

[Act 2002 No 67]



New South Wales

Rural Fires and Environmental Assessment Legislation Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979*, the *Rural Fires Act 1997* and other laws so that persons, property and the environment are more fully protected against the dangers that may arise from bush fires.

The Bill amends the *Environmental Planning and Assessment Act 1979*:

- (a) to require local government councils to record on maps land identified by the Commissioner of the NSW Rural Fire Service as bush fire prone land, and

* Amended in committee—see table at end of volume.

Explanatory note

- (b) to prevent development consent being granted for the carrying out of development for certain purposes on bush fire prone land unless the consent authority is satisfied that the development conforms to certain documented bush fire protection specifications and requirements or has consulted with the Commissioner, and
- (c) to provide for the integration of procedures to obtain development consent with a proposed requirement to obtain a bush fire safety authority from the Commissioner under the *Rural Fires Act 1997* with respect to the fire safety of development for purposes (such as buildings in retirement villages, housing for older persons and hospitals) that are particularly vulnerable in bush fires and that require special protection.

The Bill amends the *Environmental Planning and Assessment Regulation 2000* to require the fact that land that is bush fire prone is bush fire prone land to be shown on section 149 certificates.

The Bill amends the *Rural Fires Act 1997*:

- (a) to provide for the Commissioner of the NSW Rural Fire Service to conduct performance audits with respect to the implementation of bush fire risk management plans and for details of the audits to be included in the annual report for the Service, and
- (b) to require local and public authorities to report to the Commissioner as to their activities with respect to bush fire hazard reduction work, and
- (c) to establish a complaints procedure with respect to bush fire hazard reduction work that an owner or occupier of land or authority responsible for the land has failed to carry out in accordance with the Act and to require the work to be carried out, and
- (d) to enhance the powers of the Commissioner to carry out bush fire hazard reduction work, and
- (e) to require the authority of the Commissioner to be obtained with respect to the fire safety of development for purposes (such as buildings in retirement villages, housing for older persons and hospitals) that are particularly vulnerable in bush fires and that require special protection, and
- (f) to streamline the existing approval processes for the carrying out of managed bush fire hazard reduction work by providing for the work to be authorised by one certificate in place of other approvals, consents or authorities currently required by law for the carrying out of such work, but only if it is carried out in accordance with a bush fire environmental assessment code, and
- (g) to provide for the Commissioner to make bush fire danger period declarations and to issue fire permits, and

(h) to make various other minor changes.

The Bill also amends the *Rural Fires Act 1997* and various environmental assessment laws to make it clear that emergency fire fighting activities carried out by the Service or any other fire fighting authority are not subject to various planning and licensing requirements.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Rural Fires Act 1997* set out in Schedules 2–4.

Clause 5 is a formal provision giving effect to the amendments to various instruments set out in Schedule 5.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Identification and recording of mapping of bush fire prone land

Schedule 1 [4] inserts proposed section 146 into the *Environmental Planning and Assessment Act 1979* to require local government councils to record on maps, within 12 months after the commencement of the section, land identified by the Commissioner of the NSW Rural Fire Service as bush fire prone land. **Schedule 1 [1]** makes a consequential amendment to insert definitions of *bush fire prone land* and *bush fire prone land map* into the Act.

Schedule 1 [6] amends Schedule 6 to the Act to insert a transitional provision to identify bush fire prone land in the period before it is mapped.

Schedule 5.1 contains an amendment to the *Environmental Planning and Assessment Regulation 2000* to require planning certificates under section 149 of the Act to show that land that is bush fire prone is bush fire prone land.

Consultation and consent requirements concerning development of bush fire prone land

Schedule 1 [2] prevents development consent being granted for the carrying out of development for any purpose (other than for certain purposes that are particularly vulnerable in bush fires) on bush fire prone land unless the consent authority is satisfied that the development conforms to the specifications and requirements of *Planning for Bushfire Protection 2001* (or another document prescribed by the regulations) or has consulted with the Commissioner of the NSW Rural Fire Service.

Schedule 3 [9] (proposed section 100B) amends the *Rural Fires Act 1997* to require authorisation (a ***bush fire safety authority***) to be obtained from the Commissioner with respect to the fire safety of development for purposes (such as buildings in retirement villages, housing for older persons and hospitals) that are particularly vulnerable in bush fires.

Schedule 1 [3] amends section 91 of the *Environmental Planning and Assessment Act 1979* to provide for the integration of the new requirement to obtain a bush fire safety authority with the granting of development consent. The procedure for the assessment of integrated development that is local development under section 91A of that Act will allow assessment of development that is vulnerable in bush fires for the purpose of granting or refusing development consent to take place in conjunction with its assessment for the purpose of issue of a bush fire safety authority.

