

Passed by both Houses



New South Wales

Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly,
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014

Act No , 2014

An Act to amend the *Electricity Supply Act 1995* to make further provision for bush fire hazard reduction; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Electricity Supply Amendment (Bush Fire Hazard Reduction) Act 2014*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

[1] Part 5, Division 2A

Insert after Division 2 of Part 5:

Division 2A Special powers for bush fire prevention

53A Definitions

In this Division:

aerial consumers mains means that part of an electrical installation consisting of overhead conductors and support structures between the main switchboard of an electrical installation and a support structure that is the connection point with the distribution system.

bush fire prone land means land that is bush fire prone land under the *Environmental Planning and Assessment Act 1979* in any area of the State.

private land means any land that is not:

- (a) dedicated, or acquired for the purpose of dedication, under the *Forestry Act 2012* or in respect of which the Forestry Corporation has obtained the benefit of a forestry right within the meaning of Division 4 of Part 6 of the *Conveyancing Act 1919*, or
- (b) dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *National Parks and Wildlife Act 1974*, or
- (c) vested in, or under the control of, Rail Corporation New South Wales, Transport for NSW or Roads and Maritime Services, or
- (d) within the catchment area of a water authority, or
- (e) unoccupied Crown land (being Crown land that is not held under a lease or licence or not vested in, or under the control of, trustees), or
- (f) land prescribed by the regulations as public land for the purposes of this definition.

vegetation means a tree, shrub or plant.

53B Application of Division

This Division applies only to bush fire prone land but does not prevent the taking of action under section 48 in relation to premises on bush fire prone land.

53C Power to give directions for bush fire risk mitigation work on private land

- (1) A network operator may by a written notice given to the owner or occupier of any premises on bush fire prone land that is private land direct the owner of the premises to do bush fire risk mitigation work on vegetation or aerial consumers mains on the premises if the network operator has determined that:
 - (a) the vegetation could make the network operator's electricity works become a potential cause of bush fire, or
 - (b) the vegetation fails to satisfy the requirements of any standard (adopted by the network operator for the purposes of reducing the risk of bush fire) as to required clearances between vegetation and electricity works or aerial consumers mains, or
 - (c) the vegetation could make aerial consumers mains on the premises become a potential cause of bush fire, or

- (d) a fault or defect in the aerial consumers mains could make them become a potential cause of bush fire.
- (2) The work that can be directed to be done as bush fire risk mitigation work is:
 - (a) for vegetation, the trimming or removal of the vegetation, or
 - (b) for a fault or defect in aerial consumers mains, the repair of the fault or defect.

53D Responsibility for cost of bush fire risk mitigation work under direction

- (1) The owner of premises is responsible for the cost of bush fire risk mitigation work that is the subject of a direction to the owner under this Division unless the network operator is responsible for the cost of the work.
- (2) The network operator is responsible for the cost of the following bush fire risk mitigation work that is the subject of a direction under this Division:
 - (a) work on vegetation that the network operator has determined could make the network operator's electricity works become a potential cause of bush fire,
 - (b) work on vegetation that the network operator has determined fails to satisfy the requirements of any standard (adopted by the network operator for the purposes of reducing the risk of bush fire) as to required clearances between vegetation and the network operator's electricity works.
- (3) The network operator is not responsible for the cost of work in either of the following circumstances:
 - (a) if, after the electricity works were first laid or installed, an owner or occupier of the premises planted the vegetation, or caused or permitted the vegetation to be planted, in circumstances in which the owner or occupier ought reasonably to have known that destruction of, damage to or interference with the works would result,
 - (b) the land in or on which the vegetation is located, and on or over which the works are located, was the subject of an easement in favour of the network operator (or a predecessor of the network operator) when the vegetation was planted.

