

# **BUSH FIRES (AMENDMENT) ACT 1993 No. 98**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

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# **BUSH FIRES (AMENDMENT) ACT 1993 No. 98**

NEW SOUTH WALES



## **Act No. 98, 1993**

An Act to amend the Bush Fires Act 1949 with respect to the contributions to the New South Wales Bush Fire Fighting Fund, to reconstitute certain bodies under that Act, and for other purposes; and to amend the Public Sector Management Act 1988. [Assented to 2 December 1993]

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See also Fire Brigades (Amendment) Act 1993.

**The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Bush Fires (Amendment) Act 1993.

**Commencement**

2. (1) This Act commences on the date of assent, except as provided by subsection (2).

(2) Section 4, and Schedule 1 (1), (3) (a), (4), (5) (d), (6) (a), (7)–(10) and (12) and section 3 in its application to those items, commence on a day to be appointed by proclamation.

**Amendment of Bush Fires Act 1949 No. 31**

3. The Bush Fires Act 1949 is amended as set out in Schedule 1.

**Amendment of Public Sector Management Act 1988 No. 33 (Schedule 1—Departments)**

4. Schedule 1 to the Public Sector Management Act 1988 is amended by omitting from the matter relating to the Department of Bush Fire Services the words “Director-General of the Department” and by inserting instead the words “Commissioner of Bush Fire Services”.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

- (1) Section 2 (**Division into Parts**):

Omit the section.

- (2) Section 5 (**Savings and transitional provisions**):

After section 5 (4), insert:

(5) Schedule 1A has effect.

- (3) Section 6 (**Definitions**):

(a) Omit the definitions of “Co-ordinating Committee” and “Finance Committee”, insert in alphabetical order:

**“Commissioner”** means the Commissioner of Bush Fire Services.

SCHEDULE 1—AMENDMENTS—*continued*

**“Co-ordinating Committee”** means the Bush Fire Co-ordinating Committee constituted by this Act.

**“Department”** means the Department of Bush Fire Services.

**“Exercise”** of a function includes, where the function is a duty, the performance of the duty.

**“Finance Committee”** means the Bush Fire Finance Committee constituted by this Act.

**“Function”** includes a power, authority or duty.

(b) Omit the definition of “Policy of insurance”, insert instead:

**“Policy of insurance”** includes:

- (a) any certificate or declaration as to the existence of, and any agreement for, any insurance; or
- (b) any instrument in writing by which any contract of insurance is made or agreed to be made or is evidenced,

but does not include a policy of reinsurance.

- (4) Section 25 (**Proclamations of bush fire districts**):  
Omit “Bush Fire Council”, insert instead “Minister”.
- (5) Section 32 (**Contributions by Treasurer, councils and insurance companies**):
  - (a) From section 32 (1) (a), omit “one-quarter”, insert instead “14%”.
  - (b) From section 32 (1) (b), omit “one-quarter”, insert instead “12.3%”.
  - (c) From section 32 (1) (c), omit “one-half”, insert instead “73.7%”.
  - (d) From section 32 (5), omit “Bush Fire Council”, insert instead “Minister”.
- (6) Section 34 (**Determination of contributions of insurance companies**):
  - (a) From section 34 (2) and (3), omit “Minister” wherever occurring, insert instead “Commissioner”.

SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 34 (6), omit the words “but does not include:” and omit paragraphs (i) and (ii), insert instead:

but does not include stamp duty payable in respect of any policy of insurance the subject of any such premium.

- (7) Sections 39-40:

Omit the sections, insert instead:

**Constitution of Bush Fire Council**

39. (1) There is constituted by this Act the Bush Fire Council of New South Wales.

(2) The Bush Fire Council is to consist of 16 members, being:

- (a) 4 ex-officio members, as follows:

- the Commissioner, who is to be the Chairperson of the Bush Fire Council;
- the Managing Director of State Forests in the Forestry Commission;
- the Director-General of the National Parks and Wildlife Service;
- the Director-General of New South Wales Fire Brigades; and

- (b) 12 persons appointed by the Minister, as follows:

- 4 persons recommended by members of bush fire brigades in different regions of the State;
- a person recommended by the Institute of Municipal Management;
- a person recommended by the Shires Association;
- a person recommended by the Insurance Council of Australia;
- a person recommended by the New South Wales Farmers' Association;
- a person recommended by fire control officers;
- a person recommended by the Commissioner of Police;
- a person recommended by the Minister for the Environment;

SCHEDULE 1—AMENDMENTS—*continued*

- a person recommended by the Director-General of the Department of Conservation and Land Management.

