



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

# Norfolk Island fire control — consultation paper

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Director—Internal Communications and Creative Services  
Communication Branch  
Department of Infrastructure, Transport, Regional Development and Communications  
GPO Box 594  
Canberra ACT 2601  
Australia

Email: [creative.services@infrastructure.gov.au](mailto:creative.services@infrastructure.gov.au)

Websites: [www.infrastructure.gov.au](http://www.infrastructure.gov.au) | [www.communications.gov.au](http://www.communications.gov.au) | [www.arts.gov.au](http://www.arts.gov.au).

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## Introduction

In early 2020 the Department of Infrastructure, Transport, Regional Development and Communications (the department) was asked to consider possible amendments to the legislation dealing with fire control on Norfolk Island.

The Chief Fire Control Officer (CFCO) suggested extending the current permit system under the *Fire Control Act 2000* (NI) (Fire Control Act) so as to give fire control officers increased visibility of planned fires and assist them to plan and take appropriate action when necessary. The current permit system applies only during periods of acute fire danger declared by the Administrator, including days on which a total fire ban (TOBAN) has been declared. However, permits are not required on other days when windy conditions may lead to heightened concern and firefighters need to be aware of planned fires.

In the course of reviewing the Fire Control Act, a number of other potential amendments have been proposed. They are addressed under each heading with an explanation of the problem that has been identified. Where it may be helpful, the paper refers to how the laws in other Australian jurisdictions regulate similar activities.

## Related activities

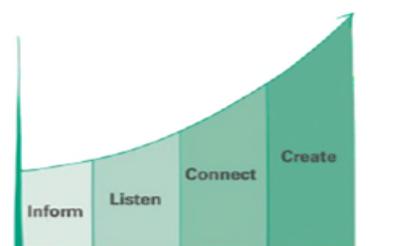
In December 2019, Assistant Minister Nola Marino MP announced funding for the development of an island-wide Norfolk Island Fire Management Plan. This work will include an island-wide risk assessment, including bushfire risk. The Norfolk Island Regional Council (NIRC) has also engaged a consultant to assist in developing a Water Response Plan and a Bushfire Response Plan.

Norfolk Island's emergency management arrangements are also being reviewed in 2020, both in relation to governance and arrangements for emergency services. Further amendments to the fire control legislation may arise from any of these bodies of work, and there will be ongoing consultation between the department and relevant administrative areas in Norfolk Island.

## Community Engagement Framework

In 2019 the Norfolk Island community co-designed the Community Engagement Framework (CEF) with the department.<sup>1</sup>

The CEF sets out an engagement spectrum with steps designed to *inform, listen, connect* and *create* with the community.



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<sup>1</sup> The CEF is available at [www.regional.gov.au/territories/norfolk\\_island/working-with-the-community/framework.aspx](http://www.regional.gov.au/territories/norfolk_island/working-with-the-community/framework.aspx).

When preparing this paper, the department *connected* with subject matter experts on-island to discuss and *create* the proposals for reform. Subject matter experts included the CFCO, staff in the department's Norfolk Island office, the Manager Customer Care, NIRC and the Manager of the Norfolk Island National Park. This process helped to refine the proposals in this paper to ensure they are tailored to local conditions and needs.

This consultation paper *informs* the community of the proposed changes and seeks written comments as a means of *listening* to community views. These views will help to *create* the final policy proposals that will be put forward for the Assistant Minister's approval so that legislative amendments can be drafted.

The department advises the Norfolk Island community about upcoming and completed consultations through the *Norfolk Islander*, Norfolk Online and the department's website at [www.regional.gov.au/territories/norfolk\\_island/legislation-updates.aspx](http://www.regional.gov.au/territories/norfolk_island/legislation-updates.aspx).

## Current fire control laws

The Fire Control Act is the main legislation that regulates fires on Norfolk Island. There are also provisions relating to fires in Norfolk Island parks and reserves in the:

- *Public Reserves Act 1997* (NI)
- *Norfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988* (NI)
- *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations), which apply to all Commonwealth national parks including the Norfolk Island National Park.

