



Environmental
Defenders Office

**Submission on the draft Bushfire Mitigation Measures
Bill 2020**

28 October 2020

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

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Introduction

Australia's summer bushfire season of 2019-20 was the most devastating on record. Catastrophic bushfires in eastern Australia, and in parts of South Australia and Western Australia led to thousands of homes being destroyed and numerous lives lost. Nearly 80 per cent of Australia's adult population was impacted, either directly or indirectly, by the fires.¹ Air quality in many major cities plummeted and more than double Australia's annual emissions of carbon dioxide were released into the atmosphere.²

The bushfires also had a devastating impact on natural landscapes, ecosystems and native wildlife. It is estimated that 19 million hectares were burnt, with 3 billion vertebrates (mammals, reptile frogs and birds) killed or displaced.³ The 2019-20 bushfire season followed devastating bushfires in Tasmania in 2013, 2016 and 2019 where large tracts of wilderness areas were burned, and properties and lives were lost.

Environmental Defenders Office (**EDO**) recognises the need for our planning and environmental laws to address the root causes of the increasing risk posed by bushfires and ensure we can better adapt and manage them.

In that context, EDO welcomes the opportunity to make a submission on the draft Bushfire Mitigation Measures Bill (**Bill**). As a community legal centre specialising in public interest environmental and planning law, EDO's submission addresses the Bill through an environmental law lens.

In this submission we first focus on the key environmental drivers of bushfires, principally climate change, and how these should be addressed in ecologically sustainable, science-based laws, regulations and strategies to protect life and property and the environment from the impacts of bushfires. Then we address the specific contents of the Bill, with a view to making recommendations about how it might be improved.

In summary, we submit:

- Climate change is driving the increasing risk of bushfires in Tasmania. It therefore vital that our laws do not just address the need to adapt to the increasing bushfire risk, but also tackle climate change more broadly, including by committing to steps that seek to limit global warming to 1.5°C.
- A broader review of Tasmania's legislation, including land use planning, fire and emergency management laws, should be undertaken with the aim of properly incorporating climate change as a key consideration in planning and decision-making.

¹ Climate Council of Australia, *Summer of Crisis*, March 2020, available at <https://www.climatecouncil.org.au/wp-content/uploads/2020/03/Crisis-Summer-Report-200311.pdf>

² Ibid

³ WWF (2020) *Australia's 2019-2020 Bushfires: The Wildlife Toll (Interim Report)*, accessed at <https://www.wwf.org.au/news/news/2020/3-billion-animals-impacted-by-australia-bushfire-crisis#gs.iqmlnv>

- The Bill fails to facilitate a strategic approach to bushfire management as it does not:
 - address climate change;
 - provide adequate opportunities for public engagement and input into bushfire management planning in their communities;
 - provide adequate protection for natural and cultural heritage values;
 - integrate bushfire planning processes into the broader fire management planning processes established under the *Fire Service Act 1979*; or
 - recognise existing statutory land management frameworks, particularly for reserved and covenanted lands, that currently address fire management and planning.

- If the Bill is to proceed, amendments are required to:
 - ensure that, in seeking to protect life and property from bushfire, there are also adequate protections for Tasmania’s unique natural and cultural heritage values; and
 - to improve the clarity and operation of the Bill.

A summary of the detailed recommendations we make throughout this submission can be found in **Appendix 1** (page 39).

1. Addressing the causes and factors contributing to the increasing bushfire risk

1.1 Climate Change

As Australia’s climate becomes hotter and drier due to global warming, bushfires will pose an ever-increasing risk to both the community and nature.

Australia’s climate has warmed by over 1.5 degrees Celsius (°C) since 1850 and the best available science tells us that average temperatures are projected to rise further.⁴ Australia is already experiencing the impacts of climate change, which include the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of the country and increased rainfall in the north, and the long-term increase in extreme fire weather. Extreme heat days, longer dry spells, and harsher fire weather will increasingly become the norm, although the severity of impacts will be less if emissions can be reduced.⁵

The Intergovernmental Panel on Climate Change (**IPCC**) is highly confident that:

⁴ See CSIRO (Commonwealth Scientific and Industrial Research Organisation) (2020). *Response to Notice to Give Information 21 April 2020 for the Royal Commission into National Natural Disaster Arrangements*. Available at: <https://naturaldisaster.royalcommission.gov.au/system/files/exhibit/CSI.500.001.0001.pdf>; CSIRO, *Climate change in Australia - Projections for Australia’s NRM regions*, <https://www.climatechangeinaustralia.gov.au/en/climate-projections/future-climate/regional-climate-change-explorer/clusters/>

⁵ The impacts of a warming climate on Australia are set out in more details in Bureau of Meteorology and CSIRO, *State of the Climate 2018* (2018), www.bom.gov.au/state-of-the-climate

Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread, and irreversible impacts globally...⁶

The evidence relating to climate change and drought led the Climate Council of Australia to advise in November 2019 that:

*“the catastrophic, unprecedented fire conditions currently affecting NSW and Queensland have been aggravated by climate change. Bushfire risk was exacerbated by record breaking drought, very dry fuels and soils, and record-breaking heat”.*⁷

There is little doubt that climate change is exacerbating a number of drivers that are contributing to more intense bushfire seasons including reduced rainfall, drier conditions and more extreme heat days.⁸ The drying climate in Tasmania is also leading to increased occurrence of fires caused by dry lightning strikes, which can be difficult to respond to and control.⁹

Scientific climate projections predict with a high level of confidence that Tasmania will experience a harsher fire-weather climate in the future as a result of climate change.¹⁰ Future preparation and planning for bushfire threats and risks must therefore acknowledge and prepare for the predicted impacts of climate change.

Recommendation 1: Recognise the role of climate change and drought in contributing to the frequency, intensity, timing and location of bushfires in Tasmania, and the potential contribution of climate change and associated impacts to future bushfire seasons.

1.2 Responding to climate change

In light of the unequivocal scientific evidence of the impacts of anthropogenic climate change (which includes longer, more intense bushfire seasons), the international community agreed in late 2015 to keep the increase in global average temperature to well below 2°C above pre-industrial levels; and to pursue efforts to limit the increase to 1.5 °C.¹¹

⁶ Intergovernmental Panel on Climate Change (IPCC) Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)] (2014) p 17, <http://www.ipcc.ch/report/ar5/syr/>

⁷ Climate Council of Australia, *Briefing Note - ‘This is Not Normal’: Climate change and escalating bushfire risk*, November 2019, available at https://www.climatecouncil.org.au/wp-content/uploads/2019/11/bushfire-briefing-paper_18-november.pdf

⁸ Owens and O’Kane. (2020). *Final Report of the NSW Bushfire Inquiry* at iv and 78, available at: <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/NSW-Bushfire-Inquiry-1630/Final-Report-of-the-NSW-Bushfire-Inquiry.pdf>

⁹ Styger, Jenny & Marsden-Smedley, Jon & Kirkpatrick, Jamie. (2018). *Changes in Lightning Fire Incidence in the Tasmanian Wilderness World Heritage Area, 1980–2016*. Fire. 1. 38. 10.3390/fire1030038.

¹⁰ CSIRO, *Climate change in Australia - Projections for Australia’s NRM regions*, <https://www.climatechangeinaustralia.gov.au/en/climate-projections/future-climate/regional-climate-change-explorer/clusters/>

¹¹ In December 2015, over 190 nations affirmed a goal to reduce greenhouse gas emissions in order to limit average global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit warming to 1.5°C. United Nations Framework Convention on Climate Change Conference of the Parties 21, *Adoption of the Paris Agreement*, ‘Annex - Paris Agreement’, Article 2 (FCCC/CP/2015/L.9/Rev.1). The Paris Agreement builds on past international commitments in Cancun, Lima and elsewhere under the 1992 UN Framework Convention on Climate Change.

The Special Report of the IPCC released in 2018 indicates that current actions are not enough to limit warming to 1.5°C, and makes it clear that the consequences of warming beyond 1.5°C are dire.¹² Failing to limit global warming to 1.5 °C will have catastrophic impacts including greater levels of sea-level rise and coastal inundation, extreme heatwaves, severe droughts, the death of coral reefs, and mass extinctions.¹³ And the impacts of climate change are not just environmental; there will be significant implications across all sectors, including health, the economy and national security.¹⁴

Despite the urgency, the legal and governance frameworks needed to achieve the global commitment to reduce greenhouse gas emissions and limit global warming are mostly absent. Tasmania is no exception. Our laws fall far short of what is needed, with many of our important environment and planning laws remaining silent when it comes to climate change.

In particular we note that:

- While Tasmania does have the *Climate Change (State Action) Act 2008*, that Act has failed to deliver an overarching legal framework creating obligations for reducing greenhouse gas emissions or implementing adaptation measures.¹⁵
- The Tasmanian Environment Protection Authority does not have a clear climate change policy through which it regulates greenhouse gas emissions, and does not generally limit greenhouse gas emissions, or charge load-based licence fees on carbon dioxide and methane emissions on activities it regulates.¹⁶

¹² Intergovernmental Panel on Climate Change, Special Report Global Warming of 1.5oC, An IPCC Special Report on the impacts of global warming of 1.5oC above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, (2018), <https://www.ipcc.ch/sr15/>

¹³ Ibid.

¹⁴ For example, the World Health Organisation (WHO) advises that climate change affects the social and environmental determinants of health – clean air, safe drinking water, sufficient food and secure shelter, and that between 2030 and 2050, climate change is expected to cause approximately 250 000 additional deaths per year, from malnutrition, malaria, diarrhea and heat stress, see <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>. In 2017, the Australian Senate Foreign Affairs, Defence and Trade References committee recognised climate change as a current and existential national security risk, see https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Nationalsecurity/Final_Report. The Reserve Bank of Australia has recently announced that banks, business and investors must think about the economic impacts of climate change, see <https://www.abc.net.au/news/2019-03-12/reserve-bank-warns-of-impact-of-climate-change-on-the-economy/10893792>

¹⁵ Environmental Defenders Office (2016) *Submission on Draft Climate Change Action Plan 2016-2021*, available at: <https://www.edo.org.au/wp-content/uploads/2019/12/160325-Embracing-the-Climate-Challenge-EDO-Tasmania-submission1.pdf> and Environmental Defenders Office (2016) *Submission on Review of Climate Change (State Action) Act 2008*, available at: <https://www.edo.org.au/wp-content/uploads/2019/12/160722-Review-of-Climate-Change-State-Actions-Act-2008-EDO-Tasmania-submission.pdf>

¹⁶ The EPA does require proponents of level-2 activities to address the greenhouse gas emissions from the proposal in the environmental effects report or environmental impact statement, however there are no regulatory limits for greenhouse gas emissions that are imposed by the EPA in deciding whether or not to recommend the granting of a permit: see EPA (2019) *Guidelines for Preparing an Environmental Impact Statement*, EPA, Hobart, Tasmania; and EPA (2019) *Environmental Effects Report Guidelines*, both accessible: <https://epa.tas.gov.au/assessment/assessment-process/guidance-documents>

- While EDO acknowledges that the Tasmanian Planning Scheme make provision for future sea-level rise and future coastal refugia, it otherwise does not address the need to mitigate greenhouse gas emissions or implement adaptation measures.¹⁷
- Climate change considerations are not adequately embedded into Tasmanian biodiversity conservation laws.¹⁸

Until we have effective legal frameworks in place to mitigate greenhouse gas emissions, global temperatures will continue to rise and the impacts of global warming, including longer and more intense bushfire seasons, will continue to impact the communities, ecosystems and wildlife of Tasmania.

Recommendation 2: Implement a whole-of-government approach to climate change by enacting new climate change laws in Tasmania that deal with both climate change mitigation and adaptation in a clear and coordinated way.

Recommendation 3: Review all relevant Tasmanian legislation with a view to incorporating clear requirements for climate change mitigation and adaptation.

Recommendation 4: Require all Tasmanian agencies to carry out their respective functions consistent with the need to mitigate greenhouse gas emissions in line with the science, and adapt to the impacts of climate change.

1.2.1 Climate-ready planning laws

The interaction between bushfire preparedness and land use planning has long been recognised. A 2014 report from the former Bushfire Cooperative Research Centre found that “(t)he succession of bushfire inquiries over the last 100 years increasingly highlights the important role of land use planning in minimising bushfire risk to urban communities”.¹⁹

Following the Black Saturday bushfires in Victoria, changes were made to the *Land Use Planning and Approvals Act 1993 (LUPA Act)* in 2011 to allow councils to consider and rely upon bushfire hazard protection plans developed by professionals accredited by the Chief Officer of the Tasmanian Fire Service (**TFS**) in applying their respective schemes.²⁰ In September 2017, the Bushfire-Prone Areas Code was introduced most Tasmanian local planning schemes.²¹ The object of the Code was to “to ensure that use and development is appropriately designed, located, serviced, and constructed, to reduce the risk to human life and property, and the cost to the

¹⁷ Environmental Defenders Office (2016) *Submission on Draft Climate Change Action Plan 2016-2021*, available at: <https://www.edo.org.au/wp-content/uploads/2019/12/160325-Embracing-the-Climate-Challenge-EDO-Tasmania-submission1.pdf> and Environmental Defenders Office (2016) *Submission on Review of Climate Change (State Action) Act 2008*, available at: <https://www.edo.org.au/wp-content/uploads/2019/12/160722-Review-of-Climate-Change-State-Actions-Act-2008-EDO-Tasmania-submission.pdf>

¹⁸ Ibid.

