

Review of the *Fire Service Act 1979*

Department of Premier and Cabinet's
submission on the Issues Paper

September 2018

Introduction

The Department of Premier and Cabinet (DPAC) welcomes the Review of the *Fire Service Act 1979* (the Review) and the opportunity it presents to streamline governance arrangements across emergency services and ensure efficient management of resources in accordance with the State's strategic priorities for emergency management. As highlighted in the Issues Paper and recognised by the Review's Terms of Reference, there is a need to modernise the legislative framework within which the Tasmania Fire Service (TFS) and the State Emergency Service (SES) operate.

DPAC's preference is for Tasmania to fully adopt and implement an 'all hazards approach' to emergency management governance that provides for the alignment of strategy, planning and investment across all of Tasmania's emergency services.

DPAC also notes that under a changing climate the TFS and the SES will be under increasing pressure to prepare for, and respond to, more intense, more frequent emergency events. This will have a significant impact on both operational and strategic planning.

Tasmania's emergency management governance should:

- Provide a legislative basis for coordinated planning and leadership across all hazards;
- Engage stakeholders and foster a shared responsibility for emergency management across prevention, preparedness, response and recovery activities;
- Provide for timely identification and management of key risks;
- Improve emergency management outcomes by applying consistent criteria for strategic and prioritised investment across all hazards based on risk; and
- Provide clear lines of responsibility and accountability for emergency management capabilities and performance.

More detailed comments are provided below in response to the questions asked in the Issues Paper, but in summary DPAC submits the following:

- The TFS and the SES should be better integrated within the Department of Police, Fire and Emergency Management (DPFEM).
- The State Fire Commission (SFC) should be retained in some form within revised governance arrangements.
- Management of SES funding, fleet and volunteers should be centralised to enable appropriate oversight and control.
- The SES must be appropriately funded to undertake its roles and responsibilities, and the funding of both the TFS and the SES should be open to budget scrutiny.
- The TFS's Chief Officer should report through the Secretary, DPFEM to the State Emergency Management Council (SEMC) and/or the Minister as necessary.
- The Chief Officer should report to the State Controller as necessary during an emergency in accordance with the provisions of the *Emergency Management Act 2006* (EM Act).

- Volunteers across all emergency services should be treated equally with a consistent level of support, access to necessary uniforms, equipment and training, and protections.

Role of the TFS (Issues Paper questions 1-3) and the SES (Issues Paper questions 4 and 30)

This Review should move Tasmania towards contemporary, best practice emergency management governance that is suited to Tasmania's needs. This includes ensuring that the roles and functions of emergency services are strategically designed to meet Tasmania's emergency management priorities while minimising duplication of effort and resources.

The roles of the TFS and the SES, as set out in legislation, should be sufficiently broad to allow for the wide range of response and emergency support activities that the services currently provide, as well as to allow the services to take on additional responsibilities in the future if required.

Legislatively, this could be achieved by amending the *Fire Service Act 1979* (FS Act) and potentially the EM Act, or by providing for both the TFS and the SES within a new Act that incorporate relevant parts of the current FS Act and EM Act. The form this takes is less important than ensuring that the legislation, however it is structured, appropriately empowers the TFS and the SES to undertake the roles and functions the community expects. It may be necessary to comprehensively review the roles, functions and structures set out in both Acts to ensure appropriate alignment under an all hazards approach.

The roles of the TFS and the SES should also be reviewed to enable a greater focus on operational activities. Many policy, advisory and corporate activities could be undertaken by people recruited for relevant skills working with operational input and expertise from the services as necessary. Centralisation of non-operational functions, for example within DPFEM, would allow strategic prioritisation across the range of emergency services, improving the Government's ability to identify opportunities for greater alignment and coordination while retaining the critical input of operational advice.

Community education (refer to question 30 in the Issues Paper) is an example of an area where greater departmental centralisation of some functions may be beneficial. As highlighted by both the House of Assembly Standing Committee on Community Development Inquiry into the State Fire Commission and the Blake Flood Review recommendation 7,¹ the SES and the TFS could benefit from sharing resources and aligning community education programs. While the TFS has developed and run prizewinning and nation-leading programs, the SES has not been able to invest in such programs to the same extent. Centralisation and alignment of the community education function would lead to efficiencies and could provide significant benefit to the community.

