



SUBMISSION

on the

**CONCEPT PAPER: REVIEW OF THE EMERGENCY
SERVICES ACTS**

PART 1
Achievement of the Primary Objectives

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INTRODUCTION

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organization representing and supporting the work and interests of Local Governments in Western Australia.

The Association provides an essential voice for 1,249 elected members and approximately 14,500 Local Government employees as well as over 2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

The Association welcomes the opportunity to comment on the *Concept Paper: Review of the Emergency Services Acts*. The Association has undertaken a comprehensive consultation process to ensure that the key concerns for Local Governments are captured in the Association's submission. Local Governments have been encouraged to send through their own submissions in addition to the WALGA submission to enable local variations to be captured in the DFES consultation process.

WALGA's submission is comprised of two Parts:
Part 1: Achievement of the Primary Objectives
Part 2: Concept Paper (Options Table)

The Association would also like to thank the DFES staff from the Review Team who attended the WALGA workshops to answer questions and provide clarity around some of the 'Preferred Options'.

BACKGROUND

This submission is informed by Local Government feedback captured in a series of workshops held with Local Government representatives in May 2014. The Local Government sector is supportive of efforts to increase WA's assessment prevention, risk mitigation, response and recovery capacity. However, the sector also has serious concerns about the increased responsibilities and costs for Local Governments of many of the preferred options within the Concept Paper. While Local Governments are aware that the Concept Paper is intended to be a high-level concept document, the sector strongly recommends that further exploration and modelling of many of the proposals is undertaken prior to finalization of any legislation, to identify the potential impacts on State and Local Government business, and the possible risks to community safety.

The Association encourages DFES to commit to working in partnership with Local Government and the community to develop practical systems that meet the need to reduce red tape, while providing enough flexibility to apply the necessary local knowledge to solve unique local problems.

Local Government plays an essential role in the State's emergency response and recovery capacity and an increasing role in mitigation across a number of natural hazards. Local Government is therefore a key stakeholder in the development and implementation of any future emergency services legislation.

COMMENT ON PRIMARY OBJECTIVES

The Concept Paper outlines that the four primary objectives of the review are to:

1. *Increase community resilience through promoting a focus on shared responsibility for prevention, while also coordinating emergency preparedness and response delivery across government agencies, Local Government, volunteers and private landowners.*
2. *Promote highly motivated, resourced and well trained emergency responders, both volunteers and career, that strive to keep themselves and others safe.*
3. *Provide the framework, powers and protections necessary to allow all emergency services personnel and agencies to carry out their functions in the best interests of the community.*
4. *Clearly identify the roles, functions, responsibilities and control mechanisms required to enable government agencies, local government and emergency services personnel to achieve effective interoperability.*

Local Government is supportive of the primary objectives but is concerned that the Concept Paper does not include the provisions necessary to bring about the desired outcomes. The following comments and recommendations on each of the objectives are intended to

OBJECTIVE 1

Increase community resilience through promoting a focus on shared responsibility for prevention, while also coordinating emergency preparedness and response delivery across government agencies, Local Government, volunteers and private landowners.

The proposals contained in the Concept Paper, appear to predominantly focus on the obligations and responsibilities of Local Government. While the Concept Paper includes a proposal to bind the Crown to the entire Act, it does not include much detail on how State agencies and agents of the State will be required to meet their obligations.

Local Government supports a focus on shared responsibility and coordination and acknowledges that the sector is best placed to ensure that private landowners are also bound to the objectives of the Act. The overarching objective will not be achieved however, unless there is clarity and greater detail included in the legislation on the responsibilities of State agencies and agents of the State and how they will be required to meet their obligations.

RECOMMENDATION 1:

That the new Emergency Services Act includes the risk mitigation and coordination obligations of State agencies, as well as those for Local Government and private landowners.

In addition, whilst Local Government is supportive of the intent of the objective to increase risk mitigation and community preparedness, the Concept Paper recommendation that the management and current model for the Emergency Services Levy remains unchanged, does not reflect a commitment to achieve this by the State. Without doubt, a significant capital investment and increased operational funding will be required to pay for the new mitigation

activities, as well as the training of individuals and the development of supporting operational and business systems.

RECOMMENDATION 2:

That in conjunction with stakeholder, DFES undertakes a full assessment of the potential costs for State agencies, Local Government and private landowners associated with the new risk mitigation obligations outlined in the Concept Paper.

RECOMMENDATION 3:

That the State Government commits to identifying a sustainable funding option for risk mitigation activities and functions under any new Emergency Services Acts. This should include a review of the future purpose and use of the Emergency Service Levy.

Objective 2

Promote highly motivated, resourced and well trained emergency responders, both volunteers and career, that strive to keep themselves and others safe.

Local Governments strongly support increased training for emergency services personnel and volunteers throughout the State, as the training system currently in place is inadequate. A commitment must be made to develop and deliver equitable, affordable and accessible training to all emergency services personnel.

The commitment to deliver better training must also be extended to include training for personnel on risk assessment and mitigation works. The focus on mitigation and prevention in the new legislation will require a network of new qualified practitioners to carry out these activities. To reduce the risk to the community, DFES need to commit to developing appropriate training standards for volunteers, State agencies, Local Government and private contractors, and the delivery of a comprehensive training program that is accessible to all communities throughout the State.

RECOMMENDATION 4:

That DFES commit to working in consultation with Local Governments and volunteer brigades to develop hazard appropriate training for emergency services personnel.

RECOMMENDATION 5:

That any future DFES training program is adequately resourced to deliver training across Western Australia on an equitable basis, in-line with local needs and schedules.

Objective 3

Provide the framework, powers and protections necessary to allow all emergency services personnel and agencies to carry out their functions in the best interests of the community.

The intent of this objective is strongly supported, Unfortunately the proposed protection from liability model is inadequate and may inadvertently result in a reduction in mitigation activities being carried out by State agencies and Local Government due to fear of potential liability if something goes wrong. Agencies undertaking risk mitigation activities to address responsibilities and functions of the Act must be offered more comprehensive protection from liability.

The risk mitigation obligations expected of Local Governments will certainly increase under the new legislation. It is therefore important that there is some sort of enhancement in liability protection commensurate with these more onerous obligations. Retaining existing coverage for anything a person has done in good faith in the performance of function under the Emergency Services Acts does not adequately mirror the augmented responsibilities Local Governments will undoubtedly experience under the new legislation. The threshold test of a person having to show they are vested with 'powers' under the Acts in respect of the activity, and were using those powers when causing the loss or damage, will inevitably exclude many risk mitigation activities from liability protection.

