



New South Wales

# Rural Fires and Environmental Assessment Legislation Amendment Bill 2002

## 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 *Environmental Planning and Assessment Act 1979*, the *Rural Fires Act 1997* and other laws so that persons, property and the environment are more fully protected against the dangers that may arise from bush fires.

The Bill amends the *Environmental Planning and Assessment Act 1979*:

- (a) to require local government councils to record on maps land identified by the Commissioner of the NSW Rural Fire Service as bush fire prone land, and

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- (b) to prevent development consent being granted for the carrying out of development for certain purposes on bush fire prone land unless the consent authority is satisfied that the development conforms to certain documented bush fire protection specifications and requirements or has consulted with the Commissioner, and
- (c) to provide for the integration of procedures to obtain development consent with a proposed requirement to obtain a bush fire safety authority from the Commissioner under the *Rural Fires Act 1997* with respect to the fire safety of development for purposes (such as buildings in retirement villages, housing for older persons and hospitals) that are particularly vulnerable in bush fires and that require special protection.

The Bill amends the *Environmental Planning and Assessment Regulation 2000* to require the fact that land that is bush fire prone is bush fire prone land to be shown on section 149 certificates.

The Bill amends the *Rural Fires Act 1997*:

- (a) to provide for the Commissioner of the NSW Rural Fire Service to conduct performance audits with respect to the implementation of bush fire risk management plans and for details of the audits to be included in the annual report for the Service, and
- (b) to require local and public authorities to report to the Commissioner as to their activities with respect to bush fire hazard reduction work, and
- (c) to establish a complaints procedure with respect to bush fire hazard reduction work that an owner or occupier of land or authority responsible for the land has failed to carry out in accordance with the Act and to require the work to be carried out, and
- (d) to enhance the powers of the Commissioner to carry out bush fire hazard reduction work, and
- (e) to require the authority of the Commissioner to be obtained with respect to the fire safety of development for purposes (such as buildings in retirement villages, housing for older persons and hospitals) that are particularly vulnerable in bush fires and that require special protection, and
- (f) to streamline the existing approval processes for the carrying out of managed bush fire hazard reduction work by providing for the work to be authorised by one certificate in place of other approvals, consents or authorities currently required by law for the carrying out of such work, but only if it is carried out in accordance with a bush fire environmental assessment code, and
- (g) to provide for the Commissioner to make bush fire danger period declarations and to issue fire permits, and

(h) to make various other minor changes.

The Bill also amends the *Rural Fires Act 1997* and various environmental assessment laws to make it clear that emergency fire fighting activities carried out by the Service or any other fire fighting authority are not subject to various planning and licensing requirements.

## 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.

**Clause 3** is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Rural Fires Act 1997* set out in Schedules 2–4.

**Clause 5** is a formal provision giving effect to the amendments to various instruments set out in Schedule 5.

## Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

### Identification and recording of mapping of bush fire prone land

**Schedule 1 [4]** inserts proposed section 146 into the *Environmental Planning and Assessment Act 1979* to require local government councils to record on maps, within 12 months after the commencement of the section, land identified by the Commissioner of the NSW Rural Fire Service as bush fire prone land. **Schedule 1 [1]** makes a consequential amendment to insert definitions of *bush fire prone land* and *bush fire prone land map* into the Act.

**Schedule 1 [6]** amends Schedule 6 to the Act to insert a transitional provision to identify bush fire prone land in the period before it is mapped.

**Schedule 5.1** contains an amendment to the *Environmental Planning and Assessment Regulation 2000* to require planning certificates under section 149 of the Act to show that land that is bush fire prone is bush fire prone land.

### **Consultation and consent requirements concerning development of bush fire prone land**

**Schedule 1 [2]** prevents development consent being granted for the carrying out of development for any purpose (other than for certain purposes that are particularly vulnerable in bush fires) on bush fire prone land unless the consent authority is satisfied that the development conforms to the specifications and requirements of *Planning for Bushfire Protection 2001* (or another document prescribed by the regulations) or has consulted with the Commissioner of the NSW Rural Fire Service.

Schedule 3 [9] (proposed section 100B) amends the *Rural Fires Act 1997* to require authorisation (a ***bush fire safety authority***) to be obtained from the Commissioner with respect to the fire safety of development for purposes (such as buildings in retirement villages, housing for older persons and hospitals) that are particularly vulnerable in bush fires.

**Schedule 1 [3]** amends section 91 of the *Environmental Planning and Assessment Act 1979* to provide for the integration of the new requirement to obtain a bush fire safety authority with the granting of development consent. The procedure for the assessment of integrated development that is local development under section 91A of that Act will allow assessment of development that is vulnerable in bush fires for the purpose of granting or refusing development consent to take place in conjunction with its assessment for the purpose of issue of a bush fire safety authority.

### **Savings and transitional**

**Schedule 1 [5]** amends Schedule 6 to the Act to insert a power to make savings and transitional regulations.

## **Schedule 2 Amendments to the Rural Fires Act 1997 relating to performance audit**

**Schedule 2 [1] and [3]** amend the *Rural Fires Act 1997* to enable the Commissioner of the NSW Rural Fire Service to conduct performance audits of the implementation of bush fire risk management plans generally in the State or in a specified rural fire district or other part of the State, either on the Commissioner's own initiative or at the request of the Bush Fire Co-ordinating Committee. Details of performance audits carried out during a year are to be included in the annual report for the Service which is required by the *Annual Reports (Departments) Act 1985* to be laid before both Houses of Parliament.

**Schedule 2 [2]** amends section 51 of the Act to require each Bush Fire Management Committee to make an annual 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.

### **Schedule 3 Amendments to the Rural Fires Act 1997 relating to bush fire prone land and bush fire hazard reduction**

**Schedule 3** contains amendments to the *Rural Fires Act 1997* relating to the fire safety of development on bush fire prone land for purposes that are particularly vulnerable in bush fires and the reduction of bush fire hazards.

#### **Fire safety of development on bush fire prone land**

**Schedule 3 [9]** inserts a new Division 8 into Part 4 of the Act. Proposed section 100B of that Division provides for the issue by the Commissioner of the NSW Rural Fire Service of bush fire safety authorities for subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes or for development of bush fire prone land for a special fire protection purpose. A *special fire protection purpose* is defined as development for the purpose of a school, a child care centre, a hospital (including a hospital for the mentally ill or mentally disordered), a hotel, motel or other tourist accommodation, a building wholly or principally used as a home or other establishment for mentally incapacitated persons, housing for older people or people with disabilities within the meaning of *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*, a group home within the meaning of *State Environmental Planning Policy No 9—Group Homes*, a retirement village or any other purpose prescribed by the regulations. A bush fire safety authority authorises development for those purposes 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.

An amendment to section 91 of the *Environmental Planning and Assessment Act 1979* (Schedule 1 [3]) provides for the integration of the requirement to obtain a bush fire safety authority with the granting of development consent.

