



New South Wales

# Rural Fires and Environmental Assessment Legislation Amendment Act 2002 No 67

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New South Wales

# **Rural Fires and Environmental Assessment Legislation Amendment Act 2002 No 67**

Act No 67, 2002

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An Act to amend the *Rural Fires Act 1997* and the *Environmental Planning and Assessment Act 1979* with respect to bush fire prone lands, bush fire hazards and bush fire emergencies; and for other purposes. [Assented to 10 July 2002]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Environmental Planning and Assessment Act 1979 No 203**

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

**4 Amendment of Rural Fires Act 1997 No 65**

The *Rural Fires Act 1997* is amended as set out in Schedules 2–4.

**5 Amendment of other instruments**

The Acts and instruments in Schedule 5 are amended as set out in that Schedule.

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## Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*bush fire prone land*, in relation to an area, means land recorded for the time being as bush fire prone land on a bush fire prone land map for the area.

*bush fire prone land map* for an area means a map for the area certified as referred to in section 146 (2).

### [2] Section 79BA

Insert after section 79B:

#### **79BA Consultation and development consent—certain bush fire prone land**

- (1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:
  - (a) is satisfied that the development conforms to the specifications and requirements of *Planning for Bushfire Protection 2001* produced by the NSW Rural Fire Service (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document), that are relevant to the development, or
  - (b) the consent authority has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.

(2) In this section:

*special fire protection purpose* has the same meaning as it has in section 100B of the *Rural Fires Act 1997*.

**[3] Section 91 What is “integrated development”?**

Insert in appropriate order in the Table to section 91 (1):

|                             |        |  |
|-----------------------------|--------|--|
| <i>Rural Fires Act 1997</i> | s 100B | authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes |
|-----------------------------|--------|--|

**[4] Section 146**

Insert after the heading to Part 8:

**146 Bush fire prone land**

- (1) If a bush fire risk management plan applies to land within the area of a council, the council must, within 12 months after the commencement of this section (and before the end of the period of every 5 years after the commencement):
  - (a) request the Commissioner of the NSW Rural Fire Service to designate land (if any) within the area that the Commissioner considers, having regard to the bush fire risk management plan, to be bush fire prone land, and
  - (b) must record any land so designated on a map.
- (2) The Commissioner of the NSW Rural Fire Service must, if satisfied that the land designated by the Commissioner has been recorded by the council on a map, certify the map as a bush fire prone land map for the area of the council.
- (3) Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.

(4) The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.

(5) In this section:

*bush fire risk management plan* has the same meaning as it has in the *Rural Fires Act 1997*.

**Note.** Division 8 of Part 4 of the *Rural Fires Act 1997* contains provisions relating to the carrying out of development and bush fire hazard reduction work on bush fire prone land.

**[5] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Rural Fires and Environmental Assessment Legislation  
Amendment Act 2002*

**[6] Schedule 6**

Insert the following Part (appropriately numbered) at the end of the Schedule:

**Part Rural Fires and Environmental Assessment  
Legislation Amendment Act 2002**

**Bush fire prone land**

- (1) The following land within the area of a council is taken to be bush fire prone land for the area of the council until a bush fire prone land map for the area has been certified by the Commissioner of the NSW Rural Fire Service under section 146:
- (a) land that is within, or within 100 metres of, a high or medium bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land, and
  - (b) land within, or within 30 metres of, a low bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land.

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Schedule 1      Amendment of Environmental Planning and Assessment Act 1979

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(2) In this clause:

*bush fire risk management plan* has the same meaning as it  
has in the *Rural Fires Act 1997*.

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## **Schedule 2 Amendments to Rural Fires Act 1997 relating to performance audit**

(Section 4)

### **[1] Section 48 Functions of Bush Fire Co-ordinating Committee**

Insert after section 48 (2):

- (2A) The Bush Fire Co-ordinating Committee may request the Commissioner to conduct a performance audit under section 62A with respect to implementation of bush fire risk management plans generally or for a specified rural fire district or other part of the State.

### **[2] Section 51 Functions of Bush Fire Management Committees**

Insert after section 51 (1):

- (1A) A Bush Fire Management Committee must, within 2 months after the end of each financial year, report to the Bush Fire Co-ordinating Committee on implementation of each bush fire risk management plan in force for the rural fire district or other part of the State for which the Bush Fire Management Committee is constituted.

### **[3] Part 3, Division 6**

Insert after Division 5:

#### **Division 6 General**

##### **62A Performance audit of implementation of bush fire risk management plans**

- (1) The Commissioner may conduct a performance audit of the implementation of bush fire risk management plans generally in the State or for a specified rural fire district or other part of the State.

