



New South Wales

# Fire Brigades Regulation 2008

under the

Fire Brigades Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fire Brigades Act 1989*.

NATHAN REES, M.P.,  
Minister for Emergency Services

## Explanatory note

The object of this Regulation is to remake, with some amendments, the *Fire Brigades Regulation 2003* which is repealed on 1 September 2008 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following matters:

- (a) the appointment and conditions of service of firefighters,
- (b) the functions and duties of firefighters,
- (c) misconduct by firefighters,
- (d) disciplinary action against firefighters,
- (e) the awarding of bravery and service awards by the Commissioner,
- (f) the charges payable for certain services performed by firefighters, including attending at hazardous material incidents and false fire alarms,
- (g) other matters relating to the administration of New South Wales Fire Brigades.

New provisions in this Regulation provide:

- (a) for remedial action to be taken against a firefighter who is guilty of misconduct, as an alternative to disciplinary action, and
- (b) that a firefighter who makes a false or misleading statement in an application for appointment as a firefighter is guilty of misconduct, and
- (c) for the recovery of additional costs incurred by the New South Wales Fire Brigades in the performance of certain services, including providing fire safety reports.

This Regulation is made under the *Fire Brigades Act 1989*, including sections 74 and 85 (the general regulation-making power).

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Fire Brigades Regulation 2008

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## Fire Brigades Regulation 2008

under the

Fire Brigades Act 1989

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Fire Brigades Regulation 2008*.

#### 2 Commencement

This Regulation commences on 1 September 2008.

**Note.** This Regulation replaces the *Fire Brigades Regulation 2003* which is repealed on 1 September 2008 under section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

In this Regulation:

***approved*** means approved by the Commissioner.

***Commissioner's Orders*** means the written instructions in force under clause 4.

***corrupt conduct*** has the same meaning as it has in Part 3 of the *Independent Commission Against Corruption Act 1988*.

***departmental premises*** means a fire station or other premises leased or operated by NSW Fire Brigades.

***departmental property*** includes property used by or for the purposes of NSW Fire Brigades.

***fire appliance*** means any vehicle that forms part of the equipment of NSW Fire Brigades and that is equipped with an audible warning device and flashing lights.

***firefighter*** means a permanent firefighter or a retained firefighter.

***NSW Fire Brigades*** means New South Wales Fire Brigades established by the Act as a Department of the Government.

***officer*** means a firefighter of a rank that, by operation of clause 7 (2), is an officer rank for the purposes of this Regulation.

***permanent firefighter*** means a member of a permanent fire brigade.

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*record* means any document or other source of information compiled, recorded or stored in written form, on film, by electronic process or in any other manner or by any other means.

*retained firefighter* means a person who is classified by NSW Fire Brigades as a retained firefighter.

*the Act* means the *Fire Brigades Act 1989*.

### 4 Commissioner's Orders

- (1) The Commissioner may, by order in writing, issue instructions with respect to the efficiency, discipline and good conduct of firefighters.
- (2) The instructions may be published under the title of "In Orders" or "Standing Orders".
- (3) The Commissioner must take steps to ensure that all current In Orders and Standing Orders are brought to the attention of all firefighters.

### 5 Areas of operation

- (1) The Commissioner is to assign to each fire brigade a fire district or part of a fire district within which the brigade is responsible for preventing and extinguishing fires.
- (2) A brigade may operate beyond the area assigned to it, and must do so in accordance with the Commissioner's Orders.

### 6 Notes

Notes included in this Regulation do not form part of this Regulation.

## Part 2 Appointments and conditions of service

### 7 Ranks of firefighter

- (1) The Commissioner may establish such ranks of firefighters as the Commissioner considers appropriate.
- (2) Any rank declared by the Commissioner to be an officer rank is an officer rank for the purposes of this Regulation.

### 8 Firefighters' positions

The Commissioner may create, abolish or otherwise deal with any firefighter's position.

### 9 Appointment as a permanent firefighter

- (1) An application for appointment as a permanent firefighter must be in the approved form.
- (2) Before appointing an applicant as a permanent firefighter, the Commissioner must be satisfied that the applicant:
  - (a) is medically and psychologically fit to exercise the functions of a firefighter, and
  - (b) has passed examinations and assessments set or nominated by the Commissioner for appointment as a permanent firefighter, and
  - (c) holds a current driver licence under the *Road Transport (Driver Licensing) Act 1998*, and
  - (d) is of good character, and
  - (e) is an Australian citizen or a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law, and
  - (f) is otherwise suitable for employment as a permanent firefighter.
- (3) An applicant for appointment as a permanent firefighter must produce any evidence with respect to the applicant's driving qualifications, citizenship or entitlement to reside in Australia that the Commissioner requires.
- (4) A successful applicant is to be appointed:
  - (a) except in the case of a former permanent firefighter—as a recruit firefighter, or
  - (b) in the case of a former permanent firefighter—to the rank that the Commissioner considers appropriate to the applicant's skill and experience.

