

## **INSTRUMENT OF DELEGATION TO THE CHIEF EXECUTIVE OFFICER UNDER THE FIRE AND EMERGENCY SERVICES ACT 2005 AND THE FIRE AND EMERGENCY SERVICES REGULATIONS 2005**

### **Preamble**

1. This delegation is for use in respect of Chief Executive Officers (or equivalent) of councils.
2. Some powers and functions are only relevant to:
  - 2.1 councils with areas within a 'fire district'; or
  - 2.2 'rural' councils; or
  - 2.3 councils wholly or partly within a 'bushfire management area'.
3. Under the Act:
  - 3.1 a 'rural council' means a council whose area lies wholly or partially outside a fire district;
  - 3.2 a 'fire district' is an area declared by the South Australian Fire and Emergency Services Commission for the purposes of the operations of the South Australian Metropolitan Fire Service;
  - 3.3 'country' means any area outside a fire district.
  - 3.4 the Governor may divide the State into 'bushfire management areas'.
4. The instrument contains notes in respect of those powers which only apply to certain councils or to certain areas of certain councils. Care should be taken and the instrument carefully reviewed to ensure only those relevant powers are delegated.
5. Councils should note that some powers under the Act may only be delegated to a fire prevention officer. Therefore, it is necessary for some councils to make delegations under the Act to both the chief executive officer and fire prevention officer. See document no 256275/FXD01268138 for delegations to a fire prevention officer.

6. On the basis of the above, some councils may need one or more of the following delegations:
  - 6.1 Delegations to the chief executive officer (this instrument);
  - 6.2 Delegations to a fire prevention officer.

## NOTES

7. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
8. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.
9. In this instrument the following abbreviations have the following meaning:  
'SACFS' means the South Australian Country Fire Service.

## POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

Last amended: November 2009

### **Delegation Sources**

- Fire and Emergency Services Act 2005
- Fire and Emergency Services Regulations 2005

### **Titles**

- Chief Executive Officer
- Director Infrastructure & Environmental Services

## Instrument of Delegation to the Chief Executive Officer under the Fire and Emergency Services Act 2005 and the Fire and Emergency Services Regulations 2005

Fire and Emergency Services Act 2005			
Provision	Item Delegated	Delegate	Conditions and Limitations
s4A(3)	<p>1. Areas of Urban Bushfire Risk</p> <p>1.1 The power pursuant to Section 4A(3) of the Fire and Emergency Services Act 2005 ('the Act'), to consult with and make submissions to the Commission before the Commission publishes a notice in the Gazette designating pursuant to Section 4A(1) of the Act an area within a fire district as an area of urban bushfire risk, varies an area designated under Section 4A(1) of the Act or revokes the designation of an area under Section 4A(1) of the Act.</p> <p>(Note: only applies to Councils with areas within a 'fire district')</p>	Chief Executive Officer	
s71C	<p>2. Use of Facilities - State Bushfire Coordination Committee</p> <p>2.1 The power pursuant to Section 71C of the Act to make arrangements with the State Bushfire Coordination Committee for the State Bushfire Coordination Committee to make use of the services of the staff, equipment or facilities of the Council.</p>	Director Infrastructure & Environmental Services	
s72D	<p>3. Use of Facilities - Bushfire Management Committees</p> <p>3.1 The power pursuant to Section 72D of the Act to make arrangements with a Bushfire Management Committee for the Bushfire Management Committee to make use of the services of the staff, equipment or facilities of the Council.</p>	Director Infrastructure & Environmental Services	
s73A(7)	<p>4. Bushfire Management Area Plans</p> <p>4.1 The power pursuant to Section 73A(7) of the Act, in relation to a proposal of a bushfire management committee to create or amend a Bushfire Management Area Plan for its area, to consult with and make submissions to the bushfire management committee where the Council's area is wholly or partly within the relevant bushfire management area.</p> <p>(Note: only relevant where Council's area is wholly or partly within a 'bushfire management area')</p>	Chief Executive Officer	
s103(1)	<p>5. Fire Control Officers</p> <p>5.1 The power pursuant to Section 103(1) of the Act to request that the Chief Officer of the SACFS appoint a person as fire control officer for a designated area of the State (whether inside or outside a council area).</p>	Chief Executive Officer	
s103(2)	5. Fire Control Officers	Chief Executive	

