

# Rural Fires Act 1997 No 65

[1997-65]



New South Wales

## Status Information

### Currency of version

Historical version for 4 April 2017 to 30 June 2017 (accessed 9 October 2024 at 2:44)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Coastal Management Act 2016 No 20](#) (not commenced)
  - [Rural Fires Amendment \(Fire Trails\) Act 2016 No 41](#) (not commenced)
  - [Biodiversity Conservation Act 2016 No 63](#) (not commenced)
  - [Transport Administration Amendment \(Transport Entities\) Act 2017 No 12](#) (not commenced)
  - [Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act 2017 No 22](#) (not commenced — to commence on 7.7.2017)
- **See also**
  - [Local Government Amendment \(Parliamentary Inquiry Recommendations\) Bill 2016](#) [Non-government Bill: Rev the Hon F J Nile, MLC]

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 June 2017

# Rural Fires Act 1997 No 65



New South Wales

## Contents

<b>Long title</b> .....	11
<b>Part 1 Preliminary</b> .....	11
Note .....	11
1 Name of Act .....	11
2 Commencement .....	11
3 Objects of Act .....	11
4 Definitions .....	12
5 Notes .....	12
6 Rural fire districts .....	12
7 Responsible local authorities in rural fire districts .....	13
<b>Part 2 NSW Rural Fire Service</b> .....	14
Note .....	14
<b>Division 1 The Service</b> .....	14
8 NSW Rural Fire Service .....	14
9 Functions of Service .....	14
<b>Division 2 The Commissioner and other staff of Service</b> .....	15
10 The Commissioner and other staff .....	15
11 Ministerial control .....	16
12 Functions of Commissioner .....	16
12A Entry into rural fire district service agreements .....	16
13 Service Standards .....	17

14 Delegation by Commissioner .....	18
<b>Division 3 Rural fire brigades</b> .....	<b>18</b>
15 Formation of rural fire brigades .....	18
16 Formation of groups of rural fire brigades .....	18
17 Disbandment of rural fire brigades .....	18
18 Area of operations and officers of rural fire brigades .....	19
19 Area of operations and officers of groups of rural fire brigades .....	19
20 Members of rural fire brigades .....	19
21 Functions of officers of rural fire brigades .....	20
22 General powers of rural fire brigade officers and others .....	20
22A Power to remove persons or obstacles .....	21
23 Power to enter premises .....	21
24 Closure of streets and public places .....	21
25 Making premises safe .....	21
26 Use of water and works .....	22
27 Permission of RailCorp, RIC or TIDC required .....	22
28 Damage to property and the environment .....	22
29 Notice of entry .....	22
30 Care to be taken .....	23
31 Use of force .....	23
32 Authority to enter premises .....	23
33 Voluntary work by rural fire brigade .....	23
<b>Division 3A Power to enter land to investigate fires</b> .....	<b>24</b>
33A Object of Division .....	24
33B Power to enter land up to 24 hours after fire .....	24
33C Search warrants .....	24
33D Functions of Commissioner that may be exercised by others .....	25
<b>Division 4 Fire control officers</b> .....	<b>25</b>
34 Deputy fire control officers .....	25
35 Acting fire control officer .....	25
36 Councillors not to be appointed as fire control officers, deputy fire control officers or acting fire control officers	

.....	26
37 Responsibilities of fire control officers and local authorities .....	26
38 Functions of fire control officers .....	26
<b>Division 5 Command structure .....</b>	<b>27</b>
39 Commissioner may authorise officers and members of rural fire brigades to exercise functions....	27
40 Officer in charge may authorise others to exercise functions.....	27
41 Duty to recognise authority of officers .....	27
42 Obstruction etc of Commissioner and other members of Service .....	28
43 Interstate assistance at fires .....	28
<b>Part 3 Co-ordinated bush fire fighting .....</b>	<b>29</b>
Note.....	29
<b>Division 1 Co-ordination of bush fire fighting by Commissioner .....</b>	<b>29</b>
44 Commissioner’s responsibility .....	29
45 Power to give directions etc .....	30
<b>Division 2 Bush Fire Co-ordinating Committee .....</b>	<b>30</b>
46 Constitution of Bush Fire Co-ordinating Committee.....	30
47 Membership and procedure of Bush Fire Co-ordinating Committee.....	30
48 Functions of Bush Fire Co-ordinating Committee .....	31
49 Delegation .....	32
<b>Division 3 Bush Fire Management Committees .....</b>	<b>32</b>
50 Bush Fire Management Committees .....	32
51 Functions of Bush Fire Management Committees .....	32
<b>Division 4 Preparation of draft bush fire management plans .....</b>	<b>33</b>
52 Bush Fire Management Committees to prepare plans .....	33
53 Content of draft plan of operations.....	33
54 Content of draft bush fire risk management plan.....	33
55 General content.....	34
56 Failure of Management Committee.....	34
<b>Division 5 Public participation in preparation of plans .....</b>	<b>34</b>

57 Public notice of draft bush fire risk management plans.....	34
58 Adoption of bush fire risk management plans .....	35
59 Adoption of bush fire plans of operation.....	36
60 Co-ordination of planning by bush fire management plans .....	36
61 Amendment, revocation and cessation of bush fire management plans .....	37
62 Public availability of bush fire management plans and draft bush fire management plans.....	37
<b>Division 6 General</b> .....	<b>37</b>
62A Performance audit of implementation of bush fire risk management plans .....	37
<b>Part 3A Neighbourhood safer places</b> .....	<b>37</b>
62B Definitions .....	37
62C Designation of neighbourhood safer places .....	38
62D Commissioner to inspect neighbourhood safer places .....	38
62E Removal of designation as neighbourhood safer places.....	39
62F Register of neighbourhood safer places.....	39
62G Neighbourhood safer places may be signposted.....	39
62H Protection from personal liability for owners of neighbourhood safer places .....	39
<b>Part 4 Bush fire prevention</b> .....	<b>40</b>
Note.....	40
<b>Division 1 Duty to prevent bush fires</b> .....	<b>40</b>
63 Duties of public authorities and owners and occupiers of land to prevent bush fires.....	40
64 Occupiers to extinguish fires or notify fire fighting authorities .....	40
<b>Division 2 Bush fire hazard reduction</b> .....	<b>41</b>
Note.....	41
65A Hazard management officers .....	41
65 Reduction of fire hazards on unoccupied Crown land and managed land.....	41
66 Bush fire hazard reduction notices .....	42
67 Objection to notices.....	43
68 Appeal against notices .....	44
69 Powers and duties of hazard management officer.....	45
70 Bush fire hazard reduction work in default of compliance with notice.....	45
71 Defence to court proceedings .....	46

72 Certain damage to property caused by bush fire hazard reduction work covered by fire insurance .....	46
73 Bush fire hazard reduction by Commissioner .....	46
74 Bush fire hazard reduction reports .....	47
<b>Division 2A Bush fire hazard complaints</b> .....	<b>48</b>
74A Bush fire hazard complaints .....	48
74B Who may make a bush fire hazard complaint .....	48
74C How and to whom are complaints to be made .....	48
74D Investigation of complaint.....	48
74E Action that may be taken by Commissioner if bush fire hazard exists .....	49
74F Complainant to be notified of action taken.....	49
74G, 74H (Repealed) .....	49
<b>Division 3 Damage by fire to dividing fences and other matters</b> .....	<b>50</b>
75 Definitions .....	50
76 Notices to repair or restore dividing fences .....	50
77 Recovery of costs .....	51
78 Jurisdiction of Local Court .....	51
79 Entry to land to extinguish fire .....	51
80 (Repealed) .....	51
<b>Division 4 Bush fire danger period</b> .....	<b>51</b>
81 General bush fire danger period.....	51
82 Local bush fire danger period .....	51
83 Consultation required before local bush fire danger period declaration made .....	52
84 (Repealed) .....	52
<b>Division 5 Permits and notice requirements</b> .....	<b>52</b>
85 Definitions .....	52
86 Notice and certain authorities required before certain fires lit .....	53
87 Lighting fires for land clearance or fire breaks in bush fire danger period .....	53
88 Lighting fires that are dangerous to buildings in fire districts and rural fire districts.....	54
89 Issue of permits .....	54
90 Duration of permits .....	55