¹ "That SES and Tasmania Fire Service share resources and align their community education programs and adopt an all-hazards approach to awareness."

Volunteers (Issues Paper questions 5 and 21)

A “statement of commitment to volunteers” as suggested in the Issues Paper is unlikely, in isolation, to meaningfully change the way volunteers are treated or how they see themselves and the extent to which they are supported by the Government.

Commitment by the TFS and the SES to meaningful consultation and representation in organisational planning and decision-making, as well as communication to volunteers and the community, would better address the relevant recommendation of the House of Assembly Committee.

Any legislative changes related to volunteers should be substantive and relate to ensuring appropriate protections for volunteers across both the TFS and the SES.

These reforms should aim for an outcome where TFS and SES volunteers are treated equally with no obvious differences between resourcing or access to necessary uniforms, equipment and training. This would not be achieved through a statement of commitment to volunteers, but will require appropriate and meaningful reforms to governance and funding arrangements as discussed elsewhere.

Importantly, the SES should centrally manage its funding, volunteer facilities, fleet and operational expenses. This would go a long way towards ensuring that volunteer units, and their resources, can be appropriately and consistently managed. The support that councils currently provide should be retained, but should be restructured to enable centralised management by the SES.

State Fire Commission (Issues Paper questions 7-11)

The governance arrangements of the TFS and the SES should be structured to make responsibilities and reporting lines clear, and to allow for resources to be managed in accordance with the State’s strategic priorities for emergency management as a whole, and for appropriate oversight of those resources.

The Issues Paper notes that currently many of the powers and functions of the SFC have been delegated to the Chief Officer or are governed through the Secretary, DPFEM through the *State Service Act 2000*. The Review should consider whether it is more appropriate for the Chief Officer to report to the Secretary, DPFEM rather than to the SFC.

The SFC currently serves as a primary mechanism through which the views of key stakeholders are represented. These stakeholders should continue to have input on issues that impact them and those that they represent. However, another structure that better fits contemporary governance standards, such as an advisory group that meets regularly to inform TFS decision-making or the structure used by the Parks and Wildlife Service, could be considered. Governance arrangements should ensure that decisions are made with appropriate input from stakeholders, similar to any other Government service or department.

Role of the Chief Officer (Issues Paper questions 12-14)

It is apparent that roles and accountabilities between the Chief Officer, the Director SES and the State Controller need to be clarified. The EM Act is set up as an all hazards framework, and fire should operate within that Act similar to any other hazard. Decisions on the role of the Chief Officer should follow other decisions about governance structure and reporting lines. However, in relation to the issues raised, appointment of the Chief Officer by the Governor is appropriate in the context of other statutory appointments. In relation to administration and management of the TFS and the SES, the Chief Officer should report to the Secretary, DPFEM and through the Secretary to the Minister for Police, Fire and Emergency Management as required.

The legislated requirement for the Chief Officer to have experience in fire service administration and management of fire-fighting operations should be reconsidered. Removing the requirement from legislation would not preclude a selection process valuing that experience, but would broaden the field and allow a process that values a wider range of skills and knowledge to be considered. Particularly given the inclusion of the SES within the TFS, a broader emergency management background may be considered appropriate.

As the Chief Officer is the manager of a hazard Management Authority under the Tasmanian Emergency Management Plan, he or she should continue to advise the SEMC as necessary. In an emergency, the Chief Officer should report to the State Controller as required by the EM Act, although it is likely that the State Controller would defer to the advice of the Chief Officer on operational matters.

Similarly, the Director SES is the manager of a hazard Management Authority and, in this capacity, reports directly to SEMC and the State Controller rather than through the Chief Officer. The Director SES is also the 'default' executive officer of SEMC under section 8(5)(b) of the EM Act.

Given the multiple circumstances in which the Director SES reports directly to SEMC and/or the State Controller, additional consideration could be given to whether the Director SES should report through the Chief Officer or directly to the Secretary, DPFEM. As noted above, there may be a significant body of work in reviewing and consolidating functions across both the FS Act and the EM Act to ensure workable roles and accountabilities and clear chains of command across multiple circumstances.

