



Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 28 November 2019

David Hurley
Governor-General

By His Excellency's Command

Nola Marino
Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>Jervis Bay Territory Rural Fires Ordinance 2014</i>	<i>2</i>

1 Name

This Ordinance is the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019*.

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.	3 December 2019

Note: This table relates only to the provisions of this Ordinance as originally made.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 section 4F of 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Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

Schedule 1—Amendments

Jervis Bay Territory Rural Fires Ordinance 2014

1 After paragraph 5(c)

Insert:

- (ca) the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires; and

2 Section 6 (definition of *bush fire hazard reduction work*)

Repeal the definition, substitute.

bush fire hazard reduction work means:

- (a) the establishment or maintenance of fire breaks and fire trails on land; or
- (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate against the spread of a bush fire;

but does not include construction of a track or road.

3 Section 6 (definition of *Environment Department*)

Repeal the definition.

4 Section 6

Insert:

fire risk object: see subsection 86K(1).

Infrastructure Department means the Department administered by the Minister responsible for administering the *Jervis Bay Territory Acceptance Act 1915*.

5 Section 6 (definition of *Parks Australia*)

Repeal the definition, substitute:

Parks Australia means:

- (a) that part of the Department (the *Environment Department*) administered by the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* that is 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.

6 Section 6 (paragraph (d) of the definition of *public authority*)

Omit “authority.”, substitute “authority;”.

7 Section 6 (at the end of the definition of *public authority*)

Add:

and includes, for the purposes of Part 4, an authorised network operator within the meaning of the *Electricity Network Assets (Authorised Transactions) Act*

*2015 (NSW), as in force at the time the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019* commenced.*

8 Paragraphs 7(1)(aa), (b) and (c)

Before “Department”, insert “Infrastructure”.

9 Subsection 7(3)

Before “Department”, insert “Infrastructure”.

10 After subparagraph 9(a)(ii)

Insert:

- (ia) the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in the Territory;

11 Section 21

Omit “An officer”, substitute “(1) An officer”.

12 Paragraph 21(b)

Repeal the paragraph, substitute:

- (b) destroy, pull down, shore up or remove a building or structure, or part of a building or structure;

13 At the end of section 21

Add:

- (2) The cost of doing something under paragraph (1)(b) is to be borne by the owner of the building or structure and is to be paid to the Minister.
- (3) The Minister may waive payment of the whole or any amount payable under subsection (2) in such circumstances as the Minister thinks appropriate.

14 Section 22

Omit “An officer”, substitute “(1) An officer”.

15 Section 22

Omit “or for the purpose of training or demonstration”.

16 At the end of section 22

Add:

- (2) The Minister may, by arrangement with the owner or occupier or person having control or management of land containing a water source, take and use, free of charge, water from that source for the purpose of training or demonstration by any rural fire brigade.

17 Subsection 36(2)

Omit “person acting”, substitute “person, including a volunteer rural fire fighter, acting”.

18 Paragraph 40(2)(a)

Before “Department”, insert “Infrastructure”.

19 Subsection 40(4)

Before “Department”, insert “Infrastructure”.

20 At the end of section 44

Add:

- (3) The Minister may direct the Fire Management Committee to amend the draft bush fire risk management plan.

21 Subsection 45(3) (note)

Omit “2014 be viewed on the Department’s”, substitute “2019 be viewed on the Environment Department’s”.

22 Subsection 55(1) (note)

After “*fire*”, insert “*hazard*”.

23 Subsection 77(2)

Repeal the subsection, substitute:

- (2) The Minister must not issue a fire permit unless:
- (a) if the lighting of the fire would require an approval, consent or other authority under the *Environment Protection and Biodiversity Conservation Act 1999* or any other law—the Minister is satisfied that the approval, consent or other authority has been given; and
 - (b) the Minister is satisfied that the lighting of the fire would not contravene any other Act or law.

24 Subparagraph 85(5)(a)(ii)

Omit “in the Gazette”, substitute “on the Infrastructure Department’s website”.

