

Fire Brigades Act 1989 No 192

[1989-192]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
 - [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2008 No 122](#) (not commenced — to commence 1.7.2009)
 - [NSW Trustee and Guardian Act 2009 No 49](#) (not commenced)
- **See also**
 - [Statute Law \(Miscellaneous Provisions\) Bill 2009](#)

Authorisation

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New South Wales

Contents

Long title	7
Part 1 Preliminary	7
1 Name of Act	7
2 Commencement	7
3 Definitions	7
4 Application of Act	9
5 Fire districts	9
Part 2 Provision of fire brigades etc	10
6 Duty to deal with fires and hazardous material incidents	10
7 General authority to protect persons and property	10
8 Establishment, maintenance etc of fire brigades	10
9 Volunteer fire brigades	10
10 Exercise of functions by officers and agents	11
10A Protection of environment	11
Part 3 Fighting and preventing fires and dealing with hazardous material incidents	11
Division 1 Powers at fires and hazardous material incidents	11
11 Brigades to proceed with speed to suspected fires or hazardous material incidents	11
12 Investigation of reported fires and hazardous material incidents	11
13 General powers of officers at fires and hazardous material incidents	12

14 Closure of streets and public places	12
15 Use of water etc	12
16 Taking possession etc of buildings and vessels during fires or hazardous material incidents	13
17 Making walls and buildings safe	13
18 Disconnection etc of gas and electricity	13
19 General power to remove persons or obstacles	14
Division 2 Special powers	14
20 Fires outside areas to which Act applies	14
20A Hazardous material incidents outside area to which Act applies.....	14
21 Power to clear fire breaks etc	15
22 Authority to enter land and buildings	15
Division 3 Command structure	15
23 Commissioner may authorise others to exercise functions	15
24 Officer in charge may authorise others to exercise functions.....	16
25 Duty to recognise authority of officers	16
26 Interstate assistance	16
Division 4 Inspection etc	17
27 Inspection etc of brigades	17
28 Inspection of theatres etc	17
29 Inspection—dangerous goods, lighting of fires	17
30 Information may be requested from owner	17
Division 5 Offences	18
31 Fire brigade not to be constituted unless authorised.....	18
32 Concealing fire hydrant	19
33 Damaging fire brigade equipment etc	19
34 False alarms.....	19
35 Obstruction of fire fighters or other personnel	19
35A (Repealed)	19
Division 6 Miscellaneous	19
36 Commissioner may be represented at inquiry	19
37 Payments for voluntary services.....	20

38 Certain damage to be covered by insurance	20
39 Use of water for practice	20
Part 4 Charges for attending fires and other services	20
40 Charges for attending fires or hazardous material incidents	20
41 Apportionment of charges	21
42 Charges for other services.....	21
43 Waiver or reduction of charges.....	22
Part 5 Contribution to fire brigade costs	22
Division 1 Estimates of fire brigade expenditure and contributions	22
44 Definitions	22
45 Estimate of recurrent and capital fire brigade expenditure	23
46 (Repealed)	23
47 Adjustment of estimates of recurrent expenditure requirements	23
48 Contributions payable	24
49 Times for instalment payments	24
Division 2 Contributions by local government areas	25
50 Contributions required from councils.....	25
50A Advance contribution payment by councils.....	25
51 Apportionment between local government areas.....	25
52 How contribution is to be funded.....	26
53 (Repealed)	26
53A Council’s requirements under Local Government Act 1993.....	26
Division 3 Contributions by insurance companies.....	26
54 Contributions required from insurance companies	26
55 Advance payment by insurance companies	26
56 Assessments and adjustments	27
57 Liability of owner where foreign insurer involved	28
58 Returns by insurance companies.....	29
59 Definition of “total amount of premiums”	30
60 Audit of accounts of insurance companies	30
61 Returns by owners of property	31

61A Transitional arrangement—special returns by insurance companies (and by certain property owners) for 6 month period ending 30 June 1993	31
Division 4 Administration of funds	32
62 Management of unspent funds	32
63 (Repealed)	32
64 New South Wales Fire Brigades Capital Fund	32
Part 6 Administration	32
Division 1 The Department	32
65 Establishment of Department	32
66 Staff of Department etc	33
67 Efficiency, discipline and good conduct	33
Division 2 Fire fighters	33
68 Definition of “Authority”	33
69 Appointment etc of fire fighters	33
70 Authority is to be employer for certain purposes	33
71 Authority may fix salaries, wages etc	34
72 Authority may enter into agreements	34
73 Commissioner to give effect to orders, agreements etc	34
74 Regulations relating to members of fire brigades	34
Division 2A Community fire units	35
74A Definitions	35
74B Establishment of community fire units	35
74C Objects and functions of community fire units	35
74D Appointment of members	36
74E Training and equipment for community fire units	36
Division 3 The Advisory Council	36
75 Constitution of Council	36
76 Functions of Council	37
77 Committees of Council	37

Part 7 General	38
78 Protection from liability	38
79 Acquisition of land	38
79A Automatic fire alarm network service arrangements	38
80 Information to policy holders	38
81 Expenses incurred by agents and trustees	39
82 Recovery of charges	39
83 Delegation	39
84 Proceedings for offences	40
85 Regulations	40
86 Repeals and amendments	41
87 Savings and transitional provisions	41
Schedule 1 Proportion of premiums subject to contribution	41
Schedule 2 Provisions relating to members and procedure of Council	42
Schedule 3 (Repealed)	45
Schedule 4 Savings and transitional provisions	45

Fire Brigades Act 1989 No 192



New South Wales

An Act to provide for the protection of persons and property from fire and from hazardous material incidents, and for that purpose to constitute New South Wales Fire Brigades as a Department of the Government and to provide for permanent and volunteer fire brigades; to amend certain Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

Commissioner means the Commissioner of NSW Fire Brigades holding office as such under the *Public Sector Employment and Management Act 2002*.

community fire unit means a community fire unit established under section 74B.

Council means the New South Wales Fire Brigades Advisory Council constituted by this Act.

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

fire brigade means a permanent fire brigade or a volunteer fire brigade, but does not include a rural fire brigade.

fire district means an area constituted as a fire district under section 5.

flammable matter includes:

(a) any substance capable of ignition or combustion by the application of heat, by means of sparks or spontaneously, and

(b) any substance prescribed as flammable for the purposes of this definition.

hazardous material means anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent it from escaping, may cause injury or death or damage to property.

hazardous material incident means an actual or impending land-based spillage or other escape of hazardous material that causes or threatens to cause injury or death or damage to property.

local government area has the same meaning as **area** has in the [Local Government Act 1993](#).

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

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

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

- (a) any person for the time being in actual receipt of, or entitled to receive, the rents and profits of the land or building, or
- (b) any person who, if the land or building were let to a tenant, would be entitled to receive the rents and profits of it,

whether as beneficial owner, trustee, executor, mortgagee in possession, or as agent or attorney for any other person, or otherwise.

permanent fire brigade means a permanent fire brigade established and maintained by the Commissioner, the services of whose members are wholly at the disposal of the Commissioner.

policy of insurance includes:

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

but does not include a policy of reinsurance.

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

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

(2) In this Act:

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

(3) Notes included in this Act (Schedule 1 excepted) do not form part of this Act.

4 Application of Act

(1) This Act applies to all fire districts.

(2) This Act applies to land-based hazardous material incidents (and to any fires that may result from them) that occur anywhere in the State except on State waters, as defined in the [Marine Pollution Act 1987](#).

(3) A hazardous material incident that occurs in or on a building, bridge or other structure or on any body of water (not being part of State waters) is taken to be land-based.

(4) This section has effect subject to sections 20 and 20A.

