



New South Wales

Rural Fires Amendment (Fire Trails) Act 2016 No 41

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New South Wales

Rural Fires Amendment (Fire Trails) Act 2016 No 41

Act No 41, 2016

An Act to amend the *Rural Fires Act 1997* to provide a system for establishing, maintaining and protecting fire trails on public land and private land; and for other purposes. [Assented to 21 September 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rural Fires Amendment (Fire Trails) Act 2016*.

2 Commencement

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

Schedule 1 Amendment of Rural Fires Act 1997 No 65

[1] Section 51 Functions of Bush Fire Management Committees

Insert “and fire access and fire trail plan” after “bush fire risk management plan” in section 51 (1A).

[2] Section 52 Bush Fire Management Committees to prepare plans

Insert after section 52 (2):

- (3) Each Bush Fire Management Committee must, in accordance with this Division, prepare and submit to the Bush Fire Co-ordinating Committee a draft fire access and fire trail plan for the rural fire district or other part of the State for which it is constituted.
- (4) A draft fire access and fire trail plan must be prepared and submitted to the Bush Fire Co-ordinating Committee by a Bush Fire Management Committee:
 - (a) within the period (the *original period*) notified to it by the Bush Fire Co-ordinating Committee, and
 - (b) thereafter within each successive 5 year period following the end of the original period.

[3] Section 54A

Insert after section 54:

54A Content of draft fire access and fire trail plan

- (1) A draft fire access and fire trail plan is to provide schemes for appropriate means of accessing land to prevent, fight, manage or contain bush fires, and in particular may do so by identifying or providing for the identification of suitable existing or proposed fire trails.
- (2) A draft fire access and fire trail plan is to set out matters in conformity with the Fire Trail Standards.
- (3) The Commissioner may direct a Bush Fire Management Committee to amend a draft fire access and fire trail plan prepared and submitted by it.

[4] Section 59A

Insert after section 59:

59A Adoption of fire access and fire trail plan

- (1) After preparing a draft fire access and fire trail plan for the rural fire district or other part of the State for which it is constituted, the Bush Fire Management Committee is to submit the plan to the Bush Fire Co-ordinating Committee.
- (2) When a draft fire access and fire trail plan is submitted to the Bush Fire Co-ordinating Committee, it must review the provisions of the draft plan and of any current fire access and fire trail plan.
- (3) After the review, the Bush Fire Co-ordinating Committee may:
 - (a) approve the draft plan (as submitted or after amendment by the Bush Fire Co-ordinating Committee) and revoke any other fire access and fire trail plan to the extent that it makes corresponding provisions for that rural fire district or other part of the State, or
 - (b) vary another fire access and fire trail plan for some or all of the same rural fire district or 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 amendment by the Bush Fire Co-ordinating Committee).

- (4) A fire access and fire trail plan prevails over a bush fire risk management plan to the extent of any inconsistency.

[5] Part 3B

Insert after Part 3A:

Part 3B Fire trails

Division 1 Preliminary

62I Purpose of this Part

The purpose of this Part is to provide for the establishment, maintenance, protection, certification and registration of fire trails (whether existing or new), and for associated purposes.

Note. Provisions for fire access and fire trail plans are contained in Part 3.

62J Definitions

- (1) In this Part:
- private land* means land that is not public land.
 - public land* means managed land, unoccupied Crown land, or land owned or occupied by a public authority.
- (2) For the purposes of this Part and without limiting the meaning of the term *occupier* in this Act, a public authority responsible for any particular land is taken to be the occupier of the land.

Division 2 Fire Trail Standards

62K Fire Trail Standards

- (1) The Commissioner may make Fire Trail Standards.
- (2) The Fire Trail Standards are to provide standards for fire trails on land throughout the State, and in particular to provide, as far as practicable, practical networks of fire trails.
- (3) Without limitation, the Fire Trail Standards may:
- (a) relate to:
 - (i) the structure and form of fire access and fire trail plans, and
 - (ii) the classification, length, width, gradient, signage, construction standards and maintenance of fire trails, and
 - (b) require a fire access and fire trail plan to include a treatment register for fire trails that is approved by the Commissioner from time to time.
- (4) The Fire Trail Standards must be published in the Gazette and on the NSW Rural Fire Service website.
- (5) The Fire Trail Standards may:
- (a) apply generally or be limited in their application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or

- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.
- (6) The reference in this section to a treatment register for fire trails is a reference to a register that specifies action to be taken or records action taken (or both) to ensure a fire trail complies with relevant Fire Trail Standards.
- (7) The reference in this section to making Fire Trail Standards extends to changing them by varying or replacing them from time to time.
- (8) A change to a requirement under the Fire Trail Standards does not apply to fire trails to which a then existing direction under section 62L or a then existing agreement under section 62M applies, unless the standard is less onerous in its effect or the owner and occupier (if any) of the land concerned consent to the change.

Division 3 Directions and agreements for fire trails

62L Directions for fire trails on public land

- (1) This section applies to public land.
- (2) The Commissioner may give a direction in writing that a fire trail be established and maintained on specified public land for the purposes of this Part. The direction must provide particulars of the fire trail including its location, and a copy is to be given to each owner and occupier (if any) of the land of whom the Commissioner is aware.
- (3) A direction for the establishment of a fire trail may apply to a new fire trail or an existing fire trail or a combination of both.
- (4) A direction for the establishment of a fire trail operates to establish the fire trail as a designated fire trail (even if the fire trail is not yet wholly or partly created).
Note. Section 62N enables certification of an existing fire trail without the need for a direction under this section.
- (5) The Commissioner may revoke a direction for the establishment of a fire trail at any time before the fire trail is registered under this Part.
- (6) A designated fire trail ceases to be so designated when it is registered as a fire trail or the direction for its establishment is revoked before its registration.
- (7) A reference in this section to:
 - (a) a new fire trail includes a reference to a new part of an existing fire trail, and
 - (b) an existing fire trail includes a reference to a part of an existing fire trail.

62M Agreements for fire trails on private land

- (1) This section applies to private land.
- (2) The Commissioner may enter into negotiations with the owner of private land for an agreement between the Commissioner and the owner in writing that a fire trail be established on the land for the purposes of this Part. The agreement must provide particulars of the fire trail including its location.
- (3) The agreement may apply to a new fire trail or an existing fire trail (or part of an existing fire trail) or both.

- (4) The agreement must:
 - (a) be in a form approved by the Commissioner, and
 - (b) state that the agreement is for the purposes of this Part, and
 - (c) acknowledge the consent of the owner to the designation and registration of the fire trail under this Part.
- (5) The Service Standards may provide for the procedures in respect of negotiations referred to in this section, including information to be provided to the owner of land.
- (6) The Commissioner may enter into any such agreements.
- (7) An agreement for the establishment of a fire trail operates to establish the fire trail as a designated fire trail (even if the fire trail is not yet wholly or partly created).

Note. If an existing fire trail is the subject of an existing agreement for a fire trail on private land, section 62N enables certification of the existing fire trail without the need for an agreement under this section.
- (8) A designated fire trail ceases to be so designated when it is registered as a fire trail or if the Commissioner and the owner of the land concerned agree to withdraw from the agreement before the fire trail is registered.
- (9) An agreement must not be entered into with the owner of private land if:
 - (a) the occupier of the land on which the fire trail the subject of the proposed agreement is situated is not the owner of the land, and
 - (b) the occupier has not consented, in writing, to the agreement.

Division 4 Certification and registration of fire trails

62N Certification of fire trails

- (1) The Commissioner may, for the purposes of this Act, certify:
 - (a) a fire trail situated on public land—if the fire trail is the subject of a direction under section 62L, or
 - (b) a fire trail situated on private land—if the fire trail is the subject of an agreement under section 62M, or
 - (c) an existing fire trail situated on public land—if the fire trail is referred to in a fire access and fire trail plan, or
 - (d) an existing fire trail situated on private land—if the fire trail is referred to in a fire access and fire trail plan and the fire trail is the subject of an agreement for the establishment of a fire trail entered into before the commencement of this section.
- (2) A fire trail may be certified only if it fully complies with the Fire Trail Standards at the time of certification.

