

# FIRE NOTE

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## UNDERSTANDING FIRE LAW

### SUMMARY

Conflicting legal requirements, and fear of litigation, may impede decision making at all stages of the “prevent, prepare, respond and recover” cycle of hazard management. This *Fire Note* reports on the preliminary outcomes of research to identify the true impact of law upon fire management and community resilience and identifies the next stage of the research. It discusses how fire agencies may assist in identifying legal impediments to effective fire and emergency management.

### ABOUT THIS FIRE NOTE

This is a preliminary report on mainstreaming fire management into law and policy; a research project conducted as part of the Bushfire CRC Extension *Understanding Risk* research program.

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### END USER STATEMENT

“Emergency services agencies will gain by this research, through developing a sound understanding of the liabilities they face in conducting their activities, and the benefits that derive from a clear understanding of community expectations and concerns in respect to their obligations.”

– Mick Ayre, Acting Director, Northern Territory Fire and Rescue Service

### CLAIMS FOR COMPENSATION AGAINST THE NSW RURAL FIRE SERVICE

In the period 1989 to 2010 the NSW Rural Fire Service attended 184,888 fire calls and received 263 claims for compensation.

- Between 21 and 31 per cent of claims related to firefighting operations.
- Between 25 and 35 per cent related to hazard reduction burns.
- 27 per cent related to motor vehicle accidents involving fire appliances.
- Five per cent related to claims arising from other activities.
- 13 per cent were for personal injury.
- 84 per cent were for damage to property.
- 11 per cent were made by members of the Rural Fire Service.
- Only six per cent were taken to Court. That means there was one court case for every 10,875 fire calls.



### CONTEXT

**Fire agencies and the community need to understand the limit of the law as it applies to fire planning and emergencies and to advocate for reforms to ensure that the legal system does not impose undue burdens on communities that must live with the risk of fire.**

The research has reviewed the findings of post-event inquiries, judicial decisions and insurance claims to identify how law is applied to the fire ground and to determine if legal principles are an impediment to effective fire management.

### BACKGROUND

Laws that restrict the ability to clear vegetation, prima facie, conflict with legal obligations to reduce fire risk; statutory obligations to respond to fire events are restricted by other obligations to ensure health and safety. Fear of legal liability may hinder decision-makers and individuals.

This research is identifying how these competing interests can be balanced in the most effective way, to ensure that the law and its processes do not unduly hinder the community's ability to live with the risk of fire. The research seeks to separate fact, fear and fiction regarding law and its impact on fire management.

### BUSHFIRE CRC RESEARCH

Preliminary research published in the *Environmental and Planning Law Journal* (Eburn, M and Jackman, B, 2011) suggests that the area of law and emergency management is surrounded more with urban myth and confusion rather than actual, clear evidence of a problem. Claims of inconsistencies or legal impediments to preparation or response appear, more often than not, to be examples of misunderstanding of the process, or a belief the law is too costly, time consuming or complex.

As the next step to identify how the law may impede effective emergency management, this research looked at the extent of litigation and claims for compensation arising out of bushfires. Publicly available court judgments were reviewed to identify cases that dealt with liability for starting, or failing to contain, bushfires. The research identified that, in the 79 years between 1931 and 2010, fires subject to litigation that resulted in a judgment by a court occurred in just 14 of those years.

A review was also undertaken of the claims files maintained by the New South Wales Treasury

Managed Insurance Fund dealing with claims for compensation made against the NSW Rural Fire Service. In the period 1989 to 2010, the Managed Fund dealt with 263 claims for compensation; of which 28 (or 10.6 per cent) were subject to court litigation.

## RESEARCH OUTCOMES

Despite responding to, on average, 53,000 fire calls a year (Productivity Commission), the Australian fire agencies have not faced a large amount of litigation. The apparent trend is, however, that post-fire litigation is increasing and the target of the litigation, the nature of the defendants and claims made are changing.

In the 64 years between 1925 and 1988, fires led to litigation in only seven years; an average of one case every nine years. In the 22 years from 1989 to 2010 there was an average of one case every 3.2 years. Day to day or routine fires continue to be dealt with without litigation, though there is a constant “trickle” of claims for compensation for small scale damage caused by the actions of the fire authorities. Some of these claims are met for pragmatic reasons, some are denied, but most do not end up before a court. Significant fire events, such as the 2009 Victorian Black Saturday fires on the other hand, now trigger litigation almost before the fires are extinguished.

Alongside the increased frequency of claims, the number and type of defendants has also grown. Cases were originally brought against landowners for negligence in starting or failing to contain fires. In 1977 actions were commenced against electrical authorities. In 1995 fire and land management agencies first appeared as defendants, being sued over their management of fuel loads and their response to major campaign fires.

## HOW THE RESEARCH IS BEING USED

This research is the first step in identifying ways to “mainstream” legal processes. As learning organisations, agencies need to be willing to receive complaints and criticism in order to learn. In some cases they have to make amends for injury, loss or damage that has been unnecessarily caused. But the processes to resolve these issues are long, arduous and painful. Cases can last

## YEARS IN WHICH FIRES LED TO COURT ACTION IN AUSTRALIA

	Defendant – other than electricity authorities.	Electricity authorities	Land management and/or fire fighting authorities
1925	✓		
1933	✓		
1961	✓		
1968	✓		
1977		✓	
1978	✓		
1983	✓	✓	
1991		✓	
1995	✓		✓
1997	✓		✓
2001			✓
2002		✓	
2003		✓	✓
2009		✓	✓

## REFERENCES /FURTHER READING

Eburn, M and Jackman, B, 2011, ‘Mainstreaming fire and emergency management into law’, *Environmental and Planning Law Journal* 28(2), 59-76

Australian Productivity Commission (2008) ‘Report on Government Services’ (Canberra).

years, and even when they are resolved with no finding of liability, the emotional costs to members and the service, and people affected by the fire, can be a cause of further distress. These burdens can also be felt in post-event inquiries such as coronial proceedings and royal commissions.

Bushfire CRC researchers are conducting end user meetings to demonstrate the true legal risk that fire agencies face and to identify policy alternatives that will allow fire agencies to remain as accountable learning institutions

without undue cost to the service or to the volunteer ethos upon which the community depends.

In the next stage, the research will look at how volunteers and fire managers see their role and look at the impact of law and legislation upon their ability to prevent, prepare for and respond to fire.

## FUTURE DIRECTIONS

Researchers from the Bushfire CRC will be asking fire agencies and volunteers for their experiences with the law and whether the fear of legal consequences impacts upon fire management decisions or people’s willingness to volunteer.

Identifying how law impacts upon fire management will allow the researchers, and the Bushfire CRC, to advocate for reforms to ensure that the law and its processes do not increase our community’s vulnerability to fire.

**Fire Note is published jointly by the Bushfire Cooperative Research Centre (Bushfire CRC) and the Australasian Fire and Emergency Service Authorities Council (AFAC). This Fire Note is prepared from available research at the time of publication to encourage discussion and debate. The contents of the Fire Note do not necessarily represent the views, policies, practices or positions of any of the individual agencies or organisations who are stakeholders of the Bushfire CRC.**

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AFAC is the peak representative body for fire, emergency services and land management agencies in the Australasia region. It was established in 1993 and has 35 full and 10 affiliate member organisations.