

## **Explanatory Statement – Jervis Bay Territory Rural Fires Ordinance 2014**

### **Ordinance No. 1, 2014**

#### **Overview and Background**

The purpose of the *Jervis Bay Territory Rural Fires Ordinance 2014* is to provide efficient and effective fire management services to the Jervis Bay Territory (JBT), including establishing a Jervis Bay Territory Rural Fire Service, a Jervis Bay Territory Fire Management Committee and mandating the preparation of Jervis Bay Territory Bush Fire Management Plans.

The Commonwealth accepted the JBT from New South Wales (NSW) through the *Jervis Bay Territory Acceptance Act 1915* (Acceptance Act). Section 4A of the Acceptance Act provides that the laws in force from time to time in the Australian Capital Territory are, so far as they are applicable to the JBT and are not inconsistent with an Ordinance, in force in the JBT as if it formed part of the Australian Capital Territory.

The Governor-General made the *Jervis Bay Territory Rural Fires Ordinance 2014* in accordance with the power granted under subsection 4F(1) of the Acceptance Act – to make Ordinances for the peace, order and good government of the Territory.

Previously, the *Rural Fires Ordinance 2001* (JBT) provided the legislative basis for fire management services in the JBT. It applied the New South Wales *Rural Fires Act 1997* and *Rural Fires Regulations 1998* as in force at the time of the Ordinance's commencement with modifications to reflect the JBT's jurisdictional and administrative circumstances. However, since the commencement of the *Rural Fires Ordinance 2001* (JBT), the NSW legislation has undergone successive amendments which have no force in the JBT.

The *Jervis Bay Territory Rural Fires Ordinance 2014* provides the legislative basis for fire management services in the JBT. Due to the cross-border delivery of fire services from NSW to the JBT the *Jervis Bay Territory Rural Fires Ordinance 2014* is based on the NSW *Rural Fires Act 1997* and *Rural Fires Regulations 2008* with modifications to reflect the Jervis Bay Territory's jurisdictional and administrative circumstances. This Ordinance repeals the *Rural Fires Ordinance 2001* (JBT).

This Ordinance empowers the Minister responsible for territories to delegate his or her powers to fire fighting authorities, including the Commissioner of the NSW Rural Fire Service (NSWRFS). The Minister may also delegate his or her powers to enter land to investigate fires to the Commissioner of the NSWRFS and to the Australian Federal Police (AFP). The Minister also has the power to delegate his or her power of delegation to a Senior Executive Service employee of the Department to subdelegate powers and functions to a member of a fire fighting authority, including the Commissioner of the NSWRFS, or to conclude agreements to provide fire management services to the JBT.

The *Jervis Bay Territory Rural Fires Ordinance 2014* establishes the Jervis Bay Territory Fire Management Committee responsible for the functions as are conferred or imposed on it

by the Ordinance, including the preparation of bush fire management plans. This Ordinance provides legal protection for members of the Jervis Bay Territory Fire Management Committee and fire management service providers for acts or omissions done in good faith in carrying out their functions under the Ordinance, including under Jervis Bay Territory Bush Fire Management Plans.

The *Jervis Bay Territory Rural Fires Ordinance 2014* establishes the Jervis Bay Territory Rural Fire Service and imposes functions upon it in relation to the provision of fire services for the JBT. This Ordinance also provides for the nomination of hazard management officers and provides a structure for bush fire hazard reduction works in the JBT.

The *Jervis Bay Territory Rural Fires Ordinance 2014* is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*. According to section 4G of the Acceptance Act, this Ordinance is a disallowable instrument and as such section 42 of the *Legislative Instruments Act 2003* applies. This Ordinance commenced on the day after it was registered on the Federal Register of Legislative Instruments.

The JBT contains Defence land, including HMAS Creswell and the Jervis Bay Range Facility, which are subject to, among other Acts, the *Defence Act 1903*, and land managed under lease by the Director of National Parks – Booderee National Park – which is subject to the *Environment Protection and Biodiversity Conservation Act 1999*. Due to the legislative hierarchy of Commonwealth Acts over Ordinances, a provision of an Act would prevail should a provision of the *Jervis Bay Territory Rural Fires Ordinance 2014* be inconsistent.

Taking into account national security considerations, particularly in relation to Defence land in the JBT, this Ordinance requires, prior to carrying out a function that relates to or affects Defence land, consultation with the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell. For example, prior to entering Defence land to control or suppress a fire, a fire fighting authority would be required to consult with the Senior Australian Defence Force Officer at HMAS Creswell or their authorised person regarding entry and actions taken on Defence land in performing such a function. The Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell may waive the obligation to consult.

#### Statement of Compatibility with Human Rights

The *Jervis Bay Territory Rural Fires Ordinance 2014* has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Ordinance is compatible with the human rights and freedoms recognised or declared in the international instruments listed in s3 of the *Human Rights (Parliamentary Scrutiny) Act 2001*. The following paragraphs provide an assessment of the compatibility of this Ordinance with Australia's international human rights and freedoms obligations.

### The right to liberty

The *Jervis Bay Territory Rural Fires Ordinance 2014* may affect the right to liberty by virtue that it contains criminal offences for which a person found guilty may face imprisonment. However, Article 9.1 of the *International Covenant on Civil and Political Rights* (ICCPR) provides an exception for imprisonment for offences “on such grounds and in accordance with such procedure as are established by law.” The General Comments of the Human Rights Committee, established under the ICCPR, notes that “Liberty of person is not absolute. Article 9 recognizes that sometimes deprivation of liberty is justified, for example, in the enforcement of criminal laws for the protection of the rights of others.” The ratio of term of imprisonment to penalty units for criminal offences is consistent with that prescribed by section 4B of the *Crimes Act 1914* (Cth) and the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. Under the Ordinance, only the AFP has powers of arrest, and any person so arrested would be subjected to the criminal justice system. Therefore, this Ordinance is compatible with this human right.

