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CFA should be the lead agency for bushfires which threaten lives or private property.

Victoria's bushfire command and control is currently shared between CFA and DSE. Unlike in other states, no one agency has overall responsibility and accountability for bushfires.

The lead agency for managing a bushfire is determined by the location of the bushfire – on private land the lead agency is the CFA and on public land the lead agency is DSE.

The application of these bushfire management arrangements is based around where the balance of the bushfire is located, not whether there is a risk to life and private property. This approach is seriously flawed. Bushfires do not respect the borders between public and private land.

The management of bushfire and bushfire risk throughout Victoria must have appropriate, clear and unambiguous lines of authority, responsibility and accountability that affords priority to the protection of life above all else.

The current system can create operational confusion because CFA and DSE have very different organisational management and command structures, staffing arrangements, operations systems and statutory objectives and priorities. Because of these differences and the time needed to consult and negotiate strategic and tactical approaches by the agencies for each fire they jointly confront, the current system lacks the agility to respond to fast moving bushfires spreading across public and private land and causes real ambiguities in authority, responsibility and accountability.

The potential for these problems must be removed. There must be a clear and unequivocal allocation of overall responsibility, command and control with complete clarity at every level of operations of who is in charge of managing the strategic response to the bushfire when lives are at risk.

This is necessary for operational effectiveness, proper accountability and public confidence.

The Bushfire Royal Commission has already identified the confusion that current arrangements created as to which agency and chief officer was responsible for issuing public warnings. It has recommended that the CFA's Chief Officer be made legally responsible "*to issue warnings and provide information to the community concerning the risk of bushfires*".

The statutory roles and therefore operational organisation of the CFA and DSE are different.

DSE is a land management agency. Its statutory mandate is the protection of forests, national parks and other protected public land. **There is no statutory obligation imposed on DSE to protect lives or property from the threat of bushfire.**

In stark contrast, CFA is an emergency management agency. **It is the sole agency outside the MFB region (mainly inner and middle Melbourne suburbs) with statutory responsibility to protect lives and property.**

Section 20 of the CFA Act 1958 makes plain that CFA's sole objectives are the prevention and suppression of fires and the protection of life and property. It is mandated to "*take all necessary steps*" to prevent and suppress fires and to protect life and property.

By its statutory obligations and resulting organisation as an emergency service, CFA should be the statutory lead command agency for bushfires with clear responsibility and authority for the overall planning for and management of bushfires regardless of their location. Under this accountability model DSE would continue to have responsibility for fire prevention and suppression on public land but subject to overall strategic command and control by the CFA as the State's lead bushfire agency. Similarly, incident controllers would continue to be appointed on the basis of the best person for the job regardless of their agency status.

PROPOSAL FOR A SINGLE CONTROL AGENCY AND LINE OF CONTROL FOR BUSHFIRE MANAGEMENT IN VICTORIA



VFBV

VOLUNTEER FIRE
BRIGADES VICTORIA

October 2009

BACKGROUND

1. **In an Interim Submission to the Royal Commission, VFBV submitted that for any bushfire that has the potential to threaten CFA area (“the country area of Victoria”), CFA should be the designated control agency, or at a minimum CFA’s Chief Officer should have legislative oversight of the combat arrangements for any fire that threatens the “country area of Victoria”.**
2. In the early phase of the Royal Commission, various parties including Counsel Assisting have gone to great lengths to emphasise that in relation to the management of bushfires, the highest priority of the state should be the protection of lives. There is no dispute with this focus. The need to protect lives was the catalyst for the progressive formation of public fire brigades throughout Victoria since colonisation, as it has been throughout the world.
3. Since VFBV’s original submission, a range of evidence has been adduced in the Commission that has increasingly illustrated that many key aspects of the 2008/09 fire season exceeded previous experience in Victoria and consequently, the knowledge upon which the existing bushfire management arrangements in the State are premised.
4. This new experience and record of evidence warrants a revision of VFBV’s original position and strongly supports an alternative approach to Victoria’s emergency management arrangements with respect to bushfires.

CURRENT POSITION

5. The responsibility to protect the lives and property of Victorians from the impact of bushfires is primarily shared between the Country Fire Authority (CFA) and the Department of Sustainability and Environment (DSE). The CFA has been assigned responsibility for outer metropolitan Melbourne and the rest of Victoria, but excluding those fires that occur on any forest, national park or protected public land. DSE has the responsibility to manage fires on these areas of public land.
6. Currently, there is no standard criterion applied to determine which agency will take a lead role in managing any fire with the exception of a limited initial assessment based on the tenure of the land on which the fire commenced and on which class of land, public or private, the immediate future run of the fire might impact.
7. For example, on the 7th February 2009, the Kilmore East commenced on private property before entering public land and then impacting on various communities and townships including Strathewan, Kinglake, Flowerdale and Glenburn. The control agency for this fire was CFA.
8. Shortly after, the Murrindindi fire commenced on private property, burnt through public land before impacting various communities and townships including Narbethong, Buxton and Marysville. The control agency for this fire was DSE.
9. Each of these fires covered both public and private land and caused significant destruction of life and property and yet were controlled by different agencies under different leadership, personnel, protocols with separate communications and IT networks with management resourcing generally determined in semi-isolation. While each fire received support from both agencies, there was no unity of control or “one person in charge”.



