



New South Wales

# Fire and Rescue NSW Regulation 2023

under the

Fire and Rescue NSW Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Fire and Rescue NSW Act 1989*.

JIHAD DIB, MP  
Minister for Emergency Services

## Explanatory note

The object of this regulation is to remake, with changes, the *Fire Brigades Regulation 2014*, which is repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

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 in relation to firefighters,
- (e) the awarding of bravery and service awards by the Commissioner,
- (f) the charges payable for certain services performed by the Commissioner or by firefighters.

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## Fire and Rescue NSW Regulation 2023

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Fire and Rescue NSW Act 1989

### Part 1 Preliminary

#### 1 Name of regulation

This regulation is the *Fire and Rescue NSW Regulation 2023*.

#### 2 Commencement

This regulation commences on 1 September 2023.

**Note**— This regulation replaces the *Fire Brigades Regulation 2014*, which is repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this regulation—

**approved** means approved by the Commissioner.

**Commissioner's directions**—see section 4(1).

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

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

**departmental property** means property used by or for the purposes of Fire and Rescue NSW, including the following—

- (a) a building,
- (b) land,
- (c) an asset,
- (d) equipment,
- (e) a uniform,
- (f) a fire appliance,
- (g) intellectual property.

**disciplinary action**, in relation to a firefighter, means one or more of the following—

- (a) terminating the firefighter's appointment,
- (b) directing the firefighter to resign, or to be allowed to resign, within a specified time,
- (c) a demotion in rank,
- (d) the imposition of a fine not more than 10 penalty units,
- (e) a caution or reprimand.

**final fire safety report** has the same meaning as in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 50.

**fire appliance** means a vehicle that—

- (a) forms part of the equipment of Fire and Rescue NSW, and
- (b) is equipped with an audible warning device and flashing lights.

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

**initial fire safety report** has the same meaning as in *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 25(1).

**officer** means a firefighter of a rank declared by the Commissioner to be an officer rank under section 6(2).

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

**procedural guidelines** means the guidelines in force from time to time under section 33.

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

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

- (a) requiring the firefighter to undertake counselling,
- (b) requiring the firefighter to undertake training and development,
- (c) monitoring the firefighter's conduct,
- (d) implementing a conduct improvement plan for the firefighter,
- (e) issuing a warning to the firefighter that certain conduct is unacceptable,
- (f) transferring the firefighter to another firefighter position of the same rank,
- (g) another action of a similar nature.

**retained firefighter** means a person appointed as a retained firefighter by the Commissioner under section 9.

**the Act** means the *Fire and Rescue NSW Act 1989*.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

#### **4 Commissioner's directions—the Act, ss 74(1) and 85(2)(b) and (c)**

- (1) The Commissioner may issue, amend or revoke a direction in relation to the efficiency, discipline and good conduct of firefighters (the **Commissioner's directions**).
- (2) The Commissioner must ensure that the Commissioner's directions are published in a way that the Commissioner is satisfied—
  - (a) will bring the directions to the attention of all firefighters, and
  - (b) ensures all firefighters may access the directions.
- (3) In this section—

**direction** includes a written policy, procedure or instruction.

#### **5 Areas of operation—the Act, s 74**

- (1) The Commissioner must 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 in accordance with the Commissioner's directions.

## **Part 2 Appointment and conditions of firefighters—the Act, s 74**

### **6 Ranks of firefighter**

- (1) The Commissioner may establish ranks of firefighters.
- (2) A rank declared by the Commissioner to be an officer rank is an officer rank for this regulation.

