

**CFA Schedule 13 Permit to Burn Discussion Paper MAV Submission**

**June 2017**

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While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

# Introduction

The Municipal Association of Victoria welcomes the opportunity to provide feedback on the Country Fire Authority’s (CFA) Schedule 13 ’permit to burn’ discussion paper.

Councils currently take different approaches when issuing of Schedule 13 ‘permits to burn’. This is due to a number of factors, including the varied capability and capacity of councils to issue permits, the variation of demand across the State from the community to undertake agricultural burns, and also the differences in participation from the CFA in either assisting councils in or directly issuing permits. The CFA discussion paper both recognises the variation in the practice of issuing permits, as well as suggests that having an agreed cooperative state-wide practice would be a good outcome. The CFA discussion paper does not discuss who is best placed to issue permits, or recognise many of the concerns raised by local government.

The CFA discussion paper is essentially an overview of the CFA’s view of the Permit purpose and preferred practice. This submission will provide a local government perspective, and outline some of the issues raised by MAV members.

This submission also outlines the changes in roles and responsibilities between the CFA and municipal councils over time, and how this affects the way in which the permit process should be undertaken.

The MAV recognises that the recently announced fire services reform may have potential implications for councils regarding the issuing of these permits. The MAV has requested that the State works with us to review the current Schedule 13 arrangements, irrespective of any changes to the fire services.

This submission is based on written and verbal feedback received from council officers. This submission has not been endorsed by the MAV Board.

# Capability

Councils undertake a range of services for their local community. Many of these services and non-discretionary roles are undertaken as part of councils’ usual business, and councils have high levels of capability to undertake these roles. However, many councils believe they are not the most appropriate agency to issue Schedule 13 ‘permits to burn’ because they do not have the requisite expertise in fire behaviour, what determines *essential* agriculture, as well as determining an applicant’s vulnerabilities.

Many councils prefer not to issue permits during the Fire Danger Period (FDP) as they see this as an unnecessary increase in the risk of a fire entering the landscape. Having fire and smoke present in the landscape during the FDP is contrary to the messages councils provide to the community about emergencies, and burns during the FDP can cause concern within the community when they do not know a permit to burn is being utilised. Furthermore, a number of Municipal Fire Prevention Officers (MFPO) have provided feedback that they are not provided adequate training or guidance from the CFA regarding fire behaviour at either a local or landscape level, which is contrary to the outline of training provided in the *Professional Development* section of the discussion paper. In addition to this, the MFPO position does not require qualifications in fire behaviour.

Councils understand that a complex array of factors contribute towards fire behaviour and how it impacts varying ecosystems, including topography, varying weather patterns, and different fuels and its dryness. Councils do not believe the CFA-run MFPO training provided adequately equips MFPOs to take these into consideration when issuing permits. In addition to this, MFPO training is not a requirement and only takes place once per year.

Additionally, councils appear to have varied knowledge regarding agricultural practices, and have advised the MAV that MFPOs generally lack the capability to ascertain whether an agricultural burn is essential. Consequently, there is concern that the current permit process may be unnecessarily introducing fire into the landscape during a declared FDP.

Furthermore, the discussion paper states that “the MFPO should be aware of any applicant vulnerability that may impact capacity to undertake burn in accordance with permit conditions and restrictions” (page 8). This statement is contradicted on page 9 of the discussion paper when it states that permit issuers are not responsible under the Act to assess capability of the applicant. This issue heightens concerns faced by councils regarding liability, and their capability to accurately assess the vulnerability of applicants.

The CFA has broad expertise in fire behaviour and the varied fire risk profiles across the State, and many councils believe that during the FDP, the CFA should use this expertise to authorise fire to be added to the landscape, not councils.

# Capacity

With the introduction of rate capping, many councils have been forced to review and rationalise discretionary services provided to the community. The issuing of Schedule 13 Permits to burn is one such service.

