

EXPOSURE DRAFT



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Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following instrument.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Kristy McBain [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Regional Development, Local Government and Territories

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1 Name

This Ordinance is the *Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2022*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	The day after this Ordinance is registered.	

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Schedule 1—Amendments

Norfolk Island Continued Laws Ordinance 2015

[Amendments of the *Fire Control Act 2000 (NI)*]

1 Item 97E of Schedule 1

Repeal the item, substitute:

97E Section 5

Repeal the following definitions:

- (a) definition of *Board*;
- (b) definition of *Chairperson*.

97EA Section 5

Insert:

Commonwealth reserve has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

97EB Section 5 (definition of *fire danger period*)

Repeal the definition, substitute:

fire danger period means a fire danger period declared under section 22.

97EC Section 5

Repeal the following definitions:

- (a) definition of *member*;
- (b) definition of *period of acute fire danger*.

97ED Section 5

Insert:

permit means a permit issued under Part 3A.

public reserve means a reserve within the meaning of the *Public Reserves Act 1997*.

2 Item 97H of Schedule 1

Repeal the item, substitute:

97H Subsection 14(1)

Omit “Minister may”, substitute “Chief Executive Officer may, by written instrument,”.

97HA Subsection 14(2)

Omit “3”, substitute “5”.

97HB Paragraph 15(2)(k)

Omit “and property”, substitute “, property or the environment”.

97HC Subsection 16(1)

Omit “Minister may”, substitute “Chief Executive Officer may, by written instrument,”.

3 After item 97M of Schedule 1

Insert:

97MA Part 3 (heading)

Repeal the heading.

97MB Section 19

Repeal the section, substitute:

19 Powers to enter land and light fires on land

(1) If:

- (a) a fire is occurring on any land; or
- (b) the Chief Fire Control Officer, a Fire Officer, a Volunteer Fire Officer or an authorised person reasonably suspects that a fire is occurring on any land;

the Chief Fire Control Officer, a Fire Officer, a Volunteer Fire Officer or an authorised person may enter land for the purpose of inspecting, extinguishing, or stopping the progress of, the fire or suspected fire.

(2) The Chief Fire Control Officer, a Fire Officer or a Volunteer Fire Officer may, for the purpose of stopping the progress of a fire occurring on any land, light other fires on land.

97MC Sections 21 to 26

Repeal the sections, substitute:

Part 3—Prevention and control of fires

Division 1—Total fire ban

21 Declaration of a total fire ban

- (1) The Chief Fire Control Officer may declare a total fire ban for a period in an area if the Chief Fire Control Officer is satisfied that it is appropriate to do so to protect life, property or the environment from fire, having regard to:
- (a) the existence or likelihood of severe weather conditions conducive to the outbreak or spread of fire in the area; or
 - (b) the likelihood that a fire in the area could get out of control; or
 - (c) the number, nature or location of existing fires in the area; or

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Schedule 1 Amendments

- (d) insufficient resources being available to extinguish or prevent the outbreak or spread of fire in the area.

Note 1: A total fire ban under this section may be declared in an area that is in a Commonwealth reserve or a public reserve. A total fire ban may also be declared in a Commonwealth reserve under regulation 12.30 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Note 2: A declaration under this section may be varied or revoked: see subsection 33(3) of the *Acts Interpretation Act 1901* (Cth) (applying because of section 8A of the *Interpretation Act 1979*).

- (2) The Chief Fire Control Officer must arrange to have the particulars of the total fire ban broadcast, published, or otherwise communicated to the public, in such manner as the Chief Fire Control Officer thinks fit.

21A Fires during a total fire ban

- (1) During a total fire ban in an area, a person must not light, use or maintain a fire in the open air in the area except in accordance with:
 - (a) the requirements of subsection (2); or
 - (b) a direction under subsection 25(1); or
 - (c) subsection 19(2) (power to light fire on land).

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Requirements for using barbeque or stove during total fire ban

- (2) The requirements of this subsection are:
 - (a) the fire must be in a gas or electric barbecue or in a gas or electric stove; and
 - (b) the barbecue or stove must be within 20 metres of the person's residence; and
 - (c) the space immediately around and above the barbecue or stove must be cleared of all flammable, explosive or dangerous material to a distance of at least 2 metres; and
 - (d) the person must be 18 or older; and
 - (e) a supply of running water, or fire fighting equipment, adequate to extinguish a fire must be at hand.