5 Fire districts

(1) In this section:

reserved area means land within a national park, historic site or state conservation area within the meaning of the [National Parks and Wildlife Act 1974](#) or any other land reserved or dedicated under that Act.

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

Editorial note—

For orders constituting fire districts, see the Historical notes at the end of this Act.

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

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

Part 2 Provision of fire brigades etc

6 Duty to deal with fires and hazardous material incidents

- (1) It is the duty of the Commissioner to take all practicable measures for preventing and extinguishing fires and protecting and saving life and property in case of fire in any fire district.
- (2) It is the duty of the Commissioner to take all practicable measures:
 - (a) for protecting and saving life and property endangered by hazardous material incidents, and
 - (b) for confining or ending such an incident, and
 - (c) for rendering the site of such an incident safe.

7 General authority to protect persons and property

- (1) The Commissioner is authorised to take measures anywhere in the State for protecting persons from injury or death and property from damage, whether or not fire or a hazardous material incident is involved.
- (2) In the case of fire, it does not matter whether or not the persons are, or the property is, within a fire district.

8 Establishment, maintenance etc of fire brigades

For the purpose of exercising the Commissioner's functions under this Part, the Commissioner may:

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

9 Volunteer fire brigades

- (1) The Minister may approve an association of persons as a volunteer fire brigade if satisfied that:
 - (a) the association is formed for the purpose of extinguishing fires and of taking measures referred to in section 6 (2) in relation to hazardous material incidents, and

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

- (2) The Minister may revoke such an approval at any time by notice in writing given to the captain of the volunteer fire brigade or published in the Gazette.
- (3) The trustees of any real or personal property of a volunteer fire brigade may vest that property in the Crown, to be held by the Crown subject to the provisions of this Act but free from any other trust.

10 Exercise of functions by officers and agents

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

10A Protection of environment

The Commissioner is to have regard to the principles of ecologically sustainable development described in section 6 (2) of the [Protection of the Environment Administration Act 1991](#) in carrying out any function that affects the environment.

Part 3 Fighting and preventing fires and dealing with hazardous material incidents

Division 1 Powers at fires and hazardous material incidents

11 Brigades to proceed with speed to suspected fires or hazardous material incidents

- (1) When there is an alarm of fire, a fire brigade must, despite anything to the contrary in any Act, proceed with all speed to the fire and try by all possible means to extinguish it and save any lives and property that are in danger.
- (2) When there is a report of a hazardous material incident, a fire brigade must, despite anything to the contrary in any Act:
 - (a) proceed with all speed to the site of the incident, and
 - (b) try by all possible means to render the site of the incident safe and save any lives and property that are in danger.

12 Investigation of reported fires and hazardous material incidents

- (1) The officer in charge may, with or without members of a fire brigade, enter any place:
 - (a) in respect of which an alarm of fire is raised to ascertain whether there is a fire at the place, or

(b) in respect of which a report of a hazardous material incident has been made to ascertain whether there is any hazardous material at the place that is, or is about to be, the subject of a hazardous material incident.

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

13 General powers of officers at fires and hazardous material incidents

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

(a) may take such measures as the officer thinks proper for the protection and saving of life and property and for the control and extinguishing of the fire, and

(b) is to control and direct the operations of any fire brigade.

(1A) At the site of a hazardous material incident, the officer in charge:

(a) may take such measures as the officer thinks proper for the protection and saving of life and property, for confining and ending the incident and for rendering the site safe, and

(b) is to control and direct the operations of any fire brigade.

The site is taken to be such area in the vicinity of the incident as is for the time being determined by the officer in charge.

(2) If the fire is a bush fire (including a grass fire), the officer in charge is, as far as practicable, to carry into effect any plan of operations in force under section 52 of the [Rural Fires Act 1997](#) in relation to the place where the fire occurs.

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

14 Closure of streets and public places

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

(2) The officer in charge at a hazardous material incident may cause any street or public place in the vicinity of the site of the incident to be closed to traffic until the site has been rendered safe.

15 Use of water etc

The officer in charge at a fire or hazardous material incident may, for the purpose of extinguishing or controlling a fire or confining or ending the incident or rendering the site of the incident safe, without payment:

- (a) use or cause to be used any water mains, pipes and hydrants and any water in them or in any well, tank or stream, and
- (b) cause water to flow into or be shut off from any main or pipe.

16 Taking possession etc of buildings and vessels during fires or hazardous material incidents

- (1) During a fire, the officer in charge may take possession of any building, vehicle or vessel, and any property in it or on it, if it is so situated that a fire in it would endanger any structure or any property in a structure.
- (2) The officer in charge may, to control, extinguish or prevent the spread of the fire, cause such a building to be pulled down or destroyed and cause such a vehicle to be removed or destroyed and such a vessel to be removed or sunk, and may remove any such property and keep it in safe custody.
- (2A) For the purpose of confining or ending a hazardous material incident or rendering the site of such an incident safe, the officer in charge may:
 - (a) take possession of any building, vehicle or vessel in the vicinity of that site and any property (whether or not the property consists of a hazardous material) in it or on it, and
 - (b) cause such a vehicle or vessel to be removed or remove any such property and keep it in safe custody.
- (3) Whenever practicable, the consent of the Harbour Master, or other officer having the control of the removal of vessels in the port, is to be obtained before any vessel is removed or sunk.

17 Making walls and buildings safe

- (1) The officer in charge at a fire may during the fire or immediately after it, pull down, destroy, or shore up any wall or building damaged or rendered insecure by the fire or which, in the officer's opinion, may be dangerous to life or property.
- (1A) The officer in charge at a hazardous material incident may, during the incident or immediately after it, pull down, destroy or shore up any wall or building damaged or rendered insecure by the incident or which, in the officer's opinion, may be dangerous to life or property.
- (2) The cost of doing so is to be borne by the owner of the wall or building and is to be paid to the Commissioner.

18 Disconnection etc of gas and electricity

- (1) The officer in charge at a fire may cause the supply of gas or electricity to any

premises on fire, or to adjacent premises, to be shut off or disconnected.

- (1A) The officer in charge at a hazardous material incident may cause the supply of gas or electricity to any premises in the vicinity of the site of the incident to be shut off or disconnected.
- (2) In exercising a power under this section, the officer in charge may require the person who supplies the gas or electricity concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the officer's directions.
- (3) A person must comply with any such requirement and directions.
- (4) A person who supplies gas or electricity is not liable for any damages because of any interruption of that supply under this section.

19 General power to remove persons or obstacles

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

Division 2 Special powers

20 Fires outside areas to which Act applies

- (1) The Commissioner may permit any members of a fire brigade, with engines and appliances, to go beyond the limits of any fire district for the purpose of extinguishing any fire.
- (2) In such a case the provisions of this Act apply to the fire and to anything done at the fire as if the fire were within a fire district.

20A Hazardous material incidents outside area to which Act applies

- (1) The Commissioner may, at the request of a port authority, permit any members of a fire brigade to attend the site of a hazardous material incident (whether land-based or otherwise) on that part of State waters in relation to which the port authority exercises functions.
- (2) At the site of such a hazardous material incident the members of the fire brigade may take such measures as the officer in charge of the members thinks proper for the protection and saving of life and property, for confining and ending such an incident and for rendering the site of such an incident safe.
- (3) In such a case the provisions of this Act apply to the hazardous material incident and to anything done at the site of the incident as if the incident were not on State waters.

(4) In this section:

port authority means:

- (a) the Minister administering the *Ports and Maritime Administration Act 1995*, or
- (b) a Port Corporation (within the meaning of the *Ports and Maritime Administration Act 1995*) exercising port safety functions (within the meaning of that Act).

site includes any area in the vicinity of the incident as is for the time being determined by the officer in charge.

