BUSHFIRE MANAGEMENT AND NATIONAL ENVIRONMENT LAW

This document aims to provide guidance on the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), and its role in regulating bushfire management activities carried out by state and territory governments, local councils, other authorities such as fire and emergency services, and individuals.

What is national environment law?

Australia’s key national environment law is the Environment Protection and Biodiversity Conservation Act 1999, also known as the EPBC Act. This legislation regulates activities that are likely to have a significant impact on nationally protected matters.

Types of bushfire management activities

Bushfire management can be separated into two categories:

- **Fire fighting**—emergency actions taken to prevent bushfires damaging life or property.
- **Fire prevention**—preventative actions taken to prevent or reduce the risk of severity of fires before a fire occurs.

How does national environment law apply to fire fighting activities?

In the case of emergency bushfire suppression and containment activities, protecting life and property is always the overriding concern.

National environment law generally does not restrict responses required to manage bushfire emergencies, nor does it regulate measures taken to fight fires.

There may be instances where emergency bushfire activities have a significant impact on nationally protected matters (for example, back burning, clearing of fire breaks, or emergency vehicle access or camps in habitat where threatened species are known to occur). If these activities are part of a genuine emergency response, they are unlikely to be subject to compliance actions or other penalty under the national environment law. However, the department strongly recommends that, wherever possible, nationally protected matters are identified in bushfire risk management plans and local and regional operational mapping.
In the case of an emergency, and where legal certainty is required, the federal environment minister has power to issue an urgent exemption if it is determined that this is in the national interest (see What activities might be exempt?).

How does national environment law apply to bushfire prevention activities?

The state and territory governments have primary responsibility for care and management of the environment. National environment law does not generally regulate fire prevention measures taken by state and territory governments, and only applies in limited circumstances. Fire prevention activities only need federal environmental approval if:

- they are likely to have a significant impact on a nationally protected matter, and
- they are not specifically exempted by the national environment law (see What activities might be exempt?).

What activities might be exempt?

Not all activities that have the potential to have a significant impact on nationally protected matters are regulated by national environment law. Activities that are exempt include:

- those that were approved or authorised under federal or state/territory laws before July 2000 (when the legislation began)
- continued lawful land uses that were occurring before July 2000. This includes activities that have continued in the same location without enlargement, expansion or intensification, including activities done cyclically over long periods of time such as works to reduce the fire risk. The types of activities that might fall within this category include:
  - maintaining access tracks and fire breaks
  - maintaining existing fire infrastructure, services and utilities
  - roadside weed control
  - doing routine controlled burns of the type that have occurred in the past
- forestry operations done in accordance with a Regional Forest Agreement (as defined in the Regional Forest Agreement Act 2002)
- activities done in accordance with an endorsed strategic assessment policy, plan or program under national environment law
- activities that are declared not to need approval in an approved conservation agreement under national environment law
- activities otherwise declared by the federal environment minister not to require approval.

What fire prevention activities are not likely to be significant?

National environment law is not about regulating day-to-day land management. Fire prevention activities that are unlikely to require approval by the federal government may include:

- routine fuel reduction burns, including roadside burns, done in accordance with state or territory law requirements
- routine maintenance of fence lines, access roads or tracks
• routine maintenance of existing fire breaks, fire infrastructure, services and utilities
• replacing sheds or other infrastructure at the same site
• localised weed control by hand or machinery
• minor sediment and erosion preventative works and repairs
• temporary repairs and track closures
• clearing of a defendable space around a home or rural asset in accordance with state/territory and local government requirements.

These examples are a general guide only. Whether a particular activity will have a significant impact on a nationally protected matter is influenced by a variety of factors, and must be considered on a case-by-case basis.

What fire prevention activities might need to be referred for approval?

Fire prevention activities may require federal approval if there is likely to be a significant impact on a nationally protected matter and no exemption applies (see What activities might be exempt?). These activities may result in irreversible or permanent loss of nationally threatened communities or key habitats for threatened species and could include:
• constructing substantial new fire breaks, asset protection zones, access roads or tracks on a significant scale, in habitat for nationally threatened species or areas that form part of a nationally threatened ecological community
• one-off fuel reduction burns in remnant forest that is important habitat for nationally threatened species and has not been previously subject to burning regimes
• proposed new burning regimes in world heritage sites, national heritage places or Ramsar wetlands
• trial or experimental ecological burns, on a significant scale, in habitat for nationally threatened species or areas that form part of a nationally threatened ecological community
• one-off burns in listed or high habitat value ecological communities that are not fire tolerant (for example, littoral rainforests and wet sclerophyll forests)
• burning that may cause substantive indirect (downstream) damage to nationally protected matters as a result post-fire erosion (for example, water quality within a Ramsar wetland).

The above list focuses on impacts on nationally threatened species and ecological communities, as these are the nationally protected matters most likely to be affected by fire prevention activities. However, fire prevention activities could require approval if they are likely to have a significant impact on any nationally protected matter, such as migratory species, Ramsar wetlands or Commonwealth land (see Where can I get more information?).

How do I get approval?

If you are planning a non-exempt activity that is likely to have a significant impact on any nationally protected matter, it is your responsibility to refer it to the department for consideration.

A referral under national environment law does not necessarily mean you will need federal environmental approval. Usually you will be notified within 20 business days whether or not federal assessment and approval is required.

**What happens if I am uncertain whether I need approval?**

If you are unsure whether you need to refer your proposed fire fighting or fire prevention activities, email the department at compliance@environment.gov.au or call 02 6274 1372 or free call 1800 110 395. Farmers and agricultural organisations can contact the National Farmers’ Federation environment liaison officer by email environment@nff.org.au or free call 1800 704 520.

**Where can I get more information?**

Information on what is protected is available at www.environment.gov.au/epbc/protect/index.html


More guidance about the significance of fire activities on individual species, ecological communities and other nationally protected matters is available in policy statements, conservation advices and recovery plans:


**What other tools are available to help me?**

Several tools are available to help you find what nationally protected matters are likely to occur in your area of interest. These tools include:

- protected matters search
- species profile and threats database
  www.environment.gov.au/cgi-bin/sprat/public/sprat.pl

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