certify Incident Controllers. This legislation would enable the FES Commissioner to delegate this power to Parks and Wildlife or other agencies, if deemed necessary and appropriate.

Costs

There are no additional costs anticipated.

OTHER OPTIONS CONSIDERED

5.2.2 **Retain current endorsement of 'Incident Controllers' through policy**

Continuing to define the process for accrediting Incident Controllers in policy rather than legislation allows for flexibility in the process to respond to changing operational

requirements. Some concern was expressed over the current process as there was a perception that having multiple bodies responsible for the endorsement of Incident Controllers allowed for inconsistent standards. This is currently addressed in arrangements through the co-training methodology adopted by DFES and Parks and Wildlife and an agreed accreditation pathway. Some stakeholders are of the opinion that the final authority in respect of endorsement should lie with the FES Commissioner who is ultimately responsible under the emergency services legislation.

5.2.3 Prescribed parties may endorse certain people as 'Incident Controllers'

Another option would be to enshrine the endorsement of Incident Controllers in legislation but allow for any 'prescribed' party to be the endorsing body. Initially the prescribed parties are likely to be limited to DFES and Parks and Wildlife. This option would retain the current arrangements while providing legislative backing to the process of endorsing Incident Controllers. Currently DFES and Parks and Wildlife train Incident Controllers together, maintaining this arrangement would help address any concerns over the consistency of standards. Stakeholders were of the opinion that the preferred option better achieves the same result contemplated by this option.

5.3 TRANSFER OF CONTROL OF INCIDENTS

Transfer of control does not necessarily mean the agency managing the incident changes. For example, the FES Commissioner could use the power under s 13 of the Bush Fires Act to appoint a DFES employee as Incident Controller while the incident is still managed by a local government. The FES Commissioner could also use the power under s 13 to appoint a Chief Bush Fire Control Officer who was already the Incident Controller, for the purposes of providing that Incident Controller additional powers that are provided in the Bush Fires Act.

Currently the legislative arrangements for transferring incident control are limited to fire. These arrangements are set out as follows in the Bush Fires Act:

- Section 13 of the Bush Fires Act provides that the FES Commissioner may authorise a person to take control of all operations in the following circumstances:
 - at the request of a local government or the CALM Act CEO; or
 - at the discretion of the FES Commissioner due to the nature and extent of the bushfire.
- Section 13 of the Bush Fires Act also deals with the powers and duties of a 'Bush Fire Liaison Officer (BFLO)' and the interaction with a Bush Fire Control Officer (BFCO).

- Under s 45A(1) of the Bush Fires Act a BFCO or member of a brigade may hand supreme control of a bushfire to an authorised CALM Act officer who is present at the fire. For a fire on conservation land the authorised CALM Act officer can hand control to a bush fire officer.

The process(es) associated with the handover or transfer of control has been scrutinised in past reports and reviews. For example, the Major Incident Review of the Black Cat Creek Fire of 12 October 2012, recommendation 5 states:

'DFES and DEC [Department of Environment and Conservation] (depending on land tenure) is mandated to take over control of emergency incidents from Local Government once they have declared Level 2 incidents. WESTPLAN BUSHFIRE and legislation be amended accordingly.'

The options covered under this heading are:

- The FES Commissioner has power to authorise a person to take control of an incident either upon request or due to the nature and extent of the incident; and
- Legislated handover triggers that would require the transfer of control of incidents.

5.3.1 PREFERRED OPTION: The FES Commissioner has power to authorise a person to take control of an incident either upon request or due to the nature and extent of the incident

This option will largely retain the current arrangements around the handover of bushfires and expand them. It is proposed that the current powers granted to the FES Commissioner, or his delegate, would be extended from fires to all hazards for which DFES is the Hazard Management Agency⁸².

The current legislation allows the FES Commissioner to appoint someone to take over control of all operations in relation to a bushfire and there is no limitation relating to the declaration of an 'incident level'.

Proposed Benefits

The FES Commissioner needs to be able to consider the circumstances of any incident to determine whether the nature or extent of an incident warrants appointing someone in accordance with this power.

⁸² See *Emergency Management Regulations 2006*, r 17

By also allowing Incident Controllers to exercise discretion as to whether to request a handover, it allows flexibility to respond to the unique circumstances of any incident. In line with the all hazard approach of the new emergency services Act the powers of the FES Commissioner in respect of fires could be extended to other specified hazards. This approach helps to avoid any confusion in the case of multiple hazard incidents.

Other Impacts

This option may not alleviate all reported confusion surrounding when takeover of incidents should occur as the FES Commissioner would retain the discretion to choose whether or not to exercise the powers in this regard. It is however expected that Response Agreements will greatly assist in this regard.

Costs

This is largely the current position and this option is therefore not expected to have significant cost impact. DFES may experience a level of cost escalation if the new powers result in an increase in the number of incidents for which it has appointed Incident Controllers.

OTHER OPTION CONSIDERED

5.3.2 Legislated handover triggers that would require the transfer of control of incidents

The new emergency services Act could set out specified 'triggers' that would require the handover of the incidents to the appropriate party once the trigger was met. For example, once a fire reached a certain size or complexity it would have to be handed over to a specific emergency service or a person with specific skills, such as an Incident Controller endorsed as set out in *section 5.2 Endorsement of Incident Controllers*. This approach would provide direction to those involved in incident response as to when an incident would be handed over and to whom it would be handed to.

Stakeholders repeatedly issued cautions against a one size fits all approach in the new legislation. Legislating when an incident must be handed over may reduce the ability to react to the unique nature of every incident.

5.4 NOTIFICATION OF INCIDENTS

WESTPLAN Fire establishes DFES Communication Centre (COMCEN) as a key party in the state wide reporting and tracking of fires. As part of this role DFES is to be kept informed of fire incidents occurring across the State, particularly those with the potential to escalate to a level 3 fire⁸³. DFES's ability to manage incidents at a regional or State level is greatly limited if it is not notified of what incidents are occurring across the State.

The options covered under this heading are:

- Requirement to notify DFES of all prescribed incidents anywhere in the State; and
- The new emergency services Act remains silent on the requirement to notify DFES.

5.4.1 PREFERRED OPTION: Requirement to notify DFES of all prescribed incidents anywhere in the State

Stakeholders reported occasions where DFES has received requests to provide resources to incidents it has not been notified of. This option would make it a legislative requirement for DFES to be notified of all prescribed incidents occurring anywhere in the State. DFES has an existing notification process in place that could be utilised to meet the new legislative requirement.

Proposed Benefits

This option is consistent with the current WESTPLAN Fire but escalates the requirement to a legislative obligation. Notifying DFES allows for the accurate assessment of the resource requirements across the State and appropriate management of the State's finite emergency response capacity.

Other Impacts

Placing the requirement to notify in the new emergency services Act would place an additional legislative burden on non-DFES bodies involved in emergency response.

⁸³ 'Level 3 fire incidents are protracted, large and resource intensive. They may affect community assets and/or public infrastructure, and attract significant community, media and political interest' WESTPLAN FIRE, p25

Costs

There would be no cost change resulting from this option.

OTHER OPTION CONSIDERED

5.4.2 The new emergency services Act remains silent on the requirement to notify DFES

This option would retain the requirement to notify as required by policy in WESTPLAN Fire, an arrangement with which stakeholders are familiar. The current issues reported with notifications could be addressed through other mechanisms without legislation. However, these mechanisms lack the same strength as legislation and previous attempts to address this have failed. Without putting in place a strong mechanism to require notification the current issues are likely to remain.

5.5 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 brigades⁸⁴.

The options covered under this heading are:

- 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;
- Maintain legislated rank structures, for some BGUs; and
- No legislated rank structure.

5.5.1 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

⁸⁴ *Fire Brigades Regulations 1943*, r 172 and 181-184

Services with the power in the new emergency services Act to be able to prescribe the ranks for all BGUs in the regulations.

Proposed Benefits

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.

Other Impacts

This option does not propose creating a single uniform rank structure across all BGUs. Issues related to uniformity of rank are therefore not addressed.

Costs

The costs associated with this option would depend on what rank structures were set out in the regulations.

OTHER OPTIONS CONSIDERED

5.5.2 Maintain legislated rank structures, for some BGUs

This option is not favoured as it maintains the inconsistent manner in which ranks are currently addressed in legislation.

5.5.3 No legislated rank structure

This option provides flexibility in dealing with rank, however most stakeholders are of the opinion that certainty and uniformity should be addressed by legislating rank structure.

5.6 BUSH FIRE LIAISON OFFICERS

The Bush Fires Act allows for the FES Commissioner to designate a departmental officer to be a Bush Fire Liaison Officer (BFLO)⁸⁵ and sets out the duties and powers of the BFLO⁸⁶. These duties and powers include:

⁸⁵ *Bush Fires Act 1954*, s 12(2)

⁸⁶ *Bush Fires Act 1954*, s 13

- exercising the same powers as are available to a Bush Fire Control Officer⁸⁷;
- acting as an advisor to a Bush Fire Control Officer⁸⁸; and
- being authorised by the FES Commissioner to take control of all operations in relation to a fire⁸⁹.

With the consolidation of the current emergency services legislation and preferred options identified elsewhere in this Concept Paper, the need to retain the position of BFLO has been raised.

The options covered under this heading are:

- Remove the option for the FES Commissioner to appoint a BFLO; and
- Retain the option for the FES Commissioner to appoint a BFLO.

5.6.1 PREFERRED OPTION: Remove the option for the FES Commissioner to appoint a BFLO

The FES Commissioner's power to appoint a person to take over control of a fire, or other duties as set out in legislation, is not limited to the position of BFLO⁹⁰. For example the FES Commissioner can authorise a person to assist with providing advice to any party in terms of the FES Commissioner's general function as set out in s 11(2)(b) of the Fire and Emergency Services Act. The position of BFLO is not essential for the current duties and functions tied to the role to be carried out.

Proposed Benefits

The preferred option assists in simplifying the new emergency services Act.

Other Impacts

BFLO is an established position which some stakeholders identify with the role of incident control. There may need to be clarification that the removal of the name does not remove the functions of the role; the FES Commissioner would retain the ability to authorise a person to undertake certain duties and functions.

⁸⁷ *Bush Fires Act 1954*, s 13(1)

⁸⁸ *Bush Fires Act 1954*, s 13(3)

⁸⁹ *Bush Fires Act 1954*, s 13(4) and (5)

⁹⁰ S 13(4) and 13(5) of the *Bush Fires Act 1954*

Costs

There are no anticipated cost impacts associated with this option.

OTHER OPTION CONSIDERED

5.6.2 Retain the option for the FES Commissioner to appoint a BFLO

Whilst BFLO is an established position with an accepted role, maintaining the position is viewed as inconsistent with the objective of simplifying the new emergency services Act.

NON-LEGISLATIVE ISSUES

Some issues identified in relation to the Response, Command and Control are non-legislative in nature and therefore are not in the scope of this Review. An undertaking was given to all stakeholders that the Review would pass on information on non-legislative issues raised to the relevant DFES business area or other government agency responsible.

5.7 COMMUNICATION DURING INCIDENTS

Communications during incidents were raised by a number of stakeholders as an area of concern. Stakeholders expressed concern with the technology infrastructure that facilitates communications as well as the processes and training in place for personnel.

5.8 RETENTION OF LOCAL KNOWLEDGE

Stakeholders repeatedly raised the retention of local knowledge as a key issue in the successful response to incidents. Of particular concern was making sure that first responders were included in Incident Management Teams (IMT) once they were established. DFES stakeholders indicated that the importance of retaining local knowledge is understood and must be factored in when making incident management decisions.

CHAPTER 6: EMERGENCY SERVICES IN THE BUILT ENVIRONMENT

Under current emergency services legislation the FES Commissioner has powers to support the prevention of unplanned fire and protect life and property from fire⁹¹.

