

A BURNING ISSUE—THE POLITICIZATION OF A BUSHFIRE

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The Stirling bushfire of 1980 produced the first substantial claim for disaster liability against a South Australian local authority. In the absence of precedent and clear rules of process this developed into a long and costly legal battle lasting nine years and then developed into a political conflict between the Council and the ruling Labor State government. The community is riven by discord about the terms of settlement. A positive outcome has been the establishment of a Local Government Association Mutual Liability Scheme which indicates the possibility of local government collaboration as an alternative to a state-local relationship with its concomitant conflict.

Local government occupies an unenviable position in the management of disasters. It is likely to be subject to the most intensive impact, in some cases reaching levels approaching 100% of households, but it is the least well resourced of the tiers of government and will depend on outside assistance if it is to cope. It is this incapacity that has been invoked by some observers as one of the factors explaining the low level of development of Australian local government (Hancock 1980, p. 70). The argument is to some extent circular, since it is the low level of development that acts as a limiting factor on a local authority's capacity to cope. With a sounder financial base and a wider range of functions it would be better able to deal with lesser disasters and to make a more substantial contribution to the greater ones.

As it is, disasters of any great scale will require outside assistance and an appropriate division of intergovernmental responsibilities is essential if this is to be effective. As in the case of other shared functions it is a matter of allocating responsibilities to the level where they can be most effectively carried out. It is also

essential that this allocation is clearly defined and governed by accepted rules. Any uncertainties will be resolved by political bargaining and this is not likely to produce optimum results for disaster management.

Local government is in a particularly vulnerable position should politicisation occur. It is commonly subordinate to the higher levels of government in a statutory and administrative sense as well as in financial matters. This is certainly the case in South Australia (Robbins 1981). Local government is inevitably a supplicant whose political leverage is quite weak and subject to the vicissitudes of political advantage. The Stirling bushfire case graphically demonstrates the weakness of a single local authority but the consequences equally demonstrate the feasibility of a local government solution.

THE STIRLING BUSHFIRE CASE

Stirling District Council (Martin 1987) governs a substantial area of the Adelaide Hills in South Australia. It was first settled as a haven from the summer heat of the plains. With the arrival of the southeastern freeway in the late 1960s it burgeoned into a substantial residential suburb, attracting those who preferred the cooler climate and mountain scenery. Unfortunately, a major feature of the latter is the eucalyptus bushland, penetrated by numerous gullies. These provide ideal conditions for the generation of fierce bushfires which are particularly threatening to those who live literally immersed in the bush.

Two severe bushfires have swept through the Stirling area in recent years, both, curiously but ominously, on Ash Wednesday. The more devastating of these in terms of loss of life and property was in 1983, but the one with the greatest political impact was in 1980 (Douglas 1983; Healey 1985).

Establishing Legal Liability

The fire of 20th February, 1980 burned out 8,000 hectares, destroyed 51 houses and killed a great deal of stock, though fortunately it took no human lives. Its origin was identified as the Stirling refuse dump, operated by F.S. Evans and Sons Pty. Ltd. under licence from the Stirling Council. The operators had failed to extinguish completely a destructor fire and having been rekin-

dled by the high winds it was then carried to nearby bushland, from which it had spread to inhabited areas.

Initial estimates of the damages amounted to \$A5 million and an appeal by the Lord Mayor of Adelaide raised \$A400,000. Given the restricted area affected and the relatively small assessment of the damage, the State Government, then in Liberal hands, did not declare it a disaster. One hundred and thirty-six victims applied for assistance with claims amounting to \$A1.8 million. A coronial enquiry in July 1980 identified the source of the fire and commented on the absence of any fire-fighting equipment or water source in the vicinity of the destructor fire.

Victims who were uninsured or underinsured formed a Fire Loss Action Society of the Hills and in February 1981 they began a test case on behalf of one of the members, claiming negligence on the part of F.S. Evans and Sons and the Stirling Council. A judgement of the South Australian Supreme Court in August 1984 found for the plaintiff. The Council appealed to the full bench of the Supreme Court which confirmed the previous judgement.

