

# Rural Fires Act 1997 No 65

[1997-65]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

### Authorisation

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# Rural Fires Act 1997 No 65



New South Wales

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# Rural Fires Act 1997 No 65



New South Wales

An Act to establish the NSW Rural Fire Service and define its functions; to make provision for the prevention, mitigation and suppression of rural fires; to repeal the *Bush Fires Act 1949*; to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### Note—

This Part contains provisions that are helpful in understanding the Act as a whole, as well as some machinery provisions. It also provides for the constitution of all those parts of the State that are not within fire districts (within the meaning of the *Fire Brigades Act 1989*) as rural fire districts.

### 1 Name of Act

This Act is the *Rural Fires Act 1997*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are to provide:

- (a) for the prevention, mitigation and suppression of bush and other fires in local government areas (or parts of areas) and other parts of the State constituted as rural fire districts, and
- (b) for the co-ordination of bush fire fighting and bush fire prevention throughout the State, and
- (c) for the protection of persons from injury or death, and property from damage, arising from fires, and
- (d) for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

## 4 Definitions

(1) Definitions are contained in the Dictionary at the end of this Act.

**Note—**

Expressions used in this Act (or in a particular provision of this Act) that are defined in the *Interpretation Act 1987* have the meanings set out in that Act.

(2) Words and expressions used in the *State Emergency and Rescue Management Act 1989* and in this Act have the same meanings in this Act as they have in the 1989 Act.

(3) Subsections (1) and (2) do not apply to the extent that the context or subject-matter otherwise indicates or requires.

**Note—**

Some expressions defined in the *State Emergency and Rescue Management Act 1989* that are used in this Act are:

**combat agency** means the agency identified in Displan as the agency primarily responsible for responding to a particular emergency.

**Displan** means the State Disaster Plan referred to in section 12.

**emergency** means an emergency due to an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or warlike action) which:

- (a) endangers, or threatens to endanger, the safety or health of persons in the State, or
- (b) destroys or damages, or threatens to destroy or damage, property in the State,

being an emergency which requires a significant and co-ordinated response.

**emergency services organisation** means the Police Service, Fire Brigades, Rural Fire Brigades, Ambulance Service, State Emergency Service, Volunteer Rescue Association or any other agency which manages or controls an accredited rescue unit.

## 5 Notes

Notes in the text of this Act do not form part of this Act.

## 6 Rural fire districts

(1) A rural fire district is constituted by this section for the area of each local authority, with boundaries of the district being the same as the boundaries of the area as at the date of commencement of this section.

**Note—**

The Dictionary defines **area** of a local authority. The area of a council is land within the local government area of the council. The area of the Western Lands Commissioner is the Western Division. The area of the Lord Howe Island Board is Lord Howe Island.

(2) A rural fire district is not constituted by this section for, and does not include, any land within an area that is within a fire district.

**Note—**

A **fire district** means land within a fire district constituted under the *Fire Brigades Act 1989*.

- (3) If the boundaries of the area of a local authority for which a rural fire district is constituted by this section change after the commencement of this section, the boundaries of the rural fire district change so as to correspond to the boundaries of the area.
- (4) If the whole of the area of a local authority for which a rural fire district is constituted by this section is dissolved after the commencement of this section, the rural fire district is dissolved.
- (5) If part of the area of a local authority for which a rural fire district is constituted is dissolved after the commencement of this section, the rural fire district constituted for the area is taken to have been constituted for the remaining part of the area.

## **7 Responsible local authorities in rural fire districts**

- (1) A function conferred or imposed by or under this Act on a local authority for and in respect of a rural fire district is to be exercised:
  - (a) by the local authority for the area for which the district is constituted under section 6, or
  - (b) if, under subsection (2), two or more local authorities agree to combine responsibility for and in respect of their rural fire districts—by the local authorities jointly or, if a local authority is nominated in the agreement, by the local authority or local authorities nominated in the agreement, or
  - (c) if, under subsection (3), two local authorities agree that one of the local authorities is to have responsibility for and in respect of the whole or part of the rural fire district of the other local authority—by the local authority nominated in the agreement as the local authority to be responsible for the whole or part of that rural fire district.
- (2) Two or more local authorities may agree in writing to combine responsibility for and in respect of their rural fire districts. Responsibility for those rural fire districts is to be exercised jointly by the local authorities or, if the authorities nominate one of them in the agreement as the responsible authority, by that authority.
- (3) A local authority may agree in writing with another local authority that the other local authority have responsibility for or in respect of the whole or part of the rural fire district for the area of the local authority.

## **Part 2 NSW Rural Fire Service**

**Note—**

This Part establishes the NSW Rural Fire Service, and provides for its composition, functions and management. The Service is to be managed and controlled by the Commissioner of the NSW Rural Fire Service. The Commissioner is responsible for issuing the Service Standards, which are the guidelines in respect of the standard operating procedures to be followed by members of the Service. The Commissioner determines the duties of certain members of the Service (staff of the Service, including fire control officers, deputy fire control officers and ancillary fire control staff). The fire control officers, deputy fire control officers and ancillary fire control staff are employed under the *Public Sector Management Act 1988* and are responsible for a number of functions, including the supervision and direction of functions exercised by or under the Act by rural fire brigades and groups of rural fire brigades.

## Division 1 The Service

### 8 NSW Rural Fire Service

(1) There is established by this Act the NSW Rural Fire Service.

(2) The Service comprises the following members:

- (a) the Commissioner and other staff of the Service,
- (b) (Repealed)
- (c) volunteer rural fire fighters.

(3) In this Act:

***volunteer rural fire fighters*** means:

- (a) officers and other members of rural fire brigades, and
- (b) any person other than a member of a rural fire brigade who, without remuneration or reward, voluntarily and without obligation engages in fighting (or in activities associated with fighting) a fire with the consent of or under the authority and supervision of an officer of a rural fire brigade.

### 9 Functions of Service

(1) The NSW Rural Fire Service has the following functions:

- (a) to provide rural fire services for New South Wales,
- (b) to assist other emergency services organisations at incidents and at emergencies under the control of those organisations,

**Note—**

The *State Emergency and Rescue Management Act 1989* provides for Displan to identify combat agencies primarily responsible for responding to an emergency. The Service is identified as the agency primarily responsible for responding to an emergency due to fire occurring in rural fire districts.

- (b1) to provide advisory services (whether within or outside the State) relating to fire fighting and other matters with respect to which it has expertise,
- (c) to carry out such other functions as may be assigned to it by or under this or any other Act,

- (d) to do anything necessary for, or incidental to, the exercise of its functions.
- (2) The functions of the Service are to be exercised in accordance with the *State Emergency and Rescue Management Act 1989* and, in particular, with the requirements under Displan or any state of emergency under that Act.
- (3) The Service is to have regard to the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991* in carrying out any function that affects the environment.
- (4) In this section:
- rural fire services** includes the following:
- (a) services for the prevention, mitigation and suppression of fires in rural fire districts,
- (b) the protection of persons from dangers to their safety and health, and property from destruction or damage, arising from fires in rural fire districts,
- (c) the provision of services referred to in paragraphs (a) and (b) throughout the State in accordance with Part 3,
- (d) any other service prescribed by the regulations.

**Note—**

Other provisions of this Act also affect the exercise of Service functions. See, for example, sections 38 and 133 (2).

## **Division 2 The Commissioner and other staff of Service**

### **10 The Commissioner and other staff**

- (1) A Commissioner of the NSW Rural Fire Service, a fire control officer for each rural fire district and such other staff as may be necessary for the purposes of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) Subsection (1) does not apply to the members of the Service referred to in section 8 (2) (b) and (c).
- (3) The Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government Department or public authority.
- (4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the Service.

## **11 Ministerial control**

The Commissioner is, in the exercise of the Commissioner's functions, subject to the control and direction of the Minister.

## **12 Functions of Commissioner**

- (1) The Commissioner is responsible for managing and controlling the activities of the Service and has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.
- (2) The Commissioner may determine the various duties that members of the staff of the Service are required to perform and allocate the duties to be carried out by each member of the staff.
- (3) The Commissioner may, when the Commissioner considers it appropriate to do so, conduct an audit of all or any activities of members of the Service to determine whether the members are carrying out the activities effectively and doing so efficiently and in compliance with the Service Standards.
- (4) The ranks of members of the Service are to be determined by the Commissioner.
- (5) The Commissioner (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the functions of the Service.
- (6) This section is subject to the other provisions of this Act and the regulations.

### **12A Entry into rural fire district service agreements**

- (1) Without limiting section 12, the Commissioner may enter into a rural fire district service agreement (a **service agreement**) with any local authority or authorities responsible for a rural fire district or districts.
- (2) Without limitation, a service agreement:
  - (a) may specify functions imposed on the local authority by or under this Act that are to be exercised by the Commissioner during a period (if any) specified in the agreement, and
  - (b) may specify any obligations to be imposed on the local authority as a consequence of the Commissioner agreeing to exercise those functions, and
  - (c) may set performance targets for the exercise of those functions, and
  - (d) may provide for the evaluation and review of results in relation to those targets.
- (3) The Commissioner and the local authorities must, as far as practicable, exercise the



functions and carry out the obligations in accordance with the service agreement.

- (4) The Commissioner is to report the results of the performance under a service agreement during a financial year to the local authority or authorities concerned within 3 months after the end of that year.

### **13 Service Standards**

- (1) The Commissioner may from time to time issue written policy statements to members of the Service for or with respect to procedures to be followed in connection with the operation, management and control of the Service.
- (2) Without limiting the matters with respect to which statements may be issued under this section, statements may be issued in respect of standard operating procedures, including procedures in respect of the following:
  - (a) fire reporting,
  - (b) operational co-ordination,
  - (c) operational planning,
  - (d) bush fire risk management planning,
  - (e) fire fighting assistance planning,
  - (f) standards of fire cover reporting,
  - (g) implementation of training standards,
  - (h) communications,
  - (i) brigade management,
  - (j) community education,
  - (k) protocols on relevant matters,
  - (l) health and safety.
- (3) The Commissioner is, wherever practicable, to consult with the Advisory Council before issuing policy statements under this section.

### **14 Delegation by Commissioner**

- (1) The Commissioner may delegate to any member of the Service any of the Commissioner's functions under this Act, other than this power of delegation.
- (2) The Commissioner may delegate to the Commissioner of New South Wales Fire Brigades any of the Commissioner's functions under the following provisions, but only

to the extent that the functions are exercisable in respect of land within a fire district:

- (a) section 73 (Bush fire hazard reduction by Commissioner),
- (b) section 100B (Bush fire safety authorities),
- (c) section 79BA (Consultation and development consent—certain bush fire prone land) of the *Environmental Planning and Assessment Act 1979*,
- (d) section 146 (Bush fire prone land) of the *Environmental Planning and Assessment Act 1979*.

## **Division 3 Rural fire brigades**

### **15 Formation of rural fire brigades**

- (1) A local authority may form one or more rural fire brigades for any rural fire district constituted for its area or part of its area.
- (2) Two or more local authorities may jointly form a rural fire brigade for a rural fire district constituted for their areas.
- (3) A rural fire brigade may be formed on the initiative of the local authority or local authorities concerned or on the request of any interested person.
- (4) The Commissioner may form a rural fire brigade for a rural fire district if any local authority requested to form a rural fire brigade for that district refuses or fails to do so within the period prescribed by the regulations after being requested to do so by the Commissioner.

### **16 Formation of groups of rural fire brigades**

The fire control officer for a rural fire district may form two or more rural fire brigades formed for the district into a group of rural fire brigades.

### **17 Disbandment of rural fire brigades**

- (1) A rural fire brigade may be disbanded at any time by the person or body who formed it by notice in writing given to the officer in charge of the rural fire brigade.
- (2) The disbandment takes effect 21 days after the notice is given.
- (3) The officer in charge of the rural fire brigade concerned may, with the agreement of a majority of the members of the rural fire brigade, lodge an appeal in writing to the Minister against the decision to disband the rural fire brigade.
- (4) The appeal must be lodged before the disbandment takes effect.
- (5) After considering the appeal, the Minister may:

- (a) confirm the disbandment, or
- (b) withdraw the notice.

(6) The disbandment of a rural fire brigade that is the subject of an appeal does not take effect until the appeal is either withdrawn or finally determined by the Minister and the result notified to the officer in charge of the rural fire brigade concerned.

## **18 Area of operations and officers of rural fire brigades**

The body or person that forms a rural fire brigade is:

- (a) to determine the territory in which the brigade is to operate, and
- (b) to appoint as the officers for the brigade those persons selected, in accordance with the Service Standards, to be officers for the brigade by the members of the brigade.

### **Note—**

Under section 47 of the *Interpretation Act 1987*, conferral of a power to appoint a person to an office includes a power to remove or suspend the person from the office.

## **19 Area of operations and officers of groups of rural fire brigades**

- (1) The fire control officer who forms a group of rural fire brigades is to determine the territory in which the group is to operate.
- (2) The officers of the rural fire brigades forming a group of rural fire brigades are those persons selected, in accordance with the Service Standards, to be officers for the group by the members of the rural fire brigades forming the group. A person selected to be an officer holds office for the period specified in the Service Standards.

## **20 Members of rural fire brigades**

- (1) The body or person that forms a rural fire brigade is required to keep a register of members of the brigade in accordance with the Service Standards.
- (2) The members of a rural fire brigade are the persons listed on the register for the brigade kept under this section.

## **21 Functions of officers of rural fire brigades**

- (1) An officer of a rural fire brigade or group of rural fire brigades has the functions conferred or imposed on the officer by or under this or any other Act.

### **Note—**

Functions may be conferred under the Act by the Service Standards.

- (2) An officer of a rural fire brigade or group of rural fire brigades may exercise a function conferred or imposed on the officer:
  - (a) at a fire, incident or other emergency in the rural fire district for which the brigade

or group was formed, or

(b) at a place outside that rural fire district:

(i) with the approval of the Commissioner or of the fire control officer for the rural fire district in which the place is located, or

(ii) in accordance with a bush fire management plan or in circumstances prescribed by the regulations, or

(iii) within a fire district—with the approval of an officer of New South Wales Fire Brigades.

(3) An officer or member of a rural fire brigade or group of rural fire brigades is not, merely because of the authority conferred on the officer or member to exercise any functions under this Act, to be taken to be an employee of the State, a Minister of the State or a local authority.

## **22 General powers of rural fire brigade officers and others**

(1) An officer of a rural fire brigade or group of rural fire brigades of a rank designated by the Commissioner may, for the purpose of controlling or suppressing a fire or protecting persons, property or the environment from an existing or imminent danger arising out of a fire, incident or other emergency:

(a) exercise any function conferred on the officer by or under this Act, or

(b) take any other action that is reasonably necessary or incidental to the effective exercise of such a function.

(2) The officer may exercise such a function or take such an action with such persons as the officer considers necessary for the purpose.

(2A) Any function that may be exercised, or action that may be taken, by an officer of a rural fire brigade or group of rural fire brigades because of this section may be exercised or taken by the Commissioner.

(3) The following provisions of this Division are intended to be particular examples of the way in which functions referred to in this section can be exercised and are not intended to limit the generality of this section.

## **23 Power to enter premises**

An officer of a rural fire brigade or group of rural fire brigades may enter any premises for the purpose of exercising any function conferred or imposed on the officer by or under this Act.

### **Note—**

**Premises** is defined in the Dictionary.

## **24 Closure of streets and public places**

The officer in charge of a rural fire brigade or group of rural fire brigades may cause any street or public place in the vicinity of a fire, incident or other emergency to be closed to traffic.

## **25 Making premises safe**

An officer of a rural fire brigade or group of rural fire brigades may, if persons are, or property is, endangered or likely to be endangered by a fire, incident or other emergency, do any of the following things:

- (a) pull down, cut and remove or cause to be pulled down, cut and removed, fences on any land,
- (b) destroy, pull down or remove or cause to be destroyed, pulled down or removed any buildings or structures on any land,
- (c) destroy or remove or cause to be destroyed or removed any living or dead vegetation on any land,
- (d) establish fire breaks on any land or cause fire breaks to be established on any land.

## **26 Use of water and works**

An officer of a rural fire brigade or group of rural fire brigades may for the purpose of controlling or suppressing a fire:

- (a) take and use without any payment any water from any source on any land, or
- (b) use without any payment all or any water mains, water plugs, valves, pipes and works of water supply vested in or under the management or control of any water supply authority, public authority or body.

