

# Review of Bushfire Arson Laws

Prepared by:  
Legislation, Policy and Criminal Law Review Division  
Attorney General's Department  
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Tel: (02) 8061 9222 Fax: 8061 9370

## **Executive Summary**

In the aftermath of the 2009 Victorian bushfires and as fires continued in NSW, the Premier of NSW requested the Attorney General review the offences and penalties for bushfire-related arson.

NSW has both specific and general offences that are applicable to bushfires. The specific laws range from dealing with minor infractions at one end, such as lighting a fire in a reserve with a maximum penalty of \$550, to indictable offences in the *Crimes Act 1900* punishable by imprisonment for up to 14 years. These specific laws co-exist with other general offences that may be applicable, such as manslaughter and property offences, some of which are aggravated where damage involves fire. These offences carry penalties as high as 25 years imprisonment.

Various studies have suggested, and this Review confirms, that notwithstanding the range of available offences, the nature of the offending presents significant difficulties in apprehending and preventing these crimes. The offences are typically committed by solitary individuals in isolated areas, causing bushfires by means that are often destroyed in the ensuing fire. These characteristic problems are part of the reason for the relatively small number of prosecutions under specific bushfire laws. The Review has identified the need to address the difficulties in deterrence, investigation and prevention, and therefore has focussed its recommendations on the areas of greatest need, being:

- a) increasing the penalties for minor but specific offences, which deal with specific behaviour as a means of fettering and educating the public; and
- b) providing new investigative powers to assist the Rural Fire Service in identifying fires which are the result of arson.

## **Scope of the Review**

The Attorney General's Department requested and received submissions from a number of interested agencies. It is worthy of note however, that those agencies whose work is most closely related to both preventing and fighting bushfires were engaged in that activity at the time of this report. However, submissions were received from those agencies, which were of great assistance in the preparation of this report, and suggestions and comments have been incorporated where appropriate.

Not surprisingly in an area that has the potential to cause such devastation, significant earlier work had also been conducted, including the review in 2002 by Model Criminal Law Officers Committee (MCLOC). Also, this year, the Australian Institute of Criminology conducted a detailed examination of bushfire arson and the research in their Report has been reviewed and utilised.

Each of the states in Australia and in the Commonwealth are independently examining their own laws relating to bushfires. Whilst the officers of each of these states are sharing information, the findings of these inquiries are not yet available. It is notable that Victoria will be conducting a Royal Commission in relation to its recent fires. That inquiry has very broad terms of reference. The Victorian Premier having indicated that the penalties for arson in Victoria are appropriate, it is not anticipated that significant change to Victorian offences or penalties in that state will be recommended, however its findings are likely to be of significant interest to law enforcement and fire fighting agencies and should be monitored.

## **Summary of submissions received by the Review**

Generally, submissions received by the Review spoke positively of the offences and penalties available in NSW. Some identified specific issues which have been addressed in the Review.

### **NSW Rural Fire Service**

The Rural Fire Service submission specifically raised the issue of investigative powers. Recommendations six and seven in the Review concern the provision of new investigative powers to the Rural Fire Service.

The Rural Fire Service provided further detailed information concerning statistics, investigative methods and general background information concerning bushfires through further correspondence and discussions. This information was of great assistance to the Review.

### **NSW Fire Brigades**

The NSW Fire Brigades submission enclosed a schedule of arson related penalties and offences in NSW. The schedule noted that, in the opinion of the NSW Fire Brigades, the penalties for the vast majority of fire related offences are appropriate. Recommendations one and two of the Review relate to offences which the NSW Fire Brigades identified as having low penalties.

### **NSW Police Force**

The NSW Police Force provided details about the operations and the successes of Strike Force Tronto, which focuses on bushfire offences. The submission noted the relatively high numbers of juveniles who commit bushfire related offences. Recommendation four of the Review arises directly from these concerns.

The Police Force submission also requested that the penalties associated with sections 195 – 198 of the *Crimes Act 1900*, which contain property damage by fire offences, be reviewed for consistency and uniformity. A discussion of these offences and their associated penalties, can be found in the section titled *Current arson offences in NSW* in the review.

The Police Force submission suggested that consideration be given to broadening the scope of the specific bushfire offence found in section 203E of the *Crimes Act 1900*. The Review engages in this analysis as part of its inter-jurisdictional analysis of arson offences.

### **NSW Sentencing Council**

The Sentencing Council advised on various aspects of the offences and penalties available for bushfire offences. It noted that the maximum sentence for the bushfire offence was appropriate. It also noted that there was no need to amend the standard non-parole period for that offence, however, it qualified this by noting that it will be reviewing standard non-parole periods generally in the future.

## **The Director of Public Prosecutions**

The Director of Public Prosecutions expressed his view that the maximum penalties are set at an appropriately high level as is the standard non-parole period for the specific bushfire offence. He noted that many fire prosecution offences are concluded by way of a plea of guilty. The Director provided detailed background and information concerning fire related prosecutions which has assisted the Review.

## **The Department of Juvenile Justice**

The Department of Juvenile Justice provided information concerning the options and outcomes available for children who commit fire related offences. This information is set out in detail in the Review in the section entitled *Causes of bushfire - child arsonists*.

## **Bushfires**

A bushfire (a fire which starts in or burns into bushland), can cause significant damage to property and the environment. Indeed the catalyst for this review was the terrible bushfires in Victoria in early 2009 which occurred as fires threatened similar terrible consequences in NSW. Whilst no loss of life was occasioned in NSW in early 2009, those events are a clear indication of the risks involved and the need for all possible steps to be undertaken to reduce the number of man made and deliberately lit bushfires in NSW.

## **THE LAWS RELATING TO THE CRIME OF ARSON**

### **A recent history of arson laws in NSW**

In 1987 NSW abolished the common law offence of arson and replaced it with a regime of property damage by fire offences.<sup>1</sup> These offences provide for higher penalties where property damage is occasioned by fire as opposed to some other means.

For example, section 196 of the *Crimes Act 1900* creates the offence of damaging property with the intention of causing bodily injury to another person and prescribes a maximum penalty of 7 years imprisonment for the offence. Where the offence is committed by fire, the prescribed maximum penalty doubles to 14 years imprisonment. These offences are set out in detail at Appendix 1.

In 2002, after a horrific bushfire season, NSW introduced a new, specific bushfire offence.<sup>2</sup> The aim of the new offence was not to address an identified flaw or lacuna in the law. The aim was to send a message to the community about bushfire arsonists. This was noted in the second reading speech:

*All honourable members will recall the bushfires that damaged the State in December and in January... The bill before the House seeks to emphasise the gravity of the danger that bushfires represent by enacting a special offence of causing a bushfire.*

*In introducing this bill the Government is seeking not to fill a gap in the criminal law but, rather, to seek to emphasise society's abhorrence and condemnation of the deliberate lighting of bushfires by making specific provisions against it.*<sup>3</sup>

The offence was based on the specific bushfire offence recommended by the MCLOC.<sup>4</sup> The offence has 14 years prescribed as a maximum penalty.

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<sup>1</sup> *Crimes (Criminal Destruction and Damage) Amendment Act 1987*

<sup>2</sup> *Crimes Act 1900* s 203E

<sup>3</sup> Hansard, Legislative Assembly, 12/04/2002

<sup>4</sup> MCOC, *Model Criminal Code Report – Chapter 4 Damage and Computer Offences*, 4.1.8. Model offences are created after detailed consideration and consultation with all jurisdictions in Australia. Model Criminal Law Officers Committee is a sub-committee of the Standing Committee of Attorneys

The offences available to deal with bushfire arsonists are not limited to the *Crimes Act 1900*. Other, usually more specific, offences are set out in appendix A and are discussed further below.

### Current arson offences in NSW

The arson offences in NSW can be categorised into four groups for the purposes of this review:

1. property damage by fire offences;
2. the specific bushfire offence;
3. the major *Rural Fires Act 1997* offence; and
4. minor bushfire arson offences.

Appendix 1 sets out a list of all offences which exist in NSW.

#### 1. Property damage by fire offences

The *Crimes Act 1900* provides for a series of property damage by fire offences. Sections 195-198 of the *Crimes Act 1900* contain these offences, which are:

Section		Offence	Penalty
195	1(b)	Destroy/damage property by fire	10 years
	1A(b)	Destroy/damage property by fire in company	11
	2(b)	Destroy/damage property by fire during a public disorder	12
196	1(b)	Destroy/damage property by fire intending to cause bodily injury	14
	2(b)	Destroy/damage property by fire intending to cause bodily injury during a public disorder	16
197	1(b)	Dishonestly destroy/damage property by fire	14
	2(b)	Dishonestly destroy/damage property by fire during a public disorder	16
198		Destroying or damaging property with intention of endangering life	25

Leaving aside section 195(1A)(b) and section 198, which will be discussed below, there is a clear scheme of offences in the Act, which is illustrated in the following matrix.

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General, however, input from many interested government and non-government agencies is included in the development of these model laws. The consideration by the Model Criminal Law Officers Committee of this issue and the recommendations concerning it represent a most detailed analysis of the issue.



Circumstances of the offence	Intention		
	Damage only	Intent to injure	Dishonest intent
Primary offence	195(1)(b) - <b>10(yrs)</b>	196(1)(b) - <b>14</b>	197(1)(b) - <b>14</b>
During a public disorder	195(2)(b) - <b>12</b>	196(2)(b) - <b>16</b>	197(2)(b) - <b>16</b>

Offences of damaging property by fire are aggravated in two ways. Firstly, as noted above, offences which occur during public disorders have higher maximum penalties than offences which occur when no such disorder is taking place.

Secondly, offences are aggravated by the intention of the person who commits them. The lowest penalties are reserved for those offenders who intend merely to damage property. Where there is intention to injure a person, or to dishonestly destroy intending to profit, the penalties are increased.

The offence of destroying or damaging property by fire in company (Section 195(1A)(b)) lies outside this matrix. The offence, introduced in 2008, is targeted at damage caused by criminal gangs by fire and complements the provision in the *Crimes Act 1900* relating to criminal groups<sup>5</sup>. The criminality of this offence attracts a penalty of 11 years and is positioned at that point in the provisions. It does not, however, fall within the tiered structure of increasingly aggravated intent.

The highest penalty for a property damage offence, under section 198 of the *Crimes Act 1900*, is 25 years imprisonment. This penalty is available if a person lights a fire and damages property with the intention of endangering the life of a person. Twenty-five years imprisonment is available regardless of whether or not somebody actually dies as a result of the damage caused by the fire. This offence is discussed further in the section on bushfire arson causing death below.

In its submission, the Rural Fire Service noted that it may be worthwhile considering the imposition of standard non-parole periods for the property damage by fire offences discussed above. This undertaking is outside the scope of this review, however, it is understood that the Sentencing Council will be reviewing standard non-parole periods later this year.