### **Bush fire hazard reduction**

**Schedule 3** contains a number of amendments to the *Rural Fires Act 1997* designed to ensure that bush fire hazard reduction work that is necessary to more fully protect persons, property and the environment against the dangers that may arise from bush fires is carried out. Schedule 3:

- (a) provides for the making and investigation of complaints concerning the failure by public authorities and owners and occupiers of land to carry out bush fire hazard reduction work, and
- (b) enhances the powers of the Commissioner of the NSW Rural Fire Service to monitor the carrying out of bush fire hazard reduction work by public and local authorities and to ensure that work is carried out, and
- (c) streamlines the existing approval processes for carrying out of managed bush fire hazard reduction work by providing for the work to be authorised by one certificate (a *bush fire hazard reduction certificate*) in place of other approvals, consents or authorities currently required by law for the carrying out of such work, but only if it is carried out in accordance with a bush fire environmental assessment code.

### **Bush fire hazard complaints**

**Schedule 3 [5]** inserts a new Division 2A (proposed sections 74A–74H) into Part 4 of the Act.

Proposed section 74A enables a complaint to be made under Division 2A 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*).

Proposed section 74B provides for a bush fire hazard complaint to be made by any owner or occupier of land adjacent to or in the vicinity of land to which the complaint relates.

Proposed section 74C sets out the procedure for making a bush fire hazard complaint. A complaint relating to unoccupied Crown land or managed land for which a public authority is responsible is to be made to the Commissioner. A complaint relating to other land in the area of a local authority is to be made to the local authority.

Proposed section 74D provides for the investigation of bush fire hazard complaints by the Commissioner and local authorities.

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Proposed sections 74E and 74F set out the action that may be taken by the Commissioner and local authorities if a bush fire hazard complaint is found to be justified, including carrying out bush fire hazard reduction work if an owner or occupier or public authority fails to do so after being notified that work should be done.

Proposed section 74G requires the Commissioner and local authority to notify the complainant about action taken.

Proposed section 74H enables a person who has complained to a local authority to ask the Commissioner to deal with the complaint if the local authority fails to do so.

**Enhancement of Commissioner's powers with respect to bush fire hazard reduction**

**Schedule 3 [3] and [4]** contain provisions designed to enhance the Commissioner's powers with respect to bush fire hazard reduction.

Section 73 of the Act currently enables the Commissioner to carry out bush fire hazard reduction work required to be carried out on land by a bush fire management plan if the owner or occupier of the land has not carried out the work as required by the plan. It includes a dispute resolution mechanism for circumstances where the owner or occupier is a public authority and the public authority disagrees with the Commissioner about the work and enables the Commissioner to recover the costs incurred in carrying out the work as a debt due to the Crown. **Schedule 3 [3]** replaces section 73 with a new section. It expands the circumstances in which the Commissioner may carry out work to include a failure of an owner or occupier of land to carry out a duty under section 63 of the Act and a failure of a public authority to carry out work following resolution of a bush fire hazard complaint. It also removes the dispute resolution mechanism and makes it clear that costs that may be recovered by the Commissioner include costs incurred in obtaining the approval of any local or public authority under any other law to carry out the work.

Section 74 of the Act currently requires a local authority to carry out an annual review of the incidence of bush fire hazards on land in its area. **Schedule 3 [4]** replaces section 74 with a new section which requires local authorities and public authorities to make annual reports to the Commissioner with respect to bush fire hazards. Information contained in the reports is to be included in the annual report for the Service which is required by the *Annual Reports (Departments) Act 1985* to be laid before both Houses of Parliament.

### **Bush fire hazard reduction certificates**

**Schedule 3 [9]** inserts a new Division 8 (proposed sections 100A–100O) into Part 4 of the *Rural Fires Act 1997*. The Part includes provisions to streamline the existing approval processes for carrying out managed bush fire hazard reduction work by providing for the work to be authorised by one certificate (a ***bush fire hazard reduction certificate***) in place of other approvals, consents or authorities currently required by law for the carrying out of such work but only if it is carried out in accordance with a bush fire environmental assessment code made under the proposed Division.

Proposed section 100A defines words and expressions used in the proposed Division, including ***bush fire code***. **Schedule 3 [11] and 4 [26]** amend the Dictionary to the Act to define ***managed bush fire hazard reduction work*** as bush fire hazard reduction work that is carried out in accordance with a bush fire risk management plan and ***emergency bush fire hazard reduction work*** as 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.

Proposed section 100B relates to bush fire safety authorities and is described above.

Proposed section 100C prevents an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* from prohibiting, requiring development consent for, or otherwise restricting, the doing of emergency bush fire hazard reduction work on any land or managed bush fire hazard reduction work on land other than excluded land (defined in proposed section 100A as land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies and any other land prescribed by the regulations).

The section also provides that 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.

The section also provides that Part 5 does not apply to or in respect of managed bush fire hazard reduction work carried out on land other than excluded land but only if certain requirements are met. The work must be carried out in accordance with a bush fire risk management plan that applies to the land, there must be a bush fire hazard reduction certificate in respect of the work and the work must be carried out in accordance with any conditions specified in the certificate and any requirements of a bush fire environmental assessment code (a ***bush fire code***) applying to the land specified in the certificate.



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The section also makes it clear that various approvals, consents and authorisations under certain environmental assessment legislation need not be obtained if managed bush fire hazard reduction work is carried out in this way.

Proposed section 100D describes the effect of a bush fire hazard reduction certificate.

Proposed section 100E provides for bush fire hazard reduction certificates relating to work to be carried out by persons (other than the Commissioner or a public authority) on private land to be issued by local authorities. The Commissioner, a local authority and a public authority may “self” certify as to work carried out by themselves.

Proposed section 100F provides for the making of applications for, and issue of, bush fire hazard reduction certificates by local authorities and sets out the conditions that must be specified by the certificate. The local authority cannot issue the certificate unless it has determined which provisions of any applicable bush fire code must be complied with and specified those provisions in the certificate.

Proposed section 100G specifies the matters with respect to which the Commissioner, a local authority or public authority must certify before carrying out bush fire hazard reduction work.

Proposed section 100H provides for any person to bring proceedings in the Land and Environment Court to remedy or restrain any breach of section 100F or 100G by a local authority, the Commissioner or a public authority.

Proposed section 100I provides for bush fire hazard reduction certificates to have effect for 12 months.

Proposed section 100J requires the Commissioner to prepare a draft bush fire environmental assessment code in relation to land (other than excluded land) if requested to do so by the Minister. In preparing the draft code the Commissioner is required to take into account the principles of ecologically sustainable development and 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 the proposed Division) if Part 5 of that Act were applicable to the work and the carrying out of the work were an activity within the meaning of that Part.

Proposed section 100K requires the Commissioner to consult various bodies in preparing a draft bush fire code.