In order to promote a consistent approach to fire control, this paper also suggests amendments to some of those other provisions. Unless otherwise specified, references to legislative provisions are to those in the Fire Control Act. This paper does not discuss the range of provisions in the Fire Control Act where no change is proposed, such as the functions and powers of the CFCO and authorised officers.<sup>2</sup>

Table 1 sets out the key provisions in the Fire Control Act that regulate fires and state the community's rights and obligations.

## Fire danger periods and total fire bans

The Minister may, by notice in the Gazette or public broadcast by radio, declare a fire danger period or a total fire ban (TOBAN) for a specified period and area (s 21(1)). This power has been delegated to the Administrator. Both fire danger periods and TOBANs are encompassed by the term 'acute fire danger period'. However, some of the restrictions and penalties for non-compliance differ between the two, given that a TOBAN is imposed only in the most dangerous conditions when the potential consequences are most severe.

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<sup>2</sup> The Fire Control Act is at [www.legislation.gov.au/Details/C2018Q00060](http://www.legislation.gov.au/Details/C2018Q00060).

**Table 1** Current regulation of fires under the Fire Control Act

| <b>Activity</b>   | <b>Fire danger period</b>   | <b>Total fire ban (TOBAN)</b>  |
|---|---|--|
| Can I light, use or maintain a fire in the open air?  | Only if:<br>(a) for the purpose of cooking food or heating liquids in a properly constructed fireplace<br>(b) in a properly constructed incinerator designed to prevent the escape of sparks or incandescent material<br>(c) in accordance with a permit in writing issued by the CFCO.<br>Otherwise, it is an offence punishable by 10 penalty units (p.u.) or 1 year imprisonment. <sup>3</sup> | No<br><br>Offence punishable by 20 p.u. or 2 years imprisonment        |
| Can I leave a fire in the open air unattended?  | No, even if the fire is permitted. It is an offence punishable by 5 p.u. or 6 months imprisonment.  | No - the same as in a fire danger period.                              |
| What happens if I don't comply with the conditions of a permit?                                 | It is an offence punishable by 10 p.u. or 1 year imprisonment   | No permits are issued during a TOBAN.                                  |
| Can the CFCO direct me to extinguish a fire, even if it is otherwise permitted?                 | Yes, where the CFCO is of the opinion that a fire is, or is likely to become, a danger to life or property.<br>It is an offence to fail to comply without reasonable excuse, punishable by 5 p.u. or 6 months imprisonment.   | Yes – the same as during a fire danger period.                         |
| Can the CFCO direct a landowner to take any preventative measures?                              | Yes – the CFCO can direct any reasonable measures to prevent and inhibit the outbreak and spread of fire on the land and to protect property from fire on or spreading from the land.<br>It is an offence to fail to comply without reasonable excuse, punishable by 5 p.u. or 6 months imprisonment.   | Yes – the same as during a fire danger period.                         |
| What do I need to do if I become aware of an uncontrolled fire on my land or on adjoining land? | Notify the CFCO immediately.<br>It is an offence not to, punishable by 5 p.u. or 6 months imprisonment.   | Notify the CFCO immediately – the same as during a fire danger period. |

## Proposed changes

The proposed changes to the fire control legislation are outlined below. Under each heading, there is an explanation of the current law, the problems that have been identified, a comparison with other jurisdictions where relevant, and the change that is proposed.

<sup>3</sup> One penalty unit (p.u.) equals \$100 (*Interpretation Act 1979* (NI), s 12A).

## Fires for cooking

Currently, a fire for cooking or heating liquids may only be lit in the open air during a fire danger period in a 'properly constructed fireplace' (s 23(1)(a)). This is a vague term, which also appears in South Australian and Victorian fire legislation. In Victoria the term is defined to mean 'a fireplace that is constructed of stone, metal, concrete or any other non-flammable material so as to contain the perimeter of the fire'.<sup>4</sup> There is no definition in the South Australian legislation.

