



Regulation of open burning in NSW

An environmental guideline for councils, fire management authorities and landowners

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The following definitions are supplied to help interpret the legislation outlined in this guide. They are not necessarily legal definitions.

Burning in the open Means burning where the products of combustion are not directed to the open air by a stack or chimney. The use of an open fireplace built into a house for home heating is not considered ‘burning in the open’ and is not covered by the Protection of the Environment Operations (Control of Burning) Regulation 2000.

Burning of vegetation for agricultural operations Includes the burning of diseased crops, orchard prunings, crop stubble, weeds, pest animal habitat and pasture for regenerative purposes, and the clearing of land for commercial agriculture. It does not include the burning of packaging associated with agricultural operations, vegetation accumulated from land clearance for commercial property development, domestic refuse or private garden green waste.

Bushfire hazard reduction work Means:
 (a) the establishment or maintenance of fire breaks on land
 (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate the spread of a bushfire but does not include construction of a track, trail or road.

Domestic waste Is readily combustible waste (other than vegetation) of a kind and quantity ordinarily generated on domestic premises.

Ecological/bush regeneration burns Are carried out to:
 • destroy infestations of noxious weeds and plants
 • clear land for native species regeneration
 • allow seeding or germination of native species that need fire
 • maintain biodiversity through the use of fire where fire thresholds have been exceeded.

EPA NSW Environment Protection Authority

Fire fighting authority The following organisations are fire fighting authorities:
 (a) NSW Rural Fire Service
 (b) New South Wales Fire Brigades
 (c) National Parks and Wildlife Service
 (d) State Forests of NSW.

Fuel In the context of bushfires, fuel can be defined as any naturally occurring vegetative material (native or introduced) which in the event of a bushfire would contribute to fire intensity.

No-burn day A day on which open burning is prohibited when there is likely to be a build-up of air pollution. A no-burn day is declared by the EPA by means of an order issued under section 133 of the *Protection of the Environment Operations Act 1997*.





Recreational purposes	Include camping, barbecuing, picnicking, scouting and other similar outdoor activities.
RFS	NSW Rural Fire Service
Rural fire district	Under the <i>Rural Fires Act 1997</i> , a rural fire district constitutes the area of each local authority. Note: A rural fire district does not constitute, and does not include, any land in an area that is in a fire district constituted under the <i>Fire Brigades Act 1989</i> .
Total fire ban	A specified period during which lighting, maintaining or using any fire in the open air is prohibited.



INTRODUCTION

This guide gives local councils and fire management authorities an outline of burning requirements under the *Protection of the Environment Operations Act 1997* (NSW) and the *Rural Fires Act 1997* (NSW). It has been jointly prepared by the Environment Protection Authority (EPA) and the NSW Rural Fire Service (RFS).

The uncontrolled burning of waste such as household rubbish and garden clippings creates an air quality impact that should be avoided. Measures have been introduced over time to control backyard burning and other open burning. These have been successful in bringing down average levels of particle pollution, especially in the Greater Metropolitan Region.

The Protection of the Environment Operations (Control of Burning) Regulation 2000 consolidates and builds on these measures. The Regulation:

- requires anyone who burns anything in the open or in an incinerator to do so in a manner that prevents or minimises air pollution
- imposes a statewide ban on the burning of tyres, coated wire, paint/solvent containers and residues, and treated timber
- controls the burning of domestic waste and vegetation
- gives powers to councils to control the extent of vegetation burning in their local government area where they have elected to have this control
- permits agricultural, cooking and recreational fires
- allows other burning if approved by the EPA
- bans home-unit incinerators.

The Regulation does not affect bushfire hazard reduction work allowed under the *Rural Fires Act*, the destruction of prohibited plants or drugs, or the burning of diseased animal carcasses.

SUMMARY OF BURNING REQUIREMENTS UNDER PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997, AND PROTECTION OF THE ENVIRONMENT OPERATIONS (CONTROL OF BURNING) REGULATION 2000

There are five key mechanisms in the *Protection of the Environment Operations Act 1997* and the Protection of the Environment Operations (Control of Burning) Regulation 2000 for managing inappropriate burning:

- the EPA can issue no-burn orders (section 133 of the Act – see Appendix 1)
- authorised officers of a local authority or of the EPA can issue directions to extinguish certain fires (section 134 of the Act – see Appendix 1)
- blanket bans are placed on burning certain articles, namely tyres, coated wire, paint containers and residues, solvent containers and residues, and timber treated with copper chromium arsenate (CCA) or pentachlorophenol (PCP) (clause 6 of the Regulation – see Appendix 4)
- permanent restrictions are placed on backyard burning in specified local government areas (clause 7 of the Regulation – see Appendix 4)
- operation of home-unit incinerators had to cease by 1 September 2001 (clause 8 of the Regulation – see Appendix 4).





