

Important Information

PLEASE READ CAREFULLY AS THIS PROCESS HAS RECENTLY CHANGED

The attached instrument has been prepared by the Parliamentary Counsel's Office (PCO).

Do NOT alter the text of the instrument or any of the accompanying documents yourself.

Ask PCO to make any changes and supply a revised version.

It is your responsibility to print the instrument and comply with the relevant procedures to have the instrument made. This information sheet must **NOT** be submitted to the Executive Council or other person or body making the instrument.

Executive Council

If the instrument is to be made by the Governor in Executive Council:

Please ensure the following are submitted to the Executive Government Officer at the Department of the Premier and Cabinet —

- 1 double-sided copy of the instrument;
- 1 single-sided copy of the instrument;
- the Executive Council minute, signed by your Minister;
- the Counsel's Certificate;
- explanatory notes, prepared by you, for the Executive Council.

PCO will, by email, advise the instructing officer when the instrument is on the Executive Council meeting agenda.

For more details consult your Minister's office, the Executive Council's Guidelines, or the Executive Government Officer on 6552 5754.

Publication in the Government Gazette

If the instrument, when made, must be published in the *Government Gazette*:

If made by the Governor in Executive Council:

- Executive Council will advise PCO when the instrument has been made (by emailing the signed Executive Council minute).
- PCO will send the electronic version of the instrument to the State Law Publisher (SLP) for publication **in the next *Government Gazette*** (usually on Friday or Tuesday) unless an earlier special *Government Gazette* has been requested or an alternative arrangement has previously been made with PCO.
- Agencies **no longer** need to send requests to SLP for publication.

If NOT made by the Governor in Executive Council:

Contact the State Law Publisher (SLP) on 6552 6012 to arrange publication of the instrument in the *Government Gazette*.

Publication must take place as soon as possible after the instrument is made.

You will need to send 1 copy of the instrument bearing the signature or seal of the person or body who made it to PCO (publications@pco.wa.gov.au) and SLP.

When you have done that, SLP will obtain from PCO an electronic version of the instrument for publication.

Tabling

If the attached instrument, when made and published, must be tabled in Parliament:

PCO will arrange for it to be tabled.

Parliamentary Joint Standing Committee on Delegated Legislation

The Joint Standing Committee on Delegated Legislation (JSCDL) scrutinises subsidiary legislation and certain other instruments on behalf of the Parliament of Western Australia.

Your organisation must comply with the JSCDL's requirements with respect to the provision of information about the attached instrument, when made. Those requirements are set out in the Premier's Circular No. 2014/01 of 15 February 2014, "Subsidiary Legislation Explanatory Memoranda".

Western Australia

Bush Fire Risk Treatment Standards 2020

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Bush Fire Risk Treatment Standards 2020

Made by the FES Commissioner under section 35AA of the Act.

1. Citation

These standards are the *Bush Fire Risk Treatment Standards 2020*.

2. Commencement

These standards come into operation as follows —

- (a) clauses 1 and 2 — on the day on which these standards are published in the *Gazette*;
- (b) the rest of the standards — on the day after that day.

3. Terms used

In these standards —

Building Code means the Building Code of Australia which is Volumes One and Two, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board;

collar, of a branch of a tree, means the base of the branch where it meets the trunk of the tree;

development approval means —

- (a) approval under the *Planning and Development Act 2005* for the development of any land; or
- (b) approval, authorisation, consent or permission under any other written law to do anything that would or might significantly affect the physical character of any land;

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inner zone has the meaning given in clause 5(2);

lot has the meaning given in the *Land Tax Assessment Act 2002* Glossary clause 2;

Metropolitan Region Scheme has the meaning given in the *Planning and Development Act 2005* section 4(1);

outer zone has the meaning given in clause 5(3);

relevant building means a building that —

(a) is classified under the Building Code as —

(i) Class 1, 2, 3, 9 or 10c; or

(ii) Class 10a, but only if part of the building is within 6 metres of a building classified under the Building Code as Class 1, 2, 3 or 9;

and

(b) was built under development approval obtained before 8 December 2015;

riparian vegetation means the distinctive vegetation associated with a wetland or watercourse;

risk treatment area has the meaning given in clause 5(1);

tree means a perennial plant —

(a) having one or more woody, self-supporting trunks; and

(b) standing at a height of at least 5 metres;

vegetation does not include a tree;

watercourse has the meaning given in the *Rights in Water and Irrigation Act 1914* section 3;

wetland has the meaning given in the *Environmental Protection Act 1986* Schedule 5 clause 2.

4. Areas to which standards apply

- (1) Except as provided in subclauses (2) and (3), these standards apply to land in an area of the State designated as a bush fire

prone area under the *Fire and Emergency Services Act 1998* section 18P.