State waters has the same meaning as in the *Marine Pollution Act 1987*.

21 Power to clear fire breaks etc

(1) The Commissioner is authorised to:

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

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

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

22 Authority to enter land and buildings

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

Division 3 Command structure

23 Commissioner may authorise others to exercise functions

- (1) Any function conferred or imposed on the Commissioner by this Part may be exercised by any officer or member of a fire brigade authorised for the purpose by the Commissioner.
- (2) Such an authorisation need not be in writing and operates to authorise the exercise of functions accordingly.

24 Officer in charge may authorise others to exercise functions

- (1) The officer in charge at a fire or hazardous material incident may authorise any officer or member of a fire brigade to exercise all or specified functions under this Part of the officer in charge.
- (2) Such an authorisation need not be in writing and operates to authorise the exercise of functions accordingly.

25 Duty to recognise authority of officers

- (1) Every member of the Police Service and all other persons are to recognise:
 - (a) the authority of the Commissioner and any member of a fire brigade acting under the Commissioner's orders, and
 - (b) the authority of the officer in charge at a place at which a fire brigade is present.
- (2) It is the duty of every member of the Police Service to support the authority of such a person and to assist him or her in enforcing compliance with any orders given under this Act or the regulations.
- (3) This section applies only in respect of the protection of persons from injury or death, or of property from damage, when the persons are or the property is endangered by fire or a hazardous material incident.

26 Interstate assistance

- (1) A person who is a member of an interstate fire brigade and present at a fire in a fire district for the purpose of trying to extinguish it or to save any lives or property in danger there must:
 - (a) obey any orders given to the person by the officer in charge at the fire, and
 - (b) place any gear or equipment in the person's charge at the disposal of the officer in charge at the fire.
- (1A) A person who is a member of an interstate fire brigade and present at a hazardous material incident in the State for the purpose of trying to confine or end the incident, to render the site of the incident safe or to save any lives or property in danger there must:
 - (a) obey any orders given to the person by the officer in charge at the incident, and
 - (b) place any gear or equipment in the person's charge at the disposal of the officer in charge at the incident.
- (2) While there is no officer in charge at the fire or incident, the member of the interstate fire brigade who has charge of the members of that brigade present at the fire or

incident is, for the purposes of this Act, to be considered to be the officer in charge at the fire or incident.

(3) In this section:

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

Division 4 Inspection etc

27 Inspection etc of brigades

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

28 Inspection of theatres etc

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

29 Inspection—dangerous goods, lighting of fires

- (1) The Commissioner may at any time enter any land, building or vessel for the purpose of ascertaining whether provisions made by or under any Act relating to the storage or keeping of explosives or flammable matter, or relating to the lighting of fires, are being or have been contravened.
- (2) If satisfied that such a provision is being contravened, the Commissioner may serve on the occupier of the land or building concerned or on the master, owner or agent of the vessel concerned, a notice requiring the contravention to be remedied within a specified time.
- (3) A person must comply with such a notice within the time specified.

Maximum penalty: 50 penalty units.

30 Information may be requested from owner

- (1) The following persons are authorised to make a request under this section:
 - (a) the Commissioner,
 - (b) (Repealed)
 - (c) any member of a fire brigade.
- (2) On request made by a person authorised by this section, the owner of premises where a fire or hazardous material incident occurs, the owner or driver of a vehicle conveying

personal property and involved in a hazardous material incident, or the owner of any personal property on any such premises or vehicle or which has been destroyed or damaged by fire or such an incident, must:

- (a) inform the authorised person whether the premises or property were or was insured at the time or during the period specified by the person, and
- (b) give the authorised person full particulars of any such insurance, including the name of the insurer and the amount of the insurance.

Personal property includes any hazardous material.

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

Maximum penalty: 5 penalty units.

Division 5 Offences

31 Fire brigade not to be constituted unless authorised

- (1) It is unlawful for any persons to constitute or maintain a fire brigade for the purpose of extinguishing fire within any fire district except:
 - (a) as a permanent or volunteer fire brigade under the authority of this Act, or
 - (b) on premises or land owned or used by the persons or at which they are employed.
- (1A) It is unlawful for any persons to constitute or maintain any body for the purpose of taking measures referred to in section 6 (2) in relation to hazardous material incidents except:
 - (a) as a permanent or volunteer fire brigade under the authority of this Act, or
 - (b) on premises or land owned or used by the persons or at which they are employed, or
 - (c) where the body consists of employees of the persons and the body is constituted to deal with incidents involving hazardous materials owned by or transported by vehicles or other means of transport owned by the persons, or
 - (d) with the approval of the Commissioner.
- (2) A person who acts in contravention of this section is guilty of an offence.

Maximum penalty: 20 penalty units.

32 Concealing fire hydrant

It is an offence for a person to:

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

Maximum penalty: 20 penalty units.

33 Damaging fire brigade equipment etc

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

Maximum penalty:

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

34 False alarms

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

Maximum penalty:

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

35 Obstruction of fire fighters or other personnel

A person who obstructs or hinders the Commissioner, any member of the staff of the Department or any member of a fire brigade in the exercise of a function under this Act is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

35A (Repealed)

Division 6 Miscellaneous

36 Commissioner may be represented at inquiry

- (1) The Commissioner may, at any inquest or inquiry relating to the cause or origin of any

fire or hazardous material incident, be represented by a person appointed by the Commissioner for the purpose.

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

37 Payments for voluntary services

The Commissioner may make payments for voluntary or special services rendered to the Commissioner or to any fire brigade.

38 Certain damage to be covered by insurance

- (1) Any damage to property caused by the Commissioner, the officer in charge at a fire or a hazardous material incident, any member of a fire brigade (including an interstate fire brigade within the meaning of section 26) or any member of a community fire unit in the exercise in good faith of functions under this or any other Act is to be considered to be damage by fire for the purposes of any policy of insurance against fire covering the property.
- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are or the property is endangered by fire or endangered by the escape or likely escape of hazardous material.

39 Use of water for practice

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

Part 4 Charges for attending fires and other services

40 Charges for attending fires or hazardous material incidents

- (1) Except as provided by this section, no charge is to be made for the attendance at a fire of any members of a fire brigade.
- (2) If a fire occurs in any building, vehicle, vessel or property outside a fire district to which this Act applies, the Commissioner is entitled to recover, for services rendered by any members of a fire brigade in endeavouring to extinguish the fire or save life or property, charges not exceeding the prescribed charges.
- (3) Those charges may be recovered from:
 - (a) the owner of the building, vehicle or property, or
 - (b) the master or owner of the vessel and the cargo and freight for the vessel.

- (4) The amount of those charges is not to exceed 20 per cent of the value before the fire of the building, vessel, cargo and freight or property.
- (4A) If a hazardous material incident occurs anywhere in the State, the Commissioner is entitled to recover charges, not exceeding the prescribed charges, for services rendered by any members of a fire brigade in endeavouring:
 - (a) to confine or end the incident, or to render the site of the incident safe, or
 - (b) to save any lives or property in danger.
- (4B) Those charges may be recovered from:
 - (a) the owner of, or the person having charge of, the hazardous material involved, or
 - (b) the owner or occupier of the premises on which, or the owner or person in charge of the vehicle or vessel on or in which, or arising out of the use of which, the incident occurred.
- (4C) This section does not allow recovery of charges for a fire within a fire district even though the fire arose from a hazardous material incident.
- (5) This section binds the Crown in right of the State and also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

41 Apportionment of charges

- (1) The charges payable under section 40 in respect of a fire are to be ratably apportioned between the owner of the building, vessel or vehicle and the owner of the property, cargo or freight, according to their respective values before the fire.
- (2) If any dispute arises between the parties liable to pay such a charge as to the proportion payable by each or any of them, the Commissioner may determine and certify the amount payable by each person.
- (3) The Commissioner's certificate is conclusive evidence in any proceedings of the amount payable by each of the parties.
- (4) The charges payable under section 40 otherwise than in respect of a fire are to be ratably apportioned in accordance with the regulations, if the regulations so provide.