SUMMARY OF BURNING REQUIREMENTS UNDER *RURAL FIRES ACT 1997 AND RURAL FIRES REGULATION 2002*

The burning of waste material and the management of vegetation (fuels) on properties are also of concern. Care must be taken to prevent the spread of a bushfire as well as to protect the community from hazards created by the lighting of fires.

Open burning is therefore regulated under the *Rural Fires Act 1997* and the *Rural Fires Regulation 2002* by:

- Bush Fire Management Committees preparing bushfire risk management plans and operations plans (section 52 of the Act)
- landowners or occupiers of land undertaking hazard reduction to prevent the spread of a fire on or from the land (section 63 of the Act)
- councils or the Commissioner of the NSW Rural Fire Service issuing notices to implement hazard reduction where a bushfire risk management plan requires this and the landowner fails to exercise their duty of care (section 66 of the Act)
- the Commissioner of the NSW Rural Fire Service implementing hazard reduction when public authorities fail to exercise their duties under the *Rural Fires Act 1997*
- controls on cooking fires being provided (without the need for a permit)
- certain public authorities providing controls on roadside fire protection
- controls being provided on burning to demolish buildings or old building material in rural fire districts
- specific control measures on burning to destroy sawmill waste
- specific controls on burning for charcoal production, lime burning or distillation of oils
- clearance controls on burning at garbage depots in bushfire danger periods
- the lighting of fires being controlled close to buildings in fire districts (section 86 of the Act – see Appendix 7)
- prohibitions on the lighting, use and maintenance of open fires during bushfire danger periods without a permit (section 87 of the Act – see Appendix 7)
- total fire bans being declared that prevent the lighting of fires, and permits being suspended for the duration of the ban (section 99 of the Act).



REQUIREMENTS UNDER *PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997*, AND *PROTECTION OF THE ENVIRONMENT OPERATIONS (CONTROL OF BURNING) REGULATION 2000*

NO-BURN ORDERS ISSUED UNDER SECTION 133 OF THE *PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997*

Section 133 of the Act (see Appendix 1) allows the EPA to ban burning in the open, conditionally or unconditionally, on days when weather conditions mean that burning is likely to contribute to significant air pollution. The EPA initiates the no-burn procedure by notifying the RFS two days before the proposed ban. Following discussions between the RFS and the EPA, the EPA finalises the no-burn notice on the day before it comes into effect. Appendix 2 outlines the procedure for issuing a no-burn notice.

A no-burn notice is issued when there is likely to be a build up of air pollution. It is different from a total fire ban which can be issued under the *Rural Fires Act 1997* because of the risk of bushfires.

On the morning of the ban, a no-burn notice (see Appendix 3) is published in the public notices section of *The Sydney Morning Herald*. A copy can also be found on the EPA's website (www.epa.nsw.gov.au/airqual/aqupd.asp) when the regional pollution index is updated at approximately 4 p.m. in the afternoon before the ban, as well as on the day of the ban. The EPA may revoke the no-burn notice if it no longer believes that weather conditions will lead to pollution build-up.

Features of a typical no-burn notice

No-burn notices will contain conditions that vary according to the circumstances under which they were issued. Each no-burn notice should be read carefully to see which conditions apply. The following summarises

the general practice for the issue of no-burn notices:

- In general, a no-burn notice will apply only to the local council areas listed in the notice rather than to NSW as a whole. The specified local council areas will usually be those in and around Sydney, the Illawarra, the Central Coast and the lower Hunter.
- The notice will apply for the period specified, ranging from one to seven days.
- The notice will prohibit all open burns (including hazard reduction and ecological burns – see 'Definitions' on page v), other than those lit for the suppression of bushfires under the authority of the *Rural Fires Act 1997* and those specifically exempted by the notice.
- Recreational fires not for cooking purposes, such as campfires, will be prohibited during a no-burn day.
- The notice will not prohibit the use of incinerators licensed by the EPA. The use of other incinerators will be prohibited during a no-burn day.
- The notice will not prohibit the use of barbecues and other cooking fires and fires lit for the purpose of home heating.
- Open burns lit before the issuing of the notice will not need to be extinguished but they must not be actively maintained, unless exempt from the notice.
- All other types of burns are prohibited unless stated otherwise on the notice.

A sample no-burn notice is provided in Appendix 3.





Summary

No-burn notices:

- are issued only when absolutely essential. No-burn notices are not intended to reduce the amount of hazardous waste burning. The aim of a no-burn notice is to minimise the impact of smoke on the community.
- ban burning only in areas listed on the notice
- may be revoked if the forecasted weather conditions change.

DIRECTIONS UNDER SECTION 134 OF THE *PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997* TO EXTINGUISH FIRES

Section 134 of the Act (see Appendix 1) allows the EPA or an authorised local council officer to issue a direction to extinguish a fire immediately if, in the officer's opinion, the fire:

- contravenes an order issued by the EPA under section 133 of the Act, or
- air pollution from the fire is injurious to anyone's health or is likely to create serious discomfort or inconvenience.