There is strong argument for saying that certain risk mitigation activities may be regarded as being of sufficient importance to warrant protection from liability. Consequently the Association and Local Government Insurance Services (LGIS) would rather see the Protection Clause enhanced to provide for specific activities to be covered – such as hazard mitigation or acting in terms of a risk management plan.

A commitment to quality risk mitigation training, an emphasis on developing effective state-wide standards and procedures in terms of risk mitigation, and coherent inter-agency communication and leadership should alleviate any concerns over any potential increase in negligence in the conduct of risk mitigation work. Furthermore, skilled drafting of the new legislation should address any concerns over statutory ambiguity as to which activities are, or are not, covered by any prospective enhancement in the Protection Clause.

The Association and LGIS disagree with the assertion that ambiguity over interpretation of the prospective legislation is a cogent argument against expanding the Protection Clause to cover recognised risk mitigation activities. Perhaps an emphasis on *acting in accordance with*, rather than necessarily *performing a function under*, the new emergency services legislation would be a more appropriate liability threshold test, especially given the potential increase in Local Government obligations envisioned in the Concept Paper.

In addition, the proposed option that suggests that the new legislation remains silent on 'burden of proof' will also result in undue stress for State agencies, Local Governments and private contractors. Leaving it up to the defendant (State agencies, Local Governments and private contractors undertaking mitigation activities) to prove they acted in 'good faith' when the complainant does not need to prove otherwise, is unfair and inequitable.

RECOMMENDATION 6:

That DFES work in consultation with Local Government Insurance Services and WALGA to explore the liability implications for Local Government in relation to risk mitigation activities prescribed in the new Emergency Services Act.

Objective 4

Clearly identify the roles, functions, responsibilities and control mechanisms required to enable government agencies, local government and emergency services personnel to achieve effective interoperability.

Local Government supports the introduction of more clarity around functions, responsibilities, roles and powers under the new legislation, but believes that the Concept Paper does not go far enough. Many Local Governments are concerned that confusion within the community in regard to who is responsible for what, and who has the power to direct private landowners, increases the risk to the community. Many Local Governments have suggested that the

legislation or regulations include details as to who is responsible for what, and in what situation powers may be used.

Further exploration of the implications of expanding risk mitigation activities to include all hazards also needs to be undertaken. Local Governments support an all hazard approach to risk mitigation and preparedness, and many currently employ a number of risk mitigation strategies across multiple hazards. The training and expertise, resourcing and time impacts of expanding these responsibilities, however, needs to be identified. Currently many Local Governments do not have the capacity to increase their assessment and mitigation schedules. A commitment to further training and funding needs to be made to meet the increase in responsibilities.

RECOMMENDATION 7:

That DFES makes a commitment to explore the cost and resource implications of expanding the legislation to include all hazards, and to develop a proposal to build capacity and resources to meet these requirements under the Act.

Objective 5

Simplifying the current emergency services legislation and the provision of emergency services, by eliminating duplication and overlap of effort.

While this objective is supported in-principle, Local Governments have expressed considerable concerns with many of the corresponding proposals within the Concept Paper. Specifically, the proposals relating to establishing a single Fire Danger Period, not permitting Local Governments to alter Fire Danger Periods, and streamlining the fire permit system, will mean that many decisions will be made centrally by DFES, and remove the flexibility Local Governments and brigades currently have to minimise risk by controlling local conditions.

The proposals in the Concept Paper related to these matters need to be explored further to enable the potential consequences of adopting such a model to be understood.

RECOMMENDATION 8:

That DFES undertakes further assessment and scenario planning on the streamlined risk mitigation strategies outlined in the Concept Paper to identify the potential risks to community safety, if the proposals were to be adopted.

CONCLUSION

A number of the options outlined in the Concept Paper were misinterpreted by Local Government, and inadvertently caused concern and angst in regard to the option being proposed. **The Association recommends that for the next public consultation phase for this project, a concerted effort is applied to ensuring that the proposed provisions are adequately explained, and the potential impacts explored in full.**

The options that were misinterpreted are identified in **Appendix A**.

Local Government is supportive of the promotion of 'shared responsibility' for prevention and mitigation across State agencies, Local Government and private landowners. Local Governments acknowledge that they are a key stakeholder in assessing and mitigating risks across hazards, as well as playing a significant role in supporting response delivery across the State.

The Concept Paper introduces a number of new obligations for Local Governments, particularly in relation to risk mitigation on Local Government land and private landholdings. While the Concept Paper is intended to be a high-level concept document, many of the 'Preferred Options' need further exploration to fully determine the implications for the WA community.

While Local Governments support the increased focus on risk mitigation, the capacity of Local Governments and brigades to meet these new responsibilities differs greatly across the State. Further training and funding will be required over an extended period of time to raise the standard of risk mitigation, assessments and reporting across the State, and to sustain this standard into the future.

The Concept Paper does not identify practically how the new obligations are to be funded or how other resources required to support the identified obligations under the Act are to be provided. Without a significant commitment from the State to invest in raising the standard of risk mitigation and prevention activities across Western Australia, local communities will continue to be put at risk.

The Association looks forward to contributing to further stages of the Review and working together with DFES and Local Governments to develop practical risk mitigation models that are feasible to implement, and will result in the best outcomes for local communities across the State.

For Local Government comments on the 'Preferred Options' in the Concept Paper, please refer to **Part 2**.



Western Australian Local Government Association

Submission to DFES Concept Paper – Review of the Emergency Services Acts

Part 2: Options Table

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WALGA Submission on the *Concept Paper: Review of the Emergency Services Acts (Options Table)*

CHAPTER 1: EMERGENCY SERVICES LEVY (ESL)

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
1.1 ADMINISTRATION OF THE ESL	
<p>1.1.1 PREFERRED OPTION: Responsibility for administration of the ESL to remain with DFES</p>	<p>Not supported.</p> <p><i>Many Local Governments are concerned that the perceived conflict of interest will not be addressed by keeping the status quo. Many Local Governments did comment, however, that if the ESL continues to be a fund for response purposes, the administration should sit with DFES as the subject experts. If the focus of the fund was to expand to include mitigation, for example, then administration will need an independent perspective. A concern has been raised, however, that if the Department of Finance administer the ESL, the money may find its way into general revenue.</i></p> <p><i>The Concept Paper indicates that the new Act will have a greater focus on mitigation and 'shared responsibility' across State agencies, Local Government and private landowners. The ESL, however, only continues to fund response, with the money going to Local Government limited to the needs and capacity of local brigades. For this reason, WALGA continues to advocate for a full review of the ESL, beyond a review of who should administer the fund, to ensure that an appropriate proportion of funding from the ESL is directed to Local Government to meet responsibilities under the Act.</i></p>
1.2 ESL FUNDING MODEL AND REVENUE STREAMS	
<p>1.2.1 PREFERRED OPTION: Retain the current ESL funding model</p>	<p>Not supported.</p> <p><i>There is strong support from Local Government to review the current ESL funding model. Many Local Governments have commented that the ESL does not adequately cover the costs associated with undertaking activities and functions of the Act, beyond the needs of DFES. There is an appetite to review the allocation and purpose of ESL to ensure that funds are allocated to higher risk areas, that funds are provided for mitigation as well as response (option 1.6), and to allow Local Governments to have more control over the allocation and distribution of funds.</i></p>

