

1990

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

CARELESS USE OF FIRE (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

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CARELESS USE OF FIRE (AMENDMENT) BILL 1990

The Careless Use of Fire Act 1936 (the Principal Act) provides for the control of fire in rural areas of the Territory, establishes the Bush Fire Council and allows for the employment of people, paid and volunteer, in the work of controlling or extinguishing fire in the Territory outside built-up areas.

The Principal Act, dating as it does from 1936, is inadequate in the provision of the statutory authority necessary to set up the infrastructure required for the prevention and control of bush fire in the Territory. Amendment of the Principal Act in two stages is planned in order to provide suitable statutory authority. The Careless Use of Fire (Amendment) Bill 1990 (the Bill) is the first stage of this plan.

The Bill amends the Principal Act:

- (i) to provide that the Principal Act will bind the Crown;
- (ii) to provide for the establishment and control of a Rural Firefighting Service, incorporating and recognising all persons officially engaged in the prevention and control of fire in rural areas, both paid and voluntary;
- (iii) to provide for the introduction of an operational manual for the Rural Firefighting Service;
- (iv) to provide for the recognition of interstate firefighters when fighting fire in the Territory;
- (v) to provide an indemnity against individual and personal liability to be given by the ACT Government to members of the Rural Firefighting Service, as defined in the Rural Fire Control Manual, while acting in the course of their duties; and
- (vi) to extend the term of office of the Bush Fire Council from one year to three years, and to provide for the Chairperson and Deputy Chairperson of the Council to be an appointment of the Minister.

The Bill extends the powers of an inspector appointed under the Act to enter property and give directions to a landowner regarding the removal or minimisation of fire hazards, and extends the obligation on a landowner to take action to prevent an outbreak of fire.

Financial Considerations

The Bill is not expected to have any impact on income or expenditure

Details of the Bill are outlined in the Attachment.

ATTACHMENT

CARELESS USE OF FIRE (AMENDMENT) BILL 1990

Clause 1 states that the Bill, once enacted, may be cited as the Careless Use of Fire (Amendment) Act 1990.

Clause 2 defines the 'Principal Act' to be the Careless Use of Fire Act 1936.

Clause 3 inserts, after section 2 of the Principal Act, new section 2A which provides for the Crown to be bound: -

new subsection 2A (1) binds the Crown to the Principal Act.

new subsection 2A (2) renders the Crown not liable to be prosecuted for an offence under the Principal Act.

Clause 4 amends section 3 of the Principal Act, the interpretation section, by inserting additional definitions.

Clause 5 amends section 5 of the Principal Act.

Subclause 5 (a) amends section 5 so that the section is expressed in gender neutral terms.

Subclause 5 (b) inserts new subsections 5 (2) and 5 (3) into the Principal Act to bring the provisions relating to inspection into line with similar provisions in other ACT legislation: -

new subsection 5 (2) provides for the issue of an identity card to an inspector by the Minister; and

new subsection 5 (3) requires an inspector to return an identity card issued to her or him on ceasing to be an inspector on penalty of \$100.

Clause 6 inserts, after section 5 of the Principal Act, new sections 5AA, 5AB, 5AC and 5AD.

New sections 5AA and 5AB, as do the amendments to section 5 of the Principal Act, insert standard inspection procedures to protect the public's interests in line with similar ACT legislation.

New section 5AA provides an inspector, where the inspector believes on reasonable grounds that it is necessary to do so to ensure compliance with section 5S or to issue a notice under section 5AC of the Act and after having given written notice to the owner of the land at least 24 hours before entry, with power to enter land outside a built-up area.

New section 5AB requires an inspector to display his or her identity card, on the request of the owner, to the owner of land before the inspector is authorised to remain on the land.

New section 5AC provides that an inspector may give directions to the owner of land in certain situations. The reasons for which an inspector may issue directions; the circumstances to which the inspector must have regard to in issuing a particular direction; and the required contents of the direction are set out to ensure that the interests of the landowner are protected while enabling an inspector to take preventative action to minimise the incidence of bushfires.

New subsection 5AC (1) provides that an inspector may, where the inspector believes on reasonable grounds that the owner of land outside the built-up area is in breach of the obligation under subsection 5S (1) in not taking steps to prevent and inhibit the outbreak and spread of fire and to protect property from fire on that land, issue directions to the landowner to take action that is reasonable in the circumstances to comply with subsection 5S (1).

New subsection 5AC (2) provides that, in giving directions under subsection 5AC (1), an inspector shall consider: -

- (a) the amount and type of litter, timber or vegetation whether alive or dead on the land;
- (b) the amount and type of other inflammable material on the land;
- (c) climatic conditions affecting the land;
- (d) the location and use of the land and any nearby land; and
- (e) the possible effects of a fire on the land and any nearby land.

