

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Regional Development and Territories,  
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,  
Transport and Regional Development

*Jervis Bay Territory Acceptance Act 1915*

### ***Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019***

#### Authority

This Ordinance is made under subsection 4F of the *Jervis Bay Territory Acceptance Act 1915*, which provides that the Governor-General may make Ordinances for the peace, order and good government of the Jervis Bay Territory (JBT).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.

#### Purpose and operation

The *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019* (the Ordinance) makes a range of amendments to the *Jervis Bay Territory Rural Fires Ordinance 2014* (the Principal Ordinance), following a review under section 99 of the Principal Ordinance. Such a review is required to be carried out within four years of the commencement of the Ordinance, to determine whether the objects set out in section 5 of the Principal Ordinance remain valid; and the terms of the Principal Ordinance remain appropriate for securing those objects.

The review was carried out in 2017 and 2018. Amongst other matters, the review considered changes made to the *Rural Fires Act 1997* (NSW) and *Rural Fires Regulation 2008* (NSW) (the NSW rural fires legislation) and whether they should be incorporated into the Ordinance, given it is based on that NSW legislation. The Principal Ordinance includes modifications to reflect the JBT's jurisdictional and administrative circumstances. The aim of the Principal Ordinance is to support this provisions of efficient and effective fire management services to the JBT, including establishing a Jervis Bay Territory Rural Fire Service, a Jervis Bay Territory Fire Management Committee and mandating the preparation of Jervis Bay Territory Bush Fire Management Plans. It also provides for: the prevention, mitigation and suppression of bush and other fires in the Territory; the coordination of bush firefighting and bush fire prevention throughout the Territory; the protection of persons from injury or death, and property from damage, arising from fires; and the protection of the environment.

The Principal Ordinance aims to ensure that the NSW Rural Fire Service is able to deliver fire management services in the JBT in a similar legislative environment as that in NSW.

Specifically, the Ordinance:

- Adds a new object to section 5 of the Principal Ordinance, being the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. The functions of the JBT Rural Fire Service are also expanded consistent with this object. This will align with NSW rural fires legislation.

- Creates a new offence of discarding a ‘fire risk object’ (a lit tobacco product, lit match or incandescent material), with a higher penalty applying when a total fire ban order is in force (section 86K). The driver or owner of a vehicle, and the owner of a trailer, may also be deemed to have committed an offence in certain circumstances if a fire risk object is discarded from their motor vehicle or trailer. Details of these provisions and how an owner or driver may avoid liability is in the Attachment.
- Introduces a new aggravating offence of lighting a fire without authority knowing a total fire ban is in place, to address the serious risk of fire in a territory which is mostly national park and thus highly susceptible to bushfires (the Booderee National Park comprises almost 87 per cent of the JBT).
- Removes the infringement notice provisions from the Principal Ordinance, as there was no provision for administering, disputing or enforcing such notices. Police and park rangers may still issue infringement notices for offences in the Booderee National Park under the *Environment Protection and Biodiversity Regulations 2000*, which covers around 87 per cent of the JBT.
- Amends the Principal Ordinance to provide that NSW total fire ban orders – declared in the surrounding Illawarra/Shoalhaven area of NSW and in force in the JBT – would be published on the website of the Department of Infrastructure, Transport, Cities and Regional Development rather than in the Gazette. This will allow for faster publication of such notices in a way which is more accessible to the public. The notice would also direct people to further information on the relevant NSW website.
- Amends some of the existing penalties for offences to take account of the differences between the value of penalty units in the Commonwealth and NSW. This ensures, as far as possible, that equivalent offences carry similar penalties in both jurisdictions.

### Special legislative framework

This Ordinance is made pursuant to a plenary legislative power conferred on the Governor-General under section 4F of the *Jervis Bay Territory Acceptance Act 1915*. It is rare for Commonwealth legislation to confer a plenary power to make delegated legislation. Such conferrals are very different to the general regulation-making power that is commonly found in Commonwealth Acts, which authorises the Governor-General to make regulations prescribing matters that are ‘required or permitted’ to be prescribed by the Act, or that are ‘necessary or convenient’ for carrying out or giving effect to the Act.

