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Fire and Emergency Service Act Reform
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SUBMISSION ON THE CONSULTATION OF THE DRAFT TASMANIA FIRE AND EMERGENCY SERVICE BILL 2023

Thank you for the opportunity to comment. Please find below the Tasmania Parks and Wildlife Service (PWS) submission on the proposed *Tasmanian Fire and Emergency Service Act 2023*.

PWS is the managing authority for public land reserved under the *Nature Conservation Act 2002* and managed under the *National Parks and Reserves Management Act 2002* and has management responsibility for lands set aside under the *Crown Lands Act 1976*. PWS is identified in the *Emergency Management Act 2006* and the Tasmanian Emergency Management Plan (the TEMP) as the Response Management Authority for reserved land in Tasmania and has obligations as a land manager under the *Fire Service Act 1979*. As such PWS is the land manager and has management responsibility and obligations for approximately 51% of the State of Tasmania.

The area of the reserve system has expanded considerably since the inception of PWS in the early 1970s and the development of the *Fire Service Act 1979*. The estate that PWS is chartered with managing contains environments of World Heritage significance for its natural and cultural values. Our responsibility in fire management therefore extends to protecting the habitat and natural condition of flora and fauna species and to preserving cultural places and landscapes, in addition to protecting human life and property.

Our legislative obligations for achieving these objectives are of international consequence and the scrutiny being applied to our success has increased markedly in recent years since the 2016 bushfires impacted much of the Tasmanian Wilderness World Heritage Area (TWWHA). We anticipate our role in fire management in Tasmania will continue to grow due to the changing climate and the resulting increase in extreme fire weather events and remote area fires started by lighting, particularly in the TWWHA.

With this context, PWS supports the opportunity to move to a contemporary legislation structure, one that reflects the changes to fire risks as well as the roles, responsibilities, and arrangements in fire management in Tasmania. Below PWS have provided comment on a number of components of the proposed Bill that we feel need addressing before the enactment of any legislative reform.

1. Objectives of the Act

PWS supports recommendation 42 of the Blake Report (2020) for new legislation to be “contemporary, flexible and sufficiently forward-looking”. However, PWS notes the need for clarity in the overarching objectives of the Bill to ensure, in perpetuity, that the values and land that PWS manages are appropriately considered. PWS believe that the absence of the objectives of the Act is a missed opportunity to establish a best practice, whole-of-government approach to fire management in the State. In the absence of overarching objectives, there is little certainty about how subsidiary regulations, policies or procedures will be taken into account. Although section 9 outlines the objectives of the Tasmanian Fire and Emergency Service (TFES), they do not bind other parties such as PWS – in its collaboration with the TFES (as anticipated in interoperability) – except for responsible officers operating under the *Nature Conservation Act* (section 22 of the Bill), including the proposed State Fire and Emergency Service Committee (SFESC).

It is PWS’ understanding that enabling legislation in Australia usually includes overarching objectives. Further, PWS notes the *Rural Fire Service Act 1997* (NSW) objectives go so far as to extend to the protection of both environmental and cultural values (s3(c1)), as well as ensuring that fire management activities are “carried out having regard to principles of ecological sustainable development” (s3(d)). This contrasts with the Bill which constrains the TFES functions to “recognis(ing), when performing emergency management operations, that the environment has an inherent value for the Tasmanian community;” (s9(1)(c)). To implement that objective, TFES need not do anything more than ‘recognise’ those values. PWS is of the opinion that principles, similar to those outlined in the NSW legislation, embedded in the TFES legislation, would not inhibit the agencies capacity to remain agile and deliver contemporary practices but would, in fact, better reflect a recognition that Tasmanians care about the environment and that it provides economic value to the state which should be protected if practicable during emergencies.

In addition, PWS notes the Bill provides little to no mention of the role that fire and fire management activities across the broader preparedness, prevention, recovery and response spectrum can play. The Bill is very much focused on emergency response. This focus fails to recognise the diverse role that fire can play in our landscape. The PWS, in concert with other fire agencies, employs fire intentionally for multiple purposes, including to:

- reduce the adverse impacts of bushfires on people, communities, critical infrastructure, and assets, including environmental, economic, cultural and social values.
- promote ecologically resilient ecosystems on reserved land, providing for their capacity to perform ecosystem functions and services.