## 2. The specific bushfire offence

As discussed above, in 2002 NSW introduced an offence specifically to capture bushfire offending. The offence is to intentionally cause a fire with recklessness as to the spread of that fire (Section 203E of the *Crimes Act 1900*). It carries a maximum penalty of 14 years imprisonment, and a standard non-parole period of five years. The Review asked the Sentencing Council to consider the appropriateness of the maximum penalty and standard non-parole period for this offence. The Sentencing Council did not recommend any changes.

This major offence complements the existing arson offences in the *Crimes Act 1900* and those in the *Rural Fires Act 1997* (discussed below). The offence recognises the serious view that is taken of bushfires and the damage that reckless behaviour in

<sup>5</sup> See Part 3A, Division 5 *Crimes Act 1900*

relation to them can cause, and hence prescribes the high maximum penalty of 14 years.

### 3. *The major Rural Fires Act 1997 offence*

The *Rural Fires Act 1997* contains a number of offences concerning fires and bushfires in particular. These are specific offences addressing more specific criminal behaviour and accordingly they have lower penalties than the broader offences discussed above.

The key bushfire offence is found in section 100(1) of that Act. That section makes it an offence to set fire to land or property belonging to someone else, or to fail to prevent a fire spreading to that land or property, without lawful excuse. The offence carries a maximum penalty of five years imprisonment or 1000 penalty units, or both. This offence is available as a statutory alternative in the event that a person is charged with the specific bushfire offence under 203E of the *Crimes Act 1900* and that offence is not made out.

The offence does not require a specific state of mind or any intent or negligence. It merely requires the lighting of a fire which escapes certain land in certain circumstances.

### 4. *Minor bushfire arson offences*

The minor offences are primarily contained in the *Rural Fires Act 1997* and are varied in their subject matter. Generally, they concern lighting fires without approval (or exceeding approval); or lighting a fire during a bushfire period. The penalties range from fine only to, in some cases, up to one year imprisonment.<sup>6</sup>

Further offences are found in the *Rural Fires Regulation 2008* which concern minor offences committed during bushfire danger periods, such as lighting a fire to create charcoal, and other particular offences, such as using fire to demolish a building. The offences range in penalty up to 50 penalty units.

There are additional offences in a number of Acts and Regulations, which touch on or relate to bushfires. A complete list can be found at Appendix 1. These offences concern usually quite specific behaviours with a low level of objective criminality.

In its submission, NSW Fire Brigades identified two offences where, in its opinion, the penalty might be too light. The first is the offence of failing to extinguish a fire (section 100(2) of the *Rural Fires Act 1997*). NSW Fire Brigades noted these offences might lead to bushfires. Whilst this is true, it is noted that in the event such an offence leads to a bushfire, the bushfire offence with its maximum penalty of 14 years would be available.

Section 100(2) provides for a maximum penalty of \$5,500 or imprisonment for 12 months or both. Given the availability of the more serious *Crimes Act 1900* offence

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<sup>6</sup> For example, s 86 *Rural Fires Act 1997*

the Review is of the view that this penalty is sufficient. However, the prescribed penalty for this offence if the informant proceeds by way of penalty notice is \$550.<sup>7</sup>

Penalty notices provide a way for the frontline agencies, in this case the Rural Fire Service, to issue immediate, on the spot penalties on offenders. This easy, present enforcement acts as a strong deterrent on this risky behaviour so long as the penalty imposed is sufficiently high.

Noting the potential for damage that accompanies such behaviour and hence the very real need to provide adequate deterrence, this penalty should be increased. It is therefore recommended that the prescribed penalty notice penalty amount be increased to \$1,100.

**RECOMMENDATION 1: The prescribed penalty notice penalty amount for section 100(2) of the *Rural Fires Act 1997* be increased to \$1,100.**

Another offence, clause 21(2)(o) of the *Crown Lands (General Reserves) By-Law 2006*, was also identified in the NSW Fire Brigades analysis as one which may have too low a penalty.

Clause 21(2)(o) provides a penalty of five penalty units for lighting a fire in a reserve when doing so is prohibited under the *Rural Fires Act 1997* and in other circumstances. This offence, however, covers a variety of behaviours, which might not lead to bushfires. Change is not recommended to this clause, as another offence is available, with a higher maximum penalty, which also covers this situation. Section 99(6) of the *Rural Fires Act 1997* provides for a maximum penalty of \$5,500 or imprisonment for 12 months or both. The section makes it an offence to light a fire when a formal declaration is made preventing the lighting of fires. It therefore covers the relevant situations envisaged by clause 21(2)(o) above.

Like section 100(2), the prescribed penalty for an offence under section 99(6) of the *Rural Fires Act 1997* if the informant proceeds by way of penalty notice is \$550.<sup>8</sup> For the same reasons as were provided above, it is recommended that the prescribed penalty notice penalty amount for this offence be increased to \$1,100.

**RECOMMENDATION 2: The prescribed penalty notice penalty amount for section 99(6) of the *Rural Fires Act 1997* be increased to \$1,100.**

**Offences which capture bushfires which cause death**

The arson and bushfire offences are complemented, in cases where death results from a bushfire, by the offences of murder and manslaughter.

In the event that a person caused a bushfire intending by that fire to kill a person and in fact does kill that person, that person would be guilty of murder with a maximum penalty of life imprisonment. In the event that the victim did not die, the person would have committed an offence of destroying or damaging property with the intention of

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<sup>7</sup> Part 1, Schedule 2 *Rural Fires Regulation 2008*

<sup>8</sup> Part 1, Schedule 2 *Rural Fires Regulation 2008*

endangering the life of a person under section 198 of the *Crimes Act 1900* and face 25 years imprisonment in addition to being liable for attempted murder under Division 3 of Part 3 of the *Crimes Act 1900*. Under these provisions, the penalty applies regardless of whether or not the damage is caused by fire.

Where a person intentionally caused a bushfire intending by that fire to cause grievous bodily harm and caused the death of a person, the offender would be guilty of murder.

There are two further possibilities that need to be considered:

1. where a person intentionally starts a bushfire, and that fire unintentionally causes the death of a person; and
2. where a person recklessly starts a bushfire, and that fire unintentionally causes the death of a person.

In both cases, the availability of a general offence of murder or manslaughter will depend upon the facts of each case. Where the action is unlawful, manslaughter by unlawful and dangerous act may be available. Where it is grossly negligent, it is possible that the person would be found to have committed manslaughter by criminal negligence. It is unlikely that murder would be available, however, unless the recklessness was extreme and there was a high level of foresight present.

Where the link between the fire and death is insufficient to establish these charges, then it is likely that the other serious property damage by fire charges under the *Crimes Act 1900* discussed above would be available, with their penalties which range between 10 and 25 years imprisonment.

The NSW Sentencing Council noted that *“where fire is lit by a person with a specific intent to endanger the lives of others, then the increase in the maximum penalty to 25 years imprisonment available for a charge brought under section 198 would seem adequate to address that more serious form of offending.”*

### **Are the prescribed penalties for bushfire arson high enough?**

None of the agencies consulted for this review, including the Sentencing Council expressed concern about the penalties available for bushfire arson offences in general terms. An analysis conducted by the Community Safety Division of the NSW Fire Brigades<sup>9</sup> held that most of the penalties associated with arson type offences were appropriate.

This possibly reflects the regular review undertaken in NSW of bushfire related offences and the provision for significant increases in penalty where a property offence is committed by fire. In most instances under the *Crimes Act 1900*, committing a criminal damage offence by fire doubles or almost doubles the maximum penalty available to a court.

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<sup>9</sup> NSW Fire Brigade submission

## How do other jurisdictions approach arson?

Jurisdictions around Australia have quite different approaches to general arson and bushfire arson offences. Many are minor regulatory or summary offences. In order to conduct a meaningful analysis of these offences and penalties, it is convenient to consider particular groupings of offences. For the purposes of this analysis, only the main indictable criminal offences are considered.

There are five groups or types of offences considered:

1. specific bushfire offences;
2. wilful and unlawful arson offences;
3. property damage arson;
4. damage property by fire with intent to endanger life offences; and
5. damaging property occasioning death offences.

The table below sets the primary offences of each type in each jurisdiction. It is apparent that some jurisdictions focus on 'pure' arson offences, whereas others adopt a damage property by fire model as used in NSW. The difference between the two types of offences is discussed below.

Type	Jurisdictions	Section(s)	Penalty
Specific MCLOC Bushfire offence	Victoria WA SA ACT NSW	Crimes Act 1958 s 197 Criminal Code 1913 s 444 Criminal Law Consolidation Act 85B Criminal Code 2002 s 405 Crimes Act s 203E	15 years 14 years 20 years 15 years 14 Years
Wilful and unlawful Arson ('Pure' Arson)	Qld Tasmania NT ACT	Criminal Code Act 1899 Criminal Code Act 1924 s268 Criminal Code Act s 239 Criminal Code 2002 s404	Life 21 years Life 15 years
Property damage arson	SA Victoria WA NSW	Criminal Law Consolidation Act s85 Crimes Act 1958 s 197(6) Criminal Code s 444 Crimes Act s 195	Up to Life 15 years 14 years Up to 16 yrs
Damage property by fire/causing a fire with intent to endanger life	ACT Tasmania NSW	Crimes Act 1900 s 117 Criminal Code Act 1924 s269A Crimes Act 1900 s 198	25 years 21 years 25 years
Damaging property occasioning death	Victoria	Crimes Act 1958 197A	25 years

### *Specific bushfire offences*

NSW, as have most jurisdictions, adopted the model bushfire offence in the Model Criminal Code. NSW is however in a significantly different position with respect to this offence. Whereas in the Model Criminal Code it is necessary to have a discrete bushfire offence to capture such criminality, this is not required in NSW due to the existence of the general property damage offences, which are specifically aggravated by fire. The Code does not contain these general offences and the specific arson offence is limited in its application and covers only a narrow set of behaviours.

Technically it could be argued that the bushfire offence is necessary in NSW, as the general property damage offences require damage to be proved. The reality is that in most bushfires, some property damage will occur, as the nature of the offending act is in itself destructive. The insertion of the bushfire offence did however play an important role. It is a clear message that bushfires are of significant concern and reflects the level of criminality in such an act. This is reflected in the level of penalty, which is set at 14 years. This is one year below the model offence penalty but reflects the level of penalties in NSW, which are usually set at 14 as opposed to 15 years.

The Model Offence captures both the reckless and intentional setting of fires which might cause damage to neighbouring property. An offender need only be reckless as to the spread of the fire, and no damage need actually occur.

Causing a fire includes:<sup>10</sup>

- (a) lighting a fire;
- (b) maintaining a fire; or
- (c) failing to contain a fire, except where the fire was lit by another person or the fire is beyond the control of the person who lit the fire.

Jurisdictions listed in the table against this item have created an offence of the type recommended in the Model Code. However, there are some minor differences in the approach taken by jurisdictions.

The Australian Capital Territory and Victoria created the offence as set out in the code. Western Australia already had an offence of the type set out in the code, however, the offence is limited to the wilful and unlawful setting of fires, and does not include the reckless setting of fires as included in the Code Offence.

