

# Rural Fires Amendment Act 2009 No 74

[2009-74]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Rural Fires Amendment Act 2009 No 74



New South Wales

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# Rural Fires Amendment Act 2009 No 74



New South Wales

An Act to amend the *Rural Fires Act 1997* to make further provision in relation to the management of bush fire hazard reduction work, the investigation of rural fires and the functions of the NSW Rural Fire Service; to increase the penalty notice amounts for certain fire-related offences; and for other purposes.

## 1 Name of Act

This Act is the *Rural Fires Amendment Act 2009*.

## 2 Commencement

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

## Schedule 1 Amendment of *Rural Fires Act 1997 No 65*

### [1] Section 14 Delegation by Commissioner

Insert before section 14 (2) (a):

(a1) section 70 (Bush fire hazard reduction work in default of compliance with notice),

### [2] Section 22A

Insert after section 22:

#### **22A Power to remove persons or obstacles**

An officer of a rural fire brigade or group of rural fire brigades may cause to be removed any person, vehicle, vessel or thing the presence of whom or which at or near a fire, incident or other emergency might, in the officer's opinion, interfere with the work of any rural fire brigade or the exercise of any of the officer's functions.

### [3] Part 2, Division 3A

Insert after Division 3:

## **Division 3A Power to enter land to investigate fires**

### **33A Object of Division**

The object of this Division is to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

### **33B Power to enter land up to 24 hours after fire**

- (1) The Commissioner may enter and inspect any land for the purposes of investigating the cause or origin of any fire that has occurred on that land or any adjacent land, but only for a period of up to 24 hours after the fire has been put out.
- (2) The power conferred on the Commissioner under subsection (1) may be exercised with or without the consent of the owner or occupier of the land concerned.
- (3) This section does not authorise the Commissioner to enter any part of land used only for residential purposes without the authority of a search warrant under section 33C or the consent of the owner or occupier of the land concerned.
- (4) In this section and in section 33C, **land** includes any building on the land.

### **33C Search warrants**

- (1) The Commissioner may apply to an authorised officer for a search warrant for any land if the Commissioner reasonably believes that entry onto the land is necessary for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.
- (2) An authorised officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Commissioner or any other person named in the warrant to enter land for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) In this section:  
**authorised officer** has the same meaning as in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

### **33D Functions of Commissioner that may be exercised by others**

- (1) Any function conferred or imposed on the Commissioner under section 33B or

33C may be exercised by the Commissioner of NSW Fire Brigades, but only to the extent that the function is exercisable in respect of land within a fire district.

- (2) Without limiting section 14 (1), the Commissioner may delegate any function conferred or imposed on the Commissioner under section 33B or 33C to a fire fighting authority or a member of staff of a fire fighting authority.
- (3) Subsection (1) does not limit any of the functions of the Commissioner of NSW Fire Brigades under the *Fire Brigades Act 1989*.

**[4] Section 44 Commissioner's responsibility**

Omit "officers of the Forestry Commission, officers of the National Parks and Wildlife Service" from section 44 (2).

Insert instead "a member of staff of the Department of Industry and Investment, a member of staff of the Department of Environment, Climate Change and Water".

**[5] Section 47 Membership and procedure of Bush Fire Co-ordinating Committee**

Omit section 47 (1). Insert instead:

- (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) a member of staff of New South Wales Fire Brigades nominated by the Commissioner of NSW Fire Brigades,
  - (c) a member of staff of the Department of Industry and Investment nominated by the Director-General of that Department,
  - (d) a member of staff of the Department of Environment, Climate Change and Water nominated by the Director-General of that Department,
  - (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

Climate Change and 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) a member of staff of the Department of Human Services nominated by the Minister for Community Services,
- (m) a member of staff of the Land and Property Management Authority nominated by the Chief Executive of the Authority.

**[6] Section 48 Functions of Bush Fire Co-ordinating Committee**

Omit "Minister for Land and Water Conservation" from section 48 (2) (b).

Insert instead "Minister for Climate Change and the Environment".

**[7] Section 55 General content**

Omit "National Parks and Wildlife" from section 55 (1) (b).

Insert instead "the Department of Environment, Climate Change and Water".

**[8] Section 64 Occupiers to extinguish fires or notify fire fighting authorities**

Omit section 64 (2) (b). Insert instead:

- (b) if the fire is burning outside any such fire district—the nearest available:
  - (i) officer or member of a rural fire brigade, or
  - (ii) fire control officer or deputy fire control officer, or
  - (iii) member of staff of the Department of Industry and Investment, or
  - (iv) member of staff of the Department of Environment, Climate Change and Water.