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Clause 10 Fire Brigades Regulation 2008

Part 2 Appointments and conditions of service

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### 10 Appointment as a retained firefighter

- (1) An application for appointment as a retained firefighter must be in the approved form.
- (2) Before appointing an applicant as a retained firefighter, the Commissioner must be satisfied that the applicant:
  - (a) is medically and psychologically fit to exercise the functions of a firefighter, and
  - (b) has passed examinations and assessments set or nominated by the Commissioner for appointment as a retained firefighter, and
  - (c) holds a current driver licence under the *Road Transport (Driver Licensing) Act 1998*, and
  - (d) is of good character, and
  - (e) is an Australian citizen or a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law, and
  - (f) is otherwise suitable to be a retained firefighter.
- (3) An applicant for appointment as a retained firefighter must produce any evidence with respect to the applicant's driving qualifications, citizenship or entitlement to reside in Australia that the Commissioner requires.

### 11 Examinations and assessments

The Commissioner may set or nominate any examinations or assessments that the Commissioner considers appropriate as a requirement for promotion, transfer or appointment to a position.

### 12 Termination of appointment

- (1) The Commissioner may terminate a firefighter's appointment as a firefighter:
  - (a) if the firefighter is no longer medically or psychologically fit to exercise the functions of a firefighter, or
  - (b) if the firefighter is no longer a suitable person to exercise the functions of a firefighter.
- (2) The Commissioner may, without limiting subclause (1), terminate a firefighter's appointment as a firefighter of a particular rank:
  - (a) if the firefighter is no longer medically or psychologically fit to exercise the functions of a firefighter of that rank, or



- (b) if the firefighter is no longer a suitable person to exercise the functions of a firefighter of that rank, or
  - (c) at the firefighter's own request.
- (3) The Commissioner may, without limiting subclause (1), terminate a firefighter's appointment as a firefighter of a particular position:
  - (a) if the firefighter is no longer medically or psychologically fit to exercise the functions of a firefighter of that position, or
  - (b) if the firefighter is no longer a suitable person to exercise the functions of a firefighter of that position, or
  - (c) at the firefighter's own request.
- (4) The Commissioner may also terminate the services of any retained firefighter who, except when on approved leave or other authorised absence:
  - (a) for 3 consecutive months fails to attend drills appointed by the Commissioner or the officer in charge of the firefighter, or
  - (b) fails to attend the approved number or proportion of drills, fires or other incidents in any period of 6 months.
- (5) The Commissioner must terminate the appointment of a firefighter who is not an Australian citizen or who ceases to satisfy or does not satisfy the requirements of clause 9 (2) (e) or 10 (2) (e).
- (6) The termination of a firefighter's appointment to a particular rank operates to demote the firefighter to a rank determined by the Commissioner.
- (7) The Commissioner must cause notice of a proposed termination of appointment:
  - (a) as a firefighter, or
  - (b) to a particular rank, or
  - (c) to a particular position,to be given to the firefighter. That notice must specify the reasons for the proposed termination.
- (8) The Commissioner must:
  - (a) allow the firefighter to respond to the reasons for the proposed termination within a reasonable time specified in the notice of proposed termination, and
  - (b) consider any response by the firefighter before determining whether to terminate any appointment.

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- (9) The Commissioner must cause notice of the final reasons for a termination of appointment:
- (a) as a firefighter, or
  - (b) to a particular rank, or
  - (c) to a particular position,
- to be given to the firefighter.

### **13 Leave**

The granting of all leave is subject to the approval of the Commissioner.

## **Part 3 Functions of firefighters**

### **14 Contraventions of Part 3**

A contravention of this Part does not give rise to an offence but may be the subject of disciplinary proceedings under Part 4.

### **15 Firefighters to acquire and maintain knowledge of legislation, orders and functions**

- (1) A firefighter must acquire and maintain a thorough knowledge of, and must comply with the requirements of, the Act, this Regulation and the Commissioner's Orders.
- (2) A firefighter must acquire and maintain the knowledge and skills that are relevant to the performance of the firefighter's functions.

### **16 Honesty and truthfulness**

- (1) A firefighter must act honestly and truthfully in the performance of the firefighter's functions.
- (2) In particular, a firefighter must not in the capacity of a firefighter:
  - (a) wilfully or negligently make a false or misleading statement to a person, or
  - (b) knowingly make a false or misleading statement in any official record, or
  - (c) without good or sufficient cause, destroy or mutilate any official record or alter or erase any entry in it, or
  - (d) fail to account promptly for any money or property that comes into the firefighter's possession during the course of the firefighter's functions, or
  - (e) otherwise be concerned, whether directly or indirectly, in corrupt conduct.

