

Bush Fires Amendment Bill 2016

EXPLANATORY MEMORANDUM

OVERVIEW OF THE BILL

The purpose of this Bill is to provide that the FES Commissioner may publish standards regarding bush fire risk treatments that an owner or occupier of land may comply with if they wish to do so. An owner or occupier of land may carry out bush fire risk treatments on their land, despite any other written law, if they conform with the published standards.

The Bill allows for the prescribing of written laws that the standards will not override. Provisions of the *Bush Fires Act 1954* that relate to the land will need to be complied with. This includes obtaining a permit to burn the bush if this treatment method is allowed pursuant to the standards, and the *Bush Fires Act 1954* required this.

There will be the ability to publish standards for specified areas of the State to allow for the varying bush fire risks in different parts of the State.

For the purposes of compliance with the published standards, an owner or occupier of land has been defined to include a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.

This will ensure a consistent approach to the carrying out of bush fire risk treatment measures for all owners or occupiers of land in the State.

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CLAUSE 1. SHORT TITLE

Clause 1 sets out the name of the Act.

CLAUSE 2. COMMENCEMENT

Clause 2 provides for the Act to come into operation as follows:

- a) sections 1 and 2 on the day the Act receives Royal Assent;
- b) the rest of the Act on a day fixed by proclamation.

CLAUSE 3. ACT AMENDED

Clause 3 sets out that the *Bush Fires Act 1954* is the Act amended by this Act.

CLAUSE 4. PART III DIVISION 7 INSERTED

Clause 4 inserts a new Division 7 at the end of Part III which is titled 'Bush fire risk treatment standards'. This new Division contains the proposed sections 35AA and 35AB.

The proposed section 35AA(1) provides that the FES Commissioner may make standards which will be called 'bush fire risk treatment standards' (standards). These standards may specify measures to prevent the outbreak, spread or extension of a bush fire; or to mitigate the effects of a bush fire. Where a specified measure does not prevent the outbreak, spread or extension of a bush fire, it is intended that the measure would mitigate the effects of a bush fire by reducing the radiant heat generated and this may allow structures or other assets to survive a bush fire.

The proposed section 35AA(2) allows that the specified measures can include all or any of the things mentioned in section 33(1)(a) or (b) of the *Bush Fires Act 1954*. This includes the clearing of firebreaks by ploughing, cultivating, scarifying, burning or other clearing, and the dimensions of such firebreaks; and any other acts specified in relation to anything upon the land which is likely to be conducive to the outbreak, spread or extension of a bush fire. The FES Commissioner may also specify any other measures considered appropriate to

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prevent the outbreak, spread or extension of a bush fire; or to mitigate the effects of a bush fire.

The proposed section 35AA(3) allows a standard to apply to the whole of the State; or there may be different standards for different areas of the State. The standards may differ due to things such as the vegetation types in an area, construction densities or differing climatic conditions from one area to another. A standard may also apply to a particular geographic area such as by reference to the area being declared a 'bush fire prone area' by the FES Commissioner under the *Fire and Emergency Services Act 1998*.

The proposed section 35AA(4) allows the FES Commissioner to amend an existing standard, or revoke a standard and if required make a new standard.

The proposed section 35AA(5) specifies that the FES Commissioner must publish any standards that are made, or any amendment or revocation of any standards. Publication may occur in a newspaper for the area the standard applies to, on a website maintained by the FES Commissioner, or as the FES Commissioner otherwise considers appropriate.

The proposed section 35AA(6) requires the FES Commissioner to consult with the Minister prior to making, amending or revoking any standards.

The proposed section 35AB(1) defines the following terms for the purposes of that section:

bush fire risk treatment standards means bush fire risk treatment standards published under section 35AA(5);

owner or occupier of land includes a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.

The proposed section 35AB(2) provides that owners or occupiers of land may comply with a standard applicable to their land, but they are not required to do so. The intent of this provision is to allow owners or occupiers to carry out bush fire risk treatments on their land that comply with the applicable standards. However, unlike a notice issued by a local government pursuant to section 33(1) of the *Bush Fires Act 1954*, there is no compulsion on the owner or occupier to undertake the treatments in the applicable standards if they do not wish to do so.

The proposed section 35AB(3) provides that whilst carrying out a bush fire risk treatment measure in accordance with an applicable standard, the owner or occupier of the land must still comply with:

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- a provision of the *Bush Fires Act 1954* that applies to their land. As an example, if a standard allowed the burning of the bush on the land as a treatment measure, and the land is in a zone of the State subject to a restricted burning time, the owner or occupier would be required to obtain a permit to burn the bush from the appropriate local government;
- any written law applicable to the land, if the law is prescribed in regulations for the purposes of this subsection; or
- any local laws made pursuant to section 33(5a) of the *Bush Fires Act 1954* that are applicable to the land.

The proposed section 35AB(4) provides that with the exception of the matters mentioned in section 35AB(3), a land owner can carry out a measure specified in a standard applicable to the land, despite any other written law.

CLAUSE 5. Section 35A amended

The definition of ***normal brigade activities*** in section 35A is amended so if a bush fire brigade member is engaged by a land owner or occupier to assist with the undertaking of a measure specified in a standard, it is not considered to be a normal brigade activity. The definition is also amended to include reference to current provisions in the *Bush Fires Act 1954* that refer to a land owner or occupier being required to undertake 'firebreak' measures by either the CALM Act CEO or the FES Commissioner, in a manner similar to that required by a local government pursuant to section 33(1) of the *Bush Fires Act 1954*.

CLAUSE 6. Section 65 amended

Section 65 is amended so the production of a copy of a standard certified by the FES Commissioner is deemed to be evidence of the making of a standard until the contrary is proved.