The PWS also receive Government funding to support the use of fire by the Tasmanian Aboriginal community to connect to and care for Country.

For these reasons, PWS is of the opinion that the Act should articulate a set of objectives which will facilitate holistic, best practice fire management, and will carry through into future legislative interpretation, implementation and the development of good government policy and practice.

Recommendation 1.1: The Bill include a set of overarching objectives that explicitly include the provision for:

- a) Mitigation activities, including planned burning, for fuel reduction, ecological and cultural reasons; and**
- b) The protection of vulnerable natural and cultural values from fire.**

2. Functions of TFES

The PWS supports the objective of TFES (as outlined in s9(1)(a)) to “*preserve human life and to protect property and premises, if an emergency event occurs*”.

Whilst we recognise preservation of human life and the protection of property and premises, we reiterate our position as detailed under recommendation 1.1 that the Bill explicitly include provision for the protection of vulnerable natural and cultural values from fire.

The PWS recognises the inclusion, through s9(1)(b)(ii) of the Bill which details that TFES will ‘*prevent, or limit as far as practicable, the economic, social and physical impacts of a bushfire*’ however we remain concerned the current drafting places a higher priority on ‘property’ than ‘natural and cultural values’ no matter the value proposition. Tasmania, and in particular our reserved estate, hosts significant cultural and environmental values, found no where else in the world. Some of these values are highly vulnerable to the direct effects of fire and should they be impacted by a bushfire will be lost forever. PWS stresses the importance of recognising the difference between environmental values that are adapted to and capable of persisting post fire, and those of international significance that will be permanently destroyed by it. Further the framing of the Bill suggests the TFES will value and will work to protect a structure (irrespective of its economic value, importance to its owner/community and its capacity to be replaced), over that of irreplaceable indigenous cultural heritage sites and fire killed vegetation.

It is worth noting that although PWS is the management authority for fire on national parks, future potential production forest and other reserves, single agency management of a fire terminates when the incident either becomes cross tenure or escalates to a level three incident. This means any arrangements under TFES enabling legislation would impact how PWS land is managed in the event of fire, further reinforcing the need to ensure the protections of vulnerable natural and cultural values is enshrined through legislation.

Recommendation 2.1: Section 9(1)(a) be amended to elevate the need to protect natural and cultural values in an emergency. PWS supports the amendment of the text to be “to preserve human life and to protect property, premises and natural and cultural values, if an emergency event occurs”.

3. Authority to allow for rapid response to fires.

Under the *Fire Service Act 1979* section 123 provides for ‘powers of entry of members of the Fire Service’. Section 20 ‘Powers of entry of the TFES’ of the proposed *Tasmania Fire and Emergency Service Act 2023* continues to limit this authority to the TFES.

Recommendation 28 of the Blake Review suggested an amendment was required to allow for any first responders to have the authority to enter land to enable quick response to fires in the landscape without waiting for formal instruction from TFES. Further, the Tasmanian Government’s response to the Stevens’ Report supported the premise that authority allowing for quick response to fires in the landscape should be provided to PWS, without the need for formal instruction and approval of TFES.

These recommendations align with the current Interagency Bushfire Management Protocol (2023-2024), in which Section 10.4 states, “*regardless of the legislative responsibilities for fires on different land tenures, the guiding principle remains that the most able firefighting resources of any agency will be deployed immediately to a reported fire as a priority.*”

The *Forest Act 1958*, in Victoria, provides for powers of entry “*to any building or land*” to public land

fire management personnel for the purpose of “(c) taking or directing to be taken all lawful steps for preventing or extinguishing fires”. Such an extension of authority for the Victorian public land fire management personnel has been in place for at least 25 years, with no identified adverse outcomes.

PWS continues to reiterate the need for a legislative mechanism that allows for its employees to have access to and deal with fire as soon as possible, irrespective of land tenure. This is needed not only to ensure all fires are managed in the most expedient manner possible, but additionally so that PWS can fulfil its own fire response obligations on reserved land, by allowing necessary access to the reserved estate via private property where necessary.