¹⁹ Norman B, Weir JK, Sullivan K and Lavis J (University of Canberra), (2014), *Planning and bushfire risk in a changing climate*, Bushfire CRC, Australia, p 3, available at https://www.bushfirecrc.com/sites/default/files/urban_and_regional_planning.pdf

²⁰ *Fire Service Amendment (Bushfire-Prone Areas) Act 2011*.

²¹ Except Flinders Island and Sullivans Cove Planning Schemes. See Planning Directive No. 5.1 – Bushfire-Prone Areas Code.

community, caused by bushfires.” This Code has largely been replicated in the incoming Tasmanian Planning Scheme.

In summary these initiatives:

- allow the TFS to administer an accreditation process for individuals who may then certify bushfire hazard management plans for the purposes of planning applications;
- require a planning authority to accept a bushfire hazard management plan certified by an accredited person as meeting a requirement of planning schemes;
- indemnify the planning authority from any liability for loss of life or property if the measures on the certified plan are inadequate or if the property owner does not maintain the property to the standard set out in the plan;
- require Councils to identify and map bushfire-prone land in a planning scheme overlay in consultation with the TFS; and
- require any development applications for new subdivisions or developments for vulnerable or hazardous uses to comply with the requirements of the Bushfire-Prone Areas Code, and generally, to be accompanied by a certified bushfire hazard management plan.

The incoming Tasmanian Planning Scheme also provides for a number of exemptions from the need for permits for vegetation removal for safety,²² including where it is for the purposes of:

- fire hazard management in accordance with a bushfire hazard management plan approved as part of a use or development;²³
- fire hazard reduction required in accordance with the *Fire Service Act 1979 (FS Act)* or an abatement notice issued under the *Local Government Act 1993*;²⁴
- fire hazard management works necessary to protect existing assets and ensure public safety in accordance with a plan for fire hazard management endorsed by the TFS, Sustainable Timbers Tasmania, the Parks and Wildlife Service, or council;²⁵
- clearance within 2m of lawfully constructed buildings or infrastructure including roads, tracks, footpaths, cycle paths, drains, sewers, power lines, pipelines and telecommunications facilities, for maintenance, repair and protection.²⁶

Furthermore, all buildings in bushfire-prone areas must comply with the *Director’s Determination - Bushfire Hazard Areas* before building permits will be granted under the *Building Act 2016*.²⁷ This determination imposes requirements for the design and construction, property access, water supply for firefighting, hazard management areas, bushfire emergency planning, and bushfire hazard management plans and certificates for buildings within bushfire-prone areas.

²² These exemptions do not apply where the works are proposed to be undertaken on an actively mobile landforms as referred to in clause 1.4 of the Tasmanian State Coastal Policy 1996: Clause 4.0.3 State Planning Provisions.

²³ Clause 4.4.1 (c) State Planning Provisions.

²⁴ Clause 4.4.1 (d) State Planning Provisions.

²⁵ Clause 4.4.1 (e) State Planning Provisions.

²⁶ Clause 4.4.1 (f) State Planning Provisions.

²⁷ This determination will replace the *Director’s Determination – Requirements for Building in Bushfire-Prone Areas (transitional)* dated 6 February 2020 on the implementation of the Tasmanian Planning Scheme.

A key factor missing in Tasmanian planning laws with respect to managing bushfire risk is the explicit requirement for the increased risk of bushfires from climate change to be factored into decision-making. For example:

- Generally, the LUPA Act contains no explicit requirement to assess the increasing risks and impacts of climate change, particularly with reference to climate projections of increased temperature, sea level rise, variable rainfall or future bushfire risks in:
 - the creation or amendments to State Planning Provisions or Local Provision Schedules, in
 - the grant of permits, or
 - the imposition of conditions for a particular proposal.
- There is no legal requirement for the accredited person to account for climate risks when they certify bushfire hazard management plans for new subdivisions, vulnerable or hazardous uses for the purposes of a development application.²⁸
- It is critical that local councils have sufficient capacity and capability to continually update planning scheme mapping and requirements to reflect the best available science and technology, including in relation to climate change projections.

It is noted that the LUPA Act does not apply to certain activities which may contribute to increased risk of bushfires, for example, certain plantation or forestry operations undertaken in accordance with the *Forest Practices Act 1985*,²⁹ or dam works that may have an impact or effect of drying downstream areas or vegetation.³⁰

It is also noted that the LUPA Act permit process only applies to new development proposals, with limited ability to retrospectively update or modify consent conditions or require retrofitting of existing development. As such, the development application process does not consider the increasing risks and impacts from increased bushfire risk on existing homes, buildings, infrastructure or surrounding landscapes – nor the need to increase community and environmental resilience to these threats. There are no retrofitting requirements for buildings, for example. Nor is there a significant assistance or compliance and audit program for existing homes, businesses or infrastructure to assess vulnerability to climate risks such as bushfire.

Recommendation 5: Ensure Tasmanian planning laws are climate-ready for example, by:

- Explicitly requiring climate risks to be considered when assessing all development proposals on bushfire-prone land.
- Explicitly requiring decision-makers to assess the increasing risks and impacts of climate change on development proposals, including the proposal itself and the locality, particularly with reference to climate projections of increased temperature, sea level rise, variable rainfall or future bushfire risks.

²⁸ An accredited person will need to implement the Chief Officer's requirements for the form of a Bushfire Hazard Management Plans – section 60A *Fire Service Act 1979*, however there are no specific legislated requirements to consider climate change.

²⁹ See sections 3 (definition of “works”) and 11(3)(a) *Land Use Planning and Approvals Act 1993* and section 8(2A) *Forest Practices Act 1985*

³⁰ See section 60A(1) *Land Use Planning and Approvals Act 1993*.

- Ensuring local councils and the TFS have sufficient capacity and capability to continually update mapping and responsiveness to reflect the best available science and technology, including in relation to climate change projections.

1.2.2 Climate-ready emergency and fire laws

There are two primary Acts that govern how Tasmania plans for and responds to bushfires: the *Emergency Management Act 2006* and the FS Act.

The *Emergency Management Act 2006* is the primary piece of legislation underpinning emergency management in Tasmania, including bushfire emergency events. This legislation establishes emergency management committees at State, regional and municipal levels. The primary functions of committees include to institute, coordinate, and support emergency management in Tasmania, and prepare and review the Tasmanian Emergency Management Plan and Special Emergency Management Plans.

The FS Act establishes the TFS and its functions, and makes provision for the prevention, mitigation and suppression of fires, including by providing:

- fire management planning, both at a State level and a local level;³¹
- for the undertaking of measures to respond fire hazards, including;
 - inspections of land and the making of recommendations with respect to fire hazards by TFS authorised officers;³²
 - the issuing of notices requiring the “trimming, cutting back, or removal of the hedge” or “burning off, or removal of, the vegetation, rubbish, or matter”;³³
 - the creation of firebreaks;³⁴
 - the declaration of fire permit periods and imposition of restrictions on lighting of fires;³⁵ and
- a process for the accreditation of individuals who can assess bushfire hazards and certify bushfire hazard management plans.³⁶

Again, a key factor missing in both the *Emergency Management Act 2006* and FS Act with respect to managing bushfire risk is the explicit requirement for the increased risk of bushfires from climate change to be factored into decision-making. For example:

- there is no requirement to consider climate change in exercise of functions or powers under either the *Emergency Management Act 2006* or FS Act;
- there is no requirement to consider climate change the preparation of fire or emergency management plans; and
- there is no explicit requirement to consider climate change in preparing or certification of bushfire hazard management plans under the FS Act.

³¹ Sections 8(1)(d), 15(1)(a) and 20(1)(c) *Fire Service Act 1979*.

³² Section 48 *Fire Service Act 1979*.

³³ Section 49 *Fire Service Act 1979*.

³⁴ Section 56 *Fire Service Act 1979*.

³⁵ Part V *Fire Service Act 1979*.

³⁶ Part IVA *Fire Service Act 1979*

Another key factor that is missing is that there are no requirements to consider the principles of ecologically sustainable development (**ESD**) in carrying out any function or power under either the *Emergency Management Act 2006* or FS Act.³⁷

Recommendation 6: Explicitly require climate change risks to be considered in decision-making (particularly in relation to bushfire planning) under the *Emergency Management Act 2006* and FS Act and addressed consistent with the principles of ESD.

1.3 Bushfires and protection of the environment

Bushfires and bushfire management practices have a significant impact on ecosystems, natural landscapes and environments.

EDO supports bushfire management practices that are science-based, protect lives and property and are ecologically sustainable. Bushfires can have a significant impact on ecosystems, natural landscapes and environments. Firefighting responses have the capacity to alter this impact either positively or negatively, depending upon the strategies and tactics used to combat the fire.

Backburning tactics, for example, could be expected to have high impacts on environments through the interaction of fire-fronts and the trapping of wildlife between approaching fronts, whereas aggressive fire suppression tactics early in a fire event may minimise burnt areas. Research to quantify resources that would enable more fires to be contained at a small size and minimise the need for backburning should be prioritised. If this research finds that close containment is an effective and more environmental appropriate approach, the findings could form the basis of plans to transition firefighting resources toward rapid suppression and close containment.³⁸

Following bushfires, there is always considerable discussion about prescribed burning (otherwise referred to as hazard reduction burning). Much of this discussion includes questions about whether prescribed burning can reduce the spread and severity of bushfires and whether adequate prescribed burning was undertaken. In this context, it must be recognised that there is still considerable work to be done to establish the most effective regime(s) for prescribed burning taking into account different ecosystems and the changing climate.

Empirical evidence for the effectiveness of prescribed burning can conflict with claims that more areas should be burnt to mitigate bushfire hazards. Analysis following the 2009 Black Saturday fires found that very recent burns conducted close to structures did provide a small level of assistance in protecting those structures, but, critical to this inquiry, there was no evidence that remote burns provided any assistance in protecting houses.³⁹ To our knowledge, despite decades

³⁷ By way of comparison, reference to ESD is found in the objects of the *Rural Fires Act 1997* (NSW), and in the exercise and key functions under that Act.

³⁸ A similar recommendation is made in Press, AJ (Ed.) (2016) *Tasmanian Wilderness World Heritage Area Bushfire and Climate Change Research Project*. Tasmanian Government, Hobart at p 22, recommendation 10.

³⁹ Price, O. F. & Bradstock, R. A. The efficacy of fuel treatment in mitigating property loss during wildfires: Insights from analysis of the severity of the catastrophic fires in 2009 in Victoria, Australia. *J. Environ. Manage.* **113**, 146–157 (2012)., Gibbons, P. *et al.* Land management practices associated with house loss in wildfires. *PLoS One* **7**, e29212 (2012).

of research, no evidence yet exists to show that burning remote areas provides any material protection to houses, yet the pressure to burn more area results in an increase in burning of remote hectares and a reduction in treatments adjacent to assets, where they may provide assistance.⁴⁰ Regular burning of bushland has the potential to lead to environmental degradation, so prescribed burning should only be conducted at a location and scale where this loss is deemed acceptable or unavoidable, or can be mitigated consistent with the principles of ESD.⁴¹

Allowing forestry operations to occur in fire-affected areas flies in the face of substantial evidence warning against post-fire logging. Detailed studies by the Australian National University, including those done after Victoria's devastating Black Saturday fires, showed that post-fire logging did widespread damage to forest recovery.⁴² It hampers species recovery, destroying important areas for refuge, and has negative effects on water, increasing sedimentation and catalysing erosion. Perhaps counter-intuitively, the research also showed that post-fire logging increases future fire risk.

Following significant bushfire events, perceived tensions between conservation, asset protection and disaster preparedness present risks of 'maladaptation' and can lead to perverse outcomes. There is a real risk that following the bushfires of the 2019-20 summer, the incentive to make swift and far-reaching changes to bushfire management practices will undermine science-based, ecologically sustainable bushfire management practices that protect lives, property and the environment.⁴³

For example, the NSW government is currently proposing to introduce further changes to its vegetation clearing laws to allow for clearing of up to 25m from boundary fences, notwithstanding that this was one of the recommendations of the NSW Independent Bushfire Inquiry and its potential to have far-reaching ecological impacts.⁴⁴ Likewise, despite the ongoing review into the FS Act here in Tasmania, there has been very little explanation concerning the need for the Bill or information provided about the "bushfire mitigation measures" likely to be allowed under it.

EDO does not support environmentally destructive, unsubstantiated practices introduced under the guise of bushfire management.

⁴⁰ Inspector-General for Emergency Management. Review of performance targets for bushfire fuel management on public land. (2015).

