

Act 1994 No. 34

BUSH FIRES (FURTHER AMENDMENT) BILL 1994*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to modify the current legislative schemes for obtaining permits that authorise the lighting of fires for the purpose of clearing land containing timber, grass or other vegetation (such as for fire breaks) or near buildings and to exclude the granting of such a permit from Part 5 of the Environmental Planning and Assessment Act 1979; and
- (b) to require Bush Fire Management Committees to be established for all bush fire districts (and to allow Bush Fire Management Committees to be established for other parts of the State), to require those Committees to prepare draft bush fire management plans setting out:
 - bush fire fighting operational procedures to be followed; and
 - bush fire hazard reduction measures to be taken,on the land for which they were established to be submitted for approval by the Bush Fire Co-ordinating Committee and to require regular updating of those plans; and
- (c) to require local councils to enforce, and to monitor, the carrying out on private land of bush fire hazard reduction work in accordance with approved bush fire management plans, and to provide for the carrying out of such work by the local council or the Commissioner of Bush Fire Services if other persons fail to carry it out in accordance with such a plan and for the recovery of costs incurred in carrying out such work; and
- (d) to authorise the fire control officer appointed for a bush fire district to call out bush fire brigades (in accordance with an approved bush fire management plan) to bush fires occurring outside, as well as within, the district and to authorise members of those brigades to attend those fires; and

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

Bush Fires (Further Amendment) 1994 [Act 1994 No. 34]

- (e) to provide for another 3 members of the Bush Fire Council to be members of the Co-ordinating Committee; and
- (f) to enable certain functions of the Chief Co-ordinator of Bush Fire Fighting (such as taking charge of fire fighting operations) to be exercised outside the parts of the State to which their exercise is presently restricted.

The Bill also makes certain savings and transitional provisions consequential on the above.

For those purposes, the Bill amends the Bush Fires Act 1949 and, in minor respects, the Fire Brigades Act 1989 and the Local Government Act 1993.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 gives effect to the amendments to the Bush Fires Act 1949 as set out in Schedule 1.

Clause 4 gives effect to the amendments to the Acts specified in Schedule 2 as set out in that Schedule.

SCHEDULE 1—AMENDMENT OF BUSH FIRES ACT 1949

Permits for fires

At present:

- a permit under section 10 of the Bush Fires Act is required for a fire lit (otherwise than by a public authority) for the purpose of clearing land during a bush fire danger period for the land; and
- a permit under section 35A of the Fire Brigades Act (or under section 10 of the Bush Fires Act) is required for a fire lit in a fire district under that Act if it is likely to be dangerous to a building.

A permit under section 10 is usually granted by a local council but a permit under section 35A is granted by the officer in charge of the nearest fire station.

The amendments will draw together the different legislative schemes for obtaining permits for those purposes. All permits will be granted under section 10 and the offence currently stated in section 35A of lighting a fire without obtaining a permit will be transferred to that section and the penalty increased to be the same as for failing to obtain a permit required by section 10.

A council that grants a permit equivalent to those currently issued under section 35A will be required to give notice of the issue of the permit to the Director-General of New South Wales Fire Brigades. officers in charge of fire stations will also be able to grant permits of that kind. Notice of when the fire will be lit will be required to be given in accordance with regulations under the Bush Fires Act in all cases and conditions will be able to be imposed on all permits.

The amendments will also provide for all permits to have effect for 21 days, unless they are previously revoked or a direction is given under section 16 imposing a fire ban.

Bush Fires (Further Amendment) 1994 [Act 1994 No. 34]

The granting of a permit will be excluded by the amendments from the environmental assessment requirements of Part 5 of the Environmental Planning and Assessment Act. **(Schedule 1 (2) and (3))**

Bush Fire Management Committees and fire management plans

The Bush Fires Act presently enables the Bush Fire Co-ordinating Committee to form District Fire Committees for any local government area or locality within the State and authorises the preparation of plans of operations by the Co-ordinating Committee in consultation with them, but there is no compulsion to form any such Committee.

The amendments will empower the Co-ordinating Committee to establish committees (in accordance with regulations made under the Act) for any part of the State to be known as Bush Fire Management Committees so as to avoid confusion (because they may not necessarily be formed only for bush fire districts declared under the Act). However, the Co-ordinating Committee must establish Bush Fire Management Committees to cover at least all of those bush fire districts.

Each of the Bush Fire Management Committees will be required to prepare draft bush fire management plans of two kinds, respectively setting out

- procedures to be followed for bush fires of such a size that they would be incapable of being suppressed by fire fighting authorities within the part of the State for which the Bush Fire Management Committee was formed (plans of operations); and
- bush fire hazard reduction measures to be taken in that part of the State (fuel management plans).

