



Review of the Emergencies Act 2004

Discussion Paper

Emergency Services Agency
Department of Justice and Community Safety
July 2015

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Ministerial Foreword



The people of the Australian Capital Territory know all too well the devastating impacts that an emergency can have on a community. The 2003 bushfires that swept through the Territory will forever be remembered as a tragic day, and ranks as one of Australia's worst single-day natural disasters.

The lessons learned from the 2003 bushfires led to the consolidation of all of our emergency management laws into the *Emergencies Act 2004* ('the Act').

The Government has been proactive in ensuring that the Act continues to provide the best legislative framework for managing the Territory's emergency prevention and response capabilities. A number of amendments to the Act have been made over the years as part of the Government's commitment to continuous improvement of our emergency management systems and processes. Despite these ongoing efforts, it is timely to review the operation of the Act to ensure that the legislative framework continues to best suit the needs of the ACT community.

As the Minister for Police and Emergency Services, I am committed to ensuring that residents of the ACT are protected by well-resourced, high quality and responsive emergency services. Ensuring the legislative framework delivered by the Act best supports those emergency management efforts is an integral part of that commitment.

This Discussion Paper raises a number of topics regarding the operation of the Act. While inviting comment on the general operation of the Act, it also raises specific topics that this review would benefit from community feedback on.

The ACT Government is interested in hearing the views of the community on the operation of the Act. I invite you to consider the points raised in this Discussion Paper and lodge a written submission expressing your opinion. Your feedback forms an important part of this review and I encourage you to contribute your views.

A handwritten signature in black ink, appearing to read 'Joy Burch'.

Joy Burch MLA

Minister for Police and Emergency Services

How to lodge a submission

The ACT Government invites submissions from the public. Submissions need not be limited to the issues raised in this paper. All submissions will be given thorough consideration, and all interested individuals and organisations are encouraged to give their views.

Submissions can be lodged as follows:

By post: Emergencies Act Review
 Emergency Services Agency
 GPO Box 158
 CANBERRA ACT 2601

By email: esahaveyoursay@act.gov.au

The closing date for submissions is 24 August 2015.

PLEASE NOTE:

Submissions will be treated as public submissions and may be published, as may the names of people making submissions, unless a submission is clearly marked confidential.

Background

The Minister for Police and Emergency Services is required under section 203 of the *Emergencies Act 2004* ('the Act') to review operation of the Act at five yearly intervals. The Minister has three months to undertake the review.

Submissions from the public and interested stakeholders are sought to assist and inform the review. The review will be tabled in the ACT Legislative Assembly once completed.

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 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, Rural Fire Service (RFS) and the State Emergency Service (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.

Finally, 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. The Emergency Services Commissioner was given responsibility for responsible 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 last reviewed in 2009, and the Act 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, and 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 Chief Executives 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) Amendment 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 services, including rescue services, the organisation provides to the ACT community.

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 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.

Significant events in the past five years

A number of emergency events have occurred since the Act was last reviewed. The more significant events are highlighted below. These activities were not selected on the basis that they exposed any potential inefficiency with the legislative regime, but rather to illustrate the range of situations that Act may apply to and to serve as discussion points for feedback as part of this Review.

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 was declared during this period.

Fire at Energy Services Invironmental premises, Mitchell, 15-17 September 2011

The premises of Energy Services Invironmental in Dacre Street, Mitchell were destroyed by a fire between 15-17 September 2011. The site of the fire was a facility where oils contained in electrical equipment such as transformers are chemically treated to destroy PCBs, a class of persistent and toxic chemical banned under the Stockholm Convention, thus rendering the oils acceptable for re-use.

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 (in the case of campers at Exhibition Park and workers present in Mitchell business premises) 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.

A multi-agency effort responded to the fire. The then ACT Fire Brigade undertook fire suppression activities and conducted air monitoring (supported by Fire & Rescue NSW), while the Environmental Protection Agency, assisted by personnel from the SES and the NSW Office of Environment and Heritage conducted sample collection of soils and fire site runoff water, as well as from locations where atmospheric deposition of smoke particulates may have settled.

The National Research Centre for Environmental Toxicology at the University of Queensland was appointed to undertake an independent review of the testing and analysis related to the fire. The review found that the ACT emergency, environment and health authorities acted quickly, responsibly and carefully to protect the health of the community and the environment during and after the fire. Observations were made in relation to protocols and procedures for sampling and monitoring of the airborne toxins, and the media and public information made available during and immediately after the incident.

The fire also saw the first operational use of the Emergency Alert telephony based warning system 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.

Blue Mountains (NSW) Bushfires, October 2013

Described as the worst NSW bushfires since the 1960s, and concentrated in the greater Blue Mountains region of NSW (although at one point over 100 bushfires were active across the state), these fires caused the loss of life and the destruction of hundreds of houses and other buildings, as well as significant disruption to essential services and transport links. The premier of NSW declared a state of emergency for the entire state on 20th October 2013, which was revoked on 30th October 2013. Whilst the emergency was confined to NSW (although members of the ACT emergency services did assist in response operations), it has been included in this paper given the significance of both that a state of emergency was declared for entire state, but also that the Minister delegated his powers to the Commissioner of the Rural Fire Service rather than the Commissioner of Police, which is understood to be the first time that this has occurred.

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 tankers on scene along with support vehicles and approximately 50 firefighters. 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 still continuing on the building.

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.

The ACT Government has given effect, or is currently giving effect, to those recommendations. There was one specific recommendation that proposed an amendment to the Act, which would allow the ACT 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*.

Interstate developments

There have been significant developments in emergency management in other jurisdictions in the last five years. Many of these changes have been a result of significant natural disasters, including the Victorian Black Saturday fires, the Perth Hills bushfires and the South-East Queensland 2010 flood event.

Victoria

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. Statutory authorities and emergency services agencies provide on-the-ground emergency response services to the Victorian community. These include the Metropolitan Fire Brigade, Country Fire Authority, State Emergency Service and the Emergency Services Telecommunications Authority.

South Australia

In 2013 the South Australian Government commissioned a review of its *Fire and Emergency Services Act 2005*. That Act established the South Australian Fire and Emergency Services Commission (SAFECOM) as the agency responsible for supporting the Country Fire Service, Metropolitan Fire Service and the State Emergency Service, undertaking strategic policy planning, governance and resource allocation for the overall fire and emergency services sector. SAFECOM also supports emergency management planning across South Australia.

The review noted that South Australia was one of the only states that retained a board to manage emergency services, with most other jurisdictions adopting a model whereby one person has ultimate responsibility for all fire and emergency services. The review found that the emergency service organisations tended to adopt a 'silo' mentality, and that while the emergency services were cooperating satisfactorily at an operational level, there was

widespread dissatisfaction with the operation of the board and its ability to efficiently allocate emergency service resources between the agencies.

In response, in 2014 the South Australian government announced plans to adopt a new structure (the South Australian Fire, Emergency and Rescue (SAFER)), to be led by a single chief executive officer, which would have responsibility for areas such as training and purchasing. The chief executive officer would be supported by chief officers for the respective services who in turn would have operational responsibility for their service. In May 2015, in response to criticism, primarily from CFS volunteers, the South Australian Minister announced that the proposed reforms would be reviewed.

Western Australia

The Western Australian Government commissioned a report into that state's fire and emergency services following the Perth Hills bushfire in February 2011. That report contained 55 recommendations which were endorsed in-principle by the government and has since resulted in significant structural change in respect to fire and emergency services within the state of Western Australia. A further report was commissioned following the November 2011 Margaret River bushfire which further supported the need for reform.

In response, Fire and Emergency Services Authority was abolished in November 2012, and replaced by the Department of Fire and Emergency Services. The change sought to improve the coordination and planning of emergency services. The Department is overseen by the Fire and Emergency Services Commissioner who is responsible for the organisation's strategic direction, operations and functions.

Queensland

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 and 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.

New South Wales

The NSW Ministry for Police and Emergency Services commenced operation on 1 April 2011. It incorporated former branches of the Department of Premier and Cabinet, Family and Community Services, the NSW Police Force and Emergency Management NSW. The Ministry for Police and Emergency Services, part of the NSW Department of Justice, is responsible for the development and coordination of emergency management policy and advice, and the coordination of recovery functions including disaster welfare services.

