



# Legislative Assembly

## Crimes Amendment (Bushfires) Bill

12/04/2002

### Hansard Extract

#### Second Reading

**Mr STEWART** (Bankstown—Parliamentary Secretary), on behalf of Mr Debus [10.11 a.m.]: I move:

That this bill be now read a second time.

All honourable members will recall the bushfires that damaged the State in December and in January. The men and women who fought on the front line—volunteer and professional firefighters, police and those involved in planning, communications, catering and welfare—worked together in partnership in unforgiving weather conditions. Many risked their lives. They were defending thousands of homes—and in thousands of cases, they succeeded. They were stunningly successful. The volunteer forces that come together at times of significant natural disaster are almost unique to Australia and New South Wales has achieved the highest standards in this regard. The bill before the House seeks to emphasise the gravity of the danger that bushfires represent by enacting a special offence of causing a bushfire.

In introducing this bill the Government is seeking not to fill a gap in the criminal law but, rather, to seek to emphasise society's abhorrence and condemnation of the deliberate lighting of bushfires by making specific provisions against it. In doing so the Government is further implementing reforms to the criminal law arising out of the Model Criminal Code. The code has been drawn up by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys General. It is a committee in which this Government has been heavily involved since its inception. This new offence is yet another example of this Government taking the best options for law reform and adapting them to suit the needs of this State. The Government has previously enacted legislation based on the Model Criminal Code in the areas of computer offences, sabotage, contamination of goods and sexual servitude.

The bill proposes to insert into the Crimes Act 1900 a new offence of causing a bushfire. This offence will be committed if a person intentionally causes a fire and either intends to spread the fires, or is reckless as to the spread of it to vegetation on any public land or land belonging to another. I note that has been a matter of major concern to the all honourable member of this House, particularly the honourable member for Peats and the honourable member for East Hills, who are present in the Chamber and who are almost constantly reinforcing the need for controlling the spread of fires. This bill addresses those concerns but the offence is not intended to be a catch-all arson offence. The Crimes Act 1900 already contains more than adequate offences of malicious damage to property. Currently, section 195 (b) of the Crimes Act 1900 provides for up to 10 years imprisonment for maliciously damaging property by the use of fire or explosives. A person who recklessly damages property in this way acts maliciously. Under section 196 (b) the penalty rises to 14 years if the property is damaged with the intention of injuring a person, and under section 198 a maximum penalty of 25 years imprisonment can be applied to a person who maliciously damages property with the intention of endangering life.

I now turn to the provisions of the bill. Schedule 1 inserts a new subdivision 5 entitled "Bushfires". This new offence is bushfire specific and it is targeted to catch those persons who intentionally set fire to our bush. Proposed section 203E (1) establishes the new offence, which requires that a person be reckless as to the spread of fire to vegetation. If buildings or other property are damaged as a result of the spread of such a fire, such damage can be taken into account in sentencing. When appropriate, additional charges may be laid relating to the additional damage. The penalty for the new offence of causing a bushfire will sit in the middle of the existing range of property damage penalties. The danger to life and property that a bushfire represents in a continent as dry as Australia means that the offence should be seen to be a special aggravated form of damage to property. The bill therefore will enact a maximum penalty of 14 years imprisonment, placing the offence on a par with the offence of damaging property with the intention of injuring a person.

It should be noted that for the purposes of consistency the Government has chosen to depart from the Model Criminal Code's suggested 15-year maximum penalty, to maintain consistency in the application of 14-year imprisonment penalties in the Crimes Act 1900. However, this offence will not require that the person deliberately intends to cause any damage to property or that the person intends the fire to spread. The emphasis of this offence is on recklessness as to the spread of fire to vegetation. The speed at which fire can spread and the need to take immediate preventative action means that it is appropriate for persons to be expected to light fires only in circumstances where they are in a position to control the fire and to prevent it spreading to vegetation.

