



Bush Fires

An introduction to Bush Fires

Western Australia's climate means our environment is often subject to bushfires. These bushfires can cause significant damage to people, property and the environment, but in some cases our environment is actually a result of and is adapted to bushfire. Although there are different views about whether and how bushfires should be managed in WA, for example, whether there should be "controlled burns" to reduce the risk of bushfires to people and property, some regulation of bushfires is currently a part of WA law.

This fact sheet outlines the regulatory regime relating to bushfires in Western Australia. In particular, it describes the government bodies responsible for fire control and response, 'prohibited' and 'restricted' burning times, occupier's responsibilities in the case of a fire, and activities which are regulated to prevent the risk of bushfires. It also provides information on the planning and development laws in Western Australia that relate to bush fire prone areas.

What is a bush fire?

For the purpose of this fact sheet, a bushfire (or wildfire) is any unplanned fire.

Bushfires have many causes, including lightning, escape from camp fires or planned burning operations, escape from industrial activities such as mining or forestry, damage to power transmission lines, discarded cigarette butts, and also from deliberate arson.

This fact sheet does not deal with the prescribed burning carried out by the Department of Environment and Conservation ("DEC") to reduce fuel loads on land that it manages. For information on DEC's management of land, see [Fact Sheet 11: Conservation Reserves](#).

Who is responsible for responding to bush fires?

There are several government agencies with some responsibility for responding to and managing bushfires:

- The Fire and Emergency Services Authority ("FESA") has principal responsibility for fire control policy in WA, as well as public education and fire prevention programs.
- DEC has principal control over managing bushfires on land which it manages, including conservation reserves, State forests and timber reserves.
- Local governments appoint and manage local bush fire control officers and bush fire brigades, who provide fire prevention and control services for their local area.

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- Bush Fire Brigades are established and managed by local government, but are also under the general control of FESA. Bush fire brigades are usually comprised of volunteers who are on call, but can also contain permanent staff.
- Bush fire liaison officers are appointed by FESA to take responsibility for co-ordinating FESA's response to a wildfire. Bush fire liaison officers generally co-operate with and advise bush fire control officers, but they are also empowered to take "supreme control" over fires and give directions to bush fire control officers and bush fire brigades in a bush fire situation.
- Bush fire control officers are appointed by local government and are generally responsible for responding to fires in their local area.

Fire Districts

Fire districts are declared (and changed) by the Minister for Emergency Services ("the Minister"). Each fire district has an associated fire brigade(s). Whether or not land is within a fire district influences who has primary responsibility for dealing with bushfires, but otherwise does not have a significant impact on how fires are controlled or responded to.

There are several Acts which deal with bushfires, the main ones being the *Bush Fires Act 1954 (WA)*, the *Fire Brigades Act 1942 (WA)* and the *Fire and Emergency Services Authority Act 1998 (WA)*.

What can bush fire officers etc do in the event of a bushfire?

The powers of bush fire control officers, bush fire brigades and bush fire liaison officers in the event of a fire extend to nearly any activity that is reasonably necessary for the control and extinguishment of a bushfire. For example, they can:

- enter any land or building;
- pull down fences or buildings;
- take and use water from any source (other than a domestic tank or water intended for use at a school);
- take and use other fire extinguishing material from any land;
- clear fire breaks (including by back burning);
- give directions to an occupier to take action on their land;
- cut off electricity, gas etc and close roads; and
- take other appropriate measures required to control a fire.

Bush fire control officers also have powers with regard to preventing fires. They can postpone the lighting of the fire to clear a fire break, burn stubble, control vegetation along a fence line etc, even when a permit to burn on that particular day has been granted. They can also direct a land owner to take all reasonable steps to control or extinguish a fire where the officer believes there is a danger that the fire will escape from the owner's property.

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Occupier's obligations in bushfire

Where a bushfire is burning on any land during a restricted or prohibited burning time, the occupier of the land must take all possible measures to extinguish the fire immediately upon becoming aware of a fire. The occupier bears the expense of any measures employed to extinguish the fire.

If the occupier requires assistance to extinguish the fire they must (if practicable and without leaving the fire unattended), inform the nearest available bush fire officer of the existence and locality of the fire.