No fire for cooking or heating liquids is permitted during a TOBAN.

The *Public Reserves Act 1997* (NI) (s 40) prohibits fires in a reserve at all times except in a 'fireplace approved for the purpose', or on a portable barbecue or stove that uses liquefied petroleum gas (LPG). Portable barbecues and stoves that are electric or use other types of fuel are not covered.

In the Norfolk Island National Park, the EPBC Regulations permit the following types of fires, unless the Director, Parks (or their delegate) has declared a TOBAN for the Park:

- a portable gas or electric barbecue or stove
- a fireplace either provided for the purpose or approved by the Director, Parks
- another place approved by the Director, Parks.<sup>5</sup>

The Director may impose conditions on the use of such fires by making a determination. Conditions might include, for example, that a person must ensure that there is no flammable material within a specified distance, or that the fire may only be used in a specified period, or that a portable barbecue or stove may only be used in a specified place. It is an offence to leave any fire unattended in the park. It is also an offence to use any type of fuel that is prohibited under a park management plan.

To minimise confusion, it is proposed to define the term 'properly constructed fireplace' in the Fire Control Act along the lines of the Victorian definition, and to refer specifically to electric and gas stoves and barbecues. It is also proposed that the fire must have adequate clearance from vegetation and other flammable material.

So as to avoid confusion about the laws applying throughout Norfolk Island, it is also proposed to amend the *Public Reserves Act 1997* (NI) to ensure consistency in the definitions of permitted barbecues and stoves.

It is also proposed to allow the use of residential electric and gas barbecues and stoves in restricted circumstances during a TOBAN (see Proposal 3 below).

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<sup>4</sup> *Country Fire Authority Act 1958* (Vic) s 38A(1A). There must also be 3 metres clearance from flammable material, and the fire must not exceed 1 square metre in size and be the minimum size necessary for the purpose. In NSW there is no reference to a 'properly constructed fireplace': instead, a fire in the open for cooking or heating liquids must be surrounded by ground that is clear of all combustible material for at least 2 metres (*Rural Fires Regulation 2013* (NSW) s 25).

<sup>5</sup> EPBC Regulations s 12.30A.

**Proposal 1: Fires for cooking**

In providing for fires for cooking or heating liquids during a fire danger period, the term 'properly constructed fireplace' should be defined to mean a fireplace that is constructed of stone, metal, concrete or any other non-flammable material so as to contain the perimeter of the fire. Electric and gas barbecues and stoves should be expressly included.

There should also be a requirement that the ground around the fire is clear of combustible material for at least 2 metres.

To ensure consistency, the *Public Reserves Act 1997* (NI) should be amended to permit the use of portable electric barbecues or stoves in public reserves, in addition to the gas barbecues and stoves that are currently permitted.

## Permits to burn green waste or burn a firebreak

At present, burning green waste as part of land clearance processes or burning a firebreak on land are only permitted during a fire danger period in accordance with a permit issued by the CFCO (s 23(1)(c)). Burning green waste such as garden cuttings is also permitted during a fire danger period in a properly constructed incinerator that is designed to prevent the escape of sparks or incandescent material (s 23(1)(b)). All such activities are banned during a TOBAN because of the high fire risk, but they are not regulated at other times of the year.

The CFCO has proposed that permits should also be required outside a fire danger period so as to increase authorities' awareness of, and responsiveness to, these fires, as well as to ensure neighbours are aware when green waste is to be burnt. This is particularly important in windy conditions when the risk of fire spread is higher. At least 24 hours' notice of the fire should be given to neighbours and the CFCO, and an adult should be required to be in attendance at all times until the fire is extinguished. Other conditions may also be imposed in the permit as the CFCO considers appropriate.

