



New South Wales

Rural Fires Amendment Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Rural Fires Act 1997* to make further provision for bush fire hazard reduction,
- (b) to make other miscellaneous amendments to the *Rural Fires Act 1997* and the *Rural Fires Regulation 2013*,
- (c) to amend the *National Parks and Wildlife Act 1974* to provide immunity from committing certain offences under that Act in the course of carrying out bush fire hazard reduction work,
- (d) to amend the *State Emergency and Rescue Management Act 1989* to create an aggravated offence relating to impersonating an emergency services organisation officer.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Rural Fires Act 1997 No 65

Schedule 1 [1] inserts a new object into the *Rural Fires Act 1997*, namely, to provide for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. **Schedule 1 [2]** is a consequential amendment.

Schedule 1 [3] expands the functions of the NSW Rural Fire Service to include the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in rural fire districts. **Schedule 1 [4]** is a consequential amendment.

Schedule 1 [5] expands the things a rural fire brigade officer may do if a person or property is, or is likely to be, endangered by a fire or other emergency to include shoring up buildings or structures and destroying, pulling down, shoring up or removing parts of buildings or structures on any land.

Schedule 1 [6] provides that the cost incurred by a rural fire brigade in destroying, pulling down, shoring up or removing any buildings or structures or parts of buildings or structures in order to make premises safe is to be borne by the owner of the building or structure and paid to the Commissioner of the NSW Rural Fire Service (the *Commissioner*). However, the Commissioner has a discretion to waive part or the whole of the payment of these costs.

Schedule 1 [7] enables the Commissioner to take and use, free of charge, water from a water source on any land (by arrangement with the owner, occupier or person having control or management of that land) for the purpose of training or demonstration by a rural fire brigade.

Schedule 1 [8] clarifies that a person who obstructs or hinders, or incites or encourages any person to obstruct or hinder, a volunteer rural fire fighter acting under the direction of the Commissioner, a fire control officer or an officer of a rural fire brigade or group of rural fire brigades commits an offence.

Schedule 1 [9] updates references to the membership of the Bush Fire Co-ordinating Committee.

Schedule 1 [10] enables the Commissioner to direct a Bush Fire Management Committee to amend a draft bush fire risk management plan prepared and submitted by it.

Schedule 1 [11] provides that a hazard management officer is not required to issue a bush fire hazard reduction certificate in respect of bush fire hazard reduction work required by a notice issued under section 66 (2) if the work is otherwise authorised, or not required to be authorised, to be carried out.

Schedule 1 [12] provides that a bush fire hazard reduction notice is not required in the case of the establishment or maintenance of a fire trail or bush fire hazard reduction work carried out by the Commissioner when the identity and location of the owner or occupier of land cannot be ascertained.

Schedule 1 [13] provides that the Commissioner can carry out bush fire hazard reduction work on land if the Commissioner cannot ascertain the identity and location of the owner or occupier of that land after reasonable inquiry conducted over a period of not less than 7 days. **Schedule 1 [14]** is a consequential amendment.

Schedule 1 [15] provides that a public authority must report to the Commissioner on bush fire hazard reduction carried out in the preceding financial year on any land it manages within 1 month after the end of the financial year (rather than within 3 months as is the present case).

Schedule 1 [16] provides that, in addition to an annual report, a public authority must submit a monthly report on bush fire hazard reduction activities carried out in the preceding month on any land it manages and, if any activities planned for that month were not carried out, the reasons for that omission. **Schedule 1 [17] and [18]** are consequential amendments.

Schedule 1 [20] inserts an offence of discarding a lighted tobacco product or match or any incandescent material on land, which is currently an offence under clause 28 (2) of the *Rural Fires Regulation 2013*. The proposed amendment provides for a higher penalty when the offence is committed during a total fire ban in the relevant part of the State. **Schedule 1 [19]** is a consequential amendment.

Schedule 1 [21] provides that where bush fire hazard reduction work is to be carried out on several parcels of adjoining land, a single bush fire hazard reduction certificate may be issued by the relevant issuing or certifying authorities. **Schedule 1 [22]** is a consequential amendment.

