

Department of Primary Industries, Parks, Water and Environment



Tasmanian
Government

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Mr Michael Harris
Chair, Steering Committee Review of *Fire Service Act 1979*
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Dear Mr Harris

PWS submission to the Review of the *Fire Service Act 1979*

Thank you for the opportunity to comment. The Tasmania Parks and Wildlife Service (PWS) is pleased to provide this submission to the review of the *Fire Service Act 1979*.

The PWS is the managing authority for public land reserved under the *Nature Conservation Act 2002*, and managed under the *National Parks and Reserves Management Act 2002*, and has management responsibility for lands set aside under the *Crown Lands Act 1976*. The PWS is identified in the *Emergency Management Act 2006* and the Tasmanian Emergency Management Plan (the TEMP) as the Response Management Authority for reserved land in Tasmania and has obligations as a land manager under the *Fire Service Act 1979*. As such the PWS is the land manager and has management responsibility and obligations for approximately 51% of the State of Tasmania.

The area of the reserve system has expanded considerably since the inception of the PWS in the early 1970s and the development of the *Fire Service Act 1979*. The estate that PWS is chartered with managing contains environments of World Heritage significance for its natural and cultural values. Our responsibility in fire management therefore extends to protecting the habitat and natural condition of flora and fauna species and to preserving cultural places and landscapes. Our legislative obligations for achieving these objectives are of international significance and the scrutiny being applied to our success has increased markedly in recent years since the 2016 bushfires across much of the Tasmanian Wilderness World Heritage Area.

The PWS is equally responsible for using fire to protect and conserve the environment as it is to protect life and property, noting that our priorities and investment are often driven by the latter. Given the scale and extent of the reserve system, the PWS has many neighbours and stakeholders within and adjacent to its lands that rely on sound, proactive fire management to protect communities and important strategic infrastructure assets, such as power utilities. Consequently, the PWS cannot fulfill its fire management mitigation and suppression responsibilities alone, and it is essential that PWS work with TFS and other land managers to achieve a positive and sustainable approach to bushfire management.

The PWS are pleased that a review into the *Fire Service Act 1979* is being conducted, as it is an excellent opportunity to move towards a contemporary legislation structure that reflects changes in fire risk and the roles, responsibilities and arrangements that have developed in fire management practices. The PWS has comments to make on numerous parts of the Act and these are due in

part to changes in the reserve system, changes in fire risk due to climate change, planning and land management practices, local agreements such as the Inter Agency Fire Management Protocol, national and international agreements such as the Agreement for Interstate Assistance and the Agreement for International Assistance; and development of whole of Government programs such as the Fuel Reduction Program that have not had relevant legislative amendment made to support the program.

Rather than comment on each and every line of enquiry, I offer the following comments regarding issues of specific interest and relevance to the Tasmania Parks and Wildlife Service.

Responses to Questions in Review of the Fire Services Act 1979 Issues Paper

Volunteers

Question 5: Should a statement of commitment to volunteers be included in the new legislation and, if so, who and what should it cover?

The use of volunteers beyond initial attack on campaign bushfires and on land other than private property is essential and it is reasonable to recognise this. The volunteer group is a large group that assists the fire agencies to sustain the attack on campaign bushfires and is a task that cannot be achieved with career firefighters alone.

The use of volunteers in bushfire response extends to SES volunteers who assist the response in non firefighting duties such as: logistics, traffic control, communications (radio), staging area management, rapid damage assessment etc.

Other Fire Agencies

Question 6: Should the legislation provide PWS and forest officers with appropriate legislative authority to undertake fire control work and reflect contemporary Tasmanian practice in relation to Inter-Agency Incident Management?

Responsibilities for fire suppression across the State are reflected in the Inter-Agency Fire Management Protocol 2017-2018 (the Protocol), which was established to define fire related coordination and responsibilities between STT, PWS and TFS. Changes to land tenure have meant that the PWS has responsibility for vegetation fires across Reserved Land and Crown Land (FPPFL), yet PWS personnel do not have legislative authority to access or take action to protect life and property (e.g. close roads). The PWS supports a legislative mechanism that allows its Officers/Employees in charge of fire suppression to have access to, and to deal with, a fire as soon as possible.

