



Full Day Hansard Transcript (Legislative Council, 22 October 2014, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 22 October 2014 (Proof).

Second Reading

The Hon. NIALL BLAIR (Parliamentary Secretary) [6.03 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

There is nothing more thoughtless and disappointing than fires that are deliberately or carelessly lit. Fires can destroy lives and properties which have long-term effects on our communities and the environment in which they live. During the 2013-14 bushfire season, the New South Wales Rural Fire Service responded to more than 6,950 bushfires and grassfires across the State. In that period the New South Wales Rural Fire Service formally investigated more than 1,900 suspicious bushfires or grassfires. This is in addition to bushfire incidents that are reported and investigated by police through Strike Force Tronto. It is sad to think that some of these may have occurred at the hands of others.

While the New South Wales Rural Fire Service works hard to keep our communities safe through bushfire reduction programs and public awareness campaigns, these efforts can be undermined because of the careless acts of others. It is for this reason that the Baird Government is taking the threat of bushfires seriously and has proactively developed the Rural Fires Amendment Bill to address these mindless acts. This bill introduces two key measures into section 100 (1) of the Rural Fires Act 1997 to address an emerging problem for the New South Wales Rural Fire Service—fires being lit during a total fire ban. A total fire ban is introduced when weather conditions pose a high fire risk. These involve predominantly hot, dry and windy conditions.

Debate adjourned on motion by the Hon. Niall Blair and set down as an order of the day for a later hour.



Full Day Hansard Transcript (Legislative Council, 22 October 2014, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 22 October 2014 (Proof).

RURAL FIRES AMENDMENT BILL 2014

Second Reading

Debate resumed from an earlier hour.

The Hon. NIALL BLAIR (Parliamentary Secretary) [6.19 p.m.], on behalf of the Hon. John Ajaka: I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

When a Total Fire Ban is in force no fires can be lit in the open, fire permits are suspended and general purpose work such as welding or grinding cannot be done outdoors.

Holders of a fire permit are contacted by the NSW Rural Fire Service and informed that their permit is suspended until further notice.

I understand that in national parks, rangers routinely visit camping grounds to tell visitors that a Total Fire Ban is in operation.

Camping permits also inform visitors when an open fire cannot be lit.

Furthermore, the message is frequently broadcast in our towns and cities.

The provisions relating to unlawfully lighting a fire are contained at section 100(1) of the Rural Fires Act 1997. The section makes it an offence for a person to set fire or cause a fire to be set on another person's land or property.

The section also makes it an offence for an owner/occupier of a property to allow a fire to escape in a way that endangers other property and people.

While the vast majority of people understand the importance of a Total Fire Ban and comply with its terms, there are unfortunately some within our community who persist in lighting fires and putting innocent lives at risk.

One example is where an individual has a fire permit and is told by the NSW Rural Fire Service not to conduct a hazard reduction burn during a Total Fire Ban, and that advice is ignored.

This has become a key concern for the NSW Rural Fire Service, particularly in certain parts of the State, and it is a concern I think all of us share.

A Total Fire Ban is a serious decision made by the Commissioner of the Rural Fire Service based on such factors as weather conditions, bushfire risk and the amount of "fuel loads"—like leaf litter around a home.

Given how important this declaration is and the work that is involved in letting the public know, from someone changing the Fire Danger Rating sign outside their town to media broadcasts state wide, it is not a step that is taken lightly.

To address this, the bill proposes to introduce an aggravating factor and an aggravated offence for cases where a fire has been lit during a Total Fire Ban.

Our amendments establish a new section 100(1A) of the bill, which enables a court when determining a penalty for unlawfully lighting a fire, to consider as an aggravating factor that the offence was committed at a place where—and when—a Total Fire Ban was in force.

Adding that the aggravating factor must be considered by the court recognises that lighting a fire during a Total Fire Ban is a more serious offence, given the increased risk posed to the community in terms of property and stock losses, injuries and fatalities.

Secondly, we will now have a new aggravated offence aimed at individuals who continually ignore

warnings from the NSW Rural Fire Service not to light fires during a Total Fire Ban.

The offence is for a group of people who are not deterred by the existing penalty, and for whom a more severe sentence is appropriate.

Under new section 100(1B) if:

- a person, without lawful authority, sets fire or causes a fire to be set ... on another person's property, or
- if an owner-occupier of land allows a fire to escape in a way that endangers other people and their property

and they know that the place where the fire was lit was subject to a Total Fire Ban, then they may face a maximum penalty of seven years imprisonment, or 1,200 penalty units, which is \$132,000, or both.

It is important to note that when this is heard in court, the prosecution will be required to show that the person received sufficient information and warning that a Total Fire Ban existed.

If a jury is not satisfied that a person was sufficiently aware a Total Fire Ban was in place, the jury may still find a person guilty of an offence under section 100(1).

The aggravating factor will then also be taken into consideration by the court.

The bill will also strengthen the operation of section 100(1) by expanding the ability for police and NSW Rural Fire Service officers to issue penalty notices in cases where an offence has been committed but no major damage has been caused and the investigating officer decides on the circumstance of the case, it does not warrant prosecution in court.

