Review of the operation of the Emergencies Act 2004

Prepared in accordance with section 203 of the *Emergencies Act 2004*

Emergency Services Agency

Directorate of Justice and Community Safety

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Executive Summary

The *Emergencies Act 2004* (the Act) established the legislative framework for emergency planning, prevention response and recovery operations within the ACT. The Act seeks to protect and preserve life, property and the environment, and to provide for the effective and cohesive management by the emergency services commissioner of the four emergency services and the operational and administrative support providers.

Section 203 of the Act requires that the Minister must review the operation of the Act at five yearly intervals. A report on the outcome of the review must be presented to the Legislative Assembly.

The review covered the operation of the Act over the five years from 2010.

This report summarises the findings of the review, which will be used to inform future development of the Act and improve existing procedures.

The review has been greatly assisted by the information and advice provided by key stakeholders including members of the emergency service, including volunteer members, the ACT Bushfire Council, the ACT Conservation Council, as well as members of the public.

This report's overall conclusion is that the ACT's emergency management arrangements are of high quality and reflect best practice. The ACT model, comprising of a public service agency led by a single Commissioner who provides strategic direction and oversight to the various emergency services within the agency, is increasingly being adopted by other jurisdictions. The Emergency Services Agency (ESA) as constituted by the Act remains the most appropriate model for the Territory.

There are, however, a number of minor areas where the operation of the legislative regime may be improved. In addition, in a small number of areas the Act is not reflective of the current practice of the ESA.

While the individual emergency services are highly effective, and emergency service members regularly display very high levels of commitment, effort and skill, in some respects the ESA still operates within operational 'silos'. Further improvement is required to bring the various emergency services bodies closer together and ensure the ESA operates as a coherent whole. The ESA is implementing its Strategic Reform Agenda (SRA) to realign the ESA so that it operates as one organisation through cohesive operations, collaborative management and a unified executive, delivering quality services to the community while respecting the different operational and enabling services that work within it. The successful delivery of the SRA over the next five years will be critical in achieving that objective.

Background and Review Methodology

The Minister for Police and Emergency Services is required under section 203 of the *Emergencies Act 2004* ('the Act') to review the operation of the Act at five yearly intervals. The Minister has three months to undertake the review. The review covered the operation of the Act over the five years from 2010 when the review requirement in section 203 was introduced.

The review considered the operation of the Act, and primarily whether the Act was appropriately meetings its objectives of:

(a) to protect and preserve life, property and the environment; and

(b) to provide for effective emergency management that—

(i) has regard to the need to prepare for, prevent, respond to and recover from emergencies; and

(ii) takes an all-hazards approach to emergency management; and

(c) to provide for the effective and cohesive management by the Commissioner of the State Emergency Service (SES), the Ambulance Service, Fire and Rescue and the Rural Fire Service (RFS); and

(d) to recognise the value to the community of all emergency service members, including volunteer members, and providers of operational and administrative support to the commissioner and the services.

The review was undertaken by the ESA on behalf of the Minister for Police and Emergency Services.

Consultation

The primary method of engagement on the review was through a five and a half week public consultation period, supported by the publication of a discussion paper on the ESA website.

The release of the discussion paper was advertised on a variety of ACT Government platforms, including ESA social media channels, the ACT Government Time to Talk website, on the Community Noticeboard on www.act.gov.au and on the ACT Government twitter feed and Facebook page.

In addition, key stakeholders were provided with an advance copy of the discussion paper and encouraged to make a submission to the review. A number of meetings were held with many of these stakeholders. These stakeholders were:

- Chief Officers and ESA members;

- The Transport Workers Union (ACT Branch);
- The United Firefighters Union (ACT Branch);
- The Volunteer Brigades Association, representing RFS volunteers;
- RFS Brigade captains;
- The ACT SES Volunteers Association;
- SES Unit commanders (through the Principals Advisory Group);
- The Community Fire Unit Consultation Committee;
- The ACT Bushfire Council;
- The ACT Conservation Council; and
- Relevant ACT Government Directorates.

Nine formal responses were received. In addition, a number of ACT Government directorates and agencies provided feedback on a variety of issues. Specific reference to comments provided are detailed where appropriate in the recommendations for improvement or amendment to the Act section of this paper below.

The Act as enacted

According to its Explanatory Statement, the Act was introduced in response to the *Inquiry into the Operational Response to the January 2003 Bushfires in the ACT* by Ron McLeod AM (the McLeod Report). The McLeod Report found inefficiencies in the then-structure of the ACT's emergency service arrangements that frustrated emergency workers and volunteers. Taking into account the size of the Territory, the Inquiry considered it would be more efficient if all of the ACT emergency services, including assets and personnel, were contained and managed within a new authority set up outside the framework of the ACT Public Service. The Inquiry also indicated that this change would bring the various emergency service bodies closer together and would facilitate a more efficient use of equipment and personnel.

The McLeod Report also proposed that the existing emergency legislation be reviewed and redesigned to reflect contemporary needs, and to provide for different levels of special powers with the capacity for escalation measures to be invoked to assist in the management of emergencies.

The Act established the Emergency Services Authority (as it was then called), as constituted by an Emergency Services Commissioner. The authority as constituted was responsible for the overall strategic direction and management of the four services (the then Fire Brigade, Ambulance Service, RFS and the SES). Day to day performance of functions was to remain under the direct management of the Chief Officers of the services who, as members of the authority's staff, were ultimately responsible to the Commissioner for the performance of functions.

The Act also provided a mechanism for firefighters to become public servants, as it was considered that having all members of the Authority employed under the *Public Sector Management Act 1994* would assist in creating a unified organisation, which would allow for greater mobility between the different emergency services.

The Act also established a new mechanism for declaring a state of alert in addition to the existing powers for declaring a state of emergency. The purpose of a state of alert was to put the community on notice of a developing situation that, it is considered, has the potential for serious impact on the community. In a state of emergency (which includes an impending emergency) the powers of entry, people management, evacuation, etc would apply and would be exercised by the Territory Controller. The Territory Controller would be appointed by the Chief Minister and would be the person considered to be the most appropriate in the particular circumstances.

The Act appointed the Emergency Services Commissioner as chair of the Emergency Management Committee, a role previously held by the Chief Police Officer. The Emergency

Management Committee was a planning body consisting of key stakeholders and was responsible for the Emergency Plan.

The Act also reconstituted the Bushfire Council as an advisory body, noting that the previous role/responsibilities of the Council had failed to reflect numerous legislative and other changes that have occurred since self-government. The majority of the existing statutory functions of the Council were transferred to the Chief Officer (RFS) or the Emergency Services Commissioner.

The Act provided for a bushfire abatement zone that surrounded the urban edge of Canberra. In the bushfire abatement zone land managers were required to prepare an operational plan that accords with the Strategic Bushfire Management Plan. The Act also amended the *Building Act 2004* to provide for areas to be declared bushfire-prone, and to require compliance with the standards for bushfire-prone areas in the Building Code.

The Act continued relatively unamended until 2006, when it was amended as a result of the Strategic and Functional Review of the ACT Public Sector and Services that reviewed public sector structures and finances to identify options to improve efficiency through more effective government structures. The most relevant recommendation of the review for the purposes of the Act was the recommendation to abolish various independent statutory bodies (including the then Emergency Services Authority) and the transfer of their functions back to the Territory. The amendments implemented the Government decision to move to a more streamlined structure for emergency services that provided high quality and responsive services to the community, while reducing overhead costs associated with maintaining a separate statutory authority. The functions of the Emergency Services Authority were integrated with the Department of Justice and Community Safety. An ACT Emergency Services Commissioner was appointed within the Department, and the ESA was created as an administrative unit within the Department, comprising of four emergency services and the supporting service providers. The Emergency Services Commissioner was given responsibility for the overall strategic direction and management of the emergency services while the existing statutory powers of the service chiefs were retained.

The 2010 amendments to the Act

The Act was reviewed in 2009, and was amended via the *Emergencies Amendment Act 2010* to give effect to the recommendations of that review.

The amendments reflected changes at the national level to inter jurisdictional coordination arrangements and an increasing focus on an “all hazards” approach to preparedness, prevention, response and recovery.

Key amendments made by the 2010 Act were:

- redesignating the Territory Controller as the Emergency Controller, more clearly articulating the responsibilities of that position;
- decoupling the activation of the powers of the Emergency Controller from the need to formally declare a State of Emergency. This was done to allow the greater coordination capacity of that position to be utilized in advance of an emergency occurring – e.g. on a day of "catastrophic" bushfire danger rating – but where a formal declaration of a State of Emergency would be inappropriate;
- to transfer the functions of the Emergency Management Committee to the Security and Emergency Management Senior Officials Group (SEMSOG). This emphasised the role of Director-General's collectively supporting the Government and an Emergency Controller in managing the response to an emergency and ensuring a coordinated whole of government effort; and
- to require agencies to address preparedness, prevention, response and recovery under an all-hazards approach.

Subsequent amendments to the Act

A number of amendments have been made to the Act since the Act was last reviewed. The substantive amendments are as follows:

Emergencies (Commissioner Directions) Amendment Act 2012

The *Emergencies (Commissioners Directions) Act 2012* provided the Emergency Services Commissioner with the express authority to give directions to the chief officers of the emergency services.

The need for this power reflected contemporary findings and lessons learned, including those from the Victorian Bushfires Royal Commission and the initial observations of the report by Neil Comrie into the 2010-2011 floods in Victoria.

The existing functions of the Commissioner provided for the overall strategic direction and management of the emergency services and to ensure each agency is prepared for emergencies. Then section 35 (3) of the Act, provided that a direction by a Chief Officer "must, if practicable, be in accordance with any direction of the Commissioner and the commissioner's guidelines", however no express provisions were established for the Commissioner to give direction to Chief Officers during an emergency event (as defined).

While commissioners guidelines may be prepared under the Act to make provision for the operation of the emergency services, they did not necessarily provide for effective and timely decision making by the Commissioner relating to the joint operations of services during specific emergency situations that allowed consideration of the range of circumstances that may arise requiring immediate direction to be provided.

The Amendment Act provided for the Commissioner to direct a Chief Officer to undertake response or recovery operations in relation to the emergency. This section only applied to an emergency other than one for which an emergency controller is appointed, and the Commissioner may not direct the Chief Officer to undertake an operation in a particular way.

Justice and Community Safety Legislation Amendment Act 2012

This Amendment Act implemented the Government's November 2011 decision to rename the ACT Fire Brigade to ACT Fire and Rescue (ACTF&R), to better reflect the diverse range of functions the organisation provides to the ACT community, such as hazmat and rescue.

Justice and Community Safety Legislation Amendment Act 2012 (No 2)

This Amendment Act primarily addressed inconsistencies between the Act and the ACT's environmental protection legislation. Two complementary amendments were made to both the Act and the *Environment Protection Act 1997* to clarify the concurrent requirements of each act with regard to hazard reduction or burning off. Burning off is traditionally carried out as a method of reducing the amount of flammable material in an area, with a view to commensurately reducing the risk of bushfire. While this is an important activity to manage the dangers of bushfire, there are important environmental safety and emergency management considerations that must be taken into account when conducting such an activity. The amendments ensured that, due to the different considerations that need to be taken into account under each regime, in certain circumstances those seeking to engage in burning off would have to obtain approval or a permit under the Act as well as an environmental approval under the Environment Protection Act.

Another amendment was to clarify that a person may light, maintain or use a fire in the open air on residential land for heating or cooking food or heating liquid, provided that the person has adequate safety measures in place. Previously, the Act could be interpreted to make this activity an offence.

The final amendment related to the Chief Minister's powers of direction over the emergency controller where a state of emergency has been declared. The amendment addressed an unintended omission from the *Emergencies Amendment Act 2010* and provided that the Chief Minister can direct the emergency controller as to the use or non-use of their powers where a state of emergency has been declared. The amendment ensured that the Chief Minister had similar powers to direct an emergency controller when both a state of emergency had been declared and when there was no declared state of emergency.

Emergencies Amendment Act 2014

This Amendment Act made a number of amendments, including:

- clarifying the Commissioner's functions, including that the Commissioner is responsible for a wide range of operational and administrative support services in the Emergency Services Agency that support the function of the emergency services;
- clarifying the powers of the Commissioner when providing direction to Chief Officers to coordinate response and recovery activities in times of an emergency;
- providing the power for Chief Officers and an Emergency Controller to close premises in emergencies and to obtain information;
- resolving potential inconsistencies between the strategic bushfire management plan and plans of management for public land;
- delivering legislative improvements to improve bushfire planning requirements;
- improving preparedness and response to emergencies involving essential services by clarifying the powers available to an Emergency Controller; and
- increasing the penalty for discarding a lit cigarette or other item that is lit or not fully extinguished, reflecting the bushfire danger posed by these items.

ACT Auditor-General's Office Performance Audit Report into Bushfire Preparedness

On 26 July 2013 the ACT Auditor-General's Office released its performance audit into bushfire preparedness. The objective of this performance audit was to provide an independent opinion to the ACT Legislative Assembly on the effectiveness of the ACT Government's approach to bushfire preparedness. The Report made 24 recommendations, of which the Government accepted all either wholly or in part.

The audit report found that the ACT Government had a robust governance and planning framework for its bushfire management activities, but there was room for improvement in relation to the strategic and accountability indicators for bushfire management activities.

The audit report found that while the strategic bushfire management plan and supporting plans provided a sound basis for bushfire management in the ACT and were an improvement on what was in place prior to the 2003 bushfires, there were shortcomings in the plans and their supporting processes which impaired their effectiveness. The preparation of these plans generally met legislative and other governance requirements.

The audit report considered that requirements for and expectations on the ACT rural community with respect to bushfire preparedness were unclear. It also found that there is an opportunity to further engage with groups in the ACT's urban community, including for example members of the community living or working in Ember Zones, who would benefit from more effective information campaigns.

At the time of writing a number of recommendations have been implemented, with the remainder being progressed. There was one specific recommendation that proposed an

amendment to the Act, which would allow Emergency Services Agency to maintain information on privately-owned assets of public interest that are vulnerable to bushfire without the need to include this information in the Strategic Bushfire Management Plan. This amendment was made in the *Emergencies Amendment Act 2014*.