The demand for a Schedule 13 Permit to Burn varies across the State and in many cases the demand for Permits is the highest in areas where councils have the lowest levels of resources. Areas of grain cropping and other agricultural activities with similar burn requirements create high demand permits within a short period of time following the completion of the Total Fire Ban period. Several councils have indicated that they receive large numbers of Schedule 13 ‘permits to burn’ requests each year. In 2016, one council received around 500 within a six week period, and another received approximately 400. Councils have expressed that the process is onerous, not core business, and have raised concerns regarding the capacity of councils to undertake this role in addition to their everyday role.

In previous consultation with councils, it is clear that there is a broad range of ways in which Schedule 13 Permits to Burn are issued to the community during the FDP, and there are a range of local arrangements which have been made with the CFA to undertake this task. While some councils are happy to continue to collaborate with CFA to deliver the service, the majority of councils that provided feedback to the MAV on the issue reported that the demand outstripped their capacity.

Currently, some councils issue these permits directly to the community, some issue permits following site inspections, and some councils refer all permit applications to their CFA regional headquarters where a decision is made as to whether a permit is issued. It is suggested in the CFA Schedule 13 Checklist that there may be instances where the MFPO is required to validate a permit application, through either desktop analysis, or a site visit. MFPOs are juggling this permit issuing process with many other roles, and no longer feel that they have the capacity to undertake these validation processes, which ultimately reduces the confidence for MFPOs to issue permits at all.

# Council roles and responsibilities

Councils have provided comment on several specific issues raised regarding roles and responsibilities in the CFA discussion paper, which include analysis of the Act along with a comparison of the current context and the historical setting in which the original CFA Act was formed.

Councils have reported that they have viewed the discussion paper as an attempt by the CFA to provide a document that portrays one side of the discussion with the aim of shifting the legislative obligation of the CFA, as the responsible authority, onto local government. There are many debates within the discussion paper which appear to have been selected to suit the argument of the CFA. The MAV received broad feedback that this should not be the purpose of a discussion paper.

Additionally, the discussion paper references a Hansard Report from 1944 which makes the inference that “…it was the intention of Parliament to have municipal councils primarily issue permits and the ability of a CFA Chief Officer represented as only a secondary option.”. The circumstances of 1944 may form part of the historical framework to the founding of the CFA but has no relevance to today’s accountabilities, roles and responsibilities associated with fire management or the core business of the CFA and municipal councils. The circumstances of 1944 that formed the basis of Parliamentary discussions were unique. Victoria was responding to the tragedy of the 1939 fires and Australia was heavily committed to World War II. Bush Fire Brigades were made up entirely of volunteer members and were administered by the State Forests Department. Brigades had minimal power to carry out fire prevention measures and received little or no financial assistance from the Government.

Additionally, at the time of the writing of the original legislation, the CFA did not have the vast network of regional offices now present across Victoria, and due to this, councils were seen as an easy access point for the community when applying for such permits. This situation has now reversed, as councils have since amalgamated and have reduced staff capacity, while the CFA has become a large statutory authority with significant resources. It has the capacity and capabilities to bring the Schedule 13 ‘permit to burn’ process into the modern era and align it to the Victorian emergency management framework.

In regard to the inclusion of ‘Recourse’ and reference to s.45 of the Act, this reference is inappropriate. There should be no reference to recourse from a statutory authority to a municipal council or any other authority if it uses its discretion and does not undertake a function within legislation it is not mandated to perform. Whilst there is no reference in the Act to the word ‘may’ when it comes to issuing permits, councils disagree that the legislation therefore provides no discretionary intent. Having powers to consider applications and issue permits is not the same as councils being required to consider applications and issue permits.

S.45 of the Act gives way for a transfer of power from the MFPO to another nominated person whom the council would pay for should the MFPO not be efficiently carrying out their powers or duties. However we understand that there are a range of mandated positions this section is contemplating, as opposed to the discretionary role of s.38 where both council and the CFA can undertake the role. As the CFA also has the discretionary role of issuing these permits, it is not likely that councils would have to pay costs to the CFA.