### Freedom of movement

The *Jervis Bay Territory Rural Fires Ordinance 2014* engages this human right in relation to restricting the movement of persons within the JBT. An officer of a JBT rural fire brigade has the power, for the purpose of controlling or suppressing a fire or protecting persons, property or the environment from an existing or imminent danger arising out of a fire, incident or other emergency, to cause to be removed any person the presence of whom near a fire, incident or other emergency might, in the officer’s opinion interfere with the work of any rural fire brigade or the exercise of any of the officer’s functions. The officer in charge of a JBT rural fire brigade may cause any street or public place in the vicinity of a fire, incident or other emergency to be closed to traffic. This may affect the right to freedom of movement. The officer in charge may direct or authorise a member of a rural fire service to perform these functions. These powers are consistent with the objectives, aims and provisions of the ICCPR and in particular Article 12, which allows the right to liberty of movement to be restricted where in accordance with domestic law and necessary to protect national security and public order.

### Arbitrary or unlawful interference with a person’s privacy or home

This Ordinance engages the right to privacy whereby an authorised officer who intends to serve a penalty notice on a person, or a member or special member of the AFP who has reason to suspect that a person is committing an offence against this Ordinance, may direct the person to state the person’s full name and residential address. This is consistent with the objectives, aims and provisions of the ICCPR, including Article 17, which allow the prohibition on interference with privacy to be restricted when in accordance with domestic law and necessary to protect national security and public order. These coercive powers are limited to AFP officers and to authorised officers of a rural fire service who have been authorised as Fire Investigators. Prior to their appointment, a Fire Investigator is required to

undertake specific training courses and then to comply with Service Standards and Standard Operating Procedures.

The *Jervis Bay Territory Rural Fires Ordinance 2014* engages the human right protecting individuals from arbitrary or unlawful interference with a person's home. An officer of a JBT rural fire brigade has powers, for the purpose of controlling or suppressing a fire or protecting persons, property or the environment from an existing or imminent danger arising out of a fire, incident or other emergency, to enter premises and to move obstacles (including property). An officer of a JBT rural fire brigade also has the power, if persons are, or property is, endangered or likely to be endangered by a fire, incident or other emergency, to destroy, pull down or remove or cause to be destroyed, pulled down or removed any buildings or structures on any land. The Minister may authorise in writing that reasonable use of force may be used for the purpose of gaining entry to premises. These powers are limited to certain individuals under certain circumstances and are consistent with the objectives, aims and provisions of the ICCRP, including Article 17, which allow the prohibition on interference with a person's home to be restricted when in accordance with domestic law and necessary to protect national security and public order.

This Ordinance also provides the Minister or his or her delegate power to enter land to investigate fire. This power is limited to be exercised within a period of up to 24 hours after the fire has been put out and must be authorised by a search warrant if there is a belief that entry onto the land is necessary for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land. This is consistent with the objectives, aims and provisions of the ICCRP, including Article 17, which allow the prohibition on interference with a person's home to be restricted when in accordance with domestic law and necessary to protect national security and public order.

#### Peaceful assembly

The powers granted to an officer of a JBT rural fire brigade, under this Ordinance, relating to removing any person or closing streets to traffic may engage the right to peaceful assembly. Article 21 of the ICCPR provides exceptions to this right provided they are imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, or public order. This Ordinance, therefore, is consistent with this human right.

#### Consultation

In preparing the *Jervis Bay Territory Rural Fires Ordinance 2014*, the Department of Infrastructure and Regional Development undertook extensive consultation with Commonwealth and NSW agencies and organisations, including the Wreck Bay Aboriginal Community Council, and the Shoalhaven City Council which are involved with and/or affected by this Ordinance.

The consultation process included convening a teleconference with members of the Jervis Bay Territory Emergency Management Committee to discuss on-the-ground fire management

procedures and policies and to identify options to improve delivery of fire management and service in the JBT. Draft minutes of the teleconference were circulated to members of the Jervis Bay Territory Emergency Management Committee for comment, edit and final approval. The Jervis Bay Territory Emergency Management Committee comprises a representative from each of the following agencies and organisations:

- Australian Federal Police;
- Commonwealth Director of National Parks;
- Department of Defence (Navy – HMAS Creswell);
- Department of Infrastructure and Regional Development (Jervis Bay Territory Administration as Chair)
- NSW Rural Fire Service;
- Wreck Bay Aboriginal Community Council;
- Shoalhaven City Council.

Throughout the drafting process, all drafts of the Ordinance were provided by email to members of the Jervis Bay Territory Emergency Management Committee and officers in relevant departments and agencies for the opportunity to comment, including Emergency Management Australia. The Attorney-General's Department provided advice and guidance on criminal law and law enforcement issues. The Australian Government Solicitor provided advice and guidance on Constitutional law issues.

Following circulation of the final draft, no agencies and organisations consulted objected to the content of the Ordinance.

### *Detailed provision-by-provision description of the Ordinance*

#### **Part 1 – Preliminary**

##### **Section 1 – *Name of Ordinance***

This is the formal section titling the Ordinance.

##### **Section 2 – *Commencement***

The date of commencement is the day after the Ordinance is registered on the Federal Register of Legislative Instruments.

##### **Section 3 – *Authority***

This section identifies the authority upon which the Ordinance is based.

##### **Section 4 – *Schedule(s)***

This section provides that a schedule to this Ordinance amends or repeals or has effect according to its terms.

##### **Section 5 – *Objects of ordinance***

This section details the objects of the ordinance.