Recommendation 3.1: The Bill be revised to empower authorised PWS staff to access and respond to fire, regardless of tenure, as soon as possible, without the need for formal instruction and approval of TFES.

4. Limitations to liability for PWS

Under the existing *Fire Service Act 1979* there are no limitations to liability of the PWS nor its employees for damage to property that may occur as a result of fire mitigation activities (i.e. an escape of a planned burn or from embers originating from a burn), unless the activity is covered by a TFS issued permit.

Indemnity provided to TFES members under section 79 of the Bill, is extended to PWS under section 83 (if an interagency agreement exists). It is unclear however whether this indemnity extends to fuel reduction works, as the Bill refers to performing “emergency management operations” and “functions”. The Bill is not explicit as to whether “functions” extends to planned burning operations. As mentioned above the reference to mitigation activities is limited under this Bill, with section 10 “Functions of TFES” only referencing “preventing” in the context of “emergency events or potential emergency events”. This is compared to the existing legislation, which details the functions as including ‘develop(ment) of effective fire prevention and protection measures throughout the State’ (s8(1)(c)).

It is feasible under the proposed Act, that indemnity is provided for staff conducting planned burns in instances where PWS has been issued a permit under section 34(3)(b), however there is ambiguity as to what the section means by “control(ing)” a fire. PWS is concerned that should a burn they conduct escape, it could be deemed “reckless”, and staff would not be indemnified. This lack of certainty risks having a significant effect on hazard reduction works on PWS-managed land, at a time when hazard reduction activities are an articulated priority for the Tasmanian government – in line with international, national and state government policies and strategies.

Recommendation 4.1: That mitigation works, including planned burning, be explicitly included as a function of the TFES. Further, that it be clear that PWS, in undertaking planned burns, is performing a function under this Bill, and should be considered a member of TFES in accordance with section 79(1)(b).

Recommendation 4.2: Section 34(3)(b) of the Bill be replaced with s66(13) of the existing Act, to ensure PWS, in compliance with the provision of a permit are protected under the Act should a burn escape.

5. Authority to close roads and regulate traffic.

Under the *Fire Service Act 1979* both TFS members and police officers have the authority to both close roads and regulate traffic in the vicinity of a fire. Section 21 of the Bill provides powers for TFES members to regulate traffic and Section 24(2) gives explicit authority for police officers to regulate and close public streets in the vicinity of an event.

Recommendation 29 of the 2020 Blake Review advised this power should be extended to authorise PWS and STT employees to close roads to protect public safety during a fire...and have the power to regulate traffic. The review cited instances of PWS staff in remote areas, needing to close roads, to ensure members of the public did not enter an active fireground, and there being no alternative authorised individuals present to do so.

Again, this was supported by the Tasmanian Government's response to the Stevens' report which accepted the recommendation to:

“Authorise TFES, PWS and STT to close roads to protect public safety during a fire, flood or storm hazard and to have a power to regulate traffic, not just close a road.”

Given the likelihood that PWS staff will be first on scene to a fire in a remote part of Tasmania, and there be no attending police officer on site, the lives of individuals will be put at risk should PWS staff not be authorised to close a road and prevent access to an active fire ground. The PWS believes it is pertinent that authority be extended to authorised PWS staff to both close roads and regulate traffic.

Recommendation 5.1 The Bill be amended to allow authorised PWS staff to manage public safety through road closure and traffic management.

6. Inclusion of an Advisory Body

PWS is of the opinion that a body should exist to advise both the Commissioner and the Minister on matters relating to appropriate bushfire and vegetation management in Tasmania across all land tenures. Advice from this body should cover the spectrum of bushfire management arrangements relating to prevention, preparedness, response and recovery and should tap into the best available research, practices and bring a variety of perspectives to the table.

The only explicitly mentioned body in the Bill is the State Fire and Emergency Service Committee (SFESC). Given the Bill states that Minister will be responsible for the terms of reference for and functions of the committee (s17(1) & (3(a))) it is unclear whether the proposed SFESC is intended to fulfil this function (as per the existing State Fire Management Council), or whether it will be intended to focus on governance (as per the existing State Fire Commission). Should the intention be the former, it is PWS' opinion, that as the Bill goes so far as to explicitly prescribe two positions, one being representative of unions and the other of volunteers, it should also ensure other groups, functions and values are also specified, including a representative(s) of PWS.

