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Rural Fires Amendment (Vegetation Clearing) Bill 2014

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1. Introduction

In 2013, NSW experienced its warmest winter on record. Coupled with a lack of substantial rainfall, these conditions resulted in the declaration of the official bush fire danger period on 1 August, two months earlier than the standard statutory date.¹ In October 2013, 1,157 bushfires burnt across NSW, including six major bushfires at Port Stephens, in the Blue Mountains, in the Southern Highlands and on the Central Coast. Two people died while fighting the fires. The fires also destroyed 222 houses, damaged a further 168 houses and burnt approximately 118,000 hectares.²

On 13 November 2013, the Government announced that it was developing new vegetation clearing rules for homeowners in designated bushfire prone areas.³ Under the rules:

... home owners adjacent to and those in close proximity to bushland will not need to get permission to clear trees within 10 metres of their homes, on their own land. They will be able to clear undergrowth and shrubs within 50 metres of their homes, on their own land.

"This will need to be done in an environmentally responsible manner but our changes will ensure the rules regarding hazard reduction are based on protecting lives and property - people before trees is the priority," Minister Hazzard said.⁴

These rules were introduced to Parliament as part of the [Rural Fires Amendment \(Vegetation Clearing\) Bill 2014](#) on 29 May 2014 (the 2014 Bill).

This e-brief sets out the current NSW regulatory regime, summarises the provisions of the Bill and canvasses some stakeholder responses to the proposed reforms. It also examines the related Victorian regulatory scheme.

2. Rural Fires Amendment (Vegetation Clearing) Bill 2014

2.1 The current regime

Vegetation clearing for the purpose of property protection is currently regulated under the [Rural Fires Act 1997](#) as a form of bush fire hazard reduction work, which is defined as:

- (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 hazard reduction work is only permissible if carried out in accordance with a **bush fire hazard reduction certificate**. Under section 100C(4) of the [Rural Fires Act 1997](#), bush fire hazard reduction work may be carried out despite any requirement for an approval, consent or other authorisation for the work made by the [Environmental Planning and Assessment Act 1979](#), [Native Vegetation Act 2003](#), the [National Parks and Wildlife Act 1974](#), the [Threatened Species Conservation Act 1995](#) or any other Act or regulatory instrument 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 the [Bush Fire Environmental Assessment Code](#).

A bush fire hazard reduction certificate cannot be used in areas that are environmentally sensitive such as critical habitat, littoral rainforests or coastal wetlands (s 100A(1)).

[Bush fire risk management plans](#) set out schemes for the reduction of bush fire hazards in an area of the State (s 54). Amongst other matters, these plans map and describe the level of bush fire risk across an area, identify community assets at risk from bush fire, determine where mechanical clearing or hazard reduction burns are conducted, and designate which areas require specialised fire protection.

2.2 The 2014 Bill

On 29 May 2014, the [Rural Fires Amendment \(Vegetation Clearing\) Bill 2014](#) was introduced to the NSW Parliament. The major reforms contained in the Bill deal with vegetation clearing work to protect property from bushfires. Developed in response to recent bushfire events, the Bill 'cuts green and red tape' so that homeowners may implement the key fire prevention goal of minimising fuel loads near their homes.⁵

Under a new Division 9 in Part 4, vegetation clearing work may only be carried out within a **10/50 vegetation clearing entitlement area** (cl 100P).

10/50 vegetation clearing entitlement areas will be determined by the Commissioner of the NSW Rural Fire Service (RFS). Homeowners will be able to determine whether their property falls within a 10/50 vegetation clearing entitlement area via a portal on the RFS website. Clause 100P defines the buildings to which the '10/50 rule' will apply. These include the following buildings as defined in the [Standard Instrument – Principal Local Environmental Plan](#)⁶:

- Residential accommodation;
- Tourist and visitor accommodation;
- Caravans installed in caravan parks; and
- High-risk facilities – child care centres, schools and hospitals.

The 10/50 rule will also apply to manufactured homes installed in manufactured home estates, within the meaning of the [Local Government Act 1993](#).