The operation of the Act in the last five years

ACT emergency services have responded to 268,226 incidents in the last five financial years.

There have been no instances in the last five years where an emergency controller was appointed, and neither a state of alert nor a state of emergency has been declared during the last five years.

Incidents that necessitated a significant response and deployment of ESA resources included:

New Acton Fire

On 23 June 2011, a fire caused extensive damage to heritage listed buildings in the New Acton precinct. One building suffered extensive damage, with neighbouring buildings, including the Diamont Hotel, suffering associated smoke damage. No persons were injured or killed in the fire.

Fire at Energy Services lnvironmental premises, Mitchell

The premises of Energy Services lnvironmental in Dacre Street, Mitchell were destroyed by a fire between 15-17 September 2011. A highly visible smoke plume was generated by the fire. Due to the potential toxic hazard associated with the smoke plume, road blocks were placed and surrounding residents were either evacuated or warned to evacuate or remain indoors with windows and doors closed to minimize exposure. The fire caused considerable disruption to northern Canberra, with school and road closures, as well the economic disruption caused by a large portion of Mitchell being closed for several days during and after the fire.

The fire also saw the first operational use of the Emergency Alert (EA) telephony based warning system in an urban fire event nationally. EA is designed to send messages to the landline and mobile telephones of residents in a defined geographic area. Criticism was levelled at the spelling errors in both messages issued via SMS, which was a result of phonetic spellings required for the voice message being inadvertently copied into SMS messages. This led to uncertainty regarding the origin and authenticity of the messages for some recipients. The delivery of the messages also did not occur within the expected 30 minute period, as the Emergency Alert system was physically unable to dial the significant number of telephone numbers within the response area within that short time period. In response to the lessons learnt from this event, the Commissioner issued new guidelines for the use of the Emergency Alert system in 2012.

Storm events, February/March 2012

The ACT experienced prolonged extreme weather conditions resulting in widespread flooding in late February/early March 2012. These severe weather conditions led to a very high number of calls from the Canberra community for assistance, with the SES responding to 978 requests for assistance due to storm damage and flooding. Assistance provided to the community included removal of storm debris, sandbagging of areas under threat of flood, temporary repair of roofs and pumping floodwaters out of buildings and homes.

Storm event, 26 January 2013

The ACTSES, supported by ACT Fire and Rescue (ACTF&R), ACT Rural Fire Service (RFS), and the Territory and Municipal Services (TAMS) Directorate responded to 688 requests for assistance. These were attended to by 2.30pm on 29 January 2013. The jobs tasked to the crews included trees on roofs, damage to parked vehicles from fallen branches and minor flooding in and around homes.

Sydney Building Fire, 17 February 2014

The Sydney Building was significantly damaged by a fire which started following an explosion in a ground floor Japanese restaurant around 9.45 am on 17 February 2014. While the fire was quickly brought under control, it was not extinguished until early morning the following day. At the peak of the emergency there were seven fire pumpers on scene along with support vehicles and approximately 50 ACTF&R officers. ACT Ambulance Service and SES crews also attended in support.

The fire resulted in the closure of several roads and the Civic Bus Interchange, causing bus route diversions and major disruption to ACTION public transport services. The fire also caused significant economic disruption for surrounding businesses, with approximately 40 businesses evacuated following the fire. Rebuilding work is continuing on the building.

The powers of the ACTF&R Chief Officer were used after the fire was extinguished to secure the premises until appropriate security fencing could be erected to allow roof tiles that were dangerously placed after the fire, to be removed.

February 2014 storm event

On February 19 2014, severe storms rocked through Canberra bringing hail, thunder, heavy rain, gale force winds and flash flooding. 372 requests for assistance received on 19 and 20 February 2014 for a significant storm event.

Interstate and overseas support

In addition, ACTF&R, RFS, SES and ESA Mapping and Incident Management officers and volunteers have provided support to interstate and overseas emergency response operations on numerous occasions. This support for other jurisdictions is a critical feature

of emergency management practice across Australia to assist in the response to severe emergencies that may overwhelm the capacity of any one jurisdiction to effectively manage. Significant events where assistance was provided include the SE Queensland floods, the Hazelwood coal mine fire and the Blue Mountains bushfires.

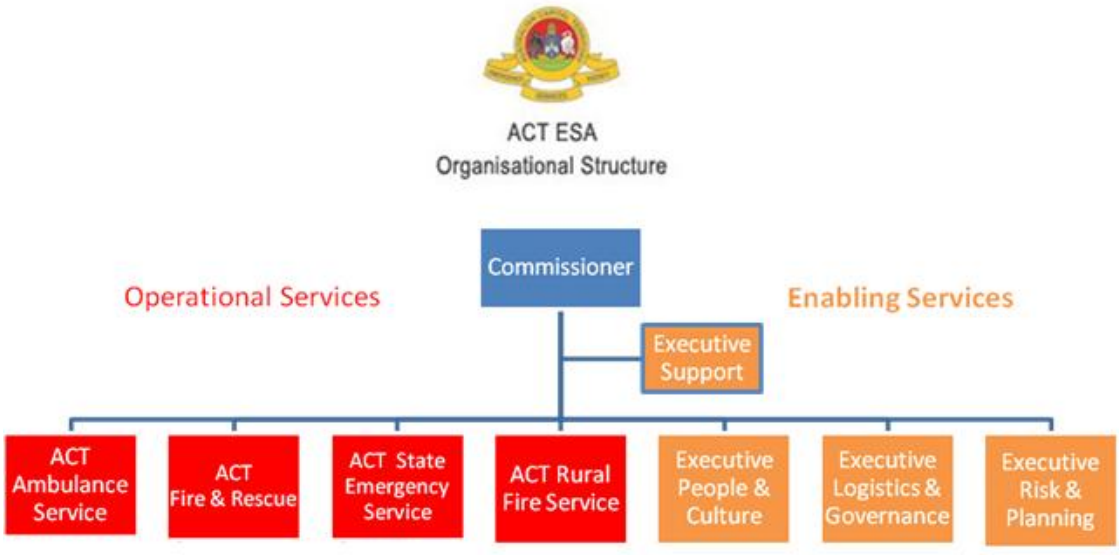
Is the current emergency management framework still the most appropriate for the ACT?

The Act establishes the position of Emergency Services Commissioner, a public servant who is responsible for the overall strategic direction and management of the emergency services and operational and administrative support to the services. The Commissioner is supported with this responsibility by four Chief Officers – the Chief Officer (Ambulance Service), the Chief Officer (ACTF&R), the Chief Officer (RFS) and the Chief Officer (SES). These Chief Officers are responsible for the general management and control of their respective services.

This current model dates back to 2006, when the then ACT Government implemented a more streamlined structure for emergency services that provided high quality and responsive services to the community, while reducing overhead costs associated with maintaining a separate statutory authority (the then Emergency Services Authority).

As part of those changes, the Emergency Services Authority was abolished, with its functions being assumed within the ACT Public Service by the Department of Justice and Community Safety (now referred to as the Justice and Community Safety Directorate).

The new organisational structure of the Emergency Services Agency is shown below. This reflects the organisational changes being implemented as part of the ESA's SRA as outlined on page 19.



While there is no consistent organisational structure approach to the provision of emergency services within Australia, the ACT model – comprising of a public service agency led by a single Commissioner who provides strategic direction and oversight to the various emergency services within the agency – is increasingly being adopted by other jurisdictions.

In Western Australia, the Fire and Emergency Services Authority, established in 1999, was abolished in November 2012, and replaced by the Department of Fire and Emergency Services. A key rationale for the change was the finding by former Australian Federal Police Commissioner Mick Keelty in *A Shared Responsiblity: The Report of the Perth Hills Bushfire February 2011* that the State's emergency management and fire and emergency service response needed to be directly accountable to Government and that a departmental structure was the best way to achieve this. The Department is overseen by the Fire and Emergency Services Commissioner who is responsible for the organisation's strategic direction, operations and functions. Operational response is provided by the various emergency services within the Department, who have retained their identity and brand.

An ongoing feature of reform of Western Australia's emergency management arrangement is the review of that State's emergency management legislation. Western Australia currently has a number of Acts that govern its emergency management arrangements. The Western Australian Government is currently developing a single comprehensive emergency services Act which will improve community safety and better support all emergency services in the future. This was one of the rationales for the introduction of the *Emergencies Act 2004* into the ACT.

The Victorian Government commenced a number of reviews and commissions following the 2009 Black Saturday bushfires. These culminated in the Victorian Government's Emergency Management Reform White Paper (the White Paper) which proposed wide ranging reform of the sector across all levels of government. Reform to the State's emergency management legislation was a key outcome for that White Paper. The amendments came into operation on 1 July 2014.

Among the reforms made by that Act was the establishment of Emergency Management Victoria as the single, overarching body responsible for whole of government policy for emergency management in Victoria, a task previously distributed across a number of agencies and departments. The Act also created an Emergency Management Commissioner, who has overall responsibility for coordination before, during and after major emergencies including management of consequences of an emergency. Emergency services agencies provide on-the-ground emergency response services to the Victorian community.

Queensland has undertaken a number of reviews that have impacted on that State's emergency management framework. Following severe flooding in December 2010/January 2011, the Queensland Floods Commission of Inquiry was commissioned to examine the flood. The final report contains 177 recommendations directed at a broad range of matters related to the floods, including: floodplain management, planning and building issues, the performance of private insurers, the impact of floods on operational and abandoned mines, the emergency response to the floods and dam management. Legislative recommendations were enacted by the Disaster Readiness Amendment Act 2011.

In 2012, the Government undertook the Malone Review into Rural Fire Services in Queensland. That review recommended that an operational organisation be established comprising of three autonomous units – a. Urban Fire Service; b. Rural Fire Service; and c. the State Emergency Service. Each of the three units should be led by a Deputy Chief Officer, each reporting to a single Chief Officer. The review also recommended that a separate area of responsibility be established to provide independent oversight and monitor disaster readiness across all hazards and that a Ministerial Advisory Council be established to inform the Minister of matters relating to RFS and SES volunteers.

In 2013 former Australian Federal Police Commissioner Mick Keelty delivered his report into the Police and Emergency Services. Among the recommendations of that report were transferring the Queensland Ambulance Service to Queensland Health, revamping the Department of Community Safety and integrating it with the Queensland Fire and Rescue Fire Service, renaming the new body the Department of Fire and Emergency Services, and creating a new position of Inspector General, Emergency Management to ensure emergency and disaster responses are better co-ordinated. Agencies within the new Department such as the State Emergency Service would retain their branding and identity.

A number of the report's recommendations are yet to be implemented, although the position of Inspector General, Emergency Management was created in December 2013 and the Queensland Fire and Emergency Services (QFES) was established on 1 November 2013. The QFES incorporates parts of two divisions of the former Department of Community Safety - the Queensland Fire and Rescue Service (QFRS) and Emergency Management Queensland (EMQ). QFES is the primary provider of fire and rescue, emergency management and disaster mitigation programs and services throughout Queensland and includes Fire and Rescue, Emergency Management, Rural Fire Service Queensland and the State Emergency Service.

In 2013 South Australia commissioned a review of its *Fire and Emergency Services Act 2005*. When enacted, that Act brought together the Metropolitan Fire Service, the Country Fire Service (CFS) and the State Emergency Service under a single Act. Each of these three emergency service organisations retained their operational autonomy, under the strategic direction and control of the South Australian Fire and Emergency Services Commission (SAFECOM) Board. The SAFECOM Board is composed of the Chief Executive, Chiefs of the emergency services as well as volunteer, employee and community representatives. The 2013 Review noted that the Act had previously been reviewed in 2009. The 2009 review found that the emergency services demonstrated a tendency to remain as organisational 'silos' and that the SAFECOM Board arrangement, with three stakeholders having specific organisational interests, was not likely to achieve a truly sector-wide model of governance. It recommended the transfer of accountability for policy, strategy and resource allocation for the emergency services sector from the SAFECOM Board to a single authoritative position.

While that recommendation was not adopted by the South Australian Parliament, the 2013 review again found that the Board structure fostered paralysis on issues such as resource allocation across services and geographical boundaries. Accordingly the 2013 Review recommended that the three emergency services be incorporated into a departmental structure under the direction of a Chief Executive. The services would operate as separate units under the ultimate direction of the CEO. The Review noted that this reflected interstate developments over the past two decades, which established this arrangement as the benchmark for the governance of emergency services in Australia.

The South Australian Government initially supported this recommendation, which the Minister for Emergency Services stated would establish 'a single agency delivering different frontline services, reducing red tape and back office duplication, balancing community facing services according to community risk, and reallocating freed-up resources to bolster highest priority areas'. In response to community concern, particularly from CFS volunteers who feared the CFS's independence from the Metropolitan Fire Brigade would be lost, in May 2015 the Minister announced that the proposed reforms would not proceed at this time.

ACT Ambulance Service

An important area where the ACT emergency management framework differs from the majority of other jurisdictions is in respect of the ACT Ambulance Service (ACTAS). The ACT is the only Australian jurisdiction where the ambulance service is part of the same administrative entity that undertakes fire and rescue services. In the majority of jurisdictions the ambulance service is part of that State's Health Department, although in Western Australia and the Northern Territory ambulance services are provided under contract by the St John Ambulance Service.

Until recently, the Queensland Ambulance Service was a division of the Department of Community Safety, which, in addition to ambulance services, was responsible for providing fire and rescue services. On 1 October 2013 the Queensland Ambulance service was made an administrative unit of the Department of Health, retained its identity and brand. It was considered that moving the Queensland Ambulance Service out of the Department of Community Safety portfolio of agencies would not better align it with its core function as an emergency health service, but it will also help capitalise on government reforms designed to improve access to Emergency Departments. It was also considered that the move may assist in the development of other triage and pre-emergency department options in the future.

Two private sector providers of event and/or non-emergency patient transport provided submissions to the public consultation process stating that the ACTAS would be best located as a stand-alone unit within the Health Directorate. This was argued on the basis that this would be consistent with the approach adopted in other jurisdictions, and it would enable funding and revenue streams to be contained within the Health Portfolio, delivering a better

funding model. The submissions also argued that the current financial cross-fertilisation arrangements between the four emergency services blur budget control.