Through its Built Environment Branch the Department of Fire and Emergency Services (DFES) provides advice to building surveyors and other fire safety practitioners to make sure plans for new buildings meet the fire safety requirements set out in the Building Code of Australia (BCA) and other relevant standards and legislation. In addition, DFES's staff have the power to undertake inspections of specified buildings in respect to potential danger to life or property from fire or hazardous materials⁹².

A number of issues have been identified with regard to the current legislation and the provisions around building safety in relation to fire and other hazards as well as the safety of firefighters.

Under the topic of Emergency Services in the Built Environment, the legislative issues that have emerged and been canvassed through consultation include:

- What powers should the FES Commissioner have in the building permit application stage?
- Should the FES Commissioner have the power to prevent the occupation of certain types of buildings?
- What powers should the FES Commissioner have in relation to inspection?
- What measures can the FES Commissioner take to require an owner/occupier to address a risk?
- Should the FES Commissioner have the power to evacuate, close, and use force for all building types which are deemed unsafe?
- Should DFES operational requirements be published in legislation?

⁹¹ *Fire Brigades Act 1942*, s 25

⁹² *Fire Brigades Act 1942*, s 33(1)(e)

LEGISLATIVE ISSUES AND OPTIONS

6.1 FES COMMISSIONER'S POWERS AT THE BUILDING PERMIT APPLICATION STAGE

Currently, as part of the approval process for certain building permits, under the *Building Regulations 2012* (Building Regulations) plans and specifications must be submitted to DFES. DFES uses the detailed plans to offer advice and provide an assessment of compliance with DFES operational requirements. There is no legislative imperative for this advice to be followed and concerns have been raised where local government, owners and surveyors depart from this advice.

Under r 15A of the Building Regulations, the registered building surveyor signing the Certificate of Design Compliance must provide DFES with a notification in writing of any part of the advice that is not incorporated within the plans and specifications. The reasons for not incorporating the advice must also be provided. Stakeholders noted that there is no penalty for failing to comply with r 15A of the Building Regulations.

The options covered under this heading are:

- DFES continues to have an advisory only role;
- The FES Commissioner's approval is required prior to a permit being issued for certain prescribed types of premises; and
- DFES does not have any direct role in the Permit Application.

6.1.1 PREFERRED OPTION: DFES continues to have an advisory only role

One of the aims of the new building legislation was to reduce red tape. Stakeholders have indicated that it is not in the wider communities interest to further complicate the building process. Certain plans, as prescribed in the building legislation, would still be provided to DFES for advice and any fire safety concerns can be highlighted at that time. In addition, the FES Commissioner would retain inspection powers allowing DFES to deal with any high risk situations as discussed in *section 6.3 The FES Commissioner's Powers of Inspection*.

Proposed Benefits

Stakeholders are familiar with the requirements of the building process. By maintaining the current arrangements of DFES having an advisory role only, all pre-occupation requirements remain consolidated in the building legislation.

Other Impacts

By being advisory only, DFES loses the opportunity to enforce relevant changes to plans earlier in the building process. It does not eliminate the risk that some high risk buildings, which incorporate alternative solutions in respect of fire safety, may not meet operational requirements.

Costs

There is no additional cost directly associated with this option as it maintains the current position.

OTHER OPTIONS CONSIDERED

6.1.2 The FES Commissioner's approval is required prior to a permit being issued for certain prescribed types of premises

Some stakeholders have suggested that DFES be added as an approval authority in respect of building permits under the *Building Act 2011* (Building Act). Under this option a building permit can only be issued once plans for the premises have been approved by the FES Commissioner. The FES Commissioner would have to be satisfied that an appropriate degree of fire safety has been achieved.

This option is not supported as it creates an additional layer of red tape in the building process and may cause additional costs or potential delays to those individuals employing an alternative fire safety solution.

6.1.3 DFES does not have any direct role in the Permit Application

In terms of this option, DFES would not be an advisory body or approval authority and would have no direct role in the permit application stage.

Stakeholders are of the opinion that DFES, who would ultimately be the agency to respond to any fire emergency, needs to maintain an advisory role to provide for early identification of any fire safety issues.

This option is not supported, however, it is important to note that under current building legislation⁹³, there is the ability to create a regime for specialist 'fire safety certifiers'. With such a regime in place DFES could have a role in establishing the guidelines, competencies and audit for such certifiers. Once established, these fire

⁹³ *Building Act 2011; Building Regulations 2012*

safety certifiers could potentially have a role across the building process including checking and advising on plans, checking fire safety appliances after installation and assessing safety matters prior to occupation. This will provide flexibility in service delivery going forward.

6.2 REQUIREMENT FOR FES COMMISSIONER APPROVAL PRIOR TO THE ISSUE OF AN OCCUPANCY CERTIFICATE

There are no provisions within the emergency services legislation or the building legislation which allow the FES Commissioner to prevent the issue of an occupancy certificate.

Stakeholders raised concern in relation to the different types of buildings and their use that may pose a higher risk to users or occupants, in particular, very large public use facilities and residential facilities housing vulnerable people. There have been suggestions that the FES Commissioner should be able to prevent occupation of certain types of buildings if they pose a fire safety risk, or do not meet the approved building plans or DFES operational requirements.

The options covered under this heading are:

- The FES Commissioner is not able to prevent the issue of an occupancy certificate;
- The FES Commissioner is empowered to prevent the issue of an occupancy certificate for prescribed types of premises if the premises do not meet the requirements of the approved building plan and building permit in respect of fire safety; and
- The FES Commissioner is empowered to prevent the issue of an occupancy certificate if any premises do not meet the requirements of the approved building plan and building permit in respect of fire safety.

6.2.1 PREFERRED OPTION: The FES Commissioner is not able to prevent the issue of an occupancy certificate

The preferred option is for DFES to retain its current role in pre-occupancy approvals, which is limited to providing non-binding advice at the time of a permit application and means that DFES will not have a role in respect to the issuing of an occupancy certificate.

Stakeholders have suggested that this is sufficient as any pre-occupancy concerns would be raised by DFES when providing advice at the building permit stage. In addition, DFES currently conducts inspections and testing of apparatus in specified new buildings, prior to occupation, under regulation 27 of the Building Regulations

and the FES Commissioner has the general power to enter and inspect premises as contained at s 33(1)(e) of the *Fire Brigades Act 1942* (Fire Brigades Act). Note the suggested modification of this section proposed at *section 6.3 The FES Commissioner's Powers of Inspection*.

Proposed Benefits

The Building Act and Regulations were reformed and enacted in 2011 and 2012. One of the targets was to reduce red tape. Stakeholders are now in the position where they are familiar with the requirements of the building process. By maintaining the current position, all pre-occupation requirements remain consolidated in the building legislation.

Other Impacts

Fire safety in a building covers a combination of safety systems, which all have to be installed in accordance with the approved standards relating to location and method. In addition to this the fire safety of a building should include the required operational layout for responding fire crews. Under this option DFES has no power to prevent occupation of a building when a building is built in accordance with approved plans but DFES advice is not followed. This may be a risk to members of the wider community and fire crews.

There would also need to be ongoing review of the Building Regulations as they apply in practice to ensure the types of plans submitted to DFES, prior to a building permit being issued, remain relevant.

Costs

No additional costs have been identified as this is the current position.

OTHER OPTIONS CONSIDERED

6.2.2 The FES Commissioner is empowered to prevent the issue of an occupancy certificate for prescribed types of premises if the premises do not meet the requirements of the approved building plan and building permit in respect of fire safety

This option would limit DFES's power to prevent occupation to prescribed buildings only. The power to prevent the issue of an occupancy certificate is only in respect of fire safety requirements. Strict time frames would be needed within which the FES

Commissioner may use this power and if no notice is sent by DFES within a specified time, the FES Commissioner will be deemed to have approved the issuing of an occupancy certificate. Affected parties would be able to appeal to the State Administrative Tribunal (SAT). The types of high risk buildings that require DFES approval would be listed in regulations.

Stakeholders do not support this option and are of the view that there is no merit in being able to prevent occupation when the building is completed, given there is no legal obligation to follow DFES advice in the first place.

This option is not supported as there are already sufficient safeguards in place to ensure that fire safety requirements are met.

6.2.3 The FES Commissioner is empowered to prevent the issue of an occupancy certificate if any premises do not meet the requirements of the approved building plan and building permit in respect of fire safety

This option is similar to *option 6.2.2*, except that it would give DFES the power to prevent occupation of any building in cases where the premises do not comply with the approved building plan in respect of fire safety.

There would be a potential cost to the business or property owner should any owner or occupier be required to make changes to premises as well as if any matter is referred to SAT.

This option is not supported as there are already sufficient safeguards in place to ensure that fire safety requirements are met.

6.3 THE FES COMMISSIONER'S POWERS OF INSPECTION

Section 33(1)(e) of the Fire Brigades Act provides that the FES Commissioner and authorised staff:

'shall at all reasonable times have free access to any premises, and if in his opinion there exists in or on any premises any potential danger to life or property from fire or hazardous materials, he may direct or order the owner or occupier of such premises to abate such danger within reasonable time, as named in the requisition'.

'Premises' is defined in s 4 of the Fire Brigades Act as *'includes any building, structure, erection, vessel, wharf, jetty, land or other premises'*. Unless otherwise stated, premises will have this meaning.

Any reference to Classes of buildings means the Classes as set out in the Building Code of Australia. Class 1a is defined as follows:

'Class 1: one or more buildings which in association constitute-

(a) Class 1a - a single dwelling being-

(i) a detached house; or

(ii) one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit'

Whilst it is not intended that DFES will have a general power to inspect Class 1a dwellings, it will still be necessary for DFES to enter any premises, including Class 1a dwellings if it is informed of a potential danger to life or property within that building.

The options covered under this heading are:

- The FES Commissioner may inspect premises and take certain action if there is potential danger to life or property from a hazard that DFES is responsible for or due to a failure to meet DFES operational requirements;
- The FES Commissioner's powers of inspection remain unchanged; and
- There is a separate power to inspect certain premises for specific purposes prior to an occupancy certificate being issued.

6.3.1 PREFERRED OPTION: The FES Commissioner may inspect premises and take certain action if there is potential danger to life or property from a hazard that DFES is responsible for or due to a failure to meet DFES operational requirements

The current provisions in relation to inspection of premises could be retained in the new emergency services legislation with some modification. Currently, the FES Commissioner can only require the owner/occupier to abate the danger and if this requirement is not adhered to then a fine can be imposed. Stakeholders have recommended expanding this power and the new wording of this provision would remove the direct link between this section and 'requisitions' thereby allowing for other potential remedies to rectify the danger.

Stakeholders indicated that there is a need for clarity in respect of the purpose of inspections, broadening the scope to assessing for potential danger in respect of other hazards for which DFES is responsible, and allowing for on-going inspections of systems, apparatus and operational requirements.

Proposed Benefits

To be able to deal with a potential danger, the FES Commissioner requires adequate power to inspect in order to determine whether the danger exists. The new section seeks to clarify the scope of this power.

Although 'danger to life from fire' would include 'operational requirements' under the current provision, as this covers the safety of firefighters, the modification suggested would clarify this and would also confirm the all hazard approach of the new emergency services legislation.

Other Impacts

The previously discussed preferred options in this chapter do not favour extending DFES involvement in the approval of building permits and occupation certificates. For this reason there is no direct link between the powers referred to in this preferred option and the actual building process.

Should it be deemed necessary, the FES Commissioner will be able to use the general powers, as set out in this preferred option, to inspect certain high risk buildings prior to occupation. The FES Commissioner will not have the power to prevent an occupancy certificate from being issued.

Costs

This option provides a general power of inspection for premises. The cost impact therefore depends ultimately on whether DFES policy requires specific pre-occupancy inspections and, if so, whether it would form part of career firefighter's normal inspection routine or whether there would need to be a separate group of pre-occupancy inspectors.

The ability to issue requisitions across a broader scope could increase the likelihood of a financial impact on property owners. An increase in the issuance of requisitions could also carry a resourcing impact to monitor compliance.