New subsection 5AC (3) provides that directions issued under subsection 5AC (1) shall state: -

- (a) the period for compliance and the penalty, which is set out in subsection 5AC (6), for non-compliance with the direction; and
- (b) that, subject to the Administrative Appeals Tribunal Act 1989, a person to whom a direction has been issued under section 5AC may obtain a statement of reasons for a decision and make an appeal to the ACT Administrative Appeals Tribunal against the decision to give the direction.

New subsection 5AC (4) provides that where a direction does not contain a statement about appeal rights in accordance with paragraph 5AC (3)(b) then the validity of the decision to give the direction is not affected.

New subsection 5AC (5) provides that a direction shall not state a period for compliance of less than 14 days except where the direction is given on a day or during a period of acute fire danger warning under section 7A of the Principal Act.

New subsection 5AC (6) creates an offence of failing to comply with a direction issued under subsection 5AC (1) within the specified period and imposes a penalty of \$1,000 or 3 months imprisonment for non-compliance.

New section 5AD provides for an application to be made to the ACT Administrative Appeals Tribunal for a review of a decision of an inspector to give a direction under subsection 5AC (1). This section is the reason for the statement required under paragraph 5AC (3)(b).

Clause 7 amends section 5B of the Principal Act. Section 5B deals with the membership of the Bush Fire Council (the Council).

Subclause 7 (a) amends section 5B by omitting subsections (2) and (3) and inserts new subsection 5B (2) which provides that the appointment of the Chairperson and Deputy Chairperson of the Council from the members of the Council is to be by the Minister rather than the Council.

Subclauses 7 (b) and (c) amend subsections 5B (4), (6) and (7) to express those subsections in gender neutral terms.

Clause 8 amends section 5C of the Principal Act so that it is expressed in gender neutral terms.

Clause 9 amends section 5D of the Principal Act:

Subclause 9 (a) amends subsection 5D (1) to remove the reference to "subject to this section" in accordance with current drafting practice and to remove any possible ambiguity.

Subclause 9 (b) amends subsection 5D (1) to provide for the term of a member elected to the Council to be a period of three years. The increased term is to ensure greater consistency and less disruption in the operations of the Council.

Subclause 9 (c) amends subsection 5D (2) so that it is expressed in gender neutral terms.

Clause 10 amends section 5H of the Principal Act to include in the powers of the Council the power to take action to control as well as prevent the outbreak of fire and inserts a new subsection 5H (2) which provides that the Council shall exercise its powers in accordance with the manual to be prepared under section 5KA.

Clause 11 corrects a section numbering error created by the Remuneration (Miscellaneous Amendments) Act 1989.

Clause 12 inserts new sections 5K and 5KA before section 5L of the Principal Act: -

New section 5K provides for the Rural Firefighting Service. The Rural Firefighting Service is established to recognise both salaried and volunteer firefighters:-

New subsection 5K (1) establishes the Rural Firefighting Service (the Service).

New subsection 5K (2) provides that the Rural Firefighting Service shall consist of the Chief Fire Control Officer, and such a number of fire control officers and bushfire brigades as are determined by the Minister by notice in the Gazette.

New subsection 5K (3) provides that a determination made under subsection (2) is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

New subsection 5K (4) provides that the Rural Firefighting Service is to have the organization and structure set out in the Rural Fire Control Manual.

The Rural Firefighting Service will operate according to an operational manual to be provided by new section 5KA. The Rural Fire Control Manual will define the structure, powers and functions of the Rural Firefighting Service.

New subsection 5KA (1) requires the Council to prepare a Rural Fire Control Manual (the Manual) within 6 months after the commencement of these amendments.

New subsection 5KA (2) stipulates that the Manual shall include: -

- (a) the organization and structure of the Service;
- (b) the powers and duties of fire control officers, bushfire brigade members and emergency volunteers;
- (c) the standards and requirements for recruitment and training of fire control officers and bushfire brigade members;
- (d) the procedures and conditions for the recruitment of emergency volunteers; and

- (e) equipment requirements and communication specifications for the Service.

New subsection 5KA (3) allows the Council to prepare variations to the Manual.

New subsection 5KA (4) provides that the Council must prepare a variation to the Manual on the written direction of the Minister.

New subsection 5KA (5) requires the Council to, within 7 days of the completion of the preparation of the Manual or of a variation to the Manual, submit a copy of the Manual or of the variation to the Manual to the Minister.

New subsection 5KA (6) requires the Council to revise, on the written direction of the Minister, the Manual or any variation to the Manual that has been submitted to the Minister under subsection 5KA (5).

