

# Rural Fires Regulation 2008

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Rural Fires Act 1997*.

Minister for Emergency Services

## Explanatory note

The object of this Regulation is to replace, with only minor changes in substance, the *Rural Fires Regulation 2002* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following:

- (a) membership of rural fire brigades and the constitutions for such brigades,
- (b) the discipline of officers and members of rural fire brigades and groups of rural fire brigades and removal from membership,
- (c) the constitution, membership and procedure of Bush Fire Management Committees,
- (d) fire prevention,
- (e) the giving of notices required under the *Rural Fires Act 1997* ("**the Act**"),
- (f) miscellaneous matters relating to bravery and other awards, voluntary work, managed land, fire permit conditions, bush fire prone land, bush fire hazard reduction, applications for bush fire safety authorities and bush fires hazard reduction certificates, bush fire safety authorities and penalty notices.

This Regulation is made under the *Rural Fires Act 1997*, including section 135 (the general regulation-making power) and the sections referred to in this Regulation.

## Part 1 – Preliminary

### 1 Name of Regulation

This Regulation is the *Rural Fires Regulation 2008*.

### 2 Commencement

This Regulation commences on 1 September 2008.

This Regulation replaces the *Rural Fires Regulation 2002* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation: "**appropriate appeal authority**" means:

- (a) if the responsible authority concerned is a local authority--the Commissioner, or
- (b) if the responsible authority concerned is the Commissioner--the Minister.

"**appropriate authority**" --see section 85 of the Act. "**appropriate disciplinary authority**", in relation to any disciplinary action under clause 9, means:

- (a) an officer of or above the rank of Superintendent appointed by the Commissioner in relation to the disciplinary action, or
- (b) if an officer has not been appointed--a district disciplinary panel constituted in accordance with the procedure set out in the Service Standards.

"**brigade register**" means the register for a rural fire brigade required to be kept under

section 20 of the Act. "**forestry land**" means land dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *Forestry Act 1916*, or in respect of which the Forestry Commission has obtained the benefit of a forestry right as referred to in section 11 (1) (m) (iia) of that Act. "**light**" a fire--see section 85 of the Act. "**motorised machine**" includes any vehicle or machine (including a steam-powered machine) that is operated by means of an internal combustion engine or other fuel burning engine. "**NPWS land**" means land reserved, or acquired for the purpose of reservation, under the *National Parks and Wildlife Act 1974*. "**responsible authority**", in relation to a rural fire brigade, means:

- (a) if the brigade is formed by a local authority under section 15 (1) of the Act--the local authority, or
- (b) if the brigade is jointly formed by two or more local authorities under section 15 (2) of the Act--the local authority nominated by an agreement in writing by the local authorities forming the brigade as the responsible authority, or
- (c) if the brigade is formed by the Commissioner--the Commissioner.

"**steam-powered machine**" means any machine that is operated by means of an engine that burns wood, coal or coke. "**the Act**" means the *Rural Fires Act 1997*.

(2) In this Regulation, a reference to *Planning for Bush Fire Protection* is a reference to the document so entitled, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006.

(3) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 – Rural fire brigades and groups of rural fire brigades**

### **4 Constitution for rural fire brigade**

(1) The constitution for a rural fire brigade is to be in a form approved by the responsible authority and is to make provision for the following matters:

- (a) the council or other governing body (however described) of the brigade and its office bearers,
- (b) the name of the brigade,
- (c) the classification of members of the brigade other than officers,
- (d) arrangements for meetings of the brigade,
- (e) the voting rights of members of the brigade,
- (f) the conduct of fundraising appeals by the brigade and the application of any money or benefit received in the course of such an appeal.

(2) The members of a rural fire brigade are to review the constitution for the brigade annually to determine whether it should be amended. In determining whether the constitution should be amended, the members are to take into consideration any relevant Service Standards.

### **5 Membership of rural fire brigades**

(1) A person is eligible to be listed on the brigade register if the person:

- (a) complies with the procedures (if any) for attaining membership set out in the constitution for the rural fire brigade, and
- (b) satisfies the requirements (if any) for attaining membership of a rural fire brigade determined by the responsible authority.

Under section 20 of the Act, the persons listed on the register for a rural fire brigade required to be kept under that section are the members of the brigade.

(2) However, the responsible authority may refuse to list a person's name on the brigade register if, in the opinion of the responsible authority, the person is not a fit and proper person to be a member of the rural fire brigade.

(3) The responsible authority must give notice of any such refusal to the person concerned.

## **6 Probationary membership**

- (1) Unless the responsible authority otherwise determines, membership of a rural fire brigade is initially to be for a probationary period of 6 months.
- (2) The responsible authority may remove a person's name from the brigade register if, at the end of the probationary period, the person:
  - (a) has not achieved a satisfactory level of competency required by the Service Standards, or
  - (b) does not satisfy any requirements for the confirmation of membership set out in the constitution of the brigade.