## **27 Permission of SRA or RIC required**

The functions conferred by this Division may not be exercised in relation to land or property vested in, or under the control of, the State Rail Authority or Rail Infrastructure Corporation without the permission of the Authority or Corporation or of a person authorised by the Authority or Corporation to give the permission.

## **28 Damage to property and the environment**

- (1) Any damage to property that is caused by any person exercising any function conferred by or under this Division in good faith and any remedial work necessary to rectify damage to the environment is to be taken to be damage by fire within the meaning of any policy of insurance against fire covering the property so damaged.
- (2) Any provision, stipulation, covenant or condition in any agreement that negates, limits

or modifies or purports to negate, limit or modify the operation of this section is void and of no effect.

### **29 Notice of entry**

- (1) A person authorised to enter premises under this Division may enter the premises without giving notice:
  - (a) if entry to the premises is made with the consent of the owner or occupier, or
  - (b) if the entry is made to a part of the premises that is open to the public, or
  - (c) if entry is required urgently and the case is one in which the Commissioner has authorised in writing (either generally or in a particular case) entry without notice.
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

### **30 Care to be taken**

In the exercise of a function under this Division, a person authorised to enter premises must do as little damage as possible.

### **31 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to premises but only if the Commissioner:
  - (a) has authorised in writing the use of force in the particular case, or
  - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the Commissioner.
- (3) The Commissioner must give notice of the use of force to such persons or authorities as appear to the Commissioner to be appropriate in the circumstances.

### **32 Authority to enter premises**

- (1) A power to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority that:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and

- (c) describes the nature of the powers conferred and the source of the powers, and
- (d) states the date (if any) on which it expires, and
- (e) describes the kind of premises to which the power extends, and
- (f) bears the signature of the Commissioner.

### **33 Voluntary work by rural fire brigade**

- (1) With the consent of the fire control officer for the rural fire district in which it operates or the Commissioner, a rural fire brigade may, in or out of the rural fire district, voluntarily co-operate with a public authority in the exercise of any function of the public authority prescribed by the regulations for the purposes of this section.
- (2) If:
  - (a) a public authority, or any member of a public authority, has immunity from legal proceedings that would otherwise lie in relation to the exercise by the authority or member of a function, and
  - (b) a rural fire brigade co-operates under this section in the exercise of the function, each officer and other member of the brigade taking part has the same immunity.

## **Division 4 Fire control officers**

### **34 Deputy fire control officers**

- (1) A deputy fire control officer is to act as fire control officer for the district:
  - (a) at the direction of the fire control officer, or
  - (b) in the event of the absence, illness or other inability to act of the fire control officer, or
  - (c) during a vacancy in the office of the fire control officer.
- (2) A deputy fire control officer:
  - (a) when acting as a fire control officer under this section, has and may exercise all the functions of a fire control officer by or under this Act, and
  - (b) when acting under the direction of a fire control officer (other than a direction under subsection (1)) has and may exercise such of the functions conferred on a fire control officer by or under this Act as may be necessary or convenient to be exercised for the purpose of carrying out the direction.

### **35 Acting fire control officer**

- (1) If both the fire control officer and all the deputy fire control officers for a rural fire district are absent from duty, the Commissioner may appoint a person to be acting fire control officer during the absence.
- (2) An acting fire control officer has the functions of the fire control officer and anything done by the acting fire control officer in the exercise of those functions has effect as if it were done by the fire control officer.

### **36 Councillors not to be appointed as fire control officers, deputy fire control officers or acting fire control officers**

- (1) A councillor within the meaning of the *Local Government Act 1993* is not eligible to be appointed as a fire control officer, deputy fire control officer or acting fire control officer.
- (2) Any fire control officer, deputy fire control officer or acting fire control officer who becomes a councillor ceases to be such an officer on a date that is 3 months after the date on which his or her election as a councillor takes effect unless the officer otherwise vacates his or her office before that date.
- (3) Any such fire control officer, deputy fire control officer or acting fire control officer does not, by virtue of holding office as such an officer, hold an office or place of profit for the purposes of section 275 (2) of the *Local Government Act 1993*.

### **37 Responsibilities of fire control officers and local authorities**

- (1) A fire control officer is, subject to any direction of the Commissioner, responsible for the control and co-ordination of the activities of the Service in the rural fire district for which he or she is appointed as fire control officer.
- (2) (Repealed)
- (3) The local authority for the rural fire district for which a fire control officer is appointed must provide facilities and accommodation to enable the fire control officer to exercise his or her functions.
- (4) Any such facilities and accommodation are to be of a standard approved by the Commissioner in consultation with the local authority.

### **38 Functions of fire control officers**

- (1) A fire control officer appointed under this Part has all the powers and immunities conferred on an officer in charge of a rural fire brigade.
- (2) A fire control officer:
  - (a) has the supervision and direction of the functions exercised by or under this Act



by all rural fire brigades and groups of rural fire brigades in the rural fire district for which the fire control officer has been appointed and of the officers of the brigades, and

- (b) has the right to use any fire fighting apparatus in the rural fire district other than fire fighting apparatus under the control of the authority responsible for managed land, and
- (c) must inspect, or cause to be inspected, at least once each year all fire fighting apparatus in the rural fire district other than fire fighting apparatus under the control of the authority responsible for managed land, and
- (d) must take or cause to be taken all necessary measures for suppressing fires in the rural fire district and protecting and saving life and property in case of fire, and
- (e) (Repealed)

(3) (Repealed)

- (4) A fire control officer may exercise a function referred to in subsection (2) (d) only if the fire control officer (and any member of the Service assisting the fire control officer in the exercise of the function) complies with the conditions (if any) imposed on the exercise of the function specified in any relevant bush fire management plan or other relevant plan of the authority responsible for the managed land of which the fire control officer is aware.

## **Division 5 Command structure**

### **39 Commissioner may authorise officers and members of rural fire brigades to exercise functions**

- (1) Any function conferred or imposed on the Commissioner by this Act may be exercised by any officer or member of a rural fire brigade or group of rural fire brigades authorised for the purpose by the Commissioner.
- (2) Such an authorisation need not be in writing and operates to authorise the exercise of the functions accordingly. However, the Commissioner must keep a record of all authorisations given under this section.

### **40 Officer in charge may authorise others to exercise functions**

- (1) The officer in charge at a fire, incident or other emergency may authorise any officer or member of a rural fire brigade or group of rural fire brigades to exercise all or specified functions under this Act of the officer in charge at a fire, incident or other emergency.
- (2) Such an authorisation need not be in writing and operates to authorise the exercise of the functions accordingly.

#### **41 Duty to recognise authority of officers**

- (1) Every member of the Police Service and all other persons are to recognise:
  - (a) the authority of the Commissioner and any member of a rural fire brigade or group of rural fire brigades or fire control officer acting under the Commissioner's directions, and
  - (b) the authority of the officer in charge at a fire, incident or other emergency at which a rural fire brigade is present or of an officer of a rural fire brigade directly assisting the person primarily responsible for responding to a fire, incident or other emergency.
- (2) It is the duty of every member of the Police Service to support the authority of such a person and to assist him or her in enforcing compliance with any directions given under this Act or the regulations.
- (3) This section applies only in respect of the protection of persons from injury or death, or of property from damage, when the persons are or the property is endangered by fire or there is imminent danger of such a fire.

#### **42 Obstruction etc of Commissioner and other members of Service**

A person who obstructs or hinders or incites or encourages any person to obstruct or hinder the Commissioner, a fire control officer or an officer of a rural fire brigade or group of rural fire brigades in the exercise of the Commissioner's or officer's functions under this Act, or any person acting under the direction of any such person, is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

#### **43 Interstate assistance at fires**

- (1) A person who is a member of an interstate fire brigade and is present at a fire within a rural fire district for the purpose of mitigating or suppressing that fire must:
  - (a) obey any orders given to the person by the officer in charge at the fire, and
  - (b) place any gear or equipment in the person's charge at the disposal of the officer in charge at the fire.
- (2) While there is no officer in charge at the fire, the member of the interstate fire brigade who has the charge of the members of that brigade present at the fire is, for the purposes of this Act, to be considered the officer in charge at the fire.
- (3) A member of an interstate fire brigade who is present at a fire within a rural fire district for the purpose of mitigating or suppressing that fire is taken to have and may exercise all the functions that, if the fire were in the area of a rural fire brigade, the officer in charge of that rural fire brigade would have and be capable of exercising and performing.

(4) In this section:

***interstate fire brigade*** means a fire brigade (by whatever name called) established under a law of any place outside New South Wales.

### **Part 3 Co-ordinated bush fire fighting**

#### **Note—**

This Part charges the Commissioner with the responsibility of controlling and co-ordinating the action to be taken by persons and bodies involved in or associated with the prevention, mitigation or suppression of bush fires in dealing with fires requiring a response beyond the area or locality in which the fires are burning. The Commissioner is authorised to give directions to persons, members of the Service, officers of other emergency services organisations and others in relation to the prevention, mitigation and suppression of fires in these circumstances.

The Part also provides for the establishment of the Bush Fire Co-ordinating Committee, the principal responsibility of which is to plan for bush fire prevention and for co-ordinated bush fire fighting. The Bush Fire Co-ordinating Committee is required to constitute Bush Fire Management Committees for rural fire districts and may constitute them for other parts of the State. These committees are responsible for the preparation of bush fire management plans for the areas for which they are constituted.

### **Division 1 Co-ordination of bush fire fighting by Commissioner**

#### **44 Commissioner's responsibility**

- (1) The Commissioner is to take charge of bush fire fighting operations and bush fire prevention measures and to take such measures as the Commissioner considers necessary to control or suppress any bush fire in any part of the State if, in the opinion of the Commissioner:
  - (a) a bush fire has assumed or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or authorities in whose area or locality it is burning, or
  - (b) the prevailing conditions are conducive to the outbreak of a bush fire likely to assume such proportions, or
  - (c) a bush fire is not being effectively controlled or suppressed by the fire fighting authority or authorities in whose area or locality it is burning, or
  - (d) a bush fire is burning in a place that is not the responsibility of any fire fighting authority.
- (2) The Commissioner may delegate the Commissioner's functions under this Division (other than this power of delegation) to an officer or member of a rural fire brigade, an officer or member of New South Wales Fire Brigades, officers of the Forestry Commission, officers of the National Parks and Wildlife Service or any other person.
- (3) The Commissioner is not subject to the control and direction of the Bush Fire Co-ordinating Committee in exercising the Commissioner's functions under this Division but must, in exercising those functions, take into consideration any relevant bush fire management plan and, in the case of managed land, any relevant plan of the

authority responsible for the managed land of which the Commissioner is aware.

#### **45 Power to give directions etc**

- (1) The Commissioner may give such directions as the Commissioner considers necessary to fire control officers, deputy fire control officers, officers of rural fire brigades, local authorities, officers or members of New South Wales Fire Brigades, members of the Police Service and other persons in connection with the prevention, control or suppression of any bush fire in the area or locality in which the Commissioner has taken charge or is taking measures under this Division.
- (2) Without limiting the powers conferred on the Commissioner, the Commissioner may exercise, in any part of the State, any functions conferred by section 21 on an officer in charge of a rural fire brigade or group of rural fire brigades in respect of the rural fire district for which the brigade is formed.
- (3) Any person (other than a police officer) who fails to observe any direction given under this section by the Commissioner is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (4) The provisions of this section have effect despite anything contained in this or any other Act to the contrary.
- (5) Nothing in this Division enables the Commissioner to commandeer equipment or resources (human or otherwise).

### **Division 2 Bush Fire Co-ordinating Committee**

#### **46 Constitution of Bush Fire Co-ordinating Committee**

- (1) There is constituted by this Act a corporation with the corporate name of the Bush Fire Co-ordinating Committee.
- (2) The Bush Fire Co-ordinating Committee is a statutory body representing the Crown.

#### **47 Membership and procedure of Bush Fire Co-ordinating Committee**

- (1) The Bush Fire Co-ordinating Committee is to consist of 13 members as follows:
  - (a) the Commissioner, who is to be the Chairperson of the Committee,
  - (b) an officer of New South Wales Fire Brigades nominated by the Commissioner of NSW Fire Brigades,
  - (c) an officer of the Forestry Commission nominated by the commissioner constituting the Forestry Commission,
  - (d) an officer of the National Parks and Wildlife Service nominated by the Director-

General of National Parks and Wildlife,

- (e) a person appointed by the Minister on the recommendation of the Local Government Association of New South Wales,
  - (f) a person appointed by the Minister on the recommendation of the Shires Association of New South Wales,
  - (g) a fire control officer appointed by the Minister on the recommendation of the NSW Rural Fire Service Association Inc,
  - (h) a person appointed by the Minister on the recommendation of the Commissioner of Police,
  - (i) a person appointed by the Minister on the recommendation of the Minister for the Environment,
  - (j) a person nominated by the Nature Conservation Council of New South Wales,
  - (k) a person appointed by the Minister on the recommendation of the NSW Farmers Association,
  - (l) an officer of the Department of Community Services nominated by the Minister for Community Services,
  - (m) an officer of the Department of Land and Water Conservation nominated by the Director-General of the Department of Land and Water Conservation.
- (2) Schedule 1 has effect with respect to the members and procedures of the Bush Fire Co-ordinating Committee.

#### **48 Functions of Bush Fire Co-ordinating Committee**

- (1) The Bush Fire Co-ordinating Committee:
- (a) is responsible for planning in relation to bush fire prevention and co-ordinated bush fire fighting, and
  - (b) is responsible for advising the Commissioner on bush fire prevention, mitigation and co-ordinated bush fire suppression, and
  - (c) has such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) Without limiting subsection (1), the Bush Fire Co-ordinating Committee:
- (a) must report to the Minister on any matter referred by the Minister to it and may report on any matter relating to the prevention and suppression of bush fires whether referred to it or not, and

(b) may enter into arrangements with the Minister for Land and Water Conservation or any public authority with respect to the reduction of bush fire hazards.

(2A) The Bush Fire Co-ordinating Committee may request the Commissioner to conduct a performance audit under section 62A with respect to implementation of bush fire risk management plans generally or for a specified rural fire district or other part of the State.

(3) The Bush Fire Co-ordinating Committee is to have regard to the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991* in carrying out any function that affects the environment.

#### **49 Delegation**

The Bush Fire Co-ordinating Committee may delegate to the Commissioner any function (other than this power of delegation) conferred or imposed on it by or under this Act.

### **Division 3 Bush Fire Management Committees**

#### **50 Bush Fire Management Committees**

(1) The Bush Fire Co-ordinating Committee must constitute a Bush Fire Management Committee for the whole of the area of any local authority for which a rural fire district is constituted.

(1A) The Bush Fire Co-ordinating Committee must constitute a Bush Fire Management Committee for the area of a local authority for which a fire district is constituted if there is a reasonable risk of bush fires in that area.

(2) The Bush Fire Co-ordinating Committee may constitute a Bush Fire Management Committee for a part of the State other than a rural fire district or a fire district.

(3) Committees may be constituted for separate rural fire districts or groups of rural fire districts and for separate fire districts or groups of fire districts.

(4) A Bush Fire Management Committee is to be constituted in accordance with the regulations.

#### **51 Functions of Bush Fire Management Committees**

(1) A Bush Fire Management Committee has such functions as are conferred or imposed on it by or under this or any other Act.

(1A) A Bush Fire Management Committee must, within 2 months after the end of each financial year, 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.

- (2) A Bush Fire Management Committee is to have regard to the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991* in carrying out any function that affects the environment.

## **Division 4 Preparation of draft bush fire management plans**

### **52 Bush Fire Management Committees to prepare plans**

- (1) Each Bush Fire Management Committee must, in accordance with this Division, prepare and submit to the Bush Fire Co-ordinating Committee a draft of each of the following kinds of bush fire management plans for the rural fire district or other part of the State for which it is constituted:
  - (a) a plan of operations, and
  - (b) a bush fire risk management plan.
- (2) Draft bush fire management plans of both kinds must be prepared and submitted to the Bush Fire Co-ordinating Committee by a Bush Fire Management Committee within 12 months after the constitution of the Bush Fire Management Committee and:
  - (a) in the case of a plan of operations—within each successive 2 year period following the constitution of the Committee, and
  - (b) in the case of a bush fire risk management plan—within each successive 5 year period following the constitution of the Committee.