New subsection 5KA (7) provides that the Minister may approve the proposed Manual or variation to the Manual submitted to her or him under subsection 5KA (5).

New subsection 5KA (8) provides that the Manual and any variation to the Manual are disallowable instruments for the purposes of section 10 of the Subordinate Laws Act 1989.

New subsection 5KA (9) requires the Council to make the Manual available for public inspection at offices of the Council and of the Chief Fire Control Officer during the hours those offices are open for business.

New subsection 5KA (10) defines "variation" for the purposes of section 5KA to include revoking the Manual and substituting a new Manual.

Clause 13 repeals section 5M of the Principal Act and substitutes new section 5M which deals with the appointment and powers of firefighters.

New subsection 5M (1) provides that the Council may, in writing, appoint such a number of fire control officers and establish such number of bushfire brigades as the Minister determines under subsection 5K (2).

New subsection 5M (2) provides that fire control officers may be appointed to various ranks.

New subsection 5M (3) provides that bush fire brigade members and emergency volunteer firefighters are to be recruited in accordance with the Manual.

New subsection 5M (4) provides that fire control officers, bush fire brigade members and emergency volunteers may exercise powers and perform such duties as specified in the Manual.

Clause 14 amends section 5N of the Principal Act .

Subclause 14 (a) inserts, before subsection (1), new subsection (1A) which provides for the appointment of a Chief Fire Control Officer by the Council.

Subclause 14 (b) omits subsection (2) and substitutes new subsection (2) which requires the Chief Fire Control Officer to exercise her or his power and perform her or his duties in accordance with the Manual.

Clause 15 repeals section 5O of the Principal Act and substitutes new sections 5P, 5Q, 5R, and 5S.

New section 5P provides that the Territory shall indemnify a person against liability for damage or personal injury whether caused directly or indirectly by, as provided for in new paragraph 5P (a), the exercise or purported exercise in good faith of a power conferred under the Act, or, as provided by new paragraph 5P (b), the performance or purported performance in good faith by the person of a duty imposed under the Act. This section is intended to give protection for firefighters against liability for such damage as is necessarily done, or such personal injury as is caused, in the course of suppressing fires in the Territory.

New section 5Q provides that any damage referred to in section 5P shall be taken to be damage by fire within the meaning of an insurance policy against fire covering the property damaged despite any condition in that insurance policy.

New section 5R provides for the recognition of firefighters from outside the Territory so that they have the same protection afforded to ACT firefighters.

New subsection 5R (1) requires a member of an interstate fire brigade, when present at a fire outside the built-up area for the purpose of the suppression or control of a fire, to:

- (a) obey orders issued by a person who, under this Act, is in charge of the operations;
- (b) to place any relevant equipment in her or his charge at the disposal of the person in authority at the fire; and
- (c) where an interstate person is at the fire and has charge of other interstate firefighters and no person is at the fire who could, under this Act, be in charge of the firefighting operations, have the powers and duties conferred and imposed on a fire control officer under this Act.

New subsection 5R (2) defines 'interstate fire brigade' for the purposes of subsection (1) to mean a fire brigade established in a State or another Territory.

New section 5S deals with the prevention of fires. This section imposes an obligation on landowners to take reasonable steps to prevent the occurrence of fire on lands under their control. This section recognises that the Council must take a proactive as well as a reactive role in combating bushfires and this necessitates being able to insist that landowners act responsibly with regard to fire hazards.

New subsection 5S (1) places an obligation on an owner of land outside a built-up area to take such measures as are reasonable in the circumstances to prevent and inhibit the outbreak and spread of fire on that land and to protect property on that land from fire and imposes a penalty of \$1,000 or 3 months imprisonment for failure to meet this obligation.

New subsection 5S (2) provides the circumstances referred to in subsection 5S (1) include:-

- (a) the amount and type of litter, timber and vegetation on the land whether dead or alive;
- (b) the amount and type of other inflammable material on the land;
- (c) the climatic conditions affecting the land;
- (d) the location and use of the land and any nearby land; and
- (e) the possible effect of fire on the land and any nearby land.

Clause 16 provides for the preservation of the status quo under the Principal Act during a transitional period.

Subclause 16 (1) provides that the person who was a Council member or the Chairman or Deputy Chairman before the commencement of these amendments continues to hold office for the remainder of the period for which she or he was appointed notwithstanding the amendments to sections 5B, 5C and 5D of the Principal Act but subject to the Principal Act as otherwise amended.

Subclause 16 (2) provides that the person who was Chief Fire Control Officer immediately before the commencement of these amendments continues to hold office as if she or he were appointed under subsection 5N (1A) of the Principal Act as amended.