



New South Wales

Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to give electricity network operators additional powers to direct the owners of premises on bush fire prone land that is private land to do bush fire risk mitigation work involving removing vegetation or rectifying defective private electricity assets on their land, and
- (b) to authorise network operators to enter private land (without further notice) to carry out that bush fire risk mitigation work if the owner fails to complete the work within the required period (unless the owner requests disconnection of premises from the distribution system), and
- (c) to provide that, generally, the landowner is responsible for the cost of bush fire risk mitigation work done under such a direction, including work done by a network operator (with provision for a hardship policy that takes account of the landowner's financial situation).

The new powers will operate in addition to existing powers that electricity network operators have to require the trimming or removal of trees that may interfere with electricity infrastructure or pose a bush fire risk. Those existing powers will continue to apply to all land.

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 Electricity Supply Act 1995 No 94

Schedule 1 [1] inserts a new Division in Part 5 (Powers and duties of network operators and retailers) of the Act that creates special powers for bush fire prevention on bush fire prone land. The Division comprises the following provisions:

- (a) **Proposed section 53A** defines terms used in the new Division, including *bush fire prone land*, which is defined to mean land that is bush fire prone land under the *Environmental Planning and Assessment Act 1979* in any area of the State (that is, land recorded for the time being as bush fire prone land on a bush fire prone land map for the area certified by the Commissioner of the NSW Rural Fire Service).
- (b) **Proposed section 53B** provides that the proposed Division applies only to bush fire prone land, but that the proposed Division does not prevent the taking of action under section 48 of the Act (Interference with electricity works by trees) in relation to premises on bush fire prone land.
- (c) **Proposed section 53C** provides for a network operator to give a written notice to the owner or occupier of any premises on bush fire prone land that is private land directing the owner to do bush fire risk mitigation work on vegetation or aerial consumers mains on the premises (which may involve the trimming or removal of vegetation or the repair of a fault or defect in aerial consumers mains) if the network operator has determined that:
 - (i) the vegetation could make the network operator's electricity works become a potential cause of bush fire, or
 - (ii) the vegetation fails to satisfy the requirements of any standard as to required clearances between vegetation and electricity works or aerial consumers mains, or
 - (iii) the vegetation could make aerial consumers mains on the premises become a potential cause of bush fire, or
 - (iv) a fault or defect in the aerial consumers mains could make them become a potential cause of bush fire.
- (d) **Proposed section 53D** specifies who has the responsibility for the cost of bush fire risk mitigation work under direction. Generally, the owner of premises is responsible unless the work was done because the vegetation could make the network operator's electricity works become a potential cause of bush fire, or because the vegetation fails to satisfy the requirements of any standard as to required clearances between vegetation and electricity works, in which case the network operator is responsible.
- (e) **Proposed section 53E** provides for what directions to do bush fire risk mitigation work must specify (including what work is required, the time limit, who is responsible for the cost and what may happen if the work is not done on time).
- (f) **Proposed section 53F** provides that, to comply with a direction, the owner of the premises must, within 30 days, notify the network operator that the work will be done, or request the network operator to disconnect the supply of electricity to the premises. If the work is to be done, the owner has 60 days to do the work. The proposed section also provides that, if the owner does not comply with the direction, the network operator may do the required work and recover the reasonable cost of doing the work from the owner.
- (g) **Proposed section 53G** provides that 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 the proposed Division.
- (h) **Proposed section 53H** provides that an environmental planning instrument cannot prohibit, require development consent for or otherwise restrict the doing on any land of work required under the proposed Division, that the environmental assessment provisions of the *Environmental Planning and Assessment Act 1979* do not apply to such work and that such work can be done despite any requirement for an approval, consent or other authorisation made by any other law, including those about native vegetation, threatened species conservation and national parks.

- (i) **Proposed section 53I** requires a network operator to have and implement a hardship policy (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 the proposed Division.

Schedule 1 [2] makes it clear that existing powers of entry that support the exercise of certain functions of network operators extend to functions under existing section 48 (which empowers a network operator to require the trimming or removal of trees) and functions under proposed Division 2A of Part 5 to be inserted by the Bill.

Schedule 1 [3] provides that a network operator exercising a power of entry is not required to give notice of entry if entry is for the purpose of doing work in the exercise of a function under proposed Division 2A of Part 5 to be inserted by the Bill.

Schedule 1 [4] provides that a network operator is not liable to pay compensation to the owner or occupier of land for loss or damage arising from the exercise of a power of entry in connection with the exercise of a function under proposed Division 2A of Part 5 to be inserted by the Bill.

Schedule 1 [5] makes a minor change to regulation-making powers.

Schedule 2 Amendment of Electricity Supply (General) Regulation 2014

Schedule 2 makes a minor amendment to a provision of the Regulation dealing with the manner in which notices and other documents under the Regulation are to be given to extend the provision to notices and other documents given under the Act.



