

# FIRE UPDATE

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## A LEGAL LOOK AT STAY AND DEFEND OR GO EARLY

THIS POLICY IS BEING STUDIED WITH A LEGAL EYE

This project aims to analyse and clarify the legal risks faced by fire managers. The main focus has been the legal risks and issues connected with the “Stay and Defend or Go Early” approach and an initial examination of these issues has been completed. With eight state and federal jurisdictions in Australia plus the laws in New Zealand to consider, the situation is not straightforward. The project is also examining related issues at the request of end users.

### OUTCOMES

- **Discussion paper: The legal considerations of the AFAC ‘Stay and Defend or Go Early’ policy.** By John Handmer, Elsie Loh and Rebecca Monson

The purpose of this paper is to clarify the current legal position with respect to this approach across Australia and to help rescuers and emergency service organisations understand the extent to which they are immune from being sued by the members of the public. The approach does not appear to confront any significant legal difficulties.

- **Discussion paper: Legal Risks of Volunteer Firefighters: How real are they?** By John Handmer and Elsie Loh

This paper examines the extent to which volunteer firefighters are protected by legislation (including the exceptions to the immunities) and the important discrepancies

or gaps in protection that volunteers and fire services should be aware of.

Volunteer firefighters are well covered by immunities from legal liabilities, although there are some gaps in that coverage.

- **Presentation and poster: Stay and Defend or Leave Early.**

Presented by Elsie Loh (Bushfire CRC) at the Second Fire Managers Research Workshop at the University of Wollongong 3-7 July 2006.

- **Legal Workshop: Practical and legal issues arising from community information programs and evaluations.**

Presented by Catherine Dunlop and Rebecca Monson (from Maddocks Lawyers) and John Handmer and Elsie Loh (from Bushfire CRC) at the AFAC/Bushfire CRC/IFFC 2006 Conference in Melbourne, 10 August 2006.

### FUTURE DIRECTIONS

End users and researchers have raised many legal issues with the researchers. These are now being considered to develop a set of research priorities - in addition to the following:

- **AFAC/Bushfire CRC 2006 workshop**  
This was a joint workshop between the Bushfire CRC researchers and Maddocks

Lawyers held on 10 August 2006 with about 37 participants. The workshop covered the legal aspects of the policy and community information and warnings. As a result of suggestions by workshop participants, a paper summarising the discussion is now available on the Bushfire CRC website. Another workshop may be held early next year.

- **An analysis of the coronial process**

This is in response to the concern by fire agencies about the seemingly expanding coronial process in investigating fires and in particular the way the actions of fire agency managers are being scrutinized. This paper will analyse the role of the coroners’ courts - their legislative mandate, evolving jurisdiction and future directions. What can fire agencies do to be better prepared for this process?

- **The legal liability of senior officers**

Many senior fire agency officers are concerned that they may carry significant legal liability for fire related decisions; even though volunteers may have a high degree of immunity from legal liability. This paper aims to outline their position in law and provide some certainty in an area of law that is most often unclear.

### ABOUT THE PROJECT

Evaluation of the Stay and Defend or Go Early policy is Bushfire CRC project C6. The project leaders are Professor John Handmer of RMIT and Alan Rhodes of the Country Fire Authority of Victoria.

Discussion papers, posters and presentations from this project are available at:  
[www.bushfirecrc.com](http://www.bushfirecrc.com)



▲ ◀ ABOVE AND LEFT: FIRE MANAGERS IN BUSHFIRE DANGER ZONES NEED TO BE AWARE OF THE LEGAL ISSUES SURROUNDING THE ‘STAY AND DEFEND OR GO EARLY’ POLICY.