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	<i>The review of the ESL should also include a review of how the different ESL categories are allocated and charged, particularly Category 5. There is currently an inequity in the way Category 5 is prescribed, whereby farming properties that are comprised of multiple non-adjoining lots, receive multiple charges.</i>
1.3 ADDITIONAL LEVIES	
1.3.1 OPTION (preference not specified): Collecting an emergency services levy from vessel owners	Not supported. <i>Local Governments do not support further fees charged to the community, particularly where these costs are currently covered by the State government.</i> <i>Local Government does however acknowledge the significant costs associated with running the VMRS, and suggest an alternative model be developed that is funded through the ESL.</i>
1.3.2 OPTION (preference not specified): Collect an emergency services levy from motor vehicle owners	Not supported. <i>Local Governments do not support further fees charged to the community, particularly where these costs are currently covered by the State government.</i>
1.4 ESL ADJUSTMENTS	
1.4.1 PREFERRED OPTION: Provide clarification that adjustments will only be permitted in the current financial year	Supported. <i>Note: There was some confusion in relation to this option. Further clarification by DFES may be required. This option relates specifically to billing errors for landowners, not ESL allocations, although the concern was raised that errors or delayed payments for necessary overspends of ESL allocations is not being addressed in the Review.</i>

CHAPTER 2: ADMINISTRATION AND MISCELLANEOUS PROVISIONS

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
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2.1 FIRE DISTRICTS	
2.1.1 PREFERRED OPTION: Abolish Fire Districts	<p>Partially supported.</p> <p><i>Many Local Governments have commented that without a model, it is difficult to assess the full impact of this option. Some Local Governments are concerned that the abolishment of Fire Districts will cause confusion in relation to response arrangements. The main concern being that outside of the Metropolitan Area, local knowledge is essential; one size does not fit all.</i></p> <p><i>There will need to be further exploration as to how fire hydrants are managed with the abolishment of Fire Districts.</i></p>
2.2 LOCAL GOVERNMENT'S POWER TO DELEGATE	
2.2.1 PREFERRED OPTION: Allow local government to sub delegate powers as required	<p>Supported.</p> <p><i>No further comment.</i></p>
2.3 BUSH FIRE ADVISORY COMMITTEES IN LEGISLATION	
2.3.1 PREFERRED OPTION: Bush Fire Advisory Committees are removed from legislation and local government form hazard advisory committees to suit local needs	<p>Partially supported.</p> <p><i>Local Governments have questioned the proposal to replace Bush Fire Advisory Committees (BFAC) with hazard advisory groups commenting that they serve different needs. For many, the BFAC is an important information sharing forum, not just for Local Government. In some areas, bushfire is the main hazard, and will require its own committee.</i></p> <p><i>It has been acknowledged that some BFACs are not performing as intended, and are not as strategic as they should be to fulfil their designated function. The system does work for some, although many acknowledged that a better system could be developed.</i></p> <p><i>It has been recommended that BFACs remain, and Local Governments should have a choice if they want to establish or maintain a BFAC. Guidelines to assist BFACs or hazard advisory committees meet their intended purpose could also be developed.</i></p>

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2.4 STRUCTURE OF POWERS	
2.4.1 PREFERRED OPTION: Emergency service powers are structured into general classes of powers (e.g. prevention; response; inspection; investigation and recovery)	<p>Supported.</p> <p><i>A draft model should be developed to clarify how the powers will be structured. A concern was raised as to the powers of volunteers within the new Act, reiterating that volunteers should not be taken from their primary role to undertake other duties, such as investigation for example.</i></p>
2.5 ABILITY TO TAKE WATER	
2.5.1 PREFERRED OPTION: Water may be taken as required to perform a function under the Act, but will be replenished as soon as practicable, in certain cases	<p>Partially supported.</p> <p><i>A number of concerns were raised in relation to the Preferred Option:</i></p> <ol style="list-style-type: none"><i>1. Who pays for the replenishment of water?</i><i>2. There needs to be clarity as to the parameters around what is a 'practicable' time to replenish water.</i><i>3. Will drinking water be replaced like-for-like?</i><i>4. What are the potential liability issues if there is damage caused during the procedure?</i> <p><i>It has been suggested that alternative water supplies for fire suppressant purposes be included in new developments to reduce the need to use drinking water.</i></p>
2.6 APPROVED INDUSTRY UNITS	
2.6.1 PREFERRED OPTION: Provide for approval of Industry Response Units to act as directed	<p>Supported.</p> <p><i>No further comment.</i></p>
2.7 INVESTIGATION POWERS	
2.7.1 PREFERRED OPTION: Establish investigation as a function of the FES Commissioner and provide specifically for investigation powers	<p>Partially supported.</p> <p><i>Local Governments have questioned potential duplication under the Act, and the powers of the WA Police. Clarification around how and when the powers will apply, and the intent of this use, should to be provided.</i></p>

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WALGA Submission on the *Concept Paper: Review of the Emergency Services Acts (Options Table)*

CHAPTER 3: RISK MITIGATION

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
3.1 BINDING THE CROWN	
3.1.1 PREFERRED OPTION: Binding the Crown to the entire Act	<p>Supported.</p> <p><i>Local Government supports the binding of the Crown to ensure maximum protection for people and property. The implications of binding the Crown to the entire Act needs further exploration, however, including how to manage risk for parcels of land or rail and road corridors, for example, when another agency is acting on behalf of the State. The risks associated with management orders over Crown land, and where the responsibility for managing the risk on Unallocated Crown Land and Unmanaged Reserves ultimately lies, also needs to be clarified.</i></p>
3.2 DIRECTING THE CROWN (STATE AGENCIES)	
3.2.1 PREFERRED OPTION: The FES Commissioner can direct State agencies	<p>Supported.</p> <p><i>Local Government supports the FES Commissioner directing State agencies however the proposed system needs to be developed further to identify whether it will have the desired outcome. Local Governments do acknowledge that there needs to be a better system to ensure that State agencies engage and undertake risk mitigation activities.</i></p> <p><i>The consequences also need to be further explored. For example, if State agencies are found non-compliant, who will undertake mitigation work on this land? Will DFES staff be required to issue infringements? The system needs to be effective and ensure that the process does not cause delays to mitigation activities, and therefore increasing the risk to the community.</i></p>
3.3 RISK MITIGATION ON LOCAL GOVERNMENT LAND	
3.3.1 PREFERRED OPTION: Making provision for local government	<p>Partially supported.</p> <p><i>While the principle is supported, the feasibility and costs associated with this option needs to be</i></p>

