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Fire Service Act Review
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Issues Paper- Review of the Fire Services Act 1979

Thank you for the opportunity to provide a submission to the Review of the *Fire Services Act 1979* (the Act) issues paper. The Local Government Association of Tasmania (LGAT/ the Association) is incorporated under the *Local Government Act 1993* and is the representative body for Local Government in Tasmania.

The objectives of LGAT are to:

- Protect and represent the interests and rights of Councils in Tasmania;
- Promote an efficient and effective system of Local Government in Tasmania; and
- Provide services to Members, councillors and employees of Councils.

LGAT fully supports those councils that have made their own submissions as part of the consultation process. Where a council has made a direct submission to this process, any omission of these specific council comments in the LGAT submission should not be viewed as lack of support by the Association for that specific issue.

LGAT is supportive of the comprehensive review of the Act and agrees that the Act must be modernised to reflect contemporary fire and emergency services. The issues paper has raised several important issues in relation to the Act, many of which if changed are likely to impact on Councils.

This submission will focus on key issues to the sector, including:

- Governance arrangements, including the role of the State Fire Commission, State Fire Management Council and Fire Management area committees;
- Sustainable funding including levies, funding of SES and centralisation of SES volunteer units; and
- Operational considerations including fire hazards and the fire permit system.

Additional feedback is provided against each of the questions posed in the issues paper in Attachment one.

Key issues

Governance

Membership and function of the State Fire Commission

Under the current Act the State Fire Commission must include two persons nominated by the Local Government Association of Tasmania. Local Government plays a significant role in collecting a considerable portion of funds for the Commission through the fire service contribution. The issues paper poses the question ‘should members of the commission be appointed as representative of their organisation or on the basis of skills/knowledge that they possess?’

There is a general view from LGAT Members that the appointment of members on the State Fire Commission should be based on skills and knowledge, however this is not necessarily mutually exclusive to an appointment based on representation of an organisation. Given the broadening role of the fire service to include mitigation and community resilience, as well as the integration of the State Emergency Service, there is an increased case for representation from the Local Government sector on the commission. Local Government is a key player in community preparedness, building community resilience and is the main stakeholder in recovery. This combined with councils’ current role in collecting a significant proportion of the Commission’s revenue through the state fire service contribution provides additional justification for Local Government representation on the State Fire Commission.

It is essential that the review of the *Fire Services Act* includes deeper consideration of the functions of the Commission so that the broader role expectations of the Tasmanian Fire Service and the State Emergency Service are encompassed. This may include a renaming of the Commission to better reflect modern functions.

Role of the State Fire Management Council (SFMC)

Under the current Act membership of the SFMC includes representation from the Local Government Association of Tasmania. The issues paper poses the question “what is the appropriate membership of the SFMC and what is the appropriate role and function of the council.”

The current role of the SFMC in providing advice to the Minister and the State Fire Commission regarding the prevention and mitigation of vegetation fire is appropriate. It is also appropriate that the SFMC oversees the Fire Management Area Committees and has a close working relationship with the Fuel Reduction Program. The current representation on the SFMC is appropriate. Local Government is a key stakeholder, with broad knowledge of planning, local risk, and community values and as such should remain on the SFMC.

Role and membership of Fire Management Area Committees (FMACs)

Under the Act, FMACs are responsible for preparing fire protection plans for the fire management area, identifying priority bushfire risks and mitigation work. There are 10 FMACs in Tasmania. The paper raises the issue of membership of committees and the current separation of FMACs from the structures established under the Emergency Management Act as well as the need for Emergency Management Plans at the regional and municipal level. The

current structure has some level of duplication, especially in relation to risk assessment. FMAC membership includes a representative from each local council.

While the FMACs and the Regional Emergency Management Committees/Municipal Emergency Management Committees have some duplicate membership, the roles of the committees are quite different and it is difficult to see how integration could provide better outcomes or decision-making processes for either committee. Since the reinvigoration of the FMACs several years ago the committees have been working well and deliver what is required of them under the Act. That said, there would be merit in better sharing of information between the FMACs, Regional Emergency Management Committees and Municipal Emergency Management Committees. The FMACs gather a large amount of risk information, including annual bushfire modelling from the Fuel Reduction Unit and the bushfire protection plans developed by FMACs are a key piece of information to support emergency management planning. This information needs to be available to Municipal and Regional Emergency Management Committees to inform their emergency management and recovery planning. The Local Government sector feels that the current membership of FMACs is appropriate.