The Parliament has conferred plenary legislative power on the Governor-General for the external territories and the JBT. This power is found in the Act that provides for the government of the relevant territory (see, for example, section 19A of the *Norfolk Island Act 1979* (Cth), section 12 of the *Cocos (Keeling) Islands Act 1955* (Cth) and section 9 of the *Christmas Island Act 1958* (Cth)). The power is designed to enable the Governor-General to legislate for state-level matters, including criminal law.

Commonwealth legislative principles provide that it is generally more appropriate for an Act of Parliament to create offences, particularly those that impose penalties greater than 50 penalty units. However, given the JBT’s legislative framework established by the Parliament under the *Jervis Bay Territory Acceptance Act 1915*, it is appropriate for the new offences to be created by a section 4F Ordinance.

In authorising the making of state-type laws in ordinances, section 4F of the *Jervis Bay Territory Acceptance Act 1915* clearly authorises the making of ordinances that impose penalties exceeding a fine of 50 penalty units.

#### Documents incorporated by reference

The Ordinance incorporates by reference parts of the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW) and the *Road Transport Act 2013* (NSW), as in force at the time the Ordinance commences. The Ordinance also incorporates by reference the Booderee National Park Management Plan 2015-2025, published by the Department of the Environment and Energy.

The *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW) and the *Road Transport Act 2013* (NSW) are available free of charge on the NSW legislation website at: <https://www.legislation.nsw.gov.au>. The Booderee National Park Management Plan 2015-2025 is available free of charge on the Department of the Environment and Energy website at <https://www.environment.gov.au>, as well as on the Federal Register of Legislation at <https://www.legislation.gov.au>.

#### Consultation

The Department consulted broadly about the proposed amendments to the Principal Ordinance, including with:

- the Jervis Bay Territory community, via the Jervis Bay Territory Community Bulletin;
- the Jervis Bay Territory Fire Management Committee, which comprises representatives from the NSW Rural Fire Service, Australian Federal Police, Wreck Bay Aboriginal Community Council, Parks Australia, Shoalhaven City Council, Department of Defence, Fire and Rescue NSW, State Emergency Service, NSW Police, NSW Ambulance and JBT Rural Fire Service;
- Emergency Management Australia; and
- the ACT Government, the Australian Federal Police and the Office of the Commonwealth Director of Public Prosecutions.

The community, Fire Management Committee and other stakeholders consulted generally supported the proposed amendments.

Details of the Ordinance are set out in the Attachment.

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Ordinance commences the day after registration on the Federal Register of Legislation.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declare in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Ordinance**

This Ordinance is made under subsection 4F of the *Jervis Bay Territory Acceptance Act 1915*, which provides that the Governor-General may make Ordinances for the peace, order and good government of the Jervis Bay Territory (JBT).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.

#### *Purpose and operation*

The *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019* (the Ordinance) makes a range of amendments to the *Jervis Bay Territory Rural Fires Ordinance 2014* (the Principal Ordinance), following a review under section 99 of the Principal Ordinance. Such a review is required to be carried out within 4 years of the commencement of the Principal Ordinance, to determine whether the objects set out in section 5 of the Principal Ordinance remain valid; and the terms of the Principal Ordinance remain appropriate for securing those objects.

The review was carried out in 2017 and 2018. Amongst other matters, the review considered changes made to the *Rural Fires Act 1997* (NSW) and *Rural Fires Regulation 2008* (NSW) (the NSW rural fires legislation) and whether they should be incorporated into the Ordinance, given it is based on the NSW legislation. The Principal Ordinance includes modifications to reflect the JBT's jurisdictional and administrative circumstances. The aim of the Principal Ordinance is to provide efficient and effective fire management services to the JBT, including establishing a Jervis Bay Territory Rural Fire Service, a Jervis Bay Territory Fire Management Committee and mandating the preparation of Jervis Bay Territory Bush Fire Management Plans. It also provides for: the prevention, mitigation and suppression of bush and other fires in the Territory; the coordination of bush firefighting and bush fire prevention throughout the Territory; the protection of persons from injury or death, and property from damage, arising from fires; and the protection of the environment.