Savings and transitional

Schedule 1 [5] amends Schedule 6 to the Act to insert a power to make savings and transitional regulations.

Schedule 2 Amendments to the Rural Fires Act 1997 relating to performance audit

Schedule 2 [1] and [3] amend the *Rural Fires Act 1997* to enable the Commissioner of the NSW Rural Fire Service to conduct performance audits of the implementation of bush fire risk management plans generally in the State or in a specified rural fire district or other part of the State, either on the Commissioner's own initiative or at the request of the Bush Fire Co-ordinating Committee. Details of performance audits carried out during a year are to be included in the annual report for the Service which is required by the *Annual Reports (Departments) Act 1985* to be laid before both Houses of Parliament.

Schedule 2 [2] amends section 51 of the Act to require each Bush Fire Management Committee to make an annual report to the Bush Fire Co-ordinating Committee on implementation of each bush fire risk management plan in force for the rural fire district or other part of the State for which the Bush Fire Management Committee is constituted.

Schedule 3 Amendments to the Rural Fires Act 1997 relating to bush fire prone land and bush fire hazard reduction

Schedule 3 contains amendments to the *Rural Fires Act 1997* relating to the fire safety of development on bush fire prone land for purposes that are particularly vulnerable in bush fires and the reduction of bush fire hazards.

Fire safety of development on bush fire prone land

Schedule 3 [9] inserts a new Division 8 into Part 4 of the Act. Proposed section 100B of that Division provides for the issue by the Commissioner of the NSW Rural Fire Service of bush fire safety authorities for subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes or for development of bush fire prone land for a special fire protection purpose. A *special fire protection purpose* is defined as development for the purpose of a school, a child care centre, a hospital (including a hospital for the mentally ill or mentally disordered), a hotel, motel or other tourist accommodation, a building wholly or principally used as a home or other establishment for mentally incapacitated persons, housing for older people or people with disabilities within the meaning of *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*, a group home within the meaning of *State Environmental Planning Policy No 9—Group Homes*, a retirement village or any other purpose prescribed by the regulations. A bush fire safety authority authorises development for those purposes to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire.

An amendment to section 91 of the *Environmental Planning and Assessment Act 1979* (Schedule 1 [3]) provides for the integration of the requirement to obtain a bush fire safety authority with the granting of development consent.

Bush fire hazard reduction

Schedule 3 contains a number of amendments to the *Rural Fires Act 1997* designed to ensure that bush fire hazard reduction work that is necessary to more fully protect persons, property and the environment against the dangers that may arise from bush fires is carried out. Schedule 3:

- (a) provides for the making and investigation of complaints concerning the failure by public authorities and owners and occupiers of land to carry out bush fire hazard reduction work, and
- (b) enhances the powers of the Commissioner of the NSW Rural Fire Service to monitor the carrying out of bush fire hazard reduction work by public and local authorities and to ensure that work is carried out, and
- (c) streamlines the existing approval processes for carrying out of managed bush fire hazard reduction work by providing for the work to be authorised by one certificate (a *bush fire hazard reduction certificate*) in place of other approvals, consents or authorities currently required by law for the carrying out of such work, but only if it is carried out in accordance with a bush fire environmental assessment code.

Bush fire hazard complaints

Schedule 3 [5] inserts a new Division 2A (proposed sections 74A–74H) into Part 4 of the Act.

Proposed section 74A enables a complaint to be made under Division 2A that a bush fire hazard exists on land because of the failure of a public authority or owner or occupier of the land to carry out bush fire hazard reduction work on the land (a *bush fire hazard complaint*).

Proposed section 74B provides for a bush fire hazard complaint to be made by any owner or occupier of land adjacent to or in the vicinity of land to which the complaint relates.

Proposed section 74C sets out the procedure for making a bush fire hazard complaint. A complaint relating to unoccupied Crown land or managed land for which a public authority is responsible is to be made to the Commissioner. A complaint relating to other land in the area of a local authority is to be made to the local authority.

Proposed section 74D provides for the investigation of bush fire hazard complaints by the Commissioner and local authorities.

Explanatory note

Proposed sections 74E and 74F set out the action that may be taken by the Commissioner and local authorities if a bush fire hazard complaint is found to be justified, including carrying out bush fire hazard reduction work if an owner or occupier or public authority fails to do so after being notified that work should be done.

Proposed section 74G requires the Commissioner and local authority to notify the complainant about action taken.

Proposed section 74H enables a person who has complained to a local authority to ask the Commissioner to deal with the complaint if the local authority fails to do so.

