

Explanatory Statement – Jervis Bay Territory Rural Fires Rule 2014

Overview and Background

The Governor-General exercising power under section 4F(1) of the *Jervis Bay Territory Acceptance Act 1915* made the *Jervis Bay Territory Rural Fires Ordinance 2014* on 24 April 2014. The Ordinance entered into force on 30 April 2014 being the day after it was registered on the Federal Register of Legislative Instruments (FRLI).

Section 98 of the *Jervis Bay Territory Rural Fires Ordinances 2014* gives the Minister the power, by legislative instrument, to make rules prescribing matters required or permitted by the Ordinance to be prescribed by the rules or are necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

Relying on the authority in section 98 of the *Jervis Bay Territory Rural Fires Ordinance 2014*, the Assistant Minister for Infrastructure and Regional Development made the *Jervis Bay Territory Rural Fires Rule 2014* on 30 April 2014. The rule commenced on the day after it was registered on the FRLI.

Section 98 provides a non-exhaustive list of matters the rules may be made for or with respect to. Section 98 also provides that the rules may create offences punishable by a penalty not exceeding 50 penalty units.

Statement of Compatibility with Human Rights

The *Jervis Bay Territory Rural Fires Rule 2014* has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This rule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2001*. The following paragraphs provide an assessment of the compatibility of this rule with Australia's international human rights and freedoms obligations.

Freedom of movement

The *Jervis Bay Territory Rural Fires Rule 2014* engages this human right in relation to restricting the movement of persons within the Jervis Bay Territory (JBT). Under section 20 of the rule, a public authority that has the care, control or management of a road or of vegetation on the side of the road may for the purpose of bush fire hazard reduction work, light a fire on the road or on the verge of the road. While such a fire is burning, the public authority may prohibit, direct or regulate the movement of persons, vehicles or animals along the road or along another road of which the public authority has the care, control or management. This may affect the right to freedom of movement. However, these powers are consistent with the objectives, aims and provisions of the International Covenant on Civil and Political Rights (ICCPR) and in particular Article 12, which allows the right to liberty of movement to be restricted where in accordance with domestic law and necessary to protect national security and public order.

Peaceful assembly

Similarly, the power under section 20 of this rule to prohibit, direct or regulate the movement of persons, vehicles or animals may engage the right to peaceful assembly. Article 21 of the ICCPR provides exceptions to this right provided they are imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, or public order. This rule, therefore, is consistent with this human right.

Consultation

In preparing the *Jervis Bay Territory Rural Fires Rule 2014*, the Department of Infrastructure and Regional Development undertook extensive consultation with Commonwealth and NSW agencies and organisations, including the Wreck Bay Aboriginal Community Council and the Shoalhaven City Council, which are involved with and/or affected by this rule.

The consultation process included convening a teleconference with members of the JBT Emergency Management Committee to discuss on-the-ground fire management procedures and policies and to identify options to improve delivery of fire management and service in the JBT. Draft minutes of the teleconference were circulated to members of the JBT Emergency Management Committee for comment, edit and final approval. The JBT Emergency Management Committee comprises a representative from each of the following agencies and organisations:

- Australian Federal Police;
- Commonwealth Director of National Parks;
- Department of Defence (Navy – HMAS Creswell);
- Department of Infrastructure and Regional Development (JBT Administration)
- NSW Rural Fire Service;
- Wreck Bay Aboriginal Community Council; and
- Shoalhaven City Council.

Throughout the drafting process, all drafts of the rule were provided by email to members of the JBT Emergency Management Committee and officers in relevant departments and agencies for the opportunity to comment, including Emergency Management Australia. The Attorney-General's Department provided advice and guidance on criminal law and law enforcement issues. The Australian Government Solicitor provided advice and guidance on Constitutional law issues.

Following circulation of the final draft, no agencies or organisations consulted objected to the content of the rule.

Detailed provision-by-provision description of the Ordinance

Part 1 – Preliminary

Section 1 – *Name of rule*

This is the formal section titling the rule.