The Principal Ordinance also aims to ensure that the NSW Rural Fire Service is able to deliver fire management services in the JBT in a similar legislative environment as that in NSW.

Specifically, the Ordinance:

- Adds a new object to section 5 of the Principal Ordinance, being the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. The functions of the JBT Rural Fire Service are also expanded consistent with this. This will align with NSW rural fires legislation;
- Creates a new offence of discarding a ‘fire risk object’ (a lit tobacco product, lit match or incandescent material), with a higher penalty applying when a total fire ban order is in force (section 86K). The driver or owner of a vehicle, and the owner of a trailer, may also be deemed to have committed an offence in certain circumstances if a fire risk object is discarded from their motor vehicle or trailer;
- Introduces a new aggravating offence of lighting a fire without authority knowing a total fire ban is in place, to address the serious risk of lighting unauthorised fires in a territory which is mostly national park and thus susceptible to bushfires (the Booderee National Park comprises almost 87 per cent of the JBT);
- Removes the infringement notice provisions from the Principal Ordinance, as there was no provision for disputing or enforcing such notices and the provisions are contrary to the infringement notice principles in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide). Police and park rangers may still issue infringement notices for offences in the Booderee National Park under the *Environment Protection and Biodiversity Regulations 2000*, whose infringement notice scheme does conform to the Guide;
- Amends the Principal Ordinance to provide that NSW total fire ban orders – declared in the surrounding Illawarra/Shoalhaven area of NSW and in force in the JBT – would be published on the website of the Department of Infrastructure, Transport, Cities and Regional Development (the Department) rather than the Gazette. This will allow for faster publication of such notices in a way which is more accessible by the public.; and
- Amends some of the existing penalties for offences to take account of the differences between the value of penalty units in the Commonwealth and NSW. This ensures, as far as possible, that equivalent offences carry similar penalties in both jurisdictions.

## **Human rights implications**

The Ordinance engages the following rights:

- the right to liberty, in Article 9.1 of the International Covenant on Civil and Political Rights (ICCPR); and
- the right to the presumption of innocence, in Article 14.2 of the ICCPR.

### ***The right to liberty***

The Ordinance engages the right to liberty, including protection from arbitrary detention, because it contains criminal offences for which a person who is found guilty may face imprisonment.

However, Article 9.1 of the ICCPR provides an exception for imprisonment for offences “... on such grounds and in accordance with such procedure as are established by law.”

Only one of the offences in the Ordinance is punishable by imprisonment. The seriousness of the offence and the need to deter conduct that poses grave risks to life and property during a total fire ban justifies a penalty of imprisonment for up to seven years and/or a fine of 420 penalty units for the offence under subsection 86(1B) (setting fire to the land or property of another person, the Commonwealth or a public authority, or permitting a fire to escape that is likely to cause injury or damage, knowing that a total fire ban is in place).

The ratio of the term of imprisonment to penalty units for the offence is consistent with section 4B of the *Crimes Act 1914* (Cth) and the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide).

### ***The presumption of innocence***

Article 14.2 of the ICCPR provides that ‘everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.’

Subsection 86(K)(4) of the Ordinance engages this right because it deems the driver or owner of a motor vehicle, or the owner of an attached trailer, to be guilty of an offence if a ‘fire risk object’ (a lit tobacco product, lit match or incandescent material) is discarded from the motor vehicle or trailer in certain circumstances. The physical elements of the offence must be made out by the prosecution.

The right to the presumption of innocence can be limited in certain circumstances, as long as it does not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

In addition, subsection 86(K)(4) does not confer unfettered discretions on the police or courts, as adequate safeguards are included for a driver deemed guilty of the offence to demonstrate their innocence and/or provide the police with details of the person actually responsible for the offending.