### **17 Duty to obey orders and act fairly and responsibly**

A firefighter must not:

- (a) disobey or disregard any lawful order made or given by a person having the authority to make or give the order, or
- (b) be disrespectful or insolent to a person in authority over the firefighter, or
- (c) abuse the firefighter's authority by acting oppressively towards a subordinate, or
- (d) without good or sufficient reason, be absent from duty or be late for any parade, drill or other required attendance, or

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Part 3 Functions of firefighters

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- (e) through negligence, carelessness or malice, allow any loss, damage or injury to occur to any person or property, or
- (f) fail to report any matter, or make an entry in an official record, that it is the firefighter's duty to report or make.

### 18 Unacceptable behaviour

- (1) A firefighter must not:
  - (a) come on duty while under the influence of alcohol or a drug, or
  - (b) while on duty, consume, use or possess any alcohol or drug, or
  - (c) while on duty, gamble in circumstances that adversely affect the discipline or efficiency of NSW Fire Brigades, or
  - (d) smoke at a fire or drill, in any departmental premises or in any departmental vehicle, or
  - (e) smoke in any public place while in uniform, or
  - (f) while off duty, enter or remain on departmental premises without authority, or
  - (g) while on or off duty, by words or action, behave in a manner that is subversive of discipline or calculated to bring discredit on NSW Fire Brigades, or
  - (h) while on duty, by words or action, harass, intimidate or threaten another firefighter, or
  - (i) while on duty, by words or action, harass or discriminate against any person on the grounds of sex, marital status, pregnancy, age, ethnic or national origin, physical or intellectual impairment, sexual preference, transgender status, carer's responsibilities or any other ground in respect of which discrimination is prohibited by the *Anti-Discrimination Act 1977*.
- (2) The officer in charge of any departmental premises must refuse to permit a firefighter to come on duty if of the opinion that the firefighter is under the influence of alcohol or a drug to the extent that the firefighter is unable to exercise the functions of a firefighter.
- (3) In this clause:  
*drug* has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999* (paragraph (a) of the definition of *drug* in the Dictionary to that Act excepted).

### 19 Damage or misuse of departmental property

- (1) A firefighter must not wilfully or negligently damage any departmental property or fail to report promptly any such damage, however caused.

- (2) A firefighter must not use departmental property for an unauthorised purpose or be concerned, whether directly or indirectly, in unauthorised use of departmental property.

**20 Uniforms**

Uniform may be worn by a firefighter only in accordance with the Commissioner's Orders.

**21 Loss or damage to uniform or personal equipment**

- (1) A firefighter:
- (a) must take care of all articles of uniform and personal equipment issued to the firefighter, and
  - (b) may be required to meet the replacement cost of any article of uniform or equipment damaged or lost through the firefighter's negligence.
- (2) Before a firefighter leaves his or her employment or service, the firefighter must return all departmental property, uniform and equipment that is in the firefighter's possession, other than any article of uniform or equipment that the Commissioner permits the firefighter to retain.
- (3) The Commissioner may require a firefighter who fails to return any such property or who returns it in a damaged condition (other than damage due to fair wear and tear) to pay compensation for the loss or damage.
- (4) The amount of any such loss or damage may be offset from any money due to the firefighter with respect to the firefighter's service.

**22 Solicitation, acceptance or retention of rewards or other benefits**

A firefighter must not:

- (a) directly or indirectly solicit or accept a reward (whether the reward involves pecuniary gain, material gain, the provision of services, the provision of training or any other benefit) in connection with the exercise of the firefighter's functions, or
  - (b) retain any money received as a gratuity or payment from any person, or accept any address, presentation or testimonial, in connection with the firefighter's official position,
- without the prior written permission of the Commissioner.

**23 Disclosure of information**

A firefighter must not disclose any information obtained in the firefighter's capacity as a firefighter unless the disclosure is made:

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Part 3 Functions of firefighters

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- (a) in the exercise of the firefighter's functions, or
- (b) about factual matters that are generally available to the public, or
- (c) by an approved firefighter to media representatives concerning operations at a fire or other incident, or
- (d) at the direction or with the permission of the Commissioner, or
- (e) with other lawful excuse.

### **24 Public comment on administration**

A firefighter must not comment publicly on the administration of NSW Fire Brigades, except with the approval of the Commissioner.

### **25 Incompatible activities**

A firefighter must not engage in any activity outside the firefighter's functions as a firefighter if to do so would be incompatible with the performance of those functions.

### **26 Functions of firefighters**

The functions of each rank and position of firefighter are those determined for the time being by the Commissioner.

### **27 Performance of functions**

- (1) A firefighter must attend such drills as may be appointed by the Commissioner or the officer in charge of the firefighter.
- (2) A firefighter must perform all firefighting or other functions that the firefighter is lawfully directed to perform.
- (3) A firefighter must serve wherever the firefighter is directed by the Commissioner.