### **7 Firefighters' positions**

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

### **8 Appointment as a permanent firefighter**

- (1) An individual may apply to the Commissioner for appointment as a permanent firefighter.
- (2) The application must be—
  - (a) made to the Commissioner, and
  - (b) in the approved form, and
  - (c) accompanied by evidence of the following—
    - (i) that the applicant holds a current driver licence under the *Road Transport Act 2013*,
    - (ii) that the applicant is an Australian citizen or a person resident in Australia whose continued presence in Australia is not subject to a time limitation imposed by law.
- (3) The Commissioner must not appoint the applicant as a permanent firefighter unless the Commissioner is 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) is of good character, and
  - (d) holds a current driver licence under the *Road Transport Act 2013*, and
  - (e) is an Australian citizen or a person resident in Australia whose continued presence in Australia is not subject to a time limitation imposed by law, and
  - (f) is otherwise suitable for employment as a permanent firefighter.
- (4) A successful applicant must be appointed—
  - (a) if the applicant is a former permanent firefighter—to the rank the Commissioner considers appropriate to the applicant's skill and experience, or
  - (b) otherwise—as a recruit firefighter.

### **9 Appointment as a retained firefighter**

- (1) An individual may apply to the Commissioner for appointment as a retained firefighter.
- (2) The application must be—
  - (a) made to the Commissioner, and
  - (b) in the approved form, and

- (c) accompanied by evidence of the following—
  - (i) that the applicant holds a current driver licence under the *Road Transport Act 2013*,
  - (ii) that the applicant is an Australian citizen or a person resident in Australia whose continued presence in Australia is not subject to a time limitation imposed by law.
- (3) The Commissioner must not appoint the applicant as a retained firefighter unless the Commissioner is 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) is of good character, and
  - (d) holds a current driver licence under the *Road Transport Act 2013*, and
  - (e) is an Australian citizen or a person resident in Australia whose continued presence in Australia is not subject to a time limitation imposed by law, and
  - (f) is otherwise suitable to be a retained firefighter.
- (4) An applicant must produce, if required by the Commissioner, evidence of the applicant's—
  - (a) driving qualifications, or
  - (b) citizenship, or
  - (c) entitlement to reside in Australia.

## 10 Examinations and assessments

The Commissioner may set or nominate an examination or assessment the Commissioner considers appropriate as a requirement for a firefighter's promotion, transfer or appointment to a position.

## 11 Termination of appointment

- (1) The Commissioner may terminate a firefighter's appointment as a firefighter if—
  - (a) the firefighter is no longer medically or psychologically fit to exercise the functions of a firefighter, or
  - (b) the firefighter abandons employment as a firefighter.
- (2) Without limiting subsection (1), the Commissioner may terminate a firefighter's appointment as a firefighter of a particular rank or position—
  - (a) if the firefighter is no longer medically or psychologically fit to exercise the functions of a firefighter of that rank or position, or
  - (b) if the Commissioner is satisfied that the firefighter is no longer a suitable person to exercise the functions of a firefighter of that rank or position, or
  - (c) at the firefighter's own request.
- (3) The Commissioner may terminate the appointment of a retained firefighter who, except when on approved leave or other authorised absence, fails to attend—
  - (a) drills appointed by the Commissioner, or the officer in charge of the firefighter, for 3 consecutive months, or
  - (b) the approved number or proportion of drills, fires or other incidents in a 6-month period.



- (4) The Commissioner must terminate the appointment of a firefighter who—
  - (a) is not an Australian citizen, or
  - (b) ceases to or does not satisfy the requirements of section 8(3)(e) or 9(3)(e).
- (5) The termination of a firefighter’s appointment to a particular rank or position under subsection (2) operates to demote the firefighter to a rank determined by the Commissioner.
- (6) Before terminating a firefighter’s appointment under subsection (1) or (2)(a) or (b), the Commissioner must give the firefighter written notice of the proposed termination (a *proposed termination notice*).
- (7) The proposed termination notice must—
  - (a) include details of the proposed termination, and
  - (b) state the reasons for the proposed termination.
- (8) The Commissioner must—
  - (a) allow the firefighter to respond to the reasons for a proposed termination, within a reasonable time specified in the proposed termination notice, and
  - (b) consider any response by the firefighter before deciding whether to terminate the appointment.
- (9) The Commissioner must give written notice to the firefighter of the final reasons for a termination of the firefighter’s appointment under this section.