THE COMMUNITY AND LEGISLATIVE ENVIRONMENT

10. Because the current arrangements reflect shared responsibility between CFA and DSE, and the legislation entrusts specific duties to CFA and the CFA Chief Officer (as described below), there is confusion about who has actual power to ensure:

- 10.1 integrated and appropriate planning for incidents;
- 10.2 integrated agency response;
- 10.3 effective emergency management and;
- 10.4 appropriate reflection and learning from

bushfires in Victoria. The Royal Commission has clearly held CFA to account, however CFA by itself, lacks the statutory power to do what is necessary to ensure effective and integrated responses to bushfires in Victoria to the extent that the Commission, firefighters, and the public expect.

11. The majority of Victorians that reside outside the immediate metropolitan area surrounding Melbourne reside in what is legally described as the “*country area of Victoria*”. Therefore by far the greatest concentration of people and property is located in areas for which the CFA is required to provide protection from fire including bushfires. For those people who reside in areas adjoining public land such as Woods Point, Bendoc, Cann River and other such isolated areas or in the more sparsely populated agricultural areas of the state in the Mallee and the Wimmera, the CFA remains legally responsible for their safety and security when bushfires occur, regardless of the origin of those fires.
12. If CFA has the responsibility and expertise to protect lives and property, it is incongruous that just because a fire has commenced on public land, or may travel through public land, that the responsibility for the management of that fire when lives are at risk should be undertaken by or transition to another agency that has neither the resources, expertise or cultural understanding of the emergency management approach that should be adopted to deal with fires involving lives and property, townships and residential/commercial development in and adjoining our towns, cities and major regional centres.
13. This no reflection on the capability of fire fighters from DSE who are acknowledged as having significant expertise in remote area forest fire management. It is an appropriate recognition of the role and legislative responsibility of the CFA, which is an emergency management agency as distinct from a land management agency, and whose sole objectives are the prevention and suppression of fires and the protection of life and property (s20 CFA Act).
14. Regardless of the provisions of s16 of the Emergency Management Act which grant the powers of the Chief Officer (CFA) to an Officer appointed to have the overall control of response activities to a fire anywhere in Victoria irrespective of land tenure, the provisions of the Emergency Management Act do not extinguish the overall legal responsibility (CFA Act s14 & s20) of the CFA for the control and suppression of fires in the country area of Victoria.
15. DSE’s mandate is the protection of forests, national parks and other protected public land (Sections 22 and 62 *Forests Act 1958*). Understandably given their overall charter, there is no statutory obligation imposed on DSE to protect lives from the threat of a bushfire as is evidenced by the absence of any related mission focus in DSE’s Corporate Plan (2008-2011) or Land & Fire Management Business Plan (2008-09).



16. Accordingly, it is clear that the CFA is the sole agency charged with protecting the lives and property of all Victorians from bushfires who reside outside the Metropolitan Fire District.

- 16.1 The people of Victoria generally understand that CFA is the provider of fire services outside Melbourne and will take steps to protect them in so far as is possible in the event of a bushfire.
- 16.2 The Government have rightfully endorsed the principle that the protection of people's lives will have primacy over all other bushfire control objectives. This is CFA's core business.
- 16.3 The CFA has been assigned the legal responsibility for the protection of life and property across all of the populated areas of the state including the outer metropolitan area of Melbourne and rural and regional Victoria (CFA Act s14).
- 16.4 CFA has been mandated to "take all necessary steps" to prevent and suppress fires and to protect life and property in the CFA area. (CFA Act s20)
- 16.5 The control strategies planned and implemented for any fire that poses, or has the potential to pose a threat to lives and communities must be developed in recognition that the primary objective is to protect life and property. This is CFA's core responsibility and for which CFA personnel are professionally trained and specially equipped.
- 16.6 CFA has significant expertise in fighting fires across a range of fuel types in Victoria that exist in areas for which CFA is responsible and has the expertise to manage these fires, and most importantly, those that directly threaten lives in the interface between the bush and the towns and cities.
- 16.7 CFA has the necessary expertise to prioritise objectives when lives, homes and other assets are under threat and difficult decisions must be made to achieve the best possible outcomes from limited resource availability.
- 16.8 CFA has expertise in managing fast running high impact fires as distinct from those remote forests fires that tend to develop more slowly but from time to time may exhibit periods of difficult fire behaviour and for which DSE is well equipped to respond.
- 16.9 CFA's aggressive approach to fire management, whilst at the same time recognising that the safety of its own people is a priority, is a key determinant in limiting loss and damage and is a trademark of any emergency service whose primary purpose is the protection of life and property.
- 16.10 The ecology and environmental biodiversity of a particular area of land should not be a primary consideration when lives and property are at risk.