Fire in a Commonwealth reserve or a public reserve

- (3) Subsection (2) does not permit a fire to be lit, used or maintained in an area in a Commonwealth reserve or a public reserve.

21B Fire must not be left unattended during total fire ban

A person who lights, uses or maintains a fire in an area must not leave the fire unattended during a total fire ban in the area.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

21C Hot works during total fire ban

- (1) During a total fire ban in an area, a person must not undertake any of the following in the area:
 - (a) welding;
 - (b) soldering;
 - (c) grinding;
 - (d) gas cutting;
 - (e) any other like activity that creates heat or sparks;except in accordance with:
 - (f) the requirements of subsection (2); or
 - (g) a direction under subsection 25(1).

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Requirements for undertaking hot works during total fire ban

- (2) The requirements of this subsection are:
 - (a) the activity must be undertaken by the person as part of urgent repairs to an essential service; and
 - (b) the Chief Fire Control Officer must have been notified that the activity is to be undertaken; and
 - (c) fire fighting equipment adequate to extinguish a fire must be at hand.

Division 2—Fire danger period

22 Declaration of fire danger period

- (1) The Chief Fire Control Officer may declare a fire danger period for a period in an area if the Chief Fire Control Officer is satisfied that weather conditions conducive to the outbreak or spread of fire exist, or are likely to exist, in the area.

Note 1: A fire danger period under this section may be declared in an area that is in a Commonwealth reserve or a public reserve.

Note 2: A declaration under this section may be varied or revoked: see subsection 33(3) of the *Acts Interpretation Act 1901* (Cth) (applying because of section 8A of the *Interpretation Act 1979*).

- (2) Before making a declaration under subsection (1), the Chief Fire Control Officer must consult:
 - (a) the Norfolk Island Regional Council; and
 - (b) if the area is in a Commonwealth reserve—the Director of the Commonwealth reserve.
- (3) The Chief Fire Control Officer must arrange to have the particulars of the fire danger period broadcast, published, or otherwise communicated to the public, in such manner as the Chief Fire Control Officer thinks fit.
- (4) A failure to comply with subsection (2) does not affect the validity of a declaration under this section.

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Schedule 1 Amendments

22A Fires during a fire danger period

- (1) During a fire danger period in an area, a person must not light, use or maintain a fire in the open air in the area except in accordance with:
 - (a) the requirements of subsection (2), (3), (4) or (5); or
 - (b) a direction under subsection 25(1); or
 - (c) subsection 19(2) (power to light fire on land).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Requirements for using a barbecue or stove during fire danger period

- (2) The requirements of this subsection are:
 - (a) the fire must be in a gas or electric barbecue or in a gas or electric stove; and
 - (b) the space immediately around and above the barbecue or stove must be cleared of all flammable, explosive or dangerous material to a distance of at least 2 metres.

Requirements for using a fireplace during fire danger period

- (3) The requirements of this subsection are:
 - (a) the fire must be in a properly constructed fireplace that is:
 - (i) constructed of a non-flammable material; and
 - (ii) capable of containing the perimeter of a fire; and
 - (b) the space immediately around and above the fireplace must be cleared of all flammable, explosive or dangerous material to a distance of at least 2 metres; and
 - (c) the fire must be for the purpose of cooking food or heating liquids.

Requirements for using an incinerator during fire danger period

- (4) The requirements of this subsection are the fire must be in a properly constructed incinerator that is designed to prevent the escape of sparks and incandescent material.

Requirements for using a permit during fire danger period

- (5) The requirements of this subsection are:
 - (a) the person must hold a permit to light, use and maintain a fire in the open air in the area during a fire danger period; and
 - (b) the person must have taken reasonable steps to give the Chief Fire Control Officer, and each owner of land adjoining the land on which the fire is lit, 24 hours notice that the fire is to be lit; and
 - (c) a person who is 18 or older must attend the fire at all times while it is alight.

Note 1: If the permit is issued subject to conditions, the person must also comply with the conditions when lighting, using or maintaining the fire. Failure to comply is an offence: see section 26A.

Note 2: Owner includes occupier: see section 5.

- (6) Notice for the purposes of paragraph (5)(b) does not have to be in writing.

Fire in a Commonwealth reserve or a public reserve

- (7) Subsections (2) to (5) do not permit a fire to be lit, used or maintained in an area in a Commonwealth reserve or a public reserve.