### **28 Recall of off-duty firefighters**

- (1) A firefighter who is off-duty (including a firefighter who is on leave) may be recalled to duty in an emergency unless the firefighter is on sick leave, in court or subject to a subpoena to appear in court.
- (2) A firefighter must ensure that the Commissioner is kept aware of where and how the firefighter may be contacted in an emergency.

### **29 Calls to fires, hazardous material incidents or other emergencies**

A firefighter receiving a call to a fire, hazardous material incident or other emergency is responsible for recording the details of the call and must make every effort to ensure an immediate response in accordance with the Commissioner's Orders.

**30 Occurrence book**

The officer in charge of a fire station must ensure that:

- (a) all events of significance relating to the operation of the fire station, and
  - (b) all other matters required by this Regulation or the Commissioner's Orders to be so recorded,
- are recorded in an occurrence book maintained at the fire station.

**31 Absence of firefighter from fire station**

- (1) A firefighter who is on duty at a fire station must not leave the fire station without the permission of the officer in charge of the fire station or, if the firefighter is an officer, a more senior officer.
- (2) A firefighter who leaves a fire station must record in the occurrence book the fact of the absence, the reason for the absence and the name of the person giving permission to leave the fire station.
- (3) This clause does not apply to a firefighter who leaves the fire station to attend to a fire call or other incident or to engage in official functions away from the fire station.

**32 Operation of fire appliances**

When responding to a call to a fire, hazardous material incident or other emergency the driver of a fire appliance must ensure that the appliance's lights and audible warning devices are operated to give the best practicable warning to the public.

**33 Security on fire duty and watch duty**

A firefighter on fire duty or watch duty at the site of a fire, hazardous material incident or other emergency must:

- (a) ensure that:
  - (i) any premises at the site are not entered, and
  - (ii) goods are not interfered with or removed from any such premises,otherwise than by persons who can establish their identity and authority to do so, and
- (b) report any breach of security to the officer in charge at the site.

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Part 4 Disciplinary provisions

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### Part 4 Disciplinary provisions

#### Division 1 Misconduct

##### 34 Definitions

In this Part:

**nominated officer** means the officer nominated by the Commissioner for the purposes of this Part.

**remedial action**, in relation to a firefighter, means any one or more of the following:

- (a) counselling,
- (b) training and development,
- (c) monitoring the firefighter's conduct or performance,
- (d) implementing a performance improvement plan,
- (e) the issuing of a warning to the firefighter that certain conduct is unacceptable or that the firefighter's performance is not satisfactory,
- (f) any other action of a similar nature.

##### 35 Misconduct

- (1) A firefighter is guilty of misconduct if the firefighter:
  - (a) contravenes a provision of Part 3, or
  - (b) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence so punishable, or
  - (c) is found to have made a statement in connection with an application for appointment as a firefighter that is false or misleading in a material particular.
- (2) A reference in subclause (1) (b) to the conviction of a firefighter for an offence punishable by imprisonment for 12 months or more includes a reference to the firefighter having been found guilty by a court of such an offence but where no conviction is recorded.

##### 36 Complaints of misconduct

- (1) A firefighter may make a complaint in writing to the Commissioner that another firefighter is guilty of misconduct.



- (2) A complaint that does not concern corrupt conduct must be lodged:
  - (a) through the chain of command, or
  - (b) if the complaint relates to the officer in charge of the firefighter, with the officer in charge's immediate superior.
- (3) If the nominated officer decides to act on a complaint, the firefighter against whom the complaint is made must be given a copy of it.
- (4) Any firefighter dealing with a complaint:
  - (a) must treat the information as strictly confidential, and
  - (b) must deal with any personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* in relation to that complaint in accordance with that Act,unless this Part authorises the information to be dealt with in another way or unless the Commissioner authorises the information to be dealt with in another way.

## **Division 2      Suspension of firefighters**

### **37      Suspension of firefighter**

- (1) An officer authorised by the Commissioner for the purposes of this clause may suspend a firefighter from duty if:
  - (a) the officer is of the opinion that the firefighter is guilty of misconduct, or
  - (b) the firefighter is taken into lawful custody.
- (2) A firefighter may be suspended under subclause (1) whether or not a complaint of misconduct has been made against the firefighter.
- (3) A firefighter may not be suspended unless all reasonable steps have been taken to ensure that the firefighter has been informed of the reason for the suspension and has been given an opportunity to respond.
- (4) A suspension under this clause has effect for the period (not exceeding 14 days) specified by the authorised officer and may be terminated at any time by the Commissioner.
- (5) If a suspension relates to the absence from duty of a firefighter without authority, the suspension is taken to have commenced when the unauthorised absence began, unless the Commissioner determines otherwise.
- (6) An officer who suspends a firefighter must, as soon as practicable, report the suspension and the reason for it to the Commissioner.