These submissions are not supported. It is considered that the current situation, where the ACTAS is part of the same administrative structure as the other emergency services – that is, within the ESA, remains the most appropriate for the ACT. This was considered as part of the expenditure review conducted within the ESA in 2014. Locating the Ambulance Service alongside the other emergency services facilitates an effective and coordinated approach to emergency preparedness and response. It delivers economies of scale for training and support functions common across all emergency services, which is particularly important in a small jurisdiction such as the ACT. It also supports the operation of the ESA's communications centre (COMCEN), which responds to all Triple Zero (000) emergency calls in the Territory. For these reasons it is considered that the current model best delivers the seamless delivery of emergency services to the people of the ACT.

It is recognised that, notwithstanding that the ACTAS is best situated within the ESA, there needs to be strong linkages and a close working relationship between ACTAS and ACT Health. The 2014 report by independent consultant Grant Lennox[1] assessed the interface between the two organisations. It found that the ACTAS has worked with ACT Health at a number of levels to strengthen existing interfaces and implement additional strategies to the ultimate benefit of the ACT community and overall government service provision in the ACT. The report also found evidence of very positive working arrangements between the two bodies in all key areas.

The submissions from private sector ambulance providers also called for ambulance services to be open to competition from private sector operators, particularly for non-emergency patient transport. The Commonwealth Government's Competition Policy Review (commonly referred to as the Harper Review), released in March 2015, examined competition law policy and the broader completion framework. The Harper Review nominated patient transport as an area of ongoing neutrality concern, although did not make any specific recommendations for change.

The ACT Government considers that while there is not a strong case for opening up the provision of non-emergency patient transport services to private operators within the ACT at this time, the ESA, as part of the SRA, will examine the current service delivery model for non-emergency patient transport, an option of which may be outsourcing or introducing contestability for non-emergency patient transport. Any such review would require a robust and thorough cost benefit analysis and community impact assessment to inform Government decision-making.

[1] Available at http://cdn.esa.act.gov.au/wp-content/uploads/Lennox-14-Final-July-182014.pdf

The Strategic Reform Agenda

The ESA as constituted by the Act remains the most appropriate model for the Territory. It ensures a seamless response across agencies, across services, to crises and problems that face our community. The ESA provides emergency response services to the Territory that are among the best in Australia when measured by response times and capabilities provided. The current model respects and values the identity and history of the four emergency services, whilst delivering efficiencies and economies of scale in support services such as training and logistics. The 2011 Hawke review endorsed the integration of all four emergency services in the ESA, which delivered economies of sales and close cohesion and alignment of effort in preparing for, and responding to emergencies in the ACT. The single agency structure continues to provide significant advantages and benefits to the community. These benefits occur at many levels, from having single-point ministerial accountability for emergency services, through to the invaluable cooperation and coordination of operational staff in communities during emergencies and disasters.

While the current ESA model is considered the most appropriate for the ACT, in many respects the ESA still operates within operational 'silos'. Further improvement is required to bring the various emergency services bodies closer together and ensure the ESA operates as a coherent whole.

The recently announced SRA within the ESA will seek to remove any remaining 'silo' mentality by realigning the ESA so that it operates as one organisation, delivering services to the community as one entity respecting the operational and support services that work underneath it. The objective of the SRA is to ensure the ESA continues to provide the highest standards of emergency services to the community through cohesive operations, a collaborative management team and a unified executive.

The SRA has identified five key priority areas for the period to 2020:

- A re-aligned ESA (Structure);
- A new Strategic and Corporate Plan (Strategy);
- Setting the highest standards in service delivery (Performance);
- Investment in leadership and people management (People); and
- Rigorous decision making (Accountability).

While many of the activities and strategies that will support each priority are still being developed or finalised, the ESA has already moved to realign its executive structure. The re-profiling of two executive functions to be responsible for people and culture, and risk and planning, will greatly assist with cross-ESA planning and delivery of these important support functions. This executive restructure has occured without any loss of operational capacity of the emergency services.

Recommendations for improvement or amendment to the Act

The review has found that the Act establishes the most effective framework for emergency planning and response in the ACT. The ESA's policy of incremental, continuous improvement in relation to its emergency management legislation, process and practices, lessons learnt from planning and desktop exercises, developments in other jurisdictions, or ACT Auditor-General's recommendations on bushfire preparedness, means that the Act continues to effectively support the provision of high quality emergency services to the Territory.

Nonetheless, a number of improvements or amendments have been identified via this review to further improve the operation of the Act. Some of these proposals will require further exploration and consultation with stakeholders. These issues identified are outlined below.

The regulation of total fire ban days

Section 114 of the Act allows the ESA Commissioner to declare a total fire ban for some or all of the ACT, and for a stated period of time. The ESA Commissioner may only declare a total fire ban if satisfied that severe weather conditions conducive to the spread of fire exist or are likely, or because of the number, nature of location of any existing fires, it is appropriate to declare a total fire ban. Total fire bans are declared when conditions are such that controlling the spread of a bushfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire.

A total fire ban was declared on 16 separate occasions since the commencement of the 2009/10 bushfire season. A breakdown for each bush fire season is set out below. Each total fire ban declaration was issued for a single day.

Bushfire season	Number of total fire ban declarations
2009/10	1
2010/11	1
2011/12	0
2012/13	6
2013/14	6
2014/15	2

Given the significant difficulty in controlling a fire during a total fire ban period, section 116 of the Act makes it an offence to light a fire in the open air during a total fire ban period. A person commits the offence if the person lights, maintains or uses a fire, or uses fireworks,

in the open air in an area during a total fire ban period. The ESA Commissioner may declare a fire to be an exempt fire under section 117 if:

- the fire is maintained for ceremonial or commemorative purposes;
- the fire is less than $1m^3$ in volume; the area for at least 3m around the fire is clear of flammable material; and
- reasonable steps have been taken to prevent the fire escaping.

Pursuant to section 118, the ESA Commissioner also has the power to issue a fire permit allowing a person to light, maintain or use a fire, or use fireworks, during a total fire ban.

While the Act makes it an offence to light a fire, it does not specifically address activities that do not themselves necessarily involve the use of fire, but which may cause a fire to ignite when undertaken in an open area. This is in contrast to the position adopted in most other jurisdictions.

In Western Australia it is an offence for a person to 'carry out an activity in the open air that causes, or is likely to cause, a fire'[2].

South Australia restricts the use of certain prescribed engines, vehicles or appliances during its fire danger season, and imposes restrictions on their use when those engines, vehicles or appliances are permitted to be used. It also prohibits the use of electric welders, mechanical cutting tools, gas appliances, angle grinders or other mechanical grinding tools from being used on total fire ban days. South Australia also imposes conditions on the use of devices such as bee smokers, fumigating rabbits or scare birds[3].

The Tasmanian legislation regarding total fire bans allows a declaration giving effect to a total fire ban to prohibit or restrict the use of specified machines or apparatus in the open air during the total fire ban period[4]. Similarly, Victoria prescribes certain activities as 'high fire risk activities' and provides that a person can only conduct those activities during a fire danger period under certain conditions[5]. These high fire risk activities include welding, gas cutting, soldering, grinding, charring, and the use of power operated abrasive cutting discs[6].

Noting the risks posed by undertaking certain high-risk activities during a total fire ban period, it is appropriate that these activities be restricted during these high fire danger periods. The Victorian approach of prescribing certain activities as high-risk activities that must not be undertaken is preferred to the Western Australian approach of making it an offence to carry out activities in the open air that cause, or is likely to cause, a fire. Prescribing certain high risk activities as prohibited assists enforcement efforts and

[2] Section 22B (2) (b), *Bush Fires Act 1954 (WA)*
[3] Section 89, *Fire and Emergency Services Act 2005 (SA)* and Part 3, division 4, subdivision 3, *Fire and Emergency Services Regulations 2005 (SA)*
[4] Section 70 (2) (b), *Fire Service Act 1979 (Tas)*
[5] section 39E, *Country Fire Authority Act 1958 (Vic)*
[6] section 111, *Country Fire Authority Regulations 2014 (Vic)*

increases the likelihood of a successful prosecution. It also assists community education efforts and provides greater certainty for the public as to what is and is not permitted to be undertaken on total fire ban days. The activities that have been assessed to be of the highest risk for the ACT are: welding, grinding, soldering, gas cutting and any other work that is likely to generate sparks.

These activities have regularly been responsible for grass and bush fires igniting in the ACT.

Given that there has been an average of three total fire ban days declared each year over the last five years, a prohibition on undertaking these activities is not expected to significantly impact on a person or business, particularly noting the public benefit from avoiding bushfires igniting in the first place.

There are a number of exemptions available in the Act that would allow a person to obtain permission to light a fire during a total fire ban. This includes the ESA Commissioner declaring the fire an exempt fire, or issuing a fire permit allowing the fire to be lit. These exemptions would apply to the new offence. This would provide sufficient flexibility, and allow activities that can be undertaken in a safe and appropriate manner can continue to be undertaken with appropriate permission.

The ACT Bushfire Council submitted that any changes should draw upon existing measures from other states. The proposed recommendation is consistent with this submission. The Council also submitted that any changes should ensure that sufficient specificity is provided on which activities are permitted during a total fire ban, to ensure the community is aware of what is and is not permitted to be undertaken during a total fire ban.

Recommendation

That an offence be created of undertaking a high risk activity in the open during a total fire ban period. High-risk activity should be defined to include welding, grinding, soldering, gas cutting or any other work that is likely to generate sparks. The amendments should include the power to define other high risk activities in the Emergencies Regulations, to allow additional activities to be more easily added to the definition as appropriate in the future.

The maximum penalty for the new offence of undertaking a high risk activity in the open during a total fire ban should match the revised maximum penalty for the offence in section 116 of lighting a fire during a total fire ban.

Similar to the existing offence of lighting a fire during a total fire ban, the element of the offence that the activity occurred during a total fire ban should be strict liability. This would mean that a person charged with the offence could not avoid sanction by claiming that they did not know a total fire ban had been declared.

Adequacy of penalties for bushfire-related offences

There are a number of offences in the Act relating to the lighting of bushfires.

Section 116 of the Act provides that a person commits an offence if the person lights, maintains or uses a fire, or uses fireworks, in the open air in an area, and a total fire ban is in force for the area. The maximum penalty for the offence is 50 penalty units (currently $7,500 for an offence committed by an individual). Strict liability applies as to whether a total fire ban is an offence – that is, it is irrelevant whether a person charged with the offence knew that a total fire ban was in force.

Section 120 provides that an owner or manager of land in a rural area commits an offence if they fail to take all reasonable steps to prevent and inhibit the outbreak and spread of fire on the land, and to protect property from fire on the land or spreading from the land. This offence is a strict liability offence, and has a maximum penalty of 100 penalty units if the offence is committed in the bushfire season, and 50 penalty units at other times.

An owner or occupier of rural land commits an offence against section 121 if they become aware of an outbreak of uncontrolled fire on the land, or on unleased Commonwealth or territory land adjacent to their land, and fails to immediately take all reasonable steps to tell the emergency services of the outbreak, and if the outbreak is on their land and not beyond the person's capacity to extinguish the fire, take all reasonable steps to extinguish it. This is a strict liability offence, and has a maximum penalty of 100 penalty units if the offence is committed in the bushfire season, and 50 penalty units at other times.

Section 125 provides that a person commits an offence if the person intentionally lights, maintains or uses a fire in the open, or engages in conduct reckless about whether the conduct would causes afire to be lit or maintained in the open air, or flammable material to be burnt, on any land, and the lighting or burning is not permitted under the Act. The maximum penalty for the offence is 50 penalty units, imprisonment for 6 months or both, or if the offence is committed during the bushfire season, the maximum penalty increases to 100 penalty units, imprisonment for one year or both.

Section 126 provides that a person commits an offence if the person lights, maintains or uses a fire in the open air on any land, and leaves the fire (whether temporarily or not) without extinguishing it (unless the person leaves the fire under the control of a responsible adult). This is a strict liability offence and has a maximum penalty of 100 penalty units if the offence is committed in the bushfire season, and 50 penalty units at other times.

While the offence in section 405 of the *Criminal Code 2002* (causing bushfires) is available where a person has intentionally or recklessly caused a fire and is reckless about the spread of the fire, (maximum penalty of 1,500 penalty units ($225,000), imprisonment for 15 years or both), it would not apply where the necessary fault elements are missing, or where the fire has been deemed not to have sufficiently spread (whether through luck or a prompt response by the emergency services).

The penalties for these offences are summarised below for ease of comparison:

Offence	**Maximum Penalty (if committed in bushfire season)**	**Maximum Penalty (if committed other than during the bushfire season)**
Section 116 Lighting fire during total fire ban	50 penalty units ($7,500)	50 penalty units ($7,500)
Section 120 Rural land owner/manager fail to prevent/inhibit outbreak and spread of fire	100 penalty units ($15,000)	50 penalty units ($7,500)
Section 121 Rural land owner/occupier fails to alert emergency services about fire/take reasonable steps to extinguish fire	100 penalty units ($15,000)	50 penalty units ($7,500)
Section 125 Lighting unauthorised fire	100 penalty units ($15,000), imprisonment for 1 year or both	50 penalty units ($7,500), imprisonment for 6 months or both.
Section 126 Leaving fire without extinguishing it	100 penalty units ($15,000)	50 penalty units ($7,500)

The existing maximum penalty for the offences in sections 120, 121, 125 and 126 are balanced and proportionate. The offence for actually lighting a fire appropriately carries the highest maximum penalty, including the option of imprisonment for six or 12 months, depending on whether the offence was committed during the bushfire season or not.

The maximum penalties for these offences contrast with the maximum penalty for the offence in section 166 of lighting a fire during a total fire ban. It is inconsistent that the offence which potentially carries the greatest risk – that of lighting a fire during a total fire ban – has the lowest penalty of all these fire-related penalties. Given that the risk of lighting a fire during a total fire ban may be considerably higher than lighting a fire during other periods, it is not readily apparent why the penalty for lighting a fire during a total fire ban is the same as lighting an unauthorised fire outside the bushfire season.