Sustainable funding model

Fire levy

Provisions for the finances of the State Fire Commission are contained in Part VI of the *Fire Services Act 1979*. The Act determines the provisions relating to contributions payable by local councils towards operating costs of brigades. The contribution is to provide for the recovery from councils of such an amount as will be sufficient to cover the operating costs of brigades for that year, as approved by the Minister, less the prescribed amount. The prescribed amount being any contributions from insurance companies, Treasury (through the Motor vehicle fire levy), the Commonwealth and/or marketing activities.

The fire services contribution provides 45.7% of the State Fire Commission budget.

The requirement for councils to collect the fire service levy on behalf of the State Government has long been an issue of contention and many councils believe that the State Government should be the collection agent for the levy. Councils also have deep concerns about the level of the Fire Service Contribution and the lack of transparency and consultation around the increase in levy from one year to the next.

A review of the Annual Reports of the State Fire Commission has identified that a standard 5.5% increase has been placed on the levy over the last 5 years without regard to the requirement under the Act that the allocation be sufficient to cover the operating costs of brigades for that year, less the prescribed amount. It is difficult to obtain the cost that is attributed to brigades separated out from other activities undertaken by the Commission. This makes it difficult to scrutinize and determine if operating costs of brigades have increased by a flat 5.5% per year.

As councils are currently the collecting authority for this State Government tax it essential that they are consulted in relation to any increase and that there is sufficient transparency for local communities to understand the reasons for increases in their rating districts. The redrafting of the legislation must build in mechanisms for broader consultation in relation to any increase in the contribution.

The integration of SES with the Tasmanian Fire Service under the State Fire Commission has obvious operational benefits however, the integration without the appropriation of funds which were previously provided through consolidated funds to the State Emergency Management Service is concerning. Funding to support this integration should not be provided by an increase to the Fire Service Levy and this needs to be reflected in the redrafted legislation.

Concern has also been raised by the sector around the rating of districts and the disparity in the levy between residents who are serviced by a metropolitan brigade compared to a voluntary brigade. The current funding model assumes that the two services operate exclusively within their rating district, when in reality the fire resources are dispatched to where the need exists at the time of an event, and this is reasonable. As fire resources will frequently move across rating districts and municipal boundaries a fairer and more transparent funding model is required.

Funding of SES

Prior to becoming the funding responsibility of the Commission, the majority of resourcing for SES was provided by the State Government. SES now operates with a State Fire Commission allocation. Councils are responsible for the establishment and maintenance of municipal SES volunteer units. SES also receives an annual allocation of \$300K from the MAIB to support road crash rescue capacity. A review of the SES was undertaken by Wise Lord and Ferguson in 2016 and a number of issues and risks to SES funding were identified. These included:

- Currently governance and financial arrangements with Local Government limit the ability of SES to strategically manage their financial assets;
- SES is unable to budget effectively as it can't forecast revenue contributions from Local Government;
- There are risks related to work, health and safety as SES is not funded for major incident response;
- Under current resourcing SES may not be able to provide adequate support in relation to risk assessment, community resilience and disaster planning; and
- Financial and resourcing levels required to meet training and support obligations of volunteers may be insufficient and there is a discrepancy in how SES, TFS and Ambulance volunteers are treated.

As a result of these recommendations the issues paper poses the questions "should fire and emergency service be funded through a single mechanism? If so what is the appropriate model?". "Should SES centrally manage and fund its volunteer unit facilities, its fleet and its operational expenses?"

The issue of SES funding, and the funding of SES volunteer units, has been an issue which has been explored with the sector through a number of past reviews including the more recent review of the *Emergency Management Act*. Feedback from that process demonstrated there was general consensus that resourcing of SES volunteer units should be centralised. There are varying views from councils as to how the centralisation should be funded with some suggesting that it should be funded from consolidated revenue while others suggested that it may be

through a levy. However, it should be noted that historically there has not been wide spread support for Local Government as a collection agent for State Government levies. Therefore, the introduction of a levy would need to consider the levy being collected by a government agency or it would need to be accompanied by an appropriate educative campaign for the community. Should a levy be applied then funding for SES volunteer units from councils would be removed (cash and in kind).