OTHER OPTIONS CONSIDERED

6.3.2 The FES Commissioner's powers of inspection remain unchanged

This option is not supported as s 33(1)(e) of the Fire Brigades Act is directly linked to the power to issue a requisition only. The only form of recourse if a requisition is not

complied with is the imposition of a \$2 500 fine and a continuing penalty of \$100⁹⁴. The preferred view separates the two powers i.e. inspection and requisition and expands the power beyond dangers from fire or hazardous material only.

6.3.3 There is a separate power to inspect certain premises for specific purposes prior to an occupancy certificate being issued

Some stakeholders have suggested that the FES Commissioner should have specific legislated powers relating to inspections of premises prior to the occupation of a building.

A number of stakeholders suggested that DFES carry out pre-occupancy inspections to ensure premises meet fire safety requirements set out in the approved plans. The new emergency services legislation could provide DFES with the power to inspect these premises for this purpose prior to an occupancy certificate being issued.

This option is not favoured in line with the previous preferred options in this chapter which indicate that DFES should have no further involvement in building permit and occupation certificate approvals.

6.4 REQUIREMENTS FOR OWNER/OCCUPIER TO TAKE CERTAIN STEPS

Section 25A of the Fire Brigades Act provides that the FES Commissioner may provide notice in writing to an owner/occupier requiring the installation and provision of certain firefighting appliances. This section is limiting in that the remedial action required is in relation to equipment, apparatus and appliances only.

The current position as per s 25A(2) of the Fire Brigades Act excludes private dwelling houses, designed for the use and occupation of one family, from the definition of premises in respect of this particular power.

As outlined previously, s 33(1)(e) of the Fire Brigades Act provides the FES Commissioner and authorised staff with certain powers to access any premises.

Stakeholders raised concerns over building owners or occupiers not taking the necessary actions to protect people and property from the outbreak and spread of fire. *Section 3.9 Hazard Management Plans – Private Landholdings* and *3.10 The FES Commissioner and Private Landowners* consider the measures that the FES Commissioner may take in regards to compelling an owner/occupier to address a risk. The FES Commissioner could use this power in dealing with premises such as derelict buildings or high risk industrial sites.

⁹⁴ *Fire Brigades Act 1942 s 33(2)*

The options covered under this heading are:

- The FES Commissioner has the power to require the owner/occupier of premises to take steps to prevent or mitigate the effects, or potential effects, of any incident;
- The FES Commissioner has the power to require the owner/occupier of prescribed types of premises to take steps to prevent or mitigate the effects, or potential effects, of any incident; and
- The FES Commissioner is not given any further powers to require property owners or occupiers to take certain action.

6.4.1 PREFERRED OPTION: The FES Commissioner has the power to require the owner/occupier of premises to take steps to prevent or mitigate the effects, or potential effects, of any incident

The *Fire and Emergency Services Act 1998* (Fire and Emergency Act) s 3 defines 'incident' to include fire, hazardous material incident, natural disaster or accident. This could also apply to action required in respect of DFES operational requirements.

The preferred option is an expansion on the current powers expressed in sections 25A and 33(1)(e) of the Fire Brigades Act to require owners or occupiers to take certain actions. Essentially these two provisions are amalgamated into one. A provision would also be included allowing for the FES Commissioner to apply to court for a closure order if the owner or occupier fails to comply or to apply the 48 hours closure provision (as discussed in *section 6.5 Powers of Evacuation, Closure and Use of Force*), depending on the circumstances.

The ability to appeal to the State Administrative Tribunal (SAT) would be retained in the event of a closure.

Proposed Benefits

This option allows for the FES Commissioner, or someone appropriately authorised, to require remedial action by an owner or occupier. This will improve fire safety and DFES's ability to safely respond to incidents. This option will include the power to require action to be taken to reduce the danger posed in relation to any existing or potential incidents. This will make it clear that the FES Commissioner can require an owner or occupier to take action or desist.

Other Impacts

The preferred option could be perceived as DFES having the ability to require changes to premises and buildings that were built in accordance with approved building plans. The FES Commissioner's power under this section is balanced by the right of appeal to SAT.

Costs

There would be a potential cost to the business and property owner should any owner or occupier be required to make changes to premises as well as costs to DFES and the wider community if any matter is referred to SAT. This cost, however, already potentially exists in the current s 25A and s 33(1)(e) of the Fire Brigades Act.

OTHER OPTIONS CONSIDERED

6.4.2 The FES Commissioner has the power to require the owner/occupier of prescribed types of premises to take steps to prevent or mitigate the effects, or potential effects, of any incident

Some stakeholders suggested that any increase in the FES Commissioner's powers should be limited to high risk premises. This option would allow the Minister for Emergency Services to prescribe which premises are considered to be high risk.

Although this option may be perceived as less invasive than the preferred option as it would apply to a smaller percentage of premises, it is not supported as restricting the power to prescribed premises may delay or prevent the ability to take action. Action could only be taken where it was determined that the premises are covered by a regulation. The prescription of certain premises in the regulations may become reactionary.

6.4.3 The FES Commissioner is not given any further powers to require property owners or occupiers to take certain action

The powers currently held by the FES Commissioner in relation to requiring property owners or occupiers to take certain action could be retained as currently set out in s 25A and s 33(1)(e) of the Fire Brigades Act. This is not supported as there is currently no specific mention of DFES operational requirements or of fire and emergency signalling systems in the sections referred to previously. There is an emphasis on water-based appliances in s 25A, and s 33(1)(e) focusses on abatement of danger from fire or hazardous materials only.

6.5 POWERS OF EVACUATION, CLOSURE AND USE OF FORCE

Section 33A of the Fire Brigades Act provides certain powers of evacuation and closure in cases of 'risk from fire or hazardous material'.

Section 33A is in respect of public buildings only, and confirms the FES Commissioner's power and duty to clear, open and unlock any area of the building if the safety of people in the building is at risk from fire or hazardous material. The FES Commissioner also has the power to evacuate the public building and close the building for up to 48 hours.

The options covered under this heading are:

- Powers to evacuate, close and use force granted for all premises (except Class 1a) to the FES Commissioner or an authorised officer in the event of a potential danger to life or due to failure to meet DFES operational requirements; and
- The FES Commissioner's powers of evacuation and closure of premises apply only to public buildings.

6.5.1 **PREFERRED OPTION: Powers to evacuate, close and use force granted for all premises (except Class 1a) to the FES Commissioner or an authorised officer in the event of a potential danger to life or due to failure to meet DFES operational requirements**

The provisions in current legislation would be expanded to allow the powers to be exercised in cases of risk from specified hazards for which DFES is responsible, would include a failure to meet operational requirements, and would apply to all premises not just public buildings, but would exclude private dwellings (Class 1a). The expanded provisions would include the power to:

- open any receptacle, using such force as is reasonably necessary;
- shore up any building closure;
- close any road or access, whether public or private;
- require any person not to enter or remain within a specified area around the site of the danger; and
- remove from any place a person who fails to comply with an order given pursuant to a power and use such force as is reasonably necessary for that purpose.

The 48 hour closure provisions including empowering the FES Commissioner to approach the Magistrate's Court with regard to extending closure would also be retained and expanded to cover all buildings.

The powers contained in this section would directly affect the rights of property owners and occupiers and the circumstances requiring the exercise of these powers would need to be legislated similar to the current s 33A(1) of the Fire Brigades Act.

The circumstances requiring the exercise of these powers include the safety of persons on the premises is considered to be endangered; the force used must be reasonable; and closure must occur only if the FES Commissioner is satisfied that the safety of people cannot reasonably be ensured by other means.

Proposed Benefits

These powers are necessary to allow the FES Commissioner to fulfil the functions under the new emergency services Act. The main change to the current position is that these powers will apply equally to all premises, excluding Class 1a, whether public or not and will apply to the risks posed by all hazards for which DFES is responsible. The changes also allow the powers to be used when DFES's operational requirements are compromised, in particular entry onto premises for emergency response.

The section would cover additional types of buildings such as industrial premises and public buildings not classed as public under existing legislation (e.g. hospitals and nursing homes) but would exclude Class 1a dwellings.

Other Impacts

Owners and occupiers of non-public commercial and private premises may be concerned that DFES's ability to close their buildings is an encroachment on their rights.

Costs

Potential financial loss could be associated with commercial or private property owners where the property has been closed for 48 hours. There could also be additional costs relating to enforcement.

OTHER OPTIONS CONSIDERED

6.5.2 The FES Commissioner's powers of closure and evacuation of premises apply only to public buildings

This option is not supported as currently the powers in relation to the closure and evacuation of premises apply only to public buildings. Most stakeholders are of the opinion that the current position limits DFES's ability to safeguard the wider community. There are premises that could pose a significant risk although they are perhaps not classed as public buildings under the existing legislation (e.g. hospitals and nursing homes). These are not covered by the current provisions.

6.6 PUBLICATION OF DFES OPERATIONAL REQUIREMENTS

There is currently no publication containing guidance to the wider community or industry in respect of DFES's operational requirements⁹⁵ for new and existing buildings and premises.

The options covered under this heading are:

- Publish a document of operational requirements (guidelines not set in legislation);
- The Minister for Emergency Services is empowered to issue a code of operational requirements in regulations; and
- DFES operational requirements are not published.

6.6.1 PREFERRED OPTION: Publish a document of operational requirements (guidelines not set in legislation)

Stakeholders have identified a concern that there is no specific document that sets out DFES's operational requirements. This option provides for the publication of all requirements as a guideline.

Proposed Benefits

Publishing DFES operational requirements would clarify DFES's expectations, result in improved compliance and lead to an improved relationship with developers and their service providers. This should streamline the application process as applicants are aware of the DFES operational requirements prior to drafting and submitting

⁹⁵ Operational Requirements includes everything that impacts upon or is impacted upon by interventions in the event of a fire related incident at a building or premises.

plans. Publishing the document as a guideline allows for more effective updates to the document and the flexibility required to articulate matters relating to alternative solutions.

Other Impacts

Operational requirements can be very specific to the location and proposed structure of the building. It is anticipated that an operational requirement guideline would therefore need to be general in nature. For this reason it may not cover every aspect of the operational requirements of a specific building project. The publication of operational requirements would however assist in highlighting DFES's expectations.

Costs

There would be an increased administrative obligation on DFES to update and educate the building industry on any changes to operational requirements.

OTHER OPTIONS CONSIDERED

6.6.2 The Minister for Emergency Services is empowered to issue a code of operational requirements in regulations

The suggestion here is that a codification of operational requirements would clarify DFES's expectations, result in improved compliance and lead to an improved relationship with developers and their service providers. Although this option would make the operational requirements a legislative imperative, many stakeholders do not agree with adding building requirements in the emergency services legislation, particularly since DFES is an advisory body only in this regard.

6.6.3 DFES operational requirements are not published

Although this option provides greater flexibility for DFES in amending operational requirements, there is no legislated or specific policy guidance provided to stakeholders.

NON-LEGISLATIVE ISSUES

Stakeholders raised a range of issues in relation to 'building safety'. Some of these issues are non-legislative and are not in the scope of this Review. An undertaking

was given to all stakeholders that the Review would pass on information on non-legislative issues raised to the relevant DFES business area or other government agency responsible.

6.7 INFORMATION SHARING WITH OTHER AGENCIES

A number of government bodies are involved in the approval or certifying process for buildings both pre and post occupancy. Whatever legislation is in place it will be important that appropriate procedures are in place to allow the adequate sharing of information between agencies to ensure a timely response.

Closed for Comment

CHAPTER 7: OFFENCES AND ENFORCEMENT

Currently offences, and corresponding penalties, are spread out across the three emergency services Acts and accompanying regulations. These offences cover a range of activities including, but not limited to operation of vehicles and machinery; burning rubbish; obstruction, interference and damage to property; and disposal of cigarettes.

