

South Australia

Fire and Emergency Services (Review) Variation Regulations 2009

under the *Fire and Emergency Services Act 2005*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Fire and Emergency Services (Review) Variation Regulations 2009*.

2—Commencement

These regulations will come into operation on the day on which the *Fire and Emergency Services (Review) Amendment Act 2009* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Fire and Emergency Services Regulations 2005*

4—Variation of regulation 6—Constitution of an SACFS brigade

Regulation 6(5)—delete subregulation (5)

5—Variation of regulation 14—Constitution of an SACFS group

Regulation 14(4)—delete subregulation (4)

6—Insertion of regulation 24A

After regulation 24 insert:

24A—Dissolution of an SACFS organisation—consultation requirements

- (1) This regulation sets out the requirements envisaged by section 68(8) of the Act.
- (2) The Chief Officer must, before determining to dissolve an SACFS organisation, consult with—
 - (a) the members of the organisation; and
 - (b) the local community; and
 - (c) the Country Fire Service Volunteers Association,in relation to the matter.

- (3) For the purposes of subregulation (2), the Chief Officer must—
- (a) organise a meeting at which the Chief Officer, or a representative or representatives of the Chief Officer, can meet with the members of the organisation (or their representative or representatives); and
 - (b) organise a public meeting within the local community; and
 - (c) invite the Country Fire Service Volunteers Association to—
 - (i) make written submissions to the Chief Officer in relation to the matter; or
 - (ii) have a representative, or representatives, attend a meeting with the Chief Officer or a representative or representatives of the Chief Officer,as the Association sees fit.
- (4) The Chief Officer must give notice of a public meeting under subregulation (3)(b) by advertisement in a newspaper circulating throughout the local area.
- (5) The Chief Officer must also give notice of a public meeting to any member of the House of Assembly whose electoral district includes any part of the area in relation to which the SACFS organisation is constituted.
- (6) The Chief Officer, or a person appointed by the Chief Officer, must chair a public meeting.
- (7) If—
- (a) a resolution expressing opposition to the dissolution of the SACFS organisation is passed (by majority vote) at a public meeting held under this regulation; but
 - (b) the Chief Officer determines to dissolve the SACFS organisation in any event,
- then the Chief Officer must furnish to the Minister a written report in relation to the matter.
- (8) The Minister must, within 6 sitting days after receiving a report under subregulation (6), have copies of the report laid before both Houses of Parliament.

7—Substitution of Part 3 Division 3

Part 3 Division 3—delete Division 3 and substitute:

Division 3—Fire prevention authorities and plans—country areas and urban bushfire risk areas

26—Bushfire Management Area Plans

For the purposes of section 73A(7)(c), the period of 6 weeks is prescribed.

8—Insertion of regulation 32A

Before regulation 33 insert:

32A—Fires permitted under section 79(2) of Act

- (1) For the purposes of section 79(2) of the Act, a fire may be lighted or maintained in the open air in the following circumstances:
 - (a) a fire for cooking or personal comfort may be lighted or maintained provided that—
 - (i) the fire is contained in a properly constructed fire place, a portable cooking appliance or a trench at least 30 cm deep; and
 - (ii) the space immediately around and above the fire is cleared of all flammable material to a distance of at least 4 m; and
 - (iii) the fire does not occupy an area in excess of 1 m²; and
 - (iv) a person who is able to control the fire is present at the site of the fire from the time it is lighted to the time it is completely extinguished; and
 - (v) an appropriate agent adequate to extinguish the fire is at hand;
 - (b) a fire for the burning of refuse may be lighted or maintained provided that—
 - (i) the fire is contained within a properly constructed incinerator; and
 - (ii) the space immediately around and above the fire is cleared of all flammable material to a distance of at least 4 m; and
 - (iii) a supply of water adequate to extinguish the fire is at hand; and
 - (iv) a person who is able to control the fire is present at the site of the fire from the time it is lighted to the time it is completely extinguished;
 - (c) a fire for heating bitumen, welding, gas-cutting, soldering or charring may be lighted or maintained provided that—
 - (i) a shield or guard of fire-resistant material is positioned around the fire to prevent the escape of sparks, hot metal or slag; and
 - (ii) the space immediately around and above the fire is cleared of all flammable material to a distance of at least 4 m, or wetted sufficiently to prevent the spread of fire; and

- (iii) a supply of water adequate to extinguish the fire is at hand; and
 - (iv) if any equipment is removed from the fire, the equipment is immediately placed in a fire-proof receptacle; and
 - (v) a person who is able to control the fire is present at the site of the fire from the time it is lighted to the time it is completely extinguished;
- (d) a fire may be lighted and maintained in accordance with the conditions of a permit;
 - (e) a fire may be lighted and maintained if specifically authorised for the purposes of section 79(2) of the Act under another regulation.
- (2) The Chief Officer may, by notice in the Gazette, prohibit or restrict the lighting and maintaining of fires under subregulation (1)(a), (b) or (c) in the whole or a specified part of the State.
 - (3) The Chief Officer may, by further notice in the Gazette, vary or revoke a notice under subregulation (2).
 - (4) The Chief Officer must consult with any council for an area that would be affected by a notice under this regulation before the notice is made.

