

APPENDIX 10

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

NOTES

1. 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.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.
3. In this instrument the following abbreviations have the following meaning:

‘SACFS’ means the South Australian Country Fire Service.

Sub-delegation

In exercise of the power provided to me by the Council on the 21 February 2017 as above, I, Colin John Davies, Chief Executive Officer on this Twenty-First day of February 2017 hereby sub-delegate the following powers to the officer or officers of the Council as indicated in the column marked "Subdelegate" (including any person appointed to act in any such position).

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

	SUB-DELEGATE
1. Areas of Urban Bushfire Risk	
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.	

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<i>(Note: only applies to Councils with areas within a 'fire district')</i>	
2. Use of Facilities – State Bushfire Coordination Committee	
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.	
3. Use of Facilities – Bushfire Management Committees	
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.	
4. Bushfire Management Area Plans	
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.	
5. Fire Control Officers	
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).	
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.	

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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.	
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).	
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.	
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.	
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	
9.2.2 in assessing the qualifications or experience of a person for the purposes of Section 105B(2) of the Act,	
take into account any policy developed by SACFS for the purposes of Section 105B of the Act.	
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	

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<p>appoint a fire prevention officer under Section 105B of the Act.</p> <p><i>(Note: paragraphs 9.1—9.3 only relevant to ‘rural councils’ or councils that have a ‘designated urban bushfire risk area’ within their area)</i></p>	
<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>	
<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>	
<p>11.2 The power pursuant to Section 105F(5) of the Act, if</p>	

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<p>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>	
<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>	
<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>	
<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>	

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11.5	The power pursuant to Section 105F(9) of the Act to give a notice under Section 105(5) of the Act -	
11.5.1	personally; or	
11.5.2	by post; or	
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 -	
11.5.3.1	by publishing the notice in a newspaper circulating in the locality of the land; and	
11.5.3.2	by leaving a copy of the notice in a conspicuous place on the land.	
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.	
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.	
12.	Council Land	
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.	
12.2	The duty pursuant to Section 105G(7) of the Act, to comply with a notice under Section 105G(6) of the Act.	
13.	Additional Provision in Relation to Powers of Authorised Officers	
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 -	
13.1.1	at any reasonable time, after giving	

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	reasonable notice to the occupier of the land, enter the land; or	
	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.	
13.2	The power and duty pursuant to Section 105J(3) of the Act to apply for a warrant -	
	13.2.1 either personally or by telephone; and	
	13.2.2 in accordance with any procedures prescribed by the regulations.	
13.3	The power pursuant to Section 105J(4) of the Act, in exercising a power under Part 4A of the Act, to -	
	13.3.1 give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;	
	13.3.2 take photographs, films, audio, video or other recordings;	
	13.3.3 give any other directions reasonably required in connection with the exercise of the power.	
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.	
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.	
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.	
13.7	The power pursuant to Section 105J(8) of the Act, to recover the reasonable costs and expenses incurred	

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<p>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>	
<p>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.</p>	
<p>14. Power to Provide Sirens</p>	
<p>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.</p>	

**DELEGATIONS UNDER FIRE AND EMERGENCY SERVICES
REGULATIONS 2005**

<p>15. SACFS Group Committee</p>
<p>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.</p>
<p>16. Fires Permitted under Section 79(2) of Act</p>
<p>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.</p>
<p>17. Special Provision relating to Gas and Electric Cooking Appliances</p>
<p>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:</p>

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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:
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;
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
17.1.3.3 that an appropriate agent adequate to extinguish a fire must be at hand;
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
17.1.5 may be varied or revoked by further notice in the Gazette.
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.
18. Identity cards
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.
19. Roadside Fire Protection
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 –
19.1.1 light a fire on the road, or on the verge of the road; and
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.

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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.

(Note: only relevant to Councils with roads in the 'country').

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.

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.

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.

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SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

[Instructions for use: any conditions or limitations which apply to delegations under this Act should be inserted here – DELETE this note once conditions/limitations are entered. If no conditions apply insert "NIL"]

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations