

TASMANIA

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**CRIMINAL CODE AMENDMENT (ARSON) BILL  
2013**

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**CRIMINAL CODE AMENDMENT (ARSON) BILL  
2013**

*(Brought in by the Minister for Justice, the Honourable Brian  
Neal Wightman)*

**A BILL FOR**

**An Act to amend the *Criminal Code Act 1924* and the  
*Sentencing Act 1997***

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

**PART 1 – PRELIMINARY**

**1. Short title**

This Act may be cited as the *Criminal Code  
Amendment (Arson) Act 2013*.

**2. Commencement**

This Act commences on the day on which this  
Act receives the Royal Assent.

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*Act No. of*

s. 3

Part 2 – Criminal Code Act 1924 Amended

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**PART 2 – CRIMINAL CODE ACT 1924 AMENDED**

**3. Principal Act**

In this Part, the *Criminal Code Act 1924\** is referred to as the Principal Act.

**4. Schedule 1 amended (*Criminal Code*)**

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from section 267(3) “An” and substituting “Except as otherwise provided in this chapter, an”;
- (b) by omitting from section 268 “or to any stack or heap of cultivated vegetable produce, or of timber, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel, whether completed or not,”;
- (c) by omitting subsection (1) from section 268A and substituting the following subsection:
  - (1) A person is guilty of a crime –
    - (a) if the person unlawfully sets fire to any vegetation, whether live or dead; or
    - (b) if –

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\*No. 69 of 1924

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- (i) the person sets or maintains a fire that spreads to vegetation or other vegetation; and
- (ii) the person knew, or ought to have known, that the fire was likely to so spread; and
- (iii) the fire in that vegetation or other vegetation would have been unlawfully set if it had been set directly by that person rather than occurring by the spread of the fire as originally set or maintained by the person.

Charge: Unlawfully setting fire to vegetation.

- (d) by omitting from section 268A(2)(e) “log.” and substituting “log; or”;
- (e) by inserting the following paragraph after paragraph (e) in section 268A(2):
  - (f) any stack or heap of –

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Part 2 – Criminal Code Act 1924 Amended

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- (i) cultivated vegetable  
produce; or
  - (ii) timber; or
  - (iii) mineral fuel; or
  - (iv) vegetable fuel.
- (f) by omitting from section 269 “or 268A”.

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*Act No. of*

Part 3 – Sentencing Act 1997 Amended

s. 5

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**PART 3 – SENTENCING ACT 1997 AMENDED**

**5. Principal Act**

In this Part, the *Sentencing Act 1997\** is referred to as the Principal Act.

**6. Part 9, Division 2A inserted**

After section 69 of the Principal Act, the following Division is inserted in Part 9:

***Division 2A – Recovery of costs and expenses***

**69A. Recovery of costs and expenses**

- (1) If a court finds a person guilty, or convicts a person, of an arson offence, the court may order the offender to pay the reasonable costs and expenses incurred by the Crown, the State Fire Commission or a Government Business Enterprise in responding to, and fighting, the fire that is the subject of the offence.
- (2) An order under subsection (1) may be made by the court –
  - (a) on its own motion; or
  - (b) on an application made –
    - (i) by the Crown, the State Fire Commission or the

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\*No. 59 of 1997

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Government Business  
Enterprise in whose  
favour the order is sought;  
or

(ii) on behalf of the Crown,  
the State Fire  
Commission or a  
Government Business  
Enterprise by the DPP.

- (3) An application under subsection (2)(b) is to be made as soon as practicable after the offender is found guilty or convicted of the offence.
- (4) Nothing in subsection (2)(b)(ii) requires the DPP to make an application on behalf of the Crown, the State Fire Commission or a Government Business Enterprise.
- (5) Nothing in this section takes away from, or affects the right of, any person to recover damages for, or to be indemnified against, any injury, loss, destruction or damage so far as it is not satisfied by payment or recovery of costs and expenses under this section.
- (6) In determining, for the purposes of this section, the amount of costs and expenses, the court is not bound by the rules of evidence and may inform itself in any matter in any way it considers appropriate.
- (7) In this section –



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*arson offence* means an offence under section 268, 268A, 269 or 269A of the *Criminal Code*;

*Government Business Enterprise* has the same meaning as in the *Government Business Enterprises Act 1995*;

*State Fire Commission* means the State Fire Commission established under section 7 of the *Fire Service Act 1979*.

**69B. Enforcement of recovery order**

An order requiring the payment of costs and expenses made by the Supreme Court under section 69A is taken to be a judgment of that court and is enforceable under the *Supreme Court Civil Procedure Act 1932*.

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Part 4 – Miscellaneous

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**PART 4 – MISCELLANEOUS**

**7. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.