

Bushfire by arson is a difficult crime to characterise, and has a number of elements which make it a difficult crime for the lawyer to professionally deal with. The fact is that not all bushfires by arson result in loss of life or private property. Some bushfires by arson could never conceivably cause such loss, whilst some undoubtedly would, but for the swift and often heroic actions of firefighters and others, the preventative measures taken by people before the fire was lit, the topography and vegetation of the area lit, the prevailing meteorological conditions before and during the fire, and the actions of potential victims.

In attempting to characterise any bushfire in terms of its potential or actual seriousness, those responsible for representing the alleged arsonist are faced with a significant disparity in the resources available to them, compared with those available to the prosecution. This is a significant issue going to the criminality of the defendant. Objective tests as to recklessness of conduct are found throughout the criminal law in relation to the charges an alleged arsonist might face. Evidence of the various factors to be taken into account when applying the objective test is crucial—and never more so when it comes to sentencing and the issue of proportionality.

Matters peculiar to the defendant arsonist are difficult to discern. Forensic psychological and psychiatric assessment may (and usually does) point to some mental health problems, but not to the nexus (if one exists) between those problems and the motivation for arson. Hence the sentencing issue of rehabilitation, and the likelihood of reoffending become problematic with heightened community focus on the issue of arson prevention and management in our community, work has commenced on developing a best practice approach to managing convicted arson offenders. Currently in Australia there is no standardised treatment modality designed specifically to address the unique demands of intervention with adult deliberate firesetters. This paper will present the results of a preliminary review into current best practice for risk assessment of arson offenders. Issues pertaining to treatment goals will also be canvassed. In Australia, currently there is no consistent approach to the assessment and intervention of either juvenile or adult arsonists. Reference to advances in the international arena will be made and the applicability of the lessons learned overseas to the domestic context will be examined.