62O Register of certified fire trails

- (1) The Commissioner is to keep a register of certified fire trails.
- (2) A copy of the register is to be published on the NSW Rural Fire Service website.
- (3) A certified fire trail is registered when its name or other identifying description is placed on the register.

- (4) The Commissioner may assign and vary names or other descriptions of certified fire trails.

Division 5 Fire trail complaints

62P Fire trail complaints

A complaint may be made under this Division that a registered fire trail does not comply with the Fire Trail Standards in any material respect.

62Q Who may make a fire trail complaint

A fire trail complaint may be made by any owner or occupier of land adjacent to or in the vicinity of the land on which the registered fire trail is situated.

62R How and to whom complaints are to be made

- (1) A fire trail complaint is to be made by:
 - (a) giving it to the Commissioner, or
 - (b) sending it to the Commissioner by post or email or in any other way approved by the Commissioner.
- (2) A fire trail complaint must be made in writing, must identify the complainant and must state the grounds for the complaint.
- (3) Written notice of the making of the complaint and the grounds of the complaint are to be given by the Commissioner to the owner or occupier of the land to which the complaint relates as soon as practicable after the complaint is received.

62S Investigation of complaint

- (1) The Commissioner must investigate a fire trail complaint as soon as practicable after it is received.
- (2) The Commissioner may investigate the complaint as the Commissioner thinks fit.
- (3) The Commissioner may decline to deal with a complaint, or dismiss a complaint, that the Commissioner considers to be vexatious, misconceived, frivolous or lacking in substance.
- (4) The Commissioner is to notify the complainant if the Commissioner declines to deal with, or dismisses, the complaint.

Note. Section 62ZP includes power to enter and inspect land in connection with this Division.

62T Action that may be taken by Commissioner

- (1) If, in relation to a fire trail complaint, the Commissioner finds that a registered fire trail does not comply with the Fire Trail Standards in a material respect, the Commissioner may take action under Division 6 or any other relevant provision of this Act.
- (2) Nothing in subsection (1) affects the operation of Division 6 or any other relevant provision referred to in that subsection.

62U Complainant to be notified of action taken

If any action is taken by the Commissioner in relation to a fire trail complaint, the Commissioner must, as soon as practicable after it is taken, advise the complainant of the action taken.

Division 6 Construction, maintenance and rectification work

62V Application of this Division

- (1) This Division applies to land on which a designated fire trail or registered fire trail is situated.
- (2) This Division applies whether or not a complaint is made under Division 5 in relation to the matter concerned.

Note 1. The term **fire trail rectification work** is defined in the Dictionary at the end of this Act.

Note 2. Section 62ZP includes power to enter and inspect land in connection with this Division.

62W Construction and maintenance of fire trails

- (1) It is the duty of the owner or occupier of the land on which a designated fire trail or registered fire trail is situated to construct (to the extent that it has not already been constructed) and to maintain the fire trail in accordance with the Fire Trail Standards and any steps that are included in a fire access and fire trail plan applying to the land.
- (2) Subsection (1) does not impose a duty on an occupier of public land who:
 - (a) is in occupation of the land when the direction is given under section 62L in relation to the land, and
 - (b) is not a public authority.
- (3) An owner or occupier is liable for the costs incurred by it in performing the duty imposed by this section.
- (4) Subsections (1) and (3) have effect subject to the terms of any agreement between the Commissioner and the owner (or former owner) of the land concerned.

62X Fire trail rectification work on unoccupied Crown land and managed land

A person authorised by the Commissioner may carry out fire trail rectification work on unoccupied Crown land or managed land with the assistance of such other persons as the authorised person considers to be necessary for the purpose.

62Y Fire trail rectification notices

- (1) A fire trail management officer may, by notice in writing, require the owner or occupier of any land (including land referred to in section 62X) to carry out fire trail rectification work specified in the notice on the land.
- (2) A notice under this section may specify circumstances in which, conditions under which, places at which, the manner in which and the time within which the fire trail rectification work is to be carried out.
- (3) The time within which fire trail rectification work is to be carried out must not be less than 28 days after the notice is given.
- (4) The requirements and conditions so specified must include any requirements specified in a fire access and fire trail plan that is applicable to the land and is in force.

