

SECOND READING SPEECH

HON. M.T. (RENE) HIDDING MP

Fire Service Amendment (Fire Infringement Notices) Bill 2015

Madam Speaker, I move that the Bill now be read for the second time.

The *Fire Service Amendment (Fire Infringement Notices) Bill 2015* provides the Tasmania Fire Service with more effective options to enforce minor breaches of the *Fire Service Act 1979* and offers another means of reducing fire-offending behaviour. The Bill reflects the principles of restorative justice, recognising the importance of educating individuals and raising community awareness of fire safe practices, rules and responsibilities. The Bill offers processes to inform and if necessary penalise offenders aiming to prevent further offending.

The Bill will:

- provide the Tasmania Fire Service with alternative enforcement options, thereby avoiding costly, time-consuming and sometimes, ineffective court action;
- implement alternatives that educate and inform offenders of their fire safety obligations; and
- provide enforcement options that deter offenders (and potential offenders) from future offending.

The Bill also provides three ways to regulate and address the behaviour of fire offenders and improve the safety of all Tasmanians:

- A Caution Fire Infringement notice, which is an official caution.
- A Fire Safe Course Notice, which requires the offender to complete a Fire Safe Course.
- A Fire Infringement Notice, which requires the offender to pay a percentage of the maximum penalty for the relevant offence.

Madam Speaker, the “why” for this Bill can be traced back to conversations with volunteer fire fighters. In addition to discussing their achievements and challenges, brigade members were also keen to share a particular frustration – that is, individuals from the community who continued, year after year, to light fires on their properties - usually for the purpose of land clearing or burning off - and then not taking adequate or appropriate measures to ensure that the fires remained under control.

According to TFS records, over the last five years, there have been some 1,466 deliberately lit fires, albeit with good intent which have subsequently “*gotten out of control*”.

Moreover, in the last five years, another 3,213 bush, grass and crop fires were **recklessly or maliciously** lit and required intervention.

It is hoped that the options included in this Bill will increase individual and community awareness about fire safety in general - for instance, the need to have a fire permit in some circumstances, and also a management plan for a controlled burn. Regardless of whether fires are lit with a malicious or good intent, out of control fires still need to be attended by the local fire brigade, which in most cases is primarily staffed by volunteers.

Unfortunately, evidence shows it's often a similar scenario for offenders who light fires on the way home from school or perhaps get into mischief over a weekend. These fires are not only a

nuisance, but also create potentially damaging and unsafe consequences. Again, it's often volunteer fire fighters who attend to these fires.

Much to the fire fighters' frustration, the offending individuals frequently avoid any sanctions or seemingly do not receive any significant consequences for their actions. This is because the behaviour and actions of these offenders are usually not deemed sufficient to meet the complex requirements of proof of the relevant criminal offences.

These behaviours *may* be addressed under other offences in the *Fire Service Act 1979* such as lighting a camp fire within 3 metres of a tree or failing to clear a blocked exit in a night club. These offences may appear minor or moderate but they can also quickly pose a serious threat to life, property and the environment. Only last year Minister Groom highlighted that inappropriate disposal of cigarette butts is not only illegal but also a significant cause of bushfires.

Whilst this Bill does provide for monetary penalties, the primary focus of the Bill is educative and aims to raise community awareness of fire offences and fire safe obligations under the *Fire Service Act 1979*

This Bill clearly fits within a broader national strategy to improve public awareness about risks from a range of hazards including fire, and to build community resilience to such hazards.

COAG's National Strategy for Disaster Resilience recognises a shared responsibility between Governments, communities, businesses and individuals to enable communities to withstand natural hazards including bushfire and fires in the built environment. As indicated, the educative component of the provisions in this Bill will facilitate greater awareness of fire risks, particularly amongst individuals who may be ignorant, reckless or careless of such risks.

Madam Speaker the bushfires in Tasmania this summer, as well as the fires in 2013, demonstrates the importance of ensuring, at every opportunity, ongoing education and awareness-raising within the community about the importance of fire safety. While the Tasmania Fire Service is doing much, including delivering two national award-winning fire safety programs, the addition of the educative component of this Bill, and the deterrence it also provides, will strengthen TFS' efforts to protect the Tasmanian community from fire.

Although this Bill is not specifically in response to the recent Tasmanian bushfires, any fire tragedy underlines the importance of giving the TFS tools which are firstly educative, and if necessary, punitive to ensure awareness is raised within our community and compliance is encouraged. The mere act of receiving any of the three notices under this Bill formally acknowledges that the TFS consider that the person has committed a fire-related offence. It is an official condemnation of a person's behaviour, which does not occur at the moment except in the relatively rare cases of prosecution.

It is expected that the implementation and presentation of Fire Safe courses (as prescribed by this Bill), will educate people and ensure those who offend have the knowledge to act responsibly when dealing with fires. The introduction of compulsory Fire Safe courses builds on the Tasmanian Fire Service's existing policy and programs of community education.

