



Western Australia

Bush Fires Act 1954

Compare between:

[21 Sep 2016, 09-e0-00] and [01 Jul 2017, 09-f0-00]

Western Australia

Bush Fires Act 1954

An Act to make better provision for diminishing the dangers resulting from bush fires, for the prevention, control and extinguishment of bush fires, for the repeal of the *Bush Fires Act 1937*² and for other purposes.

Part I — Preliminary

[Heading inserted by No. 19 of 2010 s. 43(3)(a).]

1. Short title

This Act may be cited as the *Bush Fires Act 1954*¹.

[2. Deleted by No. 8 of 1987 s. 3.]

[Heading deleted by No. 19 of 2010 s. 43(3)(b).]

3. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

4. Saving provisions

- (1) This Act does not affect the provisions of the *Fire Brigades Act 1942*, or of the *Conservation and Land Management Act 1984*.
- (2) This Act is to be construed so as not to limit or restrict in any way the effect and operation of the provisions of either of those Acts.

[Section 4 amended by No. 38 of 2002 s. 16; No. 19 of 2010 s. 52(4).]

[5. Omitted under the Reprints Act 1984 s. 7(4)(f).]

[6. Deleted by No. 38 of 2002 s. 17.]

7. Terms used

- (1) In this Act unless the context otherwise indicates or requires —
adjoining, when used with respect to 2 or more pieces of land, extends to pieces of land which are separated only by a road or roads or by a railway or by a watercourse;

authorised CALM Act officer means a wildlife officer, forest officer, ranger or conservation and land management officer who is authorised for the purposes of section 45(3a) of the *Conservation and Land Management Act 1984*;

bush includes trees, bushes, plants, stubble, scrub, and undergrowth of all kinds whatsoever whether alive or dead and whether standing or not standing and also a part of a tree, bush, plant, or undergrowth, and whether severed therefrom or not so severed. The term does not include sawdust, and other waste timber resulting from the sawmilling of timber in a sawmill whilst the sawdust and other waste timber remains upon the premises of the sawmill in which the sawmilling is carried on;

bush fire brigade means a bush fire brigade for the time being registered in a register kept pursuant to section 41;

CALM Act CEO has the meaning given to **CEO** by section 3 of the *Conservation and Land Management Act 1984*;

CALM Act Department has the meaning given to **Department** by section 3 of the *Conservation and Land Management Act 1984*;

Department has the meaning given in the FES Act section 3;

employed in the Department means employed or engaged in the Department in accordance with the FES Act section 20(1);

FES Act means the *Fire and Emergency Services Act 1998*;

FES Commissioner has the meaning given in the FES Act section 3;

forest land means State forest and timber reserves within the meaning of the *Conservation and Land Management Act 1984* and any land to which section 131 of that Act applies;

occupier of land means, subject to subsection (2), a person residing on the land or having charge or control of it, whether the person is the owner or tenant or a bailiff, servant, caretaker, or other person residing or having charge or control of the land and includes a person who as mortgagee in possession has possession of the land, while the land is unoccupied, and also a

person who has the charge or control of 2 or more separate parcels of land, although the person resides on only one of the parcels;

prohibited burning times means the times of the year during which it is declared by the Minister under section 17 to be unlawful to set fire to the bush within a zone of the State and, in relation to any land in such a zone —

- (a) includes any extension of those times made, or any further times imposed, under that section in respect of the whole of that zone or in respect of the part of that zone, or the district or part of a district, in which that land is situated; but
- (b) does not include any period by which those times are reduced, or for which those times are suspended, under that section in respect of the whole of that zone or in respect of the part of that zone, or the district or part of a district, in which that land is situated or in respect of that land in particular;

restricted burning times means the times of the year during which it is declared by the FES Commissioner under section 18 to be unlawful to set fire to the bush within a zone of the State except in accordance with a permit obtained under that section and with the conditions prescribed for the purposes of that section and, in relation to land in such a zone —

- (a) includes any extension of those times made, or any further times imposed, under that section in respect of the whole of that zone or in respect of the part of that zone, or the district or part of a district, in which that land is situated; but
- (b) does not include any period by which those times are reduced, or for which those times are suspended, under that section in respect of the whole of that zone or in respect of that part of that zone, or the district or part of a district, in which that land is situated.

- (2) Subject to section 33(9), a reference in this Act to an owner or occupier of land does not include a reference to a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.

[Section 7 amended by No. 11 of 1963 s. 3; No. 65 of 1977 s. 4; No. 112 of 1984 s. 22; No. 60 of 1992 s. 4; No. 14 of 1996 s. 4; No. 42 of 1998 s. 4 and 16; No. 38 of 2002 s. 18; No. 70 of 2003 s. 6; No. 28 of 2006 s. 387; No. 22 of 2012 s. 46 and 69.]

Part II — Administration

[Division 1 heading deleted by No. 42 of 1998 s. 5.]

[8. Deleted by No. 42 of 1998 s. 6.]

9. Terms used

In this Part —

conservation land has the meaning given in section 45(1);

land other than conservation land has the meaning given in section 45(1).

[Section 9 inserted by No. 25 of 2009 s. 4.]

[Division 2 heading deleted by No. 42 of 1998 s. 7.]

10. Powers of FES Commissioner

- (1) The FES Commissioner shall —
 - (a) report to the Minister as often as the FES Commissioner thinks expedient so to do on the best means to be taken for preventing or extinguishing bush fires;
 - (b) perform and undertake such powers and duties as may be entrusted to the FES Commissioner by the Minister;
 - (c) subject to the general control of and direction by the Minister, be responsible for the administration of this Act;
 - (d) recommend to the Minister the prohibited burning times to be declared for the whole or any part of the State;
 - (e) carry out such fire prevention measures as the FES Commissioner considers necessary;
 - (f) carry out research in connection with fire prevention and control and matters pertaining to fire prevention and control;
 - (g) conduct publicity campaigns for the purpose of improving fire prevention measures.

- (2) The FES Commissioner may —

[(a) deleted]

- (b) organise and conduct bush fire brigade demonstrations and competitions and provide prizes and certificates for presentation to bush fire brigades and competitors;
- (c) pay the expenses of bush fire brigades attending bush fire brigade demonstrations.

[Section 10 amended by No. 65 of 1977 s. 7; No. 42 of 1998 s. 8 and 16; No. 22 of 2012 s. 47 and 69.]

[11, 11A. Deleted by No. 42 of 1998 s. 9.]

12. Bush fire liaison officers

- (1) In this section —

departmental officer means a person employed in the Department;

designation means a designation under subsection (2).

- (2) The FES Commissioner may designate a departmental officer to be a bush fire liaison officer.
- (3) There are to be as many bush fire liaison officers as are necessary to perform the functions conferred on bush fire liaison officers by this Act or any other written law.
- (4) A person ceases to be a bush fire liaison officer if the designation of the person is revoked or ceases to have effect.
- (5) The power to make a designation includes —
 - (a) the power to revoke a designation previously made; and
 - (b) the power to designate a person to perform functions of another person who has that designation when it is impractical for that other person to perform the functions.
- (6) A designation ceases to have effect if the person designated ceases to be a departmental officer.

- (7) These are to be in writing —
 - (a) a designation;
 - (b) a revocation of a designation.

[Section 12 inserted by No. 22 of 2012 s. 48.]

13. Duties and powers of bush fire liaison officers

- (1) A bush fire liaison officer shall exercise such powers and perform such duties as the FES Commissioner may direct and may, in addition, exercise all the powers that may be exercised by a bush fire control officer under this Act.
- (2) A bush fire liaison officer shall exercise his powers and perform his duties —
 - (a) subject to such directions as may be given by the FES Commissioner;
 - (b) in such part or parts of the State as the FES Commissioner may direct.
- (3) Subject to subsection (6), in the exercise or performance of any of the powers or duties conferred or imposed on a bush fire liaison officer he shall co-operate with, and act in an advisory capacity to a bush fire control officer.
- (4) If a bush fire is burning in the district of a local government on land other than conservation land, the FES Commissioner may, in writing, authorise a bush fire liaison officer or another person to take control of all operations in relation to that fire —
 - (a) at the request of the local government; or
 - (b) if, because of the nature or extent of the bush fire, the FES Commissioner considers that it is appropriate to do so.
- (5) If a bush fire is burning on conservation land, the FES Commissioner may, in writing, authorise a bush fire liaison officer or another person to take control of all operations in relation to that fire —
 - (a) at the request of the CALM Act CEO; or

- (b) if, because of the nature or extent of the bush fire, the FES Commissioner considers that it is appropriate to do so.
- (6) If, under subsection (4) or (5), a bush fire liaison officer or another person (an **authorised person**) is authorised to take control of all operations in relation to a fire, all —
 - (a) bush fire control officers; and
 - (b) bush fire liaison officers; and
 - (c) authorised CALM Act officers; and
 - (d) officers and members of a bush fire brigade,who are present at the fire are in all respects subject to, and are to act under, the authorised person's orders and directions.
- (7) If a person other than a bush fire liaison officer is authorised under subsection (4) or (5), the person is to be taken to be a bush fire liaison officer during the period that the authorisation has effect.

[Section 13 inserted by No. 65 of 1977 s. 10; amended by No. 42 of 1998 s. 16; No. 38 of 2002 s. 19; No. 25 of 2009 s. 5; No. 22 of 2012 s. 69.]

14A. Powers and duties under section 13 not affected by certain powers under *Emergency Management Act 2005*

- (1) This section has effect despite the *Emergency Management Act 2005* section 8(1).
- (2) The exercise of powers and the performance of duties by a bush fire liaison officer or another person on being authorised to take control of all operations in relation to a bush fire under section 13(4) or (5) are not limited or otherwise affected by —
 - (a) a hazard management agency being prescribed in relation to fire under the *Emergency Management Act 2005*; or

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- (b) the powers that may be exercised under that Act by the hazard management agency's hazard management officers as the result of the declaration of an emergency situation under that Act.

[Section 14A inserted by No. 25 of 2009 s. 6.]

14B. Powers of authorised persons and police officers during authorised periods

- (1) In this section —

affected area means the area specified in an authorisation as the area affected by the relevant bush fire;

authorisation means an authorisation to take control of all operations in relation to a bush fire given by the FES Commissioner under section 13(4) or (5);

authorised period means the period specified in an authorisation as the period during which the authorisation has effect;

authorised person means a bush fire liaison officer or another person who is given an authorisation and includes a person acting under an authorised person's orders and directions under section 13(6);

relevant bush fire means the bush fire in relation to which an authorisation is given.

- (2) During the authorised period, an authorised person or a member of the Police Force may do all or any of the following —
- (a) direct, or by direction prohibit, the movement of persons, animals and vehicles within, into, out of or around the affected area or any part of the affected area;
- (b) direct the evacuation and removal of persons or animals from the affected area or any part of the affected area;
- (c) close any road, access route or area of water in or leading to the affected area.
- (3) During the authorised period and for the purposes of controlling or extinguishing the relevant bush fire, an authorised person

may use a vehicle in any place and in any circumstance despite any provision of the *Road Traffic (Vehicles) Act 2012* that requires a permit for the use of that vehicle or for the use of that vehicle in that place or in that circumstance.

- (4) This section does not limit the powers of a bush fire liaison officer, a member of the Police Force or another person under another provision of this Act or any other written law.

[Section 14B inserted by No. 25 of 2009 s. 6; amended by No. 22 of 2012 s. 49 and 69; No. 8 of 2012 s. 47.]

14C. Failure to comply with directions

- (1) A person given a direction under section 14B(2) must comply with the direction.

Penalty: a fine of \$25 000.

- (2) A person must comply with a direction referred to in subsection (1) despite the provisions of any other written law, and the person does not commit an offence by reason of that compliance.

- (3) In proceedings for an offence under subsection (1), an authorisation given under section 13(4) or (5), including the affected area and the authorised period specified in the authorisation, may be proved by tendering a copy of the authorisation certified by the FES Commissioner to be a true copy of the original.

[Section 14C inserted by No. 25 of 2009 s. 6; amended by No. 22 of 2012 s. 69.]

14. Certain persons may enter land or building for purposes of Act

- (1) A person employed in the Department who is authorised by the FES Commissioner so to do, a bush fire liaison officer and a bush fire control officer, designated or appointed in accordance with the provisions of this Act, and, subject to subsection (1A),

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a member of the Police Force, is empowered to enter any land or building at any time to —

- (a) examine a fire which he has reason to believe has been lit, or maintained, or used in contravention of this Act;
- (b) examine a fire which he believes is not under proper control;
- (c) examine fire-breaks on the land;
- (d) examine anything which he considers to be a fire hazard existing on the land;
- (e) investigate the cause and origin of a fire which has been burning on the land or building;
- (f) inspect fire precaution measures taken on the land;
- (g) investigate and examine the equipment of a bush fire brigade;
- (h) do all things necessary for the purpose of giving effect to this Act.

(1A) Despite subsection (1), a member of the Police Force is not empowered under this section to enter any land or building for any purpose other than those specified in subsection (1)(a), (b) and (e).

(2) A bush fire liaison officer or a member of the Police Force exercising the power conferred by subsection (1)(e) may remove from the land or building, and keep possession of, anything which may tend to prove the origin of the fire.

[Section 14 amended by No. 11 of 1963 s. 5; No. 65 of 1977 s. 11 and 47; No. 60 of 1992 s. 8; No. 42 of 1998 s. 16; No. 38 of 2002 s. 20; No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 50.]

[Divisions 3 and 4 (s. 15-16E) deleted by No. 42 of 1998 s. 11(1).]

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[Division 1 deleted by No. 65 of 1977 s. 12.]

Division 2 — Prohibited burning times

17. Prohibited burning times may be declared by Minister

- (1) The Minister may, by declaration published in the *Gazette*, declare the times of the year during which it is unlawful to set fire to the bush within a zone of the State mentioned in the declaration and may, by subsequent declaration so published, vary that declaration or revoke that declaration either absolutely or for the purpose of substituting another declaration for the declaration so revoked.
- (2) Where by declaration made under subsection (1) prohibited burning times have been declared in respect of a zone of the State then, subject to such variations (if any) as are made under that subsection from time to time, those prohibited burning times shall have effect in respect of that zone in each year until that declaration is revoked.
- (3) A copy of the *Gazette* containing a declaration published under subsection (1) shall be received in all courts as evidence of the matters set out in the declaration.
- (4) Where the FES Commissioner considers that burning should be carried out on any land, the FES Commissioner may suspend the operation of a declaration made under subsection (1), so far as the declaration extends to that land, for such period as the FES Commissioner thinks fit and specifies and subject to such conditions as may be prescribed or as the FES Commissioner thinks fit and specifies.
- (5) The FES Commissioner may authorise a person employed in the Department to regulate, permit or define the class of burning that may be carried out, and the times when and conditions under which a fire may be lit, on the land referred to in

subsection (4) during the period of suspension granted under that subsection.

- (6) In any year in which the FES Commissioner considers that seasonal conditions warrant a variation of the prohibited burning times in a zone of the State the FES Commissioner may, by notice published in the *Gazette*, vary the prohibited burning times in respect of that year in the zone or a part of the zone by —
- (a) shortening, extending, suspending or reimposing a period of prohibited burning times; or
 - (b) imposing a further period of prohibited burning times.
- (7) Subject to subsection (7B), in any year in which a local government considers that seasonal conditions warrant a variation of the prohibited burning times in its district the local government may, after consultation with an authorised CALM Act officer if forest land is situated in the district, vary the prohibited burning times in respect of that year in the district or a part of the district by —
- (a) shortening, extending, suspending or reimposing a period of prohibited burning times; or
 - (b) imposing a further period of prohibited burning times.
- (7B) A variation of prohibited burning times shall not be made under subsection (7) if that variation would have the effect of shortening or suspending those prohibited burning times by, or for, more than 14 successive days.
- (8) Where, under subsection (7), a local government makes a variation to the prohibited burning times in respect of its district or a part of its district the following provisions shall apply —
- (a) the local government —
 - (i) shall, by the quickest means available to it and not later than 2 days before the first day affected by the variation, give notice of the variation to

- any local government whose district adjoins that district;
- (ii) shall, by the quickest means available to it, give particulars of the variation to the FES Commissioner and to any Government department or instrumentality which has land in that district under its care, control and management and which has requested the local government to notify it of all variations made from time to time by the local government under this section or section 18;
 - (iii) shall, as soon as is practicable publish particulars of the variation in that district;
- (b) the Minister, on the recommendation of the FES Commissioner, may give notice in writing to the local government directing it —
- (i) to rescind the variation; or
 - (ii) to modify the variation in such manner as is specified in the notice;
- (c) on receipt of a notice given under paragraph (b) the local government shall forthwith —
- (i) rescind or modify the variation as directed in the notice; and
 - (ii) publish in that district notice of the rescission or particulars of the modification, as the case may require.
- (9) For the purposes of subsection (8) —
- publish*** means to publish in a newspaper circulating in the district of the local government, to broadcast from a radio broadcasting station that gives radio broadcasting coverage to that district, to place notices in prominent positions in that district, or to publish by such other method as the FES Commissioner may specify in writing.

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- (10) A local government may by resolution delegate to its mayor, or president, and its Chief Bush Fire Control Officer, jointly its powers and duties under subsections (7) and (8).
- (11) A local government may by resolution revoke a delegation it has given under subsection (10) and no delegation so given prevents the exercise and discharge by the local government of its powers and duties under subsections (7) and (8).
- (12) Subject to this Act a person who sets fire to the bush on land within a zone of the State during the prohibited burning times for that zone is guilty of an offence.

Penalty: \$10 000 or 12 months' imprisonment or both.