<b>Fire and Emergency Services Act 2005</b>			
	5.2 The power pursuant to Section 103(2) of the Act to consult with and make submissions to the Chief Officer of the SACFS before the Chief Officer of the SACFS of his or her own initiative appoints a person as a fire control officer for a designated area of the State (whether inside or outside a council area) in relation to the proposed appointment.	Officer	
s104	6. Giving of Expiation Notices 6.1 The duty pursuant to Section 104 of the Act to not authorise a person (under Section 6(3)(b) of the Expiation of Offences Act 1996) to give expiation notices for alleged offences under Part 4 of the Act unless the person is a fire prevention officer.	Director Infrastructure & Environmental Services	
s105	7. Appropriation of Penalties 7.1 The duty pursuant to Section 105 of the Act if a summary offence against Part 4 of the Act is committed in the area of the Council and the complaint is laid by the Council (or an officer of the Council), to pay any fine recovered from the defendant into the general revenue of the Council (rather than into the Consolidated Account).	Chief Executive Officer	
s105A	8. Interpretation 8.1 The power pursuant to Section 105A of the Act to authorise for the purposes of Part 4A of the Act an authorised person appointed by the Council under the Local Government Act 1999.	Director Infrastructure & Environmental Services	
s105B(1)	9. Fire Prevention Officers 9.1 The power and duty pursuant to Section 105B(1) of the Act and subject to Sections 105B(2) and 105B(3) of the Act, to appoint at least one person as a fire prevention officer for the Council's area.	Director Infrastructure & Environmental Services	
s105B(3)	9. Fire Prevention Officers 9.2 The duty pursuant to Section 105B(3) of the Act to -  9.2.1 in determining the number of fire prevention officers to appoint under Section 105B(1) of the Act; and  take into account any policy developed by SACFS for the purposes of Section 105B of the Act.	Director Infrastructure & Environmental Services	
s105B(3)	9. Fire Prevention Officers 9.2 The duty pursuant to Section 105B(3) of the Act to -  9.2.2 in assessing the qualifications or experience of a person for the purposes of Section 105B(2) of the Act,	Chief Executive Officer	

<b>Fire and Emergency Services Act 2005</b>			
	take into account any policy developed by SACFS for the purposes of Section 105B of the Act.		
s105B(3)	<p>9.3 The power pursuant to Section 105B(3) of the Act to apply to the Chief Officer of the SACFS for an exemption for the Council from the requirement to appoint a fire prevention officer under Section 105B of the Act.</p> <p>(Note: paragraphs 9.1 - 9.3 only relevant to 'rural councils' or councils that have a 'designated urban bushfire risk area' within their area)</p>	Chief Executive Officer	
s105E	<p>10. Reports</p> <p>10.1 The duty pursuant to Section 105E of the Act to, where required by written notice from the Commission, the State Bushfire Safety Coordination Committee or a bushfire management committee in whose bushfire management area the Council's area is wholly or partly located, provide to the Commission, the State Bushfire Coordination Committee or the bushfire management committee (within a period stated in the notice or at stated intervals) any report, or reports relating to the performance, exercise or discharge of the functions, powers or responsibilities of the fire prevention officer or officers (if any) for the Council's area, as the Commission, the State Bushfire Coordination Committee or the bushfire management committee (as the case may be) thinks fit.</p>	Chief Executive Officer	
s105F(2)	<p>11. Private Land</p> <p>11.1 The duty pursuant to Section 105F(2) of the Act, in determining the standard required to comply with Section 105F(1) of the Act (but subject to Section 105F(4) of the Act), to take into account the following matters (insofar as may be relevant and without limiting any other relevant matter):</p> <p>11.1.1 the nature of the land;</p> <p>11.1.2 whether the land is in a country, metropolitan, township or other setting;</p> <p>11.1.3 the activities carried out on the land (including whether flammable or combustible materials or substances are used or stored on the land);</p> <p>11.1.4 other statutory standards or requirements that apply to or in relation to the land.</p>	Director Infrastructure & Environmental Services	
s105F(5)	<p>11. Private Land</p> <p>11.2 The power pursuant to Section 105F(5) of the Act, if the Delegate believes on reasonable grounds -</p> <p>11.2.1 that an owner of private land has failed to comply with Section 105F(1) of the Act; or</p> <p>11.2.2 that measures should be taken in respect of particular private land for the purpose of -</p>	Director Infrastructure & Environmental Services	

