

CPSU submission

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CPSU submission on the *Position Paper State Fire and Emergency Services Commission*

The Community and Public Sector Union (CPSU) is the union representing Tasmanian State Service Award Employees within both Tasmania Fire Service (TFS) and State Emergency Service (SES). The CPSU represents workers who provide services across the state within prevention, preparedness and response to fire, flood, and other emergencies. This includes workers undertaking frontline, operational, administrative, specialist, and leadership roles.

The CPSU has a particular interest in ensuring any new legislation introduced provides for an effective and contemporary state fire and emergency service authority that provides the best possible protection and service for the Tasmanian community, now and into future.

This submission is on behalf of CPSU TFS members.

The following is the CPSU's feedback and position on matters relevant to the interests of its members in response to the release of the *Position Paper State Fire and Emergency Services Commission*. The CPSU welcomes transparency and clarity to the issues identified.

Overview

Overall, it is unclear to the CPSU which of the recommendations from the Blake/Stevens reviews are being adopted. It is understood that following consultation and feedback on the draft TFES Bill in 2023, a change in position has been adopted, particularly around governance and retaining a Commission as an independent statutory authority. However, the *Position Paper State Fire and Emergency Services Commission* provides little clarity and intent on the proposed overall governance arrangements which leaves more questions than answers for the CPSU and its members. The CPSU is concerned that a new TFES Bill is being drafted without clarity being provided.

Establishment of the State Fire and Emergency Services Commission (SFESC)

The CPSU welcomes the Government's announcement to establish the State Fire and Emergency Services Commission as a statutory authority and broadly supports a skills-based board approach to the membership of the Commission.

Throughout previous Fire Service Act reform consultation, it has been the strong view of the CPSU and its members that the Commission should be retained as a statutory authority with employment powers and full control over budget and finances in order to improve the current muddled governance model that exists. The CPSU's view is that empowering the Commission in this way is the only way to achieve the following outcome in the Blake Review Terms of Reference:

Outcome 2: that the Commission and TFS are organised and operating as effectively and efficiently as possible to provide the best outcomes to the community in terms of prevention, preparedness, response and community stabilisation and will provide value for money in the future.

Whilst the CPSU cautiously welcomes the announcement to retain the Commission, the recent Government announcements has not made clear what role the Commission will play and whether the Commission and TFES Commissioner will have the necessary powers to achieve the functions imposed under the draft Bill to achieve the above outcome.

The CPSU notes the *Position Paper State Fire and Emergency Services Commission* omits the CPSU's view on employment power and power over finances, however the CPSU believes that this is equally important, if not more important, than the constitution of the governing board for TFES. The CPSU only supports the statutory authority model if the board is given the full power to act, per the Blake recommendation on the amended statutory authority model.

Blake stated that where a statutory authority model is chosen, it should be given the full power to act and made the following recommendations in the event the Government decides to adopt an amended statutory authority model:

“3.5.4

2. the Chief Officer having responsibility both for leading the chain of command and for corporate governance.



- *in the event that Government supports the amended statutory authority model, the Chief Officer having responsibility both for leading the chain of command and for corporate governance is appropriate, however –*
 - *legislation should confirm the need for a Chief Officer (or equivalent) to be appointed and by whom*
 - *how or what the Chief Officer or TFES establish as an appropriate organisational management structure (including the number of Deputy Chief Officers [or equivalent]) should not be established in legislation. These are matters for the Chief Officer and TFES*
- *it is the responsibility of TFES and its Chief Officer to manage TFES in such a way, consistent with government policy, as to ensure it has sufficient resources to maintain continuity of corporate governance functions during fire season and other major incidents.”*

Review of the Fire Safety Act – Mike Blake – October 2020 Page 40

“Recommendations made by John Uhrig AO in his report Review of the Corporate Governance of Statutory Authorities and Office Holders, released on 12 August 2004. The following two recommendations have some relevance to this Review.

- *The role of portfolio departments as the principal source of advice to Ministers should be reinforced by requiring statutory authorities to provide relevant information to departmental secretaries, in parallel to that information being provided by statutory authorities to Ministers.*
- *Boards should be used only when they can be given full power to act. It is not feasible to have a board in authorities where Ministers play a key role in the determination of policy. In this case, governance can best be provided by executive management.*

Outcomes from the 2006 Commonwealth Review of the Corporate Governance of Statutory Authorities and Office Holders²⁸, from which the following are noted.

