

RURAL FIRES AMENDMENT BILL 2014

Bill introduced on motion by Mr Stuart Ayers, read a first time and printed.

Second Reading

Mr STUART AYRES (Penrith—Minister for Police and Emergency Services, Minister for Sport and Recreation, and Minister Assisting the Premier on Western Sydney) [7.06 p.m.]: I move:

That this bill be now read a second time.

There is nothing more thoughtless and disappointing than fires that are lit deliberately or carelessly. Fires destroy lives and properties, which has a long-term effect on our communities and the environment in which we live. During the 2013-14 bushfire season the NSW Rural Fire Service responded to more than 6,950 bush and grass fires across the State. In that period the NSW Rural Fire Service formally investigated more than 1,900 suspicious bush and grass fires, which was in addition to the bushfire incidents that were reported to and investigated by police through Strike Force Toronto. Sadly the suffering that was caused by some of these fires may have occurred at the hands of others. While the NSW Rural Fire Service works hard to try to keep our community safe through bushfire reduction programs and public awareness campaigns, these efforts can often be undermined because of the careless acts of others. For this reason, the Baird Government is taking the threat of bushfires seriously and has proactively developed this bill to address these mindless acts.

The bill introduces two key measures under section 100 (1) of the Rural Fires Act 1997 that address the emerging problem for the NSW Rural Fire Service of persons lighting fires during total fire ban days. A total fire ban is introduced when the weather conditions pose a high fire risk. These involve predominantly hot, dry and windy conditions. When a total fire ban is in force, no fires can be lit in the open, fire permits are suspended and general purpose works such as welding and grinding cannot be performed outdoors. Holders of fire permits are contacted by the NSW Rural Fire Service and informed that their permit is suspended until further notice.

<23>

I understand that in national parks rangers routinely visit camping grounds to tell visitors that total fire bans are in operation. Camping permits also inform visitors when an open fire can be lit. Furthermore, the message is frequently broadcast in our towns and cities.

The provisions relating to the lawful lighting of a fire are contained in section 100 (1) of the Rural Fires Act 1997. The section makes it an offence for a person to set a fire or cause a fire to be set on another person's land or property. This section also makes it an offence for an owner or occupier of a property to allow the 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 in 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 NSW RFS 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 RFS, particularly in certain parts of the State, and is a concern that all of us share.

A total fire ban is a serious decision made by the commissioner of the RFS based on such factors as weather conditions, bushfire risk and the amount of fuel loads, like leaf litter, around the 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 the town to the media broadcast statewide, 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 RFS 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, 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 that 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 RFS 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 circumstances of the case that 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 bushfire danger period. Bushfire 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 bushfire danger period.

A fire permit imposes conditions on the way a fire is lit and maintained, and helps ensure that agencies such as the NSW RFS know when and where landholders 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 RFS or Fire and Rescue NSW from issuing a permit unless a bushfire hazard reduction certificate, or other approval such as those found under the Environmental Planning and Assessment Act 1979, is given. In practice, activities such as agricultural burns 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 bushfire hazard reduction certificate when another consent or approval is in place represents an additional layer 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 RFS 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 a lit cigarette 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 a 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 and 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 to which the trailer was attached, 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 that this important provision captures indiscriminate and dangerous throwing of 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 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.

<24>

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, and in 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 the prosperity of our communities. Our emergency services do a great job in keeping us safe. Their professionalism and commitment is recognised across the State. They are there when we need them, and we thank them for that. 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 will send a strong message to those who ignore their advice that their actions will not be tolerated if they light fires on total fire ban days. I commend the bill to the House.

Debate adjourned on motion by Mr Michael Daley and set down as an order of the day for a future day.