Natural Hazards Research Australia

Landholder legal responsibility for bushfire mitigation in Queensland

An analysis of the legislative and regulatory framework governing bushfire mitigation in Queensland

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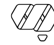

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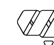


Table of contents

Table of contents 3

Executive summary 6

Research question 7

1. Introduction 8
1.1 Research utilisation and impact 8
1.2 List of figures/tables 8
1.3 Abbreviations 8
1.4 List of legislation 9
1.5 Glossary of legislation and case law terms 10

2. Project scope and limitations 13

3. Methodology overview: Multistream legal analysis 14
3.1 Queensland legislative analysis 14
3.2 Queensland case law analysis 15
3.3 Interjurisdictional comparison 15
3.4 State and non-state landholder 15
3.5 The use of artificial intelligence statement 16

4. The Fire Services Act 17
4.1 Powers and authorisations 17
4.2 No general landholder duty to reduce bushfire hazards 17
4.3 Relationship with other legal regimes 18
4.4 Civil shields and defences 18
4.5 Case law analysis findings 18

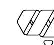
Findings part 1 – Queensland legal framework (Beyond the *Fire Services Act 1990*) 20

5. General land tenures – Planning Act and Vegetation Management Act treatment 22
5.1 Introduction to legislation 22
5.2 Lawful clearing pathways 22
5.3 Constraints to bushfire hazard reduction 28
5.4 Connections with the Fire Services Act 29
5.5 Case law 29

6. Specific land tenures – Forestry Act and the Nature Conservation Act 31
6.1 Lawful clearing pathways 31
6.2 Other legislative considerations to bushfire hazard reduction 32
6.3 Connections with the Fire Services Act 35
6.4 Case law 36

7. Other legislative obligations – All tenure types – Cultural Heritage Acts and Nature Conservation Act/protected plants and WHS Act 38
7.1 The Aboriginal Cultural Heritage Act and the Torres Strait Islander Cultural Heritage Act 38
7.2 Protected plants (Nature Conservation (Plants) Regulation) 39
7.3 Work health and safety 40

8. Connections with the Fire Services Act 42
8.1 Aboriginal Cultural Heritage Act, Torres Strait Islander Cultural Heritage Act, and Queensland Heritage Act 42



8.2 Protected plants (Nature Conservation (Plants) Regulation) 42
8.3 Work Health and Safety Act and Work Health and Safety Regulation 43

9. Other clearing pathways – General tenure types 44

9.1 Emergency works (Planning Act 2016) 44
9.2 Local government remedial notices (Local Government Act and local laws) 44

10. Queensland case law 46

11. Related legislative considerations 47

11.1 Commonwealth legislation 47
11.2 Environmental offsets and matters of state environmental significance 47

12. How responsibilities differs between state and non-state landholders 49

Findings Part II – How regulatory layering structures hazard reduction responsibility 50

Findings Part III – Interjurisdictional comparison (Bushfire Acts) 52

13. Jurisdictions with positive standing duties 53

13.1 New South Wales 53
13.2 South Australia 55
13.3 Australian Capital Territory 56
13.4 Northern Territory 57

14. Jurisdictions with notice-triggered duties 59

14.1 Victoria 59
14.2 Tasmania 60
14.3 Queensland 62

15. Hybrid standards-and-notice Model 65

15.1 Western Australia 65

16. Comparative insights 68

16.1 Typology of state and territory approaches to landholder bushfire mitigation obligations 68

17. Discussion 70

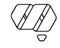
17.1 No positive obligation to undertake bushfire mitigation 70
17.2 Complex legal obligations when Undertaking Bushfire Mitigation 71
17.3 Ongoing obligations arising from planning approvals and tenure 71
17.4 Point-in-time obligations created by notices 71
17.5 Parallel legal obligations and implementation complexity 72
17.6 Behavioural effects of liability settings 72
17.7 Queensland in the national context 72

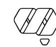
To answer the research question 74

Appendices 75

Appendix 1: List of Selected Queensland Case Law Referenced in the Analysis 75
Appendix 2: Comparative Overview: Landholder Bushfire Duties and Liability (Australia) 80
Appendix 3: National Snapshot — Scaled Comparative Matrix and Scaling Tables 81
Appendix 4: Additional Consolidated Legislative Mechanisms for Bushfire Risk Management Across Australian Jurisdictions 83
Appendix 5: Findings Table — Queensland Hazard Reduction Responsibilities by Regime 86
Appendix 6: Queensland Bushfire-Relevant Legislation — Crown Binding and Officer Liability 88

References 89





Executive summary

This report examines Queensland's legal framework for bushfire mitigation and situates it within the national regulatory landscape. It seeks to determine the extent to which occupiers of land in Queensland have a legal responsibility to manage bushfire hazards on their property. This includes analysing whether Queensland law imposes any positive or ongoing obligations on landholders to mitigate bushfire risk and how those duties, if any, are created, structured and enforced across different land tenures.

Drawing on statutory analysis and comparative national scholarship, the report finds that Queensland does not operate a standing duty model for bushfire mitigation. Instead, legal obligations arise from specific statutory triggers, including fire service requisitions and property-specific planning approvals.

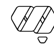
Queensland's *Fire Services Act 1990* (Qld) establishes ignition controls, permit systems, emergency powers and requisition authorities but does not impose a continuous obligation to mitigate bushfire hazard in the absence of a formal direction. This approach aligns structurally with Victoria and Tasmania and, in operational terms, with Western Australia's notice-based regime. Western Australia's regime, however, is supplemented by technical standards that provide legal clarity for landholders wishing to undertake bushfire mitigation, while also becoming mandatory in certain circumstances. By contrast, New South Wales, South Australia and the Australian Capital Territory impose continuing positive standing duties on owners and occupiers, while the Northern Territory applies zone-based obligations such as mandatory firebreaks and Property Fire Management Plans (PFMP).

The report further identifies that bushfire mitigation activities in Queensland commonly engage multiple statutory systems simultaneously. Hazard reduction works may trigger planning and vegetation clearing controls; environmental duties concerning smoke and erosion; Aboriginal and Torres Strait Islander cultural heritage processes; forestry and protected area authorisations; workplace health and safety requirements; and local government regulatory powers. These regimes operate concurrently: compliance with fire service permits or the absence of a declared fire ban does not displace obligations under other statutory frameworks. In some contexts – particularly where planning approvals, forestry tenures or conservation management instruments apply – ongoing land management obligations may be embedded through regulatory conditions, while in others, duties arise only when activated by notices or emergency directions.

Obligations also differ between private and public landholders. Queensland's ignition controls and permit systems apply across tenures, but the legal sources of enforceable duties vary. Public landholders or managers commonly encounter ongoing obligations arising from forestry tenures, protected area management frameworks or conservation management regimes. Private landholders are more often regulated through planning approvals, vegetation clearing pathways, statutory fire services notices and local government compliance mechanisms. For both private and public landholders, bushfire mitigation responsibility arises from multiple overlapping regulatory regimes rather than from a single standing statutory duty.

National scholarship analysed in this report confirms that Queensland's position reflects a broader Australian pattern, in which responsibility for bushfire mitigation is distributed across multiple legal domains rather than concentrated within fire legislation alone. Those analyses support the conclusion that Queensland exemplifies a notice-triggered, multistatute model in which landholder responsibilities are shaped by the interaction of regulatory systems rather than by a single, continuous fuel reduction obligation.

Overall, the report concludes that Queensland's bushfire mitigation framework is defined by layered regulatory controls, tenure specific duties and event-based enforcement mechanisms, placing the state among jurisdictions that regulate fuel management through episodic statutory activation rather than through standing preventive obligations.



Research question

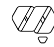
This project addresses the research question:

> 'To what extent do occupiers of land in Queensland have a legal responsibility for managing bushfire hazards on their property?'

Queensland's legislative framework allocates many compliance obligations by reference to land control rather than legal ownership, making the role of landholders (including owners, occupiers, lessees, state agencies and public authorities), central in day-to-day bushfire risk management. Public communications issued by Queensland Fire Department (QFD) emphasise strong expectations of landholder responsibility, including guidance materials stating that landowners are legally responsible for managing bushfire hazards and commonly used formulations such as 'own the fuel, own the risk'.

The Fire Services Act, however, does not establish a general, ongoing obligation on occupiers to undertake proactive hazard reduction in the absence of regulatory intervention. Instead, enforceable duties to carry out mitigation works arise primarily where QFD issues a requisition notice or where conditioned in a development approval.

This report explores the various legal responsibilities landholder have relating to managing bushfire hazards on their property and seeks to provide an answer to the research question.



1. Introduction

1.1 Research utilisation and impact

This research examines the legal framework governing responsibility for bushfire hazard reduction in Queensland. It integrates statutory analysis, case law review and interjurisdictional comparison to clarify how responsibility is allocated, activated and limited under current law.

This analysis maps how multiple legislative regimes—including fire services legislation, planning law, vegetation management, environmental protection, forestry tenure, cultural heritage protection and work health and safety—operate together in practice. It identifies where legal responsibility arises, where it does not and how obligations vary across land tenures and categories of occupiers and landholders. The research also compares Queensland's approach with that of other Australian jurisdictions that adopt different legislative models.

The findings provide a consolidated legal reference point on when and how bushfire mitigation obligations arise in Queensland. This includes documentation of notice-based regulatory mechanisms, approval pathways, tenure specific duties and the role of local government. The analysis also records areas of legal uncertainty and regulatory fragmentation encountered by landholders and public authorities in operational contexts.

The regulatory layers framework developed in this project offers an analytical account of how overlapping statutory regimes collectively shape bushfire hazard reduction activity.

Overall, the research provides a descriptive account of Queensland's current legal landscape governing activities that may contribute to bushfire mitigation. It is intended to support a consistent understanding among agencies, practitioners and researchers of how responsibility for hazard reduction is presently allocated and administered under Queensland law.

1.2 List of figures/tables

Figure 1: Methodology overview: Multistream legal analysis

Figure 2: Regulatory layers governing bushfire hazard reduction in Queensland

Figure 3: Bushfire hazard reduction clearing pathways under the Planning Act and Vegetation Management Act

Figure 4: Bushfire hazard reduction landholder checklist

1.3 Abbreviations

ADVCC: Accepted Development Vegetation Clearing Code

CHMP: Cultural Heritage Management Plan

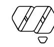
CFA: Country Fire Authority

CG: Coordinator-General

DA: Development Application

EIS: Environmental Impact Statement

EPBC: Environment Protection and Biodiversity Conservation



EVNT: Endangered, Vulnerable, Near Threatened

FMA: Fire Management Areas

FPN: Fire Prevention Notices

FMZ: Fire Management Zones

FPZ: Fire Protection Zones

FRV: Fire Rescue Victoria

MID: Ministerial Infrastructure Designation

NHRA: Natural Hazards Research Australia

PCBU: Person Conducting a Business or Undertaking

PFMP: Property Fire Management Plans

QCAT: Queensland Civil and Administrative Tribunal

QFD: Queensland Fire Department

QPEC: Queensland Planning and Environment Court

SARA: State Assessment and Referral Agency

1.4 List of legislation

This list includes legislation analysed in the report. It is not intended to be an exhaustive statement of all laws relevant to bushfire management in Queensland or Australia.

Commonwealth

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Queensland

Aboriginal Cultural Heritage Act 2003 (Qld)

City of Brisbane Act 2010 (Qld)

Environmental Protection Act 1994 (Qld)

Fire Services Act 1990 (Qld)

Forestry Act 1959 (Qld)

Local Government Act 2009 (Qld)

Nature Conservation Act 1992 (Qld)

Nature Conservation (Plants) Regulation 2020 (Qld)

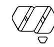
Planning Act 2016 (Qld)

Planning Regulation 2017 (Qld)

State Development and Public Works Organisation Act 1971 (Qld)

Torres Strait Islander Cultural Heritage Act 2003 (Qld)

Vegetation Management Act 1999 (Qld)



Work Health and Safety Act 2011 (Qld)

Other Australian Jurisdictions (Comparative Analysis)

Bushfires Act 1954 (WA)

Bushfires Management Act 1954 (NT)

Bushfire Management Act 2004 (ACT)

Country Fire Authority Act 1958 (Vic)

Fire and Emergency Services Act 2005 (SA)

Rural Fires Act 1997 (NSW)

Fire Service Act 1979 (Tas)

Subordinate Instruments and Codes (Queensland)

Accepted Development Vegetation Clearing Codes (ADVCC)

State Development Assessment Provisions (SDAP)

Relevant local government laws relating to fire hazard management (local laws)

1.5 Glossary of legislation and case law terms

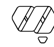
Note: Unless otherwise stated, terms defined in this glossary are used for descriptive and analytical purposes in this report only. They are not statutory terms and do not create legal obligations, duties or rights. Where statutory terms are used, they are defined by reference to the relevant legislation.

Accepted development
Development that may be carried out without a development approval if all prescribed criteria in the *Planning Act 2016* (Qld) and *Planning Regulation 2017* (Qld) are satisfied. Accepted development is permission-based and subject to strict conditions.

Accepted Development Vegetation Clearing Codes (ADVCC)
ADVCC sets out the rules for clearing native vegetation for specific purposes. If a landholder complies fully with the relevant code, the proposed clearing activity is classified as accepted development, meaning there is no need for a development approval for the clearing itself.

Assessable development
If the proposed clearing is for a relevant purpose but does not comply with the ADVCC codes for that purpose, it is assessable development and a landholder must obtain a development approval before clearing under the Planning Act.

Binding the State
Section 13 of the *Acts Interpretation* Act *1954* (Qld) states that a law does not automatically bind the State unless expressly stated. Without such clear language, there is a judicial assumption that legislation does not apply to the Crown or the state, as it does to non-state entities. This assumption can be overridden by explicit wording or necessary implications indicating Queensland Parliament’s intention to bind the state. The Queensland legislation reviewed in this report binds the state in various ways; some bind the state only, while others clarify whether the state can or cannot be held liable for an offence. It is noted that despite these clauses, operational or administrative duties might still exist in practice.



Bushfire
A generic Australian term for an unplanned vegetation fire which includes grass fires, forest fires and scrub fires. Bushfires are synonymous with the terms 'wildfire' (North America, Asia, Europe, New Zealand) and 'veldt fire' (South Africa).

Bushfire hazard
A bushfire hazard is the potential fire behaviour characterised by weather, fuel loads and topography. Fuel load is live or dead vegetation that accumulates in an area over time. For example, dead leaves and twigs may build up as they fall from trees.

Bushfire hazard reduction
Activities undertaken to reduce the likelihood or severity of bushfire impacts, including fuel load management, firebreak construction, access maintenance and vegetation treatment. For the purposes of this report, bushfire hazard reduction includes but is not limited to, the construction or maintenance of necessary firebreaks and fire management lines, and the carrying out of hazardous fuel load burns for bushfire risk mitigation. The term is used in a regulatory sense, referring to activities that may require authorisation or be constrained under Queensland's planning, vegetation management, fire services, environmental, forestry and cultural heritage frameworks, rather than general land management practice.

Civil safe harbour
A statutory limitation on civil liability where a person conducts a fire in accordance with a valid notification, permit or requisition under the Fire Services Act, and complies with all applicable conditions, provided the activity is not carried out recklessly or maliciously. The protection operates in relation to the authorised act and does not displace other statutory obligations applying to the activity. In Queensland, this protection is principally provided in s. 145L of the Fire Services Act, with additional good faith protections for statutory actors under s. 153B.

Clearing for infrastructure
A vegetation clearing pathway under the ADVCC that allows clearing only where it is genuinely necessary for the protection or operation of eligible infrastructure, as defined in the Vegetation Management Act.

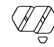
Common law duty
Obligations arising through judicial decisions rather than statute, including duties of care in negligence. In the bushfire context, common law duties are highly fact-specific and most clearly articulated in planning and ignition liability cases.

Development application (DA)
A formal application seeking approval to carry out assessable development under the Planning Act. Conditions attached to a DA may impose ongoing bushfire management obligations.

Exempt development/exemption
Activities excluded from assessment under the Planning Act or Planning Regulation (including sch. 21) but highly defined scope of activity. Exemptions remove the need for a development approval but do not override other legislative requirements.

Firebreak
A cleared or modified strip of land intended to slow or stop the spread of fire. Firebreak construction in Queensland is regulated through multiple legal pathways and is not subject to a universal statutory obligation.

Hazard reduction notice/requisition notice
A notice issued under the Fire Services Act or a local law requiring specified actions to reduce fire risk. Legal responsibility arises upon issuance of a valid notice.



Landholder/occupier
The person or entity in control of land, including owners, lessees or managers. Legal responsibility for bushfire hazard reduction varies depending on tenure, land use and statutory triggers. Refer to chapter 3.4 State and Non-state Landholder for further clarification.

Notice-triggered duty
A legal obligation that arises only once a formal notice or direction is issued by an authorised authority.

Permissions-based framework
The term used in this report to describe a regulatory model in which bushfire mitigation is lawful only if carried out through authorised pathways (e.g. approvals, codes and exemptions), but is not required in the absence of a trigger.

Planning and environment court
The Queensland court has jurisdiction over planning, development and environmental disputes. Most judicial consideration of bushfire mitigation in Queensland currently occurs through this court.

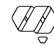
Positive standing duty
The term used in this report to describe a continuous statutory obligation requiring landholders to undertake activities that contribute to bushfire hazard reduction, regardless of notice or approval.

Regulatory layers model
The analytical framework used in this report to describe how multiple legal regimes collectively shape bushfire responsibility, creating overlap, gaps and conditional obligations.

State landholder
A government agency or authority occupying or managing land. While some legislation limits the ability for state landholders to be prosecuted by state agencies, operational responsibilities for bushfire risk management remain substantially similar to those of non-state landholders.

Tenure specific obligation
A legal duty arising from the nature of land tenure, such as forestry or protected area management.

Trigger-based responsibility
The term used in this report to describe a legal framework in which responsibility for bushfire hazard reduction arises only after a specified action, such as the issuance of a notice, conditioning of a development approval, or activation of emergency powers.

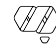


2. Project scope and limitations

This project examines the extent to which land occupiers in Queensland are legally responsible for managing bushfire hazards on their properties. Rather than focusing solely on the Fire Services Act, the project maps the broader regulatory environment that shapes mitigation responsibilities, including planning law, vegetation management, environmental protection, cultural heritage protection, protected area management, forestry tenure and work health and safety regimes. It also analyses how courts interpret and apply these obligations and situates Queensland within the national context through targeted interjurisdictional comparison.

The project builds on the established national doctrinal scholarship on Australian bushfire law undertaken by McCormack[1] and Eburn[2], which identifies that hazard reduction duties are distributed across multiple statutory regimes rather than consolidated within a single fire authority or legislative instrument. While that scholarship adopts a cross-jurisdictional focus, this report applies a Queensland-specific doctrinal analysis, examining in detail how the Fire Services Act interacts with vegetation management, planning, environmental protection, cultural heritage, forestry and work health and safety legislation in shaping the legal obligations of land occupiers. The analysis is limited to the statutory framework and its judicial interpretation. It does not offer site-specific development guidance, mapping decisions or operational classification results, as these depend on detailed fact-based assessments and administrative judgements. The national literature provides the analytical foundation for this study, which concentrates on the practical operation of statutes in Queensland, enforcement mechanisms and judicial interpretation. This is supplemented by focused interjurisdictional comparisons to assess whether Queensland's regulatory model differs from approaches adopted in other Australian jurisdictions.

[1] McCormack, P., et al. 2022. *Melbourne University Law Review*. "An Anatomy of Australia's Legal Framework for Bushfire". pp. 156-217.
[2] Eburn M,Cary GJ 2017 'You Own the Fuel, but Who Owns the Fire?' vol. 26(12) pp. 999; McCormack PC et al 2022, 'An Anatomy of Australia's Legal Framework for Bushfire' vol. 46(1) pp. 156.



3. Methodology overview: Multistream legal analysis

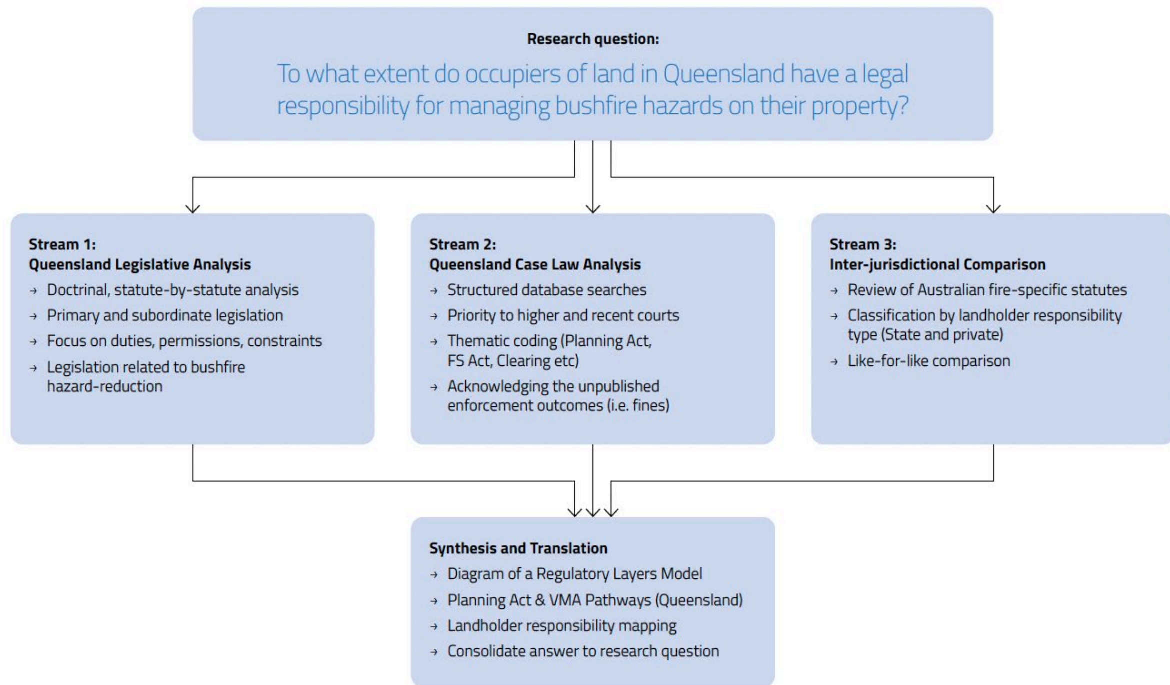
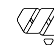


Figure 1: Methodology overview: Multistream legal analysis

Different analytical approaches were applied to each legal component. The research, therefore, adopted a multistream methodology comprising the following elements:

3.1 Queensland legislative analysis

A doctrinal, statute-by-statute methodology was applied to determine whether Queensland law imposes positive duties on landholders to reduce bushfire hazards and to examine how mitigation responsibilities are structured in practice. The analysis focused on primary and subordinate legislation that authorise, restrict, or regulate activities that contribute to bushfire hazard reduction, or that create duties, approval requirements or enforcement powers relevant to bushfire mitigation. Scope, inclusion criteria, exclusions, research sources, search strategy and methodological limitations are specified in the legislation report. The methodology prioritised authoritative primary legal materials and treated statutory regimes as operating through defined ‘legal gates’ that determine when hazard reduction activity is permitted, required or constrained under Queensland law.



3.2 Queensland case law analysis

A structured legal research methodology was applied to identify court decisions relevant to responsibility for bushfire hazard reduction in Queensland. Searches were conducted across major case law databases using targeted fire-related terms, with results refined through staged filtering to ensure relevance and legal authority. Priority was given to higher-court decisions and recent judgements to reflect current doctrine, while lower-court and tribunal decisions were retained where they illustrated operational enforcement patterns.