## **7 Removal from membership**

- (1) The responsible authority must remove the name of a person from the brigade register if the person:
  - (a) has died, or
  - (b) applies in writing to have his or her name removed from the brigade register.
- (2) The responsible authority may remove the name of a person from the brigade register if the person:
  - (a) is found guilty of a breach of discipline under clause 9, or
  - (b) becomes a mentally incapacitated person, or
  - (c) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (d) in the opinion of the responsible authority, is no longer a fit and proper person to be a member of the rural fire brigade.
- (3) Without limiting the generality of subclause (2) (d), the responsible authority may form an opinion that a person is no longer a fit and proper person to be a member of the rural fire brigade if:
  - (a) the person is listed on the brigade register but has ceased to be an active member for a period of 12 months or more, or
  - (b) the person has not paid his or her annual subscription in accordance with the brigade's constitution.
- (4) The responsible authority is to give notice to a person before removing the person's name from the brigade register under subclause (2) (b), (c) or (d).
- (5) The person's name may be removed, subject to clause 8 (4), 21 days after the notice is given.

## **8 Appeals relating to membership**

- (1) If the responsible authority refuses, under clause 5 (2), to list a person's name on the brigade register or decides to remove the person's name from the register, under clause 7 (2) (b), (c) or (d), the person may appeal to the appropriate appeal authority.
- (2) Such an appeal must be made in writing and within 21 days of the person being notified of the refusal or decision.
- (3) After hearing the appeal, the appropriate appeal authority may:
  - (a) confirm the decision to refuse to list the person's name on the brigade register or to remove it from the register, or
  - (b) order the responsible authority to list, or to retain, the person's name on the brigade register.
- (4) A person's name may not be removed from a brigade register if the decision to remove the name is the subject of an appeal until the appeal is either withdrawn or finally determined by the appropriate appeal authority.

## **9 Disciplinary action**

- (1) An officer or member of a rural fire brigade or group of rural fire brigades is guilty of a breach of discipline if the officer or member:

- (a) contravenes the Act or a provision of this Regulation, or
  - (b) is negligent, careless, inefficient or incompetent in the discharge of his or her duties, or
  - (c) fails to comply with the Service Standards.
- (2) An appropriate disciplinary authority may take disciplinary action against an officer or member of a rural fire brigade or group of rural fire brigades if:
- (a) an alleged breach of discipline is dealt with in accordance with the procedure set out in the Service Standards and notice has been given in accordance with clause 10 (1), and
  - (b) the officer or member concerned is found to have committed the breach.
- (3) The appropriate disciplinary authority may take the following disciplinary action:
- (a) reprimand the officer or member,
  - (b) suspend the officer or member from service with the rural fire brigade or group of rural fire brigades for a specified period,
  - (c) recommend to the responsible authority that the responsible authority:
    - (i) demote the officer or member, or
    - (ii) disqualify the officer or member from holding rank in the brigade or group, or
    - (iii) remove the officer's or member's name from the brigade register.

### **10 Appeals concerning disciplinary action**

- (1) Before taking disciplinary action under clause 9, the appropriate disciplinary authority must investigate the alleged breach of discipline and give the officer or member at least 14 days' notice in writing of the findings of the investigation and of the disciplinary action that the appropriate disciplinary authority proposes to take in respect of the officer or member.
- (2) The officer or member may, within 14 days after receiving the notice, appeal to the responsible authority against the findings of the appropriate disciplinary authority, or against any disciplinary action that the appropriate disciplinary authority proposes to take.
- (3) On an appeal, the responsible authority:
- (a) may confirm the decision of the appropriate disciplinary authority, or
  - (b) may recommend that no action, or that other disciplinary action, be taken against the officer or member.

### **11 Incident reports**

- (1) When a rural fire brigade attends a fire or other incident or emergency, the officer in charge of that brigade must ensure that the fire control officer is furnished with a report on the incident.
- (2) A report must:
- (a) be furnished to the fire control officer within the time required by the Service Standards, and
  - (b) include any matters required to be covered in such a report by the Service Standards.

### **12 Period for compliance with request to form rural fire brigade**

For the purposes of section 15 (4) of the Act, the prescribed period is 3 months after the request to form a rural fire brigade is made.

## **Part 3 – Bush Fire Management Committees**

### **13 Constitution of Bush Fire Management Committees**

A Bush Fire Management Committee is not to be incorporated and is not to become a committee of a council under the *Local Government Act 1993*.

#### **14 Eligibility for membership of Bush Fire Management Committees**

Unless the Bush Fire Co-ordinating Committee determines otherwise, the following persons are to be invited to become members of a Bush Fire Management Committee:

- (a) a person nominated by each local authority whose area comprises land in the Bush Fire Management Committee's area, being (in the case of a local authority that is a council) the Mayor or a councillor of the council,
- (b) a person nominated by each of the following organisations as being in charge of its affairs in the Bush Fire Management Committee's area:
  - (i) the Roads and Traffic Authority,
  - (ii) the Department of Lands,
  - (iii) the NSW Fire Brigades,
  - (iv) the NSW Police Force,
  - (v) each distribution network service provider listed in Schedule 3 to the *Electricity Supply Act 1995* having a distribution district comprising land in the Bush Fire Management Committee's area,
  - (vi) each rural lands protection board established for any rural lands protection district comprising land in the Bush Fire Management Committee's area,
  - (vii) Rail Corporation New South Wales,
  - (viii) Rail Infrastructure Corporation,
- (c) a person or persons nominated by the Director-General of the Department of Environment and Climate Change as being in charge of the affairs of the Department in the Bush Fire Management Committee's area,
- (d) a person or persons nominated by the Director-General of the Department of Primary Industries as being in charge of the affairs of the Department in the Bush Fire Management Committee's area,
- (e) a person nominated by each local authority for the Bush Fire Management Committee's area as having responsibilities for the performance of the local authority's functions respecting the environment,
- (f) a person nominated by the Nature Conservation Council of New South Wales,
- (g) not more than 2 persons chosen by rural fire brigades operating in the area,
- (h) a rural land holder nominated by the NSW Farmers Association or, if the Association does not nominate a rural land holder within a reasonable time (as determined by the Bush Fire Co-ordinating Committee), by the local authority for the area,
- (i) a person nominated by each Local Aboriginal Land Council for any Local Aboriginal Land Council area comprising land located in the Bush Fire Management Committee's area,
- (j) any other person or persons approved by the Bush Fire Co-ordinating Committee.

#### **15 Functions of Bush Fire Management Committees**

- (1) A Bush Fire Management Committee must, at the request of the Bush Fire Co-ordinating Committee, assist the Bush Fire Co-ordinating Committee in the performance of its functions under sections 48, 60 (2) and 63 (4) of the Act.
- (2) A Bush Fire Management Committee may draw to the attention of:
  - (a) the Bush Fire Co-ordinating Committee, or
  - (b) the Commissioner, or
  - (c) a public authority exercising its functions in the Bush Fire Management Committee's area,any matter it considers relevant to the protection of land, life, property or the environment in that area from the impact of bush fires.
- (3) A Bush Fire Management Committee has no power to conduct or take part in fire fighting or fire prevention operations authorised by the Act, this Regulation or any other Act or statutory instrument.

## **16 Procedure for meetings of Bush Fire Management Committees**

- (1) A Bush Fire Management Committee is to meet in such manner and at such times as the Bush Fire Co-ordinating Committee may determine.
- (2) The procedure for the calling of the meetings and the conduct of business of a Bush Fire Management Committee is, subject to any rules made by the Bush Fire Co-ordinating Committee, to be as determined by the Bush Fire Management Committee.

## **17 Chairperson**

- (1) At its first meeting, a Bush Fire Management Committee is to elect one of its members (not being its Executive Officer and not being a member referred to in clause 14 (b), (c), (d) or (e)) to be Chairperson of the Committee.
- (2) The Chairperson (or in the absence of the Chairperson, another member elected to chair the meeting by the members present) is to preside at a meeting of the Bush Fire Management Committee.
- (3) On the expiration of the term of office of the Chairperson or if the Chairperson ceases to be a member of the Bush Fire Management Committee or resigns office as Chairperson, the Bush Fire Management Committee is to elect one of its other members (not being its Executive Officer and not being a member referred to in clause 14 (b), (c), (d) or (e)) to be Chairperson of the Committee.
- (4) A Chairperson elected under this clause holds office as Chairperson, subject to any rules made by the Bush Fire Co-ordinating Committee, for a period of 12 months but is eligible (if otherwise qualified) for re-election.

## **18 Executive Officer**

- (1) Each Bush Fire Management Committee is to have an Executive Officer.
- (2) The Executive Officer of a Bush Fire Management Committee is a member of the Committee.
- (3) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (1) of the Act is to be the fire control officer for the Bush Fire Management Committee's area.
- (4) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (1A) of the Act is to be a member of NSW Fire Brigades nominated as Executive Officer by the Commissioner of NSW Fire Brigades.
- (5) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (2) of the Act is to be a member of the Service nominated as Executive Officer by the Commissioner.
- (6) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (3) of the Act:
  - (a) for groups of rural fire districts, is to be a fire control officer nominated as Executive Officer by the Commissioner, and
  - (b) for groups of fire districts, is to be a member of NSW Fire Brigades nominated as Executive Officer by the Commissioner of NSW Fire Brigades.
- (7) The Commissioner may revoke a nomination made for the purposes of subclause (5) or (6).

## **Part 4 – Fire prevention**

### **Division 1 – General**

#### **19 Burning to demolish buildings**

A person must not light a fire on land for or in connection with:

- (a) the demolition of a building, or
- (b) the destruction of old building materials, or
- (c) any similar purpose,

except in accordance with the conditions set out in a permit obtained from the appropriate authority for the area.

Maximum penalty: 20 penalty units.

## **20 Burning to destroy sawmill waste material**

- (1) A person must not light a fire to destroy sawmill waste material unless the fire is lit:
- (a) in an incinerator designed to prevent the escape of sparks and burning material, or
  - (b) on ground enclosed by a fence of galvanised iron or other fire resistant material not less than 1.8 metres high so that the top of the waste to be burned is not less than 600 millimetres below the level of the top of the fence, or
  - (c) in a pit dug for the purpose so that the top of the waste to be burned is not less than 600 millimetres below the top of the edge of the pit, or
  - (d) in accordance with the conditions set out in a permit issued by the appropriate authority.

Maximum penalty: 20 penalty units.