In NSW the Model Offence was amended to only include intentionally causing a fire. The NSW bushfire offence applies when a person intentionally causes a fire, and is reckless to its spread to vegetation.

The introduction of the Model Offence in NSW in 2002 created a three rung penalty scheme for bushfire offenders.

Worst Class	Section 203E – Intentionally cause fire, reckless as to its spread	14 years
Mid Class	Section 195(1)(b) – Recklessly damage property by fire	10 years
Low Class	Section 100(1) <i>Rural Fires Act 1997</i> – Set or cause fire	5 years

In this scheme, the highest penalty is reserved for those who start fires intentionally but are reckless about its potential to cause a bushfire. The middle class, which carries 10 years, is available where a person recklessly causes a fire, and that fire in fact causes damage to property (including vegetation or trees). The low class, which carries five years imprisonment, is available when a person causes a fire, irrespective of his or her intent, and that fire causes no actual damage.

<sup>10</sup> 203D *Crimes Act 1900*

The classes recognise that different levels of behaviour and consequence require different levels of punishment to be available. The graduation of penalties provides important information to courts in a way that the Model Offence, with its catch-all provisions, does not convey. A person who recklessly lights a fire that does damage is of lesser criminality than a person who intentionally lights a fire. Dealing with both under an offence with a single, high maximum penalty potentially leads to a sentence that is disproportionate to the criminality of the offender or one that the general public will view as disproportionate to the maximum penalty. In the absence of sentencing trends suggesting that courts have an insufficient sentencing range and the absence of any concern being expressed about the level of penalties available, the Review does not propose any amendment to section 203E to include recklessness as per the Model Criminal Code.

The Commonwealth Government put forward a proposal to the May meeting of the Standing Council of Attorneys General (SCAG) to extend the model offence so that it provides higher penalties where death or serious bodily harm ensues as a result of an unlawfully caused bushfire. All states agreed that they would consider implementing the new model offence and also report back to SCAG on penalties imposed for arson offences in each of the States and territories. Advice is being sought from the Model Criminal Law Officers Committee which will report back to SCAG's August meeting. Should the Committee recommend any new provisions, consideration will then be given to whether the provisions are necessary and appropriate for NSW.

#### *Wilful and unlawful arson ('pure' arson)*

These offences, which exist in Queensland, Tasmania, the Northern Territory and the Australian Capital Territory, are based on causing fire. Strictly, the fire need not cause any damage for these offences to be made out, although in practical terms such damage is likely to have occurred before anyone is charged.

These 'pure' arson offences are both broader and narrower than offences based on property damage. They are broader in the sense that they capture behaviours independent of the result. The only necessary intention is to cause the fire. They therefore have high maximum penalties to encompass the totality of behaviours which fall under them. Property damage type arson offences have penalties which vary according to the intention of the offender in relation to the damage which results from the fire. In practice, with 'pure' arson offences, whilst the prosecution need not prove the result to make out the offence, the offender's intention when the fire was lit will affect the sentence imposed at the time of sentencing.

The 'pure' arson offences are narrower in that they tend to cover only specific types of property. Section 461 of the *Queensland Criminal Code Act 1899* is an example:

#### *s 461 Arson*

*(1) Any person who wilfully and unlawfully sets fire to any of the things following, that is to say--*

- (a) a building or structure;
- (b) a motor vehicle, train, aircraft or vessel;
- (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel;
- (d) a mine, or the workings, fittings, or appliances of a mine;

*is guilty of a crime, and is liable to imprisonment for life.*

*(2) It is immaterial whether or not a thing mentioned in subsection (1)(a) or (b) is complete.*

NSW has a very limited example of such an offence as a species of attempted murder. Section 28 of the *Crime Act 1900* provides:

*Whosoever:*

*sets fire to any vessel, or any chattel therein, or any part of her tackle apparel or furniture, or casts away or destroys any vessel, or by the explosion of gunpowder, or other explosive substance, destroys, or damages any building, or places, or throws, any matter or thing upon or across a railway, or removes, or displaces any sleeper, or other thing belonging to a railway, with intent in any such case to commit murder, shall be liable to imprisonment for 25 years.*

This section is part of what is, in practical terms, a broad list of acts set out in Part 3 Division 3 of the *Crimes Act 1900* through which one might attempt murder.

With the exception of section 28 above, NSW does not have any offence like a 'pure' arson offence. Instead, its offences are based on the property damage model and specifically provide for arson by identifying fire as a circumstance which aggravates the offence.

### *Property damage arson*

Property damage offences, which exist in South Australia, Victoria, Western Australia and NSW would capture damage to bushland by bushfire. These offences focus on some form of damage caused as a result of the fire. Damage to property must be caused by the fire. That property can include trees, scrub and other vegetation which would ordinarily be damaged by a bushfire.

In NSW, the base offence of damaging property by fire begins with 10 years imprisonment. Where other intentions attach to the property damage, for example where there is an intention to endanger life, the maximum penalties rise in accordance with that intention to up to 25 years imprisonment (see table of NSW offences at Appendix 1).



In NSW these property damage offences (i.e. sections 195 – 198) are of wide application. Unlike the pure arson example from Queensland cited above, the NSW offences are drafted to broadly capture various forms of property.

The word “property” as defined in section 194 for the purposes of these sections, includes most things of a tangible nature.

The section was amended by the *Crimes (Criminal Destruction and Damage) Amendment Act 1987*. Before the amendments, long lists of types of property were included in the *Crimes Act 1900* in order to capture criminal damage. When the amendments were introduced, it was noted in the second reading speech that “this is a simple offence of wide application which provides clarity and virtual universal application. It obviates the need to prove a particular type of property, and applies to both living and inanimate objects.”<sup>11</sup>

The NSW property damage offences are also drafted to encompass a wide range of fault elements concerning the damage. A person who ‘intentionally or recklessly destroys or damages property’ by fire belonging to another is guilty of an offence. In the *Crimes Act 1900*, recklessness includes knowledge<sup>12</sup>. This is broader than the ‘pure’ arson type offences which generally require a stricter fault element. In the example from Queensland cited above we see that a person must act ‘wilfully’ to destroy the property.

The penalties in NSW are comparable to other jurisdictions with similar property damage offence with the exception of South Australia, which prescribes a maximum penalty of life imprisonment for property damage. The South Australian offence can be distinguished on two bases. Firstly, because its requirement that the offender either intend, or be recklessly *indifferent* to the damage caused, is a more difficult test to meet than the test of recklessness in the NSW offences. Secondly, because the maximum penalty replaces a graduated scheme of penalties which apply in different cases, making the application of the higher levels of penalty unlikely.

The Sentencing Council noted that the penalties in NSW were both adequate and proximate to the penalties in other jurisdictions for similar offences.

#### *Damage property by fire with intent to endanger life offences*

The Australian Capital Territory, Tasmania and NSW have created such offences. In NSW, damaging property with the intent to endanger life is an offence and it is immaterial as to whether or not the property damage was occasioned by fire.<sup>13</sup>

This offence is one example of how jurisdictions with criminal damage by fire offences provide for higher maximum penalties on the basis of intent. The 25 years provided in NSW accords with the penalties provided in other jurisdictions for their ‘pure’ arson offences. However the scope of this offence is wider than those offences as it *includes damage to any property*, including damage to vegetation by bushfires.

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<sup>11</sup> NSW Legislative Assembly, *Debates*, 28 October 1987, 15344

<sup>12</sup> s4A *Crimes Act 1900*

<sup>13</sup> s198 *Crimes Act 1900*

### *Damaging property occasioning death*

Section 197A of the Victorian *Crimes Act 1958* provides that a person shall be guilty of an offence is liable to imprisonment for up to 25 years if they commit arson which causes death. It is not necessary to prove that the accused intended the person's death; rather it is only necessary to establish that he or she intended to cause the fire.

In NSW, the situation is encompassed by two sets of provisions, s198 of the *Crimes Act 1900*, which has a comparable penalty of 25 years, and the homicide offences in the *Crimes Act 1900* which carry maximum penalties in some cases of life imprisonment.

Section 198 does not require the prosecution to establish that death has occurred, nor is it restricted to arson. It does however, require that the damage to property is with the intention of endangering the life of another. In the event that a person actually dies, as a result of the fire, the offences of murder and manslaughter may be available. Again, it is necessary in NSW to establish a state of mind in the accused with respect to the death.

It is acknowledged that to attract a penalty of 25 years in NSW, the prosecution is required to prove some intent or recklessness in relation to the death. It is unlikely however, in the case of the Victorian offence, that in the absence of such a state of mind, that any court would impose a penalty of that magnitude which would be reserved for the most serious cases. In NSW, the longest sentence imposed for an offence under section 195(1)(b) of the *Crimes Act 1900* (property damage by fire *simpliciter*) is eight years imprisonment. Of those who receive gaol terms *and are dealt with in a higher court*, more than 80% are sentenced to less than five years imprisonment.<sup>14</sup> Most offenders are dealt with in the local court where the jurisdictional maximum is two years imprisonment.

In *R v Long; Ex Parte Attorney-General (Qld)*<sup>15</sup> the offender deliberately burnt down the Palace Backpackers Hostel in Childers in 2000. He received life sentences for the deaths caused in that case (he was charged with murder) and 15 years for arson. The Court described this as "arson of the worst kind, [which displayed] callousness and cruelty which is difficult to imagine."<sup>16</sup>

These examples show that the penalties available for arson provide ample scope for the imposition of appropriate sentences. The penalty available in s198 reflects that reality.

The other significant advantage of the NSW provision is that it does not actually require death to occur. If a fire were lit, regardless of whether it is extinguished or by chance claimed no fatalities, a person would still be charged under section 198 if they had the requisite intention at the time it was lit.

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<sup>14</sup> Source: Judicial Commission Statistics: Jan 2001 – Dec 2008

<sup>15</sup> [2003] QCA 77

<sup>16</sup> See further Anderson John, "Smoke Gets in your Mind": the legal framework for the crime of arson" (2004) 28 Crim LJ 26

This, together with s203E of the NSW Act, reflects the position NSW has taken in relation to serious property damage. The deterrence flows from the factor causing the purported harm, that is, the destruction of the property. In NSW, the message is reinforced in relation to arson in that specific provision is made in s203E to reflect the serious cost of lighting fires and being reckless as to the spread.

In its response to the Review, the Sentencing Council noted *“a manslaughter charge would encompass most of the potential incidents covered by the Victorian arson causing death offence, an offence which does face potential problems in its proof as to causation, and which in any event may envisage a penalty which is disproportionate to the extent of the mens rea of any given offender, for example where unexpected events intervened to increase the spread of the fire, or to prolong its duration.”*

#### *Conclusion of jurisdictional analysis*

As a result of the consistent and close scrutiny of arson related offences in NSW, there are now a set of complementary provisions, which cover the range of behaviours which are of concern. These offences carry penalties between 10 and 25 years imprisonment. NSW has implemented two approaches.

