



New South Wales

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.



New South Wales

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New South Wales

Crimes Amendment (Bushfires) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Crimes Act 1900* and the *Criminal Procedure Act 1986* with respect to causing bushfires.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Bushfires) Act 2002</i> .	3
2 Commencement	4
This Act commences on a day to be appointed by proclamation.	5
3 Amendment of Acts	6
Each Act specified in Schedules 1 and 2 is amended as set out in those Schedules.	7 8

Schedule 1	Amendment of Crimes Act 1900 No 40	1
	(Section 3)	2
Part 4, Division 2, Subdivision 5		3
Insert after Subdivision 4 of Division 2 of Part 4:		4
Subdivision 5	Bushfires	5
203D	Definitions	6
	In this Subdivision:	7
	<i>causing a fire</i> includes:	8
	(a) lighting a fire, or	9
	(b) maintaining a fire, or	10
	(c) 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.	11 12 13
	<i>firefighter</i> means a member of a fire brigade under the <i>Rural Fires Act 1997</i> or the <i>Fire Brigades Act 1989</i> or of any other official firefighting unit (including a unit from outside the State).	14 15 16 17
	<i>spread</i> of a fire means spread of a fire beyond the capacity of the person who causes the fire to extinguish it.	18 19
203E	Offence	20
	(1) A person:	21
	(a) who intentionally causes a fire, and	22
	(b) who is reckless as to the spread of the fire to vegetation on any public land or on land belonging to another,	23 24
	is guilty of an offence.	25
	Maximum penalty: Imprisonment for 14 years.	26
	(2) For the purposes of this section, recklessness may also be established by proof of intention.	27 28

- (3) A person is not criminally responsible for an offence against this section if: 1
2
- (a) the person is a firefighter or acting under the direction of a firefighter, and 3
4
- (b) the person caused the fire in the course of bushfire fighting or hazard reduction operations. 5
6
- (4) If on the trial of a person for an offence against this section the jury 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 against section 100 (1) of the *Rural Fires Act 1997*, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly. 7
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Schedule 2	Amendment of Criminal Procedure Act 1986 No 209	1
		2
	(Section 3)	3
Schedule 1	Indictable offences triable summarily	4
	Insert after item 9 in Table 1:	5
9A	Bushfires	6
	An offence under section 203E of the <i>Crimes Act 1900</i> .	7