

SHIRE OF GNOWANGERUP

BUSH FIRE BRIGADES LOCAL LAW 2019

Note

This document contains a number of notes and text boxes which do not form part of the local law and are simply to assist with explaining the application of the local law, or are extracts from other legislation.

Most significant issues that relate to bush fires, brigades and firefighting are dealt with by the Bush Fires Act 1954 and the associated Regulations. The only matters that must be included in a local law are in s43:

A local government which establishes a bush fire brigade shall by its local laws provide for the appointment or election of a captain, a first lieutenant, a second lieutenant, and such additional lieutenants as may be necessary as officers of the bush fire brigade, and prescribe their respective duties.

All other matters are dealt with under the Act. For example:

- Part 2 of the Act sets out the powers of the Fire and Emergency Services Commissioner, provides for the appointment of bush fire liaison officers, and sets out powers of police or authorised persons as well as providing for entry on to land or buildings for the purposes of the Act;
- Part 3 sets out measures to prevent bush fires, including restricted or prohibited burning times, fire bans, and provisions about burning of land or rubbish. Section 33 allows a local government to require occupiers of land to establish fire breaks by a notice in the Gazette and or public notice, or by local law;
- Part 4 deals with the control and extinguishment of bush fires. In particular:
 - Section 36 provides that a local government may expend funds to control and extinguish bush fires;
 - Under s37 a local government must insure volunteer fire fighters and bush fire brigade equipment;
 - Section 38 provides that a local government may appoint a person as a bush fire control officer (and who does not necessarily have to be a local government employee), and of whom can be a Chief Bush Fire Control Officer and deputy. Under s38A the FES commissioner may appoint a person as a Chief Bush Fire Control officer if requested by a local government for its district;
 - Section 39 sets out the powers of bush fire control officers;
 - Section 40 sets out the powers and duties of local governments, brigades, and bush fire control officers in the event of a bush fire;
 - Section 41 provides that a local government shall keep a register of bush fire brigades and their members in accordance with the regulations, and may at any time cancel the registration of a bush fire brigade;
 - Under s42A, any group of persons, however constituted and whether incorporated or not, may be established as a bush fire brigade under section 41(1) or 42(1); and
 - Sections 44 – 47 deal with fire-fighting by officers of bush fire brigades, 'CALM' and bush fire control officers.
- Part 5 of the Act deals with miscellaneous matters and among other things:
 - Allows a local government to delegate any of its powers and duties to its CEO; and
 - Provides for penalty and prosecution provisions.

SHIRE OF GNOWANGERUP
LOCAL GOVERNMENT ACT 1995
BUSH FIRE BRIGADES LOCAL LAW 2019

Under the powers conferred by the *Local Government Act 1995*, *Bush Fires Act 1954* and under all other powers enabling it, the Council of the Shire of Gnowangerup resolved on **dd mm 2019** to make the following local law.

1 Citation

This local law may be cited as the Shire of Gnowangerup Bush Fire Brigades Local Law 2019.

2 Repeal

The *Shire of Gnowangerup Bush Fire Brigades Local Law 2016* published in *the Government Gazette* on 15 November 2016 is repealed.

3 Definitions

(1) In this local law unless the context otherwise requires –

Act means the *Bush Fires Act 1954*;

brigade area is defined in clause 6.1(b);

bush fire brigade is defined in section 7 of the Act;

bush fire brigade means a bush fire brigade for the time being registered in a register kept pursuant to section 41;

Extract from s7 of Bush Fires Act 1954

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

local government means the Shire of Gnowangerup;

normal brigade activities is defined by section 35A of the Act; and

35A. Terms used

In this Division, and in section 41 —

bush fire means a fire or potential fire, however caused, and includes a fire in a building;

loss or damage does not include loss or damage that is caused by or results from theft, reasonable wear or tear, mechanical or electrical breakdown, failure or breakage;

normal brigade activities means the following activities when carried out by a volunteer fire fighter —