New South Wales

Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014

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New South Wales

Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Electricity Supply Act 1995* 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 <i>Electricity Supply Amendment (Bush Fire Hazard Reduction) Act 2014</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Electricity Supply Act 1995 No 94	1
[1] Part 5, Division 2A		2
	Insert after Division 2 of Part 5:	3
Division 2A	Special powers for bush fire prevention	4
53A	Definitions	5
	In this Division:	6
	<i>aerial consumers mains</i> 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.	7 8 9 10
	<i>bush fire prone land</i> means land that is bush fire prone land under the <i>Environmental Planning and Assessment Act 1979</i> in any area of the State.	11 12
	<i>private land</i> means any land that is not:	13
	(a) dedicated, or acquired for the purpose of dedication, under the <i>Forestry Act 2012</i> 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 <i>Conveyancing Act 1919</i> , or	14 15 16 17
	(b) dedicated or reserved, or acquired for the purpose of dedication or reservation, under the <i>National Parks and Wildlife Act 1974</i> , or	18 19
	(c) vested in, or under the control of, Rail Corporation New South Wales, Transport for NSW or Roads and Maritime Services, or	20 21
	(d) within the catchment area of a water authority, or	22
	(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	23 24
	(f) land prescribed by the regulations as public land for the purposes of this definition.	25 26
	<i>vegetation</i> means a tree, shrub or plant.	27
53B	Application of Division	28
	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.	29 30 31
53C	Power to give directions for bush fire risk mitigation work on private land	32
	(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:	33 34 35 36
	(a) the vegetation could make the network operator's electricity works become a potential cause of bush fire, or	37 38
	(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	39 40 41 42
	(c) the vegetation could make aerial consumers mains on the premises become a potential cause of bush fire, or	43 44

(d)	a fault or defect in the aerial consumers mains could make them become a potential cause of bush fire.	1 2
(2)	The work that can be directed to be done as bush fire risk mitigation work is:	3
(a)	for vegetation, the trimming or removal of the vegetation, or	4
(b)	for a fault or defect in aerial consumers mains, the repair of the fault or defect.	5 6
53D	Responsibility for cost of bush fire risk mitigation work under direction	7
(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.	8 9 10
(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:	11 12
(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,	13 14 15
(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.	16 17 18 19 20
(3)	The network operator is not responsible for the cost of work in either of the following circumstances:	21 22
(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,	23 24 25 26 27
(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.	28 29 30 31
53E	Contents of direction	32
(1)	A direction under this Division to the owner of premises to do bush fire risk mitigation work is to specify the following:	33 34
(a)	the particular work required to be done (the <i>required work</i>) and a statement of the reason the work is required to be done,	35 36
(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,	37 38 39 40
(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,	41 42 43 44
(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,	45 46 47

(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,	1 2 3
(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.	4 5 6
(2)	The direction must also include the following:	7
(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,	8 9 10
(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,	11 12 13
(c)	information that explains how a dispute or complaint about the direction can be referred to the Energy and Water Ombudsman NSW.	14 15
(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:	16 17
(a)	prescribing a standard form of direction, or	18
(b)	specifying standard wording for any aspect of the direction, or	19
(c)	requiring the inclusion in a direction of matter in addition to the matter required by this section.	20 21
53F	Compliance with direction	22
(1)	To comply with a direction under this Division, the owner of the premises must:	23 24
(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	25 26 27 28
(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.	29 30 31
	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.	32 33 34 35
(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.	36 37 38 39
(3)	A network operator can by notice in writing to the owner or occupier of premises, increase any period for compliance with a direction.	40 41
53G	Compensation	42
	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.	43 44 45

53H	Effect of other laws	1
(1)	An environmental planning instrument under the <i>Environmental Planning and Assessment Act 1979</i> 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 3 4 5
(2)	Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> 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.	6 7 8
(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 <i>Native Vegetation Act 2003</i> , the <i>Threatened Species Conservation Act 1995</i> , the <i>National Parks and Wildlife Act 1974</i> or any other Act or instrument made under an Act.	9 10 11 12 13
53I	Hardship policy for cost recovery	14
(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.	15 16 17 18 19
(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.	20 21 22
(3)	The policy must be publicly available on the network operator's website.	23
[2]	Section 54 Powers of entry	24
	Omit section 54 (1) (h). Insert instead:	25
	(h) exercising any function conferred on the network operator by section 48, 49 or 49A or Division 2A.	26 27
[3]	Section 55 Notice of entry	28
	Insert at the end of section 55 (3) (c):	29
	, or	30
	(d) if entry is for the purpose of doing work in the exercise of a function under Division 2A.	31 32
[4]	Section 60	33
	Omit the section. Insert instead:	34
60	Compensation	35
	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:	36 37 38 39
	(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	40 41 42
	(b) work done in the exercise of a function under Division 2A.	43

[5] Section 191 Regulations

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Insert after section 191 (1) (i):

2

- (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.

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Schedule 2	Amendment of Electricity Supply (General)	1
	Regulation 2014	2
	Clause 69 Service of documents	3
	Omit “under this Regulation”. Insert instead “by or under the Act or this Regulation”.	4