- (5) An owner or occupier of land to whom a fire trail rectification notice is given must comply with the requirements specified in the notice.
Maximum penalty: 220 penalty units (in the case of a corporation or public authority) or 20 penalty units or imprisonment for 2 years or both (in any other case).
- (6) A notice under this section that is the subject of an objection or appeal under section 62Z or 62ZA does not have effect until the objection or appeal is finally determined.

62Z Objection to notices

- (1) A person on whom a fire trail rectification notice has been served under section 62Y may, within 28 days of the service of the notice, lodge an objection to the notice with the fire trail management officer who served the notice stating the grounds of objection, or, if that officer is not available, any other fire trail management officer.
- (2) If a person lodges an objection, the fire trail management officer and the person must genuinely attempt to resolve the matter by consultation having regard to:
 - (a) the provisions of any fire access and fire trail plan applicable to the land that is in force, and
 - (b) any other matters prescribed by the regulations.
- (3) Within 28 days of the lodging of an objection, the fire trail management officer must:
 - (a) confirm the notice, or
 - (b) vary the notice, if the fire trail management officer is satisfied that the variation will appropriately address the issue, or
 - (c) withdraw the notice, if the fire trail management officer is satisfied that there is no longer any need for the notice to be served.
- (4) If the fire trail management officer confirms or varies the notice, the officer must give the person who lodged the objection notice of the decision and must specify a time after the notice is given within which the person must comply with the notice as confirmed or varied.

62ZA Appeal against notices

- (1) A person on whom notice of a decision on an objection to a notice under section 62Z has been served may appeal in writing to the Commissioner within 28 days of the service of the notice stating the grounds of appeal.
- (2) The Commissioner must:
 - (a) consider the appeal within a reasonable time, and
 - (b) take into account all relevant circumstances, including the matters referred to in section 62Z (2).
- (3) After considering the appeal, the Commissioner must:
 - (a) confirm the notice, or
 - (b) vary the notice in any way the Commissioner thinks fit, or
 - (c) cancel the notice.
- (4) If the Commissioner confirms or varies the notice, the Commissioner must give the person who lodged the appeal notice of his or her decision and must

specify a time after the notice is given within which the person must comply with the notice as confirmed or varied.

62ZB Duties of fire trail management officer

- (1) A fire trail management officer who requires an occupier or owner of land to take action under a fire trail rectification notice must give notice in the approved form to such persons or bodies as may be prescribed by the regulations.
- (2) It is a duty of a fire trail management officer to keep a record of whether or not fire trail rectification work has been carried out in accordance with a fire trail rectification notice.

62ZC Fire trail rectification work in default of compliance with notice

- (1) In this section:
relevant notice means:
 - (a) a fire trail rectification notice, or
 - (b) if a fire trail rectification notice is the subject of an objection or appeal, a notice under section 62Z (4) or 62ZA (4), respectively.
- (2) If within a reasonable time the person to whom a relevant notice is given fails to comply with any requirement of the notice, the Commissioner may, without prejudice to the person's liability, carry out the required fire trail rectification work.
- (3) Any costs incurred by the Commissioner in carrying out work under this section (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 person as a debt due to the Crown in a court of competent jurisdiction.

62ZD Defence to court proceedings

If:

- (a) the occupier and the owner of the land in respect of which a fire trail rectification notice is given are not the same person, and
- (b) the owner of that land has been prosecuted under section 62Y (5) or an action for recovery of costs has been taken against the owner under section 62ZC (3),

it is a defence to that prosecution or action if the court is satisfied that that owner had no legal right, as between the owner and the occupier of that land, to enter that land and comply with the requirements of the notice.

62ZE Certain damage to property caused by fire trail rectification work covered by fire insurance

- (1) Any damage to property caused by a person in the exercise in good faith of a power conferred by or under this Division is to be taken to be damage by fire within the meaning of any policy of insurance against fire covering the damaged property.
- (2) This section does not apply in relation to an entry on land that is authorised by section 62ZP.

62ZF Fire trail rectification work on damaged or destroyed fire trail

A reference in this Division to a fire trail includes a reference to a former fire trail that has fallen into disuse or has been wholly or partly blocked, damaged or destroyed.