Enhancement of Commissioner's powers with respect to bush fire hazard reduction

Schedule 3 [3] and [4] contain provisions designed to enhance the Commissioner's powers with respect to bush fire hazard reduction.

Section 73 of the Act currently enables the Commissioner to carry out bush fire hazard reduction work required to be carried out on land by a bush fire management plan if the owner or occupier of the land has not carried out the work as required by the plan. It includes a dispute resolution mechanism for circumstances where the owner or occupier is a public authority and the public authority disagrees with the Commissioner about the work and enables the Commissioner to recover the costs incurred in carrying out the work as a debt due to the Crown. **Schedule 3 [3]** replaces section 73 with a new section. It expands the circumstances in which the Commissioner may carry out work to include a failure of an owner or occupier of land to carry out a duty under section 63 of the Act and a failure of a public authority to carry out work following resolution of a bush fire hazard complaint. It also removes the dispute resolution mechanism and makes it clear that costs that may be recovered by the Commissioner include costs incurred in obtaining the approval of any local or public authority under any other law to carry out the work.

Section 74 of the Act currently requires a local authority to carry out an annual review of the incidence of bush fire hazards on land in its area. **Schedule 3 [4]** replaces section 74 with a new section which requires local authorities and public authorities to make annual reports to the Commissioner with respect to bush fire hazards. Information contained in the reports is to be included in the annual report for the Service which is required by the *Annual Reports (Departments) Act 1985* to be laid before both Houses of Parliament.

Bush fire hazard reduction certificates

Schedule 3 [9] inserts a new Division 8 (proposed sections 100A–100O) into Part 4 of the *Rural Fires Act 1997*. The Part includes provisions to streamline the existing approval processes for carrying out managed bush fire hazard reduction work by providing for the work to be authorised by one certificate (a ***bush fire hazard reduction certificate***) in place of other approvals, consents or authorities currently required by law for the carrying out of such work but only if it is carried out in accordance with a bush fire environmental assessment code made under the proposed Division.

Proposed section 100A defines words and expressions used in the proposed Division, including ***bush fire code***. **Schedule 3 [11] and 4 [26]** amend the Dictionary to the Act to define ***managed bush fire hazard reduction work*** as bush fire hazard reduction work that is carried out in accordance with a bush fire risk management plan and ***emergency bush fire hazard reduction work*** as bush fire hazard reduction work carried out to protect persons, property or the environment from an existing or imminent danger arising out of a fire.

Proposed section 100B relates to bush fire safety authorities and is described above.

Proposed section 100C prevents an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* from prohibiting, requiring development consent for, or otherwise restricting, the doing of emergency bush fire hazard reduction work on any land or managed bush fire hazard reduction work on land other than excluded land (defined in proposed section 100A as land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies and any other land prescribed by the regulations).

The section also provides that Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of emergency bush fire hazard reduction work carried out on any land.

The section also provides that Part 5 does not apply to or in respect of managed bush fire hazard reduction work carried out on land other than excluded land but only if certain requirements are met. The work must be carried out in accordance with a bush fire risk management plan that applies to the land, there must be a bush fire hazard reduction certificate in respect of the work and the work must be carried out in accordance with any conditions specified in the certificate and any requirements of a bush fire environmental assessment code (a ***bush fire code***) applying to the land specified in the certificate.

Explanatory note

The section also makes it clear that various approvals, consents and authorisations under certain environmental assessment legislation need not be obtained if managed bush fire hazard reduction work is carried out in this way.

Proposed section 100D describes the effect of a bush fire hazard reduction certificate.

Proposed section 100E provides for bush fire hazard reduction certificates relating to work to be carried out by persons (other than the Commissioner or a public authority) on private land to be issued by local authorities. The Commissioner, a local authority and a public authority may “self” certify as to work carried out by themselves.

Proposed section 100F provides for the making of applications for, and issue of, bush fire hazard reduction certificates by local authorities and sets out the conditions that must be specified by the certificate. The local authority cannot issue the certificate unless it has determined which provisions of any applicable bush fire code must be complied with and specified those provisions in the certificate.

Proposed section 100G specifies the matters with respect to which the Commissioner, a local authority or public authority must certify before carrying out bush fire hazard reduction work.

Proposed section 100H provides for any person to bring proceedings in the Land and Environment Court to remedy or restrain any breach of section 100F or 100G by a local authority, the Commissioner or a public authority.

Proposed section 100I provides for bush fire hazard reduction certificates to have effect for 12 months.