This approach is also inconsistent with the approach adopted in other jurisdictions, where the seriousness of lighting a fire during a total fire ban is reflected in the penalty being higher than for other fire-related offences not committed during a total fire ban. For instance, in NSW section 100 of the *Rural Fires Act 1997* provides that a person commits an offence if they set fire to the land or property of another person or the State. The maximum

penalty for the offence is 1,000 penalty units ($110,000) or imprisonment for five years, or both. If the offence is committed during a total fire ban period, the maximum penalty increases to 1,200 penalty units ($132,000) or imprisonment for seven years, or both.

In Victoria, the penalty for the offence of lighting a fire in the open air in the country area of Victoria during a fire danger period (section 37, *Country Fire Authority Act 1958*) is 120 penalty units ($18,200.40) or imprisonment for 12 months or both. Section 40 of that Act provides that a person who lights a fire in the open during a total fire ban commits an offence, punishable by a maximum of 240 penalty units ($36,400.80) or imprisonment for two years or both –doubled the penalty where the fire is light other than during a total fire ban.

In South Australia, the penalty for lighting or maintaining a fire in the open air during the bushfire season is $5,000 or imprisonment for one year (the penalty doubles for a second or subsequent offence) (section 79, *Fire and Emergency Services Act 2005*). Like Victoria, the penalty for lighting or maintaining a fire in the open air during a total fire ban is doubled – $10,000 or imprisonment for two years (the penalty also doubles for a second or subsequent offence) (section 80, *Fire and Emergency Services Act 2005*). In Western Australia, the penalty for lighting a fire during a total fire ban period, as opposed to during a restricted burning time (bushfire season), increases from $10,000 to $25,000, although the option of a term of imprisonment of 12 months remains available to both offences (sections 17 and 22B, *Bush Fires Act 1954*).

The maximum penalty the equivalent offence to section 116 (lighting fire during total fire ban) among various jurisdictions is shown below for ease of comparison:

Jurisdiction	**Maximum Penalty**
ACT	50 penalty units ($7,500)
NSW	1,200 penalty units ($132,000) or imprisonment for 7 years, or both
VIC	240 penalty units ($36,400.80) or imprisonment for 2 years or both
SA	$10,000 or imprisonment for 2 years (the maximum penalty is doubled for a second or subsequent offence)
WA	$25,000, or 12 months imprisonment
QLD	250 penalty units ($29,450) or 2 years Imprisonment
TAS	200 penalty units ($30,800)
NT	100 penalty units ($15,300) or 2 years imprisonment

The ACT is the only jurisdiction that does not provide for the option of sentencing a person found guilty of the offence of lighting a fire during a total fire ban to a term of imprisonment. The maximum financial penalty that can be imposed is also significantly less than all other jurisdiction.

The Justice and Community Safety (JACS) Directorate's *Guide for Framing Offences* states that penalties should be in proportion to their seriousness, and that the maximum penalty for an offence should reflect the seriousness of the offence relative to other offences of a similar nature. Total fire bans are declared when conditions are such that the spread and control of a wildfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire. As such, it is necessary that the penalty for lighting a fire during a total fire ban reflects the extremely serious consequences to life, property and the environment that may attach to this conduct. The penalty must also reflect community views about the seriousness of these offences.

The current maximum penalty for lighting a fire during a total fire ban period is both out of step with community perceptions as well as being significantly out of step with the penalties available in other Australian jurisdictions. It is particularly important that the maximum penalty more closely align with NSW to ensure that there is no incentive for NSW residents seeking to deliberately light fires to travel to the ACT to do so.

It is recommended that the maximum penalty for the offence in section 116 of lighting a fire during a total fire ban be increased. Increasing the maximum penalty for this offence will ensure that the hierarchy of maximum penalties for fire-related offences is better balanced and progresses logically according to the seriousness and level of culpability involved for each offence. An increased maximum penalty for this offence will improve the balance of the penalty scheme.

An increased maximum penalty will also provide a more effective deterrent against persons deliberately lighting fires on total fire bans. In the ACT, ACTF&R and/or RFS responded to 24 grass or bush fires on the 8 total fire ban days in the 2013/14 and 2014/5 bushfire season. It is an unfortunate reality that across Australia a significant number of bushfires occurring on total fire bans are deliberately lit. It is estimated that across Australia approximately 50 percent of bushfires are either deliberately lit, suspicious, or careless in origin. ACT data shows that 44% of grass and bush fires are either deliberately lit or are suspicious in origin. These figures show that lighting fires during total fire bans is a significant problem, and the prevalence of these fires poses a substantial risk to life, property and the environment within the ACT.

Increasing the maximum penalty will assist ongoing ACT Government deterrence efforts against people who jeopardise community safety by deliberately light fires to threaten life, property or the environment. This proposal complements the previous proposal, which seeks to reduce the incidence of accidental fires, by restricting high risk activities that may accidentally cause fires to ignite during a TOBAN.

The maximum penalty for the recommended new offence of undertaking a high risk activity during a total fire ban should have the same maximum penalty as the offence in section 116. As previously noted, total fire bans are declared when conditions are such that

controlling the spread of a bushfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire.

Recommendation

The maximum penalty for the offence in section 116 of lighting a fire during a total fire ban should be increased to improve the balance of the penalties applying to fire-related offences. The maximum penalty should be increased to 200 penalty units, imprisonment for two years, or both.

The maximum penalty for the proposed new offence of undertaking high risk activities should match the penalty applying to section 116 – that is, 200 penalty units, imprisonment for two years, or both.

Legal recognition for the ACT Ambulance Service Clinical Advisory Committee

The Chief Officer (Ambulance Service) is responsible for matters relating to the technical and professional expertise of the Ambulance Service, for example, training and professional standards (section 28 of the Act). Under section 38 (2), the Chief Officer may also determine standards and protocols for medical treatment provided by the Ambulance Service.

In exercising this power, the Chief Officer is supported by a clinical advisory committee who provide authoritative expert advice and recommendations on all clinical matters relevant to the chief officer's functions, and to maintain the quality of pre-hospital emergency and routine ambulance care to the community. The clinical advisory committee is chaired by the Medical Advisor to the Ambulance Service, and includes medical practitioners from the Canberra and Calvary hospitals. Additional members are co-opted as required to provide specialist input.

The ACTAS clinical advisory committee is not specifically referred to in ACT legislation, and does not have any legal status. As such, members of the committee do not enjoy any specific legal protections, and the committee's proceedings and deliberations do not have any privileges and are subject to disclosure in legal and other proceedings. Members of the committee, and members of the Ambulance Service more generally, have raised concerns that this lack of legal protection inhibits the committee's ability to review and advise on medical care provided by members of the ambulance service, as part of a broader 'lessons learnt' / quality assurance process.

This contrasts to quality assurance committees declared under the *Health Act 1993*. Under section 25 of that Act, the Health Minister may approve a quality assurance committee for a health facility. That approval confers certain legal protections on members of that committee, and ensures that sensitive information disclosed to the committee to support its

deliberations is protected from disclosure to a court or from a freedom of information application. Quality assurance committees are used to encourage and facilitate the voluntary participation of health care practitioners in healthcare improvement by providing a confidential and privileged environment where their practice and the data that describes it can be examined. The members of a quality assurance committee and those assisting such a committee to perform its functions are subject to very strict confidentiality provisions. Information or documents created by or for a committee are not generally admissible in any legal proceedings. Similarly, the members of a quality assurance committee and those assisting the committee cannot be called to give evidence in legal proceedings.

Interstate ambulance services benefit from the legal protections that quality assurance committees can deliver when reviewing and advising on medical care provided by members of their ambulance service. Ambulance services in NSW and Tasmania have quality assurance committees with legislated protection concerning the release of information.

The reviews of the ACTAS in 2010 and 2014 by Grant Lennox recommended that a quality assurance committee with statutory protection for their records, proceedings and members be established for the ACTAS. This would ensure open and honest participation of clinical personnel in the scrutiny of clinical incidents, adverse events and deaths.

By allowing ambulance officers to freely discuss the circumstances surrounding a negative patient outcome, without fear that admissions made to the committee will be disclosed to a court or other investigating body, systemic weaknesses will be identified and protocols developed to avoid re-occurrences. This will benefit the broader community by supporting the provision of the highest quality ambulance services. It is therefore appropriate that the ACTAS clinical advisory committee be given similar protections to that of quality assurance committees.

Recommendation

That the Minister be given a statutory power to convey upon the ACTAS clinical advisory committee similar legal protections enjoyed by quality assurance committees declared under the *Health Act 1993*.

Power of the Chief Officer (ACTAS) to establish, amend, suspend or withdraw an ambulance officer's scope of practice

The Chief Officer (ACTAS) is, under section 28 (3) of the Act, responsible for matters relating to the professional and technical expertise of the Ambulance Service. To assist the Chief Officer in fulfilling that function, section 35 of the Act allows a Chief Officer to give directions to emergency service members, and section 35 (2) specifically provides that a direction by the Chief Officer (ACTAS) may be about the provision of medical treatment. In

addition, section 38 (2) gives the Chief Officer the power to determine standards and protocols for medical treatment by the Ambulance Service.

The Chief Officer (ACTAS) currently approves the authority for and scope of clinical practice for members of the Ambulance Service. The authority to practice provides the member with administrative authority to undertake clinical practice and activities at a particular level, and the scope of practice encompasses the range of drugs and procedures called Clinical Management Guidelines that the member is approved to access and administer.

While this power to define the authority for and scope of practice for individual members of the ambulance service is considered to integral part of the Chief Officer's power to provide direction and determine standards and protocols, there is no specific power in the Act for the Chief Officer to establish, amend, suspend or withdraw the scope of practice for individual members. This contrasts with the approach taken in respect of health practitioners under the *Health Act 1993*. Part 5 of that Act confers specific powers for the scope of clinical practice of various health practitioners to be amended, suspended or withdrawn (It is acknowledged that this power relates to health practitioners, and ambulance officers are not currently registered health practitioners, although it is currently being considered at a national level).

It could be considered that the power in the Health Act is necessary as it relates to the registered health practitioners, and as ambulance officers are not currently health practitioners under national or state health practitioner regimes,

It is important to clarify that the power to amend, suspend or withdraw a member's authority to practice/scope of clinical practice is not a disciplinary measure. Instances where a members authority to practice may be amended or suspended include where a member of the ambulance service returns from a period of extended leave. During their clinical revalidation, the authority to practice for that member may be amended from independent to supervised practice for a period of 3 months to ensure that the member's clinical skills and knowledge are up to date.

A member's authority to practice may also be suspended or amended where an adverse clinical incident (patient death) has occurred and the Ambulance Service needs to undertake a robust quality review of the case. During this period, the member's authority to practice may with due consideration be amended or withdrawn. As previously mentioned, amending or suspending a member's scope of practice is not a disciplinary measure, and is solely concerned with enhancing public safety by ensuring that the Chief Officer is satisfied that a member of the Ambulance Service has the necessary skills and abilities to safely and properly provide clinical care to the community. The *Public Sector Management Act 1994* would continue to apply where there is suspected misconduct by a member of the Ambulance Service that may warrant administrative sanction or termination of employment.

Clarifying the power of the Chief Officer (ACTAS) to vary or suspend an ambulance officer's scope of practice is also consistent with the approach adopted in other jurisdictions. Tasmania, South Australia and Queensland all give the power to the chief officer of the ambulance services or the head of the Health Department to within which the ambulance service operates a specific power to determine the scope of services provided by ambulance officers.

It should be noted that this change is a short-term remedy, pending the proposed inclusion of ambulance officers/paramedics into the National Registration and Accreditation Scheme for Health Professionals. COAG is currently working towards the inclusion of paramedics into this existing scheme, which regulates health practitioners to ensure that only suitably trained and qualified health practitioners are able to deliver healthcare services to the public. Once implemented, this reform will see the scope and authority of practice of ambulance officers determined by the industry regulator, the Australian Health Practitioner Regulation Agency.

This proposal was supported in submissions received from two interstate private ambulance providers. One responder noted that the power should not extend to determining the scope of practice for private operators. The recommendation does not extend to any private operators approved as a provider of ambulance services. There are other, more appropriate, mechanisms for ensuring that ambulance officers employed by private providers possess the appropriate experience and qualifications.

Recommendation

The Chief Officer (ACTAS) should be given a specific power in the Act to establish, amend, suspend or withdraw an ambulance officer's scope of clinical practice.

The ACT Bush Fire Council

The ACT Bushfire Council (the Council) has performed a role in the bushfire preparedness of the ACT for over 75 years. Since being reconstituted by the Act in 2004, the Council primary function is to advise the Minister about matters relating to bushfires, or the Commissioner, when asked.

On 13 September 2006, the Minister for Police and Emergency Services gave a Standing Reference to the Council, asking that it provide its advice to the Minister under section 130 (1) of the Act by 1 November each year, on the following matters:

- The level of preparedness of ACT Government agencies, rural leaseholders and the broader ACT community for the coming bushfire season;

- Proposals for new and ongoing funding for bushfire mitigation, preparedness and response by ACT Government agencies for the coming financial year, and the Council's advice on priority of expenditure; and
- Any other matter relevant to the mitigation, preparedness or response to bushfires in the ACT.

Another function performed by the ACT Bushfire Council is its support for the development of the Strategic Bushfire Management Plan, as well as the ongoing review of that Plan. The Council also monitors the implementation of these plans and reports on this in its annual report to the Minister.

The 2013 ACT Auditor-General's Office Performance Audit Report into Bushfire Preparedness found that there was a lack of governance and procedural documentation for the Council. The Auditor-General considered that this increased the risk that the Council was being ineffective in fulfilling its role and responsibilities. In response to this a terms of reference was developed by the Council with the support of the Emergency Services Agency and endorsed at a Council meeting on 3 July 2013.

Membership of the Council

The Council is comprised of the chairperson, a deputy chairperson and at least three, and no more than ten, other members who are appointed by the Minister for a term of not longer than four years (members may be reappointed to the Council). The Act requires the Minister to try and ensure that representatives with the skills or experience in a range of disciplines such as fire sciences, land management, fighting fires, and indigenous land management are appointed.