These safeguards include the various exceptions to the deeming provision in subsection 84K(4) that relieve the driver or owner of criminal responsibility in certain circumstances. The deeming provision does not apply:

- to the owner or driver of a bus, taxi or other public transport vehicle if the person who discarded the fire risk object was a passenger (subsection 86K(6));
- to the owner of a vehicle or trailer that was stolen or illegally taken or used (subsections 86K(7) and (8));
- to the owner who was not in the vehicle at the time if they either give notice of the person who was in charge of the vehicle, or satisfy the court dealing with the matter, that they did not know and could not with reasonable diligence have found out that person’s name and address (subsection 86K(9)); and
- to the driver if they either give notice of the passenger who discarded the fire risk object, or satisfy the court dealing with the matter that they did not know and could not with reasonable diligence have found out that person’s name and address (subsection 86K(11)).

In addition, subsection 86K(5) provides that if a penalty has been imposed on or recovered from anyone, no further penalty can be imposed on or recovered from another person. This ensures that only one person is penalised for the offence. The maximum penalty for the offence is a fine rather than imprisonment.

Subsection 86K(13) sets out the procedure for the owner or driver to give notice to claim an exception under subsections 86K(9) or 86K(11). They must provide a statutory declaration within 28 days to the prosecutor. If the statutory declaration names a person in relation to the offence, it is evidence that the person committed the offence (subsection 86K(12)).

Further, the deeming provision is aimed at achieving a legitimate objective and is reasonable, necessary and proportionate. The potential consequences of discarding a lit fire risk object, particularly during a period of total fire ban, is serious enough to justify the putting aside the normal requirement for proof of fault. The consequences of catastrophic bush fire are well known to the Australian community and can involve the significant loss of life and property.

The deemed guilt provision in the Ordinance has a clear legal basis, in that it is publicly available on the Federal Register of Legislation, as are these explanatory materials. The law has been in force in NSW, which is geographically very close to the JBT, for some time, and there is a public website explaining the law and how it works.

There is, as outlined above, sufficient flexibility to allow drivers deemed guilty an easily accessible way of disputing their guilt. Similar laws have been in place in other Australian jurisdictions for some time. The provisions were introduced in response to real and present threat of bushfire in the JBT and surrounding regions.

There is also a new offence in subsection 86(1B) concerning setting fire to property or land, or permitting a fire to escape land, while knowing a total fire ban is in place. Subsections 86(1C) and 86(1D) provide that a person who is prosecuted for, but found not guilty of, an offence against subsection 86(1B) may be found guilty of the lesser offence in subsection 86(1), so long as the person has been accorded procedural fairness. The lesser offence in subsection 86(1) has the same elements except for the requirement of knowledge that a total fire ban was in place. This provision is reasonable and necessary and ensures fairness to the offender.

## **Conclusion**

The Ordinance is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Assistant Minister for Regional Development and Territories, Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development**

**The Hon Nola Marino MP**

**Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019**

**Section 1 – Name**

This section provides that the title of the Ordinance is the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019*.

**Section 2 – Commencement**

This section provides that the Ordinance commences on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Ordinance is made under section 4F of the *Jervis Bay Territory Acceptance Act 1915*.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Ordinance is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to the Ordinance has effect according to its terms. Schedule 1 sets out the amendments to the Principal Ordinance.

***Schedule 1 – Amendments***

**Item 1** amends section 5 of the Principal Ordinance to insert the following new object: the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires.

**Item 2** amends section 6 to repeal the definition of ‘bush fire hazard reduction work’ in the Principal Ordinance and replace it with a new definition to make it consistent with the definition of the same term in the *Rural Fires Act 1997* (NSW).

**Item 3** repeals the definition of Environment Department.

**Item 4** inserts a new definition of ‘fire risk object’ in the Principal Ordinance by reference to new subsection 86K(1) (see Item 24) and defines ‘Infrastructure Department’ to mean the Department administered by the Minister responsible for administering the *Jervis Bay Territory Acceptance Act 1915*.