Under the topic of Offences and Enforcement, the legislative issues that have emerged and been canvassed through consultation include:

- Should penalties in the new emergency services Act be specified in units or in dollar amounts?
- Who should have the powers of enforcement?
- Should the legislation provide for optional warning notices?
- Should the legislation provide for daily and repeat offenders?
- Should the new emergency services Act incorporate the infringement procedure as contained in the *Criminal Procedure Act 2004*?
- Should the legislation provide for a more general offence for the disposal of cigarettes, cigars and matches?
- To what extent should the new emergency services Act retain offences that also appear in other legislation?
- Should there be a separate offence relating to damage to critical infrastructure?

During consultation, stakeholders also discussed the level of the penalties that is imposed and whether any additional offences need to be included in the new emergency services legislation. These issues are considered at the end of this chapter.

LEGISLATIVE ISSUES AND OPTIONS

7.1 DOLLARS VERSUS UNITS

The emergency services legislation in Western Australia has always prescribed penalties as a dollar value. Throughout Australia, there are a number of jurisdictions including Victoria and Queensland that have adopted a unit model to stipulate the penalty value of an offence. Within Western Australia, the *Road Traffic Act 1974* and the *Australian Crime Commission (Western Australia) Act 2004* identify the penalties in units.

The options covered under this heading are:

- Penalty amounts should be specified in units; and
- Retain penalties as dollar amounts.

7.1.1 **PREFERRED OPTION: Penalty amounts should be specified in units**

Many stakeholders were in favour of specifying penalties in units. One of the biggest criticisms of the current penalties is that they are too small to be an effective deterrent. As changing an Act is not a simple endeavor and it appears that most of the penalty amounts have not been updated for some time, then this option would provide for an efficient adjustment of penalty levels which could be achieved by regulation.

Proposed Benefits

This option would help ensure that penalties remain relevant and an appropriate deterrent in line with community expectations.

Other Impacts

There were two disadvantages of this option identified by stakeholders. The first was that the immediate value of a particular penalty would not be readily apparent. The new emergency services Act would identify the number of penalty units attached to an offence and the reader would have to refer to the value of a penalty unit in the regulations. The second is the belief that individuals will be psychologically more deterred by seeing a dollar amount rather than a number of units. The latter could be addressed by ensuring signage and public information is disseminated in dollars.

Another concern was that penalty units could be tied to a Consumer Price Index (CPI) inflation mechanism resulting in strange penalty amounts. This method of automatic increase is not favoured by stakeholders and is not suggested by the Review. Rather, a regular review period is the preferred adjustment mechanism.

Costs

There are no costs attributable directly to this option. Any signage or public education materials referencing penalties would need to be updated to the new penalty amount regardless of the option selected. It is anticipated that there would be administrative savings attributed to the ease of updating regulations as opposed to the Act itself.

OTHER OPTION CONSIDERED

7.1.2 Retain penalties as dollar amounts

Whilst other Acts in Western Australia set out penalties in dollars and the wider community and enforcement agencies are familiar with this method of stating the penalty level, the time associated with making an amendment to an Act to achieve future adjustments to penalty amounts makes this option unattractive.

7.2 ENFORCEMENT

The basic model of issuing penalties for less serious offences under the *Bush Fires Act 1954* (Bush Fires Act) is that the enforcement agency issues an Infringement Notice for non-compliance and, depending on the outcome, court action may follow to enforce the penalty. A number of different parties are empowered to prosecute offences.

Section 59 of the Bush Fires Act states:

A person authorised by the Minister, a person employed in the Department for the purposes of this Act, an authorised CALM Act officer, a member of the Police Force, or a local government, may institute and carry on proceedings against a person for an offence alleged to be committed against this Act⁹⁶.

In addition, the same parties may issue Infringement Notices in terms of s 59A of the Bush Fires Act.

The *Fire Brigades Act 1942* (Fire Brigades Act) and the *Fire and Emergency Services Act 1998* (Fire and Emergency Services Act) do not provide for infringement notices and are silent on specific enforcement powers. Offences in terms of these Acts are dealt with under the *Criminal Procedure Act 2004*⁹⁷ (the Criminal Procedure Act) and the *Director of Public Prosecutions Act 1991*.

The options covered under this heading are:

- Assign enforcement powers to the parties as set out in Section 59 of the Bush Fires Act;
- Provide enforcement powers to additional parties; and
- Remove enforcement powers from certain parties.

⁹⁶ *Bush Fires Act 1954*, s 59

⁹⁷ See *Criminal Procedure Act 2004*, s 20(1)(b) in respect of Courts of summary jurisdiction

7.2.1 PREFERRED OPTION: Assign enforcement powers to the parties as set out in Section 59 of the Bush Fires Act

This provision provides enforcement powers to a range of parties. Although the enforcement powers are provided to parties that do not routinely exercise them, it is the opinion of some stakeholders that the power should be expressed in terms that are broad enough to cover those most likely to require it for prosecution of an offence.

Proposed Benefits

The parties most likely to require enforcement powers are specifically mentioned while the Minister for Emergency Services may authorise other parties if necessary.

Other Impacts

Some stakeholders have indicated that although the enforcement powers are wide, there is a need to effectively utilise the powers encompassed by these provisions in order for the offences and enforcement provisions to properly act as a deterrent.

Costs

There are no costs identified with this option.

OTHER OPTIONS CONSIDERED

7.2.2 Provide enforcement powers to additional parties

There are already sufficient enforcement agencies referred to in s 59 of the Bush Fires Act. Consultation and research has not indicated other parties that require enforcement powers under emergency services legislation. In addition, the Minister for Emergency Services may authorise anyone else to institute and carry on proceedings. This power will be carried forward under the preferred option.

7.2.3 Remove enforcement powers from certain parties

Limiting legislated enforcement powers to parties who regularly exercise them, may reduce criticism from stakeholders that government agencies do not fulfill all its responsibilities, however, it would reduce the flexibility currently built into the legislation.

7.3 OPTIONAL WARNING NOTICES

The basic model of issuing penalties under the current legislation is largely that the enforcement agency issues an Infringement Notice for non-compliance and, depending on the outcome, court action may follow to enforce the penalty.

A number of stakeholders suggested the introduction of some type of formal warning prior to the issuing of an Infringement Notice. Where specific action is required in terms of the new emergency services Act, a formal warning could be issued, requiring certain works be undertaken by a date or requiring the taking of measures to reduce risk. These warning notices could be utilised as an optional interim measure prior to issuing infringement notices, fines or formal requisitions.

The options covered under this heading are:

- Continue to allow enforcement agencies to issue warnings as they deem necessary; and
- Introduce formal warning notices that may be issued prior to Infringement Notices.

7.3.1 PREFERRED OPTION: Continue to allow enforcement agencies to issue warnings as they deem necessary

The current legislative arrangements have been determined to be sufficient. Warning notices can be utilised by enforcement agencies should they deem it necessary. Any such legislated provision would not make any practical difference to an entity's ability to carry out an enforcement action. In other words, although a written warning could have a deterrent effect, it would not carry any additional legal effect and therefore does not need to be legislated.

Proposed Benefits

Enforcement agencies, such as local government, are familiar with current enforcement processes. A legislated formal warning notice may create some confusion if not used consistently across all enforcement agencies.

Other Impacts

Many agencies and local government indicated that it uses verbal negotiations to encourage compliance and an additional formal tool would be preferable to costly court action to enforce fines. This option may not be viewed as addressing this issue.

Consistent with the objectives stated at the start of the Concept Paper of keeping the legislation simple, if having the formal warning legislated would not provide any legal effect, it should not be included in the legislation.

Costs

There are no costs identified with this option.

OTHER OPTION CONSIDERED

7.3.2 Introduce formal warning notices that may be issued prior to Infringement Notices

While there is anecdotal evidence from stakeholders that formal warnings could have a deterrent effect, there is no evidence that having them legislated would carry any additional deterrent effect. In addition, a formal warning system may require the introduction of an additional administrative process to record warnings that are provided.

7.4 STRUCTURE OF PENALTIES FOR DAILY AND REPEAT OFFENDERS

Some parts of the current emergency services legislation provide for daily penalties where there is an ongoing offence⁹⁸. However, there is no existing provision for graduated penalties for repeat offenders. Stakeholder engagement identified examples where such options would have been beneficial in generating compliance.

The options covered under this heading are:

- Improve daily penalty provisions;
- Introduce graduated penalties for repeat offences; and
- Retain penalty arrangements as set out in current legislation.

7.4.1 PREFERRED OPTION PART A: Improve daily penalty provisions

Stakeholders suggested that for certain offences of an ongoing nature, such as failure to undertake required hazard mitigation activities, there should be a daily penalty in addition to the initial penalty. For example s 72 of the Fire Brigades Act provides for an initial fine of \$1 000 plus \$100 per day for continuation of an offence

⁹⁸ *Fire Brigades Act 1942*, s 72

after conviction. A provision similar to this could be included in the new emergency services Act.

Proposed Benefits

Daily penalties for ongoing non-compliance serve as an incentive to take remedial action in a timely manner. This is particularly important in situations that involve public safety and risk mitigation.

Other Impacts

There is likely to be increased administration requirements for the enforcement authority if daily penalties were introduced. It would be necessary to monitor the non-compliant party to determine when compliance was achieved.

Costs

There would be costs associated with any increase in administrative requirements under this option. Some of these costs may be offset by the collection of the penalty if the prosecuting agent is the recipient of the penalty. The estimated costs for this option, and all other penalty provisions combined, would be approximately \$80 000 upfront for system development and \$155 000 annually for additional staffing of one full time position and ongoing system licensing⁹⁹.

7.4.2 PREFERRED OPTION PART B: Introduce graduated penalties for repeat offences

The need for graduated or increased penalties for repeat offences was proposed by a number of stakeholders. This arrangement could reduce the number of individuals or groups that repeatedly fail to comply with emergency services legislation. For example, penalties could include an initial maximum fine with a specified increase with each subsequent occurrence of the same offence.

Graduated penalties in the new legislation would likely be identified as first offence, second offence and third offence amounts. The use of graduated penalties could also be applied to the more serious offences.

⁹⁹ Internal DFES modelling

Proposed Benefits

Repeat offenders take up significant resources from the perspective of enforcement authorities. It was suggested that increased penalties for repeat offences may act as an increased deterrent, allowing the enforcement authority to apply its resources to other activities.

Other Impacts

Monitoring would be required by the enforcement authority to identify repeat offenders.

Costs

There may be some increase in administrative costs for enforcement authorities as a result of monitoring for the purposes of identifying repeat offenders. There may also be an indirect cost if repeat offenders dispute the increased penalties and court action is required. The estimated cost of this option is the same as those set out in *7.4.1 preferred option part A*.

OTHER OPTION CONSIDERED

7.4.3 Retain penalty arrangements as set out in current legislation

The need to change the structure of penalties may be reduced or eliminated if the base penalty was raised to a level that was a sufficient deterrent. If this was done the current penalty structure could remain unchanged. Maintaining the current structure does not provide the enforcement authority with a clear mechanism to adequately deal with repeat offenders without stipulating a sufficiently high penalty amount that may be deemed unfair to first time offenders.

7.5 INFRINGEMENT PROCEDURE WITHIN THE *CRIMINAL PROCEDURE ACT 2004*

Section 59A of the Bush Fires Act currently provides a specific procedure to be undertaken in the event that a prosecutor elects to proceed against an alleged offender in terms of an infringement notice. Part 2 of the *Criminal Procedure Act 2004* (Criminal Procedure Act) outlines an extensive regime for the issuing of infringement notices as well as the form and content of the notices and methods of service. The new emergency services Act could either contain all required infringement procedures or be listed as a prescribed Act under the Criminal Procedure Act.

It should be noted that regardless of the option chosen, the new emergency services Act would still subscribe to the *Fines, Penalties and Infringement Notices Enforcement Act 1994* which sets out the requirements and procedures in respect of the enforcement of infringement notices.

The options covered under this heading are:

- The new emergency services Act is listed as a prescribed Act under the *Criminal Procedure Act 2004*; and
- Retain infringement procedure set out in current legislation.

7.5.1 PREFERRED OPTION: The new emergency services Act is listed as a prescribed Act under the *Criminal Procedure Act 2004*

Consistent with current practice and to simplify the new emergency services Act, the infringement procedures as set out in the Criminal Procedure Act would be incorporated into the new Act by reference.

