



New South Wales

Bushfires Legislation Amendment Bill 2020

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Rural Fires Act 1997* and other legislation in response to the Final Report of the NSW Bushfire Inquiry dated 31 July 2020.

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.

Schedule 1 Amendment of Rural Fires Act 1997 No 65

Schedule 1[1] enables the Commissioner of the NSW Rural Fire Service (the *Commissioner*) to designate groups of persons as industry brigades for the purposes of the *Rural Fires Act 1997*, and enables regulations under the Act to make further provision with respect to industry brigades.

Schedule 1[7] expands the membership of the Bush Fire Co-ordinating Committee so that it includes a person appointed on the recommendation of the New South Wales Aboriginal Land Council. **Schedule 1[2]** makes a consequential amendment. **Schedule 1[3]–[6]** update details of the Committee's membership.

Schedule 1[10] enables the Commissioner to audit bush fire management plans generally, including their content, rather than only the implementation of bush fire risk management plans. **Schedule 1[8], [9], [11] and [12]** make consequential amendments.

Schedule 1[15] empowers hazard management officers to serve bush fire hazard reduction notices on public authorities. Public authorities will be able to object to, and appeal against, a notice in the same way as other owners or occupiers of land. **Schedule 1[14]** limits the power to members of the NSW Rural Fire Service who are of or above the rank of Superintendent. **Schedule 1[13]** makes a consequential amendment.

Schedule 1[16] provides for a penalty of 100 penalty units for non-compliance with a bush fire hazard reduction notice by a corporation or public authority.

Schedule 1[19] provides that, if a public authority receives a written complaint about a bush fire hazard on its land, the authority must refer it to the Commissioner even though the complaint should properly have been made directly to the Commissioner or to a relevant local authority.

Schedule 1[20] and [21] apply to public authorities the same procedures and remedial action as currently apply to other owners or occupiers of land that is the subject of a substantiated bush fire hazard complaint. As a result, the Commissioner may direct a hazard management officer of or above the rank of Superintendent to serve a bush fire hazard reduction notice on a public authority, and the Commissioner will be able to enter the land to carry out bush fire hazard reduction work that is not carried out by a public authority within the time specified in the notice. **Schedule 1[17] and [18]** make consequential amendments.

Schedule 1[22] prevents bush fire management plans from excluding land from provisions requiring an adjoining owner to repair or restore a dividing fence damaged or destroyed by a bush fire caused by the adjoining owner's failure to clear the land of combustible matter. **Schedule 1[23]** makes a consequential amendment.

Schedule 1[27] permits vegetation clearing work on land if specified conditions are met. The conditions are that the vegetation clearing work must be—

- (a) within 25 metres of a holding's boundary with adjoining land, and
- (b) on land in a rural zone, and
- (c) by or with the authority of the owner of the holding, and
- (d) for the purpose of bush fire hazard reduction, and
- (e) in accordance with a Rural Boundary Clearing Code that is in force.

The proposed provisions allow the Minister administering the *Rural Fires Act 1997*, with the agreement of other relevant Ministers, to make a Rural Boundary Clearing Code for this purpose, and provide that permitted vegetation clearing work will not be an offence under other specified legislation. **Schedule 1[24] and [25]** make consequential amendments. **Schedule 1[26]** updates a cross-reference.

Schedule 2 Amendment of other legislation

Schedule 2.1[1] amends the *Biodiversity Conservation Act 2016* consequentially on Schedule 1[27].

Schedule 2.1[2] exempts bushfire-affected development from the test to determine whether development is likely to significantly affect threatened species or ecological communities or their habitats. The exemption applies only if—

- (a) the proposed development will result only in a building or structure that is the same, or substantially the same, as the building or structure that existed immediately before it was damaged or destroyed, and
- (b) the development application for the bushfire-affected development is made no later than 2 years after the commencement of the proposed subsection.

An application for development consent for exempt bushfire-affected development is not required to be accompanied by a biodiversity development assessment report.

For the purposes of the proposed provisions, ***bushfire-affected development*** is development involving the erection of, or repairs to, a building or structure to replace or repair a lawfully erected building or structure that was destroyed or damaged as a result of bushfire in the period starting 5 August 2019 and ending 2 March 2020.

Schedule 2.2 amends the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* consequentially on Schedule 1[10].

Schedule 2.3 amends the *Local Land Services Act 2013* consequentially on Schedule 1[27].

