

BETTER REGULATION STATEMENT

Executive Summary

The current Rural Fires Regulation 2002 is to be repealed on 1 September 2008 under the *Subordinate Legislation Act 1989*. The Rural Fires Regulation 2008 (“proposed Regulation”) has been drafted to replace the current Regulation.

The proposed Regulation is made under the *Rural Fires Act 1997*. The rationale for the Rural Fires Act is outlined on page 4 of the attached Regulatory Impact Statement (RIS).

Briefly, the objects of the Act are to provide for:

- the prevention, mitigation and suppression of bush and other fires in local government areas (or parts of areas) and other parts of the State constituted as rural fire districts, and
- the co-ordination of bush fire fighting and bush fire prevention throughout the State, and
- the protection of persons from injury or death, and property from damage, arising from fires, and
- the protection of the environment by requiring certain activities to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

The current Regulation supports the operation of the Act by providing for the necessary operational and administrative support to achieve its objectives. The proposed Regulation is a remake of the current Regulation, with only minor changes.

Minor changes in substance are made to the following clauses:

- Notice of intention to burn off or burn firebreak (cl.33) - the conditions are made clearer and more flexible;
- Hazard reduction on managed lands (cl.41) - a definition is extended to cover certain classes of Crown Lands; and
- Penalty Notices (cl.48) - in respect of offences under the *Rural Fires Act 1997*, the power to issue penalties (currently only provided to police and local government officers) is extended to RFS officers.

Housekeeping amendments are made to the following clauses/schedules:

- Definitions (cl.3) - in respect of disciplinary action against officers or brigade members, the appropriate authority is updated, and a redundant subclause is removed, and the definition of NSW Land is clarified;
- Eligibility for membership of Bush Fire Management Committee (cl.14) – to reflect changes in the names of agencies;
- Burning garbage and refuse (cl.26) - in respect of the prohibition on burning household garbage or refuse anywhere other than at a garbage depot, a necessary reference to animal carcasses is added;
- Development excluded from requirements for bush fire safety authority (cl.45) - clarifying a reference to a measure of the *Western Lands Act 1901*;

- Application for bush fire hazard reduction certificate (cl.47) - to include any biobanking agreement entered into under Part 7A of the *Threatened Species Conservation Act 1995*, and to reflect that there is only one purpose for which a certificate is required, i.e. for hazard reduction work, and a redundant subclause is removed; and
- Fire prohibition Zones (Schedule 1) - reflect changes in the names of local government areas, Weather Forecast Districts and NSW Fire Areas.

In accordance with the *Guide to Better Regulation* the RFS conducted preliminary stakeholder consultations to:

- identify policy options/alternatives;
- develop the RIS; and
- develop the public consultation draft of the proposed Regulation.

Public consultation on the proposed Regulation was conducted in accordance with Premier's Memorandum No. 2006-17 (minimum 28 day consultation period) and the Subordinate Legislation Act.

Eleven submissions were received. All submissions supported the proposed Regulation. Further refinements were made to the proposed Regulation, reflecting comments made in submissions.

The attached RIS demonstrates the proposed Regulation provides the greatest net benefit to New South Wales. An explanation is provided in the RIS' executive summary, on pages a to e.

The proposed Regulation has been reviewed and refined in accordance with the seven best practice principles of better regulation:

1. The need for government action should be established;
2. The objective of government action should be clear;
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;
4. Government action should be effective and proportional;
5. Consultation with business and the community should inform regulatory development;
6. The simplification, repeal, reform or consolidation of existing regulation should be considered; and
7. Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

These are discussed as follows:

1. Need for Government Action

The RFS is required to demonstrate that government intervention is justified.

This is demonstrated by the entire RIS. However, the need for government action is outlined in the RIS' Executive Summary on pages a to e.

2. Objective of Government Action

The RFS is required to demonstrate that the objectives of government action are well understood.

This requirement is demonstrated by the entire RIS. However, it is summarised in the RIS' Executive Summary on pages a to e.

