



Jervis Bay Territory Rural Fires Amendment (Offences and Other Measures) Ordinance 2015

Ordinance No. 5, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following Ordinance.

Dated 03 September 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Jamie Briggs
Assistant Minister for Infrastructure and Regional Development

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1 Name

This is the *Jervis Bay Territory Rural Fires Amendment (Offences and Other Measures) Ordinance 2015*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	The day after this Ordinance is registered.	

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under the *Jervis Bay Territory Acceptance Act 1915*.

4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

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Schedule 1—Amendments

Jervis Bay Territory Rural Fires Ordinance 2014

1 Subsection 6(1)

Omit “(1)”.

2 Subsection 6(1)

Insert:

AFP means the Australian Federal Police.

3 Subsection 6(1) (at the end of the definition of *approved form*)

Add “under section 7A”.

4 Subsection 6(1) (paragraph (b) of the definition of *authorised member*)

Omit “officers”, substitute “members”.

5 Subsection 6(1) (definition of *bush fire danger period*)

Repeal the definition, substitute:

bush fire danger period has the meaning given by section 72.

6 Subsection 6(1) (definition of *Director of National Parks*)

Repeal the definition, substitute:

Director of National Parks means the Director of National Parks referred to in section 514A of the *Environment Protection and Biodiversity Conservation Act 1999*.

7 Subsection 6(1)

Insert:

emergency means an emergency due to an actual or imminent event:

(a) that:

-
- (i) endangers, or threatens to endanger, the safety or health of persons or animals in the Territory; or
 - (ii) destroys or damages, or threatens to destroy or damage, property in the Territory, including any part of the environment of the Territory; and
- (b) that requires a significant and coordinated response.

emergency services organisation means any of the following organisations:

- (a) the AFP;
- (b) the police force of New South Wales;
- (c) the Jervis Bay Territory Rural Fire Service;
- (d) Fire and Rescue NSW;
- (e) the NSW Rural Fire Service;
- (f) the State Emergency Service of New South Wales;
- (g) the Ambulance Service of New South Wales;
- (h) any other emergency service operating in the Territory under an agreement with the Commonwealth, or on an ad hoc basis during an emergency.

environment includes:

- (a) the physical characteristics of the Territory; and
- (b) plants, native animals and marine life; and
- (c) natural and physical resources.

Environment Department means the Department administered by the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.

motorised machine includes any vehicle or machine that is operated by means of an internal combustion engine or other fuel-burning engine.

8 Subsection 6(1) (definition of *Parks Australia*)

Repeal the definition, substitute:

Parks Australia means:

- (a) that part of the Environment Department known as Parks Australia; or

- (b) if there is a change in the name by which that part of the Environment Department is known—that part of the Environment Department known by the changed name.

9 Subsection 6(1) (paragraph (a) of the definition of *public authority*)

Omit “by or under an ordinance”, substitute “under an Ordinance”.

10 Subsection 6(1)

Insert:

rules means rules made under section 98.

this Ordinance includes the rules.

11 Subsection 6(2) (including the notes)

Repeal the subsection.

12 Subsection 7(1)

After “this Ordinance”, insert “(other than section 98)”.

13 After paragraph 7(1)(a)

Insert:

(aa) the Secretary of the Department; or

14 At the end of Part 1

Add:

7A Approved forms

- (1) The Minister may approve forms for this Ordinance.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.
- (3) The Minister must ensure that approved forms are publicly available.

15 Paragraph 9(d)

Omit “ordinance”, substitute “Ordinance”.

16 Subsection 16(1)

Omit “by or under this Ordinance or any other ordinance”, substitute “under this or any other Ordinance”.

17 Subsection 17(1)

Omit “by or”.

18 Section 23 (heading)

Repeal the heading, substitute:

23 Damage to property**19 Subsection 32(4)**

Before “Act”, insert “any”.

20 Subsection 33(1)

Omit “by this Ordinance”, substitute “under this Ordinance”.

21 Paragraph 35(1)(a)

Omit “or the rules”.

22 Subsection 35(2)

Omit “or the rules”.

23 Subsection 39(3)

Repeal the subsection, substitute:

- (3) This section has effect despite anything to the contrary in this or any other Ordinance.

