

Bush Fires Amendment Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

Bush Fires Amendment Bill 2009

A Bill for

An Act to amend the *Bush Fires Act 1954* and, in consequence, to amend the *Environmental Protection Act 1986*.

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Bush Fires Amendment Act 2009*.

4

2. Commencement

5

This Act comes into operation as follows —

6

(a) sections 1 and 2 — on the day on which this Act
receives the Royal Assent;

7

8

(b) the rest of the Act — on a day fixed by proclamation,
and different days may be fixed for different provisions.

9

1 **Part 2 — *Bush Fires Act 1954* amended**

2 **3. Act amended**

3 This Part amends the *Bush Fires Act 1954*.

4 **4. Section 9 inserted**

5 At the beginning of Part II insert:

6

7 **9. Terms used**

8 In this Part —

9 *conservation land* has the meaning given in
10 section 45(1);

11 *land other than conservation land* has the meaning
12 given in section 45(1).

13

14 **5. Section 13 amended**

15 (1) In section 13(3) delete “subsection (4),” and insert:

16

17 subsection (6),

18

19 (2) Delete section 13(4) and (5) and insert:

20

21 (4) If a bush fire is burning in the district of a local
22 government on land other than conservation land, the
23 Authority may, in writing, authorise a bush fire liaison
24 officer or another person to take control of all
25 operations in relation to that fire —

26 (a) at the request of the local government; or

27 (b) if, because of the nature or extent of the bush
28 fire, the Authority considers that it is
29 appropriate to do so.

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- 1 (5) If a bush fire is burning on conservation land, the
2 Authority may, in writing, authorise a bush fire liaison
3 officer or another person to take control of all
4 operations in relation to that fire —
- 5 (a) at the request of the CALM Act CEO; or
6 (b) if, because of the nature or extent of the bush
7 fire, the Authority considers that it is
8 appropriate to do so.
- 9 (6) If, under subsection (4) or (5), a bush fire liaison
10 officer or another person (an **authorised person**) is
11 authorised to take control of all operations in relation to
12 a fire, all —
- 13 (a) bush fire control officers; and
14 (b) bush fire liaison officers; and
15 (c) authorised CALM Act officers; and
16 (d) officers and members of a bush fire brigade,
17 who are present at the fire are in all respects subject to,
18 and are to act under, the authorised person's orders and
19 directions.
- 20 (7) If a person other than a bush fire liaison officer is
21 authorised under subsection (4) or (5), the person is to
22 be taken to be a bush fire liaison officer during the
23 period that the authorisation has effect.
24

25 **6. Sections 14A, 14B and 14C inserted**

26 After section 13 insert:
27

28 **14A. Powers and duties under section 13 not affected by**
29 **certain powers under the *Emergency Management***
30 ***Act 2005***

- 31 (1) This section has effect despite the *Emergency*
32 *Management Act 2005* section 8(1).

- 1 (2) The exercise of powers and the performance of duties
 2 by a bush fire liaison officer or another person on being
 3 authorised to take control of all operations in relation to
 4 a bush fire under section 13(4) or (5) are not limited or
 5 otherwise affected by —
- 6 (a) a hazard management agency being prescribed
 7 in relation to fire under the *Emergency*
 8 *Management Act 2005*; or
- 9 (b) the powers that may be exercised under that
 10 Act by the hazard management agency’s hazard
 11 management officers as the result of the
 12 declaration of an emergency situation under
 13 that Act.

14 **14B. Powers of authorised persons during authorised**
 15 **periods**

- 16 (1) In this section —
- 17 *affected area* means the area specified in an
 18 authorisation as the area affected by the relevant bush
 19 fire;
- 20 *authorisation* means an authorisation to take control of
 21 all operations in relation to a bush fire given by the
 22 Authority under section 13(4) or (5);
- 23 *authorised period* means the period specified in an
 24 authorisation as the period during which the
 25 authorisation has effect;
- 26 *authorised person* means a bush fire liaison officer or
 27 another person who is given an authorisation and
 28 includes a person acting under an authorised person’s
 29 orders and directions under section 13(6);
- 30 *relevant bush fire* means the bush fire in relation to
 31 which an authorisation is given.

