

Jervis Bay Territory Rural Fires Ordinance 2014

Ordinance No. 1, 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance under the *Jervis Bay Territory Acceptance Act 1915*.

Dated 24 April 2014

Peter Cosgrove Governor-General

By His Excellency's Command

Jamie Briggs Assistant Minister for Infrastructure and Regional Development



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Part 1—Preliminary

1 Name of Ordinance

This Ordinance is the *Jervis Bay Territory Rural Fires Ordinance* 2014

2 Commencement

This Ordinance commences on the day after it is registered.

3 Authority

This Ordinance is made under the *Jervis Bay Territory Acceptance Act 1915*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Objects of Ordinance

The objects of this Ordinance are to provide for:

- (a) the prevention, mitigation and suppression of bush and other fires in the Territory; and
- (b) the coordination of bush fire fighting and bush fire prevention throughout the Territory; and
- (c) the protection of persons from injury or death, and property from damage, arising from fires; and
- (d) the protection of the environment.

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6 Definitions

(1) In this Ordinance:

approved form means a form approved by the Minister.

authorised member of a fire fighting authority or other authority means:

- (a) a member of the authority; or
- (b) a person authorised by the authority to perform functions conferred on authorised officers under this Ordinance.

back burning means the application of fire to combustible matter to provide a fire break to control or suppress a fire or protect persons, property or the environment from an existing or imminent danger arising out of a fire.

bush fire includes a grass fire.

bush fire danger period means a period fixed by section 72, or rules made under that section, as a bush fire danger period.

bush fire hazard complaint means a complaint made under subsection 61(1).

bush fire hazard reduction notice means a notice issued by a hazard reduction officer under subsection 56(1).

bush fire hazard reduction work means:

- (a) the establishment or maintenance of fire breaks; and
- (b) the maintenance of fire tracks and fire trails; and
- (c) the controlled application of appropriate fire regimes, or other means for the reduction or modification of available fuels, within a predetermined area to mitigate against the spread of a bush fire;

but does not include construction of a track, trail or road.

bush fire management plan means a plan of operations or a bush fire risk management plan.

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bush fire risk management plan means a plan prepared under Part 3 containing the matters mentioned in section 44 and adopted by the Fire Management Committee under section 48.

combustible matter means any matter or substance:

- (a) capable of ignition:
 - (i) spontaneously; or
 - (ii) by the application of heat, fire, flame or sparks; or
- (b) prescribed by the rules as combustible matter for the purposes of this definition.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

Defence land means land in the Territory that is occupied by, or being used by, the Defence Department or the Australian Defence Force.

Director of National Parks has the meaning given by section 514A of the *Environment Protection and Biodiversity Conservation Act* 1999.

financial year means the period from 1 July to the following 30 June.

fire fighting apparatus includes vehicles, equipment and other things used for or in connection with the prevention or suppression of fire or the protection of life or property in case of fire.

fire fighting authority means any of the following:

- (a) the Rural Fire Service;
- (b) Fire and Rescue NSW;
- (c) the NSW Rural Fire Service;
- (d) Parks Australia;
- (e) the New South Wales National Parks and Wildlife Service;
- (f) any other person or body specified by the rules for this definition.

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Fire Management Committee means the Jervis Bay Territory Fire Management Committee established by section 40.

fire permit means a permit issued under section 77.

function includes a power, authority or duty.

hazard management officer means a person nominated as a hazard management officer under section 54.

interstate fire brigade means a fire brigade (by whatever name) established under a law of a place outside the Territory.

light a fire includes:

- (a) maintain or use a fire; and
- (b) cause a fire to be lit, maintained or used.

managed land has the meaning given by the rules.

New South Wales National Parks and Wildlife Service means the service established by section 6 of the *National Parks and Wildlife Act 1974* (NSW).

occupier of land means:

- (a) the person who has the management or beneficial use of the land (whether resident on the land or not); or
- (b) if the land is a public reserve or park—the trustees or any person having the care, control and management of the land.

officer of a rural fire brigade means the holder of a rank determined as a rank of an officer by the Minister under subsection 10(2).

officer in charge, at a fire at which a rural fire brigade is present for the purpose of mitigating or suppressing the fire, means the person for the time being in charge of the members of the rural fire brigade present at the fire.

owner of land:

- (a) for leased Commonwealth land—means the lessee; and
- (b) for Commonwealth land that is not leased—means:

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- (i) the Commonwealth; or
- (ii) a person to whom the Commonwealth has lawfully contracted to sell the land but in respect of which the purchase price or other consideration for the sale has not been received by the Crown; and
- (c) for land other than Commonwealth land—includes:
 - (i) each person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession; and
 - (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise.

Parks Australia means the agency assisting the Director of National Parks in performing the Director's functions under the *Environment Protection and Biodiversity Conservation Act 1999*.

plan of operations means a plan prepared under Part 3 containing the matters mentioned in section 43 and adopted by the Fire Management Committee under section 49.

premises includes a building or part of a building, and any land whether built on or not, but does not include a building on, or land forming part of, managed land.

public authority means:

- (a) a public authority constituted by or under an ordinance other than this Ordinance; or
- (b) a Department; or
- (c) a statutory body of the Commonwealth; or
- (d) a person prescribed by the rules as a public authority.

rural fire brigade means a rural fire brigade formed under section 12.

Rural Fire Service means the Jervis Bay Territory Rural Fire Service established by section 8.

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Service Standards means the standards issued by the Minister under section 11.

tree includes bush, shrub, scrub or timber.

unoccupied Commonwealth land means Crown land that is not:

- (a) held under lease or licence; or
- (b) vested in, or under the control of, trustees.

vehicle means any means of transport whether self-propelled or not, and whether used on land or water or in the air.

volunteer rural fire fighters means:

- (a) members of a rural fire brigade; or
- (b) a person (other than a member of a rural fire brigade) who, without remuneration or reward, voluntarily and without obligation engages in fighting, or activities associated with fighting, a fire with the consent of, or under the authority and supervision of, an officer of a rural fire brigade.
- (2) Expressions used in this Ordinance have the same meaning as in the *Jervis Bay Territory Emergency Management Ordinance 2014*.
 - Note 1: Some expressions used in this Ordinance are defined in the *Jervis Bay Territory Acceptance Act 1915*, and have the same meaning as in that Act, for example *Territory*.
 - Note 2: Examples of expressions that have the same meaning as in the *Jervis Bay Territory Emergency Management Ordinance 2014* are *emergency*, and *emergency services organisation*.

7 Delegation

- (1) The Minister may delegate, in writing, his or her functions and powers under this Ordinance to:
 - (a) a member of a fire fighting authority; or
 - (b) an SES employee of the Department; or
 - (c) an employee of the Department.

Note 1: The Commissioner of the NSW Rural Fire Service is a member of a fire fighting authority, and is covered by paragraph (a).

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- Note 2: A provision of this Ordinance may make a delegation unnecessary, for example subsection 32(1).
- (2) If the Minister delegates a power or function to the Commissioner of the NSW Rural Fire Service under paragraph (1)(a), the Commissioner may sub-delegate, in writing, the power or function to a member of a fire fighting authority.
- (3) If the Minister delegates a power or function to an SES employee of the Department under paragraph (1)(b), the SES employee may sub-delegate, in writing, the power or function to a member of a fire fighting authority.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation by the Commissioner of the NSW Rural Fire Service or an SES employee in a corresponding way to the way in which they apply to a delegation.

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Part 2—Jervis Bay Territory Rural Fire Service

Division 1—Jervis Bay Territory Rural Fire Service and Minister's functions

8 Establishment of the Jervis Bay Territory Rural Fire Service

(1) The Jervis Bay Territory Rural Fire Service is established by this Ordinance.