Cases were coded by subject matter, including planning controls, ignition liability, duties under the Fire Services Act, vegetation clearing, disaster-related liability and cultural heritage considerations, to enable doctrinal comparison and identification of recurring legal issues. The analysis records limitations in the published jurisprudence, including the frequency with which matters are resolved through regulatory notices, guilty pleas or administrative settlements rather than reported judicial decisions.

3.3 Interjurisdictional comparison

The comparative analysis only examined bushfire-specific legislative frameworks in Australian jurisdictions equivalent to Queensland's Fire Services Act, focusing on statutory duties, regulatory powers, enforcement mechanisms, permit systems and liability protections. Statutory provisions were extracted into standardised analytical statements, and each jurisdiction was organised by trigger type (standing duties versus notice-based models), enforcement pathways and priority rules. This approach ensured consistent, like-for-like comparison across jurisdictions and generated a robust evidence base for assessing Queensland's position relative to national practice and prevailing policy models.

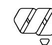
3.4 State and non-state landholders

A threshold issue for this report is whether Queensland legislation applies to state landholders in the same manner as it applies to private landholders. Before analysing the legislative regimes that shape bushfire hazard-reduction responsibilities beyond the Fire Services Act, the report clarifies how Queensland statutes apply to state and non-state entities.

Most Queensland statutes examined in this report expressly bind the state, although many exclude the state from criminal and civil liability. Where legislation does not expressly bind the state, this does not indicate an absence of regulatory control or accountability. Rather, it affects the available enforcement mechanisms. In such cases, criminal proceedings may not be available, but other forms of oversight remain, including judicial review of administrative action, civil liability and statutory accountability processes.

In operational terms, state agencies remain subject to statutory standards, must exercise their powers lawfully, and are expected to manage bushfire risk in accordance with legislative frameworks and government policy settings.

For transparency, each legislative regime analysed in this report makes reference to whether it binds the state, does or does not make the state liable for an offence, and whether that status is likely to affect the law's practical operation. While formal liability settings may differ, both state and non-state landholders are generally required to plan, authorise and undertake bushfire mitigation activities in accordance with comparable regulatory standards.



For non-state landholders: Responsibility for bushfire hazard reduction beyond the Fire Services Act arises through several distinct regulatory pathways. Where landholders are persons conducting a business or undertaking, the *Work Health and Safety Act 2011* (Qld) require them to identify bushfire risk, implement control measures, and manage safety through planning, training, supervision and communication systems. Where land is held within the State Forest Estate, the *Forestry Act 1959* (Qld) imposes fire management obligations linked to that tenure. In addition, landholders undertaking bushfire mitigation activities must comply with vegetation clearing controls, planning approval processes, environmental protection requirements and cultural heritage obligations. These regimes primarily regulate how mitigation is undertaken rather than establishing a general, positive standing duty to reduce fuel loads across all land tenures.

Local governments are established under the *Local Government Act 2009* (Qld) as bodies corporate with perpetual succession, a common seal, and the capacity to sue and be sued in their own name (s. 11). Although created under state legislation, they are legally distinct from the state and hold and manage land in their own right. Accordingly, when acting in their capacity as landholders, local governments are properly characterised as non-state landholders for the purposes of this analysis.

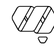
For state landholders: Operational responsibilities are similar in substance to those of non-state landholders. The principal legal distinctions concern statutory provisions that limit the State's prosecution in certain circumstances, and tenure-specific operational requirements within the forestry framework. These distinctions do not reduce practical compliance expectations. State agencies remain responsible for managing bushfire risk through appropriate planning processes, approvals and operational controls.

In Queensland, there is no general statutory obligation requiring state landholders to undertake activities that contribute to bushfire hazard reduction in the absence of regulatory direction. Under the Fire Services Act, enforceable obligations arise upon issuance of a requisition notice. The Forestry Act is an outlier in that it imposes fire management and prevention duties within the State Forest Estate.

Other regimes, including work health and safety, vegetation management, planning and environmental protection legislation, impose safety and compliance requirements relevant to bushfire mitigation activities, but do not create a general, positive standing duty on landholders to reduce bushfire risk.

3.5 The use of artificial intelligence statement

Generative AI, including computational tools were used to improve language clarity, structure the presentation, brainstorm the layout and format tables and comparison matrices. The tools were not used for legal research, interpreting laws or cases, producing legal conclusions or determining the report’s findings. All legal analysis, interpretation, case review or digest and judgment were conducted independently by the author, using primarily legal databases. The author reviewed, edited and approved all content and is responsible for the report’s accuracy and content.



4. The Fire Services Act

The Fire Services Act regulates permits for lighting fires, fire bans, requisition and abatement notices, building fire safety compliance and emergency powers. As demonstrated in this research, the Act does not establish a general, proactive statutory obligation on landholders to undertake bushfire fuel-load reduction or hazard reduction works in the absence of regulatory intervention. Its primary function is to regulate ignition activities, address hazardous fire situations as they arise, and ensure compliance with building fire safety requirements (see 5.1 — Queensland Legislative Analysis).

Where enforceable obligations arise under the Act, they generally relate to:

- compliance with fire bans and permits (ss. 145M-145S)
- responding to emergency directions (ss. 145T-145Y)
- maintaining building fire safety systems (ss. 146L-146N)
- complying with requisition notices when issued (s. 145G).

4.1 Powers and authorisations

The Fire Services Act confers substantial operational powers on authorised fire officers of Queensland Fire and Rescue and Rural Fire Service Queensland, both operating within the QFD. Queensland courts have consistently upheld the breadth of requisition powers and the penalties for non-compliance exercised under the Fire Services Act. However, the reported cases mostly concern building fire safety systems rather than bushfire hazard mitigation, as reflected in the Queensland case law reviewed in this report (refer to chapter 5.5 - Case law).

4.2 No general landholder duty to reduce bushfire hazards

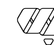
Nothing in the Fire Services Act establishes a general or statewide obligation on landholders to maintain land in a condition that is proactively mitigated against bushfire risk. In particular, the Act does not impose a standing requirement to:

- clear or slash vegetation
- maintain fuel levels
- establish firebreaks
- undertake preparatory works in anticipation of bushfire conditions.

Instead, enforceable duties arise under the Act only where:

- a specific requisition notice is issued
- an emergency direction is given.

Occupation-based obligations in Queensland may, however, apply under leases or other contractual arrangements.



4.3 Relationship with other legal regimes

This report examines legislation relevant to activities that contribute to bushfire mitigation, including:

- vegetation clearing restrictions in certain scenarios
- planning approvals
- environmental obligations
- cultural heritage duties
- protected area rules.

The Fire Services Act does not explicitly override any of the above but may in very limited circumstances. Nonetheless, the Queensland courts expect lawful compliance with parallel legislation even when acting for fire safety purposes (as demonstrated in later references to Queensland case law).

4.4 Civil shields and defences

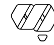
Queensland provides a statutory civil safe harbour[3] for authorised hazard reduction burns. Where a burn is conducted under a valid notification, permit or requisition, relevant conditions are complied with, and the activity is not carried out recklessly or maliciously, common law liability for resulting damage is displaced (by s. 145(l) of the Fire Services Act). The Fire Services Act also confers protection for acts done under statutory authority in good faith, including by officers and other persons exercising powers under s. 153(a).

Across all Australian jurisdictions, comparable immunities are typically framed by reference to conduct undertaken in the execution of statutory fire management functions rather than to institutional status alone. Such protections are not generally provided to private landholders acting outside an authorisation framework.

4.5 Case law analysis findings

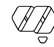
Queensland case law has not yet tested the application of the Fire Services Act to bushfire fuel-load reduction. The Queensland Civil and Administrative Tribunal (QCAT) and District Court decisions reviewed—including the *Jackson v QFES* [2020] QCATA 171, *Patterson v QFES* [2022] QDC 115, and *Kazakova v QFRS* [2011] QCA 328 matters—concerned requisition notices issued under the Act in relation to building fire safety systems, such as hydrant infrastructure and evacuation planning, rather than vegetation management or fuel load mitigation.

To date, the jurisprudence[4] has not established that the Fire Services Act imposes a positive statutory duty on landholders to reduce bushfire hazards through vegetation removal or fuel management. Instead, Queensland decisions indicate that enforceable mitigation obligations arise on a case-by-case and site-specific basis, primarily through planning and development assessment processes. For instance, Queensland courts and tribunals have refused subdivision approvals (such as in the *Kissane v Brisbane CC* [2016] QPEC 57, *Kenlynn v Noosa SC* [2019] QPEC 65, and *Rainbow Shores Pty Ltd v Gympie Regional Council & Ors* [2013] QPEC 26) or imposed development conditions (such as in *Traspunt No. 4 Pty Ltd v Moreton Bay Regional Council* [2021] QPEC 6; *Harris v Scenic Rim Regional Council* [2014] QPEC 16; *Sailmist v Sunshine Coast RC* [2017] QPEC 63; and *Mayo v Gold Coast CC* [2002] QPEC 60) where bushfire risk was unacceptable in the absence of fuel reduction zones, evacuation routes or ongoing management plans. In some instances, including *Elandra Settlers Cove v Noosa SC* [2018] QPEC 37, the authorities demonstrate that such obligations may be imposed on an ongoing basis through covenants attached to the land that bind successive owners.



In some selected private law disputes, the Fire Services Act permit or offence provisions have been referenced when evaluating whether landholders acted reasonably in lighting or managing fires. Nonetheless, these cases did not involve interpreting ss. 145J or 145L, nor did they regard permit compliance as decisive for civil liability or as establishing a statutory fuel reduction obligation. Instead, the Act was merely part of the factual background for common law negligence or nuisance assessments, rather than serving as the basis for enforceable bushfire mitigation duties. Detailed summaries of the Queensland cases discussed here appear in Appendix 1.

[3] The civil-liability safe harbour is contained in s. 145L (sometimes read with the surrounding provisions in ss 145J–145L of the Fire Services Act.
[4] The accumulated case law that converts legislative text into operational legal rules for decision-makers and land managers.



Findings part 1 – Queensland legal framework (Beyond the *Fire Services Act 1990*)

This section examines the Queensland legislative framework governing bushfire hazard-reduction responsibilities beyond the Fire Services Act.

Figure 2 illustrates the parallel layered regulatory framework governing activities that contribute to bushfire hazard reduction in Queensland, showing how land tenure, planning and vegetation law, fire legislation, environmental protection, cultural heritage and work health and safety regimes operate concurrently.

To support practical interpretation, each legislative regime is introduced by noting whether it binds the state, and by considering whether that distinction is likely to affect how the legislation operates in practice for state and non-state landholders.

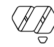
Throughout this section, the question of whether an Act binds the state is treated as a framing consideration, not a determinant of substantive responsibility. This means that whether legislation binds the state affects how the law is enforced, but it does not determine whether state or non-state landholders are expected to manage bushfire risk in practice. In many cases, the distinction has limited operational impact. Although formal liability settings may differ, both state and non-state landholders are generally expected to plan, authorise, document and carry out bushfire mitigation activities in a comparable manner.

Regulatory layers governing bushfire hazard reduction in Queensland

Land categories	Vegetation clearing framework	Fire use and burn permission	Environmental protection & offsets	Cultural heritages	Work health and safety	Local government laws
Bushfire mitigation function: determines which Acts govern bushfire mitigation hazard reduction	**Function: controls vegetation removal**	**Function: regulates the act of burning for the purpose of bushfire mitigation**	**Function: manages ecological impacts**	**Function: protects heritage sites**	**Function: protects workers/contractors conducting bushfire mitigation activities**	**Function: adds local conditions outside planning categorisation**
Non-state land Freehold, Leasehold (under the *Land Act 1994*), Indigenous-Owned Land (under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*) or Indigenous leasehold (under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*), Private Easements / Private Occupiers, Trust Land (Non-Government) **State land** Unallocated State Land (USL), *Protected Areas (Nature Conservation Act 1992*), State Forests & Timber Reserves (*Forestry Act 1959*), Land Act Reserves (Dedicated/Non-Dedicated Reserves) (State land set aside for a particular public purpose under the *Land Act 1994*), Roads, Road Reserves & Stock Routes, Marine, Tidal & Watercourse Land (State Land), Crown Leasehold Where the State Is Occupier, State owned operational land.	***Planning Act 2016 / Planning Regulation 2017*** — accepted clearing rules/ development application/ prohibited ***Vegetation Management Act 1999*** — Accepted Development Vegetation Clearing Code (ADVCC) ***Nature Conservation Act 1992/Nature Conservation (Plants) Regulation 2020*** — protected plants ***Forestry Act 1959*** — State forest ***Nature Conservation Act 1992*** — Koala habitat mapping & species protection overlay	***Fire Services Act 1990*** — permit to light, bans, emergencies	***Environmental Protection Act 1994*** — General Environmental Duty ***Environmental Offsets Act 2014*** — Development Application + Matters of State Environmental Significance only"	***Aboriginal Cultural Heritage Act 2003*** ***Torres Strait Islander Cultural Heritage Act 2003*** ***Queensland Heritage Act 1992***	***Work Health and Safety Act 2011*** — hazards, safe systems, PPE, emergency plan	***Local Government Act 2009 + Local Laws*** — vegetation, roadside, permits

How to read this diagram: This diagram illustrates the layered regulatory framework governing bushfire hazard-reduction activities in Queensland. No single statute authorises or requires hazard reduction on its own. Instead, landholders must navigate multiple, concurrent legal regimes that perform different functions: land tenure determines which legislation applies; planning and vegetation laws determine whether clearing is permitted, exempt, or prohibited; fire legislation governs when and how burning may occur; work health and safety law imposes ongoing duties to manage risk during operations; environmental and cultural heritage laws set absolute constraints that continue to apply regardless of approvals; and local government laws operate as a supplementary enforcement overlay. Together, these layers facilitate bushfire mitigation by removing approval barriers in defined circumstances, while maintaining limits on how, where, and when vegetation may be cleared or fire may be used, without imposing a universal duty to undertake hazard-reduction works.

Figure 2: Regulatory layers governing bushfire hazard reduction in Queensland



5. General land tenures – Planning Act and Vegetation Management Act treatment

5.1 Introduction to legislation

This dedicated chapter addresses the Vegetation Management Act and the Planning Act. This is not because they occupy a superior position in the legislative hierarchy, but because Queensland bushfire mitigation case law has most frequently arisen in planning and vegetation clearing contexts, requiring more detailed doctrinal analysis. This section shows how the Planning Act and Vegetation Management Act provide various permissive pathways to enable bushfire hazard reduction (primarily clearing for firebreaks and fire management lines) without imposing a positive duty on general land tenures[5] to reduce bushfire hazard on their land.

Section 44 of the Planning Act introduces statutory concepts such as 'accepted development', 'assessable development' and 'prohibited' development pathways. Where vegetation clearing is involved as part of bushfire mitigation activities, accepted development may occur either directly under the Planning Regulation or through compliance with ADVCC established under the Vegetation Management Act, which operates as a distinct statutory pathway. These pathways are permissive, not mandatory: they authorise clearing where criteria are met, but do not create an obligation to require landholders to carry out the works of clearing (for example, firebreaks or fire management lines). Separate accepted development exemptions under the Planning Regulation operate in defined circumstances but likewise do not impose a general duty to clear.

The Planning Act framework applies to both new developments and established parcels of land, noting that clearing vegetation is considered development; the Vegetation Management Act applies to vegetation on both categories of land.

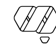
Note: This dedicated chapter addresses the Planning Act and the Vegetation Management Act, not because they occupy a superior position in the legislative hierarchy, but because Queensland bushfire mitigation case law has most frequently arisen in planning and vegetation clearing contexts, requiring more detailed doctrinal analysis.

5.2 Lawful clearing pathways

For the purposes of this report, bushfire hazard reduction includes but is not limited to, the construction or maintenance of necessary firebreaks and fire management lines, and the carrying out of hazardous fuel load burns for bushfire risk mitigation. The term is used in a regulatory sense, referring to activities that may require authorisation or be constrained under Queensland's planning, vegetation management, fire services, environmental, forestry and cultural heritage frameworks, rather than general land management practices.

Figure 3 sets out the lawful and prohibited pathways for bushfire hazard-reduction clearing on general land tenures under the Planning Act and Vegetation Management Act.

[5] Land tenure in Queensland is primarily governed by the Land Act 1994 (Qld), which regulates interests in State land, including leases, reserves, and trust land, alongside the Land Title Act 1994 (Qld), which governs freehold estates and registered interests



Bushfire hazard reduction clearing pathways under the Planning Act and Vegetation Management Act

INTERACTION WITH FIRE SERVICES ACT

→ Planning Act/Vegetation Management Act regulates whether clearing activity is lawful
→ Fire Services Act regulates whether burning for bushfire mitigation is permitted
→ Both pathways must be satisfied; one does not override the other

INTRODUCTION TO LEGISLATION

→ Applies to State and non-state landholders
→ In bushfire-mitigation regimes, how an Act binds the State affects enforcement exposure, not substantive compliance requirements
→ Legislation permits but does not mandate bushfire mitigation activities

STATE LANDHOLDERS

→ Planning Act does NOT impose criminal liability
→ Prohibition on unauthorised clearing of native vegetation on prescribed land clearing governs State's operational conduct even where the Act limits criminal liability
→ Prohibition on unauthorised clearing of native vegetation on prescribed land clearing remains unlawful
→ Only alternative regimes may override (State Development and Public Works Organisation Act, Nature Conservation Act, Forestry Act)

Is bushfire mitigation vegetation clearing activity being proposed?

PATHWAY 1a:
ACCEPTED DEVELOPMENT (Planning Act)
→ Firebreak up to 20 metres or 1.5 times the height of the tallest nearby vegetation
→ Fire-management lines up to 10m wide
→ Permissive only

PATHWAY 1b:
ADVCC (Vegetation Management Act) – overlays Planning Act on most land tenures + vegetation types

→ Self-assessable code (e.g. Clearing for Infrastructure)
→ Pre-clearing notification
→ Strict compliance remains unlawful
→ Only alternative regimes may override (State Development and Public Works Organisation Act, Nature Conservation Act, Forestry Act)

PATHWAY 2:
ASSESSABLE DEVELOPMENT (DEVELOPMENT APPLICATION)

→ Required if above pathways (1a – 1b) not met
→ Assessed via State Assessment and Referral Agency
→ If a Development Application is approved, the approval can lawfully impose binding requirements on how the clearing or bushfire-mitigation works must be carried out.

PROHIBITED DEVELOPMENT (Schedule 10, Part 3 – the Planning Regulation)

→ If pathways 1a, 1b, and 2 do not apply, vegetation clearing is prohibited
→ Vegetation clearing on prescribed land is regulated on a default-prohibition model, with clearing lawful only where a specific pathway applies
→ Prohibited clearing is unlawful under planning framework

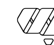
SCHEDULE 21 EXEMPT CLEARING

→ Applies only to highly specified scenarios only on prescribed land
→ Excluded from planning assessment
→ Does NOT authorise clearing beyond scope
→ Other laws still apply

CONSTRAINTS ON ALL PATHWAYS

→ Strict limits on location, width, and purpose
→ Vegetation Management Act categories & code layers apply
→ Environmental Protection Act, Cultural Heritage Acts, Work Health and Safety always apply, and to some extent the Commonwealth law (e.g. Environmental Protection and Biodiversity Conservation Act 1999)
→ Koala habitat mapping & species protection overlay

Figure 3: Bushfire Hazard Reduction Clearing Pathways Under the Planning Act & Vegetation Management Act



5.2.1 Accepted development – Operational work for necessary firebreaks or fire management lines (the Planning Regulation 2017)

Under s. 18(1) of the Planning Regulation, development prescribed in Schedule 7 is accepted development for the purposes of s. 44(5) of the Planning Act. Schedule 7, Part 3, s. 13 identifies operational work for necessary firebreaks or fire management lines as accepted development by reference to Schedule 6, Part 3, s. 20A, which limits the ability of a local categorising instrument to treat certain vegetation clearing for bushfire management as assessable development and sets out the clearing parameters and applicable tenure types.

Landholders of the below-listed tenure types may carry out clearing for essential management, including the construction and maintenance of firebreaks and fire management lines, without requiring a DA, provided that the activity is authorised as accepted development under the Planning Regulation or is undertaken in accordance with an ADVCC made under the Vegetation Management Act.

Applicable tenures (referred to as 'general land tenures') (under sch. 6 pt. 3 of the Planning Regulation) are listed as:

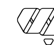
- freehold, Indigenous land, leases under the *Land Act 1994 (*Qld) (agriculture/grazing and other, if consistent with lease purpose)
- trust land (non-Indigenous) if done/allowed by the trustee and consistent with the trust purpose
- unallocated state land (by/allowed by the Chief Executive)
- Land Act licences/permits (by the licensee/permittee).

The accepted development bushfire mitigation activities are:

1) necessary firebreaks to protect infrastructure up to 20 metres or to 1.5 times the height of the tallest nearby vegetation, whichever is greater
2) fire management lines up to 10 metres wide.

Note: sch. 7 pt. 3 s. 13 of the Planning Regulation makes the above clearing 'accepted development' by reference to sch. 6 pt. 3 ss. 20A(b)(i)–(vii), which identifies the relevant tenure categories and clearing parameters.

Application to state landholders: the accepted development pathway for operational work on necessary firebreaks and fire management lines under the Planning Regulation and Act applies across the above-listed tenure types regardless of ownership. In the case of unallocated State land, Schedule 6 Part 3 s. 20A requires that the clearing be carried out by, or for, the Chief Executive administering the Land Act 1994. Separately, s. 7(2) of the Planning Act provides that the Act does not of itself make the State liable for an offence.



5.2.2 Accepted development under the Vegetation Management Act (ADVCC)

The Vegetation Management Act regulates the clearing of native vegetation (s. 8) on applicable land tenures in Queensland, including freehold land, Indigenous land, leasehold land under the Land Act, and occupation licences issued under the Vegetation Management Act (s. 7). It operates primarily through the Regulated Vegetation Management Map, which classifies vegetation into categories on properties (including Category A, B, C, R and X).[6] However, the Vegetation Management Act does not apply to certain types of land and areas, notably protected areas declared under the *Nature Conservation Act 1992* (Qld) (such as national parks, conservation parks, etc.), state forests and timber reserves under the Forestry Act and forest entitlement areas under the Land Act. Thus, while the Vegetation Management Act has a broad territorial reach, its operation is shaped by these tenure-based exclusions, which determine whether clearing is regulated under the Vegetation Management Act framework or under parallel regimes governing protected and forestry estates.

Vegetation is regulated to conserve remnant vegetation, protect vegetation in declared areas, and prevent the loss of biodiversity, among other purposes. In this regard, vegetation refers to a native tree or plant, other than grass or a non-woody herbage, a mangrove, or a plant within a grassland regional ecosystem identified as having ‘grassland’ structure (s. 3 of the Vegetation Management Act).

Under Part 2, Division 4B, s. 19O of the Vegetation Management Act, the Minister may make the ADVCCs. Where clearing is carried out in compliance with an ADVCC, it is treated as accepted development for the purposes of the Planning Act (s 19Q of the Vegetation Management Act). The current codes are established via s. 3 of the *Vegetation Management Regulation 2023* (Qld). These codes create self-assessable pathways for specific purposes; the detailed code is then applied through the Vegetation Management Act’s accepted development framework.

