

Rural Fires Amendment (Fire Trails) Bill 2016

Second Reading

The Hon. SARAH MITCHELL (11:30): On behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech into Hansard.

Leave granted.

At the last election the New South Wales Liberal and Nationals Government committed to providing New South Wales with an enhanced fire trail network.

We made that commitment to assist the dedicated members of the NSW Rural Fire Service [RFS] in their hazard reduction and firefighting duties.

An enhanced, more functional, and better maintained fire trail network will give the RFS and other firefighting authorities better access to areas where bush fires are, or may be occurring as well as improved access to undertake hazard reduction works. More timely access to a fire front will mitigate the loss of life and property damage that bush fires can cause.

This bill amends the Rural Fires Act 1997 to provide the legislative basis for the establishment and maintenance of the enhanced fire trail network. It integrates fire trail management into the bush fire management planning process in New South Wales.

I will turn now to the bill's specific provisions.

The bill amends section 51 to require bush fire management committees, or BFMCs, to prepare draft fire access and fire trail plans and report on their implementation to the Bush Fire Co-ordinating Committee, or BFCC.

The BFCC, which is already established under section 48 of the Rural Fires Act 1997, has carriage of planning for bushfire prevention and coordinated bushfire fighting across the State.

A key responsibility of the BFCC is the establishment of BFMCs, which are also already provided for under section 50 of the Rural Fires Act.

BFMCs are forums for cooperative and coordinated bush fire management within their area of responsibility.

Membership of BFMCs is derived from relevant agencies with local knowledge including the NSW Rural Fire Service, Fire and Rescue NSW, NSW Police Force, the Office of Environment and Heritage, Forestry Corporation of NSW, Department of Primary Industries—Lands, NSW Farmers Association, Nature Conservation Council, local Aboriginal and local councils and local councils.

Existing key functions of BFMCs include the preparation of a draft bush fire risk management plan and a draft plan of operations for the coordinated response to a bush fire for their area of responsibility.

Amendments to section 52 require each BFMC to prepare a draft fire access and fire trail plan for its respective area. The BFMC must submit the initial plan to the BFCC within three years of the bill's commencement. Thereafter, a plan must be submitted within every successive five-year period.

Proposed section 54A provides for the content of draft fire access and fire trail plans, which must address:

- appropriate means of accessing land to prevent, fight, manage or contain bush fires; and
- may do so by identifying or providing for the identification of suitable existing or proposed fire trails.

The NSW RFS Commissioner may direct a BFMC to amend its fire access and fire trail plans.

Fire access and fire trail plans must conform to the Fire Trail Standards made by the NSW RFS Commissioner under proposed section 62K.

Proposed section 59A requires BFMCs to submit their draft fire access and fire trail plans to the BFCC for review and approval.

The BFCC may either approve the plans and revoke or vary other existing plans that relate to the area the plans cover. The BFCC may also amend the plans submitted by the BFMC.

Part 3B sets out how the new fire trail and access plans will operate.

Section 621 sets out the purpose of the new part 3B, which is to provide for the establishment, maintenance, protection, certification and registration of fire trails. Both new and existing fire trails may be registered.

Section 62J defines public land as managed land, unoccupied Crown land, or land owned or occupied by a public authority.

Private land is defined as any land that is not public land.

An "occupier" may include a public authority that is responsible for any particular land.

Section 62K sets out the requirements for Fire Trail Standards. The section provides that the NSW RFS Commissioner may make Fire Trail Standards, and may vary or replace the standards from time to time. The NSW RFS must publish the Fire Trail Standards in the Government Gazette and on their website.

The standards:

- are to as far as practicable, provide for a practical network of fire trails across the State;

- may relate to the structure and form of fire access and fire trail plans;
- may relate to the classification, length, width, gradient, signage, construction standards and maintenance of fire trails, and
- will require fire access and fire trail plans to include a treatment register for fire trails that is approved by the NSW RFS Commissioner from time to time.

Section 62L permits the NSW RFS Commissioner to give a written direction that a fire trail be established and maintained on public land.

The direction:

- must provide particulars of the fire trail including its location ;
- may apply to a new fire trail or an existing fire trail or a combination of both.