The obligation on the Minister to try and ensure that people with those skills and experiences means that the Minister is not obliged to appoint members with those backgrounds. Similarly, while sections 129 (f), (g) and (h) of the Act require the Minister to try and ensure that a person is appointed to represent the interests of rural lessees, the community's interest in the environment and the community's interests generally, there is no specific requirement that persons representing these interests be appointed.

An alternate approach of requiring that the Minister may only appoint someone to a position if satisfied that the person has appropriate expertise in a specified area was considered. This would mean that one person appointed to the Council would have experience in land management, another person appointed would have experience with fighting fires in rural areas, and so on. An example of this practice is the appointment of members to the scientific committee established by section 31 of the *Nature Conservation Act 2014*.

It is not considered that introducing this requirement, in relation to sections 129 (2) (a) to (e) (which refer to a particular background of the appointee), would increase the value

and utility of the advice provided by the Council. The current arrangement provides flexibility of appointments, and also reflects that many current or future members possess skills or experiences across a number of these areas.

A change is recommended in relation to the representative appointments – those members referred to in section 129 (2) (f) to (h) – who are appointed to represent the interests of rural lessees, the community and the community's interests in relation to the environment. Given that ultimately bushfire risk is managed to protect the community and the environment, it is important that these interests be appropriately represented on the Council. As such it is recommended that the Minister be obliged to appoint a representative of those interests to the Council. This would also be consistent with general ACT Government practice for the appointment of community representatives to advisory bodies, where a community representative is required.

This change is not supported by the Council. The Council's submission noted that this change would limit membership options and exclude potentially suitable candidates. While the Council's view is accepted in relation to appointments for people with specific expertise (which is not being recommended for amendment), any limitation on membership options arising from the change would be offset by the community benefit that ensuring a dedicated community, rural lessees and environmental representative was appointed to Council will deliver. It is not considered that there will be any difficulty in identifying suitably skilled persons to appoint to these positions, nor is it considered that there would be any reduction in the quality or utility of the advice provided by the Council from this change.

The ACT Rural Landholders Association supports the Council, and considers that it allows for a systemic representation of the views of rural landholders on bushfire issues. This amendment would ensure that the Council has a specific member appointed to represent rural landholders, ensuring their perspective and views are heard.

The Conservation Council ACT Region's submission asked that the Minister be required to appoint a person with relevant skills or experience to represent the community's interests in the environment. The Conservation Council considered it important that a dedicated environmental representative be appointed given the Council's role of providing a forum for community concerns and issues to be aired in a co-operative and non-adversarial manner. The Council can provide early warning of unease in various sectors with an interest in fire management and can thrash out conflicting advice or research if it is adequately resourced and represents the interests of the community.

The Conservation Council also submitted that ACT Government officers with relevant expertise in environmental matters should attend as ex-officio members of the Council – particularly the Conservator for Flora and Fauna and a representative of the EPD's Conservation Planning and Research area, as the area responsible for wildlife research, ecological surveying, biodiversity monitoring, and threatened species conservation, and the Scientific Committee established under the *Nature Conservation Act 2014*. The

recommendation to specify these officers as ex-officio members of the Council is not supported. The Council currently has a number of ACT Government representatives who provide advice on their respective area of expertise as required. These members are not specified in the Act. It is not proposed to amend the Act to specify the ex-officio members who may attend Council meetings, but rather continue with the current practice of inviting relevant ACT Government officers with specific expertise on a as-needs basis.

The ACT Volunteer Brigades Association (VBA), which represents RFS volunteers, submitted that a dedicated volunteer's representative should be included on the Council. Whilst the Minister is currently required to try to ensure that a person with experience in fighting fires in rural areas is appointed to the Council, the Association submits that as volunteers are the backbone of the rural fire-fighting force in the ACT a dedicated volunteer representative position should be established. This change is not supported. The existing requirement that a person should be appointed who has experience in fire fighting in rural areas While it is recognised and appreciated that the contribution of volunteers is vital in managing and responding to bushfires in the ACT, there are existing mechanisms for the volunteers and the VBA to provide its views on bushfire related matters, including regular meetings with the Minister, the Commissioner and the Chief Officer (RFS). It is also open to volunteers to nominate for a position on the Council. Noting that four members of the Council are current ACT RFS volunteers (and other Council members are volunteers with the NSW RFS), the views of RFS volunteers are well represented on the Council.

Term limits

There is currently no provision in the Act regarding the period for which a person can be appointed to the Council, nor is there any restriction on term limits (the amount of time a person can be appointed and reappointed to the Council).

To promote good governance, the term limits for members should be specified in the Act. It is proposed that members be appointed for no more than 4 years, and that members may not be reappointed for more than two consecutive terms (so a total of eight consecutive years). It is important to highlight that the restriction only applies to consecutive terms of membership – there would be no restriction on a member seeking reappointment in the future following a break in their membership.

The use of term limits is a common governance practice, and is widely used on other ACT Government advisory boards. Term limits provide a regular opportunity to ensure that the Council is comprised of members with the most appropriate set of skills and experiences. New members bring fresh insights, ideas and approaches, which is particularly useful in an advisory body such as the Council.

It is recognised that opponents of term limits argue that it may reduce corporate memory and result in the loss of dedicated members who are still in a position to make a valued contribution. This would be managed by the staggering of member's terms, so that half the

terms expired every two years. This would ensure that there is a healthy balance of fresh perspective and experience among Council members.

A respondent to the review noted that introduction of term limits should not be introduced due to the limited numbers of people within the ACT who possess the relevant skills or experiences in certain areas. This view is not supported by recent experience in recruiting for vacancies to the Council. Expressions of interests received in response to recent vacancies received a significant number of quality candidates. As such, it is not considered that the imposition of term limits will result in a lack of suitable applicants, or lead to any loss of quality in the advice provided by the Council.

The recommendation is not supported by the Council. It considers that the current arrangements providing a good balance between longer term knowledge and new thinking. Council proposed that instead of introducing term limits, a better approach would be to have the performance of the Council periodically reviewed, including an external review of an individual member's knowledge, past performance and suitability for continued Council membership. This approach is not supported. Conducting such a review would be time-consuming and resource-intensive, potentially confrontational and may be a disincentive to potential members of the Council. It would difficult to determine the 'effectiveness' of a Council member, and this could lead to a perception of bias should a review find a member has not been effective. It is also not common practice in the ACT for other advisory boards.

Council did note that any change in term limits would need to be carefully implemented in order to avoid the sudden loss of corporate memory or expertise from the Council. It is considered that the staggering of Council member's terms would avoid this occurring. The introduction of term limits would also only apply to future appointments to the Council, and current appointees who have served for more than two cumulative terms would not be required to vacate their position. This will further assist in avoiding the sudden loss of corporate memory or expertise.

The inclusion of term limits balances the need for Council stability with the need for renewal of strategic direction and reflects corporate best practice. The inclusion of a specific term limit would provide greater clarity with respect to the length of service. It also recognises the benefits of continuity and realising opportunities to enhance performance through the introduction of new members to the Council.

Consultation role for RFS appointments

The Council has a consultation role in relation to the appointment by the Minister of the Chief Officer and Deputy Chief Officer of the RFS, and in relation to the appointment by the Chief Officer (RFS) of volunteer members of the RFS of a senior rank. In practice the consultation role in relation to appointments to a senior rank does not appear to be exercised.

The Council's consultation role – being focused on the RFS – is inconsistent as it does not have a similar role in relation to appointments within ACTF&R. This is despite the ACTF&R responding to more grass and bush fires than the RFS (as is expected given the ACTF&R professional full-time capacity whilst the RFS is primarily a volunteer response organisation). In 2013/14, the ACTF&R responded to 210 grass and bush fires, whilst the RFS responded to 76.

The Council's consultation functions do not appear to have been given to other similar bodies in other jurisdiction. In particular, in NSW none of the statutory bushfire-related advisory committees –the Bush Fire Co-ordinating Committee, the Rural Fire Service Advisory Council and the Fire Services Joint Standing Committee – have any statutory role in relation to the appointment of the chief officer or any other RFS member.

The Council, in it submission to this review, considered that this consultation function was important in ensuring that the community's interests are protected in relation to the exercise of the Commissioner's bushfire responsibilities and the Director-General's consideration of appointments of senior officers. It considers that this consultation role provides an important 'sanity check' for both the Commissioner and the Director-General.

The Council submits that the requirement to consult should be extended to the appointment of the Chief Officer and Deputy Chief Officer of ACTF&R. The Council considers that the current lack of obligation to consult in relation to ACTF&R appointments is a curious omission considering ACTF&R's important role in combating bushfire in the ACT's urban-rural interface and built-up area.

Whilst the Council submission has merit, this Report proposes that the Council no longer exercise a consultation role in relation to the appointments for the Chief Officer or Deputy Chief Officer of the RFS, and that it not be given a consultation role in relation to the leadership of ACTF&R. ACTF&R undertakes a significant variety of roles within the Territory, with bushfire planning and response a relatively minor function. The Council will have little ability to assess a potential Chief Officer or Deputy Chief Officer's skills and experiences in managing structure fires, HAZMAT or rescue operations.

In relation to the RFS, the requirement to consult the Council in relation to appointments may raise the potential for governance issues. This is particularly applicable given that a significant percentage of Council members are serving members of the ACT RFS (four out of the 12 members are current serving members of the ACT RFS). This may see members of Council asked to consider the suitability of persons with whom they may have had a longstanding close working relationship with, or alternatively may be a supervisor or subordinate of such a person within a RFS Brigade hierarchy.

The consultation role for appointments is a historical legacy of the Council's previous role in undertaking fire response operations for the Territory. It is not appropriate for an advisory role to exercise such a function.

The Council does support the removal of the consultation role in relation to appointments of volunteer members of the RFS to a senior rank. It considers that the existing requirement to consult on the appointment of volunteer members is a anomaly given that senior roles within RFS are filled by a combination of TAMS land managers (ACT Government public servants), career RFS staff as well as volunteers. Rather than an obligation to consult on the appointment of specific volunteer appointments, the Council recommends that consultation with Council should be on the standards required for appointment to senior roles within the RFS. This submission is supported.

Role of the Council

Under the Act, the Council has the function of advising the Minister about matters relating to bushfires. In addition, if the Commissioner asks for the Bushfire Council's advice before exercising a function relating to bushfires, the Council also has the function of advising the Commissioner about the exercise of the function.

The 2006 Ministerial Standing Reference to the Council requires the Council to provide annual advice on matters relating to bushfire management in the ACT, including: the level of preparedness, prevention activities, the response capability of fire services, and the implementation of recommendation from the inquiries into the 2003 Canberra bushfires, and other major bushfire events.

The requirement to provide annual advice on matters relating to bushfire management in the ACT occupies a considerable proportion of the Council's annual workload. It is not clear that the delivery of this annual advice always represents the most efficient use of the Council. For instance, the Council does not deliver its annual advice until shortly before the commencement of the bushfire season in October, by which time it is too late to implement substantial changes to practice or procedure, or to procure different equipment, in time to be utilised that season. A more efficient outcome may be for the Council to report on the operation of the completed bushfire season in autumn each year as part of the broader ESA lessons learnt process.

The Strategic Bushfire Management Plan requires the Council to provide annual advice on the implementation of actions established under the Plan. The Strategic Bushfire Management Plan is the overarching document that directs all levels of bushfire planning throughout the ACT. It is therefore vital that the attention of the Council be primarily focused on the preparation and implementation of the plan. The ESA has begun to better support this focus on the Plan by asking the Council to consider a specific aspect of the SBMP at each meeting, with the entirety of the Plan to be reviewed by the Council over a 24 monthly rolling cycle. This focus on the Plan should continue.

Noting the changes to the Council proposed by this Paper, it is appropriate that the Terms of Reference for the Council, and the Ministerial Standing Reference, to ensure that the functions of, and tasks required for the Council, are appropriately reflected.

Reporting requirements

Section 138 of the Act requires the Council to publish minutes of its proceedings within 7 days after the minutes are confirmed by the Council. The Council does not support any amendment to the requirement that minutes be published. No change is proposed in relation to that requirement.

The Council noted that there is no requirement that its annual reports or other formal advice to Government be published or otherwise be made publicly available. Council supported the publication of this advice. While there is nothing in the Act preventing this advice being published, it is recommended that the Council be given an express power to publish its report and other advice. This reflects the community's interest in ensuring that the community is appropriately prepared to manage the threat posed by bushfires in the ACT. It also fulfils an important oversight and monitoring role, allowing the community to assess and consider the advice presented by the Council. It is also consistent with the intent as expressed by the then Minister for Police and Emergency Services when the Act was originally introduced that Council "decision-making processes are transparent and that the Council and the [ESA] are accountable for their decisions and actions".

Recommendations

That the membership of the ACT Bushfire Council be amended so that the Minister must appoint persons representing the interests of rural lessees, the community, and the community's interests in the environment.

That a term limit for Council members be introduced, with members to be appointed for no more than four years at a time, and that members may not be reappointed for more than two consecutive terms (so a total of eight consecutive years).

That the consultation role for the Council be amended so that it no longer exercises a consultation role for the appointment of a Chief Officer or Deputy Chief Officer of the RFS. The Council will be consulted on the standards required for appointment to senior roles within the RFS.

That the Council be given the power to publish its reports and other advice to Government.

The role of the Chief Officer (Rural Fire Service) in fire prevention for premises

Part 5.4 of the Act is concerned with fire prevention in relation to premises. That part gives the Chief Officer (ACTF&R) certain fire prevention related powers, including the power to issue improvement, occupancy or closure notices. 'Premises' is defined in the Act to include any land, structure or vehicle and any part of an area of land, a structure or vehicle. Premises therefore has a much more expansive meaning than how the term may be ordinarily used, which is to refer to a building.

There are no powers given to the Chief Officer (RFS) under this part. This means that the Chief Officer (RFS) has no power to act to address a risk to public safety or to the safety of people who are or are likely to be at the premises. This applies even in the rural area, where the Chief Officer (RFS) is responsible for fire preparedness and fire response.