Requirement to clear fire breaks

Local governments can issue notices to owners and occupiers requiring them to clear fire breaks (and keep them clear), and to generally do other things on their property to deal with things which are likely to cause or exacerbate a bushfire. The notice must be in writing and also advertised in a newspaper. The notice can set out the number of fire breaks, as well as their dimensions, place and how they should be cleared. It is an offence to not comply with the notice, and if the notice is not complied with in time, a bush fire officer can also come onto the land and carry out the work at the owner or occupier's cost. Local governments can also make local laws requiring fire breaks to be cleared, and these local laws will then have the same legal effect as a specific notice.

If a landowner or occupier is given a notice under the Bush Fires Act to clear a firebreak, they do not have to obtain a clearing permit, provided they comply strictly with the terms of the notice.

Fire break notices should only be issued as a measure for preventing the outbreak of fire, or preventing the spread or extension of the fire. If you don't think a notice has been properly issued, you can contact the EDO for advice.

Prohibited burning times

Prohibited burning times are declared by the Minister for Emergency Services for particular areas. It is then an offence to set fire to any bush during a prohibited burning time. A landowner or occupier may be able to obtain a permit from the local bush fire control officer for burning specifically to protect buildings or crops during a prohibited burning time, but the permit will have strict conditions.

Prohibited burning times may be suspended or varied by FESA for particular land, or more generally varied for overall zones and times, if FESA thinks there is a good reason for doing so. Where FESA suspends a prohibited burning time and allows burning on a particular area of land, the owner or occupier of adjacent land may also obtain a permit to burn bush for the purpose of fire hazard reduction.

A local government may also vary the prohibited burning times within its district for up to 2 weeks, however, the variation can be overridden by the Minister acting on the recommendation of FESA.

Restricted burning times

Restricted burning times are also declared by the Minister, and can also be varied by FESA and the local government in the same way as prohibited burning times. As with prohibited burning times, restricted burning

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times make it an offence to set fire to bush, but there are a much wider range of permits which can be granted during a restricted burning time to allow some burning.

During restricted burning times, it is an offence to set fire to bush without a permit which sets out the dates for the burn, standard conditions, and any site specific conditions. The standard conditions of permits include the following:

- Adjacent landowners and the local government must be given at least 4 days' notice of the burn.
- At least 3 able-bodied persons must be in attendance from the time the fire is lit until there is no burning or smouldering fuel within 30 metres of the perimeter of the fire, or of the fire-break if one is used.
- Burning must not be carried out on any day for which a 'very high' or 'extreme' fire danger has been forecast for the area.

Any local government may prohibit burning within its district in restricted burning time on Sundays and public holidays by notice published in a local newspaper.

Total fire ban

The Minister may declare a total fire ban for any defined area. Such a declaration takes precedence over any existing prohibited or restricted burning time. When a total fire ban has been declared for an area, it is an offence to light any fire in the open air, or carry out a process or operation likely to create a bush fire danger, without the express permission of the Minister or an officer authorized by the Minister, or unless the activity is specifically exempt under the Bush Fire Regulations.

Activities which are controlled to reduce risk of bushfire

Rubbish and garden refuse may not be burned in the open air when the fire danger is very high or extreme. When the fire danger is not very high or extreme, garden refuse may be burned on the ground or in an incinerator but restrictions apply regarding its proximity to inflammable materials and supervision.

The Bushfires Act also governs a number of other activities that do not directly involve the lighting of a fire, but still present a fire risk. Some examples of activities which are regulated for this reason include:

- the use of a tractor or self-propelled harvester during prohibited or restricted burning time is prohibited unless the vehicle complies with strict engine and exhaust specifications;
- the carriage and storage of incendiary materials is prohibited without specific permits being granted for this;
- blasting is prohibited except under certain strict conditions;
- welding and the use of certain power tools is prohibited unless there is a fire extinguisher and fire break in the area;
- fireworks are prohibited in most circumstances; and
- during restricted and prohibited burning times, it is an offence to throw a burning match, cigarette etc out of a vehicle, or in any way which is likely to set fire to bush.

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Bush Fires and Development planning

The *Town Planning Regulations 1967 (WA)* require local governments to consider several factors when considering development applications. These include:

“Whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bushfire, or any other risk” [emphasis added].