Section 2 – Commencement

The date for commencement is the day after the rule is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section identifies the authority upon which the rule is based.

Section 4 – Definitions

This section defines certain terms, phrases and expressions used in the rule.

Part 2 – Rural fire brigades and groups of rural fire brigades

Section 5 – Constitution of rural fire brigades

This section provides for the constitution of rural fire brigades and prescribes the matters which must be included in its constitution. The section imposes an obligation on the members of a rural fire brigade to review the brigade's constitution annually to determine whether it should be amended. In determining whether to amend the fire brigade's constitution the members must take into consideration any relevant Service Standards.

Section 6 – Membership of rural fire brigades

This section prescribes the criteria and conditions for eligibility for membership to a rural fire brigade. The Minister may refuse to list a person as a member of a rural fire brigade if, in the opinion of the Minister, the person is not a fit and proper person to be a member. If refused, the Minister must notify the person in writing.

Section 7 – Probationary membership

This section prescribes an initial six (6) month probationary period for new members of rural fire brigades. The Minister may remove a person's name from the brigade membership register if at the end of the probationary period the person has not achieved a satisfactory level of competency, or does not satisfy any requirements for the confirmation of membership set out in the rural fire brigade's constitution.

Section 8 – Removal of membership

This section prescribes the criteria and conditions for removing a person from a rural fire brigade register.

Section 9 – Review of decisions relating to membership

A person may apply to the Minister for review of the Minister's decision under subsection 6(2) of the rule – to refuse to include a person's name on a brigade register, or under paragraph 8(2)(b), (c), (d) or (e) of the rule – to remove a person's name from a brigade register. An application must be in writing, set out the reasons for the application of review, and be made within 21 days after the decision was made. Upon receiving an application, the Minister must appoint a review officer (an officer of the NSW Rural Fire Service at or above the rank of Assistant Commissioner). After taking into account all relevant information available to the review officer, the review officer must: confirm the Minister's decision; include the applicant's name on the brigade (for a review of a decision under subsection 6(2)); or decide to retain the applicant's name on the brigade register (for a review of a

decision under paragraph 8(2)(b), (c), (d) or (e)). The review officer must notify the applicant, in writing, of the review officer's decision and the reasons for the decision. This section provides that if a decision to remove a person's name from a brigade register is subject to an application for review, the person's name must not be removed from the register until the application is decided by the review officer.

Section 10 – *Disciplinary action*

This section prescribes the process for disciplinary action against a member of a rural fire brigade. The section creates the position of an appropriate disciplinary authority (an officer of the NSW Rural Fire Service at or above the rank of Superintendent) for an alleged breach of discipline by a member of a rural fire brigade; or if no officer is appointed, a disciplinary panel constituted in relation to the alleged breach in accordance with the procedures set out in the Service Standards. This section prescribes when an appropriate disciplinary authority may take disciplinary action against a member of a rural fire brigade, and what disciplinary action may be taken, including reprimanding the member, suspending the member from service, recommending to the Minister to demote the member, disqualifying the member from holding rank in the rural fire brigade, or removing the member's name from the JBT rural fire brigade register.

Section 11 – *Appeals concerning disciplinary action*

This section prescribes the process for appealing decisions or the imposition of disciplinary actions under this Part.

Section 12 – *Incident reports*

This section prescribes that if a rural fire brigade attends a fire, incident or other emergency, the officer in charge must ensure that the Minister is given a written report on the fire, incident or emergency.

Part 3 – Fire Management Committee

Section 13 – *Functions of the Fire Management Committee*

This section provides that the JBT Fire Management Committee may draw to the Minister's attention any matter the committee considers relevant to the protection of land, persons, animals, property or the environment in the JBT from the impact of fires. The fact of membership to the JBT Fire Management Committee does not give a member the power to conduct or take part in fire fighting or fire prevention operations. However, it does not prevent a member of the committee from taking part in such actions other than as members of the committee, for example as a member of a JBT rural fire brigade.

Section 14 – *Procedure for meetings of the Fire Management Committee*

This section permits the committee to meet in the manner, at the times, to call and conduct its business as determined by the Committee.

