



New South Wales

Rural Fires Amendment (Vegetation Clearing) Bill 2014

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Rural Fires Act 1997* to make provision for vegetation clearing work to be carried out in certain areas near residential accommodation or high-risk facilities to reduce bush fire risk,
- (b) to make other miscellaneous and consequential amendments to the *Rural Fires Act 1997* and the *National Parks and Wildlife Act 1974*.

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.

Schedule 1 Amendment of Rural Fires Act 1997 No 65

Schedule 1 [1]–[3] make amendments consequent on the enactment of the *Government Sector Employment Act 2013*.

Schedule 1 [4] updates the membership of the Bush Fire Co-ordinating Committee.

Schedule 1 [5] makes a consequential amendment to the note to Part 4.

Schedule 1 [6] and [7] provide that all bush fire hazard reduction certificates must specify the period for which the certificate operates.

Schedule 1 [8] provides that a bush fire hazard reduction certificate becomes effective on the date endorsed on it and operates for the period specified in it. Currently, a certificate operates only for a period of 12 months or, in some cases, 3 years.

Schedule 1 [9] inserts Division 9 into Part 4 to authorise vegetation clearing work to be carried out in certain areas near residential accommodation or high-risk facilities to reduce bush fire risk. The proposed Division provides that the owner of land situated within a 10/50 vegetation clearing entitlement area may carry out certain vegetation clearing work on that land despite any requirement for an approval, consent or other authorisation for the work made by other legislation.

The Commissioner of the NSW Rural Fire Service is to determine what land is a **10/50 vegetation clearing entitlement area** and identify this land on a map published on the NSW Rural Fire Service website.

The vegetation clearing work that can be carried out is the removal, destruction (by means other than by fire) or pruning of:

- (a) any vegetation (including trees or parts of trees) within 10 metres of an external wall of a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility, and
- (b) 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.

The vegetation clearing work must be carried out in accordance with the **10/50 Vegetation Clearing Code of Practice**, which is to be prepared by the Commissioner and is to deal, at a minimum, with the matters listed in proposed section 100Q (1). In addition, the Code is to be published in the Gazette and made publicly available.

For the purposes of calculating the relevant 10 or 50 metres within which vegetation can be cleared, it does not matter whether the residential accommodation or high-risk facility is located on the owner's land or on adjoining land.

The Minister is to review the proposed Division after it has been in operation for 2 years and report to the Premier on the outcome of the review.

Schedule 2 Amendment of National Parks and Wildlife Act 1974 No 80

Schedule 2 [1] and [2] expand the exemptions from the offences of harming or picking, or damaging the habitat of, threatened species, endangered populations or endangered ecological communities to exempt anything done in the course of carrying out vegetation clearing work under proposed section 100R of the *Rural Fires Act 1997*. However, any such exemption is subject to compliance with the **10/50 Vegetation Clearing Code of Practice** (which will place limitations on the clearing of any such species, populations or communities).



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New South Wales

Rural Fires Amendment (Vegetation Clearing) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Rural Fires Act 1997* in relation to vegetation clearing work in certain areas and bush fire hazard reduction certificates; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Rural Fires Amendment (Vegetation Clearing) Act 2014*.

3

2 Commencement

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

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Schedule 1	Amendment of Rural Fires Act 1997 No 65	1
[1] Section 47 Membership and procedure of Bush Fire Co-ordinating Committee		2
	Omit “member of staff of” wherever occurring in section 47 (1) (b)–(d) and (l).	3
	Insert instead “person employed in”.	4
[2] Section 47 (1) (c)		5
	Omit “members of staff of”. Insert instead “persons employed in”.	6
[3] Section 47 (1) (c)		7
	Omit “Director-General”. Insert instead “Secretary”.	8
[4] Section 47 (1) (k)		9
	Omit the paragraph. Insert instead:	10
	(k) a person employed in the Ministry for Police and Emergency Services nominated by the Minister for Police and Emergency Services,	11 12
[5] Part 4 Bush fire prevention		13
	Insert “and vegetation clearing work” after “bush fire hazard reduction work” in the note to Part 4.	14 15
[6] Section 100F Issue of bush fire hazard reduction certificates		16
	Insert at the end of section 100F (6) (c):	17
	, and	18
	(d) specify the period for which the bush fire hazard reduction certificate operates.	19 20
[7] Section 100G Bush fire hazard reduction certificates of certifying authorities		21
	Insert at the end of section 100G (2) (b):	22
	, and	23
	(c) specify the period for which the bush fire hazard reduction certificate operates.	24 25
[8] Section 100I		26
	Omit the section. Insert instead:	27
100I Duration of bush fire hazard reduction certificate		28
	A bush fire hazard reduction certificate becomes effective on the date endorsed on the certificate and operates for the period specified in the certificate.	29 30 31