(3) An ex-officio member (other than the Chairperson) may nominate a person who may attend and vote at any meeting of the Bush Fire Council as the nominee of the member.

(4) Schedule 4 has effect with respect to the appointed members and procedure of the Bush Fire Council.

**Functions of Bush Fire Council**

39A. (1) The Bush Fire Council has the following functions:

- (a) to advise and to report to the Minister and the Commissioner on any matter relating to the administration and management of bush fire services under this Act;
- (b) to advise the Commissioner on public education programs relating to bush fire matters and on the training of bush fire fighters;
- (c) such other functions as may be conferred or imposed on it by or under this or any other Act.

(2) Any advice or report given by the Bush Fire Council to the Minister or the Commissioner may be given either at the request of the Minister or Commissioner or without any such request.

**Finance Committee**

39B. (1) There is constituted by this Act the Bush Fire Finance Committee.

(2) The Finance Committee is to consist of 4 members, being:

- (a) the Commissioner, who is to be the Chairperson of the Finance Committee; and
- (b) a person appointed by the Minister on the recommendation of the Treasurer; and

SCHEDULE 1—AMENDMENTS—*continued*

- (c) a person appointed by the Minister on the recommendation of the Insurance Council of Australia; and
- (d) a person appointed by the Minister on the joint recommendation of the Local Government Association and the Shires Association.

(3) The Finance Committee has the functions conferred or imposed on it under this Act.

(4) Schedule 4 has effect with respect to the members and procedure of the Finance Committee.

**Co-ordinating Committee**

40. (1) There is constituted by this Act a body corporate with the corporate name of the Bush Fire Co-ordinating Committee.

(2) The Co-ordinating Committee is a statutory body representing the Crown.

(3) The Co-ordinating Committee is to consist of 5 members, being:

- (a) the Commissioner, who is to be the Chairperson of the Co-ordinating Committee; and
- (b) a person appointed by the Minister on the recommendation of the Minister administering the Forestry Act 1916; and
- (c) a person appointed by the Minister on the recommendation of the Minister administering the National Parks and Wildlife Act 1974; and
- (d) a person appointed by the Minister on the recommendation of the Director-General of New South Wales Fire Brigades; and
- (e) a person appointed by the Minister on the joint recommendation of the Local Government Association and the Shires Association.

(4) Schedule 4 has effect with respect to the members and procedure of the Co-ordinating Committee.

SCHEDULE 1—AMENDMENTS—*continued*

- (8) Sections 41 (**Councils and other bodies to furnish information to Commissioner**), 50 (**Destruction of notices**):  
Omit “Bush Fire Council” wherever occurring, insert instead “Commissioner”.
- (9) Section 46 (**Inspectors**):
- (a) From section 46 (2) (a), omit “Minister”, insert instead “Commissioner”.
  - (b) From section 46 (2) (c) and (d), omit “Bush Fire Council” wherever occurring, insert instead “Commissioner”.
- (10) Section 48 (**Proceedings not to lie against persons acting in good faith**):  
After “the Minister,”, insert “the Commissioner, a member of the staff of the Department,”.
- (11) Schedule 1A:  
After Schedule 1, insert:

**SCHEDULE 1A—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 5 (5))

**Part I—General**

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the Bush Fires (Amendment) Act 1993.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
- or



SCHEDULE 1—AMENDMENTS—*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**Part 2—Provisions consequent on enactment of Bush Fires (Amendment) Act 1993**

**Definitions**

2. In this Part:

“**amending Act**” means the Bush Fires (Amendment) Act 1993;

“**former Co-ordinating Committee**” means the Co-ordinating Committee of the Bush Fire Council as constituted immediately before the commencement of Schedule 1 (7) to the amending Act;

“**reconstituted Co-ordinating Committee**” means the Bush Fire Co-ordinating Committee constituted in accordance with this Act.

**Adjustment of contributions to the Fund for the financial year ending 30 June 1994**

3. (1) As soon as practicable after the commencement of Schedule 1 (5) (a)–(c) to the amending Act, the Minister:

- (a) is, as a result of the amendments to section 32 made by those items, to make the necessary adjustments (if any) to the contributions required to be paid to the Fund under Part 6 for the financial year ending 30 June 1994 (“**the current financial year**”); and
- (b) is to notify contributors of the adjusted contributions for the current financial year.

(2) The adjusted contributions so notified become the contributions payable under Part 6 for the remainder of the current financial year.

(3) The amendments to section 32 made by Schedule 1 (5) (a)–(c) to the amending Act do not affect the assessment of contributions before the commencement of those amendments.