⁴¹ For further information, please refer the expert report provided by Dr Philip Zylstra in Environmental Defenders Office (2020) *Submission to the NSW Independent Bushfire Inquiry*, available at: <https://www.edo.org.au/publication/nsw-bushfire-inquiry/>

⁴² See, for example, Lindenmayer, D. et.al., *Effects of logging on fire regimes in moist forests*, Conservation Letters 2 (2009) 271-277; Lindenmayer, D. et.al., *Please do not disturb ecosystems further*, Nature Ecology and Evolution, 1, 0031 (2017) 1-3.

⁴³ See, for example, discussion in Lindenmayer, D. et.al., *New spatial analyses of Australian wildfires highlight the need for new fire, resource, and conservation policies*, PNAS June 2, (2020) 117 (22) 12481-12485;

⁴⁴ NSW Government (2020) *New laws to empower landowners to manage bush fire risk*, available at: <https://www.rfs.nsw.gov.au/news-and-media/ministerial-media-releases/new-laws-to-empower-landowners-and-nsw-rfs-to-manage-bush-fire-risk>; and Owens and O'Kane. (2020). *Final Report of the NSW Bushfire Inquiry* at iv and 78, available at: <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/NSW-Bushfire-Inquiry-1630/Final-Report-of-the-NSW-Bushfire-Inquiry.pdf>; and The Guardian (2020) *Bush and koalas found to be threatened by 'gratuitous' NSW Land-clearing plan*, accessible at: <https://www.theguardian.com/environment/2020/oct/26/bush-and-koalas-found-to-be-threatened-by-gratuitous-nsw-land-clearing-plan>

Finally, in considering how to better plan for and manage bushfires, the Government must ensure that the views and knowledge of palawa / Aboriginal people regarding land management and cultural burning is considered in fire management and planning, and that real action is taken to recognise and facilitate palawa / Aboriginal land management and cultural burning into Tasmania's bushfire management practices.

Recommendation 8: Undertake research to quantify resources needed to enable more fires to be contained at a small size and minimise the need for backburning, and based on the findings of that research allocate resources to Tasmanian fire agencies accordingly.

Recommendation 9: Recognise the value of long-undisturbed forest in mitigating landscape fire risk in fire management planning.

Recommendation 10: Ensure that prescribed burning and other methods of reducing risk via disturbance are applied close to assets where they may provide material benefit.

Recommendation 11: Ensure that there is independent, scientific oversight of bush fire management regulation and policy in Tasmania.

Recommendation 12: Reject environmentally destructive, unsubstantiated bushfire management practices such as selective logging.

Recommendation 13: Recognise palawa / Aboriginal land management and cultural burning, and facilitate its incorporation into Tasmanian bushfire management practices.

2. Comments on the Bill

As outlined in part 1 of this submission above, significant changes are required to Tasmania's planning, emergency and fire management laws to respond to the root causes of the increasing bushfire risk Tasmania faces. The Bill represents a missed opportunity, as it does not ensure that a strategic approach is taken to bushfire management planning by, for example:

- addressing the increasing challenges posed by climate change; and
- encouraging broad community engagement in, and ownership of, the bushfire planning process, through for example, incorporating the Bill into the Resource Management and Planning System of laws;
- protecting life and property in an ecologically sustainable way and having regard to Tasmania's diverse and unique natural flora and fauna, and cultural heritage.

The Bill does not take steps towards integrating bushfire management planning for private land with the fire management plans developed under the FS Act or prepared for different tenures such as reserved land or lands subject to conservation covenants. In fact, the Bill effectively overrides any of the requirements of these other planning documents.⁴⁵ This is disappointing given that

⁴⁵ Clauses 16 and 32 Bill.

there is a government-initiated review of the FS Act underway, and it is unclear if and how strategic bushfire planning will be undertaken into the future.⁴⁶

The principal reform introduced by the Bill is a new process where people, including public authorities, can apply for the approval from the Bushfire Mitigation Measures Panel (**BMM Panel**) for the undertaking of work (described as bushfire mitigation measures) under a Bushfire Mitigation Plan (**BMP**) on land they own or occupy. Once approved by the BMM Panel, a BMP exempts a person undertaking the described bushfire mitigation measures from the need to comply with any other Tasmanian law.⁴⁷

This is a substantial reform that has the potential to significantly undermine the protections provided for our natural and cultural heritage in existing laws, particularly those protections provided under the Resource Management and Planning System in Tasmania.⁴⁸ Under the Bill, a person or public authority would only need to apply for approval of a BMP where the proposed bushfire mitigation measures would otherwise be prohibited, or other permits and approvals are required. For example, an approved BMP would only be required where the bushfire mitigation measures involve:⁴⁹

- the taking (including the destruction) of threatened species;
- the clearing and conversion of threatened native vegetation communities;
- the destruction of threatened species' habitats;
- clearing of vegetation or other works in wetlands and waterways;
- clearing of vegetation or other works in coastal areas including dunes;
- the interference with or destruction of Aboriginal cultural heritage;
- the interference with or destruction of historic cultural heritage;
- clearing of vegetation or other works on land not allowed for under conservation covenants, Part V agreements, or existing development permit conditions;
- clearing of vegetation or other works that is not allowed on reserved lands, such as national parks, nature reserves and conservation areas.

While Ministerial guidelines and standards issued by the Chief Officer of the TFS may, but are not required to, impose limitations on the BMM Panel's power to approve BMPs, the content of both the guidelines and standards are at this time unknown, and in any event, are able to be changed over time.⁵⁰ They therefore provide little assurance that adequate protections for natural and

⁴⁶ See <http://www.fire.tas.gov.au/Show?pagelD=colFireServiceActReview>

⁴⁷ Clause 16 Bill

⁴⁸ For example, the *Land Use Planning and Approvals Act 1993*, *Threatened Species Protection Act 1995*, *Nature Conservation Act 2002*; *National Parks and Reserves Management Act 2002*; *Environmental Management and Pollution Control Act 1994*; and *Historic Cultural Heritage Act 1995*.

⁴⁹ Approval of a BMP is not required where there are no existing requirements for permits, approvals or consents: Office of Security and Emergency Management Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 8.

⁵⁰ While any new or changed guidelines issued under the Bill will need to be laid before both Houses of Parliament, but Parliament will only have the power to disallow them, not to make changes etc: clause 33 Bill. The Explanatory Paper at p 12 says the statutory guidelines will be developed "in consultation with the State Fire Commission and other relevant stakeholders" – but does not identify who those other relevant stakeholders are and what say they will have in the guidelines. There is no process provided under the Bill at all for the creation of standards for the purposes of the Bill by the Chief Officer.

cultural values will be implemented or achieved through the processes outlined in this Bill. This is emphasised because, as outlined in greater detail in the submission below, there is nothing in the process for approvals of BMPs that ensures the object of the Bill - to “facilitate the mitigation of the risk of bushfires whilst balancing natural and cultural heritage values” - is achieved.

The Explanatory Paper states that “the Bill will make it easier for landowners/occupiers to meet their obligation to mitigate bushfire risks.”⁵¹ This statement implies that existing laws provide either difficult and/or unnecessary barriers to the implementation of appropriate bushfire mitigation measures. No clear justification has been provided to demonstrate the need for the new process for the approval of BMPs under the Bill, for example, in the form of statistics on areas where legal restrictions are currently preventing adequate bushfire hazard reduction or surveys of landowners or managers on their views about whether existing laws impinge on their ability to adequately manage bushfire risk. Upon a closer examination, there are already broad exemptions from the need for permits and approvals under many of these laws.⁵² Appropriately, under those exemptions, permits, approvals, or consents are generally only required where necessary to ensure natural or cultural values are adequately managed protected. The systems and procedures for obtaining approvals, permits and consents in these circumstances, although far from perfect, are far more fit-for-purpose than the BMP approval process currently set out in the Bill.⁵³

Other elements of the Bill include the creation of a new duty on public authorities and occupiers to mitigate bushfire risk on their land, and additional powers for the Chief Officer and local councils to issue bushfire hazard reduction notices. More detailed commentary on these provisions can be found in our submission below. Suffice to say that, as with the BMP approval process, no justification for the need for these provisions has been established. Indeed, they may have the unintended effect of adding to confusion about landowners’ and occupiers’ legal duties, particularly where there is conflict between the laws and obligations under the Bill and Commonwealth laws.

More detailed comments and recommendations with respect to the particular provisions of the Bill are set out below.

2.1 Definitions and objects (Part 1)

2.1.1 Definitions

There is a need for sufficient definitions for key concepts in the Bill. For example, there are no definitions provided for:

⁵¹ Office of Security and Emergency Management Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 8.

⁵² See for example, State Planning Provisions, clause 4.4.1; and *Forest Practices Regulations 2017*, reg 4(h).

⁵³ See for example, reg 4 *Threatened Species Protection Regulations 2016*; Division 2 Part 4 *Land Use Planning and Approvals Act 1993*; section 19 *Forest Practices Act 1985*; section 35 *Nature Conservation Act 2002*; sections 9 and 14 *Aboriginal Heritage Act 1975*.

- “bushfire” as compared to, for example, a prescribed burn, or a backburn;
- “fuel-break”. This definition is required to identify the scope of the Chief Officer’s and the local council’s powers to issue bushfire hazard reduction notices under clause 19;
- “risk” or identification of what is an acceptable level of risk to life and property taking account of the fact that bushfires are an inevitable and natural component of the Australian landscape.

The phrase “bushfire mitigation measures” is so broadly defined in the Bill that it gives no indication of the scope of the duties imposed on occupiers and public authorities under clause 6 (discussed in [2.4.1] and [2.4.3] of this submission). That is, the definition does not indicate what the maintenance of bushfire mitigation measures for the purposes of the “on-going prevention, or minimisation of risk, of bushfires for the protection of life and property” will require of occupiers and public authorities.⁵⁴ The Explanatory Paper states that bushfire mitigation “typically” involves:⁵⁵

- Fuel reduction – clearing, slashing, mowing, or burning to remove fine fuels only (i.e. not large trees); or
- Fuel breaks – mechanical clearing or modification of vegetation to reduce overall fuel loads that might be available to a fire.

If it is the intention that these be the activities captured by the phrase “bushfire mitigation measures”, then it is not clear why these two descriptions have not been included in the definition in clause 5 of the Bill. Any definition of bushfire mitigation measures should also include Aboriginal cultural burns and measures to reduce the severity or intensity of bushfires so as to capture cool burning techniques.

Clause 5(c) states that bushfire mitigation measures must “comply with any relevant standards issued by the Chief Officer”, however no definition is provided to the term “standards” and the creation or adoption of the standards is not specifically provided for under the Bill.⁵⁶ This is further discussed in [2.4.3] of the submission.

Recommendation 14: Amend clause 3 to provide definitions for the following terms:

- bushfire
- fuel-break
- risk, including by reference to how the risk of bushfire is to be assessed according to objective criteria
- standards.⁵⁷

Recommendation 15: Amend clause 5 to provide more detail as to what actions may be “bushfire mitigation measures”, ensuring that Aboriginal cultural burns are included, and insert a new

⁵⁴ Cause 10(2) Bill.

⁵⁵ Office of Security and Emergency Management Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 6.

⁵⁶ These standards issued by the Chief Officer will also be relevant to the preparation of a BMP through the operation of clause 13(2) of the Bill.

⁵⁷ With respect to the definition of “standards” see also recommendations 29 and 30.

clause that sets out the procedures and requirements for the creation of standards by the Chief Officer, including that they be consistent with the objective of the Act.

2.1.2 Objects (Clause 4)

Clause 4 of the Bill provides that the object of the Bill “is to facilitate the mitigation of the risk of bushfires whilst balancing natural and cultural heritage values”. The current drafting of the object makes it unclear what is to be the purpose of “balancing” natural and cultural values as against the facilitation of mitigation of the risk of bushfires.

The objects do not provide for an adequate consideration of the need to seek ESD or integration between all aspects of land use planning and resource management.

Recommendation 16: Replace clause 4 of the Bill with:

- (1) It is the object of the Act to facilitate the mitigation of the risk of bushfires to life and property at the same time as protecting the natural and cultural values to the greatest extent practicable.*
- (2) It is the obligation of any person on whom a function is imposed, or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives set out in Schedule 1.*

The objects in Schedule 1 should include the Objectives of the Resource Management and Planning System of Tasmania,⁵⁸ and specific objects addressing the need to manage and adapt to bushfires in a changing climate.

2.2 Landowner / Occupier duties and obligations under the Bill (Part 2)

One of the stated purposes of the Bill is to “reinforce the duty of public and private land owners/occupiers to mitigate bushfire risk”.⁵⁹ While landowners and occupiers may have an ethical or moral duty to take reasonable and practical steps to mitigate or reduce the risk of bushfires arising from or spreading through their land, the Explanatory Paper seems to suggest that there is already a legal obligation or duty to this effect.

⁵⁸ 1. *The objectives of the resource management and planning system of Tasmania are –*
(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

(c) to encourage public involvement in resource management and planning; and

(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. *In clause 1 (a), sustainable development means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –*

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

⁵⁹ Office of Security and Emergency Management Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 7.