## 12 Leave

The granting of a firefighter’s leave is subject to the approval of the Commissioner.

## **Part 3 Functions of firefighters—the Act, ss 74 and 85(2)(c) and (d)**

### **13 Effect of contravention of part**

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

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

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

### **15 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, do any of the following—
  - (a) wilfully or negligently make a false or misleading statement to a person,
  - (b) knowingly make a false or misleading statement in an official record,
  - (c) without good or sufficient cause—
    - (i) destroy or damage an official record, or
    - (ii) alter or remove any entry in the official record,
  - (d) fail to account promptly for money or property that comes into the firefighter's possession during the course of the firefighter's functions,
  - (e) otherwise engage, whether directly or indirectly, in corrupt conduct.

### **16 Duty to obey orders and directions and act fairly and responsibly**

A firefighter must not do any of the following—

- (a) disobey or disregard a lawful order or direction made or given by a person having the authority to make or give the order or direction,
- (b) be disrespectful or insolent to a person in authority over the firefighter,
- (c) abuse the firefighter's authority by acting oppressively towards a subordinate,
- (d) without good or sufficient reason, be absent from duty or be late for a parade, drill or other required attendance,
- (e) through negligence, carelessness or malice, allow loss, damage or injury to occur to a person or property,
- (f) fail to report matter, or make an entry in an official record, that is the firefighter's duty to report or make.

### **17 Unacceptable behaviour**

- (1) A firefighter must not do any of the following—
  - (a) come on or attend duty while under the influence of alcohol or a drug,
  - (b) while on duty—
    - (i) consume, use or possess any alcohol or drug, or
    - (ii) gamble in circumstances that adversely affect the discipline or efficiency of Fire and Rescue NSW,

- (c) while on or off duty—
    - (i) smoke at a fire or drill, on departmental premises or in a departmental vehicle, or
    - (ii) smoke or consume alcohol in a public place while in uniform, or
    - (iii) by words or action—
      - (A) behave in a way that is subversive of discipline or calculated to bring discredit on Fire and Rescue NSW, or
      - (B) bully, harass, sexually harass, intimidate or threaten a person, or
      - (C) discriminate against a person on the grounds of sex, marital status, pregnancy, age, race, disability, sexual orientation, gender identity, carer’s responsibilities or any other ground for which discrimination is prohibited by the *Anti-Discrimination Act 1977*,
  - (d) while off duty, enter or remain on departmental premises without authority.
- (2) The officer in charge of departmental premises must not allow a firefighter to come on duty if, in the officer’s opinion, the firefighter is—
- (a) under the influence of alcohol or a drug, and
  - (b) unable to exercise the functions of a firefighter.
- (3) In this section—  
**drug** has the same meaning as in the *Road Transport Act 2013*, but does not include alcohol.

#### **18 Damage or misuse of departmental property**

A firefighter must not—

- (a) wilfully or negligently damage departmental property, or
- (b) fail to promptly report damage to departmental property, regardless of how the damage was caused, or
- (c) use departmental property for an unauthorised purpose, or
- (d) engage, whether directly or indirectly, in unauthorised use of departmental property.

#### **19 Uniforms**

A firefighter must wear a uniform only in accordance with the Commissioner’s directions.

#### **20 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 an article of uniform or equipment damaged or lost through the firefighter’s negligence.
- (2) Before a firefighter leaves the firefighter’s employment or service, the firefighter must return—
- (a) all departmental property, and
  - (b) uniform and equipment in the firefighter’s possession, other than an article of uniform or equipment the Commissioner allows the firefighter to keep.
- (3) The Commissioner may require a firefighter to pay compensation for—

- (a) if the firefighter fails to return departmental property—the loss of the property, or
  - (b) if any departmental property returned by the firefighter is damaged—the damage to the property, unless the damage is due to fair wear and tear.
- (4) The Commissioner may deduct any compensation required to be paid by the firefighter under subsection (3) from money due to the firefighter for the firefighter's service.