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Part 4 Disciplinary provisions

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### **38 Commissioner to deal with suspension**

- (1) After considering the report submitted by an officer who has suspended a firefighter and any submission made by or on behalf of the firefighter, the Commissioner may, by order, confirm or terminate the suspension.
- (2) The Commissioner may not confirm a suspension unless proceedings have been initiated (whether under this Part or otherwise) in respect of the matters giving rise to the suspension.
- (3) Any suspension confirmed under this clause has effect for the period specified in the relevant order and may be terminated at any time by the Commissioner.

### **39 Payment during suspension under clause 37 (1) (a)**

- (1) Payment of a firefighter is not to be stopped during a suspension under clause 37 (1) (a) that has not been confirmed, but is to be stopped during such a suspension that has been confirmed, unless otherwise determined by the Commissioner.
- (2) If satisfied that the circumstances so warrant, the Commissioner may approve a maintenance payment to a firefighter under a suspension that has been confirmed of such amount and for such period as the Commissioner may direct.
- (3) A firefighter in respect of whom a complaint of misconduct is dismissed is to be reimbursed for any pay (including any retainer) lost during any period of suspension less any maintenance paid during that period.
- (4) If a firefighter under suspension is found guilty of misconduct, the Commissioner may approve the reimbursement of such part of any pay (including any retainer) lost during the suspension as the Commissioner may direct.

### **40 Payment of firefighter in custody**

A firefighter who is in lawful custody is not eligible for payment while suspended, unless otherwise determined by the Commissioner.

## **Division 3 Remedial action**

### **41 Remedial action**

- (1) The nominated officer may take remedial action with respect to a firefighter against whom a complaint of misconduct has been made if:
  - (a) the firefighter admits the misconduct, and
  - (b) the firefighter agrees to the remedial action, and

- (c) the nominated officer thinks it is appropriate in the circumstances to take remedial action.
- (2) The nominated officer may take remedial action in accordance with this clause at any time after a complaint of misconduct has been made, including after any of the proceedings set out in Division 4 have commenced.
- (3) However, if remedial action is taken, proceedings commenced under Division 4 are to be suspended pending the satisfactory completion of the remedial action by the firefighter.
- (4) If a firefighter fails to do anything that is required of the firefighter by the remedial action, the nominated officer may deal with the firefighter according to the provisions of Division 4 or recommence any proceedings commenced under that Division that had been suspended.

## **Division 4      Inquiries into misconduct**

### **42      Preliminary inquiry into conduct of firefighter**

- (1) The nominated officer may conduct, or may direct another officer to conduct, a preliminary inquiry into a complaint of misconduct against a firefighter.
- (2) A preliminary inquiry may not be conducted by the officer in charge of the firefighter against whom a complaint of misconduct has been made.
- (3) A preliminary inquiry is to be conducted in accordance with the Commissioner's Orders or, with respect to any matter for which those Orders do not provide, in such manner as the nominated officer may direct or, subject to any such direction, as the officer conducting the inquiry thinks fit.
- (4) A formal hearing is not to be held and witnesses are not to be called for examination.
- (5) The firefighter to whom the complaint relates may make written representations or, if the officer conducting the inquiry so permits, oral representations on any matter relevant to the inquiry.
- (6) A firefighter who is permitted to make oral representations is entitled to be accompanied by an observer, chosen by the firefighter, while the representations are made.
- (7) An officer conducting a preliminary inquiry at the direction of the nominated officer must report the result of the inquiry to the nominated officer in writing within the time set by the nominated officer.

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Clause 43 Fire Brigades Regulation 2008

Part 4 Disciplinary provisions

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### 43 Charges against firefighter

- (1) If the nominated officer considers (as a result of a preliminary inquiry or otherwise) that action should be taken against a firefighter in respect of a complaint of misconduct, the nominated officer may charge the firefighter with the alleged misconduct.
- (2) Any such charge is to be prepared in writing setting out the grounds of the alleged misconduct and a copy is to be served on the firefighter against whom the charge is made.
- (3) The firefighter, or a duly authorised representative of the firefighter, is to be allowed to read, and to take copies or extracts of, the relevant portions of the departmental file or preliminary inquiry report and any other papers held by NSW Fire Brigades in relation to the charge.
- (4) The firefighter must, within 10 calendar days after being served with a copy of the charge, report to the nominated officer in writing whether the firefighter admits or denies the charge.
- (5) If the charge is admitted by the firefighter, submissions may be made to the nominated officer by or on behalf of the firefighter (either orally or in writing) in mitigation of penalty.
- (6) The nominated officer must send any such submissions to the Commissioner.