Clause 100R provides that, despite any other legislative requirement, any of the following vegetation clearing work may be conducted on land within a 10/50 vegetation clearing entitlement area by or with the authority of the land owner:

- (a) the removal, destruction (by means other than by fire) or pruning of any vegetation (including trees or parts of trees) within 10 metres,
- (b) the removal, destruction (by means other than by fire) or pruning of any vegetation, except for trees or parts of trees, within 50 metres,

of an external wall of a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility (cl 100R(1)).

All vegetation clearing work must be carried out in accordance with the **10/50 Vegetation Clearing Code of Practice**, which will be developed by the RFS Commissioner. The Code of Practice must deal with all of the following matters:

- The type of vegetation that can and cannot be cleared, including the types of trees;
- The circumstances in which vegetation should be pruned and not entirely removed;
- Use of herbicides;
- Managing soil erosion and landslip risks;
- Protection of riparian buffer zones;
- Protection of Aboriginal and other cultural heritage; and
- 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 (cl 100Q(1)).

Schedule 2 of the Bill amends sections 118A and 118D of the [National Parks and Wildlife Act 1974](#); by this means, the exemptions from the offences of harming or picking, or damaging the habitat of threatened species, endangered populations or endangered ecological communities

are expanded to include vegetation clearing work conducted under clause 100R of the Bill. The [Explanatory Note](#) to the Bill states that this exemption will be subject to compliance with the Code of Practice, which will place limitations on the clearing of any such species, populations or communities.

The Code of Practice is due to be released by the RFS before the next bushfire season. It will be placed on public exhibition for a minimum of three weeks.⁷

According to the Department of Planning and Environment, people who conduct clearing in breach of the Code of Practice may be subject to enforcement action by local councils or other government agencies.⁸

2.3 Stakeholder responses

Responses to the proposed reforms have been mixed. The RFS Commissioner has supported the reforms, stating:

We need to ensure the community is as prepared as possible for bush fire and these changes will give residents the flexibility they need to clear their property from bush fire risk.⁹

While supporting the proposal, the RFS Deputy Commissioner also noted that:

... there [is] "no silver bullet" when it comes to reducing fire risks and residents in bushfire prone areas should continue to keep in contact with their local RFS unit and maintain a bushfire survival plan.¹⁰

Several stakeholders have suggested, however, that the policy may lead to a reduction in contact between homeowners and fire experts. This is because, in practice, the current regulatory process of issuing a bush fire hazard reduction certificate generally involves contact between homeowners and fire experts in the form of a property inspection by the RFS.¹¹ It appears unlikely that this inspection will be retained under the proposed reforms.

The NSW Greens have criticised the proposal on the basis that it is inconsistent with RFS guidelines which say that removal of all vegetation can exacerbate the fire hazard, as trees and plants may provide protection from strong winds, embers and intense heat. They also argue that critical remnant bushland will be lost under this policy.¹²

On the other hand, the [Volunteer Fire Fighters Association](#) contends that the reforms do not go far enough. They recommend the adoption of the Victorian defendable spaces approach and leaving it to local fire authorities to decide what needs to be cleared.¹³

3. Victoria

3.1 Background to current regulatory regime

The Victorian [Black Saturday](#) fires of 7 February 2009 destroyed 2,133 houses, killed 173 people and injured a further 414. On 4 September 2009, the [Victoria Planning Provisions](#) were first reformed in response to the fires by the introduction of a new [Clause 52.43 – Interim measures for bushfire](#)

[protection](#). Under the new clause, any requirement of a planning permit or planning scheme which prohibited the removal, destruction or lopping of vegetation, or required the removal, destruction or lopping of vegetation to be carried out in a particular manner, did not apply to the following measures for bushfire protection:

- The removal, destruction or lopping of any vegetation within 10 metres of a building used for accommodation;
- The removal, destruction or lopping of any vegetation, except for trees, within 30 metres of a building used for accommodation;
- The removal, destruction or lopping of any vegetation for a combined maximum width of 4 metres either side of a fence on a boundary between properties in different ownership;
- Fuel reduction burning on the roadside of an existing public road; and
- The removal of fallen wood for personal use from the roadside of an existing public road.