[Section 17 inserted by No. 65 of 1977 s. 13; amended by No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 21 and 40(1); No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 51 and 69.]

Division 3 — Restricted burning times

18. Restricted burning times may be declared by FES Commissioner

- (1) Nothing contained in this section authorises the burning of bush during the prohibited burning times.
- (2) The FES Commissioner may, by notice published in the *Gazette*, declare the times of the year during which it is unlawful to set fire to the bush within a zone of the State mentioned in the notice except in accordance with a permit obtained under this section and with the conditions prescribed for the purposes of this section, and may, by subsequent notice so published, vary that declaration or revoke that declaration either wholly or for the purpose of substituting another declaration for the declaration so revoked.
- (3) Where by declaration made under subsection (2) restricted burning times have been declared in respect of a zone of the State then, subject to such variations (if any) as are made under

that subsection from time to time, those restricted burning times shall have effect in respect of that zone in each year until that declaration is revoked.

- (4) A copy of the *Gazette* containing a declaration published under subsection (2) shall be received in all courts as evidence of the matters set out in the declaration.
- (4a) In any year in which the FES Commissioner considers that seasonal conditions warrant a variation of the restricted burning times in a zone, or part of a zone, of the State the FES Commissioner may, by notice published in the *Gazette*, vary the restricted burning times in respect of that year in the zone or part of the zone by —
 - (a) shortening, extending, suspending or reimposing a period of restricted burning times; or
 - (b) imposing a further period of restricted burning times.
- (5) Subject to subsection (5B) in any year in which a local government considers that seasonal conditions so warrant the local government may, after consultation with an authorised CALM Act officer if forest land is situated in its district —
 - (a) vary the restricted burning times in respect of that year in the district or a part of the district by —
 - (i) shortening, extending, suspending or reimposing a period of restricted burning times; or
 - (ii) imposing a further period of restricted burning times;
 - or
 - (b) vary the prescribed conditions by modifying or suspending all or any of those conditions.
- (5B) A variation shall not be made under subsection (5) if that variation would have the effect of —
 - (a) shortening the restricted burning times by; or

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- (b) suspending the restricted burning times, or any prescribed condition, for,

more than 14 successive days during a period that would, in the absence of the variation under subsection (5), be part of the restricted burning times for that zone in that year.

- (5C) The provisions of section 17(8), (9), (10) and (11), with the necessary adaptations and modifications, apply to and in relation to the variation of restricted burning times or prescribed conditions by a local government, as if those provisions were expressly incorporated in this section.

- (5D) In subsections (5) and (5C) —
prescribed condition includes the requirement of subsection (6)(a).

- (6) Subject to this Act a person shall not set fire to the bush on land within a zone of the State during the restricted burning times for that zone of the State unless —

- (a) he has obtained a permit in writing to burn the bush from a bush fire control officer of the local government in whose district the land upon which the bush proposed to be burnt is situated, or from the chief executive officer of the local government if a bush fire control officer is not available; and
- (b) the conditions prescribed for the purposes of this section are complied with in relation to the burning of the bush.

- (7) The person issuing a permit to burn under this section may, by endorsement on the permit —

- (a) incorporate therein any additional requirements and directions considered necessary by him relative to the burning; or
- (b) modify or dispense with any of the conditions prescribed for the purposes of this section in so far as those conditions are applicable to the burning.

- (8) The holder of a permit to burn under this section —
- (a) shall observe and carry out any requirement or direction incorporated therein pursuant to subsection (7)(a);
 - (b) shall, where any prescribed condition is modified pursuant to subsection (5) or subsection (7)(b), comply with that condition as so modified;
 - (c) need not comply with any prescribed condition that is suspended or dispensed with pursuant to subsection (5) or (7)(b).
- (9) A permit issued under this section may authorise the owner or occupier of land to burn the bush on a road reserve adjoining that land.
- (10A) Subject to the regulations a local government may by resolution declare that within its district bush may be burnt only on such dates and by such persons as are prescribed by a schedule of burning times adopted by the local government.
- (10B) A person desiring to set fire to bush within the district of the local government that has made a declaration under subsection (10A) shall, by such date as may be determined by the local government, apply to the local government for permission to set fire to the bush, and the local government shall allocate a day or days on which the burning may take place.
- (10C) Any burning permitted under subsection (10B) shall be done only on the day or days and in the manner specified by the local government and subject to the conditions prescribed for the purposes of this section except that any prescribed period of notice may be varied by the local government in order to enable the schedule of burning times adopted by it to be given effect to.
- (11) Where a person starts a fire on land, if the fire escapes from the land or if the fire is in the opinion of a bush fire control officer or an officer of a bush fire brigade out of control on the land, the person shall be liable to pay to the local government on the request of and for recoup to its bush fire brigade, any expenses up to a maximum amount of \$10 000 incurred by it in

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preventing the extension of or extinguishing the fire, and such expenses may be recovered in any court of competent jurisdiction.

- (12) A person who commits a breach of this section other than subsection (11) is guilty of an offence.

Penalty: For a first offence \$4 500.

For a second or subsequent offence \$10 000.

[Section 18 inserted by No. 65 of 1977 s. 14; amended by No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 22, 39 and 40(1); No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 69.]

[19. Deleted by No. 65 of 1977 s. 15.]

20. Regulations as to restricted burning times

- (1) The Governor may make regulations prescribing the conditions under which bush may be burnt under section 18.
- (2) Without limiting the generality of subsection (1), regulations may be made —
- (a) requiring a person who intends to burn bush to give notice to such persons as are specified in the regulations and prescribing the matters to be included in the notice and the methods by which the notice may be given;
 - (b) prescribing the precautions to be taken before a fire is lit, and whilst it is alight, in order to keep it under control and to prevent it from spreading beyond the land in respect of which a permit to burn has been obtained under section 18;
 - (c) prescribing, by reference to fire danger forecasts issued by the Bureau of Meteorology in Perth, the days on which a person may set fire to the bush.
- (3) Regulations may be made under this section —
- (a) so as to apply throughout the State or in any specified part or parts of the State;

- (b) so that different regulations apply to different parts of the State.

[Section 20 inserted by No. 65 of 1977 s. 16.]

Division 4 — Total fire ban

[Heading inserted by No. 25 of 2009 s. 7.]

21. Terms used

In this Division —

area of the State includes the whole of the State;

total fire ban means a total fire ban declared under section 22A(1).

[Section 21 inserted by No. 25 of 2009 s. 7.]

22A. Minister may declare total fire ban

- (1) If the Minister is of the opinion that —
- (a) the existing weather conditions in an area of the State are conducive to the outbreak or spread of bush fires; or
 - (b) such weather conditions in an area of the State are imminent; or
 - (c) it is otherwise necessary to declare a total fire ban in respect of an area of the State,

the Minister may declare a total fire ban in respect of that area.

- (2) A declaration of a total fire ban may be made by radio broadcast, television or other electronic means or in another manner that the Minister considers appropriate.
- (3) The declaration of a total fire ban is to specify —
- (a) the period during which; and
 - (b) the area of the State in respect of which,
- the total fire ban is to have effect, and the total fire ban has effect accordingly.

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- (4) The Minister may amend or revoke the declaration of a total fire ban by a declaration made in the manner in which the declaration of the total fire ban was made.
- (5) The Minister is to publish a declaration under this section in the *Gazette*.
- (6) A failure to comply with subsection (5) in relation to a declaration does not invalidate the declaration.

[Section 22A inserted by No. 25 of 2009 s. 7.]

22B. Lighting of fires prohibited during total fire ban

- (1) Subsection (2) —
 - (a) has effect subject to subsection (4) and sections 22C and 64 and any exemption provided for in the regulations but despite any other provision of this Act; and
 - (b) applies —
 - (i) in the period during which; and
 - (ii) in the area of the State in respect of which, a total fire ban has effect.
- (2) A person must not —
 - (a) light, maintain or use a fire in the open air; or
 - (b) carry out an activity in the open air that causes, or is likely to cause, a fire.

Penalty: a fine of \$25 000 or imprisonment for 12 months, or both.

- (3) Without limiting subsection (2), a person commits an offence under that provision if the person —
 - (a) uses in the open air an appliance that consumes solid fuel; or

- (b) carries out in the open air any process or operation that is specified in regulations made under section 27A(1)(a)(ii) as being a process or operation likely to create a bush fire danger; or
 - (c) carries out in the open air an activity that is prescribed by the regulations for the purposes of this subsection.
- (4) Subsection (2) —
- (a) does not prohibit the use of a gas appliance as authorised under section 25(1aa); and
 - (b) does not apply to an activity, or in circumstances, prescribed by the regulations for the purposes of this subsection.

[Section 22B inserted by No. 25 of 2009 s. 7.]

22C. Power of Minister to exempt from provisions of section 22B

- (1) Subsection (2) has effect if the Minister is advised in writing by the FES Commissioner that, in the opinion of the FES Commissioner, a person has taken adequate precautions for the —
- (a) prevention of the spread or extension; and
 - (b) control; and
 - (c) extinguishment, if necessary,
- of any fire that is to be lit, or that may be caused by the carrying out of an activity in the open air, in the period during which, and in the area in respect of which, a total fire ban has effect.
- (2) If this subsection has effect, the Minister may, in respect of any such fire as is so lit or may be so caused, exempt the person, and any person acting under that person's instructions, either wholly or partially from the operation of the provisions of section 22B.
- (3) An exemption granted by the Minister under this section —
- (a) is to be in writing signed by the Minister; and

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- (b) may be revoked or varied at any time by the Minister by notice in writing signed by the Minister and served on the person to whom the exemption was granted; and
 - (c) unless sooner revoked, has effect for the period specified in the exemption; and
 - (d) is subject to such conditions as the Minister thinks fit to impose and specifies in the exemption; and
 - (e) authorises the person to whom it is granted, and any person acting under that person's instructions, subject only to any conditions specified in the exemption —
 - (i) to light, maintain or use in the open air any fire authorised to be lit, maintained or used under the authority of the exemption; or
 - (ii) to carry out in the open air any activity authorised to be carried out under the authority of the exemption;and
 - (f) if paragraph (e)(i) applies — exempts any fire to which the exemption relates from the operation of section 46.
- (4) The Minister may at any time, by notice in writing signed by the Minister and served on the person to whom the exemption was granted, revoke or vary, whether by way of addition or substitution, any conditions specified in the exemption.
- (5) A person to whom an exemption is granted under this section must observe and carry out any conditions specified in the exemption.

Penalty: a fine of \$25 000 or imprisonment for 12 months, or both.

[Section 22C inserted by No. 25 of 2009 s. 7; amended by No. 22 of 2012 s. 52.]

Division 5 — Burning during prohibited times and restricted times

22. Burning on exempt land and land adjoining exempt land

- (1) For the purpose of this section —

common boundary means the boundary common to exempt land and adjoining land, and includes the boundary of exempt land which is separated by a road, railway, or watercourse from the boundary of any other land;

exempt land means land that is for the time being the subject of a suspension granted pursuant to the provisions of section 17(4).

- (2) Where, during the operation of a suspension granted pursuant to the provisions of section 17(4), the occupier of exempt land sets fire to the bush on that land, the occupier of the adjoining land may, subject to provisions of this section, for the purpose of reducing or abating a fire hazard, set fire to the bush on the adjoining land between the common boundary and the fire-break referred to in subsection (3)(b).
- (3) Before setting fire to the bush on land which is adjoining exempt land, as provided in the last preceding subsection, the occupier of the adjoining land shall —
- (a) notify the local government in whose district the adjoining land is situated, of his intention so to do and obtain its approval in writing to burn;
 - (b) prepare a fire-break having a width of at least 3 m and the boundary of which nearer to and parallel or approximately parallel with the boundary of the exempt land is not at any point, of a greater distance than 60 m from that boundary.
- (4) The occupier of the adjoining land shall comply with and observe the provisions of this Act generally and of the conditions prescribed for the purposes of section 18, as modified by the provisions of this section particularly.

- (5) The occupier of the adjoining land and the occupier of the exempt land shall, in so far as is reasonably practicable, co-operate with each other in setting fire to bush on the adjoining and the exempt land.
- (6) A local government in whose district the burning is to take place may arrange with the occupier of exempt land, the occupier of land adjoining it and a bush fire brigade which has been registered by the local government, to co-operate in burning fire-breaks on the respective lands.
- (7) Where an arrangement is made in pursuance of subsection (6) the local government shall notify the occupier of the adjoining land of the date the burning is to take place and require him to provide by that date ploughed or cleared fire-breaks parallel to the common boundary and of a distance therefrom of not more than 60 m and as specified by the local government.
- (8) Where the occupier of exempt land and a bush fire brigade are burning bush on exempt land in pursuance of an arrangement made under subsection (6) —
 - (a) the occupier of the land adjoining the exempt land shall assist in the burning of the bush;
 - (b) a bush fire control officer or an officer of the bush fire brigade may enter the adjoining land and set fire to the bush thereon for the purpose of making a fire-break.

[Section 22 amended by No. 11 of 1963 s. 9; No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 17; No. 51 of 1979 s. 5; No. 14 of 1996 s. 4; No. 19 of 2010 s. 52(4).]

23. Burning during prohibited burning times

- (1) Subject to this section the owner or occupier of land may during the prohibited burning times for the zone of the State in which his land is situated —
 - (a) at any time, burn the bush on his land for the purpose of protecting a dwelling house or other building, or a stack of hay, wheat or other produce, from damage by fire;

between 2 fire-breaks that are not more than 20 m apart and each of which is not less than 2 m in width;

and

- (b) the conditions prescribed for the purposes of section 18; and
- (c) such other conditions as are stipulated in the permit issued under this section.

[Section 23 inserted by No. 65 of 1977 s. 18; amended by No. 14 of 1996 s. 4.]

24. Bush on land growing subterranean clover may be burnt during prohibited burning times

The owner or occupier of land upon which subterranean clover is growing may burn the clover during the prohibited burning times for the purpose of facilitating the collection from it of clover burr subject to the regulations and to the following conditions —

- (a) the owner or occupier of the land applies for, pays the prescribed fee for and obtains from a duly authorised officer for the district of the local government in which the land is situated, a permit in the prescribed form to burn clover;
- (b) the permit to burn shall not be granted unless and until the applicant satisfies the authorised officer to whom the application is made that —
 - (i) the area of the land on which the clover proposed to be burnt at one time under the permit being applied for does not exceed the area to be specified in the permit, and in any event does not exceed such area as the local government from time to time determines;
 - (ii) the area is surrounded by a fire-break to a width of not less than 3 m;

- (iii) where the area on which the burning is to take place is carrying live or dead standing trees, the area has been grazed during the growing period of the clover crop to reduce the amount of dead litter to a minimum, and that all grass and debris has been raked to a distance of not less than 2 m from the base of each standing tree.

[Section 24 amended by No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 19; No. 51 of 1979 s. 5; No. 14 of 1996 s. 4.]

24A. Bush on land in prescribed irrigation areas may be burnt during prohibited times for purpose of germinating clover

- (1) This section applies in those parts of the State only, which are prescribed by the regulations as areas of irrigation to which this section applies.
- (2) The owner or occupier of land in any area of irrigation so prescribed may for the purpose of conducting to the early germination of subterranean clover on the land, burn bush on the land during the prohibited burning times, subject to the regulations and conditions which are referred to in section 24, and which shall apply subject to modification or variation under subsection (4).
- (3) A fee is not payable for a permit required under this section unless regulations made under subsection (4) prescribe otherwise.
- (4) The provisions of the regulations mentioned in section 24, and the provisions of paragraphs (a) and (b) of that section, may be modified, varied, added to, or substituted, by regulations made in relation to burning under this section, but until so modified, varied, added to, or substituted, those provisions continue to apply, subject to subsection (3), to burning under this section.

[Section 24A inserted by No. 35 of 1957 s. 4; amended by No. 11 of 1963 s. 10; No. 19 of 2010 s. 52(4).]

24B. Production of permit to burn may be required

- (1) A person employed in the Department authorised by the FES Commissioner so to do, a bush fire liaison officer, a bush fire control officer, an officer of a bush fire brigade, a member of the Police Force, or an officer of a local government authorised by it so to do, may require a person who has set fire to the bush, or to clover, on any land during the prohibited burning times or restricted burning times to produce the permit to burn issued to that person under the provisions of this Act in respect of the fire so lit by him.
- (2) Where a person does not produce a permit to burn immediately upon being required under subsection (1) to do so, the officer who made the requirement may require that person to identify the person by whom that permit was issued.
- (3) A person —
 - (a) who does not, within 7 days after being required under subsection (1) to produce a permit to burn, produce that permit to the officer who made the requirement or to a person nominated by that officer;
 - (b) who when required under subsection (2) to identify the person who issued a permit to burn to him fails or refuses to name or otherwise identify that person,

is guilty of an offence.

Penalty: \$500.

[Section 24B inserted by No. 11 of 1963 s. 11; amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 20 and 47; No. 51 of 1979 s. 5; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 22 of 2012 s. 53.]

24C. Terms used

In this section and sections 24D to 24G —

burn garden refuse means light or use a fire in the open air for the purpose of destroying garden refuse or rubbish or for any like purpose;

limited burning times, in respect of a place, means —

- (a) the restricted burning times; and
- (b) the prohibited burning times,

for that place but excluding any time when there is in force a fire danger forecast issued for that place by the Bureau of Meteorology in Perth of “catastrophic”, “extreme”, “severe” or “very high”;

rubbish tip means a landfill site of a kind that is prescribed for the purposes of Part V of the *Environmental Protection Act 1986*;

specified, in relation to a notice, means specified in the notice.