The Council had \$A1 million of public liability insurance, which, up to that point, was thought to give adequate coverage. Following the appeal verdict much of this was paid out in compensation, though it was subsequently revealed that \$A.5 million went to the State Government Insurance Commission in subrogation.

In September 1986, F.S. Evans and Sons went into liquidation, leaving the Stirling Council responsible for the full remaining liability, with claims now amounting to over \$A6 million. On advice from the Solicitor-General the Council decided to contest all further claims. In February 1988 they again sought advice, stating that the outstanding claims could be settled for \$A5 million. The government offered a loan to meet this amount but was unprepared to meet the cost itself. The Council rejected the loan proposal and proceeded to contest the claims in court.

In July 1988 the Council announced a rate increase of 22%, part of which was to cover the escalating legal costs of fighting the claimants. A public protest meeting was called with an estimated attendance of 1,500 and a Stirling Ratepayers' Association was formed. The Association opposed the continuation of the legal challenge to the claims and organized a withholding of rates which

was given substantial support and plunged the Council into financial crisis.

The Financial Settlement

In November 1988 the Supreme Court again found the Council liable, and though they considered a further appeal, they were encouraged by the Minister for Local Government to settle the claims, now estimated, inclusive of massive legal costs, at around \$A15 million. The source of finance for a settlement of this dimension was not clear and several possibilities were canvassed. The Minister's first preference was for the Stirling Council to pay half with the remainder coming from the body of South Australian councils. One suggestion was that a subvention from the Commonwealth's local government grant allocation might be a relatively painless way of providing this. The other councils were not enthused by either of these suggestions and proposed that any subsidy to the Stirling Council should come from the state government.

The main contention in the legal arena was now whether to accept a fast-track settlement which would limit the already huge legal costs (which ultimately amounted to \$A2.3 million for the Council alone), or to fight each claim in an attempt to moderate its dimension. The Council opted for the latter.

Council elections were held in May 1990 and produced record turn-out figures. The Ratepayers' Association fielded a slate which swept the field with the exception of one councillor. This meant that the new Council comprised nine members, including its Chairman, with no previous local government experience. Its first action was to resume discussions on the fast-track process and in June this was agreed, with the State government providing loan facilities which ultimately amounted to \$A14.3 million.

With the bushfire claims settled, the main remaining question was the apportionment of the financial liabilities. The prospect of levying other councils had been dropped in respect of the principal of the loan, though the Local Government Association did agree to meet the accumulated interest, which by March 1990 amounted to \$A1.5 million.

The main difficulty was securing an agreement between the Stirling Council and the Minister for Local Government. Negotia-

tions went very much into a bargaining mode. The Council claimed that it could only repay \$A1 million while the Minister's advice was that \$A7 million was possible. The Council next conceded the possibility of \$A2 million while the Minister now asked for \$A4 million. The Council stretched its offer to \$A3 million with the proviso that the Government meet three conditions which would improve its revenue-raising capacity.

The Government now appointed an investigator as a preliminary step towards suspending the Council. The report which resulted was interpreted by both sides as justifying their stance. It found no fault in the performance of the current Council and admitted that a repayment of \$A4 million would strain the community's resources. It could not but find, however, that the Council was in default in respect of the debenture which had covered the loan and which had become due on 31st March, 1990.

The Council lodged a summons with the Supreme Court in an attempt to prevent its suspension, but on 14th June, 1990 this was effected by the Minister and an administrator appointed whose prime task was to extract from Council resources the required \$A4 million, which he did by signing a debenture for a loan from the Local Government Finance Authority.

The Political Consequences

This having been done, the financial settlement of the bushfire claims has presumably been finally achieved, more than 10 years after the actual event. There remains a need for a political settlement, both between the Council and the State government, and within the Stirling community, which has been seriously riven by the dispute.

