



WHS Information Session for Local Governments Managing Volunteer Bushfire Brigades

- Question & Answer Summary

On Wednesday, 9 February 2022, WALGA and LGIS hosted a WHS Info Session for Local Government's that manage Volunteer Bushfire Brigades.

WALGA, LGIS and the Department of Mining, Industry Regulation and Safety (DMIRS) have produced this Question and Answer Summary to address the questions raised at the webinar.

Key takeaways from the Webinar were:

- It is the responsibility of everyone to both look after themselves and maintain a safe workplace.
- Local Governments need to do what is 'reasonably practicable' to provide a safe workplace for Volunteer Bushfire Brigades.

| QUESTION | ANSWER |
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| When will the WHS Act come into effect? Will there be a transitional period? | <p>The Government has committed to the Work Health and Safety laws coming into effect in March 2022.</p> <p>This was delayed from the original January 2022 commencement date. The Government is expected to announce the commencement date in the very near future.</p> |
| Are Bushfire Brigade volunteers considered 'officers' under the WHS Act? | <p>"An officer is a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the organisation's activities."¹</p> <p>LGIS has received legal advice that concluded that Brigade volunteers, Chief Bushfire Control Officers, and Community Emergency Services Managers (CESM) roles are not reasonably considered 'officers' under the WHS Act.²</p> |
| My Local Government is concerned about our ability to manage and maintain responsibility for our Bushfire Brigade/s. Is there a legal mechanism for Bushfire Brigades to be handed over to DFES and will this be covered in the new <i>Consolidated Emergency Services Act</i>? | <p>WALGA is having ongoing discussions with DFES about potential processes for Local Government to transfer responsibility of Bushfire Brigades to DFES. WALGA understands that there will be a mechanism for Local Governments to transfer management of Bushfire Brigades to DFES, and vice versa, in the <i>Consolidated Emergency Services Act</i>.</p> |
| Does the new legislation mean that Local Government will have to develop a suite of policy, procedure and safe work instructions | <p>Under the existing Occupational Safety and Health laws, Local Governments already have the duty to ensure safety at the workplace. The duty</p> |

¹ WorkSafe, Department of Mines, Industry Regulation and Safety (2021) *Guide: Work health and safety for volunteer organisations*. https://www.dmirs.wa.gov.au/sites/default/files/atoms/files/211103_gl_whsvolunteer.pdf

² <https://digitalmail.marketforcedigital.com.au/t/ViewEmail/r/64A5D5878EEFDB292540EF23F30FEDED/A812D93EC2F53266609F7ED49A76EC23?alternativeLink=False>

| QUESTION | ANSWER |
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| <p>for various tasks associated with bush fire-fighting and ensure compliance with those among the volunteer responders?</p> | <p>is limited to those aspects of the employment where the employer is capable of exercising some control.</p> <p>The commencement of the Work Health and Safety laws is an ideal opportunity for Local Governments to review work health and safety measures relating to bushfires.</p> <p>DFES has existing doctrine available for use which can be accessed from the DFES Volunteer Hub.</p> |
| <p>The majority of our registered volunteer Bushfire responders are farmers who bring their own vehicles and slip on fire appliances to fires. As a Local Government we don't currently control the design or oversee the condition of these vehicles and their slip on units. Is this an exposure to us now?</p> | <p>Everyone has a duty under the WHS Act to act and behave reasonably and safely in a workplace, including farmers and Local Government. Under the WHS Act, duties are limited by the capacity to influence and control a situation, therefore if the Local Government has no or very limited control, it is unlikely the Local Government will be held responsible for what occurs on a fire ground. This will depend upon the circumstances.</p> <p>Local Governments should ensure the safety of their employees and volunteers, including farmers who are registered brigade members so far as is reasonable and practicable.</p> <p>Farmers have a duty of care for their workers to provide safe working vehicles and equipment.</p> |
| <p>Currently we are not checking if our volunteers are fatigued when they arrive to fight a fire. As an example a farmer may have just completed a long session in the harvester when a fire starts near his property and he responds when the call goes out. We have no visibility of his/her fatigue levels. Under the new legislation are we exposed in these circumstances should that farmer be injured due to fatigue?</p> | <p>Everyone has a duty under the WHS Act to act and behave reasonably and safely in a workplace. Under the WHS Act, duties are limited by the capacity of a PCBU to influence and control the situation.</p> |
| <p>Many volunteer Bushfire Brigades are incorporated associations. How will the new WHS Legislation affect these types of Bushfire Brigades, and their members? Are they a PCBU under the legislation? Will there be any additional liabilities for them?</p> <p>Will they still be covered by the Local Government Insurance Scheme?</p> | <p>LGIS is obtaining legal advice on this issue.</p> <p>All Bushfire Brigades that are managed by Local Government are covered by LGIS' Bushfire Volunteers Protection.</p> |
| <p>DFES's training pathway recommends a minimum level of training for positions within the volunteer Bushfire Brigades. Do Local Governments need to adhere to these standards of training or can they develop their own?</p> | <p>Local Government managed Bushfire Brigades may undertake DFES training, their own training or a mix of the two. Each Local Government and their Bushfire Brigades should determine the appropriate procedures and standards that they put in place to support their Bushfire Brigade volunteers.</p> |

| QUESTION | ANSWER |
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| <p>Bushfire Brigades elect their own members to positions of Captain, Lieutenants etc. Is there any risk to a Local Government if a Brigade member who doesn't hold the minimum training standards is appointed to one of these positions?</p> | <p>Everyone has a duty under the WHS Act to act and behave reasonably and safely in a workplace. Under the WHS Act, duties are limited by the capacity to influence and control a situation.</p> |
| <p>Local Government staff are generally not in attendance at bushfires, with the fire suppression activities coordinated and controlled by a Bushfire Brigade volunteer, DFES staff member or DBCA staff member taking on the responsibility of Incident Controller. How can Local Governments ensure that:</p> <p>a) attendees at fire grounds have undertaken the minimum training required; b) that appropriate PPE is being worn; and c) procedures are being followed?</p> | <p>The Incident Controller is responsible for activities on a fire ground, to the capacity that they are able to exercise influence and control over those activities.</p> <p>Everyone has a duty under the WHS Act to act and behave reasonably and safely in a workplace. Under the WHS Act, duties are limited by the capacity to influence and control a situation.</p> <p>Local Governments, and DFES and/or DBCA where a fire ground is under their control, have shared responsibilities to ensure the safety of all personnel participating in fire suppression activities.</p> |
| <p>What is the Local Governments' responsibility in ensuring that volunteer Bushfire Brigade members do not attempt to suppress a fire where they have not been appropriately trained to combat that type of fire (e.g. long-burning fires in peat soil, structural fires, forest fires, shed fires where chemicals may be stored)?</p> | <p>As a volunteer, if you are aware of a fire or hazard that is outside of your ability and level of training, it is your responsibility to not attend that fire.</p> <p>Local Governments can provide information or training to volunteers on what is reasonable for them to do on fire grounds in accordance with their abilities and knowledge. Appropriate training should be provided where practicable.</p> |

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