Once a direction is given, the fire trail is established as a 'designated fire trail'. A fire trail ceases to be a designated fire trail once it is registered, or its designation is revoked prior to registration.

Section 62ZQ provides that both designation and registration of a fire trail runs with the land. Both designation and registration are not affected by a change of ownership or occupation of land, regardless of whether the fire trail is on public or private land. Furthermore, a fire trail is also not affected if public land on which the trail is situated becomes private land , or vice versa .

Section 62M permits the NSW RFS Commissioner to enter into negotiations and agreements with the owners of private land to establish written agreements for the establishment of fire trails.

The agreements:

- must provide particulars of the fire trail including its location;
- may apply to a new fire trail or an existing fire trail or a combination of both ;
- must be in a form approved by the NSW RFS Commissioner ;
- state that the agreement is made pursuant to the purposes of the new part 3B ; and
- acknowledge the consent of the owner to the designation and registration of the fire trail.

Once an agreement is made, the fire trail becomes a designated fire trail. The fire trail will cease to be a designated fire trail once it becomes registered or the NSW RFS Commissioner or the owner of the land agrees to withdraw from the agreement before the fire trail is registered.

Where the owner of land is not the occupier of the land, an agreement may only be entered into where the occupier has given written consent to enter into the agreement.

Section 62N permits the commissioner to certify:

- fire trails on public land subject to a direction ;

- fire trails on private land subject to an agreement ;
- existing fire trails on public land that are referred to in a fire access and fire trail plan ; or
- existing fire trails on private land that are referred to in a fire access and fire trail plan provided that the fire trail is the subject of an agreement to establish the fire trail that was entered into prior to the bill's commencement.

A fire trail may only be certified if it complies with the Fire Trail Standards.

A fire trail becomes registered when it is placed on the register. The NSW RFS Commissioner must keep a register of certified fire trails, which is to be published on the NSW RFS website.

Land managers will also have the ability to access the register through the Guardian system. This will enable them to have visibility of the fire trails they have responsibility for.

Owners and occupiers of land adjacent to or in the vicinity of land on which a registered fire trail is situated may make a fire trail complaint to the RFS Commissioner, if the registered fire trail does not conform with the Fire Trail Standards in any material respect.

The bill's complaint provisions are based on the existing Rural Fires Act complaints framework.

Complaints must be in writing and must identify the complainant and the grounds for the complaint.

The owner or occupier of the land to which the complaint relates must be given written notice of the complaint and its grounds as soon as practicable after the complaint is made.

Section 62S requires the NSW RFS Commissioner to investigate a fire trail complaint as soon as practicable after it is received. However, the NSW RFS Commissioner does not need to investigate the complaint if the NSW RFS Commissioner considers it is vexatious, misconceived, frivolous or lacking in substance.

Section 62ZP permits the NSW RFS Commissioner or an RFS member authorised by the Commissioner to enter and inspect land other than a dwelling house to determine whether it complies with the standards.

Where a fire trail is not in compliance with the standards, the NSW RFS Commissioner may undertake construction, maintenance and rectification work to bring it into compliance with the standards.

Section 62W creates a duty on the owner or occupier of land on which a fire trail is situated to construct and maintain the fire trail in accordance with the Fire Trail Standards. The owner or occupier is also liable for all costs incurred by it in performing that duty.

However, section 62W (4) allows private landowners to vary the duty by agreement with the NSW RFS. This means that private landowners will not be responsible for construction or maintenance of a fire trail, or liable for the cost to construct or maintain a fire trail, if they do not want to be.

The provision is intended to provide for situations where, for example, a fire trail incorporates part of a road used primarily for private purposes which it would be inappropriate to use public funds to maintain.

Where that situation exists, the agreement between the land owner and NSW RFS may provide for some costs to be met by the land owner. In situations where the fire trail is only used as a fire trail, it would be likely that the owner would bear no responsibility and no liability for the construction, maintenance or cost of the trail.

Further, the duty does not apply to an occupier of public land who is not a public authority.

Section 62X permits the NSW RFS Commissioner to authorise persons to carry out fire trail rectification work on unoccupied Crown land or managed land.