The Minister restored the original Council on 31st August, 1990, expecting them to be bound by the debenture, particularly since the loan is placed with the local government funded Local Government Finance Authority. Acrimonious comments continue to be exchanged between the Council Chairman and the Minister.

The Opposition indicated that, should it be returned to office at the next election, it will reduce the Council's indebtedness by half of the imposed amount of \$A4 million. As another election is not due for another three years this promise has extended the period of uncertainty by at least that long. It has also indicated that, with

Australian Democrat support in the upper house, it will form a parliamentary select committee to investigate all aspects of the bushfire case. This will include claims that the Stirling Council has been guided in its most crucial decisions by advice from the State government.

Rate notices for 1990-91 were issued by the administrator and these contained the rate increase to 8%, including a component for the repayment of the impost. Ratepayers were also given the option of paying the total liability on their property immediately, with subsequent reductions in their overall rate payments, or paying off portions of the liability, again with commensurate reductions in rates.

The community remains actively irate, with well-attended public meetings and rallies which show total hostility to the terms of settlement. A public meeting held by the Stirling Ratepayers' Association rejected overwhelmingly a proposal to renew the rate-strike of 1988-89, but, encouraged by Opposition support, advised the restored Council to withhold payment of the debenture pending the findings of the select committee.

Quite apart from the problem of normalising relations between the restored Council and the State government, the issue will be kept alive politically by the proceedings of the select committee and by the anticipation of an Opposition victory at the next State election.

A political solution is not merely a matter of elite accommodation since the community is substantially mobilised by its hostility to the outcomes. This hostility is generated by several factors:

1. The arbitrary suspension of a democratically elected council which has been found to be managing capably and which had had no part in generating either the initial liability or the subsequent legal costs.
2. The perceived injustice of imposing a charge on a substantial number of ratepayers who had not resided in the area at the time of the incident.
3. The perceived injustice of imposing a charge on all ratepayers to cover the losses of those few who had been uninsured or underinsured.

4. The belief that the Ministers' intransigence was fuelled by the fact that the area was a safe Liberal seat.
5. Incredulity at some of the claims that had been reported as having been met by the fast-track settlement process. These included \$A1 million compensation for a bushfire victim's son who was claimed to have subsequently developed schizophrenia as a result of the episode, though he was not present in the area at the time; an amount of \$A11,000 for the lost production of 12 hens killed in the bushfire, and \$A29,000 for cut flowers not available from a burnt-out garden.

There is no real question of the basic legality of the process. The Council had initiated a legal challenge to the Minister's powers of suspension in the circumstances prevailing, but this was withdrawn by the administrator and was acknowledged to have had a slender chance of success. The Council, whatever its management skills, was in default of a legally-binding agreement.

The Council had been found clearly and incontrovertibly liable for bushfire damages and, once its small insurance cover had been expended, had no other legitimate source of funds than its ratepayers. As a corporate body its continuity was unaffected by either the changes in elected personnel or the mobility of residents. The individual claims had been calculated on accepted legal and actuarial principles and approved by the senior legal barrister, a Queen's Counsel, who was appointed to supervise the settlement.

The very fact that the major points of grievance are legally justifiable is an indication that the main issues are political. There is obviously a demand that, if this is the way that the rules work, the rules should be changed and that, in the meantime, a political waiver should be granted to free the Stirling ratepayers of their liabilities.

The fact that these liabilities stem from claims made by local residents has been the cause of rancorous conflict within the community. Initially it was the claimants who felt injured by the neglect of their claims and the determination of earlier Councils to outbid them in their willingness and ability to fund expensive litigation.

At this stage most residents were able to take a fairly detached view and could attach themselves, without any real rancour, to one

policy or another in dealing with the claims. It was when the Council's legal costs were converted into rate increases that community hostility to the policy of legal attrition began to grow, culminating in the rate-strike and a quite virulent campaign condemning Council members. There now appeared to be a coalescence of the interests of the bushfire claimants and the majority of the actively-interested residents.

