

What is arson?

Arson is the act of intentionally and maliciously destroying or damaging property through the use of fire. Within this definition there are four core elements:

- the lighting of fire – fire is the fundamental element of arson; if there is no fire lit, there is no arson (some legal definitions also include lighting explosives);
- intention or wilfulness – excludes fires started by natural causes or accidents;
- malice – excludes fires started intentionally with positive or legitimate intent; and
- property – there must be some kind of property or object that is burned.

The element of intent is critical to a definition of arson. People deliberately light fires for many reasons, including for some legitimate and legal purposes. For example, people may light fires at home in a fireplace, or at a camp site in an approved place when there are no fire bans in force, or prescribed burning conducted in a controlled manner for fuel and land management purposes. In all these cases the fire is deliberately lit but does not constitute arson as there was no intention to cause damage or harm and no breach of the law.

In any of these cases the fire may spread to fuels surrounding the fire site, creating a large fire and causing property and environmental damage and even injury or loss of life. Assuming there was no negligence or reckless indifference involved, and the person or persons responsible for controlling the fire did all they reasonably could to keep the fire under control, there is no arson and no breach of the law because there was never an intention to cause damage or harm.

The term arson is not usually used in fire-related data. In a strict sense, arson can be seen as a concept defined by legislation. Unless a court rules that the legal elements of arson have been proved in a particular case, arson in the legal sense has not occurred. To discuss arson in strict legal terms would narrow the subject of interest markedly, so 'arson' in this series of bulletins will include the broader categories of *incendiary* and *suspicious* fires. Incendiary fires are those where the evidence or a legal outcome indicates that a fire was deliberately lit. Suspicious fires are those where circumstances – such as multiple ignition factors or the lack of accidental or natural ignition factors – suggest the possibility that the fire may have been deliberately lit.

The term 'firesetting' will also be used in these bulletins as a term which goes beyond the strict legal definition of arson to more generally refer to the behaviour of deliberately lighting fires.

For more information:

Drabsch T 2003. *Arson: briefing paper 2/2003*. Sydney: NSW Parliament <http://www.parliament.nsw.gov.au/prod/web/PHWebContent.nsf/PHPPages/ResearchBf022003>