An analysis of legal duties with respect to bushfires undertaken by Eburn and Cary indicates that presently in Tasmania there is no overarching common law or statutory duty that explicitly requires the taking of steps by owners or occupiers to mitigate or reduce the risk of bushfires starting or spreading through their land before a fire has started.⁶⁰ Fortunately, as drafted, it is unlikely that clause 6 will be construed as imposing a statutory duty of care on public authorities or occupiers to mitigate bushfire risk the breach of which is actionable under the common law.⁶¹ However, there may still be a number of unintended and undesirable consequences arising from the duties created under the clause.

2.2.1 Disputes between landowners and occupiers

Despite the stated intention of the Bill being to impose a duty on occupiers and landowners to mitigate bushfire risk,⁶² the Bill only imposes a duty on public authorities and occupiers. Subclause (3) further provides that liability for the costs of taking bushfire mitigation measures is on public authorities and occupiers, not on landowners. Likewise, the bushfire hazard reduction notice (and associated offence provisions) of the Bill only applies to occupiers, not landowners.

As acknowledged in the Explanatory Paper,⁶³ there are likely to be restrictions on the types of bushfire mitigation measures that can be undertaken by lessees or tenants under the terms of leases for properties. Given the ongoing benefit from any potentially costly bushfire mitigation measures (such as slashing or clearing) undertaken pursuant to a BMP may be derived by a landowner rather than the tenant, particularly if the tenant is on a short-term lease, it is unclear why this approach has been taken. Placing the duty on occupiers appears to overlook the fact that many occupiers of land in bushfire-prone areas, particularly if they are residential tenants, are unlikely to have the means to incur costs of any significant basic bushfire mitigation measures that may be required.

The Explanatory Paper suggests that this problem is overcome as occupiers have the option of appealing against the issue of a bushfire hazard reduction notice.⁶⁴ Given the short timeframes for appeal and absence of any clear guidance on how such appeals ought to be resolved by the BMM Panel (both of which are discussed later in this submission), this option does not provide a satisfactory level of reassurance for occupiers who are unable to obtain permission or assistance from landowners to prepare a BMP and then undertake the bushfire mitigation measures outlined therein, or cannot afford to take the bushfire mitigation measures required.

The Explanatory Paper further states that guidelines issued by the Minister pursuant to clause 33 “may” provide guidance on how the duty imposed under clause 6 is to operate in these

⁶⁰ Eburn, Michael, Cary, Geoffrey J. (2017) You own the fuel, but who owns the fire?. *International Journal of Wildland Fire* 26, 999-1008 at 1002-1003 . <https://doi.org/10.1071/WF17070>. Section 64 of the *Fire Services Act 1976* does impose a duty on occupiers of land to “take diligent steps” to extinguish a fire on their land or take steps to mitigate its spread, but only where they are aware of the fire and during a fire permit period.

⁶¹ Eburn, Michael, Cary, Geoffrey J. (2017) You own the fuel, but who owns the fire?. *International Journal of Wildland Fire* 26, 999-1008 at 1003-1004. <https://doi.org/10.1071/WF17070>

⁶²Office of Security and Emergency Management Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 7.

⁶³ Ibid at p 13.

⁶⁴ Ibid at p 13.

scenarios,⁶⁵ but again, without knowing the proposed content of the guidelines, this does not provide the certainty required for occupiers currently renting or looking to rent properties in the outer suburbs or in rural and regional areas of Tasmania.

Recommendation 17: Amend the Bill to delete the word “occupier” and replace with the word “landowner”.

2.2.2 The operation of the duty is likely to preference mechanical clearance and slashing over prescribed or bushfire hazard reduction burning

As already mentioned, there is currently no legal duty on Tasmanian public authorities or occupiers to mitigate the risk of bushfire on their properties. The Bill proposes to change that situation by encouraging more active management of risk, for example through prescribed burns. However, without any statutory protection from liability, legal responsibility for a fire is far more likely where a fire is intentionally lit by the public authority or occupier and that fire causes damage.⁶⁶

For example, if a public authority / occupier lights a prescribed burn in accordance with an approved BMP or with a bushfire hazard reduction notice, and that burn gets out of control and causes damages surrounding properties, then the public authority / occupier may be found to be liable for that damage.⁶⁷ This could lead to a situation where public authorities / occupiers are, from a legal perspective at least, safer *not* conducting prescribed burns on their properties even if those burns are the most effective and/or ecologically or culturally appropriate option for that land.⁶⁸ As a consequence, public authorities and occupiers may prefer other bushfire mitigation measures such as clearing or slashing over prescribed burning. These other bushfire mitigation measures may also be preferred given the limited capacity of the TFS, or other appropriately experienced and qualified services, to assist public authorities and occupiers to safely undertake prescribed burning.

There are other measures in the Bill to the limit the personal liability of the BMM Panel, Chief Officer and TFS brigades in relation to the exercise of their functions and powers, it is unclear why those acting in accordance with notices or BMPs issued under the Bill should not also receive some protection from liability where they are acting in good faith and not recklessly or maliciously.

Recommendation 18: Amend the Bill to provide that where a person receives a bushfire hazard reduction notice to conduct a prescribed burn or an approved BMP that allows for a prescribed burn, and the person lights a fire in accordance with the conditions of the notice or the BMP, that

⁶⁵ Ibid at p 13.

⁶⁶ Eburn, Michael, Cary, Geoffrey J. (2017) You own the fuel, but who owns the fire?. *International Journal of Wildland Fire* 26, 999-1008 at 1001. <https://doi.org/10.1071/WF17070>

⁶⁷ This is assuming that, due to the operation of clause 16 of the Bill, a fire permit is not required pursuant to section 66 of the *Fire Service Act 1979* to light a prescribed burn that is approved under a BMP. Section 66(13) of the *Fire Services Act 1979* currently provides some protection from liability for people who light fires in accordance with a fire permit issued under that Act.

⁶⁸ Eburn, Michael, Cary, Geoffrey J. (2017) You own the fuel, but who owns the fire?. *International Journal of Wildland Fire* 26, 999-1008 at 1003-1004. <https://doi.org/10.1071/WF17070>

person is not liable for any loss, injury or damage caused by that fire unless it is proven that the person acted maliciously or recklessly.⁶⁹

2.2.3 Bushfire mitigation measures may be contrary to existing statutory duties for public authorities or beyond means of some public authorities

The Bill imposes a duty to mitigate bushfire risk not only on occupiers of land but also state service agencies (such as the Department of Primary Industries Parks Water and the Environment, Department of Health, Department of State Growth, Department of Education), UTAS, Police and government business enterprises (such as Hydro Tasmania, TasNetworks, Tas Irrigation). Many of these public authorities will already be undertaking some level of bushfire planning and preparation for land that they own or manage in accordance with their statutory responsibilities.

For example, the PWS has a statutory duty to manage reserved lands (such as national parks and conservation areas) in accordance with any statutory management plans, or absent those, in a way that is consistent with the purposes for which the land was reserved and the management objectives for that reserve class.⁷⁰ The PWS is empowered to do all things necessary for the purposes of discharging that function, including taking “any steps or undertake any activities that the managing authority considers necessary or expedient for the purposes of preventing, managing or controlling fire in reserved land, having regard to the management objectives for that reserved land”.⁷¹ Many of the reserves managed by PWS have management plans in place that deal with the issue of bushfire management.⁷² It would be inappropriate for bushfire management in PWS reserves to be conducted outside (and potentially in conflict with) the framework established by the *Nature Conservation Act 2002* (Tas) and the *National Parks and Reserves Management Act 2002* (Tas).

The regime proposed for BMPs under the Bill is to be contrasted with the fire management planning presently conducted under the FS Act which must be performed consistently with the statutory reserve management plans or objectives for reserved lands.⁷³ The documents accompanying the Bill have not explained the need for an additional statutory duty and regime for the preparation of BMPs for these public authorities with existing statutory duties to plan for bushfire. Indeed, the fact that a BMP can be created under the Bill without regard for these authorities’ separate statutory duties and functions (by virtue of clause 16 of the Bill) has the real

⁶⁹ This would provide the same protection from liability that is currently available under section 66(13) of the *Fire Service Act 1979*. Refer also to the recommendations found in Eburn, Michael, Cary, Geoffrey J. (2017) You own the fuel, but who owns the fire?. *International Journal of Wildland Fire* 26, 999-1008 at 1004. <https://doi.org/10.1071/WF17070>

⁷⁰ Section 30(1) *National Parks and Reserves Management Act 2002*.

⁷¹ Section 30(2) and (3) *National Parks and Reserves Management Act 2002*.

⁷² See, for example, the *Arthur-Pieman Conservation Area Management Plan 2002*, [4.1]; *Ben Lomond National Park Management Plan*, pp 39-40; *Freycinet National Park, Wye River State Reserve Management Plan 2000*, [4.1]; *Lake Johnston Nature Reserve Management Plan 1999*, [4.1]. These and other reserve management plans dealing with the issue of bushfire management can be found at <https://parks.tas.gov.au/about-us/managing-our-parks-and-reserves/management-plans-reports>. PWS is currently in the process of developing a comprehensive Fire Management Plan for the Tasmanian Wilderness World Heritage Area, see: <https://parks.tas.gov.au/be-involved/have-your-say/fire-management-plan-for-twwha>

⁷³ Sections 8(6) & (7), 15(3) & (4), and 20(3) & (4) *Fire Service Act 1979*.

potential to lead to discordant and unsatisfactory outcomes for the management of land (this is discussed further in [2.4.6] of this submission).

Furthermore, some public authorities, particularly smaller councils, own or manage significant areas of land on modest budgets. The explanatory paper does not explain whether there will be further budget allocations to these bodies, or in-kind assistance from the TFS, to ensure they can effectively fulfil their expanded duties.

Recommendation 19: Explain the need for a separate duty for public authorities that are already planning for bushfire management. If the Bill is going to create further legal duties for these authorities amend clause 16 to insert a new subclause which specifically excludes land owned or occupied by public authorities from the operations of the clause.

Recommendation 20: Allocate funding to support public authorities to fulfil additional duties under the Bill.

2.3 Bushfire Mitigation Measures Panel (Part 3)

The BMM Panel is proposed to comprise:

- the Secretary of the Department of Police, Fire and Emergency Services (or their delegate);
- the Secretary of the Department of Premier and Cabinet (or their delegate);
- the Director of the Environment Protection Authority;
- a representative nominated by the Local Government Association of Tasmania (LGAT); and
- an expert member appointed by the Minister.

The composition of the BMM Panel is notable for its lack of independence from government and its lack of specialist or expert members, with only one “suitably qualified expert”, who is appointed by the Minister. There is no indication of what field of expertise that person must have, or indeed, if it is even relevant to the matters considered by the BMM Panel.

As presently proposed, the BMM Panel will not have the benefit of being comprised of independent experts in any of the following fields:

- fire management (there is no guarantee the Secretary of the Department of Police, Fire and Emergency Services or their delegate will match this description);
- fire ecology;
- environmental/town planning (there is no guarantee the person appointed by Local Government Association of Tasmania will match this description);
- Aboriginal cultural heritage management;
- historic cultural heritage management;
- conservation and land management (including in the management of land for bushfires, weeds, natural or cultural values); and
- law (given the role of the BMM Panel to hear appeals against bushfire hazard reduction notices).

There is also no palawa/Aboriginal community representation on the BMM Panel, notwithstanding that the Panel's powers could potentially have broad ranging impacts on palawa/Aboriginal cultural values and ought to be exercised in light of the expertise that palawa/Aboriginal people might bring to issues concerning cultural burns.

The lack of independence and expertise of the BMM Panel is pertinent given the proposal for BMPs approved by the BMM Panel to effectively override a broad suite of Tasmanian laws designed to protect natural and cultural values, and to ensure land use is properly managed. The membership of the BMM Panel is also not reflective of the current objective of the Bill "to facilitate the mitigation of the risk of bushfires whilst balancing natural and cultural heritage values", as there is a lack of representation of persons who have appropriate qualifications or expertise in relevant fields.

The Explanatory Paper responds to the lack of TFS representation on the BMM Panel on the basis that the assessments will be undertaken at "arm's length" given the role the TFS will have in assisting people to develop their BMPs.⁷⁴ While it may be intended that the TFS have a role in the assistance of applicants (albeit that this is not reflected in the Bill), that does not address the lack of expertise in fire management or fire ecology on the BMM Panel.

The BMM Panel does have the power to require expert advice from the TFS or another body the Panel considers suitably qualified to assist in the assessing of an application.⁷⁵ But without an onus on the BMM Panel to consult with suitably qualified experts when required (including in the hearing of appeals against bushfire hazard reduction notices), and take account of those opinions in the making of the BMM Panel's decisions, this provision does little to ensure that the BMM Panels will be informed by relevant independent expert opinion.

