

# FIRE BRIGADES ACT 1989 No. 192

NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1 - PRELIMINARY

1. Citation
2. Commencement
3. Definitions
4. Application of Act
5. Fire districts

### PART 2 - PROVISION OF FIRE BRIGADES ETC.

6. Duty to prevent and extinguish fires in fire districts
7. General authority to protect persons and property
8. Establishment, maintenance etc. of fire brigades
9. Volunteer fire brigades
10. Exercise of functions by officers and agents

### PART 3 - FIRE FIGHTING AND PREVENTION

#### Division 1 - Powers at fires

11. Brigades to proceed with speed to suspected fires
12. Investigation of alarms of fire
13. General powers of officers at fires
14. Closure of streets and public places
15. Use of water etc.
16. Destruction etc. of buildings and vessels during fires
17. Buildings etc. damaged by fire
18. Disconnection etc. of gas and electricity
19. General power to remove persons or obstacles

## *Fire Brigades 1989*

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### Division 2 - Special powers

20. Fires outside areas to which Act applies
21. Power to clear fire breaks etc.
22. Authority to enter land and buildings

### Division 3 - Command structure

23. Chief Officer may authorise others to exercise functions
24. Officer in charge may authorise others to exercise functions
25. Duty to recognise authority of officers
26. Interstate assistance

### Division 4 - Inspection etc.

27. Inspection etc. of brigades
28. Inspection of theatres etc.
29. Inspection - dangerous goods, lighting of fires
30. Information may be requested from owner

### Division 5 - Offences

31. Fire brigade not to be constituted unless authorised
32. Concealing fire hydrant
33. Damaging fire brigade equipment etc.
34. False alarms
35. Obstruction of fire fighters etc.

### Division 6 - Miscellaneous

36. Director-General may be represented at inquiry
37. Payments for voluntary services
38. Certain damage to be covered by insurance
39. Use of water for practice

## PART 4 - CHARGES FOR ATTENDING FIRES AND OTHER SERVICES

40. Charges for attending fires
41. Apportionment of charges
42. Charges for other services
43. Waiver or reduction of charges

## PART 5 - CONTRIBUTION TO FIRE BRIGADE COSTS

### Division 1 - Estimates of fire brigade expenditure and contributions

44. Definitions
45. Estimate of expenditure in fire districts
46. Total estimate not to exceed amount approved by Treasurer
47. Reduction of amount estimated
48. Financial year estimate to be used to produce calendar year estimate
49. Times for instalment payments

*Fire Brigades 1989*

---

Division 2 - Contributions by local government areas

50. Contributions required from councils
51. Apportionment between local government areas
52. How contribution is to be funded
53. Returns by local government areas

Division 3 - Contributions by insurance companies

54. Contributions required from insurance companies
55. Advance payment by insurance companies
56. Assessments and adjustments
57. Liability of owner where foreign insurer involved
58. Returns by insurance companies
59. Definition of "total amount of premiums"
60. Audit of accounts of insurance companies
61. Returns by owners of property

Division 4 - Appropriation of estimated expenditure

62. Special appropriation
63. Department's Working Account
64. New South Wales Fire Brigades Capital Fund

PART 6 - ADMINISTRATION

Division 1 - The Department

65. Establishment of Department
66. Staff of Department etc.
67. Chief Officer

Division 2 - Fire fighters

68. Definition of "Authority"
69. Appointment etc. of fire fighters
70. Authority is to be employer for certain purposes
71. Authority may fix salaries, wages etc.
72. Authority may enter into agreements
73. Director-General to give effect to orders, agreements etc.
74. Regulations relating to members of fire brigades

Division 3 - The Advisory Council

75. Constitution of Council
76. Functions of Council
77. Committees of Council

PART 7 - GENERAL

78. Protection from liability
79. Resumption etc. of land under Public Works Act

*Fire Brigades 1989*

---

- 80. Information to policy holders
- 81. Expenses incurred by agents and trustees
- 82. Recovery of charges
- 83. Delegation
- 84. Proceedings for offences
- 85. Regulations
- 86. Repeals and amendments
- 87. Savings and transitional provisions

SCHEDULE 1 - PROPORTION OF PREMIUMS SUBJECT TO CONTRIBUTION

SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF COUNCIL

SCHEDULE 3 - AMENDMENT OF OTHER ACTS

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS

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# **FIRE BRIGADES ACT 1989 No. 192**

NEW SOUTH WALES



**Act No. 192, 1989**

An Act to provide for the protection of persons and property from fire and for that purpose to constitute New South Wales Fire Brigades as a Department of the Government and to provide for permanent and volunteer fire brigades; to amend certain Acts; and for other purposes.  
[Assented to 19 December 1989]

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Citation**

1. This Act may be cited as the Fire Brigades Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

"**Chief Officer**" means the Chief Officer of Fire Brigades holding office as such under the Public Sector Management Act 1988;

"**Council**" means the New South Wales Fire Brigades Advisory Council constituted by this Act;

"**Department**" means New South Wales Fire Brigades established by this Act as a Department of the Government;

"**Director-General**" means the Director-General of the Department holding office as such under the Public Sector Management Act 1988;

"**fire brigade**" means a permanent fire brigade or a volunteer fire brigade, but does not include a bush fire brigade;

"**fire district**" means an area constituted as a fire district under section 5;

"**flammable matter**" includes:

- (a) any substance capable of ignition or combustion by the application of heat, by means of sparks or spontaneously; and
- (b) any substance prescribed as flammable for the purposes of this definition;

"**local government area**" has the same meaning as in the Local Government Act 1919;

"**officer in charge**", in relation to a place at which a fire brigade is present, means the Chief Officer or, if the Chief Officer is absent:

- (a) the person for the time being in charge of any members of a permanent fire brigade present at that place; or

*Fire Brigades 1989*

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- (b) if no members of a permanent fire brigade are present, the person for the time being in charge of any members of a volunteer fire brigade present at that place;

"owner", in relation to land or a building, means:

- (a) any person for the time being in actual receipt of, or entitled to receive, the rents and profits of the land or building; or
- (b) any person who, if the land or building were let to a tenant, would be entitled to receive the rents and profits of it, whether as beneficial owner, trustee, executor, mortgagee in possession, or as agent or attorney for any other person, or otherwise;

"**permanent fire brigade**" means a permanent fire brigade established and maintained by the Director-General, the services of whose members are wholly at the disposal of the Director-General;

"**policy of insurance**" includes:

- (a) any certificate or declaration as to the existence of, and any agreement for, any insurance or reinsurance; and
- (b) any instrument or writing whereby any contract of insurance or reinsurance is made or agreed to be made or is evidenced;

"**vessel**" means any ship, barge, punt, boat or other floating vessel used wholly or partly for storing or carrying goods or for carrying passengers;

"**volunteer fire brigade**" means any association of persons for which an approval as a volunteer fire brigade is in force under section 9, but does not include a bush fire brigade.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Application of Act**

4. This Act applies to all fire districts.

**Fire districts**

5. (1) In this section:

"reserved area" means land within a national park, historic site or state recreation area within the meaning of the National Parks and Wildlife Act 1974 or any other land reserved or dedicated under that Act.

(2) The Governor may, by order published in the Gazette, constitute an area as a fire district, the area so constituted being described by reference to a local government area or reserved area or in any other manner.

(3) An area constituted as a fire district must not include any area that is within neither a local government area nor a reserved area.

(4) A reference in an order under this section to a local government area or a reserved area is to be construed as a reference to that area with boundaries as at the date of publication of the order in the Gazette.

**PART 2 - PROVISION OF FIRE BRIGADES ETC.**

**Duty to prevent and extinguish fires in fire districts**

6. It is the duty of the Director-General to take all practicable measures for preventing and extinguishing fires and protecting and saving life and property in case of fire in any fire district.

**General authority to protect persons and property**

7. The Director-General is authorised to take measures for protecting persons from injury or death and property from damage, whether or not fire is involved and whether or not those persons are, or the property is, within a fire district.