This appears inconsistent with other powers granted to the Chief Officer (RFS) under the Act. For instance, the Act appoints both the Chief Officer (RFS) and the Chief Officer (ACTF&R) as inspectors and investigators. Among the powers available to an inspector is the power to enter premises to find out whether grounds exist for an improvement notice, occupancy notice or closure notice (section 104 (1) (b)), as well as take all reasonable steps to ensure that an improvement notice, occupancy notice or closure notice is complied with (section 105 (1)). The Chief Officer (RFS) may enter premises to determine if grounds exist for an improvement notice, occupancy notice or closure notice to be issued, and may also take reasonable steps to ensure such a notice is issued and complied with. The Chief Officer (RFS) lacks the power to actually issue such a notice.

The Council noted that the current situation where the Chief Officer (RFS) has no power to address a risk to public safety in premises within the rural area appeared to contradict the Chief Officer's responsibilities for fire preparedness and response in the rural area. The Council considered that the current situation was a risk averse and needlessly bureaucratic approach, which placed all of the liability on ACTF&R for an area where they do not have primary responsibility. The Council submitted that the Chief Officer (RFS) be given the same powers in part 5.4 available to the Chief Officer (ACTF&R). This position was also supported by the ACT Volunteers Brigades Association representing RFS volunteers.

Noting the importance of protecting public safety, it is appropriate that the Chief Officer (RFS) be given the power to issue improvement notices, occupancy notices and closure notices. It is important to note that the occupier of premises who has been issued with such a notice may apply to the ACT Civil and Administrative Tribunal (ACAT) for review of the decision. ACAT has the power to vary or set aside the notice if it considers appropriate in the circumstances.

Recommendation

That the Chief Officer (RFS) be given the power under part 5.4 to support fire prevention by issuing an improvement notice, occupancy notice or closure notice for premises within the rural area.

Permission to interfere with fire appliances

Section 190 of the Act creates a number of offences relating to interfering with fire appliances, hydrants or alarms. The offences reflect the significant danger posed by persons interfering with these devices so as to prevent their effective operation.

Section 190 (1) provides that a person commits an offence if the person does something to, or near, a fire appliance that prevents or hinders the effective use of the appliance. Fire appliance is defined widely, and includes:

- any vehicle, equipment, implement or thing used for the prevention, extinguishing or containment of fire or smoke;
- any fire alarm;
- any apparatus for alerting the occupants of a building to a fire or facilitating the evacuation of the building; and
- equipment used for the control or evacuation of smoke from a building.

A person commits the offence in section 190 (3) if they cover, enclose or conceal a fire hydrant, or obliterates a mark, sign or letter indicating the position of, or distinguishing a, fire hydrant.

A person commits an offence under section 190 (4) if the person does anything to a fire alarm that prevents or hinders the effective use of the fire alarm. The offence is not committed if the person does the thing to give an alarm of fire, or to test or do maintenance work on the fire alarm.

While it is appropriate that interfering with these important safety devices constitutes an offence, it is important to appreciate that there are occasions when these devices have to be interfered with, including for maintenance purposes. For instance, the offence in section 190 (4) of preventing or hindering the effective use of a fire alarm does not apply if a person is testing or doing maintenance work on the alarm.

For that reason, section 190 (2) provides that a person does not commit an offence under 190 (1) (preventing or hindering the effective use of a fire appliance) if they have the permission of a member of ACTF&R, a member of the RFS or a police officer to undertake the action that is preventing or hindering the effective use of a fire appliances. That permission currently only extends to the offence in section 190 (1), and currently there is no scope for a member of ACTF&R, a member of the RFS or a police officer to give permission to actions that would constitute an offence under sections 190 (3) or (4).

As an example, a building may require maintenance works that are likely to generate sufficient smoke to activate a fire alarm in that building. To avoid the fire alarm being triggered, and ACTF&R diverting resources to attend in response to the alarm, it may be appropriate for the person(s) undergoing the work to isolate the fire alarm to prevent it being activated or ACTF&R being alerted. While permission may be sought from an ACTF&R officer under 190 (2), that permission only applies to the offence in section 190 (1), and they would still be committing the offence in section 190 (4). While section 190 (4) does not apply to maintenance work being carried out on the fire alarm itself, it does not extend to maintenance work that is not directly on the fire alarm itself but is likely to trigger the alarm (such as welding works occurring underneath a fire alarm sensor).

It is recommended that the opportunity to seek permission from a member of ACTF&R or the RFS, or a police officer, under section 190 (2) be extended to apply to the offences in sections 190 (3) and (4). This would allow appropriate consent being given to activities that would otherwise constitute an offence under those sections. A person giving their consent under this provision would be able to impose any conditions necessary to ensure that public safety is appropriately protected during any such works.

The Chief Officer (ACTF&R) and Chief Officer (RFS) may provide directions or otherwise determine to members of ACTF&R or the RFS the circumstances in which a member may give consent under this section.

Recommendation

That the ability of a member of ACTF&R, a member of the RFS or a police officer to give consent to actions that would otherwise constitute an offence under section 190 (1) be extended to the offences in section 190 (3) and (4).

The role of Community Fire Units

Community Fire Units (CFUs) were established to assist people in the area for which the unit is established to learn how to assist with the defensive protection of property from fire, and to use equipment for fire prevention work and fire fighting. Members of CFUs are volunteers, and comprise local residents who live close to bush land areas across the ACT. These local volunteers are trained and equipped by ACTF&R to safeguard their homes during a bushfire until the fire services arrive. CFUs are part of ACTF&R, with the Chief Officer (ACTF&R) responsible for establishing CFUs and determining areas for which they are established.

CFUs have a statutory function of undertaking fire prevention work, assisting with fire fighting during a fire emergency, and assisting with recovery operations after a fire emergency. CFUs are also required to act in accordance with the standards and protocols established by ACTF&R, and under the direction of the Chief Officer (ACTF&R). CFUs are unique among ACT emergency services in that a CFU may exercise its functions only in the area for which the unit is established. Each unit has a designed area of approximately 50 to 80 residential homes, and comprises on average between eight and 30 members.

The submission by the Conservation Council ACT Region considered that the restriction on a CFU only exercising its functions only in the area for which it is established restricts CFU members from moving outside their fence line to defend houses in an effective manner. The Council recommended that CFU also be given the power to exercise its functions in the adjacent inner asset protection zone. This would enable the CFU members to operate immediately behind the houses to the extent of this zone. It will also enable CFUs to assist in

controlled burns immediately behind the houses, and hence receive additional valuable training in actual fire situations.

The ACT Legislative Assembly's Select Committee on Estimates 2015 – 2016 noted in its report in August 2015 that there had not been any formal evaluation of CFUs in the 10 years of their operation in the ACT. The Committee recommended that the ACT Government conduct a formal evaluation of CFUs and present it to the Legislative Assembly by June 2016. The ACT Government has agreed to the recommendation, and the ESA will conduct the review, within the construct of its SRA. The ESA will work closely with the CFU Consultative Committee, which includes CFU representatives, on the review.

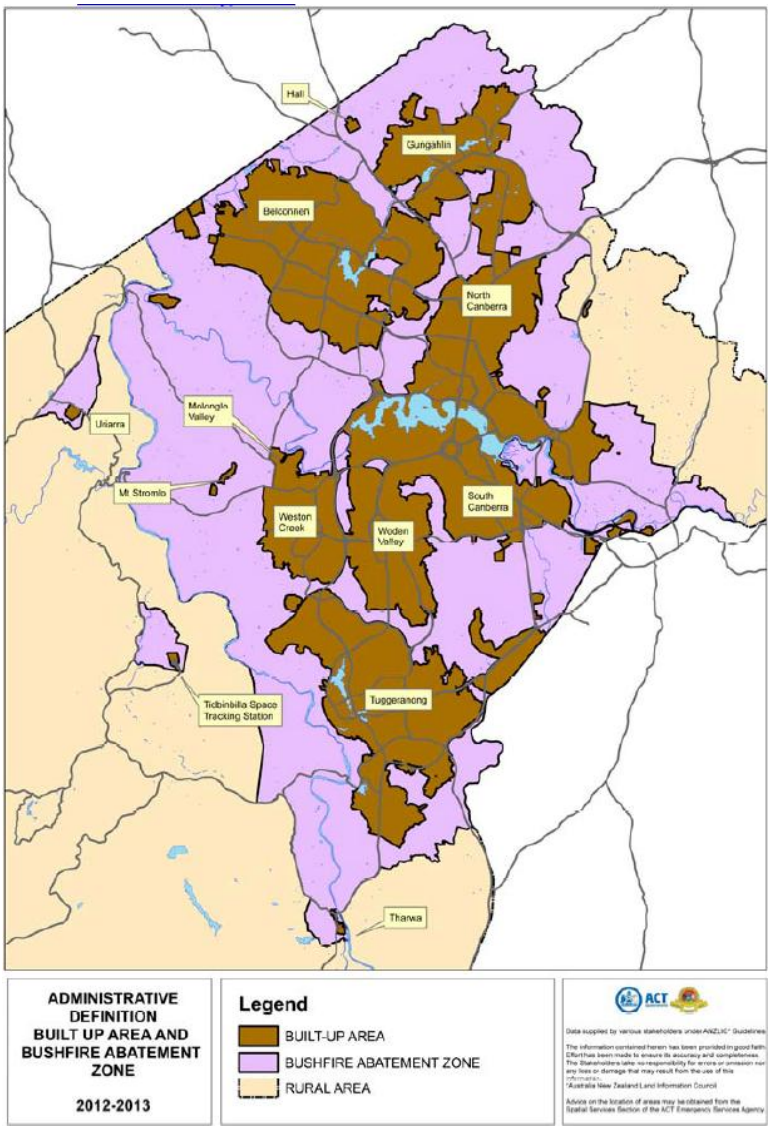
Noting this review, this paper makes no recommendation regarding the question posed in the discussion paper – should the role of CFUs be more broadly defined to capture the valuable role they could play in assisting the community in times of storm or other events? Members of the CFU Consultative Committee did provide input to this review of the Act, noting that any change in the role of CFUs would need to be done in consultation with CFU members, and that members would need to receive appropriate training before being given any additional functions. Members noted the close working relationship and strong linkages that CFUs have with ACTF&R. These issues will be further developed during the CFU review.

Responsibility for fire control in the Bushfire Abatement Zone

The Act currently assigns responsibility for fire control between ACTF&R and the RFS on a geographic basis. As its name suggests, the term 'built-up area' refers to metropolitan Canberra, with the Commissioner having power under section 65 (1) to declare an area to be a built-up area[7]. The bushfire abatement zone is declared under section 71 to incorporate rural areas immediately surrounding the built-up area where specific measures may be required to reduce risk to life and property in the built-up area of Canberra from fires occurring in that zone.

ACTF&R is responsible for fire control and response in the built-up area, as well as for planning for fire in the bushfire abatement zone (in consultation with the RFS). The RFS has responsibility for fire response in rural areas as well for planning for fire outside the city area (in consultation with ACTF&R). The city area is a combination of the built-up area and the bushfire abatement zone. These areas are shown in the map below.

[7] The current declaration of a built-up area and bushfire abatement zone can be accessed at http://www.legislation.act.gov.au/ni/2012-450/current/pdf/2012-450.pdf



The Commissioner's concept of operations for bush and grass fires[8] provides that, in relation to fires in the bushfire abatement zone, the service responsible incident control will be decided by the officers in charge on scene from each service liaising with each other and jointly determining the priorities and strategies for the management of the fire, including incident control.

If agreement is not quickly achieved on scene the officer in charge on scene from each Service must immediately contact their respective Chief Officer. The Chief Officers will then liaise with each other and appoint an Incident Controller and other key Incident Management Team (IMT) roles as required. If, in the opinion of either Chief Officer the fire is likely to escalate, or has escalated, into a complex incident threatening life, property or significant environmental assets, or multiple incidents are occurring that may compete for resources the fire will be under the control of an off-scene located IMT.

[8] http://www.legislation.act.gov.au/ni/2012-400/current/pdf/2012-400.pdf

If an IMT is not in place, the Chief Officers will liaise with each other and appoint an Incident Controller and other key IMT roles as required, taking into consideration the risk profile of the incident. In the event that agreement is not reached between the Chief Officers, the Commissioner will appoint an Incident Controller and other key IMT roles as required.

The current procedure for determining which service has control of a fire in the bushfire abatement zone is cumbersome and potentially problematic. Requiring the officers in charge from each service at a fire to attempt to mutually agree which service should have control is an unnecessary distraction for these officers at a time when their efforts would be better served by directing fire response operations. The existing requirement unnecessarily impedes timely decision making for fires in this crucial urban interface. The ACT Auditor-General's 2013 Report into Bushfire Preparedness noted that it was essential in the 'command and control' environment of emergency management to have clarity on geographic responsibilities.

It is proposed that a single service be given specific responsibility for fire control and response planning in the bushfire abatement zone. This Report does not seek to identify which service should be given this responsibility. The Government will work with stakeholders including the relevant services and member/volunteer organisations to determine the fire service which is best placed to assume this function.

This change will not alter the existing response arrangements, which are that first response to all grass and bush fires in the ACT will be by the nearest available most appropriate resource, irrespective of jurisdiction or Service. Both ACT fire services would continue to work together in responding to fires in the bushfire abatement zone.

This proposal would also see no change to the current processes for the appointment of an incident controller. Incident controllers and incident management teams will continue to be appointed from across the ESA (or even beyond the ACT if required) from suitably qualified officers. This reflects the ESA's unified and cohesive command and management structure.

Operational Planning

ACTF&R have responsibility for operational planning for fire in the built-up area, and, in consultation with the RFS, for fire in the bushfire abatement zone. The RFS is responsible for operational planning, in consultation with ACTF&R, for fire outside the city area. The city area is defined as the built-up area (residential Canberra) and the bushfire abatement zone.

Operational planning is currently interpreted to include what may be termed as planning and development functions. For instance, the Chief Officer (ACTF&R) and the Chief Officer (RFS) may be required to provide approvals in relation to the installation of any fire appliance in new buildings or new part of buildings under the *Building (General) Regulation 2008*.

The risk with the current approach is that, by having two separate entities providing formal advice depending on where the building is located, there is a risk that any advice provided by the two Chief Officers may be inconsistent. While the obligation on each Chief Officer to consult with their counterpart in relation to the bushfire abatement zone and the rural area reduces the risk, it does not eliminate it. It is of vital importance from a public safety perspective that there is a coordinated and consistent approach to emergency planning and advice.