<b>Fire and Emergency Services Act 2005</b>			
	<p>11.2.2.1 preventing or inhibiting the outbreak of fire on the land; or</p> <p>11.2.2.2 preventing or inhibiting the spread of fire through the land; or</p> <p>11.2.2.3 protecting property on the land from fire,</p> <p>to, by notice in writing that complies with any requirements set out in the regulations, require the owner of the private land to take specified action to remedy the default or to protect the land or property on the land, within such time as may be specified in the notice.</p>		
s105F(6)	<p>11. Private Land</p> <p>11.3 The power pursuant to Section 105F(6) of the Act and without limiting the operation of Section 105F(5) of the Act, to include in a notice under Section 105F(5) of the Act directions -</p> <p>11.3.1 to trim or remove vegetation on the land; or</p> <p>11.3.2 to remove flammable or combustible materials or substances, or to store flammable or combustible materials or substances in a specified manner; or</p> <p>11.3.3 to eliminate a potential ignition source; or</p> <p>11.3.4 to create, establish or maintain fire breaks or fuel breaks.</p>	Director Infrastructure & Environmental Services	
s105F(7)	<p>11. Private Land</p> <p>11.4 The duty pursuant to Section 105F(7) of the Act, in acting under Section 105F(5) of the Act, to apply any guidelines prepared or adopted by the Minister for the purposes of Section 105F(5) of the Act and published by the Minister in the Gazette.</p>	Director Infrastructure & Environmental Services	
s105F(9)	<p>11. Private Land</p> <p>11.5 The power pursuant to Section 105F(9) of the Act to give a notice under Section 105(5) of the Act -</p> <p>11.5.1 personally; or</p>	Chief Executive Officer	

<b>Fire and Emergency Services Act 2005</b>			
	<p>11.5.2 by post; or</p> <p>11.5.3 if the delegate cannot, after making reasonable inquiries, ascertain the name and address of the person to whom the notice is to be given -</p> <p>11.5.3.1 by publishing the notice in a newspaper circulating in the locality of the land; and</p> <p>11.5.3.2 by leaving a copy of the notice in a conspicuous place on the land.</p>		
s105F(10)	<p>11. Private Land</p> <p>11.6 The power pursuant to Section 105F(10) of the Act to, by further notice in writing, vary or revoke a notice under Section 105(5) of the Act.</p>	Director Infrastructure & Environmental Services	
s105F(11)	<p>11. Private Land</p> <p>11.7 The duty pursuant to Section 105F(11) of the Act, if a notice under Section 105F(5) of the Act is directed to an occupier of land, to take reasonable steps to serve (personally or by post) a copy of the notice on the owner.</p>	Director Infrastructure & Environmental Services	
s105G(5)	<p>12. Council Land</p> <p>12.1 The power pursuant to Section 105G(5) of the Act to consult with and make submissions to the Minister on the referral of a matter under Section 105G(4) of the Act.</p>	Chief Executive Officer	
s105G(7)	<p>12. Council Land</p> <p>12.2 The duty pursuant to Section 105G(7) of the Act, to comply with a notice under Section 105G(6) of the Act.</p>	Chief Executive Officer	
s105J(1)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.1 The power pursuant to Section 105J(1) of the Act, for a purpose related to the administration, operation or enforcement of Part 4A of the Act, to -</p> <p>13.1.1 at any reasonable time, after giving reasonable notice to the occupier of the land, enter the land; or</p> <p>13.1.2 with the authority of a warrant issued by a magistrate, or in circumstances in which the delegate reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on, the land.</p>	Director Infrastructure & Environmental Services	