Schedule 2.4 amends the *National Parks and Wildlife Act 1974* to enable regulations to be made authorising the taking of action for the management of land that the Minister for Energy and Environment is satisfied is an environmental or cultural asset of intergenerational significance. Management action may be taken despite any plan of management that applies to the land.

Schedule 2.5 amends the *Rural Fires Regulation 2013* consequentially on Schedule 1[16] to provide for the issue of a penalty notice for \$4,400 for non-compliance with a bush fire hazard reduction notice by a corporation or public authority.

Schedule 2.6 amends the *State Emergency and Rescue Management Act 1989* to make it a function of the State Emergency Management Committee to promote the continuous improvement of emergency management policy and practice at a State level.



New South Wales

Bushfires Legislation Amendment Bill 2020

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New South Wales

Bushfires Legislation Amendment Bill 2020

No. _____, 2020

A Bill for

An Act to amend the *Rural Fires Act 1997* and other legislation in response to an inquiry into the 2019–2020 bushfire season.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Bushfires Legislation Amendment Act 2020*.

3

2 Commencement

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(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).

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(2) Schedule 1[27] commences on a day to be appointed by proclamation.

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| Schedule 1 | Amendment of Rural Fires Act 1997 No 65 | 1 |
| [1] Part 2, Division 3AA | | 2 |
| Insert after Division 3— | | 3 |
| Division 3AA Industry brigades | | 4 |
| 33AA Designation of industry brigades | | 5 |
| (1) The Commissioner may, on application and in accordance with the regulations, designate a group of persons as an <i>industry brigade</i> for the purposes of this Act. | | 6 7 8 |
| (2) The regulations may make provision for or with respect to industry brigades and, in particular, for or with respect to the following— | | 9 10 |
| (a) requirements for the designation of industry brigades, | | 11 |
| (b) the deeming of industry brigades to be rural fire brigades, or a class of rural fire brigades, for the purposes of this Act, | | 12 13 |
| (c) the deeming of members of industry brigades to be members of rural fire brigades, or a class of members of rural fire brigades, for the purposes of this Act (and, as a consequence, to be members of the Service, or a class of members of the Service), | | 14 15 16 17 |
| (d) the application of provisions of this Act, and of instruments made under this Act, in relation to industry brigades, | | 18 19 |
| (e) the functions and immunities of members of industry brigades, including the conferral of functions and immunities on members of industry brigades by reference to the functions and immunities of members of rural fire brigades, | | 20 21 22 23 |
| (f) without limitation, the issue of Service Standards, and the delegation of functions, to members of industry brigades by the Commissioner, | | 24 25 |
| (g) reimbursement of expenditure incurred by industry brigades, including regulating or prohibiting payment from the New South Wales Rural Fire Fighting Fund for reimbursement of the expenditure. | | 26 27 28 |
| (3) In this section, <i>member</i> includes officer. | | 29 |
| [2] Section 47 Membership and procedure of Bush Fire Co-ordinating Committee | | 30 |
| Omit “14 members” from section 47(1). Insert instead “15 members”. | | 31 |
| [3] Section 47(1)(c) | | 32 |
| Omit section 47(1)(c) and (d). Insert instead— | | 33 |
| (c) 3 persons nominated by the Secretary of the Department of Planning, Industry and Environment— | | 34 35 |
| (i) 1 of whom is a person employed in the Energy, Climate Change and Sustainability Division of the Department, and | | 36 37 |
| (ii) 1 of whom is a person employed in the Catchment and Lands—NSW Crown Lands Division of the Department, and | | 38 39 |
| (iii) 1 of whom is a person employed in the National Parks and Wildlife Service, | | 40 41 |
| [4] Section 47(1)(e) | | 42 |
| Omit “the Local Government and Shires Association of New South Wales”. | | 43 |