The Jervis Bay Territory Rural Fire Service is referred to in this Ordinance as the "Rural Fire Service".

- (2) The Rural Fire Service comprises the following members:
 - (a) staff of the Service;

Note:

- (b) volunteer rural fire fighters.
- (3) Before carrying out a function of a person mentioned in subsection (2) under this Ordinance that relates to or otherwise affects:
 - (a) Defence land: or
 - (b) anything on Defence land; or
 - (c) an activity being conducted, or to be conducted, on Defence land; or
 - (d) a person on Defence land;

the person must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.

- (4) However, the person is not required to comply with subsection (3) if the requirement to be consulted has been waived by:
 - (a) the Secretary of the Defence Department; or
 - (b) the Chief of the Defence Force; or
 - (c) the Senior Australian Defence Force Officer at HMAS Creswell; or

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(d) a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell to waive the requirement in subsection (3).

9 Functions of the Rural Fire Service

The Rural Fire Service has the following functions:

- (a) to provide the following services for the Territory:
 - (i) services for the prevention, mitigation and suppression of fires in the Territory;
 - (ii) the protection of persons from dangers to their safety and health, and property from destruction or damage, arising from fires in the Territory;
 - (iii) any other services prescribed by the rules for this section;
- (b) to issue public warnings about bush fires and bush fire threats in the Territory;
- (c) to assist other emergency services organisations at emergencies under the control of those organisations, including incidents and emergencies in New South Wales;
- (d) to perform other functions assigned to it under this or any other ordinance;
- (e) to do anything necessary for, or incidental to, the performance of its functions.

10 Minister's functions

- (1) The Minister is responsible for managing and controlling the activities of the Rural Fire Service.
- (2) The Minister may:
 - (a) determine the duties that members of the Rural Fire Service are to perform; and
 - (b) determine the ranks of members; and
 - (c) allocate duties to be carried out by each member.

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- (3) The Minister may conduct an audit of all or any activities of the Rural Fire Service to determine whether the Rural Fire Service is carrying out its activities effectively, efficiently and in compliance with the Service Standards.
- (4) The Minister may enter into contracts or arrangements, on behalf of the Commonwealth, with any person or organisation for the:
 - (a) carrying out of works; or
 - (b) performance of services; or
 - (c) supply of goods or materials;

in connection with the performance of the functions of the Rural Fire Service.

- (5) The Minister may use any fire fighting apparatus other than fire fighting apparatus under the control of the authority responsible for managed land.
- (6) The Minister must ensure that all fire fighting apparatus in the Territory is inspected at least once each year, other than fire fighting apparatus under the control of the authority responsible for managed land.
- (7) The Minister must take all necessary measures within the Minister's powers and functions for suppressing fires in the Territory and protecting and saving life and property:
 - (a) in case of fire; and
 - (b) as part of assisting an emergency services organisation at an emergency or other incident under the control of the organisation.
- (8) In carrying out the Minister's functions under subsection (7), the Minister must:
 - (a) comply with the conditions (if any) specified in the bush fire management plan; and
 - (b) if performing functions on managed land—comply with the conditions (if any) specified in any relevant plan of the authority responsible for the managed land of which the Minister is aware; and

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(c) ensure, as far as practicable, that any member of the Rural Fire Service assisting the Minister in the exercise of the function complies with the conditions mentioned in paragraphs (a) and (b).

Example: Relevant plans for paragraph (b) include the Booderee Fire Management Plan and the Booderee Fire Action Plan.

- (9) Before carrying out a function of the Minister under this Ordinance that relates to or otherwise affects:
 - (a) Defence land; or
 - (b) anything on Defence land; or
 - (c) an activity being conducted, or to be conducted, on Defence land; or
 - (d) a person on Defence land;

the Minister must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.

- (10) However, the Minister is not required to comply with subsection (9) if the requirement to be consulted has been waived by:
 - (a) the Secretary of the Defence Department; or
 - (b) the Chief of the Defence Force; or
 - (c) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (d) a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell to waive the requirement in subsection (9).

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Division 2—Service Standards

11 Service Standards

- (1) The Minister may 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.
- (2) Without limiting subsection (1), the Service Standards may set out standard operating procedures, including procedures in respect of the following:
 - (a) fire reporting;
 - (b) operational coordination;
 - (c) operational planning;
 - (d) bush fire risk management planning;
 - (e) fire fighting assistance planning;
 - (f) standards of fire cover reporting;
 - (g) implementation of training standards;
 - (h) communications;
 - (i) brigade management;
 - (i) community education;
 - (k) protocols on relevant matters;
 - (1) health and safety.
- (3) The Service Standards apply as in force from time to time.

Division 3—Rural fire brigades

12 Formation of rural fire brigades

- (1) The Minister may form one or more rural fire brigades for the Territory.
- (2) The Minister may form a rural fire brigade on the Minister's initiative or on request.

13 Disbandment of rural fire brigades

- (1) The Minister may disband a rural fire brigade by giving written notice to the officer in charge of the rural fire brigade.
- (2) The disbandment takes effect 21 days after the notice is given.

14 Area of operations and officers of rural fire brigades

The Minister may:

- (a) determine the area in which the brigade is to operate; and
- (b) appoint, as an officer for the brigade, a person selected by the members of the brigade, in accordance with the Service Standards, to be an officer for the brigade.

15 Members of rural fire brigades

The Minister must keep a register of the members of a rural fire brigade, in accordance with any requirements in the Service Standards.

16 Functions of officers of rural fire brigades

(1) An officer of a rural fire brigade has the functions conferred on the officer by or under this Ordinance or any other ordinance.

Note: Functions may also be conferred by the Service Standards.

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- (2) An officer or other member of a rural fire brigade is not taken to be an employee of the Commonwealth merely because the officer or other member may perform functions under this Ordinance.
- (3) Before carrying out a function of an officer of a rural fire brigade under this Ordinance that relates to or otherwise affects:
 - (a) Defence land; or
 - (b) anything on Defence land; or
 - (c) an activity being conducted, or to be conducted, on Defence land; or
 - (d) a person on Defence land;

the officer must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.

- (4) However, the officer is not required to comply with subsection (3) if the requirement to be consulted has been waived by:
 - (a) the Secretary of the Defence Department; or
 - (b) the Chief of the Defence Force; or
 - (c) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (d) a person authorised by the Senior Australian Defence Force Officer at HMAS Creswell to waive the requirement in subsection (3).

17 Additional powers of officer of a rural fire brigade

- (1) An officer of a rural fire brigade may take any action reasonably necessary for or incidental to the effective performance of a function conferred on the officer by or under this Ordinance.
- (2) An officer of a rural fire brigade may perform a function conferred on the officer, or take action reasonably necessary or incidental to the effective performance of such a function, with the assistance of any other person as the officer considers necessary.
- (3) Any function that may be performed, or action that may be taken, by an officer of a rural fire brigade because of this section may be performed or taken by the Minister.

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18 Power to remove persons or obstacles

If an officer of a rural fire brigade believes the presence of a person, vehicle, vessel or other thing at or near a fire might interfere with the work of a rural fire brigade or the performance of functions by the officer, the officer may:

- (a) remove the person or thing; or
- (b) authorise or direct a member of a rural fire brigade to remove the person or thing.

19 Power to enter premises

An officer of a rural fire brigade may, for the purpose of performing a function conferred on the officer under this Ordinance:

- (a) enter any premises; or
- (b) authorise or direct a member of a rural fire brigade to enter any premises.