**Establishment, maintenance etc. of fire brigades**

8. For the purpose of exercising the Director-General's functions under this Part, the Director-General may.

*Fire Brigades 1989*

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- (a) with the approval of the Minister, establish permanent fire brigades and form or assist in the formation of volunteer fire brigades; and
- (b) provide permanent and volunteer fire brigades with suitable premises and requisite equipment; and
- (c) maintain permanent fire brigades; and
- (d) pay subsidies to volunteer fire brigades and make payments to the members of volunteer fire brigades.

**Volunteer fire brigades**

9. (1) The Minister may approve an association of persons as a volunteer fire brigade if satisfied that:

- (a) the association is formed for the purpose of extinguishing fires; and
- (b) the carrying out of that purpose is not the sole or principal occupation or means of livelihood of those persons or a majority of them (whether or not they receive any payment for their services as members of the association).

(2) The Minister may revoke such an approval at any time by notice in writing given to the captain of the volunteer fire brigade or published in the Gazette.

(3) The trustees of any real or personal property of a volunteer fire brigade may vest that property in the Crown, to be held by the Crown subject to the provisions of this Act but free from any other trust.

**Exercise of functions by officers and agents**

10. The Director-General may exercise the Director-General's functions under this Act by his or her officers or agents (including the members of any permanent fire brigade) or by the members of any volunteer fire brigade.

**PART 3 - FIRE FIGHTING AND PREVENTION**

**Division 1 - Powers at fires**

**Brigades to proceed with speed to suspected fires**

11. When there is an alarm of fire, a fire brigade must, despite anything to the contrary in any Act, proceed with all speed to the fire

and try by all possible means to extinguish it and save any lives and property that are in danger.

**Investigation of alarms of fire**

12. (1) At a place in respect of which an alarm of fire is raised, the officer in charge may, with or without members of a fire brigade, enter the place and any premises at the place to ascertain whether there is a fire there.

(2) Reasonable force, whether by breaking down gates or fences or breaking open doors or otherwise, may be used to gain entry.

**General powers of officers at fires**

13. (1) At a fire, the officer in charge:

- (a) may take such measures as the officer thinks proper for the protection and saving of life and property and for the control and extinguishing of the fire; and
- (b) is to control and direct the operations of any fire brigade.

(2) If the fire is a bush fire (including a grass fire), the officer in charge is, as far as practicable, to carry into effect any plan of operations in force under section 41A of the Bush Fires Act 1949 in relation to the place where the fire occurs.

(3) The following provisions of this Division are intended to be particular examples of the way in which functions under this section can be exercised and are not intended to limit the generality of this section.

**Closure of streets and public places**

14. The officer in charge at a fire may cause any street or public place in the vicinity of a fire to be closed to traffic during the fire.

**Use of water etc.**

15. The officer in charge at a fire may, for the purpose of extinguishing or controlling a fire, without payment:

- (a) use or cause to be used any water mains, pipes and hydrants and any water in them or in any well, tank or stream; and

*Fire Brigades 1989*

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- (b) cause water to flow into or be shut off from any main or pipe.

**Destruction etc. of buildings and vessels during fires**

16. (1) During a fire, the officer in charge may take possession of any building, vehicle or vessel, and any property in it or on it, if it is so situated that a fire in it would endanger any structure or any property in a structure.

(2) The officer in charge may, to control, extinguish or prevent the spread of the fire, cause such a building to be pulled down or destroyed and cause such a vehicle to be removed or destroyed and such a vessel to be removed or sunk, and may remove any such property and keep it in safe custody.

(3) Whenever practicable, the consent of the Harbour Master, or other officer having the control of the removal of vessels in the port, is to be obtained before any vessel is removed or sunk.

**Buildings etc. damaged by fire**

17. (1) The officer in charge at a fire may during the fire or immediately after it, pull down, destroy, or shore up any wall or building damaged or rendered insecure by the fire or which, in the officer's opinion, may be dangerous to life or property.

(2) The cost of doing so is to be borne by the owner of the wall or building and is to be paid to the Director-General.

**Disconnection etc. of gas and electricity**

18. (1) The officer in charge at a fire may cause the supply of gas or electricity to any premises on fire, or to adjacent premises, to be shut off or disconnected.

(2) In exercising a power under this section, the officer in charge may require the person who supplies the gas or electricity concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the officer's directions.

(3) A person must comply with any such requirement and directions.

(4) A person who supplies gas or electricity is not liable for any damages because of any interruption of that supply under this section.

**General power to remove persons or obstacles**

19. The officer in charge at a fire may cause to be removed any person, vehicle, vessel or thing the presence of whom or which at or near a fire might, in the officer's opinion, interfere with the work of any fire brigade or the exercise of any of the officer's functions.

**Division 2 - Special powers**

**Fires outside areas to which Act applies**

20. (1) The Director-General may permit any members of a fire brigade, with engines and appliances, to go beyond the limits of any fire district for the purpose of extinguishing any fire.

(2) In such a case the provisions of this Act apply to the fire and to anything done at the fire as if the fire were within a fire district.

**Power to clear fire breaks etc.**

21. (1) The Director-General is authorised to:

- (a) plough, burn, clear or otherwise establish or maintain fire breaks on any land (whether or not within a fire district); and
- (b) remove, burn or destroy any flammable matter or other material on any land (whether or not within a fire district) if satisfied that the action is necessary to prevent the outbreak, spread or extension of a bush fire or other fire.

(2) The power conferred by this section must not be exercised except:

- (a) for the purpose of controlling or extinguishing a fire or protecting persons endangered by fire from injury or death or property endangered by fire from damage; or
- (b) with the permission of the person apparently in occupation or control of the land.

**Authority to enter land and buildings**

22. The Director-General is authorised to enter, by his or her agents, any land, building or vessel where any fire has occurred and to retain possession of the land, building or vessel for a reasonable time or until an inquest or inquiry has been held relating to the fire.

**Division 3 - Command structure****Chief Officer may authorise others to exercise functions**

23. (1) Any function conferred or imposed on the Chief Officer by this Part may be exercised by any officer or member of a fire brigade authorised for the purpose by the Chief Officer.

(2) Such an authorisation need not be in writing and operates to authorise the exercise of functions accordingly.

**Officer in charge may authorise others to exercise functions**

24. (1) The officer in charge at a fire may authorise any officer or member of a fire brigade to exercise all or specified functions under this Part of the officer in charge.

(2) Such an authorisation need not be in writing and operates to authorise the exercise of functions accordingly.

**Duty to recognise authority of officers**

25. (1) Every member of the Police Force and all other persons are to recognise:

- (a) the authority of the Chief Officer and any member of a fire brigade acting under the Chief Officer's orders; and
- (b) the authority of the officer in charge at a place at which a fire brigade is present.

(2) It is the duty of every member of the Police Force to support the authority of such a person and to assist him or her in enforcing compliance with any orders given under this Act or the regulations.

(3) This section applies only in respect of the protection of persons from injury or death, or of property from damage, when the persons are or the property is endangered by fire.

**Interstate assistance**

26. (1) A person who is a member of an interstate fire brigade and present at a fire in a fire district for the purpose of trying to extinguish it or to save any lives or property in danger there must:

- (a) obey any orders given to the person by the officer in charge at the fire; and

## *Fire Brigades 1989*

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- (b) place any gear or equipment in the person's charge at the disposal of the officer in charge at the fire.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) While there is no officer in charge at the fire, the member of the interstate fire brigade who has charge of the members of that brigade present at the fire is, for the purposes of this Act, to be considered to be the officer in charge at the fire.

(3) In this section:

"interstate fire brigade" means a fire brigade, by whatever name called, established under a law of Queensland, Victoria, South Australia or the Australian Capital Territory.

### **Division 4 - Inspection etc.**

#### **Inspection etc. of brigades**

27. The Chief Officer may inspect fire brigades and their premises and equipment and enforce compliance with the regulations in respect of them.

