

# Fire and Rescue NSW Act 1989 No 192

[1989-192]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Previously named**  
Fire Brigades Act 1989
- **See also**  
*Marine Pollution Amendment (Review) Bill 2020*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Fire and Rescue NSW Act 1989 No 192



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# Fire and Rescue NSW 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 retained 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 and Rescue NSW 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 person employed in the Public Service as the Commissioner of Fire and Rescue NSW.

**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.

**fire brigade** means a permanent fire brigade or a retained 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 retained 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.

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



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

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(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 2012*.

(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.

## **5A General functions of Commissioner**

- (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.
- (3) 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 and, in the case of a fire, it does not matter whether or not the persons are, or the property is, within a fire district.
- (4) The Commissioner is also authorised to:
  - (a) as directed by the State Emergency Operations Controller, deal with an emergency where no other agency has lawful authority to assume command of the emergency operation, and
  - (b) carry out, by accredited brigades, rescue operations allocated by the State Rescue Board, and
  - (c) assist the State Emergency Operations Controller to carry out emergency management functions relating to the prevention of, preparation for and response to, and to assist the State Emergency Recovery Controller to carry out emergency management functions relating to the recovery from, emergencies, in accordance with the *State Emergency and Rescue Management Act 1989*, and
  - (d) assist, at their request, members of the NSW Police Force, the NSW Rural Fire Service, the NSW State Emergency Service or the Ambulance Service of NSW in dealing with any incident or emergency, and
  - (e) maintain effective liaison with all emergency services organisations, and
  - (f) carry out such other functions as may be assigned to the Commissioner by or under this or any other Act, or by the State Emergency Operations Controller or the Minister.

## **Part 2 Provision of fire brigades etc**

### **6, 7 (Repealed)**

## **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 retained fire brigades, and
- (b) provide permanent and retained 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 retained fire brigades.

## **9 Retained fire brigades**

- (1) The Minister may approve an association of persons as a retained fire brigade if satisfied that:
  - (a) the association is formed for the purpose of extinguishing fires and of taking measures referred to in section 5A (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 retained fire brigade or published in the Gazette.
- (3) The trustees of any real or personal property of a retained 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 retained 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) take and use any water from any source on any land, 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), or
- (c) the port operator of a private port under the [Ports and Maritime Administration Act 1995](#).

**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 2012](#).

### 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**

(1) 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.

(2) Subsection (1) does not apply if entry is made only for the purpose of assisting in the prevention of fires by investigating the cause or origin of a fire.

## **Division 2A Special powers to enter land to investigate fires**

### **22A Object of Division**

The object of this Division is to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

### **22B Meaning of “land”**

In this Division, **land** includes any building on the land and any vessel.

### **22C Power to enter land up to 24 hours after fire**

(1) The Commissioner may enter and inspect any land for the purposes of investigating the cause or origin of any fire that has occurred on that land or any adjacent land, but only for a period of up to 24 hours after the fire has been put out and the land is safe to enter.

(2) The power conferred on the Commissioner under subsection (1) may be exercised with or without the consent of the owner or occupier of the land concerned.

(3) This section does not authorise the Commissioner to enter any part of land used only for residential purposes without the authority of a search warrant under section 22D or the consent of the owner or occupier of the land concerned.



## **22D Search warrants**

- (1) The Commissioner may apply to an authorised officer for a search warrant for any land if the Commissioner reasonably believes that entry onto the land is necessary for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.
- (2) An authorised officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Commissioner or any other person named in the warrant to enter land for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

**authorised officer** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## **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 NSW Police Force 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 NSW Police Force to support the authority of such a person and to assist him or her in enforcing compliance with any orders given under this Act or the regulations.
- (3) This section applies only in respect of the protection of persons from injury or death, or of property from damage, when the persons are or the property is endangered by fire 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 retained 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 5A (2) in relation to hazardous material incidents except:
- (a) as a permanent or retained 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 Fire and Rescue NSW 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 training and demonstration**

The Commissioner may, by arrangement with the owner or occupier or other person having control or management of land containing a water source, take and use, free of charge, water from that source for the purpose of training or demonstration by a 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 or, if no amount is so prescribed, of such amount as the Commissioner thinks fit.
- (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 brigades costs**

#### **Division 1 Preliminary**

##### **44 Definitions**

In this Part:

**assessment notice** means an assessment notice given to a local council under section 54.

**financial year** means the period of 12 months starting on 1 July in a year.

**fire brigade contribution** means an amount payable under this Part for a financial year by a local council.

**fire brigade contribution instalment**—see section 51A.

**fire brigades expenditure**, in relation to a financial year, means the total of:

- (a) expenditure incurred for fire brigades during the year, and
- (b) (Repealed)
- (c) expenditure incurred during the year in respect of the administrative costs of Fire and Rescue NSW or the Minister under the authority of this Act.