[Section 24C inserted by No. 38 of 2002 s. 24; amended by No. 25 of 2009 s. 8.]

24D. Burning garden refuse prohibited if fire danger very high to catastrophic

A person must not burn garden refuse at any place at any time when there is in force a fire danger forecast issued for that place by the Bureau of Meteorology in Perth of “catastrophic”, “extreme”, “severe” or “very high”.

Penalty: \$3 000.

[Section 24D inserted by No. 38 of 2002 s. 24; amended by No. 25 of 2009 s. 9.]

24E. Burning of garden refuse at rubbish tips

- (1) A person must not burn garden refuse at a rubbish tip during the limited burning times for the area in which the tip is located unless it is burned in accordance with a notice published under subsection (2).

Penalty: \$10 000.

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- (2) On the recommendation of the FES Commissioner the Minister may, by notice published in the *Gazette*, permit the burning of garden refuse at a rubbish tip during the limited burning times for the area in which the tip is located.
- (3) In a notice under subsection (2) the Minister —
 - (a) must specify —
 - (i) the person or class of persons to whom; and
 - (ii) the area in which; and
 - (iii) the period during which, the notice applies; and
 - (b) may impose such conditions on the burning of garden refuse as the Minister considers appropriate.
- (4) The Minister may vary or cancel a notice under this section by publishing a further notice.

[Section 24E inserted by No. 38 of 2002 s. 24; amended by No. 22 of 2012 s. 54.]

24F. Burning garden refuse during limited burning times

- (1) A person must not burn garden refuse at a place (other than a rubbish tip) during the limited burning times for that place unless it is burned —
 - (a) in an incinerator in accordance with subsection (2); or
 - (b) on the ground in accordance with subsection (3).

Penalty: \$3 000.

- (2) Garden refuse burned in an incinerator is burned in accordance with this subsection if —
 - (a) the incinerator is designed and constructed so as to prevent the escape of sparks or burning material; and

- (b) either —
 - (i) the incinerator is situated 2 m or more away from any building or fence; or
 - (ii) if the incinerator is within 2 m of a building or fence, the local government has given written permission for the incinerator to be used;and
 - (c) there is no inflammable material within 2 m of the incinerator while it is in use; and
 - (d) at least one person is present at the site of the fire at all times until it is completely extinguished; and
 - (e) when the fire is no longer required, the person ensures that the fire is completely extinguished by the application of water or earth.
- (3) Garden refuse burned on the ground is burned in accordance with this subsection if —
- (a) there is no inflammable material (other than that being burned) within 5 m of the fire at any time while the fire is burning; and
 - (b) the fire is lit between 6 p.m. and 11 p.m. and is completely extinguished before midnight on the same day; and
 - (c) at least one person is present at the site of the fire at all times until it is completely extinguished; and
 - (d) when the fire is no longer required, the person ensures that the fire is completely extinguished by the application of water or earth.
- (4) A local government must not give permission under subsection (2)(b)(ii) unless it is satisfied that the use of the incinerator is not likely to create a fire hazard.

[Section 24F inserted by No. 38 of 2002 s. 24.]

24G. Minister or local government may further restrict burning of garden refuse

- (1) On the recommendation of the FES Commissioner the Minister may, by notice published in the *Gazette*, prohibit or impose restrictions on the burning of garden refuse that is otherwise permitted under section 24F.
- (2) A local government may, by notice published in the *Gazette* and a newspaper circulating in its district, prohibit or impose restrictions on the burning of garden refuse within its district that is otherwise permitted under section 24F.
- (3) A person must not burn garden refuse contrary to a prohibition or restriction imposed under this section.
Penalty: \$3 000.
- (4) In a notice under this section the Minister or a local government must specify —
 - (a) the person or class of persons to whom; and
 - (b) the area in which; and
 - (c) the period during which,the notice applies.
- (5) The Minister or a local government may vary or cancel a notice under subsection (1) or (2) by publishing a further notice under the relevant subsection.

[Section 24G inserted by No. 38 of 2002 s. 24; amended by No. 22 of 2012 s. 55.]

25. No fire to be lit in open air unless certain precautions taken

- (1) Subject to subsection (1aa) and section 25A, during the restricted burning times or during the prohibited burning times a person shall not light or use a fire in the open air for a purpose not specifically mentioned or provided for in this Act, save and

except in accordance with and subject to the following provisions —

- (a) a fire for the purpose of camping or cooking shall not be lit within 3 m of a log or stump and unless and until a space of ground around the site of the fire having a radius of at least 3 m from the site as the centre, is cleared of all bush and other inflammable material, and when for any day, or any period of a day, the fire danger forecast by the Bureau of Meteorology in Perth in respect of the locality wherein it is desired to light or use a fire for such purpose is “catastrophic”, “extreme”, “severe” or “very high”, such fire shall not be lit on that day or during that period unless and until the approval in writing of the local government for that locality has been obtained so to do;
- (b) a fire shall not be lit for the conversion of bush into charcoal, or in or about a lime kiln for the production of lime, unless and until approval in writing is obtained from the local government in whose district the burning is proposed to be carried out and a space of ground around the perimeter of a kiln, pit, or retort used for the purpose is cleared of all bush and other inflammable material for a distance of at least 6 m and such directions and requirements, if any, as are given or specified by a bush fire control officer or authorised CALM Act officer as being in his opinion, necessary for the purpose of preventing the fire from spreading or escaping, are duly carried out or complied with;
- (c) a fire for the purpose of disposing of the carcass of a dead animal, or a part of the carcass, shall not be lit —
 - (i) unless and until a space of ground around the perimeter of the fire and the carcass or part to be burnt is cleared of all bush and other inflammable material for a distance of at least 6 m;

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- (ii) within a distance of 6 m of a standing tree, whether dead or living and unless at least one person remains in attendance constantly at the fire, and the directions which may be given by a bush fire liaison officer or bush fire control officer in respect of the fire are complied with;
- (iii) except between the hours of 6 p.m. and 11 p.m.;
- (iv) unless and until notice of intention so to do has been given to the occupier of all land adjoining the land on which the burning is to take place and to a bush fire control officer of the local government for the district in which the fire is to be lit;

[(d), (e) deleted]

- (f) where a fire is lit for any purpose mentioned in this subsection, except for the purpose mentioned in paragraph (b), the person who lit the fire, or the person left in attendance on the fire as required by this subsection, as the case may be, shall completely extinguish the fire by the application of water or earth before he leaves it;
- (g) where the occupier of a sawmill uses a fire on the premises of the sawmill for the purpose of consuming or disposing of sawdust and waste timber resulting from the sawmilling of timber in the sawmill, if the occupier causes reasonable precautions to be taken for the purpose of preventing the fire from spreading or becoming a source of danger to persons or property, and causes the particular directions or requisitions of a bush fire control officer, bush fire liaison officer or of an authorised CALM Act officer in respect of the fire to be properly observed, the occupier is not required to extinguish the fire whilst it continues to be required for the purpose;

- (h) where the occupier of a brick kiln uses a fire on the premises of the brick kiln for the purpose of burning and producing bricks, such occupier is not required to extinguish the fire while it continues to be required for that purpose, if he takes or causes to be taken reasonable precautions to prevent the fire from spreading or becoming a source of danger to persons or property and observes or causes to be observed properly the particular directions or requisitions of a bush fire control officer, bush fire liaison officer or authorised CALM Act officer in respect of the fire.
- (1aa) For the purposes of this section a gas appliance, comprising a fire the flame of which is encapsulated by the appliance and which does not consume solid fuel, shall not be taken to be a fire in the open air and may be used at any time for the purpose of camping or cooking if that gas appliance is used —
- (a) at a person's home; or
 - (b) in an area which —
 - (i) is set aside for that purpose by the State Authority or local government responsible for the care, control or management of the land; and
 - (ii) bears the State Authority's or local government's sign denoting that purpose,
- and all combustible material is cleared from within a 5 m radius of the appliance.
- (1a) Notwithstanding anything contained in subsection (1) a local government may, by notice published in the *Gazette* and in a newspaper circulating in its district, prohibit the lighting of fires in the open air in its district for the purpose of camping or cooking for such period during the prohibited burning times as is specified in the notice.
- (1b) A notice published under subsection (1a) may be cancelled or varied by a subsequent notice so published.

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- (1c) During any period for which the lighting of fires for the purpose of camping or cooking is prohibited in the district of a local government by a notice published under subsection (1a) a person shall not light a fire in the open air in that district for either of those purposes unless the fire is lit —
- (a) in a place specified in the notice as being set aside for the lighting of camping and cooking fires; or
 - (b) with the approval in writing of the local government.
- (1d) The provisions of subsection (1)(a) and (f) shall be complied with in relation to a fire lit pursuant to subsection (1c).
- (2) A person who contravenes a provision of this section is guilty of an offence.

Penalty: \$3 000.

[Section 25 amended by No. 11 of 1963 s. 12; No. 15 of 1965 s. 2; No. 113 of 1965 s. 8(1); No. 101 of 1969 s. 5; No. 67 of 1970 s. 2; No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 21, 47 and 48; No. 51 of 1979 s. 5; No. 8 of 1987 s. 8; No. 60 of 1992 s. 23; No. 14 of 1996 s. 4; No. 57 of 1997 s. 26(1); No. 10 of 1998 s. 20(1); No. 38 of 2002 s. 25, 39 and 40; No. 25 of 2009 s. 10; No. 19 of 2010 s. 52(4).]

25A. Power of Minister to exempt from provisions of section 25

- (1) Where the Minister is advised in writing by the FES Commissioner that, in the opinion of the FES Commissioner, a person has taken adequate precautions for the —
- (a) prevention of the spread or extension; and
 - (b) control; and
 - (c) extinguishment, if necessary,

of any fire that is to be lit in the open air during the restricted burning times or the prohibited burning times the Minister may, in respect of any such fire as is so lit, exempt the person and any person acting under his instructions, either wholly or partially from the operation of the provisions of section 25.

- (2) An exemption granted by the Minister under this section —
- (a) shall be in writing signed by the Minister; and
 - (b) may be revoked at any time by the Minister by notice in writing signed by him and served on the person to whom the exemption was granted; and
 - (c) is subject to such conditions as the Minister thinks fit to impose and specifies in the exemption; and
 - (d) authorises the person to whom it is granted and any person acting under his instructions to light and maintain, subject only to the conditions of the exemption, any fire authorised to be lit and maintained pursuant to the authority of the exemption; and
 - (e) exempts any fire to which the exemption relates from the operation of section 46.
- (3) The Minister may at any time, by notice in writing signed by him and served on the person to whom the exemption was granted, revoke or vary, whether by way of addition or substitution, any conditions specified in the exemption.
- (4) A person to whom an exemption is granted under this section shall observe and carry out any conditions specified therein.
Penalty: \$10 000.
- (5) Notwithstanding any other provision of this section a local government may, by notice in writing served on a person to whom an exemption has been granted under this section, prohibit that person and any person acting under his instructions from lighting a fire to which the exemption relates for such period as is specified in the notice.
- (6) A notice under subsection (5) may prohibit the lighting of a fire either absolutely or unless such conditions as are specified in the notice are complied with.

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- (7) A person who lights a fire contrary to a notice under subsection (5) is guilty of an offence.

Penalty: \$10 000.

[Section 25A inserted by No. 15 of 1965 s. 3; amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 22 and 48; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 26 and 39; No. 22 of 2012 s. 56.]

[25B. Deleted by No. 38 of 2002 s. 27(1).]

26. Burning of plants to eradicate disease during prohibited burning times

- (1) Where in the opinion of the Minister it is desirable that a plant, or the refuse of a plant, should be burnt during the prohibited burning times in order to eradicate the plant or to prevent or eradicate disease arising or likely to arise from the plant, or the refuse, the Governor may, on the recommendation of the Minister, by proclamation —
- (a) authorise the burning of the plant, and the refuse specified in the proclamation, during the prohibited burning times or during any period of the prohibited burning times, as stated in the proclamation; and
 - (b) declare that the proclamation shall take effect either generally or in the particular districts which are specified in the proclamation.
- (2) A proclamation made under the provisions of subsection (1) may be revoked, amended, or varied at any time by a subsequent proclamation.
- (3) Where a proclamation authorises the burning of a plant, or the refuse of the plant, the burning shall be carried out subject to and in accordance with the regulations.
- (4) A person who pursuant to the authority of a proclamation made under this section, burns a plant or the refuse of a plant, and

fails to carry out the burning in accordance with the regulations is guilty of an offence against this Act.

Penalty: A fine not exceeding \$2 000.

- (5) In this section **plant** does not include a plant that is a declared pest as that term is defined by the *Biosecurity and Agriculture Management Act 2007*.

[Section 26 amended by No. 35 of 1957 s. 5; No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 23 and 48; No. 24 of 2007 s. 28(2); No. 38 of 2002 s. 39.]

26A. Burning of declared plants during prohibited burning times

- (1) A plant that is a declared pest as that term is defined by the *Biosecurity and Agriculture Management Act 2007*, or the refuse of such a plant, may be burnt during the prohibited burning times so long as the burning is carried out subject to and in accordance with the regulations.
- (2) A person who, pursuant to the authority of this section, burns a plant or the refuse of a plant and fails to carry out the burning in accordance with the regulations is guilty of an offence against this Act.

Penalty: A fine not exceeding \$2 000.

[Section 26A inserted by No. 65 of 1977 s. 24; amended by No. 38 of 2002 s. 39; No. 24 of 2007 s. 28(3).]

Division 6 — General restrictions, prohibitions and offences

27. Prohibition on use of tractors or engines except under certain conditions

- (1) Subject to the provisions of subsection (2) a person shall not operate, during the prohibited burning times or the restricted burning times —
- (a) a tractor or self-propelled harvester unless —
- (i) its exhaust system, including pipes, is maintained in sound and efficient condition; and

- (ii) its exhaust pipe is fitted with a spark arrester as prescribed by regulation; and
 - (iii) its exhaust pipe terminates so as to discharge exhaust emissions vertically upwards or, in the case of a self-propelled harvester the exhaust pipe of which terminates at least 2 m above the ground, so as to discharge exhaust emissions horizontally or in a direction upwards of the horizontal plane;
- (b) an internal combustion engine, steam engine or other prescribed machinery or vehicle contrary to the regulations or otherwise than in accordance with the regulations.

Penalty: \$5 000.

- (2) A local government may at any time permit the use in orchards within its district of tractors the exhaust pipes of which are not vertical, and in any district where permission is so given, a person may operate in an orchard during the times mentioned in subsection (1) a tractor the exhaust pipe of which is not vertical, so long as the person while operating that tractor complies with the other requirements specified in respect of a tractor in paragraph (a) of that subsection and with the requirements of any notice under subsection (3) having effect in the district for the time being.
- (3) A local government may, by notice published in its district by —
- (a) publication in a newspaper circulating in that district; and
 - (b) broadcast from a radio broadcasting station that gives radio broadcasting coverage to that district; and
 - (c) display in prominent positions in that district,

prohibit the operation in its district of any tractor or self-propelled harvester other than a tractor or self-propelled harvester that is equipped with a fire extinguisher.

- (4) A notice under subsection (3) —
- (a) shall have effect for such period during the prohibited burning times or the restricted burning times, or both, as is specified in the notice;
 - (b) may be varied or cancelled by the local government by a notice published in the manner set out in that subsection.
- (5) During any period for which a notice under subsection (3) has effect in a district a person shall not operate a tractor or self-propelled harvester in that district unless a fire extinguisher as prescribed by regulation is carried on that tractor or self-propelled harvester or, in the case of a tractor, on a trailer, semi-trailer or agricultural machine or appliance being drawn or propelled by that tractor.
- Penalty: \$5 000.
- (6) The Governor may make regulations with respect to the prohibition or regulation of the use of engines, vehicles, plant and machinery during the prohibited burning times or restricted burning times.
- (7) Regulations made under subsection (6) may —
- (a) authorise a local government or a bush fire control officer to prohibit the carrying out of an activity or operation either absolutely or except in accordance with conditions specified in the notice or direction by which the prohibition is imposed or in the regulations;
 - (b) prohibit the carrying out of an activity or operation without the consent of a local government or bush fire control officer;
 - (c) provide that an act or thing shall be done subject to the approval or to the satisfaction of a local government or a bush fire control officer;
 - (d) provide as the penalty for a breach of any regulation so made a maximum penalty of \$5 000.

- (8) The provisions of subsections (6) and (7) are in addition to and not in derogation of those of section 61.

[Section 27 amended by No. 11 of 1963 s. 13; No. 65 of 1977 s. 25; No. 51 of 1979 s. 2; No. 95 of 1981 s. 2; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 38 of 2002 s. 39.]

27A. Regulation of blasting and matters likely to create bush fire danger

- (1) The Governor may make regulations —
- (a) regulating —
 - (i) the use of any materials for the purpose of blasting, including explosives and fuses;
 - (ii) the carrying out in the open air of any process or operation specified in the regulations as being a process or operation likely to create a bush fire danger,

either generally or in any locality or localities specified in the regulations or during any period or periods specified in the regulations;
 - (aa) providing that preparations for, or the carrying out of, blasting or any other process or operation specified in the regulations shall be in accordance with the directions, and to the satisfaction of, a bush fire control officer, officer of a bush fire brigade, or authorised CALM Act officer;
 - (b) prescribing as the penalty for a breach of any regulation so made a maximum penalty of \$10 000.
- (2) The provisions of subsection (1) are in addition to and not in derogation of those of section 61.

[Section 27A inserted by No. 35 of 1957 s. 6; amended by No. 113 of 1965 s. 8; No. 65 of 1977 s. 26 and 48; No. 8 of 1987 s. 8(1); No. 38 of 2002 s. 39 and 40(2).]