#### **Inspection of theatres etc.**

28. The Chief Officer may at any time enter any theatre, hall, building or place used for public entertainment or public assembly to ascertain whether provisions made by or under any Act for the prevention of fire or for the safety of the public are being or have been contravened.

#### **Inspection - dangerous goods, lighting of fires**

29. (1) The Chief Officer may at any time enter any land, building or vessel for the purpose of ascertaining whether provisions made by or under any Act relating to the storage or keeping of explosives or flammable matter, or relating to the lighting of fires, are being or have been contravened.

(2) If satisfied that such a provision is being contravened, the Chief Officer may serve on the occupier of the land or building concerned or on the master, owner or agent of the vessel concerned, a notice requiring the contravention to be remedied within a specified time.

*Fire Brigades 1989*

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(3) A person must comply with such a notice within the time specified.

Maximum penalty: 50 penalty units.

**Information may be requested from owner**

30. (1) The following persons are authorised to make a request under this section:

- (a) the Director-General;
- (b) the Chief Officer;
- (c) any member of a fire brigade.

(2) On request made by a person under this section, the owner of premises where a fire occurs, or the owner of any personal property on premises where a fire occurs or which is destroyed or damaged by fire, must:

- (a) inform the person whether the premises or property are or is insured; and
- (b) furnish the person with full particulars of any such insurance, including the name of the insurer and the amount of the insurance.

(3) A person who contravenes subsection (2), or in purported compliance with that subsection gives any information knowing it to be false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 5 penalty units.

**Division 5 - Offences**

**Fire brigade not to be constituted unless authorised**

31. (1) It is unlawful for any persons to constitute or maintain a fire brigade for the purpose of extinguishing fire within any fire district except:

- (a) as a permanent or volunteer fire brigade under the authority of this Act; or
- (b) on premises or land owned or used by the persons or at which they are employed.

(2) A person who acts in contravention of this section is guilty of an offence.

Maximum penalty: 20 penalty units.

**Concealing fire hydrant**

32. It is an offence for a person to:

- (a) wilfully cover up, enclose or conceal any fire hydrant so as to make it difficult to find; or
- (b) obliterate or remove any mark, sign or letter used to indicate the position of or distinguish a fire hydrant.

Maximum penalty: 20 penalty units.

**Damaging fire brigade equipment etc.**

33. A person who wilfully damages or destroys any building, engine, hose, ladder or other thing belonging to or in use by any fire brigade is guilty of an offence.

Maximum penalty:

- (a) for a first offence - 20 penalty units or imprisonment for 1 month, or both; or
- (b) for a second or subsequent offence - 50 penalty units or imprisonment for 12 months, or both.

**False alarms**

34. A person who tampers with any fire alarm or signalling apparatus for giving notice of fire or who maliciously gives any false alarm of fire is guilty of an offence.

Maximum penalty:

- (a) for a first offence - 20 penalty units or imprisonment for 1 month, or both; or
- (b) for a second or subsequent offence - 50 penalty units or imprisonment for 12 months, or both.

**Obstruction of fire fighters etc.**

35. A person who obstructs or hinders the Director-General, the Chief Officer, any member of the staff of the Department or any member of a fire brigade in the exercise of a function under this Act is guilty of an offence.

Maximum penalty: 10 penalty units.

*Fire Brigades 1989*

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**Division 6 - Miscellaneous**

**Director-General may be represented at inquiry**

36. (1) The Director-General may, at any inquest or inquiry relating to the cause or origin of any fire, be represented by a person appointed by the Director-General for the purpose.

(2) The Director-General's representative may adduce evidence, examine witnesses and address the court at the inquest or inquiry.

**Payments for voluntary services**

37. The Director-General may make payments for voluntary or special services rendered to the Director-General, the Chief Officer or to any fire brigade.

**Certain damage to be covered by insurance**

38. (1) Any damage to property caused by the Chief Officer, the officer in charge at a fire or any member of a fire brigade (including an interstate fire brigade within the meaning of section 26) in the exercise in good faith of functions under this or any other Act is to be considered to be damage by fire for the purposes of any policy of insurance against fire covering the property.

(2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are or the property is endangered by fire.

**Use of water for practice**

39. The Chief Officer may, by arrangement with the person controlling the water supply concerned, authorise the use free of charge of the water in any mains or pipes for the purpose of drill or practice by any fire brigade.

**PART 4 - CHARGES FOR ATTENDING FIRES AND OTHER SERVICES**

**Charges for attending fires**

40. (1) Except as provided by this section, no charge is to be made for the attendance at a fire of any members of a fire brigade.

(2) If a fire occurs in any building, vehicle, vessel or property outside an area to which this Act applies, the Director-General is entitled to recover, for services rendered by any members of a fire brigade in endeavouring to extinguish the fire or save life or property, charges not exceeding the prescribed charges.

(3) Those charges may be recovered from:

- (a) the owner of the building, vehicle or property, or
- (b) the master or owner of the vessel and the cargo and freight for the vessel.

(4) The amount of those charges is not to exceed 20 per cent of the value before the fire of the building, vessel, cargo and freight or property.

(5) This section binds the Crown in right of the State and also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Apportionment of charges**

41. (1) The charges payable under section 40 are to be ratably apportioned between the owner of the building, vessel or vehicle and the owner of the property, cargo or freight, according to their respective values before the fire.

(2) If any dispute arises between the parties liable to pay such a charge as to the proportion payable by each or any of them, the Director-General may determine and certify the amount payable by each person.

(3) The Director-General's certificate is conclusive evidence in any proceedings of the amount payable by each of the parties.

*Fire Brigades 1989*

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**Charges for other services**

**42. (1)** If the Director-General or a member of a fire brigade, on request made by or on behalf of any person (whether or not made in compliance with any law):

- (a) inspects any premises; or
- (b) inspects, tests, services or repairs any equipment; or
- (c) furnishes any advice or report concerning fire prevention or protection, fire fighting equipment or other matters; or
- (d) conducts any training course; or
- (e) responds to any alarm (if it is afterwards discovered that the alarm was false); or
- (f) performs any other service specified in the regulations,

the Director-General is entitled to payment by the person of the charge prescribed by the regulations in respect of the service performed.

**(2)** If a charge is not prescribed in respect of the conduct of a training course, the Director-General is entitled to payment of the charge that the Director-General determines is the reasonable charge payable for the conducting of a training course.

**(3)** This section binds the Crown in right of the State and also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Waiver or reduction of charges**

**43.** The Director-General may, at his or her discretion, waive any charge payable under this Part or reduce any such charge by such proportion as the Director-General thinks fit having regard to:

- (a) a person's contribution (whether by payment of local government rates or insurance premiums or otherwise) to the cost of fire brigade operations; and
- (b) such other matters as the Director-General considers relevant.

**PART 5 - CONTRIBUTION TO FIRE BRIGADE COSTS**

**Division 1 - Estimates of fire brigade expenditure and contributions**

**Definitions**

44. In this Part:

"**calendar year**" means the period of 12 months commencing on 1 January in any year;

"**insurance company**" means any body corporate, partnership, association, underwriter or person that or who:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to any property situated in New South Wales; or
- (b) receives premiums in respect of such policies of insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales;

"**financial year**" means the period of 12 months commencing on 1 July in any year;

"**fire brigade expenditure**", in relation to a specified period, means the aggregate of:

- (a) recurrent expenditure incurred during that period in the exercise of the Director-General's functions under section 8 (Establishment, maintenance etc. of fire brigades); and
- (b) recurrent expenditure incurred during that period in making payments under section 37 (Payments for voluntary services); and
- (c) recurrent expenditure incurred during that period in respect of the administrative costs of the Department, the Council or the Minister incurred under the authority of this Act;

*Fire Brigades 1989*

**"Working Account"** means the Department's working account established under section 63.

**Estimate of expenditure in fire districts**

45. Before the start of each financial year, the Director-General is to make an estimate of fire brigade expenditure in and in relation to each fire district for that financial year.

**Total estimate not to exceed amount approved by Treasurer**

46. The total of the estimates under section 45 for all fire districts for a financial year is not to exceed the amount approved in respect of that financial year by the Treasurer in consultation with the Minister.

