

LOCAL GOVERNMENT ACT 1995  
BUSH FIRES ACT 1954

SHIRE OF MANJIMUP

**BUSH FIRE BRIGADES LOCAL LAW 2023**

Under the powers conferred by the *Local Government Act 1995*, the *Bush Fires Act 1954* and under all other powers enabling it, the Council of the Shire of Manjimup resolved on 17 August 2023 to make the following local law.

**1. Citation**

This local law may be cited as the *Shire of Manjimup Bush Fire Brigades Local Law 2023*.

**2. Commencement**

This local law will come into operation 14 days after publication in the *Government Gazette*.

**3. Repeal Provisions**

The *By-laws of the Manjimup Road Board relating to the Establishment, Maintenance and Equipment of Bush Fire Brigade for the Road District of Manjimup*, as published in the *Government Gazette* on the 24 May, 1940 are repealed.

**4. Application**

This local law applies throughout the district.

**5. Definitions**

(1) In this local law unless the context otherwise requires—

*Act* means the *Bush Fires Act 1954*;

*brigade area* is defined in clause 6(1)(b);

*bush fire brigade* is defined in section 7 of the Act;

*CEO* means the Chief Executive Officer of the local government;

*district* means the district of the local government;

*local government* means the Shire of Manjimup;

*normal brigade activities* is defined by section 35A of the Act; and

*Regulations* means Regulations made under the Act.

(2) In this local law, unless the context otherwise requires, a reference to—

(a) a captain;

(b) a first lieutenant;

(c) any additional lieutenants;

means a person holding that position in a bush fire brigade.

**6. Establishment of a bush fire brigade**

(1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.

(2) A bush fire brigade is established on the date of the local government's decision under subclause (1).

(3) A bush fire brigade established under subclause (1) is to hold a meeting at least once every financial year to appoint persons to the positions in clause 6(1)(c).

**7. Name and officers of bush fire brigade**

(1) On establishing a bush fire brigade under clause 5(1) the local government is to—

(a) give a name to the bush fire brigade;

(b) specify the brigade area in which the bush fire brigade is primarily responsible for carrying out the normal brigade activities; and

(c) appoint—

(i) a captain;

(ii) a first lieutenant; and

(iii) additional lieutenants if the local government considers it necessary.

(2) A person appointed to a position pursuant to subclause (1)(c) is to be taken to be a brigade member.

(3) The appointments referred to in subclause (1)(c) expire at the completion of the first annual general meeting of the bush fire brigade.

(4) In accordance with section 43 of the Act, the local government may remove or appoint officers of a bush fire brigade as deemed necessary or appropriate.

(5) Subject to subclause (4)—

(a) an election is to be held at the first annual general meeting by the members of the brigade for appointments to the positions referred to in subclause (1)(c) and every subsequent annual general meeting; and

- (b) if a position referred to in subclause (1)(c) becomes vacant prior to the completion of the first annual general meeting or at any time, then the brigade members are to vote for a replacement member to fill the position.
- (6) The brigade members may elect, set the term of office, describe the duties of, and dismiss, any person to any other position including secretary, treasurer, equipment officer, training officer or other positions, and may combine those positions.
- (7) The brigade members may establish types of brigade membership including fire fighting members, auxiliary members, cadet members, and honorary life members.

#### **8. Duties of captain and bush fire brigade officers**

- (1) The duties of the captain are to—
- (a) provide leadership to bush fire brigades;
  - (b) in the absence of a bush fire control officer take command and manage members during emergencies and other Brigade related activities;
  - (c) monitor bush fire brigades' resourcing, equipment and training levels;
  - (d) liaise with the local government concerning—
    - (i) fire prevention or fire suppression matters generally;
    - (ii) directions to be issued by the local government to bush fire control officers, including those who issue permits to burn; and
    - (iii) bush fire brigade officers;
  - (e) ensure that a list of bush fire brigade members is maintained;
  - (f) report annually to the local government the office bearers of the bush fire brigade in accordance with the Regulations;
  - (g) report to the local government at least annually, for consideration and appropriate provision being made in the next local government budget, the status of a bush fire brigade's—
    - (i) training and readiness;
    - (ii) protective clothing;
    - (iii) equipment; and
    - (iv) vehicles and appliances;
  - (h) arrange for normal brigade activities as authorised by the Act or by the local government; and
  - (i) where a vacancy occurs in a position appointed under clause 6(1)(c), to—
    - (i) advise the CEO of the vacancy as soon as practicable; and
    - (ii) make alternate suitable arrangements for that position until an appointment is made.
- (2) The duties of lieutenants are to—
- (a) provide support to the Captain;
  - (b) in the absence of a bush fire control officer and or captain take command and manage members during emergencies and other Brigade related activities;
  - (c) demonstrate positive leadership and mentor members;
  - (d) maintain open lines of communication and encourage positive interaction and teamwork between members;
  - (e) ensure Bush Fire Brigade Operational Procedures are adhered to during brigade activities;
  - (f) ensure members engaged in firefighting activities hold competencies relevant to the task;
  - (g) work cohesively with the brigade Training Officer and conduct training activities for members;
  - (h) ensure the behaviour of members is in accordance with the Local Government's code of conduct; and
  - (i) in the absence of the brigade Captain the most senior Lieutenant present assumes the responsibilities and duties of that office and takes ultimate responsibility for the performance of all Brigade activities.