9—Variation of regulation 33—Permits

Regulation 33—after subregulation (10) insert:

- (11) A person whose permit is revoked may appeal to the Commission against that revocation.
- (12) An appeal must be instituted by written notice of appeal setting out in detail the grounds of appeal.
- (13) On an appeal, the Commission may—
 - (a) confirm the revocation;
 - (b) direct that a new permit be issued.

10—Variation of regulation 34—Special provisions relating to gas and electric cooking appliances

Regulation 34(1)—delete "section 79(2)(e)" and substitute:
section 79(2)

11—Variation of regulation 35—Fires during fire danger season—orchards and vineyards

Regulation 35—delete "section 79(2)(e)" and substitute:
section 79(2)

12—Variation of regulation 36—Fires in the open air on a total fire ban day

Regulation 36—delete "sections 79(2)(e)" and substitute:

sections 79(2)

13—Variation of regulation 41—Welders and other tools

Regulation 41—after subregulation (4) insert:

- (5) Despite subregulations (1) and (2), a person must not operate an appliance referred to in subregulation (1) in the open air for any purpose on a day in relation to which a total fire ban under section 80 of the Act has been imposed in any part of the State to which the total fire ban applies.

14—Substitution of Part 3 Division 4 Subdivision 4

Part 3 Division 4 Subdivision 4—delete Subdivision 4 and substitute:

Subdivision 4—Burning objects and material

47—Burning objects and material

- (1) A person must not smoke in the open air in the country within 2 m of flammable bush or grass (but this prohibition does not operate within a municipality or township).
Maximum penalty: \$1 250.
- (2) A person must not, without lawful excuse, drop or throw a burning object or material from a vehicle.
Maximum penalty: \$5 000.
- (3) A person must not, without lawful excuse, drop or throw a burning object or material in circumstances in which it may come into contact with flammable material and cause a fire in the country.
Maximum penalty: \$5 000.
- (4) A person must not, without lawful excuse, drop or throw any material capable of causing a fire in circumstances in which it may cause a fire in the country.
Maximum penalty: \$5 000.

15—Revocation of Part 3 Division 4 Subdivision 5

Part 3 Division 4 Subdivision 5—delete Subdivision 5

16—Substitution of regulation 51

Regulation 51—delete the regulation and substitute:

51—Caravans

- (1) A person must not use a caravan in the country unless an efficient fire extinguisher that complies with subregulation (2) is carried in the caravan.

- (2) A fire extinguisher required under subregulation (1) must—
 - (a) comply with *Australian Standard 1841.5-1997: Portable Fire Extinguishers—Specific Requirements for Powder Type Extinguishers*; and
 - (b) have a minimum classification and rating of 10B, as defined by *Australian Standard 1850-1997: Portable Fire Extinguishers—Classification, Rating and Performance Testing*; and
 - (c) be maintained in accordance with *Australian Standard 1851.1-1995: Maintenance of Fire Protection Equipment—Portable Fire Extinguishers and Fire Blankets*.

17—Insertion of Part 3A

After regulation 56 insert:

Part 3A—Fire prevention

56A—Duties to prevent fires

- (1) For the purposes of section 105F(5) of the Act, the form set out in Schedule 12 is prescribed.
- (2) For the purposes of section 105F(10) of the Act, the form set out in Schedule 13 is prescribed.

56B—Applications for warrants

- (1) The grounds for an application for a warrant under section 105J of the Act made personally must be verified by affidavit.
- (2) If an application for a warrant is made under section 105J of the Act by telephone—
 - (a) the applicant must inform the magistrate of the applicant's name and identify the position that he or she holds for the purposes of the Act, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant holds that position; and
 - (b) the applicant must inform the magistrate of the purpose for which the warrant is required and the grounds on which it is sought; and
 - (c) if it appears to the magistrate from the information given by the applicant that there are reasonable grounds to issue a warrant (taking into account the requirements of the Act), the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and

- (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant; and
 - (e) the warrant is taken to have been issued, and comes into force, when signed by the magistrate; and
 - (f) the magistrate must inform the applicant of the terms of the warrant; and
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).
- (3) A magistrate by whom a warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.