**Reduction of amount estimated**

47. (1) The total of the estimates for a financial year is to be reduced by the aggregate of:

- (a) the amount standing to the credit of the Working Account at the beginning of that financial year; and
- (b) the amount that the Director-General estimates will be the amount paid into the Working Account during that financial year under section 63 (2) (a) and (b).

(2) There is to be a corresponding pro-rata reduction in the amount required to be contributed in respect of each fire district so that the amount required to be contributed is calculated in accordance with the following:

$$\text{amount required to be contributed for a fire district} = \text{amount estimated for the fire district} \times \frac{\text{total of estimates for all fire districts reduced as required by subsection (1)}}{\text{total of estimates for all fire districts}}$$

**Financial year estimate to be used to produce calendar year estimate**

48. (1) An estimate for a financial year (reduced as required by section 47) is to be multiplied by the factor determined under

subsection (2) to give the amount required to be contributed under this Part for the calendar year that commences during that financial year.

(2) The factor by which a financial year estimate is to be multiplied is the factor determined by the Treasurer in consultation with the Minister as the factor necessary to give an estimate for the calendar year in question that is equivalent to the estimate for the financial year.

#### **Times for instalment payments**

49. (1) The contributions payable under this Part (including advance payments) are to be paid in quarterly instalments on or before 1 January, 1 April, 1 July and 1 October in each year, or on or before such other days as the Director-General may direct and notify to the contributors concerned.

(2) If an instalment is not paid within 30 days after it becomes payable, any council or insurance company by which it is payable is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) Conviction for an offence under this section does not affect the liability to pay the instalment.

### **Division 2 - Contributions by local government areas**

#### **Contributions required from councils**

50. (1) Of the amount required to be contributed for a fire district, 12.3 per cent is (unless subsection (2) applies) to be contributed by the local government area or areas the whole or part of which is included in the fire district.

(2) If a fire district comprises a reserved area (as defined in section 5) and no other area:

- (a) a local government area included in the fire district is not required to contribute in respect of the fire district; and
- (b) 12.3 per cent of the amount required to be contributed for the fire district is to be contributed from the National Parks and Wildlife Fund established under the National Parks and Wildlife Act 1974 and payment from that fund is authorised accordingly.

*Fire Brigades 1989*

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**Apportionment between local government areas**

51. If a fire district comprises more than one local government area, the amount of the contribution to be paid by each area is to be apportioned according to the aggregated land values (estimated under section 67 of the Valuation of Land Act 1916) of all ratable land in the local government area or in the part of it to which this Act applies.

**How contribution is to be funded**

52. (1) If this Act applies to the whole of a local government area, the amount of contribution payable by the area is to be paid out of the general fund of the council concerned.

(2) If this Act applies to part only of a local government area, the council is to pay the required contribution out of the general fund or raise the required amount by a local rate under the Local Government Act 1919 on the land value of ratable land in the part.

(3) Despite any provision of the Local Government Act 1919 to the contrary, no poll of ratepayers is to be taken on the question of whether such a rate is to be levied.

(4) If the amount required for any year is greater than that required for any previous year, the council may levy a higher local rate, to be fixed by the council, to provide for the greater amount, without making a rate for that year.

**Returns by local government areas**

53. (1) The council of a local government area must furnish a return to the Director-General during July in each year or at such other time as the Director-General may require and notify to the council.

(2) The return is to show such particulars as the Director-General considers necessary to be obtained for the purposes of this Part in relation to all ratable property in the local government area or in the part of it to which this Act applies.

(3) A council which fails to furnish a return as required by this section or which in furnishing a return furnishes information that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) A conviction for the offence of failing to furnish a return does not affect the requirement to furnish the return or the liability of a council to be convicted of a further offence in respect of a continuing failure.

### **Division 3 - Contributions by insurance companies**

#### **Contributions required from insurance companies**

54. Of the total amount required to be contributed under this Part for a calendar year, 73.7 per cent is to be contributed by insurance companies in accordance within this Division.

#### **Advance payment by insurance companies**

55. (1) An insurance company must, in each calendar year, make an advance payment to the Director-General pending an assessment under section 56.

(2) The advance payment is to be an amount equal to the percentage fixed by the Director-General in respect of that year of the total amount of the premiums subject to contribution under subsection (4) received by or due to the company during the calendar year immediately preceding the last preceding calendar year.

(3) The percentage fixed by the Director-General is to be the percentage that will provide the total amount to be contributed under this Part by all insurance companies in respect of all fire districts in the calendar year for which the contribution is required.

(4) The amount of the premiums under any class of policies of insurance specified in Schedule 1 which is to be subject to contribution under this section is as indicated in that Schedule in respect of that class of policies of insurance.

(5) If the Minister is satisfied that at least two-thirds of the insurance companies liable to contribute under this section desire that Schedule 1 be amended in a certain manner, and the Director-General recommends the amendment, the Minister may by notice published in the Gazette, amend that Schedule accordingly.

(6) Any such amendment takes effect from such date following publication of the notice as the Minister directs in the notice.

*Fire Brigades 1989*

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**Assessments and adjustments**

56. (1) If an insurance company submits a return under this Division in a calendar year, the Director-General is to notify the company of the required contribution in relation to the company for the last preceding calendar year assessed in accordance with the following formula:

$$\text{required contribution} = \frac{a \times b}{c}$$

where:

- "a" is the total amount of premiums subject to contribution specified in the return made by the company,
- "b" is the total amount to be contributed under this Part by all insurance companies in respect of all fire districts for the year to which the return relates;
- "c" is the total amount of all premiums subject to contribution specified in returns under this Division made by all insurance companies in respect of that year.

(2) If the required contribution assessed in relation to an insurance company for a year is greater than the advance payment required to be made under this Division by the company for that year, the company must, not later than 1 July in the year in which the assessment is made or such later day as may be approved by the Director-General, pay to the Director-General the amount of the difference between the advance payment and the assessed amount.

(3) If the required contribution is assessed for a year in which the company did not make an advance payment under this Division, the company must, not later than 1 July in the year in which the assessment is made or such later day as may be approved by the Director-General, pay the amount assessed to the Director-General.

(4) If the required contribution assessed for a year is less than the amount of the advance payment required to be made under this Division by the company for that year, the Director-General is to credit the amount of the difference against:

- (a) any instalments that remain to be paid in respect of the advance payment for the year in which the assessment is made; and
- (b) any instalments that will be required to be paid in respect of the advance payment to be made during the following year,

in such manner as the Director-General may determine and, if any balance is outstanding at the end of the year referred to in paragraph (b), the Director-General is to pay the amount outstanding to the company not later than the next 31 January.

(5) If an insurance company:

- (a) is entitled to a credit referred to in subsection (4) in respect of an advance payment under this Division; and
- (b) did not receive, and was not entitled to receive, in the year in which the advance payment was made, any premium in respect of which it would have been required by this Division to submit a return; and
- (c) the liabilities of the company in relation to the contributions under this Part have been discharged,

the Director-General must, as soon as practicable, pay to the company the amount of the credit or, as the case may be, the balance outstanding.

#### **Liability of owner where foreign insurer involved**

57. (1) This section applies to a person who is the owner of property in respect of which an insurance company has received a premium referred to in section 55 if the insurance company is not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business.

(2) The Director-General may notify a person to whom this section applies that the person is to be responsible for the contributions required to be paid by the insurance company under this Part because of premiums received by the company in respect of the person's property, and in such a case:

- (a) the person must pay to the Director-General any amounts that would otherwise be payable by the company under this Part in respect of those premiums; and
- (b) the provisions of this Division are to apply to the person as if the person were the insurance company that received those premiums, subject to any modification of those provisions required by the regulations.

(3) An owner who fails to pay such an amount within 30 days after it falls due is guilty of an offence.

Maximum penalty: 10 penalty units.