Schedule 1 [23] allows a bush fire hazard reduction certificate that applies only to carrying out bush fire hazard reduction work of a kind that is carried out regularly and has a low impact on the environment and biodiversity to operate for 3 years.

Schedule 1 [24] updates references to agencies and other bodies with whom the Commissioner must consult and whose recommendations, if any, the Commissioner must take into account in preparing a draft bush fire environmental assessment code.

Schedule 1 [25] clarifies that proceedings for offences under section 100 (1) of the Act (setting fires without lawful authority or allowing fire to escape) are indictable offences.

Schedule 1 [26] amends the definition of *bush fire hazard reduction work* to include the establishment or maintenance of fire trails. **Schedule 1 [27]** is a consequential amendment.

Schedule 1 [28] inserts a definition of *volunteer rural fire fighters* into the Dictionary.

Schedule 2 Amendment of other legislation

Schedule 2.1 [1] and [2] exempt anything done in the course of carrying out bush fire hazard reduction work to which section 100C (4) of the *Rural Fires Act 1997* applies (namely, work carried out without certain approval, consent or authorisation but in accordance with a bush fire risk management plan and bush fire code) from the offences of harming or picking threatened species, endangered populations or endangered ecological communities and damaging the habitat of threatened species, endangered populations or endangered ecological communities, respectively.

Schedule 2.2 removes the offence of leaving or depositing a lighted tobacco product, match or any incandescent material on land or certain structures from clause 28 (2) of the *Rural Fires Regulation 2013*. That offence is now in proposed section 99A of the Act (see Schedule 1 [20]).

Schedule 2.3 inserts aggravated offences relating to impersonating an emergency services organisation officer.



New South Wales

Rural Fires Amendment Bill 2013

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New South Wales

Rural Fires Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Rural Fires Act 1997* to make further provision for bush fire hazard reduction; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Rural Fires Amendment Act 2013*.

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2 Commencement

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

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Schedule 1	Amendment of Rural Fires Act 1997 No 65	1
[1] Section 3 Objects of Act		2
Insert after section 3 (c):		3
(c1) for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and		4 5 6
[2] Section 3 (d)		7
Omit “(a)–(c)”. Insert instead “(a)–(c1)”.		8
[3] Section 9 Functions of Service		9
Insert after paragraph (b) of the definition of <i>rural fire services</i> in section 9 (4):		10
(b1) the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in rural fire districts,		11 12 13
[4] Section 9 (4), definition of “rural fire services”		14
Omit “(a) and (b)” from paragraph (c). Insert instead “(a)–(b1)”.		15
[5] Section 25 Making premises safe		16
Omit section 25 (b). Insert instead:		17
(b) destroy, pull down, shore up or remove, or cause to be destroyed, pulled down, shored up or removed, any buildings or structures or parts of buildings or structures on any land,		18 19 20
[6] Section 25 (2) and (3)		21
Insert at the end of section 25:		22
(2) The cost of doing something pursuant to subsection (1) (b) is to be borne by the owner of the building or structure and is to be paid to the Commissioner.		23 24
(3) The Commissioner may waive payment of the whole or any part of an amount payable under subsection (2) in such circumstances as the Commissioner thinks appropriate.		25 26 27
[7] Section 26 Use of water and works		28
Insert at the end of the section:		29
(2) The Commissioner may, by arrangement with the owner or occupier or person having control or management of land containing a water source, take and use, free of charge, water from that source for the purpose of training or demonstration by any rural fire brigade.		30 31 32 33
[8] Section 42 Obstruction etc of Commissioner and other members of Service		34
Insert “volunteer rural fire fighter or other” after “, or any”.		35
[9] Section 47 Membership and procedure of Bush Fire Co-ordinating Committee		36
Omit section 47 (1). Insert instead:		37
(1) The Bush Fire Co-ordinating Committee is to consist of 14 members as follows:		38 39
(a) the Commissioner, who is to be the Chairperson of the Committee,		40