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| Insert instead “Local Government NSW”. | 1 |
| [5] Section 47(1)(h) | 2 |
| Omit “Minister for the Environment”. | 3 |
| Insert instead “Minister for Energy and Environment”. | 4 |
| [6] Section 47(1)(k) | 5 |
| Omit “the Ministry for Police and Emergency Services”. Insert instead “Resilience NSW”. | 6 |
| [7] Section 47(1)(m) | 7 |
| Insert after section 47(1)(l)— | 8 |
| (m) a person appointed by the Minister on the recommendation of the New South Wales Aboriginal Land Council. | 9 10 |
| [8] Section 48 Functions of Bush Fire Co-ordinating Committee | 11 |
| Omit “a performance audit under section 62A with respect to implementation of bush fire risk management plans” from section 48(2A). | 12 13 |
| Insert instead “an audit under section 62A of bush fire management plans”. | 14 |
| [9] Section 62A, heading | 15 |
| Omit the heading. Insert instead— | 16 |
| 62A Audits of bush fire management plans | 17 |
| [10] Section 62A(1) | 18 |
| Omit “a performance audit of the implementation of bush fire risk management plans”. | 19 |
| Insert instead “an audit of bush fire management plans”. | 20 |
| [11] Section 62A(2) | 21 |
| Omit “a performance audit”. Insert instead “an audit”. | 22 |
| [12] Section 62A(4) | 23 |
| Omit “performance”. | 24 |
| [13] Section 65AA | 25 |
| Insert before section 65A— | 26 |
| 65AA “Owner” or “occupier” includes “public authority” | 27 |
| To avoid doubt, a reference in this Division to an owner or occupier of land includes a reference to a public authority if the land is owned or occupied by, or vested in or under the control or management of, the public authority. | 28 29 30 |
| [14] Section 65A Hazard management officers | 31 |
| Insert at the end of the section— | 32 |
| (2) A hazard management officer may exercise a function under this Division in relation to a public authority only if the officer is a member of the Service who is of or above the rank of Superintendent. | 33 34 35 |

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| [15] Section 66 Bush fire hazard reduction notices | 1 |
| Omit “(not being a public authority) of any land” from section 66(1). | 2 |
| Insert instead “of land”. | 3 |
| [16] Section 66(8) | 4 |
| Omit the penalty. Insert instead— | 5 |
| Maximum penalty— | 6 |
| (a) for a corporation or public authority—100 penalty units, or | 7 |
| (b) for an individual—50 penalty units or imprisonment for 12 months. | 8 |
| [17] Section 73 Bush fire hazard reduction by Commissioner | 9 |
| Omit section 73(1)(c). | 10 |
| [18] Section 73(2) | 11 |
| Omit “subsection (1)(a)–(c)”. Insert instead “subsection (1)(a) or (b)”. | 12 |
| [19] Section 74CA | 13 |
| Insert after section 74C— | 14 |
| 74CA Misdirected complaints | 15 |
| (1) A written communication made to a public authority (other than the relevant local authority) that, if it were made to the Commissioner or the relevant local authority, would be a bush fire hazard complaint relating to land owned or occupied by, or vested in or under the control or management of, the public authority— | 16 |
| (a) must be referred by the public authority to the Commissioner within 14 days of receipt of the communication, and | 21 |
| (b) is taken to be a bush fire hazard complaint for the purposes of this Division even though it was not made to the Commissioner or the relevant local authority. | 23 |
| (2) Despite subsection (1)(b) and section 74C(4), written notice of the communication does not need to be given to the public authority. | 26 |
| (3) In this section, <i>relevant local authority</i> means the local authority of the local government area in which the land to which the written communication relates is located. | 28 |
| [20] Section 74E Action that may be taken by Commissioner if bush fire hazard exists | 31 |
| Omit “(other than land for which a public authority is responsible)” from section 74E(1). | 32 |
| [21] Section 74E(2) and (3) | 33 |
| Omit the subsections. | 34 |
| [22] Section 75 Definitions | 35 |
| Omit “(other than excluded land)” from the definition of <i>adjoining owners</i> . | 36 |
| [23] Section 75, definition of “excluded land” | 37 |
| Omit the definition. | 38 |

