



New South Wales

Rural Fires Amendment (Bush Fire Prevention) Bill 2015

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 provide that persons are not guilty of offences under environmental legislation merely for carrying out bush fire hazard reduction work or vegetation clearing work if the work is carried out under, and in accordance with, the *Rural Fires Act 1997*,
- (b) to permit vegetation clearing work to be carried out in certain areas near farm sheds in order to reduce bush fire risk,
- (c) to clarify how provisions authorising vegetation clearing work apply to the removal of trees,
- (d) to ensure that the written consent of adjoining neighbours is obtained before certain vegetation clearing work is carried out.

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] makes it clear that bush fire hazard reduction work can only be carried out under section 100C (4) of the *Rural Fires Act 1997* (the *principal Act*) if the work is carried out in

accordance with a bush fire risk management plan that applies to the land, any conditions specified in the bush fire hazard reduction certificate (that is required for the work) and the provisions of any bush fire code applying to the land.

Schedule 1 [2] provides that a person is not guilty of an offence under a number of Acts merely because of the carrying out of bush fire hazard reduction work. However, the defence applies only where the work is carried out in accordance with the requirements set out above.

Schedule 1 [3] inserts a definition of *farm shed* and replaces a definition of *tree* for the purposes of Division 9 (Vegetation clearing work) of Part 4 of the principal Act.

Schedule 1 [4] substitutes section 100R of the principal Act, which provides for vegetation clearing work by owners of land around certain residential and other buildings with habitable rooms. The section as substituted extends the provision to provide for similar clearing around farm sheds. An owner of land in a 10/50 vegetation clearing entitlement area is authorised to carry out vegetation clearing work involving the clearing of any vegetation within 10 metres of the external wall of a building to which the section applies or vegetation (other than trees) within 50 metres of any such wall. Work is permitted to be carried out only if it is carried out in accordance with the proposed section. The proposed section also provides that a tree must not be removed or destroyed unless its trunk is within 10 metres of the external wall of a building to which the proposed section applies. A person may only clear or authorise the clearing of vegetation on land that the person owns. If there is no external wall of a building on land owned by the person that authorises particular vegetation clearing work, the person may rely on an external wall of a building on adjoining land to authorise the clearing. However, in such a case, the person must not carry out the work unless he or she has obtained the written consent of each owner of adjoining land on which there is an external wall that could be used to authorise the clearing (being an external wall that is within 10 metres or 50 metres of the particular vegetation as the case may be). Any vegetation clearing work must be carried out in accordance with the 10/50 Vegetation Clearing Code of Practice prepared by the Commissioner of the NSW Rural Fire Service under section 100Q of the principal Act. The proposed section also provides that a person is not guilty of an offence under a number of Acts merely because of the carrying out of vegetation clearing work in accordance with the proposed section.



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New South Wales

Rural Fires Amendment (Bush Fire Prevention) Bill 2015

No. , 2015

A Bill for

An Act to amend the *Rural Fires Act 1997* to make provision with respect to bush fire hazard reduction work and vegetation clearing work.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Rural Fires Amendment (Bush Fire Prevention) Act 2015*.

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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] Section 100C Carrying out of bush fire hazard reduction work

Omit “Act if” from section 100C (4). Insert instead “Act only if”.

[2] Section 100C (5)

Insert after section 100C (4):

(5) A person is not guilty of an offence under any of the following Acts merely because of the carrying out of bush fire hazard reduction work in accordance with subsection (4):

(a) *Coastal Protection Act 1979*,

(b) *Environmental Planning and Assessment Act 1979*,

(c) *Fisheries Management Act 1994*,

(d) *Heritage Act 1977*,

(e) *Native Vegetation Act 2003*,

(f) *Protection of the Environment Operations Act 1997*,

(g) *Soil Conservation Act 1938*.

Note. Failure to comply with subsection (4) (a), (b) and (c) when carrying out bush fire hazard reduction work may expose a person to offences under the Acts referred to above.