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- 1 (2) During the authorised period, an authorised person may
2 do all or any of the following —
- 3 (a) direct, or by direction prohibit, the movement
4 of persons, animals and vehicles within, into,
5 out of or around the affected area or any part of
6 the affected area;
- 7 (b) direct the evacuation and removal of persons or
8 animals from the affected area or any part of
9 the affected area;
- 10 (c) close any road, access route or area of water in
11 or leading to the affected area.
- 12 (3) During the authorised period and for the purposes of
13 controlling or extinguishing the relevant bush fire, an
14 authorised person may use a vehicle in any place and in
15 any circumstance despite any provision of the *Road*
16 *Traffic Act 1974* that requires a permit for the use of
17 that vehicle or for the use of that vehicle in that place
18 or in that circumstance.
- 19 (4) This section does not limit the powers of a bush fire
20 liaison officer or another person under another
21 provision of this Act or any other written law.

22 **14C. Failure to comply with directions**

- 23 (1) A person given a direction under section 14B(2) must
24 comply with the direction.
25 Penalty: a fine of \$25 000.
- 26 (2) A person must comply with a direction referred to in
27 subsection (1) despite the provisions of any other
28 written law, and the person does not commit an offence
29 by reason of that compliance.
- 30 (3) In proceedings for an offence under subsection (1), an
31 authorisation given under section 13(4) or (5),
32 including the affected area and the authorised period

1 specified in the authorisation, may be proved by
2 tendering a copy of the authorisation certified by the
3 Authority to be a true copy of the original.
4

5 **7. Part III Division 4 replaced**

6 Delete Part III Division 4 and insert:
7

8 **Division 4 — Total fire ban**

9 **21. Terms used**

10 In this Division —
11 *area of the State* includes the whole of the State;
12 *total fire ban* means a total fire ban declared under
13 section 22A(1).

14 **22A. Minister may declare a total fire ban**

- 15 (1) If the Minister is of the opinion that —
16 (a) the existing weather conditions in an area of the
17 State are conducive to the outbreak or spread of
18 bush fires; or
19 (b) such weather conditions in an area of the State
20 are imminent; or
21 (c) it is otherwise necessary to declare a total fire
22 ban in respect of an area of the State,

23 the Minister may declare a total fire ban in respect of
24 that area.

25 (2) A declaration of a total fire ban may be made by radio
26 broadcast, television or other electronic means or in
27 another manner that the Minister considers appropriate.

- 28 (3) The declaration of a total fire ban is to specify —
29 (a) the period during which; and

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- 1 (b) the area of the State in respect of which,
2 the total fire ban is to have effect, and the total fire ban
3 has effect accordingly.
- 4 (4) The Minister may amend or revoke the declaration of a
5 total fire ban by a declaration made in the manner in
6 which the declaration of the total fire ban was made.
- 7 (5) The Minister is to publish a declaration under this
8 section in the *Gazette*.
- 9 (6) A failure to comply with subsection (5) in relation to a
10 declaration does not invalidate the declaration.

11 **22B. Lighting of fires prohibited during total fire ban**

- 12 (1) Subsection (2) —
- 13 (a) has effect subject to subsection (4) and
14 sections 22C and 64 and any exemption
15 provided for in the regulations but despite any
16 other provision of this Act; and
- 17 (b) applies —
- 18 (i) in the period during which; and
19 (ii) in the area of the State in respect of
20 which,
21 a total fire ban has effect.
- 22 (2) A person must not —
- 23 (a) light, maintain or use a fire in the open air; or
24 (b) carry out an activity in the open air that causes,
25 or is likely to cause, a fire.
- 26 Penalty: a fine of \$25 000 or imprisonment for
27 12 months, or both.

- 1 (3) Without limiting subsection (2), a person commits an
2 offence under that provision if the person —
- 3 (a) uses in the open air an appliance that consumes
4 solid fuel; or
- 5 (b) carries out in the open air any process or
6 operation that is specified in regulations made
7 under section 27A(1)(a)(ii) as being a process
8 or operation likely to create a bush fire danger;
9 or
- 10 (c) carries out in the open air an activity that is
11 prescribed by the regulations for the purposes
12 of this subsection.
- 13 (4) Subsection (2) —
- 14 (a) does not prohibit the use of a gas appliance as
15 authorised under section 25(1aa); and
- 16 (b) does not apply to an activity, or in
17 circumstances, prescribed by the regulations for
18 the purposes of this subsection.