91 Cancellation or suspension of permits.....	55
92 Conditions of permit .....	55
93 Refusal to issue fire permit.....	56
94 Notice to be given of issue of fire permit.....	56
95 Permit not required for fires lit by public authorities .....	56
96 Appropriate authorities not determining authorities .....	56
97 Reporting requirements.....	57
98 Issue of permit does not affect duty to prevent bush fires .....	57
<b>Division 6 Total fire bans .....</b>	<b>57</b>
99 Lighting of fires prohibited in certain circumstances .....	57
<b>Division 7 Offences.....</b>	<b>58</b>
99A Offences—discarding lighted cigarettes etc .....	58
100 Offences .....	60
<b>Division 8 Development of bush fire prone land and for bush fire hazard reduction</b> .....	<b>61</b>
<b>Subdivision 1 Definitions.....</b>	<b>61</b>
100A Definitions .....	61
<b>Subdivision 2 Bush fire prone land.....</b>	<b>62</b>
100B Bush fire safety authorities .....	62
<b>Subdivision 3 Bush fire hazard reduction.....</b>	<b>63</b>
100C Carrying out of bush fire hazard reduction work .....	63
100D What is a bush fire hazard reduction certificate? .....	65
100E Issuing and certifying authorities .....	65
100F Issue of bush fire hazard reduction certificates .....	66
100G Bush fire hazard reduction certificates of certifying authorities.....	67
100H Remedy and restraint for breaches of sections 100F and 100G.....	68
100I Duration of bush fire hazard reduction certificate .....	68
<b>Subdivision 4 Bush fire environmental assessment codes.....</b>	<b>68</b>

100J Commissioner may prepare draft codes .....	68
100K Consultation on draft codes.....	68
100L Public participation in preparation of codes .....	69
100M Approval of code .....	69
100N Publication, commencement and availability of codes.....	69
100O Amendment or revocation of codes .....	70
<b>Division 9 Vegetation clearing work .....</b>	<b>70</b>
100P Definitions .....	70
100Q The 10/50 Vegetation Clearing Code of Practice .....	72
100R Carrying out vegetation clearing work .....	72
100S Review of Division .....	74
<b>Part 5 New South Wales Rural Fire Fighting Fund.....</b>	<b>74</b>
<b>Division 1 Preliminary .....</b>	<b>74</b>
101 Definitions .....	74
<b>Division 2 The Fund.....</b>	<b>75</b>
102 New South Wales Rural Fire Fighting Fund .....	75
<b>Division 3 Estimates of rural fire brigade expenditure.....</b>	<b>76</b>
103 Rural fire brigade funding target .....	76
104 Relevant councils to give information to Minister .....	77
105 Commissioner to assist.....	77
<b>Division 4 Treasurer to contribute to Fund .....</b>	<b>77</b>
106 Treasurer to pay contributions .....	77
107 Contribution payable in instalments.....	77
108 Rural fire brigade funding amount.....	78
<b>Division 5 Councils to pay rural fire brigade contribution .....</b>	<b>78</b>
109 Council to pay rural fire brigade contribution .....	78
110 Amount of contribution.....	79
110A Contribution payable in instalments.....	79
110B Minister to advise State Revenue Commissioner.....	79



<b>Division 6 Payment of contributions by relevant councils</b> .....	79
111 When instalments are to be paid.....	79
112 Annual assessment notice.....	80
113 Instalment notices.....	80
113A Rural fire brigade contribution is debt payable to State Revenue Commissioner.....	80
114 How contribution is to be funded.....	81
114A Exemptions.....	81
114B Certificate evidence.....	81
<b>Division 6A (Repealed)</b> .....	82
<b>Division 7 Miscellaneous</b> .....	82
118 Application of the Fund.....	82
118A Management of unspent funds.....	82
119 Maintenance and disposal of fire fighting equipment purchased from Fund.....	82
120 Consolidated fund of councils.....	83
121 (Repealed).....	83
<b>Part 6 Rural Fire Service Advisory Council</b> .....	83
Note.....	83
122 Establishment of Rural Fire Service Advisory Council.....	83
123 Membership and procedure of Advisory Council.....	83
124 Functions of the Advisory Council.....	84
<b>Part 6A Application of other legislation</b> .....	84
<b>Division 1 Application of other legislation to emergency fire fighting acts</b> .....	84
124A Application of Environmental Planning and Assessment Act 1979.....	84
124B Application of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995 .....	85
124C Application of Local Government Act orders.....	85
<b>Part 7 Miscellaneous</b> .....	85
125 Act binds Crown.....	85

126 Councils and other bodies to furnish information to Commissioner and the Co-ordinating Committee .....	85
127 Liability of persons in respect of loss or damage caused by bush or other fires.....	85
128 Protection from liability .....	86
129 Commissioner may be represented at inquiry .....	86
130 Giving of notices.....	87
131 Penalty notices .....	87
131A Power to require name and address.....	87
132 Powers of police officers to give directions.....	88
133 Powers affecting land near certain bush fires.....	88
134 Proceedings for offences .....	89
135 Regulations.....	89
136 Repeal of Bush Fires Act 1949 .....	90
137 Savings and transitional provisions .....	90
138 (Repealed) .....	90
139 Review of Act.....	90
<b>Schedule 1 Constitution and procedure of Advisory Council and Bush Fire Co-ordinating Committee</b> .....	90
<b>Schedule 2 (Repealed)</b> .....	96
<b>Schedule 3 Savings, transitional and other provisions</b> .....	96
<b>Schedule 4 (Repealed)</b> .....	110
<b>Dictionary</b> .....	110

# 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
- (c1) for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and
- (d) for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c1) 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 the State Emergency Management Plan as the agency primarily responsible for controlling the response to a particular emergency.

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

- (a) endangers, or threatens to endanger, the safety or health of persons or animals 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 NSW Police Force, Fire and Rescue NSW, Rural Fire Brigades, Ambulance Service of NSW, State Emergency Service, Volunteer Rescue Association or any other agency which manages or controls an accredited rescue unit.

**State Emergency Management Plan** means the State Emergency Management Plan referred to in section 12 of the *State Emergency and Rescue Management Act 1989*.

#### 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 [Government Sector Employment Act 2013](#) 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,
  - (a1) to issue public warnings about bush fires and bush fire threats in the State for the purpose of protecting life and property,
- (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 the State Emergency Management Plan 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 the State Emergency Management Plan 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,
  - (b1) the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in rural fire districts,
  - (c) the provision of services referred to in paragraphs (a)-(b1) 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 4 of the *Government Sector Employment Act 2013*.

- (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 Public Service agency 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 Fire and Rescue NSW 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:
  - (a1) section 70 (Bush fire hazard reduction work in default of compliance with notice),
  - (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 Fire and Rescue NSW.
- (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.