- (2) A person who lights a fire in accordance with the conditions set out in subclause (1) (b) or (c) must ensure that the ground within 9 metres of any part of the fence or edge of the pit is cleared of combustible matter and that at least 2 knapsack spray pumps, each of 16 litre minimum capacity, and a supply of not less than 450 litres of water are readily available for use on the fire. Maximum penalty: 20 penalty units.

## **21 Use of spark arresters**

- (1) A person must not, in connection with any agricultural, pastoral, railway or other land use, drive or use any steam-powered machine unless:
- (a) the smoke box is fitted with a spark arrester constructed of a mesh not exceeding 3.2 millimetres, and
  - (b) the fire box is fitted with a tray constructed in such a manner as to prevent the escape from the fire box of any sparks or burning material, and
  - (c) the spark arrester and tray are maintained in a good and serviceable condition and comply with *AS 1019--2000*.

Maximum penalty: 20 penalty units.

- (2) In this clause: "**AS 1019--2000**" means the Australian Standard entitled *AS 1019--2000, Internal combustion engines--Spark emission control devices*, published by Standards Australia on 1 August 2000.

## **22 Other safety requirements**

- (1) A person must not, in connection with any agricultural, pastoral or other land use, drive or use in any grass, crop or stubble land any motorised machine unless:
- (a) the machine is constructed so that any heated areas will not come into contact with combustible matter, and
  - (b) the machine is maintained in a good and serviceable condition so as to prevent the outbreak of fire.

Maximum penalty: 20 penalty units.

- (2) A person must not, in connection with any agricultural, pastoral or other land use:
- (a) drive or use in any grass, crop or stubble land a motorised machine on which it is practicable to carry prescribed fire safety equipment, or
  - (b) carry out welding operations or use explosives or an angle grinder or any other implement that is likely to generate sparks,
- unless the person carries on the machine, or has in the vicinity, prescribed fire safety equipment that is maintained in a serviceable condition. Maximum penalty: 20 penalty units.

- (3) In this clause: "**prescribed fire safety equipment**" means:
- (a) a knapsack spray pump of 16 litre minimum capacity filled with water, or
  - (b) a fire extinguisher (liquid type) of 9 litre minimum capacity, or
  - (c) a dry powder type extinguisher of 0.9 kg minimum capacity.

### **23 Roadside fire protection**

- (1) A prescribed authority may, for the purposes of bush fire hazard reduction work:
- (a) light a fire on a road, or on the verge of a road, and
  - (b) while the fire is burning, prohibit, direct or regulate the movement of persons, vehicles or animals along a road.
- (2) Subclause (1) authorises a prescribed authority to light a fire on land comprising a road or the verge of a road only if to do so is consistent with any bush fire management plan applying to the land.
- (3) In this clause: "**prescribed authority**" means a public authority that has the care, control or management of a road, or of roadside vegetation.

### **Division 2 – Bush fire danger periods**

#### **24 Application of Division**

This Division applies during bush fire danger periods.

#### **25 Lighting fires for cooking etc**

A person must not light a fire in the open to cook, heat or prepare meals or to boil water or for any similar purpose unless the fire is lit at a site surrounded by ground that is clear of all combustible matter for a distance of at least 2 metres.

Maximum penalty: 20 penalty units.

#### **26 Burning garbage and refuse**

- (1) A person must not light a fire to destroy garbage or refuse at a waste depot unless the fire is lit at a site surrounded by ground that is clear of all combustible matter for a distance of at least 30 metres. Maximum penalty: 20 penalty units.
- (2) A person must not light a fire to destroy household garbage or refuse or to destroy an animal carcass, otherwise than at a waste depot, unless the fire is lit:
- (a) in an incinerator designed to prevent the escape of sparks and burning material, or
  - (b) in accordance with the conditions set out in a permit issued by the appropriate authority,
- and, in any case, unless the fire is lit at a site surrounded by ground that is clear of all combustible matter for a distance of at least 5 metres. Maximum penalty: 20 penalty units.
- (3) Nothing in subclause (1) or (2) affects the operation of any law that prohibits or regulates the lighting of fires.

#### **27 Lighting fires to produce charcoal etc**

- (1) A person must not light a fire for or in connection with:
- (a) charcoal production, or
  - (b) the distillation of eucalyptus or other oils,
- unless the fire is lit at a site surrounded by ground that is clear of all combustible matter for a distance of at least 30 metres. Maximum penalty: 20 penalty units.
- (2) A person must not light a fire to burn waste products resulting from the activities referred to in subclause (1) unless:
- (a) all conditions set out in a permit obtained from the appropriate authority for the area are complied with, and
  - (b) the fire is lit at least 30 metres from the site of any other fire lit in connection with the distillation of eucalyptus or other oils.

Maximum penalty: 20 penalty units.



(3) In this clause, a reference to "**combustible matter**" does not include a reference to any timber to be reduced to charcoal, any charcoal so produced, any material used for the distillation of eucalyptus or other oils, or any building or fence.

### **28 Offence to light, use or carry tobacco product**

(1) A person must not, without lawful authority:

(a) light any tobacco product, match or other material, or

(b) use or carry any lighted tobacco product, match or other material,

within 15 metres of any stack of grain, hay, corn or straw or any standing crop, dry grass or stubble field. Maximum penalty: 50 penalty units.

