

BUSH FIRES (AMENDMENT) ACT 1989 No. 115

NEW SOUTH WALES



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BUSH FIRES (AMENDMENT) ACT 1989 No. 115

NEW SOUTH WALES



Act No. 115, 1989

An Act to amend the Bush Fires Act 1949 with respect to the prevention and fighting of bush fires; to increase penalties; and for other purposes. [Assented to 24 August 1989]

Bush Fires (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Bush Fires (Amendment) Act 1989.

Commencement

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

Amendment of Bush Fires Act 1949 No. 31

3. The Bush Fires Act 1949 is amended as set out in Schedules 1 - 3.

**SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION**

(Sec. 3)

(1) Section 6 (**Definitions**):

- (a) After the definition of "Deputy fire control officer", insert:
"District Fire Committee" means a District Fire
Committee constituted under section 41A by the
Co-ordinating Committee.
- (b) After the definition of "Occupier", insert:
"Officer", in relation to a bush fire brigade, means:
- (a) the bush fire brigade captain or group captain;
or
 - (b) the deputy, or the senior deputy, bush fire
brigade captain; or
 - (c) the deputy, or the senior deputy, group
captain.

SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

(2) Section 13 (**Councils may require fire breaks**):

After section 13 (1), insert:

(1A) The fire control officer for a council, or another person authorised by the council, may:

- (a) in the daytime; and
- (b) for the purpose of forming an opinion as to whether the council should serve a notice under this section on the owner of any land,

enter any part of the land (other than a dwelling-house) that it is necessary to inspect in order to form that opinion.

(3) Section 22 (**Powers of bush fire brigade officers**):

(a) Omit section 22 (2), insert instead:

(2) The powers conferred by subsection (1):

- (a) may be exercised despite any other provisions of this Act except paragraph (b) and sections 16, 17, 41A, 41F and 51; and
- (b) may not be exercised in relation to land or property vested in, or under the control of, the State Rail Authority without the permission of the Authority or of a person authorised by the Authority to give the permission.

(b) Section 22 (3A) - (3D):

Omit the subsections.

(4) Sections 22A, 22B:

After section 22, insert:

Reduction of fire hazards

22A. (1) In this section:

"authorised person", in relation to land, means:

- (a) any officer of a bush fire brigade for the time being nominated for the purposes of this section by the council for the area in which the land is situated; or

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SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

- (b) any person for the time being nominated for the purposes of this section by the Co-ordinating Committee; or
- (c) if the land is in the territory of a Fire Prevention Association - any person for the time being nominated for the purposes of this section by the Association; or
- (d) a person exercising functions under a plan of operations in force under section 41 A;

"Crown land" has the same meaning as it has in the Crown Lands Consolidation Act 1913;

"unoccupied Crown land" means Crown land that is not:

- (a) held under lease or licence; or
- (b) vested in, or under the control of, trustees.

(2) With the appropriate permission, an authorised person may enter any land and:

- (a) establish fire breaks on the land by ploughing, burning or clearing, or by any other means; or
- (b) remove, burn or destroy any inflammable matter, or any other material, that is on the land,

with the assistance of such other persons as the authorised person considers to be necessary for the purpose.

(3) For the purposes of this section, the appropriate permission in relation to land described in Column 1 of the Table to this section is permission given:

- (a) by the person or body described in Column 2 of the Table opposite the description of the land; or
- (b) by a person for the time being nominated for the purpose by the person or body so described.

(4) A prescribed organisation referred to in section 41 A is to be taken to have given the appropriate permission to the extent necessary to give effect to a plan of operations in force under that section.

(5) If the appropriate permission is given subject to conditions, the conditions must be complied with.

SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

(6) Any damage to property caused by a person in the exercise in good faith of a power conferred by or under this section is to be taken to be damage by fire within the meaning of any policy of insurance against fire covering the damaged property.

(7) This section does not apply in relation to an entry on land that is authorised by section 14 (which relates to entry on land after failure to comply with a council notice).

