



# BushFIRE Arson Bulletin

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## The changing meaning of arson in Australia

The word *arson* came into English law from Middle French about the same time as the Great Fire of London in 1688. It had two elements; the first was malicious damage to property and the second was a threat to the state by burning important symbols of the established order. For example, the burning of haystacks was as a symbol of rural unrest and was specifically mentioned in the legislation. It still remains in most current Australian legislation. As the eighteenth century progressed, the word lost its treasonous element (Eldefonso & Coffey 1981) and acquired the meaning most people would recognise today; 'the act of intentionally and maliciously destroying or damaging property through the use of fire' (personal communication, solicitor, nd).

Australian arson laws were largely inherited from English common law and significant sections have remained fundamentally unchanged since 1774 (Tarr & Tarr 1999). Despite its origins, arson has been a particularly difficult crime to define precisely and has been described as 'a crime with a splendidly evocative name in search of a coherent rationale for its existence' (MCOC 2001: 37).

One of the challenges to developing distinct definition for arson is the overlap between its traditional meaning and crimes of criminal damage and offences against the person (Bagaric 2008). This is made more challenging by significant differences across Australia in the levels of prescriptiveness of intent in the 58 pieces of legislation that deal with damages and injury (Anderson 2004).

Another problem with arson is that proving malicious intent can be problematic, especially in the case of bushfire arson where causes can range from recklessness with fire to a desire to cause as much death and destruction as possible. As part of a national effort to develop greater consistency across jurisdictions by developing a Model Criminal Code, bushfire arson became a distinct offence with an emphasis on reckless endangerment, rather than malicious intent, to reflect the fact that the link between action and foreseeable consequence is often weaker for bushfire arson than it is for structural arson (MCOC 2001). This meaning has been adopted by most states and territories. Many jurisdictions also have summary offences which empower agencies, including fire brigades, forestry and parks services and to issue infringement notices for arson for less serious offences. This legislation often covers reckless endangerment as well as malicious intent.

## References

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