## **Section 6 – Definitions**

This section defines terms and expressions used in this Ordinance.

## **Section 7 – Minister’s power to delegate**

The Minister may delegate his or her powers and functions under the Ordinance to a member of a fire fighting authority. This will permit the Minister to delegate to the Commissioner of the NSWRFSS and to other members of a fire fighting authority to exercise the Minister’s powers and perform the Minister’s functions under the Ordinance.

To ensure Minister’s powers are exercised and Minister’s functions are performed to meet the objects of the Ordinance, the Ordinance grants a power to the Commissioner of the NSWRFSS to subdelegate Minister’s powers to members of a fire fighting authority, including other members of the NSWRFSS.

The Minister may delegate his or her powers and functions, including the power to delegate, to a Senior Executive Service employee of the Department. A Senior Executive Service employee of the Department acting as delegate may subdelegate to a member of a fire fighting authority.

## **Part 2—Jervis Bay Territory Rural Fire Service**

### **Division 1—Jervis Bay Territory Rural Fire Service and Minister’s functions**

#### **Section 8 – Establishment of Jervis Bay Territory Rural Fire Service**

This section establishes the Jervis Bay Territory Rural Fire Service and identifies its members. This section creates an obligation on the Jervis Bay Territory Rural Fire Service, prior to carrying out a function that relates to or affects Defence land, to consult with the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell. The Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell may waive the obligation to consult.

#### **Section 9 – Functions of the Rural Fire Service**

This section identified the Rural Fires Service’s functions.

#### **Section 10 – Minister’s Functions**

This section prescribes the Minister’s functions in implementing the Ordinance, including managing and controlling the activities of the Jervis Bay Territory Rural Fire Service, determining the duties of members of the Rural Fire Service, conducting audits into the activities of the Rural Fire Service, and entering into contracts or arrangement for the carrying out of works, or the performance of the service, or the supply of goods or materials in connection with the performance of the functions of the Jervis Bay Territory Rural Fire Service. This section creates an obligation on the Minister, prior to carrying out a function that relates to or affects Defence land, to consult with the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force

Officer at HMAS Creswell. The Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell may waive the obligation to consult.

## **Division 2—Members of Rural Fire Service**

### **Section 11 – *Service Standards***

This section provides the Minister the power to issue written Service Standards for members of the Rural Fire Service in relation to procedures to be followed in connection with the operation, management and control of the Rural Fire Service.

## **Division 3—Rural fire brigades**

### **Section 12 – *Formation of rural fire brigades***

This section provides the Minister the power to form one or more rural fire brigades.

### **Section 13 - *Disbandment of rural fire brigades***

This sections provides the power to and details the process by which the Minister may disband a rural fire brigade.

### **Section 14 – *Area of operations and officers of rural fire brigades***

This section provides the power to determine the area of operation of a rural fire brigade and to appoint an officer for a rural fire brigade.

### **Section 15 – *Members of rural fire brigades***

This section imposes an obligation on the Minister to keep a register of members of a rural fire brigade, in accordance with any requirements in the Service Standards.

### **Section 16 – *Functions of officers of rural fire brigades***

This section notes that functions may be conferred on an officer of a rural fire brigade by this Ordinance, any other ordinance or the Service Standards. This section makes clear that an officer or a member of the rural fire brigade is not taken to be an employee of the Commonwealth merely because the officer or member may perform functions under this Ordinance.

This section creates an obligation on an officer of rural fire brigade, prior to carrying out a function that relates to or affects Defence land, to consult with the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell. The Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at HMAS Creswell or a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell may waive the obligation to consult.

### **Section 17 – *Additional powers of officers of a rural fire brigade***

This section provides powers to officers of rural fire brigades to take any action necessary for

or incidental to the effective performance of a function conferred on the officer by or under this Ordinance. The section provides that the officer may perform a function, or take action necessary or incidental to the effective performance of a function with the assistance of other people. The Minister may perform functions of officers of a rural fire brigade.

**Section 18 – *Power to remove persons or obstacles***

This section confers power on an officer of a rural fire brigade to remove a person or thing if the officer believes the presence of the person or thing at or near a fire might interfere with the work of a rural fire brigade or the performance of functions by the officer.

**Section 19 – *Power to enter premises***

This section confers powers on officers of rural fire brigades, or to authorise or direct a member of a rural fire brigade, to enter premises for the purpose of performing a function conferred on the officer under this Ordinance.

This section should be read in conjunction with sections 24 to 26 concerning consent, authorisation and the use of force on entering premises.

**Section 20 – *Closure of streets and public places***

This section confers powers on officers in charge of rural fire brigades to close a street or a public place to traffic or authorise or direct a member of the rural fire service to perform such functions, if the street or public place is in the vicinity of a fire, incident or other emergency.

**Section 21 – *Making premises safe***

This section confers powers on officers of a rural fire brigade, or to authorise or direct a member of the rural fire service, to pull down, cut or remove a fence; destroy, pull down or remove a building or structure; destroy or remove vegetation; or to establish fire breaks, if a person or property is endangered or likely to be endangered by a fire, incident or other emergency.

**Section 22 – *Use of water and works***

This section confers powers on officers of a rural fire brigade, or to authorise or direct a member of the rural fire service, for the purpose of controlling or suppressing a fire or for the purpose of training or demonstration to take and use water from any source without payment, or use without payment any water mains, water plugs, valves, pipes or works of water supply vested in, or under the management or control of, a water supply authority, public authority or body.

**Section 23 – *Damage to property and the environment***

This section deems damage to property that is caused by a person performing a function under this Division in good faith to be damage by fire within the meaning of a policy of insurance against fire covering the property. This provision cannot be contracted out of by an insurance policy against fire.