TABLE

Column 1	Column 2
Unoccupied Crown land in a catchment area for a public authority or council supplying water	The public authority or council
Unoccupied Crown land in a catchment area notified or constituted under the Soil Conservation Act 1938	The Catchment Areas Protection Board
Unoccupied Crown land under the control of a Pastures Protection Board	The relevant Pastures Protection Board
Unoccupied Crown land in an irrigation area	The Minister administering the Irrigation Act 1912
Land under the control of the Forestry Commission, whether or not it is Crown land or land dedicated under the Forestry Act 1916	The Forestry Commission

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SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

Column 1	Column 2
Land dedicated for a public purpose and vested in trustees	The trustees
Land vested in, or under the control of, the State Rail Authority	The State Rail Authority
Land that, under the National Parks and Wildlife Act 1974, is a national park, historic site, state recreation area, nature reserve or state game reserve	The Director of National Parks and Wildlife
A road vested in a council	The council
Crown land vested in, or under the control of, trustees	The trustees
Any other unoccupied Crown land (not being land under the control of the Forestry Commission or trustees)	The Minister administering the Crown Lands Consolidation Act 1913
Unoccupied land that is under the control of a public authority or council and is not otherwise referred to in this Table	The public authority or council

SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

Column 1

Column 2

Any occupied land not
otherwise referred to
in this Table.

The occupier

Voluntary work by bush fire brigade

22B. (1) With the consent of the council of the area in which it operates, a bush fire brigade may, in or out of the area, voluntarily co-operate with a public authority in the exercise of any function of the public authority prescribed by the regulations for the purposes of this section.

(2) If:

(a) a public authority, or any member of a public authority, has immunity from legal proceedings that would otherwise lie in relation to the exercise by the authority or member of a function; and

(b) a bush fire brigade co-operates under subsection (1) in the exercise of the function,

each officer and other member of the brigade taking part has the same immunity.

(5) Section 25 (**Proclamations of bush fire districts**):

(a) Omit "(not being within a fire district constituted under the Fire Brigades Act, 1909, a national forest, State forest, timber reserve or flora reserve, under the Forestry Act, 1916, or any other Act)".

(b) Omit the proviso.

(6) Section 27 (**Powers of fire control officers etc.**):

(a) Omit "Notwithstanding", insert instead "(2) Despite".

(b) At the end of section 27, insert:

; and

(f) may, in relation to land referred to in subsection (3), exercise such of the functions of the captain of a bush fire brigade as are exercisable in relation to that land.

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SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

- (3) In subsection (2) (b), (c) and (d):
"bush fire district" does not include land that is:
- (a) a fire district constituted under the Fire Brigades Act 1909; or
 - (b) a national forest, State forest, timber reserve or flora reserve under the Forestry Act 1916; or
 - (c) a national park, historic site, state recreation area, nature reserve or state game reserve under the National Parks and Wildlife Act 1974; or
 - (d) vested in, or under the control of, the State Rail Authority.
- (7) Section 37 (**Application of the Fund**):
After section 37 (1) (g), insert:
(g1) the establishment of fire breaks and the reduction of fire hazards;
- (8) Section 41A (**Co-ordination of planning**):
- (a) After section 41A (1), insert:
(1A) The Co-ordinating Committee may, in accordance with the regulations, constitute a District Fire Committee for each area or locality for which a plan of operations exists or is proposed.
 - (b) Section 41A (2):
After "may," insert "in consultation with the relevant District Fire Committee and".
 - (c) After section 41A (2), insert:
(2A) The Co-ordinating Committee may, in consultation with the relevant District Fire Committee, prepare all or any of the following plans:
 - (a) a plan for the reduction of fire hazards in an area or locality in which a prescribed organisation has functions associated with the prevention, control or suppression of bush fires;

SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

- (b) a plan for the exercise in such an area or locality of functions conferred or imposed by this Act;
 - (c) with the consent of the relevant prescribed organisation - a plan for the exercise in such an area or locality of functions of the organisation.
- (2B) If a dispute arises between the Co-ordinating Committee and a prescribed organisation in relation to a plan of operations being prepared under subsection (2A):
 - (a) resolution of the dispute is a matter for the Minister and, if the prescribed organisation is within the administration of another Minister, that other Minister; and
 - (b) the decision of the Minister or Ministers is binding on the parties to the dispute.
- (9) Section 41B (**Other functions of Co-ordinating Committee**):

After section 41B (3), insert:

 - (4) If the Co-ordinating Committee is satisfied that a council is not making full use of its powers under section 13 (which relates to the reduction of fire hazards on private land), the Committee may, by notice in writing served on the council, require it to exercise those powers as stated in the notice.
 - (5) A council served with a notice under subsection (4) must comply with the requirements of the notice.
- (10) Section 41I (**Area of operations of Co-ordinating Committee and Chief Co-ordinator**):

Section 41I (1):

After "Act", insert ", other than those relating to the reduction of fire hazards and the exercise of functions under section 51,".
- (11) Section 48 (**Proceedings do not lie for execution of Act in good faith**):

After "Act" where lastly occurring, insert "(section 22B excepted)".