To achieve this, and to ensure that the ACT community receives the highest-quality, consistent advice, it is proposed that the functions of ACTF&R and RFS in relation to operational planning for fire be amended so that the agencies have responsibility for "planning for fire response" in their respective areas. The Commissioner would be given explicit responsibility for planning and development advice functions.

The preparation of planning and development advice would continue to be undertaken by members of ACTF&R and RFS with the applicable skills, qualifications and expertise. The Commissioner would act upon this advice, and the recommendation from the respective Chief Officer, in providing a planning and development approval.

Recommendation

That the Commissioner be given the function of providing planning and development advice to Government. That the functions of the Chief Officer (F&R) and Chief Officer (RFS), and the functions of their respective service, be amended to clarify that they are responsible for planning for fire response. Consequential amendments would be required to other legislation, such as the *Building (General) Regulation 2008*, to reflect this amendment and ensure that the Commissioner bears the responsibility for providing advice.

The Application of the Act to Commonwealth land managers

The ACT is unique among Australian jurisdictions in that a relatively large proportion of its land mass is Commonwealth land. In addition to the Parliamentary Triangle, Commonwealth Government agencies such as Defence, the CSIRO, the National Botanic Gardens and the Department of Finance all manage large areas of Commonwealth land within the ACT.

The ESA has previously taken the policy position that Commonwealth land managers did not need to comply with the Strategic Bushfire Management Plan. For this reason the Strategic Bushfire Management Plan states that plan "does not apply to National Land in the ACT; however, it places high value on collaborative fire management with National Land managers (e.g. Department of Defence lands, CSIRO, the National Botanic Gardens)". This declaration in the Strategic Bushfire Management Plan is relevant as the Act imposes on owners and managers of land based upon the Plan. For instance, section 77 (1) states that

an owner of land must, as far as practicable, ensure that the land is managed in accordance with the Strategic Bushfire Management Plan. Section 78 provides that the owner of land in a bushfire abatement zone must develop a bushfire operational plan if the land is identified in the Strategic Bushfire Management Plan as land for which a bushfire operational plan must be prepared.

As mentioned, the ESA's decision that Commonwealth land managers should not comply with the Strategic Bushfire Management Plan was a policy decision. The ESA has not previously sought for the requirement to comply with the Strategic Bushfire Management Plan to apply to Commonwealth land managers. As an alternative, the ESA chose to take a cooperative approach to work with Commonwealth land managers to achieve similar bushfire safety objectives in relation to that land.

While the ESA has successfully adopted a cooperative approach with Commonwealth land managers to manage bushfire risk, the unique nature of Canberra as the bush capital necessitates more formal bushfire management coordination. This is particularly important given the significant amount of Commonwealth land in the ACT, and the location of that land, which is often in close proximity to residential homes. For this reason the ACT Auditor-General noted in its 2013 bushfire preparedness report the importance of a management framework to address bushfire risks on Commonwealth land.

Ensuring a coordinated approach to bushfire risk management is best achieved by making Commonwealth land managers comply with the requirements of the Strategic Bushfire Management Plan. This harmonisation of requirements and obligations will ensure that the ACT is best placed to prepare for, and manage the threat posed by bushfires.

Noting the Constitutional arrangements that apply to the ACT, the ESA will liaise with the Commonwealth Government to seek to ensure that any legal impediments that may apply to applying the Strategic Bushfire Management Plan to Commonwealth land located within the Bushfire Abatement Zone are resolved.

Revising the Strategic Bushfire Management Plan to clarify that it applies to Commonwealth land located within the Bushfire Abatement Zone will have two main implications. First, land managers will be required to prepare a Bushfire Operational Plan. Many Commonwealth land managers already prepare an equivalent plan, and it is not expected that this will significantly impact on Commonwealth land managers. Secondly, it gives the Commissioner the power to direct the owner of an area of land to comply with the Bushfire Operational Plan.

This change will address the Auditor-General's recommendation that a bushfire management framework should be developed to address bushfire risk on Commonwealth land. Implementing this change will require that a new version of the Strategic Bushfire Management Plan be made by the Minister. In preparing the Plan, the Commissioner will be required to comply with the consultation requirements in part 5.3 of the Act.

Recommendation

That the Strategic Bushfire Management Plan be revised to clarify that the Strategic Bushfire Management Plan may apply to Commonwealth land located within the Bushfire Abatement Zone.

An all-hazards approach

Modern emergency practice, both in Australia and overseas, is based upon four key concepts to manage risks to communities and the environment: an all-hazards approach, a comprehensive approach, an all-agencies (or integrated) approach, and a 'prepared community' approach.

The all hazards approach concerns arrangements for managing the large range of possible effects of risks and emergencies. This concept is useful to the extent that a large range of risks can cause similar problems and measures such as warning, evacuation, medical services and community recovery will be required during and following emergencies.

The ESA has adopted an all-hazards approach to emergency management, preparedness and response in the ACT. Indeed, the rationale for the Agency itself was based upon bringing together all ACT emergency services into the one agency to support the all hazards approach to emergency response.

In many respects the Act already reflects this all hazards approach, such as the powers available to Chief Officers. Section 34 of the Act gives certain powers to Chief Officers that may be exercised for the preservation of life, property or the environment. These include the power to:

- with any necessary assistance and force, enter land;
- close a street or road to traffic;
- bring equipment onto land or into a structure or vehicle;
- open a container, or dismantle equipment, using any necessary or reasonable force;
- remove, dismantle, demolish or destroy a structure or vehicle;
- contain an animal or substance;
- remove or destroy an animal, a substance or vegetation;
- turn off, disconnect or shut down a motor or equipment;
- control, shut off or disconnect a supply of fuel, gas, electricity, water or anything else;
- use a supply of water without charge;
- give directions to regulate or prohibit the movement of people, animals or vehicles;
- evacuate people or animals from an area to another place;
- close any premises;

- require a person to give information, answer questions,
- produce documents or anything else, reasonably needed; and
- require a person to give reasonable assistance to a member of an emergency service.

Section 39 allows the Chief Officers to delegate their powers to members of an emergency service, including members of other emergency services other than their own, as well as public servants (such as members of the ESA enabling services).

The Act then departs from an all hazards approach by giving additional powers to the Chief Officer (ACTF&R) and the Chief Officer (RFS) (sections 67 and 68 respectively) that may be exercised at, immediately after, or in anticipation of the spread of, a fire.

These additional powers are the power to:

- control and direct members of an emergency service;
- direct a person to leave any land or premises on fire or near the fire;
- remove to any place the Chief Officer considers appropriate anything that the chief officer considers is interfering with, or may interfere with, the fire control operation; and
- do anything else the Chief Officer considers appropriate, for example, severing or pulling down a fence, or burning grass or other vegetation.

An important difference between the two sets of powers is that the powers in relation to fires may be exercised by any member of ACTF&R or the RFS (in rural areas) without the power having previously been delegated to that member. The exercise of the powers is dependent on the powers being exercised to protect life or property, or to control or extinguish fire. The power can only be exercised in accordance with the Commissioner's guidelines or when it is not practicable for a direction or authority from a Chief Officer to be obtained.

The Council commented that the Act does not have a strong all hazards emergency management emphasis, but was heavily focused on bushfire planning, prevention, response and recovery. The Council's submission noted that this emphasis on bushfire was not surprising given the history of the Act and its main drivers behind its development (the 2003 Canberra bushfires), and the recognition that the recurrent number one natural disaster risk in the ACT remains bushfire.

The claim that the Act does not have a strong all hazards emergency management emphasis is not accepted. The Act, and supporting plans such as the ACT Emergency Plan, provide for a comprehensive and thorough regime to manage emergencies and their consequences within the Australian Capital Territory, irrespective of the nature or cause of the emergency. This regime provides for all components of emergency management in the ACT to work together under a single, comprehensive and flexible framework. Roles and responsibilities, related to identified hazards and associated emergencies are clearly identified in the ACT

Emergency Plan, including the lead agency responsible for controlling the response. The same process applies for coordination of the activities of other agencies in the Territory and elsewhere in support of a lead response agency in the event of a significant emergency.

It is accepted that the Act does have a strong focus on fire response and control. As the Council notes, this reflects the period when the Act was enacted, shortly following the 2003 Canberra bushfires. It also reflects that bushfires are an inevitable fact of life in the ACT, reflecting the geographical reality that Canberra is a city designed and built within a bush and grass landscape. For this reason the focus on fire and response is appropriate. This does not suggest that the Act does not provide sufficient powers to respond to other hazards or emergencies. The Act does provide a very comprehensive set of powers to chief officers of all emergency services that may be used for the protection of life, property or the environment. These powers may be delegated to individual members of the emergency services in line with responsibilities, ranks or levels of training held by those individual members.

Powers in relation to fire response and control

Sections 67 and 68 of the Act provide specific powers available to the Chief Officer (ACTF&R) and the Chief Officer (RFS) for the purpose of extinguishing or preventing the spread of a fire in the built-up area and the rural area respectively. Members of ACTF&R and RFS (in relation to fires in rural areas) may exercise these powers without being directed or given authority by their respective chief officer if the powers are exercised in accordance with the commissioner's guidelines, and it is not practicable for a direction or authority to be obtained. This allows members of ACTF&R and the RFS to exercise the powers of their chief officer in an emergency when life or property is threatened, without the need to first obtain the necessary approval or endorsement. The Commissioner may issue guidelines that would specify the circumstances when these powers may be exercised, and the manner in which they may be exercised.

The powers in part 5.2 may only be exercised by the Chief Officer for the purposes of extinguishing or preventing the spread of fire, and only by other members of ACTF&R or RFS for the protection of life or property or to control or extinguish a fire. The powers may not be exercised to respond to consequences of the fire. An example of this limitation arose during the September 2011 Invironmental Services fire at Mitchell. In addition to the fire itself, ACTF&R members had to deal with the spread of chemicals from the factory, and a significant and potentially dangerous smoke plume that affected a significant part of northern Canberra. While the powers of the Chief Officer (ACTF&R) in section 34 were available to ACTF&R members, in relation to the broader plume and the spread of chemicals from the factory, the powers relating to fires in a built-up area in section 67 were not available as they would not be exercised for the purposes of "extinguishing or preventing the spread of the fire". This is despite ACTF&R being the lead response agency for the

unintentional release of hazardous materials such as chemical, radiological, explosives or liquid fuels under the ACT Emergency Plan.

Members of ACTF&R or the RFS should be able to exercise the powers available to them under section 67 and 68 to protect life or property where the threat to life or property arises as a consequence of a fire, rather than just from the fire itself.

The role of the RFS

The main function of the RFS is to protect and preserve life, property and the environment from fire in rural areas. In exercising this function, the RFS is responsible for operational planning, in consultation with ACTF&R, for fire outside the city area, including fire preparedness, and fire response in rural areas, other than a fire that is in a building and at which a member of fire and rescue is present. The RFS also has the function of undertaking assistance operations to support other entities in the exercise of their functions under the Act.

Under the Commissioner's Guidelines for the concept of operations for grass and bush fires in the ACT, first response to all bush and grass fires in the ACT will be by the nearest available most appropriate resource, irrespective of jurisdiction or Service. This is not supported by the Act, which only confers a function on the RFS (in relation to the built-up area) of undertaking assistance operations to support other entities in the exercise of their functions – that is, the RFS only has power to assist ACTF&R.

In reality, the RFS already operates within the built-up area, sometimes in conjunction with ACTF&R or the SES and sometimes on its own. These operations range from conducting hazard reduction burns in Canberra Nature Parks, through to responding to grass and bush fires.

Noting the importance of protecting and preserving life, property and the environment, it is important that the RFS have the ability to respond to fire within the city area where ACTF&R is not available or where a member of ACTF&R is not present to direct the RFS. It is therefore recommended that the RFS be given the function of responding to fire within the built-up area where ACTF&R is not present. This reflects the existing policy, as set out in the Commissioner's concept of operations for grass and bush fires in the ACT, that first response to all bush and grass fires in the ACT will be by the nearest available most appropriate resource, irrespective of jurisdiction or Service.

This power would be subject to any guidelines issued by the Commissioner. This would allow the Commissioner to detail operational procedures for any response, including on the prerequisites required before the power could be exercised. This could include the RFS member only exercising these powers if they possess prescribed training qualifications.

The power would only apply when a member of ACTF&R was not present. In line with the existing Commissioner's concept of operations for grass and bush fires, the RFS would hand

over control of fire response operations in relation to a fire within the built-up area as soon as it is safe and practicable to do so following a member of ACTF&R arriving on scene. There will be no change to the current practice that ACTF&R have primacy of response for building fires, whether in the city or rural areas.

Exemptions under other legislation for members of emergency services

The Act provides broad powers on chief officers and members of the emergency services to protect and preserve life, property and the environment. Exercising these functions may see the emergency service member committing an offence under other ACT legislation. For this reason relevant legislation contains an exemption for actions undertaken by certain members of an emergency service in an emergency.

For instance, section 7 of the *Nature Conservation Act 2014* provides that this Act does not apply to the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire. Relevant person is defined as—

(a) a member of the ambulance service; or

(b) a member of fire and rescue; or

(c) a member of the rural fire service; or

(d) a member of the SES; or

(e) any other person under the control of—

(i) the chief officer (ambulance service); or

(ii) the chief officer (fire and rescue); or

(iii) the chief officer (rural fire service); or

(iv) the chief officer (SES); or

(f) a police officer.

This provision refers to all four emergency services (as well as police officers), reflecting that members of all four emergency services may be required to act to protect or preserve life or property in a way that would otherwise breach a provision of the *Nature Conservation Act 2014*.

Similar provisions apply in other ACT legislation. However, many of these provisions do not apply to all emergency services, and are restricted to members of ACTF&R and the RFS. For instance, section 6 of the *Environmental Protection Act 1997*, section 7 of the *Heritage Act 2004*, section 28 of the *Water Resources Act 2007 and* section 19 of the *Tree Protection Act 2005* do not extend the immunity to members of the Ambulance Service or the SES.

