



Is That Fire Illegal?

Do You Understand NSW Legislation?

It is important to recognise that legal requirements for burning differ from district to district. You must ensure that you are familiar with the requirements and procedures that apply within your own district.

The legal requirements for burning are primarily set out in the Rural Fires Act, Rural Fires Regulation, Protection of the Environment Operations Act (Environment Act) and Protection of the Environment Operations (Clean Air) Regulation (Environment Regulation). The legislation is supplemented by Service Standard 4.2.2 (in relation to issue of Permits) and Gazetted exemptions to total fire ban (Toban) orders. Other legislation can also apply in specific circumstances. The relevant provisions may be accessed on MyRFS under the Legislation heading in the links section.

Fire permits are not normally required outside the BFD. However, residents are not allowed to burn many types of materials either because of the location, local government requirements or environmental protection legislation.

This operational brief sets out the key legal requirements that you are obliged to comply with throughout the year consistently (including no burn days), during the BFD and during a Toban.

It is most important for you to understand the requirements and what is permitted within your district.

CONSISTENT THROUGHOUT THE YEAR

1. Lighting Fires Without Authority

You are not permitted to burn outside your boundaries, (i.e. on the footpath or in the gutter) or on land that is not under your control.¹

2. No Burn Days

If the potential for smoke pollution is high, the Environment Protection Authority (EPA) may order a "no burn day".² A no burn day order prohibits burning in the open air. The order can be unconditional or subject to certain conditions. Notice of a no burn day is broadcast extensively in the media. If you want to burn, you will need to check for any special conditions at the time a particular no burn order is made.

A no burn day order has effect even if it prohibits burning that may be permitted by regulation relating to the burning of fires.

It is an offence to fail to comply with a no burn day order without reasonable excuse.³ However, the Environment Act⁴ provides that a person is not guilty of an offence under the Environment Act for any act or omission if it was done or omitted in good faith as a member of a rural fire brigade.

3. Hazard Reduction

Hazard reduction carried out by RFS Brigades in accordance with the requirements of the District Bush Fire Management Committee (BFMC) will have the HR plans and any permission required prepared by the District Office.

For hazard reduction on private land requested by an owner/occupier, it is the responsibility of the owner/occupier to obtain all necessary permissions, permits, issue of notices and carry out all burning activity.

4. Buildings and Building Material

Burning of buildings for demolition or burning old building materials is prohibited unless it complies with the Environment Regulation⁵ and a permit has been obtained from the Service having jurisdiction (RFS or NSWFB) operating within the LGA.⁶

¹ For example, pursuant to section 100 of the Rural Fires Act

² Pursuant to section 133 of the Environment Act

³ Pursuant to section 135 of the Environment Act

⁴ Section 285

⁵ Division 3. A Permit Issuing Officer should discuss the requirements with their District Staff prior to issuing a permit

⁶ Regulation 19 of the Rural Fires Regulation



5. National Park, State Forest, Council Land including Roads/Footpaths etc

Burning is not permitted on public land without the written consent of the authority in charge of the land.

6. Fires Dangerous to Buildings

Lighting of fires that are dangerous to buildings is prohibited unless a permit has been obtained from the appropriate authority,⁷ the required notices given and compliance with the conditions on the permit to burn.

7. Other Special Provisions

Special provisions are also made in the Rural Fires Regulations for the burning of sawmill waste,⁸ use of spark arresters⁹ and other safety requirements for the use of machines or welding equipment for agricultural or pastoral purposes.¹⁰

You should seek advice if any of these are relevant to you.

Windrows are governed by the Plantations and Reafforestation Act. If windrows are part of a plantation then it is possible to apply for a Bush Fire Hazard Reduction Certificate in order to burn them, however the Department of Environment, Climate Change and Water should be consulted.

