

CLAUSE NOTES

Fire Service Amendment (Bushfire Prone Areas) Bill 2011

PART 1 – PRELIMINARY

Clause 1: Short title

This provides the short title to be used when citing the Act for any legal purpose.

Clause 2: Commencement

This Act commences on a day to be proclaimed.

PART 2 – *FIRE SERVICE ACT 1979* AMENDED

Clause 3: Principal Act

The Principal Act referred to in Part 2 of the Bill is the *Fire Service Act 1979*.

Clause 4: Part IVA – Accreditation inserted

Clause 4 amends Section 60 of the Principal Act through the insertion of accreditation and appeals Sub Clauses including:

Sub clause 60(A): defines in the Principal Act that:

- “Approved” means that only the Chief Officer of the Tasmania Fire Service approves the item, and

- “Bushfire Hazard Management Plan” must be submitted in a format that is approved by the Chief Officer.

Sub Clause 60(B): Application for accreditation

Sub Clause 60(B) provides for the insertion of clauses pertaining to accreditation into the Principal Act.

Sub Clause 60(B)(1)(a) authorises a person to apply for accreditation to certify a Bushfire Hazard Management Plan as acceptable.

Sub Clause 60(B)(1)(b) authorises a person to apply for accreditation to certify that there is an insufficient increase in risk to the property to warrant specific protection measures.

Sub Clause 60(B)(2)(a) ensures that the application for accreditation is in a form that is approved by the Chief Officer.

Sub Clause 60(B)(2)(b) provides for the charging of a fee for accreditation. The fee is similar in structure and purpose to the one currently used by the Tasmania Fire Service for the accreditation of fire system installers, in that it provides for administration of the accreditation. Section 8A of the Act already authorises the State Fire Commission to charge for services.

Sub Clause 60(B)(3)(a) allows the Chief Officer to request further information relating to the qualification, competency, insurance or experience of the applicant prior to accreditation.

Sub Clause 60(B)(3)(c) allows the Chief Officer to require information provided by an applicant to be verified by statutory declaration.

Sub Clause 60(C): Requirements for accreditation

Sub Clause 60(C)(a) requires the Chief Officer to approve or reject an application for accreditation on the evidence of the applicant's capacity and

competence to write and accredit bush fire hazard management plans. This requirement is in addition to evidence of qualifications and compliance with other requirements (see Sub Clause 60(C)(b), (c) and (d).

Sub Clause 60(C)(b) provides the Chief Officer with the authority to accredit persons who have met the requirements of Sub Clause 60C(a) and have a prescribed qualification in bush fire planning and mitigation or has satisfactorily completed a prescribed course as part of a broader qualification.

Sub clause 60(C)(c) provides the Chief Officer with the authority to accredit persons who have met the requirements of Sub Clause 60C(a & b), if they have insurance coverage. The required insurance coverage will be set by the Chief Officer and will vary depending on the level of accreditation sought by the person.

Sub clause 60(C)(d) allows the Chief Officer to approve the requirements to demonstrate the capacity and competence, used in the accreditation process.

Sub Clause 60(D): Determination of application

Sub Clause 60(D) outlines the process for the assessment of the application for accreditation by the Chief Officer.

Sub Clause 60(D)(1)(a) allows the Chief Officer to grant an application for accreditation allowing conditions or restrictions to be placed on the accreditation. The restriction may, for example, take the form of limiting the area of practice, such as to the North West, or requiring plans to undergo peer review for a period of time.

Sub Clause 60(D)(1)(b) allows the Chief Officer to refuse the granting of an application for accreditation if the requirements are not met.

Sub Clause 60(D)(2) requires the Chief Officer to provide an applicant who has been refused an application for accreditation, a written explanation of why the refusal has been given.

Sub Clause 60(D)(3)(a) defines the relevant period for providing the applicant with advice of a refusal to grant an application to be within three months of the receipt of an application.

Sub Clause 60(D)(3)(b) allows the relevant period to restart from the receipt of any additional information requested by the Chief Officer.

Sub Clause 60(E): Prescribed conditions and restrictions

Sub Clause 60(E) ensures that conditions or restrictions placed on an accreditation are binding.

Sub Clause 60(F): Breach of condition or restriction

Sub Clause 60(F) prescribes the penalty for a person that fails to practice within the conditions and restrictions placed on their accreditation.

Sub Clause 60(F)(a) provides a mechanism to fine an incorporated body.

Sub Clause 60(F)(b) provides for the fining of a person who holds an accreditation.

Sub Clause 60(G): Surrender, revocation or suspension of accreditation

Sub Clause 60(G)(1) allows accredited persons to surrender their accreditation at any point in time.

Sub Clause 60(G)(2)(a) provides the Chief Officer with the authority to suspend or revoke an accreditation if the Chief Officer considers that the person is no longer competent.

Sub Clause 60(G)(2)(b) provides the Chief Officer with the authority to suspend or revoke an accreditation if it is deemed that the person does not meet the

requirements of Sub Clause 60(C) including the competence and capacity to certify a Bushfire Hazard Management Plan, approved qualifications and or capacity to meet other requirements approved for the purposes of the section.