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Schedule 2

Amendments to Rural Fires Act 1997 relating to performance audit

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- (2) The Commissioner may conduct a performance audit on the Commissioner's own initiative or at the request of the Bush Fire Co-ordinating Committee under section 48 (2A).
- (3) Without limiting the powers the Commissioner may exercise under subsection (1), the Commissioner may make such enquiries as the Commissioner considers fit to determine whether or not bush fire hazard reduction work has been carried out in accordance with any bush fire risk management plan that applies to the land.
- (4) The annual report of the Service prepared under the *Annual Reports (Departments) Act 1985* must include details of the number, and results, of performance audits carried out under this section in the year to which the report relates.

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## **Schedule 3 Amendments to Rural Fires Act 1997 relating to bush fire prone land and bush fire hazard reduction**

(Section 4)

### **[1] Section 14 Delegation by Commissioner**

Insert at the end of the section:

- (2) The Commissioner may delegate to the Commissioner of New South Wales Fire Brigades any of the Commissioner's functions under the following provisions, but only to the extent that the functions are exercisable in respect of land within a fire district:
  - (a) section 73 (Bush fire hazard reduction by Commissioner),
  - (b) section 100B (Bush fire safety authorities),
  - (c) section 79BA (Consultation and development consent—certain bush fire prone land) of the *Environmental Planning and Assessment Act 1979*,
  - (d) section 146 (Bush fire prone land) of the *Environmental Planning and Assessment Act 1979*.

### **[2] Section 66 Bush fire hazard reduction work required by local authorities**

Insert after section 66 (2):

- (2A) The local authority must issue a bush fire hazard reduction certificate in respect of any bush fire hazard reduction work required by a notice issued in accordance with subsection (2).

### **[3] Section 73**

Omit the section. Insert instead:

#### **73 Bush fire hazard reduction by Commissioner**

- (1) The Commissioner may carry out bush fire hazard reduction work on land:

- (a) if the work has not been carried out on land by a public authority or owner or occupier of land when, or in the manner, required by a bush fire risk management plan, or
  - (b) if, in the opinion of the Commissioner, a public authority or owner or occupier of land has not properly performed a duty under section 63 to take notified steps, or any other practicable steps, that is imposed on the public authority or owner or occupier, or
  - (c) if the work has not been carried out by a public authority when, or in the manner, required by the Commissioner under section 74F.
- (2) Any costs incurred by the Commissioner in carrying out such work (including costs incurred in obtaining the approval of any local or public authority under any other law to carry out the work) may be recovered from the responsible person or authority as a debt due to the Crown in a court of competent jurisdiction.
- (3) Before carrying out any bush fire hazard reduction work under this section, the Commissioner must certify a bush fire hazard reduction certificate in respect of the work in accordance with section 100G.
- (4) In this section:  
*responsible person or authority* means a public authority or owner or occupier of land referred to in subsection (1).

**[4] Section 74**

Omit the section. Insert instead:

**74 Bush fire hazard reduction reports**

- (1) Each local authority must report to the Commissioner not later than 3 months after the end of the financial year on its activities in respect of bush fire hazard reduction work during the preceding year on land (other than managed land) in its area.

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- (2) The report must include the following information:
- (a) details of the extent of implementation of any scheme for the reduction of bush fire hazards on land in its area (other than managed land and unoccupied Crown land) set out in a bush fire risk management plan that applies to the land,
  - (b) the number of inspections relating to bush fire hazards carried out on the land,
  - (c) the number of bush fire hazard reduction notices issued by the local authority in respect of the land,
  - (d) details of any objections lodged against such notices and of whether they were confirmed, varied or withdrawn,
  - (e) the number of bush fire hazard reduction works carried out by the local authority under section 70,
  - (f) details of bush fire hazard reduction certificates issued by the local authority,
  - (g) information about such other matters (if any) as are prescribed by the regulations.
- (3) Each public authority that is responsible for managed land must report to the Commissioner not later than 3 months after the end of the financial year on its activities to reduce bush fire hazards on the managed land during the preceding financial year.
- (4) The report is to include details of the extent of implementation of any scheme for the reduction of bush fire hazards on managed land for which the public authority is responsible set out in a bush fire risk management plan that applies to the land.
- (5) The annual report of the Service prepared under the *Annual Reports (Departments) Act 1985* must include details of information contained in reports under this section for the year to which the annual report relates.

**[5] Part 4, Division 2A**

Insert after section 74:

**Division 2A Bush fire hazard complaints**

**74A Bush fire hazard complaints**

- (1) A complaint may be made under this Division that a bush fire hazard exists on land because of the failure of a public authority or owner or occupier of the land to carry out bush fire hazard reduction work on the land (a *bush fire hazard complaint*).
- (2) A bush fire hazard complaint may be made whether or not the public authority or owner or occupier concerned has a duty under section 63 to carry out the work.

**74B Who may make a bush fire hazard complaint**

A bush fire hazard complaint may be made by any owner or occupier of land adjacent to or in the vicinity of the land to which the complaint relates.

