

ARSON LEGISLATION AMENDMENT BILL 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Transport)**, read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [10.02]: I move —

That the bill be now read a second time.

The Arson Legislation Amendment Bill 2009 will strengthen protection to persons and property provided by arson-related offences in the Criminal Code and the Bush Fires Act 1954. It will introduce a new bushfires offence into the Criminal Code, clarify the applicability of existing offences against the person to harm caused by fire, and increase the maximum penalties available under existing offences.

Following the tragic events in Victoria in February 2009, the government undertook a review of arson offences in Western Australia. The review focused on whether or not, given comparative offences and penalties in other Australian jurisdictions, the criminal law in Western Australia was adequate. The findings of this review, relevant parts of the Model Criminal Code and the views of the Standing Committee of Attorneys General form the basis for the Arson Legislation Amendment Bill 2009.

The proposed legislation will increase the penalty provided by the Bush Fires Act 1954 for lighting, or attempting to light, a fire likely to injure others. At present, the maximum penalty is a \$250 000 fine or 14 years' imprisonment. The bill increases the maximum term of imprisonment to 20 years. An analysis of other Australian jurisdictions demonstrates that currently all but three jurisdictions have a greater maximum term than Western Australia for similar offences. Consistent with the range of sentences in Western Australia and given the serious nature of the offence and the significant danger posed by deliberately lit bushfires, 20 years' imprisonment is the appropriate maximum penalty. The bill also removes provision for imposing a fine as the courts' general power to impose a fine under section 41(5) of the Sentencing Act 1994 renders that section superfluous.

The bill also amends the Criminal Code to create and clarify offences relating to the misuse of fire. Section 266 of the Criminal Code at present reads as follows —

It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Following the fatal Victorian bushfires of February 2009, there was a concern, expressed by the Standing Committee of Attorneys General, that homicides caused by deliberately lit bushfires might not fall within the recognised categories of homicide offences. Consequently, this bill amends section 266 of the Criminal Code to define the word "anything" as including a source of ignition or fire. This makes it clear and unambiguous that fires are a dangerous thing within the meaning of the Criminal Code. Therefore, persons who fail to take reasonable care or reasonable precautions when in charge of a source of ignition or fire will be held to have caused any consequence to the life and safety of others that results from the failure to take reasonable care or reasonable precautions. Amending section 266 is also consistent with further amendments to the Criminal Code provided for by the bill for the protection of property in relation to arson. The proposed legislation will also add the new offence to the Criminal Code of recklessly or negligently causing property damage by fire. The new offence also imposes a duty on a person to use reasonable care and take reasonable precautions when in charge of a source of ignition or a fire, or to avoid lighting a fire that may destroy or cause damage to property. If property is damaged or destroyed, the person is held to have caused that destruction or damage. For the purposes of this offence, property that is capable of being destroyed or damaged is to be specifically defined to include vegetation. This new offence of causing damage to property would therefore encompass causing damage to bushland on crown land. The general definition of property in the Criminal Code, "anything capable of being the subject of ownership", does not distinguish between public and private owners of property. Any bush on crown land is vested in the state and, therefore, owned by the state. This means that it is property for the purposes of the new offence. Therefore, any person who fails to use reasonable care when in charge of a source of ignition or fire, and therefore causes damage to bush on crown land, will be held liable for that damage. The maximum penalty for that new offence is 15 years' imprisonment.

This new offence is based on the prescription of a range of arson-related behaviours in the Model Criminal Code of the Standing Committee of Attorneys General. The Model Criminal Code recommends arson offences with an intention element of recklessness. The Western Australian Criminal Code at present contains no provision for an intention element of recklessness. Creating an offence of recklessly causing property damage by fire will further enhance the ability of the Office of the Director of Public Prosecutions to successfully prosecute arsonists, and it is appropriate in light of the widespread and devastating damage to property that can be caused by bushfire. It is also consistent with the intention element of the existing offence of endangering another person's life, safety or health through failure to take reasonable care in the management of a dangerous thing. Various sections of the Criminal Code generally excluding liability in the absence of intention will be expressly declared not to apply to this new offence. The new offence does overlap to a certain extent with existing offences in the Bush Fires Act 1954. However, the offences in the different acts will have slightly different elements, and a different sentencing range, giving the Office of the Director of Public Prosecutions some flexibility when prosecuting bushfire offences.

I commend this bill to the house.

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.