

## Exposure Draft Explanatory Statement

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Issued by the Authority of the Minister for Regional Development, Local Government and Territories

*Jervis Bay Territory Acceptance Act 1915*

### **Jervis Bay Territory Rural Fires Rules 2024**

#### **Authority**

The *Jervis Bay Territory Rural Fires Rules 2024* (the Rules) is made under subsection 98(1) of the *Jervis Bay Territory Rural Fires Ordinance 2014*.

#### **Purpose**

The purpose of the instrument is to make rules as permitted by the *Jervis Bay Territory Rural Fires Ordinance 2014* (the Ordinance) to provide effective and efficient fire management services to the Jervis Bay Territory (JBT). The instrument replaces the *Jervis Bay Territory Rural Fires Rule 2014* which sunsets on 1 October 2024.

#### **Background**

The Ordinance provides the legislative framework for fire management services to the JBT. It establishes the JBT Rural Fire Service, the JBT Fire Management Committee (FMC) and deals with other matters relating to bushfire prevention, such as preparation of JBT Bush Fire Management Plans and issuing of notices and fire permits.

Section 98 of the Ordinance gives the Minister the power to make rules in relation to the issuing of fire permits, the classification of substances as combustible, the operation of committees, the service of notices or directions under the Ordinance, the conduct and discipline of members of the Rural Fire Service, and the operations of rural fire brigades. The rules may not:

- create offences or civil penalties
- provide powers of arrest or detention, or entry, search or seizure
- impose a tax, or
- directly amend the text of the Ordinance.

For practical reasons and to ensure consistency across jurisdictions in responding to emergencies, the Australian Government engages the New South Wales Rural Fire Service (NSWRFS) to provide day-to-day management of the Jervis Bay Territory Rural Fire Service and operational support in relation to fire management in the JBT.

Due to this cross-border delivery of fire services from New South Wales (NSW) to the JBT, the Ordinance and the Rules are modelled off the *NSW Rural Fires Act 1997* and *Rural Fires Regulations 2022* respectively, with modifications to reflect the JBT's jurisdictional and administrative circumstances as appropriate. Many of the provisions in the Ordinance and the Rules are identical to the NSW legislation, to ensure emergency services personnel have clarity as to their role and their rights and responsibilities regardless of whether they are operating in the JBT or in NSW on any given day.

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The JBT Rural Fire Service is aligned as far as practical, with the services provided by the NSWRFSS in the Shoalhaven Rural Fire District. Members of the JBT Rural Fire Service are all volunteers and JBT brigades are part of a local NSW group in the Shoalhaven district. In practice, this means that the Service Standards, policies and procedures applying to NSWRFSS members are applied to JBT Rural Fire Service members.

### Review

Most membership decisions in the Rules specify an internal review process. The Rules provide a robust process involving reviews conducted at senior level either by a senior officer of the NSWRFSS, at or above the rank of Assistant Commissioner, or by the Minister. These review provisions provide for review by a person other than the primary decision-maker who may affirm or vary the original decision.

In other instances, such as in relation to probationary membership, the same informal review processes available to members of the NSWRFSS local group are available to JBT Rural Fire Service members. That is, the person can request reconsideration of the decision.

This is consistent with the *Australian Administrative Law Policy Guide 2011* (the Guide) which acknowledges some agencies may have 'ad hoc systems' rather than formal legislative review rights. It notes that these may be 'simply available through administrative processes in the agency. Internal review can be sought by requesting reconsideration of a decision or by following the set procedures of more formal mechanisms.' The Guide further acknowledges that 'generally, internal review is easy for applicants to access, and enables a quicker and more inexpensive means of re-examining decisions where applicants believe a mistake has been made.'

### Summary of the Rules

This instrument remakes the *Jervis Bay Territory Rural Fires Rule 2014* and in summary it:

- Sets out definitions used in the Rules and prescribes a definition of managed land for the purposes of section 6 of the Ordinance.
- Sets out the requirements for the constitution of rural fire brigades, including the requirement for brigades to review their constitution annually.
- Prescribes the criteria and conditions for becoming a member of a rural fire brigade, including serving an initial six month probationary period.
- Sets out the circumstances and process for removing a person from a rural fire brigade.
- Sets out the process for review of decisions relating to membership, including decisions by the Minister refusing to include a person's name on the brigade register and decisions to remove a person from a brigade register.
- Sets out the process for taking disciplinary action against a member of a rural fire brigade as well as the process for appeals against disciplinary decisions.
- Requires the officer in charge of the brigade to prepare and provide an incident report following attendance by the brigade at a fire, incident or other emergency.
- States that the FMC will meet in the manner and at the times determined by the FMC.

