

PART 7**OPEN AIR BURNING, INCINERATORS AND CHIMNEYS**

In this Part “in the open air” has the same meaning as that contained in Division 3 of the Country Fire Authority Act 1958.

53. Restriction on Burning in the Open Air – Land 1,500 Square Metres or Below

- (1) A person must not, without a permit, light a fire in the open air on land, including in an incinerator, where the land size is 1,500 square metres or below.

Penalty: Twenty (20) Penalty Units

- (2) The restriction in sub-clause (1) does not apply to:
- (a) a barbecue, pizza oven or other properly constructed appliance while it is being used for cooking food;
 - (b) a fire in a brazier or chimenea while it is being used for heating;
 - (c) a tool of trade while being used for the purpose for which it was designed;
 - (d) a fire lit during the course of duty by a member of a fire and emergency services agency; or
 - (e) a fire where the Council has granted a permit because it considers that the specific circumstances of the case enable it to provide an exemption to the restriction as specified in Clause 58.

54. Restrictions on Burning in the Open Air – Land above 1,500 square metres

- (1) A person may light a fire in the open air on land, including in an incinerator, where the land size exceeds 1,500 square metres but is less than 40,000 square metres, provided that:
- (a) the fire is lit or allowed to remain alight only on a Friday or a Saturday and not before 9am or after 4pm;
 - (b) no more than 10 cubic metres of vegetation is burnt at any one time;
 - (c) the fire is not within 10 metres of any neighbouring dwelling;
 - (d) the fire is lit or allowed to remain alight in accordance with Clause 61 – General Provisions.

Penalty: Twenty (20) Penalty Units

- (2) Where a person wants to burn in the open air under this provision and the requirements in sub-clause (1) cannot be complied with, a person must obtain a permit.

Penalty: Twenty (20) Penalty Units

55. Restrictions on Burning in the Open Air – Land 40,000 square metres or above

- (1) A person may light a fire in the open air on land, including in an incinerator, where the land size is 40,000 square metres or above, provided that:
 - (a) no more than 100 cubic metres (e.g. 5 metres wide x 5 metres long x 4 metres high) of vegetation is burnt at any one time;
 - (b) the fire is not within 100 metres of any neighbouring dwelling; and
 - (c) the fire is lit or allowed to remain alight in accordance with clause 61 – General Provisions.

Penalty: Twenty (20) Penalty Units

- (2) Where a person wants to burn in the open air under this provision and the requirements in sub-clause (1) cannot be complied with, a person must obtain a permit.

Penalty: Twenty (20) Penalty Units

56. Removal of Restrictions on Open Air Burning

The Municipal Fire Prevention Officer may remove some restrictions on open air burning contained within Part 7 of the General Purposes Local Law. The removal of any restrictions will be for a period of up to four (4) weeks to enable landowners to light a fire in the open air for fire prevention purposes only and Council will give public notice of this period.

57. Applying for a Permit to Burn

A person can apply for a permit by:

- (a) lodging an application with the Council in a form approved by the Council or an Authorised Officer and
- (b) paying to the Council the appropriate application fee, if applicable.

58. Issue of Permits to Burn

- (1) The Council or an Authorised Officer may issue a permit with conditions or refuse to issue a permit based on the specific circumstances of the case having due regard to:
 - (a) the size of the land or
 - (b) the ability of the landowner to remove the vegetation via more appropriate methods or
 - (c) the proximity to other landowners and risk of smoke nuisance or
 - (d) any other relevant thing.
- (2) The conditions of the permit must be set out in the permit.
- (3) A person who undertakes open air burning for which the Council or an Authorised Officer has issued a permit must comply with the conditions on the permit.
- (4) Even if a permit has been issued, a person must not light or allow to remain alight any fire in the open air on a day that has been declared as a total fire ban day or smog alert day.

59. Nuisance Burning and Incinerators

- (1) A person must not light a fire on any land in the open air, including in an incinerator that:
- (a) is offensive or a nuisance to another person in the vicinity, or beyond the property boundary;
 - (b) may cause a hazard to a person's health; or
 - (c) has an adverse impact on visibility beyond the property boundary, including reducing the visibility of motorists and other users of a public road; or
 - (d) creates a hazard on, or near, a public road.

Penalty: Twenty (20) Penalty Units

- (2) A person must not light a fire in the open air, including in an incinerator on land to burn, cause or allow to be burnt any:
- (a) green or wet material;
 - (b) non timber based building materials;
 - (c) rubber or plastic, including plastic mulch, plant pots and packaging materials;
 - (d) furnishings and carpet;
 - (e) manufactured chemicals;
 - (f) petroleum or oil products;
 - (g) paint, including any container in which paint is kept;
 - (h) food waste;
 - (i) manure and straw;
 - (j) carcasses or dead animals, unless prescribed by the Department of Primary Industries as the only means of disposal; or
 - (k) other offensive, noxious or toxic matter.

Penalty: Twenty (20) Penalty Units**60. Extinguishing Fires**

A person who has lit or allowed a fire to remain alight contrary to the provisions in this Part or any condition contained in a permit, must extinguish the fire immediately on being directed to do so by:

- (a) an Authorised Officer; or
- (b) a member of Victoria Police or the Country Fire Authority.

Penalty: Twenty (20) Penalty Units

61. General Provisions

- (1) A person who has lit or allowed a fire to remain alight must do so in accordance with the following requirements:
 - (a) the fire or use of the incinerator is supervised by an adult at all times;
 - (b) sufficient fire protection equipment is available to extinguish the fire if required;
 - (c) the vegetation to be burnt is dead and dry prior to lighting it; and
 - (d) at the site of the fire, the wind speed must not exceed 20 kilometres per hour (11 knots).

Penalty: Twenty (20) Penalty Units

- (2) A person must not light a fire in the open air in the whole of the municipal district:
 - (a) on any day of smog alert declared by Environment Protection Authority Victoria;
 - (b) on any day of total fire ban declared by the Country Fire Authority; and
 - (c) during a declared fire danger period under the *Country Fire Authority Act 1958* without first obtaining a permit from the Municipal Fire Prevention Officer or Country Fire Authority.

Penalty: Twenty (20) Penalty Units

62. Chimneys

- (1) A person who owns or occupies land must not allow any chimney on that land to discharge, ash, smoke or dust to such an extent that it becomes a public nuisance, or is dangerous or is likely to be dangerous to the health and safety of any person or animal, or is harming or likely to be harmful to the environment.
- (2) In determining whether a contravention has occurred an Authorised Officer must have regard to:
 - (a) the nature of any complaint received;
 - (b) any observations of an Authorised Officer, including the level of observable dust, grit, ash, smoke substance or odour;
 - (c) any diary entries made by any person detailing the particulars of the complaint;
 - (d) whether the chimney and any heating devices comply with any relevant Australian Standard; and
 - (e) the nature of the fuel used in the heating device.

Penalty: Twenty (20) Penalty Units