22B Fire must not be left unattended during a fire danger period

A person who lights, uses or maintains a fire in an area must not leave the fire unattended during a fire danger period in the area.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Division 3—Fires other than during a total fire ban or fire danger period

23 Fires to clear land

- (1) A person must not clear land in an area by burning except in accordance with:
- (a) the requirements of subsection (3); or
 - (b) a direction under subsection 25(1); or
 - (c) subsection 19(2) (power to light fire on land); or
 - (d) the *Public Reserves Act 1997* or the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) For the purposes of subsection (1), **clearing land** includes clearing land to create or maintain a firebreak.

Requirements for using permit to clear land

- (3) The requirements of this subsection are:
- (a) the person must hold a permit to light, use and maintain a fire in the open air in the area for the purposes of clearing land; and
 - (b) the person must have taken reasonable steps to give the Chief Fire Control Officer, and each owner of land adjoining the land on which the fire is lit, 24 hours notice that the fire is to be lit; and
 - (c) a person who is 18 or older must attend the fire at all times while it is alight; and
 - (d) the burning must not be undertaken during a total fire ban or fire danger period in the area.

Note 1: If the permit is issued subject to conditions, the person must also comply with the conditions when lighting, using or maintaining the fire. Failure to comply is an offence: see section 26A.

Note 2: Owner includes occupier: see section 5.

- (4) Notice for the purposes of paragraph (3)(b) does not have to be in writing.

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Schedule 1 Amendments

Fire in a Commonwealth reserve or public reserve

- (5) Subsection (3) does not permit a fire to be lit, used or maintained in an area in a Commonwealth reserve or a public reserve.

Note 1: For when a fire may be lit, maintained or used in a Commonwealth reserve; see the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Note 2: For when a fire may be lit, maintained or used in a public reserve; see the *Public Reserves Act 1997*.

23A Burning waste

A person must not burn solid waste (other than green waste) in the open air except in accordance with:

- (a) a direction under subsection 25(1); or
- (b) subsection 19(2) (power to light fires on land); or
- (c) the *Public Reserves Act 1997* or the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

23B Burning green waste

- (1) A person must not burn green waste in the open air in an area except in accordance with:

- (a) the requirements in subsection (3) or (5); or
- (b) a direction under subsection 25(1); or
- (c) subsection 19(2) (power to light fire on land); or
- (d) the *Public Reserves Act 1997* or the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) Subsection (1) does prohibit burning green waste for a purpose other than disposing of the waste.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 58 of the *Criminal Code 2007*.

Requirements for burning green waste other than in an incinerator

- (3) The requirements of this subsection are:

- (a) either:
 - (i) the person must hold a permit to light, use and maintain a fire in the open air in the area for the purpose of disposing of green waste; or
 - (ii) the fire must not exceed 4 cubic metres; and
- (b) the person must have taken reasonable steps to give the Chief Fire Control Officer, and each owner of land adjoining the land on which the fire is lit, 24 hours notice that the fire is to be lit; and
- (c) a person who is 18 or older must attend the fire at all times while it is alight; and

- (d) the green waste must not be burnt during a total fire ban or fire danger period in the area.

Note 1: If the permit is issued subject to conditions, the person must also comply with the conditions when lighting, using or maintaining the fire. Failure to comply is an offence: see section 26A.

Note 2: Owner includes occupier: see section 5.

- (4) Notice for the purposes of paragraph (3)(b) does not have to be in writing.

Requirements for using an incinerator to burn green waste

- (5) The requirements of this subsection are:
 - (a) the green waste must be burnt in a properly constructed incinerator designed to prevent the escape of sparks and incandescent material; and
 - (b) the green waste must not be burnt during a total fire ban or fire danger period in the area.

Fire in a Commonwealth reserve or a public reserve

- (6) Subsections (3) and (5) do not permit a fire to be lit, used or maintained in an area in a Commonwealth reserve or a public reserve.

Note 1: For when a fire may be lit, maintained or used in a Commonwealth reserve; see the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Note 2: For when a fire may be lit, maintained or used in a public reserve; see the *Public Reserves Act 1997*.

Division 4—Obligations relating to fires at all times

24 Uncontrolled fires must be notified and extinguished

- (1) The owner of land must, immediately after becoming aware of an uncontrolled fire on the land or on adjoining land, notify the Chief Fire Control Officer of the fire.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) If there is an uncontrolled fire on land, the owner of the land must use all available means to bring the fire under control.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

24A No tampering etc with fire protection or fire prevention equipment

- (1) A person must not tamper with, interfere with or damage:
 - (a) fire protection equipment; or
 - (b) fire fighting equipment (including a vehicle used for fighting fires).