This '10/30 rule' was introduced to clarify, simplify and extend existing planning permit exemptions to enable homeowners in bushfire risk locations to remove a reasonable amount of vegetation on their own property in preparation for the upcoming bushfire season. The amendments did not apply to municipal districts in metropolitan Melbourne and were due to expire on 31 August 2010 following reassessment in light of the Victorian Bushfire Royal Commission [final report](#).¹⁴

The Royal Commission's final report noted that there were some difficulties associated with the 10/30 rule:

- It does not permit clearing beyond 30 metres from a house or other building used for accommodation, and a vegetation clearing permit might still be needed to clear vegetation beyond 30 metres from a building to create the minimum defendable space recommended by the [Country Fire Authority](#) (CFA), if no applicable exemption from requirement of a permit for the purpose of fire protection exists in [Clause 52.17: Native Vegetation](#) of the Victoria Planning Provisions; and
- It is a one-size-fits-all solution, and there is concern about whether the rule could be used to permit widespread clearing to the detriment of important environmental or landscape values.¹⁵

It argued that amendment of the State's Wildfire Management Overlay (recommendation 39) would alleviate the problems associated with the 10/30 rule, so that no permit would be required for vegetation clearing to create minimum defendable space on existing developments. This would apply if the Overlay did the following:

- Provide that new developments be approved only if minimum defendable space can be created and continually maintained on the property, without unacceptable biodiversity costs;
- Provide that for existing developments, minimum defendable space may be created on the lot without a requirement for a permit to remove vegetation;

- Allow councils to use a schedule to the overlay to identify areas of particular environmental or landscape importance and for which a permit is required to remove vegetation to create defensible space around existing developments;
- Recognise the different levels of bushfire risk identified in the mapping of bushfire-prone areas; and
- Allow councils to use schedules to adapt the application of the overlay to different risk levels and to local conditions – including to identify areas of particular environmental or landscape importance for which a permit is needed to remove vegetation to create defensible space around existing developments.¹⁶

In the opinion of the Royal Commission, implementation of recommendation 39 would allow:

... the extent of clearing permitted for fire protection to be linked to an applicable risk level, based on more accurate bushfire hazard mapping and application of the Bushfire-prone Overlay [the updated Wildfire Management Overlay], rather than the arbitrary measures in the 10/30 rule. This might not be as simple as the 10/30 rule, but it would be a more evidence-based and robust approach, and the CFA could provide detailed guidelines to help people understand the rationale and approach to assessing permit applications for dwellings, non-dwellings and subdivisions.

Although the Commission considers the 10/30 rule has been a useful interim measure, the rule should not continue to be used once clause 44.06 [the Wildfire Management Overlay clause] and the CFA's assessment guidelines are revised and comprehensive bushfire-prone area mapping is completed.¹⁷

In November 2011, new [bushfire planning provisions](#) were introduced as part of an [Integrated Planning and Building Framework](#). The key elements of the Framework were as follows:

- A new [State Planning Policy for Bushfire](#);
- Replacement of the Wildfire Management Overlay with a new [Bushfire Management Overlay](#), established under [Clause 44.06](#) of the Victoria Planning Provisions;
- New planning requirements under [Clause 52.47 Bushfire protection: planning requirements](#);
- Minimum construction standards for buildings in [Bushfire Prone Areas](#); and
- Vegetation management permit exemptions, under a new [Clause 52.48 Bushfire protection: exemptions](#), and through amendments to [Clause 52.16: Native vegetation precinct plan](#) and [Clause 52.17: Native vegetation](#).

The reforms relevant to native vegetation clearing around buildings used for accommodation and other buildings were contained in Clauses 44.06, 52.47 and 52.48; they are explained below in respect to existing developments and new or significantly modified developments.

3.2 Vegetation clearing around existing developments

[Clause 52.48 Bushfire protection: exemptions](#) provides for exemptions from native vegetation regulations when creating defendable space around existing buildings used for accommodation. Under this clause, any requirement of a planning permit or planning scheme which prohibits the removal, destruction or lopping of vegetation, or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to any of the following measures, as carried out by or with the authority of the land owner:

- The removal, destruction or lopping of any vegetation within 10 metres of an existing building used for accommodation that was:
 - constructed before 10 September 2009; or
 - approved by a permit issued under this scheme before 10 September 2009; or
 - approved by a building permit issued under the *Building Act 1993* before 10 September 2009; or
 - constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.
- The removal, destruction or lopping of any vegetation, except trees, within 30 metres of an existing building used for accommodation that was:
 - constructed before 10 September 2009; or
 - approved by a permit issued under this scheme before 10 September 2009; or
 - approved by a building permit issued under the *Building Act 1993* before 10 September 2009; or
 - constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.
- The removal, destruction or lopping of any vegetation, except trees, within 50 metres of an existing building used for accommodation where land is within the Bushfire Management Overlay and where the existing building was:
 - constructed before 10 September 2009 or lawfully erected before 18 November 2011 without the need for a planning permit; or
 - approved by a permit issued under this scheme before 10 September 2009 and erected before 18 November 2011; or
 - approved by a building permit issued under the *Building Act 1993* before 10 September 2009 and erected before 18 November 2011; or
 - constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.