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SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

- (12) Section 51 (**Powers affecting land near certain bush fires**):
- (a) Section 51 (1), (1B), (1C):
Omit "8 kilometres of" wherever occurring, insert instead "the appropriate distance from".
 - (b) Section 51 (1A):
Omit "8 kilometres", insert instead "the appropriate distance".
 - (c) After section 51 (1C), insert:
 - (1D) If a bush fire is burning on land in:
 - (a) a national forest, State forest, timber reserve or flora reserve under the Forestry Act 1916; or
 - (b) a catchment area within the meaning of any Act relating to the supply of water by a public authority; or
 - (c) a national park, historic site, state recreation area, nature reserve or state game reserve under the National Parks and Wildlife Act 1974,
 and the fire is within the appropriate distance from the territory of a bush fire brigade, the bush fire brigade has the functions conferred by subsection (1E).
 - (1E) A bush fire brigade may exercise on land on which a bush fire referred to in subsection (1D) is burning the same functions as are conferred or imposed by this section on other persons in relation to a bushfire burning in any adjoining territory of the bush fire brigade.
 - (d) After section 51 (4), insert:
 - (5) Subject to sections 17 (which relates to emergency fire controllers and their deputies) and 41F (which relates to the Chief Co-ordinator), and subject to any plan of operations in force under section 41A:
 - (a) if a bush fire brigade is carrying out fire fighting operations under subsection (1E); and
 - (b) fire fighting operations are also being carried out on the same land on behalf of the public authority by which the land is controlled,

SCHEDULE 1 - AMENDMENTS RELATING TO FIRE
FIGHTING AND FIRE PREVENTION - *continued*

the officer of the public authority who is in charge of fire suppression strategies involved in the operations referred to in paragraph (b) is also in charge of fire suppression strategies involved in the operations referred to in paragraph (a).

(6) Subsection (5) does not operate to affect the normal chain of command by means of which fire suppression strategies are given effect.

(7) In this section:

"appropriate distance" means:

- (a) 8 kilometres; or
- (b) if a plan of operations current under section 41A specifies that a provision of this section has effect under the plan in relation to a different distance - that different distance.

(13) **Section 54 (Duty of councils and public authorities to prevent fires):**

(a) Omit "the council of any area or any public authority", insert instead "a council or a public authority".

(b) At the end of section 54, insert:

(2) A council or public authority is liable for the costs incurred by it in performing the duty imposed by this section but this subsection does not preclude the council or public authority from accepting financial assistance in discharging the liability.

(3) In this section:

"practicable steps" includes any steps:

- (a) that the Co-ordinating Committee considers to be necessary for the proper performance of the duty imposed on a council or public authority by this section; and
- (b) that are included in a plan in force under section 41A.

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SCHEDULE 2 - AMENDMENTS RELATING TO PENALTIES

(Sec. 3)

- (1) Section 10 (**Requirements to be complied with by persons lighting certain classes of fires**):
 - (a) Section 10 (1):

Omit "Penalty: \$500", insert instead "Maximum penalty: 20 penalty units".
 - (b) Section 10 (2):

Omit "Penalty: \$1,000", insert instead "Maximum penalty: 50 penalty units".
- (2) Sections 12 (1), 12 (3), 16 (4), 17 (10), 18, 41F (4):

Omit "\$1,000" wherever occurring, insert instead "50 penalty units".
- (3) Section 13 (**Councils may require fire breaks**):

Section 13 (3):
Omit "Penalty: \$1,000", insert instead "Maximum penalty: 50 penalty units".
- (4) Section 34 (**Determination of contributions of insurance companies**):
 - (a) Section 34 (3):

Omit "\$50", insert instead "1 penalty unit".
 - (b) Section 34 (3):

Omit "\$1,000", insert instead "10 penalty units".
- (5) Sections 44 (2), 50:

Omit "\$200" wherever occurring, insert instead "5 penalty units".

