

BUSH FIRES (AMENDMENT) BILL, 1958

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to enact that there will be a bush fire danger period for the whole State from 1st October in any year until 31st March in the following year;
- (b) to allow, subject to safeguards, a council to revoke in respect of the whole or part of its area and for such period as the council determines the bush fire danger period referred to in paragraph (a) above;
- (c) to allow a council to declare in respect of the whole or any part of its area a bush fire danger period during, or during any part of, the period from 1st April to 30th September in any year;
- (d) to allow the Minister to revoke in respect of the whole or any part of the Western Division, as defined, or Lord Howe Island and for such period as he determines the bush fire danger period referred to in paragraph (a) above;
- (e) to allow the Minister to declare in respect of the whole or any part of the Western Division, as defined, or Lord Howe Island a bush fire danger period during, or during any part of, the period from 1st April to 30th September in any year;
- (f) to extend the provisions of section 10 (circumstances in which fires can be lit, &c., during a bush fire danger period) to parts of the State that are not within the boundaries of local government areas;
- (g) to make it an offence during a bush fire danger period to throw or drop a lighted cigarette, match, &c., on a bridge, wharf, pontoon, &c., situated in a part of the State to which the bush fire danger period applies;
- (h) to make it clear that the powers conferred by section sixteen (lighting of fires prohibited in emergent circumstances) may be exercised in respect of parts of the State that are not within the boundaries of local government areas; and also to provide that those powers extend to prohibiting the maintenance and use of any fire;
- (i) to permit a bush fire brigade to be formed on Lord Howe Island;
- (j) to authorise bush fire brigades, subject to their obtaining the appropriate consents, to enter upon certain Crown land and upon land belonging to the Commissioner for Railways for the purpose of carrying out protective burning operations, &c.;
- (k) to enable a council, if it so desires, to contribute more to the Bush Fire Fighting Fund than it could otherwise be compelled to contribute;
- (l) to add to the list of persons who are fire patrol officers and to authorise those officers to require certain fires to be suppressed;
- (m) to confer additional powers on Forestry Commission officers and other authorised persons where a bush fire is more than 5 miles from a national forest, State forest, &c., but endangers or is likely to endanger the national forest, State forest, &c.;
- (n) to define the powers of officers of a water supply authority and other persons authorised by that authority where a bush fire is burning on any land within 5 miles of a catchment area of that authority;
- (o) to allow substituted service of notices by a council;
- (p) to make certain other amendments of a minor or consequential character.

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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1958.

A BILL

To make further provision for the prevention, control and suppression of bush and other fires and for the mitigation of dangers resulting from bush and other fires; for this purpose to amend the Bush Fires Act, 1949, in certain respects; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Bush Fires (Amendment) Act, 1958".

Short title, citation and commencement.

Bush Fires (Amendment).

(2) The Bush Fires Act, 1949, as amended by this Act, may be cited as the Bush Fires Act, 1949-1958.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Bush Fires Act, 1949, is amended—

Amendment of Act No. 31, 1949. Sec. 6. (Interpretation.)

10 (a) by omitting from the definition of "Bush fire danger period" in section six the words "proclaimed as such under this Act" and by inserting in lieu thereof the words "fixed or declared by or under this Act to be a bush fire danger period";

15 (b) by inserting in the same section at the end of the definition of "Eastern and Central Divisions" the words "and includes any part of the Western Division as defined in that Act, as so amended, which is for the time being included within the boundaries of any area";

20 (c) by inserting in the same section at the end of the definition of "Western Division" the words "but does not include any part of that Division which is for the time being included within the boundaries of any area".

3. The Bush Fires Act, 1949, is further amended—

Further amendment of Act No. 31, 1949.

25 (a) by omitting section seven and by inserting in lieu thereof the following section:—

Subst. sec. 7.

30 7. (1) Subject to this section, there shall be a bush fire danger period for the whole State from the first day of October in each year until the thirty-first day of March in the year next ensuing, both days inclusive.

Bush fire danger period.

(2)

Bush Fires (Amendment).