Penalties

An authorised EPA or local council officer may issue a penalty notice carrying a penalty of \$200 for an individual or \$400 for a corporation for:

- failure to comply with a no-burn order issued under section 133
- failure to comply with a direction issued under section 134 to extinguish a fire.

Where an offence under these sections is prosecuted in court, the maximum penalty is 30 penalty units (\$3,300).

RESTRICTIONS ON BURNING UNDER THE PROTECTION OF THE ENVIRONMENT OPERATIONS (CONTROL OF BURNING) REGULATION 2000

Control of burning generally

Clause 5 of the Regulation (see Appendix 4) creates a general obligation for anyone who burns anything in the open or in an incinerator to prevent or minimise air pollution. This requirement applies even in areas where there are no other specific controls on burning. In particular, the person undertaking the burning should:

- take into account the potential for smoke impacts on other people due to wind direction and other weather conditions
- take reasonable measures to ensure the material being burnt is not wet
- burn only material that is suitable for burning from a human health and environmental perspective.

Prohibition on burning certain articles

Under clause 6 (see Appendix 4) it is an offence throughout NSW to burn in the open or in an unlicensed incinerator, the following prohibited articles:

- tyres (except for the purposes of official fire fighting instruction)
- coated wire
- paint containers and residues
- solvent containers and residues
- timber treated with copper chromium arsenate (CCA) or pentachlorophenol (PCP).

Control of burning in local government areas

Clause 7 of the Regulation (see Appendix 4) allows local councils to assess local conditions and to select the appropriate control of



burning for the area. The level of control on burning will vary.

- For local government areas listed in Part 1 of Schedule 1 (see Appendix 4), all burning in the open or in an incinerator is prohibited except with an approval (see 'Exceptions' in next column).
- For local government areas listed in Part 2 of Schedule 1 (see Appendix 4), all burning of vegetation in the open or in an incinerator is prohibited except with an approval. Councils have powers to grant approvals for burning dead and dry vegetation on the premises on which the vegetation grew. A council may issue such approval under clause 9(2) (see Appendix 4) to:
 - (a) a class of people, such as all people living in a certain locality specified by the council, through a notice published in a local newspaper circulating in the local government area, or
 - (b) a particular person to undertake a one-off burn, through a written notice (see 'Exceptions' in next column).
- For local government areas listed in Part 3 of Schedule 1 (see Appendix 4), burning anything other than vegetation in the open or in an incinerator is prohibited except with an approval (see 'Approvals' on next page). However, clause 8(4) (see Appendix 4) permits the burning of domestic waste if domestic waste collection services are not available (see 'Exceptions' in next column).

A summary of open burning activities permitted or prohibited in local government areas listed in Schedule 1 is provided in Appendix 5.

Councils who wish to change their listing on the Schedule or who wish to have their local government area added to the Schedule should write to the EPA to amend the Regulation.

Ban on use of home unit incinerators

The use of domestic waste incinerators in home unit/apartment buildings is no longer permitted (from 1 September 2001) (clause 8(2) of the Regulation – see Appendix 4). The continued use of these types of incinerators cannot be justified because their emissions have adverse impacts on health and amenity, and domestic waste collection services are readily available in the areas where remaining incinerators were located.

Exceptions

The prohibitions in the Protection of the Environment Operations (Control of Burning) Regulation 2000 set out above do not apply to:

- burning to give official instruction in fire fighting methods (clause 8(1) – see Appendix 4)
- cooking or barbecuing in the open
- fires for recreational purposes such as camping, picnicking, scouting or similar outdoor activities
- burning vegetation while carrying out agricultural operations.

The Regulation does not limit or affect any right or obligation to carry out bushfire hazard reduction work under the *Rural Fires Act 1997* that is reasonably necessary for the protection of life, property or the environment (in the opinion of the fire fighting authority conducting the work or the local authority requesting it).

The Regulation does not apply to burning that might be required to dispose of prohibited plants or drugs under the *Drug Misuse and Trafficking Act 1985*, or the burning of animal carcasses with diseases specified under the *Stock Diseases Act 1923* or the *Exotic Diseases of Animals Act 1991* – see clause 4 of the Protection of the Environment Operations (Control of Burning) Regulation 2000 in Appendix 4.





Approvals

Under clause 9(1) of the Regulation, the EPA may issue an approval for burning as an exception to the prohibitions in place for local government areas listed in Parts 1, 2 or 3 of Schedule 1. Councils have similar powers for approval under clause 9(2) but only in relation to the burning of vegetation on-site. See Appendix 4.

Examples of open fires that may warrant EPA approval include:

- ecological or bush regeneration burns (see ‘Ecological/bush regeneration burns’ in Chapter 3) – note that EPA approval is not needed where such burns are included in a bushfire risk management plan
- special effects for film-making which require open burning or the production of smoke
- destruction of noxious weeds from bushcare operations where alternative disposal is not practicable.