The bill provides for the issue of fire trail rectification notices to ensure that owners and occupiers construct and maintain fire trails in compliance with the standards.

Fire trail rectification work includes construction or completing the construction of a fire trail, to bring it into compliance with the Fire Trail Standards.

Section 62Y permits a fire trail management officer to issue written fire trail rectification notices. These notices will require the owner or occupier of land to carry out fire trail rectification work within a time period specified in the notice. However, the notice must provide a minimum of 28 days for the work to be carried out.

An owner or occupier who does not comply with a fire trail rectification notice is liable to a maximum penalty of 20 penalty units or imprisonment for two years, or if the owner or occupier is a corporation or public authority, a maximum penalty of 220 penalty units.

Section 62Z permits a person to object to a fire trail rectification notice.

Once an objection is lodged, a fire trail management officer must, within 28 days, either confirm the notice, vary it or withdraw it.

Section 62ZA permits a person to appeal in writing against a decision on an objection to a notice. The NSW RFS Commissioner must consider and deal with the appeal within a reasonable time by confirming, varying or cancelling the notice.

Section 62ZC allows the NSW RFS Commissioner to carry out fire trail rectification work if the person to whom a fire trail rectification notice is given does not complete the required work. The NSW RFS Commissioner may also recover costs incurred in undertaking the work from the relevant person.

Section 62ZD creates a defence to prosecution under section 62Y or an action to recover costs under section 62ZC. An owner of land may use the defence where the owner is not the occupier and the court is satisfied that the owner had no legal right, as between the owner and occupier, to enter the land to comply with the notice.

Section 62ZE provides that any damage to land caused in good faith by fire trail rectification work is considered to be fire damage within the meaning of any fire insurance policy covering the damaged property, unless the damage was caused pursuant to an entry on to the land authorised by section 62ZP.

Section 62ZG provides that a fire trail is considered closed if:

- it is wholly or partly removed or destroyed ;
- it is obstructed so that it is not available for use as a fire trail ;
- a sign had been placed indicating it is not available for use as a fire trail ;
- the trail is otherwise not available for proper use as a fire trail.

Section 62ZH allows the NSW RFS Commissioner to carry out all work reasonably necessary to remedy an unauthorised closure of a fire trail. Any costs incurred in doing so may be recovered from the owner or occupier of the land.

These powers are necessary to ensure that access is maintained for firefighting and hazard reductions across the strategic network of fire trails, particularly during critical bush fire weather.

Section 62ZI creates an offence of closing a designated or registered fire trail without reasonable cause, or inciting or encouraging another person to do so. The offence carries a maximum of 20 penalty units or imprisonment for two years, or a maximum penalty of 220 penalty units in relation to a corporation or public authority.

The RFS Commissioner, under section 62ZJ, may terminate the registration of a fire trail, or part of a fire trail, either on their own initiative or on application.

Section 62ZK permits an owner or public authority to apply in writing to the NSW RFS Commissioner for termination of the registration of a fire trail.

A fire trail management officer will consider the application and make a recommendation to the NSW RFS Commissioner on whether to grant or refuse the application.

Where an application is refused, a fire trail management officer must serve a notice of refusal on the person who made the application.

The person on whom the refusal notice is served may lodge an objection to the notice with the fire trail management officer within 28 days of service of the notice.

The fire trail management officer must confirm or vary the notice within 28 days and give the applicant a notice of decision regarding the objection.

If confirmed, the person on whom the notice of decision was served may appeal the notice in writing to the NSW RFS Commissioner within 28 days of the notice being served. The NSW RFS Commissioner must consider the appeal within a reasonable time and may confirm, vary or reject the recommendation.

The NSW RFS Commissioner must terminate the registration to the extent provided for in the confirmed, varied or rejected recommendation.

To put it another way, an appeal might be only partially supported. Where that is the case, the registration of the relevant fire trail will be terminated to the extent that the appeal is supported.

The NSW RFS Commissioner must also give the applicant notice of the decision.

The bill provides a comprehensive framework for the establishment of an enhanced fire trail network for New South Wales. It increases fire safety for the residents of New South Wales and reduces the likelihood of bush fire-related death, injury and property damage.

I commend the bill to the House.