

BUSH FIRES (FURTHER AMENDMENT) ACT 1994 No. 34

NEW SOUTH WALES



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BUSH FIRES (FURTHER AMENDMENT) ACT 1994 No. 34

NEW SOUTH WALES



Act No. 34, 1994

An Act to amend the Bush Fires Act 1949 to make further provision relating to the prevention and control of bush fires and for other purposes; and to amend the Fire Brigades Act 1989 and the Local Government Act 1993 consequentially. [Assented to 2 June 1994]

Bush Fires (Further Amendment) Act 1994 No. 34

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Bush Fires (Further Amendment) Act 1994.

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 Schedule 1.

Amendment of other Acts

4. The Acts specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949

(Sec. 3)

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

(a) In alphabetical order, insert:

“**Bush Fire Management Committee**” means a Bush Fire Management Committee constituted under section 41AA.

“**Bush fire management plan**” means a bush fire management plan approved under section 41A or, if it has been varied under that section, the plan as so varied ~~or~~ for the time being.

(b) Omit the definition of “District Fire Committee”.

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

(a) In section 10 (1), after “fire break”, insert “, or in circumstances in which doing so would be likely to be dangerous to a building,”.

(b) Omit section 10 (2) (b).

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
continued

(c) Omit section 10 (3), insert instead:

(3) A person must not light, maintain or use a fire, or cause a fire to be lit, maintained or used, at any place in a fire district constituted under the Fire Brigades Act 1989 (being a place within a local government area) in circumstances in which doing so would be likely to be dangerous to a building, unless:

- (a) the person has given the notices required to be given under subsection (1); and
- (b) the person is authorised to do so by a permit granted by the council of the local government area or by the officer in charge of the nearest fire station; and
- (c) the fire is lit, maintained or used in accordance with the conditions, if any, attached to the permit.

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

(3A) It is a duty of a council to give notice of the grant of a permit under subsection (3) to the Director-General of New South Wales Fire Brigades when the council grants the permit.

(d) From section 10 (4), omit “Any such permit”, insert instead “A permit must be in writing and”.

(e) After section 10 (7), insert:

(8) A person authorised to grant a permit is not, for the purposes of granting the permit, a determining authority within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979. In addition, a person is not a determining authority within the meaning of that Part merely because the person can authorise another person to grant a permit.

(9) This section does not require a permit to be granted for a fire lit, maintained or used by or under the direction of a public authority.

(3) Section 11 (**Duration, revocation, suspension and variation of permits**):

- (a) From section 11 (1) and (2), omit “referred to in section 10 (2)” wherever occurring.

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
continued

(b) After section 11 (3), insert:

(4) A permit remains in force for 21 days after the day on which it was granted unless, before that period expires, it is revoked under this section or ceases to have effect because of a direction under section 16 to prohibit the lighting, maintenance or use of the fire to which it relates.

(4) Section 13 (**Fire hazard reduction work required by councils**):

(a) After section 13 (1), insert:

(1AA) The council must serve a notice under this section if required to do so by a bush fire management plan that is in force.

(b) In section 13 (1A) (b), after “land”, insert “or whether or not such a notice has been complied with”.

(c) After section 13 (6), insert:

(7) It is a duty of a council to keep a record of whether or not bush fire hazard reduction work has been carried out on land within the area of the council in accordance with notices under this section if the work is required by a bush fire management plan.

(5) Section 14 (**Fire hazard reduction work in default of compliance with notice**):

After section 14 (1), insert:

(1AA) The council must exercise its power under this section if the requirement that has not been complied with is made by a bush fire management plan.

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

At the end of section 22 (3) (f), insert:

(g) in relation to a bush fire which is within or outside a bush fire district where the exercise of such powers is sanctioned by the fire control officer in accordance with a bush fire management plan.

(7) Section 22A (**Reduction of fire hazards**):

(a) From paragraph (d) of the definition of “authorised person” in section 22A(1), omit “plan of operations in force under section 41A”, insert instead “bush fire management plan”.

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
continued

- (b) From section 22A (4), omit “plan of operations in force under that section”, insert instead “bush fire management plan”.
- (8) Section 27 (**Powers of fire control officers**):
After section 27 (2), insert:
(2A) A fire control officer may call out a bush fire brigade, formed or organised within the bush fire district for which the officer is appointed, to attend a bush fire within or outside that bush fire district. In doing so, the fire control officer must comply with any relevant bush fire management plan.
- (9) Section 40 (**Co-ordinating Committee**):
(a) From section 40 (3), omit “5”, insert instead “8”.
(b) At the end of section 40 (3) (e), insert:
; and
(f) three members of the Bush Fire Council appointed by the Minister on the recommendation of the Bush Fire Council, none of whom is an ex-officio member of that Council, at least one of whom is an occupier of rural land that is (when the occupier is recommended for appointment) affected by a bush fire management plan and one of whom is the member of the Bush Fire Council appointed by the Minister on the recommendation of the Minister for the Environment.
- (10) Sections 41AA, 41AB:
After section 41, insert:
Bush Fire Management Committees
41AA. (1) The Co-ordinating Committee may constitute Bush Fire Management Committees for any part of the State.
(2) Bush Fire Management Committees must be constituted for all parts of the State that are bush fire districts, but need not be constituted separately for each bush fire district.
(3) A Bush Fire Management Committee must be constituted in accordance with the regulations.

**SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
*continued*****Draft bush fire management plans**

41AB. (1) Each Bush Fire Management Committee must, in accordance with this section, prepare and submit to the Co-ordinating Committee a draft of each of the following kinds of bush fire management plans for the part of the State for which it was constituted:

- (a) a plan of operations; and
- (b) a fuel management plan.

(2) Draft bush fire management plans of both kinds must be prepared and submitted to the Co-ordinating Committee by a Bush Fire Management Committee:

- (a) within 3 months after the commencement of this section and within each successive 2 year period following that commencement; or
- (b) within such other periods as may be fixed by the regulations.

(3) A draft plan of operations is to set out proposed procedures to be followed if:

- (a) a bush fire breaks out in the part of the State for which the Bush Fire Management Committee was constituted and assumes or is likely to assume such proportions as to be incapable of suppression by the fire fighting authority or authorities in that part of the State; or
- (b) the prevailing conditions are conducive to the outbreak of a bush fire likely to assume such proportions.

(4) A draft fuel management plan is to set out schemes for the reduction of fire hazards in the part of the State for which the Bush Fire Management Committee was constituted.

(5) A draft bush fire management plan of either kind may:

- (a) include schemes for the exercise in the part of the State to which it applies of functions conferred or imposed by this Act; and
- (b) confer or impose functions on the Director-General of New South Wales Fire Brigades, the Forestry Commission, the Director-General of National Parks and Wildlife or any other person or unincorporated body associated with the prevention, control or suppression of bush fires in that part of the State.

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
continued

(6) The Commissioner may exercise the functions of a Bush Fire Management Committee under this section if the Committee has failed to submit a draft bush fire management plan in accordance with this section or has submitted a draft plan that, in the opinion of the Co-ordinating Committee, is inadequate. In any such case, the draft plan is taken to have been prepared by the Bush Fire Management Committee and is to be submitted by the Commissioner to the Co-ordinating committee.

(11) Section 41A (**Co-ordination of planning by bush fire management plans**):

(a) From section 41A (l), omit the definition of “plan of operations”.

(b) Omit section 41A (1A)–(3), insert instead:

(2) When a Bush Fire Management Committee or the Commissioner submits a draft bush fire management plan for any part of the State, the Co-ordinating Committee must review the provisions of the draft plan and of any current bush fire management plan of the same kind for that part of the State.

(3) After the review, the Co-ordinating Committee may:

- (a) approve the draft plan (as submitted or after alteration by the Co-ordinating Committee) and revoke any other bush fire management plan to the extent that it makes corresponding provisions for that part of the State; or
- (b) vary another bush fire management plan for some or all of the same part of the State so as to incorporate in the other plan some or all of the provisions of the draft plan (as submitted or after alteration by the Co-ordinating Committee).

(3A) The Co-ordinating Committee is not to approve or vary a bush fire management plan so as to impose a requirement on a prescribed organisation within the administration of a Minister if the organisation objects to the requirement.

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
continued

(3B) The Co-ordinating Committee may, with the consent of a prescribed organisation:

- (a) vary or revoke any provision of an approved bush fire management plan imposing a requirement on the organisation; or
- (b) vary an approved bush fire management plan so as to impose a requirement on the organisation.

(3C) Any dispute between the Co-ordinating Committee and a prescribed organisation about whether such a consent should be given is to be decided by the Minister and, if the organisation is within the administration of another Minister, that other Minister. The decision of the Minister or Ministers is binding on the parties to the dispute.

(3D) If agreement cannot be reached between the Ministers, the dispute is to be resolved by the Premier whose decision is binding on the parties to the dispute.

- (c) From section 41A (4) and (5), omit “plan of operations” wherever occurring, insert instead “bush fire management plan”.

(12) Section 41F (**Functions of Chief Co-ordinator**):

From section 41F (5), omit “plan of operations under section 41A”, insert instead “bush fire management plan”.

(13) Section 41I (**Area of operations of Co-ordinating Committee and Chief Co-ordinator**):

Omit section 41I (1), insert instead:

(1) The functions conferred and imposed on the Co-ordinating Committee and the Chief Co-ordinator by or under this Act may be exercised only on land in the areas or parts of areas mentioned in Schedule 3, except as provided by subsections (1A) and (1B).