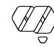
Each ADVCC is purpose-specific and context-dependent and requires pre-clearing notification and record-keeping. This means that each ADVCC unlocks clearing only for listed purposes. Landholders must also meet the context-dependent and the mapped vegetation categories under the Vegetation Management Act (e.g. Category B-remnant/Category C-high-value regrowth), tenure fit, buffers, slope and other criteria. If any element of that eligibility is not satisfied, the code doesn’t apply and the clearing activity is not accepted development under that pathway.

The ADVCC for Clearing for Infrastructure pathway is the principal code relevant to bushfire mitigation activities, as it authorises clearing for necessary firebreaks and fire management lines within the defined limits, and provides an accepted development pathway under the Planning Act via the Vegetation Management Act s. 19Q.

Further operational detail on how the clearing criteria are applied in practice is outlined in the state’s guidance materials for necessary environmental clearing. Other ADVCC pathways (such as weed management) may authorise clearing for their stated purposes, but they do not operate as a fuel load reduction pathway unless the clearing independently falls within the relevant authorisations and exclusions.

The ADVCC Clearing for Infrastructure is one code made under the Vegetation Management Act, but it operates through two lenses: substantively under the Vegetation Management Act (the real legal control) and procedurally under the Planning Act and/or Planning Regulation (to determine if landholders need a DA for clearing activity).

[6] https://www.qld.gov.au/environment/land/management/vegetation/maps/vegetation-categories



Application to state landholders: The application of the Vegetation Management Act and the ADVCC to state landholders depends on whether the land is within the areas covered by the Vegetation Management Act. The Vegetation Management Act generally applies to most land types and to occupy licences issued under it. In these cases, the State has the same responsibilities and potential enforcement actions as private landholders, including for illegal clearing. However, the Vegetation Management Act does not cover certain public lands, such as protected areas under the Nature Conservation Act, and state forests and timber reserves under the Forestry Act, which are managed under separate laws. When the Vegetation Management Act applies, the State can use the ADVCC pathway as a simple way to lawfully clear native vegetation, provided all conditions, notification and record-keeping rules are met. Using an ADVCC does not mean the state has an obligation to undertake bushfire risk reduction clearing. Instead, it is a condition approval that can be used if the rules are met and the state wishes to do so. If the rules are not met, the clearing is not considered accepted development and must be done through other statutory pathways.

5.2.3 Assessable development requiring development application under the Planning Act 2016

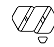
Section 20 of the Planning Regulation identifies the category of assessable development. Where vegetation clearing does not qualify as accepted development, it may constitute assessable development requiring a DA under Chapter 3 of the Planning Act, for landholders wishing to undertake bushfire clearing works beyond those enabled via the accepted development pathways.

When a DA is required, it will typically be assessed against the State Development Assessment Provisions through the State Assessment and Referral Agency (SARA). Referral to SARA is triggered when Schedule 10, including Part 3 of the Planning Regulation, applies when development involves the clearing of native vegetation. Conditions may be imposed to reduce environmental impacts, manage erosion and sediment, protect fauna and rehabilitate the affected area.

Application to state landholders: for state landholders, the Planning Act (s. 7) also binds the State, while providing that the Act does not make the state liable for an offence (s. 7(2)). For state-led infrastructure, planning approval may occur through alternative statutory pathways, including (i) a coordinated project process under the *State Development and Public Works Organisation Act 1971* (Qld) (where a project is declared a coordinated project), and (ii) a Ministerial Infrastructure Designation (MID), under Part 5 of the Planning Act. These mechanisms operate as project-level planning approvals and can alter or bypass the standard DA pathway that would otherwise apply under the Planning Act framework. However, they do not operate as stand-alone authorisations for vegetation clearing. Any clearing undertaken as part of a State project, including clearing that may contribute to bushfire hazard reduction, must still comply with applicable requirements under other relevant statutory regimes including, the Vegetation Management Act, Planning Regulation, Fire Services Act, *Environmental Protection Act 1994* (Qld), the *Aboriginal Cultural Heritage Act 2003* (Qld), the *Torres Strait Islander Cultural Heritage Act 2003* (Qld), *Queensland Heritage Act 1992* (Qld), the Nature Conservation Act or the Forestry Act.

5.2.4 Prohibited development (Schedule 10, Part 3 of the Planning Regulation 2017)

Section 19 of the Planning Regulation (via reference to sch. 10) prohibits clearing native vegetation on prescribed land, where it does not fall within the accepted development pathways under the Planning Act/Regulation or Vegetation Management Act (e.g. ADVCC) and is not capable of being approved through a DA process. Some specific exemptions apply in limited circumstances via Schedule 21 of the Planning Regulation.



Note: Under the Planning Regulation (sch. 10 pt. 3 div. 1), operational work that clears native vegetation on prescribed land is prohibited to the extent that it is not for a recognised purpose under the Vegetation Management Act and does not fall within an exempt or accepted development category. Prohibited development cannot be authorised through a development approval and cannot be conditioned or mitigated. If clearing is prohibited, it is unlawful to carry out under the planning framework.

Application to state landholders: the prohibition applies equally to state and non-state landholders in operational terms. Although the Planning Act does not render the state liable for an offence (s. 7(2)), prohibited development remains outside the scope of lawful activity and cannot be undertaken by the state except through alternative statutory pathways that modify or displace the usual DA process within the planning framework (such as the coordinated project process under the State Development and Public Works Organisation Act, MID under Part 5 of the Planning Act, or land management regimes under the Nature Conservation Act or Forestry Act).

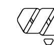
Exempt clearing work (Schedule 21 of Planning Regulation)

Schedule 21 primarily addresses specified tenure-based or activity-based exemptions, including clearing authorised under other statutory approvals or instruments, clearing linked to particular land tenures, and clearing authorised under sector-specific legislation. It does not itself create the specific operational work pathway for necessary firebreaks or fire management lines. These exemptions apply only in defined circumstances and are distinct from both the accepted development pathway for necessary firebreaks and fire management lines under Schedule 7 (by reference to Schedule 6, Part 3, s. 20A) and from clearing authorised under an ADVCC made under the Vegetation Management Act.

Note: Schedule 21 of the Planning Regulation operates only to exclude certain clearing from the Schedule 10 assessment pathways and does not itself authorise clearing beyond the scope of the exemption relied upon. Schedule 21 also does not replace the accepted or assessable development pathways. Rather, it operates to exclude certain clearing activities from planning-based native vegetation assessment where those pathways otherwise apply.

Application to state landholders: Generally, where the state undertakes vegetation clearing on land governed by the Vegetation Management Act or Planning framework, the same Schedule 21 exemptions may be relied upon, subject to the applicable eligibility criteria, as would apply to private landholders. If the land falls within the Vegetation Management Act or planning regime, the state may rely on a Schedule 21 exemption only if specific conditions are met (such as purpose, width, location, land tenure, etc.). An exemption means no development approval is required, but it does not permit unrestricted clearing. For land governed outside the Vegetation Management Act or planning framework (such as parks or forests), alternative pathways under the Nature Conservation Act or Forestry Act apply.

Note regarding the term 'infrastructure' in Schedule 21: A critical distinction exists between the ADVCC pathway and Schedule 21 exemptions. The infrastructure requirement applies only to some clearing pathways, not all of them. The Vegetation Management Act contains a statutory definition of 'infrastructure' (sch. 10), and this concept is essential to the ADVCC code for 'Clearing for infrastructure' – meaning clearing under ADVCC is only lawful if it is genuinely for the protection or operation of eligible 'infrastructure.' By contrast, not all Schedule 21 exemptions in the planning regime rely on the concept of infrastructure in the Vegetation Management Act. Some Schedule 21 exemptions apply only where clearing is undertaken to protect infrastructure – for example, to establish necessary firebreaks. Other exemptions are based instead on factors such as land tenure, land use, or the type of activity being carried out, and do not depend on the presence of infrastructure.



5.2.5 Koala habitat mapping and species protection overlays

In addition to the development-classification framework under the Planning Act and Planning Regulation, koala-protection measures under the Nature Conservation Act and the *Nature Conservation (Koala) Conservation Plan 2017* (Qld), together with associated state mapping maintained by the Department of Environment, Science and Innovation, may affect whether and how vegetation management activities are assessed. Where land is identified as regulated koala habitat under the applicable mapping and assessment framework, additional assessment requirements, referral triggers or development conditions may apply, even where an activity would otherwise fall within an accepted-development pathway under planning or vegetation legislation.

5.2.6 Relationship between the Planning Act and role of local government

A local categorising instrument must not state that development is prohibited unless a regulation allows it. A local categorising instrument must also not state that development is assessable if a regulation prohibits it. Furthermore, a local categorising instrument must not be inconsistent with a specified assessment benchmark in a regulation. Section 43(5) of the Planning Act limits the effect of local categorising instruments. If a local categorising instrument is inconsistent with that subsection, it has no legal effect. Schedule 6 of the Planning Regulation identifies development that a local categorising instrument cannot classify as assessable development (s. 43(5)(b) of the Planning Act refers).

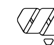
5.2.7 Relationship between the Planning Act and Vegetation Management Act

There is no Queensland appellate decision that squarely addresses the interaction between the Planning Act and Planning Regulation's vegetation clearing framework (including sch. 10 prescribed vegetation and sch. 21 exemptions of Planning Regulation 2017) and the Vegetation Management Act's pathways, specifically in the context of planned bushfire mitigation works. Decisions of the Planning and Environment Court, including *Trask and Traspunt No. 4 Pty Ltd v Moreton Bay Regional Council (No. 2)* [2021] QPEC 7, address the application of vegetation clearing controls and the limits of relying on broad 'firebreak' justifications outside the relevant statutory pathways. Those decisions confirm that vegetation removal must proceed through authorised planning and vegetation management mechanisms. However, these case law do not determine how all statutory clearing pathways operate collectively for bushfire mitigation activities across different tenures and regulatory regimes.

5.3 Constraints to bushfire hazard reduction

Under Queensland's planning and vegetation management regimes, fuel load reduction is lawful only where clearing falls within an exempt or accepted-development pathway, or where an assessable DA has been approved. These frameworks regulate not only whether vegetation may be removed, but also where and to what extent clearing may occur, and they require strict compliance with applicable codes and conditions. They do not displace parallel obligations under other regimes, including requirements for fire permits, environmental protection, cultural heritage processes or workplace health and safety.

Native vegetation clearing is therefore closely regulated. Where works fall outside the specified accepted-development limits, for example, firebreaks exceeding the greater of 20 metres or 1.5 times the height of adjacent vegetation, or fire management lines wider than 10 metres, or cannot proceed under the Vegetation Management Act ADVCC, the activity will be either assessable (requiring a DA) or prohibited under the planning framework.



Application to state landholders: The constraints imposed by the Planning Act and the Vegetation Management Act apply to state landholders in substantially the same manner as to private landholders. Unless land is excluded from the operation of those regimes by other legislation, such as the Nature Conservation Act or the Forestry Act, or the state proceeds through an alternative major-project approval pathway, state land managers are required to comply with the same exempt, accepted or assessable clearing classifications and with the ADVCC requirements that apply generally.

The Planning Act provides that the state is not liable for an offence under the Act (s. 7(2)), whereas the Vegetation Management Act does not contain an equivalent exclusion, leaving open the possibility that the state may be prosecuted for contraventions of that Act.

5.4 Connections with the Fire Services Act

Queensland's planning and vegetation management regimes determine whether and how land occupiers may lawfully undertake vegetation clearing activities, including through accepted development pathways for firebreaks, ADVCCs under the Vegetation Management Act or approved DAs. By contrast, the Fire Services Act governs if and when fires may be lit, including through permit requirements and the imposition of fire bans.

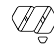
Where bushfire hazard-reduction is to be undertaken by burning, landholders must therefore ordinarily satisfy both regimes: a lawful clearing pathway under the planning or vegetation frameworks, and a lawful lighting authority under the fire legislation. Authorisation to burn under the Fire Services Act does not excuse non-compliance with clearing controls under the planning or vegetation regimes, and compliance with clearing requirements does not permit burning during a declared fire ban period.

5.5 Case law

Across the case law set, courts generally approach bushfire mitigation activities through a permission-based framework. Decisions commonly turn on the applicable categorising instruments under planning law, the availability and compliance with vegetation management code pathways, and the operation of tenure specific regimes such as those governing protected areas or forestry estates. Courts also take account of method and safety overlays, including environmental protection requirements, workplace health and safety obligations, and building or fire safety regulations. None of the decisions examined establishes a general common-law or statutory duty to proactively reduce fuel loads. Rather, obligations arise through the service of statutory notices, conditions attached to approvals, tenure specific duties, or safety obligations, in a manner consistent with the broader legislative framework outlined above.

5.5.1 Planning Act/Planning Regulation (and schemes)

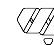
In Queensland Court of Appeal authority (for example, *Gerhardt v Brisbane City Council* [2017] QCA 285; *Leeward Management Pty Ltd v Sunshine Coast Regional Council* [2025] QCA 11; *Lockyer Valley Regional Council v Westlink Pty Ltd* [2012] QCA 370; *Stevenson Group Pty Ltd v Nunn* [2012] QCA 351; and *Tendiris v Moreton Bay Regional Council* [2010] QCA 349), a consistent emphasis is placed on the primacy of the applicable planning instrument and on close, text-based interpretation of whether development is properly classified as accepted or assessable. Those principles are reflected in first-instance decisions of the Queensland Planning and Environment Court (QPEC) within the present case law set (including *Boral Resources (Qld) Pty Ltd v Gold Coast City Council* [2012] QPEC 53; *Maroochy Shire Council v Barns* [2002] QPEC 25; *Brisbane City Council v Erlbaum* [2015] QPEC 46; and *JJJM Pty Ltd v City of Gold Coast* [2024] QPEC 9).



Together, these authorities support the proposition that vegetation clearing undertaken for bushfire mitigation purposes must either fall within an accepted-development category—such as specified firebreak or fire management-line widths—or proceed by way of a DA assessed against statutory benchmarks. Where parties rely on bushfire risk arguments but do not comply with the applicable categorisation framework or exceed the textual limits of the relevant instruments, courts have enforced the planning and vegetation management regimes according to their terms.

5.5.2 Vegetation Management Act and Vegetation Management Regulation codes

Decisions of the QPEC (for example, *Boral Resources (Qld) Pty Ltd v Gold Coast City Council* [2012] QPEC 53 and *Maroochy Shire Council v Barns* [2002] QPEC 25) indicate that courts treat the Vegetation Management Act accepted-development framework—including applicable codes and vegetation mapping—as determinative gateways. Where a party relies on an Accepted Development Vegetation Clearing Code, compliance is assessed strictly: required notifications, adherence to mandatory operational standards and clearing confined to the mapped vegetation categories are all critical. If any element of the code pathway is not satisfied, the clearing will not qualify as accepted development and instead falls to be assessed under the planning regime or may be prohibited altogether. The case law, therefore, supports a 'strict compliance' approach to reliance on Vegetation Management Act code pathways.



6. Specific land tenures – Forestry Act and the Nature Conservation Act

6.1 Lawful clearing pathways

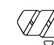
6.1.1 Nature Conservation Act and Nature Conservation (Protected Areas Management) Regulation – Permit/authority first

In national parks, conservation parks and resource reserves, interference with natural resources is prohibited unless authorised in writing under the *Nature Conservation (Protected Areas Management Regulation) 2024* (Qld) and its statutory applicable management plan or management statement. The Nature Conservation (Protected Areas Management) Regulation supplements this framework by regulating the use of fire within protected areas, including through local fire bans, duties to extinguish fires and approval requirements for constructing or maintaining fire management infrastructure. The Nature Conservation Act does not impose a general, positive obligation on occupiers to mitigate bushfire hazard in protected areas. Instead, bushfire mitigation activities are lawful only where they are authorised or required under a management instrument or a specific approval issued under that regime, and where they also comply with the Fire Services Act controls on lighting fires and related safety requirements. Where a management plan or authority mandates hazard reduction works, the occupier's legal obligation is to implement that instrument; in the absence of such a requirement, there is no independent statutory duty under the Nature Conservation Act to proactively mitigate bushfire risk.

Protected area land may be leased or licensed to private parties under the Nature Conservation Act, and limited grazing permits may be issued under the Nature Conservation (Protected Areas Management) Regulation. Any bushfire hazard-reduction activity undertaken by lessees or permit holders must therefore be authorised under the protected area framework, be consistent with the relevant management plan, and comply with fire lighting controls under the Fire Services Act, including the requirement to obtain a permit where applicable.

Application to state landholders: In protected areas, the same regulatory framework applies to the state in its capacity as land manager. The Nature Conservation Act expressly binds all persons, including the state, while also providing that the Act does not make the state liable to prosecution for an offence. As a result, State agencies are required to comply with the Act's substantive controls and must not interfere with natural resources, including vegetation, within a protected area unless authorised under the Act. Where a management plan or management statement is in force, the chief executive, trustees, or a management board are required to implement that instrument, and it is through these instruments that any obligation to undertake bushfire mitigation works within protected areas is created.

The vegetation clearing frameworks under the Vegetation Management Act and the Planning Act do not apply within protected areas, so the state cannot rely on those regimes or associated exemptions when undertaking activities that contribute to bushfire hazard reduction on such land. Instead, any vegetation management must proceed under the Nature Conservation Act framework. Parallel statutory regimes, including the Fire Services Act (permits and fire bans), the Environmental Protection Act (general environmental duty), the Work Health and Safety Act (risk control obligations for workers), and the Aboriginal and Torres Strait Islander cultural heritage legislation, continue to operate concurrently and must also be complied with.



6.1.2 Forestry estate (Forestry Act) – State forests/timber reserves

The Forestry Act establishes a distinct regulatory framework for fire management within Queensland's State Forest estate – that is, Crown land declared as State Forest or timber reserve. These areas fall outside the vegetation clearing pathways under the Vegetation Management Act (s. 7) and the Planning Regulation for vegetation removal, with land management and fire-related activities instead governed by the Forestry Act and associated statutory instruments.

Within this tenure specific framework, lessees, licensees and permit holders are subject to defined duties to prevent, detect, control and extinguish fires, as well as to specific fire control offences and compliance directions. The forestry regime, therefore, creates a tailored set of operational responsibilities for fire management that attach to tenure status.

The Forestry Act is distinctive in that s. 63 imposes positive fire prevention obligations on tenure holders and establishes operational fire management requirements across the State Forest Estate.

Note: Forestry operations conducted on privately owned land are regulated under the Vegetation Management Act.

Application to state landholders: The Forestry Act applies to land within the State Forest Estate, with the state's obligations varying according to the capacity in which it acts The Act assigns positive fire prevention and notification duties to tenure holders, including lessees, licensees, and permit holders, and the state is subject to those duties where it operates as a tenure holder (for example, where a state agency undertakes activities under a forestry licence or permit).

Where the state acts as land manager or regulator rather than as a tenure holder, it remains subject to obligations under the Fire Services Act*,* including permit requirements, fire bans and emergency directions. It must also ensure that authorised activities comply with the Environmental Protection Act (including the general environmental duty), the Work Health and Safety Act where staff or contractors are involved, and applicable cultural heritage legislation.

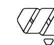
6.2 Other legislative considerations to bushfire hazard reduction

6.2.1 Protected areas and wildlife

Within national parks, conservation parks and resource reserves, landholders must not interfere with natural resources—including line cutting, slashing, clearing or burning—without written authority that is consistent with the area's management plan or management statement. Park-specific fire controls also reinforce compliance with declared fire bans and require that campfires and other ignition sources be fully extinguished.

In protected areas, fuel load reduction is lawful only where it is authorised under the Nature Conservation Act (s. 62), undertaken consistently with the relevant management statement or plan, and carried out in accordance with the Nature Conservation (Protected Areas Management) Regulation fire and operational controls. Vegetation protections under the *Nature Conservation (Plants) Regulation 2020* (Qld) must also be observed, alongside compliance with parallel statutory regimes, including the Fire Services Act, the Environmental Protection Act, the Work Health and Safety Act, and applicable cultural heritage legislation.

The Nature Conservation Act does not impose a general, positive duty to maintain protected land in a condition mitigated against bushfire risk. Any obligation to undertake activities that contribute to bushfire hazard reduction arises only if they are required by the management instrument governing the protected area.



Application to state landholders: The same restrictions under the Nature Conservation Act apply to State landholders within protected areas. Although the Act provides that the state is not liable to prosecution for an offence (s. 3), it expressly binds the state and therefore constrains the conduct of state agencies. State entities must not interfere with natural resources, including vegetation, within a protected area without authorisation under the Act (s. 62).

Any requirement to undertake fuel load reduction arises only where a management statement or management plan mandates such work. Once approved, those instruments must be implemented by the chief executive, trustees, or the relevant board (ss. 113C–120). The Nature Conservation (Protected Areas Management) Regulation then prescribes how fire-related activities and operations are to be conducted within protected areas. It operates as a conduct regime rather than as a standalone vegetation clearing approval.

Exemptions under the Nature Conservation (Plants) Regulation (s. 50) for necessary firebreaks and management lines apply outside protected areas. Within protected areas, state agencies must obtain authorisation under the Nature Conservation Act and comply with any wildlife or operational conditions attached to that approval. Vegetation clearing pathways under the Vegetation Management Act do not apply to land within protected areas under the Nature Conservation Act estates (see Vegetation Management Act, s. 7).

Other statutory regimes—including the Fire Services Act (permits and fire bans), the Environmental Protection Act (general environmental duty), the Work Health and Safety Act, and cultural heritage legislation—operate concurrently. These regimes do not authorise clearing within protected areas, but they regulate how any activity approved under the Nature Conservation Act must be carried out in practice.

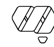
6.2.2. State Forest/Plantation Estate

The Forestry Act creates specific fire control offences and imposes positive duties on lessees, licensees and permit holders to prevent, detect, control and extinguish fires within the State Forest Estate. The Act also regulates the lighting or maintenance of fires likely to burn off or clear vegetation through its permitting system and compliance framework.

Application to state landholders: The Forestry Act provides the statutory framework governing management of the State Forest Estate. The state is bound by the Act where it holds tenure or performs roles created by the statute. However, because the Act does not expressly bind the Crown for offence liability, the common-law presumption applies: the state is not subject to prosecution for offences unless it assumes the statutory status of a 'holder'. Where a state entity holds a lease, licence or permit under the Act, it is treated as a holder and is subject to the associated offence provisions and duties, including those in ss. 63 and 65B.

The Vegetation Management Act does not apply to state forests, timber reserves, or plantation tenures (s. 7). Activities that contribute to bushfire hazard reduction on those tenures must therefore proceed under the Forestry Act and the *Forestry Regulation 2024* (Qld). Where a state entity holds a lease, licence or permit, it has positive fire prevention and notification obligations—such as duties to prevent, detect, control, extinguish and notify of fires—at its own cost (s. 63), with potential cost recovery where a fire originates from its activities (s. 65B).

The use of fire remains subject to the Fire Services Act. Section 61U of the Forestry Act provides that holding a valid permit to light a fire under the Fire Services Act constitutes a defence to specified forestry-related fire offences (including ss. 62(1)–62C(1)). This mechanism avoids regulatory conflict by ensuring that burns lawfully authorised under the fire services regime are not simultaneously criminalised under forestry legislation. It does not displace other duties imposed by the Forestry Act or obligations arising under parallel statutory frameworks.



Wildlife and flora protections continue to apply. The definition of 'take' aligns with the Nature Conservation Act (s. 73D(4)), preserving controls on protected species. Operational and conduct requirements are prescribed in the Forestry Regulation. Local government local laws do not authorise interference with State Forest land but may apply in limited respects—for example, in relation to public risk controls—subject to the constraints imposed by state legislation.