Where the size of the fire is less than 4 cubic metres (equal to just under 1.6m x 1.6m x 1.6m), a permit should not be required to burn green waste. However, the material should be burnt either in an incinerator designed for the purpose, or if in the open air, an adult must be in attendance at all times, and 24 hours' notice should be given to neighbours and the CFCO. 'Green waste' means waste that consists of branches, grass, leaves, plants, loppings, tree trunks, tree stumps and similar materials. Where possible, such material should be disposed of in other ways such as chipping, mulching or recycling, so as to minimise environmental impacts.

Rubbish other than green waste should not be burnt, as the NIRC has provided a waste facility for disposal of domestic and commercial waste. In particular, potentially hazardous materials such as tyres and plastic must not be burnt.

To ensure proper record keeping, fire permits will ordinarily be granted in writing. However, the CFCO may give a verbal permit in urgent circumstances. The CFCO must keep a written record of the details of verbal permits that have been granted.

**Proposal 2: Burning of green waste and burning of firebreaks**

Burning a firebreak on land and burning green waste where the size of the fire exceeds 4 cubic metres will require a permit at all times of the year and:

- the permit holder must give 24 hours' notice to adjoining landholders and the CFCO
- an adult must be in attendance at all times until the fire is extinguished
- the CFCO may impose other conditions in the permit as the CFCO considers appropriate.

Outside these situations, green waste may only be burnt:

- in a properly constructed incinerator designed to prevent the escape of sparks or incandescent material, or
- if in the open air:
  - the size of the fire must not exceed 4 cubic metres
  - an adult must be in attendance at all times until the fire is extinguished
  - 24 hours' notice must be given to neighbours and the CFCO (verbally or in writing).

Permits will ordinarily be in writing, but the CFCO may grant a verbal permit in urgent circumstances. The CFCO must keep a written record of verbal permits.

No burning of land or green waste is permitted during a TOBAN, unless at the direction of the CFCO for fire prevention/control purposes.

## Fires during a TOBAN

Due to the extreme fire risk, it is an offence to light, use or maintain a fire in the open air during a TOBAN. It is not proposed to alter this general position, except as set out below.

### Electric and gas barbecues close to residences

It is proposed to permit residents to use an electric or gas barbecue or stove close to their homes (that is, within 20 metres) during a TOBAN, provided that certain safety measures are in place:

- there is at least 2 metres clearance from vegetation or other combustible material
- the barbecue or stove is under the direct control of a responsible adult who is present at all times
- there is immediate access to adequate running water (ie a garden hose) or other suitable extinguisher.

NSW<sup>6</sup> and South Australia<sup>7</sup> allow a similar exemption.

No cooking fires that use other types of fuel, including solid fuel, will be permitted during a TOBAN.

<sup>6</sup> By inclusion in the standard exemptions to TOBANs in NSW.

<sup>7</sup> *Fire and Emergency Services Regulations 2005 (SA)*, s 34(2).

**Proposal 3: Residential gas and electric barbecues during a TOBAN**

During a TOBAN, a person may use an electric or gas barbecue or stove in the open air within 20 metres of their home, provided that the following safety measures are in place:

- there is at least 2 metres clearance from vegetation or other combustible material
- the barbecue or stove is under the direct control of a responsible adult who is present at all times while it is operating
- an adequate supply of running water (ie a garden hose) or other suitable extinguisher is immediately available at all times.

**Hot works**

Because of the risk of sparks or hot metal starting a fire, some jurisdictions expressly prohibit 'hot works' such as grinding, soldering and welding in the open air during a TOBAN.<sup>8</sup> An exception is made for urgent essential services, such as repairs to facilities for electricity, sewerage and water supply, provided safety precautions are taken and authorities are notified.

It is proposed that using 'hot works' in the open air during a TOBAN will be an offence. There would be an exception for urgent essential services, provided the CFCO is advised and there is adequate firefighting equipment at the work site to prevent the escape of a fire.