27B. False alarms

- (1) A person who, knowing it is false, gives a false alarm of fire to a person employed in the Department, an agent of the FES Commissioner or an employee or agent of a local government, or to a member of a bush fire brigade, or to a bush fire liaison officer, bush fire control officer, or authorised CALM Act officer employed in connection with any forest, commits an offence.

Penalty: \$5 000.

- (2) A court convicting an offender of an offence of giving a false alarm of fire against subsection (1), may assess the amount of any expenses needlessly incurred by the FES Commissioner or any local government, bush fire brigade, or other body or person, as a result of the false alarm, and order the offender to pay the amount so assessed to the FES Commissioner, local government, brigade, body, or person by which or by whom the expenses were so incurred, in addition to or without imposing a penalty on the offender.

[Section 27B inserted by No. 35 of 1957 s. 6; amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 47 and 48; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39 and 40(2); No. 22 of 2012 s. 57 and 69.]

27C. Vandalism

- (1) A person who, except by lawful authority, moves, uses, interferes with, damages or destroys anything provided by the FES Commissioner, a local government, a bush fire control officer, or a bush fire brigade, for preventing, controlling, or extinguishing, bush fires, commits an offence.

Penalty: \$5 000.

- (2) A court convicting an offender of an offence against subsection (1) may assess the amount of expense of replacing, or as the case may be, of repairing or restoring, anything the subject matter of the offence, and order the offender to pay the

amount to the FES Commissioner, or, as the case may be, the local government, bush fire control officer, or bush fire brigade, in addition to or without imposing a penalty on the offender.

[Section 27C inserted by No. 35 of 1957 s. 6; amended by No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39; No. 22 of 2012 s. 69.]

27D. Requirements for carriage and deposit of incendiary material

- (1) In this section *incendiary material* means hot or burning ash, cinders, hot furnace refuse, or any combustible matter that is burning.
- (2) A person shall not use a motor vehicle, or cause it to be used, for the carriage of incendiary material unless —
 - (a) it is used with a metal container that totally encloses, and prevents the escape of, the incendiary material; and
 - (b) it is used in accordance with and subject to any directions or requirements of a local government, a bush fire control officer, a bush fire liaison officer, or an authorised CALM Act officer that apply to the carriage of incendiary material.

Penalty: \$1 000.

- (3) A person shall not deposit incendiary material, or cause it to be deposited, on any land unless —
 - (a) it is deposited with the prior approval of the bush fire control officer of the local government for the district in which the land is situated; and
 - (b) it is deposited in accordance with and subject to any directions or requirements of a local government, a bush fire control officer, a bush fire liaison officer, or an authorised CALM Act officer that apply to the land; and

- (c) it is deposited on a part of the land that is immediately surrounded by a fire-break cleared of all bush and other inflammable material to a width of at least 3 m.

Penalty: \$1 000.

[Section 27D inserted by No. 101 of 1969 s. 7; amended by No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 47 and 48; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 38 of 2002 s. 40(1).]

28. Occupier of land to extinguish bush fire occurring on own land

- (1) Where a bush fire is burning on any land —
- (a) at any time in any year during the restricted burning times; or
- (b) during the prohibited burning times,

and the bush fire is not part of the burning operations being carried on upon the land in accordance with the provisions of this Act, the occupier of the land shall forthwith, upon becoming aware of the bush fire, whether he has lit or caused the same to be lit or not, take all possible measures at his own expense to extinguish the fire.

- (1B) Where he requires assistance for the purpose he shall if practicable, without leaving the fire unattended, inform or cause to be informed the nearest available bush fire control officer, or bush fire brigade officer, of the existence and locality of the fire.
- (2) For the purposes of this section, a fire lit before the commencement of a period of prohibited burning times relating to the district where the fire is situated, and which is still burning at the commencement of those prohibited burning times, is to be regarded as being a bush fire which is not part of the burning operation being carried on upon the land in accordance with the provisions of this Act.

Penalty: \$10 000.

- (3) Where the occupier of the land upon which a bush fire is burning fails to take measures to extinguish it as required by subsection (1), a bush fire liaison officer, a bush fire control officer of any local government or an authorised CALM Act officer employed in connection with any forest land which is within 3 km of the land where the fire is burning may enter upon the land where the fire is burning and take all proper measures to extinguish it.
- (4) In so far as the measures taken by the bush fire liaison officer, bush fire control officer or authorised CALM Act officer are necessitated by reason of the failure of the occupier of the land to comply with subsection (1), any expenses incurred by the bush fire liaison officer, bush fire control officer or authorised CALM Act officer, in taking measures to extinguish the fire, shall be a debt owing by the occupier of the land to the State, local government or CALM Act CEO, respectively.
- (5) The FES Commissioner (on behalf of the State), local government, or CALM Act CEO, as the case may be, may recover the expenses from the occupier in any court of competent jurisdiction.

[Section 28 amended by No. 11 of 1963 s. 14; No. 113 of 1965 s. 8(1); No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 27, 47 and 48; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39 and 40; No. 28 of 2006 s. 388; No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 58.]

[29. Deleted by No. 65 of 1977 s. 28.]

30. Disposal of burning cigarettes etc.

During the restricted burning times or prohibited burning times for a zone of the State a person shall not dispose of burning tobacco, or a burning cigarette, cigar or match, in that zone —

- (a) in circumstances that are likely to set fire to the bush; or

- (b) by throwing it from a vehicle under any circumstances whatever.

Penalty: \$5 000.

[Section 30 inserted by No. 65 of 1977 s. 29; amended by No. 8 of 1987 s. 8; No. 38 of 2002 s. 39.]

[31. Deleted by No. 65 of 1977 s. 30.]

32. Offences of lighting or attempting to light fire likely to injure

- (1) In this section —

property means personal or real property, including Crown land, and includes the bush and fauna.

- (2) A person who —

- (a) wilfully lights or causes to be lit or attempts to light a fire; or
- (b) places a match or other inflammable or combustible substance, matter or thing in a position so that it may directly or indirectly be ignited by the rays of the sun or by friction or other means, or be exploded or set on fire, or whereby a fire may be lit or caused and with the intent to cause a fire,

under such circumstances as to be likely to injure or damage a person or property, whether the fire be caused or not, is guilty of a crime.

Penalty: Imprisonment for 20 years.

[Section 32 amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 31 and 48; No. 8 of 1987 s. 8; No. 101 of 1990 s. 56; No. 4 of 2004 s. 58; No. 25 of 2009 s. 11; No. 43 of 2009 s. 4.]

33. Local government may require occupier of land to plough or clear fire-break

- (1) Subject to subsection (2) a local government at any time, and from time to time, may, and if so required by the Minister shall, as a measure for preventing the outbreak of a bush fire, or for preventing the spread or extension of a bush fire which may occur, give notice in writing to an owner or occupier of land situate within the district of the local government or shall give notice to all owners or occupiers of land in its district by publishing a notice in the *Government Gazette* and in a newspaper circulating in the area requiring him or them as the case may be within a time specified in the notice to do or to commence to do at a time so specified all or any of the following things —
- (a) to plough, cultivate, scarify, burn or otherwise clear upon the land fire-breaks in such manner, at such places, of such dimensions, and to such number, and whether in parallel or otherwise, as the local government may and is hereby empowered to determine and as are specified in the notice, and thereafter to maintain the fire-breaks clear of inflammable matter;
 - (b) to act as and when specified in the notice with respect to anything which is upon the land, and which in the opinion of the local government or its duly authorised officer, is or is likely to be conducive to the outbreak of a bush fire or the spread or extension of a bush fire,
- and the notice may require the owner or occupier to do so —
- (c) as a separate operation, or in co-ordination with any other person, carrying out a similar operation on adjoining or neighbouring land; and
 - (d) in any event, to the satisfaction of either the local government or its duly authorised officer, according to which of them is specified in the notice.
- (2) A notice in writing under subsection (1) may be given to an owner or occupier of land by posting it to him at his last postal

address known to the local government and may be given to an owner of land by posting it to him at the address shown in the rate record kept by the local government pursuant to the *Local Government Act 1995*, as his address for the service of rate notices.

- (2a) The provisions of subsection (2) are in addition to and not in derogation of those of sections 75 and 76 of the *Interpretation Act 1984*.
- (3) The owner or occupier of land to whom a notice has been given under subsection (1) and who fails or neglects in any respect duly to comply with the requisitions of the notice is guilty of an offence.
Penalty: \$5 000.
- (4) Where an owner or occupier of land who has received notice under subsection (1) fails or neglects to comply with the requisitions of the notice within the time specified in the notice —
- (a) the local government may direct its bush fire control officer, or any other officer of the local government, to enter upon the land of the owner or occupier and to carry out the requisitions of the notice which have not been complied with; and
 - (b) the bush fire control officer or other officer may, in pursuance of the direction, enter upon the land of the owner or occupier with such servants, workmen, or contractors, and with such vehicles, machinery, and appliances as he deems fit, and may do such acts, matters and things as may be necessary to carry out the requisitions of the notice.
- (5) The amount of any costs and expenses incurred by the bush fire control officer or other officer in doing the acts, matters, or things provided for in subsection (4) —
- (a) shall be ascertained and fixed by the local government and a certificate signed by the mayor or president of the

local government shall be *prima facie* evidence of the amount; and

- (b) may be recovered by the local government in any court of competent jurisdiction as a debt due from the owner or occupier of land to the local government.
- (5a) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* —
- (a) requiring owners and occupiers of land in its district to clear fire-breaks in such manner, at such places, at such times, of such dimensions and to such number, and whether in parallel or otherwise, as are specified in the local laws and to maintain the fire-breaks clear of inflammable matter;
 - (b) providing that things required by the local laws to be done shall be done to the satisfaction of the local government or its duly authorised officer.
- (5b) Where an owner or occupier of land fails or neglects in any respect to comply with the requirements of local laws made under subsection (5a) the provisions of subsections (3), (4) and (5) apply *mutatis mutandis* as if those requirements were the requisitions of a notice given under subsection (1).
- (5c) Nothing in subsection (5a) affects the power of a local government to give notice under subsection (1) nor its duty to do so if so required by the Minister.
- (5d) Where the provisions of local laws made under subsection (5a) are inconsistent with those of a notice given under subsection (1) or under section 34 or 35, the provisions of that notice shall, to the extent of the inconsistency, prevail.
- (6) A local government may, at the request of the owner or occupier of land within its district, carry out on the land, at the expense of the owner or occupier, any works for the removal or abatement of a fire danger, and the amount of the expense, if not paid on demand, may be recovered from the owner or occupier by the

local government in a court of competent jurisdiction as a debt due from the owner or occupier to the local government.

- (7) Nothing in this section authorises a local government —
- (a) to set fire to the bush, or to require an owner or occupier of land to set fire to the bush, contrary to the provisions of section 17; or
 - (b) to make local laws authorising or requiring bush to be set on fire contrary to the provisions of section 17.
- (8) Any amount recoverable by a local government under this section as a debt due from the owner or occupier of land is, until paid in full —
- (a) a debt due from each subsequent owner in succession; and
 - (b) a charge against the land with the same consequences as if it were a charge under the *Local Government Act 1995* for unpaid rates; and
 - (c) recoverable by the local government in the same manner as rates imposed in respect of the land are recoverable under that Act.

- (9) In this section —

owner or occupier of land includes a prescribed department of the Public Service that occupies land or a prescribed State agency or instrumentality that owns or occupies land.

[Section 33 amended by No. 11 of 1963 s. 15; No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 32 and 48; No. 51 of 1979 s. 3 and 5; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 38 of 2002 s. 28 and 39; No. 70 of 2003 s. 7; No. 19 of 2010 s. 52(4).]

34. Burning on Crown lands

- (1) Subject to subsections (1a) and (1b) the owner or occupier of land that abuts upon Crown land (other than land set apart for roads or land comprised in closed roads), a reserve or other land that is unoccupied by abandonment except forest land, may

enter upon that Crown land, reserve or other land for the purpose of clearing or clearing and ploughing fire-breaks not more than 3 m in width situated not more than 200 m distant from the boundary of that Crown land, reserve or other land, and may burn the bush between those fire-breaks and the boundary of the land of the owner or occupier if the burning is not contrary to the provisions of section 17 and is carried out in accordance with the provisions of section 18.

(1AB) Before any fire-breaks are burnt under the provisions of subsection (1), a permit to so burn shall be obtained from a bush fire control officer of the local government in whose district the burning is to take place and where a permit is granted the bush fire control officer shall state in the permit the width to which a fire-break may be burnt up to a maximum of 200 m in width from the boundary of the land or reserve.

(1AC) A bush fire control officer may subject to the provisions of sections 17 and 18 enter upon any Crown land or reserve except forest land with such servants and workmen or with such vehicles, machinery and appliances as he may think necessary for the purpose of burning bush, in order to reduce or abate a fire hazard which cannot practicably be reduced or abated otherwise than by burning.

(1a) Where —

- (a) the person, body or Government department responsible for the care, control and management of a reserve, after consultation with the local government or local governments in whose district or districts the reserve is situated, tenders to the FES Commissioner a plan setting out the measures taken and proposed to be taken to prevent, control and extinguish bush fires on the reserve; and
- (b) the FES Commissioner is satisfied that the measures set out in the plan will provide adequate fire protection in relation to the reserve and that the exercise of the powers

conferred by subsections (1) to (1AC) would be likely to interfere with the development of the reserve, the FES Commissioner may, by notice published in the *Gazette* and in a newspaper circulating in the district in which the reserve is situated, order that the powers conferred by subsections (1) to (1AC) shall not be exercised in relation to the reserve.

- (1b) A notice published under subsection (1a) —
- (a) has effect according to its tenor;
 - (b) may be varied or cancelled by a subsequent notice so published.
- (2) Where an agreement for the purpose of making fire-breaks is not made between the CALM Act CEO and the owner or occupier of land adjoining or adjacent to forest land, if the CALM Act CEO has established on the forest land marginal and internal fire-breaks, he may at any time and from time to time, give notice in writing to the owner or occupier within a time specified in the notice to do all or any of the things mentioned in section 33(1)(a) and (b) upon that part of the land of which he is the owner or occupier and which is nearest to the forest land as though the CALM Act CEO were the local government referred to in those paragraphs and the provisions of the paragraphs apply *mutatis mutandis* as though they were expressly incorporated in this subsection.
- (3) When and as often as the CALM Act CEO gives notice to an owner or occupier of land as provided for in subsection (2), the provisions of section 33(3), (4) and (5) *mutatis mutandis* apply and have effect in the same manner and to the same extent as if they were expressly incorporated in this section.

[Section 34 amended by No. 11 of 1963 s. 16; No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 33; No. 51 of 1979 s. 5; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 28 of 2006 s. 389; No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 69.]

35. Powers of FES Commissioner on default by local government

- (1) Where a local government, if requested so to do by the Minister, fails to give to an owner or occupier of land a notice under the provisions of section 33(1), the FES Commissioner may give the notice and thereafter subsections (3) and (4) of that section *mutatis mutandis* apply and have effect as if they were expressly incorporated in this section.
- (2) Where a local government, in compliance with a request by the Minister, gives to an owner or occupier of land a notice under section 33(1), if the owner or occupier fails to comply with the requirements of the notice, and the local government fails to exercise its powers under subsection (4) of that section, the FES Commissioner may authorise persons employed in the Department or agents of the FES Commissioner to exercise all the powers which the local government may exercise to ensure that the requirements of the notice are properly carried out.
- (3) Where the FES Commissioner in exercise of the power conferred on the FES Commissioner by subsection (2) incurs any costs and expenses, the amount of the costs and expenses so incurred shall be ascertained and fixed by the FES Commissioner.
- (3B) A certificate signed by the FES Commissioner is evidence of the amount referred to in subsection (3), and the FES Commissioner may recover the amount in a court of competent jurisdiction as a debt due to the State from the local government or from the owner or occupier of the land in respect of which the notice has been given, as the FES Commissioner may at the FES Commissioner's option elect.
- (4) Where in accordance with subsection (3B) the FES Commissioner takes proceedings against, and obtains a judgment against, the local government, the local government has no recourse against, or right of contribution by, the owner or occupier of land under this section in respect of the judgment.

- (5) Where, in the opinion of the FES Commissioner, a local government fails or neglects to carry out its duties, exercise its powers or perform its functions under the provisions of this Part, the FES Commissioner may, if the FES Commissioner deems it necessary, instruct a bush fire liaison officer to take such action as he considers necessary to remedy the default or neglect.
- (6) The FES Commissioner may recover in a court of competent jurisdiction the amount of the expenses incurred by the liaison officer in remedying the default or neglect of the local government as a debt due by it to the State.

[Section 35 amended by No. 65 of 1977 s. 34 and 47; No. 60 of 1992 s. 11; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 59 and 69.]

Division 7 — Bush fire risk treatment standards

[Heading inserted by No. 27 of 2016 s. 4.]

35AA. FES Commissioner may make bush fire risk treatment standards

- (1) The FES Commissioner may make standards (**bush fire risk treatment standards**) specifying measures for —

- (a) preventing the outbreak of a bush fire or the spread or extension of a bush fire; and
- (b) mitigating the effects of a bush fire on any property.

- (2) The measures that may be specified in bush fire risk treatment standards are —

- (a) all or any of the things mentioned in section 33(1)(a) and (b); and
- (b) any other measures the FES Commissioner considers appropriate.

- (3) Bush fire risk treatment standards may apply to —

- (a) the whole of the State; or

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(b) one or more specified areas of the State.

(4) The FES Commissioner may amend bush fire risk treatment standards or revoke them and make new bush fire risk treatment standards.