<b>Fire and Emergency Services Act 2005</b>			
s105J(3)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.2 The power and duty pursuant to Section 105J(3) of the Act to apply for a warrant -</p> <p>13.2.1 either personally or by telephone; and</p> <p>13.2.2 in accordance with any procedures prescribed by the regulations.</p>	Director Infrastructure & Environmental Services	
s105J(4)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.3 The power pursuant to Section 105J(4) of the Act, in exercising a power under Part 4A of the Act, to -</p> <p>13.3.1 give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;</p> <p>13.3.2 take photographs, films, audio, video or other recordings;</p> <p>13.3.3 give any other directions reasonably required in connection with the exercise of the power.</p>	Chief Executive Officer	
s105J(5)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.4 The power pursuant to Section 105J(5) of the Act, in exercising a power under Part 4A of the Act, to be accompanied by such assistants as may reasonably be required in the circumstances.</p>	Director Infrastructure & Environmental Services	
s105J(6)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.5 The power pursuant to Section 105J(6) of the Act, if an owner of land refuses or fails to comply with the requirements of a notice under Section 105F(5) of the Act, to proceed to carry out those requirements.</p>	Director Infrastructure & Environmental Services	
s105J(7)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.6 The power pursuant to Section 105J(7) of the Act to authorise a person for the purposes of Section 105J(6) of the Act, to take action under Section 105J(6) of the Act on the Council's behalf.</p>	Director Infrastructure & Environmental Services	
s105J(8)	<p>13. Additional Provision in Relation to Powers of Authorised Officers</p> <p>13.7 The power pursuant to Section 105J(8) of the Act, to recover the reasonable costs and expenses incurred by an authorised person in taking action under Section 105J(6) of the Act as a debt from the person who failed to comply with the requirements of the relevant notice, if the relevant notice was given by the Council or a fire prevention officer or an authorised person appointed by the Council and authorised for the purposes of Part 4A of the Act.</p>	Director Infrastructure & Environmental Services	



<b>Fire and Emergency Services Act 2005</b>			
s105J(9)	13. Additional Provision in Relation to Powers of Authorised Officers 13.8 The power pursuant to Section 105J(9) of the Act, if an amount is recoverable from a person by the Council under Section 105J(8) of the Act, to recover the amount as if it were rates in arrears.	Director Infrastructure & Environmental Services	
s129	14. Power to Provide Sirens The power pursuant to Section 129 of the Act to erect a siren in a suitable place for the purpose of giving warning of the outbreak or threat of a fire or the occurrence or threat of an emergency, and the power to test and use the siren.	Chief Executive Officer	
<b>Fire and Emergency Services Regulations 2005</b>			
<b>Provision</b>	<b>Item Delegated</b>	<b>Delegate</b>	<b>Conditions and Limitations</b>
Reg19(2)(e)(i)	15 SACFS Group Committee 15.1 The power pursuant to Regulation 19(2)(e)(i) of the Fire and Emergency Services Regulations 2005 ('the Regulations') to nominate a representative from the Council to be a member of a SACFS group committee, where the Council's area lies wholly or partially within the area of the group.	Chief Executive Officer	
Reg 32A(4)	16. Fires Permitted under Section 79(2) of Act 16.1 The power pursuant to Regulation 32A(4) of the Regulations to consult with and make submissions to the Chief Officer before the Chief Officer makes a notice under Regulation 32A of the Regulations.	Chief Executive Officer	
Reg 34(3)	17. Special Provision relating to Gas and Electric Cooking Appliances 17.1 The power pursuant to Regulation 34(3) of the Regulations, in addition to Regulation 34(1) and Regulation 34(2) of the Regulations, by notice in the Gazette, to declare part of the Council area to be an area where a person may, in accordance with the terms of the notice, operate a gas fire or electric element for cooking purposes in the open air contrary to the terms of a total fire ban in accordance with Regulation 34(4) of the Regulations, and such notice:  17.1.1 shall be in the form set out in Schedule 11; and  17.1.2 may be limited in its operation to particular times of the day, and to particular days of the year; and  17.1.3 will operate subject to the following conditions:	Chief Executive Officer	