**[9] Sections 65A and 65-70**

Omit sections 65-70. Insert instead:

**65A Hazard management officers**

The Commissioner may nominate a member of the Service as a hazard management officer for the purposes of this Division.

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

(1) In this section:

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

- (a) a hazard management officer, or
  - (b) any officer of a rural fire brigade for the time being nominated for the purposes of this section by the Commissioner, or
  - (c) any person for the time being nominated for the purposes of this section by the Bush Fire Co-ordinating Committee, or
  - (d) a person exercising functions under a bush fire risk management plan, or
  - (e) 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 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 notices**

- (1) A hazard management officer may, by notice in writing, require the owner or occupier (not being a public authority) of any land to carry out bush fire hazard reduction work specified in the notice on the land.
- (2) A hazard management officer 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.
- (3) A hazard management officer 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).
- (4) A notice under this section may specify:
  - (a) 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

- (b) any means by which the bush fire hazard reduction work is to be carried out and alternative means other than fire by which the work should, if practicable, be carried out.
- (5) 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.
- (6) 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 hazard management officer.
- (7) 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, ecological communities or critical habitats within the meaning of the *Threatened Species Conservation Act 1995*.

**Note—**

See section 54 (2) for other possible limitations.

- (8) 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.

- (9) 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



hazard management officer who served the notice stating the grounds of objection, or, if that officer is not available, any other hazard management officer.

- (2) If a person lodges an objection, the hazard management officer 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 (7), 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 hazard management officer must:
  - (a) confirm the notice, or
  - (b) vary the notice, if the hazard management officer is satisfied that the variation will appropriately address the threat of fire, or
  - (c) withdraw the notice, if the hazard management officer is satisfied that there is no longer any need for the notice to be served.
- (4) If the hazard management officer confirms or varies the notice, the officer must give the person who lodged the objection notice of the decision and must specify a time after the notice is given within which the person must comply with the notice as confirmed or varied.

## **68 Appeal against notices**

- (1) If a person has lodged an objection under section 67 and:
  - (a) the hazard management officer 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).

- (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.
- (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 Powers and duties of hazard management officer**

- (1) A hazard management officer may, for the purpose of forming an opinion as to:
  - (a) whether a notice under section 66 should be served 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 hazard management officer who 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 hazard management officer to keep a record of whether or not bush fire hazard reduction work has been carried out 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 Commissioner 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) 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 owner or occupier of the land as a debt due to the Crown in a court of competent jurisdiction.

**[10] Section 71 Defence to court proceedings**

Omit “expenses” from section 71 (b). Insert instead “costs”.

**[11] Section 73 Bush fire hazard reduction by Commissioner**

Omit “74F” from section 73 (1) (c). Insert instead “74E (2)”.

**[12] Section 74**

Omit the section. Insert instead:

**74 Bush fire hazard reduction reports**

- (1) 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.
- (2) The report must include:
  - (a) details of the extent of implementation of any scheme for the reduction of bush fire hazards set out in a bush fire risk management plan that applies to the land, and
  - (b) information about such other matters (if any) as are prescribed by the regulations.
- (3) The annual report of the Service prepared under the *Annual Reports (Departments) Act 1985* must include details of information contained in a report under this section for the year to which the annual report relates.

**[13] Section 74C How and to whom are complaints to be made**

Omit section 74C (3). Insert instead:

- (3) A local authority must refer any complaint made to it under this Division to the Commissioner within 14 days of receipt of the complaint.

**[14] Section 74D Investigation of complaint**

Omit “or local authority” wherever occurring.

**[15] Section 74D (3)**

Omit “or a local authority”.

**[16] Sections 74E and 74F**

Omit sections 74E–74H. Insert instead:

**74E 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 (other than land for which a public authority is responsible) to which a bush fire hazard complaint relates, the Commissioner:
  - (a) may direct a hazard management officer 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) may, subject to sections 67 and 68, exercise his or her 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.
- (2) 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.
- (3) 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.

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

If any action is taken by the Commissioner in relation to a bush fire hazard complaint, the Commissioner must, as soon as practicable after it is taken, advise the complainant of the action taken.

**[17] Section 100E Issuing and certifying authorities**

Omit section 100E (1). Insert instead:

- (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:
  - (a) the local authority of the area in which the land is situated, or
  - (b) the Commissioner.

**[18] Section 100F Issue of bush fire hazard reduction certificates**

Omit "A local authority or public authority" from section 100F (9).

Insert instead "A public authority, a local authority or the Commissioner".

