

2002

**THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN
CAPITAL TERRITORY**

CRIMES (BUSHFIRES) AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

**Circulated by the authority of
the Attorney-General
Jon Stanhope MLA**

Crimes (Bushfires) Amendment Bill 2002

Outline

The Crimes (Bushfires) Amendment Bill 2002 (the Bill) inserts a new offence relating to the lighting of bushfires into the *Crimes Act 1900*.

The recent bushfires have revealed that existing ACT offences are not appropriately structured to deal with persons who intentionally or recklessly cause bushfires. The new provision is based on the bushfire offence in Chapter 4 of the Model Criminal Code.

Financial Implications

The Bill is not expected to have any financial implications. The costs associated with any prosecutions for offences under the Bill would be met from within existing resources.

Notes on Clauses

Part 1 Preliminary

Clause 1 Name of Act

Upon enactment, the Act will be known as the *Crimes (Bushfires) Amendment Act 2002*.

Clause 2 Commencement

The proposed Act will commence the day after it is notified.

Clause 3 Act amended

The Act to be amended by this Bill is the *Crimes Act 1900*.

Clause 4 Interpretation: section 115(5) and (6)

The purpose of this clause is to make consequential amendments to section 115 of the *Crimes Act 1900*. That section contains definitions relevant to Division 6.3, and the effect of clause 4 is to ensure that those definitions will apply appropriately after the new bushfire offence, contained in proposed section 118A, is inserted into that Division.

Clause 5 New section 118A

This new section is based on the proposed bushfire offence in Chapter 4 of the Model Criminal Code.

New section 118A(1) sets out the elements of the proposed offence. The physical element of the offence is “causing a fire”. There are two fault elements for the offence. Firstly, the person must intend or be reckless as to causing the fire. Secondly, when the person causes the fire, he or she must be reckless as to the spread of the fire to vegetation on another person’s property. The offence will only be committed if both fault elements are present.

The physical element of “causing a fire” is defined in proposed section 118A(3), which explains that “causing a fire” includes lighting a fire, maintaining a fire and failing to contain or extinguish a fire lit by that person, where that person could have contained or extinguished it. The extended definition of “causing a fire” means that the new offence covers a person who intentionally or recklessly maintains a fire, even though the person realises there is a risk of the fire spreading to vegetation on someone else’s property. It also covers a person who lights a fire unintentionally, or without being reckless as to lighting that fire, but who then fails to contain or extinguish the fire while he or she is capable of so doing, even though he or she realises there is a risk of the fire spreading to vegetation on someone else’s property.

Proposed section 118A(2) provides for a specific defence of consent. It should be noted that other defences recognised by the criminal law may also apply. The defence in proposed section 118A(2) is based on the consent defence included in Chapter 4 of the Model Criminal Code for offences involving property damage. The purpose of the defence in proposed section 118(2) is to protect persons engaged in controlled burning operations with the consent of affected land owners, or in the belief those land owners would consent. It provides that no offence is committed if the person causing the fire had the consent of the person who owned the property with vegetation to which the fire is at risk of spreading. The defence also applies if the person causing the fire believed that property owner had consented, or that the property owner would have consented if he or she had known of the risk.

As noted previously, proposed section 118A(3) defines the concept of causing a fire. It also defines the concept of spread of a fire, to make it clear that “spread” does not mean any movement of the fire or any increase in the fire’s volume, but the spread of the fire beyond the capacity of the person who caused the fire to contain or extinguish it. This definition of “spread” ensures that controlled burning activities are not covered by the offence.

Section 118A(4) makes it clear that the *Criminal Code 2002* applies to the new offence. Section 118A has been structured to take account of the operation of the *Criminal Code 2001*, which can be applied to new offences even though it has not commenced.