Similar to the ACT, New South Wales has made a number of minor amendments to its emergency management legislation over the last 5 years, most of which have not originated with a review or inquiry. Following the 2013 Blue Mountains bushfires, a number of amendments were made, include increasing the ability of landowners to clear vegetation on their land to manage bushfire risk, giving the RFS the power to carry out hazard reduction without the consent of landowners when attempts to contact them have failed, and increasing penalties for impersonating an emergency worker. Other legislative amendments include giving the RFS a new statutory function of protecting 'infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in rural fire districts', and allow the RFS to 'destroy, pull down, shore up or remove, or cause to be destroyed, pulled down, shored up or removed, any buildings or structures or parts of buildings or structures on any land' in order to make premises safe. The cost of these actions is to be borne by the property owner.

Potential areas for improvement

The ACT Government has adopted a practice of continuous improvement in relation to its emergency management process and practices. This has included regular amendments to the emergency management legislative regime (as highlighted above), to take into account lessons learnt from planning and desktop exercises, developments in other jurisdictions, or recommendations of the Auditor-General's performance audit report into bushfire preparedness. The majority of these amendments have been to chapters 2 (Emergency Services Commissioner), 3 (Chief Officers) and 7 (Emergency management) of the Act. For these reasons, while submissions are to be welcomed concerning any aspect of the operation of the Act, particular focus in this paper has been given to other chapters of the Act, in particular chapters 5 (Fire management) and 6 (The bushfire council).

It should be highlighted that while this paper raises various questions for discussion on specific topics, the review will examine all aspects of the operation of the Act, including areas possibly not mentioned in this paper. Comments on any aspect of the operation of the Act will also be welcomed as part of any feedback.

Does the Act support the Emergency Services Agency's Strategic Reform Agenda?

Like similar emergency management and response agencies across Australia, the ESA has been the subject of a number of reviews in recent years. These reviews include:

- ACT Ambulance Service's *Enhancing Professionalism – A Blueprint for Change*, which was released in March 2015¹. This was the culmination of a number of internal review processes that the ACT Ambulance Service undertook undertaken over the past 18 months;
- The Women in Emergency Services Strategy, which seeks to ensure that the ESA builds a workforce that better reflects the community it serves, and provides an inclusive environment that respects and values all of its members, affording equitable opportunities and fully utilising the capabilities of all staff;
- The Treasury Expenditure Review of the ESA. The review examined opportunities to improve the efficiency and effectiveness of certain services within the ACT Government, including the ESA. The aim of the review was to place the ESA on a sustainable financial footing by better aligning funding with services. The Review considered a range of options to address financial performance, define future levels and standards of service delivery, and address future sustainability. A number of subordinate reviews were also conducted to address specific issues, including a review on closer organisational alignment of the ACT Ambulance Service with ACT Health, a review of the efficiency and effectiveness of current resourcing, functions and command arrangements for ACT Fire & Rescue against response experience, and a review of the Communication Centre;
- ESA Review of enabling support services. This review assessed workforce planning, training and volunteer management, logistics, and risk, planning and spatial services to determine efficiencies within the ESA and minimise duplication of support services across the four emergency services; and
- Review into ACTF&R human resources matters. This review was conducted to investigate two specific human resource incidents relating to the ACTF&R and any other underlying cultural issues.

In addition to the specific areas addressed by the various reviews, the ESA (like similar organisations across Australia) faces a number of challenges, including:

- high community expectations;
- increasing demand for services, particularly for ambulance services;
- climate change;
- increasing population in the Territory; and
- an ageing population and ESA workforce.

¹ Available on the ESA website at <http://esa.act.gov.au/wp-content/uploads/ACTAS-Enhancing-Professionalism-A-Blueprint-for-Change-Report.pdf>

In response to these challenges and reviews, the ESA has developed a Strategic Reform Agenda, which draws together the outcomes and organisational reforms that were identified in these reviews in a single blueprint for change. The Strategic Reform Agenda will be the biggest organisational reform the ESA has undertaken since its formation. The Strategic Reform Agenda brings together all the recent reviews of ESA and sets a path forward for the next 5 years to 2020. It seeks to deliver a cohesive ESA, a collaborative management team and a unified executive. By doing so it will allow the ESA to deliver better emergency services to the community on behalf of the ACT Government.

The Strategic Reform Agenda is specifically directed at:

- respecting the identity of the four operational Services, but ensuring the ESA operates a coherent whole;
- retaining operational excellence;
- embedding enterprise risk management, including for corporate and investment decision making;
- modernising the governance arrangements consistent with the operating environment and risk profile;
- further transforming data holdings and using performance information to improve monitoring and evaluation; and
- promoting an inclusive and supportive culture.

The Strategic Reform Agenda's key areas of priority are:

- A Realigned ESA;
- A New Strategic and Corporate Plan;
- Setting the highest standards in Service delivery;
- Investment in leadership and people management; and
- Rigorous decision making.

A number of these reviews have identified that in many respects the ESA still operates within operational 'silos'. This is despite the clear intent when the Act was introduced that the creation of the ESA was designed to bring the various emergency service bodies closer together and would facilitate a more flexible use of equipment and personnel. It is also inconsistent with the all hazards/all agencies approach used in modern emergency management.

The priority of realigning the ESA seeks to ensure that the ESA operates as one organisation to achieve the objectives set out in the Act, delivering services to the community as one entity respecting the four operational services that work underneath it. A key feature of the priority for a realigned ESA will be ensuring a more singular executive that collectively looks across the ESA's legislative and functional responsibilities, the external operating environment, and stakeholder interests. In addition to the four operational services, this will see the realignment of executive positions responsible for people (including volunteer

management), risk management, as well as the current function of logistics and support services. These positions would be responsible for those issues on an ESA wide basis to assist in removing the duplication of effort which currently occurs across the four operational services.

Questions for Consideration

1. Does the Act support the delivery of the ESA Strategic Reform Agenda?

The role of, and governance and reporting arrangements, for the ACT Bushfire Council

The ACT Bushfire Council (the Council) has performed a role in the bushfire preparedness of the ACT for over 75 years. The Council was originally established by the *Bushfire Act 1936*. Since being reconstituted by the Act in 2004, the Council no longer has powers to take action directly to prevent or suppress bushfires, with its primary function to advise the Minister about matters relating to bushfires.

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.

In addition to the ACT Bushfire Council, the Commissioner may (under section 73) establish a committee to help prepare the draft strategic bushfire management plan and monitor the scope and effectiveness of the plan.

There are no equivalent committees or councils to advise the Minister or Commissioner in relation to other hazards, such as structure fires, chemical emergencies, storms or flood damage. Given that the original function of the Council was to undertake fire prevention and response, it is important to consider whether the current Council model is the most appropriate way to ensure community input into bushfire prevention. Section 73 of the Act already gives the Commissioner the power to establish a committee to help the preparation of the draft strategic bushfire management plan. This committee must include members with experience in land management and bushfire management.

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 ACT Bushfire 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. The terms of reference

are at Attachment A. The Auditor-General's report recommended that the ACT Emergency Services Agency, in consultation with the ACT Bushfire Council, should conduct a review of the ACT Bushfire Council against those terms of reference within two years. Feedback received from this Discussion Paper will inform that review.

Membership of the Council

The Council is comprised of the chairperson, a deputy chairperson and at least 3, and no more than 10, 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. It also represents rural leaseholder, environmental and community interests.

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. An alternate approach would be to require that the Minister must not appoint someone to a position unless satisfied that the person has appropriate expertise in a specified area. An example of this practice is the appointment of members to the scientific committee established by section 31 of the *Nature Conservation Act 2014*. 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.

Questions for Consideration

2. Does the Bushfire Council have the most appropriate composition to effectively advise the Minister about matters relating to bushfires?
3. Are the current mix of skills and experiences identified in section 129 (2) of the Act the most appropriate for the Council to meet its functions? Are there other areas of expertise that should be represented, such as climate change science?
4. Should the membership include a representative of each of the skills and experiences listed in section 129 (2) (i.e. one person appointed must have experience in land management, one person appointed must have experience with fighting fires in rural areas, and so on)?
5. Should the membership include a member representing the interests of rural lessees, the community's interests in the environment, and the community's interests generally?
6. Should a limit be set on how many times a member can be appointed or reappointed to the Council?

The Consultation Role of the Council

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.

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 (as at 21 May 2015 three out of eight members of Council were 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. While the Act does contain processes for proceeding where a Council member has a relevant interest in an issue being considered, the obligation is on such a Council member to declare such an interest in the first place. In addition, what constitutes a direct or indirect interest is often difficult to objectively determine.

