

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Rural Fires Act 1997 (the principal Act) as follows:

- (a) to provide that certain bush fire hazard management functions of local authorities (eg councils) are to be exercised instead by hazard management officers of the NSW Rural Fire Service,
- (b) to enable the Commissioner of the NSW Rural Fire Service (the Commissioner) to enter and inspect land, with or without the consent of the owner or occupier, to investigate the cause or origin of a fire for up to 24 hours after the fire has been put out,
- (c) to enable the Commissioner to apply for a search warrant to enter and inspect land to investigate the cause or origin of a fire,
- (d) to enable an officer of a rural fire brigade to remove persons or things who or that are an interference from a fire or other emergency,
- (e) to increase the penalty notice amounts for certain fire-related offences under the principal Act.

The Bill also makes related amendments to other legislation.

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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Bush fire hazard reduction

Schedule 1 [9] replaces existing provisions that enable a local authority (ie a local council, the Western Lands Commissioner or the Lord Howe Island Board) to issue a notice to the owner or occupier of land to carry out bush fire hazard reduction work with provisions that enable such a notice instead to be issued by a hazard management officer of the NSW Rural Fire Service. The new provisions will operate as follows:

Proposed section 65A provides that the Commissioner may nominate a member of the NSW Rural Fire Service as a hazard management officer. Schedule 1 [26] inserts a definition of hazard management officer for the purposes of the principal Act.

Proposed section 65 enables authorised persons (who will now include hazard management officers) to carry out bush fire hazard reduction work on certain land with the permission of the appropriate persons or bodies.

Proposed section 66 enables a hazard management officer to require the owner or occupier of any land to carry out bush fire hazard reduction work on the land by a notice. An owner or occupier who fails to comply with such a notice is guilty of an offence.

Proposed section 67 enables an owner or occupier of land on whom a notice requiring bush fire hazard reduction work has been served to lodge an objection with the hazard management officer.

Proposed section 68 provides for an appeal to be lodged with the Commissioner by a person who has lodged an objection.

Proposed section 69 enables a hazard management officer to enter land to determine whether a notice should be issued, or has been complied with, and requires the officer to notify certain authorities if notice is given and to keep records in respect of notices.

Schedule 2.2 [5] makes a consequential amendment.

Proposed section 70 enables the Commissioner to carry out bush fire hazard reduction work required to be done by a notice if the owner or occupier of the land

concerned fails to carry out the work. The cost of the work carried out by the Commissioner is recoverable from the owner or occupier. Schedule 1 [1] provides that the Commissioner may delegate his or her functions under proposed section 70 to the Commissioner of NSW Fire Brigades. Schedule 1 [10] and Schedule 2.2 [6] make consequential amendments.

Schedule 1 [12] substitutes an existing provision that requires local authorities and public authorities to make annual reports to the Commissioner in respect of bush fire hazards so that local authorities will no longer be required to report on bush fire hazard reduction notices.

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Schedule 1 [14]–[16] provide that the Commissioner is to have the sole responsibility for investigating and taking action in respect of bush fire hazard complaints (currently a local authority also has that responsibility). This includes carrying out bush fire hazard reduction work if an owner or occupier of land or public authority fails to do so after being notified that work should be done. Schedule 1 [13] provides that a local authority is to refer a bush fire hazard complaint made to it to the Commissioner. Schedule 1 [11] makes a consequential amendment.

Schedule 1 [17] provides that the Commissioner, in addition to a local authority, may issue a bush fire hazard reduction certificate relating to work carried out by persons (other than the Commissioner or a local authority) on private land. Schedule 1 [18] makes a consequential amendment.

Power to remove persons or obstacles

Schedule 1 [2] authorises an officer of a rural fire brigade or group of rural fire brigades to remove any person, vehicle, vessel or thing interfering at a fire, incident or other emergency.

Power to enter land to investigate fires

Schedule 1 [3] inserts proposed Division 3A of Part 2 (proposed sections 33A–33D) into the principal Act to provide the Commissioner with the express power to enter land in order to investigate the cause or origin of a fire on that land or on any adjacent land. This power of entry would be exercisable in situations where the owner or occupier of the land does not consent to the entry by, for example, an officer of a rural fire brigade who is seeking to investigate the cause or origin of a fire.

Proposed section 33A provides that the object of the proposed Division is to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

Proposed section 33B authorises the Commissioner to enter and inspect land (other than residential premises), with or without the consent of the owner or occupier of that land, to investigate the cause or origin of a fire that has occurred on that land or any adjacent land, but only up to 24 hours after the fire has been put out.

Proposed section 33C enables the Commissioner to apply 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.

Proposed section 33D provides that the powers of entry in proposed section 33B or 33C may be exercised by the Commissioner of NSW Fire Brigades and provides that the Commissioner of the NSW Rural Fire Service may delegate the powers of entry to a fire fighting authority. Schedule 2.1 makes a consequential amendment to enable the Commissioner of NSW Fire Brigades to delegate his or her functions under any Act (in addition to the Fire Brigades Act 1989).

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Penalty notices for certain fire-related offences

Schedule 2.2 [8] and [9] increase the amount (to \$1,100 in each case) of a penalty notice that may be issued for the following fire-related offences under the principal Act:

- (a) failing to comply with a bush fire hazard reduction notice (section 66 (8)),
- (b) lighting a fire in contravention of a direction from the Minister (section 99 (6)),
- (c) leaving a fire in the open air before the fire is thoroughly extinguished (section 100 (2)).

Other amendments

Schedule 1 [4]–[8], [19]–[22] and [25] and Schedule 2.2 [1]–[4] update various references to Ministers, Departments, bodies and officers.

Schedule 1 [23] inserts a savings and transitional regulation-making power.

Schedule 1 [24] inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

Schedule 2.2 [7] provides that a notice of intention to burn off or burn a firebreak is to now include the name of the person proposing to light the relevant fire.