6.2.3 Environmental method and impacts

Under the Environmental Protection Act and the *Environmental Protection Regulation 2019* (Qld), activities that contribute to bushfire hazard reduction are regulated primarily by reference to how they are undertaken, rather than whether landholders or occupiers may act in principle. The General Environmental Duty (s. 319) applies to all persons, including the state, and requires all reasonably practicable measures to be taken to prevent or minimise environmental harm arising from clearing, slashing or burning.

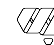
In operational terms, this requires landholders and occupiers to plan and conduct hazard reduction works so as to limit smoke emissions, prevent erosion and sediment run-off, maintain buffers to waterways and appropriately manage ash and debris. Causing material or serious environmental harm or creating an environmental nuisance—such as unreasonable smoke or odour—constitutes an offence unless the activity is authorised by an appropriate environmental authority.

The Environmental Protection Regulation supplements these duties by prohibiting the release of prescribed water contaminants, including soil, ash, or sediment, into waters or stormwater systems unless lawfully authorised. It also identifies activities that constitute Environmentally Relevant Activities (ERAs) under chapter 3. Where fuel reduction operations involve regulated waste, heavy machinery, or quarrying, an environmental authority may be required.

Persons carrying out activities that contribute to bushfire hazard reduction must also immediately notify the regulator if an activity causes, or threatens to cause, significant environmental harm. In addition, the *Environmental Protection (Air) Policy 2019* (Qld) and the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* (Qld) establish air-quality and water-protection objectives that inform regulatory oversight and enforcement.

Application to state landholders: The Environmental Protection Act and the Environmental Protection Regulation apply to State landholders in the same way as they apply to private landholders. State agencies must comply with the general environmental duty, including by planning burns and vegetation management activities to minimise smoke emissions, erosion and run-off; avoiding material or serious environmental harm or environmental nuisance unless lawfully authorised; and adhering to prescribed water-contaminant controls, including preventing ash or sediment from entering waterways or stormwater systems.

Where activities that contribute to bushfire hazard reduction trigger an environmentally relevant activity, state entities must hold the required environmental authority. They are also required to promptly notify the regulator of any incident that causes or threatens to cause environmental harm. The Environmental Protection Act does not exempt the state from liability for offences, leaving open the possibility of prosecution where the statutory thresholds are met.



6.3 Connections with the Fire Services Act

6.3.1 Nature Conservation Act and Nature Conservation (Protected Areas Management Regulation)

Within protected areas, land occupiers must obtain authorisation under the Nature Conservation Act before interfering with park resources, including clearing vegetation or constructing or maintaining fire management lines. Under the Nature Conservation (Protected Areas Management) Regulation, it is an offence to light, keep or use a fire in a protected area while a local fire ban is in force.

Accordingly, hazard reduction or land management works within parks must be authorised under the Nature Conservation Act, and any burning activities must also comply with the permit and ban requirements of the Fire Services Act.

Limited exceptions apply to small cooking or heating fires. These are generally permitted only where the fire is contained within a specified cooking or heating appliance or the occupier holds written approval, and where no local fire ban is in effect. In the absence of those conditions, lighting, keeping or using a fire constitutes an offence.

The Nature Conservation (Protected Areas Management) Regulation also imposes a positive obligation on persons to fully extinguish any fire they have lit before leaving the protected area.

6.3.2 Forestry Act and the Forestry Regulation

The Forestry Act imposes positive duties for fire prevention, detection and control on lessees and permit holders within the State Forest Estate. The Act also provides that certain fire-related offences, such as burning off or clearing vegetation by fire, do not apply where the activity is carried out in accordance with a valid authority issued under the Act. In that sense, burning undertaken within the scope of a forestry approval is lawful for the purposes of forestry offence provisions, provided all conditions are met.

Accordingly, on State Forest land, persons undertaking burning or related activities must both hold the relevant forestry tenure or authority and comply with its conditions. Authorisation does not displace the continuing operational duty to manage fire safely and in accordance with the Act.

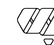
Fire lighting controls under the Fire Services Act operate concurrently. Unless an exemption applies, a permit to light a fire is required and declared fire bans must be observed. A forestry authorisation does not permit burning during a declared fire ban.

In practical terms, fuel reduction burning within the State Forest Estate requires compliance with two regulatory layers:

1) holding and complying with the relevant authority under the Forestry Act
2) holding any required permits under, and complying with bans imposed pursuant to, the Fire Services Act.

6.3.3 Environmental Protection Act and Environmental Protection Regulation

Parallel obligations arise under multiple statutory regimes. The Fire Services Act governs whether and when ignition may occur through permit requirements and fire bans. The Environmental Protection Act regulates how burning and associated activities must be conducted, including through the General Environmental Duty and any required environmental authorities, with a focus on managing impacts such as smoke, ash deposition, erosion and run-off.



Accordingly, the existence of a valid fire permit and the absence of a declared fire ban do not displace obligations under environmental legislation. Land occupiers must continue to comply with all requirements imposed under the environmental regulatory framework.

6.4 Case law

6.4.1 Nature Conservation (protected areas)

Although most of the protected area authorities reviewed arise in regulatory or administrative contexts rather than fire-specific prosecutions, first-instance decisions, such as *Scenic Rim Regional Council v Queensland Heritage Council* [2022] QPEC 42, reflect a consistent doctrinal position: land tenure-specific statutory regimes operate as threshold controls within conservation estates.

For national parks, s. 62 of the Nature Conservation Act prohibits interference with natural resources without statutory authority, while the Nature Conservation (Protected Areas Management) Regulation imposes fire control obligations, compliance with burn bans and approval requirements for works. These provisions function as primary regulatory gateways.

Vegetation clearing pathways under the Planning Act and the Vegetation Management Act, including accepted-development categories, do not authorise activities within national park estates. The case law therefore supports the conclusion that approvals under conservation legislation are legally distinct from, and antecedent to, any planning permissions and that courts will not treat planning-based authorisations as displacing controls applicable to protected areas.

6.4.2 Forestry Act (State forests/plantations)

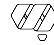
The forestry estate decisions within the case law set—including *Yarraman Pine Pty Ltd v Forestry Plantations Queensland* [2009] QCA 102 (‘*Yarraman*’) as a leading authority—operate alongside the Forestry Act’s express tenure-based fire management duties requiring lessees and permit holders to prevent, detect, control and extinguish fires.

Although the reviewed cases do not include a prosecution under s. 63, the appellate reasoning in *Yarraman* and the tenure specific approach evident in planning law decisions support the conclusion that obligations under the Forestry Act are determined by estate type and operate concurrently with authorisations granted under the Fire Services Act. In particular, authorised burns are recognised for forestry offence purposes, while the underlying statutory duties to manage fire risk continue to apply.

Taken together, the statutory scheme and judicial interpretation indicate that the forestry estate presently represents the clearest example in Queensland legislation of a tenurespecific regime imposing positive, ongoing fire management duties.

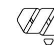
6.4.3 Environmental Protection Act/Environmental Protection Regulation

The environmental authorities identified—particularly *New Acland Coal Pty Ltd v Ashman & Ors (No 4*) [2017] QLC 24 line of decisions—do not directly concern bushfire operations. However, they reinforce the operation of the general environmental duty under the Environmental Protection Act. Those decisions demonstrate close judicial scrutiny of operational methods, emissions, and off-site impacts and a willingness to impose or reaffirm environmental conditions.



That approach is directly applicable to hazard reduction burning and vegetation clearing. Even when planning approval or vegetation management pathways are satisfied, environmental controls governing how activities are carried out continue to apply, including requirements for smoke management, ash deposition, erosion and run-off.

The case law therefore supports the proposition that environmental legislation regulates how activities that contribute to bushfire hazard reduction are conducted, rather than determining whether such activities are permitted in principle.



7. Other legislative obligations – All tenure types – Cultural Heritage Acts and Nature Conservation Act/protected plants and WHS Act

7.1 The Aboriginal Cultural Heritage Act and the Torres Strait Islander Cultural Heritage Act

Queensland's cultural heritage framework operates as a parallel regulatory layer governing how bushfire mitigation activities may be undertaken. Two statutes are relevant: the Aboriginal Cultural Heritage Act and the Torres Strait Islander Cultural Heritage Act. Neither of these Acts independently authorise vegetation clearing or burning for hazard reduction purposes. Instead, they regulate circumstances in which activities may lawfully proceed and impose procedural obligations on landholders and state agencies when heritage values are engaged. Under these acts landholders and occupiers must take all reasonable and practicable measures to avoid or minimise harm to Aboriginal or Torres Strait Islander cultural heritage when undertaking clearing or burning (s. 23 of both the Cultural Heritage Acts), as informed by the statutory duty of care guidelines made under s. 28. It is an offence to harm cultural heritage unless the activity is carried out lawfully; for example, in accordance with an approved plan or agreement or in compliance with the duty of care and guidelines (s. 24).

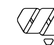
Where a project is subject to an EIS or other prescribed environmental assessment process, landholders will generally be required to obtain an approved Cultural Heritage Management Plan (CHMP) before works commence (ss. 87–88). Such plans typically prescribe survey requirements, avoidance measures, buffer zones, monitoring arrangements and procedures for managing unexpected discoveries, all of which must be integrated into hazard reduction operations.

These Acts do not themselves authorise bushfire mitigation activities; approvals under the planning, vegetation management and fire services regimes remain necessary. The cultural heritage legislation instead regulates how activities that contribute to bushfire hazard reduction are conducted to protect cultural heritage. It remains unresolved in Queensland jurisprudence whether these Acts impose a positive obligation on landholders to proactively undertake bushfire mitigation works in order to protect cultural heritage sites.

Application to state landholders: The Aboriginal and Torres Strait Islander cultural heritage legislation binds the state and applies to state land and protected estates. Although the Acts do not provide for prosecution of the State for offences, they regulate the conduct of state agencies and the way in which activities may be undertaken.

Environmental impact assessment requirements apply to state proponents in the same way as to private proponents and may give rise to obligations under the cultural heritage framework. Where a state-led project triggers an EIS under the State Development and Public Works Organisation Act (pt. 4, for example where a project is declared coordinated) or under chapter 3 of the Environmental Protection Act, the state must prepare EIS, undertake public consultation and submit the project for assessment, with the outcomes informing subsequent statutory approvals. This may give rise to cultural heritage obligations under the Cultural Heritage Acts.

Routine activities that contribute to bushfire hazard reduction will not ordinarily trigger an EIS. However, large-scale or integrated state projects—such as transport corridors, major water infrastructure or extensive estate developments—may do so.



The EIS process interacts with other regulatory obligations. In particular, it may require preparing a CHMP under Aboriginal and Torres Strait Islander cultural heritage legislation. Under s. 87, a CHMP is mandatory where an EIS is required under another Act, including for state proponents and s. 88 governs the approval process and minimum content of that plan. The EIS regime also operates alongside permits and bans under the Fire Services Act, the General Environmental Duty under the Environmental Protection Act, and any relevant planning or vegetation clearing approvals.

7.1.1 Case law - Cultural Heritage Acts

Court decisions such as *Dare & Ors v state of Queensland* [2016] QLC 11 and *Knight v DNRW* [2009] QLC 20 demonstrate that the Land Court considers land use approvals alongside the Aboriginal and Torres Strait Islander cultural heritage legislation, and gives weight to whether the statutory framework requiring heritage assessment and management processes—including duty of care guidelines and CHMP where applicable—has been properly integrated into the planning and implementation of mitigation activities.

While emergency response actions during an active bushfire may engage specific statutory exceptions, routine hazard reduction works remain subject to these heritage requirements. The case law therefore supports the conclusion that cultural heritage obligations operate as a continuing regulatory layer within bushfire mitigation planning, and that compliance must be evidenced through documented assessment and management processes.

7.2 Protected plants (Nature Conservation (Plants) Regulation)

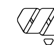
The *Nature Conservation (Plants) Regulation 2020* (Qld) provides an 'Exemption for Taking Protected Plants' when creating a necessary[7] firebreak that is 20 metres or less in width, or equal to 1.5 times the height of the plants, as well as for establishing a 10-metre fire management line. A wildlife permit (formally called a 'protected plant clearing permit' under the Nature Conservation (Plants) Regulation) is not required if these activities are performed outside protected areas and within the specified widths. It is important to document the widths and necessity of these measures, and to file a map accordingly. 'Protected plants' are native plants classified as protected wildlife under the Nature Conservation Act and the Nature Conservation (Plants) Regulation (including Endangered, Vulnerable, Near Threatened (EVNT) species, and other prescribed classes). They occur across tenures, not just in national parks—e.g., freehold, leasehold, road reserves, wetlands, and even Category X (non-remnant) vegetation. Queensland uses a Protected Plants Flora Survey Trigger Map to flag high-risk areas where EVNT plants are known or likely to occur; clearing in these areas may require a flora survey and, if impacts are found and no exemption applies, a clearing permit.

Application to State landholders: The Nature Conservation Act binds State landholders but does not make the State liable to prosecution for offences under the Act. Within protected areas, State entities must still obtain authorisation under the Nature Conservation Act to 'interfere with' vegetation, and any exempt 'taking' under the Nature Conservation (Plants) Regulation must be undertaken consistently with that authorisation.

Such activities must also comply with permit and ban requirements under the Fire Services Act, the general environmental duty under the Environmental Protection Act, obligations under the Work Health and Safety Act, and applicable Aboriginal and Torres Strait Islander cultural heritage legislation.

7.2.1 Case law

There is no Queensland appellate authority directly addressing the interaction between protected plant controls under the Nature Conservation Act and landholder obligations to mitigate bushfire risk under the Fire Services Act. Existing case law concerning vegetation clearing and firebreaks—including *Traspunt No 14 Pty Ltd v Moreton Bay Regional Council* [2021] QPEC 4—demonstrates that bushfire risk, of itself, does not excuse vegetation clearing undertaken outside authorised statutory processes.



In the absence of direct judicial guidance, landholders and regulators must manage these issues through administrative decision-making and approval pathways. This reinforces the permission-based and multilayered character of Queensland's bushfire governance framework.

7.3 Work health and safety

The Work Health and Safety Act and the *Work Health and Safety Regulation 2011* (Qld) apply to both state and private landholders where fuel load reduction involves workers or contractors. In those circumstances, the state or land manager will be a person conducting a business or undertaking (PCBU) and owes a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers and other persons (Work Health and Safety Act ss. 19–20, with "reasonably practicable" defined in s. 18).

Where a fuel load creates a foreseeable bushfire risk to staff, visitors or neighbouring properties at a workplace, the PCBU must assess and manage that risk. This may include planned burning or activities that contribute to bushfire hazard reduction, provided they are undertaken safely and in accordance with work health and safety requirements. Part 3.1 of the Work Health and Safety Regulation requires hazard identification, risk assessment, implementation of control measures and ongoing review, while s. 43 mandates a site-specific emergency plan addressing communications, evacuation and coordination with the QFD.

Operationally, any burning must be supported by safe systems of work, competent supervision, worker training, appropriate personal protective equipment, ignition-pattern planning, crew readiness and medical and evacuation contingencies.

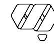
These work health and safety obligations do not authorise clearing or fire lighting in themselves. Landholders must still comply with the applicable vegetation clearing or land tenure regimes (including pathways under the Planning Regulation, the Vegetation Management Act, the Forestry Act, or the Nature Conservation Act, depending on tenure) and obtain any required permits, and observe any bans, under the Fire Services Act.

Application to state landholders: The Work Health and Safety Act and the Work Health and Safety Regulation apply to state landholders in the same way as they apply to private entities. The Act binds the state and provides that the state may be liable for offences. A state agency is a PCBU and therefore owes a primary duty of care to workers and other persons so far as is reasonably practicable (ss. 19–20, with "reasonably practicable" defined in s. 18). Officers must exercise due diligence (s. 27), and duty holders are required to consult, cooperate, and coordinate activities with other duty holders (ss. 46–49).

Part 3.1 of the Regulation requires systematic hazard identification, risk assessment, and implementation and review of control measures, and mandates a site-specific emergency plan (s. 43).

These WHS obligations do not, in themselves, authorise clearing or burning. The state must still rely on a lawful approval pathway under the Planning Act and the Vegetation Management Act, or under the Forestry Act or the Nature Conservation Act, depending on land tenure, and must comply with permit and ban requirements under the Fire Services Act as well as duties under the Environmental Protection Act.

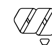
[7] The term "necessary" isn't defined in the Planning Act 2016 or the Planning Regulation 2017. It relies on the ordinary meaning in Queensland or common law, where "necessary" means something reasonably needed to fulfil the purpose of a power or exemption, not just convenient or preferable. This requires decision-makers and landholders to justify actions as genuinely required within the statutory purpose, not merely beneficial. Also see s14A of the *Acts Interpretation Act 1954*.



7.3.1 Case law

The general safety authorities reviewed—including *Baker v Smith* [2021] QCA 66, *Harris v Lagerroth* [2020] QDC 285, *Chapel of Angels Pty Ltd v Hennessy Builder Pty Ltd* [2018] QDC 218, and Queensland Building and Construction Commission and QCAT decisions in 2023–24—focus on compliance systems and duty formulation rather than vegetation management or fuel reduction. They emphasise the need for PCBUs and occupiers to maintain documented safety systems, training programs, maintenance regimes, and emergency planning, and demonstrate that courts and tribunals will uphold regulatory notices or sanctions where those requirements are not met.

These decisions are consistent with the legislative analysis in this report, which identifies that the work health and safety and building fire safety regimes establish positive duties directed to the protection of people, rather than a general statutory obligation to undertake bushfire fuel-reduction works.



8. Connections with the Fire Services Act

8.1 Aboriginal Cultural Heritage Act, Torres Strait Islander Cultural Heritage Act, and Queensland Heritage Act

Under the *Queensland Heritage Act 1992* (Qld), works affecting a place entered in the Queensland Heritage Register generally require approval from the Chief Executive unless an exemption applies. Activities associated with fuel load reduction, such as mechanical clearing, firebreak construction or planned burning, may therefore require heritage approval where they are proposed within or adjacent to a registered heritage place. The Act does not create a duty to undertake bushfire mitigation works but may constrain or condition how such activities are carried out.

All persons, whether state or non-state, are also subject to a duty of care under the Aboriginal Cultural Heritage Act and the Torres Strait Islander Cultural Heritage Act when carrying out activities that may affect Aboriginal and Torres Strait cultural heritage (s. 23). Compliance with that duty is informed by the statutory duty of care guidelines (s. 28).

Both Acts contain emergency provisions permitting actions necessary to respond to an active emergency, such as a bushfire. Those provisions are directed to emergency response and do not generally extend to planned mitigation activities. Accordingly, a permit issued under the Fire Services Act for planned hazard reduction works does not displace cultural heritage duties of care, due diligence requirements or the need for an approved CHMP where one is required.

Before undertaking planned works such as firebreak construction, dozer lines or burn preparation, landholders must complete a cultural heritage assessment. This may occur in one of two ways:

- duty of care compliance — by applying the statutory duty of care guidelines, including identifying potential heritage values, consulting relevant Aboriginal or Torres Strait Islander groups, assessing on-site risks, avoiding or minimising harm, and documenting decision-making; or
- CHMP — where the project triggers that requirement, commonly because an EIS is required, by obtaining an approved CHMP before works commence.

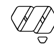
Compliance with these processes helps landholders meet their statutory duty of care and reduce the risk of unlawful harm to cultural heritage.

Queensland case law has not yet resolved whether the cultural heritage legislation imposes a positive obligation on landholders to proactively undertake bushfire mitigation works to protect cultural heritage sites.

8.2 Protected plants (Nature Conservation (Plants) Regulation)

The protected plant framework under the Nature Conservation Act and the Nature Conservation (Plants) Regulation does not impose a general obligation on landholders to undertake bushfire mitigation works. However, it affects how activities that contribute to bushfire hazard reduction may be lawfully carried out in practice.

While the Fire Services Act empowers local governments to issue notices requiring landholders to address fire hazards, compliance with such notices does not displace the operation of protected plant controls. Where protected plant protections apply, hazard reduction works must proceed through the relevant approval or exemption pathways under conservation legislation.

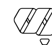


Accordingly, both public and private landholders are required to comply with applicable environmental authorisation processes when undertaking activities that contribute to bushfire hazard reduction in areas subject to protected plant regulation.

8.3 Work Health and Safety Act and Work Health and Safety Regulation

PCBU duty under work health and safety legislation: Where a land occupier operates a business or undertaking, it is responsible for managing bushfire risks as part of its obligations under work health and safety law. This includes undertaking risk assessments, preparing and implementing emergency plans, providing worker training, ensuring effective communications and supplying appropriate personal protective equipment.

Key point: Holding a permit under the Fire Services Act does not discharge work health and safety obligations. Tested emergency plans and safe systems of work must still be in place to protect workers and other persons, including visitors, who may be affected by the activity.



9. Other clearing pathways – General tenure types

9.1 Emergency works (Planning Act 2016)

Where there is an immediate threat to life, health, building structural safety or critical infrastructure, the Planning Act provides a limited emergency mechanism allowing landholders to undertake certain works before notifying government authorities. Section 166 operates as a narrow, last-resort provision for imminent emergencies, not as a pathway for routine activities that contribute to bushfire hazard reduction.

This relief is confined to planning law offences. It does not displace obligations under other statutory regimes. Landholders must still comply with the Fire Services Act, including:

- permit requirements, fire bans, and directions
- the general environmental duty under the Environmental Protection Act
- cultural heritage obligations (including emergency response provisions where applicable)
- work health and safety duties
- the tenure-specific approval regimes under the Nature Conservation Act and the Forestry Act.

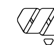
Operationally, s. 166 of the Planning Act can be relied upon only for urgent, tightly targeted vegetation removal necessary to abate an immediate danger; for example, vegetation encroaching on critical assets during an active bushfire threat, rather than for pre-season mitigation programs or broad activities that contribute to bushfire hazard reduction.

Application to state landholders: Section 166 of the Planning Act applies to the state. In a genuine emergency—such as where a fire presents an immediate threat to State infrastructure or communities—the State agency may undertake urgent vegetation clearing or fuel reduction to abate that risk.

The agency must still comply with the notification and restoration requirements in s. 166 and with all parallel statutory regimes that apply to other landholders, including the Fire Services Act, the Environmental Protection Act, work health and safety legislation, cultural heritage legislation and any tenure-specific controls under the Nature Conservation Act or the Forestry Act.

9.2 Local government remedial notices (Local Government Act and local laws)

Local governments may rely on the Local Government Act (or in the case of Brisbane City Council, the *City of Brisbane Act 2010 (Qld)*) and local laws to issue remedial or compliance notices to owners or occupiers when land poses a public risk, such as overgrown vegetation or bushfire hazards. Such notices typically specify the hazard, the required remedial works—such as slashing, removing flammable debris or creating or maintaining firebreaks—and the timeframe for compliance. Councils commonly rely on model local laws addressing overgrown vegetation or hazard abatement to support these directions.



If a private landholder or occupier fails to comply, a council may carry out the required works in default, recover its reasonable costs and impose penalties in accordance with statutory processes. In Queensland, local governments are bodies corporate with perpetual succession and capacity to sue and be sued in their own name (s. 11). This status confirms councils' legal standing to issue and enforce remedial or compliance notices, and to be subject to legal challenge where powers are exercised beyond statutory limits. It does not expand substantive powers beyond those conferred by legislation.