First, bushfires can be dealt with under a tiered scheme of general property damage offences which are aggravated by fire. Second, in addition to the general offences, NSW has emphasised its concern with bushfire by enacting the specific Model Code offence. This underlines the level of concern about this type of behaviour and also allows charging patterns to be monitored in relation to bushfires.

It is not recommended that additional offences be added to the current regime of applicable offences given the coverage that is now available. Further reviews could be undertaken in relation to simplifying the existing types of general property damage.

## **BUSHFIRE ARSON – THE CRIME AND THE CRIMINALS**

### **Causes of bushfire - Failing to take measures to prevent bushfires**

The Rural Fire Service classifies fires that involve some form of human intervention as *Deliberate Ignitions*. The sub categories of Deliberate Ignitions are as follows:

**Accidental Ignition:** Fires coming from equipment use, power lines, railways or accidents;

**Careless Ignition:** Fires that result from escaped hazard reductions, permit burns, campfires, smoking or other debris burning, or are lit by a person;

**Suspicious:** Deliberate ignitions where an obvious incendiary device has been used, juvenile play or the fire is suspiciously lit. This equates to what is commonly known as arson.

The following table provides an indication of the amount of fires that have been classified as Deliberate Ignitions by the Rural Fire Service.

#### **Total Deliberate Ignitions (as at 28 January 2009) <sup>17</sup>**

	<b>Total Bush/Grass Fires Reported</b>	<b>Total Deliberate Ignition</b>	<b>% Per Annum</b>
<b>2003/04</b>	5608	1552	27.67%
<b>2004/05</b>	3533	2220	62.84%
<b>2005/06</b>	6753	2380	35.24%
<b>2006/07</b>	6781	2228	32.86%
<b>2007/08</b>	4428	1877	42.39%
<b>2008/09</b>	2899	1598	55.12%
<b>Total</b>	30002	11855	39.51%

Of all the bushfires reported, 2% are determined as suspicious. 37% of the reported fires are carelessly or accidentally lit. <sup>18</sup>

In the past the prosecution of offences, particularly the minor penalty notice offences, has varied according to location. This was a particular problem when the authority to issue penalty notices was restricted to Local Council or local Police. <sup>19</sup>

Often, these offences occur in small communities where prosecuting authorities might be reluctant to prosecute or issue notices. The Rural Fire Service noted that in the absence of a large fire, prosecution is often seen as unnecessary or unworthy of the effort in those communities.

<sup>17</sup> Source: Rural Fire Service, electronic mail correspondence, 4/3/09

<sup>18</sup> Source: Rural Fire Service, electronic mail correspondence, 4/3/09

<sup>19</sup> Rural Fire Service, electronic mail correspondence, 4/3/09

The Rural Fire Service was granted the power to issue penalty notices in 2008. The Service has identified accidental and careless fires as being a significant issue and developed strategies to reduce the instances of these fires. This is being accomplished through a process of statewide reporting and monitoring, along with an auditing programme to ensure local managers are addressing these issues. This involves a process of issuing formal warning letters if it appears to be a genuine accident but escalating to penalty notice and ultimately court action for repeat offenders.

Mitigating the likelihood and severity of fires has a greater effect than prosecuting after the fact. In order to accomplish this, the Rural Fire Service utilises its authority under section 66 of the *Rural Fires Act 1997* to enforce hazard reduction in bush fire prone areas. When a landholder or occupier defaults on a section 66 notice requiring them to do particular work, the Rural Fire Service issues a penalty notice and carries out the work itself. The Service subsequently recovers costs from the landholder or occupier. As the Rural Fire Service obtains contractors at government rates but can only levy a \$220 fine, it is sometimes cheaper for the landholder or occupier to default and have the Rural Fire Service undertake the work.

If prosecuted in court, the offence of failing to comply with a bush fire hazard reduction notice under section 66(7) of the *Rural Fires Act 1997* carries a maximum penalty of 12 months imprisonment or \$5,500 or both. Whilst this penalty is appropriate, there is clear scope to increase the proscribed penalty notice amount in response to the issues noted above.

**RECOMMENDATION 3: The prescribed penalty notice penalty amount for section 66(7) of the *Rural Fires Act 1997* be increased to \$1,100.**

### **Causes of bushfire - The deliberate bushfire arsonist**

A 2008 study of bushfire arsonists in NSW found that 90% of the offenders were male and that the mean age of bushfire arsonists was 26.6 years<sup>20</sup>. The motives of arsonists are varied and there have been a large number of studies into what these motives are.<sup>21</sup> A number of classifications are set out in the literature. The following is one taxonomy of motives attributed to arsonists:<sup>22</sup>

- Vandalism motivated arson;
- Excitement motivated arson;
- Revenge motivated arson
- Crime concealment;
- Profit motivated arson; and
- Extremist motivated arson.

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<sup>20</sup> Muller, *Offending and reoffending patterns of arsonists and bushfire arsonists in NSW*, Trends & Issues in Crime and Criminal Justice No. 348, Australian Institute of Criminology, January 2008

<sup>21</sup> Director of Public Prosecutions submission

<sup>22</sup> Willis *Bushfire Arson: A review of the Literature* 2004 Pp 37, 38

It is difficult to ascertain whether or not arsonists, and bushfire arsonists in particular, are recidivists. Findings by studies as to levels of recidivism have ranged from 4% to 60%.<sup>23</sup> However, arson is a difficult offence to detect, and it is possible that these findings understate the levels of recidivism.

However, a majority of arsonists have prior convictions for one or more 'non-arson' offences. The most common of which are offences against the person, followed by property offences and drug offences.<sup>24</sup>

Because of the difficulty identifying bushfire arsonists, new methods of preventing bushfire arson need to be sought. Recommendation nine, below, proposes the creation of a working group to consider this issue outside the context of the criminal law.

Two suggestions in this regard were made by the NSW Fire Brigades in their submission. Firstly that a community education programme be implemented in relation to arson offences and their cost to the community. This suggestion should be considered further by the working group established pursuant to recommendation eight of this Review.

The second suggestion by the NSW Fire Brigades was the creation of an offence to carry implements for causing fires in bushland areas during total fire ban days. The Review is concerned that this proposal would be difficult to enforce considering the multitude of implements which might be used to cause fire; the simplicity of hiding them (on persons or in vehicles) and the size and nature of the areas which are to be covered. A number of ordinary domestic implements which may at present be carried in these areas, particularly in residential areas, together with the prevalence and everyday nature of these objects make this a difficult offence to frame and ultimately enforce.

### **Causes of bushfire - child arsonists**

The NSW Police Force submission notes that there are a disproportionate number of children charged with bushfire related offences when compared with adults. In 2006/07, Strike Force Tronto resulted in 23 adults and 81 children charged.

Child arsonists are usually dealt with differently from adults. In addition to the full range of sentencing options available for adults, a number of specific provisions are made for children. Arising out of the consideration of bushfire laws after the terrible fires of 2001/02, specific provision is made for children in the context of youth justice conferencing.

#### *Youth Justice Conferencing*

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<sup>23</sup> Muller, *Offending and reoffending patterns of arsonists and bushfire arsonists in NSW*, Trends & Issues in Crime and Criminal Justice No. 348, Australian Institute of Criminology, January 2008 p2

<sup>24</sup> Muller, *Offending and reoffending patterns of arsonists and bushfire arsonists in NSW*, Trends & Issues in Crime and Criminal Justice No. 348, Australian Institute of Criminology, January 2008 p3

Youth Justice conferences bring the offender or offenders, their family and supports together, face to face, with the victim or victims and their support people. Together, they agree on a suitable outcome that they have developed among themselves designed to repair harm to the victims. The rationale behind youth justice conferencing is to help the child take steps toward repairing the harm they have caused and taking responsibility for their actions.<sup>25</sup>

Clause 20 of the *Young Offenders Regulation 2004* specifies that outcome plans agreed to at youth justice conferences convened for bushfire and arson related offences may include attendance of young people at a Burns Unit or hospital, or attendance at a screening of a film designed to provide education as to the harmful effects of fire.

Clause 20 of the *Young Offenders Regulation 2004* also requires that outcome plans include community reparation for the offence, such as assisting in clean-up operations, treatment of injured animals and the payment of compensation.

Clause 20(2)(a) refers to the attendance by the young person at a burns unit or hospital ward. When the Regulation was made, the then Minister for Health advised that this was not an option in NSW hospitals.<sup>26</sup> Therefore, the viewing of the video or film effectively is the compulsory Regulation 20(2) option.

Presently, a video used as part of a fire prevention program in Victoria and produced by the Fire and Emergency Services Authority (FESA) of Western Australia called "*The Consequences of Fire*" is used at all conferences involving arson related matters. The video focuses on juvenile fire lighting by demonstrating the speed at which fire can spread, the damage to property it can cause and contains an interview with a young burns victim.

The Department of Juvenile Justice (DJJ) and the NSW Fire Brigades (NSWFB) have in place a Memorandum of Understanding, which focuses on processes and procedures associated with:

- DJJ notifying NSWFB of youth justice conferences where NSWFB attendance is required; and
- A NSWFB representative attending DJJ youth justice conferences for fire related offences wherever possible. The representative will provide input to assist in the production of a suitable, workable and consistent outcome plan.

Since 2001, 159 youth justice conference referrals for offences involving damage by fire have been received. 115 youth justice conferences resulted from these referrals involving 159 young people (28 conferences involved multiple referrals for the same offence and may have included co-offenders).

Of the 115 youth justice conferences that were held only one conference was unable to agree on a suitable outcome plan. Of a total of 158 agreed outcomes, 140 were completed with an average outcome plan completion rate from 2001/02 to 2007/08 of 89%.

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<sup>25</sup> NSWFB Guidelines for Attendance at Youth Justice Conference, p 1

<sup>26</sup> Department Juvenile Justice Submission

In conjunction with a range of additional outcome plan tasks in line with Section 52 of the *Young Offenders Act 1997*, 40% of outcomes included some form of direct work for the victim, work for the NSW Fire Brigade and/or financial reparation.

Youth Justice Conferencing has proven to be a successful intervention for young offenders. The major findings of the re-offending study by the Bureau of Crime Statistics and Research in 2002, which compared young offenders appearing in the Children's Court with those dealt with by conferences, were:

- youth justice conferences are an effective way of reducing juvenile re-offending;
- the proportion of juveniles who re-offended (i.e. were subsequently charged and brought before the Children's Court) was about 28 percent lower for those who had been involved in a conference than for those who had originally been dealt with by a Children's Court;
- the number of reappearances in court was about 24 percent lower amongst those who had originally been referred to a conference than amongst those who had been dealt with by a Children's Court; and
- that Aboriginal young people are less likely to reoffend following a youth justice conference than following a court appearance.

The overall conclusions of the reoffending study were that:

- conferencing has the effect of reducing or delaying re-offending as measured by subsequent court appearances or conferences; and
- when the effects of other factors are controlled for, it appears that both the risk of re-offending and the rate of reappearances per year in the follow-up period are about 15-20 per cent lower for those who participated in a conference than for those who went to court.

