



NSW RURAL FIRE SERVICE

REGULATORY IMPACT STATEMENT

Rural Fires Regulation 2021

DOC21/27986

Contents

- 1 Review of the *Rural Fires Regulation 2013*.....3
- 2 Approach taken in this Regulatory Impact Statement.....3
- 3 Submissions3
- 4 Overview of previous amendments to the current Regulation3
- 5 Statement of objectives.....4
- 6 Options to achieve those objectives4
 - 6.1 Allow the current Regulation to lapse4
 - 6.2 Remake the current Regulation without change5
 - 6.3 Remake the current Regulation with minor changes.....5
- 7 Recommendation.....6
- 8 Consultation.....6
- 9 Attachment6

1 Review of the *Rural Fires Regulation 2013*

The *Rural Fires Regulation 2013* ('the current Regulation') outlines the framework for the establishment of rural fire brigades in NSW; the constitution, functions and procedures for Bush Fire Management Committees ('BFMC'); and provisions as they relate to fire prevention in NSW including provisions relating to:

- a) bush fire danger periods
- b) bush fire hazard reduction work
- c) prescribed requirements involving the burning or demolition of buildings and saw mills
- d) safety requirements which must be observed when operating certain types of machinery
- e) the issuing of fire permits.

The current Regulation also provides for bravery and service awards, voluntary work by rural fire brigades; fire permit conditions; bush fire safety authorities; bush fire hazard reduction notices, penalty notice offences and fire prohibition zones, amongst other things.

Part 3 of the *Subordinate Legislation Act 1989* requires all Regulations published on or after 1 September, 1990 to be repealed after five years. Agencies are notified of the proposed repeal of the Regulation and, following review, must determine whether the Regulation should be repealed, postponed or remade.

Where a determination is made to remake a Regulation, a Regulatory Impact Statement is generally required.

2 Approach taken in this Regulatory Impact Statement

The *Rural Fires Regulation 2013* is set for repeal on 1 September, 2021. This Regulatory Impact Statement ('RIS') will examine whether the current Regulation should:

- a) lapse
- b) be remade without change; or
- c) be remade with changes.

This RIS proposes that the current Regulation be remade with minor changes. The proposed Regulation has been drafted for commencement on 1 September, 2021.

3 Submissions

Submissions regarding the proposed Regulation can be made to the:

- Director, Legal and Assurance
NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142
Email: legal@rfs.nsw.gov.au

4 Overview of previous amendments to the current Regulation

In the time since it was introduced, a number of amendments have been made to the current Regulation to improve the operation of rural fire services in NSW. This includes amendments that:

- a) enable the NSW Rural Service ('NSW RFS') Commissioner to approve the form of a Brigade Constitution if a local authority fails to comply with a direction to do so within the time required (21 days - clause 4(3))
- b) allow the NSW RFS Commissioner to appoint officers to new rural fire brigades if a local authority fails to do so within the time required (also 21 days - clause 4A)

- c) extends the circumstances in which rural fire brigades can provide assistance to public authorities such as the NSW Police Force, the NSW State Emergency Service, Health and Fire and Rescue NSW (clause 40)
- d) allow the NSW RFS Commissioner to appoint any member of the NSW RFS to take disciplinary action in relation to members of the Service (clause 3)
- e) provides greater clarity around the types of development which don't require a bush fire safety authority such as driveways, pathways and carrying out earthworks or drainage works (clause 45).
- f) reflect the introduction of *Planning for Bush Fire Protection 2019* which contains specifications and requirements for development on bush fire prone land (clause 3(2) and clause 44(3)).

A penalty notice for the offence of discarding lit cigarettes has been introduced and the penalty notice amount for failure to comply with the requirements for a bush fire hazard reduction notice has been increased in recognition of the serious consequences that may arise if section 66(8) of the *Rural Fires Act 1997* is not complied with.

5 Statement of objectives

The objective of the proposed Regulation is to repeal and remake the current Regulation with minor changes.

6 Options to achieve those objectives

Three options are available:

1. Allow the current Regulation to lapse
2. Remake the current Regulation without change
3. Remake the current Regulation with minor changes.

The recommended option is to remake the current Regulation with minor changes.

6.1 Allow the current Regulation to lapse

Allowing the Regulation to lapse would diminish the effective operation of rural fire services across the State.

Costs

The administration of rural fire brigades would be impeded as the Commissioner would no longer have the ability to approve the Constitution of a brigade in cases where a local authority fails to do so.