25 Subsection 85(6) (penalty)

Omit “50 penalty units”, substitute “30 penalty units”.

26 After subsection 86(1)

Insert:

- (1A) In determining the penalty for an offence under subsection (1) that was committed when a total fire ban under Division 7 was in force in the part of the Territory in which the fire was set or was permitted to escape, the court must take the total fire ban into account as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates.
- (1B) A person commits an offence if the person:
- (a) sets fire or causes fire to be set to the land or property of another person, the Commonwealth or a public authority; or
 - (b) being the owner or occupier of land, permits a fire to escape from the land under such circumstances as to cause or be likely to cause injury or damage to:

- (i) the person, land or property of another person; or
 - (ii) the land or property of the Commonwealth or a public authority;
- knowing that a total fire ban under Division 7 is in force in the part of the Territory in which the fire is set or permitted to escape.

Penalty: Imprisonment for 7 years, or 420 penalty units, or both.

- (1C) Subsection (1D) applies if, in a prosecution for an offence (the *prosecuted offence*) against subsection (1B), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection (1) (the *alternative offence*).
- (1D) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

27 Paragraph 86J(1)(b)

Omit “field; and”, substitute “field.”.

28 Paragraph 86J(1)(c)

Repeal the paragraph.

29 Subsection 86J(1) (penalty)

Omit “50 penalty units”, substitute “30 penalty units”.

30 Paragraph 86J(2)(b)

Omit “field; and”, substitute “field.”.

31 Paragraph 86J(2)(c)

Repeal the paragraph.

32 Subsection 86J(2) (penalty)

Omit “50 penalty units”, substitute “30 penalty units”.

33 Subsection 86J(3)

Repeal the subsection.

34 At the end of Division 8 of Part 4 (first occurring)

Add:

86K Leaving or depositing fire risk objects

Definition of fire risk object

- (1) A *fire risk object* is:
- (a) a lit tobacco product; or
 - (b) a lit match; or
 - (c) incandescent material.

Offence

- (2) A person commits an offence if the person discards a fire risk object on any land.
Penalty: 30 penalty units.

Aggravated offence

- (3) A person commits an offence if:
(a) the person discards a fire risk object on any land; and
(b) the person does so while an order is in force to which Division 7 (total fire bans) applies in the part of the Territory concerned.
Penalty: 60 penalty units.

Driver and owner of vehicle deemed guilty

- (4) If a fire risk object is, in contravention of subsection (2) or (3), discarded from a motor vehicle, or from a trailer attached to a motor vehicle, the following are taken to be guilty of an offence under the subsection:
(a) in the case of a fire risk object discarded from a motor vehicle—the driver of the motor vehicle;
(b) in the case of a fire risk object discarded from a motor vehicle—the owner of the motor vehicle;
(c) in the case of a fire risk object discarded from a trailer attached to a motor vehicle—the owner of the trailer.

Only one person liable

- (5) Subsection (4) does not affect the liability of the actual offender but, if a penalty has been imposed on or recovered from any person in relation to the offence (whether the actual offender, the driver or the owner), no further penalty may be imposed on or recovered from any other person.

Exception for passenger vehicles

- (6) Subsection (4) does not apply if:
(a) the motor vehicle is a bus, taxi or other public transport vehicle and is being used at the time to convey a public passenger; and
(b) the fire risk object was discarded by that passenger.

Exception for stolen vehicles

- (7) Paragraph (4)(b) does not apply if the motor vehicle was at the time a stolen motor vehicle or a motor vehicle illegally taken or used.

Exception for stolen trailers

- (8) Paragraph (4)(c) does not apply if the trailer was at the time a stolen trailer or a trailer illegally taken or used.

Exception for owner when not driver

- (9) Paragraph (4)(b) or (c) does not apply if the owner:

-
- (a) was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time; and
 - (b) either:
 - (i) gives notice in accordance with subsection (13) of the name and address of the person who was in charge of the motor vehicle at the relevant time; or
 - (ii) satisfies the court dealing with the offence that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (10) A notice under subsection (9) is, in proceedings against the person named in the notice for an offence under subsection (2) or (3), evidence that the person was driving the motor vehicle at the relevant time.