**fire brigades funding amount**—see section 49.



**fire brigades funding target**—see section 45.

**Fund** means the New South Wales Fire Brigades Fund established under section 64A (1).

**State Revenue Commissioner** means the Chief Commissioner of State Revenue under the [Taxation Administration Act 1996](#).

## Division 2 Fire brigades funding target

### 45 Fire brigades funding target

- (1) Before 31 March in each year or a later date agreed to by the Treasurer, the Minister must:
  - (a) prepare and, subject to the Treasurer’s agreement, adopt a funding target for Fire and Rescue NSW for the next financial year (the **fire brigades funding target**), and
  - (b) prepare and adopt an estimate of the amount of the fire brigades funding target for each fire district for the next financial year.
- (2) The Minister is to calculate the fire brigades funding target for the financial year using the following formula:

$$FT_t = EE_t + (AE_{t-2} - EE_{t-2})$$

where:

**FT<sub>t</sub>** is the fire brigades funding target for the financial year (represented by “t”).

**EE<sub>t</sub>** is the estimated fire brigades expenditure for the financial year.

**AE<sub>t-2</sub>** is the actual fire brigades expenditure for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

**EE<sub>t-2</sub>** is the estimated fire brigades expenditure for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

- (3) To avoid doubt, if  $AE_{t-2} - EE_{t-2}$  is a negative amount, that amount is subtracted from  $EE_t$ .
- (4) The estimate of fire brigades expenditure for a financial year is to be reduced, as necessary, by the amount it is estimated will be paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (5) The actual fire brigades expenditure for a financial year is to be reduced, as necessary, by the amount paid to the Fund for the financial year (other than from contributions made by the Treasurer).

- (6) Without limiting subsections (4) and (5), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the fire brigades funding target in respect of:
  - (a) certain money paid into the Fund, or
  - (b) certain amounts it is estimated will be paid to Fire and Rescue NSW for the financial year.
- (7) In determining the amount of the fire brigades funding target for each fire district, the Minister may apportion the total estimated expenditure between fire districts in the way the Minister thinks fit.

#### **46 Commissioner to assist**

- (1) To assist the Minister in preparing and adopting the fire brigades funding target for a financial year, the Commissioner must prepare and give to the Minister a written report and recommendations about fire brigades expenditure for the year and the estimated expenditure for each fire district and each local council.
- (2) The Minister must consider the Commissioner's report and recommendations in preparing the estimates.

### **Division 3 Treasurer to contribute to Fund**

#### **47 Treasurer to pay contributions**

- (1) The Treasurer is to pay an annual contribution to the Fund for each financial year.
- (2) The annual contribution payable is the fire brigades funding amount.
- (3) The Treasurer may direct the payment of additional contributions to the Fund, subject to any terms and conditions approved by the Treasurer.
- (4) The annual contribution, and any additional contributions, are to be paid out of money provided by Parliament.

#### **48 Contribution payable in instalments**

The annual contribution is to be paid by the Treasurer in instalments on or before the following dates:

- (a) 1 August,
- (b) 1 October,
- (c) 1 January,
- (d) 1 April.

#### **49 Fire brigades funding amount**

- (1) As soon as practicable after the commencement of each financial year, the Minister must prepare and, subject to the Treasurer's agreement, adopt an update of fire brigades funding for the financial year (the ***fire brigades funding amount***).
- (2) The fire brigades funding amount is the estimated fire brigades expenditure for the financial year (that is,  $EE_t$  in the fire brigades funding target for the financial year), adjusted and updated in accordance with this section.
- (3) Estimated fire brigades expenditure is to be adjusted for the purposes of the fire brigades funding amount so that the estimate:
  - (a) is reduced or increased, as appropriate, for any difference between the estimate of fire brigades expenditure for the financial year, as adopted in the fire brigades funding target, and an updated estimate of that amount, and
  - (b) is reduced or increased, as appropriate, for any difference between the fire brigades funding amount for the previous financial year and the actual amount of fire brigades expenditure for that financial year.
- (4) Without limiting subsection (3), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the fire brigades funding amount in respect of:
  - (a) any surplus in the Fund at the end of the previous financial year, or
  - (b) certain money paid into the Fund, or
  - (c) certain amounts it is estimated will be paid to Fire and Rescue NSW for the financial year.
- (5) An adjustment to the estimated fire brigades expenditure that is made under this section has no effect on, and is not to be used in the calculation of, the fire brigades funding target for a financial year.

