

# Bushfire Mitigation Measures Draft Exposure Bill

## Explanatory Paper



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# BUSHFIRE MITIGATION MEASURES BILL

The Tasmanian Government is committed to protecting life and property from the potentially devastating impacts of bushfire. The measures we take to manage the risks of bushfire are important to all Tasmanians. This is why we want the community and other stakeholders to have their say about the Tasmanian Government's new draft Bushfire Mitigation Measures Bill.

## How to Make a Submission

You can find the submission template at Appendix I. The template is also available on the Department of Premier and Cabinet's website. The Government seeks feedback on the main elements the Bill. You do not have to answer all the questions in the template when making your submission for your views to be considered as part of the consultation process. If you want, you can also write an email or a letter explaining your views.

Submissions can be made on any aspect of the Draft Exposure Bill by either:

- Completing the Submission Template on the Department of Premier and Cabinet's website: [www.dpac.tas.gov.au/bmmb](http://www.dpac.tas.gov.au/bmmb)
- Writing to the Project Team

Email: [bushfiremitigation@dpac.tas.gov.au](mailto:bushfiremitigation@dpac.tas.gov.au)

Post: Office of Security and Emergency Management  
Department of Premier and Cabinet  
GPO Box 123  
HOBART TAS 7001

## Submissions close on 23 October 2020.

Please provide your name and contact details with your submission. If you are providing a confidential submission, please clearly state this.

Submissions should address issues that are relevant to what the Government is trying to achieve with the draft Bill. Any offensive or defamatory material will not be published.

Queries on the lodgement of submissions can be made by contacting the Project Team at [bushfiremitigation@dpac.tas.gov.au](mailto:bushfiremitigation@dpac.tas.gov.au)

## Use of Submissions

All submissions will be taken into account in finalising the draft Bushfire Mitigation Measures Bill. Unless stated as confidential, submissions will be treated as public information and will be published on the Department of Premier and Cabinet's website as soon as reasonably practical after the closing date for submissions. No personal information other than an individual's name or the organisation making a submission will be published.

# SUMMARY

Australia is experiencing more extreme fire weather events. The prevailing scientific evidence tells us that bushfire seasons are starting earlier and lasting longer. Recent bushfire events – both in Tasmania and on mainland Australia – have shown us the increasing scale and severity of the bushfire threat.

Bushfires can result in the loss of life and the destruction of homes and property. They also have devastating impacts to wildlife and our natural environment. The social and economic impact of recent bushfires is significant, and ongoing.

It is not possible to eliminate bushfires. They are, and will continue to be, a part of Tasmania's natural landscape. However, measures can and should be put in place to reduce the impact of these fires. In Tasmania, there are already a range of measures in place to support bushfire prevention and preparedness. For example, the Government's Fuel Reduction Program has reduced Tasmania's bushfire risk. However, as the duration of our bushfire season extends, the window in which activities such as fuel reduction burns can take place narrows. This makes it crucial for governments, and the broader community, to consider and adopt new and flexible approaches to managing bushfire risk.

The Bushfire Mitigation Measures Bill will introduce a new legislative framework for bushfire mitigation in Tasmania. The Bill will ensure that there is clear accountability for landowners and occupiers. The Bill aims to proactively manage and mitigate risks to better protect human life, property and natural and cultural heritage values from the ravages of devastating bushfire.

## Consultation Process

By releasing the Draft Exposure Bill, the Government wants to consult with the community on the proposed framework, and is committed to listening to and incorporating stakeholder feedback.

The purpose of the Bill is to set up a new, overarching framework for managing and mitigating bushfire risk. The Government understands that it will need to work with all stakeholders – including the scientific and subject area experts – to develop the necessary supporting detail.

The Government also recognises that there are likely to be technical issues with the overarching framework that need to be resolved before the Bill is introduced to the Parliament. The Government is committed to working through the issues so that we deliver a best-practice, contemporary bushfire mitigation framework for Tasmania.

## Background

Bushfire mitigation typically involves:

- **Fuel reduction** – clearing, slashing, mowing, or burning to remove fine fuels only (i.e. not large trees); or
- **Fuel breaks** – mechanical clearing or modification of vegetation to reduce overall fuel loads that might be available to a fire.