Proposed section 100L requires the Commissioner to publicly exhibit a draft bush fire code for at least 42 days and to seek submissions on it.

Proposed section 100M provides for Ministerial approval of a draft bush fire code.

Proposed section 100N makes provision with respect to the publication, commencement and availability of bush fire codes.

Proposed section 100O ensures that the procedures for the making of a bush fire code are followed for any amendment or revocation of the code.

**Schedule 3 [2]** makes a consequential amendment to section 66 of the Act.

### **Delegation**

**Schedule 3 [1]** amends section 14 of the Act to enable the Commissioner to delegate the functions to be conferred on the Commissioner by certain of the proposed amendments contained in Schedule 3 on the Commissioner of New South Wales Fire Brigades in respect of land in fire districts.

### **Fire permits**

**Schedule 3 [6]–[8]** make amendments to sections 86, 89 and 92, respectively, of the Act that are associated with the provisions relating to bush fire hazard reduction certificates. **Schedule 3 [6]** makes it an offence to light a fire for the purpose of land clearance or burning a fire break unless a bush fire hazard reduction certificate or any approval, consent or authority required under the *Environmental Planning and Assessment Act 1979* or any other law has been obtained.

**Schedule 3 [7]** prevents an appropriate authority from issuing a fire permit unless a bush fire hazard reduction certificate or any approval, consent or authority required under the *Environmental Planning and Assessment Act 1979* or any other law has been obtained.

**Schedule 3 [8]** makes it a condition of a fire permit that any condition of a bush fire hazard reduction certificate or any approval, consent or authority required under the *Environmental Planning and Assessment Act 1979* or any other law be complied with.

### **Savings and transitional provisions**

**Schedule 3 [10]** amends Schedule 3 to the Act to insert savings and transitional provisions.

## **Schedule 4 Other amendments to Rural Fires Act 1997**

**Schedule 4** contains miscellaneous amendments to the *Rural Fires Act 1997*.

**Schedule 4 [1]** amends section 22 of the Act to make it clear that the powers of rural fire brigade officer officers and others under the Act are exercisable not only for the purpose of protecting a person or property from an existing or imminent danger arising out of a fire but also to protect the environment.

**Schedule 4 [2] and [25]** make amendments for similar purposes to section 28 and the definition of *back burning* in the Dictionary to the Act.

**Schedule 4 [3] and [4]** are amendments by way of statute law revision (there are no longer fire control officers for local authorities).

**Schedule 4 [5]–[7]** substitute sections 82 and 83 and repeal section 84 to provide for the Commissioner, instead of local authorities, to make bush fire danger period declarations.

**Schedule 4 [8] and [9]** amend section 85 to provide for the Commissioner to be an appropriate authority for the purpose of issuing fire permits in rural fire districts instead of local councils. **Schedule 4 [12], [13], [14], [16], [17], [18], [20] and [21]** make consequential amendments.

**Schedule 4 [22]** inserts Part 6A (proposed sections 124A–124C) to make it clear that certain environmental assessment and other legislation does not apply to emergency fire fighting acts. **Schedule 4 [26]** inserts a definition of emergency fire fighting act into the Dictionary to the Act. An *emergency fire fighting act* is defined as 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. **Schedule 4 [10], [11], [15] and [19]** make consequential amendments.

**Schedule 4 [23] and [24]** amend Schedule 3 to the Act to insert savings and transitional provisions.

## **Schedule 5 Amendment of other instruments**

**Schedule 5** amends various environmental assessment and other laws to make it clear that emergency fire fighting activities carried out by the Service or any other fire fighting authority are not subject to various planning and licensing requirements.

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It also amends the *Environmental Planning and Assessment Regulation 2000* to require planning certificates under section 149 of the *Environmental Planning and Assessment Act 1979* to show the fact that land that is bush fire prone is bush fire prone land and amends the *Land and Environment Court Act 1979* as a consequence of proposed section 100H of the *Rural Fires Act 1997* (to be inserted by Schedule 3 [9]).



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# Rural Fires and Environmental Assessment Legislation Amendment Bill 2002

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New South Wales

# Rural Fires and Environmental Assessment Legislation Amendment Bill 2002

No. , 2002

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## A Bill for

An Act to amend the *Rural Fires Act 1997* and the *Environmental Planning and Assessment Act 1979* with respect to bush fire prone lands, bush fire hazards and bush fire emergencies; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Rural Fires and Environmental Assessment Legislation Amendment Act 2002</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Environmental Planning and Assessment Act 1979 No 203</b>	8 9
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	10 11
<b>4 Amendment of Rural Fires Act 1997 No 65</b>	12
The <i>Rural Fires Act 1997</i> is amended as set out in Schedules 2–4.	13
<b>5 Amendment of other instruments</b>	14
The Acts and instruments in Schedule 5 are amended as set out in that Schedule.	15 16

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<b>Schedule 1</b>	<b>Amendment of Environmental Planning and Assessment Act 1979</b>	1 2
	(Section 3)	3
<b>[1]</b>	<b>Section 4 Definitions</b>	4
	Insert in alphabetical order in section 4 (1):	5
	<i>bush fire prone land</i> , in relation to an area, means land recorded for the time being as bush fire prone land on a bush fire prone land map for the area.	6 7 8
	<i>bush fire prone land map</i> for an area means a map for the area certified as referred to in section 146 (2).	9 10
<b>[2]</b>	<b>Section 79BA</b>	11
	Insert after section 79B:	12
<b>79BA</b>	<b>Consultation and development consent—certain bush fire prone land</b>	13 14
	(1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:	15 16 17 18 19
	(a) is satisfied that the development conforms to the specifications and requirements of <i>Planning for Bushfire Protection 2001</i> produced by the NSW Rural Fire Service (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document), that are relevant to the development, or	20 21 22 23 24 25
	(b) the consent authority has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.	26 27 28 29 30 31



(2) In this section:	1	
<i>special fire protection purpose</i> has the same meaning as it has	2	
in section 100B of the <i>Rural Fires Act 1997</i> .	3	
<b>[3] Section 91 What is “integrated development”?</b>	4	
Insert in appropriate order in the Table to section 91 (1):	5	
<i>Rural Fires Act 1997</i> s 100B      authorisation under section	6	
	100B in respect of bush fire	7
	safety of subdivision of	8
	land that could lawfully be	9
	used for residential or rural	10
	residential purposes or	11
	development of land for	12
	special fire protection	13
	purposes	14
<b>[4] Section 146</b>	15	
Insert after the heading to Part 8:	16	
<b>146 Bush fire prone land</b>	17	
(1) If a bush fire risk management plan applies to land within the	18	
area of a council, the council must, within 12 months after the	19	
commencement of this section (and before the end of the	20	
period of every 5 years after the commencement):	21	
(a) request the Commissioner of the NSW Rural Fire	22	
Service to designate land (if any) within the area that the	23	
Commissioner considers, having regard to the bush fire	24	
risk management plan, to be bush fire prone land, and	25	
(b) must record any land so designated on a map.	26	
(2) The Commissioner of the NSW Rural Fire Service must, if	27	
satisfied that the land designated by the Commissioner has	28	
been recorded by the council on a map, certify the map as a	29	
bush fire prone land map for the area of the council.	30	
(3) Land recorded for the time being as bush fire prone land on a	31	
bush fire prone land map for an area is bush fire prone land for	32	
the area for the purposes of this or any other Act.	33	