<b>Fire and Emergency Services Regulations 2005</b>			
	<p>17.1.3.1 that the space immediately around and above the gas fire or electric element must be clear of all flammable material to a distance of at least 4 metres;</p> <p>17.1.3.2 that a person who is able to control the gas fire or electric element must be present at all times while it is lighted or charged; and</p> <p>17.1.3.3 that an appropriate agent adequate to extinguish a fire must be at hand;</p> <p>17.1.4 will operate subject to such other conditions (if any) as may be specified by the Council or the Chief Officer of the SACFS (as the case may be); and</p> <p>17.1.4 may be varied or revoked by further notice in the Gazette.</p>		
Reg 34(5)	<p>17. Special Provision relating to Gas and Electric Cooking Appliances</p> <p>17.2 The duty pursuant to Regulation 34(5) of the Regulations, if a notice is published in accordance with Regulation 34 of the Regulations, to immediately send a copy of the notice to the Chief Officer of the SACFS.</p>	Chief Executive Officer	
Reg 52(2)	<p>18. Identity cards</p> <p>18.1 The duty pursuant to Regulation 52(2) of the Regulations issue to each fire prevention officer or assistant fire prevention officer appointed by the Council a certificate of identity in a form approved by the Chief Officer of the SACFS.</p>	Director Infrastructure & Environmental Services	
Reg 54(2)	<p>19. Roadside Fire Protection</p> <p>19.1 The power pursuant to Regulation 54(2) of the Regulations, where the Council has the care, control and management of a road in the country, or roadside vegetation in the country, for the purpose of providing fire protection on a road, or the verge of a road, to -</p> <p>19.1.1 light a fire on the road, or on the verge of the road; and</p> <p>19.1.2 while the fire is burning, prohibit, direct or regulate the movement of persons, vehicles or animals along the road; subject to Regulation 54(3) of the Regulations.</p>	Director Infrastructure & Environmental Services	
Reg 54(3)	<p>19. Roadside Fire Protection</p> <p>19.2 The duty pursuant to Regulation 54(3) of the Regulations to obtain a permit to light and maintain a fire under Regulation 54 of the Regulations during the fire danger season.</p>	Director Infrastructure & Environmental	

<b>Fire and Emergency Services Regulations 2005</b>			
	(Note: only relevant to Councils with roads in the 'country').	Services	
Reg 56(2)	20. Special Fire Areas 20.1 The duty pursuant to Regulation 56(2) of the Regulations to consult with and make submissions to the Chief Officer of the SACFS regarding the inclusion of the area or part of the area of the Council within a special fire area.	Chief Executive Officer	
Reg 56(4)(a)	20. Special Fire Areas 20.2 The power pursuant to Regulation 56(4)(a) of the Regulations to nominate one or more representatives of the Council to a committee of management established under Regulation 56(3) of the Regulations.	Chief Executive Officer	
Reg 65(b)	21. Coronial Inquests The power pursuant to Regulation 65(b) of the Regulations to make representations to the South Australian Fire and Emergency Services Commission or an emergency services organisation that a coronial inquest should be held in relation to a fire or other emergency.	Chief Executive Officer	

#### Document history and version control

<b>Date</b>	<b>Council/Chief Executive Officer</b>	<b>Comment</b>
27/6/2017	Full annual review adopted at the Council meeting of 27 June 2017	