A range of Tasmanian laws already deal with land management, pollution and maintenance of natural and cultural heritage as they relate to proposed bushfire mitigation works. For new developments, bushfire risks are largely dealt with under existing planning and building laws. The Tasmanian Planning Scheme establishes a Bushfire-Prone Areas Code to ensure that use and development is appropriately designed, located, serviced and constructed, to reduce the risk to human life and property, and the cost to the community, caused by bushfire. The Building

Regulations also contain certain requirements for works in a bushfire-prone area. New developments must be considered against these requirements and bushfire protection measures installed as part of the development. The required protection measures are detailed within a certified plan called a Bushfire Hazard Management Plan, which forms part of the Planning or Building Permit.

For existing developments or undeveloped vacant land, the authorisation process for bushfire mitigation activities can be much more complex. The current approval process can be lengthy and, as a result, may deter or delay landowners and occupiers from taking steps to reduce bushfire risks on their land. Reforms under the Bushfire Mitigation Measures Bill aim to address this issue by creating a streamlined approval process for bushfire mitigation activities. In this way, the Bill is intended to complement Tasmania's existing planning and building laws.

Under the *Fire Service Act 1979* the State Fire Commission has the power to issue notices to:

- require occupiers of land to remove fire hazards;
- require local councils to deal with fire dangers as if they were a nuisance under the *Local Government Act 1993*; and
- require the formation of necessary firebreaks (local councils also have this power).

The Bushfire Mitigation Measures Bill will provide a consolidated legislative framework for the issue of bushfire hazard reduction notices requiring the removal or mitigation of bushfire risks (including the establishment of fuel breaks).

## OVERVIEW

The Bushfire Mitigation Measures Bill (the Bill) will establish a new legislative framework to support the proactive management of bushfire risks. The Bill:

- reinforces the duty of public authorities and private landowners/occupiers to appropriately manage bushfire risks; and
- introduces new streamlined processes to better support public authorities and private landowners/occupiers to manage bushfire risks.

## What will the Bill do?

### I. Reinforce the duty of public and private land owners/occupiers to mitigate bushfire risks

Bushfire mitigation measures are those that aim to:

- prevent bushfires;
- minimise the spread of bushfires; and
- protect life and property from bushfires.

The *Fire Service Act 1979* already enables the State Fire Commission to issue notices where it considers that steps need to be taken to mitigate bushfire risks. These might require an occupier to remove a fire danger or provide for the construction of a firebreak. However, legislation does not currently include an obligation on landowners or occupiers to *actively* manage bushfire risks.

The Bill will make it clear that landowners or occupiers have a duty to take practical steps, at their own cost, to proactively manage bushfire risks on land they own or control. It will also allow for clear guidelines to be developed to give more detail about what this duty means and how it may be assessed. This guidance

will be contained in Statutory Guidelines, which will be issued by the relevant Minister, and subject to Parliamentary scrutiny.

## 2. Streamline Bushfire Mitigation Plan approval processes

The Bill will also make it easier for landowners/occupiers to meet their obligation to mitigate bushfire risks.

The Bill creates a 'one-stop' approval process where landowners or occupiers can submit for approval a Bushfire Mitigation Plan (BMP) to a newly established Bushfire Mitigation Measures Panel (BMM Panel). Statutory Guidelines will provide guidance about the planning and development of BMPs and matters to be considered in this process. Any BMP must be endorsed by the Tasmania Fire Service (TFS) before it is submitted to the Panel. If the BMM Panel approves the BMP, then this will enable the measures detailed in the BMP to be undertaken, despite any other statutory approval process. The Bill outlines matters that the BMM Panel will need to consider before approving a BMP with the Statutory Guidelines able to give further guidance about how environmental and cultural heritage values of land are to be considered.

The BMM Panel's endorsement of a BMP removes the potential for multiple, lengthy, and complex assessment and approval processes that may otherwise be required. It also provides certainty and reduces the risk that performing appropriate bushfire mitigation could inadvertently result in a breach of other legislation. Relevant legislation that may be exempted by the BMM Panel's endorsement of a BMP include:

- *Forest Practices Act 1985*;
- *Threatened Species Protection Act 1995*;
- *Land Use Planning and Approvals Act 1993*;
- *National Parks and Reserves Management Act 2002*;
- *Wellington Park Act 1993*;
- *Weed Management Act 1999*;
- *Nature Conservation Act 2002*;
- *Environmental Management and Pollution Control Act 1994*;
- *Aboriginal Heritage Act 1975*;
- *Historic Cultural Heritage Act 1995*; and
- *Crown Lands Act 1976*.

In order to obtain an exemption, bushfire mitigation measures would need to be undertaken in accordance with the terms of the BMP and any conditions of the BMM Panel.

The BMM Panel's endorsement of a BMP will have effect for a maximum of five years, although the Panel may impose a shorter time period as a condition of its endorsement.