*Fire Brigades 1989*

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(4) The amount of such a payment may be deducted from any premium recoverable in the State by or on behalf of the company on the issue or renewal of any fire policy on the property or may be recovered from the company as a debt by the person making the payment.

(5) This section applies whether the premium concerned was received in or outside the State.

**Returns by insurance companies**

**58.** (1) An insurance company must during March in each calendar year, or at such other time during the calendar year as the Director-General may notify in the Gazette, submit to the Director-General:

- (a) a return in the prescribed form showing the total amount of premiums received by or due to the company for the previous calendar year in respect of the insurances against loss of or damage to any property in the State under the classes of policies specified in Schedule 1; and
- (b) an auditor's certificate that relates to the return and complies with subsection (2).

(2) The auditor's certificate must be in the prescribed form and be given by:

- (a) a registered company auditor within the meaning of the Companies (New South Wales) Code; or
- (b) a person not resident in the State who has qualifications that, in the opinion of the Director-General, are appropriate for the giving of the certificate.

(3) An insurance company that ceases to receive, and to be entitled to receive, any premiums in respect of which it would have been required by this section to submit a return must, within 30 days, notify the Director-General accordingly in writing.

(4) If a notification under subsection (3) is received by the Director-General:

- (a) before 1 July in a calendar year - the company is not discharged from its liability to pay any unpaid instalments of its advance payment under section 55 for that year; or

(b) on or after 1 July in a calendar year - the company is not discharged from its liability to pay any unpaid instalments of its advance payment for that year or its advance payment for the next calendar year.

(5) An insurance company is guilty of an offence if it:

(a) fails to lodge a return or notify the Director-General as required by this section; or

(b) lodges a return under this section that is false or misleading in a material particular.

Maximum penalty:

(a) under paragraph (a) - 5 penalty units;

(b) under paragraph (b) - 20 penalty units.

#### **Definition of "total amount of premiums"**

59. For the purposes of this Division:

"total amount of premiums" includes any brokerage or commission paid or due to be paid or allowed on:

(a) any such premium; or

(b) any bonuses or return premiums allowed in respect of any policy of insurance the subject of any such premium; or

(c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to any other insurance company in New South Wales,

but does not include:

(d) stamp duty payable in respect of any policy of insurance the subject of any such premium; or

(e) any such bonuses or return premiums, or such part of the premiums received by or due to the company, as is paid or due to be paid by way of reinsurance by the company to any other insurance company in New South Wales.

#### **Audit of accounts of insurance companies**

60. (1) At the request of the Minister, the Auditor-General is to examine and audit, or cause to be examined and audited, the accounts (and any books and documents relating to the accounts) of any insurance company liable to pay contributions under this Part.

*Fire Brigades 1989*

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(2) The examination and audit is to be in respect of matters relating to or arising out of the provisions of this Part.

(3) The Auditor-General is to forward a report on the audit to the Minister as soon as practicable after it is completed.

(4) It is an offence for a person to:

- (a) obstruct the Auditor-General, or any other person acting on behalf of the Auditor-General, when exercising functions under this section; or
- (b) fail without lawful excuse, when requested to do so for the purposes of this section by the Auditor-General or a person so acting, to produce any account, book or record in his or her possession or under his or her control or to answer any question.

Maximum penalty: 50 penalty units.

**Returns by owners of property**

61. (1) If an insurance company not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business holds a risk in respect of property within an area to which this Act applies, the owner of the property must during March in each year, or at such other time as the Director-General may direct and notify in the Gazette, furnish a return to the Director-General.

(2) The return must show the amount of the premiums paid by the owner in respect of the property to the company during the previous 12 months or such other period as the Director-General may direct.

(3) A person who fails to lodge a return as required by this section is guilty of an offence.

Maximum penalty: 20 penalty units.

**Division 4 - Appropriation of estimated expenditure**

**Special appropriation**

62. (1) There is appropriated out of the Consolidated Fund, for each financial year, the amount determined under Division 1 as estimated fire brigade expenditure for that year reduced as required by section 47.

## *Fire Brigades 1989*

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(2) Amounts appropriated by this section are to be issued and applied for or towards meeting fire brigade expenditure during the financial year to which the appropriation relates.

(3) Any amount which has not been so applied before the end of that financial year is to be paid into the Working Account.

### **Department's Working Account**

63. (1) The Treasurer is to establish a working account for the Department within the Special Deposits Account.

(2) There is to be paid into the Working Account:

- (a) all amounts paid to the Director-General in connection with the operation of this Act (except contributions payable under this Part); and
- (b) interest paid by the Treasurer, at the rate agreed by the Treasurer and the Minister, on the monthly balance of the New South Wales Fire Brigades Capital Fund; and
- (c) any amount paid to the Director-General under section 56 (Assessments and adjustments); and
- (d) any amount paid into the Working Account under section 62 (3) (unexpended appropriation).

(3) There is payable from the Working Account:

- (a) any amounts required to meet fire brigade expenditure; and
- (b) any amounts payable by the Director-General under section 56 (Assessments and adjustments).

### **New South Wales Fire Brigades Capital Fund**

64. (1) There is to be established in the Special Deposits Account in the Treasury a New South Wales Fire Brigades Capital Fund.

(2) There is to be paid into the Fund money required to be paid into the Fund by clause 6 of Schedule 4.

(3) Payments may be made from the Fund, with the consent of the Treasurer, for or towards meeting expenditure incurred under the authority of this Act.

*Fire Brigades 1989*

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**PART 6 - ADMINISTRATION**

**Division 1 - The Department**

**Establishment of Department**

65. (1) There is established by this Act a Department of the Government with the name of "New South Wales Fire Brigades".

(2) The Department is to be regarded as having been established under section 49 of the Constitution Act 1902, and nothing in this section affects the powers conferred by that section in relation to the Department.

**Staff of Department etc.**

66. (1) Such staff as may be necessary to enable the Director-General to exercise the Director-General's functions are to be employed under Part 2 of the Public Sector Management Act 1988.

(2) Subsection (1) does not apply to the members of permanent fire brigades.

(3) The Director-General may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

(4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the Department.

**Chief Officer**

67. (1) The Chief Officer is subject to the control and direction of the Director-General.

(2) The Chief Officer may enforce compliance with this Act and the regulations and the directions of the Director-General in that regard.

(3) The Chief Officer is responsible for maintaining the efficiency, discipline and good conduct of members of fire brigades.

**Division 2 - Fire fighters**

**Definition of "Authority"**

68. In this Division:

**"Authority"** means the Public Employment Industrial Relations Authority.

**Appointment etc. of fire fighters**

**69.** (1) The Director-General may appoint such persons as may be necessary to provide the members of fire brigades for the purposes of this Act.

(2) A member of a fire brigade is, when acting as such a member, to be considered to be employed by the Government of New South Wales in the service of the Crown.

(3) Except as provided by section 70, the Director-General is to have and may exercise all the functions of employer of the members of fire brigades including (but without being limited to) functions concerning:

- (a) dismissal, suspension or reinstatement of employees; and
- (b) discipline, promotion and transfer of employees.

**Authority is to be employer for certain purposes**

**70.** (1) The Authority is, for the purposes of any proceedings relating to members of permanent or volunteer fire brigades held before a competent tribunal having jurisdiction to deal with industrial matters, to be taken to be the employer of those persons.

- (2) This section does not apply to proceedings relating to:
- (a) the dismissal, suspension or reinstatement of members of permanent or volunteer fire brigades; or
  - (b) the powers of the Director-General with respect to the discipline, promotion or transfer of those members.

**Authority may fix salaries, wages etc.**

**71.** (1) The Authority may from time to time make determinations fixing:

- (a) the salaries, wages and other remuneration of members of permanent fire brigades; and
- (b) the payments to be made to members of volunteer fire brigades.

(2) The salary, wages or other remuneration of a member of a permanent fire brigade and the payments to be made to a member of a volunteer fire brigade are, except in so far as provision is otherwise

*Fire Brigades 1989*

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made by law, such as may be fixed by a determination made under this section.

