

Hi Craig,

Thanks for the phone call about the City's Bushfire Brigade Local Law. As briefly discussed on the phone, our key issues with the position taken by the JSCDL are detailed below.

Appointment, Employment, Payment and Dismissal of Bush Fire Control Officers

The Committee has taken the view that where a local government makes a Bush Fire Brigade Local Law, then that local law must deal with the appointment, employment payment and dismissal of Bush Fire Control Officers. The City does not accept the Committee's position on this issue and argued that Section 38 of the Bush Fires Act allows local governments to appoint Bush Fire Control Officers regardless of whether or not the local government has a Bush Fire Brigade Local Law. Section 38(1) of the Act prescribes:

"A local government may from time to time appoint such persons as it thinks necessary to be its bush fire control officers under and for the purposes of this Act, and of those officers shall subject to section 38A(2) appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it."

The City appoints all of its Rangers as Bush Fire Control Officers and it is Rangers that undertake the vast majority of inspection and compliance work in relation bush fire mitigation in the City. Rangers are appointed under the City's EBA and are not members of the City's Bush Fire Brigade.

If the City was to accept the Committee's view that a Bush Fire Brigade local law must deal with the appointment, employment, payment and dismissal of Bush Fire Control Officers, it would be concerned about the industrial relations implications this would have for Rangers who are not members of the Brigade. Why would you deal with the appointment, employment, payment and dismissal of local government staff through a local law dealing with a Bush Fire Brigade when those staff have no association at all with the Bush Fire Brigade? Indeed, why would you deal with the appointment, employment, payment and dismissal of any local government staff through a local law? It makes no sense and would potentially create all manner of industrial issues.

Detailing the Brigade's Operating Procedures in the Local Law

The City has a range of operating procedures for its Bush Fire Brigade that deal with a host of issues such as random drug and alcohol testing, provision of personal protective equipment, and training and development. If the City was to document all of its operating procedures in its local law, then any time it wanted to change one of those procedures, it could only do so by amending the local law. The practical implication of this is that if a new and improved piece of personal protective equipment became available and the City wanted to provide that equipment to its volunteers, it could only do so after amending its local law to prescribe the new item of equipment. Similarly, if a new training module was developed that the City wanted to make available to its volunteers, it would have to amend the local law to include that training module. This would impose unnecessary bureaucracy and red tape.

Substantive Non-Compliance with the Procedure to Make a Local Law

The report by the Committee contends that the City failed to comply with the procedure for making the local law because the local law that was adopted contained clauses that were different to the local law that was approved for advertising. The Committee's position was that if a new clause is added to a local law in between advertising and adoption, then a local government needs to recommence the process to make the local law.

The City advised the Committee that it considered this view to be incorrect and referred the Committee to section 3.12(4) of the Local Government Act which states:

"After the last day for submissions, the local government is to consider any submissions made and may make the local law as proposed or make a local law* that is not significantly different from what was proposed."*

The City did not consider that the amendments made to the local law prior to adoption rendered the local law significantly different from what was proposed.

The Committee subsequently conceded that the addition of a new provision to a local law prior to adoption does not automatically mean that a local law was significantly different to what was proposed but in doing so, advised that it still considered the City's local law to be so different to what was proposed that the City was required to recommence the process to make the local law. The City does not share this view.

Comments on the Committee's Report to Parliament

Having read the Committee's report to Parliament on the local law, the City does not believe that its position as communicated to the Committee is reflected in the report. One would have expected that the City's response to concerns raised by the Committee might have been discussed in the report.

The City's Plan for a New Local Law

The City fundamentally disagrees with the Committee's position on issues that must be addressed in a Bush Fire Brigade Local Law. The City will make a new local law but is unlikely to shift its position on the appointment, employment, payment and dismissal of Bush Fire Control Officers or the inclusion of Brigade Operating Procedures in its local law.

The City appreciates Dr Washer's interest in its local law and how it has come to be recommended for disallowance. If you need any further information or clarification, please don't hesitate to contact me.

Regards,

Grant Bradbrook
Director Business Services

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