#### *Other non-court outcomes for children*

In addition to Youth Justice Conferencing, there are a number of other non-court options which can be used to punish children for arson, such as formal cautions and warnings. These options recognise the rehabilitative focus of juvenile justice and aim at keeping children out of the criminal justice process. The table below sets out number of people who have received such penalties in the recent past.

#### **Number of persons of interest<sup>^</sup> (POIs) proceeded against by NSW Police for arson by method of legal proceeding aged 10 - 17<sup>27</sup>**

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<sup>27</sup> Source: NSW Bureau of Crime Statistics and Research, mai097508cc



<b>Method of legal proceeding</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Jan to Sept 2008</b>
<b>Proceeded against to court</b>	67	43	56	51	40
<b>Proceeded against other than to court</b>					
Youth conference	18	17	27	22	14
Caution - <i>Young Offenders Act 1997</i>	58	78	69	52	28
Infringement notice	-	2	-	-	-
Warning	75	67	69	77	43
Legal process not further classified	9	6	4	9	14
<b>Total proceeded against other than to court</b>	160	170	169	160	99
<b>Total proceeded against</b>	227	213	225	211	139

^ Persons of interest (POIs) are suspected offenders recorded by police in connection with a criminal incident. Some POIs are formally proceeded against to court and some are proceeded against other than to court whilst others are not proceeded against. The POIs included in the table above have all been proceeded against. POIs are not a count of unique offenders. Where an individual is involved in multiple criminal incidents throughout the year they will appear as a POI multiple times. Correspondingly, no person of interest information will be recorded for criminal incidents in which there is no known suspect. This is very common among incidents of property crime which have a low clear up rate.

\* Excluding persons where age was missing/unknown

Police appear to be exercising their power not to charge children for arson offences and instead engaging extra-curial punishments rather than placing the children before the courts. This is in accordance with the policy of focusing on the rehabilitation of children, rather than exposing them to the criminal justice system wherein (further) damage to their development might occur.

### *Court outcomes for children*

There are some occasions where a child must be brought to court because of the nature of the offence or because other measures have failed. Since 2007 more than 20 full time custodial or quasi-custodial sentences have been imposed on children for arson-type offences in NSW each year.<sup>28</sup> Several received community service orders. There have been no submissions received which suggest that these outcomes are perverse.

The review has not identified any particular issue with the laws or sentencing outcomes concerning child arsonists; however, it is concerning that children make up a disproportionate number of people charged with bushfire related offences. Further

<sup>28</sup> Source: NSW Bureau of Crime Statistics and Research mai097508cc

consideration needs to be given to the identifying the cause of and solutions to rectify this anomaly. Given the real impact the introduction of any solutions might have on reducing the number of bushfires, it is recommended that a preliminary report on the issue be prepared by mid October 2009, in time for the bushfire season. If necessary, a further report with more detailed consideration should be prepared thereafter.

**RECOMMENDATION 4: That the Attorney General's Department's Crime Prevention Division consider the causes of, and any solution to, the high number of juveniles involved in causing bushfires.**

## **INVESTIGATING ARSON**

The Rural Fire Service has 131 trained fire investigations located around NSW. These investigators are tasked with establishing the cause and origin of a bushfire. If the cause of a fire appears suspicious, the investigation is referred to the NSW Police Force.

The Rural Fire Service investigators work in close co-operation with the NSW Police Force. For combined investigations, the two agencies have concluded a Memorandum of Understanding, which sets out the protocols for those investigations.<sup>29</sup>

In its submission, the Rural Fire Service noted:

*“The Rural Fire Service is exploring the possibility of seconding a Police officer to the Service during the annual bushfire season to improve and enhance the sharing of information about deliberately lit bushfires”*

Whilst there is a distinction in roles between the two agencies, such co-operation can only be encouraged as an important part of bringing bushfire arsonists to justice.

### **Investigating the cause of bushfire**

The nature of bushfire arson offences means that physical evidence which might be used in a prosecution is often destroyed in the commission of the offence. In the absence of an eyewitness to the ignition of the fire who can identify the offender, there is little evidence which can be used to establish the identity of the offender. The little evidence which might remain at a scene can easily be destroyed accidentally by human contact, or perhaps even maliciously by the perpetrator of the crime.

To complicate matters further, the aftermath of a fire is a dangerous place wherein it might not be safe for police and fire investigators to conduct any investigations. NSW Fire Brigades have a general power to remove individuals and obstacles in furtherance of their functions. Section 19 of the *Fire Brigades Act 1989* provides:

*The officer in charge at a fire or hazardous material incident may cause to be removed any person, vehicle, vessel or thing the presence of whom or which at or near a fire or hazardous material incident might, in the officer’s opinion, interfere with the work of any fire brigade or the exercise of any of the officer’s functions.*

It is likely that the general powers granted to Rural Fire Brigade officers in section 22 of the *Rural Fires Act 1997*, which authorise them to do what is necessary to put out a fire, would include the power granted by section 19 above. However, as the power contemplates specific action taken against individuals, in some cases against their

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<sup>29</sup> Rural Fire Service submission

common law rights, there is need for a clear legislative imprimatur. Therefore, it is recommended that the same power, allowing for any necessary changes, be granted to the Rural Fire Brigades.

As many Rural Fire Service officers are volunteers, appropriate officers will have to be the subject of a formal individual delegation by the Rural Fire Service Commissioner to exercise this power.

The grant of power is not to be for investigative purposes; rather it is for the protection of members of the public in the dangerous circumstances of a fire. Section 22 of the *Rural Fires Act 1997* provides that certain provisions of that Act are examples of the use of powers under that Act. The power, which is the subject of this recommendation, should be drafted accordingly, that is, as an example.

**RECOMMENDATION 5: That appropriate officers of the Rural Fire Service be granted the same powers as granted to officers of NSW Fire Brigades under section 19 of the *Fire Brigades Act 1989*.**

Once the danger has passed, investigation can begin. The investigation of bushfires often involves entry onto private property. There are a number of ways that investigators are empowered to enter and investigate on such property including:

- with the consent of the owner or occupier of the land;
- establishing a crime scene pursuant to part 7 of the *Law Enforcement (Powers and Responsibilities) Act 2002*; and
- with a search warrant under part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

The Rural Fire Service investigates fires in order to ascertain their cause. It may be that the fire is caused as a result of a criminal action or there may be natural causes such as lightning strikes. In many cases this investigation is conducted with the consent of the owner or occupier of the land. Where there are reasonable grounds to believe an offence has been committed and the fire requires criminal investigation immediately, the relevant police powers can be used by the police, with the assistance of the Rural Fire Service, where consent from the owner or occupier is not forthcoming.

Where a fire is not obviously suspicious and consent cannot be obtained, the Rural Fires Service has relied on section 23 of the *Rural Fires Act 1997* for the power of entry. That section provides:

*An officer of a rural fire brigade or group of rural fire brigades may enter any premises for the purpose of exercising any function conferred or imposed on the officer by or under this Act.*

The Rural Fire Service asked in its submission that consideration be given to specific legislative powers of entry. Like the power to remove people from an area, powers of entry contemplate specific action taken against individuals, in some cases against their common law rights, and therefore require clear legislative authority. It is not

appropriate, however, to grant any agency a timeless power to trespass upon a person's property.

In a bushfire situation, it might be necessary for the Rural Fire Service to enter property in the immediate aftermath of a fire, to consider evidence which might quickly be destroyed. In that situation, designated Fire Investigation Officers of the Rural Fire Service should have a standing power to enter any land upon which a bushfire has occurred for the purposes of investigation for a period of up to 24 hours after the has been formally declared out by the Rural Fire Service.

**RECOMMENDATION 6: That the *Rural Fires Act 1997* be amended to provide to designated Fire Investigation Officers of the Rural Fire Service the power to enter any land upon which a bushfire has occurred for the purposes of investigation for a period of up to 24 hours after a fire has been declared out.**

In order to allow for situations where it is not possible to investigate in the immediate aftermath of the fire, or where investigation at a later time is required after the period of 24 hours has elapsed, consideration should be given to providing Fire Investigation Officers of the Rural Fire Service the option of applying to an authorised officer or a coroner for a warrant to investigate the cause of the fire further.

Such warrants would only be available for the purposes of investigating the cause of the fire when the cause is not known. That is, they will be available only when a fire is *not* reasonably suspected to have been caused by criminal action as in that event, the powers available to police would suffice.

The warrants should also be limited to privately owned bushland as they are concerned ascertaining the cause of bushfires. They would not extend to allow investigators to enter homes or other built up premises.

The warrants should be subjected to the usual protections and limitations of warrants found in *the Law Enforcement (Powers and Responsibilities) Act 2002*. In addition, given the extra-ordinary nature of these warrants, they should be limited in further ways and therefore further detailed consideration of this proposal and necessary safeguards is necessary.

**RECOMMENDATION 7: That legislation be prepared by the Criminal Law Review Division of the Attorney General's Department allowing designated officers of the Rural Fire Service to apply for a warrant in certain circumstances.**

### **Investigating known or suspected bushfire arson**

As noted above, the very nature of bushfires can lead to the destruction of evidence, making investigation difficult. The NSW Police Force has taken steps in the last decade to improve its ability to investigate bushfire arson.

### *NSW Police Force initiatives<sup>30</sup>*

The NSW Police Force last year expanded its general arson squad to become a team of 16 detectives dedicated to arson investigation.<sup>31</sup> The squad investigates arson incidents and provides intelligence on arson crimes across the state.

Since the bushfires in the summer of 2001/02, which caused extensive damage, the arson squad has been supplemented by Strike Force Tronto during bushfire seasons. Strike Force Tronto investigates the cause and origin of all bushfires around NSW and criminal activity associated with the fires.

The initial Strike Force Tronto (2001/02) was based at Penrith and involved detectives, analysts and other personnel working across affected regions in NSW during the bushfire season. Work was undertaken with the Rural Fire Service and NSW Fire Brigade personnel to prepare reports for the Coroner.

Strike Force Tronto was reactivated on 9 October 2002, following the Engadine bushfires. At this time, Strike Force Tronto coordinated the Local Area Command responses to criminal activity concerning bushfires, including reports on arson and looting.

A third Strike Force Tronto was activated in the summer of 2004/05. Strike Force Tronto 4 and 5 operated during the 2006/07 and 2007/08 bushfire seasons.

A sixth Strike Force has recently been approved which will operate with an Investigation Coordinator and Officer in Charge with various staff from the Arson team to assist as required with Local Area Commands where a bush fire is detected.

Strike Force Tronto has led to the identification and charging of a significant number of bushfire arsonists.<sup>32</sup> The initiative and its continued operation must be commended. Whilst it is ultimately an operational matter for the NSW Police Force, there may be benefits to be had from publicising the existence of the Strike Force during times of high fire danger as a potential deterrent to would-be bushfire arsonists.