(3) A person may sue for and recover from the Crown the amount of remuneration or payments to which the person is entitled, as determined under this section.

**Authority may enter into agreements**

72. (1) The Authority may enter into an agreement with any association or organisation representing a group or class of members of permanent or volunteer fire brigades with respect to industrial matters.

(2) Any such agreement binds all persons in the class or group affected by the agreement, and no such member of a permanent or volunteer fire brigade (whether or not a member of the association or organisation with which the agreement was entered into) has any right of appeal against the terms of the agreement.

**Director-General to give effect to orders, agreements etc.**

73. The Director-General is to give effect to any order or determination made by a competent tribunal in any proceedings referred to in section 70 and any agreement referred to in section 72.

**Regulations relating to members of fire brigades**

74. (1) The regulations may make provision for or with respect to the employment of members of permanent fire brigades and the service of members of volunteer fire brigades, including the conditions of that employment and service and the discipline of members.

(2) Any such regulations relating to conditions of employment or service, or discipline:

- (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Authority is a party; and
- (b) have effect despite any determination of the Authority under section 71 (Authority may fix salaries, wages etc.).

### **Division 3 - The Advisory Council**

#### **Constitution of Council**

**75.** (1) There is constituted by this Act the New South Wales Fire Brigades Advisory Council.

(2) The Council is to consist of 6 members, being:

- (a) the Director-General, who is to be the Chairperson of the Council;
- (b) the Chief Officer;
- (c) a person appointed by the Minister to represent insurance companies in New South Wales, being a person selected by the Minister from a panel of 3 persons nominated by the Insurance Council of Australia Limited;
- (d) a person appointed by the Minister to represent local government in New South Wales, being a person selected by the Minister from a panel of 3 persons nominated jointly by the Local Government Association of New South Wales and the Shires Association of New South Wales;
- (e) a person appointed by the Minister on the nomination of the Treasurer;
- (f) a person appointed by the Minister, being a person who in the Minister's opinion has expertise in the field of fire prevention and control.

(3) Schedule 2 has effect with respect to the members and procedure of the Council.

(4) If a body fails to nominate a panel of persons for the purposes of an appointment under subsection (2) (c) or (d) within a reasonable time after being requested to do so by the Minister, the Minister may appoint a person of the Minister's own choice.

#### **Functions of Council**

**76.** (1) The function of the Council is to advise the Minister on any matter relating to the development, co-ordination, administration and regulation throughout the State of fire brigade services provided under the authority of this Act.

(2) Any such advice may be given either at the request of the Minister or without any such request.

*Fire Brigades 1989*

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(3) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

**Committees of Council**

77. (1) The Council may, with the approval of the Minister, establish committees to assist it in connection with the exercise of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

**PART 7 - GENERAL****Protection from liability**

78. A matter or thing done by the Minister, the Director-General, the Chief Officer, any member of staff of the Department, any member of a fire brigade or any person acting under the authority of the Director-General does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject such a person personally, or the Crown, to any action, liability, claim or demand.

**Resumption etc. of land under Public Works Act**

79. Fire brigade premises are to be considered to be public works for the purposes of section 40 of the Public Works Act 1912 and the Minister is, despite that section, to be the constructing authority referred to in that section.

**Information to policy holders**

80. (1) This section applies to a policy of insurance that:

- (a) is subject to the requirement for a contribution under Part 5; and
- (b) is a policy of a class described in Part A of Schedule 1.

(2) An insurance company is not to issue to a person any invoice or other statement as to the premium payable in respect of the renewal

of a policy of insurance to which this section applies unless the statement also indicates how much of the premium is estimated to be attributable to the total of:

- (a) the required contribution under Part 5; and
- (b) any contribution required under the Bush Fires Act 1949.

Maximum penalty: 10 penalty units.

#### **Expenses incurred by agents and trustees**

**81.** (1) All expenditure necessarily or properly incurred and paid under this Act by an agent for an insurance company (within the meaning of Part 5) for or in respect of the company:

- (a) may be deducted by the agent from any money held by the agent for the company; or
- (b) may be recovered by the agent from the company as a debt in a court of competent jurisdiction.

(2) All expenditure necessarily or properly incurred and paid under this Act by an agent for a person in respect of any houses, land or premises for which the agent is agent of the person:

- (a) may be deducted by the agent from any money held by the agent for the person; or
- (b) may be recovered by the agent from the person as a debt in a court of competent jurisdiction.

(3) A trustee of any house, land or premises may apply any of the funds under the trustee's control in defraying any charges necessarily or properly incurred by the trustee under this Act in respect of the house, land or premises.

#### **Recovery of charges**

**82.** (1) Any charges payable under this Act to the Director-General may be recovered by the Director-General in a court of competent jurisdiction as a debt due to the Crown.

(2) In any proceedings to recover such a charge, a certificate signed by the Director-General to the effect that a specified amount is payable by the defendant to the Director-General is evidence of the matter certified.

*Fire Brigades 1989*

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**Delegation**

83. (1) The Director-General may delegate to an authorised person any of the Director-General's functions under this Act, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Director-General if the delegate is authorised in writing to do so by the Director-General.

(3) In this section:

"authorised person" means:

- (a) the Chief Officer; or
- (b) a member of staff of the Department; or
- (c) a member of a fire brigade.

**Proceedings for offences**

84. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

85. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) enabling the Director-General, the Chief Officer, and the fire brigades to exercise the functions conferred on them by this Act or the regulations;
- (b) prescribing generally the duties of members of fire brigades;
- (c) the maintenance of the efficiency, discipline, and good conduct of members of fire brigades;
- (d) the formation of volunteer fire brigades, and the regulation and inspection of fire brigades and their premises and equipment;
- (e) prohibiting or regulating the lighting of fires where it would be likely to be dangerous to buildings;
- (f) prescribing the forms of notices and other documents to be used in carrying out this Act and the regulations;

- (g) prescribing for various classes of buildings the means to be provided to enable occupants to escape from the building in case of fire, and the inspection and maintenance of those means of escape;
  - (h) prescribing for any building used for a purpose which in the opinion of the Director-General is of a hazardous nature or for any building the construction or use of which is, in the opinion of the Director-General, likely to allow the rapid spread of fire, the installation of fire alarms, sprinklers, and other devices or appliances approved by the Director-General designed to prevent or retard the spread of fire, and for the inspection and maintenance of those alarms, sprinklers, appliances, and devices;
  - (i) prohibiting or regulating the storage of flammable matter in, on or under any part of a building;
  - (j) prohibiting or regulating the storage of flammable matter in light areas or in close proximity to any building in any local government area to which this Act applies;
  - (k) regulating the deposit of flammable matter in yards or on vacant blocks of land in any local government area to which this Act applies;
  - (l) regulating the burning off of waste flammable matter in any local government area to which this Act applies.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units and, in the case of a continuing offence, by a penalty not exceeding 1 penalty unit for each day the offence continues.

#### **Repeals and amendments**

**86.** (1) The following Acts are repealed:

- Fire Brigades Act 1909 No. 9;
- Fire Brigades (Amendment) Act 1941 No. 23;
- Fire Brigades (Amendment) Act 1988 No. 54.

(2) Each Act specified in Schedule 3 is amended as set out in that Schedule.

#### **Savings and transitional provisions**

**87.** Schedule 4 has effect.

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*Fire Brigades 1989***SCHEDULE 1 - PROPORTION OF PREMIUMS SUBJECT TO CONTRIBUTION**

(Secs. 55, 58)

COLUMN 1 <i>Classes of policies of insurance</i>	COLUMN 2 <i>Proportion of premiums subject to contribution</i>
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**PART A**

- |   |             |
|---|-------------|
| 1. Any insurance of property including consequential loss but not including any insurance of a class specified elsewhere in this Schedule ..... | 80 per cent |
| 2. Houseowners and householders, however designated (buildings or contents or both) ...   | 50 per cent |

**PART B**

- |  |              |
|--|--------------|
| 3. Personal combined on personal jewellery and clothing, personal effects and works of art ..  | 10 per cent  |
| 4. Motor vehicle and motor cycle .....   | 2.5 per cent |
| 5. Marine and baggage - any insurance confined to maritime perils or confined to risks involving transportation on land or in the air, including storage incidental to transportation by sea, land or air, but not including *static risks (which are to be declared under Item 1) | 1 per cent   |

[Note: \*static risks includes all movements of goods and/or stock and/or material associated with processing or storage operations at any situation.]