24 Subsections 40(2) to (4)

Repeal the subsections, substitute:

- (2) The Committee is to consist of the following persons appointed, in writing, by the Minister:
- (a) a nominated representative of the Department;
 - (b) a nominated representative of the AFP;
 - (c) a nominated representative of the Director of National Parks;
 - (d) a nominated representative of the NSW Rural Fire Service;

- (e) a nominated representative of Fire and Rescue NSW;
 - (f) a nominated representative of each rural fire brigade;
 - (g) a nominated representative of the Wreck Bay Aboriginal Community Council;
 - (h) a nominated representative of the Defence Department;
 - (i) a nominated representative of the Shoalhaven City Council;
 - (j) such other persons (if any) as the Minister considers appropriate.
- (3) The Minister must not appoint, under paragraph (2)(j), a person who is an officer or employee of a State, or of an authority of a State, unless the State or authority (as the case may be) has nominated the person for the appointment.
- (4) The representative of the Department is the Chair of the Committee.
- (5) A member of the Committee holds office on the terms and conditions (if any) determined by the Minister.

25 Subsection 41(1)

Omit “by this Ordinance or any other ordinance”, substitute “under this or any other Ordinance”.

26 At the end of Division 2 of Part 3

Add:

41A Other matters relating to Fire Management Committee

- (1) The Fire Management Committee may draw to the Minister’s attention any matter the committee considers relevant to the protection of land, persons, animals, property or the environment in the Territory from the impact of fires.
- (2) The committee has no power to conduct or take any other part in fire fighting or fire prevention operations authorised by this Ordinance, any other Ordinance or any other legislative instrument.

Note: Subsection (2) does not prevent individual members of the committee from taking part in fire fighting or fire prevention operations otherwise than as members of the committee.

27 Paragraph 53(1)(c)

Omit “this Ordinance or any other ordinance”, substitute “this or any other Ordinance”.

28 Subsection 53(2) (note)

Repeal the note.

29 Paragraph 53(3)(c)

Omit “this Ordinance or any other ordinance”, substitute “this or any other Ordinance”.

30 Subsection 56(9) (note)

Repeal the note.

31 Subsection 59(3) (note)

Repeal the note.

32 At the end of Division 2 of Part 4

Add:

60A Roadside fire protection

- (1) This section applies to a public authority that has the care, control or management of a road, or of vegetation on the side of a road.
- (2) The public authority may, for the purposes of bush fire hazard reduction work, light a fire on the road, or on the verge of the road, if doing so is consistent with the bush fire management plan.
- (3) If the public authority lights a fire under subsection (2), the authority may, while the fire is burning, prohibit, direct or regulate the movement of persons, vehicles or animals along the road or along another road of which the authority has the care, control or management.

33 Paragraphs 74(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) the person does not, before lighting the fire, give notice in accordance with subsections (3), (4) and (5).

34 At the end of section 74

Add:

- (3) A notice mentioned in paragraph (1)(c) must be in writing and include:
 - (a) the name of the person intending to light the fire; and
 - (b) the location and purpose of the proposed fire; and
 - (c) a statement that a fire permit has been issued authorising the lighting of the fire; and
 - (d) the time the person intends lighting the fire; and
 - (e) the period for which it is proposed the fire will burn.
- (4) A notice mentioned in paragraph (1)(c) must be given to:
 - (a) the Minister; and
 - (b) each occupier (or, if there is no occupier, each owner) of land that is:
 - (i) contiguous to the land on which the fire is to be lit; or
 - (ii) separated only by a lane, road or waterway (whether fenced or unfenced) from the land on which the fire is to be lit.
- (5) A notice mentioned in paragraph (1)(c) must be given:
 - (a) within the period specified for giving the notice in the fire permit authorising the lighting of the fire; or
 - (b) if no period is specified—no later than 24 hours before the fire is lit.

35 Subsection 76(1)

Omit “(1)”.

36 Paragraph 80(1)(b)

Omit “ordinance or”, substitute “Ordinance or any”.

37 Paragraph 81(c)

Repeal the paragraph, substitute:

- (c) the Minister is authorised or required under this or any other Ordinance not to issue the permit.