**74C How and to whom are complaints to be made**

- (1) A bush fire hazard complaint is to be made by giving it, or sending it by post:
  - (a) if the complaint relates to unoccupied Crown land or managed land for which a public authority is responsible—to the Commissioner, or
  - (b) in the case of any other land—to the local authority of the local government area in which the land is located.
- (2) A bush fire hazard complaint must be made in writing, must identify the complainant and must state the grounds for the complaint.
- (3) A local authority must notify the Commissioner of any complaint made to it under this Division.

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- (4) Written notice of the making of the complaint and the grounds of the complaint are to be given to the owner or occupier or public authority responsible for the land to which the complaint relates as soon as practicable after receipt of the complaint.

**74D Investigation of complaint**

- (1) The Commissioner or local authority must investigate the bush fire hazard complaint as soon as practicable after it is received.
- (2) The Commissioner or local authority may investigate the complaint as the Commissioner or local authority thinks fit.
- (3) Without limiting subsection (2), the Commissioner or a local authority (or a person authorised by the Commissioner or local authority) may, for the purpose of forming an opinion as to whether a bush fire hazard exists on the land to which the complaint relates, enter during the daytime any part of the land (other than a dwelling-house) that it is necessary to inspect in order to form that opinion.
- (4) The Commissioner or local authority may decline to deal with a complaint, or dismiss a complaint, that the Commissioner or local authority considers to be vexatious, misconceived, frivolous or lacking in substance.
- (5) The Commissioner or local authority is to notify the complainant if the Commissioner or local authority declines to deal with, or dismisses, the complaint.

**74E Action that may be taken by local authority if bush fire hazard exists**

A local authority that finds that a bush fire hazard exists on land to which a bush fire hazard complaint relates:

- (a) may serve a notice under section 66 on the owner or occupier of the land if no bush fire hazard reduction notice has been served on the owner or occupier of the land, or

- (b) must, subject to sections 67 and 68, exercise its powers under section 70 in respect of the land if a bush fire hazard reduction notice has been served on the owner or occupier of the land.

**74F Action that may be taken by Commissioner if bush fire hazard exists**

- (1) If the Commissioner finds that a bush fire hazard exists on land to which a complaint made to the Commissioner relates because a public authority has failed to take notified steps, or otherwise perform a duty imposed on it as referred to in section 63, the Commissioner may, by notice in writing served on the public authority require it to carry out such bush fire hazard reduction work as is specified by the Commissioner.
- (2) If the public authority fails to carry out the specified work within a reasonable time after service of the notice, the Commissioner may carry out bush fire hazard reduction work on the land under section 73.

**74G Complainant to be notified of action taken**

- (1) The Commissioner or local authority must advise the complainant of action taken by the Commissioner or authority in respect of the complaint as soon as practicable after it is taken.
- (2) The local authority must advise the Commissioner of action taken by it in respect of the complaint as soon as practicable after it is taken.

**74H Failure of local authority to take action**

- (1) A complainant may, by notice in writing given or sent by post to the Commissioner, request the Commissioner to take action under this section if the complainant considers that the local authority has failed to exercise its powers under this Division in respect of the complaint.
- (2) If the Commissioner is satisfied that a local authority has failed to deal with a bush fire hazard complaint, the Commissioner may investigate the complaint.

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- (3) The Commissioner may deal with a complaint whether or not a notice has been served under subsection (1).
  - (4) If the Commissioner finds that a bush fire hazard exists on land to which the complaint relates, the Commissioner may, by notice in writing served on the local authority, require it:
    - (a) to serve a notice under section 66 on the owner or occupier of the land if no bush fire hazard reduction notice has been served on the owner or occupier of the land, or
    - (b) subject to sections 67 and 68, to exercise its powers under section 70 in respect of the land if a bush fire hazard reduction notice has been served on the owner or occupier of the land.
  - (5) A local authority served with a notice under this section must comply with the requirements of the notice.

**[6] Section 76 Notices to repair or restore dividing fences**

Omit section 76 (6).

**[7] Section 80 Entry to certain land to establish fire breaks**

Omit the section.

**[8] Section 86 Notice and certain authorities required before certain fires lit**

Insert after section 86 (1):

- (1A) A person who lights a fire on land for the purpose of land clearance or for burning any fire break is guilty of an offence unless:
  - (a) a bush fire hazard reduction certificate has been issued in respect of the land clearance or fire break, or
  - (b) any approval, consent or other authority required for the land clearance or fire break under the *Environmental Planning Assessment Act 1979* or any other law has been given.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**[9] Section 89 Issue of permits**

Insert at the end of the section:

- (2) An appropriate authority must not issue a fire permit for a purpose unless:
  - (a) a bush fire hazard reduction certificate has been issued in respect of the purpose, or
  - (b) any approval, consent or other authority required for the purpose under the *Environmental Planning Assessment Act 1979* or any other law has been given.