The PWS has limited authority to extinguish fire on private property that may threaten the reserve system or to respond as the nearest available agency under the Protocol. Consideration should be given to extending the authority of PWS officers to respond to fire on private property in their own right. PWS staff are currently not indemnified when working on private property and not under control of a TFS officer. The PWS would like this addressed as part of this review so that its firefighters are legally protected as first responders.

The PWS does not have formal access through private property to a large number of parcels of reserved land. This constrains the agency's ability to effectively fulfil its obligations as a land owner/manager under the Act for fire suppression and fire mitigation activities. Consideration should be given to extending the right for PWS to access reserved land through private property to enable the agency to fulfil its firefighting obligations.

The *Fire Services Act 1979* provides powers for officers of the Fire Service on days of total fire ban to enter private property and extinguish fires. PWS officers patrolling areas of the reserve system

across the State are often first on scene and are in a good position to take rapid action on fires on private property restricting overall impact. However, they have no authority under the Act to do so but are currently provided direction to do so through the Protocol.

Section 73 provides power to enter neighbouring land on a day of total fire ban to extinguish a fire within 1.5 kilometres of the land of which he is the owner occupier. The 1.5 kilometre limit is restrictive in the context of a day of total fire ban when a fire can grow and travel a significant distance in a short period of time. Early intervention on fires in these circumstances is critical to the success of suppression operations. Consideration should be given to seeking advice from a panel of skilled fire behaviour analysts to determine a suitable distance for such a provision.

Section 73 (2) provides a mechanism to gain authority to enter land on days other than a day of total fire ban through application to the local brigade chief. Brigade Chiefs can be difficult to contact and a more contemporary arrangement through the District Officer or the Deputy or Regional Chief Officer would be more appropriate and reflect contemporary management arrangements of fire risk between the TFS and the PWS.

Section 47 outlines a role for Police Officers at fires and provides functions and powers. Section 47 (3) provides Police Officers authority for closure of any street, road or lane (a) or regulation of the use of any street, road or lane in the vicinity of a fire (b) through their own volition or at the request of the appropriate fire officer. There are situations where in a remote area, PWS officers are in control of a fire but due to difficulty in communications are not in a position to contact Tasmania Police to effect a road closure in a timely manner. Consideration should be given to enabling authorised PWS officers to close a road or regulate traffic in the vicinity of a fire in certain circumstances, such as a rapidly deteriorating situation, to ensure staff and public safety.

The PWS require a permit from State Growth for closure or management of traffic on roads during planned works such as a fuel reduction burn or related fire mitigation activities. Consideration should be given to providing authorisation to PWS officers, or their contractors, to close roads or manage traffic during a range of fire management activities, with appropriate notification to the required authorities.

PWS officers do not currently have authority under any legislation to conduct fuel reduction burns on private property. Landowner consent may be gained but the constitution of the agency under the *National Parks and Reserves Management Act 2002* does not extend to operating on other land tenure potentially leaving officers or the agency exposed in the occurrence of, or during an adverse event. Consideration should be given to extending authorisation of PWS officers to conduct fuel reduction burning and other mitigation or preparatory activities on private property where it makes operational sense to include such parcels of private property within a reserve area burn with limitations in order to prevent or mitigate the occurrence of an adverse event.

At present there is no limitation to liability of the PWS or its officers under any legislation for damages to property that may occur as a result of fire mitigation activities (escaped burn, spotting or ember shower) unless the burn is covered by a TFS permit issued during the permit period. Consideration should be given to providing reasonable limits to liability for damages caused by fire mitigation activities conducted by PWS.

Role and Function of the State Fire Management Council

The SFMC provides the opportunity to independently review the effectiveness of bushfire management in Tasmania. The SFMC is in a position to determine how fire organisations in the State should work collaboratively to achieve fire management objectives.