38 Subsection 85(4)

After “If an order”, insert “(the *NSW order*)”.

39 Subsection 85(4)

Omit “that order has effect as if the order”, substitute “the NSW order has effect in the Territory as if it”.

40 Subsection 85(5)

Omit “an order mentioned in subsection (4) has effect as if the order were an order made by the Minister under subsection (1)”, substitute “a NSW order has effect in the Territory under subsection (4)”.

41 Subsections 85(6) and (7)

Repeal the subsections, substitute:

- (6) A person commits an offence if the person fails to comply with:
- (a) an order made by the Minister under subsection (1); or
 - (b) a NSW order that has effect in the Territory under subsection (4).

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

- (7) This section has effect despite anything to the contrary in this or any other Ordinance.

42 Division 8 of Part 4 (heading)

Repeal the heading, substitute:

Division 8—Offences**43 Section 86 (heading)**

Repeal the heading, substitute:

86 Lighting fires without authority**44 At the end of Division 8 of Part 4**

Add:

86A Burning to demolish buildings etc.

A person commits an offence if:

- (a) the person lights a fire for the purpose of, or in connection with, the demolition of a building or the destruction of building materials; and
- (b) the person:
 - (i) is not authorised to light the fire by a fire permit; or
 - (ii) fails to comply with any conditions set out in a fire permit authorising the person to light the fire.

Penalty: 20 penalty units.

86B Burning to destroy sawmill waste material

(1) A person commits an offence if:

- (a) the person lights a fire for the purpose of destroying sawmill waste material; and
- (b) the fire is not lit:
 - (i) in an incinerator designed to prevent the escape of sparks and burning material; or
 - (ii) on ground enclosed by a fence of galvanised iron, or other fire resistant material, at least 1.8 metres high and high enough that the top of the waste to be burned is not less than 600 millimetres below the top of the fence at its lowest point; or
 - (iii) in a pit dug for the purpose and in which the top of the waste to be burned is not less than 600 millimetres below the top of the edge of the pit at its lowest point; or
 - (iv) in accordance with the conditions of a fire permit authorising the person to light the fire.

Penalty: 20 penalty units.

(2) A person commits an offence if:

- (a) the person lights a fire for the purpose of destroying sawmill waste material; and
- (b) the fire is lit on ground enclosed as mentioned in subparagraph (1)(b)(ii) or in a pit mentioned in subparagraph (1)(b)(iii); and

-
- (c) either or both of the following apply:
- (i) the ground within 9 metres of any part of the fence or edge of the pit is not clear of combustible matter;
 - (ii) the person does not have at least 2 knapsack spray pumps, each with a minimum capacity of 16 litres, and a supply of not less than 450 litres of water, readily available for use on the fire.

Penalty: 20 penalty units.

86C Use of spark arresters and fireboxes

A person commits an offence if:

- (a) the person drives or uses a steam-powered machine; and
- (b) the person does so in connection with the use of land for agricultural, pastoral or other purposes; and
- (c) one or more of the following applies:
 - (i) the machine's smokebox is not fitted with a spark arrester constructed of mesh of a width not exceeding 3.2 millimetres;
 - (ii) the machine's firebox is not fitted with a tray constructed to prevent the escape of sparks or burning material;
 - (iii) the machine's smokebox spark arrester or firebox tray is not maintained in a good and serviceable condition;
 - (iv) the machine's smokebox spark arrester or firebox tray does not comply with Australian Standard AS 1019—2000, *Internal combustion engines—Spark emission control devices*, published on 1 August 2000.

Penalty: 20 penalty units.

86D Other safety requirements

- (1) A person commits an offence if:
- (a) the person drives or uses a motorised machine in grass, crop or stubble land; and
 - (b) the person does so in connection with the use of the land for agricultural, pastoral or other purposes; and
 - (c) either or both of the following apply:

- (i) the machine is not constructed so that any heated area of the machine will not come into contact with combustible matter;
- (ii) the machine is not maintained in a good and serviceable condition so as to prevent the outbreak of fire.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person drives or uses a motorised machine in grass, crop or stubble land; and
 - (b) the person does so in connection with the use of the land for agricultural, pastoral or other purposes; and
 - (c) it is practicable to carry prescribed fire safety equipment on the machine; and
 - (d) the person does not carry, or have in the vicinity, prescribed fire safety equipment, maintained in a serviceable condition, on the machine.