Proposed Benefits

The infringement procedure legislated by the Criminal Procedure Act is more comprehensive than that currently provided by the Bush Fires Act. The Criminal Procedure Act is also the primary statement of existing governmental practice on infringements. It is therefore unnecessary to repeat the entire infringement procedure in the new emergency services Act.

Other Impacts

The infringement procedure, being in the Criminal Procedure Act, means that in order for people to understand the requirements of the infringement process for the

purposes of the new emergency services Act, they would need to consult the Criminal Procedure Act. This impact would be minimal as it is usual for matters relating to criminal offences to appear in other relevant legislation.

Costs

There is no identified cost impact associated with this option.

OTHER OPTION CONSIDERED

7.5.2 Retain infringement procedure set out in current legislation

Although this option retains the infringement procedure in emergency services legislation, instead of having to be aware of the requirements under a different Act, it is not preferred as it is not consistent with current government practice on infringements.

7.6 OFFENCES THAT ALSO APPEAR IN OTHER LEGISLATION

There are a number of offences that appear in the current emergency services legislation that are also covered in other legislation. Some stakeholders have suggested that it is not necessary to have these duplicated offences in the new emergency services legislation. Most of the duplication is contained in the *Criminal Code*. There are also other cases of overlap. Some examples are set out below.

In the *Criminal Code*:

- It is a crime to breach the duty to use reasonable care and take reasonable precautions to avoid lighting a fire that destroys or may destroy or cause damage to property that the person is not entitled to damage or destroy or to contain such fire¹⁰⁰. The offender is liable to imprisonment for 15 years¹⁰¹.
- Any person who willfully and unlawfully destroys or damages any property is guilty of a crime and is liable, if the property is destroyed or damaged by fire, to life imprisonment¹⁰².
- An act which causes injury to the property of another, and which is done without his consent, is unlawful unless it is authorised, or justified, or excused by law¹⁰³.

¹⁰⁰ *The Criminal Code*, s 444A

¹⁰¹ *The Criminal Code*, s 445A

¹⁰² *The Criminal Code*, s 444

- A person who unlawfully destroys or damages the property of another person without that other person's consent is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000¹⁰⁴.
- It is an offence to impersonate a public officer¹⁰⁵.
- A person who obstructs a public officer or a person lawfully assisting a public officer, in the performance of the officer's functions is guilty of a crime and is liable to imprisonment for 3 years¹⁰⁶.

In the *Road Traffic Code 2000*:

- A driver shall give way to, and make every reasonable effort to give a clear and uninterrupted passage to, every police or emergency vehicle that is displaying a flashing blue or red light (whether or not it is also displaying other lights) or sounding an alarm¹⁰⁷.

In the *Litter Regulations 1981*:

- Litter creating public risk which includes: lit cigarette; and container, whether empty or not, that is labeled or marked fire and explosive hazard¹⁰⁸.

The options covered under this heading are:

- Remove offences in the emergency services legislation when clearly duplicated in the *Criminal Code* or adequately addressed in another contemporary Act in Western Australia; and
- Retain all offences in the new emergency services legislation regardless of any duplication in other legislation.

7.6.1 PREFERRED OPTION: Remove offences in the emergency services legislation when clearly duplicated in the *Criminal Code* or adequately addressed in another contemporary Act in Western Australia

There are two factors that need to be considered when removing an offence for the purposes of the new legislation. The first is whether the offence is replicated in the *Criminal Code* or in another Act and secondly, whether the penalty contained in the *Criminal Code* or that other Act is sufficient for the offence. If, after consideration of

¹⁰³ *The Criminal Code*, s 441

¹⁰⁴ *The Criminal Code*, s 445

¹⁰⁵ *The Criminal Code*, s 87

¹⁰⁶ *The Criminal Code*, s 172

¹⁰⁷ *Road Traffic Code 2000*, r 60(1)

¹⁰⁸ *Litter Regulations 1981*, Schedule 1

these factors, it is evident that there is duplication, the offence should be omitted from the new emergency services Act.

There are other Acts that may have similar offences to those contained in the emergency services legislation. However, due to the context and application of the offences within those Acts, it could be useful to be able to use the similar offences as alternative charges if necessary.

Proposed Benefits

This option will streamline the Act by removing extraneous content.

Other Impacts

Great care must be taken to avoid removing an offence that may have a technical difference to that contained in the *Criminal Code* or some other Act. This option would also require relevant staff to have sufficient knowledge of the other legislation to understand what enforcement options were available to them.

Costs

There is no cost that has been determined in respect of this option.

OTHER OPTION CONSIDERED

7.6.2 Retain all offences in the new emergency services legislation regardless of any duplication in other legislation

This option would allow for all offences relevant to emergency services to be found in the new legislation. However, there are other pieces of legislation that are more appropriate to deal with certain offences. An example of this is the *Criminal Code* which contains offences such as arson and damage to property and is familiar to enforcement agencies. It is therefore unnecessary to duplicate the such offences in the new emergency services Act.

7.7 DAMAGE TO CRITICAL INFRASTRUCTURE

There are provisions in place in the emergency services legislation which provide for offences in relation to damage to certain property¹⁰⁹. Notwithstanding the offences of vandalism and damage to certain property, some stakeholders expressed the view that there needs to be a separate offence (or set of offences) that recognises that certain infrastructure is 'critical' for emergency services or to the State and the community. They proposed that damage to these assets should result in a higher penalty.

Critical Infrastructure can be defined as '*a service or facility, or a group of services or facilities, the loss of which will have severe adverse effects on the physical, social, economic or environmental wellbeing or safety of the community*'¹¹⁰.

Other stakeholders were of the view that 'damage to property' is already contained in the *Criminal Code* and any further reference to this type of offence is unnecessary. In line with the *preferred option 7.6.1*, an analysis will be conducted into all offences, including 'damage to property' and, if the preferred option in this section is clearly covered in the *Criminal Code*, then this offence may not be included in the new emergency services Act.

The options covered under this heading are:

- The new emergency services Act provides for a single provision containing an offence for damage to any property owned or operated by a person performing a function under the emergency services legislation; and
- A new offence is added for a person who damages critical infrastructure in addition to a general provision for damage to equipment owned or operated by a person performing a function under the emergency services legislation.

7.7.1 PREFERRED OPTION: The new emergency services Act provides for a single provision containing an offence for damage to any property owned or operated by a person performing a function under the emergency services legislation

Some stakeholders were of the opinion that it was not necessary to complicate the damage to property provision by specifying types of property. The view was that, although this option does not specifically recognise critical infrastructure, the severity of any offence should be taken into account by a Court where required.

¹⁰⁹ *Fire and Emergency Services Act 1998* s 38A; *Bush Fires Act 1954*, s 27C; *Fire Brigades Act 1942*, s 59

¹¹⁰ Emergency Management Australia, *Critical Infrastructure Emergency Risk Management and Assurance Handbook 2nd Edition*, May 2004, p7

Proposed Benefits

This option keeps a single, simplified provision for all damage to property owned or operated by emergency services personnel.

Other Impacts

Some stakeholders are of the opinion that there is a greater deterrent where an Act specifies the offence in detail with the appropriate maximum penalty cited alongside the offence.

Costs

There is no increase in costs associated with this option.

OTHER OPTION CONSIDERED

7.7.2 A new offence is added for a person who damages critical infrastructure in addition to a general provision for damage to equipment owned or operated by a person performing a function under the emergency services legislation

This option would provide a higher penalty for damage to critical infrastructure, however, the general provision is sufficient to cover all types of damage without having to make the legislation more complex by adding numerous specific offences.

7.8 OFFENCES RELATING TO DISPOSAL OF CIGARETTES, CIGARS OR MATCHES

A considerable number of bush and scrub fires are caused by lit cigarettes being discarded carelessly¹¹¹. Internal DFES data places this figure at over 600 per annum.

A number of factors affect the likelihood of a discarded cigarette resulting in a fire including available fuel, moisture and temperature. Response to these fires often requires crews to work on or next to roads, resulting in a potential safety risk. Furthermore, this work is frequently undertaken on the inside road lane near traffic lights, further increasing risk.

¹¹¹ Department of Fire and Emergency Services, *Cigarette butts*, accessed 20 March 2014 <http://www.dfes.wa.gov.au/safetyinformation/fire/bushfire/Pages/cigarettebutts.aspx>

Section 30 of the Bush Fires Act provides for offences relating to the disposal of cigarettes, cigars and matches:

- (a) *in circumstances that are likely to set fire to the bush; or*
(b) *by throwing it from a vehicle under any circumstances whatever.*¹¹²

The maximum penalty for an offence under s 30 of the Bush Fires Act is \$5 000.

Proving each of the elements of an offence under this section is problematic and reduces its effectiveness as a deterrent. To prove that someone committed an offence in accordance with s 30(b) of the Bush Fires Act, the following must be established:

1. The area in which the cigarette was disposed was in a Restricted or Prohibited Burning Time zone;
2. The cigarette was thrown from a vehicle;
3. Notwithstanding knowing the vehicle from which the cigarette was thrown, it must be proven which person in the vehicle disposed of the cigarette; and
4. The cigarette was lit when it was disposed of.

Feedback from a number of stakeholders supports the simplifying of these provisions.

The options covered under this heading are:

- Create a new, more general offence and simplify the elements required to prove the offence; and
- Maintain the current provisions.

7.8.1 PREFERRED OPTION: Create a new, more general offence and simplify the elements required to prove the offence

The preferred option provides for a new, more general offence that would apply to dropping or throwing a burning object or material from a vehicle or in circumstances where it may cause a fire. The new offence would encompass cigarettes, cigars, matches and other burning objects.

The offence would apply whether or not there is a Fire Danger Period in place (see section 3.11 *Prohibited and Restricted Burning Times* for more details on the introduction of Fire Danger Periods). This would provide clarity to the offence, removing the importance of the specific location in which the offence was committed.

¹¹² *Bush Fires Act 1954*, s 30

The need to prove who dropped or threw the burning object, whether it was lit or not and whether the driver, if discarded from a vehicle, should ultimately be responsible would be amongst the issues that need to be considered when drafting the new provision.

The investigation powers discussed in *section 2.7 Investigation Powers* may also assist in obtaining details of those involved in the offence including the details of the vehicle, driver and passengers.

The current monetary level of the penalty is \$5 000 and this may be adjusted as discussed at *section 7.9 The Level of Financial Penalty*.

Proposed Benefits

The preferred option would increase the effectiveness of the provisions related to the negligent disposal of burning items which should, in turn, act as a deterrent to offenders.

Other Impacts

The effectiveness of the new provision as a deterrent will be dependent on the level of community awareness of the provision and the enforcement of the offence, both of which can be addressed through appropriate strategies.

The impacts would also depend on the extent to which the new provision contains any deeming provisions e.g. whether the driver of the vehicle is held responsible for the activity in the event of the failure to prove that it was committed by a passenger.

Costs

The cost impact of this option should be limited to those associated with the enforcement of the new provision.

OTHER OPTION CONSIDERED

7.8.2 Maintain the current provisions

This option is not supported as the current wording of the offence is not regarded as a suitable deterrent to the activity and has proven ineffective

7.9 THE LEVEL OF FINANCIAL PENALTY

Offences under current legislation are, in most cases, accompanied by a financial penalty. This penalty is intended to deter people from committing an offence by imposing a monetary loss on the offending party. The feedback from stakeholder groups consistently indicated that the current prescribed penalties do not represent an adequate deterrent and do not appear to be consistent with the gravity of the offence. Local government in particular indicated that the current penalty levels mean that it is often cheaper for landowners to pay the fine than undertake the work required of them. For example in relation to the installation of firebreaks, under the *Bush Fires (Infringement) Regulations 1978* the penalty for failing to comply with a notice to clear a firebreak is \$250¹¹³.

In addition to raising the current penalties, stakeholders generally agreed that the penalty amounts needed to be regularly reviewed to remain an adequate deterrent.