The Local Government Act confers remedial notice powers to secure compliance with the Act and local laws (ss. 138, 138AA). Such notices may require landholders to abate hazards, including through fuel load reduction, but they do not themselves authorise vegetation clearing or fire lighting beyond what is permitted under other statutory regimes, including the Vegetation Management Act, the Planning Act, the Nature Conservation Act or the Forestry Act, as applicable to the relevant tenure.

Where a remedial notice is not complied with, councils may—after giving reasonable written notice—enter land to carry out the specified works (s. 142(2)) and recover their reasonably incurred costs as a debt (ss. 142(4)–(5)). Related provisions address the owner's and occupier's responsibilities (ss. 140–141) and limited entry powers to remove materials (s. 143). Councils must rely on validly made local laws to define hazards and prescribe remedial actions (ch. 3 pt. 1), including through the state's model Local Law No. 3 (Community and Environmental Management), which links compliance notices to the remedial notice regime.

Importantly, a council notice does not displace other regulatory requirements. Recipients must still proceed through lawful vegetation management and planning pathways, comply with fire lighting controls under the Fire Services Act, and meet obligations under environmental, work health and safety and cultural heritage legislation.

Application to state landholders: Local government remedial notices may apply to the state where it is the owner or occupier of land, and a council may direct a state agency to address hazards such as overgrown vegetation or bushfire risk under the Local Government Act and the council's local laws. Where a valid remedial notice is issued, the state is generally expected to comply, or the council may undertake the works in default and recover reasonable costs (ss. 138, 138AA, 140–143).

Those powers operate subject to overriding statutory regimes. A council cannot authorise, require, or compel clearing or burning that would be unlawful under other legislation, including the Nature Conservation Act, the Forestry Act, the Planning Act, the Vegetation Management Act or permit and ban requirements under the Fire Services Act.

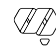
Similarly, where a state project proceeds under a specialised statutory pathway—such as a CG process under the State Development and Public Works Organisation Act or a MID—the operation of local laws may be displaced to the extent of any inconsistency.

These limits illustrate that local law remedial powers regulate compliance with hazard-abatement directions but do not expand councils' authority to override state-level approval regimes.

9.2.1 Case law - Local Government Act and local laws

Although the case law does not centre on prosecutions under local laws, the planning authorities and decisions of the Queensland District Court, QCAT, and the Planning and Environment Court reviewed indicate that compliance with local government notices must occur through lawful state approval pathways. Courts have not treated a council notice as authorising vegetation clearing beyond what is permitted under the Vegetation Management Act or the Planning Act.

This jurisprudence is consistent with the legislative analysis in this report: while a remedial notice may create an obligation to address a hazard, the manner in which that obligation is discharged must remain within the limits imposed by state statutory regimes.



10. Queensland case law

Queensland case law indicates that occupiers may be subject to substantial responsibilities in bushfire hazard management, although those responsibilities arise under multiple legal regimes rather than a single, consolidated statutory duty. The planning and environment jurisdiction is the principal source of preventive controls. Development proposals may be refused where the bushfire risk is assessed as unacceptable, or approved only subject to conditions such as asset protection zones, fuel management requirements, access easements and ongoing land management obligations.

In matters such as *Body Corporate for Elandra Settlers Cove CTS 37351 v Noosa Council* [2018] QPEC 37 and *Inverstanley Holdings P/L v South East Qld Water Corp Ltd* [2004] QSC 201, courts have accepted that bushfire-related obligations may be imposed through planning conditions, covenants or lease arrangements that attach to land and bind successive occupiers.

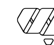
At the same time, the extent to which hazard reduction responsibilities systematically transfer to future purchasers or lessees of land remains uncertain. Although some instruments impose ongoing compliance obligations, there is no general statutory mechanism ensuring disclosure of bushfire mitigation requirements to prospective purchasers, and Queensland’s current seller-disclosure regime does not specifically capture these matters.

Other statutory regimes interact with the planning framework. The Fire Services Act imposes offence-based duties relating to the lighting and control of fires and compliance with statutory directions, while conferring operational protections on public authorities and officers. Common law duties relating to the ignition and escape of fire remain relevant in principle, but reported Queensland decisions addressing bushfire mitigation have most frequently arisen in planning and environmental contexts rather than in negligence litigation.

The case law shows that vegetation management regime operates alongside fire services and planning frameworks and regulate the circumstances in which hazard reduction clearing may occur; clearing outside authorised pathways may attract enforcement action even where undertaken for fire risk management purposes. Planning approvals may simultaneously require mitigation works, producing a regulatory environment in which landholders must navigate multiple, overlapping approval systems. Cultural heritage legislation also forms part of this framework, although there has been limited Queensland jurisprudence to date directly testing its application to routine activities that contribute to bushfire hazard reduction.

Public authority liability varies across statutory contexts. While some legislation provides protections for the state and its officers in relation to firefighting operations, those provisions do not extend to all forms of hazard management or to other natural-hazard settings. Overall, the case law indicates that landholders bear the primary operational responsibility for managing bushfire risk through a combination of planning controls, statutory offences and land use conditions, while government agencies exercise regulatory and oversight functions. The resulting framework is legally dense and multilayered, and may create uncertainty for occupiers regarding the source, scope and duration of particular obligations.

Taken together, the Queensland case law confirms that bushfire hazard-reduction responsibilities cannot be understood solely by reference to the Fire Services Act. Courts and regulators operate within a broader multistatute governance system in which obligations are shaped by planning law, vegetation management regimes, protected-estate legislation, environmental and cultural heritage controls, work health and safety requirements, and local government powers. Where proactive duties arise, they are most commonly found within these intersecting regimes.



11. Related legislative considerations

11.1 Commonwealth legislation

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) does not generally displace state environmental regimes. However, under s. 109 of the Australian Constitution, Commonwealth law prevails to the extent of any inconsistency, such that where an activity triggers the EPBC Act, state approvals cannot exempt the action from federal assessment or approval requirements.

The EPBC Act does not specifically regulate bushfire mitigation or impose a duty to undertake fuel load reduction. It may, however, constrain activities that contribute to bushfire hazard reduction where clearing or burning is likely to have a significant impact on Matters of National Environmental Significance, thereby triggering the Commonwealth controlled-action and approval process.

As of late 2025, the EPBC Act's core assessment and approval framework remains in place. Recent legislative amendments have largely been technical or machinery in nature. The Commonwealth's proposed "Nature Positive" reform package, including the *Nature Positive (Environment Protection Australia) Bill 2024* (Cth), has not proceeded. Accordingly, no structural changes to the existing controlled-action triggers or approval framework have been enacted that would alter the regulatory treatment of proposed bushfire mitigation activities under the EPBC Act.

For the current consolidated version of the EPBC Act, see the Federal Register of Legislation or the Future Law Compilations at https://www.legislation.gov.au/future-law-compilations.

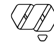
11.2 Environmental offsets and matters of state environmental significance

Under Queensland's environmental offsets framework, offsets are only relevant where fuel load reduction constitutes assessable development and results in a prescribed impact on a prescribed environmental matter. The *Environmental Offsets Act 2014* (Qld) permits offset conditions to be imposed under another Act (s. 7) for a prescribed activity (s. 9) that affects a prescribed environmental matter, including Matters of State Environmental Significance prescribed by regulation (ss. 10, 5(2), sch. 2).

The framework limits the imposition of offset conditions to circumstances where a significant residual impact remains after avoidance and minimisation measures have been applied (s. 14), subject to further constraints in s. 15. It then establishes offset-delivery mechanisms (ss. 16–19) and gives effect to the Queensland Environmental Offsets Policy (s. 6).

In operational terms, offsets are most commonly considered where fuel reduction works trigger a DA or referral under the Planning Regulation —for example, Schedule 10 part 3 native vegetation triggers—and are assessed by the SARA against the State Development Assessment Provisions, including state Code 16 (Native vegetation clearing).

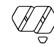
Exempt or accepted development activities—such as compliant firebreaks, fire management lines or vegetation clearing undertaken under the Vegetation Management Act and an accepted-development vegetation clearing code—do not attract offsets. Where a DA is required, and a Matter of State Environmental Significance is impacted, an environmental offset condition may be imposed in accordance with the statutory framework.



Application to state landholders: The Environmental Offsets Act applies to the state (s. 4), so the offsets regime and Matters of State Environmental Significance constraints apply to State landholders in the same manner as to private proponents. The Act does not make the state liable to prosecution for offences.

Where a state project's activities that contribute to bushfire hazard reduction trigger a DA or other state approval and affect a prescribed environmental matter—such as a Matter of State Environmental Significance (Environmental Offsets Act ss. 7, 9–10; Environmental Offsets Regulation s. 5(2) and sch 2)—a decision-maker may impose an offset condition only after the 'avoid–minimise–offset' test has been applied and a significant residual impact remains (s. 14, subject to s. 15). Any offset must then be delivered in accordance with ss. 16–19 of the Act and the Queensland Environmental Offsets Policy (Environmental Offsets Regulation s. 6).

Environmental offsets are not required for accepted development, including compliant firebreaks or fire management lines and vegetation clearing undertaken under the Vegetation Management Act and accepted-development vegetation clearing codes.



12. How responsibilities differ between state and non-state landholders

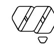
For non-state landholders, bushfire-related responsibilities in Queensland arise primarily from regulatory regimes that operate alongside the Fire Services Act. These include work health and safety duties where a landholder is a PCBU, requiring hazard identification, implementation of risk controls, worker training, provision of equipment and effective communication.

Landholders must also comply with vegetation management and planning frameworks, environmental protection requirements, and Aboriginal and Torres Strait Islander cultural heritage processes when undertaking activities that contribute to bushfire hazard reduction. Where land is held under forestry tenure within the State Forest Estate, additional tenure-specific fire management duties apply under the Forestry Act and associated statutory instruments.

For state landholders, substantive operational expectations are broadly comparable to those for non-state parties. State agencies are required to plan, authorise, document, and implement activities that contribute to bushfire hazard reduction in accordance with the same regulatory systems that govern private actors, including planning and vegetation management regimes, environmental protection, cultural heritage controls, building fire safety requirements and work health and safety law. The principal legal distinctions concern statutory provisions affecting enforcement and liability, including limits on the Crown's criminal liability under certain Acts and tenure specific liability arrangements within the forestry framework.

Queensland legislation does not impose a general, standing statutory obligation on state landholders to reduce fuel loads across all land tenures. Under the Fire Services Act, obligations relevant to state landholders arise only where a requisition or abatement notice is issued. The Forestry Act establishes fire management duties within the State Forest Estate but does not create a universal fuel reduction requirement applicable to all State-managed land.

Other regulatory regimes—including work health and safety legislation, the Vegetation Management Act and planning approval processes—impose compliance and risk management obligations but do not, of themselves, establish a blanket statutory duty on state landholders to undertake fuel reduction or bushfire mitigation works in the absence of a specific statutory trigger. Refer to Appendix 6 Queensland Bushfire-Relevant Legislation — Crown Binding and Officer Liability.



Findings Part II – How regulatory layering structures hazard reduction responsibility

As illustrated in Figure 2, Queensland's bushfire governance framework is structured through multiple parallel regulatory regimes rather than a single statutory duty.

The Fire Services Act establishes ignition controls, emergency powers and requisition mechanisms, but it does not impose a continuous obligation on landholders to undertake proactive fuel reduction activities. Instead, the legality of hazard reduction measures is mediated through planning law, vegetation management frameworks, environmental protection regimes, cultural heritage controls and work health and safety obligations, each operating as a separate statutory 'gate' on land use activity. Consequently, both private and public landholders operate within a compliance environment in which risk reduction responsibilities are generally activated by notices, permits or emergency directions rather than by a universal baseline duty. The lawfulness of any proposed works, therefore, depends on satisfying multiple approval regimes concurrently.

This layered structure produces several systemic characteristics.

Complexity: A single hazard reduction burn or clearing activity may engage multiple regulatory instruments simultaneously, including planning controls, accepted-development vegetation clearing codes, protected plant regimes, CHMP requirements and work health and safety processes, even when fire authorities encourage mitigation.

Gaps: Because most regimes regulate the manner in which clearing may occur rather than mandating it, substantial fuel loads may persist in the absence of requisition notices or emergency powers, particularly on State-managed land subject to conservation, infrastructure or tenure-specific controls.

Differential enforcement settings: Local governments primarily enforce obligations through planning and vegetation management notices, while State agencies are constrained by the same approval frameworks and are not uniformly subject to criminal liability across all statutes.

Overall, Queensland's approach distributes bushfire risk governance across multiple regulatory systems that are not designed primarily for fire management. This contributes to variable compliance signals for landholders and a reliance on case-by-case regulatory intervention rather than on continuous statutory duties. Figure 4 illustrates how bushfire mitigation responsibilities arise in practice through a sequence of regulatory checks depending on landholder category and land tenure.

Bushfire hazard reduction landholder checklist

CATEGORY OF OCCUPIER

NON-STATE LANDHOLDER

Type of land: Freehold, Private leasehold (pastoral, grazing, agricultural, perpetual, term leases), Indigenous-owned land (DOGIT, Aboriginal/Torres Strait Islander freehold), Land with private easements/occupiers.

1. Do I need approval to reduce bushfire hazard on my land?

1.1 The fire Planning Act 2016 and Planning Regulation 2017

- Firebreak ≤ 20 m or 1.5x the height of the tallest nearby vegetation → accepted development (no DA required).
- Fire-management line ≤ 10m → accepted development (no DA required).
- Wider clearing → must rely on an Accepted Development Vegetation Clearing Code (ADVCC) under the Vegetation Management Act or obtain a Development Approval (DA); in some cases clearing may be prohibited.

1.2 Vegetation Management Act 1999

- Clearing of regulated native vegetation must proceed via an authorised pathways, such as ADVCC, depending on land category and purpose.
- If clearing does not qualify under an ADVCC, it may require a DA or may be prohibited.
- ADVCC pathways are conditional: all eligibility criteria, notification, and record-keeping requirements must be met.
- Note: private forestry on non-State land is regulated under the VM Act.

2. Check for land category and environmental overlay

2.1 Nature Conservation Act 1992 and Plants Regulation 2020

- **Firebreaks ≤ 20 m or 1.5x vegetation height may be exempt from certain permit requirements, subject to land tenure and overlay controls.**
- **Protected plants may still be regulated under the Plants Regulation.**

3. Check for cultural heritages

3.1 Aboriginal Cultural Heritage Act 2003; Torres Strait Islander Cultural Heritage Act 2003; Queensland Heritage Act 1992

- Cultural heritage duty of care applies at all times.
- Avoid known cultural heritage sites and follow duty-of-care guidelines.
- Planning or fire approvals do not displace cultural heritage obligations.

4. Check relevant local laws and notices

4.1 Local Government Act 2009

- Check relevant local laws and notices (e.g. overgrown land, fire-hazard abatement, roadside or easement controls).
- Local laws operate outside the planning categorisation framework and cannot override accepted development or exempt clearing under the Planning Regulation but may impose separate compliance obligations.

5. Understand environmental safeguards & offsets

5.1 Environmental Protection Act 1994

- General Environmental Duty applies; take all reasonably practicable measures to prevent environmental harm (e.g. smoke, runoff, erosion).
- Use best-practice burn planning and mitigation measures.

5.2 Environmental Offsets Act 2014

- Environmental offsets may be required where clearing approved under a DA impacts Matters of State Environmental Significance.
- Offsets generally do not apply to exempt or accepted development (e.g. compliant firebreaks ≤ 20 m / 1.5x vegetation height or fire-management lines ≤ 10 m).

6. Obtain hazard reduction burn authorisation

6.1 Fire Services Act 1990

- If using burning as part of bushfire mitigation activities:
  - Apply for permit and comply with all permit or notification conditions.
  - Check whether local fire bans or states of fire emergency are in force.
  - Lighting a fire without a required permit or contrary to a fire ban is an offence, even if the clearing itself is lawful.

7. Manage safety and workers (WHS obligation)

7.1 Work Health and Safety Act 2011 (Qld)

- Identify and assess bushfire and burn-related hazards, including ignition sources, weather conditions, fuel loads, smoke exposure, and interaction with adjacent land uses.
- Eliminate or minimise risks so far as is reasonably practicable, including by providing safe systems of work, appropriate equipment and PPE, adequate supervision, and competent personnel.
- Prepare and implement emergency arrangements appropriate to the risks, including procedures for fire control, communication, and evacuation, consistent with the WHS Regulation (including r 43).
- Consult, cooperate, and coordinate activities with other duty holders, including workers, contractors, neighbouring landholders, and relevant authorities such as Queensland Fire Department (QFD).

STATE LANDHOLDER

Land category: Unallocated State Land (USL), Protected Areas (National Parks, Conservation Parks, etc.), state forests & timber reserves, *Land Act* reserves, road reserves & stock routes, marine/tidal/watercourse estates, Crown-managed leasehold where State is occupier

1A. Do I need approval to reduce bushfire hazard on my land?

The Planning Act 2016 and Planning Regulation 2017

- Generally apply to State agencies (such as Development Approval or accepted development rules), unless the Coordinator-General is operating under the State Development and Public Works Organisation Act 1971 (Qld) (SDPWO Act) or a Ministerial Infrastructure Designation is used (***see 1B***).
- The Planning framework binds the State agencies for functional planning purposes, including development approval and accepted development pathways, but nothing in the Act renders the State liable for an offence (s7(2)).
- The Planning Act is a regulatory statute and contains no provision creating or excluding civil liability; questions of negligence therefore fall to be determined under general law (*Graham Barclay Oysters Pty Ltd v Ryan* (2002) 211 CLR 540).

Forestry Act also binds private lessees or permit holders operating within the State forest tenure (e.g., plantation leases, timber authorities, grazing permits).

Forestry Act 1959 (Qld) – State Forest tenure and fire-management regime

1B. Does an activity assessed under the State Development and Public Works Organisation Act 1971 or approved via a Ministerial Infrastructure Designation?

- Where a project is assessed under the **State Development and Public Works Organisation Act 1971** or proceeds under a Ministerial Infrastructure, the usual development application process under the Planning Act is displaced. However, these regimes do not generally immunise the State from compliance with other substantive environmental, vegetation, fire-management, or cultural-heritage obligations, unless expressly stated.
- Conditions imposed through these processes may shape how liability is managed but do not of themselves exclude prosecution or civil liability under other Acts.
- Land categorisation may change as a part of development process under this act.

2. Do I need approval to reduce bushfire hazard on my land?

The Vegetation Management Act 1999

- Affects the State, and its accepted development codes and clearing controls are applicable on State land, except in cases where the VM Act doesn't apply. For example, in protected areas under the Nature Conservation Act 1992 or State forests and timber reserves under the Forestry Act 1959, which are governed by those specific Acts.
- Unlike the Planning Act, VM Act does not contain a general immunity from prosecution for the State. Accordingly, where the VM Act applies to a particular land tenure, the State may be subject to compliance and enforcement mechanisms in the same manner as private landholders, including for unlawful clearing.

3. Check for land category and environmental overlay and understand environmental safeguards & offsets

3.1 The Environmental Protection Act 1994

- Binds the State; State agencies may be liable for offences. Officers protected for good faith acts but it does not remove State level liability. It imposes a general environmental duty on all persons, including the State, to take reasonable and practicable measures to prevent environmental harm.
- While the Act operates primarily through regulatory enforcement, breach of the general environmental duty may also be relevant to civil liability in negligence or nuisance, particularly in relation to smoke, ash, erosion, or runoff arising from hazard-reduction activities.

3.2 Nature Conservation Act 1992 and Plants Regulation 2020

- Forestry leases must comply with lease conditions and relevant provisions of the Forestry Act 1959.
- Firebreaks ≤ 20 m or 1.5x vegetation height may be exempt from certain permit requirements, subject to land tenure and overlay controls.
- Protected plants may still be regulated under the Plants Regulation.

4. Check for cultural heritages

- Queensland's cultural heritage legislation (**Aboriginal and Torres Strait Islander Cultural Heritage Acts**) binds the State and it does not provide a general exemption for emergency or hazard-reduction works. Planned hazard-reduction works must comply with the statutory duty of care. In emergency circumstances, the content of the duty may be shaped by what is reasonable and practicable in the situation.
- The Acts impose a duty of care rather than a permit-based regime, and breach may give rise to criminal liability. Compliance with planning or fire-management authorisations does not displace cultural heritage obligations, and the Acts do not provide a civil safe harbour for damage to cultural heritage.

5. Check relevant local laws and notices

- The **Local Government Act 2009** binds local governments and empowers them to make and enforce local laws regulating matters such as overgrown land, fire hazards, and nuisance. Local laws may impose obligations on landholders and occupiers, including the State where it owns or occupies land within a local government area, subject to the terms of the particular law.
- Breach of a local law may constitute an offence enforceable by infringement notices or prosecution. However, local laws operate outside the Planning Act framework; they are not categorising instruments, cannot require a development application, and cannot override or reclassify accepted development, exempt clearing work, or other planning pathways established under the Planning Act and Planning Regulation.
- Local laws do not themselves create or exclude civil liability in negligence, although non-compliance may be relevant to the assessment of reasonable care under general law.

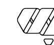
6. Obtain fire authorisation (bushfire mitigation activity)

- The **Fire Services Act 1990** establishes operational fire-management powers and duties applicable to occupiers and persons generally, including State agencies.
- The Act empowers the Commissioner to issue notices and requisitions. State agencies in their capacity as land managers and must be complied with in operational terms. However, the Act does not expressly render the State liable to prosecution for offences arising from non-compliance.
- The Act also provides a targeted civil safe harbour in relation to authorised burns, limiting common-law liability where a fire is lawfully lit in accordance with a permit, notification, or requisition and without recklessness or malice. At the same time, the Act confers public-law immunities on officers and authorised persons acting in good faith.
- The Act does not impose a standing duty to reduce fuel loads, and liability arises primarily through non-compliance with notices, unlawful lighting, or failure to respond to fire events.
- These cover prosecution and negligence.

7. Manage safety and workers (WHS obligation)

- The **Work Health and Safety Act 2011** binds the State and State agencies in the same manner as private persons. It imposes positive, ongoing duties on persons conducting a business or undertaking (PCBUs), including government departments, to ensure health and safety so far as is reasonably practicable, and creates offences for breach of those duties.
- The Act expressly provides for prosecution of the State and public authorities, subject to limited exceptions, and imposes due diligence obligations on officers, including senior public servants and statutory office-holders.
- While the Act is a public-law regulatory regime, breach of WHS duties may be relevant to civil liability in negligence, although the Act itself does not create a separate cause for action for damages.

Figure 4: Bushfire hazard reduction landholder checklist



Findings Part III – Interjurisdictional comparison (Bushfire Acts)

This section examines bushfire-specific legislation across Australian jurisdictions, focusing on statutes equivalent to Queensland's Fire Services Act.

The comparative analysis indicates that Australian jurisdictions broadly adopt three legislative models:

Standing duty jurisdictions: New South Wales, South Australia, the Australian Capital Territory (for rural land), and the Northern Territory (within mapped bushfire-prone zones), where landholders are subject to ongoing statutory obligations to undertake reasonable bushfire mitigation measures, including requirements relating to firebreaks and, in parts of the Northern Territory, preparedness planning; and

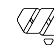
Notice-triggered jurisdictions: Victoria, Tasmania and Queensland, where enforceable private landholder duties generally arise only after a formal hazard or compliance notice is issued.

Hybrid standards-and-notice model: Western Australia, where legislation enables local governments to impose recurring, forward-looking fire prevention requirements through seasonal firebreak notices, district-wide hazard reduction directions and bushfire risk management plans.