(2) A person must not, without lawful authority, leave or deposit a lighted tobacco product, match or any incandescent material on any land, or on any bridge, wharf, pontoon or similar structure. Maximum penalty: 50 penalty units.

## **Part 5 – Notices**

### **29 Public notice of draft bush fire risk management plans**

(1) The period of public exhibition of a draft bush fire risk management plan must not be less than 42 days, during which submissions may be made to the Bush Fire Management Committee or the Commissioner, as the case requires.

(2) The Bush Fire Management Committee or Commissioner must, in accordance with the public notice of a draft bush fire risk management plan, exhibit the draft plan together with any other matter that the Committee or Commissioner considers appropriate or necessary to better enable the draft plan and its implications to be understood.

### **30 Destruction of notices**

A person who, without lawful authority, destroys, defaces or removes any notice displayed under the Act or this Regulation or under the authority of the Minister, the Commissioner, the Bush Fire Co-ordinating Committee or any public authority in pursuance of the Act is guilty of an offence.

Maximum penalty: 5 penalty units.

### **31 Bush fire hazard reduction work required by local authorities**

(1) For the purposes of section 69 (2) of the Act, a local authority that by a bush fire hazard reduction notice requires the occupier or owner of any land to burn fire breaks or combustible matter or other material on relevant land must send a copy of the bush fire hazard reduction notice to the office of the Department of Environment and Climate Change or the Forestry Commission nearest to the relevant land.

(2) Such a copy of the notice must be sent within 24 hours after the notice has been given.

(3) In this clause, "**relevant land**" means land that is within 8 kilometres (or such other distance as may be specified in a bush fire management plan applying to the land) of NPWS land or forestry land.

### **32 Bush fire hazard reduction work in default of compliance with notice**

(1) If any employees or agents of a local authority or any officers or members of a fire brigade or rural fire brigade are authorised under section 70 of the Act to enter any land and light any fire on relevant land, the local authority, officer or member concerned must notify the office of the Department of Environment and Climate Change or the Forestry Commission nearest to the relevant land.

(2) Such notification must:

(a) be in writing, and

(b) state the time at which or the period within which such fire is to be lit, and

(c) be sent at least 24 hours before the land is to be entered.

(3) In this clause, "**relevant land**" means land that is within 8 kilometres (or such other distance as may be specified in a bush fire management plan applying to the land) of NPWS land or forestry land.

### **33 Notice of intention to burn off or burn firebreak**

(1) For the purposes of section 86 (1) of the Act, notice may be given in writing or orally and must include particulars of the location, purpose, period and time of the fire proposed to be lit.

(2) The notice must be given to each of the persons referred to in subclause (3):

(a) within the time period specified in the fire permit, or

(b) if no such time period is specified--at least 24 hours before the fire is lit.

(3) The persons to whom the notice is to be given are:

(a) the occupiers (or, if there are no occupiers, the owners) of all land contiguous to, or that is separated merely by a lane, road or waterway (whether fenced or unfenced) from, the land on which the fire is to be lit, and

(b) if the land on which the fire is to be lit is in a rural fire district, the fire control officer for the district, and

(c) if the land on which the fire is to be lit is in a fire district, the officer in charge of the fire station that is nearest to the land.

### **34 Notice of issue of fire permit**

(1) For the purposes of section 94 of the Act, an appropriate authority who issues a fire permit to light a fire on relevant land must, within 24 hours of issuing the fire permit, give notice to the office of the Department of Environment and Climate Change or the Forestry Commission nearest to the relevant land.

(2) In this clause, "**relevant land**" means land that is within 8 kilometres (or such other distance as may be specified in a bush fire management plan applying to the land) of NPWS land or forestry land.

### **35 Notice to public authority not to light fires during a bush fire danger period**

(1) A notification under section 95 (2) (a) of the Act to a public authority:

(a) must be in writing, and

(b) must contain or have attached to it a copy of the relevant determination, and

(c) must be given at least 24 hours before the period specified in the notice begins.

(2) The notice is to be given:

(a) by serving it on an officer or employee of the public authority whom the public authority has notified to the local authority as being authorised to receive the notice, or

(b) by sending a copy of it to the head office of the public authority by post, email, facsimile transmission or document exchange facility.

### **36 Notices of fire prohibition in specified zones**

(1) Each area (comprising the local government areas listed in relation to each area) referred to in Schedule 1 is a zone for the purposes of any notification or direction under section 99 of the Act.

(2) For the purposes of any such notification or direction, the boundaries of any such area are those current when the notification is published or the direction is given.

### **37 Persons to whom notice of bush fire hazard reduction work must be given**

For the purposes of sections 100F (6) (c) and 100G (1) (c) of the Act, the officer in charge of the fire station that is nearest to the land on which bush fire hazard reduction work is to be carried out is prescribed as a person to whom notice of bush fire hazard reduction work must be given but only in relation to work carried out on land in a fire district.

