

Explanatory Memorandum

Bush Fires Amendment Bill 2009

Part 1 – Preliminary

Clauses 1 and 2 provide, respectively, for the short title and commencement of the Act

Part 2 – Bush Fires Act 1954 amended

This Part creates new, and amends existing provisions of the *Bush Fires Act 1954* in relation to the suppression and prevention of bush fires and the prosecution of bush fire offences.

Clause 3. The Act Amended: This identifies the Act amended by this Part.

Clause 4. Section 9 inserted: This clause defines terms used in the Bill.

Clause 5. Section 13 amended: This section has been amended to allow a FESA Bush Fire Liaison Officer (BFLO) or another person to take over control of a bush fire burning on Local Government or Conservation land at the request of the Local Government or the CALM Act CEO, or, due to the nature and extent of the fire, FESA may, without a request, authorise a BFLO or another person to take control of a fire.

When FESA authorises the BFLO or other person to take control of the fire that person has control of all Bush Fire Control Officers, Bush Fire Liaison Officers, authorised CALM Act officers and officers and members of bush fire brigades present at the fire.

Any person who is not a BFLO and is authorised under this section has the same powers as a BFLO.

Clause 6. Section 14A, 14B and 14C inserted: *Section 14A* - This proposed section addresses any conflict between the exercising of powers under the *Emergency Management Act 2005* and the proposed powers outlined below.

Section 14B – This proposed section specifies the powers available to persons authorised under the proposed section 13(4) or (5) to assume control of a fire. It requires the area and time period of the authorisation to be specified. These powers are similar to powers contained in the *Emergency Management Act 2005*.

Section 14C – This proposed section allows a person who fails to comply with a direction in an authorised area to be prosecuted. The penalty is a fine of up to \$25 000.

Clause 7. Part III Division 4 replaced: This clause repeals the current provisions relating to a bush fire emergency period and replaces it with new provisions allowing the Minister to make a total fire ban declaration.

Section 21. – defines terms used in relation to total fire ban provisions

Section 22A. – This proposed section will allow the Minister to declare a Total Fire Ban within a specified area of the State for a specified time. A Total Fire Ban may be declared based on weather conditions, or if it is otherwise felt necessary to do so. A declaration may be made by radio broadcast, television or other electronic means. A declaration may be amended or revoked and is to be published in the *Gazette*.

Section 22B. – This proposed section will prohibit the lighting, maintaining or use of a fire in the open air, or, the carrying out in the open air of an activity that causes, or is likely to cause a fire. Such activities include cooking in the open air with an appliance that consumes solid fuel, or carrying out in the open air a process or operation prescribed in the regulations. An offence against this proposed section carries a penalty of \$25 000 or imprisonment for 12 months, or both.

Activities not prohibited during a declaration include, the use of a gas appliance as authorised by section 25(1aa) and in circumstances prescribed in regulations.

Section 22C. This proposed section allows the Minister on advice from the FESA CEO (in writing) to provide an exemption to a Total Fire Ban. The exemptions can be wholly or partially from the TFB with any conditions/precautions as considered necessary. The Minister may revoke or vary an exemption.

Clause 8. Section 24C amended: Proposed amendments to this section incorporate two new Fire Danger Rating terms, these being “severe” and “catastrophic”. These terms are part of a new national model. This amendment will ensure activities currently banned when the ratings “extreme” or “very high” are issued, will also be banned when the new ratings are issued.

Clause 9. Section 24D amended: As for clause 8.

Clause 10. Section 25 amended: As for clause 8.

Clause 11. Section 32 amended: The clause inserts a definition of “property” that includes reference to Crown land and bush.

Clause 12. Section 38 amended: Proposed amendments to this section clarify the appointment of Bush Fire Control Officers by Local Government and consequential references to prohibited burning times and total fire bans. Reference to the Fire Danger rating is also amended to allow for the new terms of “severe” and “catastrophic”.

Clause 13. Section 39 amended: Subsection 2 is deleted and the powers referred to are provided for in the amended section 45.

Clause 14. Section 44 amended: Inserts consequential amendments to refer to the proposed section 13(6) and the amended section 45.

Clause 15. Section 45A inserted: This proposed section allows for an officer or member of a Bush Fire Brigade to hand control of a fire over to an authorised CALM Act officer on land other than Conservation land. When an agency is given control of a fire outside their tenure in order to ensure that state-wide control is maintained, the Incident

Controller must inform FESA that they have assumed control and comply with any regulations prescribed thus ensuring a single source of coordination.

Clause 16. Section 45 amended: This clause removes the provision enabling CALM to be in control of a fire when it is “near” Conservation land. It is replaced with the provision that an authorised CALM Act officer has the ability to respond to fires outside their tenure until the control of the fire can be passed to the relevant agency. Therefore, if the fire is on land other than Conservation land and no other fire fighting agency is present then the CALM Act officer can take control of the fire until a Bush Fires Officer is able to take control of operations.

Provision remains that that when a bush fire is burning on Conservation land, a CALM Act Officer has supreme control of operations of the fire including control of Bush Fires Officers present at the fire. However provision is given that a CALM Act Officer can hand control of a fire over to a Bush Fire Officer. When this occurs, in order to ensure that state-wide control is maintained, the Incident Controller must inform FESA that they have taken control and comply with any regulations prescribed thus ensuring a single source of coordination.

If the FESA CEO assumes control of a fire on Conservation land, as per the amended section 13, that authorisation takes precedence.

Clause 17. Section 47 amended: This clause inserts reference to section 13(6) and 45 to ensure that the ability to burn a fire break in order to control or prevent spread of a bush fire is available to an authorised officer or an authorised CALM Act officer who has taken control of operations in relation to a fire.

Clause 18. Section 64 amended: This clause is amended to include reference to a Total Fire Ban.

Clause 19. Section 65 amended: This clause has been added to assist prosecutions under a Total Fire Ban.

Part 3- Consequential amendment

Clause 20. *Environment Protection Act 1986* amended: This clause amends the Environmental Protection Act 1986 changing reference from section 21(2) – allowing for permission granted under a Bush Fire Emergency Period to now refer to section 22C - an exemption granted under a Total Fire Ban. This amendment does not change the intent of the Environmental Protection Act 1986 and will continue to ensure that there are no impediments to Fire Operations doing what they need to do in a fire emergency. Clearing may be required during a TFB either to prepare, or improve the protection of a community asset from the predicted fire, or to undertake clearing to assist with suppressing the fire.