[3] Section 100P Definitions

Omit the definition of *tree*. Insert in alphabetical order:

farm shed means a building that:

(a) is erected on land that is in one of the following land use zones (or in the case of land that is zoned under an environmental planning instrument other than an instrument made in the form of a Standard Instrument—a land use zone that, having regard to the objectives of the zone, has the substantial character of any of the following land use zones):

(i) RU1 Primary Production,

(ii) RU2 Rural Landscape,

(iii) RU4 Primary Production Small Lots, and

(b) has a floor area of more than 50 square metres, and

(c) is used by a primary producer wholly or substantially for a purpose associated with carrying on one or more of the following primary production businesses:

(i) the cultivation or propagation of plants or fungi, or their products (including seeds, spores, fruits, grain, flowers, vegetables, tobacco, bulbs and oils), but not a plant nursery,

(ii) bee keeping or aquaculture (within the meaning of the *Fisheries Management Act 1994*),

(iii) the rearing or grazing of livestock, including horses, cattle, sheep, pigs, goats or poultry or other birds, for the purpose of selling the livestock or products derived from the livestock, and

(d) if it is used for processing products—is used for processing products a majority of which are produced on the property on which the building is erected, and

(e) is not a moveable building.

tree means a perennial woody plant that is 3 or more metres in height and that has one or more self-supporting trunks (at least one of which has a circumference at a height of 1.3 metres above the ground of more than 0.3 metres), but does not include a woody plant that is:

- (a) a shrub, which is a small, low growing, woody plant with multiple stems, or
- (b) a vine, which is a woody plant that depends on an erect substrate to grow on.

[4] Section 100R

Omit the section. Insert instead:

100R Carrying out vegetation clearing work

- (1) This section applies to the following buildings only:
 - (a) a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility (but not if there is no lawful authority for the use of those rooms as habitable rooms),
 - (b) a building that is a farm shed (but not if there is no lawful authority for the use of the building as a farm shed).
- (2) The owner of land in a 10/50 vegetation clearing entitlement area may carry out any of the following vegetation clearing work on the land if the work is carried out in accordance with the requirements of this section:
 - (a) the removal, destruction (by means other than by fire) or pruning of any vegetation (including trees or parts of trees) within 10 metres of an external wall of a building,
 - (b) the removal, destruction (by means other than by fire) or pruning of any vegetation, except trees or parts of trees, within 50 metres of an external wall of a building.
- (3) Vegetation clearing work may be carried out under this section despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Act 2003* or the *Environmental Planning and Assessment Act 1979* or any other Act or instrument made under an Act.
- (4) A tree must not be removed or destroyed under subsection (2) (a) unless part of a trunk of that tree, having a circumference at a height of 1.3 metres above the ground of more than 0.3 metres, is within 10 metres of the external wall of the building.
- (5) If there is no external wall of a building on land owned by a person that authorises particular vegetation clearing work under this section, the person may rely on an external wall of a building on adjoining land to authorise the clearing. However, the person must not carry out the work unless he or she has obtained the written consent to the particular vegetation clearing work of each owner of adjoining land on which there is an external wall of a building that could be used to authorise the work.

Note. For example, a tree on a person's land that is more than 10 metres away from the person's home but that is within 10 metres of the homes of 2 neighbours could be removed under this section only if both of those neighbours provide written consent.
- (6) Vegetation clearing work is not authorised to be carried out under this section on land unless it is carried out by or with the authority of the owner of the land.

- (7) Vegetation clearing work is not authorised to be carried out under this section unless it is carried out in accordance with the 10/50 Vegetation Clearing Code of Practice. 1
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- (8) The Commissioner may prescribe in the 10/50 Vegetation Clearing Code of Practice whether, for the purposes of this section, particular rooms of a building are or are not habitable and what is or is not an external wall of a building. 4
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- (9) A person is not guilty of an offence under any of the following Acts merely because of the carrying out of vegetation clearing work in accordance with this section: 8
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- (a) *Coastal Protection Act 1979*, 11
 - (b) *Environmental Planning and Assessment Act 1979*, 12
 - (c) *Fisheries Management Act 1994*, 13
 - (d) *Heritage Act 1977*, 14
 - (e) *Native Vegetation Act 2003*, 15
 - (f) *Protection of the Environment Operations Act 1997*, 16
 - (g) *Soil Conservation Act 1938*. 17
- (10) In this section: 18
- lawful authority*** means development consent or other lawful authority under the *Environmental Planning and Assessment Act 1979*. 19
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