In granting approvals, the EPA and councils must consider:

- the impacts of an approval on regional and local air quality and amenity
- the feasibility of re-use, recycling or alternative means of disposal
- the opinions of people likely to be affected by the proposed approval.

A sample EPA approval is set out in Appendix 9.

A council must seek the EPA’s opinion if it intends to grant an approval to a class of people. Councils, organisations or individuals who seek approval from the EPA for burning in the open should contact the appropriate Regional Manager. For contact details see Appendix 10.

A key condition of any approval granted by the EPA is that the applicant comply with requirements set by the relevant fire authority. In particular, applicants need to check if any bans, such as a no-burn notice or a total fire ban, are in force on the day they intend to burn. When a no-burn notice is in force, burning may only be undertaken in areas that have been specifically exempted in the notice. During a total fire ban, no burns may take place.

Penalties

Authorised officers from local councils, the police, EPA or the National Parks and Wildlife Service may issue a penalty notice for any of the following offences under the Regulation (see Appendix 4):

- clause 5 (1) – not preventing or minimising air pollution while burning
- clause 6 (1) – burn prohibited article
- clause 7 – prohibited burning in a scheduled local government area.

Penalties for each offence are \$500 for an individual or \$1,000 for a corporation.

If a breach is considered more serious, the matter may be prosecuted in court, where the maximum penalties are 50 penalty units (\$5,500) for an individual and 100 penalty units (\$11,000) for a corporation (1 penalty unit is equivalent to \$110 at the date of publication).



Summary

Sections 133–134 of the *Protection of the Environment Operations Act 1997* (see Appendix 1) and the Protection of the Environment Operations (Control of Burning) Regulation 2000 (see Appendix 4) both regulate burning in the open in NSW. The powers in the Act to prohibit burning will override any provision of the Regulation or any approval granted in the Regulation which permits burning. In summary, their effect is to:

- allow the EPA to issue a no-burn order that overrides any approval granted under the Regulation
- allow an authorised officer of the EPA or of a local council to issue a direction to extinguish a fire, which will override an approval granted under the Regulation
- place an obligation on anyone who burns anything in the open or in an incinerator to prevent or minimise air pollution
- ban the burning throughout NSW of tyres, coated wire, paint/solvent containers and residues and treated timber
- give powers to councils to elect to be listed in the Schedules to the Regulation, as a means of controlling the extent of backyard burning in their local government area
- permit agricultural, cooking and recreational fires
- not affect bushfire hazard reduction work allowed under the *Rural Fires Act 1997*, the destruction of prohibited plants or drugs, or the burning of diseased animal carcasses
- allow other burns if approved by the EPA.





BURNING ISSUES – THE NEED FOR HAZARD REDUCTION BURNING

HAZARD REDUCTION BURNING

Hazard reduction burning is needed to reduce the amount of fuel that could cause dangerous, high intensity bushfires. Currently it is viewed as the most economically viable and effective method of reducing bushfire hazards. However, a major environmental disadvantage of this method is that it can produce large quantities of smoke and ash.

The Protection of the Environment Operations (Control of Burning) Regulation 2000 allows hazard reduction burning as permitted by the *Rural Fires Act 1997* (see clause 4 of the Regulation in Appendix 4). Although section 133 of the *Protection of the Environment Operations Act 1997* allows the EPA to ban hazard reduction burning on certain days, the legislation is intended not to reduce the amount of hazard reduction burning, but to make sure it coincides with meteorological conditions favouring pollutant dispersion rather than accumulation. The EPA acknowledges that hazard reduction burning is an essential bushfire prevention measure. Consequently, it bans burning only when absolutely essential and only when smoke could affect major metropolitan areas.

What is a bushfire hazard reduction burn?

Most hazard reduction burning is done by land management agencies in accordance with an approved bushfire risk management plan prepared under section 52 of the *Rural Fires Act 1997*.

The following burns are generally not regarded as appropriate hazard reduction burns:

- burning where other means of disposal are available
- burning domestic or garden waste collected on a suburban block

- burning materials from land clearance for commercial development
- burning leaf litter on golf courses.

For further guidance on determining whether a bushfire hazard exists, see *Planning for bushfire protection* published by the RFS and PlanningNSW, 2001.

Alternatives to hazard reduction burning

Wherever practicable, non-burning methods of hazard reduction should be used to avoid the following adverse environmental and health effects of burning:

- the emission of large quantities of fine particles, such as smoke and ash, into the atmosphere: optimum fire control often requires low intensity burns, which can lead to incomplete combustion – the resulting particles can impair visibility and become deposited in people's lungs
- the discharge of chemical compounds into the atmosphere – these are often absorbed by smoke particles and can enter people's lungs
- the accumulation of emitted particles in the atmosphere – the meteorological conditions suitable for hazard reduction burning tend to be cool with low winds, and can lead to poor dispersion.