(2) Subject to subsection three of this section, the council of any area may by resolution declare—

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(a) any period commencing on or after the first day of April and ending on or before the thirtieth day of September in any year to be a bush fire danger period in its area or in such part of its area as may be specified in the resolution;

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(b) the bush fire danger period referred to in subsection one of this section to be revoked in respect of the whole or such part of its area as may be specified in the resolution for such period as may be so specified,

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and may at any time revoke that resolution.

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(3) (a) The Minister may, by order published in the Gazette, declare an area to be a special area for the purposes of subsection two of this section.

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(b) The council of a special area shall not exercise the power conferred upon it by paragraph (b) of subsection two of this section unless it has first obtained—

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(i) the written concurrence of the Forestry Commission of New South Wales or a person authorised in that behalf by that Commission to the proposed resolution;

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(ii) if that Commission or person does not give that written concurrence within three days after notice requesting concurrence in the proposed resolution has been given to that Commission or person—the written concurrence of the Minister to the proposed resolution.

(4)

Bush Fires (Amendment).

(4) The Minister may by order published in the Gazette declare—

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(a) any period commencing on or after the first day of April and ending on or before the thirtieth day of September in any year to be a bush fire danger period on Lord Howe Island or in such part of the Island as may be specified in the order or in the Western Division or in such part of that Division as may be specified in the order;

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(b) the bush fire danger period applicable to Lord Howe Island pursuant to subsection one of this section to be revoked in respect of the whole or such part of the Island as may be specified in the order for such period as may be so specified;

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(c) the bush fire danger period applicable to the Western Division pursuant to subsection one of this section to be revoked in respect of the whole or such part of the Western Division as may be specified in the order for such period as may be so specified.

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(5) (a) During any period specified by a council in a resolution under paragraph (b) of subsection two of this section, the provisions of subsection one of this section shall cease to have any force or effect in respect of the area of the council or, where part only of its area is specified in the resolution, in respect of the part so specified.

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(b) During any period specified by the Minister in an order under paragraph (b) or (c) of subsection four of this section, the provisions of subsection one of this section shall cease to have any force or effect in respect of Lord Howe Island or the Western Division, as the case

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case may be, or where part only of Lord Howe Island or of the Western Division is specified in the order, in respect of the part of that Island or Division, as the case may be, so specified.

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(6) Where any resolution is passed by a council under subsection two of this section, the council shall—

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(a) forward to the Minister within twenty-four hours of the meeting at which the resolution was passed a copy of the resolution, together with, where the council is the council of a special area and the resolution is passed pursuant to paragraph (b) of that subsection, a copy of the written concurrence of the Forestry Commission of New South Wales or a person authorised in that behalf by that Commission; and

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(b) within the prescribed time cause a notice in the prescribed form of the resolution to be published in at least one newspaper circulating in its area.

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(7) Where the Governor is satisfied that it is necessary or expedient in the interests of public safety or for the protection of any national forest, State forest, timber reserve or flora reserve, under the Forestry Act, 1916-1957, or any other Act, from damage by fire, the Governor may by proclamation published in the Gazette suspend the operation of paragraph (b) of subsection two of this section, and of any resolution passed under that subsection, in such area and for such period as may be specified in the proclamation.

(b)

Bush Fires (Amendment).

(b) (i) by omitting paragraph (a) of subsection two of section ten and by inserting in lieu thereof the following paragraph:—

Sec. 10.,
(Require-
ments to be
complied
with by
persons
lighting
certain
classes of
fires.)

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(a) No person shall during a bush fire danger period light, maintain or use or cause to be lit, maintained or used any fire upon any land in relation to which the bush fire danger period applies for the purpose of clearing the land of bush, stubble, scrub, timber, trees, grass or vegetative or other material or for burning any fire break, unless—

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- (i) he gives the notices required to be given under subsection one of this section;
- (ii) he has obtained a permit authorising him to light, maintain or use the fire from—

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- (a) where the land is situated within an area—the council of the area or a person authorised in that behalf by the council;
- (b) where the land is on Lord Howe Island—the Lord Howe Island Board or a person authorised in that behalf by that Board; or
- (c) in any other case—the officer in charge of the police station nearest to the land or a person authorised in that behalf by the Minister; and

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(iii) the fire is lit, maintained or used in accordance with the conditions, if any, attached to the permit.