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| [24] Section 100P Definitions | 1 |
| Insert in alphabetical order— | 2 |
| <i>Rural Boundary Clearing Code</i> —see section 100RA. | 3 |
| <i>rural zone</i> means each of the following land use zones under the Standard Instrument, or a zone under another instrument that is equivalent to 1 of the following zones— | 4 |
| (a) Zone RU1 Primary Production, | 7 |
| (b) Zone RU2 Rural Landscape, | 8 |
| (c) Zone RU3 Forestry, | 9 |
| (d) Zone RU4 Primary Production Small Lots, | 10 |
| (e) Zone RU5 Village, | 11 |
| (f) Zone RU6 Transition. | 12 |
| [25] Section 100R, heading | 13 |
| Insert “in accordance with 10/50 Vegetation Clearing Code of Practice” after “work”. | 14 |
| [26] Section 100R(9)(e) | 15 |
| Omit the paragraph. Insert instead— | 16 |
| (e) Part 5A of the <i>Local Land Services Act 2013</i> , | 17 |
| [27] Sections 100RA and 100RB | 18 |
| Insert after section 100R— | 19 |
| 100RA Rural Boundary Clearing Code | 20 |
| (1) The Minister may make a code (the <i>Rural Boundary Clearing Code</i>) for the purposes of this Division. | 21 |
| (2) Power to make the Rural Boundary Clearing Code includes power to amend or repeal the Code. | 23 |
| (3) The Minister cannot make, amend or repeal the Rural Boundary Clearing Code except with the agreement of all of the following Ministers— | 25 |
| (a) the Minister for Planning and Public Spaces, | 27 |
| (b) the Minister for Energy and Environment, | 28 |
| (c) the Minister for Agriculture and Western New South Wales. | 29 |
| (4) The Rural Boundary Clearing Code may make provision for or with respect to the clearing of vegetation on land in a rural zone for the purpose of bush fire hazard reduction. | 30 |
| (5) Without limiting subsection (4), the Rural Boundary Clearing Code may make provision for or with respect to the following— | 33 |
| (a) the type of vegetation that can and cannot be cleared, | 35 |
| (b) specifying the manner of clearing vegetation that can be cleared, | 36 |
| (c) requiring the consent of an owner or occupier or other person as a precondition to the clearing of vegetation, | 37 |
| (d) the clearing of vegetation in habitats of threatened species within the meaning of the <i>Biodiversity Conservation Act 2016</i> , | 39 |
| (e) the clearing of vegetation in riparian corridors, | 41 |

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| | (f) the management of soil erosion and landslip risks in connection with the clearing of vegetation, | 1 2 |
| | (g) the protection of Aboriginal and other cultural heritage in connection with the clearing of vegetation. | 3 4 |
| (6) | The Rural Boundary Clearing Code may do 1 or more of the following— | 5 |
| | (a) apply generally or be limited in its application by reference to specified exceptions or factors, | 6 7 |
| | (b) apply differently according to different factors of a specified kind, | 8 |
| | (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body. | 9 10 |
| (7) | The Rural Boundary Clearing Code— | 11 |
| | (a) must be published in the Gazette, and | 12 |
| | (b) takes effect on the day on which it is published in the Gazette. | 13 |
| (8) | The Rural Boundary Clearing Code is to be made publicly available, as soon as practicable after publication in the Gazette, by publishing it on the NSW Rural Fire Service website. | 14 15 16 |
| 100RB | Carrying out vegetation clearing work in accordance with Rural Boundary Clearing Code | 17 18 |
| (1) | Vegetation clearing work may be carried out on a holding under this section if all of the following apply— | 19 20 |
| | (a) the vegetation clearing work is carried out within 25 metres of the holding's boundary with adjoining land, | 21 22 |
| | (b) the vegetation clearing work is carried out on land in a rural zone, | 23 |
| | (c) the vegetation clearing work is carried out by or with the authority of the owner of the holding, | 24 25 |
| | (d) the vegetation clearing work is carried out for the purpose of bush fire hazard reduction, | 26 27 |
| | (e) a Rural Boundary Clearing Code is in force under this Division, | 28 |
| | (f) the vegetation clearing work is carried out in accordance with the Rural Boundary Clearing Code. | 29 30 |
| (2) | Vegetation clearing work may be carried out under this section despite any requirement for a licence, approval, consent or other authorisation for the work made by the <i>Biodiversity Conservation Act 2016</i> or the <i>Environmental Planning and Assessment Act 1979</i> or any other Act or instrument made under an Act (other than the Rural Boundary Clearing Code). | 31 32 33 34 35 |
| (3) | A person is not guilty of an offence under any of the following Acts merely because of the carrying out of vegetation clearing work under this section— | 36 37 |
| | (a) <i>Environmental Planning and Assessment Act 1979</i> , | 38 |
| | (b) <i>Fisheries Management Act 1994</i> , | 39 |
| | (c) <i>Heritage Act 1977</i> , | 40 |
| | (d) Part 5A of the <i>Local Land Services Act 2013</i> , | 41 |
| | (e) <i>Protection of the Environment Operations Act 1997</i> , | 42 |
| | (f) <i>Soil Conservation Act 1938</i> . | 43 |
| (4) | To avoid doubt, this section does not limit or prevent the clearing of vegetation authorised under the <i>Local Land Services Act 2013</i> . | 44 45 |