#### **21 Solicitation, acceptance or retention of rewards or other benefits**

A firefighter must not, without the written permission of the Commissioner—

- (a) directly or indirectly solicit or accept a reward in connection with the exercise of the firefighter's functions, including a reward that involves pecuniary gain, material gain, the provision of services, the provision of training or another benefit, or
- (b) keep money received as a gratuity or payment from a person, or accept an address, presentation or testimonial, in connection with the firefighter's official position.

#### **22 Disclosure of information**

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

- (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 about operations at a fire or other incident, or
- (d) at the direction or with the permission of the Commissioner, or
- (e) with another lawful excuse.

#### **23 Public comment on administration**

A firefighter must not comment publicly on the administration of Fire and Rescue NSW without the approval of the Commissioner.

#### **24 Incompatible activities**

A firefighter must not engage in an activity outside the firefighter's functions as a firefighter that is incompatible with the performance of the firefighter's functions.

#### **25 Functions of firefighters**

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

#### **26 Performance of functions**

- (1) A firefighter must attend a drill if directed to do so by the Commissioner or the officer in charge of the firefighter.
- (2) A firefighter must perform all firefighting and other functions the firefighter is lawfully directed to perform.
- (3) A firefighter must serve wherever the firefighter is directed by the Commissioner.

### **27 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—
  - (a) on sick leave, or
  - (b) in court or subject to a subpoena to appear in court.
- (2) A firefighter must ensure the Commissioner is kept aware of where and how the firefighter may be contacted in an emergency.

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

A firefighter receiving a call to a fire, hazardous material incident or other emergency must—

- (a) record the details of the call, and
- (b) make every effort to ensure an immediate response is undertaken in accordance with the Commissioner's directions.

### **29 Occurrence book**

The officer in charge of a fire station must ensure details of the following are recorded in a document (an *occurrence book*) kept at the fire station—

- (a) all events of significance relating to the operation of the fire station,
- (b) all other matters required by this regulation or the Commissioner's directions to be recorded in the occurrence book.

### **30 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—
  - (a) the officer in charge of the fire station, or
  - (b) if the firefighter is an officer—a more senior officer.
- (2) A firefighter who leaves a fire station must record the following in the occurrence book—
  - (a) the date and time of the absence,
  - (b) the reason for the absence,
  - (c) the name of the person giving permission to leave the fire station.
- (3) This section does not apply to a firefighter who leaves the fire station—
  - (a) to attend to a fire call or other incident, or
  - (b) to engage in official functions away from the fire station.

### **31 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 a person does not enter, or interfere with or remove goods from, premises at the site unless the person establishes the person's identity and authority to do so, and
- (b) if a person unlawfully enters, or interferes with or removes goods from, premises at the site—report the person to the officer in charge at the site.

## Part 4 Misconduct—the Act, s 74(1)

### Division 1 Preliminary

#### 32 Meaning of “misconduct”

- (1) For this part, *misconduct* includes the following—
  - (a) a contravention of Part 3,
  - (b) performance of duties in a way that justifies the taking of disciplinary action,
  - (c) making a statement in connection with an application for appointment as a firefighter that is false or misleading in a material particular,
  - (d) taking detrimental action against a person that is substantially in reprisal for the person making a public interest disclosure,
  - (e) taking action against another firefighter that is substantially in reprisal for an internal disclosure made by the other firefighter.
- (2) For this part, the subject matter of an allegation of misconduct may relate to an incident or conduct that happened—
  - (a) while the firefighter was not on duty, or
  - (b) before the firefighter was appointed to his or her position.
- (3) In this part, a reference to an allegation that a firefighter may have engaged in misconduct includes a reference to the Commissioner being made aware, or becoming aware, by any means that the firefighter may have engaged in misconduct.
- (4) In this section—

*detrimental action* has the same meaning as in the *Public Interest Disclosures Act 1994*.