Question 15: What is the appropriate role and function of the SFMC and what should the relationship be with the State Fire Commission/TFS?

SFMC decisions should influence the TFS. Depending on the governance arrangements of the TFS, the managing body should have regard to advice from the SFMC.

The SFMC role should include the provision of advice to the Minister that relates to the provision of suitable and adequate resources with which to manage fire from a whole of Government perspective, particularly campaign fires in Tasmania. Advice should cover the spectrum of contemporary emergency management arrangements relating to fire including prevention, preparedness, response and recovery.

Question 16: What is the appropriate membership of the SFMC, and should the membership be prescribed in legislation?

The SFMC membership would ideally comprise fire management organisations and external stakeholders with expertise in, and/or responsibility for, fire management, and ensure provision of relevant and knowledgeable advice.

A revised membership of the SFMC should take into consideration the role of the SFMC. If the function and role of the SFMC remains as is then one PWS delegate would be sufficient. The PWS delegate includes the Director National Parks and Wildlife (Secretary of DPIPWE) and for many years has delegated his role on the SFMC to the General Manager of PWS. One delegate in the current context is considered sufficient.

Question 17: Should the SFMC have the power to appoint permit officers?

The recent review of the fire permit system recommended that the SFMC as an advisory body is not in a position to make appointments of Permit officers and does not hold authority or accountability for these types of operational decisions. The PWS supports this point of view.

Question 18: Are the Fire Management Areas and the composition of the Fire Management Area Committees still appropriate?

The PWS considers these Committees essential to the coordination of fire activities with other organisations and land managers. One clear benefit of having a number of fire management areas is that it provides a greater opportunity for the concerns of local communities to be taken into account. If there are larger fire management areas, opportunities for community input may be reduced, however limited resources and time means that amalgamating some of the fire management areas is worthy of consideration. The mechanisms for changing the boundaries and the number of FMAs should be retained.

Under the current arrangements, members of FMACs may not always possess the required knowledge of risk management when appointed to the Committee. This may extend to limited knowledge or understanding of preparation of a fire protection plan. In some instances, it may also be the case that the person appointed is not directly able to reflect the views of the community (by the nature of their role or position in the community). The abovementioned pose a potential risk that FMAC's will fail to adequately reflect and respond (through protection plans) appropriately. To achieve real community engagement and satisfactory representation, the FMACs require a fit for purpose community engagement model, more appropriate structures, careful selection of candidates, training in risk management, and revision of FMAC areas along with provision of more administrative and technical support.

Question 19: What opportunities exist to streamline Fire Management Area Committees with Emergency Management Committees?

This proposal would potentially involve significant amendment to the *Emergency Management Act 2006*; Tasmanian Emergency Management Plan, Special Emergency Management Plans; in addition to the changes to the *Fire Service Act*. The current *Emergency Management Act* and Emergency Management Committees appear focused on emergency response and recovery, whereas the FMACs are focused on fire prevention. There is some merit in the proposal to amalgamate the two and this would move both pieces of legislation into a more contemporary emergency management framework. However, it would be a significant body of work to develop the legislative changes and to provide the significant additional resources required to constitute and run the relevant committees.

Therefore the PWS suggests caution in broadening the scope of FMAC to include other emergency responses within the current legislative framework and resource constraints. The FMACs fire planning process is still maturing and imposing responsibility for other hazards would be at the expense of effective and efficient fire management and would also require a rethink of the approval of fire protection plans, oversight, technical competence to review and approve; etc.

Legislation that Binds the Crown

Question 22: Should any new legislation bind the Crown?

The PWS sees no issue with new legislation binding the Crown as long as it does not impinge on its capacity to fulfil its reserve management obligations.

Response, Command and Control

Question 23: How should response, command and control arrangements be handled in new legislation?