The main costs for this option would be the increased fines that would be charged to offenders. This is an intended impact of the change.

There may be some cost associated with the regular review of the penalty levels in order to keep them current, however it is unlikely to be significant.

7.10 ADDITIONAL OFFENCES

Stakeholders highlighted a number of 'offences' they felt are missing from, or not adequately dealt with, in the current emergency services legislation. As part of the development of the new legislation these additional offences will be considered for inclusion and are listed below:

- Failure to give way to an emergency vehicle (Note: Currently provided within r 60 of the *Road Traffic Code 2000*);
- Stealing of water stored for firefighting;
- Parking of vehicles on road reserves during periods of high fire danger;
- Failure to maintain unoccupied buildings;
- Failure to allow emergency services access to property for the purposes of responding to a hazard; and
- Failure to adequately supervise a fire that was intentionally lit (e.g. a campfire; burning garden refuse; a mitigation burn etc.).

¹¹³ *Bush Fires (Infringement) Regulations 1978*, first schedule, item 21

NON-LEGISLATIVE ISSUES

During consultation a number of issues or concerns were raised by stakeholders in relation to Offences and Enforcement that would be best addressed by non-legislative options and therefore is not in the scope of this Review. An undertaking was given to all stakeholders that the Review would pass on information on non-legislative issues raised to the relevant DFES business area or other government agency responsible.

7.11 SUPPORTING LOCAL GOVERNMENT TO UNDERTAKE ENFORCEMENT ACTIVITIES

Stakeholders indicated that one of the issues with enforcement was that local government did not have sufficient resources to enforce the penalties available to them. Issuing infringements and following them up can place a significant administrative and financial burden on enforcement agencies. This burden increases when the accused disputes the infringement and court action is required. Stakeholders reported that as a result, local government might be reluctant to issue infringements or allow unpaid infringements to lapse rather than prosecute.

Supporting local government to undertake enforcement activities, either through financial or physical resources, may increase the amount of enforcement undertaken, thereby reducing offending. It may also provide increased consistency of enforcement practices across local government which would address one of the concerns raised by stakeholders.

7.12 INFORMATION SHARING BETWEEN AGENCIES

Multiple stakeholders raised the need for information to be shared between the enforcement agency (e.g. local government or DFES) and those who identify issues (e.g. emergency responders or site inspectors) to ensure a holistic response is applied. Putting mechanisms in place that assists parties to share information and work together may improve enforcement and reduce offending.

7.13 COMMUNITY EDUCATION AND AWARENESS

The need for community education and awareness was raised repeatedly by stakeholders in relation to a number of issues and topics. It is unreasonable to expect members of the wider community to be aware of the details of all offences contained in emergency services legislation, however appropriate community education will assist to raise the wider communities awareness.

CHAPTER 8: PROTECTION FROM LIABILITY

Section 37(1) of the *Fire and Emergency Services Act 1998* (Fire and Emergency Services Act) states that a person does not incur civil liability for anything a person has done 'in the performance or purported performance of a function under the emergency services Acts' (referred to as the 'Protection Clause'). The emergency services Acts are defined within s 3 of the Fire and Emergency Services Act to include: the Fire and Emergency Services Act; the *Bush Fires Act 1954* (Bush Fires Act); and the *Fire Brigades Act 1942* (Fire Brigades Act).

Section 5 of the *Interpretation Act 1984* provides that any reference to function includes 'powers, duties, responsibilities, authorities and jurisdictions'. As such any action undertaken in good faith pursuant to a function, power, duty or responsibility that is within the emergency services Acts should be captured by the Protection Clause.

The civil liability relief afforded by the Fire and Emergency Services Act also applies to the Crown, local government and any other party that may otherwise have been vicariously liable.

Under the topic of Protection from Liability, the legislative issues that have emerged and been canvassed through consultation include:

- What activities should be protected and should any be specified?
- Should there be specific mention of certain groups who are performing a function under the emergency services legislation?
- Should additional protection be provided in relation to criminal liability?
- Should legislation establish a bar to action against emergency services personnel?
- With whom should the burden of proof sit?

LEGISLATIVE ISSUES AND OPTIONS

8.1 ACTIVITIES PROTECTED

The Protection Clause in its current form does not deal with any specific activities. Stakeholders have submitted that certain activities may be regarded as being of sufficient importance to require specific mention and therefore Protection from Liability.

Currently neither a private landowner and/or their contractor, nor government bodies vested with care and control of land, are likely to have protection under s 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.

The options covered under this heading are:

- 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';
- The Protection Clause provides for specific activities to be covered (such as hazard mitigation or acting in terms of a risk management plan); and
- The Protection Clause provides coverage for things done for the purposes of executing the new emergency services Act or 'any other act'.

8.1.1 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 s 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.

Proposed Benefits

Some stakeholders have commented that, should the Protection Clause be extended, then there is a danger that activities would be carried out with less care or negligently. It is a benefit to the community as a whole that the circumstances in which a person can enjoy Protection from Liability should be directly related to the

performance of a function under the Act. This provides some assurance that these activities are carried out by appropriately qualified people.

Other Impacts

There is a difference between acting in accordance with the new emergency services Act, such as with a permit, and performing a function under the Act. This distinction would need to be clarified for stakeholders and the wider community to ensure that all are aware of the circumstances under which they may be covered by the Protection Clause.

Costs

No cost impact is anticipated from retaining current arrangements.

OTHER OPTIONS CONSIDERED

8.1.2 The Protection Clause provides for specific activities to be covered (such as hazard mitigation or acting in terms of a risk management plan)

Once certain activities are listed as being covered, there is the potential that the legislation is perceived or interpreted to exclude activities which are not specifically mentioned. Most stakeholders prefer the retention of a general provision rather than specifying various activities. In addition, should the Protection Clause be extended, there is a danger that activities could be carried out negligently. See *Chapter 3 Risk Mitigation* for further discussion on this topic.

8.1.3 The Protection Clause provides coverage for things done for the purposes of executing the new emergency services Act or 'any other act'

Although this may be useful when emergency services personnel are undertaking powers, functions, duties or responsibilities under another Act, this creates an area of unpredictable application. If such protection was required, then that other Act would specifically have provided the protection.

8.2 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).

The options considered under this heading are:

- Do not include specific groups (as specified in section 37(1a) of the Fire and Emergency Services Act) in the new emergency services Act;
- Provide for further specific groups of emergency services personnel to be added to what is currently listed in section 37(1a) of the Fire and Emergency Services Act; and
- Include specific groups (as specified in section 37(1a) of the Fire and Emergency Services Act) in the new emergency services Act.

8.2.1 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.

Proposed Benefits

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

Other Impacts

Some stakeholders are of the opinion that there is comfort in seeing the specific provisions retained. Personnel may be concerned they would no longer be covered if the specific provision is not carried over to the new emergency services Act. This issue can be resolved by ensuring a clear explanation to those parties listed in the section, that they remain protected although no longer specifically mentioned.

Costs

No increase in cost is associated with this option.

OTHER OPTIONS CONSIDERED

8.2.2 Provide for further specific groups of emergency services personnel to be added to what is currently listed in section 37(1a) of the Fire and Emergency Services Act

By listing the groups who are covered, there is the risk of a negative perception for those groups who are not listed. These specific provisions are unnecessary as those groups listed would already be captured under the general provision.

Some stakeholders also suggested that interstate and overseas personnel are added as a specific category of 'person' covered under the Protection Clause to provide protection where these group are assisting with operations within Western Australia. This would also be unnecessary as, if they are performing a function under the new emergency services Act or under direction from FES Commissioner, they would be covered in any event.

8.2.3 Include specific groups (as specified in section 37(1a) of the Fire and Emergency Services Act) in the new emergency services Act

Retaining the current provision may provide peace of mind for the parties already mentioned as there is a clear statement relating to their Protection from Liability, but these specific provisions are unnecessary as explained at *option 8.2.2*.

8.3 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.

The options covered under this heading are:

- Protection is limited to Civil Liability; and
- The emergency services legislation provides a protection from both Civil and Criminal Liability.

8.3.1 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, s 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.

Proposed Benefits

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

Other Impacts

No other impacts have been identified.

Costs

There are no anticipated cost impacts arising out of this option.

OTHER OPTION CONSIDERED

8.3.2 The emergency services legislation provides a protection from both Civil and Criminal Liability

Some stakeholders want to provide the maximum level of coverage for emergency services personnel; however a protection for Criminal Liability would have limited effect in the face of the 'good faith' requirement, as many criminal offences involve an element of intent in the first place.

8.4 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.

The options covered under this heading are:

- 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; and
- Emergency services legislation stays silent on establishing a bar to action against emergency services personnel.

8.4.1 **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.

Proposed Benefits

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.

Other Impacts

The wider community may have a perception that emergency personnel and volunteers are over-protected and that it is impossible to achieve redress.

Costs

This option would not be associated with any increase in costs.

OTHER OPTION CONSIDERED

8.4.2 Emergency services legislation stays silent on establishing a bar to action against emergency services personnel

This option is not supported as, notwithstanding the Protection Clause, people with potential claims, some supported by insurance companies, may be able to push cases to trial, causing hardship or unnecessary stress for emergency service personnel who were clearly acting in good faith.

8.5 BURDEN OF PROOF IN A PROTECTION FROM LIABILITY CLAUSE

The 'burden of proof' refers to the duty of one party to a case to make out the case against the other party and to prove to the court that the case has been established¹¹⁴. The wording of the current Protection from Liability provision suggests that the person who alleges good faith must prove that good faith exists.

Most Protection from Liability provisions in Australia do not make any explicit statement as to where the burden of proof lies in using a Protection from Liability provision. One exception is the *Fire and Rescue Service Act 1990* (Qld). Section

¹¹⁴ *Wayne West & Anor v The State of New South Wales* [2012] ACTSC 184

129(3) of that Act provides that the burden of proof lies with the person who is claiming an absence of good faith.

The options covered under this heading are:

- Emergency services legislation remains silent on burden of proof; and
- The burden of proof is explicitly stated to rest with the person alleging an absence of good faith.

8.5.1 PREFERRED OPTION: Emergency services legislation remains silent on burden of proof

Changing the burden of proving good faith would mean that the legislation would make it a requirement for the person bringing the case to prove a lack of good faith. Stakeholders raise concerns that this would make proceedings procedurally unfair and could create lengthier trials.

Equivalent legislation in Western Australia does not make any explicit statement on who has the burden of proving good faith¹¹⁵. It is understood that in the absence of any explicit statement the party who seeks to rely on having acted in good faith is the one who has the burden of proving it.

Proposed Benefits

Maintaining the status quo in this regard retains a balance between protection of emergency services personnel and the right of the wider community to obtain redress in proper circumstances.

The proposed amendments discussed in *preferred option 8.4.1*, provides sufficient additional protection for cases that have no merit.

Other Impacts

No other impacts are anticipated.

Costs

There are no anticipated cost impacts arising out of this option.

¹¹⁵ See *Associations Incorporation Act 1987* s 39D; *Conservation and Land Management Act 1984* s 132; *Police Act 1892* s 137

OTHER OPTION CONSIDERED

8.5.2 The burden of proof is explicitly stated to rest with the person alleging an absence of good faith

This option would provide protections similar to s 129(3) of *Fire and Rescue Service Act 1990* (Qld). It is not supported as it may create a perception of procedural unfairness and may extend the length of trials due to the additional burden of proving an absence of good faith. As mentioned under the preferred option equivalent legislation in Western Australia remains silent on this issue.

Closed for Comment

CHAPTER 9: FIRE AND RESCUE SERVICE OPERATIONAL STAFF

This chapter considers issues relating to Fire and Rescue Service operational staff (operational staff) of Brigades established under the *Fire Brigades Act 1942* (the Fire Brigades Act).