Additionally, a local authority or Commissioner would no longer have the ability to take action in cases where a probationary member of a rural fire brigade:

- does not satisfy any requirements for membership as set out in the Constitution;
- has not achieved a satisfactory level of competency as required by the Service Standards, or has not complied with any conditions of membership that the local authority or the Commissioner may impose.

The framework to remove people from membership would also cease, with adverse impacts on the local authority or the Commissioner's ability to remove a person from a brigade in cases where:

- a person has been found guilty of a breach of discipline (for instance if he or she is found to be negligent, careless, inefficient or incompetent in the discharge of their duties)
- a person has been convicted of an offence punishable by a term of imprisonment for 12 months or more; or

- in the opinion of the local authority or the Commissioner, the person is no longer a fit and proper person to be a member of a rural fire brigade.

Other avenues of disciplinary action, such as the ability to suspend or disqualify an officer or member, as well as the ability to appeal decisions associated with disciplinary action would expire.

Fire prevention provisions contained in the current Regulation would conclude, meaning that the NSW RFS would no longer have the ability to impose conditions, safety requirements, or require a fire permit to be obtained for certain types of high risk activities.

There would also be no ability to regulate activities during Bush Fire Danger Periods, increasing bush fire risk and adverse impacts, including social and economic impacts, for communities which may be impacted by fire during that time. Processes associated with the conduct of bush fire hazard reduction work, the giving of notices, and condition and notice requirements associated with fire permits, as well as notices of fire prohibition during bush fire danger periods would also be removed.

The ability for rural fire brigades to assist other emergency service agencies would no longer apply and any clarity around the kinds of development for which a bush fire safety authority would not be needed would terminate, potentially increasing red tape and costs for applicants.

Finally, the penalty notice regime for the commission of offences under both the *Rural Fires Act 1997* and the current Regulation would be extinguished, including for serious offences such as

- failing to comply with a total fire ban order;
- without lawful authority, leaving a fire which has been lit before ensuring that it has been thoroughly extinguished
- setting fire, or letting a fire escape to another person's land or property

The costs associated with allowing the current Regulation to lapse outweigh any benefit which would be achieved in doing so.

Benefits

None. This option is not recommended.

6.2 Remake the current Regulation without change

The remaking of the current Regulation presents an opportunity for improvements to be made. This includes opportunities to provide greater clarity regarding the operation of clauses associated with activities conducted during bush fire danger periods and notice requirements.

Costs

The main cost associated with remaking the Regulation without change is that it would contain inaccuracies to references in certain clauses, and that the Regulation would not be contemporary.

Benefits

None. This option is not recommended.

6.3 Remake the current Regulation with minor changes

Remaking the current Regulation with minor changes will improve the efficacy of the statutory rule, and will ensure that it remains a contemporary Regulation that continues to support the functions and statutory responsibilities of the NSW RFS. The proposed Regulation will be remade with the following minor changes;

- Include the following terms in the definitions at Clause 3 of the draft Regulation:
 - *Planning for Bush Fire Protection*
 - *'Relevant land'*
 - *Service Standards*

- Create a clause 5 for the time for appointing officers of rural fire brigades, with consequent renumbering of clauses throughout the Regulation to accommodate this change
- Update the membership eligibility for Bush Fire Management Committees (clause 15(b)) to reflect machinery of government changes
- Formatting changes and updating the language within the regulation to provide for better clarity.

Clause 33 of the current Regulation outlines the process for notification, and to whom notices must be given if lighting a fire to clear land.

Clause 33(3) of the current Regulation states that if the land on which the fire is lit falls within a rural district, then notice must be given to a *member of the fire control centre in the rural fire district*. As fire control centres are the administrative head office of fire control officers, the clause (now clause 34) has been amended to state that the fire control officer of the rural fire district will be taken to be notified

Other minor amendments have been proposed throughout to provide clarity of expression and address minor machinery matters that do not have a substantial policy impact.

Costs

There are no resource, social, or economic impacts associated with the making of these changes.

Benefits

The changes made will improve the efficacy and operation of the proposed Regulation. This option is recommended.

7 Recommendation

The NSW RFS recommends that option 6.3 – that the Regulation be made with minor changes - be implemented.

8 Consultation

Copies of the Regulatory Impact Statement and the proposed Regulation will be provided to the:

1. NSW Rural Fire Service Association
2. Resilience NSW
3. Fire and Rescue NSW
4. NSW Police Force
5. NSW State Emergency Service
6. Department of Planning Industry and the Environment, and
7. Office of Local Government.

9 Attachment

Proposed *Rural Fires Regulation 2021*.