Questions for Consideration

7. What consultation role is appropriate for the Council?
8. Should the Council have a consultation role on the appointments of the Chief Officer and Deputy Chief Officer of the RFS?
9. Should the Council be consulted on proposed appointments of volunteer members to senior ranks within the RFS?

Reporting Requirements

Section 138 (3) requires the Council to publish the minutes of its proceedings within 7 days after the minutes are confirmed by the Council. Although the rationale for this requirement was not specifically referred to in the Explanatory Statement for the Act, when introducing the *Emergencies Bill 2004* the then Minister for Police and Emergency Services stated that publication of the minutes would “ensure that decision-making processes are transparent and that the council and the [ESA] are accountable for their decisions and actions”².

In practice, members of the Council have expressed concern that the requirement to publish minutes inhibits open and frank discussion among members of the Council.

The Council appears unique among similar statutory bodies in having to publish minutes of its proceedings. For instance, similar bodies such as the Animal Welfare Advisory Committee (constituted under the *Animal Welfare Act 1992*), the Heritage Council (*Heritage Act 2004*), the Work Safety Council (*Work Health and Safety Act 2011*) and the Aboriginal and Torres Strait Islander Elected Body (*Aboriginal and Torres Strait Islander Elected Body*

² ACT Legislative Assembly Hansard, Friday 14 May 2004, p.1936.

Act 2008) are not required to publish minutes of proceedings. Members of the Council have queried whether a more appropriate reporting mechanism may be for the council to publish resolutions (made under section 137 of the Act) but the requirement to publish minutes be removed. This would ensure that formal advice to the Minister or the Commissioner provided through a Council resolution would still be subject to an appropriate level of accountability and transparency.

While the Act currently requires that the Council publish minutes of its meetings, there is no obligation or requirement in the Act to make publicly available formal advice to Government. For instance, the 2006 Standing Reference to the Council requires the Council to provide annual advice on, among other issues, the level of preparedness for the coming bushfire season, and Council's advice on proposals for bushfire mitigation, preparedness and response by ACT Government agencies for the coming financial year. This requirement is repeated in the Strategic Bushfire Management Plan, which requires the Council to provide annual advice to the Minister on 'matters relating to bushfire management which may include the level of preparedness, fuel management and access, and the response capability of Fire Services'. Preparation of those annual reports are a key component of the Council's workload, and form an important accountability measure to appropriate levels of bushfire readiness.

Questions for Consideration

10. Is the current requirement that minutes of Council meetings be published still appropriate? Are there other methods of ensuring accountability that do not inhibit open and frank discussion at Council meetings?
11. Should the Council be obliged to publish formal reports, including its annual reports on bushfire management?

The regulation of total fire ban days

Section 114 of the Act allows the Commissioner to declare a total fire ban for some or all of the ACT, and for a stated period of time. The Commissioner may only declare a total fire ban if the Commissioner is 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 enforced when conditions are such that the spread and control 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. For that reason, the Act makes it an offence to light a fire in the open air during a total fire ban period.

A person commits an 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 Commissioner has the power in section 118 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, the Act 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. Such activities could include:

- undertaking welding or grinding;
- the use of plant and machinery;
- mowing or slashing;
- the use of bee smokers;
- using explosives; and
- the use of drones or model aircraft.

The lack of reference to activities that may lead to or cause a fire in the Act is in contrast to the situation in other jurisdictions. A number of jurisdictions have noted that, given total fire bans are declared when fires will be difficult to control, are most likely to threaten lives and property, it is imperative that activities that may lead to a fire igniting are appropriately restricted. For instance, 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'³.

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

³ Section 22B (2) (b), *Bush Fires Act 1954 (WA)*

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 birds⁴.

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 period⁵.

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 conditions⁶. These high fire risk activities include welding, gas cutting, soldering, grinding, charring, and the use of power operated abrasive cutting discs⁷.

An area of specific interest is the use of vehicles (including motorbikes) or machinery powered by an internal combustion engine on open land during total fire bans. Western Australia prohibits the use of these devices during total fire ban periods, unless the vehicle or machinery is being used on a road, or a land, driveway, yard or other area that provides access to, or a parking facility at, any residential, farming or business premises (provided the area has been sufficiently cleared of inflammable material to prevent the escape of fire). This is designed to prevent bushfires being ignited by vehicles travelling over vegetated areas, noting that fires can be caused by vegetation coming into contact with vehicle exhausts and other engine parts. There are exemptions for vehicles or machinery being used for agricultural purposes (provided certain safety precautions are met) or the vehicle or machinery is being used to prevent injury to a person or livestock⁸.

Questions for Consideration

12. Should activities that cause, or are likely to cause, a fire be restricted during total fire ban periods?
13. If so, are there any specific activities that should be restricted?
14. Are there any conditions that could be placed on persons undertaking those activities that would minimise the risk of a fire (i.e. only be operated within a cleared area, or the operator has a supply of water or other appropriate firefighting agent present and available for use)?
15. Should a specific ban be introduced on using vehicles or machinery in open areas (i.e. paddocks, nature reserves) during total fire ban periods?
16. If yes, should there be any specific exemptions that would allow the use of vehicles or machinery in open areas in certain situations?
17. Should there be exemptions when the use of fire is deemed by the Commissioner to be low risk?

⁴ Section 89, *Fire and Emergency Services Act 2005 (SA)* and Part 3, division 4, subdivision 3, *Fire and Emergency Services Regulations 2005 (SA)*

⁵ Section 70 (2) (b), *Fire Service Act 1979 (Tas)*

⁶ section 39E, *Country Fire Authority Act 1958 (Vic)*

⁷ section 111, *Country Fire Authority Regulations 2014 (Vic)*

⁸ Section 24A, *Bush Fires Regulation 1954 (WA)*

Responsibility for community 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 preparedness under the Act. The Chief Officer (Fire & Rescue) 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 preparedness⁹.

The Chief Officer (RFS) is responsible for:

- operational planning, in consultation with the Chief Officer (Fire & Rescue) for fire outside the city area, including fire preparedness and control; and
- community awareness about fire prevention and preparedness outside the city area¹⁰.

The Chief Officer (SES) is responsible for community awareness about storm, flood and civil defence preparedness¹¹.

The Commissioner’s ability to ensure that the emergency services preparedness and prevention activities are undertaken in a coordinated, effective and efficient manner may be restricted by the current wording of section 11, which gives the power to the Commissioner to make guidelines for the strategic operations of each of the emergency services. It is

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.

unclear as to whether this permits the Commissioner to make guidelines for the effective planning and delivery of emergency prevention and preparedness measures. It is important to note that this would not extend to agency preparedness and emergency response, which would properly remain the responsibility of the respective Chief Officers and their services.

Questions for Consideration

18. Would Territory preparedness and prevention be enhanced by giving the Commissioner an explicit power to make guidelines for these purposes?

Community education activities to support preparedness for emergencies

As noted above, the Commissioner is responsible for 'community education and improving community preparedness for emergencies'.

All four Chief Officers also have specific responsibilities for community awareness:

- the Chief Officer (Ambulance Service) is responsible for community awareness about pre-hospital medical emergencies;
- the Chief Officer (Fire & Rescue) is responsible for community awareness about fire prevention and preparedness in the city area;
- the Chief Officer (RFS) is responsible for community awareness about fire prevention and preparedness outside the city area; and
- the Chief Officer (SES) is responsible for community awareness about storm, flood and civil defence preparedness.

In the ACT Auditor-General's Office report on its performance audit into bushfire preparedness, the Auditor-General noted these responsibilities has lead to a number of distinct arms of the Emergency Services Agency with responsibility for community education and awareness programs. The Report also noted that the ACT Emergency Services Agency Media and Community Information business unit has also been involved in coordinating community education and awareness campaigns across the ACT Emergency Services Agency and this has added an additional layer of complexity.

The delivery of community awareness and education programs is coordinated by the ESA Community Education Plan. The Community Education Plan outlines the strategic direction for the delivery of community education within the ACT Emergency Services Agency in a coordinated approach. Among the requirements of the Community Education Plan is a joint awareness campaign (RFS and ACTF&R) to highlight the dangers of the bushfire season in the Territory. Under that plan, the RFS is the lead agency responsible for the preparation of the ACT community for the threat of bushfire each summer, and conducts an annual bushfire season community awareness campaign to encourage householders to mitigate their risk from the impact of bush and grass fires during the summer months. The ACTF&R supports this campaign through targeting the urban/rural interface through the Community Fire Units.