53E Contents of direction

- (1) A direction under this Division to the owner of premises to do bush fire risk mitigation work is to specify the following:
 - (a) the particular work required to be done (the *required work*) and a statement of the reason the work is required to be done,
 - (b) that the owner must do the required work within 60 days after the direction is given and must within 30 days after the direction is given notify the network operator (in the manner required by the direction) that the required work will be done within that 60 days,
 - (c) that the owner may (as an alternative to doing the required work) comply with the direction by requesting the network operator within 30 days after the direction is given to disconnect the supply of electricity to the premises,
 - (d) that the network operator is authorised to enter the premises and do the required work on behalf of the owner if the direction is not complied with,

- (e) if the network operator is responsible for the cost of the work—that the network operator undertakes to pay the reasonable cost of doing the work,
 - (f) if the network operator is not responsible for the cost of the work—that the network operator can recover the reasonable cost of doing the work if it is not done by the owner.
- (2) The direction must also include the following:
- (a) to the extent that any standard adopted by the network operator is relevant to the required work—information sufficient to identify the standard and facilitate access to its contents,
 - (b) a statement that the network operator has a policy for assisting persons who are experiencing difficulties due to hardship in connection with payment of the cost of doing the work required by the direction,
 - (c) information that explains how a dispute or complaint about the direction can be referred to the Energy and Water Ombudsman NSW.
- (3) The regulations can make provision for or with respect to the form and contents of a direction, including provision for or with respect to:
- (a) prescribing a standard form of direction, or
 - (b) specifying standard wording for any aspect of the direction, or
 - (c) requiring the inclusion in a direction of matter in addition to the matter required by this section.

53F Compliance with direction

- (1) To comply with a direction under this Division, the owner of the premises must:
- (a) within 30 days after the direction was given either notify the network operator that the required work will be done within 60 days after the direction was given or request the network operator to disconnect the supply of electricity to the premises, and
 - (b) (having notified the network operator that the work will be done within 60 days after the direction was given) do the required work within that 60 days.

Note. The owner must within 30 days after the direction is given either notify the network operator that the required work will be done or request disconnection. If the owner does neither of those things within that 30 days, the network operator can take action immediately for a failure to comply with the direction.

- (2) If the owner of premises does not comply with the direction, the network operator may do the required work and (unless the network operator is responsible for the cost of the work) may recover as a debt owed by the owner the reasonable cost of doing the work in an efficient and competent manner.
- (3) Any dispute about the reasonable cost of doing the work may be referred to the Energy and Water Ombudsman NSW for resolution.
- (4) A network operator can by notice in writing to the owner or occupier of premises, increase any period for compliance with a direction.

53G Compensation

No compensation is payable by a network operator for or in connection with the exercise in good faith and without negligence of a function under this Division.

53H Effect of other laws

- (1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the doing on any land of work that is required to be done by a direction under this Division.
- (2) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of the doing on any land of work that is required to be done by a direction under this Division.
- (3) Work that is required to be done by a direction under this Division may be done on land despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act.

53I Hardship policy for cost recovery

- (1) A network operator must have and implement a hardship policy that has been approved by the Australian Energy Regulator for assisting persons who are experiencing difficulties due to hardship in connection with payment of the cost of works done by the network operator when the person fails to comply with a direction under this Division.
- (2) The policy must provide flexible payment options for the payment of the cost of works that the network operator is entitled to recover from a person under this Division.
- (3) The policy must be publicly available on the network operator's website.

[2] Section 54 Powers of entry

Omit section 54 (1) (h). Insert instead:

- (h) exercising any function conferred on the network operator by section 48, 49 or 49A or Division 2A.

[3] Section 55 Notice of entry

Insert at the end of section 55 (3) (c):

, or

- (d) if entry is for the purpose of doing work in the exercise of a function under Division 2A.

[4] Section 60

Omit the section. Insert instead:

60 Compensation

The network operator or retailer concerned must pay compensation to the owner or occupier of any land in respect of which a power has been exercised under this Division for any loss or damage arising from the exercise of the power but is not so liable to the extent to which the loss or damage arises from:

- (a) work done for the purposes of an inspection which reveals that there has been a contravention by the owner or occupier, as the case requires, of any provision of this Act or the regulations, or
- (b) work done in the exercise of a function under Division 2A.

[5] Section 191 Regulations

Insert after section 191 (1) (i):

- (j) the manner in which a notice or other document that is authorised or required to be given by or under this Act is to be given.

Schedule 2 Amendment of Electricity Supply (General) Regulation 2014

Clause 69 Service of documents

Omit “under this Regulation”. Insert instead “by or under the Act or this Regulation”.