### **38 Giving of notices**

(1) For the purposes of section 130 of the Act, a notice or direction required by or under the Act to be served on a person may be served as follows (except as otherwise expressly provided by the Act or this Regulation):

- (a) by delivering the notice to the person personally,
- (b) by delivering the notice at or on the premises at which the person to be served lives or carries on business, and leaving it with any person apparently above the age of 14 years resident or employed at the premises,
- (c) by posting the notice by prepaid letter addressed to the last known place of residence or business or post office box of the person to be served,
- (d) by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent,
- (e) by email to an email address specified by the person (in correspondence or otherwise) as an address to which emails to that person may be sent,
- (f) by fixing the notice on any conspicuous part of the land, building or premises owned or occupied by the person,
- (g) in the case of an offence involving a vehicle, by attaching the notice to the vehicle,
- (h) if the person to be served maintains a box at a document exchange established in New South Wales, by depositing the notice in that box or leaving it at another such exchange for transmission to the first mentioned exchange for deposit in that box.

(2) If a notice is deposited in a box, or left at a document exchange, service of the notice is, until the contrary is proven, taken to be effected 2 days after the day on which the notice is so deposited or left.

(3) In addition to the means of service prescribed by subclause (1):

- (a) in any case where the person to be served is, or after inquiry appears to be, absent from New South Wales, the service may be on the agent of the person by any of the means prescribed by subclause (1) (a), (b), (d) or (e), and
- (b) in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the person seeking to serve the notice, the service may be by advertisement in the approved form published in a newspaper circulating in the district in which the land, building or premises are situated.

(4) The notice may be addressed by the description of "occupier" or "owner" of the land, building or premises (naming or otherwise sufficiently indicating the same) in respect of which the notice is served, and without further name or description.

(5) The notice may be wholly printed or wholly handwritten or partly printed and partly handwritten.

(6) If a notice has been served by any of the means prescribed by this clause, all inquiries required under this clause are taken to have been made, and the service is conclusive evidence of them.

(7) For the purposes of this clause, a justice of the peace is authorised to take and receive an affidavit, regardless of whether any matter to which the affidavit relates is pending in any court.

### **Part 6 – Miscellaneous**

#### **39 Bravery and other awards**

The Commissioner is to keep a register of the names of each member of the Service who is given a commendation or award for long service, bravery or other forms of meritorious service, together with details of the commendation or award.

#### **40 Voluntary work by rural fire brigades**

(1) A function of a public authority is a prescribed function for the purposes of section 33 of the Act if:

- (a) it is a function described in subclause (2), and
- (b) in the case of a function described in subclause (2) (b)--it is exercised in accordance with an agreement between the fire control officer for the rural fire district in which the rural fire brigade concerned operates and the Commissioner of NSW Fire Brigades or between the Commissioner of the NSW Rural Fire Service and the Commissioner of NSW Fire Brigades.

(2) The functions referred to in subclause (1) (a) are:

- (a) in relation to co-operation with any public authority--a function that may be exercised by the public authority under the *State Emergency and Rescue Management Act 1989* or in relation to the prevention and suppression of bush fires and other fires, and
- (b) in relation to co-operation with the Commissioner of NSW Fire Brigades--a function of the Commissioner in relation to hazardous materials and similar matters, and
- (c) in relation to co-operation with the NSW Police Force--traffic control by a police officer.

(3) For the purposes of section 33 of the Act, police officers and the Commissioner of NSW Fire Brigades are prescribed as public authorities.

#### **41 Reduction of fire hazards on managed land**

The following is prescribed as managed land for the purposes of paragraph (e) of the definition of "**managed land**" in the Dictionary at the end of the Act in the application of the definition to sections 65, 74 and 74C of the Act:

- (a) land dedicated for a public purpose and owned by a local authority or vested in, or under the control of, a local authority as trustee,
- (b) community land under the *Local Government Act 1993*,
- (c) a road vested in a local authority,
- (d) a freeway or motorway,
- (e) land that is under the care, control and management of:
  - (i) the Minister for Lands, or
  - (ii) the Lands Administration Ministerial Corporation constituted by the *Crown Lands Act 1989*, or
  - (iii) a person employed in the Department of Lands who is the administrator of a reserve trust appointed under section 117 of the *Crown Lands Act 1989*,but excluding any land subject to a holding or enclosure permit (within the meaning of the *Crown Lands Act 1989*).

#### **42 Conditions of fire permit**

For the purposes of section 92 of the Act, the following conditions are prescribed as conditions of a fire permit:

- (a) unless the fire permit provides otherwise--at least one person must be present at the site of the fire from the time it is lit until such time as it is extinguished,
- (b) a fire may be lit on land only if to do so is consistent with any bush fire risk management plan applying to the land,
- (c) a fire may be lit on land only in accordance with any direction given to the holder of the permit by the appropriate authority.

#### **43 Section 100A definition of "excluded land"**

The following is prescribed as excluded land for the purposes of paragraph (c) of the definition of "excluded land" in section 100A (1) of the Act:

- (a) land declared under section 47 of the *Threatened Species Conservation Act 1995* to be the critical habitat of an endangered species, population or ecological community,
- (b) land within Lord Howe Island.