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- Requires the FMC to display a draft bush fire risk management plan together with any information to help understand it for at least 42 days, during which interested parties may make submissions on the plan.
- Requires a hazard management officer appointed under the Ordinance to give notice of bush fire hazard reduction work to be undertaken on land within 8 kilometres of Commonwealth land.
- Requires notice be given to the relevant Commonwealth authority where a permit has been given to light a fire on Commonwealth land.
- Prescribes the manner in which notices and directions should be served, including requirements when the person to be served is not in JBT at the time of service.
- Requires the Minister keep a register of commendation and long service awards given to rural fire brigade members, as well as awards for bravery or other forms of meritorious service.
- Specifies when rural fire brigade members are able to assist public authorities outside of the JBT, including assistance to NSW Fire and Rescue, the Australian Federal Police and NSW Ambulance in the circumstances listed.
- Prescribes several conditions for fire permits, including lighting the fire be consistent with the bushfire risk management plan and be in accordance with any direction from the Minister.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance. The Rules commence on 1 October 2024.

Details of the instrument are set out in Attachment A.

### Consultation

In preparing the Rules, the Department of Infrastructure Transport, Regional Development, Communications and the Arts (the Department) consulted Commonwealth, Australian Capital Territory and New South Wales agencies and organisations which are involved with and/or affected by these Rules.

The Department also consulted the JBT Emergency Management Committee (EMC) and FMC. Members of the EMC and FMC include representatives from:

The Department  
Australian Federal Police  
Commonwealth Director of National Parks  
Department of Defence (Navy – HMAS Creswell)  
NSW Rural Fire Service  
NSW State Emergency Service  
NSW Ambulance Service  
NSW Fire and Rescue  
Wreck Bay Aboriginal Community Council; and  
Shoalhaven City Council.

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Agencies and organisations consulted agreed the Rules were needed and that the 2014 Rules were meeting their objective and should be remade. No substantive changes to the 2014 Rules were proposed for the remade rules.

In August 2023, the Department undertook an initial round of four weeks public consultation on an issues paper via the Department's public consultation webpage and provided a Community Bulletin to JBT Community members. One formal submission was received, which did not recommend any changes to the rules.

### Office of Impact Analysis

The Office of Impact Analysis (OIA) advised (reference OIA23-05046) the instrument is unlikely to have a more than minor regulatory impact. This is on the basis the Rules will likely have low direct impact (governance and appointment arrangements for fire management operation, and notice requirements), noting the modest population of the Jervis Bay Territory and the Rules are being remade with no substantive changes to *Jervis Bay Territory Rural Fires Rule 2014*. As such, OIA advised the preparation of an Impact Analysis (IA) is not required and neither is a letter certifying the efficient and effective operation of the Rules in lieu of an IA.

### Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

**Details of the Jervis Bay Territory Rural Fires Rules 2024**

Section 1 – Jervis Bay Territory Rural Fires Rules 2024

This section provides that the name of the instrument is the *Jervis Bay Territory Rural Fires Rules 2024*.

Section 2 – Commencement

This section provides for the instrument to commence on 1 October 2024.

Section 3 – Authority

This section provides that the instrument is made under subsection 98(1) of the *Jervis Bay Territory Rural Fires Ordinance 2014*.

Section 4 – Definitions

This section notes that a number of expressions used in the Rules such as such as ‘AFP’, ‘Fire Management Committee’ and ‘Service Standards’ are defined in the Ordinance. The section also defines ‘appropriate disciplinary authority’, ‘brigade register’ and ‘hazardous material’ and ‘Ordinance’.

Section 5 – Schedules

This section provides that each instrument specified in the Schedule is amended or repealed as set out in the applicable item in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms.