The *Fire Service Amendment (Fire Infringement Notices) Bill 2015* provides for the issuing of Infringement Notices to those offenders who commit fire infringement offences. This phrase is clearly defined in the Bill, which ensures that there will be no confusion about when this Bill will apply. It includes offences under the *Fire Service Act 1979* and *General Fire Regulations* such as the lighting of fires on days of total fire ban.

Over the last five years 262 fires have been lit by people on days of total fire ban – of which 167 fires were lit in accidental circumstances and 95 were deliberately started. While only a small number of these were lit maliciously this is unacceptable. It highlights a community that is primarily unaware of the rules, more so than one that is deliberately ignoring the ban.

Another type of Fire Infringement Offence recently highlighted by the media was the issue of unauthorised fires being lit during fire permit periods. Since June 2010 there were 309 fires that escaped during a period for which a fire permit should have been obtained but was not, and a further 23 fires that escaped where a permit was obtained but not adhered to.

As well as addressing escaped burn-offs and other bushfires, this Bill seeks to strengthen the capacity of the Tasmania Fire Service to deal with people who fail to maintain adequate fire safety features and measures in places of assembly like night-clubs and places where people pay for accommodation, and other public-use buildings.

This Bill will provide the TFS with additional tools to deal quickly with fire-related offences in these sorts of buildings, where public safety is potentially compromised.

A Fire Infringement Notice can be served for a breach of Section 133 that requires alteration of existing premises to provide for adequate means of escape without unreasonable hindrance, such as for a nightclub or theatre.

Currently where the TFS identify a property or business as having inadequate fire escape routes, the TFS informs the local Council, who then try to ensure that the property or business takes steps to comply with building regulations. This “back and forth” between bureaucracies was identified as a key limitation during early discussions to having infringements impacting on public safety being addressed quickly. This Bill seeks to allow the TFS to address concerns immediately.

I would like to reinforce that the Bill has been designed to integrate with current practices of the TFS and to utilise existing IT resources to ensure ease in implementing the Bill. It was important to ensure that the administrative aspects needed to record fire offences could be catered for within the current IT network and would not be an onerous or expensive burden on either the TFS or Tasmania Police.

I would like to outline how this Bill will practically work.

Under this Bill, the TFS will attend a reported or suspected fire incident. If a fire offence is identified, the TFS member will obtain the name and address of the owner or person responsible for the fire or offence. This is essential to ensure that there is the option of following up with the offender in some way, whether it is by prosecution or in order to issue a notice. Anecdotally, almost all people comply with name and address requests from Fire Service Officers.

The TFS will also determine whether it is a serious offence and should be referred to the police. If not, the TFS will assess the circumstances of the offence and prepare a report.

The evidence and report will then be considered by the Chief Officer or a person he has delegated the responsibility such as the Deputy Chief Officer, Regional Chiefs, District Chief Officers and the Community Fire Safety Director. This is not specified in the Bill because these job titles change periodically, but the capacity to issue notices will be restricted administratively to Senior TFS officers. The Commissioner of Police can also delegate responsibility to Police Officers.

If the Chief Officer, Commissioner of Police or delegate is satisfied that an offence has occurred they have the discretion to do one of the following:

- Refer to Tasmanian Police for prosecution (for example, if it is a serious breach or a repeat offender);
- Issue a notice under this Bill; or
- Take no further action

In determining which action to take, the relevant officer may request a review of the relevant criminal record of the individual from Tasmania Police. This is important because it allows TFS to consider whether a person has previously been prosecuted for a fire offence, or has committed arson or other serious fire offences.

However, the record that is released to the TFS will only include fire or like offences, and at no stage will TFS personnel have access to the system that stores offenders' records. This ensures that individuals' criminal records are only handled by those trained to do so, protecting the privacy of any individual.

If the relevant Officer wishes to issue a notice they can do one of the following:

- issue a Caution Fire Infringement Notice;
- issue a Fire Safe course Notice;
- issue a Fire Infringement Notice; or
- issue a Fire Safe Course notice and a Fire Infringement Notice

These notices are issued by post, in accordance with current Tasmanian Police practices.

Currently the TFS frequently attend incidents that are suspected fire infringement offences, such as situations where fire exits are blocked in public assembly venues or retail stores. Members of the TFS speak to people on site, assess the situation and then prepare a report. The only change necessary to accommodate this Bill is that the TFS Officers will need to be more aware of their obligations when speaking to suspected offenders and their obligations when assessing the circumstances and "gathering evidence." Tasmanian Police will provide TFS Officers with training in this area before the Bill is implemented. (Many TFS Members are already aware of these obligations, as they currently need to assess and investigate fire incidents with the possibility of prosecution)

Madam Speaker, while this Bill is designed to provide TFS with an alternative to prosecution, it is a transparent process and any person who is issued with any notice is entitled to dispute it administratively or through the criminal jurisdiction of the Magistrates Court.