Division 7 Closure of designated or registered fire trails

62ZG Extended meaning of closure

For the purposes of this Division, a fire trail is taken to be *closed* if:

- (a) the trail is wholly or partly removed or destroyed, or
- (b) the trail is obstructed so that the trail is not available for use as a fire trail, or
- (c) a sign has been placed indicating that the trail is not available for use as a fire trail, or
- (d) the trail is otherwise not available for proper use as a fire trail.

62ZH Unauthorised closure of designated or registered fire trails

- (1) The Commissioner may carry out all work reasonably necessary to remedy the unauthorised closure of a designated fire trail or a registered fire trail so that it becomes available for use as a fire trail.
- (2) Any costs incurred by the Commissioner in carrying out work under this section may be recovered from the owner or occupier of the land on which the fire trail is situated as a debt due to the Crown in a court of competent jurisdiction.

62ZI Offence to close designated or registered fire trail

A person must not, without reasonable excuse:

- (a) close a designated fire trail or a registered fire trail, or
- (b) incite or encourage any other person to close a designated fire trail or a registered fire trail.

Maximum penalty: 220 penalty units (in the case of a corporation or public authority) or 20 penalty units or imprisonment for 2 years or both (in any other case).

62ZJ Termination of registration

The Commissioner may, on the Commissioner's own initiative or on application under this Division, terminate the registration of the whole or a part of a fire trail.

62ZK Application for termination

- (1) The owner of or the public authority responsible for the land on which a registered fire trail is situated may apply to the Commissioner in writing for the termination of the registration of the fire trail.
- (2) The application is to be referred to a fire trail management officer for consideration.
- (3) The fire trail management officer is to consider whether the registration should be terminated and is to make a recommendation to the Commissioner as to whether or not the application should be granted or refused.

- (4) A recommendation for refusal must state that the fire trail management officer is of the opinion there are no grounds, or there are insufficient grounds, to warrant termination and provide reasons.
- (5) The fire trail management officer must serve on the person who made the application a notice setting out the recommendation for refusal if the officer recommends that the application be refused.

62ZL Objection to notice

- (1) A person on whom a notice of a recommendation for refusal has been served under section 62ZK may, within 28 days of the service of the notice, lodge an objection with the fire trail management officer who served the notice stating the grounds of objection or, if that officer is not available, any other fire trail management officer.
- (2) If a person lodges an objection, the fire trail management officer and the person must genuinely attempt to resolve the matter by consultation having regard to:
 - (a) the provisions of any fire access and fire trail plan applicable to the land that is in force, and
 - (b) any other matters prescribed by the regulations.
- (3) Within 28 days of the lodging of an objection, the fire trail management officer must confirm or vary the recommendation.
- (4) The fire trail management officer must give the applicant notice of the officer's decision.
- (5) If there is no available fire trail management officer, the Commissioner may deal with the matter under section 62ZM as if the recommendation had been confirmed and the applicant had appealed in accordance with subsection (1) of that section.

62ZM Appeal against notice

- (1) A person on whom notice of a decision on an objection to a notice under section 62ZL has been served may appeal in writing to the Commissioner within 28 days of the service of the notice stating the grounds of appeal.
- (2) The Commissioner must:
 - (a) consider the appeal within a reasonable time, and
 - (b) take into account all relevant circumstances, including the matters referred to in section 62ZL (2).
- (3) After considering the appeal, the Commissioner must confirm, vary or reject the recommendation.
- (4) The Commissioner must terminate the registration to the extent that the recommendation for refusal is rejected.
- (5) The Commissioner must give the applicant notice of the Commissioner's decision.

62ZN Dealing with part only of registered fire trail

- (1) The purpose of this section is to enable an application for termination of registration to be made in relation to part only of a fire trail, and to enable an application to be dealt with by granting the application in part and refusing it as to the rest.

- (2) This Division also authorises an application to be made under section 62ZK for the termination of the registration of part only of a fire trail.
- (3) This Division also authorises a fire trail management officer considering an objection under section 62ZL to recommend that an application for the termination of the registration of a fire trail (or part) be granted in part and refused as to the rest.
- (4) This Division also authorises the Commissioner when considering an appeal under section 62ZM to terminate the registration of part only of a fire trail.
- (5) This Division is to be construed accordingly and applies with any necessary adaptations.