Non-burning options for reducing bushfire hazards include composting and mulching. The EPA considers it desirable that where it is possible to physically remove bushfire fuel, it is recovered and reprocessed into compost or other organic products.

The government has established Resource NSW to help councils and industry develop waste management strategies, including collecting and reprocessing infrastructure for green waste. This will ensure that far more green waste is recovered and used for compost,



mulches and other soil enhancement products. For information on composting, contact Resource NSW on (02) 8837 6000, your local library or council, or the EPA's Pollution Line on 131 555.

ECOLOGICAL/BUSH REGENERATION BURNS

Ecological/bush regeneration burns are carried out to:

- destroy infestations of noxious weeds and plants
- clear land for native species regeneration
- allow seeding or germination of native species that need fire
- maintain biodiversity through the use of fire where fire thresholds have been exceeded.

Ecological burns that are not included in a bushfire risk management plan under the *Rural Fires Act 1997* are not expressly permitted by the Protection of the Environment Operations (Control of Burning) Regulation 2000. To prevent the burning of garden waste under the guise of 'ecological burning', the Regulation did not include ecological/bush regeneration burns as permitted burns.

Summary

- Hazard reduction burning is permitted in accordance with the *Rural Fires Act 1997*.
- Alternative methods of hazard reduction are recommended where possible.
- Ecological burns (other than those in a bushfire risk management plan) require EPA approval if they are to be done in local government areas listed in Part 1 or Part 2 of Schedule 1 of the Protection of the Environment Operations (Control of Burning) Regulation 2000.

Individuals and organisations that wish to carry out these burns in areas covered by Part 1 and Part 2 of Schedule 1 of the Regulation should apply to the relevant Regional Manager of the EPA (see Appendix 10) for specific approval under clause 9 of the Regulation (see Appendix 4).

Approvals can be granted for individual burns or burns by organisations over a specified time period. Approvals can be short- or long-term and can be subject to several conditions. Both pile burning and in-situ burning might be approved on ecological grounds. See Appendix 9 for an example of an approval notice.

HAZARD REDUCTION AND THE RURAL FIRES ACT 1997

The *Rural Fires Act 1997* and the Rural Fires Regulation 2002 place several requirements on open burning. These requirements, particularly those relating to bushfire hazard reduction burning, are outlined below.

Duties of public authorities and owners and occupiers of land to prevent bushfires

Section 63 of the *Rural Fires Act 1997* imposes a duty on all public authorities, and owners or occupiers of private property, to take all practicable steps to:

- prevent fires starting on their land
- minimise the danger of bushfires spreading on or from their land.

This section places a responsibility on councils, land management agencies and private property owners or occupiers to carry out bushfire hazard reduction activities. A local bushfire risk management plan might set out the steps to be taken in managing the bushfire hazard on the property.





Power of councils to require bushfire hazard reduction work to be done on private properties

Under section 66 of the *Rural Fires Act 1997*, the local council, or the Commissioner of the NSW Rural Fire Service if this function has been conferred, may issue a written notice requiring the owner or occupier of a property to do bushfire hazard reduction work, as defined in the Act.

The notice may specify how this work must be done. Burning is one bushfire hazard reduction method that councils might specify. If a notice issued under section 66 allows for hazard reduction burning, there is no need for the landowner/occupier of land to obtain a permit to burn before doing the work. However, the landowner/occupier of land will require a bushfire hazard reduction certificate (an example of a certificate is provided in Appendix 11).

A person who has been issued a notice under section 66 of the *Rural Fires Act 1997* has the right of objection to the notice (section 67). The grounds for objection are that the vegetation to be reduced is required for agricultural or environmental purposes such as:

- shelter, shade, windbreak or fodder
- protection of threatened species, populations, communities or critical habitat under the Threatened Species Conservation Act
- for other conservation purposes.

A person can also object if the proposed hazard reduction work is not required by a bushfire risk management plan and does not constitute a risk.

The person objecting may refer the matter for further consideration to the RFS if the land is in a rural fire district, or to the NSW Fire Brigades if it is in a fire district. If the person objecting is still concerned after this reconsideration, they may appeal to the Commissioner of the NSW Rural Fire Service.

Reduction of bushfire hazards on unoccupied Crown land and managed land

Under section 65 of the *Rural Fires Act 1997*, an authorised representative of a fire fighting authority may, with appropriate permission, enter unoccupied Crown land and managed land and do bushfire hazard reduction work (as defined under section 52 of the Act – see ‘What is a bushfire hazard reduction burn?’ on page 7). ‘Managed land’ is defined in the dictionary in the Act and by clause 38 of the Rural Fires Regulation 2000. Authorised representatives include officers of the Rural Fire Service and anyone exercising their functions under a bushfire risk management plan.

Preparation of bushfire risk management plans

Section 52 of the *Rural Fires Act 1997* requires Bush Fire Management Committees (BFMCs) to prepare both operational plans and bushfire risk management plans.