Section 15 – *Chair of the Fire Management Committee*

This section provides that the member of the JBT Fire Management Committee nominated by

the JBT Administration is the chair of the Committee. The chair, or in the absence of the chair, another member elected to chair the meeting presides at meetings of the committee.

Part 4 – Fire prevention

Division 1 – General

Section 16 – *Burning to demolish buildings*

This section creates an offence with a maximum penalty of 20 penalty units. A person commits an offence if the person does not have a fire permit or does not comply with any conditions of a fire permit and the person lights a fire to demolish a building or destruction of building materials.

Section 17 – *Burning to destroy sawmill waste material*

This section creates three offences each carrying a maximum penalty of 20 penalty units. The offences relate to lighting a fire for the purpose of destroying sawmill waste material. Although there are no sawmills within the JBT, sawmill waste material may be transported into the JBT and subsequently burned.

The first offence is if a person lights a fire for the purpose of destroying sawmill waste material and the fire is not lit in accordance with any conditions of a fire permit.

The second offence is if a person lights a fire for the purpose of destroying sawmill waste material and the fire is not lit in an incinerator, on the ground enclosed by a fence or in a pit in accordance with the prescriptions in the section.

The third offence is if a person lights a fire in accordance with the prescriptions in the section and the other prescriptions are not met, including clearing the area of combustible materials and/or not having the prescribed knapsack spray pumps readily available for use on the fire.

Section 18 – *Use of spark arresters*

This section creates an offence if a person drives or uses a steam-powered machine in connection with the use of land for agriculture, pastoral, railway or other purposes and the machine is not fitted with the prescribed spark arrester. The maximum penalty for the offence is 20 penalty units.

Section 19 – *Other safety requirements*

This section creates three offences all of which carry a maximum penalty of 20 penalty units. The first two offences relate to driving or using a motorised machine in grass, crop or stubble land in connection with the use of the land for agriculture, pastoral or other purposes and the prescribed conditions are not met. The second offence relates to carrying out welding operations or using explosives, an angle grinder or any other implement that is likely to generate sparks and the person does not have prescribed fire safety equipment. Prescribed safety equipment is defined.

Section 20 – *Roadside fire protection*

This section permits a public authority with responsibility for the care, control or

management of a road or of vegetation on the side of the road to conduct bush fire hazard reduction work if it is consistent with the bush fire management plan. While the fire is burning the public authority may prohibit, direct or regulate the movement of persons, vehicles or animals along the road or along another road.

Division 2 – Bush fire danger periods

Section 21 – *Lighting fires for cooking*

This section creates an offence if a person lights a fire in the open to cook, heat or prepare meals or boil water during the bush fire danger period and the fire is not surrounded by ground that is clear of all combustible matter for a distance of at least 2 metres from the fire. The maximum penalty for this offence is 20 penalty units.

Section 22 – *Burning garbage and refuse*

This section creates an offence if a person lights a fire to destroy household garbage or refuse, or to destroy an animal carcass during the bush fire danger period and the prescribed conditions are not met or the fire is not lit in accordance with the conditions of a fire permit. The maximum penalty is 20 penalty units.

Section 23 – *Lighting fires to produce charcoal or distil oils*

This section creates two offences each with a maximum penalty of 20 penalty units. The first offence is if a person lights a fire for, or in connection with charcoal production or the distillation of eucalyptus or other oils during the bush fire danger period and the fire is not surrounded by ground that is clear of all combustible matter for a distance of at least 30 metres.

The second offence is if a person lights a fire to burn waste products from the production of charcoal or the distillation of eucalyptus or other oils during the bush fire danger period and the person does not carry the prescribed fire safety equipment maintained in a serviceable condition.

Combustible matter is defined.

Section 24 – *Lighting, using or carrying tobacco product or other object*

This section creates three offences each carrying a maximum penalty of 50 penalty units. The first offence is if a person lights a tobacco product, match or other object within 15 metres of a stack of grain, hay, corn or straw or a standing crop, dry grass or stubble field during the bush fire danger period.