Additionally, the discussion paper asserts that liability arising from negligence or a breach of statutory duty will not attach to the municipal council or the MFPO when they issue a permit should they have issued the permit while acting honestly, cautiously and prudently in doing so. The paper compares this with the liability of when the Chief Officer or any other officer of the CFA issues a permit, stating that any liability resulting from an act or omission when issuing a permit attaches to the authority. The MAV sees this as reasonable, as the CFA are experts in fire behaviour and fire risk, whereas councils are not. This comparison of liability, and the fact that councils have lesser liability does not imply that councils are therefore intended to undertake the role instead of the Chief Officer.

Councils believe they have an almost administrative role in the issuing of Schedule 13 ‘permits to burn”. Councils’ administrative role has been seen as a hindrance with some landowners, who have been unsure about their permit auditing and approvals process due to the disjointed approach whereby council issues permits, and the CFA has the capacity to audit these permits.

# Other issues

Other issues were raised through this process, which have been listed below:

* Some councils believe the agricultural burns form an essential part of farming enterprises, where other councils feel there are very few situations where an agricultural burn is an essential activity during the FDP.

Whilst it is generally recognised that burning is the most cost-effective method of removing stubble and weed control, some councils assert that modern farming does not require the burning of crop stubble. There are concerns that burning creates increased erosion through a reduction in topsoil stability and the removal of organic matter in the soil, and damage to the mycorrhiza. In addition to this, there are a range of new crops with different ignition properties which councils are not educated on. Other jurisdictions in Australia have reformed agricultural burning policy, and banned or more highly restricted stubble burning for environmental health and carbon emission reasons. This raises the issue of whether stubble burning is being undertaken at reasonable levels or is currently over-utilised.

* The MAV has received feedback that the stakeholder consultation process described on page six of the document is not an accurate representation of what is happening currently with both the CFA and councils, and may be misleading as this section insinuates that this consultation is taking place and that it is the responsibility of the MFPO.
* It is not clear how the MFPO may refer issues to the CFA for assessment and issuance of permit, as it states that CFA approval is needed. If the MFPO requires further information from the CFA, there should be no approval required as the MFPO has already escalated the application to the CFA.
* Smoke management issues have been removed from both the template and guideline and should also be removed from any guidelines developed from this discussion paper. Smoke management is not part of the legislation, and there are no tools or expertise within councils to undertake this work.

# MAV State Council May 2017

State Council is the governing body of the MAV, and is made up of representatives from each member council. Member councils submit motions for all representatives to vote on, and if these motions are passed, these form resolutions and are then incorporated into the MAV’s strategic direction.

At the May 2017 MAV State Council, the following resolution was passed:

*That the MAV work with the State Government to ensure sufficient funding is provided to the CFA for its administration of Permits to Burn.*

# Conclusion

Local government is frequently expected to provide services outside of its core business. In addition, sometimes the provision of these services could leave councils exposed to risks, can lead to liability and negligence claims, and if proven could have substantial financial impacts.

The key consideration when deliberating over who should issue Schedule 13 ‘permits to burn’ is community safety. This important issue is not recognised in the *Foundational Principles* of the discussion paper. Through the Schedule 13 ‘permit to burn’ process, thousands of fires are introduced into the landscape across Victoria during the FDP, and the foundational principles should consider who is best placed to provide permits to the community.

The CFA is perceived by the community, the emergency management sector and State as the authority with the expertise, experience, qualifications and statutory authority to manage and have responsibility for the use of fire in the environment during the declared FDP.

The Act provides that both councils and the CFA are able to issue permits. However there is no legislative requirement for councils to issue such permits, and as such, these permits can and should be processed and issued by the CFA. The CFA is the administrator of the Act and as such should take full responsibility for the permit to burn process.

Councils appreciate that the CFA may require additional resources to administer such permits, however this is matter for the State Government to address. MAV welcomes the opportunity to work with both the State Government and the CFA to resolve this issue and deliver the best and safest outcome for the community.