

TASMANIA

**FIRE SERVICE AMENDMENT (BUSHFIRE-
PRONE AREAS) BILL 2011**

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FIRE SERVICE AMENDMENT (BUSHFIRE-PRONE AREAS) BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
1 September 2011

*(Brought in by the Minister for Planning, the Honourable
Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Fire Service Act 1979* and the *Land Use Planning and Approvals Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Fire Service Amendment (Bushfire-Prone Areas) Act 2011*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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Part 2 – Fire Service Act 1979 Amended

PART 2 – FIRE SERVICE ACT 1979 AMENDED

3. Principal Act

In this Part, the *Fire Service Act 1979** is referred to as the Principal Act.

4. Part IVA inserted

After section 60 of the Principal Act, the following Part is inserted:

PART IVA – ACCREDITATION

60A. Interpretation of Part

In this Part –

“approved” means approved by the Chief Officer;

“bushfire hazard management plan” means a plan showing means of protection from bushfires in a form approved in writing by the Chief Officer.

60B. Application for accreditation

- (1) A person may apply to the Chief Officer for accreditation to certify that –

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- (a) a bushfire hazard management plan is acceptable; or
 - (b) there is insufficient risk from bushfire to warrant any specific protection measures.
- (2) An application must be –
- (a) made in the approved manner and form; and
 - (b) accompanied by any charge fixed in accordance with section 8A.
- (3) The Chief Officer may require a person who has applied for accreditation –
- (a) to supply further information requested by the Chief Officer; and
 - (b) to verify by statutory declaration any information supplied to the Chief Officer.

60C. Requirements for accreditation

The Chief Officer must not grant accreditation to an applicant unless satisfied that the applicant –

- (a) has the appropriate competence and capacity for which accreditation is sought; and

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- (b) has the approved qualifications or has successfully completed any approved course; and
- (c) is covered, or is likely to be covered, by appropriate insurance; and
- (d) has complied with any or all of the requirements approved for the purposes of this section.

60D. Determination of application

- (1) On receipt of an application, the Chief Officer may –
 - (a) grant the application, with or without any conditions or restrictions; or
 - (b) refuse to grant the application.
- (2) If the Chief Officer refuses to grant the application, the Chief Officer must provide the applicant with written reasons for the refusal within the relevant period.
- (3) In this section, “**relevant period**”, in relation to an application, means –
 - (a) 3 months after the application is received by the Chief Officer; or

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- (b) if the Chief Officer has requested further information, 3 months after the Chief Officer receives the last information requested.

60E. Approved conditions and restrictions

Accreditation granted to a person under this Part is subject to any conditions or restrictions that are approved for the purposes of this section and are applicable to the grant of accreditation.

60F. Breach of condition or restriction

An accredited person must not fail to comply with a condition or restriction of the person's accreditation.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units; or
- (b) an individual, a fine not exceeding 400 penalty units.

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60G. Surrender, revocation or suspension of accreditation

- (1) An accredited person may surrender the person's accreditation at any time.
- (2) The Chief Officer may suspend or revoke a person's accreditation if the Chief Officer considers that the person –
 - (a) is no longer competent; or
 - (b) no longer satisfies the requirements set out in section 60C.
- (3) The Chief Officer, by notice to an accredited person –
 - (a) may suspend the accreditation, or part of the accreditation, of the accredited person for a period determined by the Chief Officer; or
 - (b) may revoke the accreditation of the accredited person wholly or in part, with immediate effect or with effect from a specified future date; or
 - (c) may impose conditions or restrictions on the accreditation; or

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- (d) may vary conditions or restrictions to which the accreditation is subject.
- (4) If the Chief Officer revokes the accreditation of an accredited person, the Chief Officer may, in the notice of revocation, declare that the accredited person is disqualified from applying for accreditation during a period specified in the notice.
- (5) Before making a decision under subsection (2) or (3), the Chief Officer –
 - (a) must notify the person in writing –
 - (i) that the Chief Officer is considering making a decision under that subsection of the kind, and for the reasons, specified in the notice; and
 - (ii) that the person may, within 28 days or a longer period specified in the notice, make written representations to the Chief Officer showing cause why the decision should not be made; and

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- (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (6) If the Chief Officer suspends or revokes the accreditation of the accredited person wholly or in part, the Chief Officer must include in the notice of suspension or revocation –
 - (a) the reasons for the suspension or revocation; and
 - (b) information about the person’s appeal rights.
- (7) The Chief Officer may withdraw a suspension of the accreditation of a person under subsection (2) by written notice given to the person.
- (8) If, for any period, an accredited person is not covered by insurance that the Chief Officer considers appropriate, the person’s accreditation is suspended for that period.

60H. Accreditation cannot be transferred or assigned

- (1) An accreditation –
 - (a) is personal to the person who holds it; and

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- (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it; and
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer or assignment of an accreditation or any other purported dealing with an accreditation by the person who holds it is of no effect.
 - (3) This section has effect despite anything in any Act or rule of law to the contrary.

60I. Appeals

- (1) If a person is aggrieved by a decision of the Chief Officer to refuse, revoke or suspend the person's accreditation, the person may request the Chief Officer to review the decision.
- (2) If a person is not satisfied with a review under subsection (1), the person may appeal to the Magistrates Court (Administrative Appeals Division).

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Part 3 – Land Use Planning and Approvals Act 1993 Amended

**PART 3 – LAND USE PLANNING AND APPROVALS
ACT 1993 AMENDED**

5. Principal Act

In this Part, the *Land Use Planning and Approvals Act 1993** is referred to as the Principal Act.

6. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “agreement”:

“accredited person” means a person accredited or approved for the purposes of this Act under –

(a) the *Fire Service Act 1979*;
or

(b) any other prescribed legislation;

- (b) by inserting the following definitions after the definition of “building”:

“bushfire hazard management plan” means a plan showing means of protection from

*No. 70 of 1993

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bushfires in a form approved in writing by the Chief Officer;

“Chief Officer” means the person appointed as Chief Officer under section 10 of the *Fire Service Act 1979*;

7. Section 51 amended (Permits)

Section 51(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “section 57(5).” and substituting “section 57(5); and”;
- (b) by inserting the following paragraph after paragraph (c):
 - (d) must accept –
 - (i) any relevant bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been certified as acceptable by an accredited person or a State Service Agency; or
 - (ii) any certificate issued by an accredited person or a State Service Agency and

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stating that the proposed use or development will result in an insufficient increase in risk from the environmental hazard or natural hazard to warrant any specific protection measures.

8. Part 4, Division 5: Heading amended

Division 5 of Part 4 of the Principal Act is amended by omitting “*Compensation*” from the heading to that Division and substituting “*Compensation and protection from liability*”.

9. Section 69A inserted

After section 69 of the Principal Act, the following section is inserted in Division 5:

69A. Protection from liability in respect of bushfire hazard management plans, &c.

A planning authority does not incur any liability for, or in respect of, anything done, or omitted to be done, in accordance with –

- (a) a bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural

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hazards, that has been approved
by an accredited person; or

- (b) a certificate issued by an accredited person or a State Service Agency stating that there is insufficient increase in risk from the environmental hazard or natural hazard to warrant any specific protection measures.

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Part 4 – Repeal of Act

PART 4 – REPEAL OF ACT

10. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.