One of the functions of the BMM Panel is "consider any BMP submitted to it and approve the BMP in accordance with Part 4 if it considers it appropriate to do so". This test of "appropriateness" is also not reflective of any balancing of bushfire risk as against the natural and cultural heritage values that may be impacted in accordance with the objects of the Bill. Aside from a discretion to take into account the objects of the Bill,⁷⁶ the factors that are to be considered by the BMM Panel when determining whether it is "appropriate" to approve a BMP do not require consideration of the potential impact of the mitigation measures on natural and cultural heritage values (for more on this see [2.4.2]).

The other function of the BMM Panel is to hear and determine any appeals against hazard reduction notices. Relevantly in this respect, Schedule 1 of the Bill provides that the BMM Panel may regulate its own procedures "subject to the rules of natural justice".⁷⁷ Given the significant powers of the BMM Panel in the determination of appeals against notices, natural justice and

⁷⁴ Office of Security and Emergency Management, Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 13.

⁷⁵ Clause 9(c) of the Bill.

⁷⁶ Clause 14(2) Bill.

⁷⁷ Schedule 1, Part 3, Clause 2(2) Bill.

procedural fairness need to be written into the operations of the BMM Panel through the terms of the Bill, and not left entirely to the BMM Panel to determine.

Recommendation 21: Amend clause 7 of the Bill to require that the BMM Panel be comprised of suitably qualified experts in fire ecology, fire management, planning, conservation and land management, Aboriginal cultural heritage, historic cultural heritage and law.

Recommendation 22: Amend clause 7 of the Bill to provide that the BMM Panel is only permitted to approve a BMP if satisfied that the BMP reduces bushfire risk to life and property and that the measures proposed to achieve that reduction minimises impacts on natural and cultural values to the greatest extent practicable.

Recommendation 23: Amend the Bill to set out the procedural requirements for the hearing of any appeals by the BMM Panel similar to those found in Part 5 of the *Resource Management and Planning Appeal Tribunal Act 1993*.

2.4 Bushfire Mitigation Plans (Part 4)

2.4.1 Bushfire mitigation plans (BMPs) – clause 10

The Bill provides little clarity around how BMPs will strike an appropriate balance between the mitigation of bushfire risk and the preservation or conservation of natural and cultural values. While the Explanatory Paper suggests that greater detail will be provided in standards and guidelines,⁷⁸ the structure and drafting of the Bill does little to guarantee that the objectives of the Act (in clause 4) will be achieved.

Clause 10(2) of the Bill provides that the purpose of a BMP is “to provide for the maintenance of bushfire mitigation measures to provide for the on-going prevention, or minimisation of risk, of bushfires and for the protection of life and property.” This clause does not acknowledge any balancing exercise between the mitigation of bushfire risks to property and human life with the impacts of the proposed bushfire mitigation measures on natural and cultural values. Clause 10 also does not acknowledge that:

- it is practically impossible to reduce the risk posed by bushfires to such an extent as to guarantee the protection of all property and life;
- there is a need for some types of fire in the landscape for healthy ecosystem functioning; and
- in some cases, bushfires pose no or minimal risk to life and property.

While it is anticipated that Ministerial guidelines produced under clause 33 of the Bill will provide greater clarity around these issues, their absence makes it difficult to provide informed feedback on the Bill, including in relation to the scope of the duties imposed under clause 6.

Recommendation 24: Amend clause 10(2) of the Bill as follows “A BMP is to provide for the maintenance of bushfire mitigation measures to provide for the on-going prevention, or

⁷⁸ Office of Security and Emergency Management, Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 13.

minimisation of risk, of bushfires and for the protection of life and property while also protecting the natural and cultural values of the property to the greatest extent practicable.”

2.4.2 Applications to the Panel (Clause 12)

Clause 12 of the Bill sets out the requirements for applications for approval of BMPs to the BMM Panel. There are a number of concerning problems with this clause.

As previously noted in [2.2.1], the Bill has the potential to give rise to disputes between occupiers and landowners. While landowners do not have a duty pursuant to clause 6 of the Bill, they are empowered to make applications for BMPs for properties that they lease, but there is no requirement on the landowners to notify their tenants that such an application has been made or opportunity for those tenants to have any input into the BMP. This is concerning because, as the Bill is currently drafted, it is the occupier that has the ongoing duty to ensure that the BMP is implemented⁷⁹. In those circumstances, an application by a landowner to the BMM Panel for approval of a BMP amounts to an *ex parte* application for orders requiring an occupier to take positive action. Obviously, that is contrary to regular principles of natural justice.

Furthermore, an occupier may only make an application for approval of a BMP with the consent of the owner of the land.⁸⁰ What happens if owner refuses consent for the application to be made? The duty under the Bill will still apply to the occupier regardless. If the occupier (a tenant) takes steps to meet that duty but does not have authorisation for the steps under a BMP, does the tenant contravene the prohibition on unauthorised alterations in section 54 of the *Residential Tenancy Act 1997*?

The documents accompanying the Bill do not explain why it is proposed that the Chief Officer or authorised officer of the TFS will have the power to apply for approval of a BMP for any land, or in what circumstances it might be expected that such an application will be made. There are currently no requirements for the Chief Officer or authorised officer to consult with the landowner, occupier and/or public authority in these cases, and no opportunities for these parties to be heard during the application process or in any appeal against the approval of a BMP. This raises the same natural justice issue as flagged above.

An application for approval of a BMP is to be accompanied by a prescribed fee and in the form approved by BMM Panel, but clause 12 does not set out any mandatory information that a BMP application is to contain. The absence of a clear definition of what are acceptable “bushfire mitigation measures” in the Bill add to the lack of clarity as to the likely scope and impact of BMPs on natural and cultural values.

A proposed BMP will need to comply with standards issued by the Chief Officer and be in accordance with guidelines issued by the Minister,⁸¹ but it is unclear at this stage what either of these documents will require by way of information in an application. This gives rise to a serious question about what the BMM Panel’s information base will be when it is determining such issues

⁷⁹ Clauses 6(2) and 19(1)(b) of the Bill.

⁸⁰ Clause 12(2)(b) of the Bill.

⁸¹ Clauses 13(2) and 14(1)(d) of the Bill.

as whether the proposed works are solely for mitigation of risk or for some other purpose, or whether the works proposed under the BMP are in the public interest.

Without explicit requirements on those preparing an BMP to undertake an assessment of the natural and cultural values on the land subject to the BMP, there is no guarantee that the BMM Panel has any idea of the possible ecological or cultural impacts of the proposed bushfire mitigation measures. If a proposed BMP includes bushfire mitigation measures that involve the clearing of threatened native vegetation communities, threatened flora species, or the habitat of threatened fauna then, at a minimum, the applicant should be required to engage a suitably qualified person to prepare a natural values assessment. Likewise, at a minimum, all landowners proposing bushfire mitigation measures involving mechanical vegetation clearing (or any other measures that might damage Aboriginal cultural heritage or historic cultural heritage) should be required to undertake an Aboriginal Heritage and/or Heritage Tasmania property search to determine whether there are any heritage records in the vicinity of the proposed works.

There are no opportunities under the current drafting of the Bill for public comment on a proposed BMP. This restricts the information base available to the BMM Panel when deciding whether to approve a BMP and is particularly troubling given the range of other Acts that are proposed to be overridden by an approved BMP, some of which allow for public comment and merits appeals.⁸² It is unclear how the BMM Panel, being comprised primarily of a limited set of public servants, can determine whether the proposed works are solely for mitigation of risk or for some other purpose, or whether the proposed works are in the public interest without at least giving the public a chance to comment on the BMP.

Recommendation 25: Provide justification for granting the power to the Chief Officer or an authorised officer to prepare a BMP for a property. If such a power is warranted, then the Bill should be amended to provide:

- That the power only be exercisable in the identified limited circumstances;
- That the Chief Officer or the authorised officer provide appropriate notice, of at least 14 days, to the relevant landowner/occupier/public authority;
- An opportunity for the landowner/occupier/public authority to be heard or make written submissions to the BMM Panel concerning the proposed BMP, and
- The BMM Panel is required to consider the submissions in the making of its decision under clause 14.

Recommendation 26: Amend the Bill to require an application under clause 12 to include:

- a natural values assessment prepared by suitably qualified persons to be included where a proposed BMP includes bushfire mitigation measures relating to threatened native vegetation communities, threatened flora species, or the habitat of threatened fauna;
- an Aboriginal Heritage property search for the land subject to the BMP
- an indication of whether the property the subject of the BMP is on the Heritage Register or on the list of local historic heritage places under the applicable planning scheme;

⁸² For example, under the *Land Use Planning and Approvals Act 1993*.

- public notice of BMP applications in a local circulating papers and online; and
- an opportunity for interested people to make representations to the BMM Panel in relation to the BMP application.

Recommendation 27: Amend clause 14 Bill to include a requirement for the BMM Panel to consider any natural values assessment, Aboriginal Heritage property search results, historic cultural heritage entries, and representations received in respect of a BMP application.

Recommendation 28: In the event the composition of the BMM Panel remains unchanged (contrary to our recommendation 21), amend the Bill to insert a provision after clause 15 to provide an opportunity to appeal against the BMP Panel’s decision to the Resource Management and Planning Appeal Tribunal by both applicants and representors.

2.4.3 Endorsement by Chief Officer (clause 13)

Before a BMP application is submitted to the BMM Panel, it must be endorsed by the Chief Officer. In endorsing the BMP, the Chief Officer must be satisfied that the BMP specifies appropriate bushfire mitigation measures and complies with any standards issued by the Chief Officer. The Bill and the Explanatory Paper provide no indication of the likely contents of the “standards” and what matters the Chief Officer will have to consider in determining whether the proposed measures are “appropriate”.

Recommendation 29: Amend clause 3 of the Bill to insert a definition of the term “standards”.

Recommendation 30: Amend the Bill to insert provision after clause 33 that prescribes:

- the types of standards that the Chief Officer may prepare;
- the procedures and requirements that the Chief Officer must comply with in preparing standards, consistent with the objectives of the Bill; and
- an opportunity for public comment on the standards before they are finalised.

2.4.4 Factors to be considered by the BMM Panel (Clause 14)

Clause 14 of the Bill sets out the factors that must be considered by the BMM Panel in considering whether to approve a BMP. As highlighted in [2.4.3] of this submission, it is not clear what information base the BMM Panel will have in order to be satisfied:

- that works to be carried out in accordance with the BMP are solely for the mitigation of the risk of bushfires and not for any other purpose such as agricultural burning or the clearing of vegetation;⁸³ and
- that the works proposed under the BMP are in the public interest.⁸⁴

How will the BMM Panel determine the real purpose of clearing proposed under a BMP if all the material that they have been provided comes from the proponent of the BMP? Neighbours and

⁸³ Clause 14(1)(b) Bill.

⁸⁴ Clause 14(1)(c) Bill.

other members in the community might be able to provide some context to an application, however, under the Bill they will not be notified a BMP application has been made or be given an opportunity to comment on it.

Even if the BMM Panel does reach the requisite level of satisfaction that the bushfire mitigation measures are not for some ulterior purposes, no mechanisms have been provided in the Bill to ensure that land cleared for the purposes of a BMP is then not later used for agricultural or other purposes, or that that land is managed so that weeds are not introduced or surrounding vegetation is not impacted or damaged over time.

There is also no provision in the Bill that makes it an offence to provide false or misleading information in an application to the BMM Panel, or requirement that the applicant sign any statutory declaration as to the accuracy of its contents. These are standard provisions for most applications relating to works or clearing of vegetation.⁸⁵

The only criterion that the BMM Panel may use to consider issues such as natural cultural values impacted by a BMP is whether the BMP is in the “public interest”.⁸⁶ The ambiguity of that phrase does not assure consideration of natural and cultural values. Indeed, even the consideration of the objects of the Bill by the BMM Panel is discretionary,⁸⁷ so it is not guaranteed the BMM Panel will undertake any exercise of weighing the competing interests of the protection of property and life against the maintenance of natural and cultural values.

If the BMM Panel does consider the objects of the Bill in assessing a BMP, the Bill and the Explanatory Paper reveal no clues as to the appropriate balance to be struck between protection of life and property and protection of natural and cultural values in the landscape. This is concerning given potential for development to encroach further and further into bushfire-prone areas providing that the buildings meet the standards outlined in the Tasmanian Planning Scheme.⁸⁸ If the protection of life and property are overriding priorities, natural and cultural values in these areas could potentially be severely impacted as a result of this Bill. While the BMM Panel will need to be satisfied that the BMP is in accordance with any guidelines issued by the Minister,⁸⁹ these guidelines were not made available to ensure the community would be able to comment on the Bill in an informed way.

Aside from the discretion to consider the objects of the Bill, the BMM Panel *may* take account of “the strategic value of the proposed bushfire mitigation measures in preventing the occurrence, stopping the spread and facilitating the suppression, of bushfires”. It is unclear why the strategic value of the BMP is not a mandatory consideration. Certainly, no BMP ought to be approved in circumstances where the bushfire mitigation measures proposed provide no strategic value in preventing the occurrence, stopping the spread and facilitating the suppression of bushfire, or indeed, if over time they actually accelerate or heighten bushfire risk. For example, cutting a fuel

⁸⁵ See for example, section 52(2) *Land Use Planning and Approvals Act 1993*, section 45 *Forest Practices Act 1985*, regulation 60 *Wildlife (General) Regulations 2010*, regulation 10 *Threatened Species Protection Regulations 2016*.

