



New South Wales

Rural Fires Amendment Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Rural Fires Act 1997* (*the Act*) and related legislation as follows:

- (a) to provide that if a person commits the offence of discarding a lighted tobacco product or match from a motor vehicle under section 99A of the Act:
 - (i) the owner of the vehicle is taken to be guilty of the offence unless the owner gives notice of the name and address of the person in charge of the vehicle at the relevant time, and
 - (ii) the driver of the vehicle is taken to be guilty of the offence unless the driver gives notice of the name and address of the passenger who discarded the lighted tobacco product or match,
- (b) to make the offence under section 100 (1) of the Act of setting fire to another person's land or property, or permitting fire to escape from land, an offence for which a penalty notice may be served,
- (c) to provide that if a person sets fire to another person's land or property, or permits fire to escape from land, where a total fire ban is in force a court must take the total fire ban into account as an aggravating factor in deciding the penalty to be imposed for the offence,
- (d) to create an aggravated offence of setting fire to another person's land or property, or permitting fire to escape from land, knowing that a total fire ban is in force,
- (e) to make minor amendments relating to the issue of fire permits.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Rural Fires Act 1997 No 65

Offence of discarding lighted tobacco product or match from vehicle—deeming provision

Section 99A of the Act makes it an offence to discard a lighted tobacco product or match or any incandescent material on any land. **Schedule 1 [4]** deems the owner and driver of a motor vehicle from which such an object is discarded to be guilty of the offence unless:

- (a) the owner was not in the vehicle and either gives notice of the name and address of the person in charge of the vehicle at the relevant time or shows that the owner did not know (and could not with reasonable diligence have ascertained) those details, and
- (b) the driver gives notice of the name and address of the passenger who discarded the lighted tobacco product or match and shows that the driver did not know (and could not with reasonable diligence have ascertained) those details.

Notice of the details of the person in charge of the vehicle, or of the passenger, must be verified by statutory declaration. The proposed amendment also creates further exceptions to the deeming provision where the vehicle is a passenger vehicle or stolen. **Schedule 1 [3]** is a consequential amendment.

Offence of setting fire to land etc—aggravating factor and aggravated offence

Schedule 1 [5] provides that if a person sets fire to another person's land or property, or permits fire to escape from land, where a total fire ban is in force a court must take the total fire ban into account as an aggravating factor in deciding the penalty to be imposed for the offence. It also creates an aggravated offence of setting fire to another person's land or property, or permitting fire to escape from land, knowing that a total fire ban is in force. The aggravated offence will require the prosecution to prove, in addition to the elements of the offence in existing section 100 (1), that a total fire ban was in force where the accused set fire to land or property, or permitted fire to escape from land, and that the accused knew the total fire ban was in force. The aggravated offence carries a maximum penalty of 1,200 penalty units or imprisonment for 7 years or both. If the accused is charged with the aggravated offence but the prosecution is unable to prove the aggravating elements (that a total fire ban was in force and that the accused knew of the total fire ban), the accused may still be found guilty of the offence under existing section 100 (1). **Schedule 1 [6]** makes the aggravated offence an indictable offence. **Schedule 1 [7]** inserts transitional provisions.

Fire permits

Schedule 1 [2] expands the circumstances in which the Commissioner of the NSW Rural Fire Service or the Commissioner of Fire and Rescue NSW may issue a fire permit authorising a person to light a fire during a bush fire danger period for a specified purpose to include circumstances in which lighting a fire for that purpose does not contravene any other Act or law. At present, such a permit may only be issued if a bush fire hazard reduction certificate has been issued in respect of the purpose or an approval, consent or authority required for the purpose has been given. **Schedule 1 [1]** makes a minor related amendment.

Schedule 2 Amendment of other legislation

Schedule 2.1 [2] amends the *Rural Fires Regulation 2013* to make the offence under section 100 (1) of the Act of setting fire to another person's land or property, or permitting fire to

escape from land, an offence that may be dealt with by a penalty notice of \$2,200. **Schedule 2.1 [1]** makes an amendment consequential on the amendment made by Schedule 1 [4].

Schedule 2.2 [2] amends the *Criminal Procedure Act 1986* to provide that the aggravated offence of setting fire to another person's land or property, or permitting fire to escape from land, knowing that a total fire ban is in force, is to be tried summarily in the Local Court unless the prosecutor elects to have the offence dealt with on indictment. **Schedule 2.2 [1]** provides that, if the offence is dealt with summarily, the maximum monetary penalty that may be imposed is 100 penalty units.