Penalty: 20 penalty units.

- (3) A person commits an offence if the person:
- (a) either:
 - (i) carries out welding operations; or
 - (ii) uses explosives, an angle grinder or any other implement that is likely to generate sparks; and
 - (b) does not have prescribed fire safety equipment, maintained in a serviceable condition, in the vicinity of the activity mentioned in paragraph (a).

Penalty: 20 penalty units.

- (4) In this section:

prescribed fire safety equipment means:

- (a) a knapsack spray pump, with a minimum capacity of 16 litres, filled with water; or
- (b) an operational liquid type fire extinguisher with a minimum capacity of 9 litres; or
- (c) an operational dry powder type fire extinguisher with a minimum capacity of 0.9 kilograms.

86E Destruction etc. of notices

A person commits an offence if:

- (a) a notice is displayed for the purposes of this Ordinance under the authority of the Fire Management Committee, the Minister or a public authority; and
- (b) the person destroys, defaces or removes the notice; and
- (c) the person does so without lawful authority.

Penalty: 5 penalty units.

86F Lighting fires for cooking etc.

A person commits an offence if:

- (a) the person lights a fire in the open to cook, heat or prepare meals or boil water, or for a similar purpose; and
- (b) the person lights the fire during the bush fire danger period; and
- (c) the fire is not surrounded by ground that is clear of all combustible matter for a distance of at least 2 metres from the fire.

Penalty: 20 penalty units.

86G Burning garbage and refuse etc.

(1) A person commits an offence if:

- (a) the person lights a fire to destroy household garbage or refuse, or to destroy an animal carcass; and
- (b) the person lights the fire during the bush fire danger period; and
- (c) the fire is not surrounded by ground that is clear of all combustible matter for a distance of at least 5 metres from the fire; and
- (d) either or both of the following apply:
 - (i) the fire is not lit in an incinerator designed to prevent the escape of sparks and burning material;
 - (ii) the fire is not lit in accordance with the conditions of a fire permit authorising the person to light the fire.

Penalty: 20 penalty units.

- (2) Subsection (1) does not affect the operation of any law that prohibits or regulates the lighting of fires.

86H Lighting fires to produce charcoal or distil oils

- (1) A person commits an offence if:
- (a) the person lights a fire for, or in connection with:
 - (i) charcoal production; or
 - (ii) the distillation of eucalyptus or other oils; and
 - (b) the person lights the fire during the bush fire danger period; and
 - (c) the fire is not surrounded by ground that is clear of all combustible matter for a distance of at least 30 metres from the fire.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person lights a fire to burn waste products resulting from an activity mentioned in paragraph (1)(a); and
 - (b) the person lights the fire during the bush fire danger period; and
 - (c) either or both of the following apply:
 - (i) the fire is not lit in accordance with the conditions of a fire permit authorising the person to light the fire;
 - (ii) the fire is not lit at least 30 metres from the site of any other fire lit for, or in connection with, the distillation of eucalyptus or other oils.

Penalty: 20 penalty units.

- (3) In this section:

combustible matter does not include the following:

- (a) charcoal;
- (b) timber to be reduced to charcoal;
- (c) material used for the distillation of eucalyptus or other oils;
- (d) a building or fence.

86J Lighting, using or carrying tobacco products or other objects

- (1) A person commits an offence if:
- (a) the person lights a tobacco product, match or other object; and
 - (b) the person lights the object within 15 metres of a stack of grain, hay, corn or straw or any standing crop, dry grass or stubble field; and
 - (c) the person lights the object during the bush fire danger period.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person uses or carries a lit tobacco product, lit match or another lit object; and
 - (b) the person uses or carries the lit object within 15 metres of a stack of grain, hay, corn or straw or any standing crop, dry grass or stubble field; and
 - (c) the person does so during the bush fire danger period.

Penalty: 50 penalty units.

- (3) A person commits an offence if:
- (a) the person leaves or deposits a lit tobacco product or lit match, or incandescent material, on any land, bridge, wharf, pontoon or similar structure; and
 - (b) the person does so during the bush fire danger period.