#### **44 Application for bush fire safety authority**

For the purposes of section 100B (4) of the Act, an application for a bush fire safety authority must be made in writing and must include the following:

- (a) a description (including the address) of the property on which the development the subject of the application is proposed to be carried out,
- (b) a classification of the vegetation on and surrounding the property (out to a distance of 140 metres from the boundaries of the property) in accordance with the system for classification of vegetation contained in *Planning for Bush Fire Protection*,
- (c) an assessment of the slope of the land on and surrounding the property (out to a distance of 100 metres from the boundaries of the property),
- (d) identification of any significant environmental features on the property,
- (e) the details of any threatened species, population or ecological community identified under the *Threatened Species Conservation Act 1995* that is known to the applicant to exist on the property,
- (f) the details and location of any Aboriginal object (within the meaning of the *National Parks and Wildlife Act 1974*) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property,
- (g) a bush fire assessment for the proposed development (including the methodology used in the assessment) that addresses the following matters:
  - (i) the extent to which the development is to provide for setbacks, including asset protection zones,
  - (ii) the siting and adequacy of water supplies for fire fighting,
  - (iii) the capacity of public roads in the vicinity to handle increased volumes of traffic in the event of a bush fire emergency,
  - (iv) whether or not public roads in the vicinity that link with the fire trail network have two-way access,
  - (v) the adequacy of arrangements for access to and egress from the development site for the purposes of an emergency response,
  - (vi) the adequacy of bush fire maintenance plans and fire emergency procedures for the development site,
  - (vii) the construction standards to be used for building elements in the development,
  - (viii) the adequacy of sprinkler systems and other fire protection measures to be incorporated into the development,
- (h) an assessment of the extent to which the proposed development conforms with or deviates from the standards, specific objectives and performance criteria set out in Chapter 4 (Performance Based Controls) of *Planning for Bush Fire Protection*.

#### **45 Development excluded from requirements for bush fire safety authority**

(1) Pursuant to section 100B (5) (a1) of the Act, the following development is excluded from the operation of section 100B:

- (a) development for the purposes of licensed premises that do not provide overnight accommodation (other than for the owner or manager of the premises and his or her family),

- (b) strata subdivision of a building, but only if development consent for the erection of the building was granted in accordance with section 79BA of the *Environmental Planning and Assessment Act 1979*,
- (c) strata subdivision of a class 2 building erected before 1 August 2002, but only if the building complies with the requirements of Level 1 construction under AS 3959--1999, *Construction of buildings in bushfire-prone areas*,
- (d) subdivision of land for the purposes of converting an existing dwelling to a dual occupancy, but only if development consent for the dwelling was granted in accordance with section 79BA of the *Environmental Planning and Assessment Act 1979*,
- (e) subdivision of, or a boundary adjustment in relation to, land that is leased under the *Western Lands Act 1901*,
- (f) subdivision for the purposes of consolidations of lots, or boundary adjustments on land where the number of lots is reduced, but only if any existing dwelling on the land complies with the requirements of Appendix 3 (Site Bush Fire Attack Assessment) of *Planning for Bush Fire Protection*,
- (g) development for the purposes of bed and breakfast accommodation using an existing building, but only if the building is more than 30 metres from native vegetation,
- (h) subdivision of land used or proposed to be used for industrial purposes on which the erection of a dwelling related to the industrial use of the land (such as a manager's residence) is permitted,
- (i) subdivision of land for a rural residential purpose in a Western New South Wales district, but only if:
  - (i) each lot created by the subdivision is greater than 10 hectares, and
  - (ii) the bush fire prone land in any lot is less than 10 per cent of the lot, and
  - (iii) each lot has direct access to an existing public road.

(2) In this clause: "**Building Code of Australia**" has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*. "**class**", in relation to a building, means a building of the specified class under the *Building Code of Australia*. "**Western New South Wales district**" means any of the following areas as referred to in Schedule 1:

- (a) Central Ranges,
- (b) North Western,
- (c) Upper Central West Plains,
- (d) Lower Central West Plains,
- (e) Southern Slopes,
- (f) Eastern Riverina,
- (g) Southern Riverina,
- (h) Northern Riverina,
- (i) South Western,
- (j) Far Western.

#### **46 Additional special fire protection purposes for which bush fire safety authority required**

For the purposes of paragraph (i) of the definition of "**special fire protection purpose**" in section 100B (6) of the Act, the following purposes are prescribed:

- (a) a manufactured home estate (within the meaning of *State Environmental Planning Policy No 36--Manufactured Home Estates*), comprising two or more caravans or manufactured homes, used for the purpose of casual or permanent accommodation (but not tourist accommodation),

- (b) a sheltered workshop, or other workplace, established solely for the purpose of employing persons with disabilities,
- (c) a respite care centre, or similar centre, that accommodates persons with a physical or mental disability or provide respite for carers of such persons,
- (d) student or staff accommodation associated with a school, university or other educational establishment.