Similarly, for diseased plants and diseased animal carcasses, special legislation applies¹¹ and the Department of Primary Industries regulates appropriate methods of disposal. While burial is generally the preferred option, burning could be ordered in some circumstances. When burning is required the Environment Regulation should be consulted prior to any burning taking place.

DURING THE BUSH FIRE DANGER PERIOD

The Bush Fire Danger Period (BFDP) applies from 1st October to 31st March each year, unless the District BFMC requests a variation. Any variation must be approved by the Commissioner and advertised in the local press.

Burning during the BFDP is prohibited¹² unless a permit has been obtained, the required notifications given and compliance with the conditions on the permit to burn. A permit to burn must be obtained from the Service having jurisdiction (RFS or NSWFB) during any BFDP operating within the LGA.

The following activities may be carried out within the specified limits during the BFDP.

8. Land Clearance or Fire Breaks

During the BFDP, any HR work approved by the District BFMC carried out by a Brigade/s does not require a permit and all planning and permission required is prepared by the District Office.

9. Permit Conditions

Fire permits may only be issued by people authorised as Permit Issuing Officers by the District Manager as per Service Standard 4.2.2 'Permits to Burn'.

Permit Issuing Officers are not permitted to issue permits to themselves or any immediate family members or for any land in which they have a vested interest.

In most cases before a permit can be issued the applicant needs a Bushfire Hazard Reduction Certificate or Permission to burn under the Environment Regulation, particularly regulation 8.

⁷ The Rural Fires Act Section 88

⁸ Regulation 20

⁹ Regulation 21

¹⁰ Regulation 22

¹¹ Such as the Stock Diseases Act and Animal Diseases (Emergency Outbreaks) Act and Plant Diseases Act.

¹² Pursuant to section 87 of the Rural Fires Act



10. Burning Garbage and Refuse

The Rural Fires Regulation limits the burning of household garbage/refuse and animal carcasses within a rural fire district unless it is:

- (a) in a properly constructed incinerator; or
- (b) in accordance with any conditions set out in a permit issued by the appropriate authority.¹³

The surrounds must be cleared of combustible material for at least 5 metres.

11. Cooking Fires:

The Rural Fires Regulation¹⁴ allows the lighting of fires in the open for cooking during bushfire danger periods provided the land surrounding it is clear of combustible material for 2 metres.

DURING A TOBAN

12. Total Fire Bans and Exemptions:

The Minister may order a Toban.¹⁵ A Toban order can apply to a specific part or parts of the State and prohibits the lighting of any open fire for the duration of the Toban. Special conditions, including exemptions, can be specified as part of the Toban order. A failure to comply with the conditions of a Toban is an offence under the Rural Fires Act.

There are 18 standing exemptions to a Toban, which are published in the Government Gazette each time a Toban is ordered. One such exemption is for gas or electric BBQ activities, but it is important that you know where and how this applies in your own District.

Also during a Toban, other exemptions may be granted, under special circumstances, by the Fire Service having jurisdiction, provided that the responsible person complies with all conditions imposed.

Exemptions, that are not covered in standing exemptions 1 - 17, may be sought under schedule 18, but these need to be approved in writing by the Commissioner of the NSW Rural Fire Service and these are administratively managed by State Operations.

A Toban exemption may be cancelled at any time by the relevant RFS District Manager (in Rural Fire District) or the Officer in Charge of the nearest NSWFB fire station (in Fire District) if the location or conditions in the area of the planned activity are not considered, in their opinion, to be suitable.

13. Fire fighting Activities during a Toban:

There is a standing exemption which is published in the Government Gazette each time a Toban is declared for lighting fires for the purpose of controlling a bushfire, for urgent repairs of equipment and for the provision of food and refreshments.

If you wish to light a fire during a Toban you should check any special conditions or exemptions that have been made for that specific Toban.

Chief Superintendent Alan Brinkworth AFSM
Manager State Operations

¹³ Regulation 26

¹⁴ Regulation 25

¹⁵ Pursuant to section 99 of the Rural Fires Act