### **Division 4 Councils to pay fire brigade contributions**

#### **50 Council to pay fire brigade contribution**

A local council is to pay to the State Revenue Commissioner a fire brigade contribution for each financial year.

#### **51 Amount of contribution**

- (1) The amount of the fire brigade contribution is the amount determined by the Minister for each local council.
- (2) The Minister is to determine the contribution payable by a local council on the basis of

the fire brigades funding target for each fire district.

- (3) The contribution payable by local councils for each fire district is 11.7% of the fire brigades funding target applicable to the fire district.
- (4) The contribution to be paid for a fire district is to be paid by the local council or councils of a local government area the whole or part of which is included in the fire district.
- (5) However, if a fire district comprises a reserved area (within the meaning of section 5) and no other area:
  - (a) a local council of an area within the fire district is not required to pay a fire brigade contribution for the fire district, and
  - (b) the fire brigade contribution for the fire district is to be paid from the National Parks and Wildlife Fund established under the *National Parks and Wildlife Act 1974*.
- (6) If a fire district comprises more than one local government area, the amount of the fire brigade contribution payable by the local council of each local government area in the fire district is to be apportioned according to the current 5-year average of the total land values of all rateable land in the local government area or in the part of it in the fire district.
- (7) A local council or an officer of a local council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the council's fire brigade contribution.
- (8) In this section:

**current 5-year average**, in relation to the total land values of land, means the arithmetic mean of the total 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 financial years before the date on which the average is being calculated.

#### **51A Contribution payable in instalments**

A fire brigade contribution payable by a local council for a financial year is payable in 4 instalments (each of which is a **fire brigade contribution instalment**).

#### **51B Minister to advise State Revenue Commissioner**

The Minister is to advise the State Revenue Commissioner, by the date of 15 April that occurs immediately before the commencement of a financial year, of:

- (a) the amount of the fire brigade contribution payable by each local council for the financial year, and
- (b) the amount of the fire brigade contribution instalments payable by each local council.

## Division 5 Payment of contributions by local councils

### 52 When instalments are to be paid

A local council must, in accordance with an instalment notice given to the council by the State Revenue Commissioner, pay to the State Revenue Commissioner a fire brigade contribution instalment on or before each of the following days in a financial year:

- (a) 30 September,
- (b) 31 December,
- (c) 31 March,
- (d) 30 June.

### 53 (Repealed)

### 54 Annual assessment notice

- (1) The State Revenue Commissioner must give to each local council that is required to pay a fire brigade contribution for a financial year an assessment notice that sets out the amount of the fire brigade contribution payable by the local council for that year.
- (2) The assessment notice must be given to the local council by 30 April in the year before the financial year for which the fire brigade contribution is payable.

### 55 Instalment notices

The State Revenue Commissioner must give to each local council that is required to pay a fire brigade contribution instalment a written notice (an **instalment notice**) that specifies:

- (a) the amount of the fire brigade contribution instalment payable under the instalment notice, and
- (b) the date by which the fire brigade contribution instalment is payable.

### 55A Fire brigade contribution is debt payable to State Revenue Commissioner

- (1) If the whole or part of a fire brigade contribution payable by a local council is not paid to the State Revenue Commissioner as required, the unpaid amount is recoverable by the State Revenue Commissioner as a debt in a court of competent jurisdiction.
- (2) The applied provisions of the [Taxation Administration Act 1996](#) apply in relation to the fire brigade contribution payable by a local council under this Act as if Part 5 of this Act were a taxation law and the contribution were a tax payable by a council under a taxation law.
- (3) The **applied provisions** of the [Taxation Administration Act 1996](#) are the following

provisions of that Act:

- (a) Division 1 (Interest) of Part 5,
  - (b) sections 50 and 55 (which prohibit the giving of false and misleading information),
  - (c) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
  - (d) sections 114, 115, 116, 118, 119 and 120,
  - (e) any provisions that are relevant to the interpretation of the above provisions.
- (4) The applied provisions apply to an assessment made by the State Revenue Commissioner under this Act in the same way as they apply to an assessment under that Act.
- (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a fire brigade contribution or to the exercise of any of the State Revenue Commissioner's functions in respect of fire brigade contributions (including under the applied provisions of the *Taxation Administration Act 1996*).