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(ii) by omitting from subsection six of the same section the words "by a council or any person authorised in that behalf by a council"; (iii)

Bush Fires (Amendment).

- (iii) by omitting from the same subsection the words "timber reserve";
- (iv) by omitting from the same subsection the words "by such council or such person" and by inserting in lieu thereof the words "by the authority or person referred to in subsection two of this section by whom the permit was granted";
- (c) (i) by omitting from subsection one of section eleven the words "by a council or a person authorised in that behalf by a council";
- (ii) by omitting from the same subsection the words "by such council or such person" and by inserting in lieu thereof the words "by the authority or person referred to in subsection two of that section by whom the permit was or could have been granted";
- (iii) by omitting from subsection two of the same section the words "the council or any person authorised by the council to grant permits" and by inserting in lieu thereof the words "a permit granted under section ten of this Act has been revoked, suspended or varied by an authority or person referred to in subsection two of that section and that authority or person";
- (iv) by omitting from the same subsection the words "such council or such person" wherever occurring and by inserting in lieu thereof the words "that authority or person";
- (d) (i) by omitting from subsection three of section twelve the words "has been proclaimed" and by inserting in lieu thereof the words "is fixed or declared by or under this Act";
- (ii) by inserting in paragraph (b) of the same subsection after the word "land" the words "or on any bridge, wharf, pontoon or similar structure";

Sec. 11.
(Revocation, suspension or variation of permits.)

Sec. 12.
(Offences.)

(e)

Bush Fires (Amendment).

- (e) by omitting from subsection five of section thirteen the words "timber reserve"; Sec. 13.
(Power given to councils to require fire breaks.)

- (f) by omitting from subsection two of section fourteen the words "timber reserve"; Sec. 14.
(Councils may authorise persons to enter land and make fire breaks or clear inflammable material.)

- 5 (g) (i) by omitting from subsection one of section sixteen the words "area or areas" where firstly occurring and by inserting in lieu thereof the words "part or parts of the State"; Sec. 13.
(Lighting of fires prohibited in emergent circumstances.)

- 10 (ii) by inserting in paragraph (a) of the same subsection after the word "lighting" the words ", maintenance or use";

- (iii) by omitting from the same paragraph the words "such area or areas or part or parts thereof" and by inserting in lieu thereof 15 the words "such part or parts of the State";

- (iv) by inserting in paragraph (b) of the same subsection after the word "lighting" the words ", maintaining or using";

- 20 (v) by omitting from the same paragraph the words "such area or areas or part or parts thereof" and by inserting in lieu thereof the words "such part or parts of the State";

- 25 (vi) by omitting from paragraph (c) of the same subsection the words "such area or areas or part or parts thereof" and by inserting in lieu thereof the words "such part or parts of the State";

- (vii)

Bush Fires (Amendment).

(vii) by inserting next after subsection two of the same section the following new subsection:—

5 (2A) The specification in any notification or direction under this section of part of the State by reference to a zone defined by the regulations for the purpose shall be a sufficient specification of a part of the State for the purposes of this section.

10 4. The Bush Fires Act, 1949, is further amended—

Further amendment of Act No. 31, 1949.

15 (a) (i) by omitting from paragraph (d) of section nineteen the words “not being within a fire district so constituted” and by inserting in lieu thereof the words “or on Lord Howe Island”;

Sec. 19. (Formation of bush fire brigades.)

(ii) by omitting from paragraph (e) of the same section the words “not being within a fire district so constituted” where lastly occurring;

20 (b) (i) by inserting in subsection one of section twenty-two after the word “danger” where firstly occurring the words “and with such persons as he may deem necessary for the purpose”;

Sec. 22. (Powers of bush fire brigade captains, group captains and deputy captains.)

25 (ii) by omitting from paragraph (b) of subsection three of the same section the words “sanctioned by the mayor, president, or clerk of the council of such area” and by inserting in lieu thereof the words “made necessary by the absence from the scene of any particular portion of the fire of the captain, deputy captain, group captain or deputy group captain of the area concerned”;

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(iii)

Bush Fires (Amendment).

