

Enforcement of Bushfire Management by Requirements Local Governments

By Peter Gillett

The bush fire season in Western Australia typically runs from early November through to late March every year. It is likely we will look back on the most recent bush fire season, as a nation, as one of the worst on record. Moving forward, there will be a greater community expectation for effective bush fire prevention. This update will discuss some of the things Western Australian local governments can do to help our State reduce the risk of bush fires and assist emergency services in containing them when they occur.

Annual Bush Fire Notices

The *Bush Fires Act 1954* provides for local governments to regulate bush fire control measures by publishing an annual bush fire notice applicable to its district. The purpose is to direct property owners and occupiers to what must be done on their land to reduce fire risk. For example, it may require owners and occupiers of large rural blocks to install and maintain firebreaks during the bush fire season. Property owners and occupiers within a local government's district have a statutory obligation to comply with the requirements set out in the annual bush fire notice. Failure to comply can result in infringements or prosecution proceedings against the owner and/or occupier of the land.

When using an annual bush fire notice, the local government must publish a complete copy of the notice in the Government Gazette and a newspaper that circulates throughout the district. The effect of those two publications together is that every property owner and occupier within the district is deemed to have received the notice. As a result, in the event of non-compliance, it is not a defence for a property owner or occupier to claim they were not aware of their obligations.

Local laws

One benefit of an annual bush fire notice is that it can be altered and refined as required by a local government from year to year. However, for many local governments, the requirements in relation to fire-breaks, once established, are unlikely to change. If that is the case, a local government may make local laws requiring owners and occupiers of land in its district to clear and maintain fire-breaks in such a manner as the local government sees fit.

Having a local law in respect to fire-breaks means that the fire-break requirements do not need to be published annually. When the requirements for fire-breaks are set out in a local law, it is simply the law, which means all owners and occupiers of land within the district have a statutory obligation to comply with it.

Achieving compliance

Ultimately, the best way a local government can help reduce the risk and impact of bush fires is to have compliance across the district. Actually getting the message out to property owners and occupiers is important. From a legal viewpoint, publishing the bush fire notice in the Government Gazette and newspaper is an effective way to give notice to all property owners within the district. Likewise, having a local law in respect to fire-break requirements. However, from a practical standpoint, property owners are more likely to receive and access the information through the local government's website and sending a copy of the notice out with the rates notice.

Another practical approach is for local government officers to conduct inspections throughout the year. This way, local governments can identify properties that will require work, such as the installation of firebreaks, prior to the bush fire season. Talking to residents directly about bringing their property into compliance before the bush fire season commences will likely bring about a high rate of compliance.

One of the most effective tools in achieving compliance for local governments is enforcement. Issuing modest infringements is one option. However, the maximum penalty under the *Bush Fires Act* for not complying with the requisitions in a bush fire notice is \$5000. In light of the impact of last year's bush fire season, we expect the courts will begin to impose higher penalties for property owners and occupiers who do not comply with bush fire notices. As a result, commencing prosecution proceedings against offenders will greatly assist local governments in achieving a culture of compliance when it comes to bush fire notices.

If you require advice relating to enforcement of bush fire management requirements, please contact the McLeods Prosecutions and Enforcement team.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.

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