New South Wales

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New South Wales

Rural Fires Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend the *Rural Fires Act 1997* and other legislation to make further provision with respect to fire-related offences and fire permits.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Rural Fires Amendment Act 2014*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Rural Fires Act 1997 No 65	1
[1]	Section 89 Issue of permits	2
	Omit “must not issue a fire permit for a purpose unless” from section 89 (2).	3
	Insert instead “may issue a fire permit for a purpose only if”.	4
[2]	Section 89 (2) (c)	5
	Insert at the end of section 89 (2) (b):	6
	, or	7
	(c) lighting a fire for the purpose does not contravene any other Act or law.	8
[3]	Section 99A Offences—discarding lighted cigarettes etc	9
	Insert “(a <i>fire risk object</i>)” after “incandescent material”.	10
[4]	Section 99A (2)–(10)	11
	Insert at the end of section 99A:	12
	(2) Driver and owner of vehicle deemed guilty	13
	If a fire risk object is, in contravention of subsection (1), discarded from a motor vehicle, or from a trailer attached to a motor vehicle, the following are taken to be guilty of an offence under that subsection:	14
	(a) in the case of a fire risk object discarded from a motor vehicle—the driver of the motor vehicle,	15
	(b) in the case of a fire risk object discarded from a motor vehicle—the owner of the motor vehicle,	16
	(c) in the case of a fire risk object discarded from a trailer attached to a motor vehicle—the owner of the trailer.	17
	(3) Only one person liable	18
	Subsection (2) does not affect the liability of the actual offender but, if a penalty has been imposed on or recovered from any person in relation to the offence (whether the actual offender, the driver or the owner), no further penalty may be imposed on or recovered from any other person. In this subsection, <i>penalty</i> includes a penalty under a penalty notice.	19
	(4) Exception for passenger vehicles	20
	Subsection (2) does not apply if:	21
	(a) the motor vehicle is a bus, taxi or other public transport vehicle and is being used at the time to convey a public passenger, and	22
	(b) the fire risk object was discarded by that passenger.	23
	(5) Exception for stolen vehicles	24
	Subsection (2) (b) does not apply if the motor vehicle was at the time a stolen motor vehicle or a motor vehicle illegally taken or used.	25
	(6) Exception for stolen trailers	26
	Subsection (2) (c) does not apply if the trailer was at the time a stolen trailer or a trailer illegally taken or used.	27
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(7)	Exception for owner when not driver	1
	Subsection (2) (b) or (c) does not apply if the owner was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time and:	2
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	(a) gives notice in accordance with subsection (9) of the name and address of the person who was in charge of the motor vehicle at the relevant time, or	5
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	(b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.	8
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	A notice under this subsection is, in proceedings against the person named in the notice for an offence under subsection (1), evidence that the person was driving the motor vehicle at the relevant time.	12
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(8)	Exception for driver when not offender	15
	Subsection (2) (a) does not apply if the driver:	16
	(a) gives notice in accordance with subsection (9) of the name and address of the passenger in the motor vehicle who discarded the fire risk object, or	17
		18
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	(b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the driver did not discard the fire risk object and did not know, and could not with reasonable diligence have ascertained, the name and address of the passenger who discarded the fire risk object.	20
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	A notice under this subsection is, in proceedings against the person named in the notice for an offence under subsection (1), evidence that the person discarded the fire risk object from the motor vehicle.	25
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		27
(9)	Notice given by owner or driver	28
	A notice for the purposes of subsection (7) (a) or (8) (a) must be verified by statutory declaration and:	29
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	(a) if a penalty notice has been given for the offence—the notice must be given to an officer specified in the penalty notice for the purpose within 28 days after service of the penalty notice, or	31
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	(b) if a court is dealing with the offence—the notice must be given to the prosecutor within 28 days after service of the summons or court attendance notice for the offence.	34
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(10)	Definitions	37
	In this section:	38
	<i>motor vehicle</i> and <i>owner</i> of a motor vehicle have the same meanings as in the <i>Road Transport Act 2013</i> .	39
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[5] Section 100 Offences	1
Insert after section 100 (1):	2
(1A) In determining the penalty for an offence under subsection (1) that was committed when a total fire ban under Division 6 was in force in the part of the State in which the fire was set or was permitted to escape, the court must take the total fire ban into account as an aggravating factor.	3 4 5 6
Note. Section 21A (2) of the <i>Crimes (Sentencing Procedure) Act 1999</i> sets out other aggravating factors to be taken into account when determining the appropriate penalty for an offence.	7 8 9
(1B) A person who, without lawful authority:	10
(a) sets fire or causes fire to be set to the land or property of another person, the Crown or any public authority, or	11 12
(b) being the owner or occupier of any land, permits a fire to escape from that land under such circumstances as to cause or be likely to cause injury or damage to the person, land or property of another person or the land or property of the Crown or a public authority,	13 14 15 16
knowing that a total fire ban under Division 6 is in force in the part of the State in which the fire is set or permitted to escape, is guilty of an offence.	17 18
Maximum penalty: 1,200 penalty units or imprisonment for 7 years, or both.	19
(1C) If on the trial of a person for an offence under subsection (1B) the trier of fact is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), the trier of fact may find the accused not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.	20 21 22 23 24 25
[6] Section 134 Proceedings for offences	26
Insert “or (1B)” after “section 100 (1)” wherever occurring.	27
[7] Schedule 3 Savings, transitional and other provisions	28
Insert after Part 6:	29
Part 7 Provisions consequent on enactment of Rural Fires Amendment Act 2014	30 31
27 Definition	32
In this Part:	33
<i>amending Act</i> means the <i>Rural Fires Amendment Act 2014</i> .	34
28 Application of amendments	35
(1) The amendments made to section 99A by the amending Act do not apply to an offence under that section committed before the commencement of the amending Act.	36 37 38
(2) Section 100 (1A) (as inserted by the amending Act) does not apply to an offence under section 100 (1) committed before the commencement of the amending Act.	39 40 41

Schedule 2	Amendment of other legislation	1
2.1	Rural Fires Regulation 2013	2
[1]	Schedule 2 Penalty notice offences	3
	Insert “(1)” after “Section 99A” in Column 1 of Part 1.	4
[2]	Schedule 2, Part 1	5
	Insert “(1) or” after “Section 100” in Column 1.	6
2.2	Criminal Procedure Act 1986 No 209	7
[1]	Section 268 Maximum penalties for Table 2 offences	8
	Insert “or (1B)” after “section 100 (1)” in section 268 (2) (h).	9
[2]	Schedule 1 Indictable offences triable summarily	10
	Insert “or (1B)” after “section 100 (1)” in clause 9 of Table 2.	11