When the dimensions of the claims became apparent and the State government insisted that the Stirling Council should meet a considerable proportion of them, hostility to the claimants began to grow, fed by rumours of fraudulent claims and police investigation. The claimants, who had previously contended only with the Council, found themselves ostracised and vilified by their neighbours. The prolongation of the affair as a political issue will obviously maintain and possibly intensify this situation.

OUTCOMES AND OUTSTANDING PROBLEMS

Many lessons have been drawn from the experience of the two Ash Wednesday bushfires, mainly in the area of prevention, preparedness and response. The Country Fire Service (CFS) has been given a more centralised structure and its equipment and operations have been reviewed, many of its smaller and under-equipped units being de-commissioned. Planning approvals, assisted by evaluations from the CFS, take note of the bushfire hazards on building sites, and the owners of existing houses are advised on appropriate precautions.

What remains to be settled is the matter of financial liability for disaster compensation. The circumstances in the Stirling case are in many respects limiting. Liability was attributed to a corporate body which did not have the option of declaring itself bankrupt. Had F.S. Evans and Sons been found solely responsible there would have been only minimal compensation available before the firm became bankrupt. Had the bushfire been started by an individual of limited means there would have been still less compensation available. Had no-one been found liable, the victims would have had to cover what were, in many cases, very substantial losses themselves. It is obviously desirable that a recovery programme requires provision for all exigencies.

The Local Government Association Mutual Liability Scheme

In respect of local government liability it is presumed that coverage is now adequate. Prompted by the Stirling experience, the Local Government Association of South Australia has produced an innovative scheme of mutual liability coverage (The Mutual Liability Scheme) which covers member councils against both public liability and professional negligence claims.

While the scheme is free-standing, it is effectively administered by the Council Purchasing Authority, a long-standing offshoot of the Local Government Association (LGA), which negotiates group purchasing terms on behalf of councils. It had previously negotiated insurance with an underwriter and, in collaboration with them, had background information on the extent of the risk cover required by each council. The reserve funds of the scheme are invested with the Local Government Finance Authority, another instrumentality developed by the LGA, so that they remain within the local government ambit and thus provide continuing benefit.

The subscription of each council is determined by a risk audit, which is furnished to the council, together with an offer of risk management advice, so that risk factors can be reduced. The risk management service is regarded as an important feature of the scheme.

Councils are expected to cover claims of up to \$A5,000 from their own resources, but amounts in excess of that and up to \$A2 million are covered from the scheme's pool. Catastrophe insurance was sought for claims exceeding \$A2 million but the State government, which is self-insuring, offered coverage at a more favourable rate than the commercial sector, and that has been taken up.

The Mutual Liability Scheme is governed by a board which has discretion in the payment of claims. The board consists of eight members, six of them, including the Chairman, from the Local Government Association, with further representatives from the State Department of Local Government and the State Government Insurance Commission.

The original purpose of this scheme was, of course, to cover local authorities against financially devastating claims such as the one confronted by the Stirling Council. It has now been extended to provide full coverage of all claims and has a useful risk management component as well.

The State budget of 23rd August, 1990 provided further coverage by setting up the Local Government Disaster Fund, financed by a .005% levy on the Financial Institutions Duty (the budget raised this from .04% to .10%). This will raise \$A4 million in the current financial year and \$A6 million in a full year. It is initially earmarked to pay the \$A10.3 million of the Stirling bushfire costs being carried by the State government. Subsequently it will be available to indemnify local authorities against their disaster costs in circumstances where there is no liability, such as flood damage or, to cite a recent claim, sand-drifts on roads in drought areas.

Individual Loss

What neither scheme does is to cover ordinary citizens against loss unless that loss is attributable to council negligence. A disaster of considerable magnitude would be covered by state and federal disaster policies though these are unlikely to give full recompense (Butler and Doessel 1979). One of lesser proportions, such as the Stirling bushfire was initially supposed to be, would be left to the exigencies of local initiative and individual insurance.