**Part 2 – Rural fire brigades**

Section 6 – Constitution of rural fire brigades

This section provides for the constitution of rural fire brigades. It prescribes the constitution include the name of the brigade, the classification of members (other than officers), arrangements for brigade meetings and member voting rights. Brigade members must review the brigade’s constitution annually to determine whether it should be amended, having regard to any relevant Service Standards.

Section 7 – Membership of rural fire brigades

This section prescribes the criteria and conditions for eligibility for membership to a rural fire brigade. A person is eligible for membership if they comply with membership rules set out in the brigade constitution and satisfy any membership requirements determined by the Minister.

Under subsection 7(2), the Minister may refuse to list a person as a member of a rural fire brigade if the Minister considers the person is not a fit and proper person to be a member. If a person is refused membership, the Minister must notify the person in writing. A person may seek an internal review of such a decision under subsection 10. A person’s listing on a

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brigade register may be subject to any conditions imposed by the Minister. In practice this may include such things as the types of duties the person is able to perform.

### Section 8 – Probationary membership

This section prescribes an initial six-month probationary period for new members of rural fire brigades. The Minister may remove a person's name from the brigade register if at the end of the probationary period the person has not achieved a satisfactory level of competency, or does not satisfy the membership requirements set out in the brigade's constitution. The person must be notified if their name is removed from a brigade register.

### Section 9 – Removal of membership

This section prescribes the criteria and conditions for removing a person from a rural fire brigade register. The Minister must remove a person's name from the register if the person has died or asks for their name to be removed. Under subsection 9(2), the Minister may remove a person's name where the person has become mentally incapacitated; been convicted inside or outside the JBT of an offence punishable by 12 months or more imprisonment; or where in the Minister's opinion the person is no longer a fit and proper person to be a rural fire brigade member. A person can seek review of these decisions as set out in section 10.

The Minister may also remove the person's name from the register where they are found to have committed a disciplinary breach under section 11 of the Rules. Appeal rights in relation to disciplinary breaches are set out in section 11.

Other than when a person has died or requested their name be removed from the register, the Minister must give the person 21 days' notice before removing their name from the register. If the person seeks review of the decision, their name must not be removed until after the conclusion of any review against the decision.

### Section 10 – Review of decisions relating to membership

A person may apply to the Minister for review of the Minister's decision to:

- refuse to include a person's name on a brigade register under subsection 7(2), or
- remove a person's name from a brigade register. under paragraphs 9(2)(b), (c), (d) or (e).

An application must be in writing, within 21 days of the decision and set out the reasons for seeking the review. Upon receiving an application, the Minister must appoint a review officer who is an officer of the NSW Rural Fire Service (NSWRFS) who holds the rank of Assistant Commissioner or above. Where a person applies for a review, their name must not be removed from the register until the application is decided by the review officer.

After considering all relevant information available to them, the review officer must either: confirm the Minister's decision; include the applicant's name on the brigade register (for a review of a decision under subsection 7(2)); or decide to retain the applicant's name on the brigade register (for a review of a decision under paragraph 9(2)(b), (c), (d) or (e)).

The review officer must notify the applicant, in writing, of the review officer's decision and the reasons for the decision.

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### Section 11 – Disciplinary action

This section prescribes the process for disciplinary action against a member of a rural fire brigade. This section also prescribes when an appropriate disciplinary authority may take disciplinary action against a member of a rural fire brigade, and what disciplinary action may be taken.

A rural fire brigade member commits a breach of discipline if they:

- contravene the Ordinance or a provision in the Rules
- are negligent, careless, inefficient or incompetent in discharging their duties. or
- fail to comply with a relevant service standard or a condition of their membership.

The Minister may appoint an officer of the NSWRFs at or above the rank of Superintendent to be the appropriate disciplinary authority for such an alleged breach of discipline. Alternatively, the appropriate disciplinary authority may be a disciplinary panel constituted as set out in the Service Standards. The Service Standards may also set out procedures for dealing with alleged disciplinary breaches.

When a member is found to have committed a disciplinary breach, the disciplinary authority may reprimand the member, suspend the member from service, recommend the Minister demote the member, disqualify the member from holding a rank in the rural fire brigade, or remove the member's name from the JBT rural fire brigade register.

