

#### 41 Fire prevention notices

- (1) In the country area of Victoria, the fire prevention officer of a municipal council may serve a fire prevention notice on the owner or occupier of land in the municipal district of that council (other than a public authority) in respect of anything—
- (a) on that land, other than a building or in a building;
  - (b) on the adjacent half width of any private street that abuts that land—
- (other than a prescribed thing or class of things) that by its nature, composition, condition or location constitutes or may constitute a danger to life or property from the threat of fire.
- (2) A fire prevention notice may be served only if the fire prevention officer forms the opinion—
- (a) that it is necessary, or may become necessary, to do so to protect life or property from the threat of fire; and
  - (b) that there is no procedure under any other Act or regulations made under any Act that is more appropriate in the circumstances to address that threat.
- (3) A fire prevention notice—
- (a) must be in the prescribed form;
  - (b) may require the owner or occupier to take the steps specified in the notice to remove or minimise the threat of fire;
  - (c) must specify the time (not less than 7 days) within which the owner or occupier must comply with the notice;
  - (d) must contain any prescribed information.

Nos 5040  
s. 42, 5191  
s. 30.  
S. 41  
amended by  
Nos 6887  
s. 2(a)(b), 7318  
s. 2, 7476  
s. 2(a)–(e),  
7606  
s. 2(a)(b)(c)(i)  
(d), 7876  
s. 2(3), 7877  
ss 9(b),  
21(a)(iv), 8257  
s. 9(a)–(c),  
8933 s. 4, 9389  
s. 3, 9488  
s. 2(a), 10004  
s. 10, 10149  
ss 11(a)–(c),  
12(a)(i)(ii)(b),  
21(1)(d)(i)(ii)(e)  
(as amended  
by No. 10173  
s. 4), 10235  
s. 11(f),  
45/1986 s. 6,  
12/1989 s. 4(1)  
(Sch. 2 items  
17.11–17.13),  
50/1989 s. 14,  
substituted by  
No. 2/1995  
s. 5.

S. 41(3)(d)  
substituted by  
No. 5/2012  
s. 30.

**S. 41A**  
inserted by  
No. 8257 s. 10,  
amended by  
Nos 9488  
s. 2(a), 9629  
s. 8, 10149  
s. 21(1)(e) (as  
amended by  
No. 10173  
s. 4), 10235  
s. 11(g),  
39/1992  
s. 5(3)(d)(e),  
substituted by  
No. 2/1995  
s. 5.

#### **41A Service of notices**

- (1) A fire prevention notice may be served on an owner or occupier—
  - (a) by giving it to or serving it personally on the owner or occupier; or
  - (b) by sending it by post to the owner or occupier at that person's usual or last known residential or business address; or
  - (c) by leaving it at the usual or last known residential or business address of the owner or occupier with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
  - (d) in a manner prescribed by any other Act or law for service on a person or class of persons of the same type as the owner or occupier.
- (2) If the fire prevention officer—
  - (a) does not know who the owner or occupier of any land is; or
  - (b) does not know the residential or business address of the owner or occupier; or
  - (c) believes that the owner or occupier is absent from Victoria and has no agent in Victoria known to the officer—the fire prevention notice may be served in accordance with subsection (3).
- (3) If subsection (2) applies, a fire prevention notice may be served—
  - (a) by displaying it on the land; and

- (b) by publishing a notice, in the prescribed form and containing the prescribed particulars, in a newspaper circulating generally in the municipal district.
- (4) A notice served under subsection (3) is sufficient notice to the owner or occupier from the date of display or publication, whichever is later.
- (5) Unless a fire prevention notice is withdrawn or cancelled, the costs of serving the notice (including reasonable administrative, labour and overhead costs and expenses incurred) may be recovered from the person on whom it was served—
  - (a) if the notice was served by a fire prevention officer, by the relevant municipal council;
  - (b) if the notice was served by the Chief Officer, by the Authority.

#### **41B Objection to notices**

- (1) A person on whom a fire prevention notice has been served may lodge a written objection with the fire prevention officer within 7 days of the service of the notice stating the grounds of objection.

**S. 41B**  
inserted by  
No. 8257 s. 10,  
amended by  
Nos 10004  
s. 11(a)(b),  
10149  
ss 12(c)(i)(ii)  
(d), 21(1)(e)  
(as amended  
by No. 10173  
s. 4), 12/1989  
s. 4(1)(Sch. 2  
items 17.15,  
17.16),  
57/1989 s. 3  
(Sch.  
item 36.2),  
substituted by  
No. 2/1995  
s. 5.

**S. 41B(1)**  
amended by  
No. 5/2012  
s. 31(1).

S. 41B(2)  
substituted by  
No. 5/2012  
s. 31(2).

- (2) If—
- (a) a person lodges an objection in accordance with subsection (1); and
  - (b) the fire prevention officer considers the grounds of objection to be reasonable—  
the fire prevention officer must consult with the person and make a genuine attempt to resolve the matter that is the subject of the fire prevention notice.
- (3) Within 14 days of the lodging of an objection the fire prevention officer must—
- (a) confirm the notice; or
  - (b) vary the notice, if the fire prevention officer is satisfied that the variation will appropriately address the threat of fire; or
  - (c) withdraw the notice, if the fire prevention officer is satisfied that there is no longer any case for the notice to be served.
- (4) If the fire prevention officer confirms or varies the notice he or she must specify a new time within which the person must comply with the notice.
- (5) In sections 41D and 41E, *fire prevention notice* includes a fire prevention notice as confirmed or varied in accordance with this section.