- (a) the prevention, control or extinguishment of bush fires;
- (b) any act or operation at or about the scene of a bush fire, or in connection with a bush fire, which is necessary for, directed towards, or incidental to, the control or suppression of the fire or the prevention of spread of the fire, or in any other way necessarily associated with the fire including travelling and support services such as meals and communication systems;
- (c) any bush fire prevention activity including the burning, ploughing or clearing of fire-breaks or any other operation, including but without being limited to, the inspection of fire-breaks or other works and the survey of areas for the purpose of detecting fire or ascertaining the need for precautions against the outbreak of fire, but not including the activities of an owner or occupier providing a fire-break or fire prevention works on his own property in order to comply with a notice given under section 33(1) or a local law made under section 33(5a);
- (d) demonstrations, exercises, fundraising, promotions, public education, competitions or a training process for volunteers;
- (e) examination, preparation, maintenance, adjustment or repair of any vehicle, equipment, building or thing used or intended to be used by a bush fire brigade for the purpose of fighting fires or for carrying out fire prevention operations including activities associated with administration of a bush fire brigade;
- (f) travelling in aircraft for the purposes of inspection of fire-breaks, fire hazards and bush fires;
- (g) erection, removal or maintenance of radio masts used for fire related purposes;
- (h) attending an incident where the skills of a volunteer fire fighter or the operation of fire fighting equipment may reduce or remove a perceived threat to life or property;
- (i) attending an incident subsequently found to be a false alarm;

volunteer fire fighter means a bush fire control officer, a person who is a registered member of a bush fire brigade established under this Act or a person working under the direction of that officer or member.

[Section 35A inserted by No. 60 of 1992 s. 18; amended by No. 14 of 1996 s. 4.]

Extract from Bush Fires Act 1954

Regulations means Regulations made under the Act.

- (2) In this local law, unless the context otherwise requires, a reference to –

- (a) a Captain;
 - (b) a First Lieutenant;
 - (c) a Second Lieutenant; and
 - (d) any additional Lieutenants;
- means a person holding that position in a bush fire brigade.

4 Application

This local law applies throughout the district.

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Provisions relating to the establishment and maintenance of firebreaks, and the powers of the local government to enter the property and establish firebreaks on default by an owner or occupier are dealt with in section 33 of the Act:

33. Local government may require occupier of land to plough or clear fire-break

- (1) Subject to subsection (2) a local government at any time, and from time to time, may, and if so required by the Minister shall, as a measure for preventing the outbreak of a bush fire, or for preventing the spread or extension of a bush fire which may occur, give notice in writing to an owner or occupier of land situate within the district of the local government or shall give notice to all owners or occupiers of land in its district by publishing a notice in the *Government Gazette* and in a newspaper circulating in the area requiring him or them as the case may be within a time specified in the notice to do or to commence to do at a time so specified all or any of the following things —
- (a) to plough, cultivate, scarify, burn or otherwise clear upon the land fire-breaks in such manner, at such places, of such dimensions, and to such number, and whether in parallel or otherwise, as the local government may and is hereby empowered to determine and as are specified in the notice, and thereafter to maintain the fire-breaks clear of inflammable matter;
 - (b) to act as and when specified in the notice with respect to anything which is upon the land, and which in the opinion of the local government or its duly authorised officer, is or is likely to be conducive to the outbreak of a bush fire or the spread or extension of a bush fire,