#### **9. Appointment, employment, payment, dismissal and duties of bush fire control officers**

The appointment, employment, payment, dismissal and duties of bush fire control officers is dealt with by the Act.

#### **10. Maintenance and equipment with appliances and apparatus of bush fire brigades**

The local government may provide funds for the maintenance and equipment with appliances and apparatus of bush fire brigades in accordance with Part 6 of *the Local Government Act 1995*.

Dated this 17 August 2023.

The Common Seal of the Shire of Manjimup was affixed by authority of a resolution of Council in the presence of—



P. OMODEI, President.

*B.R.*

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B.ROBINSON, Acting Chief Executive Officer.



### 9.1.1 Request to Provide Undertakings for Shire of Manjimup Bush Fire Brigades Local Law 2023

<b>PROPONENT</b>	Joint Standing Committee on Delegated Legislation
<b>OWNER</b>	N/A
<b>LOCATION / ADDRESS:</b>	All of Shire
<b>WARD:</b>	All Wards
<b>ZONE:</b>	N/A
<b>DIRECTORATE:</b>	Office of CEO
<b>FILE REFERENCE:</b>	F200202
<b>LEGISLATION:</b>	<i>Local Government Act 1995, Bush Fire Act 1954</i>
<b>AUTHOR:</b>	Jason Giadresco
<b>DATE OF REPORT:</b>	12 October 2023
<b>DECLARATION OF INTEREST:</b>	Nil

#### **BACKGROUND:**

At its Ordinary Meeting held 17 August 2023, Council determined (Resolution 29241) to adopt the Shire of Manjimup Bush Fire Brigades Local Law 2023 (the Local Law). A copy of the gazetted Local Law and its Explanatory Memorandum was forwarded to the Joint Standing Committee on Delegated Legislation (the Committee) on 6 September 2023.

Council has since received correspondence from the Committee. The content of the Committee's letter is considered confidential, and the Committee has requested that the letter not be included in this Council agenda item. A copy of the correspondence from the Committee will be provided to Councillors under separate cover.

Upon the Committee's review of the Local Law and Explanatory Memoranda on 11 October 2023, it was identified the Local Law requires amendment to one clause of the Local Law that will need to be corrected prior to the Local Law being supported by the Committee.

The purpose of this report is for Council to consider the correspondence received and provide the Committee with a letter of undertaking with regard to amending the Local Law.

#### **PUBLIC CONSULTATION UNDERTAKEN:**

Nil. Public consultation on correspondence received from the Committee is not required.

#### **COMMENT (Includes Options):**

For the benefit of Councillors, an 'undertaking' is a commitment made by local governments, government departments or agencies to the Committee that certain actions will be completed within a certain time frame.

The requesting of undertakings relating to Instruments (i.e. Local Laws) from local governments, departments and agencies is a serious matter. The Committee allows Instruments to pass unimpeded into law subject to the commitment that the relevant local government, department or agency will abide by the undertakings they give.

The Committee accepts undertakings provided on the following terms:

- all consequential amendments arising from the undertakings will be made;
- offending clauses will not be enforced in a manner contrary to the undertakings given;
- the undertakings will be completed within six months of the date the local government, department or agency's letter provides the undertakings;
- where the instrument is made publicly available, whether in hard copy or electronic form, it be accompanied by a copy of the undertakings; and
- in the case of a local government, it will provide a copy of the minutes of the meeting at which the relevant council resolves to provide the undertakings.