### Section 12 – Appeals concerning disciplinary action

This section prescribes the process for appealing decisions or disciplinary actions taken under the Rules. Before taking disciplinary action under section 11, the disciplinary authority must investigate the alleged breach and give the member at least 14 days' written notice of the investigation and the proposed action to be taken. The person may appeal to the Minister against the findings or the proposed action. On appeal, the Minister may confirm the disciplinary authority's decision or determine that no action, or some other action, be taken against the member.

### Section 13 – Incident reports

This section prescribes that if a rural fire brigade attends a fire, incident or other emergency, the officer in charge must ensure that the Minister receives a written report on the fire, incident or emergency. The Service Standards may specify the time period for providing the report and its content.

## **Part 3 – Fire Management Committee**

### Section 14 – Procedure for meetings of the Fire Management Committee

This section provides that the Fire Management Committee (FMC) will determine how and when meetings will be called, as well as how they will be conducted.

### Section 15 – Chair of the Fire Management Committee

This section provides the chair presides at meetings of the FMC. If the chair is absent, another member can be elected to chair the meeting,

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Under the Ordinance, the Department's nominated representative is the chair of the FMC.

### **Part 4 – Notices**

#### Section 16 – Public notice and display of draft bush fire risk management plan

This section prescribes that the FMC must publicly display a draft bush fire risk management plan, together with any other material that assists with understanding the draft plan, for at least 42 days. Interested persons may make submissions on the draft plan during that period.

#### Section 17 – Notice for bush fire hazard reduction work

This section requires that where, under subsection 58(3) of the Ordinance, hazard reduction work is to be undertaken on land located within eight kilometres of Commonwealth land, a copy of the hazard reduction notice must be given to an officer of the responsible Commonwealth authority. The notice must be given to that officer within 24 hours of it being given to the occupier or owner of the land to which the notice relates.

#### Section 18 – Notice if Minister is to carry out bush fire hazard reduction work

This section requires the Minister to notify an officer an authority responsible for Commonwealth land if, under subsection 59(1) of the Ordinance (where there has been non-compliance with a notice to undertake hazard reduction work), the Minister intends to undertake bush fire hazard reduction work on land within eight kilometres of Commonwealth land.

#### Section 19 – Notice of issue of fire permit

Under section 82 of the Ordinance, if the Minister issues a fire permit to light a fire on prescribed land, the Minister must give notice to the prescribed person or body. Under section 19 of the Rules, Commonwealth land is prescribed land and the prescribed body is the authority responsible for the Commonwealth land.

#### Section 20 – Giving of notices

This section sets out the ways in which notices and directions required or permitted to be served on a person must be served. This includes:

- Delivering it to the person personally.
- Delivering it to the person's business or residence and leaving it with a person aged over 14 residing or working at the premises.
- Posting it by prepaid letter to the person's last known place of residence, business or post office box.
- Faxing it to a number given by the person.
- Emailing it to an email address given by the person.
- Fixing it to a conspicuous part of land or building owned or occupied by the person.
- Attaching the notice or direction to the vehicle to which the notice relates if relevant.

The notice or direction does not need to name the person but can be addressed to 'occupier' or 'owner'.

If the person to be served appears to be absent from the JBT, it may be served on the person's agent personally, to their residence or place of business, by fax or email. If the land, building



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or premises of the person to be served are unoccupied and the owner's address or place of residence is not known, notice may be served by publishing an advertisement in a newspaper circulating in the JBT.

### **Part 5 – Miscellaneous**

#### Section 21 – Bravery and other awards

This section requires the Minister to keep a register of the name of each member of the Rural Fire Service who is given a commendation or award for long service, bravery or other forms of meritorious service and details of the commendation or award given to the member.

#### Section 22 – Voluntary work by rural fire brigades

Section 27 of the Ordinance allows the rural fire brigades, on consent from the Minister, to voluntarily cooperate with a prescribed public authority in undertaking prescribed functions. Section 22 of the Rules prescribes the functions where a rural fire brigade may assist public authorities either within or outside the JBT. These are:

- functions that may be exercised under the *Jervis Bay Territory Emergency Management Ordinance 2015* or in relation to the prevention and suppression of bush or other fires
- cooperating with the Commissioner of Fire and Rescue NSW in relation to hazardous materials and similar matters or in assisting with an incident or emergency
- assisting the Australian Federal Police in relation to traffic control by a police officer or in assisting with an incident or emergency
- cooperating with the Ambulance Service of NSW in relation to patient care and similar matters, and
- assisting the Commissioner of the NSW State Emergency Service in relation to with an incident or emergency.