It is possible that clarifying the role and responsibility of the Commissioner with respect to communication education for emergency preparedness would assist the ACT Emergency Services Agency in ensuring that community education and community preparedness activities are undertaken in a more coordinated, efficient and effective manner. While specific subject matter expertise would continue to reside within the relevant emergency service, planning, substance and delivery of community education could be the responsibility of the Commissioner. This may be of particular benefit in relation to awareness about bushfire risks and mitigation efforts, where there is the potential for duplication of effort by the RFS and ACTF&R noting their shared responsibilities for community awareness in relation to fire awareness.

Questions for Consideration

19. What role should the Commissioner have in relation to planning and implementation of emergency-related community education?

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 which provides 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 ACT Ambulance Service 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.

There is no power in the Act for the Minister for Police and Emergency Services to approve or otherwise recognise the ACT Ambulance Service Clinical Advisory Committee in order to give that committee similar protections enjoyed by approved quality assurance committees.

Questions for Consideration

20. Should the ACT Ambulance Service Clinical Advisory Committee be given similar protections to quality assurance committees under the *Health Act 1993*?

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

The Chief Officer (Ambulance Service) 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 (Ambulance Service) 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 (Ambulance Service) 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 an 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 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 member's 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.

Questions for Consideration

21. Should the Chief Officer (Ambulance Service) be given a specific power to establish, amend, suspend or withdraw an ambulance officer's scope of practice?

Does the Act support 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 such measures as warning, evacuation, medical services and community recovery will be required during and following emergencies.

The Emergency Services Agency 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.

The Chief Officers may delegate their powers to members of an emergency service,

The Act then gives additional powers to the Chief Officer (Fire & Rescue) and the Chief Officer (RFS) (sections 67 and 68 respectively). 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.

The powers may be exercised at, immediately after, or in anticipation of the spread of, the fire.

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 the 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.

While the all-hazard approach underpins the ACT's emergency management framework, it is questionable whether the powers available for emergency response truly reflects an all hazard approach.

Chemical fire and spills

As noted earlier in this paper, the Mitchell chemical was a significant fire event that generated a significant and potentially dangerous smoke plume that affected a significant part of northern Canberra. While the powers of the Chief Officer (Fire & Rescue) in section 34 were available to ACTF&R members, it is arguable that, in relation to the broader plume and the spread of chemicals from the factory, that the powers relating to fires in a built-up area in section 67 were not available, as they are restricted to "extinguishing or preventing the spread of the fire". This is despite the 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.

The role of the SES

While members of the SES may be delegated the powers of their chief officer, the Act does not currently confer upon members of the SES specific powers that are available to them to respond to an emergency caused, for example, by a storm or flood. This contrasts with the approach taken in relation to fires.

The Act does not give any specific power to members of the SES to respond to flood or storm emergencies. Members must rely on any existing delegation of power given to them

by the Chief Officer (SES). This applies even where the member is seeking to protect life or property.

Members of the SES have no specific powers under the Act in relation to fire response and control. While SES members are not trained in firefighting response, SES members do receive training in tasks such as traffic control and the use of chainsaws that may support fire control operations. SES members may be trained and qualified to exercise many of the powers available to the chief officer of the ACTF&R or the RFS, including the power to:

- 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.

This contrasts with members of Community Fire Units (CFUs), who fall within the definition of 'a member of fire and rescue'. This allows CFU members to exercise the powers of the Chief Officer (Fire & Rescue) provided their actions are in accordance with the Commissioner's guidelines for fire and rescue, or it is not practicable for a direction or authority to be obtained from the Chief Officer. The Commissioner's guidelines impose restrictions on what powers a CFU member can exercise, and restrict a CFU member from engaging in activities for which they are not trained. If SES members are similarly trained, then should the SES members have specific, discrete, powers to assist the ACTF&R and the RFS if required to do so?

Questions for Consideration

22. Are the current powers to respond to emergencies sufficient to support an all-hazards approach to emergency response?
23. Should the additional powers available to respond to fires be extended to other emergencies?
24. Should members of the SES be given specific powers to respond to flood and/or storm emergencies?
25. Should restrictions be placed on the exercise of that power (i.e. the member must comply with any guidelines)?
26. Should members of the SES be given specific powers to assist with fire control operations?
27. 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?

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

The Act interacts with the ACT planning and nature conservation regimes in a number of ways. The Commissioner has a variety of powers and obligations under the Act that have consequences for the ACT's planning and/or nature conservation regimes. For instance, the Commissioner may declare an area to be a bushfire abatement zone. Landholders or land managers within a bushfire abatement zone are required to develop a bushfire operational plan that identifies how the landholder will manage the land to ensure that the requirements of the strategic bushfire management plan are met in relation to the area of land.

It is recognised that managing land to minimise a potential bushfire risk may have negative consequences from an environmental or nature conservation perspective. The Act incorporates a number of features to minimise and manage any such conflict. For instance, the Commissioner is required to consult with the ACT Planning and Land Authority and the ACT Conservator of Flora and Fauna, a statutory appointment under the *Nature Conservation Act 1980*. The Commissioner is also required to consult with the Conservator when developing the strategic bushfire management plan. While these consultation requirements are intended to resolve any potential conflicts between bushfire management and environmental and ecological values, section 77A of the Act gives primacy to the strategic bushfire management plan in the event the plan is inconsistent with a plan of management (a requirement of the *Planning and Development Act 2007*) for that land.

Similarly, ACT planning and nature conservation legislation includes provisions dealing with the powers in the Act to respond to bushfires. For instance, section 7 of the *Heritage Act 2004* provides that the Heritage Act does not apply to the exercise or purported exercise by members of certain emergency services of a function under the Emergencies Act for the purpose of protecting life or property, or controlling, extinguishing or preventing the spread of a fire. Similar exemptions exist in the *Nature Conservation Act 1980*, the *Tree Protection Act 2005*, and the *Environmental Protection Act 1997*.

The ACT Auditor-General considered the interaction between the Act and the ACT's planning and environmental regimes in its 2013 report into bushfire preparedness, particularly in relation to bushfire management-related infrastructure projects. That report examined one infrastructure project, the upgrade of Mount Franklin Road and Cotter Hut Road in the Namadgi National Park, and found that it been a particularly difficult infrastructure project that has experienced a significant delay in implementation and an increase in cost.

The Auditor-General's report noted that the project took significantly longer than planned, and was considerably more expensive. 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.

There remains however the need for greater clarity in the interaction and intent of the different legislation and the definition of terms that trigger particular environmental assessments. An example is what constitutes “development” under the *Planning and Development Act 2007*, which is important as it may effect and hinder types of routine and ongoing fire management activities such as maintaining fire trails maintenance and prescribed burning. A further example of the interaction between legislation is in relation to “lawful clearing” under the *Nature Conservation Act 1980*, which is permitted for works undertaken in accordance with a strategic bushfire management plan approved under the Act.

The Auditor-General’s report noted that ACT Government agencies have taken a number of steps to improve inter-agency co-operative arrangements, and legislative changes and administrative changes have been implemented which are expected to facilitate more effective collaboration on major infrastructure projects. In particular, the *Planning and Development Act 2007* was amended in February 2011 to provide flexibilities and exemptions which may reduce the regulatory approval steps required, particularly in relation to the need for an environmental impact statement.

However, the audit report recommended that the effects of the amendments needed to be monitored, and if needed, further changes made.

Questions for Consideration

28. How can greater clarity be achieved in how the Act interacts with planning and nature conservation regimes?
29. Can the ESA better implement bushfire-related infrastructure projects in support of the strategic bushfire management plan?
30. Are there other changes that would improve the delivery of bushfire prevention activities whilst still appropriately protecting environmental and conservation values?

Fire safety building requirements and heritage listed buildings

In the last few years there have been a number of fires in heritage-listed buildings, including the 2014 Sydney building fire, the 2011 Diamant Hotel fire and the Canberra Services Club fire in 2011. The owners of heritage buildings are not required to retrospectively install fire protection equipment which would be required for modern buildings. For instance, the Building Code of Australia and other building regulations are not generally applicable retrospectively to existing buildings, including buildings that are listed heritage items or

which may have significant heritage elements. ACT legislation only requires new building work, or substantial upgrades to existing building work, to comply with the Building Code.