Some councils were of the view that the conditions of transfer to a centralised model would need to be in place before it is enshrined in legislation.

Other issues raised included:

- The need for a formal mechanism to ensure there is a continued link between the local SES unit and councils;
- The need for cost neutrality on a state-wide basis; and
- The importance of transparency in how the levy is spent, so as to ensure it doesn't become a mechanism for the State to fund the current SES management and administrative functions.

The move to fund the SES public service through the State Fire Commission is not supported unless the legislation is clear that the State Government will continue to fund the SES employees and on-costs through the Governments recurrent funding of the Commission. Local Government does not support a move to fund this part of the public service through the Fire Service Levy and this needs to be clear in the redrafted legislation.

The introduction of a levy would also need to be considered in relation to the increasing cost of living pressures currently being experience by Tasmanian households.

Operational Considerations

Fire Hazards

The current Act includes provision for the Commission to undertake all necessary acts to remove fire danger. In addition, there are powers for the Commission and councils to create fire breaks. However, it is not particularly clear in what circumstances the TFS has the authority to undertake hazard mitigation activities in non-emergency situations under the Act without needing additional approvals from either the Forest Practices Authority or Local Government. In most cases a Development Application, pursuant to the *Land Use Planning and Approvals Act 1993* (LUPAA), is required for these activities, however recent advice from the TFS has indicated that they do not believe they require a Development Application. This is not the view of the sector, however Local Government recognizes that requiring a Development Application for fuel reduction burns would be an impediment to some of TFS' mitigation activities.

The issues paper poses the question "should the Act be amended to specify these activities are exempt from the provisions of LUPAA?"

There is a view from some councils that essential fuel management activities should be exempt from requiring a Development Application and this is reflected in a number of councils Interim Planning Schemes, which provide an exemption for fire hazard reduction required by the *Fire*

Services Act 1979. However, as is mentioned above, not all Interim Planning Schemes contain this exemption. In addition, there are important matters, such as natural values, that must be assessed as part of the planning process and prior to any fuel reduction burns taking place. Given the complexity of this issue, it is recommended that specific and targeted consultation (i.e. the council planners) occur with the sector on this matter before settling on a position. LGAT is happy to assist in facilitating such consultation.

Fire Permit System

A review of the Fire Permit System was undertaken by Wise, Lord and Ferguson in 2016. The review made several recommendations, some of which have an impact on the legislation. One of the recommendations relates to the need to embrace technology and create an online system for applying for, granting and recording permits and burn plans and, for sharing data between fire agencies and other stakeholders.

Access to permit data has been an issue for Local Government for many years, in particular where members of the community have made complaints to a council in relation to smoke pollution under the *Environmental and Pollution Control (Distributed Atmospheric Emissions) Regulations* and Council By-laws. The lack of easily accessible data on fire permits can result in inefficiencies and impact on council resourcing. Councils are supportive of a move to an electronic based system. An electronic system would support sharing of real-time information with key stakeholder and would provide important information to inform planning and community education activities.

Conclusion

LGAT appreciates the opportunity to provide feedback on the issues paper and welcomes the opportunity to continue to work with the steering committee tasked with undertaking the review.

It is understood that there will be a number of additional opportunities for councils to have input into the review and this is welcomed given the complex issues which need to be worked through with the sector, particularly in relation to the State Fire Levy and the proposed centralisation of the SES volunteer units.

If you have any further questions in relation to the submission please contact Georgia Palmer, Senior Policy Officer, on 6233 5961 or georgia.palmer@lgat.tas.gov.au