*internal disclosure* means a disclosure made by a firefighter regarding the alleged misconduct of another firefighter.

*public interest disclosure* has the same meaning as in the *Public Interest Disclosures Act 1994*.

#### 33 Issuing of procedural guidelines

- (1) The Commissioner may, from time to time, issue guidelines for the following purposes—
  - (a) dealing with allegations of misconduct against firefighters as a disciplinary matter,
  - (b) the taking of disciplinary action against firefighters under this part,
  - (c) another matter referred to in this part.
- (2) The procedural guidelines must be consistent with the rules of procedural fairness.
- (3) Without limiting subsection (2), the procedural guidelines must ensure that—
  - (a) a firefighter to whom an allegation of misconduct relates is given—
    - (i) written advice of the alleged misconduct, including advice that the allegation may lead to disciplinary action being taken against the firefighter, and
    - (ii) an opportunity to respond to the allegation, and
  - (b) a firefighter against whom the Commissioner is proposing to take disciplinary action under Division 2 or 3 is given a reasonable opportunity to make a submission in relation to the proposed action.

- (4) The Commissioner may, from time to time, amend, revoke or replace the procedural guidelines.
- (5) The Commissioner must not amend, revoke or replace the procedural guidelines unless the Commissioner has first consulted with the Fire Brigade Employees' Union of NSW on the amendment, revocation or replacement.  
**Note—** The Industrial Relations Commission may deal with industrial disputes in relation to the privileges, rights, duties or obligations of employers or employees in any industry under the *Industrial Relations Act 1996*. See, in particular, that Act, Chapter 3.
- (6) The procedural guidelines as in force from time to time must be published in the approved form and way.

## **Division 2 Dealing with misconduct and other matters**

### **34 Dealing with allegations of misconduct**

- (1) If the Commissioner is made aware of an allegation that a firefighter may have engaged in misconduct, the Commissioner may decide to—
  - (a) deal with the allegation as a disciplinary matter in accordance with the procedural guidelines, or
  - (b) take remedial action in relation to the firefighter.
- (2) If the Commissioner decides to deal with an allegation of misconduct under subsection (1)(a), the Commissioner may decide to take disciplinary action against the firefighter if, in the Commissioner's opinion, the firefighter has engaged in misconduct.
- (3) Before disciplinary action is taken against a firefighter under subsection (2), the firefighter must be given an opportunity to make a submission in relation to the disciplinary action the Commissioner is considering taking.
- (4) If the Commissioner decides to deal with an allegation of misconduct under subsection (1)(a), the Commissioner may, at any stage of the process and despite anything to the contrary in the procedural guidelines, decide—
  - (a) to take remedial action in relation to the firefighter, or
  - (b) to dismiss the allegation, or
  - (c) that no further action be taken in relation to the matter.
- (5) A decision under this section by the Commissioner to take remedial action in relation to a firefighter does not prevent the Commissioner from dealing with the alleged misconduct as a disciplinary matter under subsection (1)(a), if the Commissioner considers that the firefighter may have engaged in misconduct while the remedial action is being taken.
- (6) If a firefighter fails to do anything required of the firefighter by remedial action taken in accordance with a decision under subsection (1)(b) or (4)(a), the Commissioner may decide to deal with the allegation against the firefighter as a disciplinary matter under subsection (1)(a).

### **35 Formal hearings not to be held**

- (1) A formal hearing involving the legal representation of parties and the calling and cross-examination of witnesses is not to be held in relation to an allegation of misconduct or the taking of disciplinary action in relation to a firefighter.
- (2) However, subsection (1) does not prevent the Commissioner from—
  - (a) conducting an investigation into an allegation of misconduct if the Commissioner considers the investigation necessary, or

- (b) conducting interviews with the firefighter to whom the allegation relates or with another person in connection with the matter, or
- (c) taking signed statements from the firefighter or another person in connection with the matter.

