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Biodiversity Conservation Act 2016

## **Biodiversity Conservation (Exemptions) Amendment Order 2021**

SL 2021/175

Made by the Minister under section 271(2) of the Act.

**1. Citation**

This order is the *Biodiversity Conservation (Exemptions) Amendment Order 2021*.

**2. Commencement**

This order comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this order is published in the *Gazette*;
- (b) the rest of the order — on the day after that day.

**3. Order amended**

This order amends the *Biodiversity Conservation (Exemptions) Order 2018*.

**4. Clause 7 inserted**

After clause 6 insert:

**7. Bush fire mitigation and suppression activities**

- (1) In this clause —  
*burning*, of vegetation in an area, means —

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- (a) fire hazard reduction burning in the area; or
- (b) burning or partial burning of vegetation in the area by an uncontrolled fire that reduces the risk of injury or damage to persons or property from a subsequent uncontrolled fire in the vegetation;

***bush fire mitigation activity*** means the following —

- (a) burning permitted under the *Bush Fires Act 1954* section 17(5);
- (b) burning done in accordance with a permit obtained under the *Bush Fires Act 1954* section 18;
- (c) burning done under the *Bush Fires Act 1954* section 22(2);
- (d) burning done under the *Bush Fires Act 1954* section 23;
- (e) things done to comply with a notice given under the *Bush Fires Act 1954* section 33(1);
- (f) things done pursuant to a direction of a local government under the *Bush Fires Act 1954* section 33(4);
- (g) clearing done by a local government under the *Bush Fires Act 1954* section 36(b);
- (h) things done under the *Bush Fire Risk Treatment Standards 2020* clause 6;
- (i) clearing described in the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* regulation 5(1) Table item 3 or 15;
- (j) things done for fire prevention or control purposes or other fire management works on Crown land by the FES Commissioner (as

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defined in the *Fire and Emergency Services Act 1998* section 3);

**bush fire suppression activity** means the following —

- (a) things done under the *Bush Fires Act 1954* section 39(1)(d) or 44(1)(c);
- (b) things done in relation to fire under the *Fire Brigades Act 1942* section 34(a), (c) or (j);

**fire hazard reduction burning** means burning or partial burning of vegetation to reduce the risk of injury or damage to persons or property from an uncontrolled fire in the vegetation.

- (2) A person who carries out a bush fire mitigation activity or bush fire suppression activity is exempt from —
  - (a) section 48(1) of the Act in relation to any modification of an occurrence of a threatened ecological community that occurs in the course of, or as a result of, the activity; and
  - (b) section 149(1) of the Act in relation to any taking of fauna that occurs in the course of, or as a result of, the activity; and
  - (c) section 150(1) of the Act in relation to any taking of threatened fauna that occurs in the course of, or as a result of, the activity; and
  - (d) section 153(1) of the Act in relation to any disturbance of fauna that occurs in the course of, or as a result of, the activity; and
  - (e) section 173(1) or (2) of the Act in relation to any taking of threatened flora that occurs in the course of, or as a result of, the activity.
- (3) Subclause (2) does not apply to a bush fire mitigation activity to the extent that the activity consists of fire hazard reduction burning in an area if —

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- (a) the activity is of a kind referred to in paragraph (a), (b), (d), (h), (i) or (j) of the definition of ***bush fire mitigation activity***; and
  - (b) burning of vegetation in the area has occurred within the past 6 years.
- (4) Subclause (2)(b) and (c) do not apply to the extent that the taking of fauna consists of harvesting or capturing the fauna or causing or permitting harvest or capture of the fauna.
- (5) Subclause (2)(e) does not apply to the extent that the taking of threatened flora consists of harvesting the flora or causing or permitting harvest of the flora.

A. SANDERSON, Minister for Environment.