## **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.

## **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**

- (1) 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, shore up or remove, or cause to be destroyed, pulled down, shored up or removed, any buildings or structures or parts of 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.
- (2) The cost of doing something pursuant to subsection (1) (b) is to be borne by the owner of the building or structure and is to be paid to the Commissioner.
- (3) The Commissioner may waive payment of the whole or any part of an amount payable under subsection (2) in such circumstances as the Commissioner thinks appropriate.

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

- (1) 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.
- (2) The Commissioner may, by arrangement with the owner or occupier or person having control or management of land containing a water source, take and use, free of charge, water from that source for the purpose of training or demonstration by any rural fire brigade.

## **27 Permission of RailCorp, RIC or TIDC required**

The functions conferred by this Division may not be exercised in relation to land or property vested in, or under the control of, Rail Corporation New South Wales, Transport Infrastructure Development Corporation 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 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 Fire and Rescue NSW, 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 Fire and Rescue NSW under the *Fire Brigades Act 1989*.
- (4) Any function conferred or imposed on the Commissioner under section 33B or 33C may be exercised by a police officer for the purpose of determining whether the cause or origin of the fire should be the subject of a criminal investigation.
- (5) Subsection (4) does not limit any of the functions of a police officer under this or any other Act.

## **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 NSW Police Force 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 NSW Police Force 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 volunteer rural fire fighter or other 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, a person employed in Fire and Rescue NSW, a person employed in the Department of Industry, Skills and Regional Development, a person employed in the Office of Environment and Heritage 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 Fire and Rescue NSW, members of the NSW Police Force 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 14 members as follows:
  - (a) the Commissioner, who is to be the Chairperson of the Committee,
  - (b) a person employed in Fire and Rescue NSW nominated by the Commissioner of Fire and Rescue NSW,
  - (c) 2 persons employed in the Department of Industry, Skills and Regional Development nominated by the Secretary of that Department, one of whom is a person employed in the Resources and Energy Division—Energy Business Unit of that Department, and one of whom is a person employed in the Catchments and

Lands—NSW Crown Lands Division of that Department,

- (d) a person employed in the Office of Environment and Heritage nominated by the Chief Executive of that Office,
  - (e) 2 persons appointed by the Minister on the recommendation of the Local Government and Shires Association of New South Wales,
  - (f) a fire control officer appointed by the Minister on the recommendation of the NSW Rural Fire Service Association Inc,
  - (g) a person appointed by the Minister on the recommendation of the Commissioner of Police,
  - (h) a person appointed by the Minister on the recommendation of the Minister for the Environment,
  - (i) a person nominated by the Nature Conservation Council of New South Wales,
  - (j) a person appointed by the Minister on the recommendation of the NSW Farmers' Association,
  - (k) a person employed in the Ministry for Police and Emergency Services nominated by the Minister for Police and Emergency Services,
  - (l) a person employed in the Forestry Corporation of New South Wales nominated by the chief executive officer of that Corporation.
- (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 a Minister 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.

- (3) The Bush Fire Management Committee must, when preparing a draft bush fire risk management plan for a rural fire district or other part of the State, consider the number and location of neighbourhood safer places in the rural fire district or other part of the State.
- (4) The Commissioner may direct a Bush Fire Management Committee to amend a draft bush fire risk management plan prepared and submitted by it.

**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 Fire and Rescue NSW, the Forestry Corporation, the Chief Executive of the Office of Environment and Heritage 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 3A Neighbourhood safer places**

#### **62B Definitions**

In this Part:

**place** means land or building.

### **62C Designation of neighbourhood safer places**

- (1) The Commissioner may, by notice in writing to the owner or occupier of a place, designate a place as a place that may be suitable for people to shelter from a bush fire (a ***neighbourhood safer place***).
- (2) A place (other than a place owned or occupied by a public authority) must not be designated as a neighbourhood safer place unless:
  - (a) the owner of the place has consented, in writing, to the designation, and
  - (b) if the occupier of the place is not the owner, the occupier of the place has consented, in writing, to the designation.

### **62D Commissioner to inspect neighbourhood safer places**

- (1) The Commissioner must conduct annual inspections of each neighbourhood safer place and determine whether the place remains suitable for designation as a neighbourhood safer place.
- (2) For the purposes of conducting such an inspection, the Commissioner may enter during the daytime any part of the place (other than a dwelling-house) that it is necessary to inspect in order to make that determination.
- (3) If the Commissioner finds that a bush fire hazard exists on a neighbourhood safer place (other than a place owned or occupied by a public authority) or land (other than land owned or occupied by a public authority) adjoining a neighbourhood safer place, the Commissioner may:
  - (a) direct a hazard management officer to serve a notice under section 66 on the owner or occupier of the place or adjoining land if no bush fire hazard reduction notice has been served on the owner or occupier of the place or land, or
  - (b) subject to sections 67 and 68, exercise his or her powers under section 70 in respect of the place or land if a bush fire hazard reduction notice has been served on the owner or occupier of the place or land.
- (4) If the Commissioner finds that a bush fire hazard exists on a neighbourhood safer place owned or occupied by a public authority or land owned or occupied by a public authority adjoining a neighbourhood safer place, 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.
- (5) 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.

**62E Removal of designation as neighbourhood safer places**

- (1) The Commissioner may, by notice in writing to the owner and occupier of a place, remove the designation of a place as a neighbourhood safer place, but only if:
  - (a) the Commissioner is satisfied that the land is no longer required as a neighbourhood safer place, or
  - (b) in the case of a place other than a place owned or occupied by a public authority—the owner or occupier of the place applies, in writing, to the Commissioner to have the designation removed.
- (2) If the owner or occupier of a neighbourhood safer place applies to have the designation removed, the Commissioner is to remove the designation no later than 12 months after receiving the application.
- (3) A place ceases to be a neighbourhood safer place when:
  - (a) the designation is removed by the Commissioner, or
  - (b) the owner or occupier who consented to the place being a neighbourhood safer place ceases to be the owner or occupier of the place.

**62F Register of neighbourhood safer places**

- (1) The Commissioner is to keep a register of all neighbourhood safer places.
- (2) A copy of the register is to be published on the NSW Rural Fire Service website.

**62G Neighbourhood safer places may be signposted**

- (1) The Commissioner may cause a signpost to be erected on a neighbourhood safer place for the purpose of identifying the place as a neighbourhood safer place.
- (2) A person must not, without reasonable excuse, damage, remove or interfere with a signpost referred to in subsection (1) that is located on a neighbourhood safer place.

Maximum penalty: 10 penalty units.

**62H Protection from personal liability for owners of neighbourhood safer places**

- (1) The owner or occupier of a neighbourhood safer place is not liable for the death of, or injury to, any person arising from the use of the neighbourhood safer place as a shelter from a bush fire.
- (2) Any liability for the death of, or injury to, a person arising from the use of a neighbourhood safer place as a shelter from a bush fire that would, but for subsection (1), attach to the owner or occupier of land attaches instead to the Crown.

## 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 and vegetation clearing 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:
  - (i) officer or member of a rural fire brigade, or
  - (ii) fire control officer or deputy fire control officer, or
  - (iii) employee of the Department of Industry, Skills and Regional Development, or
  - (iv) employee of the Office of Environment and Heritage.

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.

### 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) unless the work required by the notice:
  - (a) is otherwise authorised to be carried out, or
  - (b) is not required to be authorised to be carried out under this or any other Act.
- (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.
- (10) This section does not apply in relation to bush fire hazard reduction work that:
- (a) the Commissioner has determined is to be carried out in accordance with section 73 (1) (d), or
  - (b) comprises the establishment or maintenance of a fire trail.