**[10] Section 92 Conditions of permit**

Insert after section 92 (1) (a):

- (a1) any condition imposed by a bush fire hazard reduction certificate or as a condition of any approval, consent or other authority given by or under any other Act that is required to be obtained in relation to the lighting of a fire, and

**[11] Part 4, Division 8**

Insert after Division 7 of Part 4:

**Division 8 Development of bush fire prone land and for bush fire hazard reduction**

**Subdivision 1 Definitions**

**100A Definitions**

- (1) In this Division:

*bush fire code* means a bush fire environmental assessment code in force under this Division.

*bush fire safety authority* means an authority given by the Commissioner under section 100B and that is in force.

*certifying authority* means a certifying authority described in section 100E.

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***excluded land*** means the following:

- (a) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies,
- (b) land to which *State Environmental Planning Policy No 26—Littoral Rainforests* applies,
- (c) any other land prescribed by the regulations.

***issuing authority*** means the issuing authority described in section 100E.

***managed land*** means land:

- (a) that is dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *Forestry Act 1916*, or in respect of which the Forestry Commission has obtained the benefit of a forestry right as referred to in section 11 (1) (m) (ia) of that Act, or
- (b) that is dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *National Parks and Wildlife Act 1974*, or
- (c) that is vested in, or under the control of, the State Rail Authority, Rail Infrastructure Corporation or the Roads and Traffic Authority, or
- (d) that is within the catchment area of a water authority.

***private land*** means land other than managed land and unoccupied Crown land.

- (2) Expressions used in this Division that are used in the *Environmental Planning and Assessment Act 1979* have the meanings set out in that Act.

## **Subdivision 2 Bush fire prone land**

### **100B Bush fire safety authorities**

- (1) The Commissioner may issue a bush fire safety authority for:
  - (a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
  - (b) development of bush fire prone land for a special fire protection purpose.

- (2) A bush fire safety authority authorises development for a purpose referred to in subsection (1) to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire.
- (3) A person must obtain such a bush fire safety authority before developing bush fire prone land for a purpose referred to in subsection (1).
- (4) Application for a bush fire safety authority is to be made to the Commissioner in accordance with the regulations.
- (5) Development to which subsection (1) applies:
  - (a) does not include the carrying out of internal alterations to any building, and
  - (b) is not complying development for the purposes of the *Environmental Planning and Assessment Act 1979*, despite any environmental planning instrument.
- (6) In this section:

*special fire protection purpose* means the purpose of the following:

  - (a) a school,
  - (b) a child care centre,
  - (c) a hospital (including a hospital for the mentally ill or mentally disordered),
  - (d) a hotel, motel or other tourist accommodation,
  - (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
  - (f) housing for older people or people with disabilities within the meaning of *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*,
  - (g) a group home within the meaning of *State Environmental Planning Policy No 9—Group Homes*,

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- (h) a retirement village,
  - (i) any other purpose prescribed by the regulations.

### **Subdivision 3 Bush fire hazard reduction**

#### **100C Carrying out of bush fire hazard reduction work**

- (1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the doing of:
  - (a) emergency bush fire hazard reduction work on any land, or
  - (b) managed bush fire hazard reduction work on land other than excluded land.
- (2) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of emergency bush fire hazard reduction work carried out on any land.
- (3) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of managed bush fire hazard reduction work carried out on land other than excluded land if:
  - (a) the work is carried out in accordance with a bush fire risk management plan that applies to the land, and
  - (b) there is a bush fire hazard reduction certificate in force in respect of the work and the work is carried out in accordance with any conditions specified in the certificate, and
  - (c) the work is carried out in accordance with the provisions of a bush fire code applying to the land specified in the certificate.

**Note.** If work to which Part 5 of the *Environmental Planning and Assessment Act 1979* would apply but for this subsection is not carried out in accordance with this subsection, the person carrying out the work will be in breach of that Act.

- (4) Bush fire hazard reduction work may be carried out on land despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Conservation Act 1997*, the *Threatened Species Conservation*

*Act 1995, the National Parks and Wildlife Act 1974 or any other Act or instrument made under an Act if:*

- (a) the work is carried out in accordance with a bush fire risk management plan that applies to the land, and
  - (b) there is a bush fire hazard reduction certificate in force in respect of the work and the work is carried out in accordance with any conditions specified in the certificate, and
  - (c) the work is carried out in accordance with the provisions of any bush fire code applying to the land specified in the certificate.
- (5) Subsection (4) does not apply to an integrated forestry operations approval within the meaning of the *Forestry and National Park Estate Act 1998*.

**100D What is a bush fire hazard reduction certificate?**

A bush fire hazard reduction certificate is a certificate that authorises the carrying out of bush fire hazard reduction work on land in accordance with:

- (a) a bush fire risk management plan that applies to the land, and
- (b) the provisions of any bush fire code applying to the land specified in the certificate, and
- (c) any conditions specified in the certificate.

