



Speech by

**Hon. Pat Purcell**

**MEMBER FOR BULIMBA**

Hansard Wednesday, 11 October 2006

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## **FIRE AND RESCUE SERVICE AMENDMENT BILL**

### **Second Reading**

**Hon. PD PURCELL** (Bulimba—ALP) (Minister for Emergency Services) (12.26 pm): I move—

That the bill be now read a second time.

In 2004 and 2005 the Department of Emergency Services conducted a review of the Fire and Rescue Service Act 1990. The review included consultation with the public via the release of a discussion paper, direct consultation with stakeholder organisations and focus group research. The review identified a number of areas where fire safety arrangements in Queensland could be improved. The bill incorporates these improvements.

The bill makes it compulsory for smoke alarms to be installed in all existing homes. Homes built since 1 July 1997 are already required by the Building Code of Australia to have mains-wired smoke alarms installed. Residences built prior to this date may also, if required by a building certifier, be required to install smoke alarms when renovating more than half of the original building. Also, the government has installed hard-wired smoke alarms in all 50,000 Queensland public housing dwellings. There is currently no legal requirement for most pre-1997 houses and units to have smoke alarms installed. This bill will fill this gap and will mean that all homes in Queensland are required to have smoke alarms installed.

Queensland's experience with the promotion of smoke alarms and the introduction in 1997 of mandatory mains connected smoke alarms in new or significantly renovated housing has seen coverage increase from 38.7 per cent of homes in 1996 to 84.2 per cent in 2005. It is anticipated that the new laws will lift smoke alarm coverage considerably.

Smoke alarms are very important domestic safety devices. The risk of death from fire in a home is up to three times higher in homes without smoke alarms when compared to homes with smoke alarms. In Queensland, 78.1 per cent of all home fire deaths occur in homes without smoke alarms. In Queensland, since June 2004, 19 people have died in house fires in homes that either did not have smoke alarms or had smoke alarms that did not work, usually because batteries were removed or dead. In just over a fortnight in late May, early June last year 13 people, including seven children, died in home fires in New South Wales. These tragic statistics emphasise the serious risks presented by house fires and the necessity for the government to act to address this risk.

Cost-benefit studies conducted by the Department of Emergency Services, with the assistance of the Queensland Treasury Corporation, indicate that if Queensland was able to achieve 100 per cent coverage of working smoke alarms in domestic residences there could be a potential saving of 106 lives over 20 years with a net saving to householders of approximately \$70 million in reduced property losses and injury costs over the same period.

The bill makes smoke alarms compulsory but leaves it to the householder to select what type of alarm to install. The minimum acceptable alarm will be a one-year battery alarm that meets the applicable Australian standard. This type of alarm provides a reasonable level of protection provided that batteries are replaced regularly and the alarm is tested and cleaned in accordance with the alarm manufacturer's

instructions. The Queensland Fire and Rescue Service promotes the necessity to change smoke alarm batteries regularly. I take this opportunity to urge all Queenslanders to regularly check the batteries in their smoke alarms.

The smoke alarms are to be located to provide warning to occupants especially whilst sleeping so that occupants may safely evacuate in the event of fire. The location requirements for smoke alarms mirror the location requirements for smoke alarms contained in the Building Code of Australia for new homes. This requires that there be one alarm outside sleeping areas and one alarm on each level of the home. It is estimated that the laws will require the typical home to install two alarms.

Details of where to locate smoke alarms and how to test, clean and generally maintain smoke alarms are contained in instructions prepackaged with the alarms. Information on these matters and guidance about the best type of alarms to purchase is also available on the Queensland Fire and Rescue Service web site.

The new smoke alarm laws set a reasonable minimum standard of protection for householders. Protection against fire increases with the number, quality and type of smoke alarm installed. The Queensland Fire and Rescue Service recommends that householders consider installing smoke alarms above the minimum standard. For instance, it is recommended that alarms be installed in bedrooms and that photoelectric rather than ionisation alarms be installed. Information about the advantages and disadvantages of different types of alarms and other information to help householders comply with the new laws is available on the Queensland Fire and Rescue Service web site and via a 1300 number.

The bill requires that lessors of rental properties replace smoke alarms before the end of their service life. Under the applicable Australian standard smoke alarms are required to have a service life of at least 10 years. Lessors also have to check smoke alarms and carry out routine maintenance at the beginning of a tenancy. Tenants are responsible for routine maintenance during the tenancy.

To facilitate ongoing compliance, the bill requires notification from a vendor to a purchaser on the sale of a property that the property contains smoke alarms. The vendor is also required to lodge a form with the Queensland Land Registry stating that smoke alarms have been installed. This is the same process that is in place for electrical safety switches. This will make checking for the existence of smoke alarms a standard part of the conveyancing process and will help ensure that the smoke alarm initiative is sustainable over the longer term.