### **53 Content of draft plan of operations**

A draft plan of operations for a rural fire district or other part of the State is to set out the procedures to be followed if:

- (a) a bush fire breaks out in the rural fire district or other part of the State and assumes or is likely to assume such proportions as to be incapable of suppression by the fire fighting authority or authorities in that part of the State, or
- (b) the prevailing conditions are conducive to the outbreak of a bush fire likely to assume such proportions.

### **54 Content of draft bush fire risk management plan**

- (1) A draft bush fire risk management plan for a rural fire district or other part of the State is to set out schemes for the reduction of bush fire hazards in the rural fire district or other part of the State.
- (2) Without limiting the matters that may be contained in a draft bush fire risk management plan, it may restrict or prohibit the use of fire or other particular fire hazard reduction activities in all or specified circumstances or places to which the plan

applies.

**Note—**

A plan might, for example, prohibit the use of fire because of its effect on fauna or flora in, or the cultural heritage of, a particular place.

**55 General content**

- (1) A draft bush fire management plan may:
  - (a) include schemes for the exercise in the rural fire district or other part of the State to which it applies of functions conferred or imposed by this Act, and
  - (b) confer or impose functions on the Commissioner, the Commissioner of NSW Fire Brigades, the commissioner constituting the Forestry Commission, the Director-General of National Parks and Wildlife or any other person or body associated with the prevention, mitigation or suppression of bush fires in that part of the State.
- (2) A draft bush fire management plan must include any provisions that the Bush Fire Coordinating Committee has advised the Bush Fire Management Committee concerned to include in the plan.

**56 Failure of Management Committee**

The Commissioner may exercise the functions of a Bush Fire Management Committee under this Division if the Committee has failed to submit a draft bush fire management plan in accordance with the Division or has submitted a draft plan that, in the opinion of the Commissioner, is inadequate.

**Division 5 Public participation in preparation of plans**

**57 Public notice of draft bush fire risk management plans**

- (1) The Bush Fire Management Committee or Commissioner must:
  - (a) in accordance with the regulations, give public notice of and exhibit, for the purpose of receiving submissions from any interested persons, any draft bush fire risk management plan for a rural fire district or other part of the State prepared by the Committee or Commissioner, and
  - (b) concurrently display for information any draft plan of operations or plan of operations for that rural fire district or part of the State.
- (2) The Bush Fire Management Committee or Commissioner is to ensure that no addresses or telephone numbers of fire control officers or other operational contact information is displayed.



## **58 Adoption of bush fire risk management plans**

- (1) After considering all submissions received concerning the draft bush fire risk management plan, the Bush Fire Management Committee or the Commissioner (if the Commissioner is exercising the functions of the Committee under section 56) may decide to amend the draft plan or to submit it to the Bush Fire Co-ordinating Committee without amendment as the proposed bush fire risk management plan for the rural fire district or part of the State concerned.
- (2) When a draft bush fire risk management plan for a rural fire district or any other part of the State is submitted to the Bush Fire Co-ordinating Committee it must:
  - (a) consider all submissions received by it concerning the draft plan, and
  - (b) review the provisions of the draft plan and of any current bush fire risk management plan for that part of the State.
- (3) After considering the submissions and the review, the Bush Fire Co-ordinating Committee may:
  - (a) approve the draft plan (as submitted or after amendment by the Bush Fire Co-ordinating Committee) and revoke any other bush fire risk management plan to the extent that it makes corresponding provisions for that part of the State, or
  - (b) vary another bush fire risk management plan for some or all of the same part of the State so as to incorporate in the other plan some or all of the provisions of the draft plan (as submitted or after amendment by the Bush Fire Co-ordinating Committee).
- (4) If the Bush Fire Management Committee, the Commissioner (if the Commissioner is exercising the functions of the Committee under section 56) or the Bush Fire Co-ordinating Committee decides to amend the draft plan:
  - (a) they may publicly exhibit the amended draft plan in accordance with this Division, or
  - (b) if of the opinion that the amendments are not substantial, the Bush Fire Management Committee or Commissioner may submit, or the Bush Fire Co-ordinating Committee may adopt, the amended draft plan without public exhibition as the bush fire risk management plan for the area concerned.

## **59 Adoption of bush fire plans of operation**

- (1) After preparing a draft plan of operations for the rural fire district or other part of the State for which it is constituted, the Bush Fire Management Committee is to submit the plan to the Bush Fire Co-ordinating Committee.
- (2) When a draft plan of operations is submitted to the Bush Fire Co-ordinating

Committee, it must review the provisions, of the draft plan and of any current plan of operations.

- (3) After the review, the Bush Fire Co-ordinating Committee may:
  - (a) approve the draft plan (as submitted or after amendment by the Bush Fire Co-ordinating Committee) and revoke any other plan of operations to the extent that it makes corresponding provisions for that part of the State, or
  - (b) vary another plan of operations for some or all of the same part of the State so as to incorporate in the other plan some or all of the provisions of the draft plan (as submitted or after amendment by the Bush Fire Co-ordinating Committee).

#### **60 Co-ordination of planning by bush fire management plans**

- (1) The Bush Fire Co-ordinating Committee is not to approve or vary a bush fire management plan so as to impose a requirement on a public authority within the administration of a Minister if the authority objects to the requirement.
- (2) The Bush Fire Co-ordinating Committee may, with the consent of a public authority:
  - (a) vary or revoke any provision of an approved bush fire management plan imposing a requirement on the authority, or
  - (b) vary an approved bush fire management plan so as to impose a requirement on the authority.
- (3) Any dispute between the Bush Fire Co-ordinating Committee and a public authority about the imposition of a requirement on the authority is to be decided by the Minister and, if the authority is within the administration of another Minister, that other Minister. The decision of the Minister or Ministers is binding on the parties to the dispute.
- (4) If agreement cannot be reached between the Ministers, the dispute is to be resolved by the Premier whose decision is binding on the parties to the dispute.
- (5) A bush fire management plan may be communicated in such manner as the Bush Fire Co-ordinating Committee thinks fit to any public authority to which it relates.
- (6) A bush fire management plan communicated to a public authority to which it relates is to be adopted by that authority and, as far as practicable, carried into effect by the authority in the circumstances indicated by the plan.

#### **61 Amendment, revocation and cessation of bush fire management plans**

- (1) A Bush Fire Management Committee, the Commissioner or the Bush Fire Co-ordinating Committee may amend a bush fire management plan adopted under this Division by another bush fire management plan that is prepared and adopted in accordance with

sections 57–60.

- (2) A bush fire management plan may be revoked by a bush fire management plan adopted under this Division by the Bush Fire Co-ordinating Committee.

## **62 Public availability of bush fire management plans and draft bush fire management plans**

A bush fire management plan or draft bush fire management plan must be available for public inspection at, and be able to be obtained free of charge from, the office of the local authority for the area to which it relates during ordinary office hours.

## **Division 6 General**

### **62A Performance audit of implementation of bush fire risk management plans**

- (1) The Commissioner may conduct a performance audit of the implementation of bush fire risk management plans generally in the State or for a specified rural fire district or other part of the State.
- (2) The Commissioner may conduct a performance audit on the Commissioner's own initiative or at the request of the Bush Fire Co-ordinating Committee under section 48 (2A).
- (3) Without limiting the powers the Commissioner may exercise under subsection (1), the Commissioner may make such enquiries as the Commissioner considers fit to determine whether or not bush fire hazard reduction work has been carried out in accordance with any bush fire risk management plan that applies to the land.
- (4) The annual report of the Service prepared under the [Annual Reports \(Departments\) Act 1985](#) must include details of the number, and results, of performance audits carried out under this section in the year to which the report relates.

## **Part 4 Bush fire prevention**

### **Note—**

Part 4 deals with the prevention and minimisation of the spread of bush fires throughout the State. It provides for bush fire hazard reduction work to be done, for limitation of the lighting of fires without a permit during bush fire danger periods and the imposition of total fire bans. It imposes responsibilities on the owners and occupiers of land and public authorities in relation to these and other matters.

## **Division 1 Duty to prevent bush fires**

### **63 Duties of public authorities and owners and occupiers of land to prevent bush fires**

- (1) It is the duty of a public authority to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from:

- (a) any land vested in or under its control or management, or
  - (b) any highway, road, street, land or thoroughfare, the maintenance of which is charged on the authority.
- (2) It is the duty of the owner or occupier of land to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.
- (3) A public authority or owner or occupier is liable for the costs incurred by it in performing the duty imposed by this section.
- (4) The Bush Fire Co-ordinating Committee may advise a person on whom a duty is imposed by this section of any steps (whether or not included in a bush fire risk management plan) that are necessary for the proper performance of the duty.
- (5) In this section:
- notified steps** means:
- (a) any steps that the Bush Fire Co-ordinating Committee advises a person to take under subsection (4), or
  - (b) any steps that are included in a bush fire risk management plan applying to the land.

#### **64 Occupiers to extinguish fires or notify fire fighting authorities**

- (1) If a fire (not being a fire or part of a fire lit under the authority of this Act or any other Act) is burning on any land at any time during a bush fire danger period applicable to the land the occupier of the land must:
- (a) immediately on becoming aware of the fire and whether the occupier has lit or caused the fire to be lit or not, take all possible steps to extinguish the fire, and
  - (b) if the occupier is unable without assistance to extinguish the fire and any practicable means of communication are available, inform or cause to be informed an appropriate officer of the existence and locality of the fire if it is practicable to do so without leaving the fire unattended.
- (2) In this section, **appropriate officer** means:
- (a) if the fire is burning within any fire district constituted under the [Fire Brigades Act 1989](#)—the nearest available officer or fire fighter of the fire brigades in the fire district, or
  - (b) if the fire is burning outside any such fire district—the nearest available officer or member of a rural fire brigade or fire control officer or deputy fire control officer or officer of the Forestry Commission or the National Parks and Wildlife Service.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

## **Division 2 Bush fire hazard reduction**

**Note—**

**Bush fire hazard reduction work** and **bush fire hazard reduction notice** are defined in the Dictionary.

### **65 Reduction of fire hazards on unoccupied Crown land and managed land**

(1) In this section:

**authorised person**, in relation to land, means:

- (a) any officer of a rural fire brigade for the time being nominated for the purposes of this section by the local authority for the area in which the land is situated, or
  - (b) any person for the time being nominated for the purposes of this section by the Bush Fire Co-ordinating Committee, or
  - (c) a person exercising functions under a bush fire risk management plan, or
  - (d) an authorised officer of a fire fighting authority.
- (2) An authorised person may, with the permission of the fire fighting authority or other authority responsible for unoccupied Crown land or managed land or a person for the time being nominated by the authority to give such permission, enter the land and carry out bush fire hazard reduction work with the assistance of such other persons as the authorised person considers to be necessary for the purpose.
- (3) The authority responsible for unoccupied Crown land or managed land is to be taken to have given the permission under this section to the extent necessary to give effect to a bush fire risk management plan.
- (4) If permission under this section is given subject to conditions, the conditions must be complied with.

### **66 Bush fire hazard reduction work required by local authorities**

- (1) The local authority of an area may, by notice in writing, require the occupier or owner (not being a public authority) of any land within the area to carry out bush fire hazard reduction work specified in the notice on the land.
- (2) The local authority must serve a notice under this section if required to do so by a bush fire risk management plan applicable to the land that is in force.
- (2A) The local authority must issue a bush fire hazard reduction certificate in respect of any bush fire hazard reduction work required by a notice issued in accordance with subsection (2).

- (3) The notice may specify the circumstances in which, conditions under which, places at which and manner and time within which the bush fire hazard reduction work is to be carried out and is to specify any means other than fire 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.
- (4) The time within which bush fire hazard reduction work is to be carried out must not be less than 7 days after the notice is given.
- (5) The requirements and conditions so specified must include any requirements specified in a bush fire risk management plan that is applicable to the land and is in force and may include a requirement or condition that the burning of fire breaks or of combustible matter or other material:
  - (a) must, in a fire district constituted under the *Fire Brigades Act 1989*, be carried out by or under the supervision of the fire brigade in the district or the officer or fire fighter in charge of the fire brigade, or
  - (b) must, outside a fire district, be carried out by or under the supervision of the rural fire brigade specified in the notice or an appropriate officer of the rural fire brigade or any fire control officer.
- (6) A notice requiring the establishment of a fire break cannot require an occupier or owner to kill or remove any trees that are reasonably necessary:
  - (a) for shade, shelter, windbreak or fodder purposes, or
  - (b) for the protection of threatened species, populations, communities or critical habitats within the meaning of the *Threatened Species Conservation Act 1995*.

**Note—**

See section 54 (2) for other possible limitations.

- (7) An occupier or owner to whom a bush fire hazard reduction notice is given must, despite the fact that a fire permit has not been granted under Division 5, comply with the requirements specified in the notice.

Maximum penalty: 50 penalty units or imprisonment for 12 months.

- (8) A notice under this section that is the subject of an objection or appeal under section 67 or 68 does not have effect until the objection or appeal is finally determined.

## **67 Objection to notices**

- (1) The owner or occupier of land on whom a notice has been served under section 66 may, within 7 days of the service of the notice, lodge an objection with the local authority for the area in which the land is situated stating the grounds of objection.

- (2) If a person lodges an objection, the local authority and the person must genuinely attempt to resolve the matter by consultation having regard to:
  - (a) the provisions of any bush fire risk management plan applicable to the land that is in force, and
  - (b) the matters referred to in section 66 (6), and
  - (c) the proper needs for conservation, and
  - (d) such other matters as may be prescribed by the regulations.
- (3) Within 14 days of the lodging of an objection, the local authority must:
  - (a) confirm the notice, or
  - (b) vary the notice, if the local authority is satisfied that the variation will appropriately address the threat of fire, or
  - (c) withdraw the notice, if the local authority is satisfied that there is no longer any need for the notice to be served.
- (4) If the local authority confirms or varies the notice, the local authority must give the person who lodged the objection notice of its decision and must specify a time after the notice is given within which the person must comply with the notice as confirmed or varied.
- (5) A local authority may delegate any of its functions under this section (other than this power of delegation) as follows:
  - (a) in relation to land that is situated in a rural fire district—to the fire control officer for the district,
  - (b) in relation to land that is situated in a fire district—to an officer or member of a fire brigade.
- (6) Any act, matter or thing done by such a delegate of the local authority for the purposes of this section is taken to have been done by the local authority.

## **68 Appeal against notices**

- (1) If a person has lodged an objection under section 67 and:
  - (a) the local authority has failed to confirm, vary or withdraw the notice within 14 days, or
  - (b) the person is not satisfied with the confirmation or variation of the notice,the person may appeal in writing to the Commissioner within 7 days of the end of the 14 day period or the date of the confirmation or variation, whichever is earlier, stating

the grounds of appeal.

(2) The Commissioner must:

(a) consider the appeal within a reasonable time, and

(b) take into account all relevant circumstances, including the matters referred to in section 67 (2), and

(c) advise the local authority that an appeal has been received.

(3) After considering the appeal, the Commissioner must:

(a) confirm the notice, or

(b) vary the notice in any way the Commissioner thinks fit, or

(c) cancel the notice,

and advise the local authority accordingly.

(4) If the Commissioner confirms or varies the notice, the Commissioner must give the person who lodged the appeal notice of his or her decision and must specify a time after the notice is given within which the person must comply with the notice as confirmed or varied.

## **69 Duties of local authority**

(1) A fire control officer, or an officer or member of a fire brigade or other person authorised by a local authority, may for the purpose of forming an opinion as to:

(a) whether the local authority should serve a notice under section 66 on the occupier or owner of any land, or

(b) whether or not such a notice has been complied with,

enter during the daytime any part of the land (other than a dwelling-house) that it is necessary to inspect in order to form that opinion.

(2) A local authority that requires an occupier or owner of land to take action under a bush fire hazard reduction notice must give notice in the approved form to such persons or bodies as may be prescribed by the regulations.

(3) It is a duty of a local authority to keep a record of whether or not bush fire hazard reduction work has been carried out on land within the area of the local authority in accordance with a bush fire hazard reduction notice.

### **Note—**

The Land and Environment Court has jurisdiction to hear and dispose of proceedings under this Act. See section 20 of the [Land and Environment Court Act 1979](#).