(iii) by inserting next after subsection three of the same section the following new subsections:—

5 (3A) Any member of a bush fire brigade authorised by a council in that behalf, may enter upon any Crown land situated within the area of the council, not being Crown land—

10 (a) within a fire district constituted under the Fire Brigades Act, 1939, as amended by subsequent Acts;

(b) held under lease or license; or

(c) vested in or under the control of trustees,

15 and do all or any of the following things, namely, plough, burn, clear or otherwise establish fire breaks on the land or remove, burn or destroy any inflammable matter or other material upon the land, in accordance with such conditions as the council may specify.

20 A council shall not grant an authority under this subsection in relation to any Crown land unless it has first obtained permission to do so from the appropriate authority in respect of the Crown land or from some person authorised in that behalf by that appropriate authority.

25 In this subsection “appropriate authority” means—

30 (a) in respect of Crown land within a catchment area within the meaning of the Metropolitan Water, Sewerage, and Drainage Act, 1924-1954, the Metropolitan Water, Sewerage and Drainage Board or a person authorised in that behalf by that Board; (b)

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Bush Fires (Amendment).

- 5 (b) in respect of Crown land within a catchment area within the meaning of any other Act relating to the supply of water by a public authority, that public authority or a person authorised in that behalf by that public authority;
- 10 (c) in respect of Crown land within a catchment area notified or constituted under the Soil Conservation Act, 1938-1952, the Catchment Areas Protection Board or a person authorised in that behalf by that Board;
- 15 (d) in respect of Crown land under the control of a Pastures Protection Board, that Board or a person authorised in that behalf by that Board;
- 20 (e) in respect of Crown land under the control of the Forestry Commission of New South Wales, that Commission or a person authorised in that behalf by that Commission;
- 25 (f) in respect of Crown land within an irrigation area, the Minister for the time being charged with the administration of the Irrigation Act, 1912-1955, or a person authorised in that behalf by that Minister;
- 30 (g) in respect of Crown land, other than Crown land referred to in paragraph (a), (b), (c), (d), (e) or (f), the Minister for Lands or a person authorised in that behalf by that Minister.
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(3B) Any member of a bush fire brigade or any other person acting under the authority of a captain, deputy captain, group captain

Bush Fires (Amendment).

5 captain or deputy group captain of a bush
 fire brigade may, with the permission of the
 Commissioner for Railways or some person
 authorised in that behalf by that Commis-
 10 sioner, enter upon any land vested in or
 under the control of that Commissioner and
 do all or any of the following things, namely,
 plough, burn, clear or otherwise establish
 fire breaks on the land or remove, burn or
 destroy any inflammable matter or other
 material upon the land.

5. The Bush Fires Act, 1949, is further amended— Further amendment of Act No. 31, 1949.

- 15 (a) by inserting in paragraph (c) of section twenty-seven after the word “inspect” the words “, or cause to be inspected, at least once each year”; (Powers of fire control officers, etc.)
- (b) by inserting in paragraph (d) of the same section after the word “take” the words “or cause to be taken”.

6. The Bush Fires Act, 1949, is further amended— Further amendment of Act No. 31, 1949.

- 20 (a) by inserting at the end of subsection two of section thirty the following new proviso:— (Estimate to be prepared by Minister for Local Government.)
- 25 Provided that at the request of a council the Minister for Local Government may so prepare such estimate that the amount of contribution to be paid by the council will exceed the amount of contribution that would have been payable by it if this proviso had not been enacted.

- 30 (b) by omitting from paragraph (b) of subsection one of section thirty-two the words “in the Eastern and Central Divisions”. (Contributions by Colonial Treasurer, councils and insurance companies.)

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Bush Fires (Amendment).

7. The Bush Fires Act, 1949, is further amended—

Further amendment of Act No. 31, 1949.