The proposed Regulation is consistent with other government policies. For example, the proposed Regulation is consistent with the following State Plan priorities:

- F4 – Embedding the principle of prevention and early intervention into government service delivery in NSW;
- E4 – Better environmental outcomes for native vegetation, biodiversity, land, rivers and coastal waterways;
- S8 – Increased satisfaction with government services;
- P7 – Better access to training in rural and regional NSW to support local economies; and
- R4 – Increased participation and integration in community activities.

3. *Consideration of Options (including Costs and Benefits)*

The RFS is required to demonstrate consideration of the policy options, including alternatives to remaking the current Regulation.

This requirement is demonstrated by the entire RIS, particularly Parts 3, 4 and 5. However, it is summarised in the RIS' Executive Summary on pages a to e.

4. *Government action should be effective and proportional*

The RFS is required to demonstrate that the proposed Regulation is effective and proportional.

That the remaking of the current regulation with minor amendments is effective and proportional is demonstrated throughout the entire RIS, particularly Part 5. However, such matters are summarised in the RIS' Executive Summary on pages a to e.

5. *Consultation with business and the community should inform regulatory development*

The RFS is required to demonstrate that consultation was conducted in a way which informed the development of the options considered, as well as the determination of the final regulatory proposal.

The staged repeal process presented the RFS with the opportunity to conduct a complete review of the current Regulation. To streamline this process consultation was undertaken in stages.

The first stage involved consultation with internal stakeholders and key State agencies, such as the Department of Lands. The RFS sought feedback on the operation of the current regulation to identify problems. While no significant problems were found, a few amendments were suggested and some housekeeping matters were identified. Nevertheless, feedback was analysed and alternatives to remaking the current Regulation were identified and considered.

A policy decision was made based upon that analysis that the current Regulation was necessary to ensure the continued successful operation of the

Rural Fires Act. It was identified that only a few changes to the current Regulation would be required.

A draft proposed Regulation was developed for the purposes of undertaking the RIS process and to facilitate the public consultation stage.

The RFS remained open to the outcomes of the RIS process. The RFS contracted Hawkless Consulting to develop a RIS in accordance with the Subordinate Legislation Act. The RFS found remaking the current Regulation with only a few changes was the most appropriate option, in the circumstances.

The second stage (public consultation) was conducted in accordance with Premier's Memorandum No. 2006-17 (minimum 28 day consultation period). The public consultation period occurred from the 28 May to 25 June 2008:

- The RIS and public consultation draft of the proposed Regulation was released;
- A public notice was placed in the Sydney Morning Herald, the Daily Telegraph and the NSW Government Gazette on 28 May 2008, as well as on the agency website; and
- the RIS and public consultation draft of the proposed Regulation was emailed or mailed to relevant interest groups and government agencies, including the Department of Primary Industries and Department of Environment and Conservation.

Eleven submissions were received (Tab B). All submissions received full consideration even though some were received after the deadline. All submissions supported the proposed Regulation. Further refinements were made to the proposed Regulation reflecting comments made in submissions. A "summary of submissions" is attached (Tab A).

6. *The simplification, repeal, reform or consolidation of existing regulation should be considered*

The current regulation is due for repeal on 1 September 2008.

The RIS demonstrates the rationale for why the proposed Regulation is a remake of the current Regulation with a few amendments. The RIS' Executive Summary (pages a to e) provides an overview of the outcomes of the RIS process.

7. *Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.*

The RFS has a strategy for monitoring the effective operation of legislation.

RFS Fire Control Officers (FCOs) sit as Executive Officers on Bush Fire Management Committees (BFMCs). All members of the BFMC can raise issues regarding legislation at regular BFMC meetings.

There are two pathways for issues to be brought to the attention of RFS Executive:

- Executive Officers of BFMCs can raise issues directly with the Executive Director Operations (in their capacity as FCOs); or

- the BFMC can refer an issue up the Bush Fire Co-ordination Committee (BFCC), of which RFS Executives are members.

Such regular meetings provide for the on-going monitoring and review of legislation.

It is intended that the RFS will continuously monitor the conduct and minutes of BFMC and BFCC meetings to identify any issues regarding the proposed Regulation. Therefore, the first review will occur within 12 months.

Given the satisfactory statutory and NCP based reviews of State legislation, the RFS envisages that there is not a requirement to conduct a review with other instruments, at this time.