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| (5) | In this section— | 1 |
| | holding means— | 2 |
| (a) | a parcel of land, or | 3 |
| (b) | several parcels of land (whether held under the same title or different titles, or titles of different kinds) that— | 4 |
| | (i) are contiguous with one another or are separated from one another only by a road, river, creek or other watercourse, and | 5 |
| | (ii) constitute or are worked as a single property. | 6 |
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| Schedule 2 | Amendment of other legislation | 1 |
| 2.1 | Biodiversity Conservation Act 2016 No 63 | 2 |
| [1] | Section 2.8 Acts authorised under other legislation etc | 3 |
| | Omit “section 100R” from section 2.8(1)(d)(ii). Insert instead “Part 4, Division 9”. | 4 |
| [2] | Section 7.2 Development or activity “likely to significantly affect threatened species” | 5 |
| | Insert after section 7.2(2)— | 6 |
| | (3) Subsection (1)(a) does not apply to bushfire-affected development if— | 7 |
| | (a) the proposed development— | 8 |
| | (i) is the reconstruction or replacement of a bushfire-affected building or structure, and | 9 |
| | (ii) will result in a building or structure that is the same, or substantially the same, as the building or structure that existed immediately before it was damaged or destroyed, and | 10 |
| | (b) the development application for the bushfire-affected development is made no later than 2 years after the commencement of this subsection. | 11 |
| | (4) This subsection and subsections (3) and (5) are repealed 2 years after they commence. | 12 |
| | (5) In this section— | 13 |
| | <i>bushfire-affected building or structure</i> means a building or structure that— | 14 |
| | (a) was destroyed or damaged as a result of bushfire in the period starting 5 August 2019 and ending 2 March 2020, and | 15 |
| | (b) was, immediately before it was destroyed or damaged, lawfully erected. | 16 |
| | <i>bushfire-affected development</i> means proposed development involving the erection of, or repairs to, a bushfire-affected building or structure. | 17 |
| 2.2 | Government Sector Finance Legislation (Repeal and Amendment) Act 2018 No 70 | 18 |
| | Schedule 4.91 Rural Fires Act 1997 No 65 | 19 |
| | Omit “performance” from section 62A(4) of the <i>Rural Fires Act 1997</i> as substituted by Schedule 4.91[1]. | 20 |
| 2.3 | Local Land Services Act 2013 No 51 | 21 |
| | Section 600 Clearing authorised under other legislation | 22 |
| | Omit “section 100R” from section 600(d)(ii). Insert instead “Part 4, Division 9”. | 23 |
| 2.4 | National Parks and Wildlife Act 1974 No 80 | 24 |
| | Section 188H | 25 |
| | Insert after section 188G— | 26 |
| 188H | Assets of intergenerational significance | 27 |
| | (1) If the Minister is satisfied that land reserved or acquired for reservation under this Act is an environmental or cultural asset of intergenerational significance, | 28 |

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| the Minister may, by order published in the Gazette, declare the land to be land to which this section applies (<i>declared land</i>). | 1 |
| | 2 |
| (2) The regulations may make provision for or with respect to action that may be taken for the management of declared land, including protection of the land from bush fire risks. | 3 |
| | 4 |
| | 5 |
| (3) Action authorised by regulations under this section may be taken despite any plan of management that applies to declared land. | 6 |
| | 7 |
| (4) Regulations under this section do not affect the <i>Rural Fires Act 1997</i> or the regulations under that Act. | 8 |
| | 9 |
| 2.5 Rural Fires Regulation 2013 | 10 |
| Schedule 2 Penalty notice offences | 11 |
| Omit the matter relating to section 66(8) from Part 1. Insert instead— | 12 |
| Section 66(8)— | |
| (a) for a corporation or public authority | 4,400 |
| (b) for an individual | 2,200 |
| 2.6 State Emergency and Rescue Management Act 1989 No 165 | 13 |
| Section 15 Functions of State Emergency Management Committee | 14 |
| Insert after section 15(c)— | 15 |
| (c1) to promote the continuous improvement of emergency management policy and practice at a State level, including through consideration of reviews and inquiries into emergency operations, exercises and training evaluations, | 16 |
| | 17 |
| | 18 |
| | 19 |