(b)	a member of staff of Fire and Rescue NSW nominated by the Commissioner of Fire and Rescue NSW,	1 2
(c)	2 members of staff of the Department of Trade and Investment, Regional Infrastructure and Services nominated by the Director-General of that Department, one of whom is a member of staff of the Resources and Energy Division—Energy Business Unit of that Department, and one of whom is a member of staff of the Catchments and Lands—NSW Crown Lands Division of that Department,	3 4 5 6 7 8
(d)	a member of staff of the Office of Environment and Heritage nominated by the Chief Executive of that Office,	9 10
(e)	2 persons appointed by the Minister on the recommendation of the Local Government and Shires Association of New South Wales,	11 12
(f)	a fire control officer appointed by the Minister on the recommendation of the NSW Rural Fire Service Association Inc,	13 14
(g)	a person appointed by the Minister on the recommendation of the Commissioner of Police,	15 16
(h)	a person appointed by the Minister on the recommendation of the Minister for the Environment,	17 18
(i)	a person nominated by the Nature Conservation Council of New South Wales,	19 20
(j)	a person appointed by the Minister on the recommendation of the NSW Farmers' Association,	21 22
(k)	a member of staff of the Department of Family and Community Services nominated by the Minister for Family and Community Services,	23 24 25
(l)	a member of staff of the Forestry Corporation of New South Wales nominated by the chief executive officer of that Corporation.	26 27
[10]	Section 54 Content of draft bush fire risk management plan	28
	Insert after section 54 (3):	29
(4)	The Commissioner may direct a Bush Fire Management Committee to amend a draft bush fire risk management plan prepared and submitted by it.	30 31
[11]	Section 66 Bush fire hazard reduction notices	32
	Insert after “subsection (2)” in section 66 (3):	33
	unless the work required by the notice:	34
(a)	is otherwise authorised to be carried out, or	35
(b)	is not required to be authorised to be carried out under this or any other Act.	36 37
[12]	Section 66 (10)	38
	Insert after section 66 (9):	39
(10)	This section does not apply in relation to bush fire hazard reduction work that:	40
(a)	the Commissioner has determined is to be carried out in accordance with section 73 (1) (d), or	41 42
(b)	comprises the establishment or maintenance of a fire trail.	43

[13] Section 73 Bush fire hazard reduction by Commissioner	1
Insert at the end of section 73 (1) (c):	2
, or	3
(d) if the Commissioner serves a notice addressed (by the description of “Owner” or “Occupier”) to the owner or occupier of the land specifying:	4
(i) the circumstances in which, conditions under which and manner and time within which the bush fire hazard reduction work is to be carried out, and	5
(ii) any means by which the bush fire hazard reduction work is to be carried out and alternative means other than fire by which the work should, if practicable, be carried out,	6
and after reasonable inquiry conducted over a period of not less than 7 days, the Commissioner cannot ascertain the identity and location of the owner or occupier.	7
Note. The bush fire hazard reduction work can be carried out by the Commissioner on land with the consent of the owner or occupier or following notice to the owner or occupier under section 66, if the identity and location of the owner or occupier is ascertained.	8
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[14] Section 73 (2)	20
Omit “such work”. Insert instead “work under subsection (1) (a)–(c)”.	21
[15] Section 74 Bush fire hazard reduction reports	22
Omit “3 months” from section 74 (1). Insert instead “1 month”.	23
[16] Section 74 (1A)	24
Insert after section 74 (1):	25
(1A) In addition to the annual report, each public authority that is responsible for managed land must report to the Commissioner not later than 7 days after the end of each month on:	26
(a) its activities to reduce bush fire hazards on the managed land during the preceding month, and	27
(b) if any activities planned for that month were not carried out, the reasons for that omission.	28
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	32
[17] Section 74 (2)	33
Omit “The report”. Insert instead “Any such report”.	34
[18] Section 74 (3)	35
Omit “this section”. Insert instead “subsection (1)”.	36
[19] Part 4, Division 7, heading	37
Omit the heading. Insert instead:	38
Division 7 Offences	39