Operational plans detail the arrangements that will be used in a local council area to coordinate the suppression of large bushfires.

Bushfire risk management plans identify areas that constitute a threat to communities and assets, and provide the measures to be taken to ameliorate the threat.

Risk management strategies include:

- hazard reduction including burning where necessary
- ignition management
- community education
- building and development controls.

Plans might also contain strategies such as burning to maintain biodiversity (ecological burning) and managing bushfire smoke.

Bushfire hazard reduction works may be required:

- to protect life and property (Asset Protection Zones)



- to assist in managing bushfires in strategic areas (Strategic Fire Management Zones)
- as part of a land management activity (e.g. ecological burns in conservation areas).

A BFMC must be assembled for each local council area (or combination of areas) that includes lands under the control of the NSW Rural Fire Service. Members of the committees include the local Fire Control Officer; council representatives; land management agency representatives from the National Parks and Wildlife Service and State Forests of NSW; members of the NSW Fire Brigades and Rural Fire Service; and representatives from the State Rail Authority and the Nature Conservation Council.

BUSHFIRE HAZARD REDUCTION BY THE COMMISSIONER

Section 73 of the *Rural Fires Act 1997* allows the Commissioner of the NSW Rural Fire Service to carry out hazard reduction work required by a bushfire risk management plan if this work has not been undertaken by the relevant landowner, public authority or council.

BUSHFIRE HAZARD REDUCTION CERTIFICATES

Sections 100D–100G of the *Rural Fires Act 1997* (see Appendix 8) detail the process of obtaining a bushfire hazard reduction certificate. An example of such a certificate is in Appendix 11.

A land-holder/occupier of land needs a certificate from the local authority to authorise the carrying out of bushfire hazard reduction work in accordance with:

- a bushfire risk management plan that applies to the land
- the provisions of any bushfire code applying to the land specified in the certificate
- any conditions specified in the certificate.

The certifying authority is the person or authority carrying out the work if the hazard reduction work will be carried out:

- on any land by the Commissioner of the NSW Rural Fire Service or the local authority
- by a public authority on managed land or unoccupied Crown land.

HOW IS A BUSHFIRE HAZARD REDUCTION CERTIFICATE ISSUED?

An application is made in writing to the issuing authority (in most cases this function has been conferred on the NSW Rural Fire Service) by:

- the landowner/occupier of private land
- a public authority for managed or unoccupied Crown land in the vicinity of private land.

The certificate must specify any conditions imposed. Determination of the application must be made within 7 days (or longer, but only with agreement of the applicant). The certificate operates for 12 months commencing on the date endorsed on the certificate. There is no right of appeal.

BUSHFIRE HAZARD COMPLAINTS

What is a bushfire hazard complaint?

A bushfire hazard complaint may be made under section 74A of the *Rural Fires Act 1997* (see Appendix 6), asserting that there is a bushfire hazard because a public authority, landowner or occupier of land has failed to carry out bushfire hazard reduction work.

These complaints may be made by any owner or occupier of land adjacent to, or in the vicinity of, the land to which the complaint relates.





Who do I complain to about a bushfire hazard?

A bushfire hazard complaint must be made in writing, identifying the complainant and stating the grounds for complaint, and sent to:

- the Commissioner of the NSW Rural Fire Service if the complaint relates to unoccupied Crown land or managed land for which a public authority is responsible, or
- the local council of the local government area in which the land is located.

How is a bushfire hazard complaint dealt with?

Written notice of the complaint and its grounds must be given to the owner of, occupier of or public authority responsible for the land as soon as practicable.

The complaint will be investigated by Commissioner of the NSW Rural Fire Service or the local council as soon as practicable.

The council will act on the complaint by:

- declining to deal with the complaint, or dismissing it, if it is deemed to be vexatious, misconceived, frivolous or lacking in substance
- issuing a notice under section 66 of the *Rural Fires Act 1997* if no bushfire hazard reduction notice has been served
- exercising its powers under section 70 of the *Rural Fires Act 1997* if a bushfire hazard reduction notice has been served

and then advising both the complainant and the Commissioner of the NSW Rural Fire Service of the action to be taken as soon as practicable.

The Commissioner will act on the complaint by:

- serving notice in writing on a public authority, requiring it to carry out such bushfire hazard reduction work as is specified by the Commissioner (if the complaint relates to a public authority failing to take notified steps under section 63 of the *Rural Fires Act 1997*)
- carrying out the bushfire hazard reduction work on the land, under section 73 of the Act, if the public authority fails to carry out the specified work within a reasonable time

and then advising the complainant of the action to be taken as soon as practicable.

If the complainant considers the local council has failed to exercise its powers regarding the complaint, they may request the Commissioner of the NSW Rural Fire Service, in writing, to act on the complaint. This may involve investigating the complaint, serving notice on the local council to serve a notice under section 66 of the Act on a landowner/ occupier of land, or exercising their powers under section 70 of the Act.