**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.

## **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 costs 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 74E (2), or
  - (d) if the Commissioner serves a notice addressed (by the description of "Owner" or "Occupier") to the owner or occupier of the land specifying:
    - (i) the circumstances in which, conditions under which and manner and time within which the bush fire hazard reduction work is to be carried out, and
    - (ii) 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,

and after reasonable inquiry conducted over a period of not less than 7 days, the Commissioner cannot ascertain the identity and location of the owner or occupier.

**Note—**

The bush fire hazard reduction work can be carried out by the Commissioner on land with the consent of the owner or occupier or following notice to the owner or occupier under section 66, if the identity and location of the owner or occupier is ascertained.

- (2) Any costs incurred by the Commissioner in carrying out work under subsection (1) (a)–(c) (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 public authority that is responsible for managed land must report to the Commissioner not later than 1 month after the end of the financial year on its activities to reduce bush fire hazards on the managed land during the preceding financial year.
  - (1A) In addition to the annual report, each public authority that is responsible for managed land must report to the Commissioner not later than 7 days after the end of each month on:
    - (a) its activities to reduce bush fire hazards on the managed land during the preceding month, and
    - (b) if any activities planned for that month were not carried out, the reasons for that omission.
- (2) Any such 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 subsection (1) 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 refer any complaint made to it under this Division to the Commissioner within 14 days of receipt of the complaint.
- (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 must investigate the bush fire hazard complaint as soon as practicable after it is received.
- (2) The Commissioner may investigate the complaint as the Commissioner thinks fit.
- (3) Without limiting subsection (2), the Commissioner (or a person authorised by the



Commissioner) 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 may decline to deal with a complaint, or dismiss a complaint, that the Commissioner considers to be vexatious, misconceived, frivolous or lacking in substance.
- (5) The Commissioner is to notify the complainant if the Commissioner declines to deal with, or dismisses, the complaint.

**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.

**74G, 74H (Repealed)**

## 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 the 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 the 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**

The 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 Fire and Rescue NSW.

(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 may issue a fire permit for a purpose only if:
  - (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, or

(c) lighting a fire for the purpose does not contravene any other Act or law.

#### **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 Offences

### 99A Offences—discarding lighted cigarettes etc

- (1) A person must not, without lawful authority, discard a lighted tobacco product or match or any incandescent material (a **fire risk object**) on any land.

Maximum penalty:

- (a) except as provided by paragraph (b)—50 penalty units, or
- (b) in the case of an offence committed during a total fire ban under Division 6 in the part of the State concerned—100 penalty units.
- (2) **Driver and owner of vehicle deemed guilty** If a fire risk object is, in contravention of subsection (1), discarded from a motor vehicle, or from a trailer attached to a motor vehicle, the following are taken to be guilty of an offence under that subsection:
- (a) in the case of a fire risk object discarded from a motor vehicle—the driver of the motor vehicle,
- (b) in the case of a fire risk object discarded from a motor vehicle—the owner of the motor vehicle,
- (c) in the case of a fire risk object discarded from a trailer attached to a motor vehicle—the owner of the trailer.

- (3) **Only one person liable** Subsection (2) does not affect the liability of the actual offender but, if a penalty has been imposed on or recovered from any person in relation to the offence (whether the actual offender, the driver or the owner), no further penalty may be imposed on or recovered from any other person. In this subsection, **penalty** includes a penalty under a penalty notice.
- (4) **Exception for passenger vehicles** Subsection (2) does not apply if:
- (a) the motor vehicle is a bus, taxi or other public transport vehicle and is being used at the time to convey a public passenger, and
  - (b) the fire risk object was discarded by that passenger.
- (5) **Exception for stolen vehicles** Subsection (2) (b) does not apply if the motor vehicle was at the time a stolen motor vehicle or a motor vehicle illegally taken or used.
- (6) **Exception for stolen trailers** Subsection (2) (c) does not apply if the trailer was at the time a stolen trailer or a trailer illegally taken or used.
- (7) **Exception for owner when not driver** Subsection (2) (b) or (c) does not apply if the owner was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time and:
- (a) gives notice in accordance with subsection (9) of the name and address of the person who was in charge of the motor vehicle at the relevant time, or
  - (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- A notice under this subsection is, in proceedings against the person named in the notice for an offence under subsection (1), evidence that the person was driving the motor vehicle at the relevant time.
- (8) **Exception for driver when not offender** Subsection (2) (a) does not apply if the driver:
- (a) gives notice in accordance with subsection (9) of the name and address of the passenger in the motor vehicle who discarded the fire risk object, or
  - (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the driver did not discard the fire risk object and did not know, and could not with reasonable diligence have ascertained, the name and address of the passenger who discarded the fire risk object.

A notice under this subsection is, in proceedings against the person named in the notice for an offence under subsection (1), evidence that the person discarded the fire risk object from the motor vehicle.

(9) **Notice given by owner or driver** A notice for the purposes of subsection (7) (a) or (8) (a) must be verified by statutory declaration and:

- (a) if a penalty notice has been given for the offence—the notice must be given to an officer specified in the penalty notice for the purpose within 28 days after service of the penalty notice, or
- (b) if a court is dealing with the offence—the notice must be given to the prosecutor within 28 days after service of the summons or court attendance notice for the offence.

(10) **Definitions** In this section:

**motor vehicle** and **owner** of a motor vehicle have the same meanings as in the [Road Transport Act 2013](#).

## 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.

(1A) In determining the penalty for an offence under subsection (1) that was committed when a total fire ban under Division 6 was in force in the part of the State in which the fire was set or was permitted to escape, the court must take the total fire ban into account as an aggravating factor.

### Note—

Section 21A (2) of the [Crimes \(Sentencing Procedure\) Act 1999](#) sets out other aggravating factors to be taken into account when determining the appropriate penalty for an offence.

(1B) 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,

knowing that a total fire ban under Division 6 is in force in the part of the State in which the fire is set or permitted to escape, is guilty of an offence.

Maximum penalty: 1,200 penalty units or imprisonment for 7 years, or both.

(1C) If on the trial of a person for an offence under subsection (1B) the trier of fact is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), the trier of fact may find the accused not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

(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 acquired for the purpose of dedication, under the [Forestry Act 2012](#) or in respect of which the Forestry Corporation has obtained the benefit of a forestry right within the meaning of Division 4 of Part 6 of the [Conveyancing Act 1919](#), 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, Rail Corporation New South Wales, Transport Infrastructure Development Corporation, Rail Infrastructure Corporation or Roads and Maritime Services, 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
  - (a1) does not include the carrying out of any development excluded from the operation of this section by the regulations, 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) seniors housing within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*,
  - (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 Act 2003*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act only 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) A person is not guilty of an offence under any of the following Acts merely because of the carrying out of bush fire hazard reduction work in accordance with subsection (4):
  - (a) *Coastal Protection Act 1979*,
  - (b) *Environmental Planning and Assessment Act 1979*,
  - (c) *Fisheries Management Act 1994*,
  - (d) *Heritage Act 1977*,
  - (e) *Native Vegetation Act 2003*,
  - (f) *Protection of the Environment Operations Act 1997*,
  - (g) *Soil Conservation Act 1938*.



**Note—**

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

- (6) Bush fire hazard reduction work carried out in accordance with a bush fire hazard reduction notice on a neighbourhood safer place or land adjacent to a neighbourhood safer place is deemed to be emergency bush fire hazard reduction work for the purposes of this section.