*Fire Brigades 1989*

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**SCHEDULE 1 - PROPORTION OF PREMIUMS SUBJECT TO CONTRIBUTION - *continued***

6. (a) Combined fire and hail on growing crops .....	1 per cent
(b) Live stock .....	1 per cent
7. Aviation hull .....	Nil
8. Any insurance solely covering:	
(a) Loss by theft .....	Nil
(b) Plate glass .....	Nil
(c) Machinery - confined to mechanical breakdown and/ or consequential loss arising from mechanical breakdown .....	Nil
(d) Explosion or collapse of boiler and pressure vessels - confined to damage other than by fire .....	Nil

**SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF COUNCIL**

(Sec. 75)

**Definitions**

1. In this Schedule:

"**appointed member**" means a member of the Council other than an ex-officio member;

"**ex-officio member**" means the Director-General or the Chief Officer.

**Deputies of members**

2. (1) An ex-officio member may, from time to time, appoint a person to be his or her deputy, and the member or the Minister may revoke any such appointment.

(2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

*Fire Brigades 1989*

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**SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF COUNCIL - *continued***

- (3) In the absence of a member, the member's deputy:
- (a) may, if available, act in the place of the member; and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (4) The deputy of the Director-General does not (because of this clause) have the Director-General's functions as Chairperson.
- (5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

**Terms of office**

3. Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Allowances**

4. An appointed member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

**Vacancy in office of appointed member**

5. (1) The office of an appointed member becomes vacant if the member:
- (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last

SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF COUNCIL - *continued*

of those meetings, the member is excused by the Council for having been absent from those meetings; or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

**Filling of vacancy in office of appointed member**

6. If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Effect of certain other Acts**

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from

*Fire Brigades 1989*

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SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF COUNCIL - *continued*

accepting and retaining any remuneration payable to the person under this Act as an appointed member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**General procedure**

8. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

**Quorum**

9. The quorum for a meeting of the Council is 4 members.

**Presiding member**

10. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

11. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

**First meeting**

12. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

**SCHEDULE 3 - AMENDMENT OF OTHER ACTS**

(Sec. 86)

**Bush Fires Act 1949 No. 31**

- (1) Sections 3, 13, 22, 30, 32, 51A, 52:  
Omit "1909" wherever occurring, insert instead "1989".
- (2) Section 17 (**Emergency fire controllers and deputy emergency fire controllers**):  
In section 17 (9), omit "officers and employees of the Board of Fire Commissioners of New South Wales and", insert instead "officers of New South Wales Fire Brigades and the members of any permanent or volunteer fire brigade, officers and employees of".
- (3) Section 39 (**Constitution of Bush Fire Council**):  
In section 39 (2) (d), omit "Board of Fire Commissioners of New South Wales", insert instead "Director-General of New South Wales Fire Brigades".
- (4) Section 41A (**Co-ordination of planning**):  
In section 41A (1), omit "the Board of Fire Commissioners of New South Wales", insert instead "New South Wales Fire Brigades".
- (5) Section 41F (**Functions of Chief Co-ordinator**):
  - (a) In section 41F (1), omit "officers of the Board of Fire Commissioners of New South Wales", insert instead "officers of New South Wales Fire Brigades and the members of any permanent or volunteer fire brigade".
  - (b) In section 41F (3), omit "officers and employees of the Board of Fire Commissioners of New South Wales", insert instead "officers of New South Wales Fire Brigades and the members of any permanent or volunteer fire brigade".

*Fire Brigades 1989*

SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued*

(6) Section 48 (**Proceedings not to lie against persons acting bona fide under and for the purposes of this Act**):

Omit "an officer or employee of or a person acting under the authority of the Board of Fire Commissioners of New South Wales", insert instead "a member of any permanent or volunteer fire brigade or an officer or employee of or a person acting under the authority of New South Wales Fire Brigades or the Director-General of New South Wales Fire Brigades".

**Jury Act 1977 No. 18**

Schedule 2 (**Persons ineligible to serve as jurors**):

Omit item 13, insert instead:

13. The Chief Officer of Fire Brigades, any Deputy Chief Officer of Fire Brigades and any members of a permanent fire brigade under the Fire Brigades Act 1989.

**Public Finance and Audit Act 1983 No. 152**

(1) Schedule 2 (**Statutory Bodies**):

Omit "Board of Fire Commissioners of New South Wales".

(2) Schedule 3 (**Departments**):

After the matter relating to the National Parks and Wildlife Service, insert:

New South Wales  
Fire Brigades ..... Director-General  
of the Department

**Public Sector Management Act 1988 No. 33**

(1) Schedule 1 (**Departments**):

After the matter relating to the Department of Minerals and Energy, insert:

New South Wales  
Fire Brigades ..... Director-General  
of the Department

**SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued***

**(2) Schedule 3 (Declared authorities):**

Omit "Board of Fire Commissioners of New South Wales".

**(3) Schedule 3A (Chief Executive Positions):**

Omit "President of the Board of Fire Commissioners of New South Wales".

**State Authorities Non-contributory Superannuation Act 1987 No. 212**

**Schedule 1 (Employers):**

Omit "Board of Fire Commissioners of New South Wales", insert instead "The Director-General of New South Wales Fire Brigades".

**State Authorities Superannuation Act 1987 No. 211**

**Schedule 1 (Employers):**

Omit "Board of Fire Commissioners of New South Wales", insert instead "The Director-General of New South Wales Fire Brigades".

**Valuation of Land Act 1916 No. 2**

**Section 67 (Valuation for the purposes of Fire Brigades Act 1989):**

In section 67 (1), omit "1909", insert instead "1989".

**Workers Compensation Act 1987 No. 70**

**Schedule 1 (Deemed employment of workers):**

- (a) In clause 13 (1), omit "Fire Brigades Act 1909", insert instead "Fire Brigades Act 1989".
- (b) Omit clause 13 (1) (b), insert instead:
  - (b) the Director-General or any officer of New South Wales Fire Brigades or any member of a permanent fire brigade,
- (c) In clause 13 (1), omit "employed by the Board of Fire Commissioners of New South Wales", insert instead

SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued*

"employed by the Director-General of New South Wales Fire Brigades".

**Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No. 83**

Section 18 (**Exclusion from Part - fire districts**):

In section 18 (1), omit "1909", insert instead "1989".

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 87)

**Part 1 - General**

**Definitions**

1. In this Schedule:

"**appointed day**" means the day on which the repealed Act is repealed;

"**dissolved board**" means the board under the repealed Act that is dissolved by clause 3;

"**repealed Act**" means the Fire Brigades Act 1909 as in force immediately before its repeal.

**Regulations**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS

*- continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2 - Dissolution of board of Fire Commissioners**

**Dissolution of board**

3. (1) On the appointed day, the board of Fire Commissioners of New South Wales constituted under the repealed Act is dissolved.

(2) A person who, immediately before the appointed day, held office as a member of the dissolved board:

- (a) ceases to hold that office; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

**Former president to be Director-General**

4. (1) On the appointed day, the person who ceases to hold office as president of the dissolved board is to be regarded as having been appointed as the Director-General pursuant to the Public Sector Management Act 1988.

(2) The appointment is to be considered to be an appointment for the remainder of the president's term of office as president of the dissolved board.

**References to dissolved board etc.**

5. On and from the appointed day, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the board under the repealed Act is to be read as a reference to the Director-General; or
- (b) to officers or employees (however expressed) of the board under the repealed Act is to be read as a reference to the officers of the Department and the members of permanent fire brigades.