**100E Issuing and certifying authorities**

- (1) The *issuing authority* for a bush fire hazard reduction certificate in respect of bush fire hazard reduction work to be carried out on private land by a person other than the Commissioner or a local authority is the local authority of the area in which the land is situated.
- (2) The *certifying authority* for a bush fire hazard reduction certificate in respect of bush fire hazard reduction work to be carried out:
  - (a) on any land by the Commissioner—is the Commissioner,

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- (b) on any land by a local authority—is the local authority for the area in which the land is situated,
  - (c) on managed land or unoccupied Crown land by a public authority—is the public authority responsible for the land.

**100F Issue by local authorities of bush fire hazard reduction certificates**

- (1) An application for a bush fire hazard reduction certificate in respect of work to be carried out on private land by a person other than a local authority or the Commissioner is to be made to the issuing authority in writing in accordance with the regulations (if any).
- (2) An application may be made:
  - (a) by any owner or occupier of the private land, or
  - (b) if the work is to be carried out on the private land by a public authority responsible for managed or unoccupied Crown land in the vicinity of the private land—by the public authority.
- (3) A single application may, with the consent of all owners or occupiers of the land concerned:
  - (a) be made for land owned or occupied by more than one person, or
  - (b) be made by a public authority on behalf of those owners or occupiers.
- (4) A bush fire hazard reduction certificate must not be issued unless:
  - (a) a bush fire risk management plan applies to the land, and
  - (b) the issuing authority has taken into consideration the provisions of any bush fire code applying to the land and determined which of them should be complied with in carrying out the work and whether any conditions should be imposed having regard to the code.

- (5) The issuing authority may determine an application:
  - (a) by issuing a bush fire hazard reduction certificate, or
  - (b) by refusing to issue a bush fire hazard reduction certificate.
- (6) A bush fire hazard reduction certificate must:
  - (a) specify the provisions of any bush fire code applying to the land that the issuing authority has determined should be complied with in carrying out the work, and
  - (b) specify any other conditions that have been imposed by the issuing authority having regard to that bush fire code, and
  - (c) specify as a condition of the issue that notice be given to the fire control officer for the district in which the land is situated before the work is carried out and to any other person prescribed by the regulations.
- (7) The determination of an application must be completed within 7 days (or such longer period as may be agreed to by the applicant) after lodgment of the application.
- (8) There is no right of appeal against the determination of, or a failure or refusal to determine, an application for a bush fire hazard reduction certificate.

**Note.** If a bush fire hazard reduction certificate is not obtained, bush fire hazard reduction work may still be carried out but only if any approvals, consents or other authorisations that would have been required to be obtained but for section 100C are obtained.
- (9) A local authority or public authority must not charge any fee in respect of an application for, or the issue of, a bush fire hazard reduction certificate.

**100G Bush fire hazard reduction certificates of certifying authorities**

- (1) Before a certifying authority carries out any bush fire hazard reduction work on land, the certifying authority must certify:
  - (a) that a bush fire risk management plan applies to the land, and
  - (b) that the certifying authority has taken into consideration the provisions of any bush fire code applying to the land

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- and determined which of them should be complied with in carrying out the work and whether any conditions should be imposed having regard to any provisions of that code, and
- (c) if the certifying authority is a local authority or a public authority, that the notice will be given to the fire control officer for the district in which the land is situated before the work is carried out and to any other person prescribed by the regulations.
- (2) A bush fire hazard reduction certificate certified by a certifying authority must:
- (a) specify the provisions of any bush fire code applying to the land that the certifying authority has determined should be complied with in carrying out the work, and
  - (b) specify any conditions that have been imposed by the certifying authority having regard to that bush fire code.

**100H Remedy and restraint for breaches of sections 100F and 100G**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of section 100F or 100G, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

**100I Duration of bush fire hazard reduction certificate**

A bush fire hazard reduction certificate becomes effective and operates for a period of 12 months commencing on the date endorsed on the certificate.

**Subdivision 4 Bush fire environmental assessment codes**

**100J Commissioner may prepare draft codes**

- (1) The Minister may cause to be prepared by the Commissioner for submission to the Minister a draft bush fire environmental assessment code in relation to land (other than excluded land).
- (2) A draft bush fire environmental assessment code may refer to, or incorporate with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.
- (3) In preparing a draft bush fire environmental assessment code in relation to land, the Commissioner must have regard to:
  - (a) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*), and
  - (b) any matter likely to affect the environment by reason of the carrying out of bush fire hazard reduction works on the land that a determining authority would be required to consider under section 111 of the *Environmental Planning and Assessment Act 1979* (but for this Division) if Part 5 of that Act were applicable to the work and the carrying out of the works were an activity within the meaning of that Part.

