

Western Australia

Bush Fires Amendment Act 2009

As at 17 Nov 2009

No. 25 of 2009

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Bush Fires Amendment Act 2009

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Western Australia

Bush Fires Amendment Act 2009

No. 25 of 2009

An Act to amend the *Bush Fires Act 1954* and, in consequence, to amend the *Environmental Protection Act 1986*.

[Assented to 17 November 2009]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Bush Fires Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Bush Fires Act 1954* amended

3. Act amended

This Part amends the *Bush Fires Act 1954*.

4. Section 9 inserted

At the beginning of Part II insert:

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).

5. Section 13 amended

- (1) In section 13(3) delete “subsection (4),” and insert:

subsection (6),

- (2) Delete section 13(4) and (5) and insert:

- (4) If a bush fire is burning in the district of a local government on land other than conservation land, the Authority 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 Authority considers that it is appropriate to do so.

- (5) If a bush fire is burning on conservation land, the Authority 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 Authority 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.

6. Sections 14A, 14B and 14C inserted

After section 13 insert:

14A. Powers and duties under section 13 not affected by certain powers under the *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
 - (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.

14B. Powers of authorised persons 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 Authority 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 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 Act 1974* 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 or another person under another provision of this Act or any other written law.

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 Authority to be a true copy of the original.

7. Part III Division 4 replaced

Delete Part III Division 4 and insert:

Division 4 — Total fire ban

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).

22A. Minister may declare a 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.
- (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.

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.

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 Chief Executive Officer that, in the opinion of the Chief Executive Officer, 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.

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- (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
 - (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.

8. Section 24C amended

In section 24C in the definition of *limited burning times* delete ““extreme” or “very high”,” and insert:

“catastrophic”, “extreme”, “severe” or “very high”;

9. Section 24D amended

In section 24D delete ““extreme” or “very high”.” and insert:

“catastrophic”, “extreme”, “severe” or “very high”.

Note: The heading to amended section 24D is to read:

Burning garden refuse prohibited if fire danger is very high or more

10. Section 25 amended

In section 25(1)(a) delete ““extreme” or “very high”,” and insert:

“catastrophic”, “extreme”, “severe” or “very high”.

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11. Section 32 amended

(1) At the beginning of section 32 insert:

(1) In this section —

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

(2) In section 32 delete “A person” and insert:

(2) A person

12. Section 38 amended

(1) In section 38(2)(d) after “person” insert:

who is not a member of staff (as defined in the FESA Act)

(2) In section 38(2)(e) after “appointed” (first occurrence) insert:

by a local government

(3) In section 38(6)(h) delete ““extreme” or “very high,”” and insert:

“catastrophic”, “extreme”, “severe” or “very high”,

- (4) In section 38(6)(i) delete “bush during the prohibited burning times or within the defined area during a bush fire emergency period.” and insert:

bush —

- (i) during the prohibited burning times; or
- (ii) 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.

13. Section 39 amended

Delete section 39(2)(a).

14. Section 44 amended

- (1) In section 44(3)(a) delete “Where” and insert:

Subject to the provisions of sections 13(6) and 45,
where

- (2) In section 44(3)(b) delete “section 45” and insert:

sections 13(6) and 45,

15. Section 45A inserted

After section 44 insert:

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 Authority 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).

16. Section 45 amended

(1) At the beginning of section 45 insert:

(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) Delete section 45(a) and insert:

(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) In section 45(b) delete “(b) Where an authorised CALM Act officer is present at the fire” and insert:

(3) If an authorised CALM Act officer is present at a bush fire and is exercising powers and authorities under subsection (2),

(4) At the end of section 45 insert:

(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 Authority of having done so; and
 - (b) must comply with any requirements prescribed by the regulations for the purposes of this subsection.

Note: The heading to amended section 45 is to read:

Powers and authorities exercisable by authorised CALM Act officers

17. Section 47 amended

In section 47 delete “section 39(2)(a) and to the provisions of section 45,” and insert:

sections 13(6) and 45,

18. Section 64 amended

In section 64 delete “section 21(2),” and insert:

section 22B(2),

19. Section 65 amended

After section 65(4)(a) insert:

- (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

Part 3 — Consequential amendment

20. *Environmental Protection Act 1986* amended

(1) This section amends the *Environmental Protection Act 1986*.

(2) In Schedule 6 clause 10:

(a) in paragraph (c) delete “permission granted under section 21(2);” and insert:

an exemption granted under section 22C; or

(b) after each of paragraphs (a) and (b) insert:

or

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