Two rules are established by these provisions. With the exception of 21 metropolitan municipalities, unless specified otherwise in the relevant metropolitan local planning scheme, the **10/30 rule** applies to all existing buildings used for accommodation (that is, all vegetation may be removed, destroyed or lopped within 10 metres of a building and all vegetation, except for trees, within 30 metres of a building). For existing buildings located on land covered by the [Bushfire Management Overlay](#), which may cover any area of the State, including the 21 metropolitan municipalities, the **10/50 rule** applies to a building used for accommodation (that is, all vegetation may be removed, destroyed or lopped within 10 metres of a building and all vegetation, except for trees, within 50 metres of a building).

These rules do not apply to legal agreements or covenants that have the effect of prohibiting the removal, destruction or lopping of native vegetation, as may be made under the *Planning and Environment Act 1987*, *Conservation, Forests and Lands Act 1998* or *Victorian Conservation Trust Act 1972*.¹⁸

Under [Clause 74](#) of the Victoria Planning Provisions, a building used for accommodation includes camping and caravan park, corrective institutions, dependent person's units, dwellings, group accommodation, host farms, residential buildings, residential villages and retirement villages.

3.3 Vegetation clearing around new or significantly modified developments

3.3.1 The Bushfire Management Overlay and defensible space

The Bushfire Management Overlay (BMO), as established under [Clause 44.06](#) of the Victoria Planning Provisions, has the purpose of:

- Identifying areas where the bushfire hazard requires minimum bushfire protection measures for subdivision and buildings and works to be specified;
- Ensuring that the location, design and construction of development and the implementation of bushfire protection measures are considered; and
- Ensuring that development does not proceed unless the risk to life and property from bushfire is managed to an acceptable level.¹⁹

The BMO consists of a map which shows the areas affected by the BMO and provisions which:

- Identify the types of development that require a planning permit;
- The information that must be submitted with a planning permit application; and
- The decision guidelines that the council must consider when they assess a planning permit application.²⁰

The requirements for new development in the BMO are set out in [Clause 52.47 Bushfire protection: planning requirements](#). This clause includes detailed objectives, standards, mandatory standards and decision guidelines, including the establishment of **defensible space** in accordance

with either Table 1 or Table 2 of the clause, or by using an alternative method to the satisfaction of the Country Fire Authority. It applies to the following land uses:

- Dwellings and dependent person's units (Table 1);
- All other buildings used for accommodation (Table 2);
- Child care centres (Table 2);
- Education centres (Table 2);
- Hospitals (Table 2);
- Industry (Table 1);
- Leisure and recreation (Table 2);
- Offices (Table 1);
- Places of assembly (Table 2); and
- Retail premises (Table 1).

Subdivisions must ensure that the lots created have an appropriate level of defensible space (as determined according to Table 1).

Defendable space is defined in [Clause 72](#) of the Victoria Planning Provisions as:

An area of land around a building where vegetation is modified and managed to reduce the effects of flame contact and radiant heat associated with bushfire. It comprises an inner zone and an outer zone.

The inner zone is an area immediately surrounding a building or subdivision where fuel is managed to a minimum condition. The inner zone aims to:

- Reduce radiant heat on a building through the reduction of fire intensity, to a level where the building is unlikely to be ignited during the passage of a fire;
- Eliminate direct flame contact of the building from the outer zone or the unmodified vegetation; and
- Reduce ember attack on the building by reducing the amount of potential fire brands.

The outer zone is an area around the building, between the inner zone and the unmodified vegetation, which substantially decreases the intensity of an approaching fire and restricts the pathway to crown fuels. Fuels in the outer zone are managed to:

- Moderate fire behaviour coming from the unmodified fuel; and
- Reduce radiant heat on a building and to draw fire out of the canopy to a level where the building is unlikely to be subject to flame contact, excessive radiant heat and ember attack arising from fire brands.