Yours sincerely



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CHIEF EXECUTIVE OFFICER

Review of the *Fire Services Act 1979* –Issues Paper Questions

<p>1. Should the purpose of the legislation more accurately reflect the range of activities undertaken?</p>	<p>Yes the Act should reflect the variety of roles and activities undertaken, including the roles in planning, preparedness, transition to recovery and recovery.</p> <p>The definition of the role of TFS should also include the power to issue public warnings about bush fires and bush fire threats in the State for the purpose of protecting life and property. This is a prime directive in the management of risk to the community and the authority.</p> <p>The role definition should also consider the opportunity to assist other emergency services organisations at incidents and at emergencies under the control of those organisations either within the state, interstate or perhaps internationally.</p>
<p>2. How should legislation validate the delivery of the current range of non-fire services that communities and government expect TFS to deliver</p>	<p>If firefighters are currently undertaking this support role it should be clearly defined in legislation that they are equipped and trained to offer these services.</p> <p>The role of the TFS in rescue should be considered in light of the changes in other traditional fire services in Australia which have broadened the scope of operations to include rescue from vehicles, buildings, swift water and vertical rescue operations. These operations are as a result of increased capability, supported by improved training, skills development, equipment and capacity.</p> <p>The review may wish to clarify the decision-making process by which these additional roles are assigned operationally, as not all locations in the State would be in a position to take on this additional load.</p>
<p>3. Do TFS firefighters have a role in Emergency Medical Response and if so, should that role be reflected in legislation?</p>	<p>Internationally some agencies have integrated medical first responder roles to traditional fire services. This may be a consideration for the review but the increased capability relies upon a level of training and skills maintenance that would not easily be met by retained or volunteer firefighters.</p>

	<p>The articulation with the Ambulance Service would need to be carefully considered if this capability were to be assigned to TFS.</p>
<p>4. Should the State Emergency Service be included in the new legislation and removed from the Emergency Management Act in order to support personnel in emergency management?</p>	<p>The role of the SES and the range of operations that the SES undertakes in the community makes integration into the <i>Fire Service Act</i> a challenge and has not been successfully achieved in other jurisdictions.</p> <p>Governance and co-ordination of storm, flood and natural disasters other than fire, would require a very broad definition of the role of the TFS if the SES were not to be a separate organisation with a separate charter.</p>
<p>5. Should a statement of commitment to volunteers be included in the new legislation and, if so, who and what should it cover?</p>	<p>Volunteers play a critical role in emergency organisations which needs to be specifically addressed in legislation to ensure that the powers, roles and responsibilities in the operational structure is clearly defined.</p> <p>Recent discussion between the Queensland Fire and Emergency Services Department and the Rural Fire Brigades Association of Queensland over the status of volunteer firefighters highlights the importance of recognition. The debate centered on the definition of a "fire service officer" in the Queensland <i>Fire and Emergency Service Act 1990 Chapter 3, Part 1 Clause 8A (b)</i> and the debate has generated considerable concern amongst volunteers as to their legal status and authority.</p> <p>The review of Tasmania's <i>Fire Services Act</i> could avoid this matter by explicitly addressing authority, role and function of volunteers.</p>
<p>6. Should the legislation provide PWS and forest officers with appropriate legislative authority to undertake fire control work and reflect contemporary Tasmanian practice in relation to Inter-Agency Incident Management?</p>	<p>Yes, but there should be consistency and clarity around powers.</p> <p>Reference could be made to the process of appointment of incident controller and deputy incident controllers under Section 44 of the NSW <i>Rural Fires Act 1997</i>. The integration of multi-agency personnel during a major incident is greatly enhanced through the appointment by the NSW Commissioner of suitably qualified and experienced staff to the multi-agency incident command, regardless of their agency of origin. Appointment under S44 resolves any questions of authority or accountability for the appointees.</p>

	<p>In a small jurisdiction the utilisation of all suitably qualified and experienced staff is critical in the event of a state-wide emergency or multiple co-incident natural disaster responses. Recent experience in Victoria and in NSW has highlighted the need to broaden the pool of incident management personnel and the need to strengthen the focus on a multi-agency approach. In many jurisdictions experience has been that incident load can quickly overwhelm available command resources.</p> <p>There may need to be consideration of the required skills and qualifications of personnel who could be available to fill incident management roles in a major emergency to broaden the pool of appointees. A broadening of the role of TFS and a stronger engagement of the SES in the management of all natural disasters would exacerbate a shortage of qualified and experienced incident management team members in a large or protracted series of incidents.</p>
7. Should the State Fire Commission remain as a State Authority?	Yes
8. Should the State Fire Commission have the role of a governing board	No comment
9. Should members of the Commission be appointed as a representative of their organisation or on the basis of skills/knowledge that they possess?	Refer to body of submission
10. What should be the State Fire Commission's role and function and should it include the strategic policy setting and administrative oversight of the State Emergency Service?	Refer to body of submission