A NATIONAL PERSPECTIVE

- 17. New South Wales, which shares with Victoria a significant threat to its communities from bushfires with residential and commercial development interspersed within bushland environments, has for many years had legislative provisions that place major bushfire management under the sole control of the Commissioner of the Rural Fire Service. This has ensured a coordinated and concentrated response to bushfires in that state, regardless of land tenure.



18. It is not suggested that legislation in Victoria replicate that which currently exists in New South Wales. Within that jurisdiction, the Commissioner must make a declaration to give effect to his/her primacy over bushfire management. It would seem that this sort of instrument is unnecessary and that legislation could simply establish the primacy of CFA generally to manage the strategic response to all bushfires in the State.
19. In South Australia, as a consequence of the provisions of the South Australian *Fire and Emergency Services Act 2005*, and the nomination of the Chief Officer of CFS as the State Controller of Bushfires in accordance with the *Emergency Management Act 2004*, the Country Fire Service (CFS) has the legal responsibility to manage all bushfires in that State regardless of land tenure. This responsibility extends to bushfires which occur in districts under the control of the Metropolitan Fire Service where a declaration has been made under that States *Emergency Management Act*.
20. In Tasmania, the Tasmanian Fire Service is primarily responsible for managing all significant fires in that State, also regardless of land tenure.
21. The south-east of Australia has the dubious record of being one of the three most fire prone areas in the world. Each of the high risk states has approached the issue of the management of bushfires in its jurisdiction in different ways. The one common outcome is that in the SE States, other than Victoria, the agency primarily responsible for protecting life and property from the impact of bushfires is given the sole responsible to manage bushfires within the jurisdiction regardless of who is responsible to manage the land.
22. With the exception of Victoria, the remaining states in the SE of Australia have legislated to ensure that there is clear and unambiguous control over the management of bushfires and that this control is vested in the agency primarily responsible for the protection of life and property in the event of a bushfire. Accordingly, in these jurisdictions, unlike Victoria, there is clear accountability and any confusion as to who is responsible is negated, the whole of government response can be better co-ordinated and the community clearly understands who to turn to for advice.
23. In Western Australia which, in the SW of the State, has a bushfire risk similar to Victoria, the state forests Department and the public fire service (FESA) have shared the responsibility for bushfire management. However, there is currently a Bill before the Western Australian Parliament that would empower FESA to take control of a major fire, regardless of the tenure of the land on which it is burning.
24. According to the Second Reading Speech associated with this Bill delivered to the WA Parliament, *"The new arrangements will deliver seamless co-ordination, control and command procedures in dealing with the management of a major fire and also for informing and protecting the community"*.
25. It is noted that whilst this initiative resulted from a review of the States bushfire management arrangements tabled in the WA Parliament in October 2006, further impetus to amend the arrangements has occurred as a result of the bushfires in Victoria, where what occurred was described *"as a stark reminder of what can go wrong with debate and confusion sapping precious time and putting people at risk"*.
26. Even from this preliminary analysis of bushfire management arrangements in jurisdictions other than Victoria, best practice is clearly that the principal bush fire service in the jurisdiction is best positioned to manage major bushfires.



CONTINUING SHORTCOMINGS

27. What continues to emerge in the Commission is that the more recent endeavour to forge a closer relationship between CFA and DSE has in fact in many instances resulted in a distancing of command and control from local experienced personnel. As a consequence, less than optimal oversight and priority assessment of the potential threats from a bushfire and less emphasis on advice to the community has occurred.
28. It is further apparent that despite the lengthy period that has elapsed during which CFA and DSE have sought to draw closer together, there remain fragmented systems and processes in relation to many of the key attributes of organisational cohesion that are necessary to ensure the community receives the highest level of support and information necessary to protect lives and property during a bushfire.
29. The current arrangements are also beset with unnecessary duplication of personnel, infrastructure and policy with what can only be presumed to be cultural barriers to unity of control.
30. For example the individual agencies still seek self sufficiency in the availability of IMT personnel as demonstrated in evidence to the Commission (7/9/09 T6377-6378) rather than making the best use of available resources across agencies. This agency centric approach of independent capacity building within an agency is further illustrated by evidence to the Commission (16/9/09 T7302-7303 and 8/10/09 T8506-8508). Such an approach is not only fiscally irresponsible and operationally negligent but negatively impacts on building Victorian capability and capacity, particularly when recourse to interstate and overseas assistance is increasingly being treated as the norm rather than the exception.
31. There are numerous other examples emerging in the Commission that confirm the continuing existence of a strong attachment to individual agency protocols rather than a recognition and acceptance of the benefits of unity of control. Of particular concern are the conduits for critical intelligence which in many circumstances appear to remain embedded within agency structures rather than being rapidly transferred to the appropriate ICC.
32. When lives are at risk, particularly during dynamic high impact events, control and direction which is dependent upon consensus among multiple parties can not only delay critical decisions but will potentially cost lives.
33. In these circumstances it is also imperative that intelligence and information is managed within a single agency stream and line of control if it is to be effectively collated, analysed and then rapidly disseminated.
34. VFBV believes that the initial proposals submitted to the Commission in WIT.3024.002.0434 "State Fire Controller and Multi-Agency Management Team" and further described in oral evidence (T6529-6548) represents a band-aid solution that fails to recognise the root source of the problem and the more obvious solution. This proposal has the potential to add additional layers of bureaucracy and establish a process of crisis management by democratic consensus rather than by timely decisive action empowered through legislated unity of control supported by pre-determined inter-agency protocols and guidelines.