Penalty: 50 penalty units.

45 Subsection 88(1)

Omit "by or".

46 Section 89

Repeal the section, substitute:

89 Liability of persons in respect of loss or damage caused by bush or other fires

Except as expressly provided in this Ordinance, this Ordinance, or any conviction, payment of penalty or proceeding under this

Ordinance, does not affect a civil claim or proceedings in respect of:

- (a) loss or damage caused by a bush or other fire to which this Ordinance relates; or
- (b) a trespass committed.

47 Section 92

After “required”, insert “or permitted”.

48 Paragraph 93(1)(a)

Omit “or the rules”.

49 Paragraph 93(1)(b)

Repeal the paragraph, substitute:

- (b) the offence is created by a provision mentioned in an item in column 1 of the table in clause 1 of Schedule 1A.

50 Subsection 93(2)

Repeal the subsection, substitute:

- (2) The infringement notice must state that if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty specified in the notice.
- (2A) The penalty that may be specified in an infringement notice for the purposes of subsection (2) in relation to an offence created by a provision mentioned in an item in column 1 of the table in clause 1 of Schedule 1A is the amount specified in column 2 of the item.

51 Subsection 93(4)

Omit “prescribed for an offence”, substitute “specified in an infringement notice”

52 Subsections 93(6) and (7)

Repeal the subsections.

53 Subsection 93(8)

Omit “of, or made under, this Ordinance or any other ordinance or Act”, substitute “of this or any other Ordinance or any Act”.

54 Subsection 93(9) (definition of *authorised officer*)

Repeal the definition, substitute:

authorised officer means:

- (a) a member or special member of the AFP; or
- (b) a person authorised by the Minister, in writing, for the purposes of this paragraph.

55 Subsection 94(1)

Omit “or the rules”.

56 Subsection 94(3) (note)

Repeal the note.

57 Subsections 95(1) and 95(2)

Omit “or the rules”.

58 Subsection 95(4) (note)

Repeal the note.

59 Subsections 96(1) to (3)

Omit “authorised officer” (wherever occurring), substitute “authorised member”.

60 Subsection 96(3)

Omit “the officer”, substitute “the authorised member”.

61 Section 97

Omit “or the rules”.

62 Paragraphs 98(2)(b) to (f)

Repeal the paragraphs.

63 Subsection 98(3)

Repeal the subsection, substitute:

- (3) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:

- (i) arrest or detention; or
- (ii) entry, search or seizure;
- (c) impose a tax;
- (d) directly amend the text of this Ordinance.

64 Before Schedule 1

Insert:

Schedule 1A—Infringement notices

Note: See section 93.

1 Infringement notice offences created by the Ordinance

The following table sets out offences against this Ordinance that are offences for which an infringement notice may be served, and the penalty that may be specified in an infringement notice dealing with the offence.

Infringement notice offences created by the Ordinance		
Item	Column 1 Provision of Ordinance	Column 2 Penalty amount (\$)
1	Subsection 36(1)	850
2	Subsection 36(2)	850
3	Subsection 39(2)	850
4	Subsection 53(1)	340
5	Subsection 53(3)	340
6	Subsection 56(8)	850
7	Subsection 74(1)	1 000
8	Subsection 74(2)	1 000
9	Section 75	1 000
10	Section 76	1 000
11	Subsection 80(2)	850
12	Subsection 85(6)	850
13	Subsection 86(2)	1 000
14	Section 86A	510
15	Subsection 86B(1)	510

Infringement notice offences created by the Ordinance		
Item	Column 1 Provision of Ordinance	Column 2 Penalty amount (\$)
16	Subsection 86B(2)	510
17	Section 86C	510
18	Subsection 86D(1)	510
19	Subsection 86D(2)	510
20	Subsection 86D(3)	510
21	Section 86E	510
22	Section 86F	510
23	Subsection 86G(1)	510
24	Subsection 86H(1)	510
25	Subsection 86H(2)	510
26	Subsection 86J(1)	510
27	Subsection 86J(2)	510
28	Subsection 86J(3)	510
29	Subsection 95(3)	170

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