State Fire Management Council (Issues Paper questions 15-16)

The role, membership, functions and powers of the State Fire Management Council (SFMC) in relation to vegetation fire management policy are primarily an operational question for the TFS and other represented organisations to advise the best structure to achieve the work of the SFMC.

However, in order to ensure reporting lines are consistent, the SFMC should report to the Chief Officer first, then to the Secretary DPFEM, and through the Secretary to the SEMC and/or the Minister as necessary. This would ensure that the activities and priorities of the SFMC are considered appropriately in the context of broader emergency management policies and strategies.

Fire Management Area Committees (Issues Paper questions 18-19)

Fire Management Area Committees (FMACs) and Emergency Management Committees (EMCs) should be integrated. EMCs are set up to take an all hazards approach and, particularly if membership is duplicated as highlighted in the Issues Paper, it would be sensible to align these committees and relevant boundaries as far as possible. In doing so, it would be important to ensure that the inclusion of fire management issues did not become the sole focus of the EMCs, as well as to ensure that the EMCs remained focused on the full prevention, preparedness, response and recovery spectrum. As noted above, even if existing structures are maintained it may be more appropriate for FMACs and the SFMC to report to the Chief Officer, the Secretary, DPFEM and the SEMC rather than operating separately to Departmental and whole-of-government structures.

Funding (Issues Paper question 20)

In response to the question raised in the Issues Paper, whether the SES and the TFS are funded by the same mechanism or different mechanisms is a secondary issue to ensuring that both are appropriately funded to prevent, prepare for and respond to emergencies as required, and as expected by the community. As noted above, it is likely that funding needs for the TFS and the SES will continue to increase as climate change results in increased frequency and severity of extreme weather events.

The Issues Paper highlights issues in relation to SES funding in particular and it is clear that significant investment is required to increase the capacity of the SES to appropriately prepare Tasmania for flood and storm events. Whether this requires additional funding, or could be achieved through efficiencies and/or a reallocation of existing funding across the TFS, the SES, and DPFEM, would need further consideration by the Review's Steering Committee in light of decisions that are made on other aspects of the role and structure of the TFS and the SES.

DPAC notes that over a number of years the local government sector has raised concerns about the fire service contribution, including how it is determined as well as the role of local government in collecting it on behalf of the State Government.

In relation to funding of the SES specifically, given the difficulties highlighted in the Issues Paper of accurately accounting for the contributions that councils currently make to volunteer SES Units and the inconsistency across councils, the process and funding required needs to be clarified. Centralising the management within the SES of its volunteer unit facilities, fleet, and operational expenses should clarify what these actual costs are. Councils should continue to contribute in some way to the cost of maintaining these facilities, given that they primarily exist to support and implement municipal emergency management arrangements. The contributions of councils should be standardised and an appropriate collection method determined, in consultation with local government and based on current contributions and SES needs.

DPAC notes the comments of Mr Tony Ferrall, Secretary, Department of Treasury and Finance, in the House of Assembly *Committee Report of the Inquiry into the State Fire Commission* that “the State Fire Commission budget is basically developed and designed by itself and doesn't go through a scrutiny process...It has limited Parliamentary scrutiny compared to how other Government agencies or entities might operate.”² The Steering Committee should consider whether additional scrutiny over the budget of the TFS and the SES should be in place.

Role of the *Land Use Planning and Approvals Act 1993* (Issues Paper question 28)

The Issues Paper notes that “it is not particularly clear in what circumstances the TFS has the authority to undertake hazard mitigation activities in non-emergency situations without needing additional approvals.”

It is important that the TFS has clarity in relation to its powers to undertake fuel reduction activities. Legal advice may be required to advise on the best way to achieve clarity.

Generally, hazard mitigation work requires approval under the relevant planning scheme. Under section 4 of the Tasmanian Planning Scheme, vegetation removal for safety is exempt from the requirement for planning approvals.³ This exemption should be sufficiently clear to allow for appropriate fuel reduction activities without seeking additional approvals, and therefore any additional exemption in an amended FS Act could be duplicative and/or unnecessary. Legal advice should be sought to determine whether additional specification in the Act is necessary and whether there could be any issues with duplication/inconsistency or unintended consequences.