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<p>responsibilities in respect of risk mitigation activities on its land or land it manages, controls or is under its care</p>	<p><i>acknowledged, including local capacity to meet these responsibilities. Many commented that under the current structure, this is not feasible.</i></p> <p><i>Many Local Governments would also like to see the responsibilities of State agencies included in the new Act as well, including their ‘obligations to take practicable steps to prevent and minimise the occurrence and/or spread of bushfires or other natural hazards on any land directly under its control, care, or management.’</i></p> <p><i>The implications for an ‘all hazard’ approach also needs to be explored. While Local Governments support an all hazards approach, many do not have the expertise to assess and mitigate risks across a number of hazards.</i></p> <p><i>A definition for ‘any land directly under its control, care, or management’ also needs to be clarified, including responsibility for Crown land, and responsibilities within gazetted town boundaries.</i></p>
<p>3.4 DIRECTING LOCAL GOVERNMENT TO ENGAGE IN RISK MITIGATION</p>	
<p>3.4.1 PREFERRED OPTION: Local government will have an obligation to take such mitigation steps as required by the FES Commissioner</p>	<p><i>Partially supported.</i></p> <p><i>While supported in principle, the concerns are similar to those expressed for 3.3.1, particularly local capacity to undertake the assessment and mitigation steps required, especially those Local Governments who manage large areas of land with small staff numbers.</i></p> <p><i>The process whereby the FES Commissioner requires a Local Government to take certain steps also needs to be explained further. Local Governments are concerned that the timeframes could be unreasonable, and/or no consideration of local conditions or local knowledge will be taken into account when requiring Local Government to undertake works.</i></p> <p><i>This option also assumes that a process would be established for determining where and when the level of risk mitigation is appropriate. Local Government should be consulted during the assessment and decision making process.</i></p> <p><i>State agencies should also have an obligation to take such mitigation steps as required by the FES Commissioner.</i></p>
<p>3.5 LEGISLATIVE BASIS FOR COMMITTEES</p>	

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3.5.1 PREFERRED OPTION: No further committees	Supported. <i>No further comment.</i>
3.6 REPORTING	
3.6.1 PREFERRED OPTION: Local government and specified State agencies must report to the FES Commissioner on items specified in the legislation and additional matters as may be required by the FES Commissioner	Partially supported. <i>While the principle is generally supported, the proposed process needs to be developed further. Many Local Governments have expressed concern regarding the current level of reporting they already undertake, and do not want to add to this unnecessarily. The purpose and intent of reporting should be clarified.</i> <i>Reporting should also tie in to Local Government schedules and, rather than needing to report by the end of the financial year, reports should be due in September, before the bushfire season.</i> <i>Communication from DFES to Local Government and local brigades also need to be improved. There is an expectation that Local Governments will be able to access the data collected.</i>
3.7 RISK MANAGEMENT PLANNING	
3.7.1 PREFERRED OPTION: Maintain current risk management planning arrangements	Supported. <i>No further comment.</i>
3.8 MITIGATING THE EFFECTS OF OTHER NATURAL HAZARDS	
3.8.1 PREFERRED OPTION: Empower local government to issue notices to owners and occupiers to require them to mitigate the risk associated with other specified natural hazards	Partially supported. <i>The principle is supported, but the feasibility of the Preferred Option needs to be explored. There will potentially be a large increase in cost to Local Government as a result of these new responsibilities. Many Local Governments also expressed the concern that Local Government may have a potential liability risk in regard to assessments not done or done incorrectly. Local Governments do not currently have the expertise or resourcing to do this work. The cost related for Local Governments associated with non-compliance will determine its effectiveness and eventual use of powers.</i> <i>Many Local Governments identified that further training and funding will need to be made available for Local</i>

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	<i>Governments to meet these responsibilities.</i>
3.9 HAZARD MANAGEMENT PLANS – PRIVATE LANDHOLDINGS	
3.9.1 PREFERRED OPTION: Local government may require the development and implementation of a hazard management plan on private land	<p><i>Partially supported.</i></p> <p><i>The principle is supported, but the impact on Local Government resources needs to be identified including undertaking the risk assessment, signing off plans, and monitoring compliance. In addition, what is the procedure involved when the FES Commissioner requests a Local Government to require a hazard management plan for a private property?</i></p> <p><i>Note: There was some confusion as to who would develop the plans, the potential triggers, and what properties would require hazard management plans. Further clarification may need to be provided by DFES. This option provides Local Government with the ability to introduce hazard management plans as a potential risk mitigation strategy for larger private lands, for example plantations. The Local Government will require this of the private landowner who will develop the plan.</i></p>
3.10 THE FES COMMISSIONER AND PRIVATE LANDOWNERS	
3.10.1 PREFERRED OPTION: The FES Commissioner may require private landowners to conduct risk mitigation on private land	<p><i>Partially supported.</i></p> <p><i>Local Governments have expressed the concern that the private landowner may get confused if they are receiving instructions from Local Government and the FES Commissioner. There needs to be consistency in approach. A model or draft procedure will need to be developed.</i></p>
3.11 PROHIBITED AND RESTRICTED BURNING TIMES	
3.11.1 PREFERRED OPTION: Replace Restricted and Prohibited Burning Times with a single Fire Danger Period	<p><i>Partially supported.</i></p> <p><i>While Local Government acknowledges that a new system that addresses the inconsistency across the State in relation to the application of Restricted and Prohibited Burning Times, a single Fire Danger Period may limit local flexibility needed when addressing risks arising from unique local conditions.</i></p> <p><i>Local Governments acknowledge the confusion caused by different Restricted and Prohibited Burning Times across the State and from Local Government to Local Government. It was suggested that the limitations should be set at a local or a district level, so that regional weather conditions can set the restrictions with local</i></p>