**Item 5** repeals the definition of ‘Parks Australia’ and substitutes a new definition which provides that ‘Parks Australia’ means that part of the Department (the Environment Department) administered by the Minister administering the environment *Protection and Biodiversity Conservation Act 1999* that is known as Parks Australia, or, if there is a change in the by which that part of the Environment Department is known, that part of the Environment Department known by the changed name.



**Items 6 and 7** amend the definition of public authority in section 6 of the Principal Ordinance so that it includes, for the purposes of Part 4 of the Principal Ordinance, an authorised network operator within the meaning of the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW), as in force at the time this Ordinance commences.

**Items 8 and 9** insert “Infrastructure” before “Department” in paragraphs 7(1)(aa), (b) and (c) and in subsection 7(3).

**Item 10** amends paragraph 9(a) of the Principal Ordinance to insert the following new function of the Rural Fire Service: the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in the JBT. This new function aligns the functions of the Rural Fire Service with the expanded objects of the Principal Ordinance (see Item 1).

**Item 11** contains a minor amendment to allow for the new subsections to section 21 outlined at Item 13 (below).

**Item 12** amends section 21 of the Principal Ordinance to clarify that the power of an officer of the rural fire brigade to destroy, pull down or remove a building or structure applies to a part of the building or structure as well as the whole. **Item 13** provides that the cost of an officer taking such action is to be borne by the owner of the building or structure and is to be paid to the Minister. However, the Minister may waive payment of the whole or any amount payable as the Minister thinks appropriate.

**Item 14** contains a minor amendment to allow for new subsection 22(2). **Item 15** amends section 22 to remove the power of an officer of a rural fire brigade to take and use water, in the circumstances specified in section 22, for the purpose of training or demonstration. Instead, under new subsection 22(2) added by **Item 16**, the Minister may, by arrangement with the owner or occupier or person having control or management of land containing a water source, take and use water from that source free of charge for the purpose of training or demonstration.

**Item 17** amends subsection 36(2) to clarify that a person acting under the direction of the Minister or an officer of a rural fire brigade includes a volunteer rural fire fighter. This amendment makes it clearer that it is an offence under subsection 36(2) to obstruct or hinder a volunteer rural fire fighter acting under the direction of the Minister or an officer of a rural fire brigade.

**Items 18 and 19** insert “Infrastructure” before “Department” in paragraph 40(2)(a) and in subsection 40(4). Section 42 of the Principal Ordinance requires the Fire Management Committee to give the Minister a draft bush fire risk management plan. **Item 20** amends section 44 to provide that the Minister may direct the Fire Management Committee to amend the draft plan.

**Item 21** amends the note to subsection 45(3) to state that the Booderee National Park Management Plan 2015-2025 is available for viewing on the Department of Environment and Energy’s website.

**Item 22** corrects an error in the note to subsection 55(1) by inserting the word ‘hazard’.

**Item 23** requires the Minister to be satisfied of an additional matter before issuing a fire permit. Subsection 77(2) of the Principal Ordinance, which provides that the Minister must not issue a fire permit unless he or she is satisfied that an approval, consent or other authority required under the *Environment Protection and Biodiversity Conservation Act 1999* or any other law, is repealed. New subsection 77(2) restates this requirement and adds another matter about which the Minister must be satisfied, that is, that the lighting of the fire would not contravene any other Act or law.

**Item 24** amends the publication requirements where a NSW total fire ban order is in force in the JBT under subsection 85(4) of the Principal Ordinance. Subparagraph 85(5)(a)(ii) is amended to provide that notice of the total fire ban order must be published on the website of the Infrastructure Department's website. This replaces the previous requirement to publish a copy of the NSW total fire ban order in the Gazette. The change allows for quicker publication of notice of the total fire ban through means that are more widely accessed by the public. The Department's website also directs the public to more detailed and up to date information on the relevant NSW rural fires website.

**Item 25** amends subsection 85(6) of the Principal Ordinance to amend the penalty to 30 penalty units, replacing 50 penalty units. This is to take account of the difference in monetary value of penalty units between NSW and the Commonwealth, so that the penalty is aligned with that in the NSW legislation.

