

CLAUSE NOTES

CRIMINAL CODE AMENDMENT (ARSON) BILL 2013

PART I PRELIMINARY

Clause 1: **Short Title**
Provides that this Act may be cited as the Criminal Code Amendment (Arson) Act 2013

Clause 2: **Commencement**
The Act will commence on the day on which it receives the Royal Assent

PART 2 CRIMINAL CODE ACT 1924 AMENDED

Clause 3: **Principal Act**
Provides that in Part 2, a reference to the Principal Act is a reference to the Criminal Code Act 1924.

Clause 4: **Schedule I Amended (Criminal Code)**
Schedule I of the Criminal Code Act 1924 is amended:

- (a) By omitting from section 267(3) “An” and substituting “Except as otherwise provided in this chapter, an”. This is as the mental element specified here is to be changed in relation to the new 268A(1)(b)(ii)
- (b) Omits some words from the crime of arson so that arson will now only be a charge in relation to buildings, erections or structures.
- (c) Amends the offence of setting fire to vegetation. The current offence

is replicated at new subsection (1)(a). New subsection (1)(b) provides a number of elements for a new offence where a fire spreads to vegetation. (i) provides that a person sets a fire that spreads to vegetation or other vegetation. The first fire that is set can be to anything, including vegetation. The subsequent fire that results from the spread must be to vegetation. (ii) provides that the person knew, or ought to have known, that the fire was likely to so spread. The new offence provides that a person knew or ought to have known that the fire would spread in the manner it did. Ought to have known means asking if the person stopped and thought about it, in the situation that he was in, ought he with his knowledge and attributes to have known that the fire was likely to spread? (iii) clarifies that the fire which has spread needs to be a fire that would have been unlawful if it had been set directly by the accused.

- (d) Omits the word “log” and replaces it with “log or”
- (e) Includes new items in what may constitute vegetation for the purposes of section 268A of the Principal Act.

Clause 5: Principal Act

Provides that in Part 3 of this Act, the term Principal Act is a reference to the Sentencing Act 1997.

Clause 6: Part 9, Division 2A Inserted

After section 69 of the Principal Act, sections 69A and 69B are inserted.

Division 2A – Recovery of costs and expenses

69A. Recovery of Costs and Expenses

- (1) Allows the Court to make an order that a person convicted of an arson offence under the Criminal Code is to pay the reasonable costs and expenses incurred by the Crown, the State Fire Commission or a Government Business Enterprise in responding to and fighting a fire that is the subject of the offence
- (2) Outlines how an order under subsection 1 may be made.
- (3) Provides that an application is to be made as soon as practicable after a finding or guilt.
- (4) Clarifies that the DPP is not obliged to apply for a compensation order.
- (5) Makes sure that persons affected by the fire are not precluded from recovery of costs and expenses for their own losses.
- (6) Provides that the Court is not bound by the rules of evidence in determining the amount of costs recoverable

- (7) Provides some definitions for the purpose of the section.

69B. Enforcement of Recovery Order

An order under section 69A is enforceable under the Supreme Court Civil Procedure Act 1932.

PART 4 MISCELLANEOUS

Clause 7: Repeal of Act

Is a standard clause in all amending legislation which automatically repeals the amending legislation after the Act commences. The provisions that the amending legislation inserts into the Principle Act still remain in force after the repeal of the Amending Act.