**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:
  - (a) the local authority of the area in which the land is situated, or
  - (b) the Commissioner.
- (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.
- (3) If more than one bush fire hazard reduction certificate would otherwise be required for any bush fire hazard reduction work to be carried out on several parcels of adjoining land, a certifying authority in respect of any of that land is the **certifying authority** for the whole of the land, if the other relevant issuing or certifying authorities agree.

**Note—**

The Commissioner is, under subsection (2), a certifying authority for any land on which bush fire hazard reduction work is carried out by the Commissioner and accordingly the Commissioner can certify a single

certificate without the need to obtain the agreement of other authorities.

**100F Issue 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, and

(d) specify the period for which the bush fire hazard reduction certificate operates.

- (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 public authority, a local authority or the Commissioner 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.

- (1A) In the case of a single bush fire hazard reduction certificate certified by a certifying authority in respect of several parcels of adjoining land, as referred to in section 100E (3), a reference in subsection (1) to the certifying authority carrying out bush fire hazard reduction work on land is taken to include a reference to any authority or person carrying out the work on any of the land.

- (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, and

(c) specify the period for which the bush fire hazard reduction certificate operates.

#### **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 on the date endorsed on the certificate and operates for the period specified in 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 Secretary of the Department of Planning and Environment,
  - (b) the Chief Executive of the Office of Environment and Heritage,
  - (c) the Nature Conservation Council of New South Wales,
  - (d) the NSW Farmers' Association,
  - (e) the Local Government and Shires Association of New South Wales,
  - (f) the Secretary of the Department of Industry, Skills and Regional Development,
  - (g) the Commissioner of Fire and Rescue NSW,
  - (h) the Forestry Corporation of New South Wales,
  - (i) the Environment Protection Authority.
- (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 Climate Change and 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.

## **Division 9 Vegetation clearing work**

### **100P Definitions**

In this Division:

**10/50 Vegetation Clearing Code of Practice** means a code of practice under section 100Q, as in force from time to time, relating to the clearing of vegetation on land situated in a 10/50 vegetation clearing entitlement area.

**10/50 vegetation clearing entitlement area** means land determined by the Commissioner to be a 10/50 vegetation clearing entitlement area and identified on a map published on the NSW Rural Fire Service website.

**high-risk facility** means a child care centre, school or hospital within the meaning of the Standard Instrument.

**farm shed** means a building that:

- (a) is erected on land that is in one of the following land use zones (or in the case of land that is zoned under an environmental planning instrument other than an instrument made in the form of a Standard Instrument—a land use zone that, having regard to the objectives of the zone, has the substantial character of any of the following land use zones):
  - (i) RU1 Primary Production,

- (ii) RU2 Rural Landscape,
  - (iii) RU4 Primary Production Small Lots, and
- (b) has a floor area of more than 50 square metres, and
- (c) is used by a primary producer wholly or substantially for a purpose associated with carrying on one or more of the following primary production businesses:
- (i) the cultivation or propagation of plants or fungi, or their products (including seeds, spores, fruits, grain, flowers, vegetables, tobacco, bulbs and oils), but not a plant nursery,
  - (ii) bee keeping or aquaculture (within the meaning of the *Fisheries Management Act 1994*),
  - (iii) the rearing or grazing of livestock, including horses, cattle, sheep, pigs, goats or poultry or other birds, for the purpose of selling the livestock or products derived from the livestock, and
- (d) if it is used for processing products—is used for processing products a majority of which are produced on the property on which the building is erected, and
- (e) is not a moveable building.

**residential accommodation** means:

- (a) residential accommodation within the meaning of the Standard Instrument, and
- (b) tourist and visitor accommodation within the meaning of the Standard Instrument, and
- (c) caravans installed in caravan parks within the meaning of the Standard Instrument, and
- (d) manufactured homes installed in manufactured home estates within the meaning of the *Local Government Act 1993*.

**Standard Instrument** means the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

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

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

**100Q The 10/50 Vegetation Clearing Code of Practice**

- (1) The Commissioner is to prepare a 10/50 Vegetation Clearing Code of Practice for the carrying out of vegetation clearing work on land situated within a 10/50 vegetation clearing entitlement area pursuant to section 100R. The Code must (without limitation) deal with the following:
  - (a) the type of vegetation that can and cannot be cleared, including the types of trees,
  - (b) the circumstances in which vegetation should be pruned and not entirely removed,
  - (c) use of herbicides,
  - (d) managing soil erosion and landslip risks,
  - (e) protection of riparian buffer zones,
  - (f) protection of Aboriginal and other cultural heritage,
  - (g) protection of vegetation that the owner of the land on which vegetation clearing work may be carried out is under a legal obligation to preserve by agreement or otherwise.
- (2) The Commissioner may amend the 10/50 Vegetation Clearing Code of Practice from time to time.
- (3) The 10/50 Vegetation Clearing Code of Practice prepared under this section, including any amendment of the Code:
  - (a) must be published in the Gazette, and
  - (b) takes effect on the day on which it is published in the Gazette.
- (4) The 10/50 Vegetation Clearing Code of Practice is to be made publicly available, as soon as practicable after publication in the Gazette:
  - (a) by publishing it on the NSW Rural Fire Service website, and
  - (b) by providing it as a hardcopy, on request and without charge, to any owner of land situated within a 10/50 vegetation clearing entitlement area.

**100R Carrying out vegetation clearing work**

- (1) This section applies to the following buildings only:
  - (a) a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility (but not if there is no lawful authority for the use of those rooms as habitable rooms),



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

**Note—**

For example, a tree on a person's land that is more than 10 metres away from the person's home but that is within 10 metres of the homes of 2 neighbours could be removed under this section only if both of those neighbours provide written consent.

- (6) Vegetation clearing work is not authorised to be carried out under this section on land unless it is carried out by or with the authority of the owner of the land.
- (7) Vegetation clearing work is not authorised to be carried out under this section unless it is carried out in accordance with the 10/50 Vegetation Clearing Code of Practice.
- (8) The Commissioner may prescribe in the 10/50 Vegetation Clearing Code of Practice whether, for the purposes of this section, particular rooms of a building are or are not habitable and what is or is not an external wall of a building.
- (9) A person is not guilty of an offence under any of the following Acts merely because of the carrying out of vegetation clearing work in accordance with this section:

- (a) *Coastal Protection Act 1979*,
- (b) *Environmental Planning and Assessment Act 1979*,
- (c) *Fisheries Management Act 1994*,
- (d) *Heritage Act 1977*,
- (e) *Native Vegetation Act 2003*,
- (f) *Protection of the Environment Operations Act 1997*,
- (g) *Soil Conservation Act 1938*.

(10) In this section:

**lawful authority** means development consent or other lawful authority under the *Environmental Planning and Assessment Act 1979*.

#### **100S Review of Division**

- (1) The Minister is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives. The Minister may engage persons to assist in the review.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of commencement of this Division.
- (3) The Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

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

### **Division 1 Preliminary**

#### **101 Definitions**

In this Part:

**assessment notice** means an assessment notice given to a relevant council under section 112.

**relevant council** means a council of an area that is wholly or partly outside a fire district.

**rural fire brigade contribution** means an amount payable under this Part for a financial year by a relevant council.

**rural fire brigade contribution instalment**—see section 110A.

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

of:

- (a) expenditure incurred during the period in the exercise of the Commissioner's functions under this Act, and
- (b) 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, and
- (c) (Repealed)

**rural fire brigade funding amount**—see section 108.

**rural fire brigade funding target**—see section 103.

**State Revenue Commissioner**—means the Chief Commissioner of State Revenue under the [Taxation Administration Act 1996](#).

