

Explanatory Statement – Jervis Bay Territory Rural Fires Amendment (Scope of Rules)
Rule 2015

Overview and Background

The Governor-General, exercising power under subsection 4F(1) of the *Jervis Bay Territory Acceptance Act 1915*, made the *Jervis Bay Territory Rural Fires Ordinance 2014* (the Rural Fires Ordinance) on 24 April 2014, and amended the Rural Fires Ordinance by making the *Jervis Bay Territory Rural Fires Amendment (Offences and Other Measures) Ordinance 2015* (the amending Ordinance) on 3 September 2015.

Section 98 of the Rural Fires Ordinance gives the Minister the power to make rules prescribing matters required or permitted by the Ordinance to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

Section 98 (as amended by the amending Ordinance) specifies that the Minister may make rules in relation to the issuing of fire permits, the classification of substances as combustible, the operation of committees, the service of notices or directions under this Ordinance, the conduct and discipline of members of the Rural Fire Service, and the operations of rural fire brigades.

Section 98 (as amended by the amending Ordinance), places some limitations on the Minister's power to make rules under the Rural Fires Ordinance, and provides that rules may not be made which create offences or civil penalties, provide powers of arrest, detention, entry, search or seizure, impose a tax, or directly amend the text of the Rural Fires Ordinance.

The *Jervis Bay Territory Rural Fires Amendment (Scope of Rules) Rule 2015* (the amending Rule) amends the *Jervis Bay Territory Rural Fires Rule 2014* (the principal Rule) to remove the offence provisions, infringement notice provisions, and some definitions from the principal Rule. The offence and infringement notice provisions have been moved to the Rural Fires Ordinance. The amending Rule also makes minor amendments to the principal Rule, consequential on the recent amendments to the Rural Fires Ordinance.

Statement of Compatibility with Human Rights

The amending Rule has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Rule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation

In preparing the amending Rule, the Department of Infrastructure and Regional Development consulted with Commonwealth and NSW agencies and organisations, including the Wreck Bay Aboriginal Community Council and the Shoalhaven City Council, which are involved with and/or affected by this Rule. The following agencies were consulted:

- Australian Federal Police;
- Commonwealth Director of National Parks;
- Department of Defence (Navy – HMAS Creswell);
- Department of Infrastructure and Regional Development (Jervis Bay Territory Administration)
- NSW Rural Fire Service;
- Wreck Bay Aboriginal Community Council; and
- Shoalhaven City Council.

The Attorney-General's Department provided advice and guidance on criminal law and law enforcement issues. The Australian Government Solicitor provided advice on legal issues.

Following circulation of the final draft, no agencies or organisations consulted objected to the content of the rule.

Detailed provision-by-provision description of the Jervis Bay Territory Rural Fires Amendment (Scope of Rules) Rule 2015

Part 1 – Preliminary

Section 1 – Name

This is the section titling the amending Rule.

Section 2 – Commencement

The date for commencement is the day after the amending Rule is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section identifies the authority on which the amending Rule is based. The amending Rule is made under the authority of the *Jervis Bay Territory Rural Fires Ordinance 2014*.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to the amending Rule is amended or repealed as specified in the Schedule, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments – *Jervis Bay Territory Rural Fires Rule 2014*

1. Section 4

This item inserts a definition of ‘hazardous material’ into the principal Rule.

2. Section 4

This item removes the definitions of ‘light’ and ‘motorised machine’ from the principal Rule as these expressions are no longer used in the principal Rule.

3. Section 13

This item removes section 13, which deals with the functions of the Fire Management Committee, from the principal Rule. These functions are now set out in the Rural Fires Ordinance.

4. Part 4

This item removes Part 4, which contains a number of fire-related offences, from the principal Rule. These offences are now contained in the Rural Fires Ordinance.

5. Section 26 and 29

This item removes sections 26 and 29 from the principal Rule. Section 26 deals with the destruction or defacement of notices, and section 29 deals with the requirements for giving notice of the intention to light a fire. Provisions equivalent to these have been inserted into the Rural Fires Ordinance.

6. Subsection 31(1)

This item amends the language of the subsection to clarify the meaning of the section.

7. Subparagraph 33(2)(a)(i)

This item amends the subparagraph to correct a reference to the *Jervis Bay Territory Emergency Management Ordinance 2015*.

8. Subsection 33(3)

This item amends a cross-reference to the Rural Fires Ordinance, consequential on amendments to that Ordinance.

9. Section 34

This item amends a cross-reference to the Rural Fires Ordinance, consequential on amendments to that Ordinance.

10. Section 36

This item removes section 36 from the principal Rule. The section dealt with the issuing of infringement notices for offences created by the principal Rule, and the definition of ‘authorised officer’ for the purposes of subsection 93(9) of the Rural Fires Ordinance. Infringement notices will in future be issued under the Rural Fires

Ordinance, and the definition of authorised officer has been added to subsection 93(9) of the Rural Fires Ordinance.

11. Schedule 1

This item removes Schedule 1, which deals with infringement notices, from the principal Rule. A schedule of infringement notice offences and penalty amounts has been added to the Rural Fires Ordinance.