S. 41C  
inserted by  
No. 8257 s. 10,  
amended by  
Nos 43/1987  
s. 12, 12/1989  
s. 4(1)(Sch. 2  
items  
17.17–17.19),  
50/1989 s. 15,  
substituted by  
No. 2/1995  
s. 5.

#### **41C Appeal against notices**

- (1) If a person has lodged an objection under section 41B and—
- (a) the fire prevention officer has failed to confirm, vary or withdraw the notice within 14 days; or

- (b) the person is not satisfied with the confirmation or variation of the notice—  
the person may appeal in writing to the Chief Officer within 7 days of the end of that 14 day period or the date of the confirmation or variation, whichever is earlier, stating the grounds of appeal.
- (2) The Chief Officer—
- (a) must consider the appeal within a reasonable time; and
  - (b) must take into account all relevant circumstances, including the proper needs of conservation and alternative means of addressing the threat of fire.
- (3) After considering the appeal, the Chief Officer must—
- (a) confirm the notice; or
  - (b) vary the notice in any way the Chief Officer thinks fit; or
  - (c) cancel the notice.
- (4) If the Chief Officer confirms or varies the notice he or she must specify a new time within which the person must comply with the notice.
- (5) In sections 41D and 41E, *fire prevention notice* includes a fire prevention notice as confirmed or varied in accordance with this section.

S. 41D  
inserted by  
No. 2/1995  
s. 5.

#### 41D Compliance with notices

S. 41D(1)  
amended by  
No. 5/2012  
s. 32.

- (1) Subject to sections 41B and 41C, a person on whom a fire prevention notice has been served must comply with the notice.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) Proceedings for an offence under subsection (1) may be taken—

S. 41D(2)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 33.4).

- (a) by a police officer;

- (b) if the fire prevention notice was served by a fire prevention officer, in accordance with section 232 of the **Local Government Act 1989**;

- (c) if the fire prevention notice was served by the Chief Officer, by a person appointed for the purpose by the Chief Officer.

S. 41E  
inserted by  
No. 2/1995  
s. 5.

#### 41E Fire prevention infringement notices

S. 41E(1)  
amended by  
Nos 32/2006  
s. 94(Sch.  
item 8(1)),  
5/2012  
s. 33(1).

- (1) An authorised officer may serve a fire prevention infringement notice on a person the officer has reason to believe has committed an offence against section 41D.

S. 41E(1A)  
inserted by  
No. 32/2006  
s. 94(Sch.  
item 8(2)).

- (1A) An offence referred to in subsection (1) for which a fire prevention infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

(2) In addition to and without limiting section 12 of the **Infringements Act 2006**, a fire prevention infringement notice under subsection (1) may be served in accordance with section 41A.

S. 41E(2)  
substituted by  
No. 32/2006  
s. 94(Sch.  
item 8(3)).

(3) The infringement penalty for an offence against section 41D is 10 penalty units.

S. 41E(3)  
inserted by  
No. 5/2012  
s. 33(2).

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S. 41E(3)–(7)  
repealed by  
No. 32/2006  
s. 94(Sch.  
item 8(4)).

(8) In this section, *authorised officer* means—

- (a) if the fire prevention notice was served by a fire prevention officer, a person appointed for the purpose by the relevant municipal council;
- (b) if the fire prevention notice was served by the Chief Officer, a person appointed for the purpose by the Chief Officer.

#### **41F Issue of notices by Chief Officer**

S. 41F  
inserted by  
No. 2/1995  
s. 5.

(1) If—

- (a) the Chief Officer forms the opinion required by section 41(2); and
- (b) upon request, the relevant fire prevention officer refuses or fails to issue a fire prevention notice within the time specified by the Chief Officer—

the Chief Officer may serve a fire prevention notice on the owner or occupier of the land.

- (2) If the Chief Officer serves a fire prevention notice under subsection (1)—
- (a) the provisions of this Act (except this section) and the regulations apply as if, unless the contrary intention appears—
    - (i) references to the fire prevention officer were references to the Chief Officer;
    - (ii) references to the Chief Officer were references to the Authority;
  - (b) sections 225, 226, 227 and 227A of the **Local Government Act 1989** apply as if references to a Council were references to the Authority.

Nos 5040  
s. 43, 5191  
s. 31.  
S. 42  
amended by  
Nos 6956  
s. 6(2), 7877  
s. 10(a)(i)(ii)  
(b)(c), 9019  
s. 2(1)(Sch.  
item 25), 9389  
s. 4(b),  
12/1989  
s. 4(1)(Sch. 2  
items 17.20,  
17.21),  
57/1989  
s. 3(Sch.  
item 36.3),  
substituted by  
No. 2/1995  
s. 7.

#### 42 Brigades may carry out fire prevention work

- (1) The officers and members of any brigade, at the request of—
- (a) the owner or occupier of any land;
  - (b) a Minister in whom any land is vested;
  - (c) a municipal council or public authority—
    - (i) in which any land is vested;
    - (ii) that has any land under its control or management;
    - (iii) that is responsible for the care and management of any road—

may carry out on that land or road any work (including burning) for the removal or abatement of any fire danger or for the prevention of the occurrence or spread of fire.

- (2) Any work carried out under subsection (1) must be paid for by the owner, occupier, Minister, council or authority requesting the work and, if not paid, is recoverable in the Magistrates' Court as a debt due to the Authority.