## **56 How contribution is to be funded**

- (1) The fire brigade contribution payable by a local council is to be paid out of the council's consolidated fund.
- (2) Funds of a local council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards the payment of fire brigade contributions by the local council unless approved by the Minister.

## **Division 6**

### **57-64 (Repealed)**

## **Division 7 Miscellaneous**

### **64A New South Wales Fire Brigades Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury a New South Wales Fire Brigades Fund.
- (2) There is to be paid into the Fund:
  - (a) all contributions payable by the Treasurer under this Part, and
  - (b) any other money appropriated by Parliament for payment into the Fund, and
  - (c) the proceeds of investment of money in the Fund, and

(d) any other money required by law to be paid into the Fund.

(3), (4) (Repealed)

(5) Payments may be made from the Fund:

(a) to assist in meeting the costs of fire brigades expenditure, and

(b) as otherwise directed or permitted by or under this Act or another Act.

(6) Payments may be made from the Fund, with the Treasurer's agreement, as directed or permitted by or under this Act or another Act.

#### **64B Certificate evidence**

A certificate signed by the Minister that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

(a) the fire brigades funding target, as adopted by the Minister under this Part,

(b) the fire brigades funding target applicable to a fire district, as adopted by the Minister under this Part,

(c) the amount of the fire brigade contribution determined by the Minister for a specified local council for the financial year.

### **Division 8**

#### **64C (Repealed)**

### **Part 6 Administration**

#### **Division 1 Fire and Rescue NSW**

#### **65 (Repealed)**

#### **66 Staff of Fire and Rescue NSW**

(1) Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commissioner to exercise his or her functions.

**Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Commissioner makes use of) may be referred to as officers or employees, or members of staff, of the Commissioner. Section 47A of the [Constitution Act 1902](#) precludes the Commissioner from employing staff unless authorised by legislation to do so (Section 69 of this Act authorises the Commissioner to employ members of permanent fire brigades).

(2) This section does not apply to the members of permanent fire brigades.

## **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**

In this Division:

**Industrial Relations Secretary** means the Industrial Relations Secretary under the [Government Sector Employment Act 2013](#).

### **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 Industrial Relations Secretary is to be employer for certain purposes**

- (1) The Industrial Relations Secretary is, for the purposes of any proceedings relating to members of permanent or retained 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 retained fire brigades, or
  - (b) the powers of the Commissioner with respect to the discipline, promotion or transfer of those members.

### **71 Industrial Relations Secretary may fix salaries, wages etc**

- (1) The Industrial Relations Secretary 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 retained 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 retained 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 Industrial Relations Secretary may enter into agreements**

- (1) The Industrial Relations Secretary may enter into an agreement with any association or organisation representing a group or class of members of permanent or retained 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 retained 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 retained 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 Industrial Relations Secretary is a party, and
- (b) have effect despite any determination of the Industrial Relations Secretary under section 71 (Industrial Relations Secretary 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 by the Local Government and 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 Fire and Rescue NSW, 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.

### **78A (Repealed)**

### **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 Fire and Rescue NSW, 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 (Repealed)**

### **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 or any other 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 Fire and Rescue NSW, 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 the Local Court.

### **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 retained 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 (Repealed)**

## 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 under this clause, 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 mentally incapacitated person, 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) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to 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*

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*,  
but only to the extent that it amends this Act

*Emergency Services Legislation Amendment (Finance) Act 2009*, but only to the  
extent it amends this Act

any other Act that amends this Act

- (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.

## **Part 9 Provision relating to the *Statute Law (Miscellaneous***

## Provisions) Act 2011

### 30 Continuation of Fire and Rescue NSW as Division of the Government Service

The repeal of section 65 by the *Statute Law (Miscellaneous Provisions) Act 2011* does not affect the establishment of Fire and Rescue NSW as a Division of the Government Service under Chapter 4 of the *Public Sector Employment and Management Act 2002*.