Noting the importance of ensuring that members of all emergency services are able, within the limits of their training and functions, to respond, or assist with response, to all hazards, it is important that all members of the emergency services receive the necessary immunities. It is recommended that these exemption provisions be amended to include members of all four ACT emergency services.

Recommendation

That section 67 and 68 of the Act be amended to allow members of ACTF&R, the RFS or a police officer to exercise the powers available to them under that section to protect life or property where the threat to life or property arises as a consequence of a fire, rather than solely from the fire itself.

The function of the RFS be amended to allow the RFS to respond to fires in the city area, other than fires at which a member of ACTF&R is present.

That consistent immunities be provided for all members of the emergency services, including the SES and the Ambulance Service, under all ACT legislation.

The interaction of the Emergencies Act with the ACT planning and nature conservation regimes

The objects of the Act include the protection and preservation of life, property and the environment. ACT legislation provides clear and appropriate guidance that emergency bushfire responses by emergency service members for the preservation of life or property does not breach any requirements of nature conservation or planning legislation. It is in relation to bushfire preparedness or mitigation works that the values of community safety and environmental protection and biodiversity are often considered to be in conflict. Specifically, disagreements may arise when dealing with clearing for fire mitigation, and the maintenance of environmental values. The ESA recognises that it is simplistic to assert that the protection of life and property is paramount and should take precedence over the environment.

Disagreement may commonly arise in relation to vegetation management, which is both a key component of bushfire property preparedness and may be a major cause of biodiversity loss and land degradation. Some techniques for managing fuel and vegetation can also have positive benefits for the natural environment. In particular, fire is an integral feature of the Australian environment, and has shaped, and will continue to shape, ecosystems for generations to come. Whilst many people consider fire to be a significant threat to biodiversity and the environment more generally, the ESA supports the view that burning under appropriate regimes (frequency, intensity, season and extent of fire) can assist biodiversity.

Disagreement can frustrate and aggrieve those involved in bushfire planning and environmental management. Of more importance is that inappropriate resolution may reduce community safety and/or lead to unnecessary environmental harm.

Reconciling these two equally complex yet important issues has presented a challenge to jurisdictions worldwide. The ACT is not immune from this challenge. The ACT Auditor-General's report into Bushfire Preparedness noted that development, approval and delivery of the upgrade of Mount Franklin Road and Cotter Hut Road in the Namadgi National Park, a key bushfire mitigation work, had been a particularly difficult project that has experienced a significant delay in implementation and an increase in cost. The report found that there was a need to strike a careful balance between the needs of bushfire management and the long term management of environmentally sensitive areas.

Reconciling these issues requires a joint approach between land managers, environmental and planning authorities and the ESA. Community, environmental and biodiversity protection will be achieved by a cooperative approach. Regulatory or legislative solutions alone will not achieve the desired results. This approach must positively acknowledge different values and provide mechanisms that are sufficiently flexible to accommodate them. While many of these issues arise during the development and implementation of Bushfire Operational Plans, which are the responsibility of land owners and managers rather than the ESA itself, the ESA has an important role to play in this process, noting that it develops and directs the strategic approach to bushfire management in the Territory. One approach could be to develop a whole of government Code of Practice that guides the delivery of routine bushfire mitigation works. Works undertaken in accordance with the Strategic Bushfire Management Plan (which is developed in consultation with the Conservator of Flora and Fauna) and delivered in compliance with the Code of Practice could be exempted from requiring additional approvals. This approach is adopted in other jurisdictions including NSW, Victoria and South Australia.

As part of this effort, it is important that the ESA continues to develop and refine bushfire mitigation measures that are robust enough to effectively mitigate the risk and sophisticated enough to minimise impact on the environment. All actions must recognise that the most appropriate or sustainable measures will be those that achieve community safety objectives, while avoiding or minimising harm and maximising benefits to the environment and meeting legal and policy obligations for environmental care.

Responsibility for community education and preparedness

Under section 8 (2) of the Act, the Commissioner is responsible for 'community education and improving community preparedness for emergencies'. The Commissioner is also obliged (under section 8 (4) (g)) to emphasise community education and preparedness for emergencies when exercising the Commissioner's functions. The Commissioner is

responsible for preparing the strategic bushfire management plan, which is required to include strategies for prevention of, and preparedness for, bushfires (section 74 (2) (g) of the Act). After the Minister makes the strategic bushfire management plan, the Commissioner is required under section 76 (1) to conduct an assessment of the available resources and capabilities for bushfire prevention and preparedness.

Under part 5.3 (Bushfire Prevention) of the Act, the Commissioner is responsible for elements of policy for bushfire prevention activities in the ACT. This includes the declaration of the bushfire abatement zone and the preparation of a strategic bushfire management plan for the Minister. Under section 78, the Commissioner is also responsible for the approval of Bushfire Operational Plans.

Chief Officers also have responsibilities for community education and preparedness under the Act. The Chief Officer (ACTF&R) is responsible for:

- operational planning for fire in the built-up area, including fire preparedness and control;
- operational planning (in consultation with the Chief Officer (RFS)) for fire in the bushfire abatement zone, including fire preparedness and control; and
- community awareness about fire prevention and preparedness in the city area[9].

The Chief Officer (RFS) is responsible for:

- operational planning, in consultation with the Chief Officer (ACTF&R) for fire outside the city area, including fire preparedness and control;
- community awareness about fire prevention and preparedness outside the city area[10].

The Chief Officer (SES) is responsible for community awareness about storm, flood and civil defence preparedness[11].

The Chief Officer (ACTAS) is responsible for community awareness about pre-hospital medical emergencies[12]

The Council submitted that there was considerable overlap between the Commissioner's responsibilities for community education and preparedness and the various responsibilities of the Chief Officers. The Council noted that while the Act drew a distinction between the responsibilities for 'community awareness' (Chief Offices) and 'education and preparedness' (Commissioner), Council considered that in practice these terms are used interchangeably to mean the same thing, potentially leading to confusion and duplication when it comes to resource allocation and effort.

Given this, the Council recommended the streamlining of the responsibilities for community awareness, education and preparedness into one line of responsibility. The Council noted that in small jurisdictions such as the ACT, there are insufficient resources and capacity to fragment such important functions across multiple services and reporting lines, especially if there is not a clear understanding of what is expected. This can lead to potential fragmentation of resourcing and communication activities that can lead to ineffectual results and poor messaging to the community.

The Council's concerns were shared by the ACT Auditor-General, whose report on bushfire preparedness noted these responsibilities led to a number of distinct arms of the Emergency Services Agency with responsibility for community education and awareness programs. The

[9] Sections 29 (3) (c), (d) & (f) of the Act.
[10] Sections 30 (3) (c) & (e) of the Act.
[11] Section 31 (3) (c) of the Act.
[12] Section 38 (3) (c) of the Act.

Report also noted that the ESA Media and Community Information business unit has also been involved in coordinating community education and awareness campaigns across the ESA and this has added an additional layer of complexity.

Noting the importance of ensuring the community is appropriately educated, aware of emergencies and confident of their role in emergency prevention, it is recommended that the responsibilities for communication education and preparedness in the Act be amended. The Commissioner would be given responsibility for community education and awareness.

This amendment would clarify responsibilities, and would not diminish the important role that the various emergency services have in providing advice to the community and raising community awareness. The Council noted the substantial work undertaken by the emergency services in this area, including the RFS Open Day, the ACTF&R school engagement programs, CFU Saturday, and the SES StormSafe program. These services would continue to deliver community education and awareness programs in accordance with the Commissioners' strategic direction.

Recommendation

That the Commissioner be given specific responsibility for community education, awareness and preparedness.

Direction to remove flammable material from premises

Section 106 of the Act allows an inspector who believes, on reasonable grounds, that flammable material is kept on particular premises in a way that may cause, directly or indirectly, a danger to life or property if there is a fire, to direct the owner of the premises to take stated action to remove the danger. There are a range of criteria that the inspector must consider before issuing the direction, including the nature, location and use of the premises and nearby premises, the availability of firefighting facilities and the action necessary to remove the danger.

A direction specifies the action the owner must take to remove the danger, and the timeframe within which the danger must be removed. The legislated timeframe is least 14 days for the owner to comply with the direction.

Under section 107, an inspector, who believes on reasonable grounds that a person has contravened a direction under section 106, may use reasonable force to enter the premises (after giving 24 hours notice) and arrange for the action to be taken that is necessary to remove the danger. In practice the action necessary to remove the danger is to engage contractors to remove rubbish, building materials and/or vegetation from the premises.

Inspectors usually undertake these fire hazard inspections following complaints by members of the community, with the majority of request for inspections occurring over the bushfire

season. During the 2013/14 bushfire season ACTF&R inspectors undertook 68 hazard inspections. Every hazard inspection is attended by an operational firefighting appliance and takes approximately one hour to complete. 13 of the 68 premises attended during the 2013/14 season were determined not to be fire hazards. The condition of 55 premises inspected was considered to pose a fire hazard, with a direction issued to occupants requiring them to remove the hazard within 14 days. A reinspection is required for all premises for which a direction has been issued, again taking approximately one hour to complete and attended to by an operational firefighting appliance. Eight of the 55 directions were not complied with by the owner, a non-compliance rate of 14%.

An inspector does not automatically exercise their powers available under section 107 to enter the premises and arrange for necessary action taken to remove the danger. Many of these situations require a whole of government approach, and may involve public health, mental health or breach of lease considerations.

There are a small number of owners who have been given direction notices on multiple occasions. There is no sanction in the Act for non-compliance with a notice. A failure to comply with other directions issued under the Act may attract a penalty. For instance, a rural land owner or manager who fails to comply with a direction to comply with a bushfire management requirement under the Strategic Bushfire Management Plan or a Bushfire Operational Plan commits an offence under section 110, which has a maximum penalty of 50 penalty units.

Should the inspector exercise their power under section 107 to take the necessary actions to remove the danger, the costs incurred in undertaking that action may be recovered as a debt owing to the Territory by the owner of the premises. The cost incurred in undertaking this action is approximately $15,000. Recovering these debts incurs costs that are not necessarily recoverable by the Territory. The ESA is also required to expend resources in managing the debt and its recovery. An alternate approach may be to adopt the approach taken for unpaid rates or land tax. Unpaid rates or land tax are a charge on the interest held by the owner of the parcel of land – in effect the unpaid debt is a charge on the lease for the property. The charge takes priority over a sale, conveyance, transfer, mortgage, charge, lien or encumbrance in relation to the property, so the debt must be repaid prior to any other proceeds of sale being released.

The current approach in the Act does not act as a disincentive to comply with a direction notice for a not so insignificant number of land owners or leaseholders. This non-compliance poses risk not only to those individuals, but also other residents of the property, as well as neighbouring residents. Consideration should be given to examining the consequences of non-compliance, and any opportunities to increase compliance. This could include imposing a penalty for non-compliance, and/or attaching the debt as a change on the lease of the property.

Recommendation

That opportunities to increase compliance with a direction notice issued under section 106 be considered. This could include imposing a penalty for non-compliance, and/or attaching the debt as a change on the lease of the property.

Bushfire Management Standards

The Strategic Bushfire Management Plan prescribes that fuel management works must be undertaken in accordance with Bushfire Management Standards. These standards prescribe the measurable outcomes for bushfire management works, as well as establish the process by which the widths of Asset Protection Zones are determined and applied, and details the standard that applies to the process. They also identify standards and classification for fire trails, public roads, rural fire trails and aerial access in the ACT.

These Standards are approved by the Commissioner. Similar to Regional Fire Management Plans, there is no legislative basis for these standards. Given that landholders may face sanction under the Act if they fail to comply with their Bushfire Operational Plan, which in turn requires compliance with these Standards, it is appropriate that these Standards be given a legislative basis.

It is recommended that the Commissioner be given an explicit power to approve these Standards. Given the nature of the Standards, it is also appropriate that the Conservator be consulted on the Standards. The Standards should be a notifiable instrument.

Recommendation

That the Commissioner be given an explicit power to approve Bushfire Management Standards. The Conservator should be consulted prior to the Commissioner making the Standards. The Standards should be a notifiable instrument.

Adding "Service" to ACT Fire & Rescue in the Act

Section 43 of the Act establishes ACT Fire & Rescue (ACTF&R). ACTF&R is currently unique among the ACT emergency services in that, despite it being an emergency service, it is not legally referred to as an emergency service. This contrasts with the ACT Rural Fire Service, the State Emergency Service or the ACT Ambulance Service.

This lack of the word "service" in its title is not reflective of the important service role ACTF&R undertakes within the Territory. ACTF&R is a professional, highly-skilled provider of a wide spectrum of fire and rescue services, ranging from reactive response to incidents through to proactive planning and mitigation activities.

It is recommended that word “Service” be included after ACT Fire & Rescue in the Act, such that ACTF&R will be renamed as the ACT Fire & Rescue Service in the Act. This would ensure consistency with other ACT emergency services.

There would be no costs associated with this amendment and no changes to ACTF&R branding.

Recommendation

That ACT Fire & Rescue be renamed the ACT Fire & Rescue Service in the Emergencies Act.

Future reviews of the Act

Section 203 of the Act requires that the Minister review the operation of the Act as soon as practicable after the end of every fifth year after the day that section commenced. It also requires the Minister to present a report on the review to the Legislative Assembly within three months after the day the review is started.

The requirement that a report on the review must be presented to the legislative Assembly within 3 months is problematic. While the current review is anticipated to meet the three month deadline, imposing an arbitrary three month timeline may unnecessarily restrict future reviews, particularly where extensive stakeholder consultation is required. The Legislative Assembly sitting pattern also impacts upon and restricts this three month period.

A preferable approach is that the review be undertaken as soon as practicable at five yearly intervals, and that a report of the review be tabled in the Legislative Assembly at the finalisation of the review. This amendment would also deliver efficiencies within Government and Cabinet, as the current three month timeline prevents Government approval for legislative amendments identified as necessary by the report being obtained at the same time as the report itself is endorsed by the Minister. This necessitates a separate Cabinet approval being obtained for the legislative amendments recommended by this report, when it would be more efficient for Government to consider and endorse the report, and any resulting legislative amendments, at the same time.

Recommendation

That section 203 of the Act be amended so that the Minister must present a report to the Legislative Assembly as soon as practicable after the review is completed.