

# TASMANIA POLICE

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Chair  
Fire Service Act Review  
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Dear Mr Harris

## **Review of the *Fire Service Act 1979* – Tasmania Police Submission**

Thank you for the opportunity to comment on the Issues Paper reviewing the *Fire Service Act 1979* (the Act) and its governance of the Tasmania Fire Service (TFS). I have noted the high level questions formulated by the Steering Committee to guide submission responses. I have tailored my response accordingly by providing comment on several of those questions in the order they appear in the paper. As noted in the paper some of the issues do not impact upon Tasmania Police and those questions have not been addressed in this response. I also note that potential amendments that fall outside the ambit of the Issues Paper are welcome and are being collated for further examination at an appropriate stage of the review process. Tasmania Police has a number of such suggestions, which I have also included in this response.

### **Question 1: Should the legislation more accurately reflect the range of activities taken?**

As noted in the Issues Paper, the scope of TFS responsibilities has widened considerably since the enactment of the Act in 1979. TFS now leads, manages or provides assistance to Tasmania Police with matters such as road rescue, urban search and rescue, and chemical, biological and radiological (CBR) response.

Tasmania Police suggests that while the legislation should ensure that TFS and SES officers have the necessary powers and authority to fulfil their duties (such as the ability to undertake road closures in connection with their duties), it should not be prescriptive as to how those duties are undertaken. Legislation may not evolve quickly enough to account for never before seen emergencies.

Rather, the range of activities undertaken would be better outlined within the Tasmanian Emergency Management Plan (TEMP) or the newly proposed Tasmanian Emergency Management Arrangements (TEMA), which ensures that management of that issue is undertaken by the agency most appropriately placed to manage it.

**Question 2: How should legislation validate the delivery of the current range of non-fire services that communities and government expect TFS to deliver?**

This response flows on from our answer to question one. With TFS now incorporating management of the State Emergency Service (SES) there is a need for legislation that includes, and is consistent with, other legislative instruments in the emergency management space. Apart from legislating for the powers required to exercise certain new non-fire services, the legislation should articulate roles and accountabilities without being overly prescriptive around actions, which are fluid and flexible matters best left for emergency responders.

**Question 3. Do TFS firefighters have a role in emergency medical response and, if so, should that role be reflected in legislation.**

It is not recommended that TFS have a legislated mandate to provide emergency medical response. Any person can provide medical assistance and many have some level of training. However, this does not equate with a legislative requirement to provide assistance, apart from times when a person or organisation has a duty of care for the injured person. This is currently the situation with Tasmania Police officers who receive first aid training and do provide emergency assistance but without being legislatively required to do so, again except when there is a duty of care, such as persons injured in police custody. Medical response and training of TFS personnel is best left at the level of policy.

**Question 6: Should 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?**

Tasmania Police support legislating to provide consistency of powers and responsibility between Parks and Wildlife Service officers (PWS) and Sustainable Timber Tasmania officers (STT). However, care should be taken in legislating these matters as the more prescriptive the legislation regarding specific agencies or authorities, the less flexible and adaptable it will be to changing circumstances.

Tasmania Police also suggest that additional powers should be examined by the Review to support the expanded role of TFS, PWS and STT. For example, there have been occasions when PWS officers in remote areas have needed to close roads to protect public safety during a fire, but have not had the power to do so. Similarly, TFS and PWS officers should also have a power to regulate traffic not just close a road. This will allow PWS or TFS officers who are first to an incident, or in remote areas, to commence managing an incident before police arrival. Private companies such as Copper Mines of Tasmania often assist TFS and SES with road crash rescue services on the west coast of Tasmania. Whilst it is not appropriate to give them powers to close roads, it may be worthwhile exploring legislative options to allow them, to be delegated powers by TFS/SES in limited situations.

**Question 11: What structural arrangements would best allow the SFC and TFS to achieve their objectives while operating in a departmental environment?**

Tasmania police has no comment to make in relation to the arrangements between the SFC and TFS. However, we do note that as an operational arm of DPFEM, the Secretary, the SFC and the TFS all have varying levels and areas of control, either under the *Fire Service Act 1979*, the *State Service Act 2000* or as determined by government policy. As noted in the Issues Paper at page 21, the precedence and scope of these areas of responsibility are not wholly clear and it is important that greater clarity be provided.