and the notice may require the owner or occupier to do so —

- (c) as a separate operation, or in co-ordination with any other person, carrying out a similar operation on adjoining or neighbouring land; and
 - (d) in any event, to the satisfaction of either the local government or its duly authorised officer, according to which of them is specified in the notice.
- (2) A notice in writing under subsection (1) may be given to an owner or occupier of land by posting it to him at his last postal address known to the local government and may be given to an owner of land by posting it to him at the address shown in the rate record kept by the local government pursuant to the *Local Government Act 1995*, as his address for the service of rate notices.
- (2a) The provisions of subsection (2) are in addition to and not in derogation of those of sections 75 and 76 of the *Interpretation Act 1984*.
- (3) The owner or occupier of land to whom a notice has been given under subsection (1) and who fails or neglects in any respect duly to comply with the requisitions of the notice is guilty of an offence.
Penalty: \$5 000.
- (4) Where an owner or occupier of land who has received notice under subsection (1) fails or neglects to comply with the requisitions of the notice within the time specified in the notice —
- (a) the local government may direct its bush fire control officer, or any other officer of the local government, to enter upon the land of the owner or occupier and to carry out the requisitions of the notice which have not been complied with; and
 - (b) the bush fire control officer or other officer may, in pursuance of the direction, enter upon the land of the owner or occupier with such servants, workmen, or contractors, and with such vehicles, machinery, and appliances as he deems fit, and may do such acts, matters and things as may be necessary to carry out the requisitions of the notice.

- (5) The amount of any costs and expenses incurred by the bush fire control officer or other officer in doing the acts, matters, or things provided for in subsection (4) —
- (a) shall be ascertained and fixed by the local government and a certificate signed by the mayor or president of the local government shall be *prima facie* evidence of the amount; and
 - (b) may be recovered by the local government in any court of competent jurisdiction as a debt due from the owner or occupier of land to the local government.
- (5a) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* —
- (a) requiring owners and occupiers of land in its district to clear fire-breaks in such manner, at such places, at such times, of such dimensions and to such number, and whether in parallel or otherwise, as are specified in the local laws and to maintain the fire-breaks clear of inflammable matter;
 - (b) providing that things required by the local laws to be done shall be done to the satisfaction of the local government or its duly authorised officer.
- (5b) Where an owner or occupier of land fails or neglects in any respect to comply with the requirements of local laws made under subsection (5a) the provisions of subsections (3), (4) and (5) apply *mutatis mutandis* as if those requirements were the requisitions of a notice given under subsection (1).
- (5c) Nothing in subsection (5a) affects the power of a local government to give notice under subsection (1) nor its duty to do so if so required by the Minister.
- (5d) Where the provisions of local laws made under subsection (5a) are inconsistent with those of a notice given under subsection (1) or under section 34 or 35, the provisions of that notice shall, to the extent of the inconsistency, prevail.
- (6) A local government may, at the request of the owner or occupier of land within its district, carry out on the land, at the expense of the owner or occupier, any works for the removal or abatement of a fire danger, and the amount of the expense, if not paid on demand, may be recovered from the owner or occupier by the local government in a court of competent jurisdiction as a debt due from the owner or occupier to the local government.
- (7) Nothing in this section authorises a local government —
- (a) to set fire to the bush, or to require an owner or occupier of land to set fire to the bush, contrary to the provisions of section 17; or
 - (b) to make local laws authorising or requiring bush to be set on fire contrary to the provisions of section 17.
- (8) Any amount recoverable by a local government under this section as a debt due from the owner or occupier of land is, until paid in full —
- (a) a debt due from each subsequent owner in succession; and
 - (b) a charge against the land with the same consequences as if it were a charge under the *Local Government Act 1995* for unpaid rates; and
 - (c) recoverable by the local government in the same manner as rates imposed in respect of the land are recoverable under that Act.
- (9) In this section —
- owner or occupier of land** includes a prescribed department of the Public Service that occupies land or a prescribed State agency or instrumentality that owns or occupies land.

[Section 33 amended by No. 11 of 1963 s. 15; No. 113 of 1965 s. 8(1); No. 65 of 1977 s. 32 and 48; No. 51 of 1979 s. 3 and 5; No. 8 of 1987 s. 8; No. 14 of 1996 s. 4; No. 38 of 2002 s. 28 and 39; No. 70 of 2003 s. 7; No. 19 of 2010 s. 52(4).]

Extract from Bush Fires Act 1954

5 Establishment of a bush fire brigade

- (1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.
- (2) A bush fire brigade is established on the date of the local government's decision under subclause (1).
- (3) A bush fire brigade established under subclause (1) is to hold a meeting at least once every financial year to appoint persons to the positions in clause 6(5).