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	<i>input, rather than one Fire Danger Period across the State set by DFES in Perth.</i>
3.12 THE POWER TO ALTER A FIRE DANGER PERIOD	
3.12.1 PREFERRED OPTION: Local government is not permitted to alter Fire Danger Periods	<p><i>Not supported.</i></p> <p><i>Concerns have been raised regarding this option. Many Local Governments comment that there needs to be a mechanism for the Local Government or community to have input, and this will take control out of their hands. It is an essential tool Fire Control Officers (FCOs) use to control conditions. More work needs to be done to explore the feasibility of this concept, and the implications for the community.</i></p> <p><i>Local Governments also question the application of Harvest Vehicle Movement Bans, and how this system will operate under the new Act.</i></p>
3.13 TOTAL FIRE BANS - EXEMPTIONS	
3.13.1 PREFERRED OPTION: Allow for an automatic exemption to undertake an activity during a Total Fire Ban if the prescribed conditions are met. The person must notify DFES and local government of their intent to undertake the exempted activity	<p><i>Partially supported.</i></p> <p><i>Many Local Governments commented that this option and a number of the following options should be grouped together and explored further to understand the implications. The concern regarding lack of flexibility and the opportunity for local input has also been raised.</i></p>
3.14 FIRE DANGER FORECASTS	
3.14.1 PREFERRED OPTION: Remove all reference to Fire Danger Forecasts	<p><i>Partially supported.</i></p> <p><i>Many Local Governments commented that this option and a number of the following options should be grouped together and explored further to understand the implications. The concern regarding lack of flexibility and the opportunity for local input has also been raised.</i></p>
3.15 TOTAL FIRE BAN – GAZETTAL OF DECLARATION	
3.15.1 PREFERRED OPTION: Replace Gazettal requirement with the FES	<p><i>Partially supported.</i></p>

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Commissioner's certificate of proof	<i>Many Local Governments commented that this option and a number of the following options should be grouped together and explored further to understand the implications. The concern regarding lack of flexibility and the opportunity for local input has also been raised.</i>
3.16 PERMITS TO BURN	
3.16.1 PREFERRED OPTION: Permits will be required for burns that pose a higher risk, with conditions for most burns set out in the regulations	<p><i>Not supported.</i></p> <p><i>A number of concerns have been raised regarding this Preferred Option:</i></p> <ol style="list-style-type: none"><i>1) The current system allows brigades and Local Governments to review the requests to burn at a local level. A FCO will get to know residents and the land in question, and identify any risks. The FCO has the ability to say "no".</i><i>2) The definition of 'higher risk' will need to be developed.</i><i>3) It is unreasonable to expect that someone wanting to undertake burning will know the requirements in the regulations.</i><i>4) What are the standards to assess higher risk?</i><i>5) What training will be provided to undertake assessments?</i> <p><i>Permits are also issued differently across Local Governments; some go straight to the FCO, others use Customer Service staff to make judgements to progress permit applications. The model needs to take into account current systems and procedures acknowledging the important role local knowledge plays in assessing risk.</i></p>
3.17 HAZARD MITIGATION STRATEGIES: PROTECTION FROM LIABILITY	
3.17.1 PREFERRED OPTION: State agencies, local government and private landowners should not be afforded protection from civil liability in cases of risk mitigation activities	<p><i>Not supported.</i></p> <p><i>There is a concern that the new legislation will increase Local Government responsibility, but will make it difficult for Local Government to undertake mitigation activities due to fear from potential liability. It is a possibility that this option could impede risk mitigation activities.</i></p> <p><i>This option needs to be explored further. A suggestion has been made that instead of the 'good faith' test, there should be a 'general negligence' threshold. There will need to be prescribed standards to allow agencies to prove that the standards have been met.</i></p>

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	<p><i>If risk mitigation, and specifically prescribed burning, is a requirement under the new Act, Local Government should be exempted from liability if they act in accordance with legislation and prescribed standards.</i></p> <p><i>Further investigation needs to be undertaken to understand the scope and separation of protection from liability when multiple-parties are involved in an incident. Where does the liability rest when an incident occurs when undertaking activities in-line with a Bushfire Risk Mitigation Plan?</i></p> <p><i>Liability protection will need to cover Local Government staff, volunteers and contractors. The concern is that if contractors are not covered, they cannot get insurance. Training needs to be developed to ensure that all involved are appropriately skilled and are aware of their responsibilities.</i></p>
<p>3.18 HAZARD MITIGATION STRATEGIES: PRESCRIBED BURNING AS A SEPARATE CONCEPT</p>	
<p>3.18.1 PREFERRED OPTION: Prescribed Burning is defined and referred to as a distinct mitigation strategy</p>	<p>Supported.</p> <p><i>This option is generally supported, however the cost to Local Government needs acknowledged, especially if Local Government will be required to undertake these activities outside a gazetted town site.</i></p>
<p>3.19 HAZARD MITIGATION STRATEGIES: REGULATION OF PRESCRIBED BURNING</p>	
<p>3.19.1 PREFERRED OPTION: The FES Commissioner has the power to provide a system that must be compiled with in the case of every Prescribed Burn</p>	<p>Partially supported.</p> <p><i>While the principle is supported, the feasibility of implementing the system across all brigades and Local Governments was questioned. Local Governments support the introduction of minimum standards, but comment that training and support will need to be consistent, and available, for the system to be effective.</i></p> <p><i>Local Governments raised the concern that the capacity and interest in undertaking further administration work at a brigade level varies significantly. There is a concern that addition restrictions will lead to delays in prescribed burning.</i></p>
<p>3.20 HAZARD MITIGATION STRATEGIES: PRIMACY OF LEGISLATION</p>	
<p>3.20.1 PREFERRED OPTION: In the case of any conflict between the new emergency services Act (including any legislated guideline, notice or direction issued in</p>	<p>Partially supported.</p> <p><i>This option needs to be explored further to identify potential risks associated with people using this provision to their advantage to clear protected flora and fauna. A model will need to be developed, in consultation with</i></p>