**100K Consultation on draft codes**

- (1) The Commissioner must, in preparing a draft bush fire environmental assessment code, consult with, and take into account any recommendations made by or on behalf of the following:
  - (a) the Director-General of the Department of Planning,
  - (b) the Director-General of National Parks and Wildlife,

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- (c) the Managing Director of State Forests,
  - (d) the Nature Conservation Council of New South Wales,
  - (e) the NSW Farmers Association,
  - (f) the Local Government Association of New South Wales,
  - (g) the Shires Association of New South Wales,
  - (h) the Director of NSW Fisheries,
  - (i) the Commissioner of NSW Fire Brigades,
  - (j) the Director-General of the Department of Land and Water Conservation.
- (2) The Commissioner may consult with such other persons or bodies as the Commissioner considers appropriate or as the Minister directs.

**100L Public participation in preparation of codes**

- (1) The Commissioner must give public notice of and exhibit, for the purpose of receiving submissions from any interested persons, any draft bush fire environmental assessment code prepared by the Commissioner.
- (2) A draft bush fire environmental assessment code must be exhibited for at least 42 days. The Commissioner must exhibit with it any other matter that the Commissioner considers appropriate or necessary to better enable the draft code and its implications to be understood.
- (3) After considering all submissions received concerning the draft bush fire environmental assessment code, the Commissioner may amend the draft code or submit it without amendment to the Minister for approval.

**100M Approval of code**

The Minister may, after consultation with the Minister for the Environment, the Minister for Planning and such other Ministers as the Minister considers appropriate, approve a draft bush fire environmental assessment code as a bush fire code for the purposes of this Part.

**100N Publication, commencement and availability of codes**

- (1) A draft bush fire environmental assessment code:
  - (a) is to be published in the Gazette, and
  - (b) takes effect as a bush fire environmental assessment code on the day on which it is published or, if a later day is specified in the code for that purpose, on the later day so specified.
- (2) The following are to be made available without charge for public inspection during normal office hours for the council of the area to which a bush fire code relates:
  - (a) a copy of the code,
  - (b) if the code has been amended, a copy of the code as so amended,
  - (c) if the code refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.

**100O Amendment or revocation of codes**

A bush fire code may be amended or revoked by an instrument prepared, approved, publicly exhibited and published in accordance with the relevant procedures of this Part with respect to codes.

**[12] Schedule 3, Part 5**

Insert after clause 19:

**Part 5 Provisions consequent on enactment of Rural  
Fires and Environmental Assessment  
Legislation Amendment Act 2002**

**20 Definition**

In this Part:

*amending Act* means the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002*.

## **21 Savings in respect of planning matters**

- (1) The amendment made by Schedule 3 [11] to the amending Act does not affect:
  - (a) any development consent granted under the *Environmental Planning and Assessment Act 1979* before the commencement of that amendment or any development carried out in accordance with such a consent, or
  - (b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of such activity) if the provisions of that Part were complied with for that activity before the commencement of that amendment.
- (2) If an application for development consent has been made but not been finally determined on the commencement of Schedule 3 [11] to the amending Act, the amendment made by Schedule 3 [11] does not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application.
- (3) Despite subclause (2), the Minister for Planning may, by notice served on the consent authority, direct that all or any provisions inserted by the amendment apply to the determination of the application.
- (4) Despite subclause (2), if an appeal relating to an application referred to in that subclause has been made to the Land and Environment Court, the Court may, by order, direct that all or any provisions inserted by the amendment apply to the determination of the application.

## **22 Agreements about review of incidence of bush fire hazards**

Any agreement entered into by the Commissioner under section 12A in relation to the functions of a local authority under section 74 (1), as in force before the commencement of Schedule 3 [4] to the amending Act, ceases to have effect on that commencement.

**[13] Dictionary**

Insert in alphabetical order:

*bush fire hazard complaint* means a complaint under section 74A.

*bush fire hazard reduction certificate* means a certificate referred to in section 100D.

*bush fire prone land* has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

*managed bush fire hazard reduction work* means bush fire hazard reduction work that is carried out in accordance with a bush fire risk management plan.

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## Schedule 4 Other amendments to Rural Fires Act 1997

(Section 4)

**[1] Section 22 General powers of rural fire brigade officers and others**

Omit “persons or property” from section 22 (1).

Insert instead “persons, property or the environment”.

**[2] Section 28 Damage to property and the environment**

Insert “and any remedial work necessary to rectify damage to the environment” after “good faith” in section 28 (1).

**[3] Section 69 Duties of local authority**

Omit “The fire control officer for a local authority” from section 69 (1).

Insert instead “A fire control officer”.

**[4] Section 69 (1)**

Omit “by the local”. Insert instead “by a local”.

**[5] Section 82**

Omit the section. Insert instead:

**82 Local bush fire danger period**

- (1) The Commissioner may, by notice published in a newspaper circulating generally in a local government area:
  - (a) declare that there is no bush fire danger period in the area or part of the area, or
  - (b) specify a different period to that set out in section 81 as the bush fire danger period for the area or part of the area.
- (2) A declaration may be made on the Commissioner’s own initiative or on the recommendation of a Bush Fire Management Committee for the area.