**Proposal 4: Welding etc during a TOBAN**

During a TOBAN, it should be an offence to use 'hot works' such as grinding, soldering and welding in the open air. There should be an exception for urgent essential services (such as repairs to facilities for electricity or water supply), provided:

- the CFCO has been advised, and
- there is adequate firefighting equipment at the site to prevent the escape of a fire.

**Suspension of permits**

It is proposed that any permit that has been issued by the CFCO will be automatically suspended when a TOBAN is declared, except if expressly exempted in the TOBAN. This is similar to the law in other jurisdictions.<sup>9</sup>

**Proposal 5: Permits suspended during a TOBAN**

When a TOBAN is declared, all fire permits will be automatically suspended for the duration of the TOBAN, except if otherwise provided in the TOBAN.

After a permit has been granted, unforeseen weather conditions may develop that mean the fire should not be lit at the planned time. In South Australia,<sup>10</sup> authorities may direct that a permitted fire

<sup>8</sup> For example, *Emergency Services Act 2004* (ACT) s 116A; *Fire and Emergency Services Regulations 2005* (SA) s 41(4). In NSW, see the standard exemptions for TOBANs.

<sup>9</sup> For example, *Fire and Emergency Services Act 1990* (Qld) s 86E; *Fire and Emergency Services Act 2005* (SA) s 81(6).

<sup>10</sup> *Fire and Emergency Services Act 2005* (SA) s 82(2).

should not be lit if satisfied that because of weather conditions, the fire might get out of control. It is proposed to have a similar provision in Norfolk Island to allow the CFCO to direct that a permit to light a fire is suspended for a specified period. It would be an offence to light a fire contrary to the CFCO's direction.

#### **Proposal 6: Power to direct that a permitted fire should not be lit**

Where a permit to light a fire has been granted, the CFCO may direct that the fire should not be lit for a specified period if satisfied that because of weather conditions the fire might get out of control.

## Preventative measures

During a fire danger period or TOBAN, the CFCO has the power to direct landowners to take measures that are reasonable in the circumstances to prevent and inhibit the outbreak and spread of fire on the land and to protect property from fire (s 22(1)). Those circumstances include the amount and type of litter, timber or vegetation; other flammable material; the climatic conditions; the location and use of the land and nearby land; and the possible effect of fire (s 22(3)). It is an offence to refuse to comply with a direction without reasonable excuse (s 22(2)). A landowner includes an occupier (s 5).

Fire risks may be identified at any time of the year. Given that it may be too late for appropriate preventative measures such as burning off to be taken during a fire danger period, it is proposed to extend the CFCO's power to direct landowners to take reasonable preventative measures at any time of the year, taking into account the circumstances outlined in the previous paragraph.<sup>11</sup> The direction should be given by written notice to each landowner who is affected (noting that in addition, a general direction may be publicised in other ways, such as by radio announcement).

While it is anticipated that most situations would be resolved informally through discussion, it may be necessary for the CFCO to have the power to ensure compliance.

In relation to commercial premises, relevant matters to be considered would include the use of the premises, the number of people likely to be at the premises at any time and any risks to public safety. Examples of reasonable measures might be requiring adequate fire safety equipment to be available on the premises, or ensuring that flammable items are stored safely.<sup>12</sup>

#### **Proposal 7: Preventative measures – landowners/occupiers**

The CFCO's power to direct landowners / occupiers to take reasonable measures to prevent fire and protect property should be extended to all times of the year.

A landowner's obligations to notify the CFCO where there is an uncontrolled fire on their own or adjoining land, and to take all reasonable steps to extinguish a fire on their land (s 24), apply only during a fire danger period or TOBAN. Given that such fires are 'uncontrolled', it is sensible to require

<sup>11</sup> A similar obligation for landowners at all times of the year applies in Queensland (*Fire and Emergency Services Act 1990* (Qld) s 69) and in rural areas in the ACT (*Emergency Services Act 2004* (ACT) s 120).