Across jurisdictions, common regulatory mechanisms include permit systems for lighting fires, total fire ban declarations, emergency powers, event-specific obligations and real-time operational directions, supported by civil liability regimes. Most frameworks also provide statutory protections for agencies and volunteers acting in good faith, although the scope and form of those protections vary.

These fire-specific statutes operate alongside—rather than displacing—parallel planning and vegetation management systems that regulate land use and clearing in each State and Territory. These include development assessment regimes, native vegetation controls, protected area legislation, forestry statutes, environmental protection frameworks, land tenure regimes and workplace health and safety laws relevant to bushfire risk management.

In operational terms, bushfire mitigation activities in each jurisdiction must therefore satisfy multiple statutory schemes concurrently. Compliance with fire-specific legislation does not remove the need to obtain planning approvals where required, comply with vegetation clearing conditions or code-based authorisations, observe environmental and cultural heritage constraints, or discharge work health and safety duties. Local government regulatory powers may also apply through planning instruments, development conditions or local laws.



13. Jurisdictions with positive standing duties

13.1 New South Wales

The *Rural Fires Act 1997* (NSW) establishes the primary statutory framework for bushfire prevention and hazard management in New South Wales. The Act regulates ignition through permits and seasonal restrictions, provides enforcement and default works powers, and imposes standing risk reduction duties on landholders.

Standing duties and baseline obligations

Owners and occupiers are subject to a continuing statutory obligation to take both:

- any steps specified in bushfire hazard notices or bushfire risk management plans
- any other practicable measures.

Landholders must take practicable steps to prevent the outbreak of bushfires on their land and to minimise the risk of spread from their land (s 63). The landholders bear the cost of compliance with this obligation (s. 63(3)).

In addition to this general duty, a landholder may be issued with a bushfire hazard reduction notice (ss. 66-70), which specifies works that must be undertaken within a stated period.

These duties are supported by a suite of compliance tools, including:

- the Commissioner's power to issue notices requiring specified works (s. 73).
- neighbour-initiated bushfire hazard complaints whether or not s. 63 has yet been invoked (ss. 74A–74C).
- notices requiring repair or maintenance of registered fire trails (pt. 3B).

Authorisations, permits and clearing pathways

Authorisation mechanisms operate concurrently with, and do not displace, the duty specified in s. 63.

Bushfire hazard-reduction certificates permit defined works subject to conditions (ss. 100D–100G). Fire lighting is controlled through permits and notification requirements (ss. 86–88), and the grant of a permit does not suspend the continuing operation of s. 63 (s. 98).

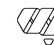
Limited statutory vegetation clearing pathways are provided through:

- the 10/50 Vegetation Clearing Code (s. 100Q)
- the Rural Boundary Clearing Code (s. 100RB).

These Codes authorise specified clearing in mapped areas without separate development approvals, provided all technical and environmental conditions are met.

Section 100Q requires the Commissioner of the NSW Rural Fire Service to prepare and publish the 10/50 Code and to prescribe categories of vegetation that may be removed or retained together with safeguards relating to riparian protection, erosion control, cultural heritage, herbicide use, pruning in preference to removal, and interaction with other legislation. Once gazetted, the Code authorises the removal or pruning of vegetation within 10 metres of habitable buildings and the removal or pruning of non-tree vegetation within 50 metres, provided the works are carried out strictly in accordance with the Code.

The Rural Boundary Clearing Code provides a parallel authorisation for clearing within 25 metres of rural property boundaries in designated areas. Both Codes remain subject to other statutory regimes, including threatened-species and heritage controls.



Defences, review and immunities

Defences and exemptions are confined to defined circumstances. Owners may rely on the absence of a legal right of entry in response to certain notices or cost recovery actions and may object to or appeal notices (ss. 67–68). Some offences include 'lawful authority' exceptions (e.g. s. 88 and s. 100), and public authorities are exempt from permit requirements in specified situations (s. 95). Limited reliance on 'reasonable excuse' is available in particular contexts.

Civil liability protection is provided to protected persons and bodies—including the NSW Rural Fire Service and those acting under the Commissioner's authority—for acts done in good faith in the execution of the Act (s. 128).

Judicial interpretation

Appellate and superior-court decisions clarify how the statutory scheme operates in practice:

- *Weber v Greater Hume Shire Council* [2019] NSWCA 74 — a council, as occupier of a waste facility, owed and breached a duty to prevent ignition or escape of fire; causation was established; *Civil Liability Act 2003* (Qld) s. 42 permitted consideration of resource constraints; s. 43A did not apply.
- *Woodhouse v Fitzgerald* [2021] NSWCA 54 — Rural Fire Service-assisted controlled burns undertaken without fault were neither negligent nor a nuisance; s. 128 immunity prevented the Service being a concurrent wrongdoer; a landowner's non-delegable duty could arise where an agent was negligent.
- *Warragamba Winery Pty Ltd v New South Wales* (No 9) [2012] NSWSC 701 — in a complex multifront incident, no duty or breach was established; s. 128 would in any event have applied; Civil Liability Act s. 43A was engaged; the judgment details the evidentiary content of 'good faith'.
- *Electro Optic Systems Pty Ltd v West* [2014] ACTCA 45 — treats s. 63 as directed to pre-ignition risk mitigation; characterises the relevant "matter or thing" as the overall firefighting strategy; confirms that good faith statutory action attracts s. 128 protection.

State landholders

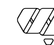
The Rural Fires Act binds the state as a land manager, but not symmetrically with respect to liability. The Act requires an 'owner or occupier' to take reasonable steps to prevent and reduce bushfire risk (s. 63), and this requirement also applies to public authorities managing land (s. 65AA). In practice, state landholders can be issued hazard reduction notices, given directions, and subject to default work regimes (ss. 66–70). Nonetheless, the state's risk of prosecution and civil liability is largely limited by statutory protections, especially the good faith immunity in s. 128, as well as the classification of fire management as a discretionary public function.

NSW note: Express extension to public authorities managing land (s. 65AA).

New South Wales — operational summary

New South Wales adopts a standing duty model for bushfire risk management. Owners and occupiers must take practicable preventive measures regardless of whether a notice has been issued. These duties are enforced through notices, neighbour complaints, default works regimes and permit systems, supplemented by limited statutory vegetation clearing codes.

Public and private landholders are subject to the same preventive obligations and regulatory directions, while exposure to litigation differs depending on the availability of statutory immunities and public function protections.



13.2 South Australia

The *Fire and Emergency Services Act 2005* (SA) establish a unified statutory framework for the Country Fire Service, the Metropolitan Fire Service, and the State Emergency Service, and authorises the Fire Services Commission to designate urban bushfire risk areas within fire districts. The Act imposes obligations on land occupiers, establishes notice and permit systems, and confers real-time operational control powers on emergency services and police.

Standing duties across land tenures

South Australia adopts a standing duty model for bushfire risk management. Section 105F(1) requires owners of private land to take reasonable steps to prevent or inhibit the outbreak and spread of fire, protect property and minimise threats to human life. Non-compliance attracts a maximum penalty of $5,000.

Parallel obligations apply to public land managers. Sections 105G(1) and 105H(1) require councils, Ministers, Crown agencies and instrumentalities that have care, control, or management of land in country areas or designated urban bushfire risk areas to take the same categories of reasonable steps. Although those provisions do not impose monetary penalties, failures to comply may be addressed administratively. Where a council is involved, the responsible Minister may consult and issue binding directions to secure compliance. Where Ministers or Crown agencies are concerned, the Minister may consult relevant officials and request that management arrangements be implemented. The Act also requires the Chief Officer to notify the controller of Commonwealth land where conditions on that land present an undue bushfire risk to surrounding non-Commonwealth land.

Enforcement and operational controls

Where a notice issued under s. 105F is not complied with, councils may undertake default works and recover costs, in addition to issuing expiation notices or commencing prosecution proceedings. Fire officers may issue immediate directions to extinguish fires or take action where a fire is unlawful, out of control, or likely to escape (s. 82). Police may prevent prescribed or other fire-causing activities from proceeding in hazardous conditions (s. 105IA). In rural areas, specific fire safety requirements may be imposed on premises (s. 86).

Seasonal prohibitions and permit regimes

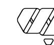
During declared Total Fire Ban periods, the Chief Officer may prohibit the lighting or maintenance of fires across all or part of the state (s. 80), subject to regulatory exceptions. Permits may authorise otherwise prohibited activities during the fire danger season or despite a Total Fire Ban (s. 81). Activities undertaken strictly within permit conditions satisfy the seasonal prohibitions.

Defences and immunities

The Act confines defences to defined circumstances. Some directions and offences are qualified by a 'reasonable excuse', including in relation to State Emergency Service directions (s. 118(4)) and police preventive powers under s. 105IA, with prescribed Codes of Practice informing that assessment. Section 127 provides good faith immunity to emergency services personnel and others acting under the Act for honest acts or omissions at an emergency scene, with any liability redirected to the relevant organisation. This protection does not extend to private landholders.

State landholders

The Fire and Emergency Services Act binds the state fully and symmetrically as a landholder. The Act establishes an ongoing legal obligation for private owners and occupiers (s. 105F), councils (s. 105G), and Crown or Commonwealth landholders (ss. 105H–105I) to take reasonable measures to minimise bushfire risk. Failing to comply is considered an offence (s. 105F(5)), and enforcement actions are applicable across different land tenure types. While emergency responders are protected in good faith (s. 127), this immunity does not override the fundamental land management responsibilities that remain with the state authorities.



SA note: Explicit provisions for councils (s 105G) and Crown/Commonwealth land (ss 105H–105I).

Judicial application of landholder duties

Judicial decisions illustrate how the standing duty provisions operate in practice. In *Higgins v Brinkworth* [2025] SASC 104, the Supreme Court found that ignition originated from a vegetation pile and held the owners negligent and liable in nuisance for failure to comply with Country Fire Service guidance, absence of firebreaks and inadequate monitoring. The Court treated s. 105F as the statutory baseline and regarded compliance with Codes of Practice as strong evidence of reasonableness, while non-compliance supported a finding of breach. Causation was determined by reference to fire behaviour evidence.

In *Mitchell v Rural City of Murray Bridge* [2012] SAERDC 38, the Environment, Resources and Development Court upheld planning consent for a rural facility subject to bushfire risk controls but confirmed that s. 105F obligations apply independently of development approval and are not displaced by planning consent.

South Australia — operational summary

South Australia imposes a continuing, reasonableness-based duty on private owners (s. 105F), councils (s. 105G), and Crown or Commonwealth land managers (ss. 105H–105I) to minimise bushfire risk. Compliance is enforced through notices, expiations or prosecutions, default works regimes and real-time operational directions. Permit systems regulate lawful risk-creating activities, and Codes of Practice provide the primary benchmark for assessing ‘reasonable steps’.

Emergency responders benefit from statutory good faith immunity (s. 127). That immunity does not remove the underlying land management obligations that continue to apply to public authorities and private landholders.

13.3 Australian Capital Territory

The *Emergencies Act 2004* (ACT) is the primary bushfire statute for the Territory. Chapter 5 regulates Total Fire Bans, controlled activities, permit systems, inspector powers and fire-related offences. While the Act incorporates building and technical standards through references to the National Construction Code and Australian Standards for particular systems, landholder obligations are imposed directly by the statute.

Standing duties — rural land

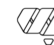
The Australian Capital Territory adopts a standing duty model for rural land. Section 120 requires an owner or manager of land in a rural area to take all reasonable steps to prevent and inhibit the outbreak or spread of fire on the land and to protect property on or from that land. Reasonableness is assessed by reference to factors including fuel load, the presence of other flammable material, climatic conditions, land use, location and the likely effects of fire. Breach of s. 120 constitutes a strict liability offence, carrying a maximum penalty of 100 penalty units during the bushfire season and 50 penalty units at other times.

Liability framework

Sections 120 and 121 establish prevention and notification obligations as strict liability offences. The Act does not create specific statutory defences beyond the ‘reasonable steps’ qualifier in s. 120, subject to the application of general defences under the *Criminal Code 2002* (ACT).

Directions and enforcement powers

Inspectors are granted extensive compliance powers under s. 106–109. An inspector may issue a written direction requiring removal of a danger created by flammable material (s. 106), allowing at least 14 days for compliance and warning that works may be undertaken at the owner’s expense.



Where a direction is not complied with, inspectors may enter land using necessary and reasonable force and carry out the required works, with costs recoverable as a debt following at least 24 hours written notice (s. 107).

During a declared fire emergency or Total Fire Ban, inspectors may issue oral or written emergency directions or take immediate action themselves, with associated costs recoverable (s. 108). Inspectors may also direct a person to comply with s. 120 where they reasonably believe the obligation is being breached (s. 109).

Application across land tenures

Section 120 applies by reference to management or control of rural land rather than ownership status and therefore extends to Territory-managed land. In operational terms, compliance is primarily secured through administrative enforcement mechanisms—directions, entry powers, default works and cost recovery—rather than routine criminal prosecution.

State landholders

The Emergencies Act binds the Territory as a land manager, particularly in rural areas. Section 120 requires owners and managers of rural land to take reasonable measures to prevent and reduce bushfire risks. This obligation depends on land management status, not land tenure and applies to Territory-managed land as well. Enforcement mainly involves administrative actions such as inspector directions (ss. 106–109), access, implementing default works and recovering costs, rather than regular criminal prosecutions by the Territory.

> ACT note: Applies to 'owners or managers' of land, capturing Territory agencies by status, not tenure (s. 120(1)).

Australian Capital Territory — operational summary

The Australian Capital Territory framework imposes a continuing, reasonableness-based duty on owners and managers of rural land to prevent and reduce bushfire risk. Enforcement is centred on inspector directions, emergency powers and cost recovery mechanisms, supported by strict liability offences. The regime applies across public and private landholders and focuses on operational compliance rather than reactive post-event enforcement.

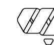
13.4 Northern Territory

The *Bushfires Management Act 2016* (NT) establishes the statutory framework for Bushfires Northern Territory and authorises the Executive Director, Chief Fire Control Officers, Fire Control Officers, Fire Wardens and recognised volunteer brigades. The Act regulates bushfire management through a zoning system comprising Fire Protection Zones (FPZs) (ss. 56–57), Fire Management Zones (FMZs) (ss. 58–59), Fire Management Areas (FMAs) (ss. 60–61), together with Fire Danger Period and Fire Ban declarations applying by time and location (ss. 62–67). Applicable obligations depend on the relevant designation.

Standing duties and mandatory controls

The Northern Territory adopts a standards-based model with enforceable standing duties.

In FPZs, owners and occupiers must establish and maintain firebreaks that meet statutory minimum standards—at least four metres wide and constructed by burning, grading or scraping, with minimal vegetation (s. 68). Breach is a strict liability offence subject to a reasonable excuse defence. The Minister may also impose additional firebreak or hazard reduction requirements by public notice (s. 69). Non-compliance constitutes an offence.



Where a fire occurs, owners and occupiers must take reasonable steps to control it and, if unable to do so, notify a fire control officer or warden and neighbouring occupiers (ss. 90–91). Failure to comply with control directions is an offence subject to strict liability and a reasonable excuse defence.

Property Fire Management Plans (PFMPs)

The Act mandates PFMPs. In FPZs (s. 70) and FMZs (s. 81), owners and occupiers may be required to prepare and maintain plans specifying adequate arrangements for mitigation, management and suppression. Failure to comply with the PFMP constitutes an offence (ss. 70A, 81A). FMAs provisions extend these regulatory powers across declared areas (s. 84), with offences for contraventions.

Notices, default works and review

The Executive Director may require hazard reduction work by notice, including the removal of flammable materials or the construction and maintenance of firebreaks (ss. 92–93). Notices may be preceded by warnings and must specify methods and timeframes. Affected persons may seek review by the Northern Territory Civil and Administrative Tribunal within seven days (s. 94). Failure to comply enables entry and default works, with recovery of costs as a debt, creation of a statutory charge over the land, and contribution arrangements between affected parties (ss. 95–96).

Permits, defences and immunities

Permit compliance authorises otherwise restricted activities within its scope (ss. 46, 73(3), 82(3)) but does not operate during declared fire bans. Most landholder offences are strict liability offences but are subject to reasonable excuse defences (for example, s. 68(4); PFMP contraventions in s. 70A, 81A, 84A; and compliance directions in s. 49(3)). Review rights apply to hazard reduction notices. Officials and volunteers are protected for acts done in good faith (s. 99). The Act does not contain broad immunities for landholders.

State landholders

The Bushfires Management Act binds the Territory without tenure-based carve-outs. The Act does not include a broad immunity clause like NSW s. 128 of the Rural Fires Act or SA s. 127 of the Fire and Emergency Act, nor does it provide exemptions for land owned by the Territory. Responsibilities around firebreaks, fire control, hazard reduction notices, and violations are generally imposed on 'owners' and 'occupiers'. When the Territory manages land, it is bound by the same legal duties, notices and penalty structures as private landowners.

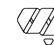
NT note: No carve-outs; 'owner' and 'occupier' definitions capture Territory land managers (s3).

Judicial treatment

Reported Northern Territory case law on bushfire offences is limited. In *King v MH1* [2024] NTSC 84, the Supreme Court addressed warrant validity and evidentiary issues in a criminal prosecution and confirmed that Criminal Code bushfire offences include lawful-management exceptions tied to compliance with Territory fire management legislation. The decision did not address civil liability or the scope of hazard reduction duties.

Northern Territory — operational summary

The Northern Territory regime imposes enforceable, zone-based obligations on owners and occupiers, including mandatory firebreaks, PFMPs, fire control and notification duties, and compliance with hazard reduction notices. Enforcement is supported by default works powers, cost recovery and land charges, permit systems that are suspended during bans, and review through the Northern Territory Civil and Administrative Tribunal. The Act does not exempt Territory-managed land. When the Territory controls land, it is subject to the same duties, notices, offences and penalty structures as private landholders.



14. Jurisdictions with notice-triggered duties

14.1 Victoria

Victoria regulates bushfire prevention through geographically differentiated fire service statutes, supported by overarching emergency management legislation.

In regional Victoria ('the country area'), prevention and enforcement functions are exercised under the *Country Fire Authority Act 1958* (Vic). Within the Fire Rescue Victoria (FRV) district, equivalent functions are exercised under the *Fire Rescue Victoria Act 1958* (Vic) (formerly the *Metropolitan Fire Brigades Act* 1958 (Vic)).

System-level emergency powers are provided by the *Emergency Management Act 1986* (Vic), which enables the declaration of a state of disaster and the issue of extraordinary ministerial directions during catastrophic events, and by the *Emergency Management Act 2013* (Vic), which establishes contemporary arrangements for control, warnings, planning and interagency coordination. These Acts do not, by themselves, impose routine fuel reduction duties on private landholders; such obligations arise primarily under the Country Fire Authority (CFA) and FRV statutes.

Fire prevention notices and hazard-abatement powers (regional Victoria)

Under the Country Fire Authority Act, municipal fire prevention officers may issue Fire Prevention Notices (FPN) under s. 41 requiring an owner or occupier to undertake specified works to remove or reduce fire hazards. Notices must allow at least seven days for compliance.

Failure to comply constitutes an offence punishable by up to 120 penalty units or 12 months' imprisonment and may alternatively be dealt with by an infringement notice (10 penalty units). If a municipal officer declines to issue an FPN, the Chief Officer of the CFA may assume the role for the purpose of issuing and enforcing the notice.

Authorised officers may give real-time directions to extinguish fires or prevent their spread, with equivalent penalties for non-compliance. CFA brigades may also undertake prevention work, including fuel reduction burning, on request, with costs recoverable from the landholder.

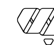
The Country Fire Authority Act also establishes positive standing duties for councils and public authorities in the country area, requiring them to take all practicable steps to prevent the occurrence of fires on, and minimise the danger of the spread of fires on and from, land and roads (s.43).

Judicial interpretation of CFA enforcement powers

Victorian courts and tribunals have addressed the procedural operation of FPNs and their interaction with planning controls.

- *Sleiman v Melton City Council* [2008] VSC 559 — confirms that prosecution of an FPN offence under s. 41D requires only a simple summons identifying the offence, date and place. Whether the defendant was an owner or occupier and whether works were required are matters for trial rather than pleading.
- *Yarra Ranges Shire Council v McAllister* [2019] VCAT 1328 — holds that planning law exemptions for fire protection works apply only where works are carried out in accordance with an FPN; a grass-slashing notice did not authorise tree removal, leading to remediation orders.

These authorities inform enforcement practice and the limits of notice-based authorisation rather than the substantive content of landholder duties.



Fire prevention powers within the FRV district

Within the FRV district, the Fire Rescue Victoria Act establishes a prevention and enforcement framework comparable to the country area regime (ss. 87-88). For private landholders, obligations arise primarily through the issuance of FPN. Municipal officers may issue FPNs to owners or occupiers on substantially the same footing as under the Country Fire Authority Act, including prescribed compliance periods, offence and infringement pathways for non-compliance, power to undertake default works with cost recovery, and statutory mechanisms for objection and appeal. Councils and public authorities responsible for land, streets, or roads are required to take all practicable steps, including burning where appropriate, to prevent fires and limit their spread (s. 5).

State landholders

Victoria establishes enforceable obligations for both private and public landholders, but not via a single symmetrical duty. Private landholders are mainly regulated through fire prevention notices under the Country Fire Authority Act. In contrast, public land obligations are directly imposed on the state through various instruments such as the *Forest Management Act 1958* (Vic) and the Emergency Management Act, with enforcement limited by statutory immunities and public function doctrines. Additionally, state occupiers of land in the FRV district and the country area of Victoria have a positive standing for bushfire mitigation that private occupiers do not.

> VIC: State obligations articulated through specific public land statutes rather than CFA notices (ss. 41, 43).

Victoria — operational summary

Victoria applies a predominantly notice-based bushfire prevention model for private landholders, implemented through FPN issued by municipal officers under the CFA and FRV statutes. These notices specify required works, support infringement or prosecution for non-compliance, and permit default works with cost recovery.

Public authorities are subject to additional statutory duties regarding land under their management, particularly within the FRV district and on state forest land, although enforcement is tempered by immunity provisions and public function protections.

Bushfire mitigation, therefore, operates through geographically differentiated fire service legislation, supported by broader emergency management statutes, rather than through a single statewide positive standing duty imposed uniformly across all land tenures.

14.2 Tasmania

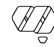
The *Fire Service Act 1979* (Tas) establishes the statewide statutory framework for fire prevention, control and suppression. It creates the Tasmanian Fire Service and the State Fire Commission, confers emergency response powers and regulates landholder obligations and enforcement mechanisms.

Baseline duties and permit-period controls

The Act differentiates between:

- general precautionary obligations applying at all times
- heightened regulatory controls during declared fire permit periods.

Outside permit periods, occupiers must take all reasonable precautions to prevent the spread of fire (s. 63) and comply with reporting and suppression duties where a fire is burning (s. 64).



During declared permit periods, additional controls apply, including requirements to obtain and comply with permits before lighting fires for vegetation clearing or related purposes.

Hazard-abatement notices and trigger-based obligations

Tasmania does not impose a universal, standing statutory obligation to undertake fuel reduction works. Hazard-abatement is primarily administered through notice-based mechanisms.

Section 49 is the principal abatement power. The State Fire Commission or an authorised officer may issue a written notice to an occupier requiring specified works, including:

- trimming or removing vegetation or rubbish
- burning off material
- completing other defined hazard reduction measures within a stated period.