The Stirling case demonstrates that individual insurance is unlikely to cover the full amount of loss. Non-insurance of houses is rare, particularly when under mortgage, because the mortgagor insists on coverage. However, since mortgagors are principally interested only in recovery of the outstanding debt, they may not ensure that coverage is adequate, and this may more readily occur in the case of non-mortgaged property. Contents are often undervalued or even uninsured, particularly among short-term renters. Loss of income is even more likely to be uninsured, even though it will inevitably accompany a disaster, at least through lost time if not through loss of income-producing assets.

Mayoral and other public appeals are a common response to local disasters (Dunstan 1985; Wettenhall 1975, pp. 238-253) though it is only in the most exceptional circumstances that they produce a sufficiently substantial amount to provide adequate compensation and the distribution of compensation by ad hoc rules often creates animosity. This could only be achieved by the institution of a scheme specifically designed to accomplish full recompense. The general attitude to this question has been that adequate coverage is a matter of personal responsibility and should be left

to individual provision. The shortfalls in practical outcomes suggest that these assumptions are flawed and that something is needed to fill the breach.

The principles of the mutual liability scheme operated by the LGA of South Australia might usefully be extended to individual citizens, and most certainly so in those areas identified as disaster prone. The integration of risk management with insurance cover would be an essential part of such a scheme. While public authorities in the Adelaide Hills have become more conscious of risk management since the 1980 and 1983 bushfires, many individual households incur unnecessarily high risks. Only a minority of commercial insurers apply risk factor loadings to individual policy holders so that there is no direct incentive to risk control.

There would be the question of whether such a scheme would be compulsory, since its object would only be fully achieved if this were the case. There is the precedent of compulsory third-party cover for motor accidents which, in South Australia, is collected with the licence fee and administered by the State Government Insurance Commission. A disaster insurance premium might similarly be added to rates. However, third party motor insurance is intended to protect victims of accidents rather than the insured person and the criterion of personal choice would probably be deemed paramount in the case of property.

There is also a compulsory levy to assist with the funding of fire brigades but this is imposed on insurance premiums and is thus not universally applied.

DISCUSSION AND CONCLUSION

The Stirling bushfire case is a graphic example of the problems which arise when the onus of disaster recovery falls on a single local authority with no clear support provision and no mechanism for the speedy resolution of claims. It is almost entirely a negative example. The very fact that there has still not been a final resolution, despite the passage of ten years since the original disaster, is a sufficient indication of the inadequacy of the procedures available.

The possibility of such a case was not entirely unheralded even if it were not, at the time, anticipated. United States' experience

indicated the growing prospect of public liability claims on local government (Petak 1985, p. 5; Kusler 1985).

Since it was also accepted that disaster relief was the most controversial aspect of hazard policy (Clay 1985, p. 25), the combination of a disputed public liability with contentious compensation claims produced a volatile mix.

The emergence of citizen group activity in the form of the Fire Loss Action Society and the Stirling Ratepayers' Association could also have been anticipated, given an inevitable gap between expectation and delivery (Wolensky and Miller 1981, p. 498).

Equally, the reaction of local politicians ran according to expectations, with responses geared more to political factors than real policy needs (Diggins 1979, p. 215). The risks inherent in this situation (Abney and Hill 1966) became apparent in the rout of the incumbent Council in the 1989 elections and the sensitivity of State politicians to the issue.

Given that this was a pioneering case, many of its features could only be identified and evaluated in retrospect. However, major flaws of preparedness and implementation arose from the inadequacy of the Council's insurance cover and the failure to have the episode declared a disaster so that it could secure systematic relief from the higher levels of government. Again, United States' experience indicates that the latter flaw was likely to bring dire consequences (Settle 1985, p. 103).