Note: See sections 24 to 26 for requirements about consent, authorisation and use on force on entering premises.

20 Closure of streets and public places

The officer in charge of a rural fire brigade may close a street or public place to traffic, or authorise or direct a member of a rural fire brigade to close a street or public place to traffic, if the street or public place is in the vicinity of a fire, incident or other emergency.

21 Making premises safe

An officer of a rural fire brigade may, if a person or property is endangered or likely to be endangered by a fire, incident or other emergency, do any of the following things:

- (a) pull down, cut or remove a fence;
- (b) destroy, pull down or remove a building or structure;
- (c) destroy or remove any living or dead vegetation;

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- (d) establish fire breaks;
- (e) authorise or direct a member of a rural fire brigade to do any of the things mentioned in paragraphs (a) to (d).

22 Use of water and works

An officer of a rural fire brigade may, for the purpose of controlling or suppressing a fire or for the purpose of training or demonstration:

- (a) take and use water from any source without payment; or
- (b) 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; or
- (c) authorise or direct a member of a rural fire brigade to do any of the things mentioned in paragraphs (a) and (b).

23 Damage to property and the environment

- (1) If damage to property is caused by a person performing a function under this Division in good faith, the damage is taken to be damage by fire within the meaning of a policy of insurance against fire covering the property.
- (2) A provision or condition in an agreement that negates, limits or modifies, or purports to negate, limit or modify, the operation of this section is void and of no effect.

24 Notice of entry of premises

- (1) A person entering premises under this Division must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.
- (2) However, the person may enter the premises without notice if:
 - (a) the entry is made with the consent of the owner or occupier of the premises; or
 - (b) the premises are open to the public or the entry is to a part of the premises open to the public; or

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- (c) entry is required urgently.
- (3) In entering the premises, and taking action on the premises, the person must do as little damage as possible.

25 Use of force to gain entry to premises

- (1) A person may use reasonable force to gain entry to premises under this Division if the Minister has authorised, in writing, the use of force:
 - (a) in the particular case; or
 - (b) in circumstances present in the particular case.
- (2) If a person uses force to enter premises, the person must, as soon as practicable, tell the Minister that the person used force to enter the premises.
- (3) 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 the force.

26 Authority to enter premises

- (1) A power to enter premises, or to take action on premises, must not be exercised unless the person proposing to enter the premises or take the action:
 - (a) is in possession of an authority mentioned in subsection (2);
 - (b) produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority, signed by the Minister, that:
 - (a) states that it is issued under this Ordinance; and
 - (b) gives the name of the person to whom it is issued; and
 - (c) describes the nature of the power conferred and the source of the power; and
 - (d) states the date (if any) on which it expires; and

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(e) describes the kind of premises to which the power extends.

27 Voluntary work by rural fire brigade

- (1) With the consent of the Minister, a rural fire brigade may, in or out of the Territory, voluntarily cooperate with a public authority in the performance of a function of the public authority prescribed by the rules for this section.
- (2) If:
 - (a) a public authority, or a member of a public authority, has immunity from legal proceedings that would otherwise lie in relation to the performance by the authority or member of a function; and
 - (b) a member of a rural fire brigade cooperates under this section in the performance of the function;

the member has the same immunity.

Division 4—Power to enter land and investigate fires

28 Object of Division

The object of this Division is to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

29 Definition of land

In this Division, a reference to *land* includes any building on the land.

30 Power to enter land to investigate cause of fire

(1) The Minister may enter and inspect any land for the purposes of investigating the cause or origin of a fire that has occurred on the land or adjacent land.

Note: The Minister may delegate his or her power under this section—see section 7.

- (2) However, if the Minister enters and inspects the land more than 24 hours after the fire has been put out, the Minister must hold a search warrant, issued under section 31, authorising the entry.
- (3) The Minister may enter and inspect the land whether or not the owner or occupier of the land has given his or her consent to the entry and inspection.
- (4) However, if the Minister enters any part of land used only for residential purposes, the Minister must:
 - (a) hold a search warrant, issued under section 31, authorising the entry; or
 - (b) obtain the consent of the owner or occupier of the land.

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31 Search warrants

(1) The Minister may apply to an issuing officer for a search warrant for any land if the Minister reasonably believes that entry onto the land is necessary for the purposes of an investigation of the cause or origin of a fire that has occurred on the land or adjacent land.

Note: The Minister may delegate his or her powers under this section—see section 7.

- (2) The issuing officer may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Minister or any other person named in the warrant to enter land for the purposes of an investigation of the cause or origin of a fire that has occurred on the land or adjacent land.
- (3) Sections 196 to 205 of the *Crimes Act 1900* (ACT) apply to a search warrant issued under this section.
- (4) In this section:

issuing officer has the same meaning as in section 185 of the *Crimes Act 1900* (ACT).

32 Functions of Minister that may be performed by others

- (1) A function conferred on the Minister under section 30 or 31 may be performed by the Commissioner of the NSW Rural Fire Service, but only to the extent that the function is performed in respect of land within the Territory.
- (2) The Commissioner of the NSW Rural Fire Service may delegate a function that may be performed by the Commissioner under subsection (1) to a member of a fire fighting authority.
- (3) Any of the Minister's functions under sections 30 and 31 may be exercised by a member or special member of the AFP for the purpose of determining whether the cause or origin of a fire should be the subject of a criminal investigation.
- (4) Subsection (3) does not limit the functions of a member or special member of the AFP under this or any other Ordinance or Act.

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Division 5—Command structure

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

- (1) A function conferred on the Minister by this Ordinance may be performed by a member of a rural fire brigade authorised for the purpose by the Minister.
- (2) The authorisation may be written or oral.
- (3) The Minister must keep a record of all authorisations given under this section.

34 Officer in charge may authorise others to perform functions

- (1) The officer in charge at a fire, incident or other emergency may 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.
- (2) The authorisation may be written or oral.

35 Duty to recognise authority of officer

- (1) A person must recognise the authority of:
 - (a) the Minister exercising powers or performing functions under this Ordinance or the rules; and
 - (b) a member of a rural fire brigade acting under the Minister's direction; and
 - (c) the officer in charge at a fire, incident or other emergency at which a rural fire brigade is present; and
 - (d) an officer of a rural fire brigade directly assisting the person primarily responsible for responding to a fire.
- (2) Each member and special member of the AFP must support the authority of a person mentioned in paragraph (1)(a), (b), (c) or (d),

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and assist that person in enforcing compliance with a direction given under this Ordinance or the rules.

36 Obstruction of Minister or other person

(1) A person commits an offence if the person obstructs or hinders the Minister or a member of a rural fire brigade, in the performance of the Minister's or member's functions under this Ordinance.

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

(2) A person commits an offence if the person obstructs or hinders a person acting under the direction of the Minister or an officer of a rural fire brigade.

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

37 Interstate assistance at fires

A member of an interstate fire brigade who is in the Territory for the purpose of mitigating or suppressing a fire may exercise all the powers, and perform all the functions, that, if the fire were in the area of the interstate fire brigade, the member would have and be capable of exercising and performing.

Part 3—Coordinated bush fire fighting

Division 1—Coordination of bush fire fighting by Minister

38 Minister's responsibility

The Minister is responsible for taking charge of bush fire fighting operations and bush fire prevention measures, and taking any measures the Minister considers necessary to control or suppress a bush fire in the Territory if, in the opinion of the Minister:

- (a) a bush fire has assumed or is likely to assume such proportions as to be incapable of control or suppression by the fire fighting authority or other authority in whose area it is burning; or
- (b) the prevailing weather conditions are conducive to the outbreak of a bush fire likely to assume such proportions; or
- (c) a bush fire is not being effectively controlled or suppressed by the fire fighting authority or other authority in whose area it is burning; or
- (d) a bush fire is burning in a place that is not the responsibility of any fire fighting authority.