Subsection 22(2) of the Rules prescribes public authorities as the Minister, the Commissioner of Fire and Rescue NSW, the NSW State Emergency Service and emergency service organisations as defined in section 4 of the *Jervis Bay Territory Emergency Management Ordinance 2015*.

#### Section 23 – Definition of managed land

This section prescribes the types of land that are defined as 'managed land' in section 6 (definitions section) of the Ordinance.

#### Section 24 – Conditions of fire permit

This section prescribes the conditions for a fire permit authorising the lighting of a fire on land. These are:

- lighting the fire must be consistent with the bush fire risk management plan
- it must be in accordance with any directions given to the permit holder, and
- at least one person must be present from the time the fire is lit until it is extinguished.

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### Schedule 1 - Repeals

The Schedule repeals the *Jervis Bay Territory Rural Fires Ordinance 2014* following commencement of the Rules on 1 October 2024.

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## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Jervis Bay Territory Rural Fires Rules 2024**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Background**

Section 98 of the *Jervis Bay Territory Rural Fires Ordinance 2014* (the Ordinance) gives the Minister the power to make rules in relation to the issuing of fire permits, the classification of substances as combustible, the operation of committees, the service of notices or directions under the Ordinance, the conduct and discipline of members of the Rural Fire Service, and the operations of rural fire brigades.

The Ordinance and Rules together provide the legislative framework for fire management services to the Jervis Bay Territory (JBT). The Ordinance establishes the JBT Rural Fire Service, the JBT Fire Management Committee (FMC) and deals with other matters relating to bushfire prevention, such as preparation of JBT Bush Fire Management Plans and issuing of notices and fire permits.

Due to the cross-border delivery of fire services from New South Wales (NSW) to the JBT, the Ordinance and Rules are based on the NSW *Rural Fires Act 1997* and *Rural Fires Regulations 2022*, modified to reflect the JBT's jurisdictional and administrative circumstances.

For practical reasons and to ensure consistency across jurisdictions in responding to emergencies, the Commonwealth engages the NSW Rural Fire Service to provide day-to-day management of the JBT Rural Fire Service and operational support in relation to fire management in the JBT.

The JBT Rural Fire Service is aligned as far as practical, with the services provided by the NSW Rural Fire Service in the Shoalhaven Rural Fire District. Members of the JBT Rural Fire Service are all volunteers and JBT brigades are part of a local NSW group in the Shoalhaven district.

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### Overview of the Instrument

The *Jervis Bay Territory Rural Fires Rules 2024* expand on and prescribe certain matters permitted under the Ordinance in relation to the JBT Rural Fire Service and fire management in the JBT. The Rules are largely procedural or administrative in nature, dealing with membership of fire brigades, administration of the JBT FMC and matters relating to notices and directions given under the Ordinance.

The Rules:

- Set out eligibility for becoming and remaining a rural fire services brigade member and the process, including review rights, for removing a person from a brigade register.
- Set out the process to be followed where a brigade member is considered to have committed a disciplinary breach, including appeal rights.
- Specify administrative matters relating to the FMC, incident reporting in relation to fires and other emergencies, and record keeping for brigade members receiving awards for bravery, other meritorious service and long service.
- Set out what is prescribed land and which entity is a prescribed authority for the purposes of the Ordinance.
- Prescribe matters relating to fire permits for land in the JBT, including notice requirements.
- Set out the requirements for notices relating to hazard reduction work in the JBT.
- Specify the display and notice requirements for the draft JBT bushfire management plan, including that it be displayed for 42 days and interested persons may make submissions in that period.
- Set out the requirements for effective service of notices or directions as required or permitted under the Ordinance.

The rules do not create offences or civil penalties. They do not provide powers of arrest or detention, or entry, search or seizure.

### Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms recognised or declared by any of the international instruments specified in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.