"Recklessness" remains a common law term in New South Wales. It has a number of meanings in different contexts. In this context "recklessness" will mean that the defendant was aware when intentionally causing a fire that there was a possibility that the fire could spread to vegetation on any public land or land belonging to another in

a way that was out of the defendant's control. The definition of the term "spread" contained in proposed Section 203D gives a special meaning. It is important to note that the offence contemplates recklessness as to the spread of the fire, not any thought as to the extent of damage that such a fire might cause. The aim is to prohibit conduct that creates an unacceptable risk of damage. The offence is therefore aimed at preventing conduct that might lead to damage, rather than waiting until the damage has occurred. The offence sends a strong message to those who light fires to be extremely careful. If a fire is carelessly lit, it may be an offence even if the fire is, by good luck, extinguished before damage occurs. That message needs to be strongly asserted.

Accordingly, the phrase "spread of a fire" is given a special meaning in the definition in proposed section 203D. The way the fire might spread must be such that it is beyond the capacity of the person who causes it to then extinguish it. Thus it is not an offence under this provision to light a fire with the intention of letting it spread across land, provided that the person who lit the fire has taken sufficient precautions to ensure that the fire is at all times controlled. Whilst a person in such circumstances may not be guilty of the proposed bushfire offence, the person may still be guilty of the lesser offence of malicious damage to property. The offence also requires that the person causing the fire was aware of the possibility of the fire spreading to property owned by another, regardless of whether that be public or private land. This means that fires lit by landowners on their own land will not fall within the scope of the offence unless there is the possibility that the fire could spread beyond the boundary of their land. On the other hand, a firebug lighting an uncontrolled fire on public land such as a national park will instantly fall within the scope of the offence.

In some circumstances lighting a fire which may possibly spread to another's land or to public land is clearly for a justified reason, such as when firefighters carry out bush fire fighting or hazard reduction operations. In recognition of this, a specific exemption from prosecution for such persons is created by proposed section 203E (3). This will act to avoid any impression that the new offence might in any way hamper the ability of firefighters and emergency workers to make quick decisions in emergency situations. It is important to note that this bushfire offence recognises the fact that innocent people can be caught in dangerous situations involving bushfires. The definition of causing a fire in proposed section 203D includes failing to contain a fire. However, two key exceptions are provided that significantly qualify this position. Under the proposed definition a person does not cause a fire by failing to contain a fire which was lit by another person. Further, a person does not cause a fire by failing to contain a fire which is beyond their control.

This second exception directly envisages a situation such as a person safely lighting a fire, such as a barbecue, and for some unforeseeable reason the fire goes beyond the person's control. An example might be an unexpected and freakish sudden strong gale of wind that instantly causes the treetops surrounding the barbecue area to catch fire and that fire is instantly uncontrollable. This person is not guilty of lighting a bushfire and cannot be reasonably expected to put themselves at risk in attempting to contain the fire.

The offence created by this bill is aimed not to comprehensively rewrite the law as it relates to bushfires. Significantly, it will work as a direct complement to the offence currently contained in section 100 (l) of the Rural Fires Act 1997, being an offence of strict liability. That offence relates to the setting of fires, without lawful authority, and carries a maximum penalty of five years imprisonment or a \$110,000 fine. New section 203E (4) of the Crimes Act 1900, as created by this bill, provides that the offence under section 100 (1) of the Rural Fires Act is available as an alternative verdict in a prosecution under the new offence. This will facilitate the complete integration of the new offence into the existing fire related offence structure whilst maintaining the Government's strong position in condemning any person found lighting a dangerous fire of any kind.

The toll exacted against our community due to the recent Christmas and New Year bushfires will not be forgotten quickly by those directly affected or by those who watched daily their neighbours and friends suffering so greatly. It is inevitable that bushfires will occur in such a hot and dry place as New South Wales—we have had to put up with that historically. The mission of this Government is to take every step possible to prevent their occurrence, their force, their regularity and, most importantly, their being lit deliberately. This bill directly confronts, in a preventative manner, the deliberate lighting of bushfires by imposing a heavy penalty on such illegal acts. I strongly commend the bill to the House.