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(4) The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.	1 2
(5) In this section:	3
<i>bush fire risk management plan</i> has the same meaning as it has in the <i>Rural Fires Act 1997</i> .	4 5
<b>Note.</b> Division 8 of Part 4 of the <i>Rural Fires Act 1997</i> contains provisions relating to the carrying out of development and bush fire hazard reduction work on bush fire prone land.	6 7 8
<b>[5] Schedule 6 Savings, transitional and other provisions</b>	9
Insert at the end of clause 1 (1):	10
<i>Rural Fires and Environmental Assessment Legislation Amendment Act 2002</i>	11 12
<b>[6] Schedule 6</b>	13
Insert the following Part (appropriately numbered) at the end of the Schedule:	14 15
<b>Part Rural Fires and Environmental Assessment Legislation Amendment Act 2002</b>	16 17
<b>Bush fire prone land</b>	18
(1) The following land within the area of a council is taken to be bush fire prone land for the area of the council until a bush fire prone land map for the area has been certified by the Commissioner of the NSW Rural Fire Service under section 146:	19 20 21 22 23
(a) land that is within, or within 100 metres of, a high or medium bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land, and	24 25 26 27
(b) land within, or within 30 metres of, a low bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land.	28 29 30 31

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Schedule 1      Amendment of Environmental Planning and Assessment Act 1979

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- (2) In this clause: 1  
*bush fire risk management plan* has the same meaning as it 2  
has in the *Rural Fires Act 1997*. 3

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<b>Schedule 2</b>	<b>Amendments to Rural Fires Act 1997</b>	1
	<b>relating to performance audit</b>	2
	(Section 4)	3
<b>[1]</b>	<b>Section 48 Functions of Bush Fire Co-ordinating Committee</b>	4
	Insert after section 48 (2):	5
	(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.	6 7 8 9 10
<b>[2]</b>	<b>Section 51 Functions of Bush Fire Management Committees</b>	11
	Insert after section 51 (1):	12
	(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.	13 14 15 16 17 18
<b>[3]</b>	<b>Part 3, Division 6</b>	19
	Insert after Division 5:	20
	<b>Division 6      General</b>	21
	<b>62A Performance audit of implementation of bush fire risk management plans</b>	22 23
	(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.	24 25 26 27

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Schedule 2 Amendments to Rural Fires Act 1997 relating to performance audit

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|---|----------------------------|
| (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).   | 1<br>2<br>3                |
| (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<br>5<br>6<br>7<br>8<br>9 |
| (4) The annual report of the Service prepared under the <i>Annual Reports (Departments) Act 1985</i> must include details of the number, and results, of performance audits carried out under this section in the year to which the report relates.   | 10<br>11<br>12<br>13       |

<b>Schedule 3</b>	<b>Amendments to Rural Fires Act 1997</b>	1
	<b>relating to bush fire prone land and bush</b>	2
	<b>fire hazard reduction</b>	3
	(Section 4)	4
<b>[1]</b>	<b>Section 14 Delegation by Commissioner</b>	5
	Insert at the end of the section:	6
	(2) The Commissioner may delegate to the Commissioner of New South Wales Fire Brigades 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:	7
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		11
	(a) section 73 (Bush fire hazard reduction by Commissioner),	12
		13
	(b) section 100B (Bush fire safety authorities),	14
	(c) section 79BA (Consultation and development consent—certain bush fire prone land) of the <i>Environmental Planning and Assessment Act 1979</i> ,	15
		16
		17
	(d) section 146 (Bush fire prone land) of the <i>Environmental Planning and Assessment Act 1979</i> .	18
		19
<b>[2]</b>	<b>Section 66 Bush fire hazard reduction work required by local authorities</b>	20
	Insert after section 66 (2):	21
	(2A) The local authority 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).	22
		23
		24
<b>[3]</b>	<b>Section 73</b>	25
	Omit the section. Insert instead:	26
	<b>73 Bush fire hazard reduction by Commissioner</b>	27
	(1) The Commissioner may carry out bush fire hazard reduction work on land:	28
		29

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Schedule 3 Amendments to Rural Fires Act 1997 relating to bush fire prone land and  
bush fire hazard reduction

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- (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 1  
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- (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 5  
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- (c) if the work has not been carried out by a public authority when, or in the manner, required by the Commissioner under section 74F. 10  
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- (2) 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 responsible person or authority as a debt due to the Crown in a court of competent jurisdiction. 13  
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- (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. 19  
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21  
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- (4) In this section: 23  
*responsible person or authority* means a public authority or owner or occupier of land referred to in subsection (1). 24  
25
- [4] Section 74** 26
- Omit the section. Insert instead: 27
- 74 Bush fire hazard reduction reports** 28
- (1) Each local authority must report to the Commissioner not later than 3 months after the end of the financial year on its activities in respect of bush fire hazard reduction work during the preceding year on land (other than managed land) in its area. 29  
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- (2) The report must include the following information: 1
  - (a) details of the extent of implementation of any scheme 2  
for the reduction of bush fire hazards on land in its area 3  
(other than managed land and unoccupied Crown land) 4  
set out in a bush fire risk management plan that applies 5  
to the land, 6
  - (b) the number of inspections relating to bush fire hazards 7  
carried out on the land, 8
  - (c) the number of bush fire hazard reduction notices issued 9  
by the local authority in respect of the land, 10
  - (d) details of any objections lodged against such notices and 11  
of whether they were confirmed, varied or withdrawn, 12
  - (e) the number of bush fire hazard reduction works carried 13  
out by the local authority under section 70, 14
  - (f) details of bush fire hazard reduction certificates issued 15  
by the local authority, 16
  - (g) information about such other matters (if any) as are 17  
prescribed by the regulations. 18
- (3) Each public authority that is responsible for managed land must 19  
report to the Commissioner not later than 3 months after the 20  
end of the financial year on its activities to reduce bush fire 21  
hazards on the managed land during the preceding financial 22  
year. 23
- (4) The report is to include details of the extent of implementation 24  
of any scheme for the reduction of bush fire hazards on 25  
managed land for which the public authority is responsible set 26  
out in a bush fire risk management plan that applies to the land. 27
- (5) The annual report of the Service prepared under the *Annual 28  
Reports (Departments) Act 1985* must include details of 29  
information contained in reports under this section for the year 30  
to which the annual report relates. 31