It is unlikely that this section would engage section 51(xxxi) of the Constitution in relation to acquisition of property and providing compensation on just terms, save for insurance policies for fire that were taken out prior to 1990, and which are still in effect at the time when this



section commences. This is because this section replicates section 28 of the *Rural Fires Act 1997* (NSW), which applied in the JBT by operation of the *Rural Fires Ordinance 2001*. The section of the repealed Ordinance replicated section 22(4) and (5) of the *Bush Fire Act 1949* (NSW), which applied in the JBT from 1997 to 2001 by the *Fire Management Ordinance 1997*. A similar provision, in section 5Q of the *Bushfire Act 1936* (ACT), applied in the JBT between 1990 and 1997.

#### **Section 24 – Notice of entry to premises**

This section requires a person entering premises under this Ordinance to give reasonable written notice to the owner or occupier of a premises of an intention to enter the premises. However, reasonable written notice is not required if the owner or occupier has consented to the entry, the premises are open to the public, or entry is required urgently. In entering the premises, the person must do as little damage as possible.

#### **Section 25 – Use of force to gain entry to premises**

This section gives powers to a person to use reasonable force to enter premises under this Division if the Minister has authorised, in writing, the use of force in a particular case or in circumstances present in the particular place. The person using reasonable force to enter premises under this section must as soon as practical tell the Minister that the person used force to enter the premises. The Minister must, on being told of the use of force, tell any other person or authority that the Minister considers appropriate about the use of force

#### **Section 26 – Authority to enter premises**

This section requires that in exercising the power to enter premises or to take action on premises the person proposing to enter or take action on premises must be in possession of a written authorisation signed by the Minister and to produce such authorisation if required to do so by the owner or the occupier of the premises. This section also prescribes the particulars which must be included in the written authorisation.

#### **Section 27 – Voluntary work by rural fire brigades**

This section permits a JBT rural fire brigade, with the consent of the Minister, to voluntarily cooperate with a public authority in or out of the JBT in the performance of a function of a public authority prescribed by the rules. This permits a JBT rural fire brigade to assist, for example, NSW rural fire brigades to take action against fires outside of the JBT. If the public authority or a member of a public authority has immunity from legal proceedings for the performance of their function and a member of a JBT rural fire brigade cooperates with the public authority under this section in the performance of its function, the member has the same immunity.

### **Division 4 – Power to enter land and investigate fires**

#### **Section 28 – Object of Division**

This section defines the object of this Division – to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

This Division specifically relates to entry of land to investigate the cause or origin of a fire and is separate to Division 3, which confers general powers of entry to combat a fire.

**Section 29 – *Definition of land***

This section defines land in this Division - to include any building on the land.

**Section 30 – *Power to enter land to investigate cause of fire***

This section confers powers on the Minister to enter land to investigate the cause of origin of a fire that has occurred on the land or on adjacent land. If entry to the land is more than 24 hours after the fire has been put out, then the Minister requires a search warrant under section 31. If the entry is within 24 hours of the fire being put out, then the Minister does not need the consent of the owner or the occupier of the land. However, if the Minister enters land used only for residential purposes then consent of the owner or occupier is required or a search warrant issued under section 31.

**Section 31 – *Search warrants***

This section prescribes the process to seek and issue a search warrant to enter premises for the purpose of investigating the cause or origin of a fire.

**Section 32 – *Functions of the Minister that may be performed by others***

Notwithstanding section 7, this section prescribes classes of people who, in addition to the Minister, may perform the functions under sections 30 and 31, including the Commissioner of the NSWRFs or a member or special member of the AFP. The Commissioner of the NSWRFs may delegate his or her functions under sections 30 and 31 to a member of a fire fighting authority.

**Division 5 – *Command structure***

**Section 33 – *Minister may authorise members of rural fire brigades to perform functions***

Recognising the need for the Minister to retain overall responsibility for the implementation of the Ordinance and the likely implementation will be by the Jervis Bay Territory Rural Fire Service and the NSWRFs, this section confers a power on the Minister to authorise a member of a rural fire brigade to perform ministerial functions. The authorisation may be written or oral and records of such authorisations must be kept.

**Section 34 – *Officer in charge may authorise others to perform functions***

Due to the requirement to respond to fire events, this section confers a power on an officer in charge at a fire, incident or other emergency to authorise a member of a rural fire brigade to perform all or specified functions that may be performed, under this Ordinance, by the officer in charge at a fire, incident or other emergency. The authorisation may be written or oral.

**Section 35 – *Duty to recognise authority of officer***

This section creates a duty for a person to recognise the authority of the Minister performing his or her functions under the Ordinance, a member of a rural fire brigade, an officer in charge at a fire, incident or other emergency, and an officer of a rural fire brigade directly assisting the person primarily responsible for responding to a fire. The section imposes a duty

on the AFP to support the authority of such a person and assist that person in enforcing compliance with a direction given under this Ordinance or the rules.

### **Section 36 – *Obstruction of Minister or other person***

This section creates an offence if a person obstructs or hinders the Minister or an officer of a rural fire brigade in the performance of their respective functions under the Ordinance. This section also creates an offence if a person obstructs or hinders a person acting under a direction of the Minister or an officer of a rural fire brigade. The maximum penalty for each offences is imprisonment for 10 months, or 50 penalty units, or both.

### **Section 37 – *Interstate assistance at fires***

This section permits a member of an interstate fire brigade to mitigate or suppress a fire in the JBT and to exercise powers and perform functions as if the member was within their own fire district. This section is vital as the majority of assistance for mitigating or suppressing fires in the JBT would come from interstate fire brigades, including the NSWRFSS.