As at 30 June 2013, DFES had an approved operational staff allocation of 1 111. Operational staff are employed under s 20(2) of the *Fire and Emergency Services Act 1998* (the Fire and Emergency Services Act) and are subject to the provisions of the Fire Brigades Act and *Fire Brigades Regulations 1943* (the Fire Brigades Regulations). Operational staff remuneration, terms and conditions of service are covered by the *Fire Brigade Employees' Award 1990 and the Western Australian Fire Service Enterprise Bargaining Agreement 2011 - AG203/2011*. Section 20 of the Fire and Emergency Services Act was inserted in 2012 and has operated satisfactorily since then.

The functions of Career Brigades are derived through the FES Commissioner and are set out in s 25 of the Fire Brigades Act as follows:

Subject to this Act, the functions of the FES Commissioner under this Act are-

- (a) *to take, superintend and enforce all necessary steps for preventing and extinguishing fires and protecting and saving life and property from fire;*
- (b) *to take all practicable measures —*
 - (i) *for protecting and saving life and property endangered by hazardous material incidents;*
 - (ii) *for confining and ending such an incident; and*
 - (iii) *for rendering the site of such an incident safe;*
- (c) *to take and superintend all necessary steps in rescue operations;*
- (ca) *to promote the safety of life and property from fire, hazardous material incidents, accidents, explosions or other incidents requiring rescue operations*¹¹⁶.

LEGISLATIVE ISSUES AND OPTIONS

9.1 ADMINISTRATIVE PROVISIONS

The emergency service Acts set out the functions and powers of operational staff while comprehensive administration provisions are contained in the Fire Brigades Regulations which deal with matters such as discipline, appeals, leave, conduct and offences.

¹¹⁶ *Fire Brigades Act 1942*, s 20

The Fire Brigades Regulations are currently being updated to incorporate contemporary requirements as a result of a separate review undertaken in consultation with operational staff and the United Firefighters Union.

Many Australian States have incorporated administrative provisions in their emergency services Acts. Victoria, in the *Metropolitan Fire Brigades Act 1958*, lists offences and provides detail in respect of laying of charges, disciplinary proceeding and appeals. South Australia has provisions relating to disciplinary proceedings and appeals and has a code of conduct in the *Fire and Emergency Services Act 2005*. Division 3 of the *Fire and Rescue Service Act 1990* in Queensland provides detail in respect of disciplinary action.

The options covered under this heading are:

- Administrative provisions contained in the regulations only; and
- Set out broad administrative provisions in the new emergency services Act.

9.1.1 PREFERRED OPTION: Administrative provisions contained in the regulations only

Stakeholders have indicated a preference for the current arrangements to be maintained. In terms of this option all administrative arrangements will be set out in the regulations and will not appear in the new emergency services Act.

Proposed Benefits

This will keep the new emergency services Act streamlined in accordance with the objects of the Review and allow for more efficient updating of the administrative provisions when required.

Other Impacts

No other impacts are anticipated.

Costs

This option is not expected to have a cost impact.

OTHER OPTION CONSIDERED

9.1.2 Set out broad administrative provisions in the new emergency services Act

Some stakeholders have suggested that new emergency services Act should set out the broad principles of requirements relating to appointments, appeals and discipline, while creating a regulatory power to specify more detailed in the regulations. This is not supported as the current position facilitates regular amendments to keep the administrative provisions relevant and up-to-date.

Closed for Comment

IMPLEMENTATION

The implementation of the new emergency services legislation will involve an extensive program of awareness, education and where appropriate, training with key stakeholders and the community. A strategy detailing particular activities and associated timelines will be developed at a later date.

Ideally a period of at least six (6) months prior to enactment of the legislation will be required to allow adequate time for familiarisation and adjustment to the new legislation. Stakeholders are encouraged to include their comments or suggestions on the implementation process as part of their feedback on the Concept Paper.

CONCEPT CONSULTATION

The Concept Paper will be made publicly available for comment until 31 July 2014 and feedback can be provided.

Online (preferred): www.dfes.wa.gov.au/legislationreview

Email: legislation@dfes.wa.gov.au

Post: Review of the Emergency Services Acts
PO Box P1174 Perth, WA 6844

This proposed consultation (Stage 3) will provide supplementary data to support the further development of the options outlined in the Concept Paper. All feedback received will be reviewed and analysed. Depending on the feedback received the preferred options outlined in this paper may change or be modified.

This will lead to the development and publication of the Decision Paper that will clearly outline the chosen options. The Decision Paper (once approved by the Regulatory Gatekeeping Unit) will form the basis of Drafting Instructions for the new emergency services Act.

APPENDIX 1 – CONSULTATION SUMMARY

STAGE 1 – PRELIMINARY CONSULTATION

17 October 2012

Initial meetings with key stakeholders

Meetings with key stakeholders advising them of the commencement of the Review and processes being utilised.

63 stakeholders were engaged over a 5 month period.

4 November 2012

Fire and Emergency Services Volunteers Conference 2012

Presentation informing attendees of the Review and the process being undertaken with a focus on volunteer participation.

Around 30 stakeholders attended the session.

5 November 2012

Website – Limited access

Dedicated website to provide a central information point for staff and volunteers to access information regarding the Review.

Direct links to the website featured on the homepage banner for both the Volunteers Portal and DFES intranet.

13 November 2012

DFES General Circular 20/2012: Review of the Emergency Services Acts

General circular announcing the Review and promoting the dedicated website.

The circular was posted on the homepage of the Volunteers Portal and DFES intranet homepage and emailed to every Volunteer Brigade, Group and Unit.

02 December 2012

Meeting with Association of Volunteer Bush Fire Brigades

Meeting with association committee members to provide an over view of the Review and the process being undertaken.

The association provided advice on the best methods for engaging volunteers in the Review.

8 association members were in attendance.

03 December 2012

Presentation to State Emergency Services Volunteers Association Committee

Meeting with the association committee members to provide an over view of the Review and the process being undertaken.

The association provided advice on the best methods for engaging volunteers in the Review

7 association committee members were in attendance.

07 December 2012

Presentation to WA Volunteer Fire & Rescue Services Association Committee

Meeting with the association committee to provide an over view of the Review and the process being undertaken.

The association provided advice on the best methods for engaging volunteers in the Review.

6 association committee members were in attendance.

13 December 2012

Meeting with the United Firefighters Union of WA

Meeting with members of the United Firefighters Union to provide an over view of the Review and the process being undertaken.

The union provided advice on the best methods for engaging firefighters in the Review.

3 executive officers were in attendance.

19 December 2012

Official Correspondence from FES Commissioner requesting submissions to the Review of the Emergency Services Acts

The FES Commissioner wrote to stakeholders announcing the Review and inviting submissions. Feedback was requested on the current legislation and what the future legislation could include.

In total 1 324 letters were sent to stakeholders representing:

- All Volunteer Brigades, Groups & Units
- Associations & Union
- Chief Bush Fire Control Officers (CBFCO)
- Deputy Chief Bush Fire Control Officers (DCBFCO)
- Government Departments and Agencies
- Local government
- Members of Parliament

12 February 2013

Information Session Kalgoorlie

Two information sessions held in Kalgoorlie.

33 stakeholders attended representing:

- City of Kalgoorlie Boulder
- Department of Agriculture and Food
- Department of Corrective Services
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Fire and Emergency Services regional staff
- Department of Education
- Department of Mines and Petroleum

- Goldfields Indigenous Housing
- Kalgoorlie Miner
- Main Roads
- St Johns Ambulance
- State Emergency Management Committee Secretariat
- SES Kalgoorlie
- SES Norseman
- VFRS Kalgoorlie
- WA Police

20 February 2013

Information Session Broome

Two information sessions held in Broome.

20 stakeholders attended representing:

- Broome SES
- Broome VFRS
- Broome VMR
- Department of Fire and Emergency Services regional staff
- Department of Health
- Department of Housing
- Department of Indigenous Affairs
- Roebourne VFRS
- Shire of Broome
- Shire of Derby/West Kimberley
- State Emergency Management Committee Secretariat
- Water Corporation
- WA Police

21 February 2013 -
22 April 2013

Metropolitan District Officer Stakeholder Sessions

Over 700 stakeholders attended 33 sessions ran by DFES District Officers regarding the Review.

21 February 2013

Information Session Kununurra

Two information sessions held in Kununurra.

14 stakeholders attended representing:

- Department of Fire and Emergency Services regional staff
- East Kimberly VMR Wyndham
- Kununurra SES
- Kununurra VFRS
- St Johns Ambulance
- State Emergency Management Committee Secretariat
- Shire of Wyndham/East Kimberley

07 March 2013

Information Session Belmont

Information session held Belmont.

21 stakeholders attended representing:

- Allanson BFB
- Armadale SES
- Bassendean SES
- Belmont/Victoria Park SES
- Darling Range BFB
- East Swan BFB
- Kalamunda SES
- SES Mounted Section
- SES Canine Section
- SES Volunteers Association
- Swan BFB
- Swan Communications BFB
- Swan SES
- West Gidgee BFB

11 March 2013

Information Session Bunbury

Two information sessions held in Bunbury.

50 stakeholders attended representing:

- Allanson BFB
- Association of Volunteer Bush Fire Brigades of WA Inc.
- Brunswick Junction VFRS
- Bunbury SES
- Capel BFB
- Collie BFB
- Collie SES
- Collie VFRS
- Department of Fire and Emergency Services regional staff
- Dardanup
- Donnybrook SES
- Easton/Australind VFRS
- Harvey BFB
- Locals Against Wildfire
- Murray SES
- Murray BFB
- Pinjarra VFRS
- Shire of Capel
- Shire of Collie
- Shire of Harvey
- Shire of Murray
- State Emergency Management Committee Secretariat
- Waterloo BFS
- Waroona VFS
- West Dardanup

12 March 2013

Information Session Northam

Two information sessions held in Northam.

33 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- CBFCO Beverly
- CBFCO Cunderdin
- CBFCO Dowerin
- CBFCO Northam
- CBFCO Toodyay
- Community Emergency Services Manager Quairading & Cunderdin
- Department of Fire and Emergency Services district staff
- Department of Parks and Wildlife Swan Region
- DCBFCO Cunderdin
- Emergency Services Associations Management Committee
- Julimar BFB
- Moora SES
- Northam SES
- Shire of Wyalkatchem
- Toodyay Fire Control Officer
- Toodyay Central BFB
- Vehicle and Equipment Advisory Committee representative
- Wongan- Ballidu BFB

Closed for Comment

13 March 2013

Information Session Carnamah

Information sessions held at the Mid-West Gascoyne District Operations Advisory Committee meeting in Carnamah.

34 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- Department of Fire and Emergency Services regional staff
- Emergency Services Associations Management Committee
- Midwest Gascoyne District Operations Advisory Committee

14 March 2013

Information Session Albany

Two information sessions held in Albany.

38 stakeholders attended representing:

- Albany SES
- Bornholm Fire Control Officer (Albany)
- Broomhill Turnbridge Fire Control Officer
- City of Albany
- Denmark BFB
- Denmark VMR
- Department of Fire and Emergency Services regional staff
- Gnowangerup SES
- Hazelvale BFB Shire of Albany
- Jerramungup
- Middleward BFB (Plantagenet)
- Redmond Fire Control Officer
- Shire of Broomehill
- Shire of Cranbrook
- Shire of Kojonup
- Shire of Plantagenet
- Shire of West Arthur
- South Coast BFB
- South Coast VMR
- Torbay BFB

17 March 2013

Information Session Belmont

A second information session was held in Belmont.

3 stakeholders attended representing:

- Bassendean SES
- East Swan BFB

19 March 2013

Information Session Cockburn

Information session held in Cockburn.

14 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Kwinana
- City of Rockingham
- DFES Staff
- Gosnells SES
- Mandogalup BFB
- Melville SES
- Shire of Serpentine Jarrahdale
- SES Mounted Section

25 March 2013

Information Session Kalamunda

By request, information sessions held at the Kalamunda BFB.

28 stakeholders attended representing:

- Darlington BFB
- Kalamunda BFB
- Kalamunda Communications Unit

27 March 2013

Information Session Esperance

Information session held in Esperance.