### 44 Formal inquiry

- (1) If the firefighter denies the charge or does not admit or deny the charge within 10 calendar days after being served with a copy of it, the nominated officer is to conduct, or direct another officer to conduct, a formal inquiry under this clause.
- (2) The defendant may appear at the inquiry in person or be represented by a barrister, solicitor or agent.
- (3) The inquiry may be conducted in the absence of the defendant if the defendant fails to attend the inquiry and if the officer conducting the inquiry is satisfied that the defendant has been served with reasonable notice of the time and place for the inquiry.
- (4) Service of any such notice may be proved by the oath of the person who served the notice or by affidavit.
- (5) The officer conducting the inquiry:
  - (a) is to conduct the inquiry in accordance with the Commissioner's Orders or, with respect to any matter for which those Orders do not provide, in such manner as the nominated officer may direct or, subject to any such direction, as the officer conducting the inquiry thinks fit, and

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- (b) is not bound by any law, rules or practice of evidence, and
  - (c) may be informed of any matter in such manner as he or she thinks fit, and
  - (d) must cause a transcript to be prepared of the proceedings of the inquiry.
- (6) The officer conducting the inquiry:
- (a) may require any firefighter or member of staff of NSW Fire Brigades to appear before the officer and to give evidence, and
  - (b) may require any firefighter or member of staff of NSW Fire Brigades to produce to the officer any document or thing relevant to the inquiry.
- (7) A person who fails to comply with a requirement under subclause (6) without reasonable excuse is guilty of an offence.  
Maximum penalty: 5 penalty units.
- (8) The defendant is entitled to inspect any document or thing furnished under this clause.

**45 Formal inquiry report**

- (1) An officer conducting an inquiry at the direction of the nominated officer must cause a report of the officer's findings and recommendations, together with the transcript of the proceedings and any document or thing admitted in evidence, to be sent to the nominated officer.
- (2) The nominated officer may make further recommendations concerning the findings of the inquiry and must inform the defendant of all recommendations made.
- (3) The nominated officer must cause the report of the findings of a formal inquiry, together with any associated recommendations, transcripts or evidence, to be sent to the Commissioner.
- (4) Written submissions (including submissions in mitigation of penalty) may be made to the Commissioner, by or on behalf of the defendant, within such time as the Commissioner allows.
- (5) If the defendant is found not guilty of misconduct, the nominated officer must terminate any suspension of the defendant immediately.

## **2008 No 383**

Clause 46 Fire Brigades Regulation 2008

Part 4 Disciplinary provisions

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### **Division 5 Disciplinary action by Commissioner**

#### **46 Disciplinary action by Commissioner**

- (1) The Commissioner, after considering a report in which a firefighter is found guilty of misconduct and any submission made by or on behalf of the firefighter, may deal with the matter in any one or more of the following ways:
  - (a) by taking remedial action against the firefighter,
  - (b) by giving the firefighter a caution or reprimand,
  - (c) by imposing on the firefighter a fine not exceeding 10 penalty units,
  - (d) by revoking the firefighter's appointment to a position,
  - (e) by demoting the firefighter,
  - (f) by terminating the employment or service of the firefighter.
- (2) The Commissioner must remove any record of disciplinary action taken under subclause (1) (a), (b) or (c) from a firefighter's personal record if the firefighter has been of good behaviour for at least 2 years since the taking of the action.
- (3) The Commissioner may suspend disciplinary action taken against a firefighter under subclause (1) (b), (c), (d) or (e) for a period not exceeding 2 years on condition that the firefighter is of good behaviour during that period.
- (4) If a firefighter fails to do anything that is required of the firefighter by the remedial action taken under subclause (1) (a), the Commissioner may deal with the firefighter in any other manner referred to in subclause (1).
- (5) The Commissioner may permit a firefighter to resign instead of taking disciplinary action under subclause (1) (f).

#### **47 Fines**

- (1) The amount of any fine imposed on a firefighter under this Division may, subject to this clause, be deducted from any money (including wages) due to the firefighter with respect to the firefighter's employment or service.
- (2) A fine is not to be deducted from the firefighter's pay until 30 days after the Commissioner's decision to impose the fine has been made known to the firefighter.

- (3) Any application made after that period for time to pay is to be considered and, if an appeal is lodged with the Government and Related Employees Appeal Tribunal against the imposition of a fine, deductions from the firefighter's pay or retainer towards payment of the fine are not to be made pending determination of the appeal.

**48 Action following court appearance**

If a firefighter is found guilty of an offence referred to in clause 35 (1) (b), the Commissioner may take action against the firefighter as if the firefighter had been found guilty of misconduct by an inquiry under this Part.

## 2008 No 383

Clause 49 Fire Brigades Regulation 2008

Part 5 General

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### Part 5 General

#### 49 Medal for Conspicuous Bravery

- (1) The Commissioner may award the New South Wales Fire Brigades Medal for Conspicuous Bravery to any firefighter who, while performing firefighting or emergency duty, exhibits exceptional bravery.
- (2) A firefighter who has previously been awarded the Medal may, for each additional act of exceptional bravery, be awarded a Bar to be attached to the ribbon from which the Medal is hung.
- (3) An award of the Medal or Bar may be made only on the recommendation of a committee appointed by the Commissioner to consider the merit of any such action.
- (4) The names of firefighters who receive awards, and details of the awards, are to be published in the In Orders publication and a record of awards is to be kept by the Commissioner.

