

Crimes Amendment (Bushfires) Bill 2002

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 *Crimes Act 1900* to provide for an offence of causing a bushfire. The proposed offence carries a maximum penalty of imprisonment for 14 years.

The offence covers persons who intentionally cause a fire and intend the fire to spread, or are reckless as to the spread of the fire, beyond their control to vegetation on public land or land belonging to another.

A person is not guilty of the offence if the person is a firefighter, or is acting under the direction of a firefighter, and caused the fire in the course of bushfire fighting or hazard reduction operations.

The proposed offence is generally based on the offence contained in the *Model Criminal Code* recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General. In light of other relevant offences and penalties in New South Wales, the proposed offence carries a slightly lower maximum penalty (imprisonment for 14 years rather than 15 years) and provides an express defence for firefighters.

The proposed offence applies to a person who **causes a fire**, which is defined to include lighting a fire or maintaining a fire, and also failing to contain a fire (except where the fire was lit by another person or the fire is beyond the control of the person who lit the fire). This will cover the situation where, for example, a person lights a fire that at that time is not at risk of spreading beyond the person's capacity to extinguish it, but at a later time the person fails to contain the fire when there is a risk that it will so spread.

The proposed offence complements the existing offence relating to the setting of fires, without lawful authority, in section 100 (1) of the *Rural Fires Act 1997*. That existing offence carries a maximum penalty of 5 years imprisonment or 1,000 penalty units (currently \$110,000).

Proposed section 203E (4) of the *Crimes Act 1900* provides that the offence under section 100 (1) of the *Rural Fires Act 1997* is available as an alternative verdict in a prosecution under the proposed new offence.

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 a day to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1 and to the *Criminal Procedure Act 1986* set out in Schedule 2.

Schedule 1 amends the *Crimes Act 1900* to create the offence of causing a bushfire with a maximum penalty of imprisonment for 14 years.

Schedule 2 amends the *Criminal Procedure Act 1986* to enable the offence to be dealt with summarily unless the prosecutor or the person charged elects to have the matter dealt with on indictment before a jury.