## **70 Bush fire hazard reduction work in default of compliance with notice**

(1) In this section:

**relevant notice** means:

- (a) a bush fire hazard reduction notice, or
  - (b) if a bush fire hazard reduction notice is the subject of an objection or appeal, a notice under section 67 (4) or 68 (4), respectively.
- (2) If within the time specified in the relevant notice the owner or occupier to whom it is given fails to comply with any requirement of the notice, the local authority or any officers or members of any fire brigade or rural fire brigade or other persons authorised by the local authority may, without prejudice to the liability of the owner or occupier, enter on the land and carry out the bush fire hazard reduction work the owner or occupier was required to do under the notice.
- (3) The expenses of carrying out the bush fire hazard reduction work are a debt recoverable from the owner or occupier of the land in any court of competent jurisdiction.
- (4) The local authority must exercise its power under this section if the requirement that has not been complied with is made by a bush fire risk management plan.
- (5) The provisions of the *Local Government Act 1993*, with respect to:
- (a) the charge of a rate under that Act on the land in respect of which it is levied, and
  - (b) the time within which proceedings for the recovery of the rate may be taken,
- apply to and in respect of any judgment recovered under this section against the owner of land by the local authority and recorded in the books, as if the amount of the judgment and of any costs awarded to the local authority in respect of its claim were a rate levied under that Act in respect of the land concerned.

## **71 Defence to court proceedings**

If:

- (a) the occupier and the owner of the land in respect of which a bush fire hazard reduction notice is given are not the same person, and
- (b) the owner of that land has been prosecuted under section 66 or an action for recovery of expenses has been taken against the owner under section 70,

it is a defence to that prosecution or action if the court is satisfied that that owner had no legal right, as between the owner and the occupier of that land, to enter that land and comply with the requirements of the notice.

## **72 Certain damage to property caused by bush fire hazard reduction work covered by fire insurance**

- (1) Any damage to property caused by a person in the exercise in good faith of a power conferred by or under this Division is to be taken to be damage by fire within the meaning of any policy of insurance against fire covering the damaged property.
- (2) This section does not apply in relation to an entry on land that is authorised by section 70 (which relates to entry on land after failure to comply with a bush fire hazard reduction notice).

## **73 Bush fire hazard reduction by Commissioner**

- (1) The Commissioner may carry out bush fire hazard reduction work on land:
  - (a) if the work has not been carried out on land by a public authority or owner or occupier of land when, or in the manner, required by a bush fire risk management plan, or
  - (b) if, in the opinion of the Commissioner, a public authority or owner or occupier of land has not properly performed a duty under section 63 to take notified steps, or any other practicable steps, that is imposed on the public authority or owner or occupier, or
  - (c) if the work has not been carried out by a public authority when, or in the manner, required by the Commissioner under section 74F.
- (2) Any costs incurred by the Commissioner in carrying out such work (including costs incurred in obtaining the approval of any local or public authority under any other law to carry out the work) may be recovered from the responsible person or authority as a debt due to the Crown in a court of competent jurisdiction.
- (3) Before carrying out any bush fire hazard reduction work under this section, the Commissioner must certify a bush fire hazard reduction certificate in respect of the work in accordance with section 100G.

- (4) In this section:

**responsible person or authority** means a public authority or owner or occupier of land referred to in subsection (1).

## **74 Bush fire hazard reduction reports**

- (1) Each local authority must report to the Commissioner not later than 3 months after the end of the financial year on its activities in respect of bush fire hazard reduction work during the preceding year on land (other than managed land) in its area.
- (2) The report must include the following information:

- (a) details of the extent of implementation of any scheme for the reduction of bush fire hazards on land in its area (other than managed land and unoccupied Crown land) set out in a bush fire risk management plan that applies to the land,
  - (b) the number of inspections relating to bush fire hazards carried out on the land,
  - (c) the number of bush fire hazard reduction notices issued by the local authority in respect of the land,
  - (d) details of any objections lodged against such notices and of whether they were confirmed, varied or withdrawn,
  - (e) the number of bush fire hazard reduction works carried out by the local authority under section 70,
  - (f) details of bush fire hazard reduction certificates issued by the local authority,
  - (g) information about such other matters (if any) as are prescribed by the regulations.
- (3) Each public authority that is responsible for managed land must report to the Commissioner not later than 3 months after the end of the financial year on its activities to reduce bush fire hazards on the managed land during the preceding financial year.
- (4) The report is to include details of the extent of implementation of any scheme for the reduction of bush fire hazards on managed land for which the public authority is responsible set out in a bush fire risk management plan that applies to the land.
- (5) The annual report of the Service prepared under the [Annual Reports \(Departments\) Act 1985](#) must include details of information contained in reports under this section for the year to which the annual report relates.

## **Division 2A Bush fire hazard complaints**

### **74A Bush fire hazard complaints**

- (1) A complaint may be made under this Division 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**).
- (2) A bush fire hazard complaint may be made whether or not the public authority or owner or occupier concerned has a duty under section 63 to carry out the work.

### **74B Who may make a bush fire hazard complaint**

A bush fire hazard complaint may be made by any owner or occupier of land adjacent to or in the vicinity of the land to which the complaint relates.

#### **74C How and to whom are complaints to be made**

- (1) A bush fire hazard complaint is to be made by giving it, or sending it by post:
  - (a) if the complaint relates to unoccupied Crown land or managed land for which a public authority is responsible—to the Commissioner, or
  - (b) in the case of any other land—to the local authority of the local government area in which the land is located.
- (2) A bush fire hazard complaint must be made in writing, must identify the complainant and must state the grounds for the complaint.
- (3) A local authority must notify the Commissioner of any complaint made to it under this Division.
- (4) Written notice of the making of the complaint and the grounds of the complaint are to be given to the owner or occupier or public authority responsible for the land to which the complaint relates as soon as practicable after receipt of the complaint.

#### **74D Investigation of complaint**

- (1) The Commissioner or local authority must investigate the bush fire hazard complaint as soon as practicable after it is received.
- (2) The Commissioner or local authority may investigate the complaint as the Commissioner or local authority thinks fit.
- (3) Without limiting subsection (2), the Commissioner or a local authority (or a person authorised by the Commissioner or local authority) may, for the purpose of forming an opinion as to whether a bush fire hazard exists on the land to which the complaint relates, enter during the daytime any part of the land (other than a dwelling-house) that it is necessary to inspect in order to form that opinion.
- (4) The Commissioner or local authority may decline to deal with a complaint, or dismiss a complaint, that the Commissioner or local authority considers to be vexatious, misconceived, frivolous or lacking in substance.
- (5) The Commissioner or local authority is to notify the complainant if the Commissioner or local authority declines to deal with, or dismisses, the complaint.

#### **74E Action that may be taken by local authority if bush fire hazard exists**

A local authority that finds that a bush fire hazard exists on land to which a bush fire hazard complaint relates:

- (a) may serve a notice under section 66 on the owner or occupier of the land if no bush fire hazard reduction notice has been served on the owner or occupier of the land, or

- (b) must, subject to sections 67 and 68, exercise its powers under section 70 in respect of the land if a bush fire hazard reduction notice has been served on the owner or occupier of the land.

**74F Action that may be taken by Commissioner if bush fire hazard exists**

- (1) If the Commissioner finds that a bush fire hazard exists on land to which a complaint made to the Commissioner relates because a public authority has failed to take notified steps, or otherwise perform a duty imposed on it as referred to in section 63, the Commissioner may, by notice in writing served on the public authority require it to carry out such bush fire hazard reduction work as is specified by the Commissioner.
- (2) If the public authority fails to carry out the specified work within a reasonable time after service of the notice, the Commissioner may carry out bush fire hazard reduction work on the land under section 73.

**74G Complainant to be notified of action taken**

- (1) The Commissioner or local authority must advise the complainant of action taken by the Commissioner or authority in respect of the complaint as soon as practicable after it is taken.
- (2) The local authority must advise the Commissioner of action taken by it in respect of the complaint as soon as practicable after it is taken.

**74H Failure of local authority to take action**

- (1) A complainant may, by notice in writing given or sent by post to the Commissioner, request the Commissioner to take action under this section if the complainant considers that the local authority has failed to exercise its powers under this Division in respect of the complaint.
- (2) If the Commissioner is satisfied that a local authority has failed to deal with a bush fire hazard complaint, the Commissioner may investigate the complaint.
- (3) The Commissioner may deal with a complaint whether or not a notice has been served under subsection (1).
- (4) If the Commissioner finds that a bush fire hazard exists on land to which the complaint relates, the Commissioner may, by notice in writing served on the local authority, require it:
  - (a) to serve a notice under section 66 on the owner or occupier of the land if no bush fire hazard reduction notice has been served on the owner or occupier of the land, or
  - (b) subject to sections 67 and 68, to exercise its powers under section 70 in respect of the land if a bush fire hazard reduction notice has been served on the owner or

occupier of the land.

- (5) A local authority served with a notice under this section must comply with the requirements of the notice.

### **Division 3 Damage by fire to dividing fences and other matters**

#### **75 Definitions**

In this Division:

**adjoining owners** means the owners or occupiers of land (other than excluded land) on either side of a dividing fence.

**dividing fence** means a fence separating land owned or occupied by different persons.

**excluded land** means land that a bush fire management plan specifies to be excluded for the purposes of this Division.

**fence** means a structure, ditch or embankment, or a hedge or similar vegetation barrier, enclosing or bounding land, whether or not continuous or extending along the whole of the boundary separating the land from other land and includes:

- (a) any gate, cattlegrid or apparatus necessary for the operation of the fence, and
- (b) any foundation or support necessary for the support and maintenance of the fence.

#### **76 Notices to repair or restore dividing fences**

- (1) An adjoining owner who has cleared land on the adjoining owner's side of a dividing fence of all combustible matter for a distance of 6 metres from the fence may, by notice in writing, require the adjoining owner on the other side of the fence to repair or restore the dividing fence if it is damaged or destroyed by a bush fire caused by the failure of the other adjoining owner to clear the adjoining owner's side of the fence of all combustible matter for the same distance.
- (2) The adjoining owner to whom a notice is given must repair or restore the dividing fence at that adjoining owner's expense:
  - (a) within one month of being given the notice, or
  - (b) within such longer period as a Local Court may allow on application by the adjoining owner to the Local Court.
- (3) The dividing fence is to be restored to a reasonable standard, having regard to its state before damage or destruction.
- (4) The adjoining owner may apply to the Local Court for an order authorising the adjoining owner to repair or restore the fence if:

- (a) the adjoining owner to whom a notice is given fails to repair or restore the fence in the required time, or
  - (b) the adjoining owner has not, after making reasonable inquiries, been able to ascertain the whereabouts of the adjoining owner for the purposes of serving the notice.
- (5) An adjoining owner who repairs or restores a fence under this section (including the owner's employees or agents) may, at any reasonable time, enter on the land adjoining the dividing fence for the purpose of carrying out the work.
- (6) (Repealed)

### **77 Recovery of costs**

- (1) An adjoining owner who repairs or restores a fence in accordance with an order under section 76 (4) is entitled to recover from the other adjoining owner the cost of carrying out the work.
- (2) Any money that an adjoining owner is required or liable to pay under this section may be recovered as a debt in a court of competent jurisdiction.
- (3) In any proceedings for the recovery of money the certificate of a Local Court as to the making and content of an order made by it under section 76 is evidence of the matters set out in the certificate.

### **78 Jurisdiction of Local Court**

A Local Court has jurisdiction to hear and determine any matter arising under this Division.

### **79 Entry to land to extinguish fire**

An adjoining owner who has cleared land in the manner referred to in section 76 may enter the land of an adjoining owner who has failed to so clear that adjoining owner's land and take all necessary steps to extinguish any unattended fire that at its closest point has approached a distance that unreasonably endangers or threatens the adjoining owner's land and any fence or property on it.

### **80 (Repealed)**

## **Division 4 Bush fire danger period**

### **81 General bush fire danger period**

For the purposes of this Act, the ***bush fire danger period*** in respect of land in the State is, except as provided by section 82, the period commencing on 1 October and ending on 31 March in the following year.

## **82 Local bush fire danger period**

- (1) The Commissioner may, by notice published in a newspaper circulating generally in a local government area:
  - (a) declare that there is no bush fire danger period in the area or part of the area, or
  - (b) specify a different period to that set out in section 81 as the bush fire danger period for the area or part of the area.
- (2) A declaration may be made on the Commissioner's own initiative or on the recommendation of a Bush Fire Management Committee for the area.
- (3) As soon as practicable after publishing a notice under subsection (1), the Commissioner is to publish a copy of the notice in the Gazette.
- (4) Despite section 81, if a declaration is made in accordance with this section specifying a different bush fire danger period in relation to any area or part of an area, the bush fire danger period in that area or part is the period specified in the declaration.
- (5) A declaration remains in force:
  - (a) until it is revoked, or
  - (b) for such period as is specified in the declaration (unless it is sooner revoked).

## **83 Consultation required before local bush fire danger period declaration made**

- (1) The Commissioner must, before making a declaration under section 82 that is to have effect only for the bush fire danger period occurring when the declaration is made, consult with and take into account any recommendations made:
  - (a) by the local authority for any area to which the declaration relates, and
  - (b) by any fire fighting authority exercising functions in the rural fire district or fire district constituted for the area.
- (2) The Commissioner must, before making a declaration under section 82 on the Commissioner's own initiative that is to have effect for a period or periods subsequent to the bush fire danger period occurring when the declaration is made, consult with and take into account any recommendations made by the Bush Fire Management Committee for the area.

## **84 (Repealed)**

## **Division 5 Permits and notice requirements**

### **85 Definitions**

In this Division:



**appropriate authority**, in relation to a fire permit in respect of land, means:

- (a) in the case of land in a rural fire district—the Commissioner of the NSW Rural Fire Service,
- (b) (Repealed)
- (c) in the case of land in a fire district—the Commissioner of NSW Fire Brigades.
- (d) (Repealed)

**land clearance** means clearing land of bush, stubble, scrub, timber, trees, grass or vegetative or other material.

**light** a fire includes:

- (a) maintain or use a fire, and
- (b) cause a fire to be lit, maintained or used.

#### **86 Notice and certain authorities required before certain fires lit**

(1) A person who lights a fire on land:

- (a) for the purpose of land clearance or for burning any fire break, or
- (b) in circumstances in which doing so would be likely to be dangerous to any building,

is guilty of an offence unless the person has given notice in accordance with the regulations to the persons prescribed by the regulations.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(1A) A person who lights a fire on land for the purpose of land clearance or for burning any fire break is guilty of an offence unless:

- (a) a bush fire hazard reduction certificate has been issued in respect of the land clearance or fire break, or
- (b) any approval, consent or other authority required for the land clearance or fire break under the [Environmental Planning and Assessment Act 1979](#) or any other law has been given.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) Nothing in this section requires an authorised officer of a fire fighting authority to give notice of the lighting of a fire for the purpose of back burning.

**Note—**

An authorised officer is not required to obtain various other approvals or authorities if carrying out an

emergency fire fighting act—see Part 6A.

### **87 Lighting fires for land clearance or fire breaks in bush fire danger period**

- (1) A person who lights a fire on land for the purpose of land clearance or for burning any fire break during a bush fire danger period that applies to the land is guilty of an offence unless the person:
  - (a) is authorised to do so by a fire permit issued by the appropriate authority and the person complies with any conditions set out in the fire permit, and
  - (b) has given notice in accordance with section 86.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Nothing in this section requires an authorised officer of a fire fighting authority who lights a fire for the purpose of back burning to be authorised to do so by a fire permit or to give any notice before lighting such a fire.

**Note—**

An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.

### **88 Lighting fires that are dangerous to buildings in fire districts and rural fire districts**

- (1) A person who lights a fire on land within a fire district or rural fire district in circumstances in which doing so would be likely to be dangerous to any building is guilty of an offence unless the person:
  - (a) is authorised to do so by a fire permit issued by the appropriate authority and the person complies with any conditions set out in the fire permit, and
  - (b) has given notice in accordance with section 86.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Nothing in this section requires an authorised officer of a fire fighting authority who lights a fire for the purpose of back burning on land within a fire district or rural fire district to be authorised to do so by a fire permit or to give any notice before lighting such a fire.

**Note—**

An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.

### **89 Issue of permits**

- (1) An appropriate authority may issue to any person a fire permit in writing authorising the person to light a fire on land specified in the permit for the purpose specified in the permit.