There may be bushfire mitigation measures detailed under a BMP that do not presently require additional permits or approvals; for example, undertaking hand-clearing or mowing. In those circumstances, approval from the BMM Panel would not be necessary as that would impose an additional barrier on land owners and occupiers that does not currently exist.



### 3. Allow for the establishment of a Bushfire Mitigation Measures (BMM) Panel

The BMM Panel will comprise:

- the Secretary of the Department of Police, Fire and Emergency Services (or their delegate);
- the Secretary of the Department of Premier and Cabinet (or their delegate);
- the Director of the Environment Protection Authority;
- a representative nominated by the Local Government Association of Tasmania (LGAT); and
- an expert member appointed by the Minister.

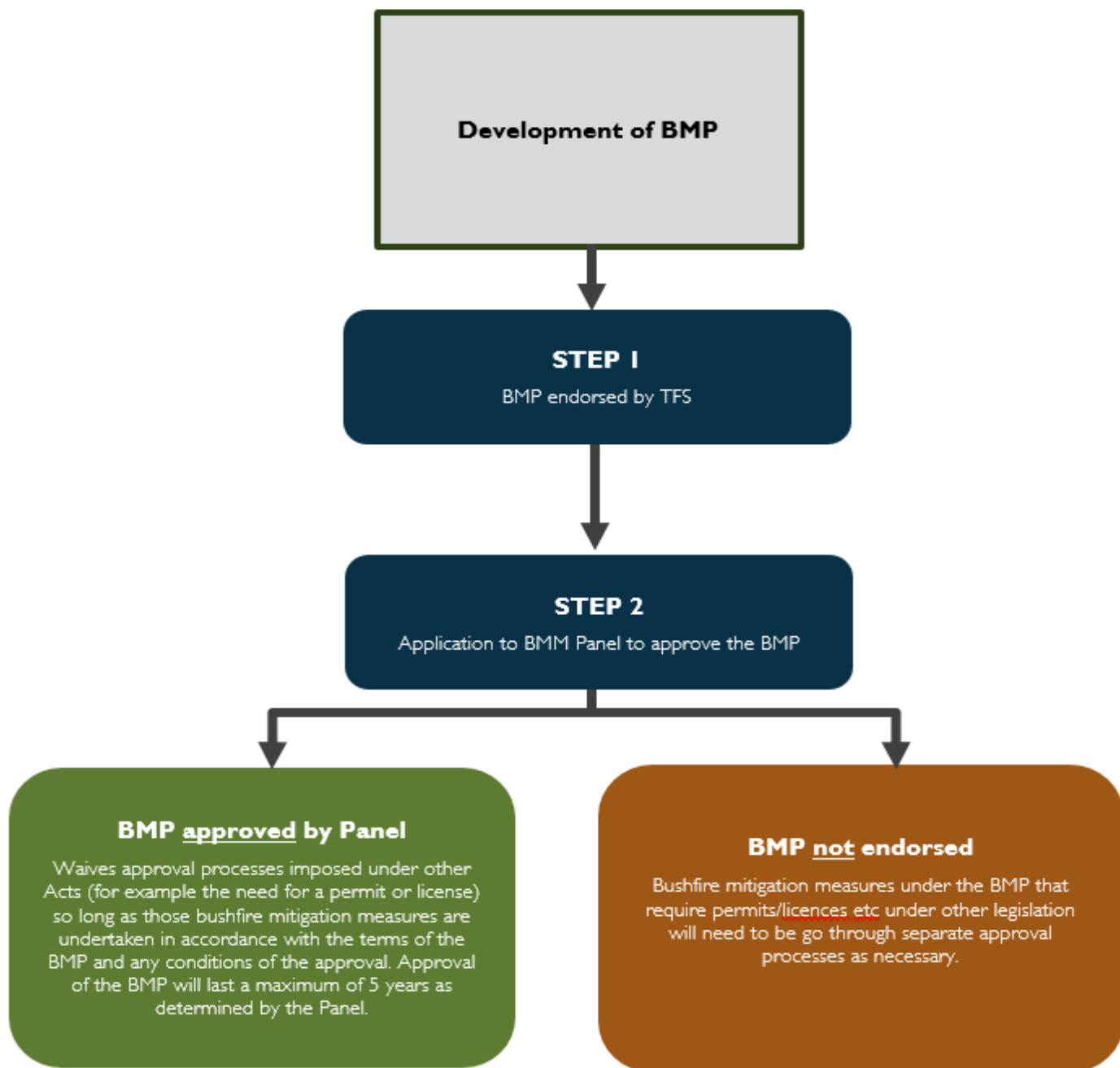
The BMM Panel's representation allows a range of perspectives to be considered. The membership separates TFS's role in supporting the development of BMPs and the approval of the technical specifications of a BMP and the BMM Panel's role to assess whether a BMP should have an exemption from other approval processes under relevant Tasmanian Acts.