⁸⁶ Clause 14(1)(c) Bill.

⁸⁷ Clause 14(2) Bill.

⁸⁸ See discussion at [1.2.1] of this submission.

⁸⁹ Clause 14(1)(d) Bill.

break into native bushland brings with it the potential introduce fire-promoting weeds such as gorse and broom to new areas.⁹⁰ Likewise, clearing or burning wet-forest or old-growth forest communities might heighten bushfire risk over time.⁹¹ These unintended consequences of bushfire mitigation measures need to be taken into account by the BMM Panel in deciding whether to approve a BMP.

While the BMM Panel may take into account “any other factor it considers relevant”,⁹² there is no explicit or mandatory requirement for BMM Panel to take account of:

- relevant expert advice on bushfire, natural or cultural values management;
- surrounding BMPs and if and how the proposed BMP complements those efforts;
- comments of neighbours and the impacted community/communities (indeed there is no opportunity for these people to even comment on a draft BMP);
- any relevant standards issued by the Chief Officer and referenced elsewhere in the Bill; and/or
- any overarching fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the FS Act.

The Bill also fails to strategically integrate BMPs with fire management plans created under the FS Act.

Recommendation 31: Amend the Bill to provide for:

- public notice of BMP applications in a local circulating papers and online;
- an opportunity for interested people to make representations in relation to the BMP application;

Recommendation 32: Amend clause 14(1) of the Bill such that the BMM Panel must consider:

- any natural values assessment, Aboriginal Heritage property search results, Heritage Register or local historic heritage places entries relevant to the BMP;
- the objects of the Bill;
- any representations received in respect of a BMP application;
- relevant expert advice it seeks on bushfire, natural or cultural values management;
- surrounding BMPs and if and how the proposed BMP complements those efforts;
- any relevant standards issued by the Chief Officer and referenced elsewhere in the Bill;
- any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the FS Act

Recommendation 33: Amend clause 15 to insert a new subclause that requires the BMM Panel to refuse to approve a BMP where the bushfire mitigation measures proposed provide no strategic

⁹⁰Leah Page and Veronica Thorp (2010) *Tasmanian Coastal Works Manual, Chapter 9: Fire Management*. Department of Primary Industries, Parks, Water and Environment – Tasmania at [9.2.2]; and Department of Environment and Natural Resource Management – South Australia (Undated), *Ecological Fire Management Strategy: Broom and Gorse*, accessible at : <https://www.environment.sa.gov.au/topics/fire-management/fire-science/ecological-strategies-and-guidelines>

⁹¹Lindenmayer, D.B., Kooyman, R.M., Taylor, C. et al. *Recent Australian wildfires made worse by logging and associated forest management*. *Nat Ecol Evol* 4, 898–900 (2020). <https://doi.org/10.1038/s41559-020-1195-5>

⁹² Clause 14(2)(c) Bill

value in preventing the occurrence, stopping the spread and facilitating the suppression of bushfire, or they will increase bushfire risk.

Recommendation 34: Amend clause 15 to insert a new subclause that provides that the BMM Panel has the power to impose conditions on BMP to restrict the use of land subject to a BMP for other unrelated purposes, such as agricultural uses.

Recommendation 35: Amend the Bill to insert a provision after clause 15 to provide an opportunity for applicants and representors to appeal against the BMM Panel's decision to the Resource Management and Planning Appeal Tribunal where they are unsatisfied with the BMM Panel's decision, and providing jurisdiction to the Tribunal to affirm or revoke the BMM Panel's decision, or vary conditions imposed.

Recommendation 36: Insert a clause after clause 15 to make it an offence to contravene a condition restricting the use of that land for other purposes.

Recommendation 37: Insert a clause in Part 6 of the Bill to make it an offence to provide false or misleading information in an application or an appeal to the BMM Panel under clauses 12 and 23.

2.4.5 Approval of the BMP by the BMM Panel (Clause 15)

Clause 15 of the Bill requires the BMM Panel to consider a BMP application as soon as practicable after it has been received.

One of the stated reasons for the Bill is to stop landowners and occupiers from delaying taking steps to mitigate bushfire risks on their land.⁹³ It is therefore unusual that maximum timeframes are not provided for endorsements and approvals of BMPs, particularly where the duties under clause 6 still apply while a BMP is under consideration by the Chief Officer or the BMM Panel. Any timeframes provided for these steps, should provide both the Chief Officer and the BMM Panel a reasonable amount of time to carry out their functions and powers appropriately, particularly in consideration of the range of other legislation that is effectively overridden by the approval of a BMP.

Clause 15(3) provides that the BMM Panel must not impose conditions that alter the bushfire mitigation measures contained in a BMP, however it is unclear why this restriction has been imposed on the BMM Panel's powers. This restriction may give rise to undue pressure on the BMM Panel to approve a BMP even where it considers that changes ought to be made to the proposed bushfire mitigation measures to protect natural and cultural values, or to ensure the efficacy of the BMP in addressing bushfire risk.

Recommendation 38: Amend clause 15 of the Bill by deleting subclause (3) and replacing it with: *"The BMM Panel may approve a BMP subject to conditions that alter the bushfire mitigation measures contained in a BMP, if the BMP is satisfied that without those conditions the BMP would not meet the criteria specified in section 14(1)".*

⁹³ Office of Security and Emergency Management, Department of Premier and Cabinet. (2020) *Bushfire Mitigation Measures Draft Exposure Bill Explanatory Paper*, p 7.

Recommendation 39: Amend clause 15 of the Bill by implementing a maximum time within which the BMM Panel must decide an application for approval of a BMP.

2.4.6 Exemptions from requirements of other Acts (Clause 16)

Clause 16 (1) of the Bill provides that:

...bushfire mitigation measures may be undertaken on that land in accordance with the BMP despite any requirement under an Act for a licence, approval, permit, consent or other authorisation for the work and despite any covenant or other restriction.

Subclause (3) further provides that:

Where a licence, approval, permit, consent or other authorisation or a covenant or other restriction is inconsistent with an approved BMP, the approved BMP prevails to the extent of the inconsistency.

The Explanatory Paper indicates that the effect of these provisions means that no approvals, permits, consents, or exemptions will be required for any bushfire mitigation measures under the following Acts:

- *Forest Practices Act 1985;*
- *Threatened Species Protection Act 1995;*
- *Land Use Planning and Approvals Act 1993;*
- *National Parks and Reserves Management Act 2002;*
- *Wellington Park Act 1993;*
- *Weed Management Act 1999;*
- *Nature Conservation Act 2002;*
- *Environmental Management and Pollution Control Act 1994;*
- *Aboriginal Heritage Act 1975;*
- *Historic Cultural Heritage Act 1995;* and
- *Crown Lands Act 1976.*

The Explanatory Paper states that the Bill provides a “one-stop shop” approval process for BMPs. While that might be true at a State level, it fails to acknowledge that Commonwealth environmental controls under, in particular, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), would continue to apply. There are potential Constitutional issues with the Bill in so far as the duty in clause 6 of the Bill and the mitigation measures provided for under a BMP or bushfire hazard reduction notice are inconsistent with restrictions under the EPBC Act or other Commonwealth laws. The Bill must expressly recognise that landowners, occupiers and public authorities cannot be required to do things under the Bill that would contravene the EPBC Act or other Commonwealth laws. For example, a person proposing to undertake actions under any approved BMP or bushfire hazard reduction notice that might have a significant impact on a matter of national environmental significance, such as an EPBC Act-listed threatened species, threatened vegetation community, World Heritage area, RAMSAR wetland etc, will need to make a referral to the Commonwealth Minister for the

Environment for a decision on whether the action requires detailed assessment and an approval under that Act (which is by no means assured).

As already highlighted in [2.2.3] of this submission, the ability for BMPs created under the Bill to override existing requirements under Tasmanian legislation has the potential to lead to discordant land use planning outcomes.

Many public authorities already undertake bushfire management planning for land they own or manage, consistent with their existing statutory powers and functions. Properties subject to conservation covenants are similarly managed for bushfire consistent with the purposes for which that land was protected. No explanation or justification has been provided in the Explanatory Paper as to why there is a need for BMPs created under the BMM Bill to override these other statutory land management regimes which have been carefully considered and provided for by the Tasmanian Parliament. Indeed, if it is truly the object of the Bill to “facilitate the mitigation of the risk of bushfires whilst balancing natural and cultural heritage values”, recognition of these existing land management frameworks within the Bill would be the best way to achieve this outcome.

While the regulations may prescribe “land or class of land, licence or approval or consent of covenant or other restriction” that is to be excluded from operation of clause 16,⁹⁴ this cannot be relied upon to ensure the Bill does not have adverse consequences on the appropriate management of land, as it leaves to the discretion of the Government to determine what, if any, existing regimes will continue to apply to bushfire mitigation.

Furthermore, even if the regulations do prescribe particular classes of land, licences, approvals or consents to be excluded from the exemption under clause 16, the Bill does not then make it clear that those issues should be taken into account by the BMM Panel in deciding any application for a BMP.

Recommendation 40: Amend clauses 6 and 16 of the Bill to make it clear that nothing in those provisions requires a person to take any step that is contrary to the EPBC Act or any other applicable Commonwealth legislation, or exempts a person from Commonwealth legislation.

Also refer to recommendation 19.

2.4.7 Register of approved BMPs (Clause 18)

In the absence of any other opportunities for the public to view or comment on BMPs under the Bill, it is helpful that the Bill makes provision for a publicly searchable register.

We recommend that any register be kept online and be free to access, with a layer provided on LIST Map showing BMP boundaries. This will encourage and facilitate neighbours to develop BMPs together and in consultation with each other, or at least to attempt to ensure their BMPs are complementary.

⁹⁴ Clause 16(4) Bill.

Furthermore, there should be a centralised public register of bushfire hazard reduction notices issued by the Chief Officer, authorised officers, and local councils. This will help to ensure that relevant land managers and authorities can monitor compliance legislation that they administer.

Recommendation 41: There should be no fee to search the register of approved BMPs, which should be accessible online.

Recommendation 42: A LIST Map layer should be created to show BMP boundaries.

Recommendation 43: A centralised public register of bushfire hazard reduction notices should be kept together with the BMP register

2.5 Bushfire Hazard Reductions Notice and Fuel Breaks (Part 5)

2.5.1 Bushfire Hazard Reduction Notices (Clause 19)

The Bill provides for the issuing of bushfire hazard reduction notices by the Chief Officer and local council in certain circumstances.

Although it is far from clear, it appears that these notices may only be issued to occupiers and not to landowners. This submission has already addressed the issues that arise from such an approach. It also appears that these notices may be issued even in circumstances where there is an existing BMP in place that is being complied with.

As acknowledged in the Explanatory Paper, the Chief Officer and local councils already do have powers to issue notices addressing fire risk under existing legislation.⁹⁵ While there may be some logic in having these powers consolidated into a single Act, no explanation has been provided as to why then the existing notice provisions should not be repealed once the Bill becomes law, nor why the Bill has been put out for consultation while the review of the *Fire Services Act 1979* is still underway.

One power in the Bill that duplicates existing provisions is the power issue of a notice requiring the creation of a fuel-break because the an authorised person is of the opinion, or the local council considers, that it is “necessary or desirable” to arrest the spread, or facilitate the suppression, of bushfires that may occur.⁹⁶ There are no requirements around the basis for either the authorised officer’s opinion or the local council’s consideration that a fuel-break is necessary or desirable. As already highlighted in [2.1.1] of this submission, the Bill does not define the term “fuel-break” and so the limitations and scope of the Chief Officer’s and local council’s power under clause 19 is potentially very broad. For example, a “fuel-break” could require the clearing of vegetation from an area anywhere from metres to hectares in size.

In the issuing of bushfire hazard reduction notices, there is no requirement on the Chief Officer or the local council to consider:

- any draft or approved BMP for the land;

⁹⁵ See sections 48, 49 and 56 *Fire Service Act 1976*, and section 200 *Local Government Act 1993*.

⁹⁶ Clause 19(1)(c) and 19(2) of the Bill.

- any guidelines issued by the Minister under clause 33 of the Bill;
- any relevant standards issued by the Chief Officer and referenced elsewhere in the Bill;
- the objects of the Bill;
- the impacts of the fuel-break on natural, historic, or Aboriginal cultural heritage values; and
- the likely costs of the works (which is relevant considering the powers for recovery of those costs under clause 21).

In issuing notices under clause 19, the Chief Officer or the local council are further not required to consider:

- any overarching fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the FS Act; or
- any other relevant management plan, covenant or other restriction applying to the land.

Clause 19 (3) of the Bill creates an offence if an occupier does not comply with a bushfire hazard reduction notice, however, there may be a range of other legislation, both at a State and Commonwealth level which regulate whether or not a person can take the actions provided under the notice.⁹⁷

Recommendation 44: Amend clause 19(1)(c) and clause 19(2) of the Bill by deleting “necessary or desirable” and replacing with “necessary and desirable”.