Penalty: 25 penalty units.

- (2) In subsection (1), *tamper with* equipment includes removing fuel from a tank or air from tyres.

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Division 5—Chief Fire Control Officer Directions

25 Directions to prevent fire or in event of fire

- (1) The Chief Fire Control Officer may direct a person to take such measures (including refraining from taking action) that are reasonable in the circumstances to:

- (a) prevent or inhibit the outbreak and spread of fire on land; or
- (b) protect life, property or the environment from fire on land or spreading from land.

Note: Failure to comply with a direction is an offence: see section 25A.

- (2) The circumstances include the following:

- (a) the amount and type of flammable material, explosive or dangerous material on the land;
- (b) weather conditions affecting the land;
- (c) the location and use of the land and nearby land;
- (d) the possible effect of fire on the land and nearby land;
- (e) the number of people likely to be on the land at any time;
- (f) the risk to public safety or the risk to the safety of people likely to be on the land.

Note: Land includes buildings on the land: see section 5.

- (3) A direction:

- (a) may specify a reasonable period within which a person must take, or refrain from taking, specified action; and
- (b) may specify that a person must refrain from lighting a fire, or must extinguish a fire, even if the person holds a permit to light, use and maintain such a fire.

- (4) A direction may be given:

- (a) in writing; or
- (b) orally, if the Chief Fire Control Officer is satisfied that the circumstances require the direction to be given urgently.

- (5) If a direction is given orally to a person, the Chief Fire Control Officer must:

- (a) make a written record of the direction; and
- (b) give the person the direction in writing within a reasonable period after giving the direction orally.

Direction to light a fire etc. in a Commonwealth reserve is not permitted

- (6) Subsection (1) does not permit the Chief Fire Control Officer to direct a person to light, use or maintain a fire in an area in a Commonwealth reserve.

Review

- (7) Applications may be made to the Administrative Review Tribunal for review of decisions under this section made by the Chief Fire Control Officer.

25A Failure to comply with Direction

If a person is given a direction under section 25, the person must comply with the direction.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Part 3A—Permits

26 Permits

- (1) The Chief Fire Control Officer may issue to a person a permit to light, use and maintain a fire in the open air in an area:
 - (a) during a fire danger period; or
 - (b) for the purposes of clearing land; or
 - (c) for the purposes of disposing of green waste.

- (2) A permit may be issued subject to conditions specified in the permit.

Note: There are other requirements that the holder of the permit must comply with when lighting, using or maintaining a fire: see subsections 22A(5), 23(3) and 23B(3).

- (3) A permit may be issued:
 - (a) in writing; or
 - (b) orally, if the Chief Fire Control Officer is satisfied that the person requires the permit urgently.
- (4) If the permit is issued orally, the Chief Fire Control Officer must:
 - (a) make a written record of the issue of the permit; and
 - (b) give the person the permit in writing within a reasonable period after issuing the permit orally.

Permit does not permit lighting a fire etc. during a total fire ban

- (5) A permit issued under this section does not permit a person to light, use or maintain a fire in the open air in an area during a total fire ban.

Permit does not permit lighting a fire etc. in a Commonwealth reserve or a public reserve

- (6) A permit issued under this section does not permit a person to light, use or maintain a fire in an area in a Commonwealth reserve or a public reserve.

Note 1: For when a fire may be lit, maintained or used in a Commonwealth reserve, see the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Note 2: For when a fire may be lit, maintained or used in a public reserve, see the *Public Reserves Act 1997*.

Review

- (7) Applications may be made to the Administrative Review Tribunal for review of decisions under this section made by the Chief Fire Control Officer.

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Schedule 1 Amendments

26A Conditions of permit must be complied with

The holder of a permit must comply with the conditions specified in the permit.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

[Amendments of the Norfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988 (NI)]

4 After item 209AB of Schedule 1

Insert:

*Norfolk Island National Park and Norfolk Island Botanic Garden
Regulations 1988 (Norfolk Island)*

209AC Regulation 8

Repeal the regulation.

[Amendments of the Public Reserves Act 1997 (NI)]

5 After item 275E of Schedule 1

Insert:

275EA Paragraph 40(b)

Repeal the paragraph, substitute:

- (b) a portable gas or electric barbecue or a portable gas or electric stove; or
- (c) accordance with the *Fire Control Act 2000*.