<sup>12</sup> There is a similar power under *Emergency Services Act 2004* (ACT) s 86, which permits the chief officer to give such directions where he or she reasonably believes there is likely to be a risk to public safety or to the safety of people at the premises.

the CFCO to be informed regardless of whether or not a fire danger period or TOBAN has been declared, so that risks can be assessed and appropriate action can be taken to assist.

Accordingly, it is proposed to extend the landowner's duties to notify the CFCO and to take reasonable steps to extinguish an uncontrolled fire so that the obligations apply at all times of the year. This is similar to the law in the ACT and Queensland.<sup>13</sup>

**Proposal 8: Preventative measures – duty to report an uncontrolled fire and take reasonable steps to extinguish it**

The landowner's obligations to notify the CFCO where there is an uncontrolled fire on their own or adjoining land and to take all reasonable steps to extinguish a fire on their land should be extended to apply at all times of the year.

The CFCO has the power to direct that a fire which would otherwise be allowed during a TOBAN or fire danger period should be extinguished where the CFCO is of the opinion that a fire is, or is likely to become, a danger to life or property (s 25(2)). It is an offence to fail to comply without reasonable excuse, punishable by 5 p.u. or 6 months imprisonment.

It is proposed to extend this power to any time of the year on the same grounds (that is, the CFCO's opinion that there is a danger or likely danger to life or property). South Australian authorities have a similar power.<sup>14</sup>

**Proposal 9: Preventative measures – power to direct that a fire be extinguished**

The CFCO's power to direct that a fire that would otherwise be allowed should be extinguished if the CFCO considers the fire is, or likely to become, a danger to life or property should be extended to apply at any time of the year.

## Powers of entry

If a fire occurs on any land, the CFCO, a fire officer, a volunteer fire officer or an authorised person may enter the land for the purpose of inspecting, checking or extinguishing the fire, and may light other fires on the land to stop the fire progressing (s 19). 'Land' includes buildings on the land (s 5).

The current provision requires a fire to be occurring – it does not assist authorities where a fire is reasonably suspected in circumstances of risk. It is proposed to extend the power of entry to include circumstances where a fire is reasonably suspected to be occurring and to present a danger to people or property.

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<sup>13</sup> *Emergency Services Act 2004* (ACT) s 121. In Queensland, occupiers have similar obligations where a fire is unauthorised (*Fire and Emergency Services Act 1990* (Qld), s 67).

<sup>14</sup> *Fire and Emergency Services Act 2005* (SA) s 82(1).

**Proposal 10: Power of entry if fire is reasonably suspected**

The power of the CFCO, a fire officer, a volunteer fire officer or an authorised person to enter any land (including any buildings on the land) where a fire is occurring should be extended to include where a fire is reasonably suspected to be occurring and to present a danger to people or property.

## Offences

Many of the current offences in the Fire Control Act are punishable by 6 months imprisonment or 5 penalty units (which equates to \$500). Other offences are subject to a penalty of 1 year imprisonment or 10 penalty units (\$1000). Because of the increased risk and consequences of fire during a TOBAN, the most serious offence of lighting a fire in the open air during a TOBAN is punishable by 2 years imprisonment or 20 penalty units (\$2000).

The maximum sentences of imprisonment reflect the seriousness of the offences and the risk the conduct poses to the community. However, the ratio of fines to imprisonment is much lower than for many offences in other legislation. A more common ratio is 50 or 60 penalty units to 1 year imprisonment. It is also worth noting that the fire-related offences in the national park under the EPBC Regulations, although not punishable by sentences of imprisonment, attract fines of 50 penalty units, equal to \$11,100.<sup>15</sup>

It is proposed to increase the maximum financial penalties for offences in the Fire Control Act so that they are more proportionate to the maximum terms of imprisonment. By way of comparison, the following penalties apply in other Australian jurisdictions for lighting a fire during a TOBAN (noting that each jurisdiction sets a different value for penalty units).

