

TASMANIA

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL (SMOKE) REGULATIONS
2018**

STATUTORY RULES 2018, No.

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**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL (SMOKE) REGULATIONS
2018**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Environmental Management and Pollution Control Act 1994*.

Dated 20 .

Governor

By Her Excellency's Command,

Minister for Environment

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Environmental Management and Pollution Control (Smoke) Regulations 2018*.

2. Commencement

These regulations take effect on the day on which their making is notified in the *Gazette*.

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3. Interpretation

In these regulations, unless the contrary intention appears –

Act means the *Environmental Management and Pollution Control Act 1994*;

AS/NZS 4012:2014 means the Australian and New Zealand Standard AS/NZS 4012 entitled “Domestic solid fuel burning appliances – Method for determination of power output and efficiency” published by Standards Australia and Standards New Zealand in 2014;

AS/NZS 4013:2014 means the Australian and New Zealand Standard AS/NZS 4013 entitled “Domestic solid fuel burning appliances – Method for determination of flue gas emission” published by Standards Australia and Standards New Zealand in 2014;

heating appliance means any solid fuel-burning heating appliance to which AS/NZS 4012:2014 or AS/NZS 4013:2014 applies, including the firebox of any such heater, regardless of whether that appliance or firebox –

- (a) was manufactured before or after the commencement of these regulations; or
- (b) is new or used;

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laboratory certificate has the meaning given by regulation 5(2);

model, in relation to a heating appliance, means a heating appliance of a particular design made by a particular manufacturer;

outdoor heating or cooking appliance means a fire pit, fire pot, barbeque, outdoor pizza oven, outdoor heater or outdoor fireplace;

prohibited waste means any one or more of the following:

- (a) asbestos;
- (b) tyres;
- (c) coated wire;
- (d) paint containers and residues;
- (e) chemical containers and residues;
- (f) timber treated with copper chrome arsenate (CCA), pentachlorophenol (PCP), oil or any other chemical;
- (g) rubber;
- (h) painted wood;
- (i) plastic;

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(j) oil;

residential premises means –

- (a) any building or part of a building used as, or for the purposes of, a residence; and
- (b) the block of land on which the building, or part of the building, is situated.

**PART 2 – HEATING APPLIANCES TO COMPLY WITH
AUSTRALIAN STANDARDS**

4. Application of Part

This Part applies to heating appliances that are designed, manufactured or adapted for domestic use on residential premises.

5. Heating appliances to comply with Australian Standards

- (1) A person must not manufacture, import into Tasmania for sale or sell a heating appliance to any other person unless –
- (a) the heating appliance is marked in accordance with AS/NZS 4012:2014 and AS/NZS 4013:2014; and
 - (b) a laboratory certificate is in force in relation to heating appliances of the same model as that heating appliance.

Penalty: Fine not exceeding 50 penalty units.

- (2) A laboratory certificate is a certificate issued by a laboratory registered with the National Association of Testing Authorities for testing for the purposes of AS/NZS 4012:2014 and AS/NZS 4013:2014.
- (3) If requested to do so by the Director, a person must produce to the Director, for inspection by

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Part 2 – Heating Appliances to Comply with Australian Standards

the Director, a laboratory certificate that is in force in relation to heating appliances of the same model as any heating appliances that the person is manufacturing, importing into Tasmania for sale or selling.

Penalty: Fine not exceeding 50 penalty units.

6. Interference with heating appliances

- (1) A person must not alter, or cause or permit the alteration of, the structure, exhaust system or inlet air system of any heating appliance of a model to which a laboratory certificate relates.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subregulation (1) does not apply in relation to –

- (a) the temporary modification of a heating appliance during the course of repairs being made to the heating appliance; or
- (b) a heating appliance that has been installed in, and is sold together with, a building.

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Part 3 – Emission of Smoke from Heating Appliances, Outdoor Heating or
Cooking Appliances and Fireplaces

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**PART 3 – EMISSION OF SMOKE FROM HEATING
APPLIANCES, OUTDOOR HEATING OR COOKING
APPLIANCES AND FIREPLACES**

**7. Emission of smoke from heating appliances,
outdoor heating or cooking appliances and
fireplaces**

- (1) A person must not cause, or allow, a heating appliance, an outdoor heating or cooking appliance or a fireplace to emit smoke that –
- (a) is visible for a continuous period of 10 minutes or more; and
 - (b) during that continuous 10-minute period, is visible for a continuous period of 30 seconds or more –
 - (i) in the case of a heating appliance or fireplace in a building, or part of a building – at a distance of 10 metres or more from the point on the building, or part of the building, where the smoke is emitted; or
 - (ii) in the case of a heating appliance or outdoor heating or cooking appliance or fireplace that is not in a building, or part of a building – at a distance of 10 metres or more from the point where the smoke is emitted.