Failure to comply is an offence (maximum 26 penalty units). The Commission may enter the land, undertake the required works and recover reasonable costs as a debt. Section 49 of the Fire Service Act 1979 (Tas) also permits escalation to the relevant council under the *Local Government Act 1993* (Tas) nuisance regime, enabling further abatement and cost recovery action.

These mechanisms are trigger-based and do not create an automatic obligation to reduce fuel loads absent a notice.

Directions, firebreak notices and review mechanisms

Orders, notices and directions issued under s. 62 are enforceable; contravention constitutes an offence (s. 63(5)).

Section 56 provides a parallel pathway for requiring firebreaks. Once a notice is issued:

- the recipient may seek review by the Tasmanian Civil and Administrative Tribunal
- authorised officers may enter and carry out default works if compliance does not occur
- costs may be recovered.

This structure—notice, review, entry, works, cost recovery—functions as a targeted regulatory response rather than a universal preventive obligation.

Public authority immunities

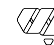
The Act contains broad statutory immunities for firefighting and risk reduction activities undertaken in good faith. In *Myer Stores Ltd v State Fire Commission* [2012] TASSC 54, the Supreme Court of Tasmania interpreted s. 121 as providing:

- personal immunity for brigade members and individuals from common-law liability unless bad faith is shown
- immunity for the State Fire Commission where death, injury or property damage is caused wholly or partly by firefighting, risk reduction, or training activities undertaken by brigades or officers, including where the Commission itself might otherwise be liable in tort.

The Chief Officer is included within this protection. These provisions are designed to shield operational decision-making during emergency and mitigation activities.

Private-occupier liability

Private occupiers remain subject to common-law duties alongside statutory controls.



In *Prestage v Barrett* [2021] TASSC 27, the Supreme Court held that an occupier who allowed an invitee to light or tend a campfire owed a non-delegable duty regarding the use of fire on the land. Liability in negligence and private nuisance was established when residual heat caused a later escape. The Court treated the fire ban regime in s. 69 as part of the statutory risk context and characterised the conduct as involving a very high level of foreseeable danger. Liability was apportioned under the *Civil Liability Act 2002* (Tas).

State landholders

Under the Fire Service Act, the state is considered an occupier if it receives a hazard reduction notice (s. 49). However, the Act does not require the state to actively mitigate bushfire hazards. Additionally, the state's civil liability is limited by widespread statutory immunity for actions taken in good faith (s. 121).

Tas note: State captured as occupier when notice is issued (s. 49).

Tasmania — operational summary

Tasmania applies a predominantly notice-triggered system, supported by baseline duties, to prevent the spread of fire and permit-period controls on ignition. Regulatory tools include hazard-abatement notices, firebreak directions, entry and default works powers, and cost recovery, supplemented by review rights through the Tasmanian Civil and Administrative Tribunal. Public authorities benefit from extensive statutory immunities for good faith operational activity, while private occupiers remain subject to both statutory offences and common-law liability. Bushfire risk governance, therefore, operates through targeted enforcement actions rather than a universal, standing fuel reduction duty imposed on all landholders.

14.3 Queensland

The Fire Services Act establishes Queensland's statutory framework for fire services. It creates and empowers the Commissioner and fire authorities, confers prevention and emergency response powers, and interfaces with building, planning and workplace-safety systems. The Act does not impose a general, continuing obligation on landholders to undertake bushfire fuel reduction. Obligations to reduce fire risk arise and become compulsory only when an authorised officer issues a requisition notice under the Fire Services Act (or a hazard-abatement notice under local government local laws).

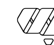
Under s. 145G, the Commissioner may direct an occupier to undertake specified risk reduction measures, including:

- constructing or maintaining firebreaks
- removing or managing flammable vegetation or materials
- ensuring water supplies or access
- suspending nominated operations.

Failure to comply is an offence. The authority may carry out the works in default and recover reasonable costs, including the disposal or sale of removed material. Corporate occupiers may also expose executive officers to liability (ss. 145G(1)–(4), (6)–(9)). These powers apply to both private and state occupiers when acting in that capacity.

Authorisation of burning and ignition controls

Outside of the requisition notice process, fuel reduction is regulated or authorised rather than mandated. Lighting an unauthorised fire is an offence punishable by up to 50 penalty units or six months' imprisonment. Authorisation may occur through:



- gazetted notifications permitting classes of burns in defined areas (s. 145A), subject to conditions (s. 145I(1)–(2)); or
- individual permits (s. 145C), typically requiring notification to adjoining occupiers unless exceptional circumstances exist, with operative conditions imposed via s. 145I.

These authorisations may be displaced by:

- prohibition notices issued to named occupiers (s. 145B).
- local fire bans (ss. 145M–145R), which override existing permits or notifications (s. 145Q).
- fire emergency declarations, which expand officer powers and increase penalties for non-compliance (ss. 145T–145Y).

Protected estates and tenure specific approvals

The Act does not itself authorise burning within protected areas or state forests.

Where land is managed under conservation or forestry legislation, burning requires separate approval from the relevant land management authority. Section 145D prevents reliance on a Fire Services Act permit or notification unless that additional authorisation has been obtained.

Defences and civil liability settings

The Act contains limited statutory defences. Section 145J(1)(b) provides a 'reasonable step' or 'reasonable excuse' defence in specified contexts.

A civil safe harbour applies to authorised burns. Where a fire is lit under a valid notification, permit or requisition, conditions are complied with and there is no recklessness or malice, the person lighting the fire does not incur common-law liability for resulting damage.

Outside those circumstances, lighting an unauthorised fire remains the primary offence pathway.

Enforcement and operational powers

Authorised fire officers and inspectors are given broad enforcement powers, including:

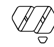
- entry, inspection and investigation
- issuing hazard-abatement notices and requisitions
- imposing penalties for non-compliance
- exercising emergency powers to prevent danger, including evacuation, suppression and restriction of activities.

A separate incident-response authority permits entry by a neighbour within 1.6 kilometres of a grassfire[8] to assist with suppression (s. 145F).

Operational triggers under the Act

The statutory scheme is structured around discrete regulatory events:

- Requisitions/hazard notices — compel risk reduction works (s. 145G)
- Gazetted notifications — authorise classes of burns (s. 145A)
- Permits — authorise specific burns subject to conditions (ss. 145C, s. 145I)
- Prohibition notices — override permissions for particular occupiers (s. 145B)
- Local fire bans — suspend prior authorisations (ss. 145M–145R)



- Fire emergency declarations — expand powers and penalties (ss. 145T–145Y)
- Protected-tenure controls — require separate conservation or forestry approval (s. 145D).

State landholders

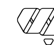
Queensland does not have a broad statutory duty requiring landholders to reduce bushfire risks. Under to the Fire Services Act, obligations for hazard reduction only come into effect when a requisition notice for fire hazard abatement is issued. This applies to both private and state landholders, but, unlike private landholders, the state cannot be held liable for an offence under the act.

Qld note: State landholders included as 'occupier' for notice compliance, but cannot be prosecuted for non-compliance.

Queensland — operational summary

Queensland operates a predominantly notice-based model for bushfire risk regulation under the Fire Services Act. The Act does not impose a universal statutory obligation on landholders—private or state—to proactively reduce mitigate bushfire risk. Enforceable duties arise only when triggered by requisitions, hazard-abatement notices, prohibition notices or declared fire events.

[8] In this context a grassfire is a fire "predominantly consuming vegetation".



15. Hybrid standards-and-notice Model

15.1 Western Australia

The *Bush Fires Act 1954* (WA) is Western Australia's principal statute governing landholder responsibilities for bushfire prevention and control. It establishes the powers of local government and fire authorities, regulates seasonal burning and provides enforcement mechanisms.

The Act itself does not impose a universal, standing statutory duty on landholders to mitigate bushfire risk. Instead, enforceable obligations arise primarily through hazard reduction notices, seasonal prohibitions and permit regimes.

Trigger-based hazard reduction duties (s. 33)

Section 33 empowers local governments to require owners and occupiers to install firebreaks and undertake specified hazard reduction works by a nominated date.

A notice may require actions such as:

- constructing or maintaining firebreaks
- removing or managing fuel loads
- clearing flammable material.

Failure to comply is an offence (s. 33(3)). A local government may enter land, carry out the works in default, and recover reasonable costs from the owner or occupier (ss. 33(4)–(5)).

Although the statute does not impose an automatic, statewide duty, most local governments issue annual s. 33 notices across their districts. These 'firebreak notices' or 'Bushfire Risk Reduction Notices' typically prescribe:

- minimum firebreak widths
- vegetation management standards
- pre-season compliance deadlines.

In operational terms, this annual notice practice functions as a district-wide, seasonal mitigation requirement/positive standing duty, enforceable through prosecution or default works.

Seasonal prohibitions and permits

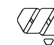
The Act also regulates ignition through restricted-burning periods, Total Fire Bans and permit systems. Key controls include:

- offences for lighting fires during restricted or prohibited times without a permit (ss. 17–18)
- open-air fire precautions (s. 25)
- garden-refuse burning controls (ss. 24D–24G).

Permits authorise otherwise unlawful burning only within their terms. Defective or non-compliant permits remove authorisation.

Bush Fire Risk Treatment Standards 2020

The Bush Fire Risk Treatment Standards 2020, made under the Act, establish mandatory technical requirements governing how bushfire mitigation clearing may be undertaken. In areas declared bushfire-prone under the *Fire and Emergency Services Act 1998* (WA) s. 18P, the Standards:



- authorise limited vegetation treatment within a 20-metre risk-treatment zone around relevant buildings
- operate without requiring separate planning approval
- impose spatial limits and site-specific exclusions.

The Standards regulate how mitigation may occur rather than creating an independent obligation to undertake works.

When combined with s. 33 notices, however, the Standards become operationally significant because they define the lawful method by which compelled mitigation must be performed.

The Regulations also prescribe authorised officers and procedural requirements for issuing infringement notices.

Judicial interpretation

Western Australian courts have clarified the operation of these mechanisms.

- *City of Kalamunda v A.C.N. 605 729 995 Pty Ltd* [2020] WASC 341 — compliance with s. 33 firebreak and hazard reduction notices was not 'development' for planning purposes; treating statutory compliance as requiring development approval would create conflict between planning and bushfire law.
- *Boon Yew Koh v City of Joondalup* [2014] WASC 396 — confirmed owner liability for failing to comply with an s. 33 notice; service and photographic evidence were sufficient; a council need not undertake default works before prosecuting.
- *McCutcheon v Bateman* [1985] 62 LGRA 212 — clarified restricted-burning offences: the offence consists of lighting a fire during restricted times without a valid permit or contrary to permit conditions; defective permits remove authorisation.

State landholders

Section 33 of the Bush Fires Act applies to land regardless of ownership, affecting both owners and occupiers, including state agencies managing Crown land. Although this provision generally does not result in criminal prosecution of the state (as evidenced by the case law review), it functions as a mandatory operational requirement for those managing state land. Compliance is ensured through fire ban prohibitions and permit systems instead of ongoing obligations. Therefore the state is bound in a standards-based, operational sense rather than a duty-based one.

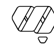
> WA note: 'Owner or occupier' formulation applies across tenure, including Crown land managers (s. 7, s. 33).

Western Australia — operational summary

Western Australia operates a hybrid standards-and-notice model.

The Bush Fires Act does not impose a universal, positive standing duty to reduce fuel. However:

- annual district-wide s. 33 notices issued by local governments routinely require mitigation works
- seasonal bans and permit regimes regulate ignition
- the Bush Fire Risk Treatment Standards prescribe lawful treatment methods near buildings in bushfire-prone areas.



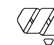
In practice, landholders—public and private—are required to undertake bushfire mitigation works when served with notices or operating within regulated periods, and must perform those works in accordance with statutory technical standards and permit conditions.

Note on a hybrid standards-and-notice model used in this report

Western Australia is best described as operating a hybrid standards-and-notice model. The Bush Fires Act does not impose a universal, standing positive obligation on all landholders to mitigate bushfire risk. Instead, it relies on enforceable hazard reduction notices issued by local governments, supplemented by mandatory Bush Fire Risk Treatment Standards that regulate the form and extent of vegetation management works in declared bushfire-prone areas.

Although the Standards themselves authorise and condition clearing rather than require it, their routine incorporation into seasonal hazard reduction notices creates a consistent operational expectation of pre-season mitigation by landholders. In functional terms, this places Western Australia between jurisdictions that impose standing preventive duties and those that rely solely on ad hoc notice-based enforcement.

To sum up, WA's scheme is notice and activity-led, but in practice it places a positive bushfire mitigation legislative obligation on landholders in wide parts of the state. Owners are liable when a s. 33 notice is issued by the Department of Fire and Emergency Services or local governments for specific properties or entire districts, when they light or fail to extinguish fires contrary to seasonal rules, or when they breach total fire bans settings; lawful paths involve permits and narrow exemptions. The *Bush Fire Risk Treatment Standards 2020* (WA) provide a planning-safe authorisation to clear or prune near buildings in bushfire-prone areas, but they do not create a duty. Courts have regarded s. 33 compliance as a genuine statutory obligation (not 'development') and have clarified the elements and proof needed for restricted-burning offences.



16. Comparative insights

16.1 Typology of state and territory approaches to landholder bushfire mitigation obligations

There is no uniform national model for allocating bushfire fuel-management responsibilities. Statutory obligations are determined at state and territory level and fall into three operational structures.

Standing duty jurisdictions

New South Wales, South Australia, and the Australian Capital Territory (for rural land) impose continuing statutory obligations on owners and occupiers to take reasonable steps to prevent the outbreak or spread of fire and to protect life and property. The Northern Territory adopts a more prescriptive, zone-based version of this model. In designated FPZs, owners and occupiers must construct and maintain mandatory firebreaks. Within FPZs, FMZs and FMAs, landholders may also be required to prepare and comply with PFMP. These obligations operate continuously and are enforceable without a prior hazard-abatement notice.

Notice-triggered jurisdictions

Victoria, Tasmania and Queensland do not impose a general, standing obligation on private landholders to reduce fuel loads. In those jurisdictions, enforceable duties arise primarily when an authorised agency issues a hazard-abatement or fire prevention notice (for example, Victorian FPN, Tasmanian s. 49 notices of the Fire Service Act 1979 (Tas), or a Queensland requisition notice). Failure to comply typically constitutes an offence, allowing the authority to undertake the works in default and recover reasonable costs.

Hybrid standards-and-notice model — Western Australia

Western Australia operates a hybrid framework combining enforceable hazard-abatement notices with mandatory technical standards governing vegetation treatment near assets.

The Bush Fires Act does not create a universal, standing obligation on landholders to reduce fuel loads. However, local governments routinely issue district-wide annual notices under s. 33 requiring owners and occupiers to construct firebreaks or undertake specified hazard reduction works before the bushfire season. Those notices are legally enforceable; non-compliance constitutes an offence and enables default works and cost recovery.

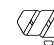
In parallel, the Bush Fire Risk Treatment Standards regulate how vegetation management may be undertaken around buildings in designated bushfire-prone areas, including specified treatment distances and exclusions. These Standards are mandatory in form but permissive in substance: they control and authorise mitigation activity where undertaken, rather than independently compelling it.

Read together, the routine use of s. 33 notices and the Bush Fire Risk Treatment Standards create a system that can require positive seasonal mitigation at scale, while remaining formally notice-based in statutory structure.

Common regulatory architecture

Across all jurisdictions, similar operational mechanisms supplement these baseline models:

- **Permits and notifications** authorise hazard reduction burning and impose binding conditions
- **Total Fire Bans, local bans and emergency declarations** override earlier authorisations for specified periods or areas



- **Event-based duties** apply once a fire exists, including obligations to extinguish or control fires and to notify authorities or neighbours
- **Real-time directions** may be issued by fire authorities or police; failure to comply is generally an offence.

Civil liability settings

In most jurisdictions, compliance with permit conditions does not eliminate exposure to negligence or nuisance claims if a fire escapes. Queensland is a partial exception, providing a statutory civil safe harbour for authorised burns carried out without recklessness or malice.

Across jurisdictions, statutory good faith immunities typically protect emergency services agencies and volunteers rather than private landholders.

Interaction with other regulatory regimes

Bushfire legislation operates alongside other statutory systems that continue to regulate activities that contribute to bushfire hazard reduction, including:

- planning and vegetation clearing approvals
- environmental protection duties concerning smoke, ash and erosion
- workplace health and safety obligations
- electrical-safety requirements.

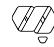
Some jurisdictions provide targeted clearing authorisations near buildings—such as Western Australia's Bush Fire Risk Treatment Standards and New South Wales 10/50 and Rural Boundary Codes—but these function as permissions rather than general mitigation mandates. It is noted that these authorisations are framed specifically for bushfire mitigation purposes and fall under the states' respective bushfire legislation, rather than under planning, building or vegetation legislation.

Operational summary

Land occupiers outside standing duty jurisdictions (New South Wales, South Australia, the Australian Capital Territory for rural land, and zone-based Northern Territory areas) are not subject to a universal statutory requirement to mitigate bushfire hazard. However, occupiers across all States and Territories, they must:

- comply with hazard-abatement or fire prevention notices
- observe permit, ban and emergency direction regimes
- take required action when a fire occurs.

Failure to comply may result in offences, default works with cost recovery, and potential civil liability where escaped fire causes damage.



17. Discussion

This chapter synthesises Queensland doctrinal findings with legal scholarship to answer the research question previously stated: *"To what extent do occupiers of land in Queensland have a legal responsibility for managing bushfire hazards on their property?"*.

The analysis draws on two national studies:

- McCormack's *An Anatomy of Australia's Legal Framework for Bushfire*[9], which maps bushfire governance as an interaction between multiple statutory systems rather than a single legislative regime
- Eburn & Cary's *You Own the Fuel, but Who Owns the Fire?*[10] examines how liability rules shape landholder behaviour in relation to prescribed burning and fuel management.

These works are used as national analytical frameworks. Queensland's position is then assessed by applying those frameworks to the legislative and case law analysis in Chapters 8–12.

17.1 No positive obligation to undertake bushfire mitigation

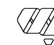
The Queensland analysis shows that the state's fire legislation does not impose a general, continuous obligation on owners or occupiers to undertake bushfire mitigation activities across all land tenures. Instead, enforceable duties arise only when statutory triggers occur, including:

- the issue of a requisition or hazard-abatement notice
- emergency directions during a fire event
- permit and prohibition regimes regulating ignition
- compliance obligations attached to building-safety regimes.

McCormack's national mapping explains this structure: fire-specific statutes commonly focus on response powers and ignition controls rather than imposing universal land management duties.

Key point: In Queensland, bushfire mitigation is not required by default as a condition of land ownership or occupation. Obligations are activated episodically through notices, emergencies and approval instruments.

[9] McCormack, P., et al. 2022. *Melbourne University Law Review.* "An Anatomy of Australia's Legal Framework for Bushfire". pp. 156-217.
[10] Eburn M,Cary GJ 2017 'You Own the Fuel, but Who Owns the Fire?' vol. 26(12) pp. 999; McCormack PC et al 2022, 'An Anatomy of Australia's Legal Framework for Bushfire' vol. 46(1) pp. 156.



17.2 Complex legal obligations when Undertaking Bushfire Mitigation

Chapters 8–12 demonstrate that once a Queensland landholder decides to undertake mitigation activity, the legal position becomes materially more complex.

McCormack's national analysis explains why: bushfire governance operates through overlapping statutory 'layers' covering fire control, planning, environmental protection, conservation and public-safety regulation.

In Queensland, mitigation activity may therefore require:

- confirmation of the applicable planning pathway
- compliance with vegetation clearing regimes or protected-estate rules
- environmental protection measures addressing smoke, erosion and run-off;
- Aboriginal and Torres Strait Islander cultural heritage processes
- koala habitat mapping & species protection overlay
- workplace health and safety systems for PCBUs
- local government compliance frameworks.

Key point: A fire permit for hazard reduction purposes does not displace these other regimes. Administering agencies and applicable landholders must coordinate sequencing, conditions management and record-keeping across multiple regulatory portfolios.

17.3 Ongoing obligations arising from planning approvals and tenure

The Queensland case law and statutory review show that continuing bushfire mitigation obligations most often arise through:

- planning approvals and development conditions
- tenure specific regimes, particularly within the State Forest Estate.

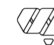
McCormack's national account identifies planning and building regulation as the primary preventive mechanisms for reducing bushfire risk across Australia, even though they sit outside fire-specific legislation.

Key point: In Queensland, ongoing bushfire mitigation responsibilities are conditioned through property-specific, case-by-case, land use and tenure compliance processes, such as development approvals and covenants, rather than through fire legislation. Long-term responsibility for these responsibilities is still unclear.

17.4 Point-in-time obligations created by notices

Queensland's most direct compulsory bushfire mitigation obligations arise through statutory notices. When a requisition or hazard-abatement notice is issued, occupiers must undertake specified works within a defined timeframe. Failure to comply exposes private/non-state occupiers to offence liability and permits authorities to perform the works in default and recover costs.

McCormack's national overview shows that similar notice-based mechanisms operate across Australia.

Key point: Notice regimes function as the principal enforcement tool available for bushfire mitigation in Queensland. Regulatory effectiveness depends on the capacity to issue, interpret and implement notices through lawful planning, vegetation and environmental pathways.

17.5 Parallel legal obligations and implementation complexity

Queensland's regulatory structure reflects the 'multilayered' national pattern identified by McCormack: a single mitigation activity may be governed simultaneously by statutes pursuing different objectives, including biodiversity protection, heritage conservation, worker safety and land use control.

In operational terms, this creates:

- overlapping approval requirements
- sequencing dependencies
- engagement with multiple agencies
- documentation and assurance requirements.

Key point: bushfire mitigation policy depends on interagency coordination and procedural clarity as much as on fire authority powers.

17.6 Behavioural effects of liability settings

Eburn and Cary's national analysis observes that Australian law allocates clearer liability for ignition and escape of fire than for failure to reduce fuels. They note that civil claims for escaped authorised burns are comparatively well developed, whereas establishing liability for allowing fire to spread in untreated fuel loads is rare.

Applied to Queensland, this national insight operates within a regulatory environment where:

- compulsory mitigation usually arises only through notices or development approval conditions
- mitigation works trigger extensive compliance obligations across multiple regimes.

Queensland's statutory civil safe harbour for authorised burns moderates some ignition-related exposure but does not displace environmental, heritage or workplace-safety duties.

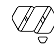
Key point: liability settings, together with administrative complexity, form part of the practical context in which landholders decide whether and when to undertake mitigation works.

17.7 Queensland in the national context

Drawing together the Queensland findings with national scholarship, three operational models emerge:

Standing duty jurisdictions

New South Wales, South Australia and the Australian Capital Territory (rural land) impose continuous prevention duties on both state and non-state owners and occupiers. The Northern Territory applies a stronger, zone-based approach that requires mandatory firebreaks and property-level fire management plans in defined areas.



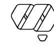
Notice-triggered jurisdictions

Queensland, Victoria and Tasmania do not impose a standing legislative duty on occupiers to mitigate bushfire risk. Obligations only arise through emergencies, and notices issued to occupiers and development approval conditions for specified properties.

Western Australia — hybrid notice-and-standards model

Western Australia occupies an intermediate position. Although it does not create a universal positive standing duty in its primary legislation, the widespread annual issuing of hazard reduction notices by local governments has the practical effect of imposing seasonal, district-wide mitigation requirements on occupiers. These enforceable hazard reduction notices often mandate the technical standards governing vegetation treatment in bushfire-prone areas. When not mandated by notice, these technical standards provide landholders wishing to undertake mitigation with a clear assurance as to the clearing and vegetation treatment they may lawfully undertake. This approach places Western Australia between legislative standing duty systems and reactive notice-triggered systems.