19 **22C. Power of Minister to exempt from provisions of**
20 **section 22B**

- 21 (1) Subsection (2) has effect if the Minister is advised in
22 writing by the Chief Executive Officer that, in the
23 opinion of the Chief Executive Officer, a person has
24 taken adequate precautions for the —
- 25 (a) prevention of the spread or extension; and
26 (b) control; and
27 (c) extinguishment, if necessary,
- 28 of any fire that is to be lit, or that may be caused by the
29 carrying out of an activity in the open air, in the period
30 during which, and in the area in respect of which, a
31 total fire ban has effect.

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- 1 (2) If this subsection has effect, the Minister may, in
2 respect of any such fire as is so lit or may be so caused,
3 exempt the person, and any person acting under that
4 person's instructions, either wholly or partially from
5 the operation of the provisions of section 22B.
- 6 (3) An exemption granted by the Minister under this
7 section —
- 8 (a) is to be in writing signed by the Minister; and
9 (b) may be revoked or varied at any time by the
10 Minister by notice in writing signed by the
11 Minister and served on the person to whom the
12 exemption was granted; and
13 (c) unless sooner revoked, has effect for the period
14 specified in the exemption; and
15 (d) is subject to such conditions as the Minister
16 thinks fit to impose and specifies in the
17 exemption; and
18 (e) authorises the person to whom it is granted, and
19 any person acting under that person's
20 instructions, subject only to any conditions
21 specified in the exemption —
- 22 (i) to light, maintain or use in the open air
23 any fire authorised to be lit, maintained
24 or used under the authority of the
25 exemption; or
26 (ii) to carry out in the open air any activity
27 authorised to be carried out under the
28 authority of the exemption;
- 29 and
- 30 (f) if paragraph (e)(i) applies — exempts any fire
31 to which the exemption relates from the
32 operation of section 46.

1 (4) The Minister may at any time, by notice in writing
2 signed by the Minister and served on the person to
3 whom the exemption was granted, revoke or vary,
4 whether by way of addition or substitution, any
5 conditions specified in the exemption.

6 (5) A person to whom an exemption is granted under this
7 section must observe and carry out any conditions
8 specified in the exemption.

9 Penalty: a fine of \$25 000 or imprisonment for
10 12 months, or both.
11

12 **8. Section 24C amended**

13 In section 24C in the definition of *limited burning times* delete
14 ““extreme” or “very high”,” and insert:

15
16 “catastrophic”, “extreme”, “severe” or “very high”;
17

18 **9. Section 24D amended**

19 In section 24D delete ““extreme” or “very high”.” and insert:

20
21 “catastrophic”, “extreme”, “severe” or “very high”.
22

23 Note: The heading to amended section 24D is to read:

24 **Burning garden refuse prohibited if fire danger is very high**
25 **or more**

26 **10. Section 25 amended**

27 In section 25(1)(a) delete ““extreme” or “very high”,” and
28 insert:

29
30 “catastrophic”, “extreme”, “severe” or “very high”,
31

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1 **11. Section 32 amended**

2 (1) At the beginning of section 32 insert:

3

4 (1) In this section —

5 *property* means personal or real property, including
6 Crown land, and includes the bush and fauna.

7

8 (2) In section 32 delete “A person” and insert:

9

10 (2) A person

11

12 **12. Section 38 amended**

13 (1) In section 38(2)(d) after “person” insert:

14

15 who is not a member of staff (as defined in the
16 FESA Act)

17

18 (2) In section 38(2)(e) after “appointed” (first occurrence) insert:

19

20 by a local government

21

22 (3) In section 38(6)(h) delete ““extreme” or “very high,”” and
23 insert:

24

25 “catastrophic”, “extreme”, “severe” or “very high”,

26

27 (4) In section 38(6)(i) delete “bush during the prohibited burning
28 times or within the defined area during a bush fire emergency
29 period.” and insert:

1

2

bush —

3

(i) during the prohibited burning times; or

4

(ii) during the period in which, and in the area of
the State in respect of which, a total fire ban is
declared under section 22A to have effect.

5

6

7

8 **13. Section 39 amended**

9

Delete section 39(2)(a).