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS  
- *continued*

**Transfer of assets, liabilities etc. to the Crown**

6. (1) In this clause:

"**assets**" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes choses in action and documents;

"**liabilities**" means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

(2) On the appointed day:

(a) the assets and liabilities of the dissolved board (except those to which subclause (3) applies) become assets and liabilities of the Crown; and

(b) all proceedings by or against the dissolved board pending immediately before that day become proceedings pending by or against the Crown.

(3) On the appointed day, the cash assets (including cash investments) of the dissolved board are to be paid into the New South Wales Fire Brigades Capital Fund established under section 64.

**Continuation of protection from liability**

7. Section 46 (Bona fide exercise of powers protected) of the repealed Act continues to apply, despite its repeal, to and in respect of the exercise of a power under the repealed Act before its repeal.

**Actions etc. of dissolved board**

8. Any act, matter or thing done or omitted to be done by or in respect of the dissolved board is (to the extent that the act, matter or thing has any force or effect immediately before the appointed day) to be taken to have been done or omitted to be done by or in respect of the Director-General.

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS  
- *continued*

**Part 3 - Staff**

**Definitions**

9. In this Part:

"**former board employee**" means a person employed under section 27 of the repealed Act immediately before the appointed day (not including a permanent fire brigade member);

"**former executive officer**" means a person who immediately before the appointed day held office as the chief officer or as a deputy chief officer under the repealed Act;

"**permanent fire brigade member**" means a person who immediately before the appointed day was a member of the fire fighting section of the dissolved board, other than a former executive officer.

**Appointment of former permanent fire brigade members**

10. (1) A permanent fire brigade member is, on the appointed day, to be regarded as having been appointed by the Director-General as a member of a permanent fire brigade at the rank and designation applicable to the person as a permanent fire brigade member immediately before the appointed day.

(2) Subject to this Act, the appointment is to be regarded as being subject to the same conditions of employment (including as to salary or wages, and allowances) as applied to the person as a permanent fire brigade member immediately before the appointed day.

**Appointment of former executive officers**

11. On the appointed day:

(a) the former executive officer who held office as chief officer under the repealed Act is to be regarded as having been appointed as the Chief Officer of Fire Brigades under the Public Sector Management Act 1988; and

(b) each of the other former executive officers is to be regarded as having been appointed as a Deputy Chief Officer of Fire Brigades under the Public Sector Management Act 1988.

*Fire Brigades 1989***SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS**  
*- continued***Transfer of other officers etc. to Public Service**

12. (1) On the appointed day, a former board employee is entitled to be appointed to a position in the Public Service in accordance with this clause.

(2) The Governor may, on the recommendation of the Minister, by order published in the Gazette, transfer a former board employee to a position in the Public Service.

(3) A person who is the subject of such an order is to be regarded for all purposes as having become an officer of the Public Service, in accordance with the terms of the order, on the appointed day.

(4) This clause has effect despite anything in the Public Sector Management Act 1988 and a person transferred under this clause is to be regarded as having been transferred in accordance with any relevant provision of that Act.

**Employment conditions of persons transferred to Public Service**

13. (1) This clause applies to a person who becomes an officer of the Public Service because of clause 12.

(2) Such a person is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the person as a former board employee immediately before the appointed day, until the salary, wages or allowances is or are varied or altered:

- (a) by an award of a competent tribunal; or
- (b) by an industrial agreement; or
- (c) by or under the Public Sector Management Act 1988; or
- (d) otherwise in accordance with law.

(3) Except as provided by this Schedule, if any condition of employment of the person was, immediately before the appointed day, regulated by an award of a competent tribunal or by an industrial agreement applicable to the person as a former board employee, the condition (so long as it does not conflict with any provision of the Public Sector Management Act 1988 or the regulations under that Act) is to continue to apply to the person until it is regulated:

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS  
- *continued*

- (a) by an award of a competent tribunal; or
- (b) by an industrial agreement; or
- (c) by or under the Public Sector Management Act 1988; or
- (d) otherwise in accordance with law.

**Preservation of rights**

14. (1) This clause applies to a person who:
- (a) was a permanent fire brigade member to whom clause 10 applies; or
  - (b) was a former board employee or former executive officer and became an officer of the Public Service because of clause 11 or 12.

(2) Such a person:

- (a) is to retain any rights accrued or accruing to him or her as a permanent fire brigade member, a former board employee or a former executive officer; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the appointed day; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the person had continued to be a permanent fire brigade member, a former board employee or a former executive officer, as the case requires.

(3) Service as an officer of the Public Service or member of a permanent fire brigade under this Act is to be regarded as service as a permanent fire brigade member, a former board employee or a former executive officer, as the case requires, for the purposes of any law:

- (a) under which any such rights accrued; or
- (b) under which he or she continues to contribute to any such superannuation scheme; or

*Fire Brigades 1989*

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**SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS**  
*- continued*

- (c) by which any such entitlement is conferred.
- (4) For the purposes of the superannuation scheme to which the person is entitled to contribute under this clause, the person is to be regarded as an officer or employee and the Government of New South Wales is to be regarded as the employer.
- (5) If the person would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:
- (a) he or she is not so entitled on becoming (whether on appointment as a member of a permanent fire brigade or as an officer in the Public Service, or at any later time while such a member of staff or officer) a contributor to any other superannuation scheme; and
  - (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Government in any case where he or she becomes a contributor to any such other superannuation scheme.
- (6) Subclause (5) does not prevent the payment to the officer or member of staff (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

**Part 4 - Miscellaneous****Continuity of service as volunteer fire fighter**

15. (1) Service by a person as a member of a volunteer fire brigade under the repealed Act is to be considered to have been service as such a member under this Act.
- (2) Service as a member of a volunteer fire brigade under this Act is to be regarded as subject to the same conditions of service (including as to payments for service) as applied to the member immediately before the appointed day until those conditions are varied or altered:

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS  
- *continued*

- (a) by an award of a competent tribunal; or
- (b) by an industrial agreement; or
- (c) otherwise in accordance with law.

**Adjustment of contributions for 1990**

16. (1) As soon as practicable after the appointed day, the Director-General is to make an estimate of fire brigade expenditure (within the meaning of Part 5) in each fire district for the 1990 calendar year.

(2) For the purposes of Part 5:

- (a) each such amount is to be considered to be the amount to be contributed in respect of the fire district concerned for the 1990 calendar year; and
- (b) the total of those amounts is to be considered to be the total amount to be contributed for the 1990 calendar year.

(3) The Director-General is then to make the necessary adjustments to the contributions required to be paid as a result of this clause and is to notify contributors of the adjusted contributions.

(4) The adjusted contributions so notified become the contributions payable under Part 5 for the 1990 calendar year.

(5) Subject to this clause, contributions payable under Part 4 of the repealed Act immediately before its repeal become payable under Part 5 of this Act and may be recovered accordingly.

**Contributions paid under repealed Act**

17. Any contribution paid to the board under Part 4 of the repealed Act is to be regarded as having been paid to the Director-General under Part 5 of this Act.

**Continuity of fire brigades**

18. (1) A permanent fire brigade established and maintained by the dissolved board and in existence immediately before the appointed day is, on that day, to be regarded as having been established by the Director-General.

*Fire Brigades 1989*

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SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS  
- *continued*

(2) Any association of persons that immediately before the appointed day was a volunteer fire brigade within the meaning of the repealed Act, is, on that day, to be considered to have been approved by the Director-General under this Act as a volunteer fire brigade.

**Fire districts**

19. An area that was a fire district under the repealed Act immediately before the appointed day is, on that day, to be regarded as having been constituted as a fire district under section 5 of this Act.

**By-laws and regulations**

20. Any regulations or by-laws in force under the repealed Act immediately before the appointed day are, on that day, to be regarded as regulations made under this Act.

**Action under Public Sector Management Act 1988**

21. Action may be taken under the Public Sector Management Act 1988 in relation to the Department before the appointed day.

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[*Minister's second reading speech made in -  
Legislative Assembly on 15 November 1989  
Legislative Council on 29 November 1989*]