



New South Wales

Rural Fires Amendment Act 2000 No 104

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New South Wales

Rural Fires Amendment Act 2000 No 104

Act No 104, 2000

An Act to amend the *Rural Fires Act 1997* with respect to the employment of fire control officers and deputy fire control officers and certain other ancillary fire control staff, the respective responsibilities of the Commissioner of the NSW Rural Fire Service and local authorities and contributions to the New South Wales Rural Fire Fighting Fund; to make consequential amendments to other laws; and for other purposes. [Assented to 13 December 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rural Fires Amendment Act 2000*.

2 Commencement

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

3 Amendment of Rural Fires Act 1997 No 65

The *Rural Fires Act 1997* is amended as set out in Schedule 1.

4 Amendment of other laws

The Act and regulations specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendments

(Section 3)

[1] Section 7 Responsible local authorities in rural fire districts

Insert “the local authorities jointly or, if a local authority is nominated in the agreement, by” after “by” in section 7 (1) (b).

[2] Sections 7 (2) and (3)

Omit “,with the approval of the Minister,” wherever occurring.

[3] Section 7 (2)

Omit “districts and nominate which of them is to be responsible for those rural fire districts”.

Insert instead “districts. Responsibility for those rural fire districts is to be exercised jointly by the local authorities or, if the authorities nominate one of them in the agreement as the responsible authority, by that authority”.

[4] Part 2, note to the Part

Omit “The Commissioner determines the duties of certain members of the Service (staff of the Service and the fire control officers and deputy fire control officers). The fire control officers and deputy fire control officers are appointed by the local authorities of areas constituting rural fire districts and”.

Insert instead “The Commissioner determines the duties of certain members of the Service (staff of the Service, including fire control officers, deputy fire control officers and ancillary fire control staff). The fire control officers, deputy fire control officers and ancillary fire control staff are employed under the *Public Sector Management Act 1988* and”.

[5] Section 8 NSW Rural Fire Service

Omit section 8 (2) (b).

[6] Section 9 Functions of Service

Insert after section 9 (1) (b):

- (b1) to provide advisory services (whether within or outside the State) relating to fire fighting and other matters with respect to which it has expertise,

[7] Section 10 The Commissioner and other staff

Insert “, a fire control officer for each rural fire district” after “Service” in section 10 (1).

[8] Section 12 Functions of Commissioner

Omit section 12 (2). Insert instead:

- (2) The Commissioner may determine the various duties that members of the staff of the Service are required to perform and allocate the duties to be carried out by each member of the staff.

[9] Section 12A

Insert after section 12:

12A Entry into rural fire district service agreements

- (1) Without limiting section 12, the Commissioner may enter into a rural fire district service agreement (a *service agreement*) with any local authority or authorities responsible for a rural fire district or districts.
- (2) Without limitation, a service agreement:
 - (a) may specify functions imposed on the local authority by or under this Act that are to be exercised by the Commissioner during a period (if any) specified in the agreement, and
 - (b) may specify any obligations to be imposed on the local authority as a consequence of the Commissioner agreeing to exercise those functions, and
 - (c) may set performance targets for the exercise of those functions, and

- (d) may provide for the evaluation and review of results in relation to those targets.
- (3) The Commissioner and the local authorities must, as far as practicable, exercise the functions and carry out the obligations in accordance with the service agreement.
- (4) The Commissioner is to report the results of the performance under a service agreement during a financial year to the local authority or authorities concerned within 3 months after the end of that year.

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

Omit section 22 (1). Insert instead:

- (1) An officer of a rural fire brigade or group of rural fire brigades of a rank designated by the Commissioner may, for the purpose of controlling or suppressing a fire or protecting persons or property from an existing or imminent danger arising out of a fire, incident or other emergency:
 - (a) exercise any function conferred on the officer by or under this Act, or
 - (b) take any other action that is reasonably necessary or incidental to the effective exercise of such a function.

[11] Section 22 (2)

Insert “or take such an action” after “function”.

[12] Section 22 (2A)

Insert after section 22 (2):

- (2A) Any function that may be exercised, or action that may be taken, by an officer of a rural fire brigade or group of rural fire brigades because of this section may be exercised or taken by the Commissioner.