<b>[5] Part 4, Division 2A</b>	1
Insert after section 74:	2
<b>Division 2A Bush fire hazard complaints</b>	3
<b>74A Bush fire hazard complaints</b>	4
(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 <i>bush fire hazard complaint</i> ).	5 6 7 8 9
(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.	10 11 12
<b>74B Who may make a bush fire hazard complaint</b>	13
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.	14 15 16
<b>74C How and to whom are complaints to be made</b>	17
(1) A bush fire hazard complaint is to be made by giving it, or sending it by post:	18 19
(a) if the complaint relates to unoccupied Crown land or managed land for which a public authority is responsible—to the Commissioner, or	20 21 22
(b) in the case of any other land—to the local authority of the local government area in which the land is located.	23 24
(2) A bush fire hazard complaint must be made in writing, must identify the complainant and must state the grounds for the complaint.	25 26 27
(3) A local authority must notify the Commissioner of any complaint made to it under this Division.	28 29

(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.	1 2 3 4 5
<b>74D Investigation of complaint</b>	6
(1) The Commissioner or local authority must investigate the bush fire hazard complaint as soon as practicable after it is received.	7 8
(2) The Commissioner or local authority may investigate the complaint as the Commissioner or local authority thinks fit.	9 10
(3) Without limiting subsection (2), the Commissioner or a local authority (or a person authorised by the Commissioner or local authority) 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.	11 12 13 14 15 16 17
(4) The Commissioner or local authority may decline to deal with a complaint, or dismiss a complaint, that the Commissioner or local authority considers to be vexatious, misconceived, frivolous or lacking in substance.	18 19 20 21
(5) The Commissioner or local authority is to notify the complainant if the Commissioner or local authority declines to deal with, or dismisses, the complaint.	22 23 24
<b>74E Action that may be taken by local authority if bush fire hazard exists</b>	25 26
A local authority that finds that a bush fire hazard exists on land to which a bush fire hazard complaint relates:	27 28
(a) may 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	29 30 31 32

	(b) must, subject to sections 67 and 68, exercise its 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.	1 2 3 4
<b>74F</b>	<b>Action that may be taken by Commissioner if bush fire hazard exists</b>	5 6
	(1) 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.	7 8 9 10 11 12 13
	(2) 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.	14 15 16 17
<b>74G</b>	<b>Complainant to be notified of action taken</b>	18
	(1) The Commissioner or local authority must advise the complainant of action taken by the Commissioner or authority in respect of the complaint as soon as practicable after it is taken.	19 20 21 22
	(2) The local authority must advise the Commissioner of action taken by it in respect of the complaint as soon as practicable after it is taken	23 24 25
<b>74H</b>	<b>Failure of local authority to take action</b>	26
	(1) A complainant may, by notice in writing given or sent by post to the Commissioner, request the Commissioner to take action under this section if the complainant considers that the local authority has failed to exercise its powers under this Division in respect of the complaint.	27 28 29 30 31
	(2) If the Commissioner is satisfied that a local authority has failed to deal with a bush fire hazard complaint, the Commissioner may investigate the complaint.	32 33 34

- (3) The Commissioner may deal with a complaint whether or not a notice has been served under subsection (1). 1  
2
- (4) If the Commissioner finds that a bush fire hazard exists on land to which the complaint relates, the Commissioner may, by notice in writing served on the local authority, require it: 3  
4  
5
- (a) 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 6  
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9
- (b) subject to sections 67 and 68, to exercise its 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. 10  
11  
12  
13
- (5) A local authority served with a notice under this section must comply with the requirements of the notice. 14  
15
- [6] Section 86 Notice and certain authorities required before certain fires lit** 16
- Insert after section 86 (1): 17
- (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: 18  
19  
20
- (a) a bush fire hazard reduction certificate has been issued in respect of the land clearance or fire break, or 21  
22
- (b) any approval, consent or other authority required for the land clearance or fire break under the *Environmental Planning Assessment Act 1979* or any other law has been given. 23  
24  
25  
26
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 27  
28
- [7] Section 89 Issue of permits** 29
- Insert at the end of the section: 30
- (2) An appropriate authority must not issue a fire permit for a purpose unless: 31  
32

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(a)	a bush fire hazard reduction certificate has been issued in respect of the purpose, or	1 2
(b)	any approval, consent or other authority required for the purpose under the <i>Environmental Planning Assessment Act 1979</i> or any other law has been given.	3 4 5
<b>[8]</b>	<b>Section 92 Conditions of permit</b>	6
	Insert after section 92 (1) (a):	7
(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	8 9 10 11 12
<b>[9]</b>	<b>Part 4, Division 8</b>	13
	Insert after Division 7 of Part 4:	14
<b>Division 8</b>	<b>Development of bush fire prone land and for bush fire hazard reduction</b>	15 16
<b>Subdivision 1</b>	<b>Definitions</b>	17
<b>100A</b>	<b>Definitions</b>	18
(1)	In this Division:	19
	<i>bush fire code</i> means a bush fire environmental assessment code in force under this Division.	20 21
	<i>bush fire safety authority</i> means an authority given by the Commissioner under section 100B and that is in force.	22 23
	<i>certifying authority</i> means a certifying authority described in section 100E.	24 25
	<i>excluded land</i> means the following:	26
(a)	land to which <i>State Environmental Planning Policy No 14—Coastal Wetlands</i> applies,	27 28
(b)	land to which <i>State Environmental Planning Policy No 26—Littoral Rainforests</i> applies,	29 30

(c) any other land prescribed by the regulations. 1

**issuing authority** means the issuing authority described in section 100E. 2  
3

**managed land** means land: 4

(a) that is dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *Forestry Act 1916*, or in respect of which the Forestry Commission has obtained the benefit of a forestry right as referred to in section 11 (1) (m) (ia) of that Act, or 5  
6  
7  
8  
9

(b) that is dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *National Parks and Wildlife Act 1974*, or 10  
11  
12

(c) that is vested in, or under the control of, the State Rail Authority, Rail Infrastructure Corporation or the Roads and Traffic Authority, or 13  
14  
15

(d) that is within the catchment area of a water authority. 16

**private land** means land other than managed land and unoccupied Crown land. 17  
18

(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. 19  
20  
21

## **Subdivision 2 Bush fire prone land** 22

### **100B Bush fire safety authorities** 23

(1) The Commissioner may issue a bush fire safety authority for: 24

(a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or 25  
26

(b) development of bush fire prone land for a special fire protection purpose. 27  
28