The inner zone seeks to manage fuel in the following condition:

- Within 10 metres of a building flammable objects such as plants, mulches and fences must not be located close to the vulnerable parts of the building such as windows, decks and eaves.
- Trees must not overhang the roofline of the building, touch walls or other elements of a building.
- Consistent with long-standing CFA practical advice grass around properties should be kept short. Five centimetres or less is considered short. All leaves and vegetation debris must be removed at regular intervals.
- Shrubs should not be planted under trees.
- Plants greater than 10 centimetres in height at maturity must not be placed directly in front of a window or other glass feature.
- Tree canopy separation of two metres and overall canopy cover of no more than 15% at maturity.

The outer zone seeks to manage fuel in the following condition:

- Grass must be no more than 10 centimetres in height and leaf and other debris mowed, slashed or mulched.
- Shrubs and trees should not form a continuous canopy.
- Tree branches below two metres from ground level should be removed.
- Trees may touch with an overall canopy cover of no more than 30 percent at maturity with few shrubs in the understorey.
- Shrubs should be in clumps no greater than 10 square metres which are separated from each other by at least 10 metres.

For both the inner zone and the outer zone:

- Non-flammable features such as tennis courts, swimming pools, dams, patios, driveways or paths should be incorporated into the proposal, especially on the northern and western sides of the proposed building.
- Features with high flammability such as doormats and firewood stacks should not be located near the structure.²¹

The Tables at the end of [Clause 52.47](#) form a matrix using three factors by which the size of the inner and outer zones is calculated:

- The Bushfire Attack Level (BAL);
- Vegetation type; and
- Slope.

The CFA defines the BAL as:

A means of measuring the severity of a building's potential exposure to ember attack, radiant heat and direct flame contact, using increments of radiant heat expressed in kilowatts per square metre, which is the basis for establishing the requirements for construction to improve protection of building elements from attack by a bushfire (AS 3959-2009).²²

A development is assigned one of six BAL ratings to establish the requirements for construction to improve protection from bushfire attack: low, 12.5, 19, 29, 40 and FZ (flame zone). The Tables below give examples of the size of inner and outer zones as determined under Tables 1 and 2 of Clause 52.47. The zone sizes have been expressed using 10/50 style terminology for comparative purposes i.e. in the 10/50 example, the inner zone is 10 metres and the outer zone is 40 metres (50 - 10). The examples below show the largest and smallest defensible spaces stipulated in the clause.

Table 1: Defendable spaces for land uses to which Table 1 of Clause 52.47 applies²³

Slope	Vegetation class	Category of bushfire risk		
		BAL 40	BAL 29	BAL 12.5
All upslope and flat (0 degrees)	Forest	19/31	25/40	48/69
	Grassland	6/0	9/0	19/0
Downslope > 15 to 20 degrees	Forest	50/73	61/87	98/134
	Grassland	11/0	15/0	32/0

As an example from Table 1, a dwelling built to withstand the highest bushfire risk (BAL 40) with the lowest risk slope (upslope or flat) and vegetation type (grassland) requires a defensible space of 6/0. The same dwelling with the highest risk slope (downslope > 15 to 20 degrees) and vegetation type (forest) requires a defensible space of 50/73.

In relation to Table 1, it is worth noting that BAL 29 is intended to operate as the upper limit, whereas BAL 40 developments will be the exception to the rule (see Standards 6.2 and 7.2 of Clause 52.47). According to the Country Fire Authority:

In the event of a bushfire, a building that has achieved the defensible space requirements for BAL-40 can expect a level of flame impact from the fire front. Careful consideration is therefore needed before an application relying on this level of defensible space will be accepted, and it is expected that there will be few instances where this will occur. An application that relies on BAL-40 defensible space will need to be complemented by other favourable site conditions, including:

- A relatively low landscape bushfire risk
- The type of occupancy/use of the building
- Appropriate access and egress.²⁴

Table 2: Defendable spaces for land uses to which Table 2 of Clause 52.47 applies

Vegetation class	Slope	
	Upslope and flat (0 degrees)	Downslope > 15 to 20 degrees
Forest	60/80	125/165
Grassland	0/35	0/55

As an example from Table 2, a hospital with forest located on a downslope >15 to 20 degrees requires a defensible space of 125/165.