- (2) These standards do not apply to land —
- (a) that is within 100 metres inland from the high water mark of the coastline of the State; or
 - (b) that is covered by the riparian vegetation of a wetland or watercourse; or
 - (c) identified as a Bush Forever area under —
 - (i) the Metropolitan Region Scheme clause 28A(1); or
 - (ii) an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011*;or
 - (d) to which a biodiversity conservation covenant under the *Biodiversity Conservation Act 2016* section 122 applies; or
 - (e) to which a conservation covenant or an agreement to reserve under the *Soil and Land Conservation Act 1945* section 30B applies; or
 - (f) to which a restrictive covenant under the *Transfer of Land Act 1893* section 129BA that has the effect of limiting the ability to clear vegetation or a tree applies; or
 - (g) to which a covenant under the *National Trust of Australia (W.A.) Act 1964* section 21A that has the effect of limiting the ability to clear vegetation or a tree applies; or
 - (h) that is an Aboriginal site as defined in the *Aboriginal Heritage Act 1972* section 4; or
 - (i) that under the *Heritage Act 2018* —
 - (i) is registered land as defined in section 4 of that Act; or

cl. 5

- (ii) is subject to a heritage agreement (as defined in section 4 of that Act) to which the Heritage Council of Western Australia established under section 11(1) of that Act is a party; or
 - (iii) is an area to which a protection order under Part 4 of that Act applies;
 - or
 - (j) that is a reserve as defined in the *Land Administration Act 1997* section 3(1); or
 - (k) that is a nature strip as defined in the *Road Traffic Code 2000* regulation 3(1); or
 - (l) that is subject to an agreement under the *Planning and Development Act 2005* section 121(1)(c).
- (3) These standards do not apply to a lot, or any part of the lot, if the lot contains threatened flora or a threatened ecological community as those terms are defined in the *Biodiversity Conservation Act 2016* section 5(1).
- (4) For the purposes of subclause (2)(a) —
- (a) the coastline follows the shores of bays, inlets and other similar bodies of water that are connected to the sea (disregarding any temporary closure from the sea); and
 - (b) the high water mark is that at ordinary spring tides; and
 - (c) the high water mark of the coastline extends across the mouth of a river or riverine estuary from the last point on the high water mark of one of the banks of the mouth of the river or estuary at which a line extended at 90° to the bank will reach the opposite bank to the other such point on the opposite bank.

5. Risk treatment areas

- (1) Land is a *risk treatment area* if —
 - (a) these standards apply to the land under clause 4; and

- (b) the land is within 20 metres of a relevant building.
- (2) Land is in the *inner zone* of a risk treatment area if the land is within 10 metres of the relevant building.
- (3) Land is in the *outer zone* of a risk treatment area if it is not in the inner zone of the area.
- (4) For the purposes of subclauses (1)(b) and (2) a carport, veranda, balcony, patio, pergola or other similar outdoor area that is contiguous to a building forms part of the building.

6. Clearing risk treatment areas

- (1) The owner or occupier of land that is a risk treatment area may clear any vegetation from the land.
- (2) Except as provided in subclause (4), the owner or occupier of land that is in the inner zone of a risk treatment area may do the following —
 - (a) if a tree is located on the land and is not also located on land owned by a person other than the owner or occupier (as the case may be) — remove the tree;
 - (b) if a tree is located on the land and is also located on land owned by a person other than the owner or occupier (as the case may be) and the owner or occupier obtains the consent of the person — remove the tree;
 - (c) if a branch of a tree that is not located on the land overhangs the land —
 - (i) if the tree is located on land owned by the owner or occupier (as the case may be) or the owner or occupier obtains the consent of the person who owns the land on which the tree is located — prune the branch back to its collar; or
 - (ii) otherwise — prune the branch back to the boundary of the land.

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- (3) Except as provided in subclause (4), the owner or occupier of land that is in the outer zone of a risk treatment area and above which part of a branch of a tree is at a height of less than 2 metres may —
 - (a) if the tree is located on land owned by the owner or occupier (as the case may be) or the owner or occupier obtains the consent of the person who owns the land on which the tree is located — prune the branch back to its collar; or
 - (b) otherwise — prune the branch back to the boundary of the land.
- (4) The owner or occupier of land that is a risk treatment area must not under subclause (2) or (3) remove, or prune the branch of, a tree that is listed on a register of significant trees established under a local planning scheme as defined in the *Planning and Development Act 2005* section 4(1).
- (5) For the purposes of this clause a tree is located on specified land if any part of its trunk —
 - (a) meets the ground on the land; or
 - (b) is above the land at a height of less than 2 metres.

Fire and Emergency Services Commissioner



Parliamentary Counsel's Office

COUNSEL'S CERTIFICATE

Bush Fire Risk Treatment Standards 2020

In my opinion the attached instrument is within the powers conferred by the *Bush Fires Act 1954*.

Please note the following:

Carefully read the sheet marked "Important Information" and follow the instructions contained in that sheet to have the instrument made.

Under section 35AA(5) of the Act, this instrument must be published —

- (a) in a newspaper circulating throughout the State or the relevant areas of the State, as the case requires; or
- (b) on a website maintained by the FES Commissioner; or
- (c) as the FES Commissioner otherwise considers appropriate.

Under section 35AA(6) of the Act, this instrument may only be made after the FES Commissioner has consulted with the Minister.

Under section 35AA(7) of the Act, the *Interpretation Act 1984* section 42 applies to and in relation to these standards as if they were regulations.

A handwritten signature in blue ink, appearing to read 'M Stone'.

for and at the direction of
Mathew Stone
Assistant Parliamentary Counsel

12 October 2020