Any exemption should be limited in its scope. If the intention is to restrict any Land Use Planning and Approvals Act exemption to the activities already set out in sections 49 and 56 of the FS Act, this would be appropriate (subject to the issues set out in the above paragraphs). However, caution should be taken to ensure the scope of any exemption is not inappropriately extended.

The Issues Paper refers to “hazard mitigation activities” generally and there are a number of hazard mitigation activities that create permanent structures/features and should, appropriately, continue to be governed by the planning system. For example, while fuel reduction burning is likely to be considered an appropriate exemption, the creation of new fire trails should be subject to broader approvals. Similarly, depending on other decisions relating to the SES and its governance, it would need to be clear that structural flood hazard mitigation activities (for example the building of levees) remained subject to planning system rules.

² HoA report p9

³ 4.4.1 (c) fire hazard management in accordance with a bushfire hazard management plan approved as part of a use or development;
 (d) fire hazard reduction required in accordance with the Fire Service Act 1979 or an abatement notice issued under the Local Government Act 1993;
 (e) fire hazard management works necessary to protect existing assets and ensure public safety in accordance with a bushfire hazard management plan endorsed by the Tasmania Fire Service, Forestry Tasmania, the Parks and Wildlife Service, or council

Other matters (Issues Paper questions 6, 17, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35)

These questions are primarily operational and/or secondary to the primary issues addressed above, and some of the answers will depend on the position taken in relation to those issues. As such, detailed responses have not been prepared. However, DPAC makes the following observations:

- 6 No comment.
- 17 The SFMC should make recommendations to the Chief Officer regarding appointment of permit officers, rather than appointing them directly.
- 22 The Crown should be bound by the legislation.
- 23 and 24 Legislation needs to make response, command and control arrangements clear, considering the context of the EM Act, but it should not be too prescriptive in setting out accountabilities, processes and systems.
- 25 to 27 No comment.
- 29 This is primarily a question for fire management experts. DPAC's Tasmanian Climate Change Office's project Climate Futures for Tasmania projects the impact of changes to Tasmania's climate to 2100 and provides information about these impacts in areas such as agriculture, water catchments, extreme events and future fire danger. Tasmania is expected to experience longer fire seasons and more days at the highest range of fire danger. Given the likely increase of Total Fire Ban days over time, the TFS must be comfortable with its ability to use Total Fire Ban days to mitigate risk.
- 31 No comment.
- 32 Additional information on evacuation plan processes in other states and territories would be useful to inform this issue but given the all hazards approach to emergency management in Tasmania, it may be appropriate to prescribe a requirement that relevant buildings have an all hazards evacuation plan (rather than being fire-specific). It may also be appropriate for organisations other than the TFS to be authorised to approve or endorse evacuation plans and therefore for relevant provisions to be housed in other legislation, and this could relieve the requirements on the TFS. Given that work health and safety legislation already places an onus on building owners to ensure workers can be safely evacuated, it is an operational question for fire and police services in particular to consider the level of oversight they need of those arrangements.

- 33 and 34 If there are gaps in the ability of the TFS to enforce current provisions, daily penalties or a wider range of sentencing options are appropriate considerations. Any additional offences should be considered in light of offences that already exist, for example under the *Police Offences Act 1935* and/or the Criminal Code. Any new offences should be justified by a demonstrated existing failure in the system, or by the magnitude of the risk that would be mitigated by the creation of the new offence.
- 35 Protection from liability when acting in good faith is important for emergency services workers and volunteers. If necessary legal advice should be sought to ensure all roles that need to be protected from liability are covered for relevant activities. Protection should be consistent for staff and volunteers across all relevant services.

Conclusion

Changes to the FS Act should be made in the context of the broader strategic policy, legislative, and governance environment of Tasmania's emergency services, considering all opportunities for alignment or combination with the EM Act and for improved consistency between emergency services and clarity on DPFEM's role.

All changes should move Tasmania further towards a fully implemented all hazards approach to emergencies that allows the services to maximise their operational expertise while also enabling a strategic approach to emergency management policy as a whole.