(4) This clause has effect despite section 32 (2).

SCHEDULE 1—AMENDMENTS—*continued***Continuity of Co-ordinating Committee and provisions relating to former members of certain bodies**

4. (1) The reconstituted Co-ordinating Committee is a continuation of, and the same legal entity as, the former Co-ordinating Committee.

(2) A person who, immediately before the Commencement of Schedule 1 (7) to the amending Act, held office as a member (other than as Chairman) of the former Co-ordinating Committee, the Bush Fire Council or the Finance Committee of the Bush Fire Council ceases to hold office as such a member on that commencement.

(3) The person who, immediately before the commencement of Schedule 1 (7) to the amending Act, held office as Chairman of the former Co-ordinating Committee, the Bush Fire Council or the Finance Committee of the Bush Fire Council is taken, on that commencement, to be the Chairperson of the reconstituted Co-ordinating Committee, the Bush Fire Council or the Bush Fire Finance Committee, respectively.

(4) A person who ceases to hold office as a member of the former Co-ordinating Committee, the Bush Fire Council or the Finance Committee of the Bush Fire Council is not entitled to any remuneration or compensation because of the loss of that office.

(5) A delegation made under section 41H by the former Co-ordinating Committee of any of the former Co-ordinating Committee's functions and in force immediately before the commencement of Schedule 1 (7) to the amending Act is taken to be a delegation made under that section by the reconstituted Co-ordinating Committee.

**Construction of certain references**

5. On and from the commencement of section 4 of the amending Act, a reference in any other Act, or in any instrument made under an Act, or in any other document of any kind, to the Director-General of the Department of Bush Fire Services is to be read as a reference to the Commissioner of Bush Fire Services.

SCHEDULE 1—AMENDMENTS—*continued*

(12) Schedule 4:

After Schedule 3, insert:

**SCHEDULE 4—PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE BUSH FIRE COUNCIL, THE FINANCE COMMITTEE AND THE CO-ORDINATING COMMITTEE**

(Secs. 39 (4), 39B (4), 40 (4))

**Definitions**

1. In this Schedule:

**“appointed member”** means a member of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee who is appointed by the Minister;**“Chairperson”** means the Chairperson of the Bush Fire Council, the Finance Committee and the Co-ordinating Committee;**“member”** means a member of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee.**Deputies of members etc.**

2. (1) A member (other than an appointed member) may, from time to time, appoint a person to be the member's deputy, and may revoke any such appointment.

(2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

(3) The deputy of a member appointed on the recommendation of a particular body, group or person is to be appointed on the recommendation of that body, group or person.

(4) In the absence of a member, the member's deputy may, if available, act in the place of the member and, while so acting, has all the functions of the member and is taken to be a member.

(5) This clause does not operate to confer on a deputy of a member who is the Chairperson the member's functions as Chairperson.

SCHEDULE 1—AMENDMENTS—*continued*

(6) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

(7) If a body, group or person fails to recommend a person for appointment under section 39 (2) (b), 39B (2) (b)–(d) or 40 (3) (b)–(e) within a reasonable time after being requested to do so by the Minister, the Minister may appoint a person of the Minister's own choice.

**Terms of office of appointed members**

3. Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration of appointed members**

4. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Vacancy in office of appointed member**

5. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 3 consecutive meetings of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee (as the case may be) of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Chairperson; or

SCHEDULE 1—AMENDMENTS—*continued*

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be so punishable.

(2) The Minister may remove an appointed member from office at any time.

**Filling of vacancy in office of appointed member**

6. If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Effect of certain other Acts**

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; and
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**Meetings of the Bush Fire Council**

8. The Bush Fire Council is to meet at least 4 times in any one year, but may meet on such other occasions as may be determined by the Chairperson.

SCHEDULE 1—AMENDMENTS—*continued***General procedure**

9. The procedure for the calling of meetings of the Bush Fire Council, the Finance Council and the Co-ordinating Committee, and for the conduct of business at those meetings, is to be determined by the Chairperson.

**Quorum**

10. (1) The quorum for a meeting of the Bush Fire Council is 9 members.

(2) The quorum for a meeting of the Finance Committee or the Co-ordinating Committee is 3 members.

**Presiding member**

11. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present, is to preside at a meeting of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee.

(2) The person presiding at any meeting of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee has a second or casting vote.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee at which a quorum is present is the decision of the Bush Fire Council, the Finance Committee or the Co-ordinating Committee.

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*[Minister's second reading speech made in—  
Legislative Assembly on 27 October 1993  
Legislative Council on 19 November 1993]*