

Mainstreaming fire and emergency management – directions for policy discussion.

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This project set out to explore the impact of law on fire and emergency management.

What we have found is that there is mainstreaming of emergency management though the strength of that mainstreaming is contestable. Fears of litigation and personal liability are overstated. Litigation is infrequent and legal protection for individuals is well established. Fire services are not immune from legal suit and the application of legal provisions are currently being tested. The fact that the provisions designed to limit liability of these services are only now being tested confirms that litigation has not been a significant issue in fire and emergency management, even if fear of litigation may be an impediment to action and is tending to be the focus of forward planning.

Finally we have determined that Australian emergency management policy suffers from a lack of clear objectives or measures of success. This absence means that agencies, governments and citizens cannot identify whether or not policy objectives are being met and whether the emergency services are succeeding in their tasks or not.

The following areas require policy or legal development, or at least community discussion to inform policy choice.

1. The objectives of Australian emergency management policies need to be more clearly defined.
2. The standard by which emergency management will be measured needs to be articulated. No fire fighter deaths should be an explicit measure of a successful response to a fire: 'The aspirational goal is no loss of life, but not at the cost of more lives' (Pers. Comm).
3. Emergency managers need to be allowed, and trusted, to make decisions in complex, dynamic, information poor environments.
4. Governments and communities have to accept that some outcomes are the result of political choices made long before any fire, flood or storm impacted.

With respect to post event inquiries

5. Emergency management policy needs to be informed by an open assessment of the risks not by successive inquiries focussed on individual events and constrained by their terms of reference. We need to move beyond developing policy by Royal Commission and instead engage in the realities of life in the Australian context. As part of that reality there needs to be a more mature approach to post event inquiries that recognises the need to learn lessons 'without sacrificing the good will of responders' (Eburn and Jackman 2011). Equally a more mature narrative of disasters is required; a narrative that recognises that disasters are a product of the environment and human choices rather than a 'failure' by government, emergency services, land managers or individuals.
6. Emergency services and their political leaders need to engage in a meaningful discussion about what can realistically be expected given the current level of resourcing and then lead the post event discussion to put the losses in context rather than simply react to the community outrage and grief.
7. A positive use of law would be to enact laws to establish a 'lessons learned' centre or process that sufficiently balanced the community's interests in ensuring that true lessons, including lessons of error or neglect are identified, whilst also protecting members of the emergency services.
8. The members of the emergency services require education about the legal process rather than needing to reform the law. Such education or familiarisation applies also to non-legally binding but influential processes such as Royal Commissions and other inquiries.

Select project publications:

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- Eburn M and Handmer, J 'Legal Issues and Information on Natural Hazards' (2012) 17 *Local Government Law Journal*, 19-26.
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- Eburn M, 'Protecting those who protect us', (2012) 25(2) *National Emergency Response* 5-7.
- Eburn M, 'The emerging legal issue of failure to warn' (2012) 27(1) *Australian Journal of Emergency Management* 52-55.
- Eburn M, 'Responding to catastrophic natural disasters and the need for Commonwealth legislation' (2011) 10(3) *Canberra Law Review* 81-102.
- Eburn M, 'Changes to occupational health and safety laws and the impact on volunteers in the emergency services' (2011) 26(4) *Australian Journal of Emergency Management* 43-47.
- Eburn M and Dovers S, 'The Stakes Are High for Australian Emergency Managers' (October 2011) *IAEM Bulletin: Online Edition*, 31, 33.
- Eburn M and Dovers S, 'Better understanding needed of legal risks from fires' (Winter 2011) *Australia Fire* 20.
- Eburn M and Dovers S, 'Understanding Fire Law' (2011) 82 *Fire Note*
<http://www.bushfirecrc.com/managed/resource/understanding_fire_law.pdf>
- Eburn M and Jackman, B 'Mainstreaming fire and emergency management into law' (2011) 28(2) *Environmental and Planning Law Journal* 59-76.**

It was invited to the land by the sky. It was put on the land by the sky and not 200 years ago it ran to the coast ... if you step back and look at it where it sat on the landscape, and you look at the forest and 10 years of drought and accumulated fuel loads. You go, well, what part of inevitability didn't we get here? At some point in time it was inevitable a fire was going to come through here and it did and it did what it had to do. We just happened to be in the way of it (Pers. Comm).

References:

- Pers. Comm., Chief Fire officers survey, details on file with the author.
- Eburn M and Jackman, B 'Mainstreaming fire and emergency management into law' (2011) 28(2) *Environmental and Planning Law Journal* 59-76.

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