42 Charges for other services

- (1) If the Commissioner or a member of a fire brigade, on request made by or on behalf of any person (whether or not made in compliance with any law) otherwise than under an automatic fire alarm network service arrangement referred to in section 79A:
 - (a) inspects any premises, or

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

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

- (1A) The Commissioner is entitled to payment of any charges that a person has agreed to pay under an automatic fire alarm network service arrangement referred to in section 79A, including charges of a kind referred to in subsection (1) (a)–(e).
- (1B) Nothing in subsection (1A) affects the Commissioner’s entitlement to payment of any charges payable otherwise than as referred to in that subsection.
- (2) If a charge is not prescribed in respect of the conduct of a training course, the Commissioner is entitled to payment of the charge that the Commissioner determines is the reasonable charge payable for the conducting of a training course.
- (3) This section binds the Crown in right of the State and also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

43 Waiver or reduction of charges

The Commissioner may, at his or her discretion, waive any charge payable under this Part or reduce any such charge by such proportion as the Commissioner thinks fit having regard to:

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

Part 5 Contribution to fire brigade costs

Division 1 Estimates of fire brigade expenditure and contributions

44 Definitions

- (1) In this Part:

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

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

financial year means the period of 12 months commencing on 1 July in any year.

(2) In this Part:

- (a) a reference to the **aggregate recurrent expenditure requirements** for fire brigades is a reference to the estimate of those requirements prepared under section 45 (1), as approved by the Treasurer, and
- (b) a reference to the **aggregate capital expenditure requirements** for fire brigades is a reference to the estimate of those requirements prepared under section 45 (1), as approved by the Treasurer, and
- (c) a reference to the **recurrent expenditure requirements** for fire brigades for a fire district is a reference to the estimate of those requirements prepared under section 45 (2), as approved by the Minister.

45 Estimate of recurrent and capital fire brigade expenditure

- (1) During each financial year, the Minister is to prepare, for approval by the Treasurer:
 - (a) an estimate of the aggregate recurrent expenditure requirements for fire brigades for the following financial year, and
 - (b) an estimate of the aggregate capital expenditure requirements for fire brigades for the following financial year.
- (2) As soon as practicable after money has been appropriated by Parliament for the purposes of this Act for a particular financial year, the Commissioner is to prepare, for approval by the Minister, an estimate of the recurrent expenditure requirements for fire brigades for that year for each fire district.

46 (Repealed)

47 Adjustment of estimates of recurrent expenditure requirements

- (1) The aggregate recurrent expenditure requirements for fire brigades for a financial year is to be adjusted as necessary, whether by way of a reduction or increase, by the aggregation of:
 - (a) such part of the surplus or deficit in the Department's operating account as at the end of the previous financial year, and

(b) such amounts it is estimated will be paid to the Department for the financial year (otherwise than from contributions under this Part for fire brigade expenditure), as may be determined by the Treasurer in consultation with the Minister.

(2) There is to be a corresponding pro-rata adjustment in the estimate of the recurrent expenditure requirements in respect of each fire district so that the estimate is adjusted in accordance with the following:

$$F_{(adj)} = F \times \frac{A_{(adj)}}{A}$$

where:

***F*_(adj)** represents the adjusted amount for the fire district.

F represents the recurrent expenditure requirements for the fire district.

***A*_(adj)** represents the aggregate recurrent expenditure requirements for fire brigades, as adjusted in accordance with subsection (1).

A represents the aggregate recurrent expenditure requirements for fire brigades.

48 Contributions payable

- (1) The total amount required to be contributed under this Part for a financial year is the sum of the following amounts:
- (a) an amount equivalent to the aggregate recurrent expenditure requirements for fire brigades for that year, as adjusted in accordance with section 47 (1),
 - (b) an amount equivalent to the aggregate capital expenditure requirements for fire brigades for that year, other than money representing provision for depreciation of the Department's assets, proceeds of the sale of any of the Department's assets or capital receipts arising otherwise than by way of appropriation by Parliament.
- (2) The amount required to be contributed under this Part for a financial year for a fire district is the sum of the following amounts:
- (a) an amount equivalent to the recurrent expenditure requirements for fire brigades for that year for that fire district, as adjusted in accordance with section 47 (2),
 - (b) such proportion of the aggregate capital expenditure requirements for fire brigades for that year as the Commissioner, with the approval of the Minister, may determine in relation to that fire district.

49 Times for instalment payments

- (1) The contributions payable under this Part (including advance payments) are to be

paid in quarterly instalments on or before 1 July, 1 October, 1 January and 1 April in each financial year, or on or before such other days as the Commissioner may direct and notify to the contributors concerned.

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

Maximum penalty: 50 penalty units.

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

Division 2 Contributions by local government areas

50 Contributions required from councils

- (1) Of the amount required to be contributed for a fire district, 12.3 per cent is (unless subsection (2) applies) to be contributed by the local government area or areas the whole or part of which is included in the fire district.
- (2) If a fire district comprises a reserved area (as defined in section 5) and no other area:
- (a) a local government area included in the fire district is not required to contribute in respect of the fire district, and
- (b) 12.3 per cent of the amount required to be contributed for the fire district is to be contributed from the National Parks and Wildlife Fund established under the [National Parks and Wildlife Act 1974](#) and payment from that fund is authorised accordingly.

50A Advance contribution payment by councils

- (1) If the amount required to be contributed by a local government area has not been finally determined by 1 July in any financial year, the council concerned must make an advance contribution payment to the Commissioner pending the making of an estimate for that financial year for all fire districts.
- (2) The advance contribution payment is to be an amount determined by the Commissioner.
- (3) When the estimates for all fire districts are determined, the required contribution for the financial year is to be adjusted by the Commissioner having regard to the amount of the advance contribution payment.

51 Apportionment between local government areas

- (1) If a fire district comprises more than one local government area, the amount of the contribution to be paid by each area is to be apportioned according to the current 5-year average of the aggregated land values of all ratable land in the local

government area or in the part of it to which this Act applies.

- (2) In this section, **current 5-year average**, in relation to the aggregated land values of land, means the arithmetic mean of the aggregate land values of the land (estimated in accordance with section 67 of the *Valuation of Land Act 1916*) as at 1 July in each of the 5 periods of 12 months prior to the date on which the average is being calculated.

52 How contribution is to be funded

- (1) If this Act applies to the whole of a local government area, the amount of contribution payable by the area is to be paid out of the consolidated fund of the council concerned.
- (2) If this Act applies to part only of a local government area, the council is required to pay the required contribution out of the consolidated fund or raise the required amount by a special rate under the *Local Government Act 1993* on the land value of rateable land in the part.
- (3) Despite any provision of the *Local Government Act 1993* to the contrary, no council poll is to be taken on the question of whether such a rate is to be levied.
- (4) If the amount required for any year is greater than that required for any previous year, the council may levy a higher special rate, to be fixed by the council, to provide for the greater amount, without making a rate for that year.

53 (Repealed)

53A Council's requirements under *Local Government Act 1993*

A council does not contravene any requirement under the *Local Government Act 1993* as a result of doing any thing required to be done in connection with this Division.