### *The role of the Coroner*

Coroners are empowered to investigate fires in which property damage and a death has occurred. A coroner can order an enquiry into a fire, and where the Rural Fire Service Commissioner has requested it, must do so.<sup>33</sup>

A Coronial Inquiry into the January 2003 bushfires took place in August 2003 in Queanbeyan. In accordance with their ordinary functions, NSW Police provided a full brief of evidence to the Inquiry.

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<sup>30</sup> The primary source for the following discussion in the NSW Police Force, Supplemental submission by email 5/3/09

<sup>31</sup> NSW Policy Ministry, by email, 4/3/09

<sup>32</sup> NSW Police Force submission

<sup>33</sup> s15 *Coroners Act 1980*

Arising out of this inquiry, a protocol between NSW Police and the State Coroner was established in 2003. The protocol for reporting of bushfires to the Coroner is as follows:<sup>34</sup>

1. Bushfires are to be reported to the Coroner in the following circumstances:
  - a. when there is death or injury to any person;
  - b. when the circumstances of the bushfire are unclear;
  - c. where criminality is suspected; or
  - d. at the request of the Minister or State Coroner.
  
2. Coronial reporting is *not* required in the following circumstances:
  - a. there has not been a death or injury to any person;
  - b. where damage is restricted to bushland and the circumstances of the fire are clear;
  - c. when damage relates only to property (of any value) and the circumstances of the fire are clear; and/or
  - d. simply because there is public or media interest.

## **DEALING WITH BUSHFIRE ARSONISTS IN COURT**

As illustrated in the table below, the number of people who are sentenced by courts for the key bushfire arson offences is very low.

### **Persons convicted of their principal offence\* under selected sections of the *Crimes Act 1900* and the *Rural Fires Act 1997* relating to arson<sup>35</sup>**

<b>Act of legislation</b>	<b>Sections</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<i>Crimes Act 1900</i>	203E(1)	5	5	3	6	5
<i>Rural Fires Act 1997</i>	100(1)(a), 100(1)(b) and 100(2)	15	12	3	9	19

\* Where a person has been found guilty of more than one offence, the offence that received the most serious penalty is the principal offence

It is difficult, with the low numbers of people sentenced, to draw any specific conclusions about the levels of penalty. It appears from statistics kept by the Judicial Commission that only one case under section 203E, *R v Mills*<sup>36</sup>, was prosecuted on indictment (as opposed to summarily) which resulted in a sentence.

Mr Mills was charged with three counts of intentionally causing a fire with recklessness as to the spread of that fire. He pleaded guilty. Mr Mills was sentenced in the District Court to a total of 28 months imprisonment with a non-parole period of 21 months to be served by way of periodic detention. The Crown appealed.

<sup>34</sup> NSW Police Force, Supplemental submission by email 5/3/09

<sup>35</sup> Source: NSW Bureau of Crime Statistics and Research, jh09-7477

<sup>36</sup> [2005] NSWCCA 175

## **An Extract from *R v Mills***

*Mr Mills (the respondent)<sup>1</sup> applied to become a voluntary probationary member of the Coal and Candle Brigade of the New South Wales Rural Fire Service on 24 September 2003. After completing a basic fire-fighting course within [sic] the Brigade, he was assigned to a fire-fighting crew from 21 December 2003.*

*At about 12 PM on 8 January 2004 the respondent stopped his car on McCarrs Creek Road in the Ku-ring-gai National Park. He lit a Jiffy firelighter and threw it into the bush. He then drove a short distance down the road, and after lighting another Jiffy firelighter he threw it into the bush. One of the firelighters burnt an area of approximately 20 metres in length and 15 metres wide. The other firelighter burnt an area of about 0.5 metres. Members of the Rural Fire Service extinguished the fires.*

*After throwing the firelighters into the bush at McCarrs Creek Road, the respondent drove to Akuna Bay where he purchased some refreshments before driving up Liberator General San Martin Drive in the Ku-ring-gai National Park. Just before 12:30 PM he stopped at the Mount Ellis trig, lit three more Jiffy firelighters and threw them into the bush. At this time the weather conditions were highly conducive to the spread of any fire, with a maximum temperature of 29.4 degrees centigrade, a minimum humidity of 18.5% and peak wind speed of 43 kilometres per hour.*

*At about 12:30 PM the Respondent contacted the Coal and Candle Rural Fire Brigade by telephone and reported seeing smoke in the area of the Mount Ellis trig and walking trail. Fire crews were dispatched to investigate and to fight a fire that was by then expanding to the east. Early in the afternoon, the Respondent attended the fire station. He contacted Roger Pearce, the Brigade President and Deputy Captain, by telephone and offered his assistance in fighting the fire. He was not required at that stage, but was instructed to hold himself available in case he was needed later.*

*He contacted Mr Pearce several times during the afternoon repeating his offer of assistance. He attended the station at 6:30 PM and went with a Rural Fire Service investigator to the location where he had reported first seeing smoke. The Respondent told the investigator that, while seated in his car, he had seen two fires on either side of the trail and smoke near three power poles. The Respondent then assisted fighting the fire until about 6 AM the following morning. On Saturday 9 January 2004 he also assisted in fighting the fire from about 6 PM until mid morning on the following day.*

*The fire the subject of this count continued to burn for five days until 13 January 2004. It burnt an area of 1,480 hectares of National Park with a perimeter of 32.5 kilometres. It is estimated that resources to the value of approximately one million dollars were expended in combating the fire, including 443 personnel, more than 50 vehicles and eight aircraft. There were no losses to private property, although various settlements were threatened. Damage was caused to the water and communications supply to the Akuna Bay Marina. In addition, six fire fighting personnel sustained injuries including a broken ankle, eye injuries, a torn ligament, back injury and dehydration. The fire damaged the habitat of a large number of native animal species that are known to inhabit the area.*



On appeal, the Court of Criminal Appeal quashed the sentence and imposed an overall sentence of 5 years and 2 months imprisonment with a non-parole period of 2 years and eight months. This was a sentence of full time imprisonment rather than periodic detention. The non-parole period imposed fell significantly short of the standard non-parole period of 5 years notwithstanding a finding that two of the three counts were in the upper range of objective seriousness for the offence.<sup>37</sup> However there were a number of reasons justifying the departure including:

- Mr Mills pleaded guilty, therefore the standard non-parole period was only relevant as a reference;<sup>38</sup>
- the existence of special circumstances, including a number of diagnosed mental conditions, his history of self-harm and the accumulation of the sentences, warranting a departure from the statutory ratio between the head sentence and the non-parole period;<sup>39</sup>
- the offender pleaded guilty at the first available opportunity; and
- that this was a Crown appeal.<sup>40</sup> There was evidence that the offender had engaged in positive activities since beginning his sentence of periodic detention.<sup>41</sup>

Because of the circumstances of this case noted above, Mills provides little guidance on the application of and the appropriateness of the level of the standard non-parole period. Moreover, no conclusion can be made about the appropriateness of the penalties.

The balance of the matters were dealt with summarily. Judicial Commission statistics show that since 2004, 12 people were sentenced in the Local Court for the offence under section 203E. Of these, 5 received custodial penalties, none of which exceeded 12 months imprisonment.

The summary criminal jurisdiction of the Local Courts has a jurisdictional maximum penalty of two years imprisonment. In practice, offences which are at the lower end of the objective seriousness, are prosecuted summarily rather than on indictment. Assuming that to be the case for these offences, and noting that the standard non-parole period does not apply in summary prosecutions,<sup>42</sup> it cannot be said on the matters charged and brought before the courts that the penalties imposed are inadequate.

Whilst a standard non parole period applied to the specific bushfire arson offences it is not strictly relevant to the vast majority of matters prosecuted because most

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<sup>37</sup> *R v Mills* [2005] NSWCCA 175 per Wood CJ at CL at 58

<sup>38</sup> *R v Mills* [2005] NSWCCA 175 per Wood CJ at CL at 50; see *R v Way* [2004] 60 NSWLR 168 for a discussion of the role of standard non-parol periods where an offender pleads guilty.

<sup>39</sup> *R v Mills* [2005] NSWCCA 175 per Wood CJ at CL at 78

<sup>40</sup> There is an element of double jeopardy in a Crown Appeal against the inadequacy of a sentence. In recognition of that, Courts of Appeal are both slow to intervene and often impose sentences at the lower range of what may otherwise be appropriate.

<sup>41</sup> *R v Mills* [2005] NSWCCA 175 per Wood CJ at CL at 76

<sup>42</sup> s 54D(2) *Crimes (Sentencing Procedure) Act 1999*

prosecutions for these offences proceed by way of a guilty plea and are prosecuted summarily.

## **CONCLUSION**

In 2002, in the aftermath of brutal bushfires in NSW, the Government considered, in detail, bushfire laws and penalties and enacted a specific bushfire offence. NSW has a wide array of offences, both specific and general, that are applicable to bushfires.

On the basis of the submissions received from the front line agencies which deal with bushfires and the criminals which light them, the submission from the Sentencing Council, an analysis of the penalties and offences available in NSW and around Australia and consideration of the penalties imposed, it is clear that the criminal laws in NSW concerning bushfire are comprehensive both in relation to the types of behaviour they capture and in relation to the level of penalties which are available to punish the offenders. This result is unsurprising given the considerable research and effort which has gone into improving the legal response bushfires over the last decade.

This Review was concerned primarily with the penalties and laws available to identify and punish bushfire arsonists. Having found that these penalties and laws are adequate, the Review has made a number of minor recommendations primarily based at increasing deterrence for offences with a low objective seriousness and providing some additional powers to the Rural Fire Services. These recommendations, however, are in the nature of minor adjustments to improve the operation of the laws and will provide the Rural Fire Service with a suite of powers to play a frontline role in deterring behaviours that can lead to bushfires.

What has been brought to the attention of the Review in the course of its analysis, is that the primary issues concerning bushfires concern identifying the offenders and stopping them before they light fires. There are limitations on the ability of criminal laws to achieve this by way of increasing penalties and broadening the scope of offences and given the already tough penalty regime which exists in NSW new initiatives and directions are required to prevent bushfires from being started at all.

It is imperative that the Government consider ways of preventing firestarting. One of the recommendations of this Review is that the Crime Prevention Division of the Attorney General's Department consider the cause of and solution to juvenile firestarting. In addition to this recommendation, however, a more general consideration of methods to preventing criminal firestarting, beyond the offences and penalties available, is necessary. Therefore a working group should be established to consider these issues. The group should consist of representatives from the Rural Fire Service, the NSW Fire Brigades, the NSW Police Force and the Crime Prevention Division of the Attorney General's Department. Given the disproportionate number of juveniles offenders, consideration should be given to including the Department of Education in the discussions of the working group in order to consider methods of educating children in relation to bushfires and the damage they cause.

The working group could consider methods of preventing fire starting including, but not limited to:

- crime prevention by environmental design;

- enforcement options; and
- community education programmes.

Any preventative measures which the Government implements may save significant damage to bushland, property and, potentially, save lives. Therefore, it is recommended that the working party issue an interim report by mid October 2009, in time for the bushfire season. If necessary, a further report with more detailed consideration should be prepared thereafter.