## **Part 3—Coordinated bush fire fighting**

### **Division 1—Coordination of bush fire fighting by Minister**

#### **Section 38 – *Minister’s responsibility***

This section provides that the Minister is responsible for taking charge of bush fire fighting operations and bush fire prevention measures. It provides that the Minister may take any measures necessary to control or suppress a fire in the JBT, provided that certain conditions are met, such as that a bush fire has or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or other authority in those area it is burning.

#### **Section 39 – *Power to give directions***

This section gives the Minister power to give directions the Minister considers necessary to any person in connection with the prevention, control or suppression of a bush fire that the Minister has taken charge of. This section creates an offence if a person, not being a police officer, fails to comply with such a direction. The maximum penalty for this offence is imprisonment for 10 months, 50 penalty units, or both.

### **Division 2—Fire management committee**

#### **Section 40 – *Jervis Bay Territory Fire Management Committee***

This section establishes the Jervis Bay Territory Fire Management Committee.

#### **Section 41 – *Fire Management Committee functions***

This section prescribes the functions of the Jervis Bay Territory Fire Management Committee, including those conferred by this Ordinance or any other ordinance. The Committee is required to report to the Minister, within 2 months after the end of each financial year, on the implementation of the bush fire risk management plan. In performing its functions the Committee must have regard to the principles of ecologically sustainable development as described in the *Environment Protection and Biodiversity Conservation Act*

1999. This is due to the fact that about 85 per cent of the JBT is Booderee National Park, managed by the Commonwealth Director of National Parks.

### **Division 3—Draft bush fire management plans**

#### **Section 42 – *Fire Management Committee to prepare plans***

A key function of the Jervis Bay Territory Fire Management Committee is the preparation of two bush fire management plans – a plan of operations and a bush fire risk management plan. This section prescribes that the Committee must give the Minister draft plans within 12 months of the Committee being established. The section also provides for revision of both plans – within 2 years and within 5 years respectively.

#### **Section 43 – *Content of draft plan of operations***

This section prescribes the content of the draft plan of operations.

#### **Section 44 – *Content of draft bush fire risk management plan***

This section prescribes the content of the draft bush fire risk management plan.

#### **Section 45 – *General content***

This section details general content that may be included in a draft bush fire management plans.

#### **Section 46 – *Failure of Fire Management Committee***

If the Jervis Bay Territory Fire Management Committee has failed to give the Minister a draft bush fire management plan in accordance with this Division, or the Minister finds a draft bush fire management plan is inadequate, the Minister may perform the functions of the Committee under this Division.

### **Division 4 – Public participation in preparation of plans**

#### **Section 47 – *Public notice of draft bush fire risk management plan***

For the purpose of receiving submissions from any interested person, this section prescribes that the Jervis Bay Territory Fire Management Committee or the Minister must give public notice of and display the draft bush fire risk management plan prepared by the Committee. This section also requires that the Fire Management Committee or the Minister concurrently display for information the draft plan of operations or plan of operation. In making the draft plan or plans available to the public, the Fire Management Committee or the Minister must ensure that no operational contact information is displayed.

### **Division 5—Adoption, amendment, revocation and availability of bush fire management plan**

#### **Section 48 – *Adoption of bush fire risk management plan***

This section prescribes the process by which the Minister may approve, amend and/or revoke a bush fire risk management plan. Following the Minister approving or amending a bush fire risk management plan, the Jervis Bay Territory Fire Management Committee must adopt the plan and the plan as adopted is in force from time to time.

### **Section 49 – *Adoption of plan of operations***

This section prescribes the process by which the Minister must review the draft plan of operations and may approve or amend and/or revoke a bush fire plan of operations. Following the Minister approving or amending a bush fire plan of operations the Jervis Bay Territory Fire Management Committee must adopt the plan and the plan as adopted is in force from time to time.

### **Section 50 – *Amendment and revocation of bush fire management plans***

This section provides the mechanism to amend a bush fire management plan by following the content and process prescribed in sections 43 to 49, and prescribes that a bush fire management plan approved by the Minister and adopted by the Committee revokes the previous plan.

### **Section 51 - *Public availability of bush fire management plans and draft bush fire management plans***

This section provides that a bush fire management plan or a draft bush fire management plan must be available for public inspection, and be able to be obtained free of charge from the office of the Jervis Bay Territory Administration.

## **Part 4 – Bush Fire Prevention**

### **Division 1 – Duty to prevent bush fires**

#### **Section 52 – *Duties of public authorities and owners and occupiers of land to prevent bush fires***

This section creates a duty on public authorities and owners and occupiers of land to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from that land. The cost of complying with this duty is to be borne on the public authority, owners and/or occupier of the land.

#### **Section 53 – *Occupiers to extinguish fires or notify fire fighting authorities***

This section creates an offence if the occupier of land, has a fire burning on the land without an authority, during the bush fire danger period, and if the person is able to extinguish the fire without assistance, does not immediately extinguish the fire. However, the section provides that a fire may be lit for the purposes of cooking or heating. The offence carries a penalty of four months imprisonment, 20 penalty units, or both.

This section also creates an offence if the occupier of land, has a fire burning on the land without an authority, during the bush fire danger period, and the person is unable to extinguish the fire and does not contact a fire fighting authority when the person has the means and it is practical to do so. The offence carries a penalty of four month imprisonment, 20 penalty units, or both.

## **Division 2 – Bush fire hazard reduction**

### **Section 54 – Hazard management officers**

This section gives the Minister power to appoint a member of the Jervis Bay Territory Rural Fire Service or the NSWRFSS as a hazard management officer.

### **Section 55 – Reduction of bush fire hazards on unoccupied Commonwealth land and managed land**

This section provides that an authorised person, with assistance if necessary, may enter unoccupied Commonwealth land and managed land for the purpose of undertaking fire hazard reduction work.