Division 3 Contributions by insurance companies

54 Contributions required from insurance companies

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

55 Advance payment by insurance companies

- (1) An insurance company must, in each financial year, make an advance payment to the Commissioner pending an assessment under section 56.
- (2) The advance payment is to be an amount equal to the percentage fixed by the Commissioner in respect of that year of the total amount of the premiums subject to contribution under subsection (4) received by or due to the company during the financial year that ended one year before the financial year for which the advance

payment is due.

- (3) The percentage fixed by the Commissioner is to be the percentage that will provide the total amount to be contributed under this Part by all insurance companies in respect of all fire districts in the financial year for which the contribution is required.
- (4) The amount of the premiums under any class of policies of insurance specified in Schedule 1 which is to be subject to contribution under this section is as indicated in that Schedule in respect of that class of policies of insurance.
- (5) If the Minister is satisfied that at least two-thirds of the insurance companies liable to contribute under this section desire that Schedule 1 be amended in a certain manner, and the Commissioner recommends the amendment, the Minister may by notice published in the Gazette, amend that Schedule accordingly.
- (6) Any such amendment takes effect from such date following publication of the notice as the Minister directs in the notice.

56 Assessments and adjustments

- (1) If an insurance company submits a return under this Division in a financial year, the Commissioner is to notify the company of the required contribution in relation to the company for that year assessed in accordance with the following formula:

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

where:

a is the total amount of premiums subject to contribution specified in the return made by the company.

b is the total amount to be contributed under this Part by all insurance companies in respect of all fire districts for the year to which the return relates.

c is the total amount of all premiums subject to contribution specified in returns under this Division made by all insurance companies in respect of that year.

- (2) If the required contribution assessed in relation to an insurance company for a financial year is greater than the advance payment required to be made under this Division by the company for that financial year, the company must, not later than 31 December in the financial year in which the assessment is made or such later day as may be approved by the Commissioner, pay to the Commissioner the amount of the difference between the advance payment and the assessed amount.
- (3) If the required contribution is assessed for a financial year in which the company did not make an advance payment under this Division, the company must, not later than 31 December in the financial year in which the assessment is made or such later day

as may be approved by the Commissioner, pay the amount assessed to the Commissioner.

- (4) If the required contribution assessed for a financial year is less than the amount of the advance payment required to be made under this Division by the company for that financial year, the Commissioner is to credit the amount of the difference against:
- (a) any instalments that remain to be paid in respect of the advance payment for the financial year in which the assessment is made, and
 - (b) any instalments that will be required to be paid in respect of the advance payment to be made during the following financial year,

in such manner as the Commissioner may determine and, if any balance is outstanding at the end of the financial year referred to in paragraph (b), the Commissioner is to pay the amount outstanding to the company not later than the next 30 June.

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

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

57 Liability of owner where foreign insurer involved

- (1) This section applies to a person who is the owner of property in respect of which an insurance company has received a premium referred to in section 55 if the insurance company is not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business.
- (2) The Commissioner may notify a person to whom this section applies that the person is to be responsible for the contributions required to be paid by the insurance company under this Part because of premiums received by the company in respect of the person's property, and in such a case:
- (a) the person must pay to the Commissioner any amounts that would otherwise be payable by the company under this Part in respect of those premiums, and

(b) the provisions of this Division are to apply to the person as if the person were the insurance company that received those premiums, subject to any modification of those provisions required by the regulations.

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

Maximum penalty: 10 penalty units.

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

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

58 Returns by insurance companies

(1) An insurance company must during September in each financial year, or at such other time during the financial year as the Commissioner may notify in the Gazette, submit to the Commissioner:

(a) a return in the prescribed form showing the total amount of premiums received by or due to the company for the previous financial year in respect of the insurances against loss of or damage to any property in the State under the classes of policies specified in Schedule 1, and

(b) an auditor's certificate that relates to the return and complies with subsection (2).

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

(a) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or

(b) a person not resident in the State who has qualifications that, in the opinion of the Commissioner, are appropriate for the giving of the certificate.

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

(4) If a notification under subsection (3) is received by the Commissioner:

(a) before 31 March in a financial year—the company is not discharged from its liability to pay any unpaid instalments of its advance payment under section 55 for that year, or

(b) on or after 31 March in a financial year—the company is not discharged from its

liability to pay any unpaid instalments of its advance payment for that year or its advance payment for the next financial year.

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

- (a) fails to lodge a return or notify the Commissioner as required by this section, or
- (b) lodges a return under this section that is false or misleading in a material particular.

Maximum penalty:

- (a) under paragraph (a)—5 penalty units,
- (b) under paragraph (b)—20 penalty units.

59 Definition of “total amount of premiums”

For the purposes of this Division:

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

- (a) any such premium, or
- (b) any bonuses or return premiums allowed in respect of any policy of insurance the subject of any such premium, or
- (c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to any other insurance company in New South Wales,

but does not include stamp duty payable in respect of any policy of insurance the subject of any such premium.

60 Audit of accounts of insurance companies

- (1) At the request of the Minister, the Auditor-General is to examine and audit, or cause to be examined and audited, the accounts (and any books and documents relating to the accounts) of any insurance company liable to pay contributions under this Part.
- (2) The examination and audit is to be in respect of matters relating to or arising out of the provisions of this Part.
- (3) The Auditor-General is to forward a report on the audit to the Minister as soon as practicable after it is completed.
- (4) It is an offence for a person to:
 - (a) obstruct the Auditor-General, or any other person acting on behalf of the Auditor-

General, when exercising functions under this section, or

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

Maximum penalty: 50 penalty units.

61 Returns by owners of property

- (1) If an insurance company not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business holds a risk in respect of property within an area to which this Act applies, the owner of the property must during September in each year, or at such other time as the Commissioner may direct and notify in the Gazette, furnish a return to the Commissioner.
- (2) The return must show the amount of the premiums paid by the owner in respect of the property to the company during the previous financial year or such other period as the Commissioner may direct.
- (3) A person who fails to lodge a return as required by this section is guilty of an offence.

Maximum penalty: 20 penalty units.

61A Transitional arrangement—special returns by insurance companies (and by certain property owners) for 6 month period ending 30 June 1993

- (1) The purpose of this section is to facilitate the changeover, from a calendar year to a financial year basis, of returns by insurance companies under section 58 and by owners of property under section 61 as a result of the amendments made by the *Fire Brigades (Amendment) Act 1993*.
- (2) As soon as practicable after the commencement of that Act (but not later than 1 month after that commencement):
 - (a) an insurance company must submit to the Commissioner a return (in accordance with section 58) in respect of the period of 6 months beginning 1 January 1993 and ending 30 June 1993, and
 - (b) a person to whom section 57 applies must submit to the Commissioner a return (in accordance with section 61) in respect of the period of 6 months beginning 1 January 1993 and ending 30 June 1993.
- (3) A return under this section is to be in a form approved by the Commissioner.
- (4) Such returns are to be used by the Commissioner to effect the assessments and adjustments under section 56 for the 1993 calendar year and to determine the

advance payments under section 55 for the 1994 calendar year.

- (5) Without limiting clause 2 of Schedule 4, the regulations may make provision for or with respect to returns under this section and the assessments, adjustments and advance payments referred to in subsection (4).

Division 4 Administration of funds

62 Management of unspent funds

Any money remaining to the credit of the Department at the end of a financial year, other than money that is required to be paid into the New South Wales Fire Brigades Capital Fund, is to be paid into the Department's operating account.

