

Passed by both Houses



New South Wales

Rural Fires Amendment Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Rural Fires Amendment Bill 2014

Act No , 2014

An Act to amend the *Rural Fires Act 1997* and other legislation to make further provision with respect to fire-related offences and fire permits.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rural Fires Amendment Act 2014*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Rural Fires Act 1997 No 65

[1] Section 89 Issue of permits

Omit “must not issue a fire permit for a purpose unless” from section 89 (2).

Insert instead “may issue a fire permit for a purpose only if”.

[2] Section 89 (2) (c)

Insert at the end of section 89 (2) (b):

, or

(c) lighting a fire for the purpose does not contravene any other Act or law.

[3] Section 99A Offences—discarding lighted cigarettes etc

Insert “(a *fire risk object*)” after “incandescent material”.

[4] Section 99A (2)–(10)

Insert at the end of section 99A:

(2) Driver and owner of vehicle deemed guilty

If a fire risk object is, in contravention of subsection (1), 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 that 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.

(3) Only one person liable

Subsection (2) 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. In this subsection, *penalty* includes a penalty under a penalty notice.

(4) Exception for passenger vehicles

Subsection (2) 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.

(5) Exception for stolen vehicles

Subsection (2) (b) does not apply if the motor vehicle was at the time a stolen motor vehicle or a motor vehicle illegally taken or used.

(6) Exception for stolen trailers

Subsection (2) (c) does not apply if the trailer was at the time a stolen trailer or a trailer illegally taken or used.

(7) **Exception for owner when not driver**

Subsection (2) (b) or (c) does not apply if the owner was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time and:

- (a) gives notice in accordance with subsection (9) of the name and address of the person who was in charge of the motor vehicle at the relevant time, or
- (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

A notice under this subsection is, in proceedings against the person named in the notice for an offence under subsection (1), evidence that the person was driving the motor vehicle at the relevant time.

(8) **Exception for driver when not offender**

Subsection (2) (a) does not apply if the driver:

- (a) gives notice in accordance with subsection (9) of the name and address of the passenger in the motor vehicle who discarded the fire risk object, or
- (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) 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.

A notice under this subsection is, in proceedings against the person named in the notice for an offence under subsection (1), evidence that the person discarded the fire risk object from the motor vehicle.

(9) **Notice given by owner or driver**

A notice for the purposes of subsection (7) (a) or (8) (a) must be verified by statutory declaration and:

- (a) if a penalty notice has been given for the offence—the notice must be given to an officer specified in the penalty notice for the purpose within 28 days after service of the penalty notice, or
- (b) if a court is dealing with the offence—the notice must be given to the prosecutor within 28 days after service of the summons or court attendance notice for the offence.

(10) **Definitions**

In this section:

motor vehicle and *owner* of a motor vehicle have the same meanings as in the *Road Transport Act 2013*.

[5] Section 100 Offences

Insert after section 100 (1):

- (1A) In determining the penalty for an offence under subsection (1) that was committed when a total fire ban under Division 6 was in force in the part of the State in which the fire was set or was permitted to escape, the court must take the total fire ban into account as an aggravating factor.

Note. Section 21A (2) of the *Crimes (Sentencing Procedure) Act 1999* sets out other aggravating factors to be taken into account when determining the appropriate penalty for an offence.

- (1B) A person who, without lawful authority:
- (a) sets fire or causes fire to be set to the land or property of another person, the Crown or any public authority, or
 - (b) being the owner or occupier of any land, permits a fire to escape from that land under such circumstances as to cause or be likely to cause injury or damage to the person, land or property of another person or the land or property of the Crown or a public authority,

knowing that a total fire ban under Division 6 is in force in the part of the State in which the fire is set or permitted to escape, is guilty of an offence.

Maximum penalty: 1,200 penalty units or imprisonment for 7 years, or both.

- (1C) If on the trial of a person for an offence under subsection (1B) the trier of fact is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), the trier of fact may find the accused not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

[6] Section 134 Proceedings for offences

Insert “or (1B)” after “section 100 (1)” wherever occurring.

[7] Schedule 3 Savings, transitional and other provisions

Insert after Part 6:

Part 7 Provisions consequent on enactment of Rural Fires Amendment Act 2014

27 Definition

In this Part:

amending Act means the *Rural Fires Amendment Act 2014*.

28 Application of amendments

- (1) The amendments made to section 99A by the amending Act do not apply to an offence under that section committed before the commencement of the amending Act.
- (2) Section 100 (1A) (as inserted by the amending Act) does not apply to an offence under section 100 (1) committed before the commencement of the amending Act.

Schedule 2 Amendment of other legislation

2.1 Rural Fires Regulation 2013

[1] Schedule 2 Penalty notice offences

Insert “(1)” after “Section 99A” in Column 1 of Part 1.

[2] Schedule 2, Part 1

Insert “(1) or” after “Section 100” in Column 1.

2.2 Criminal Procedure Act 1986 No 209

[1] Section 268 Maximum penalties for Table 2 offences

Insert “or (1B)” after “section 100 (1)” in section 268 (2) (h).

[2] Schedule 1 Indictable offences triable summarily

Insert “or (1B)” after “section 100 (1)” in clause 9 of Table 2.