### **Section 56 – Bush fire hazard reduction notices**

A hazard management officer may serve a written notice on the owner or occupier of land requiring the owner or occupier to carry out bush fire hazard reduction work as specified in the notice. The section prescribes what the notice may specify, the day by which the bush fire hazard reduction work is to be carried out, not being less than seven days after the notice is served, and requirements or conditions for the carrying out of the bush fire hazard reduction work. The section creates an offence if the occupier or owner of land does not comply with the bush fire hazard reduction notice. The maximum penalty for the offence is imprisonment for 10 months, 50 penalty units, or both. The section also contains a defence if the owner and occupier are not the same person and the owner has no legal right to enter the land to comply with the bush fire hazard reduction notice.

### **Section 57 – Objection to bush fire hazard reduction notice**

This section provides a process by which a person may object to a bush fire hazard reduction notice. A person may object to a bush fire hazard reduction notice within seven days after the bush fire hazard reduction notice has been served. It provides that a hazard reduction officer must, within 14 days of the objection being lodged confirm, vary or withdraw a bush fire hazard reduction notice following objection.

### **Section 58 – Powers and duties of hazard management officers**

This section grants a hazard management officer the power to enter land to form an opinion as to whether a bush fire hazard reduction notice should be served or whether it has been complied with. The hazard management officer may only enter land during daylight hours, and must give the owner or occupier of the land notice of an intention to enter the land, and must keep a record of whether or not bush fire hazard reduction work has been carried out in accordance with the bush fire hazard reduction notice.

### **Section 59 – Bush fire hazard reduction work if notice not complied with**

If an owner or occupier does not comply with a bush fire hazard reduction notice, the Minister may enter land and carry out the bush fire hazard reduction work at the owner or occupier's expense. There is a defence if the owner and occupier are not the same person and the owner has no legal right to enter the land to carry out the bush fire hazard reduction work. In practice, the Minister would delegate his or her power under this section.

**Section 60 – *Damage to property caused by bush fire hazard reduction work covered by fire insurance***

This section deems damage to property that is caused by a person performing a function under this Division in good faith to be damage by fire within the meaning of a policy of insurance against fire covering the property. This provision cannot be contracted out of by an insurance policy against fire.

It is unlikely that this section would engage section 51(xxxi) of the Constitution in relation to acquisition of property and provision of compensation on just terms, save for insurance policies for fire that were taken out prior to 1990, and which are still in effect at the time when this section commences. This is because this section replicates section 72 of the *Rural Fires Act 1997* (NSW), which applied in the JBT by operation of the *Rural Fires Ordinance 2001* (JBT). The section of the repealed Ordinance replicated section 22A(6) and (7) of the *Bush Fire Act 1949* (NSW), which applied in the JBT from 1997 to 2001 by the *Fire Management Ordinance 1997*. A similar provision, in section 5Q of the *Bushfire Act 1936* (ACT), applied in the JBT between 1990 and 1997.

**Division 3 – Bush fire hazard complaints**

**Section 61 – *Bush fire hazard complaints***

This section permits a person to make a complaint that a bush fire hazard exists.

**Section 62 – *Who may make a bush fire hazard complaint***

Any owner or occupier of land adjacent to or in the vicinity of the land to which a complaint relates may make a complaint.

**Section 63 – *How complaints are to be made***

This section details the process for making a bush fire hazard complaint.

**Section 64 – *Investigation of complaint***

The section imposes an obligation on the Minister to investigate bush fire hazard complaints as soon as practicable after receiving it. The Minister, or a person authorised by the Minister, may enter land for the purposes of forming an opinion as to whether a bush fire hazard exists in respect of that land. The entry may only occur during daytime hours. The Minister may decline to deal with a complaint, or dismiss a complaint, if the Minister considers the complaint is vexatious, misconceived, frivolous or lacking in substance. The Minister must notify the complainant if the Minister declines to deal with, or dismisses, the complaint.

**Section 65 – *Minister may take action if bush fire hazard exists***

If the Minister finds that a bush fire hazard exists on land, the Minister may issue a bush fire hazard reduction notice under section 56, or if a bush fire hazard reduction notice has been issued, the Minister may exercise the power of entry and undertake the bush fire hazard reduction work under section 59 at the owner or occupier's expense.

**Section 66 – *Complainant to be notified of action taken***

If the Minister takes action following the receipt of a bush fire hazard complaint, the Minister must as soon as practicable advise the complainant of the action taken.

## **Division 4 – Damage by fire to dividing fences and other matters**

### **Section 67 – *Definition***

This section defines terms and phrases used in this Division.

### **Section 68 – *Notice to repair or restore dividing fence***

This section permits an owner of land to recover damages for the destruction or damage of a fence where the owner has cleared the area adjacent to the fence and the owner's adjoining neighbour has not, and there is a fire causing damage to the fence.

### **Section 69 – *Recovery of costs***

If the adjoining neighbour does not repair or restore the adjoining fence, then the owner may restore or repair and seek reimbursement of costs from the adjoining neighbour, including through court action.

### **Section 70 – *Jurisdiction of ACT Magistrates Court***

This section vests the Australian Capital Territory Magistrates Court jurisdiction to hear and determine any matter arising under this Division.

### **Section 71 – *Entry to land to extinguish fire***

This section prescribes when an adjoining neighbour may enter adjoining land to extinguish a fire on that land.

## **Division 5 – Bush fire danger period**

### **Section 72 – *Bush fire danger period***

This section details when there is a bush fire danger period – either as determined by the Minister in the rules or if a determination is not made in the rules then the period from 1 October to 31 March. Before making a rule, the Minister must take into account the bush fire danger period applying in each local government area of New South Wales adjacent to the JBT, that is, the Shoalhaven Local Government Area.

