

SECOND READING SPEECH

CRIMINAL CODE AMENDMENT (ARSON) BILL 2013

Mr Speaker, I move that the Bill be now read a second time.

Arson is, unfortunately, a very real problem in our community. While not all bushfires are started deliberately, some of them are. Each summer, residents across Australia brace themselves to see what the coming fire season may bring. The horrors of last summer's Tasman Peninsula fires are still fresh in the minds of Tasmanians.

This Government is committed to ensuring that a person who unlawfully sets or maintains a fire, where that person knew, or ought to have known, that the fire was likely to spread, are able to be prosecuted for the resultant bushfire. In addition, these people will now be able to be ordered to pay the costs incurred in responding to the bushfire they lit.

The *Criminal Code Amendment (Arson) Bill 2013* amends the *Criminal Code Act 1924* and the *Sentencing Act 1997*. The majority of amendments to the Code are to simplify and clarify existing provisions.

The Criminal Code has a range of offences in relation to arson. Those offences are arson, setting fire to vegetation, setting fire to property and setting fire with intent to injure person or property. Each of these offences is punishable by up to 21 years imprisonment.

In this Bill, the Criminal Code Act is amended to include an offence where a person sets a fire and that fire spreads to vegetation. This may commonly be termed a bushfire, but within the Code it will be incorporated in to the existing offence of setting fire to vegetation.

The creation of this offence follows on from a recommendation made by the Sentencing Advisory Council. In 2010, the then Attorney General, Lara Giddings, referred the matter of arson and deliberately lit fires to the Sentencing Advisory Council for their investigation and report. The request for this report was prompted by Australia-wide concerns about the catastrophic consequences of bushfire.

In December 2012, the Council delivered its final report. The Report made a number of recommendations, only some of which required legislative change. It is worth noting that the Council's recommendation to amend the *Youth Justice Act 1997* was addressed in an amendment to that Bill during 2012.

The Bushfire Inquiry Report also recommends that legislation and enforcement arrangements be reviewed to ensure that there are suitable offences and penalties.

After careful consideration of the recommendations, and consultation with the Director of Public Prosecutions, this Bill implements some of the changes that were recommended.

The current offence of arson in section 268 of the Code covers any building, ship or vessel as well as an assortment of agricultural and forest products. The Sentencing Advisory Council concluded that, in a post agricultural society, there is no reason why this offence should remain so broad.

The Council asserted that as arson is the most serious offence in the list of arson related offences there is a good argument for a more modern approach to the offence. In addition, it is more likely that setting fire to a building or structure is more likely to result in serious loss and damage, and more likely that there will be people within.

The Bill amends the Code so that the offence of arson now only applies to building and structures; this is distinguished from the more general offence of setting fire to property.

Section 268A of the Code provides the offence of unlawfully setting fire to vegetation. At present, a person who unlawfully sets fire to any vegetation, whether live or dead, is guilty of a crime. This section requires setting fire to vegetation.

If a person unlawfully sets fire to something other than vegetation, such as to a car, or sets a lawful fire, such as a campfire, and the fire then spreads to vegetation and creates a bushfire it is not captured by this section. This Bill expands section 268A. There will now be an additional set of elements which will capture bushfire situations.

The elements of the bushfire offence are:

- That a person sets or maintains a fire – this fire can be to anything, and can be either lawful, such as a campfire, or unlawful, such as a cigarette butt thrown out a window or burning out a stolen car;
- This fire spreads to vegetation, or if the original fire was lawfully set to vegetation, such as the campfire, then it spreads to other vegetation, such as the bushes next to the campsite.
- The person knew, or ought to have known that the fire was likely to so spread. 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?
- Factors that might be taken in to account when determining whether a person ought to have known the fire would spread might include the weather conditions on the day, fire danger rating, proximity to other

flammable material, and the person's belief in their ability to control the fire.

- Finally, it must be shown that the "second fire" would have been unlawful if it had been set directly by the accused. This means, for example, that a farmer performing a lawful fuel control burn on their property only will not be captured by this offence. If the fire spreads to their neighbour's property, the fire on the neighbour's property is unlawful, and the original farmer can be captured by this offence.

As the offence will be contained within the Criminal Code, it will be punishable by up to 21 years imprisonment.

I am advised by my colleague, the Minister for Police and Emergency, Mr David O'Byrne, that amendments to the Police Offences Act are on foot. Those amendments will create a specific arson offence in that Act which can be utilised for less serious offences.

The Sentencing Advisory Council recommended that the *Sentencing Act 1997* be amended to include an ancillary sentencing option to order an offender convicted of a fire-related offence to reimburse the costs incurred by the State to respond to the fire.

The Council concluded that, notwithstanding possible issues if an offender did not have means to pay costs, it is not unsound or unreasonable to expect an offender to pay for the cost incurred by the State for the fire fighting operation for an arson related offence.

The current compensation provision is restricted to compensation payable to a person and is therefore not wide enough to cover payment for the deployment of emergency services.

This Bill amends the Sentencing Act by inserting new sections 69A and 69B to that Act. These sections give the Supreme Court the discretion to recover reasonable costs and expenses from an offender. The expenses that can be recovered are those of the Crown, the State Fire Commission and a Government Business Enterprise that were incurred in responding to and fighting the fire that is the subject of the offence.

The Court may make the order on its' own motion, or on application from the Crown, the State Fire Commission or a Government Business Enterprise in whose favour the order is sought; or by the DPP on behalf of these bodies. The DPP cannot be compelled to make such an application. The application must be made as soon as practicable after the offender is found guilty or convicted of the offence.

This new section will not take away from, or affect the right of, any person to recover damages for, or to be indemnified against, any injury, loss, destruction or damage so far as it is not satisfied by payment or recovery of costs and expenses under this section.

The Court is not bound by rules of evidence and may inform itself in any matter in any way it considers appropriate when determining the amount of costs and expenses.

New section 69B provides that a costs order is enforceable under the *Supreme Court Civil Procedure Act 1932* just like any other order of the Court.

This will emphasise the seriousness with which deliberately or recklessly lighting fires in the Tasmanian bush is to be treated. After the devastating fires of this summer, I am pleased to be

strengthening and clarifying the laws relating to deliberately lit fires.

I commend the Bill to the House.