(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 29  
30  
31

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- 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. 1  
2  
3
- (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  
5  
6
- (4) Application for a bush fire safety authority is to be made to the Commissioner in accordance with the regulations. 7  
8
- (5) Development to which subsection (1) applies: 9
- (a) does not include the carrying out of internal alterations to any building, and 10  
11
- (b) is not complying development for the purposes of the *Environmental Planning and Assessment Act 1979*, despite any environmental planning instrument. 12  
13  
14
- (6) In this section: 15
- special fire protection purpose* means the purpose of the following: 16  
17
- (a) a school, 18
- (b) a child care centre, 19
- (c) a hospital (including a hospital for the mentally ill or mentally disordered), 20  
21
- (d) a hotel, motel or other tourist accommodation, 22
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons, 23  
24
- (f) housing for older people or people with disabilities within the meaning of *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*, 25  
26  
27  
28
- (g) a group home within the meaning of *State Environmental Planning Policy No 9—Group Homes*, 29  
30
- (h) a retirement village, 31
- (i) any other purpose prescribed by the regulations. 32

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### 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 Conservation Act 1997*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act if:



- (a) the work is carried out in accordance with a bush fire risk management plan that applies to the land, and 1  
2
- (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 3  
4  
5  
6
- (c) the work is carried out in accordance with the provisions of any bush fire code applying to the land specified in the certificate. 7  
8  
9
- (5) Subsection (4) does not apply to an integrated forestry operations approval within the meaning of the *Forestry and National Park Estate Act 1998*. 10  
11  
12
- 100D What is a bush fire hazard reduction certificate?** 13
- 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: 14  
15  
16
- (a) a bush fire risk management plan that applies to the land, and 17  
18
- (b) the provisions of any bush fire code applying to the land specified in the certificate, and 19  
20
- (c) any conditions specified in the certificate. 21
- 100E Issuing and certifying authorities** 22
- (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 the local authority of the area in which the land is situated. 23  
24  
25  
26  
27
- (2) The *certifying authority* for a bush fire hazard reduction certificate in respect of bush fire hazard reduction work to be carried out: 28  
29  
30
- (a) on any land by the Commissioner—is the Commissioner, 31  
32
- (b) on any land by a local authority—is the local authority for the area in which the land is situated, 33  
34

(c)	on managed land or unoccupied Crown land by a public authority—is the public authority responsible for the land.	1 2 3
<b>100F</b>	<b>Issue by local authorities of bush fire hazard reduction certificates</b>	4 5
(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).	6 7 8 9 10
(2)	An application may be made:	11
(a)	by any owner or occupier of the private land, or	12
(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.	13 14 15 16
(3)	A single application may, with the consent of all owners or occupiers of the land concerned:	17 18
(a)	be made for land owned or occupied by more than one person, or	19 20
(b)	be made by a public authority on behalf of those owners or occupiers.	21 22
(4)	A bush fire hazard reduction certificate must not be issued unless:	23 24
(a)	a bush fire risk management plan applies to the land, and	25 26
(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.	27 28 29 30 31
(5)	The issuing authority may determine an application:	32
(a)	by issuing a bush fire hazard reduction certificate, or	33

- (b) by refusing to issue a bush fire hazard reduction certificate. 1  
2
- (6) A bush fire hazard reduction certificate must: 3
- (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 4  
5  
6
- (b) specify any other conditions that have been imposed by the issuing authority having regard to that bush fire code, and 7  
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9
- (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. 10  
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- (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. 14  
15  
16
- (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. 17  
18  
19
- 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. 20  
21  
22  
23
- (9) A local authority or public authority must not charge any fee in respect of an application for, or the issue of, a bush fire hazard reduction certificate. 24  
25  
26
- 100G Bush fire hazard reduction certificates of certifying authorities** 27
- (1) Before a certifying authority carries out any bush fire hazard reduction work on land, the certifying authority must certify: 28  
29
- (a) that a bush fire risk management plan applies to the land, and 30  
31
- (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 32  
33  
34

in carrying out the work and whether any conditions should be imposed having regard to any provisions of that code, and	1 2 3
(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.	4 5 6 7 8
(2) A bush fire hazard reduction certificate certified by a certifying authority must:	9 10
(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	11 12 13
(b) specify any conditions that have been imposed by the certifying authority having regard to that bush fire code.	14 15
<b>100H Remedy and restraint for breaches of sections 100F and 100G</b>	16
(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.	17 18 19 20 21
(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.	22 23 24 25 26 27
(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.	28 29 30 31
<b>100I Duration of bush fire hazard reduction certificate</b>	32
A bush fire hazard reduction certificate becomes effective and operates for a period of 12 months commencing on the date endorsed on the certificate.	33 34 35

<b>Subdivision 4 Bush fire environmental assessment codes</b>	1
<b>100J Commissioner may prepare draft codes</b>	2
(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).	3 4 5
(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.	6 7 8 9
(3) In preparing a draft bush fire environmental assessment code in relation to land, the Commissioner must have regard to:	10 11
(a) the principles of ecologically sustainable development (as described by section 6 (2) of the <i>Protection of the Environment Administration Act 1991</i> ), and	12 13 14
(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 <i>Environmental Planning and Assessment Act 1979</i> (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.	15 16 17 18 19 20 21 22
<b>100K Consultation on draft codes</b>	23
(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:	24 25 26 27
(a) the Director-General of the Department of Planning,	28
(b) the Director-General of National Parks and Wildlife,	29
(c) the Managing Director of State Forests,	30
(d) the Nature Conservation Council of New South Wales,	31
(e) the NSW Farmers Association,	32

(f)	the Local Government Association of New South Wales,	1 2
(g)	the Shires Association of New South Wales,	3
(h)	the Director of NSW Fisheries,	4
(i)	the Commissioner of NSW Fire Brigades,	5
(j)	the Director-General of the Department of Land and Water Conservation.	6 7
(2)	The Commissioner may consult with such other persons or bodies as the Commissioner considers appropriate or as the Minister directs.	8 9 10
<b>100L</b>	<b>Public participation in preparation of codes</b>	11
(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.	12 13 14 15
(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.	16 17 18 19 20
(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.	21 22 23 24
<b>100M</b>	<b>Approval of code</b>	25
	The Minister may, after consultation with the Minister for 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.	26 27 28 29 30
<b>100N</b>	<b>Publication, commencement and availability of codes</b>	31
(1)	A draft bush fire environmental assessment code:	32
(a)	is to be published in the Gazette, and	33

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(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.	1 2 3 4
(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:	5 6 7
(a)	a copy of the code,	8
(b)	if the code has been amended, a copy of the code as so amended,	9 10
(c)	if the code refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.	11 12 13
<b>1000</b>	<b>Amendment or revocation of codes</b>	14
	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.	15 16 17 18
<b>[10]</b>	<b>Schedule 3, Part 5</b>	19
	Insert after clause 19:	20
	<b>Part 5 Provisions consequent on enactment of Rural Fires and Environmental Assessment Legislation Amendment Act 2002</b>	21 22 23
<b>20</b>	<b>Definition</b>	24
	In this Part:	25
	<i>amending Act</i> means the <i>Rural Fires and Environmental Assessment Legislation Amendment Act 2002</i> .	26 27
<b>21</b>	<b>Savings in respect of planning matters</b>	28
(1)	The amendment made by Schedule 3 [9] to the amending Act does not affect:	29 30

- (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 1  
2  
3  
4  
5
- (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. 6  
7  
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9
- (2) If an application for development consent has been made but not been finally determined on the commencement of Schedule 3 [9] to the amending Act, the amendment made by Schedule 3 [9] 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. 10  
11  
12  
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14  
15  
16
- (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. 17  
18  
19  
20
- (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. 21  
22  
23  
24  
25
- 22 Agreements about review of incidence of bush fire hazards** 26
- 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. 27  
28  
29  
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**[11] Dictionary**

1

Insert in alphabetical order:

2

*bush fire hazard complaint* means a complaint under  
section 74A.