41. Bush fire brigades

- (1) For the purpose of carrying out normal brigade activities a local government may, in accordance with its local laws made for the purpose, establish and maintain one or more bush fire brigades and may, in accordance with those local laws, equip each bush fire brigade so established with appliances, equipment and apparatus.
- (2) A local government shall keep a register of bush fire brigades and their members in accordance with the regulations and shall register therein each bush fire brigade established by it under subsection (1) and each member of each such brigade.
- (2a) A local government is to notify the FES Commissioner as soon as practicable after any changes occur in any of the details required to be recorded in the register under subsection (2).
- (3) A local government may at any time cancel the registration of a bush fire brigade.

Extract from Bush Fires Act 1954

Note that there are no penalties for a breach of this local law. Bush fire brigade members are valued members of the community who volunteer their time to provide a service.

The Shire also has an obligation and duty of care to ensure that volunteers are adequately trained, comply with relevant health and safety rules, and that brigades deal properly with public funds and property. Issues are generally and preferably dealt with by agreement and consensus but if an issue is serious enough the Shire could suspend funding to a brigade and ultimately cancel its registration under the Act.

While a reason for cancellation of the registration of a bush fire brigade under s41(3) of the Act is not required it may come about from things like :

- A brigade having no members, or being merged with another;
- A consistent or serious failure to comply with the reasonable directions by a brigade or its members;
- Misuse of local government property; and/or
- Misuse of funds.

6 Name and officers of bush fire brigade

- (1) On establishing a bush fire brigade under clause 5(1) the local government is to –
 - (a) Give a name to the bush fire brigade;

- (b) Specify the brigade area in which the bush fire brigade is primarily responsible for carrying out the normal brigade activities; and
- (c) Appoint –
 - (i) a Captain;
 - (ii) a First Lieutenant;
 - (iii) a Second Lieutenant; and
 - (iv) additional Lieutenants if the local government considers it necessary.;
- (3) A person appointed to a position pursuant to subclause (1)(c) is to be taken to be a brigade member.
- (4) The appointments referred to in subclause (1)(c) expire at the completion of the first annual general meeting of the bush fire brigade.
- (5) An election is to be held at the first annual general meeting by the members of the brigade for appointments to the positions referred to in subclause 1(c) and every subsequent annual general meeting.
- (6) If a position referred to in subclause (1)(c) becomes vacant prior to the completion of the first annual general meeting or at any time, then the Brigade members are to vote for a replacement member to fill the position.
- (7) The Brigade members may elect, set the term of office, describe the duties of, and dismiss, any person to any other position including secretary, treasurer, equipment officer, training officer or other positions, and may combine those positions; and
- (8) The Brigade members may establish types of brigade membership including fire fighting members, auxiliary members, cadet members, and honorary life members.

7 Duties of Captain and bush fire brigade officers

- (1) The duties of the Captain are to:
 - (a) Provide leadership to bush fire brigades;
 - (b) Monitor bush fire brigades' resourcing, equipment and training levels;
 - (c) Liaise with the local government concerning –
 - (i) Fire prevention or fire suppression matters generally;
 - (ii) Directions to be issued by the local government to bush fire control officers, including those who issue permits to burn; and
 - (iii) Bush fire brigade officers;
 - (d) Ensure that a list of bush fire brigade members is maintained;
 - (e) Report annually to the local government the office bearers of the bush fire brigade in accordance with the Regulations;
 - (f) Report to the local government not later than 30 April each year, for consideration and appropriate provision being made in the next local government budget, the status of a bush fire brigade's –
 - (i) Training and readiness;
 - (ii) Protective clothing;
 - (iii) Equipment; and
 - (iv) Vehicles and appliances.
 - (g) Nominate persons to the CEO for appointment as bush fire control officers by the local government;
 - (h) Arrange for normal brigade activities as authorised by the Act or by the local government; and
 - (i) Where a vacancy occurs in a position appointed under clause 6(1)(c), to –
 - (i) Advise the CEO of the vacancy as soon as practicable; and
 - (ii) Make alternate suitable arrangements for that position until an appointment is made.

