



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.