(5) If the FES Commissioner makes bush fire risk treatment standards, the FES Commissioner must publish those standards and any amendment or revocation of them —

(a) in a newspaper circulating throughout the State or the relevant areas of the State, as the case requires; or

(b) on a website maintained by the FES Commissioner; or

(c) as the FES Commissioner otherwise considers appropriate.

(6) The FES Commissioner must consult with the Minister before making, amending or revoking any bush fire risk treatment standards.

(7) The *Interpretation Act 1984* section 42 applies to and in relation to the bush fire risk treatment standards as if they were regulations.

[Section 35AA inserted by No. 27 of 2016 s. 4.]

35AB. Compliance with bush fire risk treatment standards

(1) In this section —

bush fire risk treatment standards means bush fire risk treatment standards published under section 35AA(5);

owner or occupier of land includes a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.

(2) An owner or occupier of land may comply with bush fire risk treatment standards that apply to the land, but is not required to do so.

(3) Subsection (2) does not authorise an owner or occupier of land to comply with bush fire risk treatment standards that apply to the land if that compliance would result in the owner or occupier failing to comply with —

(a) another provision of this Act that has effect in relation to the land; or

(b) a provision of another written law that has effect in relation to the land and that is prescribed by the regulations for the purposes of this subsection; or

(c) local laws referred to in section 33(5a) that apply to the land.

(4) Except as provided in subsection (3), an owner or occupier of land may comply with bush fire risk treatment standards that apply to the land despite any other written law.

[Section 35AB inserted by No. 27 of 2016 s. 4.]

Part IV — Control and extinguishment of bush fires

Division 1 — Local governments

[Heading amended by No. 14 of 1996 s. 4.]

35A. Terms used

In this Division, and in section 41 —

bush fire means a fire or potential fire, however caused, and includes a fire in a building;

loss or damage does not include loss or damage that is caused by or results from theft, reasonable wear or tear, mechanical or electrical breakdown, failure or breakage;

normal brigade activities means the following activities when carried out by a volunteer fire fighter —

- (a) the prevention, control or extinguishment of bush fires;
- (b) any act or operation at or about the scene of a bush fire, or in connection with a bush fire, which is necessary for, directed towards, or incidental to, the control or suppression of the fire or the prevention of spread of the fire, or in any other way necessarily associated with the fire including travelling and support services such as meals and communication systems;
- (c) any bush fire prevention activity including the burning, ploughing or clearing of fire-breaks or any other operation, including but without being limited to, the inspection of fire-breaks or other works and the survey of areas for the purpose of detecting fire or ascertaining the need for precautions against the outbreak of fire, but not including the activities of an owner or occupier providing a fire-break or fire prevention works on his own property in order to comply with a notice given under section 33(1), [34\(2\)](#) or [35\(1\)](#) or a local law made under section 33(5a);

- (d) demonstrations, exercises, fundraising, promotions, public education, competitions or a training process for volunteers;
- (e) examination, preparation, maintenance, adjustment or repair of any vehicle, equipment, building or thing used or intended to be used by a bush fire brigade for the purpose of fighting fires or for carrying out fire prevention operations including activities associated with administration of a bush fire brigade;
- (f) travelling in aircraft for the purposes of inspection of fire-breaks, fire hazards and bush fires;
- (g) erection, removal or maintenance of radio masts used for fire related purposes;
- (h) attending an incident where the skills of a volunteer fire fighter or the operation of fire fighting equipment may reduce or remove a perceived threat to life or property;
- (i) attending an incident subsequently found to be a false alarm;

volunteer fire fighter means a bush fire control officer, a person who is a registered member of a bush fire brigade established under this Act or a person working under the direction of that officer or member.

[Section 35A inserted by No. 60 of 1992 s. 18; amended by No. 14 of 1996 s. 44; No. 27 of 2016 s. 5.]

36. Local government may expend moneys in connection with control and extinguishment of bush fires

A local government may, notwithstanding anything to the contrary contained in any other Act —

- (a) purchase and maintain appliances, equipment, and apparatus for the prevention, control and extinguishment of bush fires;

- (b) clear a street, road or reserve vested in it or under its control, of bush, and other inflammable material, for the purpose of preventing the occurrence or spread of a fire;
- [(c) deleted]*
- (d) establish and maintain bush fire brigades as a part of its organisation for the prevention, control, and extinguishment of bush fires;
- (e) use any vehicle in controlling or extinguishing a bush fire or in the attempting so to do but the local government must pay to the owner or hirer of the vehicle, in respect of any damage done to a tyre of that vehicle while it was being so utilized, an amount assessed by an employee of the local government authorised by it to assess the cost of that damage;
- (f) assist the occupier of farm lands within its district to acquire appliances, equipment and apparatus for the prevention, control, and extinguishment of bush fires upon or threatening his land, including the sale, loan or exchange to the occupier of appliances, equipment and apparatus belonging to the local government.

[Section 36 amended by No. 11 of 1963 s. 17; No. 51 of 1979 s. 5; No. 60 of 1992 s. 19; No. 14 of 1996 s. 4; No. 57 of 1997 s. 26(2).]

37. Local government to insure certain persons

- (1) A local government that maintains a bush fire brigade shall obtain and keep current —
 - (a) a policy of insurance that insures volunteer fire fighters for compensation, payable in accordance with subsection (2) for injury caused to them while they are engaged under this Act in normal brigade activities; and
 - (b) a policy of insurance that, subject to subsection (10), insures against loss or damage all appliances, equipment, and apparatus of the bush fire brigade and any privately owned appliance, equipment, or apparatus

that is used under the direction of a bush fire control officer, or an officer or a member of a bush fire brigade for the purposes of this Act.

- (2) For the purposes of a policy of insurance referred to in subsection (1)(a), the compensation that is payable for an injury and the purposes for which it is payable are the amounts and purposes that would apply if a volunteer fire fighter were a worker and suffered that injury under the *Workers' Compensation and Injury Management Act 1981*, and where a reference to weekly earnings is necessary for calculating those amounts, the volunteer fire fighter is deemed to have earned —
- (a) if the volunteer fire fighter is a self-employed or unemployed person — either the actual weekly earnings received by that volunteer fire fighter or the weekly earnings of an officer of the CALM Act Department at Level 2, Year 5, whichever is the greater;
 - (b) if the volunteer fire fighter is employed other than self-employed — either the weekly earnings calculated in accordance with the *Workers' Compensation and Injury Management Act 1981*, or the weekly earnings of an officer of the CALM Act Department at Level 2, Year 5, whichever is the greater.
- (3) The provisions contained in clauses 8, 10, 11, 16, 17, 18, 18A and 19 of Schedule 1 to the *Workers' Compensation and Injury Management Act 1981* apply, with any necessary adaptations, to a policy of insurance under subsection (1)(a) as if they were set out in the policy.
- (4) The limitation in section 56 of the *Workers' Compensation and Injury Management Act 1981* does not apply to a policy of insurance under subsection (1)(a) if the volunteer fire fighter insured —
- (a) is a self-employed person; and
 - (b) produces sufficient evidence of his or her income, earned prior to the injury.

- (5) A volunteer fire fighter who has suffered a specified injury while engaged in normal brigade activities is entitled to payment of an amount in addition to the amount referred to in subsection (2), so that the total amount received by or in respect of that volunteer fire fighter in relation to that injury is the prescribed amount multiplied by 2.36.
- (6) In subsection (5) —
- prescribed amount** means the prescribed amount as defined in section 5(1) of the *Workers' Compensation and Injury Management Act 1981* determined as at the date on which the injury was caused;
- specified injury** means —
- (a) death;
 - (b) total loss of sight of both eyes;
 - (c) total loss of sight of an only eye;
 - (d) permanent and incurable loss of mental capacity resulting in total inability to work;
 - (e) total and incurable paralysis of the limbs or of mental powers;
 - (f) loss of both hands;
 - (g) loss of a hand and foot;
 - (h) loss of both feet;
 - (i) severe facial scarring or disfigurement (including scarring or disfigurement as a result of burns);
 - (j) severe bodily, other than facial, scarring or disfigurement (including scarring or disfigurement as a result of burns).
- (7) Any additional amount payable under subsection (5) shall be paid out of moneys appropriated by Parliament for that purpose.
- (8) The amount referred to in subsection (2) and the additional amount referred to in subsection (5) are payable to the person or persons who would be entitled to receive them if a volunteer fire

fighter were a worker and suffered a compensable injury under the *Workers' Compensation and Injury Management Act 1981* and, in addition to those persons, shall extend —

- (a) to a spouse irrespective of dependency upon the volunteer fire fighter; or
 - (aa) to a person who was living in a de facto relationship with the volunteer fire fighter immediately before the death of the fire fighter and lived on that basis with the fire fighter for at least 2 years before the death of the fire fighter irrespective of dependency upon the fire fighter; or
 - (b) to a child of the volunteer fire fighter if the child is dependent upon the volunteer fire fighter.
- (8a) If the amount referred to in subsection (2) and the additional amount referred to in subsection (5) are payable to more than one person then those amounts are to be apportioned between those persons in accordance with the regulations.
- (9) A volunteer fire fighter making a claim under a policy of insurance referred to in subsection (1)(a) is subject to the same time limitation periods as would apply if the volunteer fire fighter were a worker and suffered a compensable injury under the *Workers' Compensation and Injury Management Act 1981*.
- (10) Under a policy of insurance referred to in subsection (1)(b) a local government is not required to insure for loss or damage that —
- (a) in respect of any one bush fire, exceeds —
 - (i) \$2 000 for any one appliance or item of equipment or apparatus; or
 - (ii) \$4 000 to any one person or partnership;or
 - (b) in any one insurance year, exceeds a total amount of \$10 000 to any one person or partnership for all loss or damage.

- (11) A policy of insurance referred to in subsection (1)(a) or (1)(b) shall provide reasonable conditions for the procedure of establishing claims and arbitrating differences arising out of the policy.
- (12) A local government may insure against injury of the kind referred to in subsection (1)(a) or against loss or damage of the kind referred to in subsection (1)(b) for amounts greater than those specified in subsections (2) and (10).

[Section 37 inserted by No. 60 of 1992 s. 20; amended by No. 14 of 1996 s. 4; No. 28 of 2003 s. 15; No. 42 of 2004 s. 174; No. 28 of 2006 s. 390.]

38. Local government may appoint bush fire control officer

- (1) A local government may from time to time appoint such persons as it thinks necessary to be its bush fire control officers under and for the purposes of this Act, and of those officers shall subject to section 38A(2) appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it.
- (2A) The local government shall cause notice of an appointment made under the provisions of subsection (1) to be published at least once in a newspaper circulating in its district.
- (2C) The local government shall fill any vacancy occurring in the office of Chief Bush Fire Control Officer or Deputy Chief Bush Fire Control Officer within one month after the vacancy occurs and if the local government fails or neglects to do so within that time, the FES Commissioner may by notice in writing require the local government to appoint a person to the vacant office within one month after service on it of such notice.
- (2D) Where a local government that has been served with a notice pursuant to subsection (2C) fails or neglects to comply with the requirements of that notice, the FES Commissioner may appoint

a person who is not employed in the Department to the vacant office.

- (2E) A bush fire control officer appointed by a local government under the provisions of this section shall be issued with a certificate of appointment by the local government or, if he is appointed by the FES Commissioner, by the FES Commissioner.
- (3) The local government may, in respect to bush fire control officers appointed under the provisions of this section, exercise so far as they can be made applicable the same powers as it may exercise in respect to its other officers, under the provisions of the Acts under which those other officers are appointed.
- (4) A bush fire control officer appointed under the provisions of this section shall, subject to such directions as may be given by the local government, and subject to this Act take such measures as appear to him to be necessary or expedient and practicable for —
- (a) carrying out normal brigade activities;
 - [(b), (c) deleted]*
 - (d) exercising an authority or carrying out a duty conferred or imposed upon him by any of the provisions of Part III;
 - (e) procuring the due observance by all persons of the provisions of Part III.
- (5A) A local government may issue directions to a bush fire control officer appointed by the local government, or to an officer of a bush fire brigade registered by the local government to burn, subject to the provisions of this Act, bush on, or at the margins of, streets, roads, and ways, under the care, control and management of the local government.
- (5B) The bush fire control officer, or officer of the bush fire brigade, may by authority of any directions issued under subsection (5A) carry out the directions but subject to the provisions of this Act.

- (5C) The provisions of subsections (5A) and (5B) are not in derogation of those of subsection (4).
- (6) In this section —
approved local government means a local government approved under subsection (7) by the FES Commissioner.
- (7) If it appears to the FES Commissioner that the standard of efficiency of a local government in fire prevention and control justifies the FES Commissioner doing so, the FES Commissioner, by notice published in the *Government Gazette* —
- (a) may approve the local government as one to which subsections (6) to (18) apply; and
 - (b) may from time to time cancel or vary any previous approval given under this subsection.
- (8) An approved local government may appoint to the office of fire weather officer such number of senior bush fire control officers as it thinks necessary.
- (9) Where more than one fire weather officer is appointed by a local government the local government shall define a part of its district in which each fire weather officer shall have the exclusive right to exercise the power conferred by subsection (17).
- (10) An approved local government may appoint one or more persons, as it thinks necessary, to be the deputy or deputies, as the case may be, of a fire weather officer appointed by the local government and where 2 or more deputies are so appointed they shall have seniority in the order determined by the local government.
- (11) Where the office of a fire weather officer is vacant or whilst the occupant is absent or unable to act in the discharge of the duties of the office, any deputy appointed in respect of that office under subsection (10) is, subject to subsection (12), entitled to act in the discharge of the duties of that office.

- (12) A deputy who is one of 2 or more deputies of a fire weather officer is not entitled to act in the discharge of the duties of the office of that fire weather officer if a deputy who has precedence over him in the order of seniority determined under subsection (10) is available and able to discharge those duties.
- (13) The local government shall give notice of an appointment made under subsection (8) or (10) to the FES Commissioner and cause notice of the appointment to be published at least once in a newspaper circulating in its district and the FES Commissioner shall cause notice of the appointment to be published once in the *Government Gazette*.
- (14) An approved local government may appoint a committee for the purpose of advising and assisting a fire weather officer or any deputy of a fire weather officer acting in the place of that officer under subsections (6) to (18).
- (15) Where a committee is appointed, a fire weather officer, or, as the case may be, a deputy of a fire weather officer while acting in the place of that officer, may exercise the authority conferred on him by subsection (17), notwithstanding the advice and assistance tendered to him by the committee.
- (16) The provisions of subsections (6) to (18) are not in derogation of those of any other subsection of this section.
- (17) A fire weather officer of an approved local government, or a deputy of that fire weather officer while acting in the place of that officer, may authorise a person who has received a permit under section 18(6)(a), to burn the bush in the district of the local government notwithstanding that for any day, or any period of a day, specified in the notice the fire danger forecast issued by the Bureau of Meteorology in Perth, in respect to the locality where the bush proposed to be burnt is situated, is “catastrophic”, “extreme”, “severe” or “very high”, and upon the authority being given the person, if he has otherwise complied with the conditions prescribed for the purposes of section 18, may burn the bush.

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- (18) Subsections (6) to (18) do not authorise the burning of bush —
- (a) during the prohibited burning times; or
 - (b) during the period in which, and in the area of the State in respect of which, a total fire ban is declared under section 22A to have effect.

[Section 38 amended by No. 35 of 1957 s. 7; No. 20 of 1958 s. 2; No. 11 of 1963 s. 18; No. 67 of 1970 s. 4; No. 65 of 1977 s. 36; No. 51 of 1979 s. 4; No. 60 of 1992 s. 21; No. 14 of 1996 s. 4; No. 10 of 1998 s. 20(2); No. 42 of 1998 s. 16; No. 38 of 2002 s. 29; No. 25 of 2009 s. 12; No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 60 and 69; No. 17 of 2014 s. 17(2) and (3).]

38A. FES Commissioner may designate person employed in Department as Chief Bush Fire Control Officer

- (1) At the request of a local government the FES Commissioner may designate a person employed in the Department as the Chief Bush Fire Control Officer for the district of that local government.
- (2) Where a Chief Bush Fire Control Officer has been designated under subsection (1) for a district the local government is not to appoint a Chief Bush Fire Control Officer under section 38(1).
- (3) The provisions of this Act, other than section 38(3) to (5C) apply to and in relation to the Chief Bush Fire Control Officer designated under this section as if he or she were a Chief Bush Fire Control Officer appointed under section 38 by the local government.
- (4) Section 38(3) to (5C) apply to and in relation to the Chief Bush Fire Control Officer designated under this section as if —
 - (a) he or she were a Chief Bush Fire Control Officer appointed under section 38 by the local government; and
 - (b) the references in those subsections to the local government were references to the FES Commissioner.

[Section 38A inserted by No. 38 of 2002 s. 30; amended by No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 61 and 69.]