#### 50 Commendations

- (1) The Commissioner may award commendations for courageous action or for meritorious or long service.
- (2) The names of recipients of awards and details of the awards are to be published in the In Orders publication and a record of awards is to be kept by the Commissioner.

#### 51 Honorary list

The Commissioner may place on an honorary list the names of former firefighters who have had long and meritorious service.

#### 52 Saving

- (1) Any act, matter or thing that, immediately before the repeal of the *Fire Brigades Regulation 2003*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Without limiting subclause (1), any In Orders or Standing Orders in force under clause 4 of the *Fire Brigades Regulation 2003* immediately before its repeal continue to have effect as Commissioner's Orders under this Regulation.



## Part 6 Charges

### 53 Hazardous material incidents

- (1) For the purposes of section 40 (4A) of the Act, the charges prescribed for services performed in respect of a hazardous material incident are:
  - (a) in relation to an item in Column 1 of Part 1 of Schedule 1 that is used (or made available for use), the charge per hour specified in Column 2 of Part 1 of that Schedule opposite that item, and
  - (b) in relation to an item in Column 1 of Part 2 of Schedule 1 that is hired or purchased, the charge specified in Column 2 of Part 2 of that Schedule opposite that item, and
  - (c) in relation to consumables, the charge specified in Column 2 of Part 3 of that Schedule.
- (2) If an item referred to in Part 1 of Schedule 1 is used on an hourly basis, half of the charges specified is prescribed in respect of each half hour, or part of a half hour, during which the item is used (or made available for use).
- (3) If any fully encapsulated gas suit or spillage suit is damaged or contaminated to the extent that it cannot be reused, the prescribed charge in respect of the suit concerned is the cost of replacing the suit.
- (4) If an item is purchased for use in respect of a particular hazardous material incident and the Commissioner is of the opinion that the item can be reused, the prescribed charge in respect of that item under Part 2 of Schedule 1 is to be reduced by such amount as the Commissioner considers reasonable having regard to the extent to which the item can be reused.

### 54 Services performed in connection with statutory fire safety

- (1) The charge prescribed for the provision of an initial fire safety report in respect of a development is the amount specified in Column 2 of Schedule 2 opposite the estimated cost of the development specified in Column 1 of that Schedule.
- (2) The charges prescribed for the inspection of premises for the purposes of the provision of a final fire safety report for the premises are:
  - (a) in the case of an initial inspection, \$215 plus, if the inspection takes more than 2 hours (including time spent travelling to and from the premises), \$200 for each additional hour, or part of an hour, of the inspection, and

## 2008 No 383

Clause 55 Fire Brigades Regulation 2008

Part 6 Charges

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- (b) in the case of a re-inspection, \$430 plus, if the re-inspection takes more than 2 hours (including time spent travelling to and from the premises), \$200 for each additional hour, or part of an hour, of the re-inspection.
- (3) The charge prescribed for each assessment of a Building Code of Australia Category 2 fire safety provision by the Commissioner or a fire brigade member is \$180.
- (4) The charge prescribed for attendance by the Commissioner or a fire brigade member at a fire safety meeting in connection with a development or proposed development is \$200 for each hour, or part of an hour, of the meeting.
- (5) The amount of \$2,600 is the charge prescribed for each day (or part of a day) spent by the Commissioner or a fire brigade member providing advisory, assessment or consultancy services (for which a fee is not otherwise prescribed by this clause) in respect of:
  - (a) major infrastructure development (within the meaning of Part 3A of the *Environmental Planning and Assessment Act 1979*), or
  - (b) Crown building work (within the meaning of section 116G of the *Environmental Planning and Assessment Act 1979*), or
  - (c) other development.
- (6) This clause has effect for the purposes of section 42 (1) of the Act.
- (7) In this clause:
  - Building Code of Australia** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
  - Category 2 fire safety provision** has the same meaning as in the *Environmental Planning and Assessment Regulation 2000*.
  - development** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
  - final fire safety report** has the same meaning as in clause 152 of the *Environmental Planning and Assessment Regulation 2000*.
  - initial fire safety report** has the same meaning as in clause 144 of the *Environmental Planning and Assessment Regulation 2000*.
  - premises** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

### 55 False alarms

The amount of \$250 is the charge prescribed for the performance of the service specified in section 42 (1) (e) of the Act (that is, the service of responding to an alarm that is afterwards discovered to have been a false alarm) if:

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- (a) the false alarm resulted from any activation of the alarm except in the course of a test of which prior notice was given to a fire brigade officer and that the Commissioner is satisfied was properly carried out, and
  - (b) it is the second or subsequent occasion of any such false alarm by the alarm during any period of 60 days.