- (3) As soon as practicable after publishing a notice under subsection (1), the Commissioner is to publish a copy of the notice in the Gazette.
- (4) Despite section 81, if a declaration is made in accordance with this section specifying a different bush fire danger period in relation to any area or part of an area, the bush fire danger period in that area or part is the period specified in the declaration.
- (5) A declaration remains in force:
  - (a) until it is revoked, or
  - (b) for such period as is specified in the declaration (unless it is sooner revoked).

**[6] Section 83**

Omit the section. Insert instead:

**83 Consultation required before local bush fire danger period declaration made**

- (1) The Commissioner must, before making a declaration under section 82 that is to have effect only for the bush fire danger period occurring when the declaration is made, consult with and take into account any recommendations made:
  - (a) by the local authority for any area to which the declaration relates, and
  - (b) by any fire fighting authority exercising functions in the rural fire district or fire district constituted for the area.
- (2) The Commissioner must, before making a declaration under section 82 on the Commissioner's own initiative that is to have effect for a period or periods subsequent to the bush fire danger period occurring when the declaration is made, consult with and take into account any recommendations made by the Bush Fire Management Committee for the area.

**[7] Section 84**

Omit the section.

**[8] Section 85 Definitions**

Omit paragraph (a) and the note to the paragraph from the definition of *appropriate authority*.

Insert instead:

- (a) in the case of land in a rural fire district—the Commissioner of the NSW Rural Fire Service,

**[9] Section 85, definition of “appropriate authority”**

Omit paragraphs (b) and (d).

**[10] Section 86 Notice required before certain fires lit**

Insert after section 86 (2):

**Note.** An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.

**[11] Section 87 Lighting fires for land clearance or fire breaks in bush fire danger period**

Insert after section 87 (2):

**Note.** An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.

**[12] Section 88 Lighting fires that are dangerous to buildings in fire districts and rural fire districts**

Omit “local government area that is in a fire district” from section 88 (1).

Insert instead “fire district or rural fire district”.

**[13] Section 88 (1) (a)**

Omit “an officer of New South Wales Fire Brigades”.

Insert instead “the appropriate authority”.

**[14] Section 88 (2)**

Omit “local government area that is in a fire district” from section 88 (2).

Insert instead “fire district or rural fire district”.

**[15] Section 88 (2), note**

Insert after section 88 (2):

**Note.** An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.

**[16] Section 93 Refusal to issue fire permit**

Omit “if the appropriate authority is a local authority—the local authority” from section 93 (b).

Insert instead “the appropriate authority”.

**[17] Section 94 Notice to be given of issue of fire permit**

Omit section 94 (1).

**[18] Section 95 Permit not required for fires lit by public authorities**

Omit “a local” from section 95 (2) (a). Insert instead “an”.

**[19] Section 96 Appropriate authorities not determining authorities**

Omit section 96 (2).

**[20] Section 97 Reporting requirements**

Omit section 97 (1). Insert instead:

- (1) Within 2 months (or such other period as the Bush Fire Co-ordinating Committee specifies) after the end of the financial year, the Commissioner must report to the Bush Fire Co-ordinating Committee with respect to fire permits issued by appropriate authorities during the year.

**[21] Section 97 (2) (a)**

Omit the paragraph. Insert instead:

- (a) details of the circumstances surrounding the lighting of any bush fires in the area of an appropriate authority that appear to have been caused by the lighting of a fire authorised by a fire permit issued by the appropriate authority, and

**[22] Part 6A**

Insert after section 124:

**Part 6A Application of other legislation**

**Division 1 Application of other legislation to emergency  
fire fighting acts**

**124A Application of Environmental Planning and Assessment Act 1979**

- (1) An environmental planning instrument made under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the doing of any emergency fire fighting act.
- (2) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of any emergency fire fighting act.
- (3) An order under Division 2A or 3 of Part 6 of the *Environmental Planning and Assessment Act 1979* does not have effect to the extent that it prevents or interferes with the doing of any emergency fire fighting act.
- (4) Subsection (1) applies to an environmental planning instrument made before or after the commencement of this section.

**124B Application of National Parks and Wildlife Act 1974 and  
Threatened Species Conservation Act 1995**

- (1) Part 6A (Stop work orders and interim protection orders) of the *National Parks and Wildlife Act 1974* does not apply to or in respect of the doing of an emergency fire fighting act.
- (2) A person does not harm fauna for the purposes of section 45, 70, 98, 99 or 100 of the *National Parks and Wildlife Act 1974* if the harm is caused by the doing of any emergency fire fighting act by the person.
- (3) Division 1 of Part 7 (Stop work orders) of the *Threatened Species Conservation Act 1995* does not apply to or in respect of the doing of any emergency fire fighting act.

**124C Application of Local Government Act orders**

An order under section 124 of the *Local Government Act 1993* does not have effect to the extent that it prevents or interferes with the doing of any emergency fire fighting act.