- (2) An appropriate authority must not issue a fire permit for a purpose unless:
  - (a) a bush fire hazard reduction certificate has been issued in respect of the purpose, or
  - (b) any approval, consent or other authority required for the purpose under the *Environmental Planning and Assessment Act 1979* or any other law has been given.

## **90 Duration of permits**

- (1) A fire permit, unless sooner cancelled or suspended, remains in force for the period (not exceeding 21 days) specified in the permit.
- (2) A fire permit has no force or effect during any period during which a direction prohibiting the lighting of fires under section 99 is in force.

## **91 Cancellation or suspension of permits**

- (1) A fire permit may be cancelled or suspended by the appropriate authority at any time by notice given to the permit holder.
- (2) Notice of cancellation or suspension of a permit must be given in writing unless the appropriate authority is of the opinion that the weather conditions are conducive to the outbreak or spread of bushfires or that conditions conducive to the outbreak or spread of bushfires are imminent.
- (3) In those circumstances notice may be given orally or in such other manner (including, if no other means are practicable, by broadcast by a television or radio station transmitting to the area in which the land to which the permit relates is situated) as the authority considers appropriate.

## **92 Conditions of permit**

- (1) A fire permit is subject to:
  - (a) the condition that it be carried by the holder of the fire permit at the time a fire authorised by the permit is lit, and
    - (a1) any condition imposed by a bush fire hazard reduction certificate or as a condition of any approval, consent or other authority given by or under any other Act that is required to be obtained in relation to the lighting of a fire, and
  - (b) such conditions as are prescribed by the regulations or specified in the permit.

### **Note—**

A fire permit might, for example, include a condition that any fire lit in a rural fire district or fire district be lit under the supervision of the rural fire brigade or fire brigade for the district or an officer of the brigade or a fire control officer.

- (2) A person who, being the holder of a fire permit, contravenes any condition of the fire permit is guilty of an offence.

Maximum penalty: 50 penalty units.

### **93 Refusal to issue fire permit**

An appropriate authority may refuse to issue a permit if:

- (a) issue of the permit would be inconsistent with any bush fire risk management plan, or
- (b) the appropriate authority has determined in writing that no permits be issued for fires to be lit in its area (or any part of its area) because of the seriousness of bush fire danger in the area, or
- (c) the appropriate authority is otherwise authorised or required by the regulations or by or under this or any other Act to refuse to issue the permit.

### **94 Notice to be given of issue of fire permit**

- (1) (Repealed)
- (2) An appropriate authority who issues a fire permit to light a fire on land specified in the regulations must give notice in an approved form to such persons or bodies as are prescribed by the regulations.
- (3) An appropriate authority who gives a notice under this section must notify the person or body concerned if the appropriate authority cancels or suspends the permit.

### **95 Permit not required for fires lit by public authorities**

- (1) Nothing in this Division requires a public authority or a person acting under the direction of a public authority to hold a permit to light a fire.
- (2) However, a public authority:
  - (a) must not light a fire in any area of an authority (or part of such an area) if it has been notified that a determination referred to in section 93 (b) has been made in respect of the area, and
  - (b) must not light a fire in any rural fire district unless the fire control officer for the district has been advised that it is to be lit, and
  - (c) must not light a fire on land in any fire district unless the officer in charge of the fire station that is nearest to the land has been advised that it is to be lit.

### **96 Appropriate authorities not determining authorities**

- (1) An appropriate authority is not, for the purposes of granting a fire permit, a determining authority within the meaning of Part 5 of the *Environmental Planning and*

*Assessment Act 1979*. In addition, an appropriate authority is not a determining authority within the meaning of that Act merely because the authority can authorise another person to grant a permit.

(2) (Repealed)

#### **97 Reporting requirements**

- (1) Within 2 months (or such other period as the Bush Fire Co-ordinating Committee specifies) after the end of the financial year, the Commissioner must report to the Bush Fire Co-ordinating Committee with respect to fire permits issued by appropriate authorities during the year.
- (2) A report is to include:
  - (a) details of the circumstances surrounding the lighting of any bush fires in the area of an appropriate authority that appear to have been caused by the lighting of a fire authorised by a fire permit issued by the appropriate authority, and
  - (b) details of any action taken with respect to permits that is inconsistent with any bush fire risk management plan applying to the area.

#### **98 Issue of permit does not affect duty to prevent bush fires**

The issue of a fire permit to an owner or occupier of land under this Division does not limit or affect the duty to prevent bush fires imposed on the owner or occupier under section 63.

### **Division 6 Total fire bans**

#### **99 Lighting of fires prohibited in certain circumstances**

- (1) If the Minister is of the opinion that it is necessary or expedient in the interests of public safety to do so, the Minister may, by order in writing, direct that in the part or parts of the State specified in the order:
  - (a) the lighting, maintenance or use of any fire or class of fire in the open air is prohibited for such period or periods as may be specified in the order, and
  - (b) such special conditions as may be specified in the order be observed by persons lighting, maintaining or using any fire or class of fire in the open air and for such period or periods as may be specified in the order, and
  - (c) such action as may be specified in the order be taken by such persons or class of persons as may be specified in the order for preventing the outbreak or the spread of any bush fire or for controlling or suppressing any bush fire.
- (2) As soon as practicable after making a direction under this section, the Minister is:

- (a) to cause notice of the direction to be broadcast by a television or radio station transmitting to the part or parts of the State concerned and in a newspaper circulating in those parts, and
  - (b) to cause a copy of the order by which the direction is given to be published in the Gazette.
- (3) The specification in any notice or order under this section of part of the State by reference to a zone defined by the regulations for the purpose is sufficient specification of a part of the State for the purposes of this section.
- (4) If part of a local government area is specified in any order under this section the order applies to the whole of the local government area.
- (5) The Minister may delegate to the Commissioner any of the Minister's functions under this section, other than this power of delegation.
- (6) Any person who fails to comply with any direction given by the Minister is guilty of an offence.
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.
- (7) The provisions of this section have effect despite anything contained in this Act or any other Act to the contrary.

## **Division 7 Lighting fires without authority**

### **100 Offences**

- (1) A person who, without lawful authority:
- (a) sets fire or causes fire to be set to the land or property of another person, the Crown or any public authority, or
  - (b) being the owner or occupier of any land, permits a fire to escape from that land under such circumstances as to cause or be likely to cause injury or damage to the person, land or property of another person or the land or property of the Crown or a public authority,
- is guilty of an offence.
- Maximum penalty: 1,000 penalty units or imprisonment for 5 years, or both.
- (2) A person who, without lawful authority, leaves whether temporarily or otherwise any fire which the person has lit or used in the open air before the fire is thoroughly extinguished is guilty of an offence.
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (3) Nothing in subsection (2) requires any person to extinguish a fire in the open air that has been lit or used for the purpose of cooking, heating or preparing meals or boiling water or for any similar purpose in accordance with the regulations if, at the time of the person leaving it, the fire continues to be used by some other person.

## **Division 8 Development of bush fire prone land and for bush fire hazard reduction**

### **Subdivision 1 Definitions**

#### **100A Definitions**

- (1) In this Division:

**bush fire code** means a bush fire environmental assessment code in force under this Division.

**bush fire safety authority** means an authority given by the Commissioner under section 100B and that is in force.

**certifying authority** means a certifying authority described in section 100E.

**excluded land** means the following:

- (a) land to which [State Environmental Planning Policy No 14—Coastal Wetlands](#) applies,
- (b) land to which [State Environmental Planning Policy No 26—Littoral Rainforests](#) applies,
- (c) any other land prescribed by the regulations.

**issuing authority** means the issuing authority described in section 100E.

**managed land** means land:

- (a) that is dedicated or reserved, or acquired for the purpose of dedication or reservation, under the [Forestry Act 1916](#), or in respect of which the Forestry Commission has obtained the benefit of a forestry right as referred to in section 11 (1) (m) (iia) of that Act, or
- (b) that is dedicated or reserved, or acquired for the purpose of dedication or reservation, under the [National Parks and Wildlife Act 1974](#), or
- (c) that is vested in, or under the control of, the State Rail Authority, Rail Infrastructure Corporation or the Roads and Traffic Authority, or
- (d) that is within the catchment area of a water authority.

**private land** means land other than managed land and unoccupied Crown land.

- (2) Expressions used in this Division that are used in the *Environmental Planning and Assessment Act 1979* have the meanings set out in that Act.

## Subdivision 2 Bush fire prone land

### 100B Bush fire safety authorities

- (1) The Commissioner may issue a bush fire safety authority for:
- (a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
  - (b) development of bush fire prone land for a special fire protection purpose.
- (2) A bush fire safety authority authorises development for a purpose referred to in subsection (1) 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.
- (3) A person must obtain such a bush fire safety authority before developing bush fire prone land for a purpose referred to in subsection (1).
- (4) Application for a bush fire safety authority is to be made to the Commissioner in accordance with the regulations.
- (5) Development to which subsection (1) applies:
- (a) does not include the carrying out of internal alterations to any building, and
  - (b) is not complying development for the purposes of the *Environmental Planning and Assessment Act 1979*, despite any environmental planning instrument.
- (6) In this section:

**special fire protection purpose** means the purpose of the following:

- (a) a school,
- (b) a child care centre,
- (c) a hospital (including a hospital for the mentally ill or mentally disordered),
- (d) a hotel, motel or other tourist accommodation,
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,



- (f) 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*,
- (g) a group home within the meaning of *State Environmental Planning Policy No 9—Group Homes*,
- (h) a retirement village,
- (i) any other purpose prescribed by the regulations.

### **Subdivision 3 Bush fire hazard reduction**

#### **100C Carrying out of bush fire hazard reduction work**

- (1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the doing of:
  - (a) emergency bush fire hazard reduction work on any land, or
  - (b) managed bush fire hazard reduction work on land other than excluded land.
- (2) 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.
- (3) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of managed bush fire hazard reduction work carried out on land other than excluded land if:
  - (a) the work is carried out in accordance with a bush fire risk management plan that applies to the land, and
  - (b) there is a bush fire hazard reduction certificate in force in respect of the work and the work is carried out in accordance with any conditions specified in the certificate, and
  - (c) the work is carried out in accordance with the provisions of a bush fire code applying to the land specified in the certificate.

**Note—**

If work to which Part 5 of the *Environmental Planning and Assessment Act 1979* would apply but for this subsection is not carried out in accordance with this subsection, the person carrying out the work will be in breach of that Act.

- (4) Bush fire hazard reduction work may be carried out on land despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Conservation Act 1997*, the *Threatened Species Conservation Act 1995*,

the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act if:

- (a) the work is carried out in accordance with a bush fire risk management plan that applies to the land, and
  - (b) there is a bush fire hazard reduction certificate in force in respect of the work and the work is carried out in accordance with any conditions specified in the certificate, and
  - (c) the work is carried out in accordance with the provisions of any bush fire code applying to the land specified in the certificate.
- (5) Subsection (4) does not apply to an integrated forestry operations approval within the meaning of the *Forestry and National Park Estate Act 1998*.

**100D What is a bush fire hazard reduction certificate?**

A bush fire hazard reduction certificate is a certificate that authorises the carrying out of bush fire hazard reduction work on land in accordance with:

- (a) a bush fire risk management plan that applies to the land, and
- (b) the provisions of any bush fire code applying to the land specified in the certificate, and
- (c) any conditions specified in the certificate.

**100E Issuing and certifying authorities**

- (1) The **issuing authority** for a bush fire hazard reduction certificate in respect of bush fire hazard reduction work to be carried out on private land by a person other than the Commissioner or a local authority is the local authority of the area in which the land is situated.
- (2) The **certifying authority** for a bush fire hazard reduction certificate in respect of bush fire hazard reduction work to be carried out:
  - (a) on any land by the Commissioner—is the Commissioner,
  - (b) on any land by a local authority—is the local authority for the area in which the land is situated,
  - (c) on managed land or unoccupied Crown land by a public authority—is the public authority responsible for the land.

**100F Issue by local authorities of bush fire hazard reduction certificates**

- (1) An application for a bush fire hazard reduction certificate in respect of work to be carried out on private land by a person other than a local authority or the

Commissioner is to be made to the issuing authority in writing in accordance with the regulations (if any).

- (2) An application may be made:
  - (a) by any owner or occupier of the private land, or
  - (b) if the work is to be carried out on the private land by a public authority responsible for managed or unoccupied Crown land in the vicinity of the private land—by the public authority.
- (3) A single application may, with the consent of all owners or occupiers of the land concerned:
  - (a) be made for land owned or occupied by more than one person, or
  - (b) be made by a public authority on behalf of those owners or occupiers.
- (4) A bush fire hazard reduction certificate must not be issued unless:
  - (a) a bush fire risk management plan applies to the land, and
  - (b) the issuing authority has taken into consideration the provisions of any bush fire code applying to the land and determined which of them should be complied with in carrying out the work and whether any conditions should be imposed having regard to the code.
- (5) The issuing authority may determine an application:
  - (a) by issuing a bush fire hazard reduction certificate, or
  - (b) by refusing to issue a bush fire hazard reduction certificate.
- (6) A bush fire hazard reduction certificate must:
  - (a) specify the provisions of any bush fire code applying to the land that the issuing authority has determined should be complied with in carrying out the work, and
  - (b) specify any other conditions that have been imposed by the issuing authority having regard to that bush fire code, and
  - (c) specify as a condition of the issue that notice be given to the fire control officer for the district in which the land is situated before the work is carried out and to any other person prescribed by the regulations.
- (7) The determination of an application must be completed within 7 days (or such longer period as may be agreed to by the applicant) after lodgment of the application.
- (8) There is no right of appeal against the determination of, or a failure or refusal to determine, an application for a bush fire hazard reduction certificate.

**Note—**

If a bush fire hazard reduction certificate is not obtained, bush fire hazard reduction work may still be carried out but only if any approvals, consents or other authorisations that would have been required to be obtained but for section 100C are obtained.

- (9) A local authority or public authority must not charge any fee in respect of an application for, or the issue of, a bush fire hazard reduction certificate.

**100G Bush fire hazard reduction certificates of certifying authorities**

- (1) Before a certifying authority carries out any bush fire hazard reduction work on land, the certifying authority must certify:
- (a) that a bush fire risk management plan applies to the land, and
  - (b) that the certifying authority has taken into consideration the provisions of any bush fire code applying to the land and determined which of them should be complied with in carrying out the work and whether any conditions should be imposed having regard to any provisions of that code, and
  - (c) if the certifying authority is a local authority or a public authority, that the notice will be given to the fire control officer for the district in which the land is situated before the work is carried out and to any other person prescribed by the regulations.
- (2) A bush fire hazard reduction certificate certified by a certifying authority must:
- (a) specify the provisions of any bush fire code applying to the land that the certifying authority has determined should be complied with in carrying out the work, and
  - (b) specify any conditions that have been imposed by the certifying authority having regard to that bush fire code.

**100H Remedy and restraint for breaches of sections 100F and 100G**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of section 100F or 100G, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

### **100I Duration of bush fire hazard reduction certificate**

A bush fire hazard reduction certificate becomes effective and operates for a period of 12 months commencing on the date endorsed on the certificate.

## **Subdivision 4 Bush fire environmental assessment codes**

### **100J Commissioner may prepare draft codes**

- (1) The Minister may cause to be prepared by the Commissioner for submission to the Minister a draft bush fire environmental assessment code in relation to land (other than excluded land).
- (2) A draft bush fire environmental assessment code may refer to, or incorporate with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.
- (3) In preparing a draft bush fire environmental assessment code in relation to land, the Commissioner must have regard to:
  - (a) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*), and
  - (b) 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 this Division) if Part 5 of that Act were applicable to the work and the carrying out of the works were an activity within the meaning of that Part.

### **100K Consultation on draft codes**

- (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:
  - (a) the Director-General of the Department of Planning,
  - (b) the Director-General of National Parks and Wildlife,
  - (c) the Managing Director of State Forests,
  - (d) the Nature Conservation Council of New South Wales,
  - (e) the NSW Farmers Association,
  - (f) the Local Government Association of New South Wales,
  - (g) the Shires Association of New South Wales,

- (h) the Director of NSW Fisheries,
  - (i) the Commissioner of NSW Fire Brigades,
  - (j) the Director-General of the Department of Land and Water Conservation.
- (2) The Commissioner may consult with such other persons or bodies as the Commissioner considers appropriate or as the Minister directs.