[9] Part 4, Division 9	1
Insert after Division 8:	2
Division 9 Vegetation clearing work	3
100P Definitions	4
In this Division:	5
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.	6 7 8
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.	9 10 11
high-risk facility means a child care centre, school or hospital within the meaning of the Standard Instrument.	12 13
residential accommodation means:	14
(a) residential accommodation within the meaning of the Standard Instrument, and	15 16
(b) tourist and visitor accommodation within the meaning of the Standard Instrument, and	17 18
(c) caravans installed in caravan parks within the meaning of the Standard Instrument, and	19 20
(d) manufactured homes installed in manufactured home estates within the meaning of the <i>Local Government Act 1993</i> .	21 22
Standard Instrument means the standard local environmental planning instrument prescribed by the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> .	23 24 25
tree means a perennial woody plant having a single stem or trunk and which is 3 or more metres in height and the trunk of which has a circumference at a height of 1.3 metres above the ground of more than 0.3 metre. A tree does not include a shrub, which is a small, low growing, woody plant with multiple stems, nor a vine, which is a woody plant that depends on an erect substrate to grow on.	26 27 28 29 30 31
100Q The 10/50 Vegetation Clearing Code of Practice	32
(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:	33 34 35 36
(a) the type of vegetation that can and cannot be cleared, including the types of trees,	37 38
(b) the circumstances in which vegetation should be pruned and not entirely removed,	39 40
(c) use of herbicides,	41
(d) managing soil erosion and landslip risks,	42
(e) protection of riparian buffer zones,	43
(f) protection of Aboriginal and other cultural heritage,	44

- (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. 1
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- (2) The Commissioner may amend the 10/50 Vegetation Clearing Code of Practice from time to time. 4
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- (3) The 10/50 Vegetation Clearing Code of Practice prepared under this section, including any amendment of the Code: 6
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- (a) must be published in the Gazette, and 8
- (b) takes effect on the day on which it is published in the Gazette. 9
- (4) The 10/50 Vegetation Clearing Code of Practice is to be made publicly available, as soon as practicable after publication in the Gazette: 10
11
- (a) by publishing it on the NSW Rural Fire Service website, and 12
- (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. 13
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- 100R Carrying out vegetation clearing work** 16
- (1) The owner of land situated within a 10/50 vegetation clearing entitlement area may carry out any of the following vegetation clearing work on that land 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: 17
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- (a) the removal, destruction (by means other than by fire) or pruning of any vegetation (including trees or parts of trees) within 10 metres, 22
23
- (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, 24
25
- of an external wall of a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility. 26
27
- (2) Vegetation clearing work carried out pursuant to subsection (1) must be carried out in accordance with the 10/50 Vegetation Clearing Code of Practice. 28
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- (3) It does not matter whether the residential accommodation or high-risk facility is located on the owner's land or on adjoining land. 30
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- (4) Vegetation clearing work on any land may only be carried out pursuant to subsection (1) by or with the authority of the owner of the land. 32
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- (5) This section does not apply to a building containing habitable rooms if there is no development consent or other lawful authority under the *Environmental Planning and Assessment Act 1979* for the use of those rooms as habitable rooms. 34
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- (6) The Commissioner may prescribe in the 10/50 Vegetation Clearing Code of Practice whether particular rooms of a building are or are not habitable and what is or is not an external wall of a building. 38
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- 100S Review of Division** 41
- (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. 42
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|-----|--|--------|
| (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. | 1
2 |
| (3) | The Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed. | 3
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Schedule 2	Amendment of National Parks and Wildlife Act	1
	1974 No 80	2
[1]	Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities	3
		4
	Insert “or vegetation clearing work under section 100R of that Act” after “applies” in section 118A (3B).	5
		6
[2]	Section 118D Damage to habitat of threatened species, endangered populations or endangered ecological communities	7
		8
	Insert “or vegetation clearing work under section 100R of that Act” after “applies” in section 118D (2B).	9
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