- (a) by inserting in paragraph (d) of subsection one of section forty after the word "brigades" where secondly occurring the words "on Lord Howe Island and"; Sec. 40. (Functions of Committee.)
- (b) by inserting after the word "councils," in subsection one of section forty-two the words "fire control officers, captains, deputy captains, group captains and deputy group captains of bush fire brigades,"; Sec. 42. (Appointment of fire patrol officers and honorary fire patrol officers.)
- (c) by inserting in section forty-three after the word "examine" the words "and at his discretion suppress or require to be suppressed"; Sec. 43. (Fire patrol officers empowered to enter land.)
- (d) (i) by inserting next after subsection one of section fifty-one the following new subsections:— Sec. 51. (Powers of officers of Forestry Commission where a bush fire is burning on any land within five miles of a State forest, etc.)
 - (1A) Where a bush fire is burning on any land and the bush fire or any part thereof is at a greater distance than five miles from a national forest, State forest, timber reserve or flora reserve under the Forestry Act, 1916-1957, or any other Act, and the Forestry Commission of New South Wales or any person appointed by that Commission for the purposes of this subsection is of opinion that the bush fire or any part thereof endangers or is likely to endanger the national forest, State forest, timber reserve or flora reserve, any officer of that Commission, or any other person or persons authorised in that behalf by that Commission or by the person so appointed may enter upon the land on which the bush fire is burning or upon any land situated between the land on which the bush fire is burning

Bush Fires (Amendment).

5 burning and the national forest, State forest, timber reserve or flora reserve, with such vehicles and fire fighting apparatus as may be reasonably necessary for the purpose of extinguishing or assisting to extinguish the fire, and may do all such acts, matters and things as are reasonably necessary to extinguish the fire or to prevent the spread thereof:

10 Provided that where the land referred to in this subsection is within the area of a council, an authority to enter upon that land shall not be given under this subsection unless permission to give the authority has first been obtained from the council or a person authorised in that behalf by the council.

15 (1B) Where a bush fire is burning on any land and the bush fire or any part thereof is within five miles of a catchment area within the meaning of any Act relating to the supply of water by a public authority, any officer of that authority or any person or persons authorised in that behalf by that authority may enter upon the land on which the bush fire is burning or upon any land situated between the land on which the bush fire is burning and the catchment area, with such vehicles and fire fighting apparatus as may be reasonably necessary for the purpose of extinguishing or assisting to extinguish the fire, and may do all such acts, matters and things as are reasonably necessary to extinguish the fire or to prevent the spread thereof.

20 (ii) by inserting next after subsection three of the same section the following new subsection:—

25 (4) Where persons are, pursuant to this section, engaged in fire fighting operations in

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Bush Fires (Amendment).

5 in part of the territory of a bush fire brigade and members of the bush fire brigade are also engaged in fire fighting operations in that part, the senior officer of the bush fire brigade shall, subject to section seventeen of this Act, be in charge of the fire fighting operations.

10 (e) (i) by omitting from subsection one of section fifty-six the words “, occupier, or” and by inserting in lieu thereof the words “or occupier of any land or to any”; Sec. 56.
(Giving of notices.)

(ii) by inserting next after subsection two of the same section the following new subsections:—

15 (3) (a) In addition to the modes of service prescribed by subsection two of this section—

20 (i) in any case where the person to whom the notice or direction is to be given by a council is or after inquiry appears to be absent from New South Wales, the notice or direction may be given by the council to the agent of that person
25 by any of the modes prescribed in paragraphs (a), (b) and (c) of subsection two of this section;

30 (ii) in any case where the land is unoccupied and the owner thereof or his address or place of residence is not known to the council, the notice or direction may be given by the council by advertisement as prescribed.

35 (b) Where the notice or direction has been given by a council by any of the modes prescribed by this section, all inquiries requisite under this section shall be deemed to have been made, and the giving of the notice or direction shall be conclusive
40 evidence thereof. (c)

Bush Fires (Amendment).

5 (c) Proof by affidavit or orally that the notice or direction required to be given by a council has been posted in accordance with this section shall be conclusive evidence of the giving of the notice or direction.

10 (d) For the purpose of this subsection a justice of the peace is hereby authorised to take and receive an affidavit, whether any matter to which the affidavit relates is or is not pending in any court.

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

20 (5) The notice or direction may be wholly or partly in printing or in writing or in both.

(f) by inserting next after paragraph (t) of sub- Sec. 57.
section two of section fifty-seven the following (Regula-
new paragraph:— tions.)

25 (u) approved fire appliances for use in connection with any motor vehicle used for or in connection with any agricultural, pastoral or land use purpose.