[20] Section 99A	1
Insert before section 100:	2
99A Offences—discarding lighted cigarettes etc	3
A person must not, without lawful authority, discard a lighted tobacco product or match or any incandescent material on any land.	4
Maximum penalty:	5
(a) except as provided by paragraph (b)—50 penalty units, or	6
(b) in the case of an offence committed during a total fire ban under Division 6 in the part of the State concerned—100 penalty units.	7
[21] Section 100E Issuing and certifying authorities	8
Insert after section 100E (2):	9
(3) If more than one bush fire hazard reduction certificate would otherwise be required for any bush fire hazard reduction work to be carried out on several parcels of adjoining land, a certifying authority in respect of any of that land is the <i>certifying authority</i> for the whole of the land, if the other relevant issuing or certifying authorities agree.	10
Note. The Commissioner is, under subsection (2), a certifying authority for any land on which bush fire hazard reduction work is carried out by the Commissioner and accordingly the Commissioner can certify a single certificate without the need to obtain the agreement of other authorities.	11
[22] Section 100G Bush fire hazard reduction certificates of certifying authorities	12
Insert after section 100G (1):	13
(1A) In the case of a single bush fire hazard reduction certificate certified by a certifying authority in respect of several parcels of adjoining land, as referred to in section 100E (3), a reference in subsection (1) to the certifying authority carrying out bush fire hazard reduction work on land is taken to include a reference to any authority or person carrying out the work on any of the land.	14
[23] Section 100I Duration of bush fire hazard reduction certificate	15
Insert at the end of the section:	16
(2) However, a bush fire hazard reduction certificate that applies only to the carrying out of work that:	17
(a) is of a kind that is carried out regularly, and	18
(b) has, in the opinion of the issuing authority or certifying authority, a low impact on the environment and biodiversity,	19
operates for a period of 3 years commencing on the date endorsed on the certificate.	20
[24] Section 100K Consultation on draft codes	21
Omit section 100K (1). Insert instead:	22
(1) The Commissioner must, in preparing a draft bush fire environmental assessment code, consult with, and take into account any recommendations made by or on behalf of, the following:	23
(a) the Director-General of the Department of Planning and Infrastructure,	24
(b) the Director-General of the Department of Premier and Cabinet,	25
(c) the Nature Conservation Council of New South Wales,	26

	(d) the NSW Farmers' Association,	1
	(e) the Local Government and Shires Association of New South Wales,	2
	(f) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services,	3 4
	(g) the Commissioner of Fire and Rescue NSW,	5
	(h) the Forestry Corporation of New South Wales,	6
	(i) the Environment Protection Authority.	7
[25]	Section 134 Proceedings for offences	8
	Insert "(other than section 100 (1))" after "this Act" in section 134 (1).	9
[26]	Dictionary	10
	Insert "and fire trails" after "breaks" in paragraph (a) of the definition of <i>bush fire hazard reduction work</i> .	11 12
[27]	Dictionary, definition of "bush fire hazard reduction work"	13
	Omit ", trail".	14
[28]	Dictionary	15
	Insert in alphabetical order:	16
	<i>volunteer rural fire fighters</i> —see section 8 (3).	17

Schedule 2	Amendment of other legislation	1
2.1	National Parks and Wildlife Act 1974 No 80	2
[1]	Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities	3
	Insert after section 118A (3A):	4
	(3B) This section does not apply to anything done in the course of carrying out bush fire hazard reduction work to which section 100C (4) of the <i>Rural Fires Act 1997</i> applies.	5
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[2]	Section 118D Damage to habitat of threatened species, endangered populations or endangered ecological communities	9
	Insert after section 118D (2A):	10
	(2B) This section does not apply to anything done in the course of carrying out bush fire hazard reduction work to which section 100C (4) of the <i>Rural Fires Act 1997</i> applies.	11
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2.2	Rural Fires Regulation 2013	15
	Clause 28 Offence to light, use or carry tobacco product	16
	Omit clause 28 (2).	17
2.3	State Emergency and Rescue Management Act 1989 No 165	18
	Section 63B Offences relating to emergency services organisations	19
	Insert after section 63B (2):	20
	(2A) A person who:	21
	(a) impersonates an emergency services organisation officer with the intention to deceive and purports to exercise a function of such an officer, or	22
		23
		24
	(b) impersonates an emergency services organisation officer with the intention to deceive in order to facilitate the commission of an offence,	25
		26
	is guilty of an offence.	27
	Maximum penalty: 100 penalty units.	28