Proposed section 100J requires the Commissioner to prepare a draft bush fire environmental assessment code in relation to land (other than excluded land) if requested to do so by the Minister. In preparing the draft code the Commissioner is required to take into account the principles of ecologically sustainable development and any matter likely to affect the environment by reason of the carrying out of bush fire hazard reduction works on the land that a determining authority would be required to consider under section 111 of the *Environmental Planning and Assessment Act 1979* (but for the proposed Division) if Part 5 of that Act were applicable to the work and the carrying out of the work were an activity within the meaning of that Part.

Proposed section 100K requires the Commissioner to consult various bodies in preparing a draft bush fire code.

Proposed section 100L requires the Commissioner to publicly exhibit a draft bush fire code for at least 42 days and to seek submissions on it.

Proposed section 100M provides for Ministerial approval of a draft bush fire code.

Proposed section 100N makes provision with respect to the publication, commencement and availability of bush fire codes.

Proposed section 100O ensures that the procedures for the making of a bush fire code are followed for any amendment or revocation of the code.

Schedule 3 [2] makes a consequential amendment to section 66 of the Act.

Delegation

Schedule 3 [1] amends section 14 of the Act to enable the Commissioner to delegate the functions to be conferred on the Commissioner by certain of the proposed amendments contained in Schedule 3 on the Commissioner of New South Wales Fire Brigades in respect of land in fire districts.

Fire permits

Schedule 3 [6]–[8] make amendments to sections 86, 89 and 92, respectively, of the Act that are associated with the provisions relating to bush fire hazard reduction certificates. **Schedule 3 [6]** makes it an offence to light a fire for the purpose of land clearance or burning a fire break unless a bush fire hazard reduction certificate or any approval, consent or authority required under the *Environmental Planning and Assessment Act 1979* or any other law has been obtained.

Schedule 3 [7] prevents an appropriate authority from issuing a fire permit unless a bush fire hazard reduction certificate or any approval, consent or authority required under the *Environmental Planning and Assessment Act 1979* or any other law has been obtained.

Schedule 3 [8] makes it a condition of a fire permit that any condition of a bush fire hazard reduction certificate or any approval, consent or authority required under the *Environmental Planning and Assessment Act 1979* or any other law be complied with.

Savings and transitional provisions

Schedule 3 [10] amends Schedule 3 to the Act to insert savings and transitional provisions.

Schedule 4 Other amendments to Rural Fires Act 1997

Schedule 4 contains miscellaneous amendments to the *Rural Fires Act 1997*.

Schedule 4 [1] amends section 22 of the Act to make it clear that the powers of rural fire brigade officer officers and others under the Act are exercisable not only for the purpose of protecting a person or property from an existing or imminent danger arising out of a fire but also to protect the environment.

Schedule 4 [2] and [25] make amendments for similar purposes to section 28 and the definition of *back burning* in the Dictionary to the Act.

Schedule 4 [3] and [4] are amendments by way of statute law revision (there are no longer fire control officers for local authorities).

Schedule 4 [5]–[7] substitute sections 82 and 83 and repeal section 84 to provide for the Commissioner, instead of local authorities, to make bush fire danger period declarations.

Schedule 4 [8] and [9] amend section 85 to provide for the Commissioner to be an appropriate authority for the purpose of issuing fire permits in rural fire districts instead of local councils. **Schedule 4 [12], [13], [14], [16], [17], [18], [20] and [21]** make consequential amendments.

Schedule 4 [22] inserts Part 6A (proposed sections 124A–124C) to make it clear that certain environmental assessment and other legislation does not apply to emergency fire fighting acts. **Schedule 4 [26]** inserts a definition of emergency fire fighting act into the Dictionary to the Act. An *emergency fire fighting act* is defined as anything (other than emergency bush fire hazard reduction work) done or authorised to be done by a fire fighting authority, during the course of bush fire fighting operations, by or under this or any other Act. **Schedule 4 [10], [11], [15] and [19]** make consequential amendments.

Schedule 4 [23] and [24] amend Schedule 3 to the Act to insert savings and transitional provisions.

Schedule 5 Amendment of other instruments

Schedule 5 amends various environmental assessment and other laws to make it clear that emergency fire fighting activities carried out by the Service or any other fire fighting authority are not subject to various planning and licensing requirements.

Explanatory note

It also amends the *Environmental Planning and Assessment Regulation 2000* to require planning certificates under section 149 of the *Environmental Planning and Assessment Act 1979* to show the fact that land that is bush fire prone is bush fire prone land and amends the *Land and Environment Court Act 1979* as a consequence of proposed section 100H of the *Rural Fires Act 1997* (to be inserted by Schedule 3 [9]).