**100L Public participation in preparation of codes**

- (1) The Commissioner must give public notice of and exhibit, for the purpose of receiving submissions from any interested persons, any draft bush fire environmental assessment code prepared by the Commissioner.
- (2) A draft bush fire environmental assessment code must be exhibited for at least 42 days. The Commissioner must exhibit with it any other matter that the Commissioner considers appropriate or necessary to better enable the draft code and its implications to be understood.
- (3) After considering all submissions received concerning the draft bush fire environmental assessment code, the Commissioner may amend the draft code or submit it without amendment to the Minister for approval.

**100M Approval of code**

The Minister may, after consultation with the Minister for the Environment, the Minister for Planning and such other Ministers as the Minister considers appropriate, approve a draft bush fire environmental assessment code as a bush fire code for the purposes of this Part.

**100N Publication, commencement and availability of codes**

- (1) A draft bush fire environmental assessment code:
  - (a) is to be published in the Gazette, and
  - (b) takes effect as a bush fire environmental assessment code on the day on which it is published or, if a later day is specified in the code for that purpose, on the later day so specified.
- (2) The following are to be made available without charge for public inspection during normal office hours for the council of the area to which a bush fire code relates:
  - (a) a copy of the code,
  - (b) if the code has been amended, a copy of the code as so amended,
  - (c) if the code refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.

### **1000 Amendment or revocation of codes**

A bush fire code may be amended or revoked by an instrument prepared, approved, publicly exhibited and published in accordance with the relevant procedures of this Part with respect to codes.

## **Part 5 New South Wales Rural Fire Fighting Fund**

### **Note—**

This Part requires local government councils and insurance companies to contribute, along with the State Government, to the costs of rural fire brigade expenditure. The total amount required to be contributed is based on estimated rural fire brigade expenditure.

## **Division 1 Preliminary**

### **101 Definitions**

In this Part:

**insurance company** means any body corporate, partnership, association, underwriter or person that or who:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to any property situated in New South Wales, or
- (b) receives premiums in respect of such policies of insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales.

**rural fire brigade expenditure**, in relation to a specified period, means the aggregate of:

- (a) recurrent expenditure incurred during the period in the exercise of the Commissioner's functions under this Act, and
- (b) recurrent expenditure incurred during that period in respect of the administrative costs of the Service, Advisory Council, the Bush Fire Co-ordinating Committee or the Minister incurred under the authority of this Act.

## **Division 2 The Fund**

### **102 New South Wales Rural Fire Fighting Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury a New South Wales Rural Fire Fighting Fund into which are to be paid all contributions and other money received under this Part.
- (2) There is payable from the Fund:
  - (a) money to assist in meeting the costs of rural fire brigade expenditure, and

- (b) any money payable in connection with the exercise of the duties imposed on the Commissioner by section 45 and the construction and maintenance of fire trails and other fire prevention and hazard reduction works, and
- (c) all money directed to be paid from the Fund by or under this or any other Act.

**Note—**

See for example section 20 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

- (3) The costs directly attributable to the administration of this Part and all expenses incurred by the Minister in the exercise of the Minister's functions under this Part must not, during any financial year, exceed 10% of the total expenditure from the Fund in respect of that financial year.
- (4) A written statement of the Minister is conclusive evidence as to the costs directly attributable to the administration of this Part and all expenses incurred by the Minister in the exercise of the Minister's functions under this Part.

## **Division 3 Estimates of Fund expenditure and contributions**

### **103 Estimate to be prepared by Minister**

- (1) The Minister must, before or as soon as practicable after the end of a financial year, prepare and, subject to the concurrence of the Treasurer, adopt:
  - (a) an estimate of the probable rural fire brigade expenditure, and
  - (b) an estimate of the parts of such expenditure applicable to each area of council, for the next financial year.
- (2) Before preparing the estimate, the Minister is to consider the report and recommendation of the Commissioner in respect of the matters referred to in subsection (1).

### **104 Councils etc to furnish information to Minister**

For the purpose of enabling the Minister to prepare the estimates referred to in section 103 a council or rural fire brigade or a fire control officer must, at such times and in such manner as the Commissioner may require, furnish to the Commissioner such information relating to the rural fire brigades or other fire fighting personnel, the fire fighting apparatus of the rural fire brigades or personnel and such other matters relating to the organisation of the rural fire brigades or personnel as the Commissioner may require.

### **105 Times for instalment payments**

The contributions payable under this Part (including advance payments) are to be paid on



or before 1 July, 1 October, 1 January and 1 April in each financial year, or on or before such other days as the Commissioner may direct and notify to the contributors concerned.

#### **106 Contributions due and payable within 60 days of assessment**

- (1) Contributions payable under this Part are due and payable on assessment by the Minister and any such contribution not paid within 60 days of the date of assessment shown on the assessment notice is, unless the Minister otherwise determines, to be increased by 10% of the amount of the contribution payable.
- (2) Contributions or any part of contributions not paid by any insurance company or council within 90 days of the date of assessment and all penalties incurred in respect of failure to pay any contribution constitute a debt due and payable to the Minister and are recoverable in any court of competent jurisdiction by the Minister.

#### **107 Deficits and excesses in contributions**

- (1) If, in any financial year, the amount received by the Minister from contributions under this Part falls short of the expenditure based on the estimate for that financial year, the deficit is to be added to the estimate of expenditure for the following year and the contributions are to be increased accordingly.
- (2) If the amount received by the Minister in any financial year, from contributions under this Part exceeds the expenditure based on the estimate for that financial year, then the excess is to be treated as a credit in favour of the estimated income of the following year and the contributions reduced accordingly.
- (3) For the purposes of this section any deficit or excess in respect of any financial year is to be the deficit or excess as certified by the Auditor-General.

### **Division 4 Contributions by Treasurer**

#### **108 Contributions by Treasurer**

- (1) Of the amount required to be contributed to the Fund, the Treasurer must contribute 13%.
- (2) The Treasurer may, in addition to the contribution to the Fund under subsection (1), from time to time advance such money to the Fund subject to such terms and conditions as the Treasurer may determine.
- (3) Any money payable by the Treasurer under this section is to be paid out of money provided by Parliament.

## **Division 5 Contributions by local government areas**

### **109 Contributions required from councils**

- (1) Of the amount required to be contributed to the Fund, 13.3% is to be contributed by the councils of each local government area or areas the whole or part of which is outside any fire district constituted under the *Fire Brigades Act 1989*.
- (2) Funds of a council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards payments by the council under subsection (1) unless the Minister so approves.
- (3) If it is shown to the Governor that the danger from bush fires in a local government area is negligible the Governor may, on the recommendation of the Minister, exempt the council of that area from making contributions to the Fund.
- (4) If the council of any area has been exempted under subsection (3) from making contributions to the Fund no payment is to be made in or towards any of the purposes specified in section 118 for the benefit of the area in respect of which the exemption has been granted.

### **110 Determination of contributions of councils**

- (1) The contributions of councils are to be determined as follows:
  - (a) that part of the estimated expenditure applicable to any rural fire district that is to be contributed by councils is to be contributed by those councils the areas or any parts of which are within the rural fire district, and
  - (b) the total amount of the contribution of any council is to be determined by the Minister.
- (2) The amount of the contribution payable by any council may be raised if necessary, and despite any statutory limit of such rates, by an increase of the ordinary rate by such a sum in the dollar as will be sufficient to provide the amount of the contribution, and that increase is for all purposes to be taken to form part of the ordinary rate.
- (3) Every council and every officer of the council must, when so required by the Minister, furnish the Minister with all such documents, papers and information as the Minister may require to determine the contribution of the council.

## **Division 6 Contributions by insurance companies**

### **111 Contributions required from insurance companies**

Of the total amount required to be contributed to the Fund for a financial year, 73.7% is to be contributed by insurance companies in accordance with this Division.

### **112 Advance payment by insurance companies**

- (1) An insurance company must, in each financial year, make an advance payment to the Commissioner pending an assessment under section 106.
- (2) The advance payment is to be an amount equal to the percentage fixed by the Minister in respect of that year of the total amount of the premiums subject to contribution under subsection (4) received by or due to the company during the financial year that ended one year before the financial year for which the advance payment is due.
- (3) The percentage fixed by the Minister is to be the percentage that will provide the total amount to be contributed under this Part by all insurance companies in respect of all rural fire districts in the financial year for which the contribution is required.
- (4) The amount of the premiums under any class of policies of insurance specified in Schedule 2 that is to be subject to contribution under this section is as indicated in that Schedule in respect of that class of policies of insurance.
- (5) If the Minister is satisfied that at least two-thirds of the insurance companies liable to contribute under this section desire that Schedule 2 be amended in a certain manner, and the Commissioner recommends the amendment, the Minister may by notice published in the Gazette, amend that Schedule accordingly.
- (6) Any such amendment takes effect from 1 July, or such other date, following publication of the notice as the Minister directs in the notice.

### **113 Definition of “total amount of the premiums”**

For the purposes of this Division:

**total amount of the premiums** includes any brokerage or commission paid or due to be paid or allowed on:

- (a) any such premium, or
- (b) any bonuses or return premiums allowed in respect of any policy of insurance the subject of any such premium, or
- (c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to any other insurance company in New South Wales,

but does not include stamp duty payable in respect of any policy of insurance the subject of any such premium.

### **114 Adjustments**

- (1) If an insurance company submits a return under this Division in a financial year, the

Commissioner is to notify the company of the required contribution in relation to the company for that year assessed in accordance with the following formula:

$$\text{required contribution} = \frac{a \times b}{c}$$

where:

**a** is the total amount of premiums subject to contribution specified in the return made by the company,

**b** is the total amount to be contributed under this Division by all insurance companies in respect of all rural fire districts for the year to which the return relates,

**c** is the total amount of all premiums subject to contribution specified in returns under this Division made by all insurance companies in respect of that year.

- (2) If the required contribution assessed in relation to an insurance company for a financial year is greater than the advance payment required to be made under this Division by the company for that financial year, the company must, not later than 31 December in the financial year in which the assessment is made or such later day as may be approved by the Commissioner, pay to the Commissioner the amount of the difference between the advance payment and the assessed amount.
- (3) If the required contribution is assessed for a financial year in which the company did not make an advance payment under this Division, the company must, not later than 31 December in the financial year in which the assessment is made or such later day as may be approved by the Commissioner, pay the amount assessed to the Commissioner.
- (4) If the required contribution assessed for a financial year is less than the amount of the advance payment required to be made under this Division by the company for that financial year, the Commissioner is to credit the amount of the difference against:
  - (a) any instalments that remain to be paid in respect of the advance payment for the financial year in which the assessment is made, and
  - (b) any instalments that will be required to be paid in respect of the advance payment to be made during the following financial year,in such manner as the Commissioner may determine and, if any balance is outstanding at the end of the financial year referred to in paragraph (b), the Commissioner is to pay the amount outstanding to the company not later than the next 30 June.
- (5) If an insurance company:
  - (a) is entitled to a credit referred to in subsection (4) in respect of an advance

payment under this Division, and

- (b) did not receive, and was not entitled to receive, in the financial year in which the advance payment was made, any premium in respect of which it would have been required by this Division to submit a return, and
- (c) the liabilities of the company in relation to the contributions under this Part have been discharged,

the Commissioner must, as soon as practicable, pay to the company the amount of the credit or, as the case may be, the balance outstanding.

### **115 Liability of owner where foreign insurer involved**

- (1) This section applies to a person who is the owner of property in respect of which an insurance company has received a premium referred to in section 113 if the insurance company is not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business.
- (2) The Commissioner may notify a person to whom this section applies that the person is to be responsible for the contributions required to be paid by the insurance company under this Part because of premiums received by the company in respect of the person's property, and in such a case:
  - (a) the person must pay to the Commissioner any amounts that would otherwise be payable by the company under this Part in respect of those premiums, and
  - (b) the provisions of this Division are to apply to the person as if the person were the insurance company that received those premiums, subject to any modification of those provisions required by the regulations.
- (3) An owner who fails to pay such an amount within 30 days after it falls due is guilty of an offence.

Maximum penalty: 10 penalty units.

- (4) The amount of such a payment may be deducted from any premium recoverable in the State by or on behalf of the company on the issue or renewal of any fire policy on the property or may be recovered from the company as a debt by the person making the payment.
- (5) This section applies whether the premium concerned was received in or outside the State.

### **116 Returns by insurance companies**

- (1) An insurance company must during September in each financial year, or at such other time during the financial year as the Commissioner may notify in the Gazette, submit

to the Commissioner:

- (a) a return in the approved form showing the total amount of premiums received by or due to the company for the previous financial year in respect of the insurance against loss of or damage to any property in the State under the classes of policies specified in Schedule 2, and
  - (b) a certificate in the approved form from an auditor.
- (2) An insurance company that ceases to receive, and to be entitled to receive, any premiums in respect of which it would have been required by this section to submit a return must, within 30 days, notify the Commissioner accordingly in writing.
- (3) If a notification under subsection (2) is received by the Commissioner:
- (a) before 31 March in a financial year—the company is not discharged from its liability to pay any unpaid instalments of its advance payment under section 112 for that year, or
  - (b) on or after 31 March in a financial year—the company is not discharged from its liability to pay any unpaid instalments of its advance payment for that year or its advance payment for the next financial year.
- (4) An insurance company is guilty of an offence if it:
- (a) fails to lodge a return or notify the Commissioner as required by this section, or
  - (b) lodges a return under this section that is false or misleading in a material particular.

Maximum penalty (subsection (4)):

- (a) under paragraph (a)—1 penalty unit for each day the default continues, or
- (b) under paragraph (b)—10 penalty units.

### **117 Audit of accounts of insurance companies**

- (1) At the request of the Minister, the Auditor-General may examine and audit, or cause to be examined and audited, the accounts (and any books and documents relating to the accounts) of any insurance company liable to pay contributions under this Part.
- (2) The examination and audit is to be in respect of matters relating to or arising out of the provisions of this Part.
- (3) The Auditor-General is to forward a report on the audit to the Minister as soon as practicable after it is completed.
- (4) It is an offence for a person:

- (a) to obstruct the Auditor-General, or any person acting on behalf of the Auditor-General, when exercising functions under this section, or
- (b) to fail, without lawful excuse when requested to do so for the purposes of this section by the Auditor-General or a person so acting, to produce any account, book or record in the person's possession or under the person's control, or
- (c) to fail to answer any question asked by the Auditor-General or a person so acting, for the purposes of this section.

Maximum penalty: 5 penalty units.

## **Division 7 Miscellaneous**

### **118 Application of the Fund**

- (1) Money to the credit of the Fund may be applied by the Treasurer in or towards rural fire brigade expenditure incurred under the authority of this Act.
- (2) The Treasurer may pay such money out of the Fund on the certificate of the Minister.

### **119 Maintenance and disposal of fire fighting equipment purchased from Fund**

- (1) In this section:

**fire fighting equipment** means fire fighting apparatus, buildings, water storage towers or lookout towers.

- (2) All fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund is to be vested in the council of the area for or on behalf of which the fire fighting equipment has been purchased or constructed.
- (3) A council must not sell or otherwise dispose of any fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund without the written consent of the Commissioner.
- (4) There is to be paid to the credit of the Fund:
  - (a) if the whole of the cost of the purchase or construction of any fire fighting equipment was met by money to the credit of the Fund:
    - (i) an amount equal to the proceeds of sale of any such equipment, and
    - (ii) any amount recovered (whether under a policy of insurance, from the Bush Fire Fighters Compensation Fund under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, or otherwise) in respect of the damage to, or destruction or loss of, any such equipment, and
  - (b) if a part only of the cost of the purchase or construction of any such equipment

was met by money to the credit of the Fund—an amount which bears to the amount that would be required by this subsection to be paid if the whole of that cost had been met by money to the credit of the Fund the same proportion as that part of the cost bears to the whole of that cost.

- (5) A council must take care of and maintain in the condition required by the Service Standards any fire fighting equipment vested in it under this section.
- (6) The Commissioner may, with the concurrence of the council in which fire fighting equipment is vested under this section, use any of the equipment not reasonably required by the council to deal with incidents in the area of the council to deal with incidents outside the area.