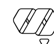
Queensland's position: Queensland sits within the notice-triggered group. It relies on targeted statutory intervention and land use and tenure controls rather than obliging landholders to maintain their land in a state that is mitigated against bushfire risk. Queensland's existing fire legislation could, however, be operationalised similarly to Western Australia's hybrid approach.



To answer the research question

In answering the research question, *'To what extent do occupiers of land in Queensland have a legal responsibility for managing bushfire hazards on their property?',* this study finds that Queensland law does not impose a general, continuous obligation on landholders to maintain land in a state that is mitigated against bushfire risk. Instead, legal responsibility is activated episodically through statutory notices, emergency directions, planning and tenure-based approvals, with environmental protection, cultural heritage and workplace health and safety regimes operating as concurrent regulatory controls on how bushfire mitigation activities are undertaken. Civil liability is addressed separately through the common law principles and statutory protections for authorised activities, rather than through the imposition of a general statutory mitigation duty.

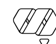
Queensland therefore operates within a multilayered governance system in which legal responsibility for bushfire risk mitigation is shaped by intersecting regulatory frameworks rather than by a single fire statute. Queensland is positioned nationally among notice-triggered jurisdictions rather than standing duty regulatory models.



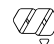
Appendices

Appendix 1: List of Selected Queensland Case Law Referenced in the Analysis

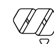
Legislation under consideration	Year	Citation	Court Level	Category of Occupier
Vegetation Management Act 1990 - Principal Act	2021	*Baker v Smith* [2021] QCA 66	Queensland Court of Appeal	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2019	*Baker v Smith (No 2*) [2019] QDC 242	District Court of Queensland	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2022	*Vukolic v Browning* [2022] QDC 279	District Court of Queensland	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2019	*McDonald v Holeszko* [2019] QCA 285	Queensland Court of Appeal	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2009	*Witheyman v Simpson* [2009] QCA 388	Queensland Court of Appeal	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2025	*Burns v Redland City Council* [2025] QDC 39	District Court of Queensland	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2023	*Dibb v Butterworth; Butterworth v Dibb* [2023] QDC 239	District Court of Queensland	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2021	*Traspunt No. 4 Pty Ltd v Moreton Bay Regional Council* [2021] QPEC 6	Planning and Environment Court of Queensland	Private landholder/developer



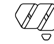
Legislation under consideration	Year	Citation	Court Level	Category of Occupier
Vegetation Management Act 1999 - Principal Act	2014	*Harris v Scenic Rim Regional Council* [2014] QPEC 16	Planning and Environment Court of Queensland	Private landholder/developer
Vegetation Management Act 1999 - Principal Act	2013	*Rainbow Shores Pty Ltd v Gympie Regional Council & Ors* [2013] QPEC 26	Planning and Environment Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2024	*Browning v Vukolic* [2024] QCA 195	Queensland Court of Appeal	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2019	*Traspunt No 4 Pty Ltd v Moreton Bay Regional Council* [2019] QCA 253	Queensland Court of Appeal	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2013	*Westlink Pty Ltd atf Westlink Industrial Trust v Lockyer Valley Regional Council* [2013] QPEC 35	Planning and Environment Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2025	*Burns v Redland City Council* [2025] QDC 39	District Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2022	*Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21	Land Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2022	*Scenic Rim Regional Council v Queensland Heritage Council* [2022] QPEC 42	Planning and Environment Court of Queensland	Local government occupier
Nature Conservation Act 1992 (Qld) - Principal Act	2022	*Bowyer Group Pty Ltd v Cook Shire Council* [2022] QPEC 33	Planning and Environment Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2025	*Rolleston Coal Holdings Pty Ltd v Department of Environment, Science and Innovation* [2025] QLC 22	Land Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2025	*Environmental Advocacy in Central Queensland Inc v Department of Environment, Tourism, Science and Innovation & Ors* [2025] QLC 7	Land Court of Queensland	Private landholder/developer
Nature Conservation Act 1992 (Qld) - Principal Act	2015	*Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors* [2015] QLC 48	Land Court of Queensland	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2025	*Leeward Management Pty Ltd v Sunshine Coast Regional Council* [2025] QCA 11	Queensland Court of Appeal	Private landholder/developer



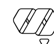
Legislation under consideration	Year	Citation	Court Level	Category of Occupier
Planning Act 2016 (Qld) - Principal Act	2021	*Gavin v Sunshine Coast Regional Council* [2021] QCA 217	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2021	*Baker v Smith* [2021] QCA 66	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2019	*Traspunt No 4 Pty Ltd v Moreton Bay Regional Council* [2019] QCA 51	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2019	*Bunnings Group Ltd v Sunshine Coast Regional Council* [2019] QCA 252	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2017	*Gerhardt v Brisbane City Council* [2017] QCA 285	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2012	*Lockyer Valley Regional Council v Westlink Pty Ltd* [2012] QCA 370	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2012	*Stevenson Group Investments Pty Ltd v Nunn* [2012] QCA 351	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2010	*Tendiris Pty Ltd v Moreton Bay Regional Council* [2010] QCA 349	Queensland Court of Appeal	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2013	*Rainbow Shores Pty Ltd v Gympie Regional Council & Ors* [2013] QPEC 26	Planning and Environment Court of Queensland	Private landholder/developer
Planning Act 2016 (Qld) - Principal Act	2017	*New Acland Coal Pty Ltd v Ashman & Ors (No 4)* [2017]	Land Court of Queensland	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2021	*Baker v Smith* [2021] QCA 66	Queensland Court of Appeal	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2009	*Yarraman Pine Pty Ltd v Forestry Plantations Queensland* [2009] QCA 102	Queensland Court of Appeal	State landholder
Forestry Act 1959 (Qld) - Principal Act	2020	*Harris v Lagerroth* [2020] QDC 285	District Court of Queensland	Private landholder/developer



Legislation under consideration	Year	Citation	Court Level	Category of Occupier
Forestry Act 1959 (Qld) - Principal Act	2021	*Baker v Smith* [2021] QCA 66	Queensland Court of Appeal	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2025	*Environmental Advocacy in Central Queensland Inc v Department of Environment, Tourism, Science and Innovation & Ors* [2025] QLC 7	Land Court of Queensland	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2012	*Boral Resources (Qld) Pty Ltd v Gold Coast City Council* [2012] QPEC 53	Planning and Environment Court of Queensland	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2002	*Maroochy Shire Council v Barns* [2002] QPEC 25	Planning and Environment Court of Queensland	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2016	*Dare & Ors v State of Queensland & Anor* [2016] QLC 11	Land Court of Queensland	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2018	*Baker v Department of Natural Resources & Mines* [2018] QCAT 375	Queensland Civil and Administrative Tribunal	Private landholder/developer
Forestry Act 1959 (Qld) - Principal Act	2009	*Knight v Department of Natural Resources and Water* [2009] QLC 20	Land Court of Queensland	Private landholder/developer
Aboriginal Cultural Heritage Act 2003 (Qld) - Principal Act	2024	*Vymetal v Inverardi* [2024] QLC 20	Land Court of Queensland	Private landholder/developer
Aboriginal Cultural Heritage Act 2003 (Qld) - Principal Act	2017	*New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No 4)* [2017] QLC 24	Land Court of Queensland	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2025	*Leeward Management Pty Ltd v Sunshine Coast Regional Council* [2025] QCA 11	Queensland Court of Appeal	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2025	*JYP Jiang Pty Ltd v CAV Gasworks Pty Ltd* [2025] QSC 134	Supreme Court of Queensland	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2017	*Gerhardt v Brisbane City Council* [2017] QCA 285	Queensland Court of Appeal	Private landholder/developer

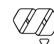


Legislation under consideration	Year	Citation	Court Level	Category of Occupier
Building Act 1975 (Qld) - Principal Act	2011	*Pialba Commercial Gardens Pty Ltd v Braxco Pty Ltd* [2011] QCA 148	Queensland Court of Appeal	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2022	*Vukolic v Browning* [2022] QDC 279	District Court of Queensland	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2018	*Chapel of Angels Pty Ltd v Hennessy Builder Pty Ltd* [2018] QDC 218	District Court of Queensland	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2016	*Queensland Building and Construction Commission v Marshall* [2016] QSC 200	Supreme Court of Queensland	Private building certifier
Building Act 1975 (Qld) - Principal Act	2024	*Queensland Building and Construction Commission v McHenry* [2024] QCAT 30	Queensland Civil and Administrative Tribunal	Private building certifier
Building Act 1975 (Qld) - Principal Act	2024	*Sigma 3 Pty Ltd t/a Integrity New Homes Cairns v QBCC* [2024] QCAT 521	Queensland Civil and Administrative Tribunal	Private landholder/developer
Building Act 1975 (Qld) - Principal Act	2002	*Maroochy Shire Council v Barns* [2002] QPEC 25	Planning and Environment Court of Queensland	Private landholder/developer



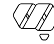
Appendix 2: Comparative Overview: Landholder Bushfire Duties and Liability (Australia)

Jurisdiction	Structure of Landholder Duty	How Duty Is Triggered	Enforcement Mechanisms	Judicial Treatment / Key Features
Queensland	No general positive standing duty to reduce fuel	Duties arise primarily through notices (Fire Services Act), permits, or when engaging in regulated activities (clearing/burning)	Notices; default works; offences for non-compliance; permit system	Courts emphasise permission-based regulation; the Fire Services Act has not yet been tested on fuel reduction obligation
New South Wales	Baseline supplemented by Notice-based duty	Ongoing baseline duty; additional obligations via bushfire hazard-reduction notices;	Notices; entry and cost recovery; offences	Strong statutory framework; courts cautious about imposing broad duties beyond notices; court apply reasonableness standard
Victoria	Notice-based duty (private landholder)	Fire Prevention Notices issued by councils or CFA	Notices; default works; cost recovery; offences	Duties crystalise only after notice; limited standing obligations
Western Australia	Hybrid standards-and-notice model	Local government firebreak or hazard reduction notices	Notices; default works; cost recovery	No general duty to reduce fuel; highly localised enforcement
Tasmania	Notice-based duty (general precaution)	Service of hazard abatement notice	Notices; entry powers; offences	Courts recognise occupier liability once notice issued
South Australia	General positive duty	Ongoing obligation to take *reasonable steps*	Direct offences; compliance directions	Courts treat codes as strong evidence of breach
Australian Capital Territory	General positive duty (primarily rural land)	Standing statutory obligation on rural landholders	Strict liability offences	Clear standing duty model within declared rural contexts
Northern Territory	General and activity-based duties	Standing obligations plus permit and plan requirements	Enforcement notices; offences; permit controls	Strongest integration of fire management planning
All jurisdictions	Activity-based duties	Lighting or maintaining fire; burning during restricted periods	Permit breaches; emergency directions	Permit compliance does not eliminate civil liability



Appendix 3: National Snapshot — Scaled Comparative Matrix and Scaling Tables

Jurisdiction	Core Fire Statute	Duty Exists	Triggered	Continuous	Clarity	Enforcement
Queensland	*Fire Services Act 1990* (Qld)	Medium	Notice	✗ No	Medium	Medium
New South Wales	*Rural Fires Act 1997* (NSW)	Strong	Baseline supplemented by Notice	✓ Yes	Weak-Medium	Strong
South Australia	*Fire and Emergency Services Act 2005* (SA)	Strong	Baseline supplemented by Notice	✓ Yes	High	Strong
Australian Capital Territory	*Emergencies Act 2004* (ACT)	Strong	Baseline (primarily rural land)	✓ Yes	High	Strong
Northern Territory	*Bushfires Management Act 2016* (NT)	Strong	Zoning	✓ Yes	Very High	Very Strong
Victoria	*Country Fire Authority Act 1958* (Vic) / *Fire Rescue Victoria Act 1958* (Vic)	Medium	Notice and state/council positive duty	✗ No	Medium	Strong
Tasmania	*Fire Service Act 1979* (Tas)	Medium	Notice	✗ No	Medium	Weak - Medium
Western Australia	*Bush Fires Act 1954* (WA)	Medium–High	Seasonal notices used to create positive duty	✗ No	High	Strong



Methodology for Comparative Matrix

The matrix evaluated the structural features of each jurisdiction's primary fire statute. Ratings are based on statutory design and legislative architecture than on empirical enforcement frequency or policy outcomes.

Duty Exist – assesses whether the legislation imposes a positive legal obligation on landholders to mitigate bushfire risk in the absence of a notice or direction. A **Very Strong rating** reflects a mandatory, ongoing statutory duty (baseline), often supported by prescriptive or zoning-based requirements. A **Strong rating** indicates an express baseline duty to take reasonable or practicable prevention steps. A **Medium rating** applies where obligations arise only upon the issuance of notice or direction. A **Weak rating** reflects the absence of a prevention of duty, with the statute primarily regulating ignition and emergency response.

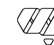
Triggered – describes the structural activation model for the obligation, including whether duties operate as a baseline requirement, are supplemented by notice powers, arise only upon notice, apply within declared zones or operate through seasonal district-wide notices.

Continuous – indicates whether the obligation operates on an ongoing basis or arise only when formally triggered.

Clarity – assesses the level of legislative certainty, including whether duties are expressly articulated, whether they are prescriptive or open-textured, and whether responsibility is consolidated in a single statute or distributed across multiple regimes.

Enforcement – assesses the strength of available coercive mechanisms, including offence provisions, default works powers, entry powers, cost recovery and penalty levels. This rating reflects the availability of enforcement tools in the statute and does not measure prosecution rates or empirical enforcement practices.

Where the national scholarship has observed that enforcement commonly proceeds through notice mechanisms rather than prosecution of baseline duties, this reflects operational practice rather than structural weakness. The matrix, therefore, assesses statutory architecture rather than practical utilisation.



Appendix 4: Additional Consolidated Legislative Mechanisms for Bushfire Risk Management Across Australian Jurisdictions

This Appendix collates statutory mechanisms governing bushfire hazard-reduction and fire control activities across Australian jurisdictions. It draws on comparative national scholarship analysed in chapter 13 and supports the Discussion in chapter 17 by documenting how Australian fire law systems structure landholder obligations, authorisation pathways, enforcement powers and liability settings.

The material is included to contextualise Queensland's position within the national regulatory spectrum and to demonstrate that the multilayered governance structure identified in this report reflects broader Australian legislative design.

Baseline Models of Landholder Obligation

Australian jurisdictions adopt two principal legislative approaches to landholder bushfire obligations:

- **Standing duty jurisdictions** impose continuous statutory obligations on owners or occupiers to take reasonable steps to prevent ignition and limit spread. These obligations operate independently of enforcement notices.
- **Notice-triggered jurisdictions** create enforceable duties only once a competent authority issues a formal hazard-abatement or firebreak notice, or where emergency powers are activated.

Some jurisdictions combine these approaches through mandatory technical standards and the routine issuance of notices.

Common Regulatory Architecture

Across jurisdictions, bushfire legislation consistently relies on five operational control mechanisms:

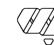
- **Hazard-abatement notices**: requiring vegetation management, firebreak construction or removal of combustible material.
- **Permit and notification systems**: authorising burning subject to seasonal restrictions and conditions.
- **Fire bans and emergency declarations**: suspending permits and imposing immediate prohibitions.
- **Real-time officer directions**: allowing emergency services or police to direct landholders to take or cease actions.
- **Default works and cost recovery**: enabling authorities to undertake works and recover expenses where notices are not complied with.

These instruments are present in Queensland, New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory and Western Australia, albeit with jurisdiction-specific thresholds and drafting.

Interaction With Planning and Environmental Systems

Fire-specific legislation does not operate in isolation. Hazard reduction activity is commonly conditioned by:

- development assessment regimes
- native vegetation controls
- protected area legislation
- forestry tenure statutes



- environmental protection duties
- cultural heritage frameworks
- workplace health and safety systems

Where authorisations exist for limited clearing near buildings—such as New South Wales' vegetation codes or Western Australia's risk-treatment standards—those instruments regulate the legality and method of works rather than imposing universal mitigation duties.

Liability and Immunity Settings

Most jurisdictions provide statutory civil liability protections for emergency services personnel and public authorities acting in good faith during suppression or authorised mitigation activities.

Private landholders generally remain subject to negligence and nuisance principles if fires escape, even where permits have been issued. Queensland is unusual in providing a statutory civil safe harbour where authorised burns are conducted in accordance with conditions and without recklessness or malice.

Criminal liability for non-compliance typically arises where:

- notices are ignored
- permits or bans are breached
- emergency directions are disobeyed

Western Australia's Preventive Standards-Based Model

Western Australia occupies a distinct intermediate position.

The *Bush Fires Act 1954* (WA) does not impose a universal standing obligation to reduce fuel loads. Instead, it authorises local governments to issue enforceable firebreak and hazard reduction notices to owners and occupiers and establishes seasonal controls on burning.

This notice-based regime is supplemented by mandatory *Bush Fire Risk Treatment Standards 2020* (WA), which prescribe the form and limits of vegetation management within declared bushfire-prone areas and authorise specified clearing near buildings without separate development approval.

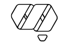
Although the Standards regulate activity rather than compel it, their routine incorporation into annual local government notices generates a practical expectation of pre-season mitigation across much of the state. The combined operation of statutory standards and district-wide notices positions Western Australia between standing duty and purely notice-triggered jurisdictions.

Purpose of Comparative Material

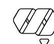
This Appendix supports Chapters 13 and 14 by documenting that Queensland's notice-driven model is not anomalous but reflects one end of a national spectrum of legislative approaches.

The comparative analysis demonstrates that Australian bushfire governance is structurally characterised by:

- multistatute regulatory layering
- permit-based ignition controls
- episodic enforcement through notices
- differentiated liability treatment for public authorities and private occupiers

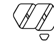


These features frame the Discussion (chapter 17) and Answer to the Research Question regarding the location of Queensland's bushfire mitigation obligations within the broader Australian regulatory landscape.



Appendix 5: Findings Table — Queensland Hazard Reduction Responsibilities by Regime

Statute	Duty type	Triggered	Continuous	Clarity	Enforcement provision
Fire Services Act 1990 (Qld)	Hazard reduction (notice)	Requisition notice	❌ No	🟧 Medium	🟧 Medium
Vegetation Management Act 1999 (Qld)	Vegetation protections	Clearing proposed/mapped vegetation triggers	❌ No	🟩 High	🟥 High
Planning Act 2016 (Qld)	Conditional	DA / Accepted development/conditions	❌ No (baseline)	🟩 High	🟥 High
Forestry Act 1959 (Qld)	Bushfire prevention (tenure specific duty)	Tenure / holder status in State Forest Estate	✔ Yes	🟩 High	🟥 High
Nature Conservation Act 1992 (Qld)	Environmental protections (tenure specific)	Protected area activity / authority required	❌ No	🟩 High	🟥 High
Environmental Protection Act 1994 (Qld)	General environmental duty	Activity undertaken with potential harm	✔ Yes	🟧 Medium - High	🟥 High
Work Health and Safety Act 2011 (Qld)	Worker safety (duty of care)	Workers / workplace activity	✔ Yes	🟩 High	🟥 High
Aboriginal Cultural Heritage Act 2003 (Qld) / *Torres Strait Islander Cultural Heritage Act* 2003 (Qld)	Cultural heritage (duty of care)	Ground-disturbing works / CHMP if triggered	✔ Yes	🟥 High	🟧 Medium - High
Local Government Act 2009 (Qld) / local laws	Hazard reduction (notice)	Remedial notice	❌ No	🟧 Medium	🟧 Medium



Methodology for Comparative Matrix

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Duty Exist – assesses whether the legislation imposes a positive legal obligation on landholders to mitigate bushfire risk in the absence of a notice or direction. A **Very Strong rating** reflects a mandatory, ongoing statutory duty (baseline), often supported by prescriptive or zoning-based requirements. A **Strong rating** indicates an express baseline duty to take reasonable or practicable prevention steps. A **Medium rating** applies where obligations arise only upon the issuance of notice or direction. A **Weak rating** reflects the absence of a general prevention of duty, with the statute primarily regulating ignition and emergency response.

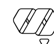
Triggered – describes the structural activation model for the obligation, including whether duties operate as a baseline requirement, are supplemented by notice powers, arise only upon notice, apply within declared zones or operate through seasonal district-wide notices.

Continuous – indicates whether the obligation operates on an ongoing basis or arise only when formally triggered

Clarity – assesses the level of legislative certainty, including whether duties are expressly articulated, whether they are prescriptive or open-textured, and whether responsibility is consolidated in a single statute or distributed across multiple regimes.

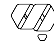
Enforcement – assesses the strength of available coercive mechanisms, including offence provisions, default works powers, entry powers, cost recovery and penalty levels. This rating reflects the availability of enforcement tools in the statute and does not measure prosecution rates or empirical enforcement practices.

Where the national scholarship has observed that enforcement commonly proceeds through notice mechanisms rather than prosecution of baseline duties, this reflects operational practice rather than structural weakness. The matrix therefore, assesses statutory architecture rather than practical utilisation.



Appendix 6: Queensland Bushfire-Relevant Legislation — Crown Binding and Officer Liability

Legislation	Does it Bind the State? (sections)	State / Officer Liability Provisions (sections)	Does it Create a Positive Hazard Reduction Duty?
Fire Services Act 1990 (Qld)	Yes — *s. 4*	*s 153B* – Protection from liability under the Act	No –duties arise only after a requisition notice (*s 145G*)
Vegetation Management Act 1999 (Qld)	Yes — *s. 6*	No express immunity; enforcement under general Crown liability principles	No — regulates clearing pathways
Planning Act 2016 (Qld)	Yes — *s. 7*	State and Commonwealth cannot be prosecuted against this Act	No — may impose mitigation via conditions
Forestry Act 1959 (Qld)	*Yes — s. 96E-F*	Protection of state and state officials	Yes — for forestry tenure only (fire control duties)
Nature Conservation Act 1992 (Qld)	Yes — *s. 3*	Officer protection for authorised acts	No general mitigation duty
Aboriginal Cultural Heritage Act 2003 (Qld)	Yes — *s. 3*	Express state immunity	No fuel reduction duty; process-based
Torres Strait Islander Cultural Heritage Act 2003 (Qld)	Yes — *s. 3*	Express state immunity	No fuel reduction duty; process-based
Environmental Protection Act 1994 (Qld)	Yes — *s. 450*	Good faith protection for individuals performing functions under the Act, but still bind state	No fire-specific duty
Local Government Act 2009 (Qld)	Yes — *s. 235*	Protection of administrators in good faith	Does not impose a general legal obligation on private landholders to carry out bushfire fuel-reduction works
Work Health and Safety Act 2011 (Qld)	Yes — *s. 10*	No state immunity for a contravention of a WHS civil penalty provision	Indirect — requires risk management where work is conducted



References

Eburn, M., & Cary, G. J. (2017). You own the fuel, but who owns the fire? *International Journal of Wildland Fire*, *26*(12), 999–1008, 1000.

Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (2nd ed, Oxford University Press, 2011).

McCormack, P., et al. 2022. *Melbourne University Law Review*. “An Anatomy of Australia’s Legal Framework for Bushfire”. pp. 156-217.

Maguire, Rowena, Justine Bell-James, Amanda Kennedy, Philippa England, Fran Humphries and Nicole Rogers, *Environmental, Planning and Climate Law in Queensland* (2nd ed, LexisNexis Australia, 2025).

Pearce, D C and Stephen Gageler, *Statutory Interpretation in Australia* (10th ed, LexisNexis Australia, 2024).