

South Australian Country Fire Service and Local Government Association of South Australia

Section 105
Fire Prevention Officer
Policy

MARCH 2017

Adopted by District Council of Peterborough: 16 October 2017, Res 82/10/17

Version Control		
<i>Version 1</i>	<i>Phil Mcdonough</i>	<i>July 2014</i>
<i>Various versions</i>		
<i>Version 2 - Consultation Draft</i>	<i>Neville Hyatt/Michael Barry</i>	<i>July 2016</i>
<i>Version 2.1 Final incorporating feedback from councils</i>	<i>Neville Hyatt</i>	<i>August 2016</i>

1. Introduction

This policy covers the appointment, management and the training requirements for a Fire Prevention Officer appointed under the *Fire and Emergency Services Act 2005*

2. Policy Authorisation

The SA CFS Fire Prevention Officer Policy is authorised for use in South Australia.

The policy has been developed by SA CFS in consultation with the Local Government Association (LGA) and the Fire Prevention Officer Reference Group.

Greg Nettleton

Chief Officer

SA Country Fire Service



Date: 21/03/2017

Matt Pinnegar

Chief Executive Officer

Local Government Association of SA



Date: 1/6/17

Title: Fire Prevention Officer Policy

1. Policy Statement

Section 105B of the *Fire and Emergency Services Act, 2005* (the Act) allows the SA Country Fire Service (CFS) to develop a policy in relation to the appointment of Fire Prevention Officers by councils.

This policy is intended to outline the CFS's requirements of council and council appointed Fire Prevention Officers in relation to fire prevention under the Act and Regulations. This will assist councils to identify and address any bushfire risks in their area of responsibility and their obligations under the Act.

2. Description

2.1 Purpose

The purpose of this policy is to give guidance to councils on the functions and roles of a council appointed Fire Prevention Officer appointed under section 105B of the Act, while enabling councils to manage and direct their employees so that councils meet their legislative requirements under the Act.

2.2 Objective

This policy has been developed to establish standards and provide guidance to councils on the required knowledge and skills that a Fire Prevention Officer requires to effectively meet the requirements of council under the Act.

This policy is directed towards ensuring compliance with the:

Fire and Emergency Services Act 2005

Fire and Emergency Services Regulations 2005

3. Scope

This document is applicable to all council appointed Fire Prevention Officers and CFS staff who have undertaken appropriate Fire Prevention Officer training.

4. Stakeholders

Consultation has occurred with the following stakeholders during the development of this policy.

- CFS staff and volunteers
- Councils
- Local Government Association
- Fire Prevention Officers

5. References

The latest versions of the documents below should be read in conjunction with:

- *Fire and Emergency Services Act 2005*
- *Fire and Emergency Services Regulations 2005*
- CFS Fire Prevention Officers Course
- CFS Policies and Procedures

6. SA CFS Responsibilities

6.1. Manager accountable for the policy

Director Preparedness Operations

6.2. Policy Sponsor

Director Frontline Services

6.3. Project Manager

Compliance Officer

6.4. Review date

By 30 June, every 2 years

6.5. Approval Date

29 September 2016 LGA Board

7. Legislation

Section 105B of the Act outlines the requirement for councils to appoint suitably qualified Fire Prevention Officer(s). Section 105C of the Act outlines the functions of Fire Prevention Officers. See Appendix A for the relevant extracts from the Act

8. Appointment of Fire Prevention Officers.

- 8.1 All Fire Prevention Officers must have the following qualifications to hold the position of Fire Prevention Officer in any council:
 - Successful completion of the Fire Prevention Officer course conducted by CFS, or
 - Successful completion of a similar course that is approved by the CFS.
- 8.2 The CFS Fire Prevention Officer course gives a Fire Prevention Officer basic knowledge and qualifications in the following:
 - Fuel hazard identification
 - Fuel hazard loading assessment
 - Knowledge of fire mitigation strategies
 - Identification of land management issues.
 - Basic principles of property inspection and collection of evidence
 - Knowledge and understanding of the legal requirements and administrative protocols to be observed in the issuing of expiation notices
 - Knowledge of Australian Standards in risk management
- 8.3 Council personnel undertaking the CFS Fire Prevention Officers course must attend and successfully complete the entire course, or provide documentation of successfully completing a similar course to gain accreditation from the CFS.
- 8.4 On successful completion of the CFS Fire Prevention Officer course (or similar CFS approved course), councils must formally appoint their personnel as a Fire Prevention Officer either at a meeting of council or by delegation and then advise the relevant CFS Regional Commander using the appointment notification form provided by the CFS. The Regional Commander will subsequently organise a Fire Prevention Officer's Identification card after this documentation is received.
- 8.5 In the event that council personnel do not obtain the Fire Prevention Officer qualification within 12 months of their appointment, the council must either enter into an agreement with CFS on a strategy to provide appropriate training to the Fire Prevention Officer or the Fire Prevention Officer must be supervised by an appropriately qualified person (for fire prevention activities).