39. Special powers of bush fire control officers

- (1) Subject to the provisions of this Act a bush fire control officer appointed under this Act by a local government may, in the exercise of his functions and the performance of his duties under this Act, do all or any of the following things —
- (a) exercise any of the appropriate powers of the FES Commissioner under the *Fire Brigades Act 1942*, in so far as the same may be necessary or expedient, for extinguishing a bush fire or for preventing the spread or extension of the fire; and
 - (b) enter any land or building, whether private property or not; and
 - (c) pull down, cut, and remove fences on land, whether private property or not, if in his opinion it is necessary or expedient so to do for the purpose of taking effective measures for extinguishing a bush fire, or for preventing the spread or extension of the fire; and
 - (d) cause fire-breaks to be ploughed or cleared on land, whether private land or not, and take such other appropriate measures on the land as he may deem necessary for the purpose of controlling or extinguishing a bush fire or for preventing the spread or extension of the fire; and
 - (e) take and use water, other than that for use at a school or the domestic supply of an occupier contained in a tank at his dwelling-house, and other fire extinguishing material from any source whatever on land, whether private property or not; and
 - (f) take charge of and give directions to any bush fire brigade present at a bush fire with respect to its operations or activities in connection with the extinguishment or control of the bush fire, or the prevention of the spread or extension of the fire; and
 - (g) any other thing which in his opinion is incidental to the exercise of any of the foregoing powers; and

- (h) employ a person or use the voluntary services of a person to assist him, subject to his directions in the exercise of any of the foregoing powers; and
- (i) either alone or with others under his command or direction enter a building which he believes to be on fire and take such steps as he considers necessary to extinguish the fire or prevent it from spreading, but except as arranged with or requested by an officer in charge of a fire brigade under the *Fire Brigades Act 1942*, this power shall not be exercised in a townsite in an area which has been declared a fire district under that Act or in a townsite in which there is a fire brigade or volunteer fire brigade formed under the provisions of that Act.

[(2) deleted]

[Section 39 amended by No. 11 of 1963 s. 19; No. 51 of 1979 s. 5; No. 8 of 1987 s. 4; No. 14 of 1996 s. 4; No. 38 of 2002 s. 31 and 40; No. 25 of 2009 s. 13; No. 22 of 2012 s. 62.]

39A. Duties of bush fire authorities on outbreak of fire

- (1) On the outbreak of a bush fire at a place within or adjacent to the district of a local government, the bush fire control officers, bush fire brigade officers, or bush fire brigade members, of the local government, or as many of them as may be available may, subject to this Act, take charge of the operations for controlling and extinguishing the bush fire or for preventing the spread or extension of the fire.
- (2) Where a bush fire to which this section applies occurs, if a bush fire control officer, bush fire brigade officer, or member of a bush fire brigade, of the local government in whose district the bush fire is burning is not present at the fire, a bush fire control officer, a bush fire brigade officer, or member of a bush fire brigade, of a local government whose district is adjoining or adjacent, may exercise in respect of the bush fire, all powers and

authorities of a bush fire control officer of the local government in whose district the fire is burning.

- (3) This section applies only to bush fires which —
- (a) have been lit or are maintained unlawfully; or
 - (b) have occurred accidentally; or
 - (c) have ceased to be under control or are not adequately controlled; or
 - (d) are declared in the regulations to be bush fires to which this section applies.

[Section 39A inserted by No. 35 of 1957 s. 8; amended by No. 51 of 1979 s. 5; No. 14 of 1996 s. 4.]

40. Local governments may join in appointing and employing bush fire control officers

- (1) Two or more local governments may by agreement join in appointing, employing and remunerating bush fire control officers for the purposes of this Act.
- (2) Bush fire control officers so appointed may exercise their powers and authorities and shall perform their duties under this Act in each and every one of the districts of the local governments which have joined in appointing them.

[Section 40 amended by No. 14 of 1996 s. 4.]

Division 2 — Bush fire brigades

41. Bush fire brigades

- (1) For the purpose of carrying out normal brigade activities a local government may, in accordance with its local laws made for the purpose, establish and maintain one or more bush fire brigades and may, in accordance with those local laws, equip each bush fire brigade so established with appliances, equipment and apparatus.

- (2) A local government shall keep a register of bush fire brigades and their members in accordance with the regulations and shall register therein each bush fire brigade established by it under subsection (1) and each member of each such brigade.
- (2a) A local government is to notify the FES Commissioner as soon as practicable after any changes occur in any of the details required to be recorded in the register under subsection (2).
- (3) A local government may at any time cancel the registration of a bush fire brigade.

[Section 41 inserted by No. 65 of 1977 s. 37; amended by No. 60 of 1992 s. 22; No. 14 of 1996 s. 4; No. 38 of 2002 s. 32; No. 22 of 2012 s. 69.]

42. Local governments may join in establishing bush fire brigade

- (1) Two or more local governments may by agreement join in establishing, maintaining, and equipping with appliances, equipment and apparatus, a bush fire brigade to act as the bush fire brigade of each local government under and for the purposes of this Act.
- (2) The bush fire brigade and its members shall be registered as provided for in section 41, but the application for registration may be made by any one local government a party to the agreement on behalf of the local governments which are parties to the agreement.

[Section 42 amended by No. 14 of 1996 s. 4; No. 38 of 2002 s. 33.]

42A. Constitution of bush fire brigade

Any group of persons, however constituted and whether incorporated or not, may be established as a bush fire brigade under section 41(1) or 42(1).

[Section 42A inserted by No. 38 of 2002 s. 34.]

43. Election and duties of officers of bush fire brigades

A local government which establishes a bush fire brigade shall by its local laws provide for the appointment or election of a captain, a first lieutenant, a second lieutenant, and such additional lieutenants as may be necessary as officers of the bush fire brigade, and prescribe their respective duties.

[Section 43 amended by No. 51 of 1979 s. 5; No. 14 of 1996 s. 4.]

44. Powers and authorities of officers of bush fire brigade

- (1) Subject to this Act, and except as provided in section 45 for the purpose of controlling and extinguishing or preventing the occurrence or spread or extension of a bush fire, or for any other prescribed purpose, the captain, or, in his absence, the next senior officer of a bush fire brigade, or in the absence of the captain and all other officers, any other member of the bush fire brigade, after consulting with the occupier of the land if he be present, has and may exercise all or any of the following powers and authorities, he may —
- (a) control and direct the bush fire brigade at the fire or a person who voluntarily places his service at his disposal;
 - (b) either alone or with others under his command or direction, enter on land or into premises which may be on fire or in the neighbourhood of a fire for the purpose of taking such steps as he deems necessary for the control or extinguishment or for the prevention of the spread or extension of the fire, or take or give directions for taking such apparatus required to be used at a fire into, through, or upon land or premises as he considers convenient for the purpose;
 - (c) take any measures which in the circumstances are reasonable and appear to him to be necessary or expedient for the protection of life and property; and, for the purpose of controlling or extinguishing or for preventing the spread or extension of a fire, cause fences

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to be pulled down or removed, and bush or other inflammable material to be burnt, or otherwise destroyed or removed;

- (d) enter or give directions for entering land or premises, and take or cause to be taken water from any source whatsoever, other than that for use at a school or the domestic supply of an occupier contained in a tank at his dwelling-house, whether the water is upon private land or other land, and in all other respects, when and as often as in his opinion he deems it necessary or expedient to do so, exercise all the powers and authorities of a bush fire control officer under this Act;
 - (e) either alone or with others under his command or direction enter a building which he believes to be on fire and take such steps as he considers necessary to extinguish such fire or prevent it from spreading.
- (2) The powers conferred by subsection (1)(e) shall not be exercised —
- (a) in an area which has been declared a fire district under the *Fire Brigades Act 1942*, unless at the express request of an officer of a fire brigade established under that Act; or
 - (b) in an area in which there is a fire brigade or volunteer fire brigade formed under the provisions of that Act, unless at the express request of an officer of the fire brigade or volunteer fire brigade as the case may be.
- (3) Subject to the provisions of sections 13(6) and 45, where the bush fire brigade of a local government is present at a fire which is burning within the district of the local government, if a bush fire control officer of the local government is not present, the captain or in his absence the next senior officer of the bush fire brigade of the local government, or in the absence of the captain and all other officers of that bush fire brigade, any other member of that bush fire brigade has and shall take supreme control and charge of all operations and the officers and

members of another bush fire brigade if present are subject to and shall act under his orders and directions.

- (4) Subject to the provisions of sections 13(6) and 45, where a bush fire control officer of a local government is present at a fire which is burning in the district of the local government, he has supreme control and charge of all operations, and the officers and members of all bush fire brigades present at the fire are subject to and shall act under his orders and directions.

[Section 44 amended by No. 35 of 1957 s. 9; No. 14 of 1996 s. 4; No. 25 of 2009 s. 14; No. 19 of 2010 s. 52(4); No. 17 of 2014 s. 17(4).]

45A. Requests to authorised CALM Act officers to take control of bush fires

- (1) If —
- (a) an officer or member of a bush fire brigade or a bush fire control officer (a ***bush fire officer***) has supreme control and charge of all operations in relation to a bush fire under section 44; and
 - (b) an authorised CALM Act officer is present at the fire,
- the bush fire officer may request the authorised CALM Act officer to take control of all operations in relation to the fire.
- (2) If the authorised CALM Act officer agrees to take control of all operations in relation to the bush fire —
- (a) the officer —
 - (i) must inform the FES Commissioner of having done so; and
 - (ii) must comply with any requirements prescribed by the regulations for the purposes of this subsection;
- and

- (b) subject to section 45(5) and (6), the officer has in relation to the fire the powers, authorities and control referred to in section 45(2) and (3).

[Section 45A inserted by No. 25 of 2009 s. 15; amended by No. 22 of 2012 s. 69.]

45. Powers and authorities exercisable by authorised CALM Act officers

- (1) In this section —

bush fire officer means a bush fire control officer or an officer or member of a bush fire brigade;

CALM Act means the *Conservation and Land Management Act 1984*;

conservation land means —

- (a) land to which the CALM Act applies, as described in section 5 of that Act; or
(b) land prescribed by the regulations for the purposes of this definition,

but does not include any land in a fire district under the *Fire Brigades Act 1942*;

land other than conservation land means land that is not —

- (a) conservation land; or
(b) in a fire district under the *Fire Brigades Act 1942*.

- (2) If —

- (a) an authorised CALM Act officer is present at a bush fire burning on land; and
(b) the land is —
(i) conservation land; or

- (ii) land other than conservation land and a bush fire officer does not have control of all operations in relation to the fire,

the powers and authorities conferred by this Act on a bush fire officer are exercisable by the authorised CALM Act officer.

- (3) If an authorised CALM Act officer is present at a bush fire and is exercising powers and authorities under subsection (2), he may take supreme control and charge of all the operations, and thereupon every bush fire control officer, and the officers and members of every bush fire brigade who are present at the fire, are in all respects subject to and shall act under his orders and directions.
- (4) Subsection (2) ceases to have effect in respect of a bush fire burning on conservation land if —
- (a) the authorised CALM Act officer requests a bush fire officer present at the fire to take control of all operations in relation to the fire; and
 - (b) the bush fire officer agrees to do so.
- (5) Subsection (2) ceases to have effect in respect of a bush fire burning on land other than conservation land if a bush fire officer is present at the fire and takes control of all operations in relation to the fire.
- (6) Subsection (2) ceases to have effect in respect of a bush fire burning on conservation land or land other than conservation land if a bush fire liaison officer or another person is authorised to take control of all operations in relation to the fire under section 13(4) or (5).
- (7) A bush fire officer who takes control of all operations in relation to a bush fire under subsection (4) or (5) —
- (a) must inform the FES Commissioner of having done so; and

- (b) must comply with any requirements prescribed by the regulations for the purposes of this subsection.

[Section 45 amended by No. 11 of 1963 s. 20; No. 8 of 1987 s. 5; No. 38 of 2002 s. 40(1); No. 25 of 2009 s. 16; No. 22 of 2012 s. 69.]

46. Bush fire control officer or forest officer may postpone lighting fire

(1A) Notwithstanding any other provision of this Act —

- (a) subject to subsection (1B) a bush fire control officer, or the local government in whose district the land is situated may prohibit, or from time to time postpone the lighting of a fire, where in his or its opinion the fire, if lit, would be or become a source of danger by escaping from the land on which it is proposed to be lit;
- (b) where a fire is burning on land and the bush fire control officer or the local government as the case may be is of the opinion that the fire is in danger of escaping from that land, he or it may direct that all reasonable steps be taken by the owner or occupier of the land to extinguish the fire or to prevent the fire from spreading.

(1B) Where it is proposed to light a fire within 3 km of a boundary of forest land, an authorised CALM Act officer may exercise the powers conferred by the last preceding paragraph to the exclusion of the exercise of those powers by a bush fire control officer or the local government but if an authorised CALM Act officer fails to exercise the powers a bush fire control officer or local government may exercise those powers.

(2) A person who lights a fire contrary to the provisions of this section or who fails to carry out any direction given to him pursuant to this section is guilty of an offence.

Penalty: \$10 000.

(3) If, as a result of the exercise of any power conferred by subsection (1A) or (1B), a person, who has paid a fee to a local

government for a permit to light a fire, is precluded from doing so in such circumstances that the permit is of no use to him the local government shall, on being requested to do so, refund the fee to him.

[Section 46 amended by No. 11 of 1963 s. 21; No. 113 of 1965 s. 8(1); No. 94 of 1972 s. 4 (as amended by No. 83 of 1973 s. 3); No. 65 of 1977 s. 48; No. 8 of 1987 s. 8; No. 78 of 1995 s. 147; No. 14 of 1996 s. 4; No. 38 of 2002 s. 39 and 40(1); No. 19 of 2010 s. 52(4).]

47. Fire-break not to be lit when bush fire burning

Subject to the provisions of sections 13(6) and 45, a person shall not, if a bush fire is burning on land, burn a fire-break on the land or on any land adjoining or adjacent though not contiguous to the land whether for the purpose of controlling or preventing the spread of, or otherwise affecting the bush fire, unless as directed by a bush fire control officer or if a bush fire control officer is not present, the captain of a bush fire brigade or, in his absence, a member of the bush fire brigade who is present at the bush fire.

[Section 47 amended by No. 8 of 1987 s. 6; No. 25 of 2009 s. 17.]

Part V — Miscellaneous

48. Delegation by local governments

- (1) A local government may, in writing, delegate to its chief executive officer the performance of any of its functions under this Act.
- (2) Performance by the chief executive officer of a local government of a function delegated under subsection (1) —
 - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the local government.
- (3) A delegation under this section does not include the power to subdelegate.
- (4) Nothing in this section is to be read as limiting the ability of a local government to act through its council, members of staff or agents in the normal course of business.

[Section 48 inserted by No. 38 of 2002 s. 35.]

[49. Deleted by No. 2 of 1996 s. 61.]

50. Records to be maintained by local governments

- (1) A local government shall maintain records containing the following information —
 - (a) the names, addresses, and usual occupations of all the bush fire control officers and bush fire brigade officers appointed by or holding office under the local government;
 - (b) where a bush fire control officer holds office in respect of part only of the district of the local government, descriptive particulars of that part of the district in respect of which the bush fire control officer holds office;

- (c) particulars of the nature, quantity, and quality of the bush fire fighting equipment and appliances which are generally available within the district of the local government for use in controlling and extinguishing bush fires.
- (2) The Governor may make regulations —
 - (a) requiring an owner or occupier of land to notify the local government in whose district the land is situated of the occurrence of any bush fire on the land;
 - (b) requiring a local government to send to the FES Commissioner particulars of losses caused by bush fires in its district;
 - (c) prescribing the times at or within which, and the manner in which, the requirements of the regulations shall be complied with;
 - (d) imposing a maximum penalty of \$1 000 for any breach of the regulations.

[Section 50 amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 39; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39; No. 22 of 2012 s. 69.]

51. Saving of remedies

- (1) Except as otherwise expressly provided in this Act, nothing in this Act and no conviction, payment of penalty or proceeding taken under this Act takes away or affects any right of action or other remedy at common law or otherwise which a person may have in respect of loss or damage caused by a bush fire to which this Act relates.
- (2) It is not a defence to a claim for damage, loss or injury in respect of the doing of anything, that it was done by or pursuant to the authority of this Act.

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- (3) The provisions of the last preceding subsection do not prejudice or affect those of section 37 of the FES Act.

[Section 51 amended by No. 42 of 1998 s. 12; No. 22 of 2012 s. 63.]

52. Approved area may be declared

- (1) For the purposes of this Act, where a bush fire brigade is established in the district of a local government the local government may apply to the Minister to have the district or part of it declared an approved area.
- (2) On receipt of the application the Minister may by notice published in the *Gazette* declare the district of the local government or part of it to be an approved area.
- (3) Before declaring the district or part of it to be an approved area the Minister may obtain a report as to the standard of efficiency of the bush fire brigade established in the district or the part.
- (4) The Minister may require the local government to pay the cost of any inspection made for the purposes of this section.

[Section 52 amended by No. 14 of 1996 s. 4.]

53. Reduction in insurance premium of crops in approved area

- (1) Where a crop of any kind situate wholly or partly within an approved area is insured against loss or damage by fire, the rate of premium charged by the insurer in respect of the insurance shall not exceed 75% of the rate of premium charged by the insurer in respect of crops of that kind not situate within an approved area.
- (2) A person who charges a rate of premium in excess of that permitted by this section is guilty of an offence.

Penalty: \$10 000.

- (3) For the purposes of this section **crop** includes any crop whether growing, standing, harvested, cut, picked, collected, stacked, stooked, or packed, and grain, hay, chaff or other things produced from a crop, and bags and other containers and packing materials to be used in connection therewith, whilst on the land on which the crop is produced and whether in the open air or in a building on the land, or whilst being transported from the land to a railway siding or other receiving depot.

[Section 53 amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 40 and 48; No. 38 of 2002 s. 39.]

54. Approved area may be cancelled

If in the opinion of the FES Commissioner the organisation for the prevention or control of fire in the district of a local government is at any time not of a reasonable standard of efficiency, the Minister may by notice published in the *Gazette* declare that an approved area within the district of the local government shall, as from a date to be specified in the notice, cease to be an approved area for the purposes of this Act and accordingly the provisions of section 53 as from the specified date cease to apply to a crop situate within the area except in so far as regards a crop on which insurance has been effected prior to the specified date.

[Section 54 amended by No. 11 of 1963 s. 22; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 22 of 2012 s. 69.]

[55. Deleted by No. 22 of 2012 s. 64.]

56. Duties of police officers, bush fire control officers etc.

- (1) It is the duty of —
- (a) a member of the Police Force, a person employed in the Department for the purposes of this Act, a bush fire control officer appointed or designated under this Act and an authorised CALM Act officer, who finds a person committing an offence against this Act to

demand from the person his name and place of abode and to require him to produce a permit or authorisation under the authority of which it is claimed a fire is lit;

- (b) a bush fire control officer if he obtains the name and place of abode of a person as provided in paragraph (a) to report the facts of the offence and the name and place of abode of the person who committed the offence as soon as conveniently may be to the local government in whose district the offence is committed.

- (2) A person who refuses to state his name and place of abode when required by a person employed in the Department for the purposes of this Act, a bush fire control officer appointed or designated under this Act, or an authorised CALM Act officer so to do, may without any other warrant than this Act be apprehended by the person requiring his name and place of abode under the provisions of this section and detained until he can be dealt with according to law.

- (3) A person who in contravention of this section refuses to state his name and place of abode, or states a false name or a false place of abode, is guilty of an offence.

Penalty: \$1 000.

[Section 56 amended by No. 11 of 1963 s. 23; No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 48; No. 8 of 1987 s. 8; No. 60 of 1992 s. 12; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39 and 40(1); No. 59 of 2004 s. 141; No. 22 of 2012 s. 65.]

57. Obstructing officers

A person who obstructs, hinders, resists or in any way opposes a person employed in the Department for the purposes of this Act, or a bush fire control officer appointed or designated under this Act, or an authorised CALM Act officer, or an officer or member of a bush fire brigade or other person acting with authority under this Act, in the performance or doing of

anything which he is empowered or required to do by this Act is guilty of an offence.

Penalty: \$5 000.

[Section 57 amended by No. 11 of 1963 s. 24; No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 48; No. 8 of 1987 s. 8; No. 60 of 1992 s. 13; No. 78 of 1995 s. 147; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39 and 40(1); No. 22 of 2012 s. 66.]

58. General penalty and recovery of expenses incurred

- (1) A person who contravenes any of the provisions of this Act is guilty of an offence against this Act and is liable, if no other penalty is prescribed, to a fine of \$2 000.

[(2) deleted]

- (3) Where, as the result of an offence against this Act, any expense is incurred by an authorised CALM Act officer, bush fire control officer, any officer or member of a bush fire brigade, or by any other person acting under the provisions of this Act, in the performance of a duty imposed, or the doing of anything which he is empowered or required to do, the relevant body may —
- (a) recover the amount of the expense so incurred from the person committing the offence as a debt due in a court of competent jurisdiction; or
 - (b) apply to a court of summary jurisdiction convicting the person of the offence for an order for payment by that person of the amount of the expense, if the amount does not exceed \$1 000, in addition to any penalty inflicted in respect of the conviction; or
 - (c) issue a certificate that the expense was incurred and as to the amount of the expense, and the certificate is evidence of the facts so stated in all courts until the contrary is proved.

(3A) In subsection (3) —

relevant body, in relation to an expense, means —

- (a) if the expense is incurred by an authorised CALM Act officer, the CALM Act CEO; or
- (b) if the expense is incurred by a bush fire control officer employed by a local government, or by an officer or member of a bush fire brigade established and maintained by a local government, the local government; or
- (c) if the expense is incurred by any other person acting pursuant to this Act, the FES Commissioner.

(3B) If an application has been made under subsection (3)(b) —

- (a) the court may grant the application wholly or in part or refuse the application, and payment of an amount specified in an order may be enforced in the same manner as payment of a pecuniary penalty; and
- (b) refusal of the court to grant an order for payment of the whole or part of the expenses is not a bar to proceedings to recover the whole or part, as the case may be, in any other court of competent jurisdiction.

(4) Where proceedings are brought against the person committing the offence for the recovery of the amount of the expenses as a debt, a certificate containing the substance and effect only of the conviction for the offence, issued by the court of summary jurisdiction that convicted the offender, is, upon proof of identity of the person, sufficient evidence of the conviction without proof of the signature, appointment or status of the person by whom the certificate is or purports to be signed until the contrary is proved.

[Section 58 amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 48; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 39 and 40(1); No. 59 of 2004 s. 141; No. 28 of 2006 s. 391; No. 19 of 2010 s. 52(2) and (3); No. 22 of 2012 s. 69.]

59. Prosecution of offences

- (1) A person authorised by the Minister, a person employed in the Department for the purposes of this Act, an authorised CALM Act officer, a member of the Police Force, or a local government, may institute and carry on proceedings against a person for an offence alleged to be committed against this Act.
- (2) The person instituting and carrying on the proceedings shall be reimbursed out of the funds of the local government within whose district the alleged offence is committed, all costs and expenses which he may incur or be put to in or about the proceedings.
- (3) A local government may, by written instrument of delegation, delegate authority generally, or in any class of case, or in any particular case, to its bush fire control officer, or other officer, to consider allegations of offences alleged to have been committed against this Act in the district of the local government and, if the delegate thinks fit, to institute and carry on proceedings in the name of the local government against any person alleged to have committed any of those offences in the district, and may pay out of its funds any costs and expenses incurred in or about the proceedings.
- (4) A local government may by written instrument cancel, or from time to time vary, any instrument of delegation conferred under subsection (3).
- (5) Notwithstanding that a local government has under subsection (3) conferred authority on a delegate, the local government is not precluded from exercising but may itself exercise the authority.

[Section 59 amended by No. 35 of 1957 s. 10; No. 11 of 1963 s. 25; No. 65 of 1977 s. 41; No. 14 of 1996 s. 4; No. 42 of 1998 s. 16; No. 38 of 2002 s. 36 and 40(1); No. 59 of 2004 s. 141; No. 19 of 2010 s. 52(4); No. 22 of 2012 s. 67.]

59A. Alternative procedure — infringement notices

- (1) In this section *prosecutor* means a person or local government authorised by or under section 59 to institute and carry on proceedings against a person for an offence alleged to be committed against this Act.
- (2) Where a prosecutor has reason to believe that a person has committed any such offence against this Act as is prescribed for the purposes of this section, the prosecutor may serve on that person a notice, in the prescribed form (in this section called an *infringement notice*), informing the person that, if he does not wish to be prosecuted for the alleged offence in a court, he may pay to an officer specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence, if dealt with under this section.
- (3) An infringement notice may be served on an alleged offender personally or by posting it to his address as ascertained from him, at the time of, or immediately following, the occurrence giving rise to the allegation of an offence, or as shown (in the case of an owner of land) in a rate record, kept pursuant to the *Local Government Act 1995*, as his address for the service of rate notices.
- (4) A person who receives an infringement notice may decline to be dealt with under the provisions of this section and, where he fails to pay the prescribed penalty within the time specified in the notice or within such further time as may, in any particular case, be allowed, he is deemed to have declined to be dealt with under those provisions.
- (5) An infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn, at any time within 60 days after the service of the notice, by the sending of a notice, in the prescribed form, signed by a prescribed officer, to the alleged offender at his last known place of residence or business, advising the alleged offender that the infringement notice has

- been withdrawn, and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.
- (6) Where a prescribed penalty has been paid pursuant to an infringement notice and the notice has not been withdrawn as provided by subsection (5), proceedings shall not be brought against any person with respect to the offence alleged in the notice.
- (7) The payment of a penalty pursuant to an infringement notice shall, for the purposes of this Act, constitute a conviction of an offence, but shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the occurrence by reason of which the infringement notice was given.
- (8) The Governor may make regulations for any purpose for which regulations are contemplated or required by this section and, in particular, may make regulations —
- (a) prescribing offences for the purposes of this section by setting out the offences or by reference to the provisions creating the offences; and
 - (b) prescribing a penalty for the purposes of this section in respect of any prescribed offence, which penalty shall be a fine of not more than \$1 000.

[Section 59A inserted by No. 65 of 1977 s. 42; amended by No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 38 of 2002 s. 37 and 39; No. 84 of 2004 s. 80.]

60. Assisting to commit an offence

Wherever in this Act there is a prohibition of the doing of anything, the prohibition is to be read as including a prohibition of the assisting in or of aiding or abetting in any way the doing of the thing, and of the causing of or suffering the doing of it, and of any attempt to do the thing, or to cause it to be done or to assist in or aid or abet the doing of the thing.

61. Regulations

- (1) The Governor may make regulations prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which appear to the Governor necessary or convenient to be prescribed for the purpose of effectually carrying out the provisions of this Act or for effecting the objects and purposes of this Act.
- (2) The regulations may impose a penalty not exceeding \$5 000 for a breach of a regulation.

[Section 61 amended by No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 48; No. 8 of 1987 s. 8; No. 38 of 2002 s. 39.]

62. Local government may make local laws

- (1) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* for and in relation to —
 - (a) the appointment, employment, payment, dismissal and duties of bush fire control officers; and
 - (b) the organisation, establishment, maintenance and equipment with appliances and apparatus of bush fire brigades to be established and maintained by the local government; and
 - (c) any other matters affecting the exercise of any powers or authorities conferred and the performance of any duties imposed upon the local government by this Act.
- (2) Where a regulation made by the Governor under this Act is inconsistent with or repugnant to a local law previously made by a local government under subsection (1) and still in force, the regulation prevails and the local law to the extent by which it is inconsistent with or repugnant to the regulation is deemed to be repealed.

[Section 62 amended by No. 14 of 1996 s. 4.]

62A. Governor may amend or repeal local laws

- (1) The Governor may make a local law to amend the text of, or repeal, a local law.
- (2) Subsection (1) does not include the power to amend a local law to include in it a provision that bears no reasonable relationship to the local law as in force before the amendment.
- (3) The Minister is to give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.
- (4) A local law made under this section is to be taken, for all purposes, to be a local law made by the local government which made the local law that is amended or repealed.
- (5) Section 3.17 of the *Local Government Act 1995* does not apply in relation to local laws made under this Act.

[Section 62A inserted by No. 14 of 1996 s. 4.]

[63. Deleted by No. 42 of 1998 s. 13.]

64. Prohibitions excluded by certain circumstances

The provisions of section 17(1), (2) and (12), section 18(2), (3), (6) and (12), section 22B(2), section 24A(2), section 24B(3), section 25(1) and (2), and section 58(1) do not apply in respect of the exercise of any power or the performance of any function authorised by or pursuant to the provisions of Part IV other than a power or function referred to in section 38(5A) or (5B) ³.

[Section 64 amended by No. 65 of 1977 s. 43; No. 51 of 1979 s. 5; No. 38 of 2002 s. 38; No. 25 of 2009 s. 18; No. 19 of 2010 s. 52(4).]

65. Proof of certain matters

- (1) In a prosecution or legal proceeding under the provisions of this Act no proof is required, until evidence is given to the contrary, of —

[(a) deleted]

- (b) an authority of the Minister or of a local government to prosecute;
 - (c) the particular or general designation or appointment of a person employed in the Department or of an officer of a local government to take proceedings against any person;
 - (d) the powers of the officer to prosecute.
- (2) The production of —
- (a) a copy of the *Gazette* containing a rule, local law, regulation, declaration, order or notice purporting to have been made or given under the provisions of this Act; or
 - (b) a copy purporting to be a true copy of such a rule, local law, regulation, declaration, order or notice certified as such by the FES Commissioner; or
 - (ca) a copy purporting to be a true copy of bush fire risk treatment standards published under section 35AA(5) certified as such by the FES Commissioner; or
 - (c) a copy purporting to be a true copy of the certificate of appointment or designation of a bush fire control officer certified as such under the hand of the chief executive officer of a local government or the FES Commissioner; or
 - (d) a copy purporting to be a true copy of the certificate of registration of a bush fire brigade certified as such under the hand of the chief executive officer of a local government,

is evidence until the contrary is proved of the due making, existence, confirmation, approval and giving of the rule, local law, regulation, declaration, order ~~or~~, notice or standard, or of the due appointment or designation of the bush fire control officer, or of the due registration of the bush fire brigade, as the case may be, and of all preliminary steps necessary to give full force and effect to the same.

- (3) The production of a certificate purporting to have been issued by the Bureau of Meteorology in Perth and signed by the Deputy Director or other officer of that Bureau as to the fire danger rating issued by the Bureau in respect of any day, or any period of a day, is evidence until the contrary is proved of the fire danger rating so issued in respect of that day or that period.
- (4) The averment in a claim, prosecution notice or other document in a prosecution or legal proceedings instituted for the purposes of this Act —
 - (a) that a stated time was during the prohibited burning times or during the restricted burning times; or
 - (ba) that a total fire ban declared under section 22A(1) had effect during a stated period and in respect of a stated area of the State; or
 - (b) that land is within a particular district or zone of the State,

is to be presumed as proved in the absence of proof to the contrary.

[Section 65 amended by No. 35 of 1957 s. 11; No. 11 of 1963 s. 27; No. 65 of 1977 s. 44; No. 60 of 1992 s. 15; No. 14 of 1996 s. 4; No. 10 of 1998 s. 20(3); No. 42 of 1998 s. 14 and 16; No. 84 of 2004 s. 80; No. 25 of 2009 s. 19; No. 22 of 2012 s. ~~68~~68; No. 27 of 2016 s. 6.]

66. Proof of ownership or occupancy

- (1) In a prosecution or legal proceedings under this Act, in addition to other methods of proof available —
 - (a) the production of the rate record of a local government, or of a copy or extract purporting to be certified by the mayor or president or chief executive officer of that local government as a copy or extract of the rate record, showing that a person is rated as the owner or occupier of land;
 - (b) the production of a document purporting to be —

- (i) a certificate signed by the Registrar of Deeds and Transfers or an assistant registrar of deeds and transfers that a person appears from a memorial of registration of a deed, conveyance or other instrument to be the owner of land; or
- (ii) a certificate signed by the Registrar of Titles or an Assistant Registrar that a person's name appears in the Register under the *Transfer of Land Act 1893*, as that of the owner of land; or
- (iii) a certificate signed by the chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997* that a person is registered in that department as the owner, lessee, or occupier of land; or
- (iv) a certificate signed by the chief executive officer of the department principally assisting in the administration of the *Mining Act 1978* that a person is registered in that department as the lessee or occupier of land or the holder of a concession or permit; or
- (v) a certificate signed by the chief executive officer of the department principally assisting in the administration of the *Conservation and Land Management Act 1984* that a person is registered in that department as the lessee or occupier of land or the holder of a timber lease, concession or permit,

is, until the contrary is proved, evidence that the person is, as the case requires, the owner, lessee, or occupier of the land or the holder of the timber lease, concession or permit.

- (2) All courts, judges and persons acting judicially shall for the purposes of this Act take judicial notice of the signature to a certificate mentioned in subsection (1).

- (3) The averment in a claim, prosecution notice or other document in a prosecution or legal proceedings instituted for the purposes of this Act that a person is or was at the stated time the owner or occupier of land, is to be presumed as proved in the absence of proof to the contrary.

[Section 66 inserted by No. 11 of 1963 s. 28; amended by No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(1); No. 57 of 1997 s. 26(3); No. 84 of 2004 s. 80; No. 28 of 2006 s. 392; No. 60 of 2006 s. 126; No. 47 of 2011 s. 16.]

67. Advisory committees

- (1) A local government may at any time appoint such persons as it thinks fit as a bush fire advisory committee for the purpose of advising the local government regarding all matters relating to the preventing, controlling and extinguishing of bush fires, the planning of the layout of fire-breaks in the district, prosecutions for breaches of this Act, the formation of bush fire brigades and the grouping thereof under group brigade officers, the ensuring of co-operation and co-ordination of bush fire brigades in their efforts and activities, and any other matter relating to bush fire control whether of the same kind as, or a different kind from, those specified in this subsection.
- (2) A committee appointed under this section shall include a member of the council of the local government nominated by it for that purpose as a member of the committee, and the committee shall elect one of their number to be chairman thereof.
- (3) In respect to a committee so appointed, the local government shall fix the quorum for the transaction of business at meetings of the committee and may —
- (a) make rules for the guidance of the committee; and
 - (b) accept the resignation in writing of, or remove, any member of the committee; and

- (c) where for any reason a vacancy occurs in the office of a member of the committee, appoint a person to fill that vacancy.
- (4) A committee appointed under this section —
 - (a) may from time to time meet and adjourn as the committee thinks fit;
 - (b) shall not transact business at a meeting unless the quorum fixed by the local government is present;
 - (c) is answerable to the local government and shall, as and when required by the local government, report fully on its activities.

[Section 67 inserted by No. 11 of 1963 s. 28; amended by No. 67 of 1970 s. 5; No. 65 of 1977 s. 45; No. 14 of 1996 s. 4.]

68. Regional advisory committees

- (1) A group of 2 or more local governments may by agreement join in appointing a regional bush fire advisory committee to assist them in the performance of their functions under this Act.
- (2) Where a group of local governments agree to appoint a committee under this section —
 - (a) those local governments, by agreement —
 - (i) shall fix the number of members of the committee and the quorum for the transaction of business at meetings of the committee;
 - (ii) shall determine the interests to be represented on the committee;
 - (iii) may make rules for the guidance of the committee;
 - and
 - (b) each of those local governments —
 - (i) shall be entitled to appoint the same number of persons as members of the committee and,

subject to paragraph (a)(ii), may so appoint such persons as they think fit;

- (ii) may accept the resignation in writing of, or remove, a member of the committee appointed by it;
- (iii) may, where for any reason a vacancy occurs in the office of a member of the committee appointed by it, appoint a person to fill that vacancy;

and

(c) the committee —

- (i) may from time to time meet and adjourn as the committee thinks fit;
- (ii) shall not transact business at a meeting unless the quorum fixed pursuant to paragraph (a)(i) is present;
- (iii) is answerable to those local governments and shall, as and when required by them, report fully on its activities.