<p>11. What structural arrangements would best allow the Commission and TFS to achieve their objectives while operating in a departmental environment?</p>	<p>No comment.</p>
<p>12. How should the Chief Officer be appointed and to whom is he responsible?</p>	<p>The Chief Officer should be appointed by the commission.</p>
<p>13. Should it still be specified that the Chief Officer is to have expertise and experience in fire service administration and in the management of fire-fighting operations?</p>	<p>An all hazards approach to incident management is considered to be a more forward-looking vision for emergency services agencies. Therefore, the skills required of a Chief Officer should reflect the broad nature of emergency responses required of the agency.</p> <p>Importantly the skills required of different types of emergencies has been greatly studied since the inception of the Bushfire CRC and now the Bushfire and Natural Hazards CRC. The requirements of leaders within emergency services agencies is considered to be much broader and holistic than experience in one discipline alone.</p>
<p>14. How should potential tensions between the roles and accountabilities of the Chief Officer TFS, the Director SES and the State Controller be best resolved?</p>	<p>A number of jurisdictions (WA, ACT and Queensland) have adopted a model that places a Commissioner as head of Department to lead an amalgamated emergency services department.</p> <p>In the Queensland Fire and Emergency Services model, each member agency is led by a Deputy Commission, within an operational command structure reporting to the Commissioner.</p> <p>In Western Australia the Department of Fire and Emergency Services has a Commissioner supported by Deputy Commissioners who lead operational and strategic commands. This is a similar configuration to the arrangements for the Emergency Services Agency in the Australian Capital Territory. Both of these were the result of major reviews after significant bushfire events and indicate the importance of a greater level of interoperability across emergency services agencies.</p>

	<p>There is potential for this type of arrangement to be introduced to Tasmania with the reformation of the structure and role of the State Fire Commission. The benefits of such a structure could be the strengthening of the role of the SES and a greater degree of interoperability across all hazards incidents.</p>
<p>15. What is the appropriate role and function of the SFMC and what should the relationship be with the State Fire Commission/TFS?</p>	<p>Providing advice to the Commissioner and being a key link to the community.</p>
<p>16. What is the appropriate membership of the SFMC and should membership be prescribed in legislation?</p>	<p>Refer to body of submission.</p>
<p>17. Should the State Fire Management Council have the power to appoint permit officers?</p>	<p>This would seem to be appropriate and would allow for the recruitment of suitably qualified officers to undertake this role in smaller communities or where particular expertise in fire management local fire behaviour is required.</p> <p>In Queensland the Fire Permit Officer system is entirely voluntary and Fire Wardens are appointed by the Commissioner from experienced and knowledgeable locals. There is no specific requirement that the Fire Warden be a member of the local brigade even though this is often the case.</p> <p>In Queensland fire permits are a requirement year-round and the conditions and timing of permits is at the discretion of the Fire Warden in the local Fire Warden District. A Fire Warden may issue permits over multiple brigade areas or only part of a brigade area depending on the size of the area in question. These permits are specifically for hazard reduction burning and agricultural burning and operate close to urban areas.</p> <p>In urban areas the Fire Warden is usually the local QFES Area Manager and in some cases the relevant Forest or National Parks senior officer. This integrates strong local knowledge and operational skills into the decision-making process required in issuing a permit to burn.</p>

18. Are the Fire Management Areas and the composition of the Fire Management Area Committees still appropriate?	Refer body of the submission
19. What opportunities exist to streamline Fire Management Area Committees with Emergency Management Committees?	Refer to body of submission
20. Should fire and emergency services be funded through a single mechanism? If so, what is the appropriate model?	Refer to body of submission
21. Should SES centrally manage and fund its volunteer unit facilities, its fleet and its operational expenses?	Refer to body of submission
22. Should any new legislation bind the Crown?	Yes, the Crown holds significant responsibility in managing risk in relation to natural disasters and therefore should be bound by the legislation in the same way that other land managers are bound.
23. How should response, command and control arrangements be handled in new legislation?	<p>It would be unusual for operational doctrine to be included in the new legislation due to the difficulty in adopting better practice which would then require amendments to the legislation.</p> <p>To define command and control arrangements in legislation would hamper the development of new practices and procedures and enshrine in place current practice. In the face of a major event the enlistment of external resources would be frustrated by a legislated definition of who is legally able to be assigned to command and control structures and challenge the capacity of the State to utilise external agencies for support.</p> <p>This level of operational practice is best assigned to the role of the Commissioner with the power to delegate to</p>