**Table 2 Penalties for offences during a TOBAN in other jurisdictions**

| Jurisdiction    | Legislation                                 | Offence  | Penalty  |
|-----------------|---|--|--|
| Norfolk Island  | <i>Fire Control Act 2000</i>                | Lighting a fire in the open air during a TOBAN s 21(3)     | 20 p.u. = \$2,000<br>2 years imprisonment  |
| Commonwealth    | EPBC Regulations                            | Lighting a fire in a national park during a TOBAN s 12.30A | 50 p.u. = \$11,100   |
| ACT             | <i>Emergencies Act 2004</i>                 | Lighting a fire in the open air during a TOBAN s 116       | 200 p.u. = \$32,000<br>2 years imprisonment  |
| NSW             | <i>Rural Fires Act 1997</i>                 | Failing to comply with a TOBAN s 99(11)                    | 50 p.u. = \$5,500<br>1 year imprisonment   |
| Queensland      | <i>Fire and Emergency Services Act 1990</i> | Lighting a fire contrary to a local fire ban s 86F         | 50 p.u. = \$6,672<br>6 months imprisonment   |
| South Australia | <i>Fire and Emergency Services Act 2005</i> | Lighting a fire in the open air during a TOBAN s 80(3)     | \$10,000 or 2 years imprisonment for first offence; double for subsequent offences |
| Victoria        | <i>Country Fire Authority Act 1958</i>      | Lighting a fire in the open air during a TOBAN s 40(4)     | 240 p.u. = \$39,653<br>2 years imprisonment  |

<sup>15</sup> Because the EPBC Regulations are made under a Commonwealth Act, 1 penalty unit equals \$222 (as at 1 July 2020), compared with the Norfolk Island scale of 1 penalty unit equalling \$100.

**Proposal 11: Penalties for offences**

The maximum financial penalties that a court may impose for a range of fire-related offences should be increased so as to be more proportionate to the existing maximum penalties of imprisonment, and to reflect the serious risks an uncontrolled fire poses to the community.

The maximum financial penalty for the following offence, which is punishable by 2 years imprisonment, should be increased from 20 p.u. to 100 p.u. (equal to \$10,000):

- s 21(3) lighting a fire in the open air during a TOBAN. This penalty would also apply to the specific offence of using 'hot works' such as grinding, soldering and welding in the open air during a TOBAN (other than where required for urgent essential services).

The maximum financial penalty for the following offences during fire danger periods, which are punishable by 12 months imprisonment, should be increased from 10 p.u. to 50 p.u. (equal to \$5000):

- s 21(4) lighting a fire in the open air during a fire danger period
- s 21(5) failing to comply with the conditions of a permit during a fire danger period.

The maximum financial penalty for the following offences, which are punishable by 6 months imprisonment, should be increased from 5 p.u. to 25 p.u. (equal to \$2500):

- s 22(2) failing to take reasonable preventative measures as directed by the CFCO
- s 24(1) landowner failing to notify the CFCO about an uncontrollable fire
- s 24(2) landowner failing to take reasonable measures to extinguish a fire on their land
- s 25(1) leaving a fire in the open unattended during a fire danger period or TOBAN
- s 25(3) failing to comply with a direction to extinguish a fire during a fire danger period or TOBAN.

The offences of tampering with or damaging fire protection equipment (s 26(1)) or firefighting equipment (s 26(2)) are subject to a penalty of 5 p.u., but they are not punishable by imprisonment. The maximum financial penalty for these offences should be increased to 25 p.u. (equal to \$2500).

The following proposed new offences should also be subject to a penalty of 25 p.u. (equal to \$2500) but they should not be punishable by imprisonment:

- Failing to comply with the conditions of a permit outside a fire danger period
- Failing to comply with a direction not to light a permitted fire if the CFCO considers the fire might get out of control because of weather conditions
- Failing to comply with the CFCO's direction to extinguish a fire outside a fire danger period or TOBAN if the CFCO considers the fire is, or likely to become, a danger to life or property.