## **Division 6 – Permits and notice requirements**

### **Section 73 – *Definitions***

This section defines terms used in this Division.

### **Section 74 – *Notice and authorities required before lighting fires***

This section creates two offences, each carrying a maximum penalty of imprisonment for 12 months, 60 penalty units, or both. One offence is created if a person lights a fire for the purpose of clearing land, back-burning or burning a fire break and has not given notice as required by the rules. The other offence is if a person lights a fire for the purpose of clearing land, back-burning or burning a fire break and either or both apply – a bush fire hazard reduction notice has not been issued or an approval, consent or authority has not been given. These offences do not apply to authorised members of a fire fighting authority undertaking land clearance, back burning or burning a fire break.



**Section 75 – *Lighting fire for land clearance or fire breaks in bush fire danger period***

This section creates an offence with a maximum penalty of imprisonment for 12 months, 60 penalty units, or both. A person is guilty of an offence if the person lights a fire for purpose of land clearing, back-burning or burning a fire break, during the bush fire danger period, with a permit or fails to comply with a condition in the permit. The offence does not apply to authorised members of a fire fighting authority undertaking land clearance, back-burning or burning a fire break.

**Section 76 – *Lighting fires that are dangerous to buildings***

This section creates an offence for a person to light a fire in circumstances where the fire is likely to endanger buildings and the person does not have a fire permit or fails to comply with a condition in the permit. The maximum penalty is imprisonment for 12 months, 60 penalty units, or both. The offence does not apply to authorised members of a fire fighting authority undertaking land clearance, back-burning or burning a fire break.

**Section 77 – *Issue of fire permits***

This section grants the Minister power to issue fire permits.

**Section 78 – *Duration of fire permits***

This section details the duration of fire permits which must be specified in the permit. The duration cannot exceed 21 days after the day of the issuing of the permit. A fire permit remains in force for the period specified in the permit, unless the permit is cancelled or suspended before the end of that period. The Minister must not issue a permit during the period in which a fire ban is in force.

**Section 79 – *Cancellation or suspension of fire permits***

The Minister may cancel or suspend a fire permit under this section.

**Section 80 – *Conditions of fire permit***

This section details some of the conditions that may be in fire permits. A person commits an offence if they do not comply with a condition in the fire permit. The maximum penalty for the offence is 50 penalty units.

**Section 81 – *Refusal to issue fire permit***

This section gives the Minister the power to refuse to issue fire permits based on specified conditions and criteria.

**Section 82 – *Notice of issue of fire permit***

If the Minister issues a fire permit to light a fire on land prescribed in the rules for this section, the Minister must give notice in an approved form to the persons or bodies prescribed by the rules.

**Section 83 – *Permit not required for fires lit by public authorities***

Section 83 removes an obligation on public authorities or a person acting under a direction of a public authority to have a fire permit to light a fire.

**Section 84 – *Issue of fire permit does not affect duty to prevent bush fires***

The issue of a fire permit to an owner or occupier of land does not limit or affect the duty to prevent bush fires imposed on the owner or occupier by section 52.

**Division 7 – Total fire bans**

**Section 85 – *Lighting of fires prohibited in certain circumstances***

This section gives the Minister the power to declare in writing fire bans in a part of the JBT or a total fire ban across the Territory. The Minister must form the opinion that it is necessary or expedient in the interests of public safety to order a fire ban and must as soon as practicable after making the order to broadcast the notice of the order by television or radio station transmitting in the JBT and publish the notice in the Commonwealth Gazette. The section provides that the Minister may specify certain conditions and actions in the order. If there is in force an order under the *Rural Fires Act 1997* (NSW) prohibiting the lighting, maintenance or use of any fire or class of fire in the open air in a local government area of New South Wales adjacent to the JBT, that is the Shoalhaven Local Government Area, that order has effect as if it were an order made by the Minister under this section. The section creates an offence if a person fails to comply with an order given by the Minister under this section. The maximum penalty is imprisonment for 10 months, or 50 penalty units, or both.

**Division 8 – Lighting fires without authority**

**Section 86 – *Offences***

Section 86 creates two offences. First, the more serious of the two has a maximum penalty of imprisonment for 5 years, or 300 penalty units, or both. A person commits this offence if the person either sets fire, or causes fire to be set, to land or property of another person, the Commonwealth or a public authority or being the owner or occupier of land and permits a fire to escape as to cause or be likely to cause, injury or damage to a person or their land or property of the land or property of the Commonwealth or a public authority.

A second offence is created and a person commits an offence if the person leaves (temporarily or otherwise) a fire which the person has lit, or used, in the open air before the fire is thoroughly extinguished. The maximum penalty is imprisonment for 12 months, or 60 penalty units, or both. However, the person does not commit an offence if the person lit or used the fire for cooking, heating, or preparing meals or boiling water, or for a similar purpose, in accordance with any requirements prescribed by the rules; and when the person leaves the fire, the fire continues to be used by another person.

**Part 4 – Miscellaneous**

**Section 87 – *Ordinance binds the Crown***

This Ordinance binds the Crown in right of the Commonwealth and, in so far as permissible, the Crown in all its other capacities. This Ordinance does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

**Section 88 – *Persons and bodies to give information to Minister***

This section permits the Minister to make reasonable requests of a person or body on whom a

function is conferred by this Ordinance to provide the Minister with specified information relating to the performance of a function or the administration of this Ordinance. The person or body is required to give such information to the Minister.

**Section 89 – *Liability of persons in respect of loss or damage caused by bush or other fires***

This permits a person who has suffered loss or damage to bring civil claims, except as expressly provided in this Ordinance.