While these requirements are not imposed through the Act, but rather the ACT planning and heritage regimes, there is a question as to whether the existing requirements and exemptions for heritage buildings are an impediment to the Emergency Services Agency meeting its statutory requirement to protect and preserve life and property. Fires in buildings are life threatening and often occur without warning. This gives building occupants little time to react – to either fight the fire or evacuate the building. Heritage buildings are more susceptible and vulnerable to fires given the lack of appropriate fire safety features. The consequences of such fires may not just be the destruction of the heritage building itself, but damage to neighbouring buildings. The most effective way to deal with this danger is through the prevention of fires in the first place, and the most effective way to do this is through the use of appropriate fire safety solutions such as sprinkler systems.

Questions for Consideration

31. How can the ESA better meet its statutory function of protecting life and property in relation to heritage buildings?

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 (Fire & Rescue) certain fire prevention related powers, including the power to issue improvement, occupancy or closure notices. 'Premises' is defined 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, 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.

Questions for Consideration

32. Should the Chief Officer (RFS) be given powers under part 5.4 to support fire prevention for premises (as defined)?

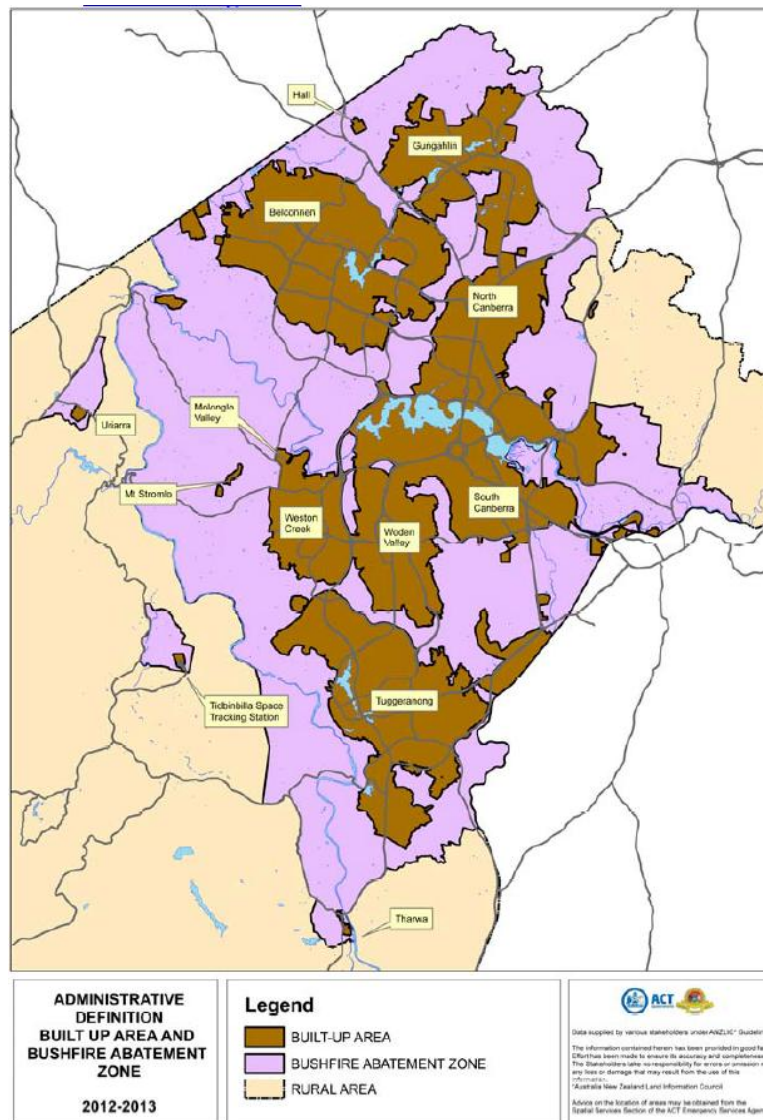
Responsibility for fire preparedness and response in the bushfire abatement zone

The Commissioner is responsible for the overall strategic direction and management of the emergency services. For the effective coordination of an emergency, the Commissioner may direct a chief officer to undertake response or recovery operations. The Commissioner may also make guidelines for the strategic operation of the emergency services, including the planning and conduct of joint operations of the emergency services.

Responsibility for fire preparedness and response is currently split between ACT Fire & Rescue and the RFS on a geographic basis. ACT Fire & Rescue is responsible for operational planning and response in the built-up area, as well as for operational planning for fire in the bushfire abatement zone (in consultation with the RFS). 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 area¹². The bushfire abatement zone is declared under section 71, and includes 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.

The RFS has responsibility for fire response in rural areas, as well for operational planning for fire outside the city area (in consultation with ACT Fire & Rescue). The city area is defined in section 66 as the built-up area and the bushfire abatement zone (although that definition is stated only to apply to chapter 5, despite the term 'city area' not actually used in that chapter). These areas are shown in the map below.

¹² 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 fires¹³ provides that the ACT F&R and the RFS will liaise with each other and jointly determine the priorities and strategies for the management of the fire in the bushfire abatement zone. ACT F&R is responsible for operational planning for fires in the bushfire abatement zone, in consultation with the RFS.

The bushfire abatement zone is unique in that classification of land as a bushfire abatement zone means that landowners and managers of land within that area may be required to undertake certain bushfire prevention activities in accordance with the strategic bushfire management plan. As such it operates primarily as a land use planning / fire management mechanism. This contrasts to the concepts of the built-up area and the rural area, which operate purely as a means to assign geographic responsibility for operational planning and fire response between the ACT F&R and the RFS.

¹³ <http://www.legislation.act.gov.au/ni/2012-400/current/pdf/2012-400.pdf>

An alternative approach could be to specifically assign responsibility for fire planning and response in the built-up area to the ACT F&R, and responsibility for fire planning and response in any area outside the built-up area (the rural area) to the RFS. In planning for fire in the built-up area, the ACT F&R will continue to plan for fires that may enter that area, but not be limited to the geographic limitation currently imposed by the bushfire abatement zone. The need to ensure close liaison between the ACT RFS and ACT F&R remains and can be ensured through the mechanisms of the Commissioners Guideline.

Responsibilities on land owners and managers of land located within the bushfire abatement zone would still continue, and be imposed through the strategic bushfire management plan and bushfire operational plans.

The Commissioner would remain responsible for the preparation of the plan, and could draw upon the expertise and advice of the Chief Officer (F&R) and Chief Officer (RFS) as appropriate in developing the plan.

Questions for Consideration

33. Could the current model for allocating responsibility for bushfire planning and response be enhanced?

Summary of Questions for Consideration

1. Does the Act support the delivery of the ESA Strategic Reform Agenda?
2. Does the Bushfire Council have the most appropriate composition to effectively advise the Minister about matters relating to bushfires?
3. Are the current mix of skills and experiences identified in section 129 (2) of the Act the most appropriate for the Council to meet its functions? Are there other areas of expertise that should be represented, such as climate change science?
4. Should the membership include a representative of each of the skills and experiences listed in section 129 (2) (i.e. one person appointed must have experience in land management, one person appointed must have experience with fighting fires in rural areas, and so on)?
5. Should the membership include a member representing the interests of rural lessees, the community's interests in the environment, and the community's interests generally?
6. Should a limit be set on how many times a member can be appointed or reappointed to the Council?
7. What consultation role is appropriate for the Council?
8. Should the Council have a consultation role on the appointments of the Chief Officer and Deputy Chief Officer of the RFS?
9. Should the Council be consulted on proposed appointments of volunteer members to senior ranks within the RFS?
10. Is the current requirement that minutes of Council meetings be published still appropriate? Are there other methods of ensuring accountability that do not inhibit open and frank discussion at Council meetings?
11. Should the Council be obliged to publish formal reports, including its annual reports on bushfire management?
12. Should activities that cause, or are likely to cause, a fire be restricted during total fire ban periods?
13. If so, are there any specific activities that should be restricted?
14. Are there any conditions that could be placed on persons undertaking those activities that would minimise the risk of a fire (i.e. only be operated within a cleared area, or the operator has a supply of water or other appropriate firefighting agent present and available for use)?
15. Should a specific ban be introduced on using vehicles or machinery in open areas (i.e. paddocks, nature reserves) during total fire ban periods?
16. If yes, should there be any specific exemptions that would allow the use of vehicles or machinery in open areas in certain situations?
17. Should there be exemptions when the use of fire is deemed by the Commissioner to be low risk?