For manufactured homes—these are homes where the land is not sold, just the home—the bill requires that the smoke alarm notice be given by the seller of the home to the buyer in the form of assignment used for the transfer of manufactured homes.

The new laws will take effect on 1 July 2007. However, the government encourages all Queenslanders not to wait for 1 July 2007. A working smoke alarm could be the difference between life and death. The government urges Queenslanders to act now and put in smoke alarms.

All buildings in Queensland, except domestic dwellings, are subject to a fire safety obligation not to overcrowd. The bill gives the Commissioner of the Queensland Fire and Rescue Service power to require licensed premises at risk of overcrowding, such as nightclubs or hotels configured as nightclubs, to set and manage a specified maximum safe occupancy limit.

The Queensland Fire and Rescue Service will assist operators to assess maximum occupancy numbers in these premises over a 24-month period. The government has worked closely with industry in the development of the overcrowding proposals and will continue to work closely with industry to ensure that they are properly implemented.

The Queensland Fire and Rescue Service attends a large number of call-outs by automatic smoke detection and alarm systems. Call-outs from monitored automatic alarm systems account for approximately one-third of all Queensland Fire and Rescue Service call-outs. The vast majority—96.6 per cent in 2005-06—of such call-outs are false in that, upon investigation, the cause of the alarm activation is not an emergency that requires the intervention of the fire service.

It is likely that the lack of alarm system suitability to the environment of the building, occupier activities—such as toasters burning toast—inappropriate location and type of detectors, system malfunctions, the lack of ability of detectors and alarms to distinguish between fires and normal conditions in the building and the lack of appropriate design features and management procedures account for the majority of unwanted alarms. The two most serious consequences of unwanted alarms are:

- firstly, complacency—the main reason for an alarm system is to provide a warning to occupants to evacuate a building to a place of safety when a fire or other relevant emergency happens. The prevalence of unwanted alarms means that building occupants may become complacent about alarms and delay evacuation in response to an alarm. In a real fire or emergency situation this may delay evacuation and put lives at risk; and
- secondly, cost—Queensland Fire and Rescue Service resources responding to unwanted alarms could be more effectively utilised for other public safety purposes.

The bill places an obligation on occupiers to maintain alarm systems so that they do not exceed an unacceptable level of unwanted alarms.

The Fire and Rescue Service Act 1990 imposes fire safety obligations on building occupiers of all buildings except homes to maintain building fire safety systems so that they will operate effectively in the event of a fire. These obligations include requirements to maintain adequate means of escape, fire safety equipment and evacuation plans and procedures to ensure personal safety in the event of fire. The act also imposes obligations on owners of budget accommodation buildings to prepare and update fire safety management plans for budget accommodation buildings.

These provisions are critical to maintaining adequate standards of fire safety in buildings in Queensland. Contravention of these obligations could potentially result in very serious consequences, including loss of life, injury and property loss. The government has reviewed the penalties imposed for breach of these important safety obligations and has increased the penalties to provide higher penalties where the breach of a fire safety obligation causes serious consequences such as death or injury.

The bill imposes a sliding scale of significant penalties for contraventions that result in adverse consequences, ranging from \$150,000 or three years imprisonment for a contravention that results in multiple deaths down to \$7,500 where there is a contravention with no adverse consequence. These increased penalties are in line with the level of penalties that apply to other public safety legislation such as the Workplace Health and Safety Act 1995.

Further, the bill provides that sections 23(1) and 24 of the Criminal Code do not apply in relation to the contravention of these fire safety obligations. Section 23(1) of the Criminal Code incorporates a general requirement that an offending act or omission must have been performed with intent, and section 24 excuses acts done in an honest and reasonable, but mistaken, belief in the existence of facts. The removal of these protections is balanced by the inclusion of defences that the contravention was due to causes over which the person had no control and that a person took reasonable precautions and exercised proper diligence to avoid the contravention.

The bill clarifies the power of fire officers to enter premises for investigative and preventative purposes. The powers currently enjoyed by authorised fire officers are general in nature and permit officers to enter premises to—

- prevent or reduce the likelihood of fires or hazardous materials emergencies;
- investigate whether fire safety measures have been taken;
- ascertain the causes of fires or hazardous materials emergencies; and
- ascertain whether fire safety requirements have been met or whether enforcement powers should be exercised.

The bill makes clear that the general powers already conferred include powers to—

- search, inspect, measure, test, photograph or film a premises;
- take things or samples, copy documents, make enquiries, conduct surveys and tests at a premises; and
- take required persons, equipment and materials onto premises.

In addition, the bill updates the fire prevention and investigation powers in relation to the collection of evidence and the conduct of inquiries into fires and hazardous materials emergencies.