(1A) The functions conferred and imposed on the Chief Co-ordinator by section 41F may be exercised on land that is not within an area or part of an area mentioned in Schedule 3

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
continued

but, in a case in which the bush fire concerned affects only one area or part of one area or land on Lord Howe Island, only if:

- (a) those functions are exercised through a person whose name is included in the list of emergency fire controllers for the land concerned (or for land including that land) and who is nominated by the Chief Co-ordinator; and
- (b) before making that nomination, the Chief Co-ordinator has taken into consideration any representations made to the Chief Co-ordinator by any Bush Fire Management Committee for the land concerned about such a nomination.

While a person is in charge of bush fire fighting operations pursuant to this subsection, section 17 does not apply to the operations.

(1B) Subsections (1) and (1A) do not apply to the exercise of functions conferred or imposed by or under this Act and relating to the reduction of fire hazards or conferred or imposed by section 51.

(14) Section 51 (**Powers affecting land near certain bush fires**):

- (a) From section 51 (5), omit “plan of operations in force under section 41A”, insert instead “bush fire management plan”.
- (b) From the definition of “appropriate distance” in section 51 (7), omit “plan of operations current under section 41A”, insert instead “bush fire management plan”.

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

From the definition of “practicable steps” in section 54 (3), omit “plan in force under section 41A”, insert instead “bush fire management plan”.

(16) Section 54A:

After section 54, insert:

Bush fire hazard reduction by the Commissioner

54A. (1) The Commissioner may carry out bush fire hazard reduction work on any land in the manner required by

**SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
*continued***

a bush fire management plan if any such work has not been carried out on that land when required by the plan or has not been carried out in the manner required by the plan.

(2) The Commissioner may recover in a court of competent jurisdiction as a debt due to the Crown by the owner or occupier of the land concerned the costs incurred by the Commissioner in carrying out any such work.

(3) Any such work may be carried out by the Commissioner whether or not the owner or occupier of the land or a council has a duty to carry out the work.

(4) Any dispute between the Commissioner and a public authority about whether bush fire hazard reduction work has or has not been carried out on any land when or in the manner required by a bush fire management plan may be decided by the Minister and, if the public authority is within the administration of another Minister, the other Minister. The decision of the Minister or Ministers is binding on the parties to the dispute.

(5) If agreement cannot be reached between the Ministers, the dispute is to be resolved by the Premier whose decision is binding on the parties to the dispute.

(17) Section 57 (Regulations):

From section 57 (2) (z) and (aa), omit “and District Fire Committees” wherever occurring.

(18) Schedule 1A (Savings and transitional provisions):

After Part 2 of Schedule 1A, insert:

**Part 3—Provisions consequent on enactment of Bush
Fires (Further Amendment) Act 1994**

Saving of permits under sec. 35A of Fire Brigades Act 1989

6. (1) A written permission that was issued under section 35A of the Fire Brigades Act 1989 before the repeal of that section and that was in force immediately before that repeal is taken to be a permit granted under section 10 (3).

(2) Section 11 (4) applies to such a permit as if it had been in force when the permit was granted.

**SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949—
*continued***

Saving of former District Fire Committees

7. Each District Fire Committee constituted under section 41A (1A) for an area or locality is, on the repeal of that subsection, taken to be a Bush Fire Management Committee constituted under section 41AA for the area or locality.

Saving of plans of operations

8. (1) A plan of operations prepared under section 41A by the Co-ordinating Committee and in force for any part of the State immediately before the commencement of section 41AB is taken to be a bush fire management plan for that part of the State approved by the Co-ordinating Committee under section 41A.

(2) Any such plan may be revoked or varied under section 41A.

(19) Schedule 4 (**Provisions relating to the members and procedure of the Bush Fire Council, the Finance Committee and the Co-ordinating Committee**):

(a) From clause 2 (7), omit “40 (3) (b)–(e)”, insert instead “40 (3) (b)–(f)”.

(b) At the end of clause 5 (h), insert:

; or

(i) in the case of a member of the Co-ordinating Committee appointed on the recommendation of the Bush Fire Council, ceases to be an appointed member of the Bush Fire Council.

(c) From clause 10 (2), omit “or the Co-ordinating Committee”.

(d) After clause 10 (2), insert:

(3) The quorum for a meeting of the Co-ordinating Committee is 5 members.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

Fire Brigades Act 1989 No. 192

Section 35A (**Lighting of fires close to buildings**):

Omit the section.

Bush Fires (Further Amendment) Act 1994 No. 34

SCHEDULE 2—AMENDMENT OF OTHER ACTS —*continued*

Local Government Act 1993 No. 30

Section 428 (**Annual reports**):

After section 428 (2) (i), insert:

- (i1) a report on the bush fire hazard reduction activities of the council during that year, including activities carried out under a bush fire management plan approved under the Bush Fires Act 1949;
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*[Minister's second reading speech made in—
Legislative Assembly on 4 May 1994
Legislative Council on 13 May 1994]*