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<p>terms of the Act) and any other prescribed Act, the new emergency service Act will prevail</p>	<p><i>local community interest groups.</i></p>
<p>3.21 HAZARD MITIGATION STRATEGIES: ASSET PROTECTION ZONES</p>	
<p>3.21.1 PREFERRED OPTION: Include provisions that deal specifically with Asset Protection Zones</p>	<p>Supported.</p> <p><i>Local Governments support the Preferred Option, but question the inclusion in legislation when many issue Asset Protection Zone (APZ) notices already. The practicality of issuing two distinct notices was questioned, with the suggestion that the need for an APZ and fire break notice can be included in a single notice, put forward.</i></p> <p><i>Whether or not DFES intends for APZ notices to be issued for current or future developments is unclear. Clarification needs to be provided regarding whether an APZ will apply retrospectively.</i></p> <p><i>Note: This option caused some confusion, and further clarification by DFES may be needed. The Preferred Option relates to the inclusion in legislation of Asset Protection Zones as another distinct mitigation strategy that can be employed by Local Government similar to a 'firebreak'.</i></p>
<p>3.22 HAZARD PRONE AREA DECLARATIONS</p>	
<p>3.22.1 PREFERRED OPTION: Empower the FES Commissioner to designate hazard prone areas</p>	<p>Partially supported.</p> <p><i>Local Governments support the position that it should be the State, not Local Government, who is responsible for declaring hazard prone areas. The assessment of hazards and hazard mapping however, need to have local input. Mapping, in particular, needs to be developed in consultation with Local Government and the local community.</i></p> <p><i>Other hazards, not just bushfire prone areas, need to be included.</i></p>

CHAPTER 4: VOLUNTEER BRIGADES, GROUPS AND UNITS

<p>CONCEPT PAPER PREFERRED OPTION</p>	<p>WALGA COMMENTS</p>
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4.1 VOLUNTEER CHARTER	
4.1.1 PREFERRED OPTION: Recognise a single Volunteer Charter in the new emergency services Act	Supported. <i>The 'Preferred Option' is generally supported, however some Local Governments did question the feasibility of the option considering all brigades and units do vary.</i>
4.2 SEPARATION OF VOLUNTEER EMERGENCY SERVICES	
4.2.1 PREFERRED OPTION: Retain the current legislative separation of the volunteer emergency services	Supported. <i>The 'Preferred Option' is generally supported, however the comment was made that there is benefit in having all brigades under the FES Commissioner for consistency and to limit potential liability issues and further cost shifting to Local Governments.</i>
4.3 ADMINISTRATION ON VOLUNTEER BGUS	
4.3.1 PREFERRED OPTION: Provide a set of minimum administrative requirements, that apply to all BGUs	Partially supported. <i>While the principle is generally supported, practically there will need to be significant investment for this to happen. Whether the brigade runs its' own administration, or whether this is done by the Local Government, additional resources will be required.</i>
4.4 CONDUCT AND DISCIPLINE	
4.4.1 PREFERRED OPTION: Discipline and conduct matters handled at BGU level in line with minimum specified requirements with some matters to be escalated to the FES Commissioner	Partially supported. <i>While the principle is generally supported, many Local Governments would like to see included the requirement for discipline and conduct matters to go through the Local Government after internal assessment by the brigades, and before being referred to the FES Commissioner.</i>
4.5 SETTING MINIMUM TRAINING STANDARDS FOR VOLUNTEERS	
4.5.1 PREFERRED OPTION: Legislation sets out that the FES Commissioner has the power to set training standards and	Partially supported. <i>While the principle is generally supported, many Local Governments are concerned about the cost of further</i>

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<p>those standards are set out in policy</p>	<p><i>training, and the appropriateness and availability of the funding that currently exists.</i></p> <p><i>It was suggested that this option be explored further to illustrate:</i></p> <ol style="list-style-type: none"> <i>1) How minimum standards across different brigades will be set, and implemented?</i> <i>2) How different requirements (skills) for different brigades will be taken into account?</i> <i>3) How training will be implemented in the regions, specifically?</i> <i>4) How will Recognition of Prior Learning (RPL) will be resolved?</i>
<p>4.6 GENERAL DIRECTION AND CONTROL OF BGU MEMBERS</p>	
<p>4.6.1 PREFERRED OPTION: Where DFES is responsible for managing BGUs, all members fall under the immediate order and control of the FES Commissioner</p>	<p>Supported.</p> <p><i>No further comment.</i></p>
<p>4.7 EMPLOYMENT PROTECTION</p>	
<p>4.7.1 PREFERRED OPTION: No employment protection for volunteers provided in the new emergency services Act</p>	<p>Supported.</p> <p><i>Note: There was some confusion around this option and further clarification by DFES may be needed. This Preferred Option relates specifically to protecting a volunteer's existing employment if their employer ends their employment due to extended absenteeism caused by volunteering.</i></p>
<p>4.8 RESPONSIBILITY FOR STATE EMERGENCY SERVICES</p>	
<p>4.8.1 PREFERRED OPTION: Retain the SES as a volunteer emergency service under DFES</p>	<p>Supported.</p> <p><i>While the Preferred Option is supported, many Local Governments have expressed dissatisfaction with the administration burden involved with the current financial management of the brigades through the Local Government. Currently no MOUs or other agreements exist to clarify the relationship between DFES, SES brigades and Local Government. It has also been commented on that this arrangement increases the amount of legislative burden involved, and will be best suited with DFES. Some Local Governments have also been caught out of pocket due to investment in SES infrastructure.</i></p> <p><i>The additional costs to Local Government and the expectations that are raised due to the unusual</i></p>

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	<p><i>arrangement whereby Local Governments distribute ESL funds to SES, while having no further responsibility or management of the brigades, need to be acknowledged by DFES and addressed.</i></p>
<p>4.9 RESPONSIBILITY FOR BUSH FIRE BRIGADES</p>	
<p>4.9.1 PREFERRED OPTION PART A: Local government may, by agreement with DFES, hand over responsibility for a BFB to DFES</p>	<p><i>Partially supported.</i></p> <p><i>While the principle is supported, this process needs further exploration. Many Local Governments commented that the community and the brigade should be consulted before the handover process begins. Whether DFES was able manage the brigade locally (not from Perth) should also be identified as a priority. Many Local Governments also expressed the concern regarding the implication of having different arrangements for brigades across the State.</i></p> <p><i>The impact of handover on Local Government mitigation responsibilities also needs to be explored and clarified. Currently, Local Governments rely on volunteers to undertake much of the required mitigation activity on Local Government and private lands. If Local Government hands over responsibility, how will this work happen, and what additional resources will be required?</i></p>
<p>4.9.2 PREFERRED OPTION PART B: DFES may take responsibility for a BFB under certain circumstances without agreement from local government</p>	<p><i>Partially supported.</i></p> <p><i>While the principle is supported, this process needs further exploration. Many Local Governments commented that the appeals process needs to be clarified, including the definition of ‘established channels’ for appeals. In addition, Local Government ‘responsibility’ must also be clearly defined, including what the process is for when they are not meeting their responsibilities.</i></p> <p><i>It has also been recognised that the circumstance whereby DFES take responsibility for a brigade without Local Government agreement is likely to be rare and therefore significant. It was suggested that the decision should be at a Ministerial level, acknowledging the potential extent of the decision.</i></p>
<p>4.9.3 PREFERRED OPTION PART C: The FES Commissioner may establish (or disband) a BFB</p>	<p><i>Partially supported.</i></p> <p><i>While the principle is supported, this process needs further exploration. Many Local Governments commented that the option is supported as long as this is only for areas under DFES control, where Local Government has signed over responsibility.</i></p> <p><i>Consultation with the community and the Local Government before a brigade is established or disbanded is</i></p>