### **120 Consolidated fund of councils**

- (1) Any of the following purposes are purposes to which the consolidated fund of a council may be applied under section 409 of the *Local Government Act 1993*:
  - (a) the purchase, distribution, maintenance and storage of fire fighting apparatus for the prevention, mitigation and suppression of bush and other fires,
  - (b) the organising of rural fire brigades and such matters as are relevant to doing so, including the establishment of fire stations and fire control centres,
  - (c) the establishment and maintenance of fire breaks,
  - (d) the removal or destruction of combustible matter,
  - (e) the taking of measures generally for the prevention, mitigation or suppression of bush fires.
- (2) For the purposes of section 495 of the *Local Government Act 1993*, any work relating to the prevention, mitigation and suppression of bush and other fires is work in respect of which a council may make a special rate.

### **121 Distribution of annual report**

As soon as practicable after the annual report which includes the financial statement prepared in accordance with Division 3 of Part 3 of the *Public Finance and Audit Act 1983* relating to the Fund has been laid before both Houses of Parliament or transmitted to the Clerk of the Parliaments and the Clerk of the Legislative Assembly, the Minister is to furnish to each council and each insurance company contributing to the Fund a copy of the annual report.

## **Part 6 Rural Fire Service Advisory Council**

### **Note—**

Part 6 establishes a Rural Fire Service Advisory Council and provides for its composition, functions and procedure.



## **122 Establishment of Rural Fire Service Advisory Council**

There is established by this Act a Rural Fire Service Advisory Council.

## **123 Membership and procedure of Advisory Council**

- (1) The Rural Fire Service Advisory Council is to consist of 9 members as follows:
  - (a) the Commissioner, who is to be the Chairperson of the Council,
  - (b) a person appointed by the Minister on the recommendation of the Insurance Council of Australia,
  - (c) a person appointed by the Minister on the recommendation of the Local Government Association of New South Wales,
  - (d) a person appointed by the Minister on the recommendation of the Shires Association of New South Wales,
  - (e) 3 persons appointed by the Minister on the recommendation of the NSW Rural Fire Service Association Inc, 2 of whom are to be members of rural fire brigades and one of whom is to be a fire control officer,
  - (f) a person appointed by the Minister on the recommendation of the NSW Farmers Association,
  - (g) a person nominated by the Nature Conservation Council of New South Wales.
- (2) Schedule 1 has effect with respect to the members and procedures of the Advisory Council.

## **124 Functions of the Advisory Council**

- (1) The Advisory Council has the following functions:
  - (a) to advise and report to the Minister and the Commissioner on any matter relating to the administration of rural fire services under this Act,
  - (b) to advise the Commissioner on public education programs relating to rural fire matters and on training of rural fire fighters,
  - (c) to advise the Commissioner on the issue of Service Standards,
  - (d) such other functions as may be conferred or imposed on it by or under this or any other Act.
- (2) The Advisory Council may give advice and make reports whether or not the advice or reports were requested.

## **Part 6A Application of other legislation**

### **Division 1 Application of other legislation to emergency fire fighting acts**

#### **124A Application of [Environmental Planning and Assessment Act 1979](#)**

- (1) An environmental planning instrument made under the [Environmental Planning and Assessment Act 1979](#) cannot prohibit, require development consent for or otherwise restrict the doing of any emergency fire fighting act.
- (2) Part 5 of the [Environmental Planning and Assessment Act 1979](#) does not apply to or in respect of any emergency fire fighting act.
- (3) An order under Division 2A or 3 of Part 6 of the [Environmental Planning and Assessment Act 1979](#) does not have effect to the extent that it prevents or interferes with the doing of any emergency fire fighting act.
- (4) Subsection (1) applies to an environmental planning instrument made before or after the commencement of this section.

#### **124B Application of [National Parks and Wildlife Act 1974](#) and [Threatened Species Conservation Act 1995](#)**

- (1) Part 6A (Stop work orders and interim protection orders) of the [National Parks and Wildlife Act 1974](#) does not apply to or in respect of the doing of an emergency fire fighting act.
- (2) A person does not harm fauna for the purposes of section 45, 70, 98, 99 or 100 of the [National Parks and Wildlife Act 1974](#) if the harm is caused by the doing of any emergency fire fighting act by the person.
- (3) Division 1 of Part 7 (Stop work orders) of the [Threatened Species Conservation Act 1995](#) does not apply to or in respect of the doing of any emergency fire fighting act.

#### **124C Application of [Local Government Act](#) orders**

An order under section 124 of the [Local Government Act 1993](#) does not have effect to the extent that it prevents or interferes with the doing of any emergency fire fighting act.

## **Part 7 Miscellaneous**

### **125 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **126 Councils and other bodies to furnish information to Commissioner and the Co-**

### **ordinating Committee**

Any person or body on which a function is conferred by or under this Act must furnish such information (and in such form) relating to the exercise of that function or the administration of this Act as the Commissioner or Bush Fire Co-ordinating Committee may reasonably require.

### **127 Liability of persons in respect of loss or damage caused by bush or other fires**

Except as expressly provided in this Act, nothing in this Act and no conviction, payment of penalty or proceeding taken under this Act affects or prejudices any civil claim, action or proceeding in respect of any loss or damage caused by any bush or other fire to which this Act relates or for any trespass committed.

### **128 Protection from liability**

(1) A matter or thing done or omitted to be done by a protected person or body does not, if the matter or thing was done in good faith for the purpose of executing any provision (other than section 33) of this or any other Act, subject such person personally, or the Crown, to any action, liability, claim or demand.

(2) In this section:

***protected person or body*** means the following:

- (a) the Minister,
- (b) the Commissioner and any person acting under the authority of the Commissioner,
- (c) any member of the Service,
- (d) a member of the Advisory Council or Bush Fire Co-ordinating Committee,
- (d1) a member of a Bush Fire Management Committee,
- (e) the Commissioner of NSW Fire Brigades, the commissioner constituting the Forestry Commission, the Director-General of National Parks and Wildlife and any person acting under the authority of those persons,
- (f) an interstate fire brigade acting in pursuance of section 43.

#### **Note—**

See section 731 of the [Local Government Act 1993](#) in respect of protection from liability of councils, councillors and employees of councils.

### **129 Commissioner may be represented at inquiry**

(1) The Commissioner may, at any inquest or inquiry relating to the cause or origin of any

fire, be represented by a person appointed by the Commissioner for the purpose.

- (2) The Commissioner's representative may adduce evidence, examine witnesses and address the court at the inquest or inquiry.

### **130 Giving of notices**

Except as otherwise expressly provided by this Act, a notice or direction required by or under this Act to be served on a person may be served as provided by the regulations.

### **131 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **authorised officer** means, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

### **132 Powers of police officers**

- (1) A police officer who has reasonable grounds to suspect that a person is committing an offence against this Act or the regulations may direct the person:
  - (a) to state the person's full name and residential address to the police officer, or
  - (b) to produce any permit, notice or other document by or under the authority of which the person claims that a fire has been lit.
- (2) A police officer may direct any person who has lit a fire in contravention of a provision of this Act or the regulations:
  - (a) to extinguish the fire, or
  - (b) if the fire is in the open air, to extinguish the fire before leaving the fire.
- (3) A person to whom a direction is given under this section must not fail to comply with the direction.

Maximum penalty: 5 penalty units.
- (4) A person is not guilty of an offence under this section unless the police officer explained to the person, when giving the direction, that failure to comply with the direction is an offence.
- (5) In this section:

**light** a fire includes:

  - (a) maintain or use a fire, and
  - (b) cause a fire to be lit, maintained or used.

### **133 Powers affecting land near certain bush fires**

- (1) An authorised officer of a fire fighting authority may enter land within the prescribed distance from the land for which the fire fighting authority is responsible and do all such things as are reasonably necessary to suppress, or prevent the spread of, a bush fire from the land to the land for which the fire fighting authority is responsible.
- (2) An authorised officer may take the action referred to in subsection (1) whether or not the authorised officer has been requested to assist in suppressing or preventing the spread of the fire by the officer in charge of the land. However, if the authorised officer takes such action any arrangements set out in any bush fire management plan applying to the land or agreed with the authority responsible for the land must be observed.
- (3) In this section:

**prescribed distance** from land for which a fire fighting authority is responsible means:

- (a) 8 kilometres from the land, or
- (b) if another distance is specified in a bush fire management plan applying to land in the vicinity of the land for which the fire fighting authority is responsible—the distance specified.

#### **134 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Division 3 of Part 2 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 100 (1).
- (3) Proceedings for such an offence may be commenced at any time within 2 years after the date on which the offence is alleged to have been committed.

#### **135 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may be made for or with respect to:
  - (a) the appointment of fire control officers, deputy fire control officers and acting fire control officers,
  - (b) appeals under this Act,
  - (c) the issue of permits,
  - (d) the establishment of fire breaks,
  - (e) the use of fire in the open,
  - (f) the escape of sparks into the open,
  - (g) the operation of internal combustion engines,
  - (h) the storage of combustible materials,
  - (i) the classification of substances as combustible,
  - (j) the constitution, rules and functions of committees,

- (k) the service of notices or directions given under this Act,
- (l) conduct and discipline of members of the Service,
- (m) the membership, officers, functions and operation of rural fire brigades and groups of rural fire brigades.

(3) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

### **136 Repeal of *Bush Fires Act 1949***

The *Bush Fires Act 1949* is repealed.

### **137 Savings and transitional provisions**

Schedule 3 has effect.

### **138 (Repealed)**

### **139 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Constitution and procedure of Advisory Council and Bush Fire Co-ordinating Committee**

(Sections 47 and 123)

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

***appointed member*** means a member of the Advisory Council or the Bush Fire Co-ordinating Committee who is appointed by the Minister.

***Chairperson*** means the Chairperson of the Advisory Council or the Bush Fire Co-ordinating Committee.

***member*** means any member of the Advisory Council or the Bush Fire Co-ordinating

Committee.

## **Part 2 Constitution**

### **2 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **4 Deputies**

- (1) A member (other than an appointed member) may, from time to time, appoint a person to be the member's deputy, and may revoke any such appointment.
- (2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and may revoke any such appointment.
- (3) The deputy of a member appointed on the recommendation of a particular body, group or person is to be appointed on the recommendation of that body, group or person.
- (4) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (5) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (7) This clause does not operate to confer on a deputy of a member who is the Chairperson the member's functions as Chairperson.

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or



- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 3 consecutive meetings of the Advisory Council or Co-ordinating Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Chairperson or unless the member is excused by the Chairperson for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove an appointed member from office.

## **6 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson**

(1) The Chairperson vacates office as Chairperson if:

- (a) he or she is removed from office by the Minister under this clause, or
- (b) ceases to be a member.

(2) The Minister may at any time remove the Chairperson from office as Chairperson.

## **8 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council or Co-ordinating Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council or Co-ordinating Committee.

- (2) A disclosure by a member at a meeting of the Advisory Council or Co-ordinating Committee that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Advisory Council or Co-ordinating Committee in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Advisory Council or Co-ordinating Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Council or Co-ordinating Committee otherwise determines:
  - (a) be present during any deliberation of the Advisory Council or Co-ordinating Committee with respect to the matter, or
  - (b) take part in any decision of the Advisory Council or Co-ordinating Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Council or Co-ordinating Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Advisory Council or Co-ordinating Committee for the purpose of making the determination, or
  - (b) take part in the making by the Advisory Council or Co-ordinating Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Council or Co-ordinating Committee.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of

the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **Part 3 Procedure**

### **10 General procedure**

The procedure for the calling of meetings of the Advisory Council and the Co-ordinating Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Chairperson.

### **11 Validity of certain acts or proceedings**

Any act or proceeding of the Advisory Council or Co-ordinating Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Advisory Council or Co-ordinating Committee, or
- (b) any defect in the appointment, or any disqualification of a member of the Advisory Council or Co-ordinating Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Advisory Council or Co-ordinating Committee were fully and properly constituted.

### **12 Quorum**

- (1) The quorum for a meeting of the Advisory Council is 5 members.
- (2) The quorum for a meeting of the Co-ordinating Committee is 7 members.

### **13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, another member elected to chair the meeting by the members present) is to preside at a meeting of the Advisory Council or Co-ordinating Committee.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Council or Co-ordinating Committee at which a quorum is present is the decision of the Advisory Council or Co-ordinating Committee.

#### **15 Subcommittees**

- (1) The Advisory Council or Co-ordinating Committee may establish subcommittees to assist the Advisory Council or Co-ordinating Committee in the exercise of its functions.
- (2) At least one of the members of a subcommittee must be a member of the Advisory Council or Co-ordinating Committee but it does not matter if none of the other members of a subcommittee is a member of the Advisory Council or Co-ordinating Committee.
- (3) The procedures for calling meetings of a subcommittee and for the conduct of those meetings are to be determined by the Advisory Council or Co-ordinating Committee (or, subject to any determination by the Advisory Council or Co-ordinating Committee) by the subcommittee.
- (4) The Advisory Council or Co-ordinating Committee may delegate to a subcommittee any of the functions of the Advisory Council or Co-ordinating Committee, other than this power of delegation.

#### **16 Transaction of business outside meetings or by telephone**

- (1) The Advisory Council or Co-ordinating Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council or Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Council or Co-ordinating Committee.
- (2) The Advisory Council or Co-ordinating Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an

ordinary meeting of the Advisory Council or Co-ordinating Committee.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Council or Co-ordinating Committee.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 17 First meeting

The Minister may call the first meeting of the Advisory Council or Co-ordinating Committee in such manner as the Minister thinks fit.

## Schedule 2 Contributions of insurance companies

(Section 112)

<b>Column 1</b>	<b>Column 2</b>
<b>Classes of policies of insurance</b>	<b>Amount of premiums subject to contribution</b>
(1) Any insurance of property and including consequential loss but not including any insurance of a class specified in items (2)–(8)	80%
(2) Houseowners and householders, however designated (buildings or contents or both)	50%
(3) Personal combined on personal jewellery and clothing, personal effects and works of art	10%
(4) Motor vehicle and motor cycle	2.5%
(5) Marine and baggage—any insurance confined to maritime perils or confined to risks involving transportation on land or in the air, and including storage incidental to the transportation by sea, land or air, but not including other Static Risks which are to be declared under item (1)	1%
<b>Note—</b>	
Static Risks includes all movements of goods and/or stock and/or material associated with processing or storage operations at any situation.	
(6) (a) Combined fire and hail on growing crops	1%
(b) Livestock	1%
(7) Aviation hull	Nil
(8) Any insurance solely covering:	
(a) Loss by theft	Nil

(b) Plate glass	Nil
(c) Machinery—confined to mechanical breakdown and/or consequential loss arising from mechanical breakdown	Nil
(d) Explosion or collapse of boiler and pressure vessels—confined to damage other than by fire	Nil

## Schedule 3 Savings, transitional and other provisions

(Section 137)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Fire Services Legislation Amendment Act 1998*

*Rural Fires Amendment Act 2000*

*Rural Fires and Environmental Assessment Legislation Amendment Act 2002*, to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on this Act

#### 2 Commissioner and other public service staff

The repeal of the *Bush Fires Act 1949* does not affect the appointment of the person holding office as the Commissioner of Bush Fire Services at the time of the repeal or of any other staff under the *Public Sector Management Act 1988*.

### **3 Dissolution of Bush Fire Council, Bush Fire Co-ordinating Committee and Finance Committee**

(1) In this clause:

***replaced body*** means:

- (a) the Bush Fire Council, or
- (b) the Bush Fire Co-ordinating Committee, or
- (c) the Finance Committee,

within the meaning of the *Bush Fires Act 1949*, as in force immediately before the commencement of this clause.

(2) On the commencement of this clause each replaced body is dissolved.

(3) A person who, immediately before the commencement of this clause held office as a member of a replaced body:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of that loss of office, but is entitled (if otherwise eligible) to hold the office on a replacing body.

### **4 Fire control officer**

A person holding office as a fire control officer or deputy fire control officer for a bush fire district under the *Bush Fires Act 1949* immediately before the commencement of section 34 is taken to have been appointed as the fire control officer or deputy fire control officer for that district as constituted as a rural fire district under this Act.

### **5 Bush fire brigades**

(1) A bush fire brigade formed or organised for a bush fire district under the *Bush Fires Act 1949* immediately before the commencement of section 15 is taken to be the rural fire brigade for the district as constituted as a rural fire district under this Act.

(2) A member or officer of a bush fire brigade formed or organised for a bush fire district under the *Bush Fires Act 1949* immediately before the commencement of section 15 is taken to be a member or officer of the rural fire brigade for the district as constituted as a rural fire district under this Act.

### **6 Nomenclature**

Despite clause 7, a bush fire brigade that by the operation of that clause is taken to be a rural fire brigade may resolve that it continue to be known as the "X bush fire brigade", X being the name of the rural fire brigade.