What are not so readily accountable, even in retrospect, are the measures taken in response to the case. While it must be accepted that there is no a priori answer to the question of which level of government is the most appropriate to any particular provision (Mushkatel and Weschler 1985, p. 53) the assumed weakness of Australian local government might have produced an expectation of a state imposed solution.

Britton (1989, pp. 37-38) supports this position, believing that local governments do not have the capacity to deal with disasters without state government assistance. He appears to be vindicated by the immediate outcome of the Stirling case which hinged on the willingness of the State government to accept the bulk of the liability. However, the establishment of the Mutual Liability Scheme indicates the possibility of a collaborative local government response. While this avoids the possibility of conflict inherent

in the sharing of responsibilities between the two levels of government, Britton is not very sanguine about the evenness of such collaboration, believing local government to be also prone to disharmony.

This raises the question of whether the collaborative scheme produced by the Local Government Association is the product of very specific conditions, perhaps the acclaimed "sense of difference" that infuses South Australian political rhetoric, or whether it is over-optimistic about the possibilities of local government co-operation.

The fact is that it is merely the most recent in a series of collaborative ventures with an established record of success indicates that there is no basic obstacle. The Local Government Association of South Australia made a modest, though, at the time, innovative start in this direction with the formation of the Council Purchasing Authority in 1967. During the 1980s a succession of further operations were inaugurated (Council and Community 1990, pp. 16-20): The Local Government Superannuation Scheme in 1983, the Local Government Finance Authority in 1984, the Local Government Association Workers' Compensation Scheme in 1986, culminating in the Local Government Association Mutual Liability Scheme in 1989.

Rather than this success being the product of some specifically South Australian political culture it is more likely that it is attributable to the development of appropriate organisational forms, though the verification of such an assumption must await the results of attempts at emulations.

Stallings and Schepart (1987, p. 281) claim that,

"post impact activities and relationships are seen as an extension of, rather than a departure from, pre-impact policies."

The problem is in the identification of basic directions. The initial response of local governments collectively in this case was to disclaim responsibility and to define it as a matter for settlement between the Stirling Council and the State government. It was unprepared to meet the bill either in whole or part. Even its eventual contribution of \$A1.5 million to pay the interest on the initial loan was effectively a laundered State government provision, since this was the amount of the discount offered to the

Mutual Liability Scheme on the cost of the higher-order liability cover. However, the ultimate and permanent result of the issue was the establishment of a local government scheme which is entirely self-directed and self-financed.

Thus there have been some positive and innovative consequences, mainly stemming from local government itself, which indicate the possibility of a more substantial role for this level of government than is usually envisaged. The normal assumption is that, given the weakness of any individual local government, intergovernmental assistance can only come from the higher levels. It is this assumption which affirms and, in practice, consolidates the inferior role of local government.

What is being demonstrated currently in South Australia is that intergovernmental relations can be activated in a horizontal as well as a vertical direction. Collaborative schemes between local governments themselves can provide the greater resources needed to deal with activities which are beyond the capacity of single or even regionally-grouped councils. These have the advantage that they can be better tailored to local governments' requirements. They also remove the policies from the possible conflicts that may arise between the two levels of government. Most importantly, they provide for the institutionalisation of provision so that it can be immediately invoked rather than left to the vicissitudes of political bargaining.

It is clear however, that there are other important problems of disaster recovery provision that remain unresolved. When the focus has shifted from the immediate questions raised by the Stirling bushfire case it may be possible to deal with these, and local government, having taken the initiative on one significant sphere, may be prepared to extend its concerns.

A final conclusion might be that the politicisation of the issue and the imbroglio that followed has not been by any means fruitless. While the sound and fury seems to shed more heat than light, it does serve to concentrate minds, particularly on the avoidance of a repetition. After the political turmoil has finally subsided it will have left behind a valuable institution, one which not only provides for improved disaster recovery but indicates the possibility of a local government solution to disaster management.

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