**36 Disciplinary action may be taken if firefighter is convicted of serious offence**

- (1) If a firefighter is convicted of a serious offence, the Commissioner may decide to—
  - (a) take disciplinary action against the firefighter in accordance with the procedural guidelines, or
  - (b) take remedial action against the firefighter, or
  - (c) take action against the firefighter under section 34 as if the firefighter had been found to have engaged in misconduct.
- (2) Before disciplinary action is taken against a firefighter under subsection (1)(a), the firefighter must be given an opportunity to make a submission in relation to the disciplinary action the Commissioner is considering taking.
- (3) For subsection (1), a firefighter is convicted of a serious offence if the firefighter—
  - (a) is convicted of an offence in New South Wales that is punishable by imprisonment for 12 months or more, or
  - (b) is convicted elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more, or
  - (c) is found guilty by a court of an offence described in paragraph (a) or (b) but no conviction is recorded.

**Division 3 Suspension of firefighters**

**37 Suspension of firefighters from duty pending decision in relation to misconduct or criminal charge**

- (1) The Commissioner may suspend a firefighter from duty if—
  - (a) an allegation that the firefighter has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, or
  - (b) a firefighter is charged with having committed an offence referred to in section 36(3).
- (2) The Commissioner may suspend the firefighter from duty until—
  - (a) the allegation of misconduct or the criminal charge has been dealt with, or
  - (b) any action that the Commissioner is considering taking under section 34 or 36 has been completed.
- (3) The Commissioner must not suspend the firefighter unless all reasonable steps have been taken to ensure the firefighter has been—
  - (a) informed of the reason for the proposed suspension, and
  - (b) given an opportunity to respond.
- (4) The Commissioner may direct the salary payable to a person as a firefighter be withheld while the person is suspended from duty.
- (5) The salary withheld under subsection (4) is forfeited to the State if—
  - (a) the Commissioner decides to take disciplinary action against the person for the misconduct, or
  - (b) the person is convicted of the offence.



- (6) Despite subsection (5), the salary withheld under subsection (4) must be paid to the person if—
  - (a) the Commissioner directs the salary withheld be paid to the person, or
  - (b) the salary is due to the person for a period before the suspension was imposed.
- (7) If the Commissioner has suspended a firefighter from duty under this section, the Commissioner may remove the suspension at any time.

### **38 Suspension of firefighters from duty by authorised officers**

- (1) An officer authorised by the Commissioner for the purposes of this section (an *authorised officer*) may suspend a firefighter from duty if, in the officer's opinion—
  - (a) the firefighter has engaged in misconduct, and
  - (b) a failure to suspend the firefighter may pose a risk to the safety and protection of other people or prevent other firefighters from adequately performing their duties.
- (2) A firefighter may be suspended under subsection (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—
  - (a) informed of the reason for the suspension, and
  - (b) given an opportunity to respond.
- (4) A suspension under this section—
  - (a) has effect for the period, that is not more than 14 days, specified by the authorised officer, and
  - (b) may be terminated at any time by the Commissioner.
- (5) If a suspension relates to the unauthorised absence from duty of a firefighter, the suspension is taken to have commenced when the unauthorised absence began, unless the Commissioner determines otherwise.
- (6) An authorised officer who suspends a firefighter must, as soon as practicable, report the suspension and the reason for it to the Commissioner.

## **Division 4 Miscellaneous provisions**

### **39 Suspension of disciplinary action**

- (1) The Commissioner may suspend disciplinary action taken against a firefighter for a period of not more than 2 years on condition that the firefighter is of good behaviour during the period.
- (2) The Commissioner may only suspend disciplinary action under subsection (1) if the disciplinary action is—
  - (a) the imposition of a fine, or
  - (b) a caution or reprimand, or
  - (c) a demotion in rank, or
  - (d) a termination of appointment to a particular position.
- (3) If the disciplinary action to be taken is the termination of the firefighter's appointment, the Commissioner may allow a firefighter to resign instead of taking the disciplinary action.