Note: The Minister may delegate the Minister's functions and powers under this Division—see section 7.

39 Power to give directions

- (1) The Minister may give directions that 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, or in relation to which the Minister is taking measures, under this Division.
- (2) A person commits an offence if:
 - (a) the person is given a direction under subsection (1); and
 - (b) the person fails to comply with the direction; and
 - (c) the person is not a police officer.

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Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

- (3) This section has effect despite anything contained in this Ordinance or any other ordinance to the contrary.
- (4) Nothing in this Division enables the Minister to commandeer equipment or resources (human or otherwise).

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Division 2—Fire management committee

40 Jervis Bay Territory Fire Management Committee

- (1) The Jervis Bay Territory Fire Management Committee is established by this section.
- (2) The Committee is to consist of the following persons:
 - (a) a representative of the Department;
 - (b) a representative of the AFP;
 - (c) a representative of the Commonwealth Director of National Parks;
 - (d) a representative of the NSW Rural Fire Service;
 - (e) a representative of each rural fire brigade;
 - (f) a representative of the Wreck Bay Aboriginal Community Council;
 - (g) a representative of the Defence Department;
 - (h) a representative of the Shoalhaven City Council;
 - (i) any other person nominated by the Minister.
- (3) The representative of the Department is the Chair of the Committee.
- (4) A person nominated by the Minister under paragraph (2)(i) holds office on the terms and conditions (if any) that are determined by the Minister.

41 Fire Management Committee functions

- (1) The Fire Management Committee has such functions as are conferred on it by this Ordinance or any other ordinance.
- (2) The Fire Management Committee must, within 2 months after the end of each financial year, report to the Minister on the implementation of the bush fire risk management plan.

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Part 3 Coordinated bush fire fightingDivision 2 Fire management committee

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(3) In performing its functions, the Fire Management Committee must have regard to the principles of ecologically sustainable development described in section 3A of the *Environment Protection and Biodiversity Conservation Act 1999*.

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Division 3—Draft bush fire management plans

42 Fire Management Committee to prepare plans

- (1) The Fire Management Committee must, in accordance with this Division, prepare and give to the Minister a draft of each of the following kinds of bush fire management plans for the Territory:
 - (a) a plan of operations;
 - (b) a bush fire risk management plan.
- (2) The Fire Management Committee must give the draft plans to the Minister within 12 months after the establishment of the Fire Management Committee.
- (3) The Fire Management Committee must prepare and give to the Minister a revised draft plan of operations within each successive 2 year period following the establishment of the Fire Management Committee.
- (4) The Fire Management Committee must prepare and give to the Minister a revised draft bush fire risk management plan within each successive 5 year period following the establishment of the Fire Management Committee.

43 Content of draft plan of operations

The draft plan of operations must set out the procedures to be followed if:

- (a) a bush fire breaks out in the Territory and assumes, or is likely to assume, such proportions as to be incapable of control or suppression by the Rural Fire Service; or
- (b) the prevailing weather conditions are conducive to the outbreak of a bush fire likely to assume such proportions; or
- (c) a bush fire breaks out in a part of New South Wales adjacent to the Territory and threatens to spread to the Territory and assume such proportions as to be incapable of control or suppression in the Territory by the Rural Fire Service.

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44 Content of draft bush fire risk management plan

- (1) The draft bush fire risk management plan must set out schemes for the reduction of bush fire hazards in the Territory.
- (2) Without limiting the matters that may be contained in the draft plan, the plan may restrict or prohibit the use of fire, or provide for other fire hazard reduction activities, in all or specified circumstances or in places to which the plan applies.

Note:

The plan might, for example, prohibit the use of fire because of its effect on fauna or flora in, or the cultural heritage of, a particular place.

45 General content

- (1) A draft bush fire management plan may:
 - (a) include schemes for the performance of functions, or exercise of powers, in the Territory under this Ordinance; and
 - (b) confer or impose functions or powers on:
 - (i) the Minister; or
 - (ii) the Commissioner of Fire and Rescue NSW; or
 - (iii) the Commissioner of the NSW Rural Fire Service; or
 - (iv) the Director of National Parks; or
 - (v) the Director-General of the New South Wales National Parks and Wildlife Service; or
 - (vi) any other person or body associated with the prevention, mitigation or suppression of bush fires in the Territory.
- (2) A draft bush fire management plan must include any provisions that the Minister has advised the Fire Management Committee to include in the plan.
- (3) A draft bush fire management plan must take into account:
 - (a) the *Environment Protection and Biodiversity Conservation Act 1999* and any regulations made under that Act; and
 - (b) the Booderee National Park Management Plan.

Note:

The Booderee National Park Management Plan could in 2014 be viewed on the Department's website (http://www.environment.gov.au).

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46 Failure of Fire Management Committee

The Minister may perform the functions of the Fire Management Committee under this Division if the Committee has failed to give the Minister a draft bush fire management plan in accordance with this Division or has given the Minister a draft plan that, in the opinion of the Minister, is inadequate.

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Division 4—Public participation in preparation of plans

47 Public notice of draft bush fire risk management plan

- (1) The Fire Management Committee or Minister must:
 - (a) in accordance with the rules, give public notice of, and display, for the purpose of receiving submissions from any interested persons, the draft bush fire risk management plan prepared by the Committee; and
 - (b) concurrently display for information the draft plan of operations or plan of operations.
- (2) The Fire Management Committee or Minister must ensure that no operational contact information is displayed.

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

48 Adoption of bush fire risk management plan

- (1) After considering any submissions received in relation to the draft bush fire risk management plan, the Fire Management Committee may amend the draft plan.
- (2) The Fire Management Committee must give the draft plan, or the draft plan as amended by the Committee under subsection (1), to the Minister as the proposed bush fire risk management plan.
- (3) The Minister must:
 - (a) consider any submissions received in relation to the draft plan; and
 - (b) either:
 - (i) approve the draft plan or amended draft plan; or
 - (ii) make such amendments to the draft plan or amended draft plan as the Minister considers necessary, and approve the plan as amended; and
 - (c) revoke any existing bush fire risk management plan.
- (4) The Fire Management Committee must adopt the draft plan approved by the Minister under subsection (3).
- (5) The bush fire risk management plan, as adopted, applies as in force from time to time.

49 Adoption of plan of operations

- (1) After preparing the draft plan of operations, the Fire Management Committee must give the draft plan of operations to the Minister.
- (2) The Minister must review the draft plan of operations and any existing plan of operations.

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

Section 50

- (3) After the review, the Minister may approve the draft plan of operations (as given to the Minister or after amendment by the Minister), and revoke any existing plan of operations.
- (4) The Fire Management Committee must adopt the draft plan of operations approved by the Minister under subsection (3).
- (5) The plan of operations, as adopted, applies as in force from time to time.

50 Amendment and revocation of bush fire management plans

- (1) The Fire Management Committee or the Minister may amend a bush fire management plan adopted under this Division by means of another bush fire management plan that is prepared and adopted in accordance with sections 43 to 49.
- (2) A bush fire management plan may be revoked by a bush fire management plan approved by the Minister, and adopted by the Fire Management Committee, under this Division.