**Item 26** amends subsection 86(1) of the Principal Ordinance relating to the offence of lighting fires without authority or, as an owner or occupier of land, permitting a fire to escape from that land. New subsection 86(1A) provides that in determining the penalty for an offence under subsection 86(1) that was committed when a total fire ban was in force in the relevant part of the JBT, the court must take the total fire ban into account as a reason for aggravating the seriousness of the offending.

Item 26 also inserts a new offence in subsection 86(1B) where it can be proven that the person knew a total fire ban was in force. The offence is punishable by a higher maximum penalty, that is, imprisonment for six years, 360 penalty units or both.

Item 26 also inserts subsections 86(1C) and 86(1D) which allow for a finding of guilt on an alternative offence. Their effect is to provide that a person who is prosecuted for, but found not guilty of, an offence against subsection 86(1B) (where the offender knew that a total fire ban was in force) may be found guilty of the lesser offence in subsection 86(1) (where proof of this element is not required but the other elements of the offence are the same), so long as the person has been accorded procedural fairness in relation to that finding of guilt.

The changes in Item 26 are in line with changes made to NSW rural fires legislation, and will ensure that there are comparable offences and penalties for lighting a fire or permitting a fire to escape in the JBT and surrounding NSW areas, particularly when a total fire ban is in force.

**Items 27 to 32** amend subsections 86J(1) and 86J(2) to remove the restriction that requires the offences to occur during a bush fire danger period, so that the offences will apply at any time. This amendment makes the offences in subsections 86J(1) and 86J(2) (of lighting, using or carrying lit tobacco products, matches or other objects within 15 metres of such things as haystacks, crops, dry grass or stubble field) consistent with equivalent offences in NSW rural fires legislation.

**Item 33** repeals subsection 86J(3) because the offence has been subsumed in new section 86K(2) (see Item 24).

**Item 34** adds new section 86K. Subsection 86K(2) creates the offence of discarding a ‘fire risk object’ on any land, punishable by 30 penalty units. A fire risk object is defined as a lit tobacco product, lit match or incandescent material (subsection 86K(1)).

Subsection 86K(3) creates an aggravated offence, punishable by 60 penalty units, of discarding a fire risk object on any land while a total fire ban is in force. This higher penalty reflects the extreme fire risks that are present when a total fire ban is imposed. Most of the JBT is covered by the Booderee National Park. Bush fires pose grave risks to public safety, including the risk of death or serious injury to JBT residents and visitors, and of significant damage to infrastructure and environmental, economic, cultural and community assets in both the JBT and neighbouring NSW areas.

Subsection 86K(4) introduces a provision which deems the driver and owner of a vehicle guilty of the offence in subsections 86K(2) or 86K(3) if the fire risk object is discarded from a motor vehicle, or from a trailer attached to a motor vehicle in certain circumstances. In the case of a fire risk object discarded from a motor vehicle, either the driver or the owner of the vehicle may be deemed guilty (only one person can be deemed guilty of the offence). The maximum penalty for the offence would be a fine rather than imprisonment.

The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) indicates that in general, vicarious, collective or deemed liability should only be used in limited circumstances, as it cuts across the fundamental principle that an individual should be responsible only for his or her own acts and omissions. The Guide defines vicarious, collective or deemed liability as when one person is made liable for the wrongful act of another on the basis of the legal relationship between them and provides that it should only be used in situations where it can be strictly justified.

The Guide outlines views previously expressed by the Senate Standing Committee for the Scrutiny of Bills, that vicarious liability (similar to deemed liability) should only be used where the ‘consequences of the offence are so serious’ that the normal requirement for proof of fault can be put aside.

The ability to deem the driver or owner guilty of the offence is considered appropriate in the circumstances having regard to the potential consequences of the act of discarding a lit fire object. In this case, it is the potential for the act to cause a catastrophic bushfire, leading to the significant loss of life and property, that is considered to be particularly serious.

Similar laws are in place in other Australian jurisdictions with the aim of deterring would be offenders and to minimise the very serious risk of bush fire.