**[19] Section 100K Consultation on draft codes**

Omit section 100K (1). Insert instead:

- (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 the Department of Environment, Climate Change and Water,
  - (c) the Nature Conservation Council of New South Wales,
  - (d) the NSW Farmers' Association,
  - (e) the Local Government Association of New South Wales,
  - (f) the Shires Association of New South Wales,
  - (g) the Director-General of the Department of Industry and Investment,
  - (h) the Commissioner of NSW Fire Brigades,
  - (i) the Chief Executive of the Land and Property Management Authority.

**[20] Section 100M Approval of code**

Omit "Minister for the Environment".

Insert instead “Minister for Climate Change and the Environment”.

**[21] Section 123 Membership and procedure of Advisory Council**

Omit “NSW Farmers Association” from section 123 (1) (f).

Insert instead “NSW Farmers’ Association”.

**[22] Section 128 Protection from liability**

Omit “National Parks and Wildlife” from paragraph (e) of the definition of **protected person or body** in section 128 (2).

Insert instead “the Department of Environment, Climate Change and Water”.

**[23] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Rural Fires Amendment Act 2009*

**[24] Schedule 3**

Insert at the end of the Schedule with appropriate Part and clause numbering:

## **Part Provisions consequent on enactment of Rural Fires Amendment Act 2009**

### **Definition**

In this Part:

**amending Act** means the *Rural Fires Amendment Act 2009*.

### **Bush fire hazard reduction**

Any action taken or commenced under Division 2 or 2A of Part 4 of this Act before the commencement of section 65A (as inserted by the amending Act) is not affected by the amending Act, and any such action may be continued or completed as if the amending Act had not been enacted.

### **Existing Bush Fire Co-ordinating Committee**

The amendment of section 47 by the amending Act does not affect the appointment of a person holding office as a member of the Bush Fire Co-ordinating Committee immediately before the commencement of that amendment.

**[25] Dictionary**

Omit “the National Parks and Wildlife Service” from paragraph (c) of the definition of **fire fighting authority**.

Insert instead “the Department of Environment, Climate Change and Water”.

**[26] Dictionary, definition of “hazard management officer”**

Insert in alphabetical order:

**hazard management officer** means a person nominated as a hazard management officer under section 65A.

## **Schedule 2 Amendment of other legislation**

### **2.1 Fire Brigades Act 1989 No 192**

#### **Section 83 Delegation**

Insert “or any other” after “under this” in section 83 (1).

### **2.2 Rural Fires Regulation 2008**

#### **[1] Clauses 14 (b) (ii) and 41 (e) (iii)**

Omit “the Department of Lands” wherever occurring.

Insert instead “the Land and Property Management Authority”.

#### **[2] Clauses 14 (c), 34 (1) and 47 (c) (iv)**

Omit “Department of Environment and Climate Change” wherever occurring.

Insert instead “Department of Environment, Climate Change and Water”.

#### **[3] Clause 14 (d)**

Omit “Department of Primary Industries”.

Insert instead “Department of Industry and Investment”.

#### **[4] Clause 14 (h)**

Omit “NSW Farmers Association”.

Insert instead “NSW Farmers’ Association”.

**[5] Clause 31 Bush fire hazard reduction work required by hazard management officers**

Omit clause 31 (1). Insert instead:

- (1) For the purposes of section 69 (2) of the Act, a hazard management officer who by a bush fire hazard reduction notice requires the occupier or owner of any land to burn fire breaks or combustible matter or other material on relevant land must send a copy of the bush fire hazard reduction notice to the office of the Department of Environment, Climate Change and Water or the Forestry Commission nearest to the relevant land.

**[6] Clause 32 Bush fire hazard reduction work in default of compliance with notice**

Omit clause 32 (1). Insert instead:

- (1) If the Commissioner enters any land under section 70 of the Act and lights any fire on relevant land, the Commissioner must notify the office of the Department of Environment, Climate Change and Water or the Forestry Commission nearest to the relevant land.

**[7] Clause 33 Notice of intention to burn off or burn firebreak**

Omit clause 33 (1). Insert instead:

- (1) For the purposes of section 86 (1) of the Act, notice may be given in writing or orally and must include particulars of:
  - (a) the name of the person proposing to light the fire, and
  - (b) the location, purpose, period and time of the fire proposed to be lit.

**[8] Schedule 2 Penalty notice offences**

Omit the matter relating to section 66 (7) from Part 1. Insert instead:

Section 66 (8)	1,100
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**[9] Schedule 2, Part 1**

Omit "550" wherever occurring from the matter relating to sections 99 (6) and 100 (2).

Insert instead "1,100".