## Other issues

### Appointment of Chief Fire Control Officer

The CFCO is appointed by the Chief Executive Officer for up to three years, and may be reappointed (s 14).

It has been proposed that the maximum period of appointment should be extended to five years, so as to reduce the frequency of appointment and the consequent risk of the position falling vacant if there is any administrative delay.

#### **Proposal 12: Term of appointment of CFCO**

It is proposed to increase the maximum term of appointment of the CFCO from 3 years to 5 years.

### Taking water required for firefighting

It is an offence to tamper with firefighting equipment (s 26(3)). Firefighting equipment is defined as including a vehicle (s 5) – that is, it is a broad inclusive definition that would cover a range of equipment used in fighting fires, rather than specifying particular items.

The CFCO has reported that in some cases water appears to have been illegally taken from identified water resources on which firefighters rely. These water sources are not exclusively used for firefighting, but if they are not available when needed, the consequences could be disastrous.

These issues can be further considered when the Norfolk Island Fire Management Plan, Bushfire Response Plan and Water Response Plan (outlined on page 4) are developed.

### Other legislation

The EPBC Regulations (s 12.30, 12.30A) allow the Director, Parks to declare a TOBAN in national parks including the Norfolk Island National Park. The EPBC Regulations also provide for fire-related offences in the park and allow the Director to issue determinations imposing further conditions on fires in the park. The Director's powers have been delegated to the Park Manager in Norfolk Island.

These provisions cover the same ground as s 8 *Norfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988* (NI Park Regulations), but there are some differences. These include the requirement to gazette a TOBAN under the NI Park Regulations before it takes effect (gazettal is not required under the EPBC Regulations – instead, the TOBAN must be notified in a newspaper and displayed on a sign at each entrance to the reserve if practicable, and if is not, notice must be given having regard to the forms of communication for people who are likely to be in the area). There are also different penalties for similar offences – those under the EPBC Regulations are higher than those under the NI Park Regulations (50 p.u. compared with 5 p.u.). Where there is an inconsistency between the two sets of provisions, as a matter of law the EPBC Regulations prevail.

To remove duplication and avoid confusion, it is proposed to repeal s 8 NI Park Regulations. The EPBC Regulations will still apply in the park and gardens.

### **Proposal 13: Repeal of fire provisions in NI Park regulations**

Section 8 *Norfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988* concerning regulation of fires in the park and gardens should be repealed, as these matters are covered by the EPBC Regulations.

## Next steps

### How can you have your say?

The department invites your comments on the changes proposed in this paper by **Monday 9 November 2020**. You can send comments in writing by:

Email: [NI\\_Legislation@infrastructure.gov.au](mailto:NI_Legislation@infrastructure.gov.au)

Hard copy: Leave your written comments at the Administrator's office, Norfolk Island, and they will be sent to the department.

The department intends to publish all submissions to this consultation paper, unless a submission is confidential or contains other information that is not suitable to publish. We will publish your name and any organisation you represent, but we will not publish any personal contact details such as your private email address or your residential address.

If you would like part or all of your submission, including your name, to remain confidential, please indicate this clearly in the body of your submission. Automatically generated statements in an email are not sufficient. Confidential submissions will be kept securely and will only be disclosed to third parties where authorised or required by law.

## Privacy notice

The department will use the personal information it collects in this consultation only for the purpose of this review, including where we may wish to communicate with you about your submission or about the review more generally.

Even if a submission is not marked confidential, we may not publish sensitive information or personal information, including information which may be used to identify a person other than the author of the submission or a group of people. This is in accordance with our obligations under the *Privacy Act 1988*.

The department's [privacy policy](#) contains information about how to access and/or seek correction of personal information we hold and how complaints may be made. The Privacy Officer can be contacted by email at [privacy@infrastructure.gov.au](mailto:privacy@infrastructure.gov.au) or on +61 2 6274 6495.