	<p>Deputies or to the policy framework endorsed by the Commissioner from each of the operational commands.</p> <p>Recent analysis by the Bushfire and Natural Hazards CRC points to the increasing importance of State agency integration at a local and district level in response to emergencies in Queensland and may be worth consideration in the review (<i>QFES Inspector General Emergency Management 2015</i>).</p>
24. Should the Chain of Command be included in legislation with accountabilities included?	No comment
25. Should endorsement of Incident Controllers be legislated? Making it clear that all emergency responders present at an incident are in all respects subject to the Incident Controller's direction or should Incident Controllers be endorsed through policy?	<p>In considering the options available to appoint incident controllers, reference should be made to Recommendations 17 and 18 of the 2009 Victorian Bushfires Royal Commission Report.</p> <p>It may also be helpful to consider the process of appointment of the incident controller and deputy incident controllers for Level 3 incidents under Section 44 of the <i>NSW Rural Fires Act 1997</i>.</p> <p>The power to appoint is conferred by legislation and the process and conditions of appointment are determined by policy and at the discretion of the Commissioner from a suite of suitably qualified and experienced staff who hold currency in relevant level of incident control.</p>
26. Are the provisions relating to the establishment and composition of brigades still available?	No comment
27. Should Industry Brigades be recognised in legislation and have the ability to assist in emergency response outside the industry boundaries?	<p>Yes</p> <p>If the intention is to expand the use of the Industry Brigade classification, then the level of liability brigades may be exposed to would need to be clearly considered in the legislation.</p> <p>It would also be important to define how the Industry Brigade and the resources of the brigade would be accounted for in the response arrangements. This is</p>

	<p>particularly important where these resources are being drawn away from the assets of the industry and assigned to protect other assets and therefore compromising the capacity of the industry to protect its own interests.</p> <p>There may be some value in considering these resources as co-opted resources and incorporate into the legislation the power of the incident controller to co-opt local resources for the purposes of suppressing a fire or responding to an emergency situation. This would broaden the range of resources that might be utilised and clarify their status in respect to authority to undertake necessary works, enter property for the purposes of response and liability in the case of damage.</p> <p>An interesting approach to the problem is contained in the Queensland <i>Public Safety Preservation Act 1986</i>. This Act provides for the protection for members of the public in terrorist, chemical, biological, radiological or other emergencies and has significant powers in the event of an extraordinary event. These powers are restricted to officers of the Queensland Police force but are one response to the issue of authority over external resources.</p>
28. Should the Act be amended to specify these activities are exempt from the provisions of the LUPAA	Refer to body of submission
29. Are the provisions relating to the declaration of Total Fire Bans still appropriate?	Yes
30. Should Community Education be an explicit function of SFC/TFS and should it include the SES?	<p>Community education should be a given by all public entities.</p> <p>There is support for this important function to be more explicitly described as a role of the TFS and the SES.</p>
31. Is it still appropriate that TFS issues permits to install, maintain or repair fire protection equipment?	No comment

<p>32. Should there be a whole of government Emergency Evacuation System that deals with all threats, not just fire risks, in the built environment? Should prescribed buildings be categorised by risk potential?</p>	<p>Yes, although there is conflicting view as to whether this requirement should sit in the <i>Emergency Management Act</i> or the <i>Fire Services Act</i>.</p>
<p>33. Are the current levels and structure of penalties appropriate?</p>	<p>No comment</p>
<p>34. Are there other offences that should be considered for inclusion in new legislation?</p>	<p>No comment</p>
<p>35. Are the current protections from liability provisions appropriate?</p>	<p>The protection from liability, as defined in the <i>Emergency Management Act</i>, provides for a broader range of coverage for "emergency workers" that might be useful to the revision of the Act.</p> <p>Importantly, liability might arise for other agencies when undertaking actions as directed by an authorised officer in the conduct of emergency response. The extension of protection from liability should include those entities that are operating within the incident management arrangements at the direction of the incident controller or his authorised officers.</p>