3.3.2 Native vegetation management

For new or significantly modified developments under the Bushfire Management Overlay, native vegetation within the defendable space of the property also has to be managed in accordance with the following provisions:

- Standard BF4 of [Clause 52.47](#); and
- The [Permitted clearing of native vegetation – Biodiversity assessment guidelines](#) (the Guidelines), [Clause 52.16 Native vegetation precinct plan](#) and [Clause 52.17 Native vegetation](#), in concert with Mandatory Standard BF5 of [Clause 52.47](#).

Standard BF4 of Clause 52.47 states that the siting and layout of development should:

- Minimise the bushfire risk having regard to slope, access, aspect, orientation and vegetation.
- Avoid or minimise the removal of vegetation.
- Site new buildings as far from the bushfire hazard as practicable.
- Minimise the need for long access and egress routes through areas of bushfire hazard and locate habitable buildings as close as practicable to property entrances.
- Provide safe access and egress for emergency services.

Clauses 52.16 and 52.17 both include a '3-step approach' to the management of native vegetation:

To ensure permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity. This is achieved through the following approach:

- Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
- Minimise impacts on Victoria's biodiversity from the removal of native vegetation.
- Where native vegetation is permitted to be removed, ensure that an offset is provided in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.

The Guidelines set out the assessment process to be used where a permit to remove native vegetation is required under either Clause 52.16 or Clause 52.17. A permit cannot be refused if the application satisfies the decision guidelines set out in Chapter 8 of the Guidelines. An application to remove destroy or lop native vegetation requires a statement explaining why this is necessary if the purpose is to create defendable space. The statement must have regard to other available bushfire risk mitigation measures. This requirement does not apply to the creation of defendable space for a new or significantly modified development under the Bushfire Management Overlay.²⁵ In this case, one permit is issued by the Government for both development approval and vegetation clearing approval.²⁶

A native vegetation offset determined in accordance with Chapter 9 of the Guidelines is required when a permit is granted to remove native vegetation. The offset requirements are specified as a condition on the permit to remove native vegetation. It is at this point that Mandatory Standard BF5 of Clause 52.47 applies to the management of native vegetation. The Standard includes a requirement that:

The location, type and layout of proposed landscaping, revegetation or any native vegetation off-set does not increase the bushfire risk to the proposed development or the adjacent area.

In commenting on this provision, the Country Fire Authority states that:

Where vegetation is being removed and native vegetation offsets are required onsite, the implementation of defendable space for the development and the ability of neighbouring land owners to manage their bushfire risk cannot be compromised. Effective defendable space, construction, water and access can all be compromised by inappropriate landscaping. Any native vegetation offsets or landscaping within defendable space should meet the requirements as relevant for inner or outer zones.

Any revegetation or native vegetation offsets within the 150 metre BMO assessment area should not:

- Alter the predominant vegetation class that has been used to calculate defendable space and level of bushfire attack
- Prevent defendable space from being established and maintained
- Have an impact on the defendable space of existing adjacent development (in the same or separate ownership).

Where native vegetation offsets will affect fuel load, structure or continuity in a way that will increase fire intensity and behaviour, they must be located outside of the 150-metre area being assessed as part of the Bushfire Site Assessment [which is the process by which new and significantly modified developments are assessed].²⁷

4. Conclusion

Throughout recorded history southeast Australia has experienced significant bushfires.²⁸ With urban development encroaching further into the bush over recent decades, along with changing climatic conditions, a large proportion of the NSW population is likely to become subject to substantial risk of bushfire. Preparations for the 2014-15 bushfire season have already commenced, with some scientists warning that parts of NSW could face catastrophic conditions.²⁹ The proposed reforms contained in the Rural Fires Amendment (Vegetation Clearing) Bill 2014 are one response to the real and present danger presented by bushfires in NSW.