10 **14. Section 44 amended**

11

(1) In section 44(3)(a) delete “Where” and insert:

12

13

Subject to the provisions of sections 13(6) and 45,
where

14

15

16

(2) In section 44(3)(b) delete “section 45” and insert:

17

18

sections 13(6) and 45,

19

20 **15. Section 45A inserted**

21

After section 44 insert:

22

23

**45A. Requests to authorised CALM Act officers to take
control of bush fires**

24

25

(1) If —

26

(a) an officer or member of a bush fire brigade or a
bush fire control officer (a *bush fire officer*)

27

28

has supreme control and charge of all

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- 1 operations in relation to a bush fire under
2 section 44; and
- 3 (b) an authorised CALM Act officer is present at
4 the fire,
- 5 the bush fire officer may request the authorised CALM
6 Act officer to take control of all operations in relation
7 to the fire.
- 8 (2) If the authorised CALM Act officer agrees to take
9 control of all operations in relation to the bush fire —
- 10 (a) the officer —
- 11 (i) must inform the Authority of having
12 done so; and
- 13 (ii) must comply with any requirements
14 prescribed by the regulations for the
15 purposes of this subsection;
- 16 and
- 17 (b) subject to section 45(5) and (6), the officer has
18 in relation to the fire the powers, authorities and
19 control referred to in section 45(2) and (3).
20

21 **16. Section 45 amended**

- 22 (1) At the beginning of section 45 insert:
23
- 24 (1) In this section —
- 25 ***bush fire officer*** means a bush fire control officer or an
26 officer or member of a bush fire brigade;
- 27 ***CALM Act*** means the *Conservation and Land*
28 *Management Act 1984*;
- 29 ***conservation land*** means —
- 30 (a) land to which the CALM Act applies, as
31 described in section 5 of that Act; or

- 1 (b) land prescribed by the regulations for the
2 purposes of this definition,
3 but does not include any land in a fire district under the
4 *Fire Brigades Act 1942*;
5 **land other than conservation land** means land that is
6 not —
7 (a) conservation land; or
8 (b) in a fire district under the *Fire Brigades*
9 *Act 1942*.
- 10 (2) Delete section 45(a) and insert:
11
- 12 (2) If —
13 (a) an authorised CALM Act officer is present at a
14 bush fire burning on land; and
15 (b) the land is —
16 (i) conservation land; or
17 (ii) land other than conservation land and a
18 bush fire officer does not have control
19 of all operations in relation to the fire,
20 the powers and authorities conferred by this Act on a
21 bush fire officer are exercisable by the authorised
22 CALM Act officer.
23
- 24 (3) In section 45(b) delete “(b) Where an authorised CALM Act
25 officer is present at the fire” and insert:
26
- 27 (3) If an authorised CALM Act officer is present at a bush
28 fire and is exercising powers and authorities under
29 subsection (2),
30

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- 1 (4) At the end of section 45 insert:
2
- 3 (4) Subsection (2) ceases to have effect in respect of a
4 bush fire burning on conservation land if —
5 (a) the authorised CALM Act officer requests a
6 bush fire officer present at the fire to take
7 control of all operations in relation to the fire;
8 and
9 (b) the bush fire officer agrees to do so.
- 10 (5) Subsection (2) ceases to have effect in respect of a
11 bush fire burning on land other than conservation land
12 if a bush fire officer is present at the fire and takes
13 control of all operations in relation to the fire.
- 14 (6) Subsection (2) ceases to have effect in respect of a
15 bush fire burning on conservation land or land other
16 than conservation land if a bush fire liaison officer or
17 another person is authorised to take control of all
18 operations in relation to the fire under section 13(4)
19 or (5).
- 20 (7) A bush fire officer who takes control of all operations
21 in relation to a bush fire under subsection (4) or (5) —
22 (a) must inform the Authority of having done so;
23 and
24 (b) must comply with any requirements prescribed
25 by the regulations for the purposes of this
26 subsection.
27

28 Note: The heading to amended section 45 is to read:

29 **Powers and authorities exercisable by authorised CALM Act**
30 **officers**

1 **17. Section 47 amended**

2 In section 47 delete “section 39(2)(a) and to the provisions of
3 section 45,” and insert:

4
5 sections 13(6) and 45,
6

7 **18. Section 64 amended**

8 In section 64 delete “section 21(2),” and insert:

9
10 section 22B(2),
11

12 **19. Section 65 amended**

13 After section 65(4)(a) insert:

14
15 (ba) that a total fire ban declared under
16 section 22A(1) had effect during a stated period
17 and in respect of a stated area of the State; or
18

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Part 3 — Consequential amendment

20. *Environmental Protection Act 1986* amended

(1) This section amends the *Environmental Protection Act 1986*.

(2) In Schedule 6 clause 10:

(a) in paragraph (c) delete “permission granted under section 21(2);” and insert:

an exemption granted under section 22C; or

(b) after each of paragraphs (a) and (b) insert:

or

=====