51 Public availability of bush fire management plans and draft bush fire management plans

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

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Part 4—Bush fire prevention

Division 1—Duty to prevent bush fires

52 Duties of public authorities and owners and occupiers of land to prevent bush fires

- (1) A public authority must take the notified steps (if any), and any other practicable steps, to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from:
 - (a) land vested in the public authority or under its control or management; or
 - (b) a highway, road, street, land or thoroughfare, the maintenance of which is the responsibility of the authority.
- (2) An owner or occupier of land must take the notified steps (if any), and any other practicable steps, to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.
- (3) A public authority, owner or occupier is liable for the costs incurred by it in complying with this section.
- (4) In this section:

notified steps means steps included in a bush fire management plan to prevent bush fires or minimise the danger of the spread of bush fires.

53 Occupiers to extinguish fires or notify fire fighting authorities

- (1) A person commits an offence if:
 - (a) the person is the occupier of land; and
 - (b) a fire is burning on the land during the bush fire danger period; and
 - (c) the fire was not lit under the authority of this Ordinance or any other ordinance; and

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- (d) the person is able to extinguish the fire without assistance; and
- (e) the person does not, immediately on becoming aware of the fire, take all possible steps to extinguish the fire.

Penalty: Imprisonment for 4 months, 20 penalty units or, or both.

(2) It is a defence to a prosecution under subsection (1) that the fire was lit or used by the person for cooking, heating or preparing meals or boiling water, or for a similar purpose, in accordance with any requirements prescribed by the rules.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person commits an offence if:
 - (a) the person is the occupier of land; and
 - (b) a fire is burning on the land during the bush fire danger period; and
 - (c) the fire was not lit under the authority of this Ordinance or any other ordinance; and
 - (d) the person is unable to extinguish the fire without assistance; and
 - (e) the person has a means of communication practicably available; and
 - (f) it is practicable for the person to inform a fire fighting authority of the existence and location of the fire, without leaving the fire unattended, by telephoning the emergency telephone number (000); and
 - (g) the person does not, immediately on becoming aware of the fire, inform a fire fighting authority of the existence and location of the fire.

Penalty: Imprisonment for 4 months, or 20 penalty units, or both.

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Division 2—Bush fire hazard reduction

54 Hazard management officers

The Minister may appoint a member of the Rural Fire Service or the NSW Rural Fire Service as a hazard management officer for the purposes of this Division.

55 Reduction of bush fire hazards on unoccupied Commonwealth land and managed land

- (1) An authorised person may, with the permission of:
 - (a) the fire fighting authority or authority responsible for unoccupied Commonwealth land or managed land; or
 - (b) a person nominated by such an authority to give such permission;

enter the land and carry out bush fire hazard reduction work.

Note: For the definition of *bush fire reduction work*, see section 6.

- (2) The authorised person may carry out the bush fire hazard reduction work with the assistance of such other persons as the authorised person considers necessary.
- (3) The authority responsible for unoccupied Commonwealth land or managed land is taken to have given permission under subsection (1) to the extent necessary to give effect to the bush fire risk management plan.
- (4) If permission under this section is given subject to conditions, the authorised person, and any person assisting the authorised person in accordance with subsection (2), must comply with those conditions.
- (5) In this section:

authorised person means:

(a) a hazard management officer; or

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- (b) a member of a rural fire brigade, or of the NSW Rural Fire Service, appointed for the purposes of this section by the Minister; or
- (c) a person performing bush fire hazard reduction functions under a bush fire risk management plan; or
- (d) an authorised member of a fire fighting authority.

56 Bush fire hazard reduction notices

- (1) A hazard management officer may, by notice in writing served on the owner or occupier of land (other than a public authority), require the owner or occupier to carry out bush fire hazard reduction work specified in the notice on the land.
- (2) A hazard management officer must serve a bush fire hazard reduction notice under this section if required to do so by the bush fire risk management plan.
- (3) A bush fire hazard reduction notice served under this section may specify any or all of the following matters:
 - (a) the circumstances in which the bush fire hazard reduction work is to be carried out:
 - (b) the conditions under which the bush fire hazard reduction work is to be carried out;
 - (c) the means by which the bush fire hazard reduction work is to be carried out and alternative means, other than fire, by which the work should, if practicable, be carried out.
- (4) The bush fire hazard reduction notice may specify a day by which the work must be carried out, but the day must not be less than 7 days after the day the notice is served.
- (5) The bush fire hazard reduction notice must include any requirements or conditions specified in the bush fire risk management plan that are applicable to the land.
- (6) The bush fire hazard reduction notice may include a requirement or condition that the burning of fire breaks or of combustible matter or other material must be carried out by, or under the supervision of, a member of a rural fire brigade specified in the notice.

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- (7) If the bush fire hazard reduction notice requires the establishment of a fire break, the notice cannot require an occupier or owner to kill or remove any trees that are reasonably necessary for:
 - (a) shade, shelter, windbreak or fodder; or
 - (b) the protection of threatened species, populations, ecological communities or critical habitats within the meaning of the *Environment Protection and Biodiversity Conservation Act* 1999.
- (8) A person commits an offence if:
 - (a) the person is the occupier or owner of land; and
 - (b) the person has been served with a bush fire hazard reduction notice in relation to the land; and
 - (c) the notice is in effect; and
 - (d) the person fails to comply with the notice.

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

- (9) It is a defence to a prosecution under subsection (8) that:
 - (a) the person is the owner of the land; and
 - (b) the person is not also the occupier of the land; and
 - (c) the person had no legal right, as between the person and the occupier of the land, to enter the land and comply with the requirements of the bush fire hazard reduction notice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

(10) If the bush fire hazard reduction notice is the subject of an objection under section 57, the notice does not have effect until the objection is finally determined.

57 Objection to bush fire hazard reduction notice

(1) The owner or occupier of land on whom a bush fire hazard reduction notice has been served (the *objector*) may lodge an objection with the hazard management officer who served the notice, or, if that officer is not available, any other hazard management officer.

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- (2) The objection must state the grounds on which it is made.
- (3) The objection must be lodged within 7 days after the bush fire hazard reduction notice is served.
- (4) The hazard management officer and the objector must genuinely attempt to resolve the matter by consultation, having regard to:
 - (a) the provisions of the bush fire risk management plan; and
 - (b) the matters referred to in subsection 56(7); and
 - (c) any other matters prescribed by the rules.
- (5) Within 14 days of the objection being lodged, the hazard management officer must:
 - (a) confirm the bush fire hazard reduction notice; or
 - (b) if the hazard management officer is satisfied that the notice can be varied in a way that will appropriately address the threat of fire—vary the notice; or
 - (c) if the hazard management officer is satisfied that there is no longer any need for the notice—withdraw the notice.
- (6) If the hazard management officer confirms or varies the bush fire hazard reduction notice, the officer must give the objector a notice:
 - (a) advising of the officer's decision; and
 - (b) specifying a time within which the objector must comply with the bush fire hazard reduction notice as confirmed or varied.

58 Powers and duties of hazard management officer

- (1) A hazard management officer may, for the purpose of forming an opinion as to:
 - (a) whether to serve a bush fire hazard reduction notice under section 56 on an occupier or owner of land; or
 - (b) whether or not such a notice has been complied with; enter any part of the land to which the notice relates (other than a part of land used only for residential purposes) that it is necessary to inspect in order to form that opinion.
- (2) However, the officer may only enter the land during daytime hours.

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- (3) A hazard management officer who requires an occupier or owner of land to take action under a bush fire hazard reduction notice must give notice in the approved form to the persons or bodies prescribed by the rules for this subsection.
- (4) A hazard management officer must keep a record of whether or not bush fire hazard reduction work has been carried out in accordance with a bush fire hazard reduction notice.