**RECOMMENDATION 8: A working group be established to consider methods of preventing criminal firestarting.**

**Appendix One - NSW Bushfire Related Legislation 2009**

<b>STATUTE</b>	<b>OFFENCE</b>	<b>MAXIMUM PENALTY</b>
<i>Crimes Act 1900</i>	<b>Section 28</b> Setting fire to vessel or causing explosion that destroys or damages building with intent to murder	Imprisonment for 25 years (10 years standard non-parole period)
	<b>Section 195(1)(b)</b> Intentionally or recklessly destroys or damages property by fire or explosives	Imprisonment for 10 years
	<b>Section 195(1A)(b)</b> Intentionally or recklessly destroys or damages property by fire or explosives in the company of other people	Imprisonment for 11 years
	<b>Section 195(2)(b)</b> Intentionally or recklessly destroys or damages property by fire or explosives, during public disorder	Imprisonment for 12 years
	<b>Section 196(1)(b)</b> Destroys or damages property by fire or explosives, intending to cause bodily injury	Imprisonment for 14 years
	<b>Section 196(2)(b)</b> Destroys or damages property by fire or explosives, intending to cause bodily injury, during public disorder	Imprisonment for 16 years
	<b>Section 197(1)(b)</b> Dishonestly destroys or damages property by fire or explosives	Imprisonment for 14 years
	<b>Section 197(2)(b)</b> Dishonestly destroys or damages property by fire or explosives, during public disorder	Imprisonment for 16 years
	<i>Section 198</i> Destroys or damages property with intention of endangering life	Imprisonment for 25 years
	<i>Section 203E</i> Intentionally causing a fire and being reckless as to the spread of the fire to vegetation on any public land or land belonging to another	Imprisonment for 14 years
<i>Rural Fires Act 1997</i>	<i>Section 64</i> During bush fire danger period, occupier of land must immediately take all steps to extinguish fire or inform an appropriate officer	Imprisonment for 6 months, 20 penalty units, or both

	<b>Section 86(1)(b)</b> Lights a fire in circumstances likely to be dangerous to any building without notice under regulations	Imprisonment for 12 months, 50 penalty units, or both
	<b>Sections 86(1)(a) and 86(1A)</b> Lighting a fire for purpose of land clearing or burning any fire break without notice under regulations, hazard reduction certificate (or approval)	Imprisonment for 12 months, 50 penalty units, or both
	<i>Section 87</i> Lighting a fire for purpose of land clearing or burning any fire break in bush fire danger period (unless authorised and with notice)	Imprisonment for 12 months, 50 penalty units, or both
	<i>Section 88</i> Lighting a fire within a fire district or rural fire district where likely to be dangerous to any building (unless authorised and with notice)	Imprisonment for 12 months, 50 penalty units, or both
	<b>Section 99(6)</b> Failing to comply with Ministerial direction prohibiting or restricting fires in open air	Imprisonment for 12 months, 50 penalty units, or both
	<b>Section 100(1)</b> Sets fire to land or permits fire to escape in circumstances likely to cause injury or damage to person, land or property	Imprisonment for 5 years, 1,000 penalty units, or both
	<b>Section 100(2)</b> Leaves fire before thoroughly extinguished	Imprisonment for 12 months, 50 penalty units, or both
<i>Rural Fires Regulation 2008</i>	<i>Section 19</i> Lighting a fire on land in connection with the demolition of a building, destruction of old building materials or similar.	20 penalty units
	<i>Section 20</i> Lighting a fire to destroy sawmill waste (subject to exceptions)	20 penalty units
	<i>Section 25</i> Lighting a fire to cook or similar unless ground cleared of all combustible matter for at least 2m	20 penalty units
	<b>Section 26(2)</b> Lighting a fire to destroy garbage or refuse otherwise than at a waste depot unless in incinerator with permit and land cleared of combustible matter within 5m	20 penalty units
	<i>Section 27</i> Lighting a fire to produce charcoal or distil oils unless ground cleared of combustible matter within 30m	20 penalty units

<i>Crown Lands (General Reserves) By-law 2006</i>	<i>Section 21</i> Activities prohibited by a public notice displayed on the reserve, including (2)(o) lighting a fire	5 penalty units
<i>National Parks and Wildlife Act 1974</i>	<b>Section 57(1)</b> Setting fire to a tree, plant, flower, or vegetation in a nature reserve	Imprisonment for 6 months, 100 penalty units (for individuals) or both
	<i>Section 58R</i> Setting fire to a tree, plant, flower, or vegetation in a karst conservation reserve	Imprisonment for 6 months, 100 penalty units (for individuals) or both
<i>National Parks and Wildlife Regulation 2002</i>	<b>Section 14(1)(a)</b> Lighting, maintaining or using a fire (i) elsewhere than in a designated fireplace, (ii) elsewhere than in a suitable temporary fireplace away from trees and flammable material, (iii) in contravention of notice regulating use of fire, (iv) when a total fire ban has been imposed.	30 penalty units
	<b>Section 14(1)(b)</b> Leaving fire unattended before thoroughly extinguished	30 penalty units
	<b>Section 14(1)(c)</b> Failing to call for help to control or extinguish fire that the person lit, used or maintained when it is beyond the person's power to control or extinguish	30 penalty units
	<b>Section 14(1)(d)</b> Handling any inflammable substance in a manner likely to cause a fire in a park	30 penalty units
	<b>Section 23(2)(g)</b> Lighting a fire in a cave	30 penalty units
<i>Rural Lands Protection (General) Regulation 2001</i>	<i>Section 27</i> Offences on travelling stock reserves: a person must not light a fire in the reserve when the lighting of fires is prohibited by the responsible authority by signs displayed on or near reserve	10 penalty units
<i>Fire Brigades Act 1989</i>	<i>Section 34</i> Intentionally or recklessly gives any false alarm of fire	Imprisonment for 1 month, 20 penalty units, or both for first offence. Imprisonment for 12 months, 50 penalty units, or both for subsequent offences
	<i>Section 35</i> Obstruction or hindrance of fire fighters	Imprisonment for 2 years, 50 penalty units, or both

<i>Forestry Regulation 2004</i>	<i>Section 17</i> Lighting fire for cooking etc in forestry area, unless at least 4.5m from nearest log, stump or tree and ground within 2m cleared of all flammable matter, or in fire place	20 penalty units
	<i>Section 18</i> Lighting fire to process timber, products or forest materials unless land within 30m cleared of flammable matter	20 penalty units
	<i>Section 19</i> Lighting fire in open air in forestry area for destroying waste from processing timber, products or forest materials without incinerator or permission	20 penalty units
	<i>Section 20</i> Lighting fire in forestry area to clear vegetation or make firebreak without authority	20 penalty units
	<i>Section 21</i> Leaving a lighted tobacco product or lighted match in forestry area	20 penalty units
	<i>Section 22</i> Lighting fire for unauthorised purpose	20 penalty units
	<b>Section 29(1)</b> Leaving site of fire unless fire extinguished or another person has undertaken to remain at the site to tend or extinguish fire	20 penalty units
	<b>Section 29(4)</b> If fire escapes from site or escalates so as to endanger a person or property, must immediately take all reasonably practicable measures to ensure fire extinguished	20 penalty units



## Appendix Two – Inter-Jurisdictional Comparison of Arson laws

Jurisdiction	Legislation	Offence	Penalty
New South Wales	<i>Crimes Act 1900: s 203E</i>	<p><b>Bushfire offences</b> A person who intentionally causes a fire, and who is reckless as to the spread of the fire to vegetation on any public land or on land belonging to another, is guilty of an offence.</p> <p>It is a defence to this offence if the person is a fire fighter or acting under the direction of a fire fighter, and the person caused the fire in the course of bushfire fighting or hazard reduction operations.</p>	14 years imprisonment
	<i>Crimes Act 1900: s 195</i>	<p><b>Destroying or damaging property by fire or explosive</b></p> <p>A person who intentionally or recklessly destroys or damages property belonging to another or to that person is guilty of an offence</p> <p>A person who, in the company of another person or persons, intentionally or recklessly destroys or damages property belonging to another or to that person is guilty of an offence</p> <p>A person who, during a public disorder, intentionally or recklessly destroys or damages property belonging to another or to that person is guilty of an offence</p>	<p>10 years imprisonment.</p> <p>11 years imprisonment</p> <p>12 years imprisonment</p>
	<i>Crimes Act 1900: s 196</i>	<p><b>Destroying or damaging property with intent to injure a person by fire or explosive</b></p> <p>A person who destroys or damages property, intending by the destruction or damage to cause bodily injury to another, is guilty of an offence</p> <p>A person who, during a public disorder, destroys or damages property, intending by the destruction or damage to cause bodily injury to another, is guilty of an offence</p>	<p>14 years imprisonment</p> <p>16 years imprisonment</p>

	<p><i>Crimes Act 1900: s 197</i></p>	<p><b>Dishonestly destroying or damaging property by fire or explosive</b></p> <p>A person who dishonestly, with a view to making a gain for that person or another, destroys or damages property is guilty of an offence</p> <p>A person who, during a public disorder, dishonestly, with a view to making a gain for that person or another, destroys or damages property is guilty of an offence</p>	<p>14 years imprisonment</p> <p>16 years imprisonment</p>
	<p><i>Crimes Act 1900: s 198</i></p>	<p><b>Destroying or damaging property with intention of endangering life</b></p> <p>A person who destroys or damages property, intending by the destruction or damage to endanger the life of another is guilty of an offence</p>	<p>25 years imprisonment</p>
	<p><i>Rural Fires Act 1997: s 100</i></p>	<p><b>Lighting fires without authority</b></p> <p>100(1) A person who, without lawful authority:</p> <ul style="list-style-type: none"> <li>• sets fire or causes fire to be set to the land or property of another person, the Crown or any public authority, or</li> <li>• being the owner or occupier of any land, permits a fire to escape from that land under such circumstances as to cause or be likely to cause injury or damage to the person, land or property of another person or the land or property of the Crown or a public authority,</li> </ul> <p>is guilty of an offence.</p> <p>100(2) A person who, without lawful authority, leaves whether temporarily or otherwise any fire which the person has lit or used in the open air before the fire is thoroughly extinguished is guilty of an offence.</p> <p>100(3) Nothing in subsection (2) requires any person to extinguish a fire in the open air that has been lit or used for the purpose of cooking, heating or preparing meals or boiling water or for any similar purpose in accordance with the regulations if, at the time of the person leaving it, the fire continues to be</p>	<p>1,000 penalty units or imprisonment for 5 years, or both.</p> <p>50 penalty units or imprisonment for 12 months, or both.</p>

		used by some other person.	
<b>Victoria</b>	<i>Crimes Act 1958: s 197</i>	<b>Destroying or damaging property</b> (6) An offence against this section committed by destroying or damaging property by fire shall be charged as arson.	15 years imprisonment
	<i>Crimes Act 1958: s 197A</i>	<b>Arson causing death</b> A person who commits arson as defined in section 197 and thereby causes the death of another person is guilty of an indictable offence.	25 years imprisonment
	<i>Crimes Act 1958: s 198</i>	<b>Threats to destroy or damage property</b> A person who without lawful excuse makes to another a threat— (a) to destroy or damage any property belonging to that other or a third person or to himself and that other or a third person; or (b) to destroy or damage his own property in a way which he knows or believes is more likely than not to endanger the life of that other or a third person— shall, if he made the threat with the purpose of causing the other to fear that it would be carried out, be guilty of an indictable offence.	5 years imprisonment
	<i>Crimes Act 1958: s 201A</i>	<b>Intentionally or recklessly causing a bushfire</b> (1) A person who— (a) intentionally or recklessly causes a fire; and (b) <i>is reckless as to the spread of the fire to vegetation on property belonging to another—</i> is guilty of an offence.	15 years imprisonment
	<i>Country Fire Authority Act 1958: s 39C</i>	<b>Causing fire in a country area with intent to cause damage etc. an indictable offence</b> ... any person who on any land in the country area of Victoria (without lawful excuse) does any act causing a fire or for the purpose of causing a fire and with intent to destroy any vegetation, produce, stock, crop, fodder or other property belonging to another shall be guilty of an indictable offence.	Minimum sentence of 12 months imprisonment.  Maximum sentence of 20 years imprisonment