- *In comparison to the direct relationship between a Minister and his/her portfolio department, statutory authorities often operate with a greater level of separation. It is this separation, or ‘independence’, that creates the need for robust governance structures.*
- *The need for governance increases when independence is combined with power. Consequently, statutory authorities should be created only where there is sufficient need for:*
 - *efficiency: that is, a clear purpose is required to achieve objectives and it is considered beneficial to undertake functions outside the portfolio department*
 - *independence: when functions require a level of separation from government to ensure objectivity. “*

Review of the Fire Safety Act – Mike Blake – October 2020 Page 50

Relevant sections of the Uhrig report referred to by Blake in his report goes on to state:

“...When a board is restricted in its ability to act, either through formal limitations or through informal relationships which bypass the board, it will fail to perform an effective governance role, thereby reducing performance of the authority and providing ineffective supervision of management. With a few notable exceptions, boards in statutory authorities are likely to be an unnecessary layer in the accountability framework.”



Review of the Corporate Governance of Statutory Authorities and Office Holders Page 66.

Generally, governance arrangements for statutory authorities should strike a balance between providing flexibility to enable authorities to undertake their legislated functions and the policies of the government of the day. As described earlier, the ability of an authority to act independently of government is drawn by the authority's legislative framework"

Review of the Corporate Governance of Statutory Authorities and Office Holders Page 18.

"Portfolio secretaries have to reconcile a range of competing priorities, including providing support to the Minister and government in fulfilling their policy objectives, evaluating the effectiveness of policy and performance of the portfolio in achieving government priorities, as well as providing a range of services. Through establishing a separate entity within the portfolio to deliver a narrow range of outcomes, the Government can allocate dedicated resources to achieving specific functions. This provides confidence for the Parliament, the Government and the community that sufficient commitment and resources are being provided to areas of specialisation."

Review of the Corporate Governance of Statutory Authorities and Office Holders Page 31

It is not clear to the CPSU that the proposed governance arrangements will adopt best practice and stand the test of time to provide the appropriate structure for the SFESC to perform an effective governance role, unless it is truly independent and given the full power to act. If not, then the current muddled governance arrangements will remain. Given that no change to the current funding model has been announced, noting that largely the TFS (and presumably TFES) is not funded through appropriation and essentially raises its own income, it is appropriate that the SFESC maintain its independence.

Further, the role of Business and Executive Services (BES) has relevance and warrants further exploration. As pointed out in the Blake Report, the utilisation of these services from BES does not shift responsibility for these functions from the Commission/Chief Officer. If the Chief Officer (Fire & Emergency Services Commissioner) does not have control of these functions then how can it be responsible for them?

There is a sense of dysfunction with this arrangement, and it is a point of significant contention from our members that the current shared service model does not serve the needs of an independent statutory fire and emergency services authority. Services are stretched within the broader department which is not always able to respond to the unique needs of the authority. For example, while TFS has been exempted from the government's efficiency dividend, BES has not, which has TFS members concerned about TFS being subject to the efficiency dividend by stealth.

The CPSU calls for review of this arrangement in conjunction with the forming of the SFESC, to ensure TFES is appropriately structured and supported to deliver its functions under the amended statutory authority model.

Summary

It is not clear from the Government's position paper whether all matters relating to creating/retaining TFES as a statutory authority have been considered and/or what the current Government position is on these matters. The CPSU seeks further clarity on these issues. The CPSU broadly supports Blakes recommendations regarding the amended statutory authority model and

conclusions drawn from the Uhrig report regarding the construct of the statutory authority. The CPSU restates its position here that the SFESC should be independent, have full power to act including power over finances and employment. Further, the CPSU's position is that that Uhrig report/recommendations relating to effective establishment of statutory authorities should be adopted as far as practical in the formation of the SFESC.

Specific Feedback

Integration of TFS and SES

The CPSU is somewhat confused as to the intended operation of TFES including how SES is being incorporated given the Government's recent announcement to *"establish the TFES in legislation to bring together the TFS and SES under one organisational banner, whilst maintaining their individual operational identities, roles and responsibilities"*.

This appears to be a departure from the previously accepted Blake recommendation to fully integrate the TFS and SES, and seems to be more an alignment rather than integration. The CPSU assumes that this means the TFS and SES will not be fully integrated per the Blake Review Option 1 and that the proposed model is more akin to Option 2: *"Retain the status quo with SES administratively contained within TFS but with legislative authority for SES remaining in the Emergency Management Act."*

The CPSU seeks clarity on this matter as both options have significant implications for our members. It is also unclear as to how SES will be funded moving forward, including taking ownership and responsibility for SES units currently funded/managed by councils. SES is inadequately funded to manage its legislated responsibilities in emergency management and while some additional funding has been provided for flood planning significant additional funding is needed and consideration should be given to the expansion of a paid operational workforce.