**[23] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Rural Fires and Environmental Assessment Legislation Amendment Act 2002*, to the extent that it amends this Act

**[24] Schedule 3**

Insert the following clause (appropriately numbered) at the end of the Schedule:

**Fire permits**

A fire permit issued by the council of a local government area and in force immediately before the commencement of the amendments made to section 88 by the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002* is taken to be a fire permit issued by the Commissioner.

**[25] Dictionary**

Omit “persons or property” from the definition of *back burning*.  
Insert instead “persons, property or the environment”.

**[26] Dictionary**

Insert in alphabetical order:

*emergency bush fire hazard reduction work* means bush fire hazard reduction work carried out to protect persons, property or the environment from an existing or imminent danger arising out of a fire.

***emergency fire fighting act*** means anything (other than emergency bush fire hazard reduction work) done or authorised to be done by a fire fighting authority, during the course of bush fire fighting operations, by or under this or any other Act.

## **Schedule 5 Amendment of other instruments**

(Section 5)

### **5.1 Environmental Planning and Assessment Regulation 2000**

#### **Schedule 4 Planning certificates**

Insert after clause 10:

#### **11 Bush fire prone land**

That land that is bush fire prone land is bush fire prone land.

### **5.2 Fisheries Management Act 1994 No 38**

#### **[1] Section 220ZF Defences**

Omit “the *Rural Fires Act 1997* or” from section 220ZF (1) (c).

#### **[2] Section 220ZF (5)**

Insert after section 220ZF (4):

- (5) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

#### **[3] Section 220ZU Notification of, and consultation concerning, proposed departures from recovery or threat abatement plan**

Omit “the *Rural Fires Act 1997* or” from section 220ZU (5).

**[4] Section 220ZU (6)**

Insert after section 220ZU (5):

- (6) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

**5.3 Land and Environment Court Act 1979 No 204**

**Section 20 Class 4—environmental planning and protection  
development contract civil enforcement**

Insert after section 20 (1) (cj):

- (cja) proceedings under section 100H of the *Rural Fires Act 1997*,

**5.4 Local Government Act 1993 No 30**

**Section 22 Other functions**

Omit “declaration of bush fire danger periods and” from the matter relating to the *Rural Fires Act 1997* in the note to the section.

**5.5 Native Vegetation Conservation Act 1997 No 133**

**[1] Section 5 Definition of “clearing”**

Insert after section 5 (4):

- (5) For the purposes of this Act, the clearing of land by burning during a bush fire within the meaning of the *Rural Fires Act 1997* does not affect any requirement of this Act with respect to any subsequent clearing of the land (whether by burning or otherwise).

**[2] Section 12 Clearing excluded from operation of Act**

Omit “the *Rural Fires Act 1997*, or the *State Emergency and Rescue Management Act 1989*,” from section 12 (a).

Insert instead “the *State Emergency and Rescue Management Act 1989*”.

**[3] Section 12 (a)**

Omit “the latter”. Insert instead “that”.

**[4] Section 12 (a1)**

Insert after section 12 (a):

- (a1) any clearing authorised under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act,

**5.6 National Parks and Wildlife Act 1974 No 80**

**[1] Section 91AA Director-General may make stop work order**

Omit “Part 2 of the *Rural Fires Act 1997* or” from section 91AA (3).

**[2] Section 91AA (3A)**

Insert after section 91AA (3):

- (3A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

**[3] Section 118A Harming or picking threatened species, populations or ecological communities**

Omit “Part 2 of the *Rural Fires Act 1997*,” from section 118A (3).

**[4] Section 118A (3A)**

Insert after section 118A (3):

- (3A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

**[5] Section 118D Damage habitat of threatened species, populations or ecological communities**

Omit “Part 2 of the *Rural Fires Act 1997*,” from section 118D (2) (c).

**[6] Section 118D (2A)**

Insert after section 118D (2):

- (2A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

## **5.7 Rural Fires Regulation 1997**

### **Clause 38 Reduction of fire hazards on managed land**

Omit clause 38 (e).

## **5.8 Threatened Species Conservation Act 1995 No 101**

**[1] Section 71 Notification of proposed departures from recovery plan**

Omit “Part 2 of the *Rural Fires Act 1997* or” from section 71 (3).

**[2] Section 71 (4)**

Insert after section 71 (3):

- (4) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

**[3] Section 88 Notification of departures from threat abatement plan**

Omit “Part 2 of the *Rural Fires Act 1997* or” from section 88 (3).

**[4] Section 88 (4)**

Insert after section 88 (3):

- (4) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

**[5] Section 114 Director General may make stop work order**

Omit “Part 2 of the *Rural Fires Act 1997* or” from section 114 (3) (b).

**[6] Section 114 (3A)**

Insert after section 114 (3):

- (3A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

[Second reading speech made in—  
Legislative Assembly on 30 May 2002  
Legislative Council on 19 June 2002]