#### *Committee comments*

Concisely, the Committee has questioned the Shire's legal ability to regulate through the Local Law, drawing attention to the fact that the document does not adequately address Section 62(1) of the *Bush Fires Act 1954* (the Act). The opinion of the Committee is that this section describes that when a local government intends to regulate its bush fire brigades, it must do so through a Local Law and not by any other means. Making reference to management of bush fire control officers through the Act is not satisfactory and must instead be described in the Local Law. Specifically, the Committee is instructing that clause 9 of the Local Law "Appointment, employment, payment, dismissal and duties of bush fire control officers" be removed and additional clauses added to bring the Local Law into consistency with Section 62(1) of the Act, suggesting use of the provisions of the Model Bush Fire Brigades Local Law 2023.

There appears to be acceptance from the Committee that it has been inconsistent with its previous treatment of this type of Local Law, noting that it did not ask the Shire of Williams (whose Local Law the Shire of Manjimup's is based on) to make undertakings as it was deliberating the interpretation of Section 62(1) at the time.

To this end the Committee has provided a recommended suggested set of undertakings to address the above discussed:

"The Council of the Shire of Manjimup resolves to undertake to the Joint Standing Committee on Delegated Legislation that:

1. Within six months, amend the local law by deleting clause 9 and inserting clauses dealing with the matters set out in section 62(1)(a) of the Act.
2. Not enforce the local law to the contrary before it is amended in accordance with undertaking
3. Ensure all consequential amendments arising from the undertaking will be made.
4. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.”

Shire officers recommend that Council accept the undertakings as suggested by the Committee above, with minor modifications to ensure clarity of intent.

#### *Alternative Option*

Alternatively, Council may choose to seek legal advice and contest the Committee’s standing. But given the advice of the Committee, this is not recommended, as it will likely cost Council more financially than allowing the Local Law to be amended or repealed and then going through the Local Law process again.

#### *Conclusion*

Once Council has issued its response to the Committee, it will await its response and will perhaps need to consider this matter further. However, in the event the Committee accepts the undertakings as provided by Council in the Officer Recommendation below, a further report will be presented to Council presenting an amendment to the Local Law in accordance with clause 3.12 of the *Local Government Act 1995* and the undertaking provided by the Committee.

#### **STATUTORY ENVIRONMENT:**

*Local Government Act 1995, Bush Fire Act 1954.*

#### **POLICY / STRATEGIC IMPLICATIONS:**

Nil.

#### **ORGANISATIONAL RISK MANAGEMENT:**

Failure to provide an undertaking for the amendments and request to repeal identified by the Joint Standing Committee on Delegated Legislation will place Council in non-compliance with the Committee’s direction and may result in the Local Law being disallowed by State Parliament.

#### **FINANCIAL IMPLICATIONS:**

Cost for the amendment of the Shire’s Local Law will be covered in the Shire’s Adopted Budget for 2023/24.

Should Council choose to challenge the Committee's undertakings, it would be expected that a greater expense would be incurred instead of complying with the Committee's request.

**SUSTAINABILITY:**

Environmental: Nil.

Economic: Nil.

Social: Nil.

**VOTING REQUIREMENTS:                      SIMPLE MAJORITY**

**OFFICER RECOMMENDATION:**

**That Council, with regard to the Shire of Manjimup Bush Fire Brigades Local Law 2023, resolves to undertake to the Joint Standing Committee on Delegated Legislation that:**

- 1. Within six months, amend the Bush Fire Brigades Local Law 2023 by deleting clause 9 and inserting clauses dealing with the matters set out in section 62(1)(a) of the *Bush Fire Act 1954*;**
- 2. Not enforce the Bush Fire Brigades Local Law 2023 to the contrary before it is amended in accordance with undertaking;**
- 3. Ensure all consequential amendments arising from the undertaking will be made; and**
- 4. Where the Bush Fire Brigades Local Law 2023 is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.**

**Ordinary Meeting**

**COUNCIL RESOLUTION:**

**MOVED: Eiby, W                      SECONDED: De Campo, W**

**29308**

**That Council, with regard to the Shire of Manjimup Bush Fire Brigades Local Law 2023, resolves to undertake to the Joint Standing Committee on Delegated Legislation that:**

- 1. Within six months, amend the Bush Fire Brigades Local Law 2023 by deleting clause 9 and inserting clauses dealing with the matters set out in section 62(1)(a) of the *Bush Fire Act 1954*;**
- 2. Not enforce the Bush Fire Brigades Local Law 2023 to the contrary before it is amended in accordance with undertaking;**
- 3. Ensure all consequential amendments arising from the undertaking will be made; and**

- 4. Where the Bush Fire Brigades Local Law 2023 is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.**

**ADOPTED BY EN BLOC RESOLUTION: 9/0**