#### **47 Application for bush fire hazard reduction certificate**

For the purposes of section 100F (1) of the Act, an application for a bush fire hazard reduction certificate must include the following:

- (a) a description (including the address) of the property on which the proposed bush fire hazard reduction work the subject of the application is to be carried out,
- (b) details of the means by which, the time within which, and the places where, the proposed bush fire hazard reduction work the subject of the application is to be carried out,
- (c) details of any provision of the following that applies to the property and that relates to bush fire hazard reduction work:
  - (i) any conservation agreement entered into under Division 12 of Part 4 of the *National Parks and Wildlife Act 1974*,
  - (ii) any property vegetation plan approved under Part 4 of the *Native Vegetation Act 2003*,
  - (iii) any Trust agreement entered into under Part 3 of the *Nature Conservation Trust Act 2001*,
  - (iv) any property management plan approved by the Director-General of the Department of Environment and Climate Change under section 113B of the *Threatened Species Conservation Act 1995*,
  - (v) any biobanking agreement entered into under Part 7A of the *Threatened Species Conservation Act 1995*,
- (d) the details of any threatened species, population or ecological community identified under the *Threatened Species Conservation Act 1995* that is known to the applicant to exist on the property,
- (e) the details and location of any Aboriginal object (within the meaning of the *National Parks and Wildlife Act 1974*) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property,
- (f) if the proposed bush fire hazard reduction work is to be carried out by a person other than the owner or occupier of the land concerned--the written consent to the proposed work of that owner or occupier.

#### **48 Penalty notices**

- (1) For the purposes of section 131 (6) of the Act:
  - (a) each offence created by a provision specified in Column 1 of Part 1 or 2 of Schedule 2 is declared to be a penalty notice offence, and
  - (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Part 1 or 2 of Schedule 2.
- (2) For the purposes of the definition of "**authorised officer**" in section 131 (9) of the Act, the following classes of persons are specified in relation to all penalty notice offences:
  - (a) police officers,
  - (b) persons authorised by a local authority for the purposes of this paragraph,
  - (c) persons authorised by the Commissioner for the purposes of this paragraph.

## **49 Savings provision**

Any act, matter or thing that had effect under the *Rural Fires Regulation 2002* immediately before the repeal of that Regulation is taken to have effect under this Regulation.

# **Schedule 1 Fire prohibition zones**

(Clause 36)

## **Far North Coast**

Local government areas of Ballina, Byron, Clarence Valley, Kyogle, Lismore, Richmond Valley and Tweed.

## **North Coast**

Local government areas of Bellingen, Coffs Harbour, Gloucester, Great Lakes, Greater Taree, Kempsey, Nambucca and Port Macquarie-Hastings.

## **Greater Hunter**

Local government areas of Cessnock, Dungog, Lake Macquarie, Maitland, Muswellbrook, Newcastle, Port Stephens, Singleton and Upper Hunter.

## **Greater Sydney Region**

Local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunter's Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby, Woollahra and Wyong.

## **Illawarra/Shoalhaven**

Local government areas of Kiama, Shellharbour, Shoalhaven, Wingecarribee, Wollondilly and Wollongong.

## **Far South Coast**

Local government areas of Bega Valley and Eurobodalla.

## **Monaro Alpine**

Local government areas of Bombala, Cooma-Monaro and Snowy River.

## **Southern Ranges**

Local government areas of Goulburn Mulwaree, Palerang, Queanbeyan, Upper Lachlan and Yass Valley.

## **Central Ranges**

Local government areas of Bathurst Regional, Blayney, Cabonne, Cowra, Lithgow, Mid-Western Regional, Oberon and Orange.

## **New England**

Local government areas of Armidale Dumaresq, Glen Innes Severn, Guyra, Tenterfield, Uralla, Walcha.

## **Northern Slopes**



Local government areas of Gunnedah, Gwydir, Inverell, Liverpool Plains and Tamworth Regional.

**North Western**

Local government areas of Moree Plains, Narrabri, Walgett and Warrumbungle.

**Upper Central West Plains**

Local government areas of Bogan, Coonamble, Gilgandra and Warren.

**Lower Central West Plains**

Local government areas of Bland, Dubbo, Forbes, Lachlan, Narromine, Parkes, Temora, Weddin and Wellington.

**Southern Slopes**

Local government areas of Boorowa, Cootamundra, Gundagai, Harden, Tumbarumba, Tumut and Young.

**Eastern Riverina**

Local government areas of Albury, Coolamon, Greater Hume, Junee, Lockhart and Wagga Wagga.

**Southern Riverina**

Local government areas of Berrigan, Conargo, Corowa, Deniliquin, Jerilderie, Murray, Urana and Wakool.

**Northern Riverina**

Local government areas of Carrathool, Griffith, Hay, Leeton, Murrumbidgee and Narrandera.

**South Western**

Local government areas of Balranald and Wentworth.

**Far Western**

Local government areas of Bourke, Brewarrina, Broken Hill, Central Darling, Cobar and the Unincorporated Area of NSW.

## Schedule 2 Penalty notice offences

(Clause 48)

### Part 1 – Offences under Rural Fires Act 1997

Column 1	Column 2
Provision	Penalty \$
Section 64	220
Section 66 (7)	220
Section 86 (1) or (1A)	550
Section 87	550
Section 88	550
Section 92 (2)	550
Section 99 (6)	550
Section 100 (2)	550
Section 132 (3)	220

### Part 2 – Offences under Rural Fires Regulation 2008

Column 1	Column 2
Provision	Penalty \$
Clause 19	330
Clause 20	330
Clause 21	330
Clause 22	330
Clause 25	330
Clause 26	330
Clause 27	330
Clause 28	330

#### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Rural Fires Regulation 2008 (348)*. GG No 98 of 15.8.2008, p 7647. Date of commencement, 1.9.2008, cl 2.