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*bush fire hazard reduction certificate* means a certificate  
referred to in section 100D.

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*bush fire prone land* has the same meaning as it has in the  
*Environmental Planning and Assessment Act 1979*.

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*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.

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<b>Schedule 4</b>	<b>Other amendments to Rural Fires Act 1997</b>	1
	(Section 4)	2
<b>[1]</b>	<b>Section 22 General powers of rural fire brigade officers and others</b>	3
	Omit “persons or property” from section 22 (1).	4
	Insert instead “persons, property or the environment”.	5
<b>[2]</b>	<b>Section 28 Damage to property and the environment</b>	6
	Insert “and any remedial work necessary to rectify damage to the environment” after “good faith” in section 28 (1).	7 8
<b>[3]</b>	<b>Section 69 Duties of local authority</b>	9
	Omit “The fire control officer for a local authority” from section 69 (1).	10
	Insert instead “A fire control officer”.	11
<b>[4]</b>	<b>Section 69 (1)</b>	12
	Omit “by the local”. Insert instead “by a local”.	13
<b>[5]</b>	<b>Section 82</b>	14
	Omit the section. Insert instead:	15
	<b>82 Local bush fire danger period</b>	16
	(1) The Commissioner may, by notice published in a newspaper circulating generally in a local government area:	17
		18
	(a) declare that there is no bush fire danger period in the area or part of the area, or	19 20
	(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.	21 22 23
	(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.	24 25 26

(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.	1 2 3
(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.	4 5 6 7 8
(5) A declaration remains in force:	9
(a) until it is revoked, or	10
(b) for such period as is specified in the declaration (unless it is sooner revoked).	11 12
<b>[6] Section 83</b>	13
Omit the section. Insert instead:	14
<b>83 Consultation required before local bush fire danger period declaration made</b>	15 16
(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:	17 18 19 20
(a) by the local authority for any area to which the declaration relates, and	21 22
(b) by any fire fighting authority exercising functions in the rural fire district or fire district constituted for the area.	23 24
(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.	25 26 27 28 29 30
<b>[7] Section 84</b>	31
Omit the section.	32

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<b>[8] Section 85 Definitions</b>	1
Omit paragraph (a) and the note to the paragraph from the definition of <i>appropriate authority</i> .	2
Insert instead:	3
(a) in the case of land in a rural fire district—the Commissioner of the NSW Rural Fire Service,	4
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	6
<b>[9] Section 85, definition of “appropriate authority”</b>	7
Omit paragraphs (b) and (d).	8
<b>[10] Section 86 Notice required before certain fires lit</b>	9
Insert after section 86 (2):	10
<b>Note.</b> An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.	11
	12
	13
<b>[11] Section 87 Lighting fires for land clearance or fire breaks in bush fire danger period</b>	14
	15
Insert after section 87 (2):	16
<b>Note.</b> An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.	17
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	19
<b>[12] Section 88 Lighting fires that are dangerous to buildings in fire districts and rural fire districts</b>	20
	21
Omit “local government area that is in a fire district” from section 88 (1).	22
Insert instead “fire district or rural fire district”.	23
<b>[13] Section 88 (1) (a)</b>	24
Omit “an officer of New South Wales Fire Brigades”.	25
Insert instead “the appropriate authority”.	26
<b>[14] Section 88 (2)</b>	27
Omit “local government area that is in a fire district” from section 88 (2).	28
Insert instead “fire district or rural fire district”.	29

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Schedule 4 Other amendments to Rural Fires Act 1997

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<b>[15] Section 88 (2), note</b>	1
Insert after section 88 (2):	2
<b>Note.</b> An authorised officer is not required to obtain various other approvals or authorities if carrying out an emergency fire fighting act—see Part 6A.	3 4 5
<b>[16] Section 93 Refusal to issue fire permit</b>	6
Omit “if the appropriate authority is a local authority—the local authority” from section 93 (b).	7 8
Insert instead “the appropriate authority”.	9
<b>[17] Section 94 Notice to be given of issue of fire permit</b>	10
Omit section 94 (1).	11
<b>[18] Section 95 Permit not required for fires lit by public authorities</b>	12
Omit “a local” from section 95 (2) (a). Insert instead “an”.	13
<b>[19] Section 96 Appropriate authorities not determining authorities</b>	14
Omit section 96 (2).	15
<b>[20] Section 97 Reporting requirements</b>	16
Omit section 97 (1). Insert instead:	17
(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.	18 19 20 21 22
<b>[21] Section 97 (2) (a)</b>	23
Omit the paragraph. Insert instead:	24
(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	25 26 27 28 29

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<b>[22] Part 6A</b>	1
Insert after section 124:	2
<b>Part 6A Application of other legislation</b>	3
<b>Division 1 Application of other legislation to emergency fire fighting acts</b>	4 5
<b>124A Application of Environmental Planning and Assessment Act 1979</b>	6
(1) An environmental planning instrument made under the <i>Environmental Planning and Assessment Act 1979</i> cannot prohibit, require development consent for or otherwise restrict the doing of any emergency fire fighting act.	7 8 9 10
(2) Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> does not apply to or in respect of any emergency fire fighting act.	11 12 13
(3) An order under Division 2A or 3 of Part 6 of the <i>Environmental Planning and Assessment Act 1979</i> does not have effect to the extent that it prevents or interferes with the doing of any emergency fire fighting act.	14 15 16 17
(4) Subsection (1) applies to an environmental planning instrument made before or after the commencement of this section.	18 19
<b>124B Application of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995</b>	20 21
(1) Part 6A (Stop work orders and interim protection orders) of the <i>National Parks and Wildlife Act 1974</i> does not apply to or in respect of the doing of an emergency fire fighting act.	22 23 24
(2) A person does not harm fauna for the purposes of section 45, 70, 98, 99 or 100 of the <i>National Parks and Wildlife Act 1974</i> if the harm is caused by the doing of any emergency fire fighting act by the person.	25 26 27 28
(3) Division 1 of Part 7 (Stop work orders) of the <i>Threatened Species Conservation Act 1995</i> does not apply to or in respect of the doing of any emergency fire fighting act.	29 30 31