56C—Prescribed rate of interest

- (1) For the purposes of section 105J(9) of the Act, the prescribed rate of interest will be the designated rate applying at the time at which the period fixed by the Minister under subsection (9)(b)(i) of that section expires.
- (2) For the purposes of this regulation, the designated rate will be the fixed-rate unsecured personal loan rate fixed by the National Australia Bank Limited as at the commencement of the financial year during which the period referred to in subregulation (1) expires (or, if there is more than 1 such rate, the average of all such rates to 2 decimal places).

18—Variation of regulation 64—Dissolution of organisation (section 116)

Regulation 64—after its present contents (now to be designated as subregulation (1)) insert:

- (2) The Chief Officer must, before determining to dissolve an SASES unit, consult with—
 - (a) the members of the unit; and
 - (b) the local community; and
 - (c) S.A.S.E.S. Volunteers' Association Incorporated,in relation to the matter.
- (3) For the purposes of subregulation (2), the Chief Officer must—
 - (a) organise a meeting at which the Chief Officer, or a representative or representatives of the Chief Officer, can meet with the members of the unit (or their representative or representatives); and
 - (b) organise a public meeting within the local community; and
 - (c) invite S.A.S.E.S. Volunteers' Association Incorporated to—

- (i) make written submissions to the Chief Officer in relation to the matter; or
 - (ii) have a representative, or representatives, attend a meeting with the Chief Officer or a representative or representatives of the Chief Officer,
- as the Association sees fit.
- (4) The Chief Officer must give notice of a public meeting under subregulation (3)(b) by advertisement in a newspaper circulating throughout the local area.
 - (5) The Chief Officer must also give notice of a public meeting to any member of the House of Assembly whose electoral district includes any part of the area in relation to which the SASES unit is constituted.
 - (6) The Chief Officer, or a person appointed by the Chief Officer, must chair a public meeting.
 - (7) If—
 - (a) a resolution expressing opposition to the dissolution of the SASES unit is passed (by majority vote) at a public meeting held under this section; but
 - (b) the Chief Officer determines to dissolve the SASES unit in any event,then the Chief Officer must furnish to the Minister a written report in relation to the matter.
 - (8) The Minister must, within 6 sitting days after receiving a report under subregulation (7), have copies of the report laid before both Houses of Parliament.

19—Insertion of regulations 71, 72 and 73

After regulation 70 insert:

71—Expiation of offences

- (1) Pursuant to Schedule 5 clause 14 of the Act, the following expiation fees are fixed for alleged offences against the following sections of the Act:

Section	Expiation Fee
Section 79(1) if—	\$315
<ul style="list-style-type: none">(a) the offence falls within the ambit of 1 of the following subparagraphs:<ul style="list-style-type: none">(i) if the fire is for cooking or personal comfort— the offence consists of a failure to comply with a requirement imposed under regulation 32A(1)(a);	

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Section	Expiation Fee
(ii) if the fire is for the burning of refuse—the offence consists of a failure to comply with a requirement imposed under regulation 32A(1)(b);	
(iii) if the fire is for heating bitumen, welding, gas-cutting, soldering, grinding or charring—the offence consists of a failure to comply with a requirement imposed under regulation 32A(1)(c);	
(iv) if the fire is lighted or maintained pursuant to a permit issued under section 81 of the Act for burning off land—the offence consists of a failure to comply with a condition of the permit prescribed by regulation 33(4)(a), (b), (d) or (e);	
(v) if the fire is lighted or maintained pursuant to a permit issued under section 81 of the Act other than for burning off land—the offence consists of a failure to comply with a condition of the permit prescribed by regulation 33(5)(a), (b) or (c);	
(vi) if the fire is lighted or maintained for a gas fire or electric element for cooking purposes under subregulation (1) of regulation 34—the offence consists of a failure to comply with a requirement imposed under that subregulation; and	
(b) the fire does not contravene a prohibition or restriction under regulation 32A(2).	
Section 89 if the offence consists of a breach of, or failure to comply with, 1 or more of the following:	\$315
(a) in the case of an offence involving the operation, during the fire danger season, of a stationary engine not enclosed by non-flammable material in the open air—regulation 37(3)(a) or (b);	
(b) in the case of an offence involving the operation, during the fire danger season, of an internal combustion engine in connection with harvesting a flammable crop, moving a flammable crop on the land holding where it has been harvested or spreading lime or fertilizer—regulation 38(2)(d);	
(c) in the case of an offence involving the operation, during the fire danger season, of an internal combustion engine in connection with cutting flammable bush, grass, pasture or stubble—regulation 38(3)(a)(i) or (b)(i);	
(d) in the case of an offence involving the operation, during the fire danger season, of an electric welder, a mechanical cutting tool, a gas appliance, an angle grinder or a mechanical grinding tool—regulation 41(2)(a) or (b);	