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	<i>essential.</i>
4.9.4 PREFERRED OPTION PART D: Local government cannot establish (or disband) a BFB without the approval of the FES Commissioner	<p>Partially supported.</p> <p><i>While the principle is supported, this process needs further exploration. The concern has been raised that DFES lack the necessary local knowledge to make this decision. Local Government should retain the ability to disband, but could offer management of the brigade to DFES before making this decision. The question was asked, however, why should Local Governments need the FES Commissioner's approval to establish or disband brigades when they are currently managed and run by Local Governments, not DFES.</i></p>

CHAPTER 5: RESPONSE, COMMAND AND CONTROL

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
5.1 RESPONSE, COMMAND AND CONTROL ARRANGEMENTS	
5.1.1 PREFERRED OPTION A: Introduce Response Agreements (that include agreement on the primary responder for an area, and details of command and control at incidents)	<p>Partially supported.</p> <p><i>While there was general support for this proposal, some Local Governments were concerned that a Response Agreement will take away flexibility to deal with unique circumstances arising from a particular incident.</i></p> <p><i>The comment was made that a Response Agreement should be an option applied at the discretion of the Local Government, or whether a particular circumstance required it. For example, providing clarity around the management of incidents on a particular parcel of land.</i></p>
5.1.2 PREFERRED OPTION B: Until a Response Agreement has been established current arrangements will continue	<p>Supported.</p> <p><i>No further comment.</i></p>
5.2 ENDORSEMENT OF INCIDENT CONTROLLERS	

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<p>5.2.1 PREFERRED OPTION: The FES Commissioner may endorse certain people as 'Incident Controllers'</p>	<p>Supported.</p> <p><i>Note: There was some confusion around this option and may require further clarification. This Preferred Option relates specifically to streamlining the process by which different agencies authorise Incident Controllers generally, not how an Incident Controller is appointed to manage a particular incident.</i></p>
<p>5.3 TRANSFER OF CONTROL OF INCIDENTS</p>	
<p>5.3.1 PREFERRED OPTION: The FES Commissioner has power to authorise a person to take control of an incident either upon request or due to the nature and extent of the incident</p>	<p>Supported.</p> <p><i>While this option is generally supported, there is some concern about the inclusions of 'all hazards' and a desire to see this option explored in more detail.</i></p>
<p>5.4 NOTIFICATION OF INCIDENTS</p>	
<p>5.4.1 PREFERRED OPTION: Requirement to notify DFES of all prescribed incidents anywhere in the State</p>	<p>Supported.</p> <p><i>While this option is generally supported, there is some concern regarding the additional resources needed to comply with a new reporting procedure.</i></p> <p><i>Some Local Governments have also queried the definition of a 'prescribed incident'.</i></p>
<p>5.5 PRESCRIPTION OF RANKS</p>	
<p>5.5.1 PREFERRED OPTION: The new emergency services Act gives the Minister for Emergency Services the power to set out the rank structures, for all BGUs, in the regulations</p>	<p>Supported.</p> <p><i>Local Governments are generally supportive of the Proposed Option, adding that while the existing structure is acceptable, consistency is needed in relation to rank systems across units.</i></p>
<p>5.6 BUSH FIRE LIAISON OFFICERS</p>	
<p>5.6.1 PREFERRED OPTION: Remove the option for the FES Commissioner to</p>	<p>Supported.</p> <p><i>Local Governments are generally supportive of the Proposed Option, but some made the comment that BFLO</i></p>

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appoint a BFLO	<i>positions must be funded through ESL funds.</i>
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CHAPTER 6: EMERGENCY SERVICES IN THE BUILT ENVIRONMENT

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
6.1 FES COMMISSIONER'S POWERS AT THE BUILDING PERMIT APPLICATION STAGE	
6.1.1 PREFERRED OPTION: DFES continues to have an advisory only role	<i>Supported.</i> <i>No further comment.</i>
6.2 REQUIREMENT FOR FES COMMISSIONER APPROVAL PRIOR TO THE ISSUE OF AN OCCUPANCY CERTIFICATE	
6.2.1 PREFERRED OPTION: The FES Commissioner is not able to prevent the issue of an occupancy certificate	<i>Supported.</i> <i>No further comment.</i>
6.3 THE FES COMMISSIONER'S POWERS OF INSPECTION	
6.3.1 PREFERRED OPTION: The FES Commissioner may inspect premises and take certain action if there is potential danger to life or property from a hazard that DFES is responsible for or due to a failure to meet DFES operational requirements	<i>Supported.</i> <i>No further comment.</i>
6.4 REQUIREMENTS FOR OWNER/OCCUPIER TO TAKE CERTAIN STEPS	
6.4.1 PREFERRED OPTION: The FES Commissioner has the power to require the owner/occupier of premises to take steps to	<i>Supported.</i>

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prevent or mitigate the effects, or potential effects, of any incident	<i>No further comment.</i>
6.5 POWERS OF EVACUATION, CLOSURE AND USE OF FORCE	
6.5.1 PREFERRED OPTION: Powers to evacuate, close and use force granted for all premises (except Class 1a) to the FES Commissioner or an authorised officer in the event of a potential danger to life or due to failure to meet DFES operational requirements	<i>Supported.</i> <i>No further comment.</i>
6.6 PUBLICATION OF DFES OPERATIONAL REQUIREMENTS	
6.6.1 PREFERRED OPTION: Publish a document of operational requirements (guidelines not set in legislation)	<i>Supported.</i> <i>No further comment.</i>

CHAPTER 7: OFFENCES AND ENFORCEMENT

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
7.1 DOLLARS VERSUS UNITS	
7.1.1 PREFERRED OPTION: Penalty amounts should be specified in units	<i>Supported.</i>
7.2 ENFORCEMENT	
7.2.1 PREFERRED OPTION: Assign enforcement powers to the parties as set	<i>Supported.</i>