## Part 10 Provisions relating to the Fire and Emergency Services Levy Act 2017

### 31 Definitions

In this Part:

**amending Act** means the *Fire and Emergency Services Levy Act 2017*.

**final contribution**—see clause 34.

**final return**—see clause 33.

**final year of the scheme** means the financial year commencing on 1 July 2016.

**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.

**insurer loading**—see clause 34.

**Monitor** means the Emergency Services Levy Insurance Monitor appointed under the *Emergency Services Levy Insurance Monitor Act 2016*.

**relevant insurance** means insurance against loss of or damage to property in the State under the classes of policies specified in Schedule 1, as in force immediately before its repeal by the *Fire and Emergency Services Levy Act 2017*.

**total amount**, in relation to premiums, includes any brokerage or commission paid or due to be paid or allowed to be paid on:

- (a) the premiums, or
- (b) bonuses or return premiums allowed in respect of policies of insurance the subject of the premiums, 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 another insurance company in the State,

but does not include duty payable under the *Duties Act 1997* in respect of policies of insurance the subject of the premiums.

### **32 Amendments do not affect pre-1 July 2017 liability**

- (1) The amendments to Part 5 of this Act made by the amending Act apply in respect of the financial year commencing on 1 July 2017 and subsequent financial years.
- (2) Subject to this Part, the amendments do not affect any liability for a fire brigade contribution for a financial year commencing before 1 July 2017 and Part 5, section 80 and Schedule 1, as in force immediately before the amendments made to this Act by the amending Act, continue to apply in respect of any such financial year as if the amendments had not been made.

### **33 Final returns to be provided by insurance companies**

- (1) An insurance company must, by 30 September 2017 or another date specified by the Commissioner by notice published in the Gazette, give to the Commissioner:
  - (a) a return in the form approved by the Commissioner showing the total amount of premiums received by or due to the company for the previous financial year for relevant insurance (a **final return**), and
  - (b) a certificate from an auditor that relates to the return and complies with subclause (2).
- (2) The certificate from the auditor must:
  - (a) be in the form approved by the Commissioner, and
  - (b) be from an auditor who is:
    - (i) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
    - (ii) a person not resident in the State who has qualifications that, in the Commissioner's opinion, are appropriate for the giving of the certificate.
- (3) An insurance company is guilty of an offence if it:
  - (a) fails to give the Commissioner a return and certificate as required by this clause, or
  - (b) gives the Commissioner a return that is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

### 34 Calculation of final contribution

- (1) The Commissioner must, by the end of 30 November 2017, calculate a final contribution for each liable insurance company.
- (2) A **final contribution** is the total fire brigade contribution that would have been payable by the insurance company for the final year of the scheme if the contribution had been calculated on the basis of:
  - (a) the premium total provided by the insurance company in its final return, and
  - (b) the premium totals provided by all insurance companies in their final returns.
- (3) If an insurance company fails to provide a final return to the Commissioner within the time required under clause 33, or any further time (not exceeding 30 days) allowed by the Commissioner:
  - (a) the Commissioner may estimate the premium total for that insurance company using any information available to the Commissioner (including information from previous returns, if any), and
  - (b) that estimate is taken to be the premium total provided by the insurance company in its final return.
- (4) If the Commissioner estimates the premium total for an insurance company under subclause (3), the final contribution payable by that insurance company is that estimate plus an insurer loading of 50% of that estimate.
- (5) In this clause:

**liable insurance company** means an insurance company liable for a fire brigade contribution in the final year of the scheme.

**premium total** means the total amount of premiums of an insurance company that are subject to a fire brigade contribution.

### 35 Final assessment

- (1) The Commissioner must give to each insurance company that made or is required to make a fire brigade contribution for the final year of the scheme a final assessment notice for that year.
- (2) The final assessment notice must state the following:
  - (a) the final contribution payable by the insurance company for the final year of the scheme,
  - (b) the amount of any fire brigade contribution already paid by the insurance

company for that financial year including, if paid in instalments, the total of all instalments already paid (the **total contribution already paid**),

(c) if the final contribution payable by the insurance company exceeds the total contribution already paid:

(i) the difference between those amounts (a **contribution deficit**), and

(ii) the date by which the contribution deficit must be paid to the Commissioner (being a date that is no earlier than 30 days after the assessment notice is given to the insurance company),

(d) if the total contribution already paid exceeds the final contribution payable by the insurance company—the difference between those amounts (a **contribution surplus**).