6 stakeholders attended representing:

- Department of Fire and Emergency Services district staff
- Esperance SES
- Esperance VMR
- Esperance VFRS
- Shire of Esperance

02 April 2013

Information Session Manjimup

Information session held in Manjimup.

14 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades WA Inc.
- Bridgetown Greenbushes
- Department of Fire and Emergency Services regional staff
- Department of Parks and Wildlife Manjimup
- Manjimup BFB
- Manjimup SES
- Manjimup VFRS
- Middlesex BFB
- Shire of Manjimup
- Shire of Bridgetown Greenbushes
- SES Volunteers Association

03 April 2013

Information Session Margaret River

Information session held in Margaret River.

17 stakeholders attended representing:

- Augusta Margaret River SES
- East Augusta BFB
- Busselton SES
- CBFCO Augusta Margaret River
- Department of Fire and Emergency Services regional staff

- DCBFCO Augusta Margaret River
- Margaret River VFRS
- Rosa Brook BFB
- Wallcliffe Fire Brigade
- Witchcliffe VFRS
- Yallingup Rural BFB

04 April 2013

Information Session Joondalup/Wanneroo

Information session held in in Joondalup.

26 stakeholders attended representing:

- CBFCO Wanneroo
- Kwinana VFRS
- Wanneroo BFB
- Wanneroo FS
- Wanneroo Support Brigade
- Wanneroo Joondalup SES

08 April 2013

Information Session Narrogin

Two information sessions held in in Narrogin.

12 stakeholders attended representing:

- Department of Fire and Emergency Services district staff
- Narrogin SES
- Pingelly SES
- St Johns Ambulance
- Shire of Boddington
- Shire of Narrogin
- Wagin BFB
- Wagin VFRS
- Williams BFB

15 April 2013

Information Session Gosnells

By request an information session was held at Gosnells BFB.

33 stakeholders attended the presentation.

15 April 2013

Information Session Karratha

Two information sessions held in Karratha.

13 stakeholders attended representing:

- Dampier VFRS
- Department of Fire and Emergency Services regional staff
- Karratha SES
- Shire of Ashburton
- Shire of Roebourne
- Tom Price Private Brigade
- Wickham VFRS

16 April 2013

Information Session Port Hedland

Two Information session held in Port Hedland.

16 stakeholders attended representing:

- CBFCO Port Hedland
- Department of Fire and Emergency Services district staff
- Hedland SES
- Shire of East Pilbara
- Town of Port Hedland

23 April 2013

Review Newsletter – Issue #1

Over 450 stakeholders were directly emailed the Review newsletter and the newsletter also featured on the Review's website.

29 April 2013

Meeting with Forest Industries Federation of WA

On request a meeting was held with the Forest Industries Federation of WA.

12 Stakeholders attended the meeting.

30 April 2013

Information Session United Firefighters Union of WA Progression from Stage 1 to Stage 2

By request an information session was held for the United Firefighters Union of WA Committee.

STAGE 2 – EXPERT PANEL DISCUSSIONS AND WORKSHOPS

07 May 2013

Presentation at the Wanneroo/Joondalup Local Emergency Management Committee Meeting

17 May 2013

Meeting with Western Australian Local Government Association (WALGA)

Meeting with WALGA to discuss allowing BFBs to be transferred to DFES by mutual agreement and proposed survey of local government's position on the option.

23 May 2013

Letter to Local Government: Option to transfer local Bush Fire Brigades

- 24 May 2013 **Meeting with the Association of Volunteer Bush Fire Brigades**
- Meeting with Association of Volunteer Bush Fire Brigades Vice President to discuss allowing BFBs to be transferred to DFES by mutual agreement and Regulatory Gatekeeping Unit requirements.
- 28 May 2013 **Review Newsletter – Issue #2:**
- Over 450 stakeholders were directly emailed the Review newsletter and the newsletter also featured on the Review's website.
- 12 June 2013 **Website – Public access**
- Dedicated website is made available from the DFES public Website.
- Links remain on the Volunteers Portal and DFES Intranet.
- 1 July 2013 **Letter (23 May 2013) published on Website**
- By request a copy of the correspondence to local government dated 23 May 2013 was published
- 18 July 2013 **Teleconference Presentation at Lower South West Regional Operations Advisory Committee**
- 08 August 2013 **Expert Panel Discussion: Emergency Services Levy**
- 16 stakeholders attended representing:
- Association of Volunteer Bush Fire Brigades of WA Inc.
 - Chief Bush Fire Control Officer

- Department of Local Government and Communities
- Department of Fire and Emergency Services
- Emergency Services Volunteer Association of WA Inc.
- Shire of Boddington
- SES Volunteers Associations Inc.
- United Firefighters Union of WA
- Volunteer Marine Rescue Western Australia Inc.
- WA Volunteer Fire and Rescue Services Association Inc.
- Western Australian Local Government Association

12 August 2013

Review Newsletter – Issue #3:

Over 450 stakeholders were directly emailed the Review newsletter and the newsletter also featured on the Review's website.

12 August 2013

Expert Panel Discussion: Emergency Service Areas

28 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Wanneroo
- Department of Aboriginal Affairs
- Department of Fire and Emergency Services
- Department of Lands
- Department of Mines and Petroleum
- Department of Parks and Wildlife
- Emergency Services Volunteer Association of WA Inc.
- Forrest Industries Federation
- Forrest Products Commission
- Office of Bushfire Risk Management
- Pastoralists and Graziers Association
- Shire of West Arthur
- SES Volunteers Associations Inc.
- Tom Price Private Brigade
- United Fire Fighters Union of WA
- Volunteer Marine Rescue Western Australia Inc.
- Western Australian Farmers Federation
- Western Australian Local Government Association

- Western Australian Police
- WA Volunteer Fire and Rescue Services Association Inc.

26 August 2013

Meeting Bremer Bay

By request a meeting was held in Bremer Bay.

6 stakeholders attended representing:

- Bremer Bay Captain
- Chief Bushfire Control Officer
- Chief Executive Officer Shire of Jerramungup
- Community Emergency Service Manager
- Emergency Services Volunteer Association Inc.
- Superintendent Great Southern

30 August 2013

Email to local government

Email on results from the survey (letter) regarding administration of local bush fire brigades.

30 August 2013

Review Newsletter – Issue #4

Over 450 stakeholders were directly emailed the Review newsletter and the newsletter also featured on the Review's website.

12 September 2013

Expert Panel Discussion: Prescribed Functions & Responsibilities

27 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- Department of Local Government and Communities
- Department of Fire and Emergency Services
- Department of Parks and Wildlife
- Emergency Services Volunteer Association of WA Inc.
- Independent

- Shire of Wongan- Ballidu
- Shire of Kojonup
- Shire of Boddington
- SES Volunteers Associations Inc.
- United Firefighters Union of WA
- Volunteer Marine Rescue Western Australia Inc.
- Western Australian Local Government Association
- Western Australian Police
- WA Volunteer Fire and Rescue Services Association Inc.

18 September 2013

Expert Panel Discussion: Protection of Volunteers

24 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Kwinana
- Department of Fire and Emergency Services
- Department of Local Government and Communities
- Emergency Services Volunteer Association of WA Inc.
- LGIS
- Pastoralists and Graziers Association
- Riskcover
- St Johns Ambulance
- Shire of Manjimup
- Volunteer Marine Rescue Western Australia Inc.
- State Emergency Management Committee Secretariat
- SES Volunteers Associations Inc.
- Volunteering WA
- Western Australian Local Governments Association
- WA Volunteer Fire and Rescue Services Association Inc.

27 September 2013

Expert Panel Discussion: Volunteer Brigades, Groups and Units

20 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Kwinana
- Department of Fire and Emergency Services
- Department of Local Government and Communities
- Emergency Services Volunteer Association of WA Inc.
- St Johns Ambulance
- Shire of Kalamunda
- Shire of Kojonup
- SES Volunteers Associations Inc.
- Volunteer Marine Rescue Western Australia Inc.
- Western Australian Local Government Association
- WA Volunteer Fire and Rescue Services Association Inc.

09 October 2013

Expert Panel Discussion: Offences and Enforcement

21 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Wanneroo
- Department of Fire and Emergency Services
- Department of Local Government & Communities
- Department of Mines and Petroleum
- Department of Parks and Wildlife
- Department of Transport
- Emergency Services Volunteer Association of WA Inc.
- Independent
- Shire of Murray
- SES Volunteers Associations Inc.
- United Fire Fighters Union of WA
- Volunteer Marine Rescue Western Australia Inc.
- Water Corporation
- Western Australian Local Government Association
- Western Australian Police
- WA Volunteer Fire and Rescue Services Association Inc.

10 October 2013

Presentation at South West & Lower South West Regional Operations Advisory Committee

16 October 2013

Expert Panel Discussion: Risk Treatments

24 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Albany
- Department of Fire and Emergency Services
- Department of Parks and Wildlife
- Department of Housing
- Department of Lands
- Department of Local Government and Communities
- Department of Mines and Petroleum
- Department of Planning
- Emergency Services Volunteer Association of WA Inc.
- Forest Industries Federation WA
- Forest Products Commission
- Office of Bushfire Risk Management
- Pastoralists and Graziers Association
- Shire of Murray
- State Emergency Management Committee Secretariat
- SES Volunteers Associations Inc.
- Volunteer Marine Rescue Western Australia Inc.
- Western Australian Local Government Association
- Western Australian Farmers Federation
- WA Volunteer Fire and Rescue Services Association Inc.

23 October 2013

Expert Panel Discussion: Built Environment

22 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Busselton
- City of Greater Geraldton
- Department of Environment Regulation
- Department of Fire and Emergency Services
- Department of Local Government & Communities
- Department of Mines and Petroleum

- Department of Planning
- Department of State Development
- Emergency Services Associations Management Committee
- Emergency Services Volunteer Association of WA Inc.
- Kwinana Industries Council
- Office of Bushfire Risk Management
- SES Volunteers Associations Inc.
- United Fire Fighters Union of WA
- Water Corporation
- Western Australian Local Government Association
- WA Volunteer Fire and Rescue Services Association Inc.

30 October 2013

Expert Panel Discussion: Emergency Service Powers

17 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- Department of Fire and Emergency Services
- Department of Local Government and Communities
- Department of Parks & Wildlife
- Emergency Services Volunteer Association of WA Inc.
- Shire of Kojonup
- State Emergency Management Committee Secretariat
- SES Volunteers Associations Inc.
- Town of Port Hedland
- United Fire Fighters Union of WA
- Volunteer Marine Rescue Western Australia Inc.
- Western Australian Local Government Association
- Western Australian Police
- WA Volunteer Fire and Rescue Services Association Inc.

06 November 2013

Expert Panel Discussion: Command and Control

21 stakeholders attended representing:

- Association of Volunteer Bush Fire Brigades of WA Inc.
- City of Kwinana
- Department of Fire and Emergency Services
- Department of Local Government and Communities
- Department of Parks and Wildlife
- Emergency Services Volunteer Association of WA Inc.
- Shire of Nannup
- State Emergency Management Committee Secretariat
- SES Volunteers Associations Inc.
- United Fire Fighters Union of WA
- Volunteer Marine Rescue Western Australia Inc.
- Western Australian Local Government Association
- Western Australian Police
- WA Volunteer Fire and Rescue Services Association Inc.

25 November 2013

Meeting with the Building Commission

26 November 2013

Meeting with the Building Commission Advisory Committee

Attendees included:

- Australian Institute of Architects
- Australian Institute of Building
- Australian Institute of Building Surveyors
- Department of Fire and Emergency Services
- Housing Industry Association
- LG Managers Australia
- Master Builders Association of WA
- Master Painters & Decorators Australia
- Master Plumbers & Gasfitters Association of WA
- Property Council of Australia
- Swimming Pool and Spa Association
- Western Australian local Government Association

03 December 2013

Expert Panel Discussion: Administration of Career Firefighters

13 stakeholders attended representing:

- Department of Fire and Emergency Services
- United Fire Fighters Union of WA
- WA Volunteer Fire & Rescue Services Association

Closed for Comment