## 7 Reference to bodies

On and from the commencement of the relevant provision of this Act, a reference (however expressed) in any other Act (whether assented to before, on or after the commencement of this clause) or in any other instrument:

- (a) to a bush fire district is to be read as a reference to a rural fire district under this Act,
- (b) to a fire control officer for a bush fire district is to be read as a reference to a fire control officer for a rural fire district under this Act,
- (c) to a bush fire brigade is to be read as a reference to a rural fire brigade under this Act,
- (d) to a group of bush fire brigades is to be read as a reference to a group of rural fire brigades under this Act,
- (e) to the New South Wales Bush Fire Fighting Fund is to be read as a reference to the New South Wales Rural Fire Fighting Fund,
- (f) to a Bush Fire Management Committee within the meaning of the *Bush Fires Act 1949* is to be read as a reference to a Bush Fire Management Committee constituted under Part 3,
- (g) to a plan of operations or fuel management plan approved under section 41A of the *Bush Fires Act 1949* is to be read as a reference to a plan of operations or bush fire risk management plan, respectively, within the meaning of this Act.

## 8 Bush fire management plans

A plan of operations or fuel management plan prepared and submitted to the Bush Fire Co-ordinating Committee by a Bush Fire Management Committee within the meaning of the *Bush Fires Act 1949* is taken, until the day that is 2 years after the day it was approved under section 41A of that Act or unless it is sooner revoked, to be a plan of operations or bush fire risk management plan, respectively, that is in force under this Act.

## 9 Transfer of assets of Fire Prevention Associations

(1) In this clause:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes choses in action and documents.

**Association** means Fire Prevention Association within the meaning of the *Bush Fires Act 1949*.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).



(2) On the commencement of this clause:

- (a) the assets and liabilities of an Association become assets and liabilities of the Crown, and
- (b) all proceedings by or against an Association pending immediately before that day become proceedings pending by or against the Crown.

#### **10 Certain fire control officers who are councillors to cease to hold office**

- (1) Despite section 36, a fire control officer or a deputy fire control officer who, immediately before the commencement of that section is a councillor, continues, subject to this Act, to be such an officer for the balance of his or her term of office as a councillor.
- (2) Any such fire control officer or a deputy fire control officer does not, by virtue of holding that office, hold an office or place of profit for the purposes of section 275 (2) of the *Local Government Act 1993*.
- (3) In this clause:

**councillor** has the same meaning as it has in the *Local Government Act 1993*.

#### **11 Fire patrol officers**

A person who, immediately before the commencement of this clause, held office as a fire patrol officer, or honorary fire patrol officer, under the *Bush Fires Act 1949*:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of that loss of office.

### **Part 3 Provisions consequent on enactment of *Fire Services Legislation Amendment Act 1998***

#### **12 Preparation of bush fire management plans**

The amendment made to section 52 by the *Fire Services Legislation Amendment Act 1998* extends to any Bush Fire Management Committee constituted before the commencement of that amendment.

#### **13 Bush fire prevention—actions by fire control officers**

Any act, matter or thing done by or with respect to a fire control officer of a local authority for the purposes of section 67 before the commencement of the amendments made to that section by the *Fire Services Legislation Amendment Act 1998* is taken, to the extent that it has effect after those amendments commence, to have been done by or with respect to the local authority.

## Part 4 Provisions consequent on enactment of [Rural Fires Amendment Act 2000](#)

### 14 Definitions

In this Part:

**affected officer** means a person who, immediately before the commencement of this clause:

- (a) was employed by the local authority responsible for a rural fire district as a fire control officer or deputy fire control officer for the district, or
- (b) was employed by the local authority in a position exercising functions relating to fire control in the district that is designated for the purposes of this paragraph by the local authority and the Commissioner.

**amending Act** means the [Rural Fires Amendment Act 2000](#).

**designated fire control officer** means a person referred to in paragraph (b) of the definition of **affected officer**.

**transfer day**, in relation to an affected officer, means the day an order under clause 15 (2) is published in the Gazette.

**transferred officer** means a person who becomes an officer of the Public Service in the Department of Rural Fire Service because of clause 15.

### 15 Transfer of existing fire control officers, deputy fire control officers and designated fire control officers to positions in Department of Rural Fire Service

- (1) On the commencement of this clause, an affected officer is entitled to be appointed to a position in the Department of Rural Fire Service of the Public Service in accordance with this clause.
- (2) The Governor may, on the recommendation of the Commissioner and with the consent of the affected officer concerned, by order published in the Gazette, appoint the affected officer to a position in the Department of Rural Fire Service of the Public Service.
- (3) A person who is the subject of such an order is to be regarded for all purposes as having become an officer of the Public Service, in accordance with the terms of the order, on the transfer day.

### 16 Employment conditions of transferred officers

- (1) This clause applies to a transferred officer.
- (2) A transferred officer is entitled to be paid salary or wages, and allowances, at a rate

not less than the rate that was payable to the transferred officer as a fire control officer, deputy fire control officer or designated fire control officer immediately before the transfer day, until the salary, wages or allowances is or are varied or altered:

(a) by a State industrial instrument, or

**Note—**

**State industrial instrument** is defined in the *Interpretation Act 1987*.

(b) by or under the *Public Sector Management Act 1988*, or

(c) otherwise in accordance with law.

(3) Except as provided by this Part and the regulations, if any condition of employment of the transferred officer was, immediately before the transfer day, regulated by an award of a State industrial instrument applicable to the person as an affected officer, the condition (so long as it does not conflict with any provision of the *Public Sector Management Act 1988* or the regulations under that Act) is to continue to apply to the person until it is regulated:

(a) by a State industrial instrument, or

(b) by or under the *Public Sector Management Act 1988*, or

(c) otherwise in accordance with law.

**Note—**

An example of an entitlement preserved by clause 16 is the preservation of salary incremental scales payable to transferred officers.

#### **17 Preservation of certain rights of existing fire control officers, deputy fire control officers and designated fire control officers**

(1) This clause applies to a transferred officer.

(2) Such an officer is entitled to retain:

(a) an entitlement to accrued annual leave up to a maximum of 40 days, and

(b) an entitlement to accrued sick leave up to a maximum of 65 days, and

(c) accrued long service leave.

(3) Leave referred to in subclause (2) is in addition to any leave that accrues after the transfer day.

(4) Such an officer is entitled to have service with the local authority that employed the officer immediately before the transfer day recognised for the purpose of eligibility for sick leave, long service leave, maternity leave, paternity leave, adoption leave or any other leave for which a condition of eligibility is a minimum period of service.

(5) In this clause:

**accrued annual leave** means annual leave owing to an affected officer (but not taken) immediately before the transfer day.

**accrued long service leave** means long service leave accrued by an affected officer (but not taken) immediately before the transfer day.

**accrued sick leave** means the amount of sick leave to which an affected officer would have been entitled in the event of illness immediately before the transfer day, other than any such sick leave not taken by the officer that the local authority employing the officer would be permitted or required under an award or agreement to pay out to the officer on resignation or termination.

## 18 Funding of leave entitlements

A local authority that, immediately before the transfer day, employed a transferred officer must, in accordance with any directions given or guidelines issued by the Treasurer, pay to the Commissioner such amount as is necessary to fund the liabilities incurred by the Department of Rural Fire Service with respect to the annual leave and long service entitlements of the transferred officer under clause 17 (2) (a) and (c).

## 19 Contributions to New South Wales Rural Fire Fighting Fund

The amendments made by Schedule 1 [25] and [26] to the amending Act apply to the financial year beginning on 1 July 2001.

## Part 5 Provisions consequent on enactment of Rural Fires and Environmental Assessment Legislation Amendment Act 2002

### 20 Definition

In this Part:

**amending Act** means the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002*.

### 21 Savings in respect of planning matters

(1) The amendment made by Schedule 3 [11] to the amending Act does not affect:

- (a) any development consent granted under the *Environmental Planning and Assessment Act 1979* before the commencement of that amendment or any development carried out in accordance with such a consent, or
- (b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of such activity) if the provisions of that Part were complied with for that activity before the commencement of that amendment.

- (2) If an application for development consent has been made but not been finally determined on the commencement of Schedule 3 [11] to the amending Act, the amendment made by Schedule 3 [11] does not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application.
- (3) Despite subclause (2), the Minister for Planning may, by notice served on the consent authority, direct that all or any provisions inserted by the amendment apply to the determination of the application.
- (4) Despite subclause (2), if an appeal relating to an application referred to in that subclause has been made to the Land and Environment Court, the Court may, by order, direct that all or any provisions inserted by the amendment apply to the determination of the application.

## 22 Agreements about review of incidence of bush fire hazards

Any agreement entered into by the Commissioner under section 12A in relation to the functions of a local authority under section 74 (1), as in force before the commencement of Schedule 3 [4] to the amending Act, ceases to have effect on that commencement.

## 23 Fire permits

A fire permit issued by the council of a local government area and in force immediately before the commencement of the amendments made to section 88 by the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002* is taken to be a fire permit issued by the Commissioner.

## Schedule 4 (Repealed)

### Dictionary

In this Act:

**Advisory Council** means the Rural Fire Service Advisory Council.

**approved form** means a form approved for the time being by the Minister.

**area** of a local authority means the area in relation to which the local authority exercises its functions.

**authorised officer** of a fire fighting authority or other authority means an officer of, or person authorised to exercise functions, conferred on authorised officers under this Act by, a fire fighting authority or other authority.

**back burning** means the application of fire to combustible matter so as to provide a fire break to control or suppress a fire or protect persons, property or the environment from an existing or imminent danger arising out of a fire, incident or other emergency.

**brigade member** means a person shown on the register of a rural fire brigade as a member of the

brigade.

**bush fire** includes a grass fire.

**bush fire danger period** means a period fixed by or under section 81 or 82 as a bush fire danger period.

**bush fire hazard complaint** means a complaint under section 74A.

**bush fire hazard reduction certificate** means a certificate referred to in section 100D.

**bush fire hazard reduction notice** means a notice under section 66.

**bush fire hazard reduction work** means:

- (a) the establishment or maintenance of fire breaks on land, and
- (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate against the spread of a bush fire,

but does not include construction of a track, trail or road.

**bush fire management plan** means a plan of operations or a bush fire risk management plan.

**bush fire prone land** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**bush fire risk management plan** means a plan prepared under Division 4 of Part 3 for the purpose referred to in section 54.

**combat agency** see section 4.

**combustible matter** means:

- (a) any matter or substance capable of ignition by the application of heat, fire, flame or sparks or spontaneously, and
- (b) any matter or substance prescribed by the regulations as combustible matter for the purposes of this definition.

**Commissioner** means the Commissioner of the NSW Rural Fire Service.

**Co-ordinating Committee** means the Bush Fire Co-ordinating Committee.

**council** means a council or county council within the meaning of the [Local Government Act 1993](#).

**Crown land** has the same meaning as in the [Crown Lands Act 1989](#).

**Note—**

Crown land, as defined in the [Crown Lands Act 1989](#), means land that is vested in the Crown or was acquired under the Closer Settlement Acts as in force before their repeal, not in either case being:

- (a) land dedicated for a public purpose, or
- (b) land that has been sold or lawfully contracted to be sold and in respect of which the purchase price or other consideration for the sale has been received by the Crown.

**Displan** see section 4.

**emergency** see section 4.

**emergency bush fire hazard reduction work** means 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.

**emergency fire fighting act** means 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.

**emergency services organisation** see section 4.

**exercise** of a function includes the performance of a duty.

**financial year** means the period from 1 July to the following 30 June.

**fire brigade** means a fire brigade within the meaning of the [Fire Brigades Act 1989](#).

**fire control officer** means a fire control officer of the NSW Rural Fire Service.

**fire district** means land within a fire district constituted under the [Fire Brigades Act 1989](#).

**fire fighting apparatus** includes all vehicles, equipment and other things used for or in connection with the prevention or suppression of fire or the protection of life or property in case of fire.

**fire fighting authority** means the following:

- (a) the Service,
- (b) New South Wales Fire Brigades,
- (c) the National Parks and Wildlife Service,
- (d) the Forestry Commission,
- (e) any other body prescribed by the regulations for the purposes of this definition.

**fire permit** means a permit issued under section 89.

**Forestry Commission** means the Forestry Commission of New South Wales.

**function** includes a power, authority or duty.

**Fund** means the New South Wales Rural Fire Fighting Fund.

**group of rural fire brigades** means two or more rural fire brigades that comprise a group of rural fire brigades formed under section 15.

**insurance company** see section 101.

**light** a fire see section 85.

**local authority** means:

- (a) in relation to land that is situated within an area within the meaning of the [Local Government Act 1993](#)—the council of the area, or
- (b) in relation to land within the Western Division (other than land referred to in paragraph (a))—the Western Lands Commissioner, or
- (c) in relation to Lord Howe Island—the Lord Howe Island Board.

**managed bush fire hazard reduction work** means bush fire hazard reduction work that is carried out in accordance with a bush fire risk management plan.

**managed land** means land that is:

- (a) dedicated or reserved, or acquired for the purpose of dedication or reservation, under the [Forestry Act 1916](#), or in respect of which the Forestry Commission has obtained the benefit of a forestry right as referred to in section 11 (1) (m) (iia) of that Act, or
- (b) dedicated or reserved, or acquired for the purpose of dedication or reservation, under the [National Parks and Wildlife Act 1974](#), or
- (c) vested in, or under the control of, the State Rail Authority or Rail Infrastructure Corporation, or
- (d) land within the catchment area of a water authority, or
- (e) other land prescribed by the regulations for the purposes of this definition.

**Management Committee** means a Bush Fire Management Committee constituted under Part 3.

**members** of the Service means the persons comprising the NSW Rural Fire Service.

**occupier** of land means:

- (a) the person who has the management or beneficial use of the land (whether resident on the land or not), or
- (b) if the land is a public reserve or park—the trustees or any person having the care, control and management of the land.

**officer** of a rural fire brigade (or group of rural fire brigades) means the holder of a rank designated as the position of an officer by the Commissioner under section 12.

**officer in charge** at a fire at which a rural fire brigade is present for the purpose of mitigating or suppressing the fire means:

- (a) the Commissioner, or
- (b) if the Commissioner is absent, the person for the time being in charge of the members of the rural fire brigade present at that fire.

**owner** of land:



- (a) in relation to Crown land, means the Crown and includes:
  - (i) a lessee of land from the Crown, and
  - (ii) a person to whom the Crown has lawfully contracted to sell the land but in respect of which the purchase price or other consideration for the sale has not been received by the Crown, and
- (b) in relation to land other than Crown land, includes:
  - (i) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and
  - (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, and
  - (iii) in the case of land that is the subject of a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* or a leasehold strata scheme under the *Strata Schemes (Leasehold Development) Act 1986*, the owners corporation under that scheme, and
  - (iv) in the case of land that is a community, precinct or neighbourhood parcel within the meaning of the *Community Land Development Act 1989*, the association for the parcel, and
  - (v) every person who by this Act is taken to be the owner, and
- (c) in relation to land subject to a mining lease under the *Mining Act 1992*, the holder of the lease.

**plan of operations** means a plan prepared under Division 4 of Part 3 for the purposes referred to in section 53.

**premises** includes any building of any description or any part of a building and any land whether built on or not but does not include any building on, or land forming part of, managed lands.

**public authority** means:

- (a) any public or local authority constituted by or under an Act other than this Act, or
- (b) any Government Department, or
- (c) a statutory body representing the Crown, or
- (d) a State owned corporation, or
- (e) any person prescribed by the regulations as a public authority.

**rural fire brigade** means a rural fire brigade formed under Part 2.

**rural fire district** means a rural fire district within the meaning of Part 1.

**rural fire services** see section 9 (4).

**Service** means the NSW Rural Fire Service established under Part 2.

**Service Standards** means the policy statements issued by the Commissioner under section 13 as in force from time to time.

**territory** of a rural fire brigade or group of rural fire brigades means the territory of the brigade or group as determined under section 19.

**tree** includes bush, shrub, scrub, timber, grass or vegetative or other material.

**unoccupied Crown land** means Crown land that is not:

- (a) held under lease or licence, or
- (b) vested in, or under the control of, trustees.

**vehicle** means any means of transport whether self-propelled or not, and whether used on land or water or in the air.

**Western Division** means the Western Division established under the [Crown Lands Act 1989](#).