



# YOU OWN THE FUEL, BUT WHO OWNS THE FIRE?

**Associate Professor Dr Michael Eburn**  
ANU College of Law  
The Australian National University  
CANBERRA

&

**Associate Professor Dr Geoff Cary**  
Fenner School of Environment and Society  
The Australian National University  
CANBERRA

# ‘Whoever owns the fuel owns the fire’

- Phil Cheney, 1994 (then Project Leader for Bushfire Behaviour and Management in CSIRO and a former Director of the National Bushfire Research Unit).
- Repeated in numerous reports and articles ever since:

Queensland Rural Fire Service (2001); NSW Rural Fire Service (2003); House of Representatives *Select Committee on the Recent Australian Bushfires* (2003); Tasmanian Fire Service (2013); Dr Kevin Tolhurst (AM) (2013); Western Australian Fire and Emergency Services Commissioner (2014); Queensland Minister for Police, Fire and Emergency Services (2014); *Report of the Special Inquiry into the January 2016 Waroona Fire in Western Australia* (2016).

# What does the law say?

- Liability for the spread of fire is governed by the ‘principles of ordinary negligence’.  
*Burnie Port Authority v General Jones* (1994) 179 CLR 520, [43].
- Those principles are summarised as
  - Duty;
  - Breach; and
  - Damage.

## Duty of care

... a man has a duty to exercise reasonable care when there is a fire upon his land (although not started or continued by him or for him), of which he knows or ought to know, if by the exercise of reasonable care it can be rendered harmless or its danger to his neighbours diminished.

*Hargrave v Goldman* (1963) 110 CLR 40, [6] (Taylor and Owen JJ).

## Standard of care

... the standard ought ... to require ... what it is reasonable ... in his individual circumstances. ... if the small owner does what he can... he may be held to have done his duty: he should not be liable unless it is clearly proved that he could, and reasonably in his individual circumstance should, have done more.

*Goldman v Hargrave* [1967] AC 645, [25].

## But there about fire – what about vegetation?

I know of no duty imposed ... on a landowner to do anything with ... what naturally grows on his land, in the interests of either his neighbour or himself. If he use the land, he must so use it as not thereby to injure his neighbours... But if he leave it unused, and if thereby his neighbours suffer, he is not responsible. So long as he does nothing with it, he is safe. It is not he who injures the neighbour. It is Nature; and he is not responsible for Nature's doings. *Sparke v Osborne* (1908) 7 CLR 51.

## What's the reasonable person to do?

The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have.

*Wyong Shire v Shirt* (1980) 146 CLR 40, 48 (Mason J).

# Liability

- For failing to reduce fuel loads would be complex.
- For starting a fire that spreads is clear.

# Liability

A person lighting a fire has a duty to take reasonable steps to contain that fire and, given the risk, 'the standard of "reasonable care" may involve "a degree of diligence so stringent as to amount practically to a guarantee of safety".'

*Burnie Port Authority v General Jones* (1994) 179 CLR 520, [41] (Mason CJ, Deane, Dawson, Toohey and Gaudron JJ).

# The statistics

- People have been sued for starting fires since 1868.
- There is only one reported case where the presence of fuel was an issue but in *Dennis v Victorian Railways Commissioner*<sup>1</sup> the defendant also introduced the ignition source.

<sup>1</sup> (1903) 28 VLR 576.

# Conclusion

- A person who introduces fire into the landscape is under a duty to control that fire.
- Liability for failing to reduce fuel loads is theoretically possible, but so far unheard of and would be difficult to establish.

The correct adage is not

“Whoever owns the **fuel** owns the fire”

# The correct adage is

“Whoever owns the **ignition source** owns the fire”

## Questions? Comments?

Thank you for your attention.

Correspondence to:

Dr Michael Eburn

[michael.eburn@anu.edu.au](mailto:michael.eburn@anu.edu.au)

P: (02) 6125 6424