The local council served with such a notice by the Commissioner of the NSW Rural Fire Service must comply with its requirements.



Summary

Under the *Rural Fires Act 1997*:

- public authorities, landowners and occupiers of land must prevent or mitigate the risk of bushfires (which may include hazard reduction burning)
- local councils, or the Commissioner of the NSW Rural Fire Service, may direct a landowner or occupier of land to undertake bushfire hazard reduction work on private property in fulfillment of a bushfire risk management plan or where it is considered necessary to protect public safety
- a person may object to a notice and also has a right of appeal
- a landowner or occupier of land needs a bushfire hazard reduction certificate to carry out hazard reduction work
- authorised people may enter land to do bushfire hazard reduction work, with the permission of the land manager, landowner or occupier of land
- Bush Fire Management Committees must prepare operational plans and bushfire risk management plans, which identify areas in need of hazard reduction for fire management purposes
- the Commissioner may carry out bushfire hazard reduction works
- complaints may be made by landowners/occupiers of land regarding bushfire hazards on land adjacent to, or in the vicinity of, their land.



PERMITS AND PROTECTING THE COMMUNITY FROM BUSHFIRES

This section provides an outline of how permits issued under the *Rural Fires Act 1997* can help the community manage the lighting of fires and prevent unplanned bushfires.

REQUIREMENTS UNDER THE *RURAL FIRES ACT 1997*

General notification requirements for the lighting of fires

Whether a person lights a fire on private land during or outside the bushfire danger period (see 'General fire safety requirements' below), that person must notify those potentially affected by the lighting of that fire.

As a general requirement, a person lighting a fire must give at least 24 hours notice of the intention to burn to the occupants of all adjoining properties.

Adjoining properties include lands separated by a road, lane, or waterway, whether fenced or not. If the land is not occupied, reasonable attempts must be made to notify the landowner.

A notice may be either in writing or verbal but must include the location, purpose and the time of the fire proposed to be lit.

Neighbours may include public land managers such as National Parks and Wildlife Service, State Forests of NSW or the Sydney Catchment Authority as well as private landowners.

General fire safety requirements

The *Rural Fires Act 1997* places no general requirements on hazard reduction burning outside the bushfire danger period, unless any requirements are specified in a bushfire risk management plan for the area, or any additional conditions are specified in the relevant bushfire hazard reduction certificate.

A permit is not required for hazard reduction burning outside the bushfire danger period, unless the burn is in an area under the control of the NSW Fire Brigades and is likely to endanger a building. However, other legislation, such as the *National Parks and Wildlife Act 1974* and Regulations and the *Protection of the Environment Operations Act 1997* can impose requirements on hazard reduction operations (for example, no-burn notices).

Section 86 of the *Rural Fires Act* (see Appendix 7) requires landowners or occupiers of land to notify adjoining neighbours and the local council not less than 24 hours before carrying out a hazard reduction burn outside the bushfire danger period.

A sample permit with standard conditions is shown in Appendix 10.

Note: Permits issued under section 87 of the *Rural Fires Act 1997* are required only when a bushfire danger period is in force. Anyone intending to light a fire during the bushfire danger period must obtain a permit. However, officers of a public authority such as councils, State Forests, the National Parks and Wildlife Service and the State Rail Authority, acting in the course of their duty, do not require a permit.

Permits are however required all-year-round where a person wishes to light a fire in a rural fire district for or in connection with:

- the demolition of a building
- the destruction of old building materials, or
- any similar type of activity.

Other safety requirements include:

- (a) when destroying sawmill wastes, a person must:



- use an incinerator designed to prevent the escape of sparks and burning material, or
 - enclose the area by a galvanised fence (or similar) of 1.8 m in height surrounded by ground that is clear of all combustible material for at least 9 m, or
 - burn them in a pit surrounded by ground that is clear of all combustible material for at least 9 m, or
 - burn them in accordance with any conditions on a permit
- (b) using spark arrestors when driving or using steam powered machines in connection with agricultural, pastoral, railway or other land
- (c) not driving or using motorised machines (including when welding) for agricultural, pastoral or other land use unless heated areas of the equipment do not contact combustible matter, and the equipment is maintained in good condition and has suitable fire safety equipment installed
- (d) where consistent with a bushfire risk management plan, a public authority may light a fire on a roadside (or verge) and prevent, direct or manage traffic movements while the fire is burning
- (e) a permit is required from the nearest NSW Fire Brigades station or Rural Fire Service issuing officer where the lighting of a fire is likely to endanger a building.

During the bushfire danger period

The statutory bushfire danger period extends from 1 October to 31 March each year. The bushfire danger period can, however, be extended or shortened in particular local council areas.