[13] Section 34 Deputy fire control officers

Omit section 34 (1)–(6).

[14] Section 34 (7) and (8)

Renumber section 34 (7) and (8) as section 34 (1) and (2), respectively.

[15] Section 34 (8) (renumbered as section 34 (2))

Omit “subsection (7)”. Insert instead “subsection (1)”.

[16] Section 35 Acting fire control officer

Omit “local authority responsible for the rural fire district may appoint a person, approved by the Commissioner,” from section 35 (1).

Insert instead “Commissioner may appoint a person”.

[17] Section 37 Responsibilities of fire control officers and local authorities

Omit section 37 (2).

[18] Section 37 (3)

Omit “A local authority that appoints a fire control officer”.

Insert instead “The local authority for the rural fire district for which a fire control officer is appointed”.

[19] Section 38 Functions of fire control officers

Omit section 38 (2) (e).

[20] Section 38 (3)

Omit the subsection.

[21] Section 47 Membership and procedure of Bush Fire Co-ordinating Committee

Omit “NSW Rural Fire Service Association” from section 47 (1) (g).

Insert instead “NSW Rural Fire Service Association Inc”.

[22] Section 86 Notice required before certain fires lit

Insert at the end of the section:

- (2) Nothing in this section requires an authorised officer of a fire fighting authority to give notice of the lighting of a fire for the purpose of back burning.

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

Insert at the end of the section:

- (2) Nothing in this section requires an authorised officer of a fire fighting authority who lights a fire for the purpose of back burning to be authorised to do so by a fire permit or to give any notice before lighting such a fire.

[24] Section 88 Lighting fires that are dangerous to buildings in fire districts

Insert at the end of the section:

- (2) Nothing in this section requires an authorised officer of a fire fighting authority who lights a fire for the purpose of back burning on land within a local government area that is in a fire district to be authorised to do so by a fire permit or to give any notice before lighting such a fire.

[25] Section 108 Contributions by Treasurer

Omit “14%” from section 108 (1). Insert instead “13%”.

[26] Section 109 Contributions required from councils

Omit “12.3%” from section 109 (1). Insert instead “13.3%”.

[27] Section 123 Membership and procedure of Advisory Council

Omit “NSW Rural Fire Service Association” from section 123 (1) (e).
Insert instead “NSW Rural Fire Service Association Inc”.

[28] Schedule 3 Savings and transitional provisions

Omit “and transitional” from the heading to the Schedule.
Insert instead “, transitional and other”.

[29] Schedule 3, clause 1

Insert at the end of clause 1 (1):

Rural Fires Amendment Act 2000

[30] Schedule 3, Part 4

Insert after clause 13:

Part 4 Provisions consequent on enactment of Rural Fires Amendment Act 2000

14 Definitions

In this Part:

affected officer means a person who, immediately before the commencement of this clause:

- (a) was employed by the local authority responsible for a rural fire district as a fire control officer or deputy fire control officer for the district, or
- (b) was employed by the local authority in a position exercising functions relating to fire control in the district that is designated for the purposes of this paragraph by the local authority and the Commissioner.

amending Act means the *Rural Fires Amendment Act 2000*.

designated fire control officer means a person referred to in paragraph (b) of the definition of *affected officer*.

transfer day, in relation to an affected officer, means the day an order under clause 15 (2) is published in the Gazette.

transferred officer means a person who becomes an officer of the Public Service in the Department of Rural Fire Service because of clause 15.

15 Transfer of existing fire control officers, deputy fire control officers and designated fire control officers to positions in Department of Rural Fire Service

- (1) On the commencement of this clause, an affected officer is entitled to be appointed to a position in the Department of Rural Fire Service of the Public Service in accordance with this clause.
- (2) The Governor may, on the recommendation of the Commissioner and with the consent of the affected officer concerned, by order published in the Gazette, appoint the affected officer to a position in the Department of Rural Fire Service of the Public Service.
- (3) A person who is the subject of such an order is to be regarded for all purposes as having become an officer of the Public Service, in accordance with the terms of the order, on the transfer day.