Recommendation 45: Amend clause 19 of the Bill by inserting a new subclause after subclause (2) which provides:

Before any bushfire hazard reduction notice can be issued under subsection (1) or (2), the Chief Officer or the local council must consider:

- (a) any draft or approved BMP for the land proposed to be subject to the notice;*
- (b) any relevant guidelines;*
- (c) any relevant standards issued by the Chief Officer;*
- (d) the objects of the Bill;*
- (e) the likely impacts of the proposed bushfire mitigation measures or fuel-break on natural, historic, or Aboriginal cultural heritage values of the land proposed to be subject to the notice;*
- (f) any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the FS Act; or*
- (g) any other relevant management plan, covenant or restriction applying to the land proposed to be subject to the notice; and*
- (h) the likely costs associated with the bushfire mitigation measures or fuel-break.*

Recommendation 46: Amend clause 19 of the Bill by inserting a new subclause after subclause (5) which provides “*It is a defence to any offence under subsection (5) if the occupier [or landowner] proves that another Act of the State or the Commonwealth prevents, precludes or restricts the*

⁹⁷ Clause 16 of the Bill provides no exemption to other Tasmanian laws where a person has been issued with a bushfire hazard reduction notice.

undertaking of the bushfire mitigation measures or creation of a fuel-break required under the bushfire hazard reduction notice.”

2.5.2 Arrangements for fuel breaks (Clause 20)

Where person is given a notice under 19(1)(c) or 19(2) and that notice has not been complied with, clause 20(1) of the Bill empowers the State Fire Commission or council to “make arrangements” with any person or the holder of a particular office for the formation or maintenance of a fuel break.⁹⁸ For the purposes of the clause, the forming of a fuel-break includes forming accesses to fuel-breaks.

The need for this clause is unclear given the powers provided under clause 21(1) of the Bill for the Chief Officer and brigades to carry out specified works under a bushfire hazard reduction notice that has not been complied with.

The Bill also does not address

- if and how will landowners and occupiers will be notified of what is proposed by way of the formation of a fuel-break;
- what powers of entry onto private land are afforded to allow such works to be undertaken by these other people that the State Fire Commission or council “makes arrangements” with, and if that includes entry and works on surrounding properties that were not subject to the bushfire hazard reduction notice; and
- who is responsible for any damage to property caused by the State Fire Commission, council, any person or the holder of a particular office that is not authorised under the bushfire hazard reduction notice.

Recommendation 47: Delete clause 20 of the Bill.

2.5.3 Cost recovery for notices (Clause 21)

Clause 21 provides for cost recovery by the State Fire Commission in event members of a brigade undertake bushfire mitigation measures or the formation of fuel-breaks required by bushfire hazard reduction notices under 19(3), or notices issued to councils under clause 24, which have not been complied with.

This provision does not explicitly prevent brigades from undertaking works before the expiry of the time for reviews and appeals of the relevant bushfire hazard reduction under clauses 22 and 23, and while that may be unlikely, clarity on this issue should be provided in the Bill as if the works were undertaken before the expiry of these timeframes, it would defeat the purpose of any review or appeal.

Clause 21(4) provides a discretion to the State Fire Commission to waive debt where it “considers it reasonable to do so”. As the failure to waive of costs may have significant consequences for

⁹⁸ To this extent, this clause is a duplication of section 56(4) of the *Fire Service Act 1979*.

recipients of notices, clear guidelines need to be developed to ensure this discretion is appropriately exercised.

Recommendation 48: Amend clause 21 of the Bill by inserting a new subclause under subclause (1) which provides “No entry on land for the carrying out of specified bushfire mitigation measures or for the formation of specified fuel-breaks may occur pursuant to subsection (1) until the expiry of any applicable timeframes in sections 22 and 23 of the Act.”

Recommendation 49: Guidelines issued by the Minister under clause 33 of the Bill should address in what circumstances the State Fire Commission should consider the waiving of debt under clause 21(4).

2.5.4 Objection against notices (Clause 22)

As the issue of the bushfire hazard reduction notices is currently solely based on either the opinion of the Chief Officer or the local council concerning certain matters, it is not clear what may be valid grounds for any request for review of that notice by the Chief Officer.

Recommendation 50: Amend clause 22(1) of the Bill by deleting the words “*stating the grounds of objection*” and inserting “*on any one or more of the following grounds:*”

- (a) *that the bushfire danger referred to in the notice does not exist;*
- (b) *that the occupier [landowner] has complied with their duty under clause 6;*
- (c) *the formation of a fuel-break is not necessary and desirable to arrest the spread, or facilitate the suppression, of bushfires that may occur;*
- (d) *that an action required by the bushfire hazard reduction notice is unreasonable; and/or*
- (e) *that the period stated in the bushfire hazard reduction notice is unreasonable*
- (f) *any other relevant ground.”*

2.5.5 Objection against notices (Clause 23)

A person who is dissatisfied with the outcome (if any) of the Chief Officer’s review of the bushfire hazard reduction notice only has 7 days to appeal against the notice to the BMM Panel.⁹⁹ This timeframe is unlikely to be long enough for that person to seek expert advice and decide whether to appeal against the notice.

The Bill provides that the appeal is initiated by way of an approved form, however, no further procedures are provided allowing for:

- the making of submissions by the appellant and/or the Chief Officer or local council that issued the notice;
- the production of evidence;
- the cross-examination the Chief Officer or local council about the grounds for the issue of the notice.

⁹⁹ Clause 23(1) Bill.

There is also no clear guidance around what issues the BMM Panel is to take into account in deciding the appeal, other than having regard to relevant BMP or guidelines.¹⁰⁰ This means there is no explicit requirement on the BMM Panel to review the bushfire hazard reduction notice with a view to balancing the bushfire risk and natural and cultural values in accordance with the object of the Bill. The BMM Panel is also not obliged to seek or consider the opinions of any relevant experts on such issues as:

- any relevant standards issued by the Chief Officer;
- the likely impacts of the proposed bushfire mitigation measures or fuel-break on natural, historic, or Aboriginal cultural heritage values of the land proposed to be subject to the notice;
- any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the FS Act; or
- any other relevant management plan, covenant or restriction applying to the land proposed to be subject to the notice; and
- the likely costs associated with the bushfire mitigation measures or fuel-break.

The BMM Panel only has two options in deciding an appeal: to confirm or cancel the notice.¹⁰¹ As the BMM Panel is not able to vary the notice to, for example, make it more reasonable, there may be pressure on the BMM Panel to confirm the notice due to the risk posed by bushfires (even where the notice may be unreasonable or have adverse natural or cultural impacts).

Recommendation 51: Amend clause 23(1) of the Bill to provide 14 days for the lodging of an appeal.

Recommendation 52: Amend clause 23 of the Bill to insert a new subclause after subclause (1) that provides:

A person appealing to the BMM Panel under subsection (1) may appeal on any one or more of the following grounds:

- (a) that the bushfire danger referred to in the notice does not exist;*
- (b) that the occupier [landowner] has complied with their duty under clause 6;*
- (c) the formation of a fuel-break is not necessary and desirable to arrest the spread, or facilitate the suppression, of bushfires that may occur;*
- (d) that an action required by the bushfire hazard reduction notice is unreasonable; and/or*
- (e) that the period stated in the bushfire hazard reduction notice is unreasonable*
- (f) any other relevant ground.*

Recommendation 53: Amend clause 23(3) to insert the following after subclause (b):

- (c) any relevant standards issued by the Chief Officer;*
- (d) the objects of the Bill;*

¹⁰⁰ Clause 23(3) Bill.

¹⁰¹ Clause 23(4) Bill.

- (e) *the likely impacts of the proposed bushfire mitigation measures or fuel-break on natural, historic, or Aboriginal cultural heritage values of the land proposed to be subject to the notice;*
- (f) *any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the FS Act; or*
- (g) *any other relevant management plan, covenant or restriction applying to the land proposed to be subject to the notice;*
- (h) *the likely costs associated with the bushfire mitigation measures or fuel-break;*
- (i) *the opinion of any suitably qualified expert; and*

Recommendation 54: Amend clause 23(4) to insert the following after subclause (a):

(b) vary the notice, if the BMM Panel is satisfied that the variation will appropriately address the threat of bushfire; or

Recommendation 55: Amend clause 23(5) to insert “or varies” after “confirms”

Recommendation 56: Part 3, Schedule 1 of the Bill to insert after subitem (2):

(3) The BMM Panel must publish its adopted procedures in relation to the hearing of appeals under section 23, and is to adhere to those procedures.

2.6 Miscellaneous provisions (Part 6)

2.6.1 Relationship with Fire Service Act 1979 (Clause 32)

Clause 32 provides that the Bill prevails to the extent of any inconsistency with the FS Act. When this provision is viewed together with clause 16, it seems unlikely that a person would be required to, for example, comply with restrictions on lighting prescribed burns during fire permit periods or obtain a fire permit under Part 5 of the *Fire Services Act 1979*, provided that burn is otherwise authorised under a BMP or bushfire hazard reduction notice issued under the Bill.

Given the review into the FS Act is not yet complete, it is concerning that clause 32 has been included to ensure that the Bill overrides that Act. As already noted, it is also troubling that so little has been done to effectively integrate the contents of the Bill with the existing fire planning provisions under the FS Act.

Recommendation 57: Delete clause 32.

2.6.2 Guidelines (Clause 33)

Clause 33 empowers, but does not oblige, the Minister to make guidelines for the purposes of the Bill and describes the process for the making of the guidelines. As the Bill is presently drafted, without the guidelines, there are no appropriate limitations on the scope and exercise of very broad powers, including to override other legislation.

Clause 33 does not identify the likely contents of the guidelines. In order for the guidelines to provide any real assistance to the proper implementation of the Bill, they will need to identify, at a minimum:

- what is an acceptable level of bushfire risk in various circumstances;
- what bushfire mitigation measures will be effective and appropriate in achieving the acceptable risk level, including by taking into account the changing climate; and
- what natural and cultural values need to be identified and how they ought to be appropriately managed under a BMP in order to achieve the objects of the Bill.

In order that the guidelines strike an appropriate balance in all the above areas, it is essential that appropriately qualified experts in the following fields be engaged to contribute to their preparation:

- bushfire ecology,
- land use planning,
- Aboriginal heritage,
- Aboriginal cultural burning,
- historic cultural heritage,
- ecology,
- risk management, and
- emergency/fire management.

EDO understands the TFS is presently in the process of preparing draft guidelines ahead of finalisation of the contents of the Bill. We strongly urge the Government to ensure that there is an extensive period for public consultation on the guidelines before they, and the Bill, are finalised.

Recommendation 58: Amend the Bill to mandate the development of guidelines prior to the making of decisions under the Act.

Recommendation 59: Amend the Bill to prescribe a process by which the guidelines are to be developed, such process to include mandatory consultation with experts in the following fields:

- bushfire ecology;
- land use planning;
- Aboriginal cultural burning;
- Aboriginal heritage;
- historic cultural heritage,
- ecology,
- risk management and
- emergency/fire management

Recommendation 60: Amend the Bill to include a public consultation process for the guidelines before they are finalised.

APPENDIX 1 - Summary of Recommendations

Recommendation 1: Recognise the role of climate change and drought in contributing to the frequency, intensity, timing and location of bushfires in Tasmania, and the potential contribution of climate change and associated impacts to future bushfire seasons.

Recommendation 2: Implement a whole-of-government approach to climate change by enacting new climate change laws in Tasmania that deal with both climate change mitigation and adaptation in a clear and coordinated way.

Recommendation 3: Review all relevant Tasmanian legislation with a view to incorporating clear requirements for climate change mitigation and adaptation.

Recommendation 4: Require all Tasmanian agencies to carry out their respective functions consistent with the need to mitigate greenhouse gas emissions in line with the science, and adapt to the impacts of climate change.

Recommendation 5: Ensure Tasmanian planning laws are climate-ready by:

- Explicitly requiring climate risks to be considered when assessing development proposals on bushfire prone land;
- Explicitly requiring decision-makers to assess the increasing risks and impacts of climate change on development proposals, including the proposal itself and the locality, particularly with reference to climate projections of increased temperature, sea level rise, variable rainfall or future bushfire risks;
- Ensuring local councils and the TFS have sufficient capacity and capability to continually update mapping and responsiveness to reflect the best available science and technology, including in relation to climate change projections.

Recommendation 6: Explicitly require climate change risks to be considered in decision-making (particularly in relation to bushfire planning) under the *Emergency Management Act 2006* and *Fire Service Act 1979* and addressed consistent with the principles of ESD.

Recommendation 7: Include provisions in Tasmanian emergency legislation that explicitly require plans developed under emergency legislation to factor climate change into decision-making, risk assessment and management, or disaster preparedness, and be addressed consistent with the principles of ESD.

