

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**BUSHFIRE (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by the Authority of the Minister for Urban Services  
Terry Connolly MLA**

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### **EXPLANATORY MEMORANDUM**

The Careless Use of Fire Act 1936 ("the Act") relates to the careless use of fire and for this purpose establishes a Bush Fire Council and a Rural Firefighting Service and provides for the appointment of a Chief Fire Control Officer.

In particular, section 7A prohibits the lighting, use or maintenance of a fire in the open air on a day or during a period of acute fire danger which occurs where the Minister has warned of conditions conducive to the spread of fires.

The Bushfire (Amendment) Bill 1993 ("the Bill") amends the Act for several main purposes –

- to enable a fire to be lit on a day of acute fire danger in circumstances prescribed by Regulation and to empower the Minister to place conditions on the lighting of such a fire; and

- to modify gender specific terminology.

#### **Financial Considerations**

There are no revenue implications arising from the Bill.

Details of the provisions of the Bill are as follows.

#### **Formal provisions**

Clauses 1, 2, 3, 4 and 5 are formal provisions dealing with the short title of the Bill, commencement arrangements, references in the Bill to the "Principal Act" and changes to the Long and Short titles of the Act, respectively.

In particular, clause 5 changes the title of the Act to the Bushfire Act 1936 to more closely reflect the subject matter of the Act. Clause 4 also reflects this change of title.

### **Days of acute fire danger**

**Clause 6** amends section 7A of the Act which creates an offence where a person lights, uses or maintains a fire in the open on a day which has been declared by the Minister to be a day of acute fire danger.

The purpose of the amendments effected by **clause 6** is to recognise that notwithstanding that weather conditions are extreme it is appropriate in some circumstances to enable a fire to be lit, used or maintained. These circumstances will be detailed in changes which will be made to the Careless Use of Fire Regulations.

In further recognition of the diverse circumstances which may exist when a fire is lit during a day of acute fire danger, **clause 6** enables the Minister to impose conditions on the lighting of such a fire. An example would be where it is desired to restrict the lighting of such a fire to particular hours of the day.

**Paragraph 6(a)** makes a technical change to subsection 7A (1) of the Act.

**Paragraph 6(b)** omits existing subsection 7A(2) of the Act, which is a defence provision, and inserts 3 new subsections.

New subsection 7A(2) provides a defence to subsection 7A(1) of the Act where a person lights a fire under section 5N of the Act (this preserves the existing defence); lights, maintains or uses a fire in accordance with the Rural Fire Control Manual prepared under section 5KA of the Act; or where the fire is of a class which is prescribed.

New subsection 7A(2A) empowers the Minister, when giving a warning of acute fire danger under subsection 7A(1), to notify any conditions imposed on the lighting, maintenance or use of a class of fires prescribed under new paragraph 7A (2)(c).

New subsection 7A(2B) creates an offence where a person, without reasonable excuse, contravenes a condition.

Because a warning of acute fire danger is usually only effective for a day, or in very rare circumstances for several days at a time, and is taken as a matter of urgency, **clause 6** does not require the exercise of the power under new subsection

7A(2A) to be made by a disallowable instrument as to do so would be purposeless. The events to which the warning relates would be completed before the relevant tabling and disallowance procedures under the Subordinate Laws Act 1989 could be undertaken.

**Paragraph 6(c)** makes a technical amendment of subsection 7A(3) of the Act.

#### **Lighting of fire in the open for cooking and other purposes**

**Clause 7** amends section 10AA of the Act which relates to the lighting of fires in the open for cooking and other purposes.

Paragraph 7(a) is a technical amendment. Paragraph 7(b) omits paragraph 10AA(b) of the Act, which permits the use of a heating appliance for cooking purposes except on a day of acute fire danger, as this activity is to be permitted on a day of acute fire danger under proposed changes of the Careless Use of Fire Regulations made under new paragraph 7A(2)(c).

#### **Penalty for burning off or lighting fires except as authorised**

**Clause 8** amends section 10AB of the Act, which creates an offence for burning-off or lighting fires without authorisation, to give effect to changes which are consequential upon the amendment effected by paragraph 7(b).

#### **Further amendments**

**Clause 9 and Schedule 1** amend the Act to modify gender specific terminology, to make changes of a technical nature and to reflect current drafting policy.

#### **Amendments of Acts**

**Clause 10 and Schedule 2** amend various Acts as a consequence of the title of the Act being changed to the Bushfire Act 1936.