- 8.6 Fire Prevention Officers' qualifications are valid for a two year period. This qualification is automatically renewed by a Fire Prevention Officer attending an annual reaccreditation session conducted by the CFS. If a Fire Prevention Officer fails to attend at least one reaccreditation session in a two year period, then their qualification will be deemed to have expired. In these circumstances the council must enter into an agreement with CFS to have the Fire Prevention Officer requalified. Each council is expected to support the Fire Prevention Officer's attendance at these workshops or training sessions.
- 8.7 Fire Prevention Officers that are not associated with a council will be covered under 8.6 for reaccreditation purposes.
- 8.8 The number of Fire Prevention Officers appointed in each council area should be determined by the council in consultation with the CFS Regional Commander. It is reasonable that the number of Fire Prevention Officers in any council area should reflect the risks identified in the councils area.
- 8.9 Under s105B of the Act each council in a rural area or a council that has within its area a *"designated urban bushfire risk area"*, must appoint at least 1 person as a fire prevention officer for its area.

9. Functions of a Fire Prevention Officer

- 9.1 Under section 105C of the Act the functions of a Fire Prevention Officer are to;
- a) to assess the extent of bushfire hazards within the relevant council area;
 - b) to assist the council in providing advice and information to any Bushfire Management Committee whose area incorporates any part of the relevant council area in connection with the preparation or review of the committee's Bushfire Management Area Plan;
 - c) to provide advice to owners of property in respect of bushfire prevention and management;
 - d) to carry out any other function assigned to the fire prevention officer by the regulations;

9.2 Expiation of Offences

Under s104 of the Act it states that a council may 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 they are a Fire Prevention Officer (appointed by a council).

9.3 Property Inspection

Under s105F of the Act (outlined above in Section 7 of this document) it may be a Fire Prevention Officer's role to undertake property inspections on private land and if the Fire Prevention Officer considers that the landowner has not complied with s105F(1) then the Fire Prevention Officer may, by notice in writing set out in the *Fire and Emergency Services Regulations*, require the landowner to take action to "*remedy the default or to protect the land or property on the land*" within a certain time frame. Council Fire Prevention Officers have power to serve notices to private landowners only and not Commonwealth or Crown land.

9.4 Power of Entry

Under s105J of the Act a Fire Prevention Officer can "*at any reasonable time, after giving reasonable notice to the occupier of the land, enter the land; or with the authority of a warrant issued by a magistrate,use force to break into or open any part of, or anything in or on, the land*" to exercise their powers as an Fire Prevention Officer for fire prevention purposes".

9.5 Relationship with the CFS

The CFS encourages and supports council Fire Prevention Officers in developing relationships with the local CFS Brigades, Groups, CFS regional staff and Community Education Officers to assist them in achieving the council's legislated requirements under the Act.

10. Record keeping and auditing

- 10.1 Each year the CFS will send to each council a summary of the approved appointed Fire Prevention Officers and Authorised Officers (for the purpose of issuing permits). Councils can use this process to ensure that all records and appointments under the Act are current
- 10.2 It will remain the responsibility of each council to ensure that CFS is formally notified of any appointment changes.
- 10.3 The CFS considers that the primary point of contact within a council for all fire prevention matters, including permit issuing and Authorised Officers will be the council Fire Prevention Officer.

10.4 Annual Register of Activities

The council Fire Prevention Officer will complete an annual register of activities (refer to Appendix C) to be submitted to the CFS Director Preparedness Operations by 30 June in each year. The annual register of activities must be authorised by the Chief Executive Officer of the council.

11. Authorities

- 11.1 The Chief Officer, CFS and the CEO, Local Government Association of SA will endorse and authorise the implementation of the policy.
- 11.2 Following endorsement of the document, the original signed copy will be returned to the Project Manager for reference and record keeping.
- 11.3 The Project Manager will arrange for the notification and publication of this Policy.

Appendix A

Fire and Emergency Services Act (2005)

Division 3—Duties to prevent fires

105F—Private land

- (1) 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.

Maximum penalty: \$5 000.

- (2) In determining the standard required to comply with subsection (1) (but subject to subsection (4)), the following matters are to be taken into account (insofar as may be relevant and without limiting any other relevant matter):
- (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.
- (3) The regulations may prescribe 1 or more codes of practice for the purposes of subsection (1).
- (4) In proceedings for an offence against subsection (1)—
- (a) if it is proved by the prosecution—
 - (i) that a code of practice under subsection (3) relates to land of the kind to which the proceedings relate; and
 - (ii) that the defendant is in breach of the code in 1 or more respects,then the defendant is, in the absence of proof to the contrary, to be taken to have failed to exercise the standard required under subsection (1); and
 - (b) if it is proved by the defendant—
 - (i) that a code of practice under subsection (3) relates to land of the kind to which the proceedings relate; and
 - (ii) that the defendant has complied with the code in all relevant respects,then the defendant is to be taken to have exercised the standard required under subsection (1).