## 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.
  - (1A) There is to be paid into the Fund:
    - (a) all contributions payable by the Treasurer to the Fund under this Part, and
    - (b) any other money appropriated by Parliament for payment into the Fund, and
    - (c) the proceeds of investment of money in the Fund, and
    - (d) any other money required by law to be paid into the Fund.
  - (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), (4) (Repealed)

## Division 3 Estimates of rural fire brigade expenditure

### 103 Rural fire brigade funding target

- (1) Before 31 March in each year or a later date agreed to by the Treasurer, the Minister must:
  - (a) prepare and, subject to the Treasurer's agreement, adopt a funding target for the NSW Rural Fire Service for the next financial year (the **rural fire brigade funding target**), and
  - (b) prepare and adopt an estimate of the amount of the rural fire brigade funding target for each rural fire district for the next financial year.
- (2) The Minister is to calculate the rural fire brigade funding target for the financial year using the following formula:

$$FT_t = EE_t + (AE_{t-2} - EE_{t-2})$$

where:

**$FT_t$**  is the rural fire brigade funding target for the financial year (represented by "t").

**$EE_t$**  is the estimated rural fire brigade expenditure for the financial year.

**$AE_{t-2}$**  is the actual rural fire brigade expenditure for the financial year that commenced 2 years before the period "t" (represented as "t-2").

**$EE_{t-2}$**  is the estimated rural fire brigade expenditure for the financial year that commenced 2 years before the period "t" (represented as "t-2").

- (3) To avoid doubt, if  $AE_{t-2} - EE_{t-2}$  is a negative amount, that amount is subtracted from  $EE_t$ .
- (4) The estimate of rural fire brigade expenditure for a financial year is to be reduced, as necessary, by the amount it is estimated will be paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (5) The actual rural fire brigade expenditure for a financial year is to be reduced, as necessary, by the amount paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (6) Without limiting subsections (4) and (5), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the rural fire brigade funding target in respect of:
  - (a) certain money paid into the Fund, or
  - (b) certain amounts it is estimated will be paid to the NSW Rural Fire Service for the

financial year.

- (7) In determining the amount of the rural fire brigade funding target for each rural fire district, the Minister may apportion the total estimated expenditure between rural fire districts in the way the Minister thinks fit.

#### **104 Relevant councils to give information to Minister**

To enable the Minister to prepare the rural fire brigade funding target, a relevant council, rural fire brigade or fire control officer must, at the times and in the way required by the Commissioner, give the Commissioner any of the following information required by the Commissioner:

- (a) information relating to the rural fire brigades or other fire fighting personnel,
- (b) information relating to the fire fighting apparatus of the rural fire brigades or other fire fighting personnel,
- (c) information about any other matter relating to the organisation of the rural fire brigades or other fire fighting personnel.

#### **105 Commissioner to assist**

- (1) To assist the Minister in preparing and adopting the rural fire brigade funding target for a financial year, the Commissioner must prepare and give to the Minister a written report and recommendations about rural fire brigade expenditure for the year and the estimated expenditure for each rural fire district and each relevant council.
- (2) The Minister must consider the Commissioner's report and recommendations in preparing the estimates.

### **Division 4 Treasurer to contribute to Fund**

#### **106 Treasurer to pay contributions**

- (1) The Treasurer is to pay an annual contribution to the Fund for each financial year.
- (2) The annual contribution payable is the rural fire brigade funding amount.
- (3) The Treasurer may direct the payment of additional contributions to the Fund, subject to any terms and conditions approved by the Treasurer.
- (4) The annual contribution, and any additional contributions, are to be paid out of money provided by Parliament.

#### **107 Contribution payable in instalments**

The annual contribution is to be paid by the Treasurer in instalments on or before the following dates:

- (a) 1 August,
- (b) 1 October,
- (c) 1 January,
- (d) 1 April.

### **108 Rural fire brigade funding amount**

- (1) As soon as practicable after the commencement of each financial year, the Minister must prepare and, subject to the Treasurer's agreement, adopt an update of rural fire brigade funding for the financial year (the **rural fire brigade funding amount**).
- (2) The rural fire brigade funding amount is the estimated rural fire brigade expenditure for the financial year (that is,  $EE_t$  in the rural fire brigade funding target for the financial year), adjusted and updated in accordance with this section.
- (3) Estimated rural fire brigade expenditure is to be adjusted for the purposes of the rural fire brigade funding amount so that the estimate:
  - (a) is reduced or increased, as appropriate, for any difference between the estimate of rural fire brigade expenditure for the financial year, as adopted in the rural fire brigade funding target, and an updated estimate of that amount, and
  - (b) is reduced or increased, as appropriate, for any difference between the rural fire brigade funding amount for the previous financial year and the actual amount of rural fire brigade expenditure for that financial year.
- (4) Without limiting subsection (3), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the rural fire brigade funding amount in respect of:
  - (a) any surplus in the Fund at the end of the previous financial year, or
  - (b) certain money paid into the Fund, or
  - (c) certain amounts it is estimated will be paid to the NSW Rural Fire Service for the financial year.
- (5) An adjustment to the estimated rural fire brigade expenditure that is made under this section has no effect on, and is not to be used in the calculation of, the rural fire brigade funding target for a financial year.

## **Division 5 Councils to pay rural fire brigade contribution**

### **109 Council to pay rural fire brigade contribution**

A relevant council is to pay to the State Revenue Commissioner a rural fire brigade

contribution for each financial year.

### **110 Amount of contribution**

- (1) The amount of the rural fire brigade contribution is the amount determined by the Minister for each relevant council.
- (2) The Minister is to determine the contribution payable by a relevant council on the basis of the rural fire brigade funding target for each rural fire district.
- (3) The contribution payable by relevant councils for each rural fire district is 11.7% of the rural fire brigade funding target applicable to the rural fire district.
- (4) The contribution to be paid for a rural fire district is to be paid by the relevant council or councils of an area the whole or part of which is included in the rural fire district.
- (5) In determining the contribution payable by a relevant council, the Minister may apportion the rural fire brigade funding target for rural fire districts between councils of an area, the whole or part of which are included in that district, in the way the Minister thinks fit.
- (6) A relevant council or an officer of a relevant council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the council's rural fire brigade contribution.

### **110A Contribution payable in instalments**

A rural fire brigade contribution payable by a relevant council for a financial year is payable in 4 instalments (each of which is a ***rural fire brigade contribution instalment***).

### **110B Minister to advise State Revenue Commissioner**

The Minister is to advise the State Revenue Commissioner, by the date of 15 April that occurs immediately before the commencement of a financial year, of:

- (a) the amount of the rural fire brigade contribution payable by each relevant council for the financial year, and
- (b) the amount of the rural fire brigade contribution instalments payable by each relevant council.

## **Division 6 Payment of contributions by relevant councils**

### **111 When instalments are to be paid**

A relevant council must, in accordance with an instalment notice given to the council by the State Revenue Commissioner, pay to the State Revenue Commissioner a rural fire brigade contribution instalment on or before each of the following days in a financial year:

- (a) 30 September,
- (b) 31 December,
- (c) 31 March,
- (d) 30 June.

### **112 Annual assessment notice**

- (1) The State Revenue Commissioner must give to each relevant council that is required to pay a rural fire brigade contribution for a financial year an assessment notice that sets out the amount of the rural fire brigade contribution payable by the relevant council for that year.
- (2) The assessment notice must be given to the relevant council by 30 April in the year before the financial year for which the rural fire brigade contribution is payable.

### **113 Instalment notices**

The State Revenue Commissioner must give to each relevant council that is required to pay a rural fire brigade contribution instalment a written notice (an **instalment notice**) that specifies:

- (a) the amount of the rural fire brigade contribution instalment payable under the instalment notice, and
- (b) the date by which the rural fire brigade contribution instalment is payable.

### **113A Rural fire brigade contribution is debt payable to State Revenue Commissioner**

- (1) If the whole or part of a rural fire brigade contribution payable by a relevant council is not paid to the State Revenue Commissioner as required, the unpaid amount is recoverable by the State Revenue Commissioner as a debt in a court of competent jurisdiction.
- (2) The applied provisions of the [Taxation Administration Act 1996](#) apply in relation to the contribution payable by a relevant council under this Act as if Part 5 of this Act were a taxation law and the contribution were a tax payable by a council under a taxation law.
- (3) The **applied provisions** of the [Taxation Administration Act 1996](#) are the following provisions of that Act:
  - (a) Division 1 (Interest) of Part 5,
  - (b) sections 50 and 55 (which prohibit the giving of false and misleading information),
  - (c) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part



9,

(d) sections 114, 115, 116, 118, 119 and 120,

(e) any provisions that are relevant to the interpretation of the above provisions.

- (4) The applied provisions apply to an assessment made by the State Revenue Commissioner under this Act in the same way as they apply to an assessment under that Act.
- (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a rural fire brigade contribution or to the exercise of any of the State Revenue Commissioner's functions in respect of rural fire brigade contributions (including under the applied provisions of the *Taxation Administration Act 1996*).

#### **114 How contribution is to be funded**

- (1) The rural fire brigade contribution payable by a relevant council is to be paid out of the council's consolidated fund.
- (2) Funds of a relevant council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards the payment of rural fire brigade contributions by the relevant council unless approved by the Minister.

#### **114A Exemptions**

- (1) The Governor may, on the recommendation of the Minister, exempt a relevant council from making a rural fire brigade contribution if the Governor is satisfied the danger from bush fires in the council's area is negligible.
- (2) If a relevant council has been exempted under this section from making rural fire brigade contributions, no payment is to be made in or towards the purpose specified in section 118 for the benefit of the council's area.

#### **114B Certificate evidence**

A certificate signed by the Minister that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the rural fire brigade funding target, as adopted by the Minister under this Part,
- (b) the rural fire brigade funding target applicable to a rural fire district, as adopted by the Minister under this Part,
- (c) the amount of the rural fire brigade contribution determined by the Minister for a specified council for the financial year.

## **Division 6A**

### **115-117E (Repealed)**

## **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.

### **118A Management of unspent funds**

Any money remaining to the credit of the Service at the end of a financial year, other than money that is required to be paid to the credit of the Fund, is to be paid into the Service's operating account.

### **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 (Repealed)**

## **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) 2 persons appointed by the Minister on the recommendation of the Local Government and Shires Association of New South Wales,
  - (d) (Repealed)
  - (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.
- (1A) A matter or thing done or omitted to be done by the Forestry Corporation or a person acting under the authority of the Forestry Corporation 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 Act, subject the Forestry Corporation, or such person personally, 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 Fire and Rescue NSW, the Chief Executive of the Office of Environment and Heritage, the Forestry Corporation and any person acting under the authority of any such person or body,
  - (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.

### **131A Power to require name and address**

- (1) An authorised officer who intends to serve a penalty notice on a person under section 131, or a police officer who has reason to suspect that a person is committing an offence against this Act or the regulations, may direct the person to state the person's full name and residential address.

- (2) A person must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum penalty: 5 penalty units.

- (3) A person is not guilty of an offence under this section unless the authorised officer or police officer (as the case may be) explained to the person, when giving the direction, that failure to comply with the direction is an offence.
- (4) An authorised officer or police officer may request a person who is required under this section to state the person's full name and residential address to provide evidence of the correctness of the name and address if the officer reasonably suspects the stated name or address is false.

### **132 Powers of police officers to give directions**

- (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) (Repealed)

(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, without reasonable excuse, 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 (other than section 100 (1) or (1B)) or the regulations are to be disposed of summarily before the Local Court.
- (2) Chapter 5 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) or (1B).
- (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 6 of the *Government Sector Employment Act 2013*, 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) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to 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 (Repealed)**

## **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

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*, but only to the extent that it amends this Act

*Rural Fires Amendment Act 2009*

*Emergency Services Legislation Amendment (Finance) Act 2009*, but only to the extent it amends this Act

any other Act that 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.

## **Part 6 Provisions consequent on enactment of Rural Fires Amendment Act 2009**

### **24 Definition**

In this Part:

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

### **25 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.

### **26 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.

## **Part 7 Provisions consequent on enactment of Rural Fires Amendment Act 2014**

### **27 Definition**

In this Part:

**amending Act** means the *Rural Fires Amendment Act 2014*.

### **28 Application of amendments**

(1) The amendments made to section 99A by the amending Act do not apply to an



offence under that section committed before the commencement of the amending Act.

- (2) Section 100 (1A) (as inserted by the amending Act) does not apply to an offence under section 100 (1) committed before the commencement of the amending Act.

## **Part 8 Provisions consequent on enactment of [Fire and Emergency Services Levy Act 2017](#)**

### **29 Definitions**

In this Part:

**amending Act** means the [Fire and Emergency Services Levy Act 2017](#).

**final contribution**—see clause 32.

**final return**—see clause 31.

**final year of the scheme** means the financial year commencing on 1 July 2016.

**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.

**insurer loading**—see clause 32.

**Monitor** means the Emergency Services Levy Insurance Monitor appointed under the [Emergency Services Levy Insurance Monitor Act 2016](#).

**relevant insurance** means insurance against loss of or damage to property in the State under the classes of policies specified in Schedule 2, as in force immediately before its repeal by the [Fire and Emergency Services Levy Act 2017](#).

**total amount**, in relation to premiums, includes any brokerage or commission paid or due to be paid or allowed to be paid on:

- (a) the premiums, or
- (b) bonuses or return premiums allowed in respect of policies of insurance the subject of the premiums, 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 another insurance company in the State,

but does not include duty payable under the *Duties Act 1997* in respect of policies of insurance the subject of the premiums.

### **30 Amendments have effect from 1 July 2017**

- (1) The amendments to Part 5 of this Act made by the amending Act apply in respect of the financial year commencing on 1 July 2017 and subsequent financial years.
- (2) Subject to this Part, the amendments do not affect any liability for a rural fire brigade contribution for a financial year commencing before 1 July 2017 and Part 5, and Schedule 2, as in force immediately before the amendments made to this Act by the amending Act, continue to apply in respect of any such financial year as if the amendments had not been made.