To assist it making its determination, the BMM Panel will be able to request expert advice as it considers appropriate. The Panel needs to be satisfied that the purpose of the proposed measures are intended for bushfire mitigation and not for other purposes such as clearing for agricultural purposes. The Bill provides high-level principles for the BMM Panel to assess and allows for the development of Statutory Guidelines outlining other criteria a BMP must meet. Those Statutory Guidelines may, for example, include details relating to the development and content of a BMP. Statutory Guidelines made by the Minister are tabled in both Houses of Parliament, providing flexibility, accountability and transparency.

Where the BMM Panel does not endorse a BMP, the bushfire mitigation measures detailed in a BMP may still be performed, however this would be subject to obtaining any approvals under applicable legislation.

The process for the BMM Panel's endorsement of a BMP is detailed at Figure 1.1.

**Figure 1.1 – Bushfire Mitigation Plan Endorsement**



#### 4. Consolidate the framework for bushfire hazard reduction notices

The Bill also makes clear that there may be implications for landowners or occupiers who do not appropriately discharge their duties in relation to bushfire mitigation. Similar to the *Fire Service Act 1979*, the Bushfire Mitigation Measures Bill enables a bushfire hazard reduction notice to be issued to an occupier of land requiring the reduction of bushfire dangers and removal of bushfire hazards. The Chief Officer of TFS or local council will also be able to give notice requiring the creation of a fuelbreak as it considers necessary or desirable to arrest the spread of bushfires or facilitate the suppression of bushfires. Where a notice is not complied with within the time specified, TFS will be able to undertake those steps detailed in the notice, with costs recoverable against the occupier.

The Bill will also facilitate the prompt resolution of disputes relating to bushfire hazard reduction notices. Under the *Fire Service Act 1979*, there is no defined appeal pathway for notices relating to fire hazards. Practically, this means that the only option for appeal is via judicial review. An application for the review of a notice for the formation of a firebreak must be made to the Magistrates Court (Administrative Appeals Division). If a notice is subject to review, this can shorten the window of opportunity for a firebreak to be established if the notice is upheld. This can hinder works being carried out if a change in conditions do not allow for the firebreak to be established.

Notices issued under the Bushfire Mitigation Measures Bill will be subject to appeal mechanisms provided for within the Bill. If an occupier wishes to object to a notice, they will first need to raise their concerns with the Chief Officer of TFS. If the issue cannot be resolved, the occupier will be able to appeal via the BMM Panel. The Bill sets out clear timeframes for the appeal process to facilitate the speedy resolution of disputes and to enable appropriate bushfire mitigation to be undertaken in a timely manner.

# FREQUENTLY ASKED QUESTIONS

## How will the Bill impact my existing Bushfire Hazard Management Plan (BHMP)?

The Bushfire Mitigation Measures Bill does not affect existing Bushfire Hazard Management Plans (BHMPs) that have been completed as part of a new development or use of land for building or planning purposes. Landowners or occupiers with an existing BHMP should not have to do anything further than those things set out in their BHMP.

## Can I develop my own Bushfire Mitigation Plan (BMP)?

Yes, you may develop your own BMP if you wish. The proposed bushfire mitigation measures will need to comply with any standards relating to specifications or technical requirements that the Chief Officer of TFS may issue. The Bill provides flexibility in relation to the form and content of a BMP although Statutory Guidelines may detail certain matters to be included in a BMP. TFS will be available to support private landowners and occupiers to develop BMPs as required.

BMPs will need to be approved by the Chief Officer before being submitted to the Bushfire Mitigation Measures Panel for endorsement to ensure that the bushfire mitigation measures meet the required technical standards.

## Can my neighbour and I develop a BMP jointly?

Yes, the Bill enables neighbours to work together to develop a joint BMP for neighbouring land.

## When will I be able to submit my BMP for approval?

The Bill aims to establish a framework to improve Bushfire Mitigation in Tasmania. Once in place, the Government will work with key stakeholders to finalise the plan for implementation. It is envisaged that private land owners/occupiers will be able to submit their BMP to the BMM Panel within six months of the Bill's passage through Parliament, to enable bushfire mitigation activities to occur before the 2021-22 Bushfire Season.