This will be achieved via an amendment to the Rural Fires Regulation 2013. The penalty notice will be fixed to an amount of not more than \$2,200.

This is consistent with the penalty notice amount issued under section 100(2) of the Rural Fires Act 1997.

In addition to these offences we are also proposing changes to the way fire permits are issued. These changes will give agencies greater flexibility to do their work, and will reduce red tape.

Under section 89 of the Rural Fires Act 1997, fire permits can be issued to allow a person to light a fire on their land for certain purposes such as hazard reduction.

Fire permits impose safety conditions for any burning that is done during a Bush Fire Danger Period.

Bush Fire Danger Periods restrict the lighting of fires by the use of fire permits. However, when a Total Fire Ban is declared all permits are suspended and the permit holder is informed.

Total Fire Bans may be declared and undeclared throughout the Bush Fire Danger Period.

A fire permit imposes conditions on the way a fire is lit and maintained, and helps ensure agencies such as the NSW Rural Fire Service know when and where land holders intend to burn.

Standard conditions include requirements for a permit holder to remain on site while the fire is lit and until it is extinguished, and the ability for the permit to be varied, cancelled or suspended depending on weather conditions.

At present, section 89 prevents the NSW Rural Fire Service or Fire and Rescue New South Wales from issuing a permit unless a bush fire hazard reduction certificate, or other approval such those found under the Environmental Planning and Assessment Act 1979, is given.

In practice, there are activities such as agricultural burns that may not require an environmental approval or a bushfire hazard reduction certificate as they do not adversely impact on the environment.

There are also some activities that have existing exemptions in place.

Yet if an environmental approval or bushfire hazard reduction certificate is not obtained, though not specifically required, this could render the fire permit invalid.

The mandatory requirement to have a bush fire hazard reduction certificate, when another consent or approval is in place, represents an additional layer in terms of resourcing and red tape.

To address this, it is proposed that section 89(2) be amended to state that an appropriate authority such as the NSW Rural Fire Service may issue a fire permit for a purpose such as hazard reduction; only if lighting that fire is:

- already authorised to be carried out under another approval, or
- does not require authorisation to be carried out under the Rural Fires Act 1997 or any other Act.

The amendment maintains the requirement for an environmental approval or bushfire hazard reduction certificate to be obtained where necessary.

The final proposed amendment establishes arrangements to enable owners and drivers of motor vehicles to nominate individuals who commit offences under section 99A of the Rural Fires Act 1997.

Section 99A covers cases where a person throws lit cigarettes or matches out of a vehicle thereby creating an increased risk of fire.

There is already under section 99A(b) an aggravated version of the offence to cover cases where the littering occurs during a Total Fire Ban.

The need for these changes was clearly demonstrated as recently as last year, when a fire at Homebush Bay destroyed dozens of vehicles, showing how devastating this type of mindless behaviour can be.

In most cases the offence will be dealt with by penalty notice once the registered owner of the motor vehicle has been identified.

However, if the registered owner is not in the vehicle at the time the offence is committed, this amendment will allow for the person actually responsible for the offence to be held accountable, as is the case currently with traffic offences such as speeding infringements or red light offences.

To address this, the bill will introduce an amendment to the Rural Fires Act 1997 to provide that if a "fire risk object" is discarded from a motor vehicle or trailer, the driver or owner will be deemed guilty unless, in the case of the owner:

- he or she was not in the motor vehicle, including the motor vehicle which the trailer was attached to at the relevant time and
- they provide the name and address of the person who was in charge of the motor vehicle at the time the offence occurred.

The inclusion of the broader term "fire risk object" will ensure this important provision captures indiscriminate and dangerous throwing of all lit objects from a vehicle—not just cigarettes. These may include objects such as firecrackers.

If they cannot do this, the owner must satisfy the officer who issued the penalty notice or the court dealing with the offence that they did not know, and could not with reasonable diligence find out the name and address of the alleged offender.

In the case of the driver, he or she will be required to provide the name and address of the passenger who discarded the object while they were in the motor vehicle.

The same provisions that apply to owners will apply to a driver if they cannot provide the passenger's name and address.

The driver or the owner of the motor vehicle will be required to provide this evidence in the form of a statutory declaration to the court or to the officer who issued the penalty notice:

- within 28 days after the penalty notice has been issued, or
- within 28 days after a summons or court attendance notice has been served.

I note that there are a number of exceptions to this provision. The section will not apply:

- if the fire risk object was discarded by a passenger on a bus, taxi or other form of public transport,
- to cases where the object has been discarded from a motor vehicle or trailer that has been stolen.

Fires have a devastating effect on lives, properties and our communities' prosperity.

Our emergency services do a great job of keeping us safe; their professionalism and commitment is recognised across the globe. They are there when we need them, and we thank them for it.

The measures contained in the bill will enhance the ability of the NSW Rural Fire Service to get on with the job of protecting our communities and sends a strong message to those who ignore their advice that their actions will not be tolerated.

I commend the bill to the House.