The Building Code of Australia also includes standards which are designed to set appropriate building construction standards to deal with bush fire risks.

Town planning schemes for different shires set out different land use and development requirements relating to bushfires. Given the delegation of the power to prepare schemes to local governments (and the varied bush fire danger of separate shires and cities), the requirements of these schemes will be variable, as will the degree to which the policies are applied and enforced. To obtain a copy of your shire's town planning scheme visit the WA Planning Commission website or contact your local shire council.

Policies relevant to bush fires

The State Planning Policy 3.4 – Natural Hazards and Disasters is a statement of planning policy that incorporates the provisions and requirements contained in the Department of Planning guidelines *Planning for Bushfire Protection (2001)*. It states that it should be used by governments to determine those areas that are most vulnerable to bushfire and therefore where development should not be recommended.

Planning for Bushfire Protection is a document prepared by FESA and the Department of Planning which sets out requirements for developments in low, medium, high, and extreme bushfire danger areas. This document contains specific requirements for the siting of buildings and the size of cleared 'fire separation zones', which vary depending on the specific conditions of the area. Town planning schemes in bushfire prone areas (medium–extreme bushfire danger) are required to consider this document and whether its conditions can be effectively met in development areas. This is primarily a policy document, and there may be discrepancies as to its degree of enforcement, or the specific policies in your shire.

Bushfire response, fire breaks, and environmental law

In some cases, clearing fire breaks and responding to bushfires will result in clearing of native vegetation, environmental harm, and possibly pollution. For more information, see [Fact Sheet 7: Clearing of native vegetation](#) and [Fact Sheet 27: Pollution and environmental harm](#).

The Environmental Protection Act 1986 provides exemptions for some activities related to fire management which might otherwise involve criminal offences. These include:

- If a notice to clear a fire break is issued to a landowner/occupier, the clearing will not require a permit for clearing native vegetation (see [Fact Sheet 7: Clearing of Native Vegetation](#));
- If a permit is issued for burning in a prohibited or restricted burning time or total fire ban, a clearing permit is not required for damage to vegetation resulting from the burn;

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- If clearing is carried out by a bush fire officer in responding to a bush fire, some clearing will not need a clearing permit;
- If environmental harm is caused by the bush fire response of or directed by a bush fire officer (eg seawater is sprayed on vegetation and causes damage), there may be a defence available to charges of environmental harm in these circumstances.

Clearing which is exempt under the *Environmental Protection Act 1986 (WA)* may still require authorization under the *Environment Protection Biodiversity Conservation Act (Cth)* if it will have a significant impact on a matter of national environmental significance (such as a world heritage area or a Commonwealth listed threatened species). For more information, see [Fact Sheet 6: Environmental impact assessment under Commonwealth law](#).

Opportunities for public involvement

There are a number of opportunities for you to be active and involved in the management of bushfires in Western Australia. You can:

- Join your local fire brigade.
- If you are in a fire prone area, you should get to know each of your neighbors, and compile a list of the contact details of the people in your immediate area and distribute it amongst each other. This can be extremely useful in the case of a fire nearby, and make you feel better protected when you are not at home.
- Keep a list of emergency phone numbers in case of a fire, and have a plan prepared for what you would do in the event of a bush fire on or near your property if you are in a fire prone area.
- Keep updated on the current fire season and fire danger for that day, and report any prohibited fire activity that you notice to FESA or DEC.
- Contact your local government to update yourself on the laws in regards to fire breaks in your local area.
- Keep updated on prescribed burns scheduled for your area on the DEC website.

Contacts and further information

Department of Environment and Conservation, Tel: 6467 5000 or [visit www.dec.wa.gov.au](http://www.dec.wa.gov.au)

DEC Emergency Fire Calls, Tel: 9219 8000

Fire and Emergency Services Authority, Tel: 9323 9300, or visit www.fesa.wa.gov.au

Department of Planning/ Western Australian Planning Commission, Tel: 6551 9000

Or visit www.planning.wa.gov.au

For copies of legislation, contact the State Law Publisher (Western Australian legislation),
Tel: (08) 9426 0000, www.slp.wa.gov.au

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The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: edowa@edowa.org.au

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