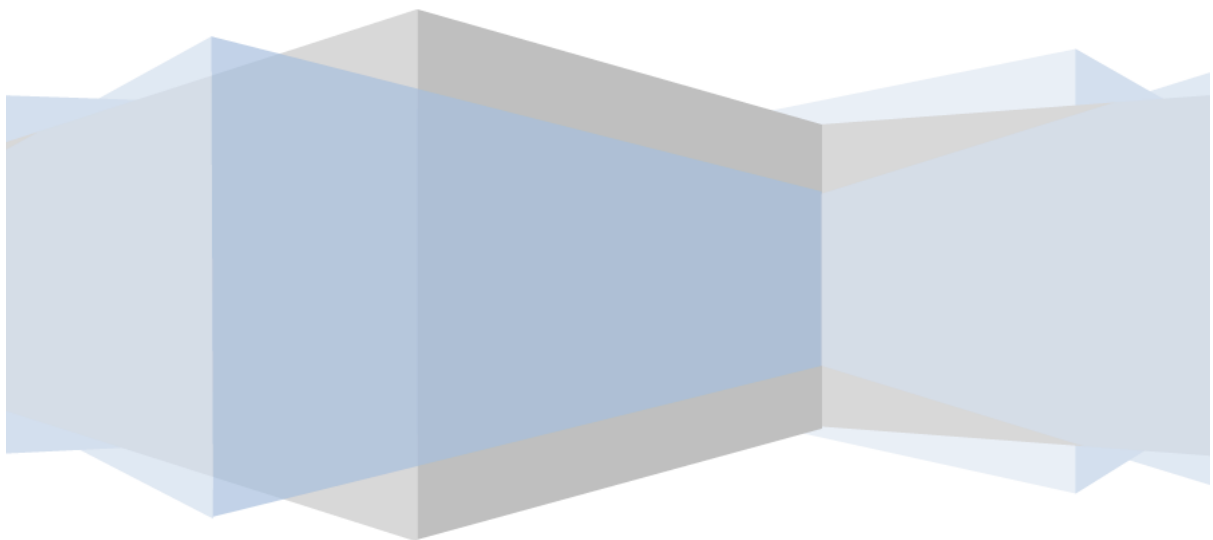
18. Would Territory preparedness and prevention be enhanced by giving the Commissioner an explicit power to make guidelines for these purposes?
19. What role should the Commissioner have in relation to planning and implementation of emergency-related community education?
20. Should the ACT Ambulance Service Clinical Advisory Committee be given similar protections to quality assurance committees under the *Health Act 1993*?
21. Should the Chief Officer (Ambulance Service) be given a specific power to establish, amend, suspend or withdraw an ambulance officer's scope of practice?
22. Are the current powers to respond to emergencies sufficient to support an all-hazards approach to emergency response?
23. Should the additional powers available to respond to fires be extended to other emergencies?
24. Should members of the SES be given specific powers to respond to flood and/or storm emergencies?
25. Should restrictions be placed on the exercise of that power (i.e. the member must comply with any guidelines)?
26. Should members of the SES be given specific powers to assist with fire control operations?
27. 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?
28. How can greater clarity be achieved in how the Act interacts with planning and nature conservation regimes?
29. Can the ESA better implement bushfire-related infrastructure projects in support of the strategic bushfire management plan?
30. Are there other changes that would improve the delivery of bushfire prevention activities whilst still appropriately protecting environmental and conservation values?
31. How can the ESA better meet its statutory function of protecting life and property in relation to heritage buildings?
32. Should the Chief Officer (RFS) be given powers under part 5.4 to support fire prevention for premises (as defined)?
33. Could the current model for allocating responsibility for bushfire planning and response be enhanced?

Attachment A – Terms of Reference ACT Bushfire Council



TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

July 2013



TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

This document sets out the roles, relationships and responsibilities of the ACT Bushfire Council (Council).

The ACT Bushfire Council was established under legislation to provide independent advice to the ACT Minister for Emergency Services on bushfire matters. The Council represents the broader ACT community and draws on the expertise of its individual members as well as seeking advice from a range of stakeholders involved with bushfire management. A summary of discussions and decisions of the Council may be found at the Emergency Services Agency website:

<http://esa.act.gov.au/actrfs/learn-about-us/act-bushfire-council/minutes/>

The Council is supported in its role by the ACT Rural Fire Service. For the Council to be most effective it needs to work in a collaborative way with the RFS and major stakeholders such as TAMS, in an environment of mutual respect and with the appropriate provision of background information to inform its consideration of strategic issues.

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

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TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

1 Purpose of Terms of Reference

The Bushfire Council has been established under the provision of the Chapter 6 Section 127 of the *Emergencies Act 2004*. The purpose of this Terms of Reference (TOR) is to define the roles, and responsibilities of the ACT Bushfire Council (BFC) and relationships with other entities, in accordance with the prescribed legislation.

2 Role and responsibilities of the ACT Bushfire Council

2.1 Advice

The ACT Bushfire Council has the function of advising the Minister about matters relating to bushfires. 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 ACT Bushfire Council will provide advice to the Minister on matters relating to bushfire management in the ACT including:

- a) The level of preparedness;
- b) Prevention activities;
- c) The response capability of fire services; and
- d) The implementation of recommendations from the inquiries into the 2003 Canberra bushfires, and other major bushfire events.

The advice will be prepared annually, and provided to the Minister prior to the commencement of the bushfire season for that year.

2.2 Strategic Bushfire Management Plan (SBMP)

The ACT ESA Commissioner must prepare, and give the Minister, a draft Strategic Bushfire Management Plan (SBMP) for the ACT. In preparing the draft plan, the Commissioner must consult with the Bushfire Council; and consider the impact of the plan on any land management agreements and land managers.

After considering the draft plan, the Minister must make a Strategic Bushfire Management Plan for the ACT. The plan is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act.

The Commissioner must, in consultation with the Bushfire Council, monitor the scope and effectiveness of the plan. The Commissioner, in consultation with the Bushfire Council, may recommend amendments of the plan to the Minister.

The Minister must, in consultation with the Bushfire Council, comprehensively review the Strategic Bushfire Management Plan at intervals of not more than 5 years.

The ACT Bushfire Council will monitor and review implementation of the actions established within the Strategic Bushfire Management Plan. Audit reports will be prepared annually to document

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

compliance with actions identified in the SBMP. Audit reports will include an outline of the audit procedures, any necessary discussion of findings, and conclusions about level of compliance with the SBMP.

Strategies identified as the responsibility of Bushfire Council in SBMPv2 are:

Strategy: The ACT Bushfire Council will provide oversight and review of bushfire management in the ACT			
No.	Actions to achieve the strategy	Priority	Responsibility
1	<p>The ACT Bushfire Council will monitor and review implementation of actions established under this Plan.</p> <p>Audit reports will be prepared annually to document compliance with actions identified in this Plan. Audit reports will include an outline of the audit procedure, any necessary discussion of findings, and conclusions about level of compliance with this Plan.</p>	High	ACT Bushfire Council
2	<p>The ACT Bushfire Council will provide advice to the Minister on matters relating to bushfire management in the ACT, including:</p> <ul style="list-style-type: none">• the level of preparedness;• prevention activities;• the response capability of fire services; and• the implementation of recommendations from the inquiries into the 2003 Canberra bushfires, and other major bushfire events. <p>This advice will be prepared annually, and provided to the Minister prior to the commencement of the bushfire season for that year.</p>	High	ACT Bushfire Council

2.3 Assessment of resources and capabilities

After the Minister makes the Strategic Bushfire Management Plan, the Commissioner must conduct an assessment, based on the plan, of available resources and capabilities for bushfire prevention and preparedness. The Commissioner must give the assessment to the Bushfire Council and the Minister.

2.4 Appointment of Rural Fire Service Chief Officer

As per section 30 of the *Emergencies Act 2004*, the Director-General of Justice and Community Safety Directorate will consult with the Bushfire Council before appointing public servants to be the Chief Officer and Deputy Chief Officer of the ACT Rural Fire Service.

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

2.5 Number of Rural Fire Brigades

As per section 54 of the *Emergencies Act 2004*, the Chief Officer Rural Fire Service will consult with the Bushfire Council in determining the number of brigades.