Illustrating the three-stage process of this Bill it firstly provides for a **Caution Fire Infringement Notice**. The notice is in the same form as cautions currently issued by Tasmania Police for things like Traffic Infringements and specifies the particular offence, and the penalty that may have otherwise been imposed by a Fire Infringement Notice.

This Notice should act as a deterrent against future offending and serve as a timely reminder of the seriousness of the behaviour, and the penalties that such behaviour can attract. Whilst a Caution will not form part of a person's criminal record, there will be a record that a Caution had been issued.

This Bill's second enforcement option is a **Fire Safe Course Notice**. This would require offenders to complete a 'Fire Safe course' rather than suffer a monetary penalty. Through the creation of "Fire Safe" courses, this Bill provides an awareness raising and educative approach for dealing with those who commit minor offences.

A Fire Safe Course Notice is not part of a person's criminal record, but offenders have an incentive to complete a Fire Safe Course instead of paying a fine or being prosecuted for the original offence. Naturally, a person who completes a Fire Safe Course will not be prosecuted in respect of that offence.

I am aware from discussions with the TFS that this Bill formalises the work that the TFS are, in fact, already undertaking with individuals who commit small-scale fire offences. They often attempt to engage with offenders on an informal one-on-one basis, to educate them about fire safety. This is informal and although not always effective it is an example of the members of the TFS and their willingness to engage with our community

The provisions of the Bill concerning Fire Safe courses have been deliberately drafted in a "non-prescriptive manner", so that the TFS can be flexible in the structure and content of these courses. Those who are aware of restorative justice methodology and restitution principles would agree that it is vital that educational programs suit the offender's particular circumstance and address the causal factors underlying their behaviour. For instance, a Fire Safe Course may take the form of specific, one-on-one training or counselling with TFS staff, or an online course.

Fire Safe courses will be restricted to adult offenders. This is because the TFS already has a program specifically aimed at youth, the '*Juvenile Fire Lighter Intervention Program*' or 'JFLIP'. This is a free, confidential, and statewide program offered to children.

It is aimed at 4-14 year old children who engage in unsafe fire-play who do not mean to cause damage and who do not understand how dangerous fires can be. The Program is very effective, with just 10% recidivism.

Young offenders between the ages of 15 and 18 who use fire for malicious or reckless purposes are typically dealt with through Youth Justice Mechanisms, which the TFS also participates in.

The introduction of the Fire Safe course addresses a key weakness highlighted by the Sentencing Advisory Council report that "Tasmania, however, has no arson or fire-specific treatment or intervention beyond the education program provided by JFLIP."

The heaviest penalty that this Bill imposes is a **Fire Infringement Notice** which requires an offender to pay a monetary fine and forms part of the offender's record.

In the event that a Caution Fire Infringement Notice or Fire Infringement Notice is issued to an offender, and at a later stage, evidence comes to light indicating that the offender's conduct was more serious than originally believed, the Chief Officer may withdraw the Infringement Notice(s) and prosecute the offender in the traditional manner.

This Bill also provides for three seemingly separate, but related amendments to the *Fire Service Act*. These amendments are necessary to close existing loopholes in the *Fire Service Act*.

Currently a member of the Fire Service has the power to demand the name and address of a person suspected of having committed an offence under the Act, and it is an offence to not comply with that request. However, in practical terms if a person does not comply then the TFS have limited options to enforce the request. They may ask that police attend the scene, but police do not have the power to make the same request under the Act and cannot arrest individuals without a warrant for non-compliance. It is inherently problematic to prosecute a person, or issue any Infringement Notices, without that individual being correctly identified.

In order to resolve this existing issue the Bill amends the Act in the following three ways:

- Firstly, the Bill amends the Act to give police officers the power to demand the name and address of a person who that officer suspects of having committed an offence under the *Fire Service Act*.
- Secondly, the Bill then makes it an offence for refusing to provide a name or address or providing an answer that is intended to mislead. The Bill then allows police officers to arrest a person without a warrant for that offence.
- Thirdly, the Bill allows police officers to arrest a person without a warrant if a person suspected of having committed an offence under the *Fire Service Act* refuses to provide a name or address or provides an answer intended to mislead when requested to do so by a member of the Fire Service.

At an organisational level, this Bill gives the TFS the capacity to issue Infringement Notices to offenders who commit certain fire offences, overcoming the issues associated with lengthy pursuit of offenders through the courts.

At a community level, it is envisaged that the Bill will lead to an overall reduction in the number of small-scale fire offences committed each year and improve the level of fire safety awareness amongst key target groups.

This Bill is a product of consultation with individuals and organisations with expertise in the key areas of fire safety and crime prevention.

Consultation has occurred with the Department of Police, Fire and Emergency Management to ensure this Bill is as robust and effective as possible.

Consultation has also occurred with the UFUI and the Police Union regarding the Bill. In addition to the input from the Unions, the Law Society of Tasmania contributed to the Bill's evolution.

Madam Speaker, I commend this Bill to the House.