The roles and responsibilities for emergency management should be updated in the *Fire Service Act 1979* to be consistent with those prescribed in the *Emergency Management Act 2006* (EMA). The Tasmanian Emergency Management Plan (TEMP) details arrangements and responsibilities for the governance and coordination of emergency management as set out in Section 32 (4) (b) of the EMA. The TEMP provides a list of response management authorities for specific hazards on different land tenure. It is understood that in accordance with EMA, the PWS is the RMA for fire on certain classes of reserved land.

The reason for this is that the PWS has statutory responsibilities to manage reserves in accordance with the management objectives listed in Schedule I of the *National Parks and Reserves Management Act 2002* (NPRMA), and to enact any Management Plan applicable to the parcel of reserved land (see s35 NPRMA). Fire management activities, and particularly suppression activities, can have a significant impact on the natural and cultural values of a reserve area and the PWS must preserve the ability to direct what actions occur in order to fulfil its statutory responsibilities.

Section 29 outline the powers and functions of Brigade Chiefs to control fires but does not provide clear advice or direction on control of fire on reserved lands. This can and does lead to situations whereby a Brigade Chief can take suppression action that complies with the *Fire Service Act* but can be contrary to a reserve Management Plan or inconsistent with the reserve management objectives, thereby inadvertently contravening the *National Parks and Reserves Management Act 2002* or the *Aboriginal Heritage Act 1975*.

An example of this is to construct a containment or control line using a bulldozer in a nature reserve without seeking the appropriate approval from the PWS (the managing authority) to do so. Fire suppression methods such as the use of machinery, back burning, retardant drops etc. require authorities under the *National Parks and Reserve Regulations 2009*. These suppression methods have the potential to cause significant long term damage to the natural and cultural values of a reserve. Consideration should be given to highlighting the extent to which the functions and powers of a brigade chief are applicable on reserved land. Alternatively, TFS officers could be required to consult with the PWS prior to undertaking works on reserved land.

Chain of Command

Question 24: Should the Chain of Command be included in legislation with accountabilities included?

The PWS does not support this proposal. Including a chain of command for bushfire control in the legislation in its current form is counter to the principle of having appropriate experience and training rather than seniority. For example, a senior officer in training may have less operational experience and training than a junior operational officer, or an officer from another agency. Appropriate experience and training is preferred over organisational seniority. Adaptability in

incident control arrangements are in line with the recommendations from the Victorian Royal Commission into the Black Saturday Bushfires which the Tasmanian Government has endorsed.

Some inclusion of the chain of command and accountabilities could be included in a broad sense with details included in a policy or operational procedure. This approach would provide the flexibility required to make change as the need arises but provide the overarching principles of command and control arrangements and accountabilities.

Question 25: Should endorsement of Incident Controllers be legislated? Making it clear that all emergency responders present at an incident are in all respects subject to the Incident Controller's direction or should Incident Controllers be endorsed through policy?

Endorsement of incident controllers and other incident management team staff such as operations, planning officers and logistics officers is an area of significant change. Bushfire incidents are classed at three levels with level one being the simplest and level three the most complex. The Victorian Royal Commission into the Black Saturday Bushfires recommended that level three incident controllers be endorsed or accredited in some form.

The Tasmanian Government endorsed the recommendations of the Royal Commission and the Multi Agency Coordinating Group (The MAC Group) developed by the interagency training committee (IATC) to develop an endorsement process for level three incident management staff amongst other terms of reference. This endorsement process has been running successfully for a number of years and includes an assessment of an individual's training, experience and third party reports provided by supervisors at incidents to verify that the individual meets the required competency standards. The individual is assessed by the MAC who then recommend endorsement of the individual by the Chief Officer of the Tasmania Fire Service.

This process is not reflected in the current legislation but provides benefits in ensuring that competent staff are in control of major bushfire incidents, irrespective of the agency or tenure of the fire area. It provides non TFS staff with a level of authority and professional indemnity when working on level 3 bushfires on all land tenures.

The Australasian Fire and Emergency Authorities Council (AFAC) recently developed an Emergency Services Professionalisation Scheme (EMPS) based on the Tasmanian model that seeks to do the same thing but on a consistent national framework. The EMPS is supported by a national database to assist verification of an individual's status when making deployments in support of the Agreements for Interstate and International Assistance (AIAs). There are many benefits to such a system but also a few pitfalls.