**56 Other services**

- (1) The charges prescribed for the performance of any other service specified in section 42 (1) of the Act (not being a service for which a charge is otherwise prescribed by this Part) are:
  - (a) in relation to each fire brigade member performing the service, the charge per hour specified in Column 2 of Part 1 of Schedule 3 opposite the rank of the member concerned, and
  - (b) in relation to an item in Column 1 of Part 2 of Schedule 3 that is hired or purchased, the charge specified in Column 2 of Part 2 of that Schedule opposite that item, and
  - (c) in relation to consumables, the charge specified in Column 2 of Part 3 of that Schedule.
- (2) If an item is purchased for the purpose of performing services specified in section 42 (1) of the Act and the Commissioner is of the opinion that the item can be reused, the prescribed charge in respect of that item under Part 2 of Schedule 3 is to be reduced by such amount as the Commissioner considers reasonable having regard to the extent to which it can be reused.

## 2008 No 383

Fire Brigades Regulation 2008

Schedule 1 Charges for performing services in relation to hazardous material incidents

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### Schedule 1 Charges for performing services in relation to hazardous material incidents

(Clause 53 (1))

#### Part 1 Standard equipment

Column 1	Column 2
Item	Amount per hour
Each standard pumper	\$423
Each hazmat pumper	\$423
Each hazmat vehicle other than a hazmat pumper	\$286
Each hazmat delta decontamination shelter	\$286
Each special operations response vehicle	\$286
Each boat (including a trailer and vehicle to tow it)	\$286
Each helicopter	\$3,300
Each incident command vehicle	\$275
Each hose	\$55
Each fully encapsulated gas suit	\$275
Each spillage suit	\$55
Each self-contained breathing apparatus	\$55
Each standard gas detector	\$55
Each unit of specialised detection equipment	\$110

#### Part 2 Special items

Column 1	Column 2
Item	Amount
Goods or services hired or purchased by the Commissioner for the purpose of performing services referred to in section 40 (4A) of the Act in respect of a particular hazardous material incident (not being items referred to in Part 1 of this Schedule)	Such amount as is certified by the Commissioner to be the cost to the Commissioner of hiring or purchasing the goods or services

Fire Brigades Regulation 2008

Charges for performing services in relation to hazardous material incidents Schedule 1

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Column 1	Column 2
Item	Amount
Premises hired by the Commissioner for the purpose of performing services referred to in section 40 (4A) of the Act in respect of a particular hazardous material incident (not being items referred to in Part 1 of this Schedule)	Such amount as is certified by the Commissioner to be the cost to the Commissioner of hiring the premises

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**Part 3 Consumables**

Column 1	Column 2
Consumables	Amount
Consumables	Such amount as is certified by the Commissioner to be the cost to the Commissioner of the consumables, plus 10% for handling costs

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## 2008 No 383

Fire Brigades Regulation 2008

Schedule 2 Charges for providing initial fire safety reports

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### Schedule 2 Charges for providing initial fire safety reports

(Clause 54 (1))

<b>Column 1</b>	<b>Column 2</b>
<b>Estimated cost of development</b>	<b>Amount</b>
Up to \$250,000	\$500
\$250,001–\$500,000	\$500, plus an additional \$0.40 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$250,000
\$500,001–\$1,000,000	\$600, plus an additional \$0.30 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000
\$1,000,001–\$10,000,000	\$750, plus an additional \$0.20 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000
More than \$10,000,000	\$2,550, plus an additional \$0.10 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000

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## Schedule 3 Charges for performing other services

(Clause 56 (1))

### Part 1 Fire brigade members

Column 1	Column 2
Rank of member of fire brigade	Amount per hour per member
Fire safety engineer	\$200
Chief superintendent or above	\$132
Building surveyor	\$130
Engineer	\$130
Fire safety manager	\$125
Superintendent	\$121
Fire safety team leader	\$110
Inspector	\$99
Fire safety officer	\$90
Station commander or captain	\$83
Firefighter	\$66

### Part 2 Special items

Column 1	Column 2
Items	Amount
Goods or services hired or purchased by the Commissioner for the purpose of performing the services referred to in section 42 (1) of the Act	Such amount as is certified by the Commissioner to be the cost to the Commissioner of hiring or purchasing the goods or services
Premises hired by the Commissioner for the purpose of performing the services referred to in section 42 (1) of the Act	Such amount as is certified by the Commissioner to be the cost to the Commissioner of hiring the premises

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Fire Brigades Regulation 2008

Schedule 3 Charges for performing other services

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**Part 3 Consumables**

<b>Column 1</b>	<b>Column 2</b>
<b>Consumables</b>	<b>Amount</b>
Consumables	Such amount as is certified by the Commissioner to be the cost to the Commissioner of the consumables, plus 10% for handling costs

BY AUTHORITY