63 (Repealed)

64 New South Wales Fire Brigades Capital Fund

- (1) There is to be established in the Special Deposits Account in the Treasury a New South Wales Fire Brigades Capital Fund.
- (2) There is to be paid into the Fund any money that is required to be paid into the Fund by or under this or any other Act or law.
- (2A) In particular, there is to be paid into the Fund:
- (a) all money appropriated by Parliament for the capital works and services of the Department for that year, and
 - (b) such of the money appropriated by Parliament for the recurrent services of the Department for that year as is necessary to cover depreciation of the Department's assets, and
 - (c) such money as arises from the sale of any of the Department's assets during that year.
- (3) Payments may be made from the Fund, with the consent of the Treasurer, for or towards meeting expenditure incurred under the authority of this Act.

Part 6 Administration

Division 1 The Department

65 Establishment of Department

- (1) There is established by this Act a Department of the Government with the name of "New South Wales Fire Brigades".
- (2) The Department is to be regarded as having been established under section 49 of the

Constitution Act 1902, and nothing in this section affects the powers conferred by that section in relation to the Department.

66 Staff of Department etc

- (1) Such staff as may be necessary to enable the Commissioner to exercise the Commissioner's functions are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) Subsection (1) does not apply to the members of permanent fire brigades.
- (3) The Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.
- (4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the Department.

67 Efficiency, discipline and good conduct

The Commissioner is responsible for maintaining the efficiency, discipline and good conduct of the members of fire brigades.

Division 2 Fire fighters

68 Definition of "Authority"

In this Division:

Authority means the Public Employment Industrial Relations Authority.

69 Appointment etc of fire fighters

- (1) The Commissioner may appoint such persons as may be necessary to provide the members of fire brigades for the purposes of this Act.
- (2) A member of a fire brigade is, when acting as such a member, to be considered to be employed by the Government of New South Wales in the service of the Crown.
- (3) Except as provided by section 70, the Commissioner is to have and may exercise all the functions of employer of the members of fire brigades including (but without being limited to) functions concerning:
 - (a) dismissal, suspension or reinstatement of employees, and
 - (b) discipline, promotion and transfer of employees.

70 Authority is to be employer for certain purposes

- (1) The Authority is, for the purposes of any proceedings relating to members of

permanent or volunteer fire brigades held before a competent tribunal having jurisdiction to deal with industrial matters, to be taken to be the employer of those persons.

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

71 Authority may fix salaries, wages etc

- (1) The Authority may from time to time make determinations fixing:
- (a) the salaries, wages and other remuneration of members of permanent fire brigades, and
 - (b) the payments to be made to members of volunteer fire brigades.
- (2) The salary, wages or other remuneration of a member of a permanent fire brigade and the payments to be made to a member of a volunteer fire brigade are, except in so far as provision is otherwise made by law, such as may be fixed by a determination made under this section.
- (3) A person may sue for and recover from the Crown the amount of remuneration or payments to which the person is entitled, as determined under this section.

72 Authority may enter into agreements

- (1) The Authority may enter into an agreement with any association or organisation representing a group or class of members of permanent or volunteer fire brigades with respect to industrial matters.
- (2) Any such agreement binds all persons in the class or group affected by the agreement, and no such member of a permanent or volunteer fire brigade (whether or not a member of the association or organisation with which the agreement was entered into) has any right of appeal against the terms of the agreement.

73 Commissioner to give effect to orders, agreements etc

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

74 Regulations relating to members of fire brigades

- (1) The regulations may make provision for or with respect to the employment of

members of permanent fire brigades and the service of members of volunteer fire brigades, including the conditions of that employment and service and the discipline of members.

- (2) Any such regulations relating to conditions of employment or service, or discipline:
 - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Authority is a party, and
 - (b) have effect despite any determination of the Authority under section 71 (Authority may fix salaries, wages etc).

Division 2A Community fire units

74A Definitions

In this Division:

bush fire has the same meaning as in the *Rural Fires Act 1997*.

bush fire danger period has the same meaning as in the *Rural Fires Act 1997*.

fire fighter means a member of a fire brigade appointed under this Act or a volunteer rural fire fighter as defined in section 8 (3) of the *Rural Fires Act 1997*.

74B Establishment of community fire units

- (1) The Commissioner may establish a community fire unit for any geographical area within a fire district.
- (2) The Commissioner is to determine the geographical area for which a community fire unit is established.
- (3) A community fire unit is to consist of such persons as the Commissioner appoints as members of the community fire unit under this Division.
- (4) The Commissioner may at any time disband a community fire unit.

74C Objects and functions of community fire units

- (1) The objects of a community fire unit are to assist with the defensive protection of homes during bush fires and to carry out other fire protection work under the direction of the Commissioner.
- (2) The functions of a community fire unit are as follows:
 - (a) to undertake fire prevention work by encouraging the preparation of properties in advance of the bush fire danger period and assisting with hazard reduction work such as clearing and pile burning,

- (b) to assist fire fighters during a bush fire, particularly through the defensive protection of homes from spot fires and ember attacks before fire fighters arrive or while fire fighters are working at the main fire fronts,
 - (c) to assist with recovery operations after a bush fire such as bushland regeneration and removal of debris that could pose a future bush fire hazard,
 - (d) to educate members of the community in relation to fire safety and the prevention of bush fires.
- (3) The functions of a community fire unit may be exercised only in the geographical area for which the unit is established.
- (4) The functions of a community fire unit may be exercised by any member of the community fire unit.
- (5) A member of a community fire unit is, in the exercise of his or her functions as a member of a community fire unit:
- (a) subject to the direction and control of the Commissioner, and
 - (b) subject to the operational guidelines of the Commissioner.

74D Appointment of members

- (1) The Commissioner may, by instrument in writing, appoint any person as a member of a community fire unit.

Note—

Members are generally volunteers who reside in a bushland area for which a community fire unit is established.

- (2) The Commissioner may terminate the appointment of a member of a community fire unit at any time in accordance with guidelines established by the Commissioner.

74E Training and equipment for community fire units

The Commissioner is to provide each community fire unit with such training and equipment as the Commissioner considers necessary to enable the community fire unit to exercise its functions.

Division 3 The Advisory Council

75 Constitution of Council

- (1) There is constituted by this Act the New South Wales Fire Brigades Advisory Council.
- (2) The Council is to consist of 4 members, being:
- (a) the Commissioner, who is to be the Chairperson of the Council,

(b) (Repealed)

(c) a person appointed by the Minister to represent insurance companies in New South Wales, being a person selected by the Minister from a panel of 3 persons nominated by the Insurance Council of Australia Limited,

(d) a person appointed by the Minister to represent local government in New South Wales, being a person selected by the Minister from a panel of 3 persons nominated jointly by the Local Government Association of New South Wales and the Shires Association of New South Wales,

(e) (Repealed)

(f) a person appointed by the Minister, being a person who in the Minister's opinion has expertise in the field of fire prevention and control.

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

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

76 Functions of Council

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

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

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

77 Committees of Council

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

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

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

Part 7 General

78 Protection from liability

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

79 Acquisition of land

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

79A Automatic fire alarm network service arrangements

- (1) The Commissioner may, on behalf of the Department, enter into, and do anything else in connection with, automatic fire alarm network service arrangements.
- (2) Nothing in this section affects any other power that the Commissioner has to enter into contracts or do anything else.
- (3) In this section, **automatic fire alarm network service arrangement** means an arrangement for the installation and maintenance of fire alarm links between fire brigade premises and other premises.

80 Information to policy holders

- (1) This section applies to a policy of insurance that:
 - (a) is subject to the requirement for a contribution under Part 5, and
 - (b) is a policy of a class described in Part A of Schedule 1.
- (2) An insurance company is not to issue to a person any invoice or other statement as to the premium payable in respect of the renewal of a policy of insurance to which this section applies unless the statement also indicates how much of the premium is estimated to be attributable to the total of:
 - (a) the required contribution under Part 5, and
 - (b) any contribution required under the *Rural Fires Act 1997*.