**Section 90 – *Protection from liability***

Recent bush fire history in Australia demonstrates that bush fires can be uncontrollable and life and property can be lost. There is a great number of professional and volunteer fire fighters involved in suppressing and controlling bush fires, including in the JBT. This section provides that any actions, or omissions done, by a protected person or body does not subject the person personally, or the Commonwealth, to any action, liability, claim, demand if the thing done, or omitted to be done, was in good faith for the purpose of giving effect to the Ordinance (other than section 27). The section prescribes who is a protected person or body for the purposes of this section.

Section 27 relates to voluntary cooperation by a rural fire brigade in or out of the JBT. The rationale for not providing an indemnity via section 90 is that section 27 provides immunity from legal proceedings to members of rural fire brigades if the public authority has immunity from legal proceedings.

**Section 91 – *Minister may be represented at inquiries***

This section provides that the Minister may be represented at an inquest, or inquiry relating to the cause or origin of a fire. The section also provides that the Minister's representative may adduce evidence, examine witnesses and address the court at the inquest or inquiry.

**Section 92 – *Giving notices***

Except as otherwise expressly provided a notice or direction required by this Ordinance to be served on a person must be served in the way prescribed by the rules.

**Section 93 – *Infringement notices***

This section provides that infringement notices may be served on a person if it appears to the authorised officer that the person has committed an offence under this Ordinance or the rules and the offence is prescribed by the rules for the purposes of this section. The section contains provisions on the process for serving an infringement notice. It states that if a person pays an infringement notice for an offence under this section, no person is liable to any further proceedings for the alleged offence under this Ordinance. Payment of the infringement notice under this section is not an admission of liability of, and does not affect or prejudice any civil claim, action or proceeding arising out of, the same occurrence. Therefore, despite a person paying an infringement notice, the still may be subject to civil proceedings as provided under section 89. The section provides that the amount of penalty prescribed by the rules for an offence to which an infringement notice relates must not exceed one-fifth of the maximum amount of penalty which could be imposed for the offence by a court under this Ordinance.

### **Section 94 – *Power to require name and address***

This section gives powers to authorised officers, who intends to serve an infringement notice on a person under section 93, or a member or special member of the AFP who has reason to suspect that a person is committing an offence against this Ordinance or the rules, may direct the person to state the person's full name and residential address. The section creates an offence, and a person commits an offence if an authorised officer or a member or special member of the AFP requests the person to state the person's full name and residential address and the person fails to state the person's full name and residential address. The maximum penalty for this offence is 5 penalty units.

The section contains a defence if the authorised officer or the AFP officer did not explain to the person that failure to comply with the direction is an offence. The authorised officer or the AFP officer may request that the person provide evidence of the correctness of their name and address.

Coercive powers, such as requiring a person's name and address has been considered by the Scrutiny of Bills Committee which considered it necessary to limit the class of people who may exercise such powers, and usually then only AFP. However, there are only four full-time AFP officers present in the JBT, and generally, due to rostering, only two on duty at any given time. This section proposes to vest this coercive power to include those members of a fire fighting authority who have been authorised to act as Fire Investigators. The NSW RFS Fire Investigation Unit has developed a sophisticated investigative capacity and works closely with NSW Police. Prior to their appointment, a Fire Investigator is required to undertake a specific training course and then to comply with Service Standards and set of Standard Operating Procedures.

### **Section 95 – *Powers of police officers to give directions***

This section gives power to AFP officers, who have reasonable grounds to suspect that a person is committing an offence against this Ordinance or the rules to direct the person to produce a permit, notice or other document by or under the authority of which the person claims that a fire has been lit. An AFP officer may direct a person who has lit a fire in contravention of a provision of this Ordinance or the rules to extinguish the fire; or if the fire is in the open air, to extinguish the fire before leaving the site of the fire. The section creates an offence, with a maximum penalty of 5 penalty units, if the person fails to comply with a direction given to them. There is a defence to the offence where the AFP officer did not explain to the person, when giving the direction, that failure to comply with the direction is an offence.

### **Section 96 – *Powers affecting land near certain bush fires***

This section permits an authorised officer of a fire fighting authority to enter land outside the area for which he or she has responsibility and may take any reasonably necessary actions to suppress a fire on that land or to prevent the spread of fire from that land to the land for which the authorised officer is responsible. The authorised officer may take the reasonably necessary actions regardless of whether he or she has been requested to do so. In taking any

reasonably necessary action, the authorised officer must comply with any relevant fire management plans applying to that land.

**Section 97 – *Proceedings for offences***

This section provides that proceedings for an offence against this Ordinance or the rules are to be dealt with summarily before the ACT Magistrates Court.

**Section 98 – *Rules***

This section prescribes the matters to which the Minister may make rules. This section limits the penalty for offences created under the rules to a maximum of 50 penalty units.

**Section 99 – *Review of ordinance***

This section requires that the Minister must review the Ordinance within four years of it being made and at least once in every subsequent four-year period. The purpose of the review is to determine whether the objects of the Ordinance contained in section 5 remain valid and whether the terms of the Ordinance remain appropriate for securing those objects.

**Section 100 *Transitional provisions***

This section provides that Schedule 1 makes transitional arrangements in relation to amendments of this Ordinance. This section and Schedule 1 expires on the day after the day this Ordinance commences as if they had been repealed by another Ordinance.

**Schedule 1 – *Transitional provisions***

**1 *Transitional – rural fire brigade in existence immediately before the commencement of this Ordinance***

This Schedule ensures that, despite the repeal of the *Rural Fires Ordinance 2001* (JBT), rural fire brigades in existence immediately before the commencement of this Ordinance continue as if they had been formed by the Minister under section 12(1) of this Ordinance.

**Schedule 2 - *Repeal***

This schedule repeals the *Rural Fires Ordinance 2001* (Jervis Bay Territory).