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Cooking Appliances and Fireplaces

Penalty: Fine not exceeding 10 penalty units.

- (2) If, in a proceeding for an offence against subregulation (1), an authorized officer or a council officer gives evidence, based on the officer's own senses, that smoke was emitted from a building or land occupied by the defendant, that evidence is prima facie evidence of the matters so stated.
- (3) A person must take all reasonable measures to ensure that only dry wood, dry vegetation or dry vegetative waste is burnt in a heating appliance, an outdoor heating or cooking appliance or a fireplace.

Penalty: Fine not exceeding 10 penalty units.

PART 4 – CONTROL OF BURNING

8. Prohibition on burning of prohibited waste

Unless it is otherwise lawful to do so, a person must not burn any prohibited waste.

Penalty: Fine not exceeding 50 penalty units.

9. Burning of vegetation and vegetative waste on land with an area of less than 4 000 square metres

- (1) A person must not burn vegetation or vegetative waste in the open, or in an incinerator, on land that has an area of less than 4 000 square metres, unless –
- (a) the person uses all practicable means as are necessary to prevent or minimise air pollution; and
 - (b) if a valid permit is issued to the person under the *Fire Service Act 1979*, he or she burns the vegetation or vegetative waste in accordance with the permit; and
 - (c) if valid by-laws, within the meaning of the *Local Government Act 1993*, are made in accordance with that Act and are applicable to the person, he or she burns the vegetation or vegetative waste in accordance with those by-laws; and
 - (d) if a valid environment protection notice is issued, or caused to be issued, to the

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Part 4 – Control of Burning

person under section 44 of the Act, he or she burns the vegetation or vegetative waste in accordance with that environment protection notice.

Penalty: Fine not exceeding 50 penalty units.

- (2) Without limiting subregulation (1), the means of preventing or minimising air pollution are to include –
- (a) means that have regard to the potential for smoke to have an adverse effect on human health and the environment, taking into account –
 - (i) wind direction and wind speed; and
 - (ii) weather conditions; and
 - (iii) the length of time that the vegetation or vegetative waste being burnt is likely to burn; and
 - (iv) the proximity of any habitable building; and
 - (b) taking reasonable measures to ensure that –
 - (i) only dry vegetation or vegetative waste is burnt; and
 - (ii) only vegetation or vegetative waste that is suitable for disposal by burning is burnt.

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Part 5 – Miscellaneous

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PART 5 – MISCELLANEOUS

10. Prescribed offences

For the purposes of section 72 of the Act –

- (a) an offence specified in column 1 of the table in Schedule 1 is a prescribed offence; and
- (b) a penalty specified in column 2 of the table in Schedule 1 is the penalty prescribed as applicable for the offence to which it relates.

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**SCHEDULE 1 – ENVIRONMENTAL INFRINGEMENT
NOTICE PENALTIES**

	Column 1	Regulation 10 Column 2
	Regulation	Penalty (penalty units)
1.	Regulation 5(1)	5
2.	Regulation 5(3)	5
3.	Regulation 6(1)	5
4.	Regulation 7(1)	2
5.	Regulation 7(3)	2
6.	Regulation 8	5
7.	Regulation 9(1)	5

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 20 .

These regulations are administered in the Department of Primary Industries, Parks, Water and Environment.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations –

- (a) provide that certain wood heaters that are sold in Tasmania, manufactured in Tasmania or imported into Tasmania for sale must comply with AS/NZS 4012:2014 and AS/NZS 4013:2014; and
- (b) regulate the emission of smoke from certain wood heaters, fireplaces and outdoor cooking or heating appliances; and
- (c) prescribe certain prohibited wastes that must not be burnt; and
- (d) regulate the burning of vegetation and vegetative waste on certain land; and
- (e) prescribe certain offences to be offences for which an environmental infringement notice may be issued and served.