Maximum penalty: 10 penalty units.

81 Expenses incurred by agents and trustees

- (1) All expenditure necessarily or properly incurred and paid under this Act by an agent for an insurance company (within the meaning of Part 5) for or in respect of the company:
 - (a) may be deducted by the agent from any money held by the agent for the company, or
 - (b) may be recovered by the agent from the company as a debt in a court of competent jurisdiction.
- (2) All expenditure necessarily or properly incurred and paid under this Act by an agent for a person in respect of any houses, land or premises for which the agent is agent of the person:
 - (a) may be deducted by the agent from any money held by the agent for the person, or
 - (b) may be recovered by the agent from the person as a debt in a court of competent jurisdiction.
- (3) A trustee of any house, land or premises may apply any of the funds under the trustee's control in defraying any charges necessarily or properly incurred by the trustee under this Act in respect of the house, land or premises.

82 Recovery of charges

- (1) Any charges payable under this Act to the Commissioner may be recovered by the Commissioner in a court of competent jurisdiction as a debt due to the Crown.
- (2) In any proceedings to recover such a charge, a certificate signed by the Commissioner to the effect that a specified amount is payable by the defendant to the Commissioner is evidence of the matter certified.

83 Delegation

- (1) The Commissioner may delegate to an authorised person any of the Commissioner's functions under this Act or the regulations, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Commissioner if the delegate is authorised in writing to do so by the Commissioner.
- (3) In this section:

authorised person means:

- (a) (Repealed)
- (b) a member of staff of the Department, or

(c) a member of a fire brigade.

84 Proceedings for offences

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

85 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) enabling the Commissioner and the fire brigades to exercise the functions conferred on them by this Act or the regulations,
 - (b) prescribing generally the duties of members of fire brigades,
 - (c) the maintenance of the efficiency, discipline, and good conduct of members of fire brigades,
 - (d) the formation of volunteer fire brigades, and the regulation and inspection of fire brigades and their premises and equipment,
 - (e) prohibiting or regulating the lighting of fires where it would be likely to be dangerous to buildings,
 - (f) prescribing the forms of notices and other documents to be used in carrying out this Act and the regulations,
 - (g) prescribing for various classes of buildings the means to be provided to enable occupants to escape from the building in case of fire, and the inspection and maintenance of those means of escape,
 - (h) prescribing for any building used for a purpose which in the opinion of the Commissioner is of a hazardous nature or for any building the construction or use of which is, in the opinion of the Commissioner, likely to allow the rapid spread of fire, the installation of fire alarms, sprinklers, and other devices or appliances approved by the Commissioner designed to prevent or retard the spread of fire, and for the inspection and maintenance of those alarms, sprinklers, appliances, and devices,
 - (i) prohibiting or regulating the storage of flammable matter in, on or under any part of a building,
 - (j) prohibiting or regulating the storage of flammable matter in light areas or in close proximity to any building in any local government area to which this Act applies,

- (k) regulating the deposit of flammable matter in yards or on vacant blocks of land in any local government area to which this Act applies,
 - (l) regulating the burning off of waste flammable matter in any local government area to which this Act applies.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units and, in the case of a continuing offence, by a penalty not exceeding 1 penalty unit for each day the offence continues.

86 Repeals and amendments

- (1) The following Acts are repealed:

Fire Brigades Act 1909 No 9

Fire Brigades (Amendment) Act 1941 No 23

Fire Brigades (Amendment) Act 1988 No 54.

- (2) (Repealed)

87 Savings and transitional provisions

Schedule 4 has effect.

Schedule 1 Proportion of premiums subject to contribution

(Sections 55, 58)

Column 1	Column 2
Classes of policies of insurance	Proportion of premiums subject to contribution
Part A	
1 Any insurance of property including consequential loss but not including any insurance of a class specified elsewhere in this Schedule	80 per cent
2 Houseowners and householders, however designated (buildings or contents or both)	50 per cent
Part B	
3 Personal combined on personal jewellery and clothing, personal effects and works of art	10 per cent
4 Motor vehicle and motor cycle	2.5 per cent

5	<p>Marine and baggage—any insurance confined to maritime perils or confined to risks involving transportation on land or in the air, including storage incidental to transportation by sea, land or air, but not including *static risks (which are to be declared under Item 1)</p> <p>[Note: *static risks includes all movements of goods and/or stock and/or material associated with processing or storage operations at any situation.]</p>	1 per cent
6	<p>(a) Combined fire and hail on growing crops</p> <p>(b) Live stock</p>	<p>1 per cent</p> <p>1 per cent</p>
7	Aviation hull	Nil
8	Any insurance solely covering:	
	(a) Loss by theft	Nil
	(b) Plate glass	Nil
	(c) Machinery—confined to mechanical breakdown and/or consequential loss arising from mechanical breakdown	Nil
	(d) Explosion or collapse of boiler and pressure vessels—confined to damage other than by fire	Nil
	(e) Inherent or latent defects—confined to damage and/or consequential loss arising out of defective design, defective workmanship or defective materials but excluding any damage or consequential loss arising from fire	Nil

Schedule 2 Provisions relating to members and procedure of Council

(Section 75)

1 Definition

In this Schedule, ***appointed member*** means a member of the Council other than the Commissioner.

2 Deputies of members

- (1) The Commissioner may, from time to time, appoint a person to be his or her deputy, and the member or the Minister may revoke any such appointment.
- (2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:

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

3 Terms of office

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

4 Allowances

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

5 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

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

6 Filling of vacancy in office of appointed member

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

7 Effect of certain other Acts

(1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.

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

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

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

8 General procedure

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

9 Quorum

The quorum for a meeting of the Council is 3 members.

10 Presiding member

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

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

11 Voting

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

12 First meeting

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

Schedule 3 (Repealed)

Schedule 4 Savings and transitional provisions

(Section 87)

Part 1 General

1 Definitions

In this Schedule:

appointed day means the day on which the repealed Act is repealed.

Director-General means the Director-General holding office immediately before the commencement of Schedule 1 to the *Fire Brigades (Amendment) Act 1994*.

dissolved board means the board under the repealed Act that is dissolved by clause 3.

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

2 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

the *Fire Brigades (Amendment) Act 1993*

the *Fire Brigades (Amendment) Act 1994*

the *Fire Brigades Amendment (Contributions) Act 1995*

the *Fire Brigades Amendment (Community Fire Units) Act 2005*

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

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

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Dissolution of board of Fire Commissioners

3 Dissolution of board

- (1) On the appointed day, the board of Fire Commissioners of New South Wales constituted under the repealed Act is dissolved.
- (2) A person who, immediately before the appointed day, held office as a member of the dissolved board:
 - (a) ceases to hold that office, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.

4 Former president to be Commissioner

- (1) On the appointed day, the person who ceases to hold office as president of the dissolved board is to be regarded as having been appointed as the Commissioner pursuant to the *Public Sector Management Act 1988*.
- (2) The appointment is to be considered to be an appointment for the remainder of the president's term of office as president of the dissolved board.

5 References to dissolved board etc

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

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

6 Transfer of assets, liabilities etc to the Crown

- (1) In this clause:

assets means any legal or equitable estate or interest (whether present or future and

whether vested or contingent) in real or personal property of any description (including money), and includes choses in action and documents.

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

(2) On the appointed day:

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

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

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

7 Continuation of protection from liability

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

8 Actions etc of dissolved board

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

Part 3 Staff

9 Definitions

In this Part:

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

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

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

10 Appointment of former permanent fire brigade members

- (1) A permanent fire brigade member is, on the appointed day, to be regarded as having been appointed by the Director-General as a member of a permanent fire brigade at the rank and designation applicable to the person as a permanent fire brigade member immediately before the appointed day.
- (2) Subject to this Act, the appointment is to be regarded as being subject to the same conditions of employment (including as to salary or wages, and allowances) as applied to the person as a permanent fire brigade member immediately before the appointed day.