Sub Clause 60(G)(3)(a) provides the Chief Officer with the authority to suspend an accreditation for a set period of time.

Sub Clause 60(G)(3)(b) provides the Chief Officer with the authority to suspend an accreditation as a whole or in part either immediately or from a nominated date.

Sub Clause 60(G)(3)(c) provides the Chief Officer with the authority to impose conditions or restrictions on the practice of an accredited person.

Sub Clause 60(G)(3)(d) provides the Chief Officer with the authority to vary the conditions or restrictions under which an accreditation has been granted.

Sub Clause 60(G)(4) allows the Chief Officer when revoking an accreditation to specify the period of time that the person cannot reapply for accreditation.

Sub Clause 60(G)(5)(a)(i) requires the Chief Officer to notify any person whose accreditation is under consideration of being revoking (under Sub Clause 60(H)(2) and (3)) of the reasons for this before a decision is made.

Sub Clause 60(G)(5)(a)(ii) provides a 28 day period as a minimum for the person under review to provide cause for why their accreditation should not be revoked. The Chief Officer can provide more than 28 days.

Sub Clause 60(G)(5)(b) requires the Chief Officer to consider any representations made within the review period.

Sub Clause 60(G)(6)(a) the Chief Officer must provide reasons for the revoking or suspension of an accreditation as part of the notice.

Sub Clause 60(G)(6)(b) the Chief Officer must provide information about the right of appeal as part of the notice.

Sub Clause 60(G)(7) the Chief Officer may withdraw a suspension in writing. However, if an accreditation is revoked a further application must be submitted.

Sub Clause 60(G)(8), suspends the accreditation of a person as soon as they do not have insurance coverage, while allowing them to regain accreditation once a new coverage is taken up. This provides for accredited persons whose workplace holds the insurance to change work without having to reapply for accreditation, while allowing their accreditation to automatically be suspended and reinstated.

Sub Clause 60(H): Accreditation cannot be transferred or assigned

Sub Clause 60(H)(1)(a) an accreditation only applies to a person, not an organisation.

Sub Clause 60(H)(1)(b) an accreditation cannot be transferred to another person.

Sub Clause 60(H)(1)(c) an accreditation only applies to the person it is issued to.

Sub Clause 60(H)(2) stops the transfer of responsibility of any portion of the accreditation to another person.

Sub Clause 60(H)(3) states that this section overrides any other law or section in any Act.

Sub Clause 60(I): Appeals

Sub Clause 60(l)(1) allows an accredited person to request the Chief Officer to review any decision made in relation to their accreditation that involves a refusal, revocation or suspension of the accreditation.

Sub Clause 60(l)(2) provides an accredited person with the right to appeal any decision made by the Chief Officer under Section 1, to the Magistrates Court (Administrative Appeals Division).

PART 3 – LAND USE PLANNING AND APPROVALS ACT 1993 – AMENDMENTS

Clause 5: Principal Act

This clause states that the *Land Use Planning and Approvals Act 1993* is referred to as the Principle Act in Part 3 of the amendment.

Clause 6: Section 3 amended (interpretation)

Section 3(1)(a) inserts a definition for an "Accredited Person" after the definition for "Agreement". The definition accommodates a person accredited under the *Fire Service Act 1979* or any other prescribed legislation. The inclusion of 'any other prescribed legislation' allows this approach to be adopted for other hazards if considered appropriate.

Section 3(1)(b) inserts definitions for "Bushfire Hazard Management Plan" and "Chief Officer" after the definition for "Building".

Clause 7: Section 51 amended (Permits)

Section 51(2)(a) amends a portion of the wording in Section 51(2)(c) of the Principal Act from "Section 57(5)." to Section 57(5); and". This allows the addition of Section 51(2)(d).

Section 51(2)(b)(d)(i) inserted after paragraph (c) is a paragraph that requires planning authorities to accept a Bushfire Hazard Management Plan without alteration if the plan has been certified by an accredited person or prescribed agency. A prescribed hazard management plan and agency will be defined under the regulations when they are required.

Section 51(2)(b)(d)(ii) requires planning authorities to accept a certificate stating that the proposed development does not represent a increase in risk, and does not require a hazard management plan.

Clause 8: Part 4, Division 5 Heading amended

A change in the heading of this division to include Compensation and protection from liability, reflecting the amended contents of this division.

Clause 9: Section 69(A) Protection from liability in respect of bushfire hazard management plans, &c inserted

Section 69(A)(a) is inserted after Section 69, stating that a planning authority does not incur any liability relating to a environmental or natural hazard management plan that has been certified by an accredited person.

Section 69(A)(b) is inserted after Section 69A(a) stating that a planning authority does not incur any liability if a certificate is issued stating that the development does not increase the risk to the property.

PART 4 – REPEAL OF ACT

Clause 10: Repeal

Once the Act has commenced and the amendments are incorporated into the Principal Acts, the "shell" of the Act - the Long Title, Short Title and Commencement, will be removed from the legislative database.