(2) The duties of other bush fire brigade officers are to support the Captain in his/her role.

8 Appointment, employment, payment, dismissal and duties of bush fire control officers

The appointment, employment, payment, dismissal and duties of bush fire control officers is dealt with by the Act.

38. Local government may appoint bush fire control officer

- (1) A local government may from time to time appoint such persons as it thinks necessary to be its bush fire control officers under and for the purposes of this Act, and of those officers shall subject to section 38A(2) appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it.
- (2A) The local government shall cause notice of an appointment made under the provisions of subsection (1) to be published at least once in a newspaper circulating in its district.
- (2C) The local government shall fill any vacancy occurring in the office of Chief Bush Fire Control Officer or Deputy Chief Bush Fire Control Officer within one month after the vacancy occurs and if the local government fails or neglects to do so within that time, the FES Commissioner may by notice in writing require the local government to appoint a person to the vacant office within one month after service on it of such notice.
- (2D) Where a local government that has been served with a notice pursuant to subsection (2C) fails or neglects to comply with the requirements of that notice, the FES Commissioner may appoint a person who is not employed in the Department to the vacant office.
- (2E) A bush fire control officer appointed by a local government under the provisions of this section shall be issued with a certificate of appointment by the local government or, if he is appointed by the FES Commissioner, by the FES Commissioner.
- (3) The local government may, in respect to bush fire control officers appointed under the provisions of this section, exercise so far as they can be made applicable the same powers as it may exercise in respect to its other officers, under the provisions of the Acts under which those other officers are appointed.
- (4) A bush fire control officer appointed under the provisions of this section shall, subject to such directions as may be given by the local government, and subject to this Act take such measures as appear to him to be necessary or expedient and practicable for —
 - (a) carrying out normal brigade activities;
 - [(b), (c) deleted]*
 - (d) exercising an authority or carrying out a duty conferred or imposed upon him by any of the provisions of Part III;
 - (e) procuring the due observance by all persons of the provisions of Part III.
- (5A) A local government may issue directions to a bush fire control officer appointed by the local government, or to an officer of a bush fire brigade registered by the local government to burn, subject to the provisions of this Act, bush on, or at the margins of,

streets, roads, and ways, under the care, control and management of the local government.

(5B) The bush fire control officer, or officer of the bush fire brigade, may by authority of any directions issued under subsection (5A) carry out the directions but subject to the provisions of this Act.

(5C) The provisions of subsections (5A) and (5B) are not in derogation of those of subsection (4).

(6) In this section —

approved local government means a local government approved under subsection (7) by the FES Commissioner.

(7) If it appears to the FES Commissioner that the standard of efficiency of a local government in fire prevention and control justifies the FES Commissioner doing so, the FES Commissioner, by notice published in the Government Gazette —

(a) may approve the local government as one to which subsections (6) to (18) apply; and

(b) may from time to time cancel or vary any previous approval given under this subsection.

(8) An approved local government may appoint to the office of fire weather officer such number of senior bush fire control officers as it thinks necessary.

(9) Where more than one fire weather officer is appointed by a local government the local government shall define a part of its district in which each fire weather officer shall have the exclusive right to exercise the power conferred by subsection (17).

(10) An approved local government may appoint one or more persons, as it thinks necessary, to be the deputy or deputies, as the case may be, of a fire weather officer appointed by the local government and where 2 or more deputies are so appointed they shall have seniority in the order determined by the local government.

(11) Where the office of a fire weather officer is vacant or whilst the occupant is absent or unable to act in the discharge of the duties of the office, any deputy appointed in respect of that office under subsection (10) is, subject to subsection (12), entitled to act in the discharge of the duties of that office.

(12) A deputy who is one of 2 or more deputies of a fire weather officer is not entitled to act in the discharge of the duties of the office of that fire weather officer if a deputy who has precedence over him in the order of seniority determined under subsection (10) is available and able to discharge those duties.