11 Appointment of former executive officers

On the appointed day:

- (a) the former executive officer who held office as chief officer under the repealed Act is to be regarded as having been appointed as the Chief Officer of Fire Brigades under the *Public Sector Management Act 1988*, and
- (b) each of the other former executive officers is to be regarded as having been appointed as a Deputy Chief Officer of Fire Brigades under the *Public Sector Management Act 1988*.

12 Transfer of other officers etc to Public Service

- (1) On the appointed day, a former board employee is entitled to be appointed to a position in the Public Service in accordance with this clause.
- (2) The Governor may, on the recommendation of the Minister, by order published in the Gazette, transfer a former board employee to a position in the Public Service.
- (3) A person who is the subject of such an order is to be regarded for all purposes as having become an officer of the Public Service, in accordance with the terms of the order, on the appointed day.
- (4) This clause has effect despite anything in the *Public Sector Management Act 1988* and a person transferred under this clause is to be regarded as having been transferred in accordance with any relevant provision of that Act.

13 Employment conditions of persons transferred to Public Service

- (1) This clause applies to a person who becomes an officer of the Public Service because of clause 12.
- (2) Such a person is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the person as a former board employee immediately before the appointed day, until the salary, wages or allowances is or are varied or

altered:

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

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

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

14 Preservation of rights

(1) This clause applies to a person who:

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

(2) Such a person:

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

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

(3) Service as an officer of the Public Service or member of a permanent fire brigade under this Act is to be regarded as service as a permanent fire brigade member, a

former board employee or a former executive officer, as the case requires, for the purposes of any law:

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

Part 4 Miscellaneous provisions relating to the commencement of this Act

15 Continuity of service as volunteer fire fighter

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

(c) otherwise in accordance with law.

16 Adjustment of contributions for 1990

- (1) As soon as practicable after the appointed day, the Director-General is to make an estimate of fire brigade expenditure (within the meaning of Part 5) in each fire district for the 1990 calendar year.
- (2) For the purposes of Part 5:
 - (a) each such amount is to be considered to be the amount to be contributed in respect of the fire district concerned for the 1990 calendar year, and
 - (b) the total of those amounts is to be considered to be the total amount to be contributed for the 1990 calendar year.
- (3) The Director-General is then to make the necessary adjustments to the contributions required to be paid as a result of this clause and is to notify contributors of the adjusted contributions.
- (4) The adjusted contributions so notified become the contributions payable under Part 5 for the 1990 calendar year.
- (5) Subject to this clause, contributions payable under Part 4 of the repealed Act immediately before its repeal become payable under Part 5 of this Act and may be recovered accordingly.

17 Contributions paid under repealed Act

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

18 Continuity of fire brigades

- (1) A permanent fire brigade established and maintained by the dissolved board and in existence immediately before the appointed day is, on that day, to be regarded as having been established by the Commissioner.
- (2) Any association of persons that immediately before the appointed day was a volunteer fire brigade within the meaning of the repealed Act, is, on that day, to be considered to have been approved by the Commissioner under this Act as a volunteer fire brigade.

19 Fire districts

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

20 By-laws and regulations

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

21 Action under [Public Sector Management Act 1988](#)

Action may be taken under the [Public Sector Management Act 1988](#) in relation to the Department before the appointed day.

Part 5 Miscellaneous provisions relating to the [Fire Brigades \(Hazardous Materials\) Amendment Act 1993](#)

22 Transitional and saving provisions

- (1) An amendment made by the [Fire Brigades \(Hazardous Materials\) Amendment Act 1993](#) (**the 1993 Act**):
 - (a) applies to a hazardous material incident whether the spillage or other escape of the material concerned occurred before or occurs after the amendment commences, but
 - (b) does not so apply as to impose any duty on a person retrospectively.
- (2) An approval of an association as a volunteer fire brigade that was in force under section 9 immediately before the amendment of that section by the 1993 Act is taken to have been granted under that section as so amended.
- (3) The amendments made to section 38 by the 1993 Act apply only in respect of a hazardous material incident that occurs after those amendments commence and affect a policy of insurance in force when such an incident occurs whether the policy was effected before or is effected after that commencement.
- (4) Any maximum charges prescribed for the purposes of section 40 (2) when section 40 (4A) commences are, subject to the regulations, taken to be prescribed as maximum charges for the purposes of section 40 (4A) also.

Part 6 Provisions relating to the [Fire Brigades \(Amendment\) Act 1994](#)

23 References to Director-General and Chief Officer

- (1) In this clause, **relevant day** means the day on which section 4 of the [Fire Brigades \(Amendment\) Act 1994](#) commences.
- (2) On and from the relevant day, a reference in any other Act, in any instrument made under any other Act, or in any other instrument of any kind:
 - (a) to the Director-General of New South Wales Fire Brigades (however expressed)—is to be read as a reference to the Commissioner, or

(b) to the Chief Officer of Fire Brigades (however expressed)—is to be read as a reference to the Commissioner.

(3) This clause extends to a reference to the Director-General effected by clause 5.

24 Former Directors-General and Chief Officers

Despite their amendment by the *Fire Brigades (Amendment) Act 1994*:

(a) section 78 continues to apply to the persons who held the office of Director-General before the office was abolished by that Act, and

(b) sections 38 and 78 continue to apply to the persons who held the office of Chief Officer before the office was abolished by that Act,

as if the amendments had not been made.

Part 7 Provisions relating to the *Fire Brigades Amendment (Contributions) Act 1995*

25 Financial year (1994-1995) estimates of fire brigade expenditure

(1) The estimates of fire brigade expenditure for all fire districts for the 1995 calendar year, as determined under Part 5 of this Act before the commencement of the *Fire Brigades Amendment (Contributions) Act 1995*, are taken to be the estimates of fire brigade expenditure for all fire districts for the financial year beginning 1 July 1994.

(2) However, the Commissioner is entitled to recover only the contributions payable in accordance with those estimates for the 6 month period beginning 1 January 1995 and ending 30 June 1995.

26 Adjustment of contributions by insurance companies

(1) As soon as practicable after the commencement of the *Fire Brigades Amendment (Contributions) Act 1995*, the Commissioner is:

(a) to set aside the assessments made under Part 5 of this Act in respect of the 12 month period ending 31 December 1994, and

(b) to make the assessments under that Part in respect of the 6 month period ending 30 June 1994, and

(c) to make the necessary adjustments to the contributions required to be paid by insurance companies under that Part.

(2) The adjusted contributions are to be notified to the relevant contributors and become the contributions payable.

27 Department's Working Account

Any money in the Department's Working Account (as established under section 63 before the repeal of that section by the *Fire Brigades Amendment (Contributions) Act 1995*) is to be dealt with in such manner as the Treasurer, in consultation with the Minister, directs.

Part 8 Provisions relating to the *Fire Brigades Amendment (Community Fire Units) Act 2005*

28 Definition

In this Part:

amending Act means the *Fire Brigades Amendment (Community Fire Units) Act 2005*.

29 Existing community fire units

- (1) A community fire unit established by the Commissioner before the commencement of the amending Act and not disbanded before that commencement is taken, on that commencement, to have been established under section 74B as inserted by the amending Act.
- (2) A person appointed by the Commissioner as a member of such a community fire unit before the commencement of the amending Act and who continued to be a member of the unit immediately before that commencement is taken, on that commencement, to have been appointed as a member of the unit under section 74D as inserted by the amending Act.