#### **40 Officers retiring or resigning before disciplinary action is taken**

- (1) An allegation that a firefighter has engaged in misconduct may be dealt with under this part, and disciplinary action may be taken against the firefighter, even though the firefighter has retired or resigned (a *former firefighter*).
- (2) The taking of disciplinary action, other than a fine, against the former firefighter does not affect—
  - (a) the former firefighter’s retirement or resignation, or
  - (b) the benefits, rights and liabilities arising from the retirement or resignation.
- (3) A fine imposed under disciplinary action may be recovered from the former firefighter—
  - (a) as a debt due to the Crown in a court of competent jurisdiction, or
  - (b) out of money payable to or for the former firefighter by the Crown.

#### **41 Fines**

- (1) If a fine is imposed under this part on a firefighter, the person responsible for paying the firefighter’s salary is, on receiving notice of the imposition of the fine, to deduct the amount of the fine from the salary payable to the firefighter in the way the Commissioner directs.
- (2) The firefighter must be given written notice of the fine.
- (3) A deduction is not to be made until 30 days after the date of notice.
- (4) A firefighter may, during the 30-day period, apply to the Commissioner for further time to pay the fine.
- (5) If the Commissioner receives an application under subsection (4), the Commissioner may direct the person responsible for paying the firefighter’s salary to make the deduction on a date specified by the Commissioner following the expiry of the 30-day period.
- (6) If, during the 30-day period, the firefighter lodges an appeal against the imposition of the fine with the Industrial Relations Commission, a deduction is not to be made until the determination of the appeal.

#### **42 Implementation of decisions under this part**

A decision of the Commissioner to take disciplinary action or remedial action under this part against a firefighter may be carried into effect at any time.

#### **43 Application of part**

- (1) This part extends to conduct occurring before the commencement of this regulation.
- (2) A proceeding pending under the *Fire Brigades Regulation 2014*, Part 4 immediately before the repeal of the regulation may continue to be dealt with under the provisions of that part as if it had not been repealed.

## Part 5 Charges

### 44 Hazardous material incidents—the Act, s 40(4A)

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

### 45 Services performed in connection with statutory fire safety—the Act, s 42(1)

- (1) For the Act, section 42(1), the charges specified in Schedule 2 are prescribed for the provision of an initial fire safety report.
- (2) The charges prescribed for the inspection of premises for the provision of a final fire safety report for the premises are—
  - (a) for an initial inspection—
    - (i) \$215, and
    - (ii) 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
  - (b) for a re-inspection—
    - (i) \$430, and
    - (ii) 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 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 section, in relation to—
  - (a) State significant infrastructure, or
  - (b) Crown building work, or

(c) other development.

(5) In this section—

**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 (Development Certification and Fire Safety) Regulation 2021*.

**Crown building work** has the same meaning as in the *Environmental Planning and Assessment Act 1979*, Part 6.

**development** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**premises** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**State significant infrastructure** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

#### 46 False alarms—the Act, s 42(1)(e)

For the Act, section 42(1)(e), the charge prescribed is \$1,600 if—

- (a) the false alarm resulted from the activation of the alarm other than during 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 a false alarm by the alarm, in circumstances specified in paragraph (a), during a period of 60 days.