3 Annual reporting requirements

The Bushfire Council must prepare, prior to the bushfire season, an annual report to the Minister for Police and Emergency Services on the state of preparedness of the ACT to bushfires including the status of actions of the SBMP.

4 Role and Support to Council Operations

4.1 Logistical Support for Council

The ESA, on behalf of the Director General Justice and Community Safety Directorate, must provide administrative support and facilities for the Bushfire Council. This support is provided by the ACT Rural Fire Service (ACTRFS)

ACT RFS provides secretarial and logistical support for the Bushfire Council which can include:

- a) A minute taker for Bushfire Council meetings and minutes are kept
- b) Providing and booking a room for meetings
- c) Organising field trips
- d) Ensuring meeting attendance is kept
- e) Ensuring records of remuneration are kept and payments are made.

4.2 ESA Commissioner

The ACT ESA Commissioner must prepare, and give the Minister, a draft Strategic Bushfire Management Plan for the ACT. In preparing the draft plan, the Commissioner must consult with the Bushfire Council; and consider the impact of the plan on any land management agreements and land managers.

The Bushfire Council has the function of advising the Minister about matters relating to bushfires. 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 bushfire season is usually the period from the beginning of October in a year to the end of March in the next year. However, the Commissioner may declare a different date to be the beginning or end of a particular season. Before making a declaration the Commissioner must consult with the Bushfire Council.

4.3 ACT Rural Fire Service

The ACT RFS will provide advice on strategic bushfire issues, based on the requirements contained within the Strategic Bushfire Management Plan (SBMP).

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

4.4 Seeking Advice on Other Strategic Matters

Where ACT Government agencies' strategic planning is being undertaken that impacts on fire management in the ACT, the BFC may seek advice from those agencies.

4.5 Keeping Council Informed on Fire Matters

ACTRFS, ACT Fire and Rescue and TAMS Parks and Conservation Service are responsible for providing a written report to the Council each meeting regarding the status of a range of bushfire matters in the ACT.

Bushfire Council is a member of the ESA Operations Review Group (ESORG). This forum allows Bushfire Council to be informed on interagency arrangements within ESA, including the CONOPS for Bush & Grass Fires in the ACT.

Where the Bushfire Council are deliberating on topics, ACTRFS, ACTF&R or TAMS PCS (depending on issue and subject matter expert) will provide written reports to the Council prior to topics being discussed.

5 Relationships with stakeholders

The ACT Bushfire Council has relationships with the following stakeholders:

- a) Minister for Police and Emergency Services;
 - To provide advice to the Minister in accordance with the relevant legislation
 - To seek clearance from the Minister's Office for the public release of information (i.e. reports and media releases).
- b) Emergency Services Agency Commissioner;
 - Commissioner to seek advice from Council (see 4.2)
- c) Emergency Services Agency;
 - Council can draw on monthly written briefings from the Fire and Rescue; or seek briefings from media and other relevant parts of ESA to inform its deliberations
- d) ACT Rural Fire Service;
 - RFS to provide monthly written reports to Council
- e) ACT RFS Volunteer Brigades;
 - Council to monitor issues in Brigades and bring these to Council meetings where not satisfactorily resolved through direct Brigade contact with RFS
- f) Parks and Conservation Service with the TAMS Directorate;
 - Written monthly reports to Council to be provided by PCS;
- g) ESDD (Conservation Planning and Research);
 - Updates on relevant issues to be sought from ESDD as required;
- h) Other professional and non-government organisations that provide advice on bushfire activities;
 - Council may seek reports on AFAC work; CRC research agendas, or BOM for seasonal preparedness reports;
- i) the ACT Community;

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

- keep the ACT Community informed about Council deliberations through the release of meeting minutes and other reports egg 10 year report (subject to Ministerial approval on a case by case basis);
- j) Media.
- Subject to Ministerial approval, provide expert opinion from Council via the Chair/Deputy Chair, on bushfire matters;

6 ACT Bushfire Council Meetings

6.1 Annual business plan with strategic issues and budget identified

The Council should prepare a business plan during January or February each year. This business plan should include the work plan for the year; meeting the strategies of the SBMP and including major topics that the Council believes are requiring review or advice during that period, having particular regard to the SBMP.

The annual Business Plan must be provided to the Minister and Commissioner after its acceptance by the Council. The Commissioner will circulate this Plan to relevant business units within ESA.

The business plan will be accompanied by a schedule which defines the major topics that will be discussed at meetings during that year. This schedule will be flexible where major topics need to be moved, on agreement between the Council and the relevant stakeholders. An annual budget will be agreed for the Council by the RFS, having regard to the Business Plan and proposed annual work plan.

6.2 Work on Significant Items

Where Council identifies a significant item that it wishes to pursue, Council will seek endorsement from the Minister for this work, and in doing so define the scope, timing and budget required for this activity.

6.3 Sub-Committees

The Bushfire Council may form sub-committees from time to time to address an activity or issue.

6.4 Timing/Frequency

The Bushfire Council is to meet at the times and places the council chairperson decides. The Bushfire Council chairperson must ensure that members have reasonable notice of meetings. The Bushfire Council chairperson must ensure that, as far as practicable, the council meets at least every 2 months.

The preferred timing for Bushfire Council meetings is every month (except January). This schedule should be followed unless exceptional circumstances cause the chairperson to remove a scheduled meeting or run an out-of-schedule meeting.

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

6.5 Agenda and Call for Items

A call for items will be made 10 days prior to each meeting of the Bushfire Council, and an agenda authorised by the chair will be circulated one week prior to the meeting.

6.6 Attendance at Meetings and Apologies

The Bushfire Council chairperson presides at meetings of the council. The Bushfire Council may decide its own procedure in relation to anything for which a procedure is not provided under the *Emergencies Act 2004*. A meeting may be held by means of a method of communication, or a combination of methods of communication that allows the Bushfire Council members taking part to hear what each other member says without being in each other's presence. A Bushfire Council member who takes part in a meeting is taken, for all purposes, to be present at the meeting.

6.7 Quorum

Business may be conducted at a Bushfire Council meeting only if at least 4 members are present.

6.8 Chairing and conduct of Meetings

BFC meeting will be conducted by the chair. In the absence of the chair, the deputy-chair will conduct the meeting. In the event of both the chair and deputy-chair being absent, the members in attendance will elect a member present to conduct that meeting.

The ESA, on behalf of the Director General Justice and Community Safety Directorate, must provide administrative support and facilities for the Bushfire Council. The Chief Officer(s) or authorised representatives are expected to attend Council meetings to provide regular briefings.

Meeting procedures will be consistent with sound meeting practice and ensure that all members are given fair and equal opportunity to participate in the deliberations.

It is important that all representatives attending meetings communicate their views clearly and openly, whilst recognising that there are often a range of views on matters and differences of opinion should be respected.

The carriage of a motion which is proposed and seconded shall be determined by a majority of votes of the members present and voting. If the votes of Bushfire Council members on a question are equally divided, the decision of the chairperson is the decision of the Bushfire Council on the question. It is, however, desirable that members strive to achieve consensus on matters.

6.9 Minutes

The Bushfire Council must keep minutes of its proceedings. At a Bushfire Council meeting the chairperson must ensure that the Council considers the minutes of its last meeting.

The secretariat must produce a draft of the minutes within 7 days of the meeting and provide them to Council Members and agency representatives for review. Council members should endeavour to provide any amendments to the secretariat prior to the meeting.

ESA must publish the minutes of Bushfire Council meetings onto the Bushfire Council section of the ESA web site within 30 days of receiving the confirmed minutes.

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

6.10 Correspondence

All Bushfire Council correspondence will be maintained on a registered file held by ESA. This file will be made available to any BFC member at any time.

The mailing address of all correspondence will be:

Bushfire Council Chair
GPO Box 158
Canberra ACT 2601

Any electronic correspondence sent or received by council members will be cc'd to RFS for inclusion on the correspondence file.

6.11 Resolutions and actions arising

A resolution is a valid resolution of the Bushfire Council if—

- (a) it is passed at a meeting of the council; or
- (b) notice of the resolution is given under procedures decided by the council and all members agree, in writing, to the resolution.

6.12 Out of session business

Where business requires an urgent decision, or where a quorum could not be established at a meeting, items can be discussed out of session via electronic means. Where items are discussed out of session, a vote can be taken via email. A record of any out of session decision must be kept by the secretariat and taken to the following Council meeting for confirmation.