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<p>out in Section 59 of the Bush Fires Act</p>	<p><i>While generally supported, some Local Government representatives suggest the inclusion of specific information in relation to which agency is responsible. It was suggested that this would provide clarity for those involved, and will result in more teeth behind the legislation.</i></p> <p><i>The comment was also made that often enforcement works better when the head of power is at a distance. For example, in a small community, a Local Government issuing a fine may not hold as much respect as if the WA Police or the DFES issued it, which impacts on compliance.</i></p>
<p>7.3 OPTIONAL WARNING SYSTEMS</p>	
<p>7.3.1 PREFERRED OPTION: Continue to allow enforcement agencies to issue warnings as they deem necessary</p>	<p>Supported.</p> <p><i>No further comment.</i></p>
<p>7.4 STRUCTURE OF PENALTIES FOR DAILY AND REPEAT OFFENDERS</p>	
<p>7.4.1 PREFERRED OPTION PART A: Improve daily penalty provisions</p>	<p>Supported.</p> <p><i>The concern was also raised that while improved daily penalty provisions were supported, Local Governments did not want to see the ability to mitigate the risk and pass on the cost (plus interest) taken away. While the daily penalty may have increased, the identified risk to the community is still prevalent.</i></p>
<p>7.4.2 PREFERRED OPTION PART B: Introduce graduated penalties for repeat offences</p>	<p>Supported.</p> <p><i>Local Governments, while supporting the Preferred Option, reiterate that when issuing infringement notices, the graduated enforcement procedure allows them to manage the workload, but also minimise costs by going straight to enforcement, for example, 'Improvement notice', 'Infringement notice', then 'Formal notice'. This can also be applied across hazards.</i></p> <p><i>In addition, Local Governments would like to see the ability to increase the yearly fines for repeat offenders. For example, if the Local Government had to mitigate the risk and clear fire breaks on private land one year, if the private landowner continued to not clear their land and rely on Local Government to undertake this, the Local Government should be able to increase the fine year to year taking into account previous behaviour.</i></p> <p><i>Local Government would also like to see the inclusion of provisions similar to those in the Litter Act 1979</i></p>

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	<i>where corporations are fined at a higher rate.</i>
7.5 INFRINGEMENT PROCEDURE WITHIN THE <i>CRIMINAL PROCEDURE ACT 2004</i>	
7.5.1 PREFERRED OPTION: The new emergency services Act is listed as a prescribed Act under the <i>Criminal Procedure Act 2004</i>	Supported. <i>No further comment.</i>
7.6 OFFENCES THAT ALSO APPEAR IN OTHER LEGISLATION	
7.6.1 PREFERRED OPTION: Remove offences in the emergency services legislation when clearly duplicated in the <i>Criminal Code</i> or adequately addressed in another contemporary Act in Western Australia	Supported. <i>No further comment.</i>
7.7 DAMAGE TO CRITICAL INFRASTRUCTURE	
7.7.1 PREFERRED OPTION: The new emergency services Act provides for a single provision containing an offence for damage to any property owned or operated by a person performing a function under the emergency services legislation	Supported. <i>No further comment.</i>
7.8 OFFENCES RELATING TO DISPOSAL OF CIGARETTES, CIGARS OR MATCHES	
7.8.1 PREFERRED OPTION: Create a new, more general offence and simplify the elements required to prove the offence	Supported. <i>While the Preferred Option is supported, there is the possibility that there may be unnecessary duplication of some of the provisions under the Litter Act 1979.</i> <i>Local Governments have also suggested the introduction of fines that have a different penalty rate depending</i>

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	<i>on whether the infringement occurred in the Fire Danger Period, or whether it occurred in a lower risk season.</i>
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CHAPTER 8: PROTECTION FROM LIABILITY

CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
8.1 ACTIVITIES PROTECTED	
8.1.1 PREFERRED OPTION: Retain existing coverage for anything a person has done in good faith 'in the performance or purported performance of a function under the emergency services Acts'	<p><i>Not supported.</i></p> <p><i>Local Governments are concerned that, on one hand, the new legislation represents a significant increase in Local Government responsibility, but on the other, does not include relevant provisions to adequately protect Local Governments when attempting to meet these responsibilities.</i></p> <p><i>There is support for Option 8.1.2 – The Protection Clause provides for specific activities to be covered (much as hazard mitigation or acting in terms of a risk management plan). There will need to be clarity regarding which activities or functions are included, and who is covered.</i></p> <p><i>There is a concern that by not including protection from liability for specific activities, a greater risk will be created by agencies fearful of undertaking responsibilities under the Act in case these activities go wrong.</i></p>
8.2 SPECIFIC MENTION OF CERTAIN GROUPS	
8.2.1 PREFERRED OPTION: Do not include specific groups (as specified in section 37(1a) of the Fire and Emergency Services Act) in the new emergency services Act	<p><i>Supported.</i></p> <p><i>No further comment.</i></p>
8.3 CIVIL AND CRIMINAL LIABILITY	
8.3.1 PREFERRED OPTION: Protection is	<i>Supported.</i>

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limited to Civil Liability	<i>No further comment.</i>
8.4 ESTABLISHING A BAR TO ACTION AGAINST EMERGENCY SERVICES PERSONNEL	
8.4.1 PREFERRED OPTION: A new section is included stating that a Court may order a stay of proceedings if satisfied that there is no reasonable ground for alleging that the Protection from Liability would not apply	Supported. <i>No further comment.</i>
8.5 BURDEN OF PROOF IN A PROTECTION FROM LIABILITY CLAUSE	
8.5.1 PREFERRED OPTION: Emergency services legislation remains silent on burden of proof	Not supported. <i>There are two main issues with this proposal:</i> <i>1) The protection from liability afforded under Preferred Option 8.1.1 and 3.17.1 is contingent on someone acting 'in good faith'. If the new Act is silent on burden of proof, there is the possibility of someone taking advantage of this provision. This will mean that agencies will be burdened with proving whether or not they acted in good faith, rather than complainants proving where the agency did not act in good faith. This does not seem either fair or efficient.</i> <i>2) If the burden of proof remains with the defendant, integrity of documentation, record keeping, systems management, and being able to demonstrate compliance with standards and accepted procedures and controls becomes paramount. Unfortunately, many State agencies, Local Government and brigades do not have rigorous, or consistent, file management procedures and systems. In addition, the State has yet to develop and implement standards for many of the proposed activities in the current legislation and future Act. Without these systems in place, agencies undertaking activities under the Act will be vulnerable.</i>

CHAPTER 9: FIRE AND RESCUE SERVICE OPERATIONAL STAFF

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CONCEPT PAPER PREFERRED OPTION	WALGA COMMENTS
9.1 ADMINISTRATIVE PROVISIONS	
9.1.1 PREFERRED OPTION: Administrative provisions contained in the regulations only	<i>Supported.</i> <i>No further comment.</i>