#### 47 Charges for other services—the Act, s 42(1)

- (1) The charges prescribed for the performance of a service specified in the Act, section 42(1)(f), for which a charge is not otherwise prescribed by this part, are as follows—
  - (a) in relation to each fire brigade member performing the service—the charge per hour specified in Schedule 3, Part 1 for the rank of the member, and
  - (b) in relation to an item specified in Schedule 3, Part 2 that is hired or purchased—the charge specified in that part, and
  - (c) in relation to consumables—the charge specified in Schedule 3, Part 3.
- (2) If an item is purchased to perform services specified in the Act, section 42(1) and, in the Commissioner's opinion, the item may be reused, the prescribed charge for the item under Schedule 3, Part 2 must be reduced by the amount the Commissioner considers reasonable, having regard to the extent to which it may be reused.

## **Part 6 Functions of Commissioner—the Act, s 85(2)(a)**

### **48 Medal for Conspicuous Bravery**

- (1) The Commissioner may award the New South Wales Fire Brigades Medal for Conspicuous Bravery to a 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 awarding the medal or bar.
- (4) The Commissioner must keep a record of the awards awarded.
- (5) The names of each firefighter who receives an award, and the details of the award received, must be published on the agency's intranet.

### **49 Commendations**

- (1) The Commissioner may award commendations for courageous action or for meritorious or long service.
- (2) The Commissioner must keep a record of the commendations awarded.
- (3) The name of each person who receives a commendation, and the details of the commendation received, must be published on the agency's intranet.

### **50 Honorary list**

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

## Part 7 Miscellaneous

### 51 Prescribed waters—the Act, s 3(1)

For the Act, section 3(1), definition of *prescribed waters*, paragraph (c), the waters specified in Schedule 4 are prescribed.

### 52 Savings

- (1) An act, matter or thing that, immediately before the repeal of the *Fire Brigades Regulation 2014*, had effect under that regulation continues to have effect under this regulation.
- (2) Without limiting subsection (1), In Orders or Standing Orders in force under the *Fire Brigades Regulation 2014*, clause 4 immediately before its repeal continue to have effect as directions under this regulation, section 4.

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

section 44(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

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### Part 2 Special items

Column 1	Column 2
Item	Amount
Goods or services hired or purchased by the Commissioner to perform services referred to in the Act, section 40(4A), other than items referred to in Schedule 1, Part 1	The amount certified by the Commissioner to be the cost to the Commissioner of hiring or purchasing the goods or services
Premises hired by the Commissioner to perform services referred to in the Act, section 40(4A), other than items referred to in Schedule 1, Part 1	The amount 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
Item	Amount
Consumables	The amount certified by the Commissioner to be the cost to the Commissioner of the consumables, plus 10% for handling costs

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## Schedule 2 Charges for providing initial fire safety reports

section 45(1)

<b>Column 1</b>	<b>Column 2</b>
<b>Estimated cost of development</b>	<b>Amount</b>
Up to and including \$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 is more than \$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 is more than \$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 is more than \$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 is more than \$10,000,000

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## Schedule 3 Charges for performing other services

section 47(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
Item	Amount
Goods or services hired or purchased by the Commissioner to perform the services referred to in the Act, section 42(1)	The amount certified by the Commissioner to be the cost to the Commissioner of hiring or purchasing the goods or services
Premises hired by the Commissioner to perform the services referred to in the Act, section 42(1)	The amount certified by the Commissioner to be the cost to the Commissioner of hiring the premises

### Part 3 Consumables

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

## Schedule 4 Prescribed waters

section 51

### 1 Coffs Harbour

The harbour known as Coffs Harbour.

### 2 Hastings River (Port Macquarie)

The waters of the Hastings River below the mean high water mark from the river entrance to the eastern side of the Dennis Bridge carrying the Pacific Highway, together with the waters below the mean high water mark of the slipway cove in the southern bank of the river immediately east of the Dennis Bridge.

### 3 Jervis Bay

The part of Jervis Bay below the mean high water mark that lies within the State.

### 4 Port Stephens

The part of Port Stephens below the mean high water mark bounded by a straight line drawn from the southern extremity of Corrie Island in a south easterly direction across the waterway to a point on the southern shore in line with the highest point of Tomaree Head.