¹ NSW Rural Fire Service, [Fire Permits and Bush Fire Danger Period](#), 11 June 2014 [online – accessed 11 June 2014]

² NSW Rural Fire Service, [Bush Fire Bulletin – The Journal of the NSW Rural Fire Service](#), Volume 35(3), 2014; Australian Attorney-General's Department, [Australian Emergency Management Knowledge Hub: Bushfire – New South Wales 2013](#), no date [online – accessed 11 June 2014]; [NSW PD](#), 29 May 2014

³ Also on 13 November 2013, the O'Farrell Government introduced the [Rural Fires Amendment Bill 2013](#) into Parliament to implement key recommendations from the Independent Hazard Reduction Audit Panel's [final report](#). Amendments made to the

- [Rural Fires Act 1997](#) included expansion of the protective role of the NSW Rural Fire Service and provision of more flexibility in the issuance of hazard reduction certificates.
- ⁴ Michael Gallacher, [NSW Government moves to protect emergency workers and homeowners from bush fire threat](#), Ministerial Media Release, 13 November 2013
- ⁵ [NSW PD](#), 29 May 2014
- ⁶ The Standard Instrument – Principal Local Environmental Plan is prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#)
- ⁷ NSW Department of Planning and Environment, [Keeping communities safe in bushfire season – Frequently Asked Questions](#), May 2014
- ⁸ Ibid.
- ⁹ Mike Baird, [New laws to protect property from bushfires](#), Media Release, 29 May 2014
- ¹⁰ [SMH](#), [Vegetation-clearing curbs in fire-prone regions to be eased](#), 29 May 2014
- ¹¹ [SMH](#), [Vegetation-clearing curbs in fire-prone regions to be eased](#), 29 May 2014; The Greens NSW, [Tree clearing rules will strip our suburbs of trees](#), Media Release, 29 May 2014
- ¹² The Greens NSW, [Tree clearing rules will strip our suburbs of trees](#), Media Release, 29 May 2014
- ¹³ Radio 2ST, [Tree clearing laws do not go far enough – fire volunteers](#), 3 June 2014
- ¹⁴ Victorian Government, [Victoria Planning Provisions, Amendment VC61 – Explanatory Report](#), 11 September 2009
- ¹⁵ B. Teague, R. McLeod & S. Pascoe, [2009 Victorian Bushfires Royal Commission final report](#), Volume II: Fire Preparation, Response and Recovery, 2009, p.243
- ¹⁶ Ibid., p.236
- ¹⁷ Ibid., p.244
- ¹⁸ Victorian Department of Planning and Community Development, [Amendment VC83 – Bushfire protection: Vegetation exemptions](#), Advisory Note 39, November 2011
- ¹⁹ Victorian Department of Planning and Community Development, [Bushfire Management Overlay and bushfire protection: planning requirements](#), Practice Note 65, November 2011
- ²⁰ Ibid.
- ²¹ Ibid.
- ²² Country Fire Authority, [Planning for bushfire Victoria: Guidelines for meeting Victoria's bushfire planning requirements](#), November 2012, p.4
- ²³ Note that for slopes of > 20 degrees, for any vegetation type and building quality type, Table 1 recommends the development of 'Alternate Solutions'. The slope types included in Tables 1 and 2 of the clause are as follows: All upslopes and flat (0 degrees); downslope > 0 to 5 degrees; downslope > 5 to 10 degrees; downslope > 10 to 15 degrees; downslope > 15 to 20 degrees; and downslope > 20 degrees. The vegetation classes, ranked generally in order from highest to lowest risk (this depends in part upon slope), are as follows: forest, woodland, rainforest, scrub, shrubland, mallee/mulga and grassland.
- ²⁴ Country Fire Authority, op. cit., p.23
- ²⁵ Department of Environment and Primary Industries, [Permitted clearing of native vegetation – Biodiversity assessment guidelines](#), September 2013
- ²⁶ *Personal communication*, Country Fire Authority, 17 June 2014
- ²⁷ Country Fire Authority, op. cit., p.20
- ²⁸ S. J. Pyne, [Burning Bush – A Fire History of Australia](#), Henry Holt and Company: New York, 1991; S. J. Pyne, [The Still-Burning Bush](#), Scribe Short Books: Melbourne, 2006; D Montoya, [Bushfires in NSW: timelines and key sources](#), Issues Backgrounder 6/2014, NSW Parliamentary Research Service, June 2014
- ²⁹ ABC News, [Experts predict NSW far south coast could be facing 'catastrophic' fire season](#), 3 June 2014 [online – accessed 11 June 2014]

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