16 Employment conditions of transferred officers

- (1) This clause applies to a transferred officer.
- (2) A transferred officer is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the transferred officer as a fire control officer, deputy fire control officer or designated fire control officer immediately before the transfer day, until the salary, wages or allowances is or are varied or altered:
 - (a) by a State industrial instrument, or
Note. *State industrial instrument* is defined in the *Interpretation Act 1987*.
 - (b) by or under the *Public Sector Management Act 1988*, or
 - (c) otherwise in accordance with law.
- (3) Except as provided by this Part and the regulations, if any condition of employment of the transferred officer was, immediately before the transfer day, regulated by an award of a State industrial instrument applicable to the person as an affected officer, the condition (so long as it does not conflict

with any provision of the *Public Sector Management Act 1988* or the regulations under that Act) is to continue to apply to the person until it is regulated:

- (a) by a State industrial instrument, or
- (b) by or under the *Public Sector Management Act 1988*, or
- (c) otherwise in accordance with law.

Note. An example of an entitlement preserved by clause 16 is the preservation of salary incremental scales payable to transferred officers.

17 Preservation of certain rights of existing fire control officers, deputy fire control officers and designated fire control officers

- (1) This clause applies to a transferred officer.
- (2) Such an officer is entitled to retain:
 - (a) an entitlement to accrued annual leave up to a maximum of 40 days, and
 - (b) an entitlement to accrued sick leave up to a maximum of 65 days, and
 - (c) accrued long service leave.
- (3) Leave referred to in subclause (2) is in addition to any leave that accrues after the transfer day.
- (4) Such an officer is entitled to have service with the local authority that employed the officer immediately before the transfer day recognised for the purpose of eligibility for sick leave, long service leave, maternity leave, paternity leave, adoption leave or any other leave for which a condition of eligibility is a minimum period of service.
- (5) In this clause:

accrued annual leave means annual leave owing to an affected officer (but not taken) immediately before the transfer day.

accrued long service leave means long service leave accrued by an affected officer (but not taken) immediately before the transfer day.

accrued sick leave means the amount of sick leave to which an affected officer would have been entitled in the event of illness immediately before the transfer day, other than any such sick

leave not taken by the officer that the local authority employing the officer would be permitted or required under an award or agreement to pay out to the officer on resignation or termination.

18 Funding of leave entitlements

A local authority that, immediately before the transfer day, employed a transferred officer must, in accordance with any directions given or guidelines issued by the Treasurer, pay to the Commissioner such amount as is necessary to fund the liabilities incurred by the Department of Rural Fire Service with respect to the annual leave and long service entitlements of the transferred officer under clause 17 (2) (a) and (c).

19 Contributions to New South Wales Rural Fire Fighting Fund

The amendments made by Schedule 1 [25] and [26] to the amending Act apply to the financial year beginning on 1 July 2001.

[31] Dictionary

Insert in alphabetical order:

back burning means the application of fire to combustible matter so as to provide a fire break to control or suppress a fire or protect persons or property from an existing or imminent danger arising out of a fire, incident or other emergency.

[32] Dictionary

Omit “appointed under this Act” from the definition of ***fire control officer***.
Insert instead “of the NSW Rural Fire Service”.

Schedule 2 Consequential amendments of other laws

(Section 4)

2.1 Road Transport (Vehicle Registration) Regulation 1998

Omit “appointed under” from clause 12 (c) (v) of Schedule 1.
Insert instead “within the meaning of”.

2.2 Rural Fires Regulation 1997

Omit clause 15 (1) (f). Insert instead:

(f) the fire control officer or officers for the area,

2.3 Superannuation Administration Act 1996 No 39

Section 127 Additional State public sector superannuation schemes

Insert after section 127 (6):

(7) A trust deed approved under this section having effect immediately before the commencement of Part 4 of Schedule 3 to the *Rural Fires Act 1997* and that relates to employees associated with or involved in local government activities is taken, subject to the regulations, to extend to any such employee who is a transferred officer within the meaning of that Part.

Note. The employees concerned are certain fire control officers, deputy fire control officers and designated fire control officers who were employed by local government authorities before being transferred under the *Rural Fires Act 1997* to the Department of Rural Fire Services.

[Minister's second reading speech made in—
Legislative Assembly on 17 November 2000
Legislative Council on 6 December 2000]

BY AUTHORITY