Recommendation 8: Undertake research to quantify resources needed to enable more fires to be contained at a small size and minimise the need for backburning, and based on the findings of that research allocate resources to Tasmanian fire agencies accordingly.

Recommendation 9: Recognise the value of long-undisturbed forest in mitigating landscape fire risk in fire management planning.

Recommendation 10: Ensure that prescribed burning and other methods of reducing risk via disturbance are applied only close to assets where they may provide material benefit.

Recommendation 11: Ensure that there is independent, scientific oversight of bushfire management regulation and policy in Tasmania.

Recommendation 12: Reject environmentally destructive, unsubstantiated bushfire management practices such as selective logging.

Recommendation 13: Recognise palawa / Aboriginal land management and cultural burning, and facilitate its incorporation into Tasmanian bushfire management practices.

Recommendation 14: Amend clause 3 to provide definitions for the following terms:

- bushfire
- fuel-break
- risk, including by reference to how the risk of bushfire is to be assessed according to objective criteria
- standards

Recommendation 15: Amend clause 5 to provide more detail as to what actions may be “bushfire mitigation measures”, ensuring that Aboriginal cultural burns are included, and insert a new clause that sets out the procedures and requirements for the creation of standards by the Chief Officer, including that they be consistent with the objective of the Act.

Recommendation 16: Replace clause 4 of the Bill with:

- (1) *It is the object of the Act to facilitate the mitigation of the risk of bushfires to life and property at the same time as protecting the natural and cultural values to the greatest extent practicable.*
- (2) *It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives set out in Schedule 1.*

The objects in Schedule 1 should include the Objectives of the Resource Management and Planning System of Tasmania, and specific objects addressing the need to manage and adapt to bushfires in a changing climate.

Recommendation 17: Amend the Bill to delete the word “occupier” and replace with the word “landowner”.

Recommendation 18: Amend the Bill to provide that where a person receives a bushfire hazard reduction notice to conduct a prescribed burn or an approved BMP that allows for a prescribed burn, and the person lights a fire in accordance with the conditions of the notice or the BMP, that person is not liable for any loss, injury or damage caused by that fire unless it is proven that the person acted maliciously or recklessly.

Recommendation 19: Explain the need for a separate duty for public authorities that are already planning for bushfire management. If the Bill is going to create further legal duties for

these authorities amend clause 16 to insert a new subclause which specifically excludes land owned or occupied by public authorities from the operations of the clause.

Recommendation 20: Allocate funding to support public authorities to fulfil additional duties under the Bill.

Recommendation 21: Amend clause 7 of the Bill to require that the BMM Panel be comprised of suitably qualified experts in fire ecology, fire management, planning, conservation and land management, Aboriginal cultural heritage, historic cultural heritage and law.

Recommendation 22: Amend clause 7 of the Bill to provide that the BMM Panel is only permitted to approve a BMP if satisfied that the BMP reduces bushfire risk to life and property and that the measures proposed to achieve that reduction minimises impacts on natural and cultural values to the greatest extent practicable.

Recommendation 23: Amend the Bill to set out the procedural requirements for the hearing of any appeals by the BMM Panel similar to those found in Part 5 of the *Resource Management and Planning Appeal Tribunal Act 1993*.

Recommendation 24: Amend clause 10(2) of the Bill as follows “A BMP is to provide for the maintenance of bushfire mitigation measures to provide for the on-going prevention, or minimisation of risk, of bushfires and for the protection of life and property while also protecting the natural and cultural values of the property to the greatest extent practicable.”

Recommendation 25: Provide justification for granting the power to the Chief Officer or an authorised officer to prepare a BMP for a property. If such a power is warranted, then the Bill should be amended to provide:

- That the power only be exercisable in the identified limited circumstances;
- That the Chief Officer or the authorised officer provide appropriate notice, of at least 14 days, to the relevant landowner/occupier/public authority;
- An opportunity for the landowner/occupier/public authority to be heard or make written submissions to the BMM Panel concerning the proposed BMP, and
- The BMM Panel is required to consider the submissions in the making of its decision under clause 14.

Recommendation 26: Amend the Bill to require an application under clause 12 to include:

- a natural values assessment prepared by suitably qualified persons to be included where a proposed BMP includes bushfire mitigation measures relating to threatened native vegetation communities, threatened flora species, or the habitat of threatened fauna;
- an Aboriginal Heritage property search for the land subject to the BMP
- an indication of whether the property the subject of the BMP is on the Heritage Register or on the list of local historic heritage places under the applicable planning scheme;
- public notice of BMP applications in a local circulating papers and online; and

- an opportunity for interested people to make representations to the BMM Panel in relation to the BMP application.

Recommendation 27: Amend clause 14 Bill to include a requirement for the BMM Panel to consider any natural values assessment, Aboriginal Heritage property search results, historic cultural heritage entries, and representations received in respect of a BMP application.

Recommendation 28: In the event the composition of the BMM Panel remains unchanged (contrary to our recommendation 21), amend the Bill to insert a provision after clause 15 to provide an opportunity to appeal against the BMP Panel’s decision to the Resource Management and Planning Appeal Tribunal by both applicants and representors.

Recommendation 29: Amend clause 3 of the Bill to insert a definition of the term “standards”.

Recommendation 30: Amend the Bill to insert provision after clause 33 that prescribes:

- the types of standards that the Chief Officer may prepare;
- the procedures and requirements that the Chief Officer must comply with in preparing standards, consistent with the objectives of the Bill; and
- an opportunity for public comment on the standards before they are finalised.

Recommendation 31: Amend the Bill to provide for:

- public notice of BMP applications in a local circulating papers and online; and
- an opportunity for interested people to make representations in relation to the BMP application.

Recommendation 32: Amend clause 14(1) of the Bill such that the BMM Panel must consider:

- any natural values assessment, Aboriginal Heritage property search results, Heritage Register or local historic heritage places entries relevant to the BMP;
- the objects of the Bill;
- any representations received in respect of a BMP application;
- relevant expert advice it seeks on bushfire, natural or cultural values management;
- surrounding BMPs and if and how the proposed BMP complements those efforts;
- any relevant standards issued by the Chief Officer and referenced elsewhere in the Bill; and
- any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the *Fire Service Act 1979*.

Recommendation 33: Amend clause 15 to insert a new subclause that requires the BMM Panel to refuse to approve a BMP where the bushfire mitigation measures proposed provide no strategic value in preventing the occurrence, stopping the spread and facilitating the suppression of bushfire, or they will increase bushfire risk.

Recommendation 34: Amend clause 15 to insert a new subclause that provides that the BMM Panel has the power to impose conditions on BMP to restrict the use of land subject to a BMP for other unrelated purposes, such as agricultural uses.

Recommendation 35: Amend the Bill to insert a provision after clause 15 to provide an opportunity for applicants and representors to appeal against the BMM Panel's decision to the Resource Management and Planning Appeal Tribunal where they are unsatisfied with the BMM Panel's decision, and providing jurisdiction to the Tribunal to affirm or revoke the BMM Panel's decision, or vary conditions imposed.

Recommendation 36: Insert a clause after clause 15 to make it an offence to contravene a condition restricting the use of that land for other purposes.

Recommendation 37: Insert a clause in Part 6 of the Bill to make it an offence to provide false or misleading information in an application or an appeal to the BMM Panel under clauses 12 and 23.

Recommendation 38: Amend clause 15 of the Bill by deleting subclause (3) and replacing it with: *"The BMM Panel may approve a BMP subject to conditions that alter the bushfire mitigation measures contained in a BMP, if the BMP is satisfied that without those conditions the BMP would not meet the criteria specified in section 14(1)"*.

Recommendation 39: Amend clause 15 of the Bill by implementing a maximum time within which the BMM Panel must decide an application for approval of a BMP.

Recommendation 40: Amend clauses 6 and 16 of the Bill to make it clear that nothing in those provisions requires a person to take any step that is contrary to the EPBC Act or any other applicable Commonwealth legislation or exempts a person from Commonwealth legislation.

Recommendation 41: There should be no fee to search the register of approved BMPs, which should be accessible online.

Recommendation 42: A LIST Map layer should be created to show BMP boundaries.

Recommendation 43: A centralised public register of bushfire hazard reduction notices should be kept together with the BMP register

Recommendation 44: Amend clause 19(1)(c) and clause 19(2) of the Bill by deleting "necessary or desirable" and replacing with "necessary and desirable".

Recommendation 45: Amend clause 19 of the Bill by inserting a new subclause after subclause (2) which provides:

Before any bushfire hazard reduction notice can be issued under subsection (1) or (2), the Chief Officer or the local council must consider:

- (i) any draft or approved BMP for the land proposed to be subject to the notice;*
- (j) any relevant guidelines;*

- (k) any relevant standards issued by the Chief Officer;
- (l) the objects of the Bill;
- (m) the likely impacts of the proposed bushfire mitigation measures or fuel-break on natural, historic, or Aboriginal cultural heritage values of the land proposed to be subject to the notice;
- (n) any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the Fire Service Act 1979; or
- (o) any other relevant management plan, covenant or restriction applying to the land proposed to be subject to the notice; and
- (p) the likely costs associated with the bushfire mitigation measures or fuel-break.

Recommendation 46: Amend clause 19 of the Bill by inserting a new subclause after subclause (5) which provides “*It is a defence to any offence under subsection (5) if the occupier [or landowner] proves that another Act of the State or the Commonwealth prevents, precludes or restricts the undertaking of the bushfire mitigation measures or creation of a fuel-break required under the bushfire hazard reduction notice.*”

Recommendation 47: Delete clause 20 of the Bill.

Recommendation 48: Amend clause 21 of the Bill by inserting a new subclause under subclause (1) which provides “No entry on land for the carrying out of specified bushfire mitigation measures or for the formation of specified fuel-breaks may occur pursuant to subsection (1) until the expiry of any applicable timeframes in sections 22 and 23 of the Act.”

Recommendation 49: Guidelines issued by the Minister under clause 33 of the Bill should address in what circumstances the State Fire Commission should consider the waiving of debt under clause 21(4).

Recommendation 50: Amend clause 22(1) of the Bill by deleting the words “*stating the grounds of objection*” and inserting “*on any one or more of the following grounds:*”

- (g) that the bushfire danger referred to in the notice does not exist;
- (h) that the occupier [landowner] has complied with their duty under clause 6;
- (i) the formation of a fuel-break is not necessary and desirable to arrest the spread, or facilitate the suppression, of bushfires that may occur;
- (j) that an action required by the bushfire hazard reduction notice is unreasonable; and/or
- (k) that the period stated in the bushfire hazard reduction notice is unreasonable
- (l) any other relevant ground.”

Recommendation 51: Amend clause 23(1) of the Bill to provide 14 days for the lodging of an appeal.

Recommendation 52: Amend clause 23 of the Bill to insert a new subclause after subclause (1) that provides:

A person appealing to the BMM Panel under subsection (1) may appeal on any one or more of the following grounds:

- (g) that the bushfire danger referred to in the notice does not exist;*
- (h) that the occupier [landowner] has complied with their duty under clause 6;*
- (i) the formation of a fuel-break is not necessary and desirable to arrest the spread, or facilitate the suppression, of bushfires that may occur;*
- (j) that an action required by the bushfire hazard reduction notice is unreasonable; and/or*
- (k) that the period stated in the bushfire hazard reduction notice is unreasonable*
- (l) any other relevant ground.*

Recommendation 53: Amend clause 23(3) to insert the following after subclause (b):

- (j) any relevant standards issued by the Chief Officer;*
- (k) the objects of the Bill;*
- (l) the likely impacts of the proposed bushfire mitigation measures or fuel-break on natural, historic, or Aboriginal cultural heritage values of the land proposed to be subject to the notice;*
- (m) any relevant fire protection plans prepared by Fire Management Area Committees, or State fire protection plan prepared by the Commission under the Fire Service Act 1979; or*
- (n) any other relevant management plan, covenant or restriction applying to the land proposed to be subject to the notice;*
- (o) the likely costs associated with the bushfire mitigation measures or fuel-break;*
- (p) the opinion of any suitably qualified expert; and*

Recommendation 54: Amend clause 23(4) to insert the following after subclause (a):

- (b) vary the notice, if the BMM Panel is satisfied that the variation will appropriately address the threat of bushfire; or*

Recommendation 55: Amend clause 23(5) to insert “or varies” after “confirms”

Recommendation 56: Part 3, Schedule 1 of the Bill to insert after subitem (2):

- (3) The BMM Panel must publish its adopted procedures in relation to the hearing of appeals under section 23, and is to adhere to those procedures*

Recommendation 57: Delete clause 32.

Recommendation 58: Amend the Bill to mandate the development of guidelines prior to the making of decisions under the Act.

Recommendation 59: Amend the Bill to prescribe a process by which the guidelines are to be developed, such process to include mandatory consultation with experts in the following fields:

- bushfire ecology;

- land use planning;
- Aboriginal cultural burning;
- Aboriginal heritage;
- historic cultural heritage,
- ecology,
- risk management and
- emergency/fire management

Recommendation 60: Amend the Bill to include a public consultation process for the guidelines before they are finalised.