As more Governments around Australia embrace a 'tenure-blind' approach to bushfire risk management, it seems incongruous that the Bill does not similarly emphasise the need for an all agency/stakeholder decision making/advisory platform. As the responsible fire management authority for 51% of the State, the PWS does not envisage a scenario where our input into bushfire management is not necessary. As such, the failure to list a representative of PWS, and other significant players in bushfire management in the State, adds no value in terms of 'agility' and 'flexibility' going forward, but rather could be seen as undermining contemporary bushfire practice

of collaborative decision making.

Recommendation 6.1: Ensure the Bill provides for an Advisory body whose membership covers all major stakeholders in bushfire and vegetation management in Tasmania, including an individual who has the authority to speak on behalf of the needs of PWS and the land and values it has management responsibilities for.

7. Retention of Fire Management Area Committees

PWS notes that Section 18 of the Bill allows for the establishment of other committees. PWS considers Fire Management Area Committees (FMACs) or bodies with similar functions, essential to the effective coordination of the on-ground delivery of fire activities of organisations and land managers. The current requirement for FMACs to develop Fire Protection Plans is a valuable mechanism for ensuring risk assessment and the consequent risk mitigation activities are strategic and tenure blind.

Recommendation 7.1: PWS recommends the explicit requirement for strategic regional cross agency committees be included in the legislation. The membership and footprint of these bodies should consider ensuring sufficient meaningful engagement and participation with relevant stakeholders is feasible, whilst limiting unnecessary duplication in participation

8. Offences relating to specified fires

Section 62 of the Bill makes it an offence to light up a 'utility fire' within three meters of any "stump, log or standing tree". The definition of a utility fire for this section includes:

*"a fire, other than a fire within a fully enclosed building
– (a) for cooking or warmth"*

This definition is ambiguous as to whether it extends to gas and liquid stoves that are used outside of 'fully enclosed' buildings, including in PWS-managed camping grounds or protected areas. This ambiguity leaves it open to interpretation that the Bill requires fuel stoves to only be used in fully enclosed buildings and/or when they are at least three meters from a stump, log or standing tree (s62(2)(b)). This is not practical or necessary in designated 'fuel stove only areas', such as the TWWHA, as the risk of fire escaping from these devices is minimal and their use is critical for recreational users in these areas. The exception in s4(1)(b) that fires may be able to be lit in 'prescribed circumstances, prescribed locations or in a prescribed manner' does not provide sufficient clarity to parks users nor sufficient comfort to PWS that this appropriate and safe use of fire will be supported by the new statutory regime. Given the new Act would take precedence over the *National Parks and Reserve Management Act 2002* and associated regulations, this current provision has the potential to inadvertently limit the capacity of walkers and campers to cook their food.

Further the prohibition under section 62(4) states

"During a fire permit period a person must not light a utility fire unless all flammable material has been moved to a place that is at least 3 metres from the site of the fire"

PWS is concerned this section suggests that fragile alpine vegetation within the TWWHA needs to be removed to maintain compliance with this section. This is not a desirable outcome. Although Section 32(1)(d) allows for fires to be lit in protected areas, in an area specially designed for fires


by the PWS, this would not extend to fuel stove use generally, as they can – and in many of Tasmania’s protected areas, must – be used in the open.

Recommendation 8.1: The Bill be amended so that the definition of ‘utility fire’ clearly does not apply to fuel stoves. The adoption of the wording of the National Parks and Reserves Management Regulations 2019 section 14(2) would mitigate these issues.

Should you have any further enquiries on this matter, please contact Katy Edwards, State Fire Manager, on telephone [REDACTED] or email [REDACTED]

Thank you again for the opportunity to comment and I look forward to seeing the results of the consultation.

Yours Sincerely,



Sophie Muller
**DEPUTY SECRETARY
PARKS AND WILDLIFE SERVICE**

4 December 2023