State Fire Management Council (SFMC)

Following the Tasmanian Government's commitment not to abolish the SFC following Mike Blake's review, Michael Stevens noted (p9, *Consultation Outcomes Report*):

"The SFC should be given the legislative ability to create subcommittees of which the SFMC would be one and contained in the legislation. This would ensure that the community representation existing in the SFMC is maintained."

The CPSU strongly supports an ongoing legislated role for the SFMC, as climate change has advanced the frequency, length and overlap of fire and emergency incidents has and will continue to increase. With the majority of Tasmania's land mass being National Park and Crown Land, the involvement of the Parks and Wildlife Service and Sustainable Timber Tasmania is critical for their specialist skills in forest fires and planned burning, positioning in remote and regional communities, incident trained surge workforce and role in planned burning and road and fire track maintenance on government managed land.

Fire response and preparedness, as climate change advances, will increasingly require a cross agency and multi-jurisdictional response to ensure we have the capacity, ongoing involvement of key government entities and stakeholders will be critical to that.

Skills Based Board

The Future: SFESC in legislation: Principals based legislation.

While the CPSU is not opposed to a “principles based” based approach to legislation, in a small state like Tasmania with limited resources and scale there needs to be an accompanying commitment by government to resource the work required to interpret and operationalise the legislation.

As Tasmania has an efficiency dividend being applied to roles that are not “front line” and in BES there is a very real risk that this program of work will not be resourced at all or in-adequately. Presenting a very real risk that a principles approach will lead to issues around interpretation, legal exposure and organisations inefficiency.

SFESC Board establishment and membership

Given that it is not intended that TFES be established as a Government Business Enterprise (GBE), the CPSU questions the relevance of adopting the board composition approach to GBE’s for the SFESC. The CPSU view is that a more relevant comparison could be made with the establishment of the Environmental Protection Authority (EPA) in the construct of the statutory authority and governing board. Being a recently established authority, perhaps this is a more contemporary approach to establishing the SFEFC, which appears to have been given the power to act including employment powers under its enabling legislation.

It is also the CPSUs position that the TEFS Commissioner should be a member of the SFESC Board.

CPSU holds some concerns with the language contained in the position paper, that speak of operational and specialist fire and emergency management experience as ‘lived experience’. While we can see some value and need for a ‘skills based’ board this must be balanced with the need for fire and emergency management experience. The approach taken within industry superannuation funds is a model that should be considered. Board positions are held by representative bodies, but individuals are appointed to the board according to their skills and operate as Directors with all the associated legal and governance requirements. This model would balance the inherent risks and advantages of both the representative and skills-based board model.

There is also some risk with a skills-based board, where the appointment is made by the Minister, that the appointment could be seen to be politicised. To minimise the risk of politicisation the CPSU proposes that the complete list of applicants, who seek appointment to the SFC, be publicly disclosed as part of the appointment process and prior to the confirmation of the successful applicant. Any concerns around the privacy of individual applicants would be overcome by making this a requirement of application.

Subcommittees of the Skills-Based Board

CPSU supports the proposal to establish a subcommittee that represents the views of volunteers and employees in the legislation and that the legislation would not allow for the subcommittees to be dissolved.



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The membership of the subcommittees would not be legislated. Membership would be the decision of the SFESC. The Minister will be able to give directions to the SFESC regarding membership of subcommittees, if necessary.

It is CPSUs strong position that the membership of the subcommittees should be legislated for the industrial unions with coverage, the CPSU and UFU, and volunteer organisations. This would not preclude the inclusion of additional members but would ensure that representative bodies, some of whose membership is currently legislated, are recognised and ensure that these important sub-committees have independence and a legitimate and recognised role in the subject matter area.

As a safeguard the legislated sub-committees should, in certain circumstances and with regards to certain matters, have the power to meet and make recommendations directly to the Minister for Police, Fire and Emergency Management. This is particularly important with a skills-based board that may not have operational experience in firefighting or emergency management and would act as an additional safeguard, helping to ensure that the board is acting in the broader interests of the Tasmanian community. As the recent debacles with regards to the actions of TasPort and TT-Line demonstrate a skills-based board is not a protection in itself.

Funding

It is still not clear to the CPSU how the Government intends to fund the TFES. Is the funding for TFS and SES to remain as they are now? The CPSU restates its call for an independent analysis of the funding needs for a contemporary fire and emergency services organisation for now and into the future, in the face of climate change with increasing frequency and severity of emergency events. The review should be all encompassing taking into consideration the needs for both operating and capital funding, along with funding for support services that provide value for money.

CPSU thanks you for the opportunity to provide the input of our members who work every day to prepare and protect Tasmania from the devastating impact of natural disasters.