(3) If the assessment notice specifies a contribution deficit, the insurance company must pay the contribution deficit to the Commissioner.

(4) The contribution deficit is payable to the Commissioner by the date for payment specified in the assessment notice or any later date permitted by the Commissioner.

(5) If an insurance company fails to pay a contribution deficit in full by the date on which it is payable to the Commissioner, the applied provisions of the [Taxation Administration Act 1996](#) apply to the unpaid amount as if the unpaid amount were a tax and this Act were a taxation law.

(6) The applied provisions of the [Taxation Administration Act 1996](#) are the following provisions of that Act:

(a) Division 1 (Interest) of Part 5,

(b) Division 2 (Penalty tax) of Part 5 (except sections 28–30),

(c) any provisions that are relevant to the interpretation of the above provisions.

(7) For the purpose of the applied provisions of the [Taxation Administration Act 1996](#):

(a) a tax default is taken to occur if the contribution deficit is not paid in full by the date on which it is payable, and

(b) a reference to the Chief Commissioner is to be read as a reference to the Commissioner under this Act.

(8) If a contribution deficit, or any part of a contribution deficit, is not paid in full by an insurance company to the Commissioner by the date on which it is payable, the unpaid amount and any interest and penalty tax payable on the unpaid amount:

(a) constitutes a debt due and payable to the Commissioner, and

(b) may be recovered in a court of competent jurisdiction by the Commissioner.

(9) A contribution deficit is to be paid into the Fund.

(10) If the assessment notice specifies a contribution surplus, the Commissioner is to refund the amount of the contribution surplus to the insurance company no later than 30 June 2018.

(11) A refund is to be paid from the Fund.

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

(1) The Commissioner may notify a relevant owner that the owner is responsible for an appropriate proportion of any contribution deficit that is required to be paid by a foreign insurance company that holds a risk in respect of the owner's property.

(2) The appropriate proportion is the proportion that the premiums paid by the relevant owner for the final year of the scheme bears to the premium total provided (or taken under this Part to have been provided) by the insurance company in its final return.

(3) Any insurer loading is not to be included in the calculation of the contribution deficit under this clause.

(4) If the relevant owner fails to pay the appropriate proportion of the final contribution within 30 days after it is due, the owner is guilty of an offence.

Maximum penalty: 10 penalty units.

(5) An amount paid by a person under this clause may be deducted from any premium recoverable in the State by or on behalf of the foreign insurance company on the issue or renewal of an insurance policy on the property or may be recovered from the foreign insurance company as a debt by the person making the payment.

(6) This clause applies whether the premium concerned was received in or outside the State.

(7) In this clause:

**relevant owner** means a person who is the owner of property in respect of which a foreign insurance company has received a premium subject to a fire brigade contribution.

### **37 Commissioner to make final 2-year assessment**

(1) The Commissioner must make an assessment, in relation to each insurance company that was required to make fire brigade contributions in the final year of the scheme or the previous financial year, of the total amount of fire brigade contributions payable by the insurance company for the final 2 years of the scheme (a **final 2-year assessment**).



- (2) The final 2-year assessment is to consist of the total of the following amounts, as assessed by the Commissioner:
  - (a) the final contribution payable by the insurance company for the final year of the scheme (excluding any insurer loading payable by the insurance company),
  - (b) the total of fire brigade contributions payable by the insurance company for the financial year commencing on 1 July 2015.
- (3) The Commissioner is to give the final 2-year assessment to the Monitor.
- (4) The Commissioner must give to the Monitor a final 2-year assessment in relation to an insurance company within 30 days after making an assessment of the final contribution payable by the insurance company for the final year of the scheme.

### **38 Certificate evidence**

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the final contribution payable by an insurance company,
- (b) the final 2-year assessment for an insurance company,
- (c) the amount of any contribution deficit,
- (d) the amount of any contribution surplus.

### **39 Transitional provision for adjusted estimates by Minister**

A reference in Part 5 of this Act, as amended by the amending Act, to contributions made to the New South Wales Fire Brigades Fund by the Treasurer includes a reference to fire brigade contributions made for the financial year commencing on 1 July 2016 or a previous financial year.