The second offence is if a person uses or carries a lit tobacco product, lit match or another lit object within 15 meters of stack of grain, hay, corn or straw or a standing crop, dry grass or stubble field during the bush fire danger period.

The third offence is if a person leaves or deposits a lit tobacco product or lit match, or incandescent material, on any land, bridge, wharf, pontoon or similar structure during the bush fire danger period.

Part 5 – Notices

Section 25 – *Public notice and display of draft bush fire risk management plan*

This section prescribes that the JBT Fire Management Committee must publicly display a draft bush fire risk management plan for at least 42 days. The JBT Fire Management Committee must display with the draft plan any other matter that the Committee considers appropriate or necessary to better understand the draft plan or that the public notice states will be displayed with the draft plan. The section prescribes that while the draft bush fire risk management plan is on display an interested person may make a submission in relation to the draft plan to the JBT Fire Management Committee.

Section 26 – *Destruction of notices*

This section creates an offence if a person destroys, defaces or removes a notice displayed for the purposes of the Ordinance or this rule under the authority of the Fire Management Committee, the Minister or a public authority. The maximum penalty for this offence is 5 penalty units.

Section 27 – *Notice for bush fire hazard reduction work*

This section requires the hazard management officer to give a copy of a notice to an officer of an authority responsible for Commonwealth land, if the Commonwealth land is within 8 kilometres of land which is subject to a bush fire hazard reduction notice.

Section 28 – *Notice if Minister is to carry out bush fire hazard reduction work*

This section requires the Minister to give written notice to an officer of an authority responsible for Commonwealth land, if the Minister intends to enter land and undertake bush fire hazard reduction work on land and the land is within 8 kilometres of Commonwealth land.

Section 29 – *Notice of intention to burn off or burn firebreak*

This section prescribes the notice that a person must give to a rural fire brigade and owners or occupiers of land adjacent to land to which the person intends to light a fire for the purpose of land clearing, back-burning or burning a fire break or in circumstances in which the fire is likely to endanger a building.

Section 30 – *Notice of issue of fire permit*

This section requires the Minister to give notice to the authority responsible for Commonwealth land if the Minister has issued a fire permit to light a fire on Commonwealth land.

Section 31 – *Giving of notices*

This section prescribes the manner in which infringement notices may be served on a person under section 92 of the Ordinance.

Part 6 – Miscellaneous

Section 32 – *Bravery and other awards*

This section requires the Minister to keep a register of the name of each member of the JBT

Rural Fire Service which is given a commendation or award for long service, bravery or other forms of meritorious service and details of the commendation or award given to the member.

Section 33 – *Voluntary work by rural fire brigades*

This section prescribes the functions of public authorities to permit cooperation by a JBT rural fire brigade with public authorities outside of the JBT. The functions a JBT rural fire brigade may assist public authorities include: cooperating with the Commissioner of Fire and Rescue NSW in relation to hazardous materials and similar matters; the AFP in relating to traffic control by a police officer; and cooperating with the Ambulance Service of NSW in relation to patient care and similar matters.

Section 34 – *Definition of managed land*

This section defines the types of land that are defined as “managed land” in the Definitions.

Section 35 – *Conditions of fire permit*

This section prescribes the conditions of a fire permit authorising the lighting of fire on land.

Section 36 – *Infringement notices*

This section creates schedules referencing the offences and penalties for infringement notices created by the Ordinance or the rule. The section also defines an “authorised officer” for the purposes of issuing infringement notices on a person.

Schedule 1 – *Infringement notices*

Part 1 – *Infringement notice offences created by the Jervis Bay Territory Rural Fires Ordinance 2014*

This Part identifies the sections and subsections of the *Jervis Bay Territory Rural Fires Ordinance 2014* which create infringement notice offences and lists the corresponding penalty amount in dollars.

Part 2 – *Infringement notice offences create by this rule*

This Part identifies the sections and subsections of the *Jervis Bay Territory Rural Fires Rule 2014* which create infringement notice offences and lists the corresponding penalty amount in dollars.