To ensure the provisions are proportionate, a number of exceptions are provided to relieve the driver or owner of liability in certain circumstances. These exceptions provide that subsection 86K(4) deeming the driver or owner guilty, does not apply:

- to the owner or driver of a bus, taxi or other public transport vehicle if the person who discarded the fire risk object was a passenger (subsection 86K(6));
- to the owner of a vehicle or trailer that was stolen or illegally taken or used (subsections 86K(7) and (8));

- to the owner who was not in the vehicle at the time if they either give notice of the person who was in charge of the vehicle, or satisfy the court dealing with the matter that they did not know and could not with reasonable diligence have found out that person's name and address (subsection 86K(9)); and
- to the driver if they either give notice of the passenger who discarded the fire risk object, or satisfy the court dealing with the matter that they did not know and could not with reasonable diligence have found out that person's name and address (subsection 86K(11)).

In addition, subsection 86K(5) provides that if a penalty is imposed on or recovered from anyone, no further penalty can be imposed on or recovered from another person. This ensures that only one person is penalised for the offence.

Subsection 86K(13) sets out the procedure for the owner or driver to give notice to claim an exception under subsections 86K(9) or (11). They must provide a statutory declaration within 28 days to the officer specified in the infringement notice, or to the prosecutor if a court is dealing with the offence. If the statutory declaration names a person in relation to the offence, it is evidence that that person committed the offence (subsection 86K(12)).

Because proposed section 86K is modelled on NSW provisions, subsection 86K(14) provides that a term used in section 86K (such as 'trailer') has the same meaning as in the *Road Transport Act 2013* (NSW).

**Item 35** corrects an error in the numbering of Parts in the Principal Ordinance.

**Item 36** repeals the infringement notice provisions in section 93 of the Principal Ordinance because they do not comply with Commonwealth principles. Police and park rangers may still issue infringement notices for offences in the Booderee National Park under the *Environment Protection and Biodiversity Regulations 2000*, whose infringement notice scheme conforms to the Guide principles.

**Items 37 to 40** make consequential amendments arising from Item 36. Subsection 94(1) is amended by removing the power for an authorised officer who intends to serve an infringement notice to direct a person to state their name and address. References to authorised officers in subsections 94(2) to 94(4) are also removed.

**Item 41** repeals section 97 of the Principal Ordinance and substitutes a new section 97 and section 97A which states that proceedings for offences against this Ordinance in relation to subsections 86(1) or (1B) may be dealt with in accordance with Part 17 of the *Crimes Act 1900* (ACT) and in any other case may be dealt with summarily before the ACT Magistrates Court. New section 97A states that proceedings for an offence against this Ordinance may be brought by a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*) or a special member of the Australian Federal Police (within the meaning of that Act).

**Item 42** amends section 99 of the Principal Ordinance to change the period of review of the operation of the Ordinance from every four years to every 10 years, beginning on the day this Ordinance commenced.

**Item 43** inserts Part 6 which provides for application, transitional and savings provisions for the amendments. This item provides that:

- section 21 of the Principal Ordinance as amended applies in relation to things done under paragraph 21(1)(b) (costs of destroying building or structures) on or after the day the Ordinance commences;
- section 44 of the Principal Ordinance as amended applies in relation to a draft bush fire risk management plan whether the plan was prepared and given to the Minister before, on or after the day the Ordinance commences;
- the definition of ‘bush fire hazard reduction work’ in section 6 in the Principal Ordinance, as substituted by the Ordinance, applies in relation to permissions given under section 55 of the Principal Ordinance on or after the day this Ordinance commences, and to bush fire hazard reduction notices issued under section 56 of the Principal Ordinance on or after the day the Ordinance commences; and
- the amendment of section 77 of the Principal Ordinance made by the Ordinance does not affect the validity of a fire permit issued under that section before the day the Ordinance commences.

**Item 44** repeals Schedule 1A of the Principal Ordinance which sets out infringement notice penalty amounts (see Item 36).