## When will Statutory Guidelines be developed?

Statutory Guidelines will be developed in consultation with the State Fire Commission and other relevant stakeholders. Guidelines will be available prior to the commencement of relevant provisions of the Bushfire Mitigation Measures Act. The Bill requires the Statutory Guidelines to be tabled in both Houses of Parliament, meaning that they will be subject to Parliamentary scrutiny.

## Will I need a BMP to undertake fuel reduction on my land?

No, a BMP may not always be required. Bushfire mitigation measures that do not currently require permits or approvals will not be affected by this Bill. Permits may, however, apply for certain works and landowners and occupiers should obtain advice on this.

Having a BMP endorsed by the BMM Panel will also provide landowners and occupiers with certainty that they may carry out endorsed bushfire mitigation measures without risk that it may inadvertently result in a breach of approval processes under other relevant Tasmanian laws.

A BMP also serves as a useful planning tool to assist landowners and managers to strategically assess and mitigate bushfire risks.

## **Do all BMPs need to be approved by the Bushfire Mitigation Measures Panel?**

No. The ability to seek the BMM Panel's approval of a BMP is available for landowners or occupiers that may be affected by other Tasmanian legislation, to allow approved bushfire mitigation measures to be exempt from approval requirements under other legislation. This process is designed to provide a more streamlined and faster approval pathway and remove uncertainty and risk to individuals undertaking bushfire mitigation.

To obtain an exemption under the Tasmanian Planning Scheme State Planning Provisions, a BMP will need to be endorsed by TFS.

## **Shouldn't the BMM Panel include a member from the Tasmania Fire Service?**

The BMM Panel will sit at arm's length from TFS. TFS will retain its role in supporting the development of BMPs. Under the Bill, BMPs will need to be approved by TFS *before* being submitted to the BMM Panel. The Panel will have a broad power to request additional information or expert advice from TFS (or any other body) in assessing a BMP application.

## **How will the Bill protect the environment?**

Bushfires can have a devastating impact on our natural environment. The Bill aims to proactively manage and mitigate bushfire risks to better protect human life and property as well as natural and cultural heritage values.

In approving a BMP, the BMM Panel will need to be satisfied that the purpose of the proposed measures are intended for bushfire risk mitigation and not for other, unrelated purposes such as clearing for agricultural purposes. The Director of the Environment Protection Authority is a member of the Panel.

The Bill also allows for the development of Statutory Guidelines. These Guidelines will support the Panel in making decisions that are consistent with objective of the Bill to facilitate the mitigation of bushfire risk whilst balancing natural and cultural heritage values.

## **What if the terms of my occupation of land limit or prevent me from undertaking certain bushfire mitigation?**

Some occupiers of land may have agreements that limit their ability to undertake bushfire mitigation activities. Likewise, occupiers with limited rights of occupation may not have rights to undertake certain works on land.

While the Bill confirms that it is the duty of occupiers to take practical steps to mitigate bushfire risks, Statutory Guidelines may provide guidance on how the duty would be assessed in these types of scenarios.

The Bill does not provide any offence where an occupier fails to meet the duty to mitigate bushfire risks unless it results in the creation of a bushfire danger. This approach aligns with the existing position under the *Fire Service Act* and there is no change to the current framework in this regard.

Where occupiers are served with a bushfire hazard reduction notice under the Bill but are unable to comply with the terms of a notice due to any limitations on their rights of occupation, occupiers will have the right to appeal a notice.

## What about the *Fire Service Act* and the *Review of the Fire Service Act*?

The Government is separately undertaking a Review of the Fire Service Act with details of the Review available here: [www.fire.tas.gov.au/Show?pagelD=colFireServiceActReview](http://www.fire.tas.gov.au/Show?pagelD=colFireServiceActReview)

The Fire Service Act will continue to apply but with the Bushfire Mitigation Measures Bill designed to complement the Fire Service Act by providing a consolidated framework for bushfire mitigation.

# APPENDIX I

## Submission Template

Personal Details	
Name	
Company/Organisation (if applicable)	
Email/postal address	
Feedback on Draft Exposure Bill – please provide comments in each section (as applicable)	
Landowner/occupier duties and obligations under the Bill <i>(Part 2 of the Bill)</i>	
Bushfire Mitigation Plans <i>(Part 4)</i>	

Bushfire Mitigation Measures Panel <i>(Part 3 &amp; Schedule 1)</i>	
Notice provisions <i>(Part 5)</i>	
General Comments <i>(including on Part 6)</i>	





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