6.13 Field Trips

To ensure that BFC is fully informed on Fire Management issues, field trips will occur from time to time to allow for inspection of physical locations, works and other activities. These are conducted for both information and knowledge building for Council members. Payments and reimbursements for field trip activities will be determined on a case by case basis by the chair in consultation with the ESA.

6.14 Conferences, Workshops and Forums

To ensure that BFC is fully informed on Fire Management issues, attendance at conferences, workshops or forums will occur from time to time. These are attended for both information and knowledge building for Council members. Payments and reimbursements for these activities will be determined on a case by case basis by the chair in consultation with the ESA.

6.15 Payments

Entitlements are per diem and as described in the ACT Remuneration Tribunal Statement and Determination 14 of 2011 Part-Time Holders of Public Office.

Council members will be paid the per diem rate for all meetings greater than 2 hours to account for travel and meeting preparation in line with the determination. In the event of a BFC meeting being

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

less than 2 hours, the chair will determine the pro rata rate for that meeting in line with the determination.

7 Appointment of ACT Bushfire Council Members

7.1 Term of Appointment

The Police and Emergency Service Minister (Minister) must appoint the Bushfire Council members, and will not include the Commissioner or the Chief Officer of an emergency service. An appointment must be for a term of not longer than 4 years.

The Minister must try to ensure that the following people are among the members appointed:

- a) a person with skills or experience in fire sciences;
- b) a person with experience in land management;
- c) a person with experience in fighting fires in built-up areas;
- d) a person with experience in fighting fires in rural areas;
- e) a person with experience in indigenous land management;
- f) a person to represent the interests of rural lessees;
- g) a person with relevant skills or experience to represent the community's interest in the environment; and
- h) a person to represent the community's interests generally.

7.2 Membership Composition

The Bushfire Council shall consist of:

- a) A chairperson;
- b) A deputy chairperson; and
- c) At least 3, and not more than 10, other members.

The deputy chairperson acts in the position of chairperson in the following circumstances:

- (a) during all vacancies in the position; and
- (b) during all periods when the chairperson cannot for any reason exercise the functions of the position.

7.3 Resignation or removals

The Minister may end the appointment of a Bushfire Council member—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity, if the incapacity affects the exercise of the member's functions; or
- (c) if the member—
 - (i) becomes bankrupt or personally insolvent; or
 - (ii) is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the Bushfire Council; or

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

- (iii) contravenes section 139 (Disclosure of interests by Bushfire Council members) without reasonable excuse; or
- (iv) commits, in Australia or elsewhere, an offence punishable by imprisonment for at least 1 year; or
- (d) if the Minister is satisfied that the member's ability to function as a member is affected by an interest disclosed under section 139.

7.4 Filling of vacancies

If a vacancy is identified within the Bushfire Council, the ESA will undertake the appropriate recruitment process and documentation. This process has to be submitted via a Cabinet process in which Cabinet members are consulted with regard the proposed appointments by the Minister for Police and Emergency Services.

The Standing Committee on Justice and Community Safety of the ACT Legislative Assembly has to be consulted for those candidates who are non ACT Government Public Servants.

8 Responsibilities of Council members

8.1 Advisory Committee

The ACT Bushfire Council is an advisory committee, and members are there to provide expert advice and a range of viewpoints. Members are not appointed to Council to represent any specific body, and should not undertake deliberations from such a position.

8.2 Confidentiality

The Bushfire Council may discuss a wide range of issues many of which may be complex, sensitive or contentious. To enable members to make an informed decision on a particular matter, it may often be necessary to consider privileged information. Such information should be treated with the utmost confidentiality and kept within the confines of the Bushfire Council.

8.3 Standards of behaviour and Code of Conduct

The Bushfire Council will conduct its business in line with the ACT Government Boards and Committees Handbook (**Appendix 1**), and Section 9 of the ACT *Public Sector Management Act 1994*.

Committee members need to be aware that when having contact with the media as an individual that comments made are not construed as being on behalf of the Council or representing the views of the Council or the ESA/RFS. Media releases are to be cleared through the Minister's Office and the spokesperson is to be the Chair or Deputy Chair, or a delegated person of the Council as agreed through a Council resolution.

Any document (correspondence, reports) developed by the Council cannot be released publicly (i.e. published on website) until the documentation has been provided to the Minister; the Minister has responded to the documentation; and as part of this response, the Minister has agreed for the information to be publicly released.

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

8.4 Disclosure of conflict of interest

A Bushfire Council member who has a relevant interest in an issue being considered, or about to be considered, by the council must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council. A relevant interest means a direct or indirect financial interest in the issue or if the interest could conflict with the proper exercise of the Bushfire Council's members functions in relation to the council's consideration of the issue.

The disclosure must be recorded in the Bushfire Council's minutes and, unless the council otherwise decides, the member must not—

- (a) be present when the council considers the issue; or
- (b) take part in a decision of the council on the issue.

8.5 Reporting of disclosure of interest

Within 14 days after the disclosure of an interest, the Bushfire Council chairperson must report to the Minister in writing about—

- (a) the disclosure; and
- (b) the nature of the interest disclosed; and
- (c) any decision by the council.

The Bushfire Council chairperson must give the Minister, by 31 July each year, a statement that sets out the information given to the Minister that relate to disclosures made during the previous financial year. The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 14 days after the day the Minister receives the statement.

ACT GOVERNMENT BOARDS AND COMMITTEES CODE OF CONDUCT

Under the system of government that operates in the ACT, Ministers, Members of the Legislative Assembly, public servants and statutory officeholders carry out the main legislative and executive functions of government. At times, non-statutory office holders also provide assistance. Members of ACT Boards and Committees have a duty to discharge responsibilities entrusted by the ACT Government and the laws made under the Australian Constitution according to the highest standards of conduct. Board members may be required by the nature of public office to accept restriction on certain areas of their private conduct beyond those imposed on ordinary citizens.

The following Code of Conduct outlines principles that should be observed by all members of ACT Government Boards and Committees, and should be read in conjunction with the ACT Code of Ethics for public employees (Section 9 of the *Public Sector Management Act 1994*).

1. A board member should perform the duties of the office impartially, uninfluenced by fear or favour;
2. A board member should be frank and honest in official dealings with colleagues;
3. Conflicts of Interest:
 - a) A board member should avoid situations in which any private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with their public duty;
 - b) When a board member directly or indirectly possesses an interest which conflicts or might reasonably be thought to conflict with their public duty or improperly influence conduct in the discharge of responsibilities, the board member should disclose that interest according to the prescribed procedures. Should new or additional facts become material after an initial disclosure has been made, the board member should disclose the further information;
 - c) When the interests of members of the board members immediate family are involved, the interests should be disclosed to the extent that they are known. Members of the immediate family will ordinarily comprise only the spouse and dependent children, but may include other members of the household or family when their interests are closely connected with those of the board member; and
 - d) When a board member possesses an interest which conflicts or might reasonably be thought to conflict with the duties of their office and such interest is not prescribed as a qualification for that office, the member should forthwith divest themselves of that interest, secure their removal from the duties in question, or obtain the authorization of a superior or other board members to continue to discharge the duties. Transfer to a trustee or to a member of the board member's family is not a sufficient divestment for the purpose. If immediate divestment would cause significant hardship to the board member, possession of the interest should be disclosed to board members or the minister and authorization obtained for temporary retention pending divestment.

TERMS OF REFERENCE ACT BUSHFIRE COUNCIL

4. A board member should not:
 - a) Use information obtained in the course of their official duties to directly or indirectly gain a pecuniary advantage for themselves or for any other person. In particular, a board member should scrupulously avoid investments or other transactions about which they have, or might reasonably be thought to have, early or confidential information which might confer on the member an unfair or improper advantage over other persons; and
 - b) Discuss or publicly disclose information gained in the course of their official duties without prior approval of the board or relevant minister.
5. A board member should not:
 - a) Solicit or accept from any person any remuneration or benefit for the discharge of their duties over and above the official remuneration;
 - b) Solicit or accept any benefit, advantage or promise of future advantage for themselves, their immediate family or any business concern or trust with which they are associated, from persons who are in, or see to be in, any contractual or special relationship with government; and
 - c) Except as may be permitted under the rules applicable to their position on the board, accept any gift, hospitality or concessional travel offered in connection with the discharge of their duties.
6. A board member should be scrupulous in their use of private property and services, and should not permit misuse of these by other persons.