### **31 Final returns to be provided by insurance companies**

- (1) An insurance company must, by 30 September 2017 or another date specified by the Commissioner by notice published in the Gazette, give to the Commissioner:
  - (a) a return in the form approved by the Commissioner showing the total amount of premiums received by or due to the company for the previous financial year for relevant insurance (a **final return**), and
  - (b) a certificate from an auditor that relates to the return and complies with subclause (2).
- (2) The certificate from the auditor must:
  - (a) be in the form approved by the Commissioner, and
  - (b) be from an auditor who is:
    - (i) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
    - (ii) a person not resident in the State who has qualifications that, in the Commissioner's opinion, are appropriate for the giving of the certificate.
- (3) An insurance company is guilty of an offence if it:
  - (a) fails to give the Commissioner a return and certificate as required by this clause, or
  - (b) gives the Commissioner a return that is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

### 32 Calculation of final contribution

- (1) The Commissioner must, by the end of 30 November 2017, calculate a final contribution for each liable insurance company.
- (2) A **final contribution** is the total rural fire brigade contribution that would have been payable by the insurance company for the final year of the scheme if the contribution had been calculated on the basis of:
  - (a) the premium total provided by the insurance company in its final return, and
  - (b) the premium totals provided by all insurance companies in their final returns.
- (3) If an insurance company fails to provide a final return to the Commissioner within the time required under clause 31, or any further time (not exceeding 30 days) allowed by the Commissioner:
  - (a) the Commissioner may estimate the premium total for that insurance company using any information available to the Commissioner (including information from previous returns, if any), and
  - (b) that estimate is taken to be the premium total provided by the insurance company in its final return.
- (4) If the Commissioner estimates the premium total for an insurance company under subclause (3), the final contribution payable by that insurance company is that estimate plus an insurer loading of 50% of that estimate.
- (5) In this clause:

**liable insurance company** means an insurance company liable for a rural fire brigade contribution in the final year of the scheme.

**premium total** means the total amount of premiums of an insurance company that are subject to a rural fire brigade contribution.

### 33 Final assessment

- (1) The Commissioner must give to each insurance company that made or is required to make a rural fire brigade contribution for the final year of the scheme a final assessment notice for that year.
- (2) The final assessment notice must state the following:
  - (a) the final contribution payable by the insurance company for the final year of the scheme,
  - (b) the amount of any rural fire brigade contribution already paid by the insurance company for that financial year including, if paid in instalments, the total of all

instalments already paid (the **total contribution already paid**),

(c) if the final contribution payable by the insurance company exceeds the total contribution already paid:

(i) the difference between those amounts (a **contribution deficit**), and

(ii) the date by which the contribution deficit must be paid to the Commissioner (being a date that is no earlier than 30 days after the assessment notice is given to the insurance company),

(d) if the total contribution already paid exceeds the final contribution payable by the insurance company—the difference between those amounts (a **contribution surplus**).

(3) If the assessment notice specifies a contribution deficit, the insurance company must pay the contribution deficit to the Commissioner.

(4) The contribution deficit is payable to the Commissioner by the date for payment specified in the assessment notice or any later date permitted by the Commissioner.

(5) If an insurance company fails to pay a contribution deficit in full by the date on which it is payable to the Commissioner, the applied provisions of the [Taxation Administration Act 1996](#) apply to the unpaid amount as if the unpaid amount were a tax and this Act were a taxation law.

(6) The **applied provisions** of the [Taxation Administration Act 1996](#) are the following provisions of that Act:

(a) Division 1 (Interest) of Part 5,

(b) Division 2 (Penalty tax) of Part 5 (except sections 28–30),

(c) any provisions that are relevant to the interpretation of the above provisions.

(7) For the purpose of the applied provisions of the [Taxation Administration Act 1996](#):

(a) a tax default is taken to occur if the contribution deficit is not paid in full by the date on which it is payable, and

(b) a reference to the Chief Commissioner is to be read as a reference to the Commissioner under this Act.

(8) If a contribution deficit, or any part of a contribution deficit, is not paid in full by an insurance company to the Commissioner by the date on which it is payable, the unpaid amount and any interest and penalty tax payable on the unpaid amount:

(a) constitutes a debt due and payable to the Commissioner, and

(b) may be recovered in a court of competent jurisdiction by the Commissioner.

(9) A contribution deficit is to be paid into the Fund.

(10) If the assessment notice specifies a contribution surplus, the Commissioner is to refund the amount of the contribution surplus to the insurance company no later than 30 June 2018.

(11) A refund is to be paid from the Fund.

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

(1) The Commissioner may notify a relevant owner that the owner is responsible for an appropriate proportion of any contribution deficit that is required to be paid by a foreign insurance company that holds a risk in respect of the owner's property.

(2) The appropriate proportion is the proportion that the premiums paid by the relevant owner for the final year of the scheme bears to the premium total provided (or taken under this Part to have been provided) by the insurance company in its final return.

(3) Any insurer loading is not to be included in the calculation of the contribution deficit under this clause.

(4) If the relevant owner fails to pay the appropriate proportion of the final contribution within 30 days after it is due, the owner is guilty of an offence.

Maximum penalty: 10 penalty units.

(5) An amount paid by a person under this clause may be deducted from any premium recoverable in the State by or on behalf of the foreign insurance company on the issue or renewal of an insurance policy on the property or may be recovered from the foreign insurance company as a debt by the person making the payment.

(6) This clause applies whether the premium concerned was received in or outside the State.

(7) In this clause:

**relevant owner** means a person who is the owner of property in respect of which a foreign insurance company has received a premium subject to a rural fire brigade contribution.

#### **35 Commissioner to make final 2-year assessment**

(1) The Commissioner must make an assessment, in relation to each insurance company that was required to make rural fire brigade contributions in the final year of the scheme or the previous financial year, of the total amount of rural fire brigade contributions payable by the insurance company for the final 2 years of the scheme (a **final 2-year assessment**).

- (2) The final 2-year assessment is to consist of the total of the following amounts, as assessed by the Commissioner:
  - (a) the final contribution payable by the insurance company for the final year of the scheme (excluding any insurer loading payable by the insurance company),
  - (b) the total of rural fire brigade contributions payable by the insurance company for the financial year commencing on 1 July 2015.
- (3) The Commissioner is to give the final 2-year assessment to the Monitor.
- (4) The Commissioner must give to the Monitor a final 2-year assessment in relation to an insurance company within 30 days after making an assessment of the final contribution payable by the insurance company for the final year of the scheme.

### **36 Certificate evidence**

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the final contribution payable by an insurance company,
- (b) the final 2-year assessment for an insurance company,
- (c) the amount of any contribution deficit,
- (d) the amount of any contribution surplus.

### **37 Transitional provision for adjusted estimates by Minister**

A reference in Part 5 of this Act, as amended by the amending Act, to contributions made to the New South Wales Rural Fire Fighting Fund by the Treasurer includes a reference to rural fire brigade contributions made for the financial year commencing on 1 July 2016 or a previous financial year.

## **Schedule 4 (Repealed)**

### **Dictionary**

#### **Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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 and fire trails 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 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.

**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) Fire and Rescue NSW,
- (c) the Office of Environment and Heritage,
- (d) the Forestry Corporation,
- (e) any other body prescribed by the regulations for the purposes of this definition.

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

**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.

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

**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) a State forest, flora reserve or timber reserve within the meaning of the [Forestry Act 2012](#), or acquired for the purpose of dedication or reservation under that Act, or in respect of which the Forestry Corporation has obtained the benefit of a forestry right within the meaning of Division 4 of Part 6 of the [Conveyancing Act 1919](#), 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, Rail Corporation New South Wales, Transport Infrastructure Development Corporation 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.

**neighbourhood safer place** means land or a building designated as a neighbourhood safer place under section 62C.

**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 Development Act 2015](#), 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) a Public Service agency, 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,

and in Part 4 includes an authorised network operator under the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#).

**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.

**volunteer rural fire fighters**—see section 8 (3).

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