Section 69 of the Fire and Rescue Service Act 1990 empowers the Commissioner of the Queensland Fire and Rescue Service to require an occupier to take measures to reduce the risk of a fire occurring on premises or reducing the potential danger to a person's property or the environment in the event of a fire occurring on premises. The requisition may be given to a particular occupier or, by gazettal notice, to all occupiers to whom the requisition applies. There is no right of merits appeal provided to an individual occupier who wishes to object to a requisition given to an occupier under section 69.

Section 69 is an important fire safety power. It enables the commissioner to take prompt action to address fire safety issues. For instance, it enables the commissioner to require firebreaks be made to reduce fire risk or that vegetation be cleared where the vegetation presents a fire risk. Further, it permits the commissioner to require a person to suspend operations where those operations present a fire risk.

Other similar enforcement procedures—for example, a building fire safety enforcement notice under section 104G of the Fire and Rescue Service Act 1990—contain a right of merits review to the fire panel established under act. It is only fair that persons affected by fire safety enforcement action have a right to have their grievances aired, and the bill provides a right of merits appeal to particular occupants the subject of a requisition under section 69.

Because it is important that the commissioner have power to require steps be taken immediately for fire safety purposes, the lodgement of an appeal does not stop the notice. The bill, however, permits an occupier, the subject of a requisition under section 69 of the act, to apply to the panel for a stay of the notice.

The panel can stay or suspend the notice only if it is necessary to secure the effectiveness of the objection and any later appeal. So, for instance, if the notice requires the occupier to spend money on fire safety measures, the appeal panel could postpone the obligation to spend the money until the panel had heard the appeal about whether the fire safety measures were justified. The panel could also require the occupier to take interim measures to ensure fire safety was not compromised pending the appeal.

Such circumstances would apply if certain building operations have to take place. The panel could require the building not to be used for the purposes it was being used until such time as the panel heard the case. I am talking now about nightclubs that may not have the required fire safety.

The Queensland Fire and Rescue Service is currently impeded by confidentiality provisions of the Fire and Rescue Service Act 1990 from providing information about building fire safety to prospective building purchasers or tenants. The bill amends the act to allow the Queensland Fire and Rescue Service to disclose any information in relation to a building to the owner, occupier or a person with an interest in the premises.

Further, the bill permits but does not require disclosure where such disclosure is reasonably necessary for enforcement of the criminal law. Such disclosure would have to comply with the government privacy arrangements.

The bill amends fees and charges provisions of the Fire and Rescue Service Act 1990 to clarify the intent of the charging provisions—

- to clearly provide that owners of properties that pay a fire levy are liable to be charged for attendances at unwanted alarms; and
- by clearly recognising that the chief executive is able to waive a charge where it is reasonable in the circumstances to do so.

Under section 147 of the Building Act 1975 private certifiers are required to keep and provide certain records relating to the specifics of a building being approved for construction under the Integrated Planning Act 1997. These documents include a list of required fire safety installations and required special fire services.

Section 137 of the Fire and Rescue Service Act 1990 requires that local governments provide fire safety officers with these documents where the local government has certified a building.

The bill amends section 137 of the Fire and Rescue Service Act 1990 to extend to building certifiers the requirement to provide fire safety inspectors with records where these records are not available from local government. This has been causing a problem over a period in relation to private certifiers in that their certification records are not available. This power permits an authorised officer to enter any premises in which a certifier carries on business during the ordinary hours of business. Nothing in the section permits an officer to enter any part of a dwelling if the part of the dwelling is not also a workplace.

The bill also amends section 216 of the Building Act 1975 to overcome the recent decision of the District Court of Queensland Charleville Registry in Goldfox Investments Pty Ltd v Paul Evans.

In the Goldfox decision the court decided that the mere existence of accommodation as defined in the definition of budget accommodation contained in section 216 of the act as it then stood was insufficient to prove for the purposes of a criminal prosecution that the accommodation was in fact budget accommodation within the definition.

Numerous members have talked to me about houses that have been used as boarding houses where the people claim they have had a party the night before and they have only slept the night. Hopefully this provision will go a long way to ensure that if a home is configured with so many beds and if people stay there on a regular basis, unless they are related, they would fall under this section of the act. The court considered that it was necessary to prove that the accommodation was actually used for the purposes of providing budget accommodation to come within the definition.

Section 216 was intended to apply to buildings configured to provide accommodation so that the mere existence of a building configured to provide accommodation in accordance with the definition would be sufficient for the building to meet the definition of a budget accommodation building. The Goldfox decision indicates that this intention has not been achieved and the section has been amended to achieve the original intention.

In addition, the bill makes a range of other improvements to the fire safety regulatory framework that fill gaps in the current building fire safety regulatory framework to make the fire safety laws operate more efficiently. I commend the bill to the House.