Bush fire management plans of both kinds must be prepared and submitted for approval by the Co-ordinating Committee within 3 months of the commencement of the new requirement and are to be updated every 2 years (but regulations under the Act may vary those time limits). If a draft plan is not prepared on time or is inadequate, the Commissioner of Bush Fire Services may prepare the draft plan instead.

A bush fire management plan will be enforceable only after it has been approved (with or without changes) by the Co-ordinating Committee. A plan is not to be approved if it would impose obligations on public authorities within the administration of a Minister (such as a local council, New South Wales Fire Brigades, the Forestry Commission or the National Parks and Wildlife Service) and the authority objects to having those obligations.

A bush fire management plan may be varied by the Co-ordinating Committee after the plan has been approved. The question of whether a public authority should consent to a variation affecting its obligations under the plan (or consent to new obligations being imposed on it by the plan, which may have initially been objected to by the authority) may be determined by the Minister and, if another Minister is responsible for administration of the authority, the other Minister. **(Schedule 1 (1), (7), (10), (11), (12), (14), (15) and (17))**

Bush fire hazard reduction in accordance with bush fire management plans

At present, local councils and public authorities have a general duty to take all practicable steps to prevent fires and to minimise the risk of fires spreading. Local councils also presently have the power to issue notices requiring the burning of fire breaks and other bush fire hazard reduction work.

Bush Fires (Further Amendment) 1994 [Act 1994 No. 34]

The amendments will:

- require local councils to issue notices to the owners or occupiers of private land so that bush fire hazard reduction work will be carried out in accordance with approved bush fire management plans; and
- place a duty on local councils to monitor the carrying out of that work in accordance with those notices; and
- place the obligation of carrying out that work on the local council if the person required to do so by such a notice fails to carry it out in accordance with the plan; and
- empower the Commissioner of Bush Fire Services to carry out that work where a local council or public authority fails to carry out bush fire hazard reduction work in discharge of such an obligation or in accordance with any such approved plan; and
- allow for the recovery of the costs incurred by the Commissioner in carrying out such work. (Local councils may already recover those costs under the Bush Fires Act.)

(Schedule 1 (4), (5) and (16))

Functions of fire control officers and members of bush fire brigades

The amendments make it clear that the fire control officer appointed for a bush fire district has the authority to call out bush fire brigades (in accordance with an approved bush fire management plan) to bush fires occurring within or outside the district.

The amendments also make it clear that members of a bush fire brigade called out in such a case may exercise their functions under the bush fire management plan within or outside the bush fire district with which the brigade is associated. **(Schedule 1 (6) and (8))**

Membership of the Co-ordinating Committee

At present, the Co-ordinating Committee consists of 5 members of the Bush Fire Council.

The amendments will add 3 more members of the Bush Fire Council to the membership of the Co-ordinating Committee. The additional members will be appointed to the Committee on the recommendation of the Council and cannot be ex-officio members of the Council. At least one of them must be an occupier of rural land affected by a bush fire management plan.

The quorum for a meeting of the Committee is consequentially increased to 5 members. **(Schedule 1 (9) and (19))**

Area of operations of the Chief Co-ordinator

Certain functions of the Chief Co-ordinator of Bush Fire Fighting (such as taking charge of fire fighting operations) may presently be exercised only on land within local government areas (or parts of such areas) specified in Schedule 3 to the Act.

Bush Fires (Further Amendment) 1994 [Act 1994 No. 34]

The amendments will enable those functions to be exercised on other land. If those functions are to be exercised in the case of a fire that affects land in only one local government area or on Lord Howe Island, the powers may be exercised only through a person whose name is on the list of emergency fire controllers for the land concerned published under section 17 of the Act. **(Schedule 1 (13))**

Savings and transitional provisions

The amendments will save current permits that have been issued under section 35A of the Fire Brigades Act, save the formerly constituted District Fire Committees as if they had been constituted as Bush Fire Management Committees under the amendments and save plans of operations under section 41A of the Bush Fires Act as if they had been approved as bush fire management plans under the proposed new scheme. **(Schedule 1 (18))**

SCHEDULE 2—AMENDMENT OF OTHER ACTS

The **Fire Brigades Act** is amended by repealing section 35A.

The **Local Government Act** is amended to impose a requirement on councils to include in their annual report details of bush fire hazard reduction activities undertaken by them during the year to which the report relates.
