



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.