- (3) The function of a regional advisory committee established under this section by a group of local governments is to advise those local governments individually and collectively on all aspects of the co-ordination and planning of their activities in preventing, controlling and extinguishing bush fires.

[Section 68 inserted by No. 65 of 1977 s. 46; amended by No. 14 of 1996 s. 4.]

[69. *Deleted by No. 42 of 1998 s. 15.]*

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Notes

¹ This is a compilation of the *Bush Fires Act 1954* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---------------|--|
| <i>Bush Fires Act 1954</i> | 53 of 1954 (3 Eliz. II No. 53) | 23 Dec 1954 | 29 Apr 1955 (see s. 3 and <i>Gazette</i> 29 Apr 1955 p. 749) |
| <i>Bush Fires Act Amendment Act 1957</i> | 35 of 1957 (6 Eliz. II No. 35) | 5 Nov 1957 | 5 Nov 1957 |
| <i>Bush Fires Act Amendment Act 1958</i> | 20 of 1958 (7 Eliz. II No. 20) | 22 Oct 1958 | 22 Oct 1958 |
| Reprint of the <i>Bush Fires Act 1954</i> approved 3 Jul 1961 in Vol. 15 of Reprinted Acts (includes amendments listed above) | | | |
| <i>Bush Fires Act Amendment Act 1963</i> | 11 of 1963 (12 Eliz. II No. 11) | 22 Oct 1963 | 22 Nov 1963 (see s. 2 and <i>Gazette</i> 22 Nov 1963 p. 3618) |
| <i>Bush Fires Act Amendment Act 1964</i> | 23 of 1964 (13 Eliz. II No. 23) | 28 Oct 1964 | 28 Oct 1964 |
| <i>Bush Fires Act Amendment Act 1965</i> | 15 of 1965 | 1 Oct 1965 | 1 Oct 1965 |
| <i>Decimal Currency Act 1965</i> | 113 of 1965 | 21 Dec 1965 | Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2)) |
| <i>Bush Fires Act Amendment Act 1969</i> | 101 of 1969 | 25 Nov 1969 | 25 Nov 1969 |
| <i>Bush Fires Act Amendment Act 1970</i> | 67 of 1970 | 17 Nov 1970 | 17 Nov 1970 |
| Reprint of the <i>Bush Fires Act 1954</i> approved 14 Apr 1971 (includes amendments listed above) | | | |
| <i>Metric Conversion Act 1972</i> | 94 of 1972 (as amended by No. 83 of 1973 s. 3) | 4 Dec 1972 | Relevant amendments (see Third Sch. ⁴) took effect on 1 Jun 1974 (see s. 4(2) and <i>Gazette</i> 24 May 1974 p. 1626) |

| Short title | Number and year | Assent | Commencement |
|--|------------------------|---------------|--|
| <i>Bush Fires Act Amendment Act 1977</i> | 65 of 1977 | 28 Nov 1977 | 1 Jun 1978 (see s. 2 and <i>Gazette</i> 10 Mar 1978 p. 667) |
| Reprint of the <i>Bush Fires Act 1954</i> approved 21 Jun 1978 (includes amendments listed above) | | | |
| <i>Bush Fires Act Amendment Act 1979</i> | 51 of 1979 | 7 Nov 1979 | 7 Nov 1979 |
| <i>Bush Fires Amendment Act 1981</i> | 95 of 1981 | 4 Dec 1981 | 4 Dec 1981 |
| <i>Acts Amendment (Conservation and Land Management) Act 1984 Pt. IV</i> | 112 of 1984 | 19 Dec 1984 | 22 Mar 1985 (see s. 2 and <i>Gazette</i> 15 Mar 1985 p. 931) |
| <i>Bush Fires Amendment Act 1987</i> | 8 of 1987 | 5 Jun 1987 | 3 Jul 1987 |
| <i>Criminal Law Amendment Act 1990 Pt. 3</i> | 101 of 1990 | 20 Dec 1990 | 14 Feb 1991 (see s. 2(1)) |
| Reprint of the <i>Bush Fires Act 1954</i> as at 27 Feb 1992 (includes amendments listed above) | | | |
| <i>Bush Fires Amendment Act 1992</i> ⁵ | 60 of 1992 | 11 Dec 1992 | Act other than Pt. 2: 11 Dec 1992 (see s. 2(1)); Pt. 2: 25 Mar 1993 (see s. 2(2) and <i>Gazette</i> 19 Mar 1993 p. 1635) |
| <i>Financial Administration Legislation Amendment Act 1993 s. 11</i> | 6 of 1993 | 27 Aug 1993 | 1 Jul 1993 (see s. 2(1)) |
| <i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i> | 32 of 1994 | 29 Jun 1994 | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948) |
| <i>Fire Brigades Amendment Act 1994 s. 36</i> | 52 of 1994 | 2 Nov 1994 | 10 Dec 1994 (see s. 2 and <i>Gazette</i> 9 Dec 1994 p. 6647) |
| <i>Planning Legislation Amendment Act (No. 2) 1994 s. 46(1)</i> | 84 of 1994 | 13 Jan 1995 | 1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567) |
| <i>Sentencing (Consequential Provisions) Act 1995 Pt. 6 and s. 147</i> | 78 of 1995 | 16 Jan 1996 | 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632) |
| <i>Coroners Act 1996 s. 61</i> | 2 of 1996 | 24 May 1996 | 7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529) |

Bush Fires Act 1954

| Short title | Number and year | Assent | Commencement |
|---|-----------------|-------------|---|
| <i>Local Government (Consequential Amendments) Act 1996</i> s. 4 | 14 of 1996 | 28 Jun 1996 | 1 Jul 1996 (see s. 2) |
| <i>Financial Legislation Amendment Act 1996</i> s. 64 | 49 of 1996 | 25 Oct 1996 | 25 Oct 1996 (see s. 2(1)) |
| <i>Transfer of Land Amendment Act 1996</i> s. 153(1) | 81 of 1996 | 14 Nov 1996 | 14 Nov 1996 (see s. 2(1)) |
| Reprint of the <i>Bush Fires Act 1954</i> as at 20 Jan 1997 (includes amendments listed above except those in the <i>Coroners Act 1996</i>) | | | |
| <i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 26 | 57 of 1997 | 15 Dec 1997 | 15 Dec 1997 (see s. 2(1)) |
| <i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 20 | 10 of 1998 | 30 Apr 1998 | 30 Apr 1998 (see s. 2(1)) |
| <i>Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998</i> Pt. 2 ⁶ | 42 of 1998 | 4 Nov 1998 | 1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833) |
| <i>Fire and Emergency Services Legislation Amendment Act 2002</i> s. 15-40 ⁷ | 38 of 2002 | 20 Nov 2002 | 30 Nov 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651-2) |
| <i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 4 | 28 of 2003 | 22 May 2003 | 1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579) |
| Reprint 6: The <i>Bush Fires Act 1954</i> as at 1 Aug 2003 (includes amendments listed above) | | | |
| <i>Acts Amendment and Repeal (Competition Policy) Act 2003</i> Pt. 3 | 70 of 2003 | 15 Dec 2003 | 21 Apr 2004 (see s. 2 and <i>Gazette</i> 20 Apr 2004 p. 1297) |
| <i>Criminal Code Amendment Act 2004</i> s. 58 | 4 of 2004 | 23 Apr 2004 | 21 May 2004 (see s. 2) |
| <i>Workers' Compensation Reform Act 2004</i> s. 174 | 42 of 2004 | 9 Nov 2004 | 4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131) |
| <i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128) |

| Short title | Number and year | Assent | Commencement |
|---|--|---------------|--|
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| Reprint 7: The Bush Fires Act 1954 as at 3 Mar 2006 (includes amendments listed above) | | | |
| <i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 14 Div. 1 | 28 of 2006 | 26 Jun 2006 | 1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347) |
| <i>Land Information Authority Act 2006</i> s. 126 | 60 of 2006 | 16 Nov 2006 | 1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369) |
| <i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> s. 28 | 24 of 2007 | 12 Oct 2007 | 1 May 2013 (see s. 2(2) and <i>Gazette</i> 5 Feb 2013 p. 823) |
| <i>Bush Fires Amendment Act 2009</i> Pt. 2 | 25 of 2009 | 17 Nov 2009 | 1 Dec 2009 (see s. 2(b) and <i>Gazette</i> 1 Dec 2009 p. 4829) |
| <i>Arson Legislation Amendment Act 2009</i> Pt. 2 | 43 of 2009 | 3 Dec 2009 | 19 Dec 2009 (see s. 2(b) and <i>Gazette</i> 18 Dec 2009 p. 5167) |
| Reprint 8: The Bush Fires Act 1954 as at 9 Apr 2010 (includes amendments listed above except those in the <i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i>) | | | |
| <i>Standardisation of Formatting Act 2010</i> s. 43(3) and 52 ⁸ | 19 of 2010 (as amended by No. 17 of 2014 s. 39(5)-(8)) | 28 Jun 2010 | s. 43(3), 52(1)-(3) and 52(4) (other than the amendments to s. 21(1), (2) and (3), s. 39(2), s. 45 and s. 47, the amendment to s. 44(3) to delete “(3)(a) Where” and insert “(3) Where” and the amendments to s. 64 to delete “s. 21(2),” and insert “s. 21(2A) and (2B),”): 11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341) |
| <i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 16 | 47 of 2011 | 25 Oct 2011 | 26 Oct 2011 (see s. 2(b)) |
| <i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 4 | 8 of 2012 | 21 May 2012 | 27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371) |

| Short title | Number and year | Assent | Commencement |
|---|-----------------------------------|------------------------------------|--|
| <i>Fire and Emergency Services Legislation Amendment Act 2012 Pt. 3</i> | 22 of 2012 | 29 Aug 2012 | 1 Nov 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255) |
| Reprint 9: The Bush Fires Act 1954 as at 11 Oct 2013 (includes amendments listed above except those in the <i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 4</i>) | | | |
| <i>Statutes (Repeals and Minor Amendments) Act 2014 s. 17</i> | 17 of 2014 | 2 Jul 2014 | 6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213) |
| <u><i>Bush Fires Amendment Act 2016</i></u> | <u>27 of 2016</u> | <u>21 Sep 2016</u> | <u>s. 1 and 2: 21 Sep 2016 (see s. 2(a)); Act other than s. 1 and 2: 1 Jul 2017 (see s. 2(b) and <i>Gazette</i> 30 Jun 2017 p. 3552)</u> |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|--|-----------------------|------------------------|---|
| <i>Biodiversity Conservation Act 2016 s. 312</i> ¹¹ | 24 of 2016 | 21 Sep 2016 | To be proclaimed (see s. 2(b)) |
| <i>Bush Fires Amendment Act 2016 s. 3-6</i> ⁹ | 27 of 2016 | 21 Sep 2016 | To be proclaimed (see s. 2(b)) |
| <i>Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016 Pt. 2</i> ¹⁰ | 28 of 2016 | 21 Sep 2016 | To be proclaimed (see s. 2(b)) |

² The provision in this Act repealing that Act has been omitted under the *Reprints Act 1984 s. 7(4)(f)*.

³ Provisions of the *Bush Fires Act 1954* referred to in s. 64 are not the same references as originally enacted. Under the *Interpretation Act 1984 s. 16(2)*, as a result of amendments to the *Bush Fires Act 1954* by the *Bush Fires Act Amendment Act 1977* (No. 65 of 1977), those references may be construed as if amended. The references were changed under the *Reprints Act 1984 s. 7(3)(g)*.

⁴ The Third Schedule was inserted by the *Metric Conversion Act Amendment Act (No. 2) 1973*.

⁵ The *Bush Fires Amendment Act 1992* s. 6(2) reads as follows:

- (2) Where, immediately before the commencement of this Act, a delegation was in force under section 9(1)(a) or (c) of the principal Act, the delegation shall, on and after that commencement, be deemed to be a delegation to the Chief Executive Officer under section 9(1)(a) of the principal Act as in force after that commencement, and may be varied or revoked accordingly.

⁶ The *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998* s. 11(2) is a transitional provision that is of no further effect.

⁷ The *Fire and Emergency Services Legislation Amendment Act 2002* s. 27(2) and (3) are transitional provisions that are of no further effect.

⁸ The *Standardisation of Formatting Act 2010* s. 52(4) in relation to amendments to the *Bush Fires Act 1954* s. 21(1), (2) and (3), s. 39(2), s. 45 and s. 47, the amendment to s. 44(3) to delete “(3)(a) Where” and insert “(3) Where” and the amendments to s. 64 to delete “s. 21(2),” and insert “s. 21(2A) and (2B), had not come into operation when it was deleted by the *Statutes (Repeals and Minor Amendments) Act 2014* s. 39(5)-(8).

⁹ ~~On the date as at which this compilation was prepared, the *Bush Fires Amendment Act 2016* s. 3-6 had not come into operation. They read as follows:~~

~~**3. Act amended**~~

~~— This Act amends the *Bush Fires Act 1954*.~~

~~**4. Part III Division 7 inserted**~~

~~— At the end of Part III insert:~~

~~**Division 7 — Bush fire risk treatment standards**~~

~~**35AA. FES Commissioner may make bush fire risk treatment standards**~~

~~(1) The FES Commissioner may make standards (*bush fire risk treatment standards*) specifying measures for —~~

~~(a) preventing the outbreak of a bush fire or the spread or extension of a bush fire; and~~

~~(b) mitigating the effects of a bush fire on any property.~~

- ~~— (2) — The measures that may be specified in bush fire risk treatment standards are —
 - ~~— (a) — all or any of the things mentioned in section 33(1)(a) and (b); and~~
 - ~~— (b) — any other measures the FES Commissioner considers appropriate.~~~~
- ~~— (3) — Bush fire risk treatment standards may apply to —
 - ~~— (a) — the whole of the State; or~~
 - ~~— (b) — one or more specified areas of the State.~~~~
- ~~— (4) — The FES Commissioner may amend bush fire risk treatment standards or revoke them and make new bush fire risk treatment standards.~~
- ~~— (5) — If the FES Commissioner makes bush fire risk treatment standards, the FES Commissioner must publish those standards and any amendment or revocation of them —
 - ~~— (a) — in a newspaper circulating throughout the State or the relevant areas of the State, as the case requires; or~~
 - ~~— (b) — on a website maintained by the FES Commissioner; or~~
 - ~~— (c) — as the FES Commissioner otherwise considers appropriate.~~~~
- ~~— (6) — The FES Commissioner must consult with the Minister before making, amending or revoking any bush fire risk treatment standards.~~
- ~~— (7) — The Interpretation Act 1984 section 42 applies to and in relation to the bush fire risk treatment standards as if they were regulations.~~

35AB. — Compliance with bush fire risk treatment standards

- ~~— (1) — In this section —
 - ~~— *bush fire risk treatment standards* means bush fire risk treatment standards published under section 35AA(5);~~
 - ~~— *owner or occupier of land* includes a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.~~~~
- ~~— (2) — An owner or occupier of land may comply with bush fire risk treatment standards that apply to the land, but is not required to do so.~~
- ~~— (3) — Subsection (2) does not authorise an owner or occupier of land to comply with bush fire risk treatment standards that apply to the land if that compliance would result in the owner or occupier failing to comply with —~~

- ~~— (a) — another provision of this Act that has effect in relation to the land; or~~
- ~~— (b) — a provision of another written law that has effect in relation to the land and that is prescribed by the regulations for the purposes of this subsection; or~~
- ~~— (c) — local laws referred to in section 33(5a) that apply to the land.~~
- ~~— (4) — Except as provided in subsection (3), an owner or occupier of land may comply with bush fire risk treatment standards that apply to the land despite any other written law.~~

~~5. — Section 35A amended~~

~~— In section 35A in the definition of *normal brigade activities* paragraph (c) delete “section 33(1) or a local law made under section 33(5a);” and insert:~~

~~— section 33(1), 34(2) or 35(1) or a local law made under section 33(5a);~~

~~6. — Section 65 amended~~

~~— In section 65(2):~~

~~— (a) — after paragraph (b) insert:~~

~~— (ca) — a copy purporting to be a true copy of bush fire risk treatment standards published under section 35AA(5) certified as such by the FES Commissioner; or~~

~~— (b) — delete “order or notice,” and insert:~~

~~— order, notice or standard;~~

⁹ [Footnote no longer applicable.](#)

¹⁰ On the date as at which this compilation was prepared, the *Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016* Pt. 2 had not come into operation. It reads as follows:

Part 2 — *Bush Fires Act 1954* amended

3. **Act amended**
This Part amends the *Bush Fires Act 1954*.
4. **Section 35A amended**
In section 35A delete the definition of *loss or damage*.
5. **Section 37 deleted**
Delete section 37.

¹¹ On the date as at which this compilation was prepared, the *Biodiversity Conservation Act 2016* s. 312 had not come into operation. It reads as follows:

312. *Bush Fires Act 1954* amended

- (1) This section amends the *Bush Fires Act 1954*.
- (2) In section 7(1) delete the definition of *authorised CALM Act officer* and insert:

authorised CALM Act officer means —

- (a) a wildlife officer who is authorised for the purposes of the *Conservation and Land Management Act 1984* section 45(4)(b); or
- (b) a forest officer, ranger or conservation and land management officer who is authorised for the purposes of the *Conservation and Land Management Act 1984* section 45(5A)(b);