- (5) *If an authorised person believes on reasonable grounds—*
- (a) *that an owner of private land has failed to comply with subsection (1); or*
 - (b) *that measures should be taken in respect of particular private land for the purpose of—*
 - (i) *preventing or inhibiting the outbreak of fire on the land; or*
 - (ii) *preventing or inhibiting the spread of fire through the land; or*
 - (iii) *protecting property on the land from fire,**the authorised person may, 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.*
- (6) *Without limiting the operation of subsection (5), a notice under that subsection may include directions—*
- (a) *to trim or remove vegetation on the land; or*
 - (b) *to remove flammable or combustible materials or substances, or to store flammable or combustible materials or substances in a specified manner; or*
 - (c) *to eliminate a potential ignition source; or*
 - (d) *to create, establish or maintain fire breaks or fuel breaks.*
- (7) *An authorised person must, in acting under subsection (5), apply any guidelines prepared or adopted by the Minister for the purposes of that subsection and published by the Minister in the Gazette.*
- (8) *A person must not refuse or fail to comply with a notice under subsection (5).*
Maximum penalty: \$10 000.
- (9) *A notice under subsection (5) may be given—*
- (a) *personally; or*
 - (b) *by post; or*
 - (c) *if the authorised person cannot, after making reasonable inquiries, ascertain the name and address of the person to whom the notice is to be given—*
 - (i) *by publishing the notice in a newspaper circulating in the locality of the land; and*
 - (ii) *by leaving a copy of the notice in a conspicuous place on the land.*
- (10) *An authorised person may, by further notice in writing, vary or revoke a notice under this section.*
- (11) *If a notice under subsection (5) is directed to an occupier of land, the authorised person must take reasonable steps to serve (personally or by post) a copy of the notice on the owner.*

Appendix B

Division 4—Related provisions

105J—Additional provision in relation to powers of authorised persons

- (1) *An authorised person in relation to particular land, or any other person authorised by the Chief Officer of SAMFS or the Chief Officer of SACFS for the purposes of this section, may, for a purpose related to the administration, operation or enforcement of this Part—*
 - (a) *at any reasonable time, after giving reasonable notice to the occupier of the land, enter the land; or*
 - (b) *with the authority of a warrant issued by a magistrate, or in circumstances in which the authorised person 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.*
- (2) *A magistrate must not issue a warrant under subsection (1)(b) unless satisfied that the warrant is reasonably required in the circumstances.*
- (3) *An application for a warrant—*
 - (a) *may be made either personally or by telephone; and*
 - (b) *must be made in accordance with any procedures prescribed by the regulations.*
- (4) *In exercising a power under this Part, an authorised officer may—*
 - (a) *give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;*
 - (b) *take photographs, films, audio, video or other recordings;*
 - (c) *give any other directions reasonably required in connection with the exercise of the power.*
- (5) *An authorised person may, in exercising a power under this Part, be accompanied by such assistants as may reasonably be required in the circumstances.*
- (6) *If an owner of land refuses or fails to comply with the requirements of a notice under section 105F(5), an authorised person may proceed to carry out those requirements.*
- (7) *Action taken by an authorised person under subsection (6) may be taken on the authorised person's behalf by a person authorised by the Chief Officer of SAMFS or the Chief Officer of SACFS, or by a council, for the purposes of this subsection.*

- (8) The reasonable costs and expenses incurred by an authorised person in taking action under subsection (6) may be recovered by—
- (a) if the relevant notice was given by a council, or a fire prevention officer or an authorised person appointed by a council and authorised for the purposes of this Part—the council; or
 - (b) in any other case—the Minister,
- as a debt from the person who failed to comply with the requirements of the relevant notice.
- (9) If an amount is recoverable from a person by a council or the Minister under subsection (8)—
- (a) in the case of an amount recoverable by a council—the council may recover the amount as if it were rates in arrears; or
 - (b) in the case of an amount recoverable by the Minister—
 - (i) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (ii) the amount together with any interest charge so payable is, until paid, a charge in favour of the Minister on the land to which the notice under section 105F(5) relates.
- (10) A person cannot claim compensation from the Minister, the Crown, a council, an authorised person or any person acting under subsection (7) in respect of any action taken under this section.

Appendix C

Annual register of activities

	Refer to clause 10.4 Annual Register of Activities	To be completed by 30 June in each year
	Council Bushfire Prevention Annual Register of Activities	
	Name of Council:	
	Name of person completing the register :	
	Position/Title of person completing the register :	
	Telephone no.	
	Email address:	
	Fire Prevention Statistics	
1	Number of Fire Prevention Officers (individuals) authorised by council	
2	Approximate number of Full Time Equivalents (FTE) this represents	
3	Number of properties requiring a detailed assessment and inspection in the reporting period	
4	Number of private properties inspected and issued with a s105 compliance notice	
5	Of the properties inspected and issued with a s105 compliance notice, how many were vacant allotments?	
7	Number of Section 105 enforcement orders (works orders) were issued in the reporting period	
8	Number of s105 expiation notices issued in the reporting period	
9	Number of permits to light and maintain a fire issued in the reporting period	



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