59 Bush fire hazard reduction work if notice not complied with

- (1) If the owner or occupier on whom a relevant notice is served fails to comply with the notice within the time specified in the notice, the Minister may, without prejudice to the liability of the owner or occupier, enter the land to which the notice relates and carry out the bush fire hazard reduction work that the owner or occupier was required to do under the notice.
- (2) Any costs incurred by the Minister in carrying out the bush fire hazard reduction work (including costs incurred in obtaining approval under another law to carry out the work) may be recovered from the owner or occupier of the land as a debt due to the Commonwealth in a court of competent jurisdiction.
- (3) It is a defence to an action under subsection (2) against the owner of the land that:
 - (a) the owner and occupier of the land are not the same person; and
 - (b) the owner had no legal right, as between the owner and the occupier of the land, to enter the land and comply with the requirements of the relevant notice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) In this section:

relevant notice means:

(a) a bush fire hazard reduction notice; or

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(b) if a bush fire hazard reduction notice is confirmed or varied following an objection to the notice—the notice as confirmed or varied and notified under subsection 57(6).

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

- (1) Any damage to property caused by a person in the exercise in good faith of a power conferred by or under this Division is taken to be damage by fire within the meaning of a policy of insurance against fire covering the damaged property.
- (2) However, subsection (1) does not apply in relation to damage caused by a person in the act of entering land under subsection 59(1).

Note: Subsection 59(1) allows the Minister to enter land if the owner or occupier fails to comply with a bush fire hazard reduction notice, and carry out bush fire hazard reduction work on the land.

Division 3—Bush fire hazard complaints

61 Bush fire hazard complaints

- (1) A person may make a bush fire hazard complaint that a bush fire hazard exists on land because of the failure of a public authority, or owner or occupier of the land, to carry out bush fire hazard reduction work on the land.
- (2) A bush fire hazard complaint may be made whether or not the public authority, or owner or occupier, has a duty under section 52 to carry out the bush fire hazard reduction work.

62 Who may make a bush fire hazard complaint

A bush fire hazard complaint may be made by any owner or occupier of land adjacent to, or in the vicinity of, the land to which the complaint relates.

63 How complaints are to be made

- (1) A person making a bush fire hazard complaint relating to unoccupied Commonwealth land, or managed land, for which a public authority is responsible, must give the complaint to the Minister.
- (2) A person making a bush fire hazard complaint relating to any other kind of land must give the complaint to the Jervis Bay Territory Administration.
- (3) The complaint must:
 - (a) be in writing; and
 - (b) identify the complainant; and
 - (c) state the address of the land to which the complaint relates; and
 - (d) state the grounds for the complaint.

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(4) As soon as practicable after the Jervis Bay Administration receives the complaint, the Jervis Bay Administration must give written notice of the complaint, and the grounds of the complaint, to the owner or occupier of, or public authority responsible for, the land to which the complaint relates.

64 Investigation of complaint

- (1) The Minister must investigate a bush fire hazard complaint as soon as practicable after receiving it.
- (2) The Minister, or a person authorised by the Minister, may, for the purpose of forming an opinion as to whether a bush fire hazard exists on the land to which the complaint relates, enter any part of the land (other than a part of land used only for residential purposes) that it is necessary to inspect in order to form that opinion.
- (3) However, the Minister or authorised person may only enter the land during daytime hours.
- (4) 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.
- (5) The Minister must notify the complainant if the Minister declines to deal with, or dismisses, the complaint.

65 Minister may take action if bush fire hazard exists

- (1) If the Minister finds that a bush fire hazard exists on land to which a bush fire hazard complaint relates, and a public authority is not responsible for the land, the Minister may:
 - (a) if a bush fire hazard reduction notice has not already been served on the owner or occupier of the land—direct a hazard management officer to serve a notice under section 56 on the owner or occupier; and
 - (b) if a bush fire hazard reduction notice has already been served on the owner or occupier of the land—subject to section 58, exercise the Minister's powers under section 59.

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(2) If the Minister finds that a bush fire hazard exists on land to which a bush fire hazard complaint relates because a public authority has failed to take notified steps, or otherwise perform a duty imposed on it by section 52, the Minister may, by notice in writing served on the public authority, require the public authority to carry out specified bush fire hazard reduction work.

66 Complainant to be notified of action taken

If the Minister takes action in relation to a bush fire hazard complaint, the Minister must, as soon as practicable after taking the action, advise the complainant of the action taken.

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Division 4—Damage by fire to dividing fences and other matters

67 Definitions

In this Division:

adjoining owners means the owners or occupiers of land (other than excluded land) on either side of a dividing fence.

dividing fence means a fence separating land owned or occupied by different persons.

excluded land means land that the bush fire management plan specifies is excluded land for the purposes of this Division.

fence means a structure, ditch or embankment, or a hedge or similar vegetation barrier, that encloses or bounds land and separates the land from other land, whether or not continuous or extending along the whole of the boundary, and includes:

- (a) a gate, cattlegrid or apparatus necessary for the operation of the fence; and
- (b) a foundation or support necessary for the support and maintenance of the fence.

68 Notice to repair or restore dividing fence

- (1) This section applies if:
 - (a) an adjoining owner (the *first adjoining owner*) has cleared all of the land on his or her side of a dividing fence of combustible matter for a distance of 6 metres from the fence; and
 - (b) the other adjoining owner in relation to the fence (the second adjoining owner) has not cleared all of the land on his or her side of the fence of all combustible matter for a distance of 6 metres from the fence: and
 - (c) the fence has been damaged or destroyed by fire for a reason connected with the second adjoining owner's failure to clear

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all of the land on his or her side of the fence of all combustible matter for a distance of 6 metres from the fence.

- (2) The first adjoining owner may, by written notice to the second adjoining owner, require the second adjoining owner to repair or restore the fence.
- (3) The second adjoining owner must repair or restore the dividing fence at his or her expense:
 - (a) within one month of being given the notice; or
 - (b) within such longer period as the ACT Magistrates Court may allow on application by the second adjoining owner to the ACT Magistrates Court.
- (4) The second adjoining owner must repair or restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.
- (5) The first adjoining owner may apply to the ACT Magistrates Court for an order authorising the first adjoining owner to repair or restore the fence if:
 - (a) the second adjoining owner fails to repair or restore the fence within the time required by subsection (3); or
 - (b) the first adjoining owner has not, after making reasonable inquiries, been able to ascertain the whereabouts of the second adjoining owner for the purposes of giving the notice to the second adjoining owner.
- (6) An adjoining owner who repairs or restores a fence under this section (including the owner's employees or agents) may, at any reasonable time, enter on land adjoining the fence for the purpose of carrying out the work.

69 Recovery of costs

(1) A first adjoining owner who repairs or restores a fence in accordance with an order under subsection 68(5) is entitled to recover the cost of carrying out the work from the second adjoining owner.

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- (2) Any money that a second adjoining owner is required or liable to pay under this section may be recovered as a debt in a court of competent jurisdiction.
- (3) In any proceedings for the recovery of the money, a certificate of the ACT Magistrates Court as to the making and content of an order made by it under subsection 68(5) is evidence of the matters set out in the certificate.

70 Jurisdiction of ACT Magistrates Court

The ACT Magistrates Court has jurisdiction to hear and determine any matter arising under this Division.

71 Entry to land to extinguish fire

- (1) Subsection (2) applies if:
 - (a) an adjoining owner (the *first adjoining owner*) has cleared all of the land on his or her side of a dividing fence of combustible matter for a distance of 6 metres from the fence; and
 - (b) the other adjoining owner in relation to the fence (the *second adjoining owner*) has not cleared all of the land on his or her side of the fence of combustible matter for a distance of 6 metres from the fence; and
 - (c) an unattended fire on the land of the second adjoining owner has approached a distance that unreasonably endangers or threatens the first adjoining owner's land or any fence or property on the first adjoining owner's land.
- (2) The first adjoining owner may:
 - (a) enter the land of the second adjoining owner; and
 - (b) take all necessary steps to extinguish the fire.

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Division 5—Bush fire danger period

72 Bush fire danger period

- (1) For the purposes of this Ordinance, the bush fire danger period is:
 - (a) the period specified in the rules; or
 - (b) if no period is specified in the rules—the period commencing on 1 October and ending on 31 March in the following year.
- (2) Before making a rule for the purposes of paragraph (1)(a), the Minister must take into account the bush fire danger period applying in relation to each local government area of New South Wales adjacent to the Territory.

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Division 6—Permits and notice requirements

73 Definitions

In this Division:

land clearance means clearing land of vegetation and other material.

74 Notice and authorities required before lighting fire

- (1) A person commits an offence if:
 - (a) the person lights a fire:
 - (i) for the purpose of land clearance, back burning or burning a fire break; or
 - (ii) in circumstances in which the fire is likely to endanger a building; and
 - (b) the person is not carrying out land clearance or back burning, or burning a fire break, as an authorised member of a fire fighting authority; and
 - (c) the rules require the person to give notice before the fire is lit; and
 - (d) the person does not, before lighting the fire, give notice in accordance with the rules.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

- (2) A person commits an offence if:
 - (a) the person lights a fire for the purpose of land clearance, back burning or burning a fire break; and
 - (b) the person is not carrying out land clearance or back burning, or burning a fire break, as an authorised member of a fire fighting authority; and
 - (c) either or both of the following apply:
 - (i) a bush fire hazard reduction notice has not been issued in relation to the land clearance, back burning or fire break;

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(ii) an approval, consent or other authority required for the land clearance, back burning or fire break under the *Environment Protection and Biodiversity Conservation Act 1999* or any other law has not been given.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

75 Lighting fires for land clearance or fire breaks in bush fire danger period

A person commits an offence if:

- (a) the person lights a fire on land, for the purpose of land clearance, back burning or burning a fire break; and
- (b) the person is not carrying out land clearance or back burning, or burning a fire break, as an authorised member of a fire fighting authority; and
- (c) the person lights the fire during the bush fire danger period; and
- (d) the person:
 - (i) is not authorised to light the fire by a fire permit; or
 - (ii) fails to comply with any conditions set out in a fire permit authorising the person to light the fire.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

76 Lighting fires that are dangerous to buildings

- (1) A person commits an offence if:
 - (a) the person lights a fire in circumstances in which the fire is likely to endanger a building; and
 - (b) the person is not carrying out land clearance or back burning, or burning a fire break, as an authorised member of a fire fighting authority; and
 - (c) the person:
 - (i) is not authorised to light the fire by a fire permit; or
 - (ii) fails to comply with any conditions set out in a fire permit authorising the person to light the fire.

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Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

77 Issue of fire permits

- (1) The Minister may issue a fire permit, in writing, authorising a person to light a fire on land specified in the permit for a purpose specified in the permit.
- (2) If the lighting of the fire would require an approval, consent or other authority under the Environment Protection and Biodiversity Conservation Act 1999 or any other law, the Minister must not issue the fire permit unless the Minister is satisfied that the approval, consent or other authority has been given.

78 Duration of fire permits

- (1) 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.
- (2) The Minister must not specify a period in a fire permit that is longer than 21 days after the day of the issue of the permit.
- (3) A fire permit has no force during a period in which a direction under section 85 is in force:
 - (a) in relation to the Territory; or
 - (b) in relation to a part of the Territory in which the land specified in the fire permit is located.

79 Cancellation or suspension of fire permits

- (1) The Minister may cancel or suspend a fire permit at any time by written notice given to the person to whom the permit is issued.
- (2) However, if the Minister is of the opinion that:
 - (a) the weather conditions are conducive to the outbreak or spread of bush fires; or
 - (b) weather conditions conducive to the outbreak or spread of bush fires are imminent;

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the Minister may give the notice orally or in another manner the Minister considers appropriate, including, if no other means are practicable, by broadcasting the notice by a television or radio station transmitting to the Territory.

80 Conditions of fire permit

- (1) A fire permit is subject to:
 - (a) a condition that the person to whom the permit is issued must carry the permit when the person lights a fire authorised by the permit; and
 - (b) a condition that the person has, before lighting the fire, obtained any approval, consent or other authority required in relation to lighting the fire by any other ordinance or Act; and
 - (c) any other condition imposed on the permit by a bush fire hazard reduction notice; and
 - (d) any other condition prescribed by the rules or specified in the permit.
- (2) A person commits an offence if:
 - (a) a fire permit has been issued to the person; and
 - (b) the person fails to comply with a condition of the fire permit.

Penalty: 50 penalty units.

81 Refusal to issue fire permit

The Minister may refuse to issue a fire permit if:

- (a) the issue of the permit would be inconsistent with the bush fire risk management plan; or
- (b) the Minister has determined in writing that no fire permits be issued for fires to be lit in the Territory because of the severity of bush fire danger in the Territory; or
- (c) the Minister is authorised or required by the rules or any other ordinance to refuse to issue the permit.

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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.

83 Permit not required for fires lit by public authorities

Nothing in this Division requires a public authority, or a person acting under the direction of a public authority, to hold a permit to light a fire.

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

85 Lighting of fires prohibited in certain circumstances

- (1) If the Minister is of the opinion that it is necessary or expedient in the interests of public safety to do so, the Minister may, by order in writing, direct that the lighting, maintenance or use of a fire or kind of fire in the open air is prohibited:
 - (a) in the Territory or a part of the Territory specified in the order; and
 - (b) during the period specified in the order.
- (2) The order may also specify:
 - (a) conditions that must be complied with by persons lighting, maintaining or using a fire or kind of fire in the open air during the period specified in the order; and
 - (b) action that must be taken by specified persons or classes of persons to prevent the outbreak or the spread of bush fire, or for controlling or suppressing a bush fire during the period specified in the order.
- (3) As soon as practicable after making the order, the Minister must ensure that:
 - (a) notice of the order is broadcast by a television or radio station transmitting to the Territory; and
 - (b) a copy of the order is published in the Gazette.
- (4) If an order is in force 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 Territory, that order has effect as if the order were an order made by the Minister under subsection (1).
- (5) If an order mentioned in subsection (4) has effect as if the order were an order made by the Minister under subsection (1):
 - (a) the Minister must ensure that:

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- (i) notice of the order is broadcast by a television or radio station transmitting to the Territory; and
- (ii) a copy of the order is published in the Gazette; and
- (b) any special condition specified in the order to be observed, or action specified in the order to be taken, applies (to the extent possible) as if the condition were specified under paragraph (2)(a) or the action were specified under paragraph (2)(b).
- (6) A person commits an offence if the person fails to comply with an order given by the Minister under subsection (1) or taken to be in force in the Territory under subsection (4).

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

(7) This section has effect despite anything contained in this Ordinance, or any other Act or ordinance, to the contrary.