Burning off in the open – the following rules apply during the bushfire danger period:

- a permit is required to burn off on land for the purposes of hazard reduction, land

clearance or establishing a fire break (including lighting a fire for agricultural purposes, such as the removal of stubble and ground fuels on agricultural, pastoral and forested lands)

- neighbours and the local fire service need to be notified at least 24 hours before the fire is lit
- someone must be in attendance all the time the fire is alight
- any conditions of the permit, and if appropriate the conditions specified on the related bushfire hazard reduction certificate, must be observed.

Cooking fires – during the bushfire danger period, the fire must be lit:

- in a permanently constructed fireplace surrounded by ground that is clear of all combustible material for at least 2 m, or
- at a site surrounded by ground that is clear of all combustible material for a distance of at least 2 m.

The fire must be completely extinguished before those responsible for lighting the fire leave the area. Where a fire is used by another person, that other person is then responsible for putting out the fire.

Note: Some land management agencies (Sydney Catchment Authority, State Forests of NSW and the National Parks and Wildlife Service) might have requirements specific to certain areas. Local managers can provide details.

Issuing of permits – permits to light fires for land clearance or firebreaks may be issued by:

- permit-issuing officers who are normally fire control staff or brigade officers of the NSW Rural Fire Service in a rural fire district
- the NSW Fire Brigades, in their fire district.

Permits may be issued for a specified period of up to 21 days. The permit-issuing officer may also specify conditions that the permit holder must meet to ensure the burning is conducted





safely and responsibly. Fire permits must be issued in writing.

Conditions of a permit – the permit-issuing officer will impose several conditions to ensure that the burning is conducted safely and responsibly during the specified period. The permit-issuing officer may also specify the days or times on which the burn may or may not take place during the specified period. Any conditions imposed must not contradict those on any related bushfire hazard reduction certificate.

The local knowledge and experience of the permit-issuing officer is important in the decision making process for granting a permit.

The permit-issuing officer may refuse to issue a permit if:

- conditions so dictate (e.g. adverse fire weather conditions are forecast)
- inadequate control capability of the person lighting the fire is evident
- issuing of the permit would be inconsistent with any bushfire risk management plan
- the local authority has determined in writing that no permits be issued for fires to be lit in its area (or any part of its area) because of the seriousness of bushfire danger.

Revocation/suspension of permits – permits are temporarily suspended when a total fire ban is declared under the *Rural Fires Act 1997*, or when the EPA declares a no-burn day. A permit may be used following the lifting of a total fire ban or no-burn notice, provided the permit has not expired. The authority that issued the permit may cancel or suspend the permit at any time for other reasons.

Total fire bans

Under section 99 of the *Rural Fires Act 1997*, a total fire ban may be declared on days of extreme fire danger caused by a combination of certain weather conditions and dry vegetation. During a total fire ban, no fire

may be lit in the open. This includes incinerators, and barbecues that burn solid fuel such as wood or charcoal. A gas or electric barbecue may be used only if:

- it is on a residential property within 20 m of the house or dwelling or in an area with council approval that specifically allows its use (for example, a picnic ground)
- it is under the direct control of an adult
- the ground within 3 m of the barbecue is cleared of all materials that could burn
- a continuous supply of water is available.

A total fire ban usually lasts for 24 hours from 12 midnight and is notified through newspapers, radio and TV.

Permits issued by a permit-issuing authority are also suspended during the period of the total fire ban.

Penalties

Section 100 of the *Rural Fires Act 1997* provides for severe penalties for people who unlawfully light fires.

- Where a person, without lawful authority, lights a fire or causes a fire to be lit on private land, unoccupied Crown land or land of a public authority, or lets a fire escape from their land and cause damage or injury, they are subject to a fine of up to \$110,000 (1,000 penalty units) or up to five years' imprisonment, or both.
- If a person leaves a fire to burn in the open without lawful authority before it is extinguished, that person can be fined up to \$55,000 (500 penalty units) or be subject to up to one year's imprisonment, or both.

In addition to the above, the council or the police may also issue an infringement notice under specific provisions of the *Rural Fires Act 1997* or Rural Fires Regulation 2002, charging fines ranging from \$220–\$550 (2–5 penalty units).



Summary

Under the *Rural Fires Act 1997*:

- the bushfire danger period usually extends from 1 October to 31 March – the Commissioner of the NSW Rural Fire Service may declare a different period for part or all of a local council area
- a permit is required for hazard reduction burning and land clearing during the bushfire danger period
- a permit is required year-round if the fire will be lit in an area under the control of NSW Fire Brigades and is likely to endanger a building
- neighbours and the local fire service must be notified at least 24 hours before any burn
- total fire bans can be made for areas and will suspend the operation of permits for land clearance purposes for the duration of the time they are in effect.

The Rural Fires Regulation 2002 places specific requirements on the other types of burning listed below:

- lighting fires during the bushfire danger period to produce charcoal or to distil eucalyptus or other oils
- burning at garbage depots during the bushfire danger period
- lighting fires for cooking purposes during the bushfire danger period
- burning to demolish buildings
- roadside fire protection
- burning to destroy sawmill waste material.