FUTURE OPERATING ARRANGEMENTS

35. The Royal Commission has recently recommended (Recommendation 9.4) that CFA's Chief Officer be legally responsible "to issue warnings and provide information to the community concerning the risk of bushfires". The recommendation has subsequently been accepted by Government. This amendment to the legislation will provide clear accountability for this function and begin to address the current problem where there is no certainty in the community as to which agency and who within that agency is responsible to protect the community from the threat of a bushfire.
36. In recognition of the shortcomings exposed by this unique event and the new performance benchmarks and expectations that must now be met, VFBV strongly supports further amendments to the State's fire management arrangements that will result in CFA and CFA's Chief Officer being assigned the overall responsibility to manage any bushfire in the State of Victoria. In particular, this arrangement will place the responsibility for management of any fire likely to threaten life and property with the State agency that has the responsibility for protecting life and property during a bushfire.
37. The adoption of this proposal will deliver certainty to bushfire management in this State and give effect to an imperative of having one organisation and one person responsible and accountable to the community and government i.e. "one person in charge".
38. The proposed arrangement will also ensure that there is a foundation for clear and unambiguous accountability in Victoria and a unified response in which the fire fighting effort is balanced with intelligence acquisition and information dissemination to the community with the overall focus on saving lives.
39. To ensure that all possible steps are implemented in recognition of a particular threat of bushfire or an emerging combination of conditions that indicate a potential for the occurrence of serious bushfires, the Chief Officer of CFA should after consultation with other fire agencies, be empowered to prescribe arrangements relating to the preparedness of the agencies to ensure a concentrated and coordinated response to any fire which may occur.
40. It should be recognised that whilst this proposal recommends that the CFA and CFA's Chief Officer be legally responsible for the management of all bushfires in Victoria, it is envisaged that the current arrangements of multi-agency IMT's will continue.
41. This will ensure that the most appropriate personnel are assigned to manage a particular fire and will accord with the recommendation of the Commission (Recommendation 9.2) that "*the most experienced, qualified and competent person is appointed as Incident Controller for each fire, irrespective of the point of ignition of the fire.*"
42. The proposal recognises that DSE has significant and quite diverse responsibilities to manage public land and undertake a range of activities not associated with managing uncontrolled fire on that land. Under VFBV's proposal, the community will see a unified approach to the management of any bushfire under a single line of control whilst the independence of the agencies for the prevention and suppression of fires in accordance with their broader legislative and community responsibilities will be retained.



43. In the context of this proposal, no suggestion is intended that any of Victoria's fire management agencies should be combined. The quite separate and unique cultures and diverse responsibilities of DSE as a land management agency run wholly by paid staff and CFA as an emergency management agency which largely relies on a volunteer workforce has been investigated on numerous occasions as far back as 1939 and rejected for good reasons which remain largely relevant today. As recently as 2003, the findings of the report into the bushfires of 2002/03 by the OESC found that the proposition to amalgamate the Fire Management Branch of DSE with the CFA would have the potential to negatively impact on crucial forest fire fighting knowledge over time and the obligations of DSE to prevent and respond to fires on public land.
44. Similarly, any proposal to combine the Metropolitan Fire Brigade and the CFA will fail on cultural and practical grounds as volunteer fire fighters will not work within an operating environment that is heavily industrialised with an associated propensity to unduly influence organisational decision making to the disadvantage of volunteers. In simple terms, a heavily industrialised paid workforce is incompatible with the aims and objectives of a community embedded volunteer based fire service and would be counter-productive to the achievement of a sustainable focus on shared responsibilities between the community and the fire service, particularly in high risk areas where mutual obligations are paramount to saving lives.