(13) The local government shall give notice of an appointment made under subsection (8) or (10) to the FES Commissioner and cause notice of the appointment to be published at least once in a newspaper circulating in its district and the FES Commissioner shall cause notice of the appointment to be published once in the Government Gazette.

(14) An approved local government may appoint a committee for the purpose of advising and assisting a fire weather officer or any deputy of a fire weather officer acting in the place of that officer under subsections (6) to (18).

(15) Where a committee is appointed, a fire weather officer, or, as the case may be, a deputy of a fire weather officer while acting in the place of that officer, may exercise the authority

conferred on him by subsection (17), notwithstanding the advice and assistance tendered to him by the committee.

- (16) The provisions of subsections (6) to (18) are not in derogation of those of any other subsection of this section.
- (17) A fire weather officer of an approved local government, or a deputy of that fire weather officer while acting in the place of that officer, may authorise a person who has received a permit under section 18(6)(a), to burn the bush in the district of the local government notwithstanding that for any day, or any period of a day, specified in the notice the fire danger forecast issued by the Bureau of Meteorology in Perth, in respect to the locality where the bush proposed to be burnt is situated, is “catastrophic”, “extreme”, “severe” or “very high”, and upon the authority being given the person, if he has otherwise complied with the conditions prescribed for the purposes of section 18, may burn the bush.
- (18) Subsections (6) to (18) do not authorise the burning of bush —
- (a) during the prohibited burning times; or
 - (b) during the period in which, and in the area of the State in respect of which, a total fire ban is declared under section 22A to have effect.

Extract from the Bush Fires Act 1954

The *Interpretation Act 1984* further provides that:

52. Power to appoint includes power to remove, suspend, appoint acting officer etc.

- (1) Where a written law confers a power or imposes a duty upon a person to make an appointment to an office or position, including an acting appointment, the person having such power or duty shall also have the power —
- (a) to remove or suspend a person so appointed to an office or position, and to reappoint or reinstate, any person appointed in exercise of such power or duty; and
 - (b) where a person so appointed to an office or position is suspended or unable, or expected to become unable, for any other cause to perform the functions of such office or position, to appoint a person to act temporarily in place of the person so appointed during the period of suspension or other inability but a person shall not be appointed to so act temporarily unless he is eligible and qualified to be appointed to the office or position; and
 - (c) to specify the period for which any person appointed in exercise of such a power or duty shall hold his appointment.
- (2) For the purposes of subsection (1)(b), **cause** includes —
- (a) illness; and
 - (b) temporary absence from the State; and
 - (c) conflict of interest.
- (3) The validity of anything done by a person purporting to act under an appointment made under subsection (1)(b) shall not be called in question on the ground that the occasion for his appointment had not arisen or had ceased.

- (4) Where a written law confers a power or imposes a duty upon a person to make an appointment to an office or position and that power or duty is exercisable only upon the nomination or recommendation, or is subject to the approval, concurrence, or consent of some other person, then the powers conferred by subsection (1)(a) to (c) shall only be exercisable upon such nomination or recommendation or subject to such approval, concurrence, or consent.
- (5) Nothing in this section affects the tenure of office or position of any person under the express provisions of any written law.

[Section 52 amended by No. 31 of 2010 s. 7.]

53. Appointments may be by name or office

Where a written law confers a power or imposes a duty upon a person to appoint or designate a person to —

- (a) perform any function; or
- (b) be a member of any board, tribunal, commission, committee, council, or other similar body, whether corporate or unincorporate; or
- (c) be or do any other thing,

that person may make the appointment or designation either by appointing or designating a person by name or by appointing or designating the holder of an office by the term designating his office; and any such appointment or designation of the holder of an office shall be construed as the appointment or designation of the person from time to time holding, acting in, or lawfully performing the functions of the office.

9 Maintenance and equipment with appliances and apparatus of bush fire brigades

The local government may provide funds for the maintenance and equipment with appliances and apparatus of bush fire brigades in accordance with Part 6 of the Local Government Act 1995.