<b>124C</b>	<b>Application of Local Government Act orders</b>	1
	An order under section 124 of the <i>Local Government Act 1993</i>	2
	does not have effect to the extent that it prevents or interferes	3
	with the doing of any emergency fire fighting act.	4
<b>[23]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	5
	Insert at the end of clause 1 (1):	6
	<i>Rural Fires and Environmental Assessment Legislation</i>	7
	<i>Amendment Act 2002</i> , to the extent that it amends this Act	8
<b>[24]</b>	<b>Schedule 3</b>	9
	Insert the following clause (appropriately numbered) at the end of the	10
	Schedule:	11
	<b>Fire permits</b>	12
	A fire permit issued by the council of a local government area	13
	and in force immediately before the commencement of the	14
	amendments made to section 88 by the <i>Rural Fires and</i>	15
	<i>Environmental Assessment Legislation Amendment Act 2002</i> is	16
	taken to be a fire permit issued by the Commissioner.	17
<b>[25]</b>	<b>Dictionary</b>	18
	Omit “persons or property” from the definition of <i>back burning</i> .	19
	Insert instead “persons, property or the environment”.	20
<b>[26]</b>	<b>Dictionary</b>	21
	Insert in alphabetical order:	22
	<i>emergency bush fire hazard reduction work</i> means bush fire	23
	hazard reduction work carried out to protect persons, property	24
	or the environment from an existing or imminent danger arising	25
	out of a fire.	26

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*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.

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<b>Schedule 5</b>	<b>Amendment of other instruments</b>	1
	(Section 5)	2
<b>5.1</b>	<b>Environmental Planning and Assessment Regulation 2000</b>	3
	<b>Schedule 4 Planning certificates</b>	4
	Insert after clause 10:	5
	<b>11 Bush fire prone land</b>	6
	That land that is bush fire prone land is bush fire prone land.	7
<b>5.2</b>	<b>Fisheries Management Act 1994 No 38</b>	8
<b>[1]</b>	<b>Section 220ZF Defences</b>	9
	Omit “the <i>Rural Fires Act 1997</i> or” from section 220ZF (1) (c).	10
<b>[2]</b>	<b>Section 220ZF (5)</b>	11
	Insert after section 220ZF (4):	12
	(5) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	13 14 15
<b>[3]</b>	<b>Section 220ZU Notification of, and consultation concerning, proposed departures from recovery or threat abatement plan</b>	16 17
	Omit “the <i>Rural Fires Act 1997</i> or” from section 220ZU (5).	18

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<b>[4] Section 220ZU (6)</b>	1
Insert after section 220ZU (5):	2
(6) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	3 4 5
<b>5.3 Land and Environment Court Act 1979 No 204</b>	6
<b>Section 20 Class 4—environmental planning and protection development contract civil enforcement</b>	7 8
Insert after section 20 (1) (cj):	9
(cja) proceedings under section 100H of the <i>Rural Fires Act 1997</i> ,	10 11
<b>5.4 Local Government Act 1993 No 30</b>	12
<b>Section 22 Other functions</b>	13
Omit “declaration of bush fire danger periods and” from the matter relating to the <i>Rural Fires Act 1997</i> in the note to the section.	14 15
<b>5.5 Native Vegetation Conservation Act 1997 No 133</b>	16
<b>[1] Section 5 Definition of “clearing”</b>	17
Insert after section 5 (4):	18
(5) For the purposes of this Act, the clearing of land by burning during a bush fire within the meaning of the <i>Rural Fires Act 1997</i> does not affect any requirement of this Act with respect to any subsequent clearing of the land (whether by burning or otherwise).	19 20 21 22 23

<b>[2] Section 12 Clearing excluded from operation of Act</b>	1
Omit “the <i>Rural Fires Act 1997</i> , or the <i>State Emergency and Rescue Management Act 1989</i> ,” from section 12 (a).	2
Insert instead “the <i>State Emergency and Rescue Management Act 1989</i> ”.	3
	4
<b>[3] Section 12 (a)</b>	5
Omit “the latter”. Insert instead “that”.	6
<b>[4] Section 12 (a1)</b>	7
Insert after section 12 (a):	8
(a1) any clearing authorised under the <i>Rural Fires Act 1997</i>	9
in relation to any emergency fire fighting act within the	10
meaning of that Act,	11
<b>5.6 National Parks and Wildlife Act 1974 No 80</b>	12
<b>[1] Section 91AA Director-General may make stop work order</b>	13
Omit “Part 2 of the <i>Rural Fires Act 1997</i> or” from section 91AA (3).	14
<b>[2] Section 91AA (3A)</b>	15
Insert after section 91AA (3):	16
(3A) This section does not apply in relation to any thing authorised	17
to be done by or under the <i>Rural Fires Act 1997</i> in relation to	18
any emergency fire fighting act within the meaning of that Act.	19
<b>[3] Section 118A Harming or picking threatened species, populations or ecological communities</b>	20
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Omit “Part 2 of the <i>Rural Fires Act 1997</i> ,” from section 118A (3).	22

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<b>[4] Section 118A (3A)</b>	1
Insert after section 118A (3):	2
(3A) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	3 4 5
<b>[5] Section 118D Damage habitat of threatened species, populations or ecological communities</b>	6 7
Omit “Part 2 of the <i>Rural Fires Act 1997</i> ,” from section 118D (2) (c).	8
<b>[6] Section 118D (2A)</b>	9
Insert after section 118D (2):	10
(2A) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	11 12 13
<b>5.7 Rural Fires Regulation 1997</b>	14
<b>Clause 38 Reduction of fire hazards on managed land</b>	15
Omit clause 38 (e).	16
<b>5.8 Threatened Species Conservation Act 1995 No 101</b>	17
<b>[1] Section 71 Notification of proposed departures from recovery plan</b>	18
Omit “Part 2 of the <i>Rural Fires Act 1997</i> or” from section 71 (3).	19
<b>[2] Section 71 (4)</b>	20
Insert after section 71 (3):	21
(4) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	22 23 24

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Schedule 5      Amendment of other instruments

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<b>[3] Section 88 Notification of departures from threat abatement plan</b>	1
Omit “Part 2 of the <i>Rural Fires Act 1997</i> or” from section 88 (3).	2
<b>[4] Section 88 (4)</b>	3
Insert after section 88 (3):	4
(4) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	5 6 7
<b>[5] Section 114 Director General may make stop work order</b>	8
Omit “Part 2 of the <i>Rural Fires Act 1997</i> or” from section 114 (3) (b).	9
<b>[6] Section 114 (3A)</b>	10
Insert after section 114 (3):	11
(3A) This section does not apply in relation to any thing authorised to be done by or under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act.	12 13 14