It is also important to note that the State Controller also has a level of authority pursuant to the *Emergency Management Act 2006*. It seems logical and appropriate that the *Fire Service Act 1979*, should

reflect this hierarchy. Where conflicts occur, the *Fire Service Act 1979* should be subordinate to the *Emergency Management Act 2006*.

**Question 14: How should potential tensions between the roles and accountabilities of the Chief Officer TFS, and the Director SES and the State Controller be best resolved?**

Different acts governing emergency management responses within Tasmania should be de-conflicted and a hierarchy defined. The lower-level arrangements concerned with reporting, financial and operational matters should not be managed by legislation, but by DPFEM governance and policy as a Tasmanian government agency.

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

These types of issues should not be covered in the legislation. These are operational decisions, with roles, functions, responsibilities and accountabilities outlined in policy such as the TEMP/TEMA and other doctrine (i.e. AIMS). If AIMS or any other system is stipulated in legislation, it has the potential to limit flexibility and operational response.

**Question 24: Should the chain of command be included in legislation with accountabilities included?**

Chain of command should not be covered in legislation, this is an operational decision with roles, functions, responsibilities and accountabilities outlined in policies and plans such as the TEMP and TEMA. This differs from organisational structures which could be considered for inclusion in legislation which only identify hierarchy for specific statutory roles.

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

Incident Controllers should not be endorsed through legislation. Again, as with the previous question these are operational decisions with roles, functions and responsibilities outlined in policy.

**Questions 33 & 34: Are the current levels and structure of penalties appropriate. Are there other offences that should be considered for inclusion in new legislation?**

The offences in the current Act are limited in scope and do not adequately reflect the expanded role of TFS and SES. The current offence and penalty provisions should be reviewed to determine if they remain appropriate, enforceable and contemporary. Care should be taken with the creation of new offences, with considerations given to the capacity and costs involved for such offences being enforced and prosecuted.

There is scope to add an offence for ignoring road closure signs, though whether the *Fire Service Act 1979*, is the appropriate Act for such an offence is debatable. Tasmania Police will often close roads either of their own accord or at the behest of TFS during critical incidents. At times, these road closures are managed by erecting signage across the road which is not permanently policed, as officers are required elsewhere to perform activities.

There have been occasions when these signs have been found pushed over or removed by members of the public who wish to gain entrance to the closed road. Ignoring these signs is not an actual offence.

A specific offence for disobeying or removing these road signs is worthy of consideration for inclusion into the new Act, or alternatively, the *Road Rules 2009*.

### Other comments and matters for consideration

- Whilst the *Acts Interpretation Act 1931* allows a reference to a specific gender to mean any gender, the rewrite is an opportune time to remove the gender specific language contained in the Act. For example, at section 29 a brigade chief may, either alone or with other persons under *his* command, enter and, if necessary, force open any outer or inner doors of any premises which are on fire or in the vicinity of a fire for the purpose of taking any action which he considers necessary for extinguishing, or for preventing the extension of, the fire.
- Section 47 grants certain powers to police enabling them to provide assistance at fire incidents. Many of the powers refer to acting on the request of the 'appropriate fire officer' which is defined as the person who, 'under this Act, is in charge of a fire-fighting operation'. It is suggested that the definition be expanded to include the fire officer or their delegate.
- Appendix B of the paper lists the other relevant legislation that has an impact upon either the *Fire Service Act 1979* or TFS activities. The appendix makes no mention of the *Work Health and Safety Act 2012* or similar work safety legislation which do impose a number of significant obligations upon DPFEM and TFS. They should be included in any deliberations by the Review Committee.

Thank you again for the opportunity to comment on this important legislative reform. Please do not hesitate to contact my office if you have any questions regarding this submission or wish to discuss the issues raised further.

Yours sincerely



S A Tilyard  
A/COMMISSIONER OF POLICE