Section	Expiation Fee
(e) in the case of an offence involving the use, during the fire danger season, of an appliance to generate smoke for the manipulation of bees—regulation 42(2);	
(f) in the case of an offence involving the use, during the fire danger season, of an appliance as a rabbit fumigator—regulation 43(2)(a) or (b);	
(g) in the case of an offence involving the use, during the fire danger season, of an appliance as a bird scarer—regulation 44(3)(a);	
(h) in the case of an offence involving the blasting of any tree, wood or timber by the use of explosive materials—regulation 46(2)(a).	
Section 105F(1)	\$315
Section 105F(8)	\$315
(2) Pursuant to Schedule 5, clause 14 of the Act, the following expiation fees are fixed for alleged offences against the following regulations:	

Regulation	Expiation Fee
Regulation 47(1)	\$315
Regulation 47(2), (3) or (4)	\$500
Regulation 51	\$315

72—Prescribed persons

For the purposes of section 148(3)(c) of the Act, each Chief Officer is a prescribed person.

73—Transitional provisions—2009 Amendment Act

- (1) In this regulation—
- commencement day* means the day on which the 2009 Amendment Act comes into operation;
- principal Act* means the *Fire and Emergency Services Act 2005*;
- 2009 Amendment Act* means the *Fire and Emergency Services (Review) Amendment Act 2009*.
- (2) To avoid doubt, a person holding an appointment as a fire prevention officer under the principal Act immediately before the commencement day will continue as a fire prevention officer on and after that day and will be taken to have qualifications and experience appropriate to the office of fire prevention officer as envisaged by section 105B of the principal Act.

- (3) A regional bushfire prevention committee in existence immediately before the commencement day will continue to be constituted until the Governor divides the State into bushfire management areas under section 72 of the principal Act (as enacted by the 2009 Amendment Act), and will then lapse.
- (4) While a regional bushfire prevention committee continues in existence under subregulation (3)—
 - (a) the Chief Officer of SACFS may continue to fill casual vacancies in the membership of the committee;
 - (b) Schedule 4 of the principal Act, as in existence immediately before the commencement day, will be taken to continue to apply to and in relation to the committee; and
 - (c) the committee may, in relation to its region, perform or exercise any function or power vested in a bushfire management committee under the principal Act as amended by the 2009 Amendment Act.

20—Revocation of Schedule 2

Schedule 2—delete the Schedule

21—Revocation of Schedule 6

Schedule 6—delete the Schedule

22—Substitution of Schedule 12

Schedule 12—delete the Schedule and substitute:

Schedule 12—Section 105F notice

Pursuant to section 105F of the *Fire and Emergency Services Act 2005* (*Name of owner*), who is the owner of land at required to take the following action to comply with the requirements of that section
.....
.....
.....
.....
.....
.....

Notes—

- 1 Section 105F requires that an owner of private land must take reasonable steps—
 - (a) to prevent or inhibit the outbreak of fire on the land; and
 - (b) to prevent or inhibit the spread of fire through the land; and
 - (c) to protect property on the land from fire; and
 - (d) to minimise the threat to human life from a fire on the land.

- 2 The following matters may be considered relevant to determining whether a breach of these requirements has occurred:
 - (a) the nature of the land;
 - (b) whether the land is in a country, metropolitan, township or other setting;
 - (c) the activities carried out on the land (including whether flammable or combustible materials or substances are used or stored on the land);
 - (d) other statutory standards or requirements that apply to or in relation to the land.Other matters may also be taken into account.
- 3 A code of practice prescribed under the Act may also be relevant to your circumstances.
- 4 If you fail to comply with a requirement of this notice—
 - (a) you may be liable to a significant fine; and
 - (b) an authorised person may proceed to carry out the work required by the notice and recover the costs against you.
- 5 You are entitled to appeal against a requirement of this notice. Your rights of appeal are set out in the *Fire and Emergency Services Act 2005*.
- 6 Your appeal should be instituted within 14 days of receiving this notice. A copy of the appeal notice must be sent to the authority that issued this notice.
- 7 **You may wish to discuss the matter with the authority that issued this notice before you institute an appeal**

.....
(Authority issuing the notice)

.....
(Date)

23—Variation of Schedule 13

- (1) Schedule 13—delete "section 83 notice" and substitute:
section 105F notice
- (2) Schedule 13—delete "section 83 of" and substitute:
section 105F of

24—Revocation of Schedule 18

Schedule 18—delete the Schedule

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 29 October 2009

No 254 of 2009