Exception for driver when not offender

- (11) Paragraph (4)(a) does not apply if the driver:
- (a) gives notice in accordance with subsection (13) of the name and address of the passenger in the motor vehicle who discarded the fire risk object; or
 - (b) satisfies the court dealing with the offence that the driver did not discard the fire risk object and did not know, and could not with reasonable diligence have ascertained, the name and address of the passenger who discarded the fire risk object.
- (12) A notice under subsection (11) is, in proceedings against the person named in the notice for an offence under subsection (2) or (3), evidence that the person discarded the fire risk object from the motor vehicle.

Notice given by owner or driver

- (13) A notice for the purposes of subparagraph (9)(b)(i) or paragraph (11)(a) must be:
- (a) verified by statutory declaration; and
 - (b) given to the prosecutor within 28 days after service of the summons or court attendance notice for the offence.

Application of terms used in the Road Transport Act 2013 (NSW)

- (14) A term used in this section has the same meaning as in the *Road Transport Act 2013* (NSW), as in force at the time the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019* commenced.

35 Part 4 (second occurring)

Re-number as Part 5.

36 Section 93

Repeal the section.

37 Subsection 94(1)

Repeal the subsection, substitute:

- (1) A member or special member of the AFP who has reason to suspect that a person is committing an offence against this Ordinance may direct the person to state the person's full name and residential address.

38 Paragraph 94(2)(a)

Omit “an authorised officer or”.

39 Subsection 94(3)

Omit “the authorised officer or”.

40 Subsection 94(4)

Omit “An authorised officer or a member”, substitute “A member”.

41 Section 97

Repeal the section, substitute:

97 Proceedings for offences

Proceedings for offences against this Ordinance:

- (a) in the case of offences against subsections 86(1) or (1B) of this Ordinance—may be dealt with in accordance with Part 17 of the *Crimes Act 1900* (ACT); and
- (b) in any other case—may be dealt with summarily before the ACT Magistrates Court.

97A Persons who may bring proceedings

Proceedings for an offence against this Ordinance may be brought by:

- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a special member of the Australian Federal Police (within the meaning of that Act).

42 Section 99

Omit “within 4 years after the Ordinance commences, and at least once in every 4 year period after that date,”, substitute “within the period of 10 years beginning on the day the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019* commenced, and at least once in each subsequent 10 year period.”.

43 After section 99

Insert:

Part 6—Application, transitional and savings provisions

100 Amendments made by the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2018*

Definitions

- (1) In this section:

amending Ordinance means the *Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Ordinance 2019*.

commencement day means the day the amending Ordinance commenced.

old Ordinance means the *Jervis Bay Territory Rural Fires Ordinance 2014*, as in force immediately before the commencement day.

Costs of destroying etc. buildings or structures

- (2) Section 21, as amended by the amending Ordinance, applies in relation to something done on or after the commencement day.

Draft bush fire risk management plans

- (3) Section 44, as amended by the amending Ordinance, applies in relation to a draft bush fire risk management plan whether the plan was prepared and given to the Minister before, on or after the commencement day.

Bush fire hazard reduction work

- (4) The definition of **bush fire hazard reduction work** in section 6, as substituted by the amending Ordinance, applies in relation to:
- (a) permissions given under section 55 on or after the commencement day; and
 - (b) bush fire hazard reduction notices issued under section 56 on or after the commencement day.

Validity of fire permits not affected by amendments

- (5) The amendment of section 77 made by the amending Ordinance does not affect the validity of a fire permit issued under that section before the commencement day.

Proceedings for offences

- (6) Despite the repeal of section 97 of the old Ordinance by the amending Ordinance, that section continues to apply, on and after the commencement day, in relation to any proceeding for an offence against subsection 86(1) of the old Ordinance.

44 Schedule 1A

Repeal the Schedule.