Division 8—Lighting fires without authority

86 Offences

- (1) A person commits an offence if the person:
 - (a) sets fire, or causes fire to be set, to the land or property of another person, the Commonwealth or a public authority; or
 - (b) being the owner or occupier of land, permits a fire to escape from the land under such circumstances as to cause, or be likely to cause, injury or damage to:
 - (i) the person, land or property of another person; or
 - (ii) the land or property of the Commonwealth or a public authority.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

- (2) A person commits an offence if the person:
 - (a) leaves (temporarily or otherwise) a fire which the person has lit, or used, in the open air before the fire is thoroughly extinguished; and
 - (b) the person does not have lawful authority to do so.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

- (3) However subsection (2) does not apply to a person if:
 - (a) 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
 - (b) when the person leaves the fire, the fire continues to be used by another person.

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Part 4—Miscellaneous

87 Ordinance binds Crown

- (1) This Ordinance binds the Crown in each of its capacities.
- (2) This Ordinance does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

88 Persons and bodies to give information to Minister

- (1) The Minister may make a reasonable request for a person or body, on which a function is conferred by or under this Ordinance, to give the Minister specified information relating to the performance of the function, or the administration of this Ordinance.
- (2) The person or body must give the information to the Minister in the form (if any) requested by the Minister.

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

Except as expressly provided in this Ordinance, nothing in this Ordinance, and no conviction, payment of penalty or proceeding under this Ordinance, affects or prejudices any civil claim, action or proceeding in respect of:

- (a) loss or damage caused by a bush or other fire to which this Ordinance relates; or
- (b) any trespass committed.

90 Protection from liability

(1) A thing done, or omitted to be done, by a protected person or body does not subject the person personally, or the Commonwealth, to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of giving effect to a provision of this Ordinance (other than section 27).

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(2) In this section:

protected person or body means any of the following:

- (a) the Minister;
- (b) a person acting as a delegate, or under the authority, of the Minister;
- (c) a member of the Rural Fire Service;
- (d) a member of the Fire Management Committee;
- (e) a member or special member of the AFP;
- (f) the Commissioner of Fire and Rescue NSW and any person acting under the authority of the Commissioner of Fire and Rescue NSW;
- (g) the Commissioner of the NSW Rural Fire Service and any person acting under the authority of the Commissioner of the NSW Rural Fire Service;
- (h) a member of the NSW Rural Fire Service;
- (i) the Director of National Parks and any person acting under the authority of the Director of National Parks;
- (j) an officer of the New South Wales National Parks and Wildlife Service;
- (k) an interstate fire brigade acting under section 37.

91 Minister may be represented at inquiry

- (1) The Minister may be represented by a person appointed by the Minister at an inquest, or inquiry relating to the cause or origin of a fire.
- (2) The Minister's representative may adduce evidence, examine witnesses and address the court at the inquest or inquiry.

92 Giving notices

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

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93 Infringement notices

- (1) An authorised officer may serve an infringement notice on a person if:
 - (a) it appears to the officer that the person has committed an offence against this Ordinance or the rules; and
 - (b) the offence is prescribed by the rules for the purposes of this section.
- (2) The infringement notice must state that if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the rules for the offence.
- (3) An infringement notice may be served on a person personally or by post.
- (4) If the amount of the penalty prescribed for an offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.
- (6) The rules may:
 - (a) prescribe an offence for the purposes of this section; and
 - (b) prescribe the amount of penalty for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed by the rules for an offence must not exceed one-fifth of the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this Ordinance or any other ordinance or Act relating to proceedings which may be taken in respect of offences.
- (9) In this section:

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authorised officer in relation to a particular offence, means a person specified in the rules to be an authorised officer in relation to that offence.

94 Power to require name and address

- (1) An authorised officer 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.
- (2) A person commits an offence if:
 - (a) 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 in accordance with subsection (1); and
 - (b) the person fails to state the person's full name and residential address.

Penalty: 5 penalty units.

- (3) It is a defence to a prosecution under subsection (2) that the authorised officer or the member or special member of the AFP did not explain to the person, when giving the direction, that failure to comply with the direction is an offence.
 - Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- (4) An authorised officer or a member or special member of the AFP may request a person who is required under this section to state the person's full name and residential address to provide evidence of the correctness of the name and address if the officer reasonably suspects that the stated name or address is false.

95 Powers of police officers to give directions

(1) A member or special member of the AFP who has reasonable grounds to suspect that a person is committing an offence against this Ordinance or the rules may direct the person to produce a

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- permit, notice or other document by or under the authority of which the person claims that a fire has been lit.
- (2) A member or special member of the AFP may direct a person who has lit a fire in contravention of a provision of this Ordinance or the rules:
 - (a) to extinguish the fire; or
 - (b) if the fire is in the open air, to extinguish the fire before leaving the site of the fire.
- (3) A person commits an offence if the person fails to comply with a direction given to the person under subsection (2)

Penalty: 5 penalty units.

(4) It is a defence to a prosecution under subsection (3) that the member or special member of the AFP did not explain to the person, when giving the direction, that failure to comply with the direction is an offence.

Note:

A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the Criminal Code).

96 Powers affecting land near certain bush fires

- (1) An authorised officer of a fire fighting authority may:
 - (a) enter land (affected land) within the authorised distance from land for which the fire fighting authority is responsible; and
 - (b) take any reasonably necessary action to:
 - (i) suppress a bush fire on the affected land; or
 - (ii) prevent the spread of a bush fire from the affected land to the land for which the fire fighting authority is responsible.
- (2) An authorised officer may take the action referred to in subsection (1) whether or not the authorised officer has been requested to assist in suppressing or preventing the spread of the fire by the officer in charge of the affected land.
- (3) If an authorised officer takes action under subsection (1), the officer must observe any arrangements set out in any bush fire

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management plan applying to the affected land, or agreed with the authority responsible for the affected land.

(4) In this section:

authorised distance from land for which a fire fighting authority is responsible means:

- (a) 8 kilometres from the land; or
- (b) if another distance is specified in the bush fire management plan—the distance specified in the plan.

97 Proceedings for offences

Proceedings for an offence against this Ordinance or the rules are to be dealt with summarily before the ACT Magistrates Court.

98 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Ordinance to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.
- (2) Without limiting subsection (1), rules may be made for or with respect to the following:
 - (a) the issue of fire permits;
 - (b) the establishment of fire breaks;
 - (c) the use of fire in the open;
 - (d) the escape of sparks into the open;
 - (e) the operation of internal combustion engines;
 - (f) the storage of combustible materials;
 - (g) the classification of substances as combustible;
 - (h) the constitution, rules and functions of committees;
 - (i) the service of notices or directions given under this Ordinance;

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- (j) the conduct and discipline of members of the Rural Fire Service:
- (k) the membership, officers, functions and operation of rural fire brigades.
- (3) The rules may create offences punishable by a penalty not exceeding 50 penalty units.

99 Review of Ordinance

The Minister must review this Ordinance within 4 years after the Ordinance commences, and at least once in every 4 year period after that date, to determine whether:

- (a) the objects set out in section 5 remain valid; and
- (b) the terms of the Ordinance remain appropriate for securing those objects.

100 Transitional provisions

- (1) Schedule 1 makes transitional arrangements in relation to amendments of this Ordinance.
- (2) This section and Schedule 1 expire on the day after the day this Ordinance commences as if they had been repealed by another Ordinance.

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Schedule 1—Transitional provisions

Note: See section 100.

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

- (1) This clause applies to a rural fire brigade in existence under the *Rural Fires Ordinance 2001* immediately before the commencement of this Ordinance.
- (2) Despite the repeal of the *Rural Fires Ordinance 2001* by this Ordinance, the brigade continues in existence on and after the commencement of this Ordinance as if the brigade were formed by the Minister under subsection 12(1) of this Ordinance.

Schedule 2—Repeal

Rural Fires Ordinance 2001

1 The whole of the Ordinance

Repeal the Ordinance.

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