SCHEDULE 2 - AMENDMENTS RELATING TO
PENALTIES - *continued*

- (6) Section 49 (**Penalties**):
 - Section 49 (1):
 - Omit "\$500", insert instead "20 penalty units".
- (7) Section 52 (**Occupiers to extinguish fires or notify fire fighting authorities**):
 - Omit "Penalty: \$500", insert instead "Maximum penalty: 20 penalty units".
- (8) Section 55 (**Members of police force to support exercise of authority under the Act**):
 - Section 55 (2):
 - Omit "\$500", insert instead "20 penalty units".

SCHEDULE 3 - OTHER AMENDMENTS

(Sec. 3)

- (1) Section 6 (**Definitions**):
 - Omit the definition of "Supervised park".
- (2) Section 8 (**Supervised parks**):
 - Omit the section.
- (3) Section 12 (**Offences**):
 - (a) Section 12 (1) (a):
 - Omit "under such circumstances as to cause or be likely to cause injury or damage to such other person or his land or property or the land or property of the Crown or public authority".
 - (b) Section 12 (1):
 - After "12 months", insert "unless, in the case of a fire referred to in paragraph (a) or (b), it was lit under the authority of this or any other Act".

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SCHEDULE 3 - OTHER AMENDMENTS - *continued*

- (4) Section 31 (**Councils etc. to furnish information to Minister**):
Omit "or the occupier of any supervised park".
- (5) Section 32 (**Contributions by the Treasurer, councils and insurance companies**):
 - (a) Section 32 (1) (b):
Omit "one-quarter. Such contribution shall be paid out of the general funds of such councils;", insert instead "one-quarter; and".
 - (b) After section 32 (1), insert:
 - (1A) Funds of a council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards payments by the council under subsection (1) except to the extent by which the contribution exceeds:
 - (a) the amount estimated in relation to the council under section 30 (2); or
 - (b) such lesser amount as the Minister approves on the recommendation of the Finance Committee made after application by the council.
- (6) Section 37 (**Application of the Fund**):
 - (a) Section 37 (1) (f) (iv):
Omit "Department of Services", insert instead "Bush Fire Council".
 - (b) Section 37 (4):
Omit "or the occupier of any supervised park".
- (7) Section 39 (**Constitution of Bush Fire Council**):
 - (a) Omit section 39 (2) (h), insert instead:
 - (h) one shall be a person nominated by the Minister on the recommendation of the Treasurer;

SCHEDULE 3 - OTHER AMENDMENTS - *continued*

- (b) Section 39 (2) (j):
Omit "Town Clerks Society of New South Wales", insert instead "Institute of Municipal Management".
- (8) Section 40 (**Functions of Bush Fire Council**):
After section 40 (2) (b), insert:
 - (c) make a request referred to in section 15 (3) (b) of the Coroners Act 1980 for the holding of an inquiry into a bush fire.
- (9) Section 42 (**Appointment of fire patrol officers and honorary fire patrol officers**):
 - (a) Omit section 42 (1), insert instead:
 - (1) For the purposes of this Act, a fire patrol officer is a person who for the time being holds an office specified in the regulations as being an office by virtue of which the holder is a fire patrol officer.
 - (1A) A fire patrol officer has the functions conferred on a fire patrol officer by or under this Act.
 - (b) Omit section 42 (3), insert instead:
 - (3) The Minister may, by notice in the Gazette, revoke an appointment made under subsection (2).
- (10) Section 44 (**Powers of fire patrol officers**):
 - (a) Section 44 (1) (c):
After "lit", insert ", used or maintained".
 - (b) Section 44 (1) (d):
Omit "or used", insert instead ", used or maintained".

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SCHEDULE 3 - OTHER AMENDMENTS - *continued*

(11) Section 56 (**Giving of notices**):

Section 56 (2) (c):

After "business", insert ", or post office box".

(12) Section 57 (**Regulations**):

Section 57 (2) (z), (aa):

After "Associations" wherever occurring, insert "and District Fire Committees".

[*Minister's second reading speech made in -
Legislative Assembly on 26 July 1989
Legislative Council on 9 August 1989*]