Division 8 General

62ZO Fire trail management officers

The Commissioner may nominate a member of the Service as a fire trail management officer for the purposes of this Part.

62ZP Power to enter and inspect land

- (1) The Commissioner or a member of the Service authorised by the Commissioner may, for any purpose referred to in subsection (2):
 - (a) enter during the daytime any part of land (other than a dwelling-house) that it is necessary to inspect for that purpose, and
 - (b) while on the land, make any reasonable enquiries and do anything else that is reasonably necessary.
- (2) The purpose for which functions may be exercised under this section in relation to land is to carry out any work authorised or permitted under this Part (including Divisions 6 and 7) or to consider or assess:
 - (a) whether a fire trail is situated on the land or should be established, or
 - (b) the suitability of a fire trail or proposed fire trail (or a part of it), or
 - (c) whether a designated fire trail or registered fire trail has been constructed or maintained in accordance with the Fire Trail Standards, or
 - (d) in particular and without limitation:
 - (i) whether a registered fire trail does not comply with the Fire Trail Standards in a material respect, as referred to in Division 5, or
 - (ii) whether a fire trail rectification notice should be served under section 62Y, or
 - (e) whether fire trail rectification work should be carried out under Division 6, or
 - (f) whether registration of a fire trail should be terminated.
- (3) The power to enter and inspect land under this section includes the power to enter any other land (other than a dwelling-house) reasonably necessary to be entered for the purpose of gaining access to the land.

62ZQ Designation and registration runs with the land

- (1) Designation as a designated fire trail or registration as a registered fire trail, whether the fire trail is on public land or private land, is not affected by a change of ownership or occupation of the land.

- (2) Without limiting subsection (1), designation as a designated fire trail or registration as a registered fire trail on:
- (a) public land—is not affected if the land becomes private land, or
 - (b) private land—is not affected if the land becomes public land.

[6] Schedule 3 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Rural Fires Amendment (Fire Trails) Act 2016

Definition

In this Part:

amending Act means the *Rural Fires Amendment (Fire Trails) Act 2016*.

Application of amendments to existing agreements relating to private land

The amendments made by the amending Act (other than this clause) do not apply to agreements entered into by the Commissioner before the commencement of this clause in relation to fire trails on private land, unless the owner consents.

Timetable for first draft fire access and fire trail plans

The original period referred to in section 52 (4) (a) (as inserted by an amendment made by the amending Act) must be within 3 years after the commencement of that amendment.

[7] Dictionary

Omit the definition of *bush fire management plan*. Insert instead:

bush fire management plan means:

- (a) a plan of operations, or
- (b) a bush fire risk management plan, or
- (c) a fire access and fire trail plan.

[8] Dictionary

Insert in alphabetical order:

designated fire trail means a fire trail that is the subject of a direction under section 62L or an agreement under section 62M, that in each case provides for the establishment of a fire trail for the purposes of Part 3B, but does not include a registered fire trail. If the fire trail is not yet wholly or partly created, the fire trail is nevertheless taken to be a designated fire trail situated on the land concerned.

existing fire trail includes a former fire trail that has fallen into disuse or has been wholly or partly blocked, damaged or destroyed.

fire access and fire trail plan means a plan prepared under Division 4 of Part 3 for the purposes referred to in section 54A.

fire trail complaint means a complaint under section 62P.

fire trail management officer means a person nominated as a fire trail management officer under section 62ZO.

fire trail rectification notice means a notice under section 62Y.

fire trail rectification work means work for the purpose of:

- (a) constructing or completing the construction of a designated fire trail in compliance with the Fire Trail Standards, or
- (b) bringing a designated fire trail or registered fire trail into compliance or closer compliance with the Fire Trail Standards.

Fire Trail Standards means the Fire Trail Standards under section 62K.

registered fire trail means a fire trail that is registered in the register of certified fire trails referred to in section 62O.

[Second reading speech made in—

Legislative Assembly on 9 August 2016

Legislative Council on 14 September 2016]