The question for Tasmania is no longer in relation to ensuring that all responders are aware of who has control of the incident as this has been addressed through a number of other initiatives such as the cooperative arrangements enshrined in the Interagency Fire Management Protocol and maintained and supervised by the Multi Agency Coordination Group (the MAC). Of more relevance are the benefits to a system such as the EMPS which include authority, accountability, indemnity, consistency and efficiency of process. The pitfalls include, expenses such as; database development and maintenance costs, application and annual renewal fees; competency maintenance issues and the dilemma about how to legally and morally proceed if you cannot provide accredited staff to manage an incident due to resource constraints or succession planning issues.

The PWS support the concept of endorsement of incident management staff within the legislation in a broad sense, but with the actual details and mechanism provided in policy or operational procedure to ensure the flexibility to make change along similar lines as that proposed for the question on the chain of command. The legislation could give power to, or require, the Chief Officer to ensure that an endorsement or accreditation process is in place for incident management staff that provides authority, accountability, indemnity, consistency and efficiency of process.

Salvage Corps and Industry Brigades

Question 27: Should Industry Brigades be recognised in legislation and have the ability to assist in emergency response outside the industry boundaries?

The concept of industry brigades is worthy of consideration for organisations such as local government authorities who are developing both expertise and capability in bushfire management and maybe in a position to make a significant contribution to bushfire in the peri urban environment. However, there is a need to set limitations on powers and what they are authorised to do, guidance expectations, and standards etc.

Fire Hazards

Question 28: Should the Act be amended to specify these activities are exempt from the provisions of the LUPAA?

Dealing with vegetation that may be a fire hazard under some circumstances needs to be considered in light of the other values that the vegetation may provide at other times. Hence the natural values and land management objectives must be taken into consideration rather than focusing just on the fire hazard. LUPAA and the *National Parks and Reserves Management Act 2002* requires management of other values that may be impacted through treatment of a 'fire hazard'. Consequently, the activity should not be exempt from the provisions of LUPAA.

Protection from Liability

Question 35: Is the current protection from liability provisions appropriate?

Given the roles and responsibilities of the PWS in fire suppression activities, the PWS consider that the current provisions for protection from liability should be extended to PWS officers.

In accord with the Interagency Fire Management Protocol, PWS employees are often the first responders to fires that would normally be the responsibility of the TFS. PWS staff are not indemnified for fire suppression work on private property where they initially, may be the only agency responding and are effectively in control of the operation.

The Tasmanian Government has on occasions (e.g. 2013 & 2016) required the assistance of interstate and international firefighting and incident management personnel. Consideration should be given to extension of indemnity from liability to interstate and international personal working in Tasmania under Agreements for Interstate or International Assistance (AIAs), or a memorandum of understanding between land management agencies.

General Comments

Prevention of unwanted fires and the improvement of community fire safety requires a focus on contemporary management elements: prevention, preparedness, response and recovery. This approach should be reflected in the legislation.

Other Issues

Section 56 provides powers to the Commission or the local council on behalf of the Commission for formation of firebreaks that may be in contravention of the *National Parks and Reserves Management Act 2002* or the *Crown Lands Act 1976*. The use of terms such as "any fires" and "any particular land" do not preclude those powers being exercised on reserved land which may contravene the management objectives for that land for which the TFS has no statutory rights and does not reflect contemporary land management arrangements or legislation or other planning controls for building in bushfire prone environments. Consideration should be given to the revision of section 56 to highlight the need to take into account the responsibilities of the managing authority in regards to the management of reserved land.

Should you have any further queries about this matter, please contact Mark Bryce, Director Operations on telephone 61 65 4272 or email Mark.Bryce@parks.tas.gov.au.

Thank you for the opportunity to comment and I look forward to reviewing your final deliberations

Yours sincerely



Jason Jacobi

**GENERAL MANAGER
PARKS AND WILDLIFE SERVICE**

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