<b>Queensland</b>	<i>Criminal Code Act 1899:</i> s 461	<p><b>Arson</b></p> <p>(1) Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—</p> <p>(a) a building or structure;</p> <p>(b) a motor vehicle, train, aircraft or vessel;</p> <p>(c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel;</p> <p>(d) a mine, or the workings, fittings, or appliances of a thing mentioned in subsection (1)(a) or (b)</p> <p>is guilty of a crime.</p> <p>(2) It is immaterial whether or not a thing mentioned in subsection (1)(a) or (b) is complete.</p>	Life imprisonment
	<i>Criminal Code Act 1899:</i> s 462	<p><b>Endangering particular property by fire</b></p> <p>A person who wilfully and unlawfully sets fire to anything situated so that a thing mentioned in section 461(1)(a) to (d) is likely to catch fire from it commits a crime.</p>	14 years imprisonment
	<i>Criminal Code Act 1899:</i> s 463	<p><b>Setting fire to crops and growing plants</b></p> <p>Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—</p> <p>(a) a crop of cultivated vegetable produce, whether standing or cut;</p> <p>(b) a crop of hay or grass, whether the natural or indigenous product of the soil or not, and whether under cultivation or not, and whether standing or cut;</p> <p>(c) any standing trees, saplings, or shrubs, whether indigenous or cultivated;</p> <p>(d) any heath, gorse, furze, or fern;</p> <p>is guilty of a crime.</p>	14 years imprisonment
<b>Western Australia</b>	<i>Criminal Code Act Compilation Act 1913:</i> s 444	<p><b>Criminal damage</b></p> <p>Any person who wilfully and unlawfully destroys or damages any property is guilty of a crime and is liable —</p>	14 years imprisonment

		(a) if the property is destroyed or damaged by fire, to imprisonment for 14 years ...	
	<i>Bush Fires Act 1954: s 32</i>	<p><b>Offences of lighting or attempting to light a fire likely to injure</b></p> <p>A person who —</p> <p>(a) wilfully lights or causes to be lit or attempts to light a fire; or</p> <p>(b) places a match or other inflammable or combustible substance, matter or thing in a position so that it may directly or indirectly be ignited by the rays of the sun or by friction or other means, or be exploded or set on fire, or whereby a fire may be lit or caused and with the intent to cause a fire, under such circumstances as to be likely to injure or damage a person or property, whether the fire be caused or not, is guilty of a crime.</p>	\$250 000 or 14 years imprisonment or both
<b>South Australia</b>	<i>Criminal Law Consolidation Act 1935: s 85</i>	<p><b>Damaging property by fire or explosives</b></p> <p>(1) Where a person—</p> <p>(a) intending to damage property of another, or being recklessly indifferent as to whether property of another is damaged; and</p> <p>(b) without lawful authority to do so, and knowing that no such lawful authority exists, damages, or attempts to damage, property of another by fire or explosives, the person shall be guilty of an offence.</p>	<p>Penalty:</p> <p>(a) for a completed offence—</p> <p>(i) where the damage exceeds \$30 000— imprisonment for life;</p> <p>(ii) where the damage exceeds \$2 500 but does not exceed \$30 000— imprisonment for 5 years;</p> <p>(iii) where the damage does not exceed \$2 500— imprisonment for 2 years;</p> <p>(b) for an attempt—</p> <p>(i) where the damage would, if the offence had</p>

			<p>been completed, have exceeded \$30 000— imprisonment for 12 years;</p> <p>(ii) where the damage would, if the offence had been completed, have exceeded \$2 500 but would not have exceeded \$30 000— imprisonment for 3 years;</p> <p>(iii) where the damage would not, if the offence had been completed, have exceeded \$2 500— imprisonment for 18 months.</p>
	<p><i>Criminal Law Consolidation Act 1935:</i> s 85A</p>	<p><b>Recklessly endangering property</b></p> <p>(1) Where—</p> <p>(a) a person does an act knowing that the act creates a substantial risk of serious damage to the property of another; and</p> <p>(b) the person does not have lawful authority to do so and knows that no such lawful authority exists, the person is guilty of an offence.</p> <p>(2) It is a defence to a charge of an offence against this section for the accused to prove an honest belief that the act constituting the charge was reasonable and necessary for the protection of life or property.</p>	<p>6 years imprisonment</p>
	<p><i>Criminal Law Consolidation Act 1935:</i> s 85B</p>	<p><b>Special provision for causing a bushfire</b></p> <p>(1) A person who causes a bushfire—</p> <p>(a) intending to cause a bushfire; or</p> <p>(b) being recklessly indifferent as to whether his or her conduct causes a bushfire, is guilty of an offence.</p>	<p>20 years imprisonment</p>

		<p>(2) A bushfire is a fire that burns, or threatens to burn, out of control causing damage to vegetation (whether or not other property is also damaged or threatened).</p> <p>(3) An offence is not committed against this section if—</p> <p>(a) the bushfire only damages vegetation (or other property) on either or both of the following:</p> <p>(i) the land of the person who causes the fire;</p> <p>(ii) the land of a person who authorised, or consented, to the act of the person who caused the fire; or</p> <p>(b) the bushfire results from operations genuinely</p>	
<b>Tasmania</b>	<i>Criminal Code 1924: s 268</i>	<p><b>Arson</b></p> <p>Any person who unlawfully sets fire to any building, erection, or structure whatever, whether the same is completed or not, or to any stack or heap of cultivated vegetable produce, or of timber, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel, whether completed or not, is guilty of a crime, which is called arson.</p>	21 years imprisonment
	<i>Criminal Code 1924: s 268A</i>	<p><b>Unlawfully setting fire to crops, forest, moorland, peat, &amp;c.</b></p> <p>(1) Any person who unlawfully sets fire to any vegetation, whether live or dead, is guilty of a crime.</p>	21 years imprisonment
	<i>Criminal Code 1924: s 269</i>	<p><b>Unlawfully setting fire to property</b></p> <p>Any person who unlawfully sets fire to any property not comprised in <a href="#">section 268</a> or <a href="#">268A</a> is guilty of a crime.</p>	21 years imprisonment
	<i>Criminal Code 1924: s 269A</i>	<p><b>Causing a fire with intent to injure person or property</b></p> <p>A person who puts or places flammable or combustible material, or does any other act, in any place, for the purpose of causing a fire with intent to injure any person or property is guilty of a crime.</p>	21 years imprisonment
<b>Australian</b>	<i>Criminal Code</i>	<p><b>Arson</b></p> <p>(1) A person commits an offence if the</p>	1,500 penalty

<p><b>Capital Territory</b></p>	<p>2002: s 404(1)</p>	<p>person—  (a) causes damage to a building or vehicle by fire or explosive;  and  (b) intends to cause, or is reckless about causing, damage to that or any other building or vehicle.</p>	<p>units or 15 years imprisonment or both</p>
	<p><i>Criminal Code</i>  2002: s 404(2)</p>	<p>(2) A person commits an offence if the person—  (a) makes to someone else (<b>person B</b>) a threat to damage, by fire or explosive, a building or vehicle belonging to person B or to another person; and  (b) intends to cause, or is reckless about causing, person B to fear that the threat will be carried out.  (3) In the prosecution of an offence against subsection (2) it is not necessary to prove that the person threatened (person B) actually feared that the threat would be carried out.</p>	<p>700 penalty units or imprisonment for 7 years or both</p>
	<p><i>Criminal Code</i>  2002: s 405</p>	<p><b>Causing bushfires</b>  (1) A person commits an offence if the person—  (a) intentionally or recklessly causes a fire; and  (b) is reckless about the spread of the fire to vegetation on property belonging to someone else.   (2) In this section:  <b>causes</b> a fire—a person <b>causes</b> a fire if the person does any of the following:  (a) lights a fire;  (b) maintains a fire;  (c) fails to contain or extinguish a fire that was lit by the person if it is not beyond the person’s capacity to contain or extinguish it.  <b>spread</b>, of a fire, means spread of the fire beyond the capacity of the person who caused the fire to contain or extinguish it.</p>	<p>1,500 penalty units or 15 years imprisonment or both</p>
	<p><i>Crimes Act</i>  1900: s 117(1)</p>	<p><b>Arson</b>  (1) A person who destroys or damages by means of fire or explosive any property with intent to endanger the life of another person by that destruction or damage commits an offence..</p>	<p>25 years imprisonment</p>



	<i>Crimes Act 1900: s 117(2)</i>	<b>Arson</b> (2) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages by means of fire or explosive any property commits an offence.	20 years imprisonment
<b>Northern Territory</b>	<i>Criminal Code Act: s 239</i>	<b>Arson</b> Any person who unlawfully sets fire to: (a) a building; (b) a ship, whether complete or not; (c) a stack of cultivated vegetable produce, or a stack, tank, storage or collection of mineral or vegetable fuel; (d) a mine or the workings, fittings or appliances of a mine; or (e) an aircraft, is guilty of a crime	Life imprisonment
	<i>Criminal Code Act: s 240</i>	<b>Attempts to commit arson</b> Any person who: (a) attempts to commit a crime defined by section 239; or (b) unlawfully sets fire to anything that is so situated that any such thing as is mentioned in section 239 is likely to catch fire from it, is guilty of a crime	14 years imprisonment
	<i>Criminal Code Act: s 241</i>	<b>Setting fire to crops and growing plants</b> Any person who unlawfully sets fire to: (a) a crop of cultivated vegetable produce, whether standing or cut; (b) a crop of hay or grass, whether the natural or indigenous product of the soil or not and whether under cultivation or not and whether standing or cut; (c) standing trees, saplings or shrubs, whether indigenous or cultivated; or (d) pasture, whether indigenous or cultivated,	14 years imprisonment

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