

FIRE SERVICE AMENDMENT BILL 1996

EXPLANATORY NOTES

Short Title

This Bill may be cited as the *Fire Service Amendment Bill 1996*.

Policy Objectives and Rationale for the Bill

This Bill effects government policy to create a more independent fire service, establishing the Queensland Fire and Rescue Authority as a separate statutory authority able to operate more independently of the Department of Emergency Services.

The Bill provides for the renaming of the Queensland Fire Service to become the Queensland Fire and Rescue Authority, reflecting the increased role of the fire service in rescue activities, particularly in road accident rescue.

The Authority is charged with the primary responsibility of protecting persons, property and the environment from fire and chemical hazards.

The Bill also establishes a Queensland Fire and Rescue Authority Board, which will have responsibility for the performance of the Queensland Fire and Rescue Authority and determination of the policies of the Authority. The Bill provides for the selection and conduct of members of the Board.

This governance structure is expected to provide the most operationally efficient and flexible management structure for the new Authority.

Alternative Ways of Achieving the Policy Objectives

Amending legislation is required to change the legal status of the various corporate entities which currently exist in the *Fire Service Act 1990* and to incorporate the new Authority.

The changes in the legislative underpinning and management structure of the Queensland Fire Service will strengthen the independence of the statutory authority and are the most effective means of enhancing the

management and thus the operational effectiveness of the fire service.

Estimated Cost of Government Implementation

The establishment of the Authority and the Board of the Authority will be funded from within the existing Queensland Fire Service budget. Establishment costs are not expected to be significant and ongoing costs for the Board will be limited to meeting fees for up to five members and associated out of pocket expenses. Remuneration will only be paid to members not on the public payroll.

It is anticipated that the business expertise made available to the Queensland Fire and Rescue Authority by the new Board members will lead to more effective exploitation of commercial revenue generating opportunities and a more efficient fire service.

Consistency with Fundamental Legislative Principles

The Bill conforms with the fundamental legislative principles in every respect.

Consultation

Perceived low morale, industrial unrest and poor management practices identified in the Queensland Fire Service during 1995 led to an independent review of the Queensland Fire Service following the change in government in early 1996. During the course of the review open forums were conducted throughout Queensland from Cairns to Toowoomba to meet with over 550 Firefighters and Officers of all ranks to hear their views. There was also considerable consultation with Department of Emergency Services officers who provide corporate support to the fire service. Various non-government organisations were also consulted.

The Commissioner of Fire Service was consulted extensively throughout the review.

Following release of the report of the review, copies were provided to Department of Emergency Services officers, Union representatives and Queensland Fire Service regional officers for further comment. These comments were considered prior to the acceptance of various recommendations of the report.

The review recommended changes to the governance structure of the fire service. These recommendations are accepted by government and are effected by this legislation.

Purpose and Intended Operation of Each Clause

Part 1

Clause 1 provides for the short title of this Act to be the *Fire Service Amendment Act 1996*.

Clause 2 provides that this Act commences on a day to be fixed by proclamation.

Clause 3 states that this Act amends the *Fire Service Act 1990*.

Clause 4 amends the long title of the *Fire Service Act 1990* so that the long title will now read:

An Act to establish the Queensland Fire and Rescue Authority and to provide for the prevention of and response to fires and certain other incidents endangering persons, property or the environment and for related purposes.

Clause 5 amends the short title of the Act from *Fire Service Act 1990* to *Fire and Rescue Authority Act 1990*.

Clause 6 amends section 6 by omitting the definitions for “**commissioner**”, “**fire service**”, “**fire service officer**”, and “**fire service superannuation scheme**” and inserting:

- a definition for “**authority**” to mean the Queensland Fire and Rescue Authority; and
- a definition for “**board**” by reference to the new section 8F of the Act which establishes the Board of the Queensland Fire and Rescue Authority; and
- a definition for “**chief commissioner**” who is the chief commissioner of the authority; and
- a definition of “**conviction**” to include a plea of guilty or a finding of guilt by a court even though a conviction may not be recorded; and
- a definition of “**fire authority officer**” to include a person

employed by the authority, but excludes the person appointed as the chief commissioner.

- a definition of “**fire service superannuation scheme**” to mean the scheme approved for fire officers in previous Acts and in the current Act prior to the commencement of this amendment Act.

This Clause also amends the definition of “**fire officer**” to reflect the new title of the authority.

Clause 7 omits the previous heading of Part 2 of the *Fire Service Act 1990* and inserts a new Part 2 heading—viz ‘PART 2—QUEENSLAND FIRE AND RESCUE AUTHORITY’.

Clause 8 inserts new sections 8A to 8P inclusive under the headings—*Queensland Fire and Rescue Authority* and *Authority’s board*—which provide for the establishment, functions and powers of the Queensland Fire and Rescue Authority and its Board and relevant appointment and procedural matters. This clause also inserts the new division headings in accordance with current drafting practices.

Section 8A establishes the Queensland Fire and Rescue Authority.

Section 8B provides the Authority to be a body corporate with perpetual succession and a common seal, which may sue and be sued in its corporate name.

Section 8C states that the Authority represents the State, with privileges and immunities of the State, and is an exempt public authority under the Corporations Law.

Section 8D specifies the functions conferred on the Authority by the Act. In particular those functions are to protect persons, property and the environment from fire and from chemical incidents; and to protect persons trapped in a vehicle or building or otherwise endangered, to the extent that the personnel and equipment under the control of the authority can reasonably be deployed or used for the purpose; and to provide an advisory service and undertake other measures to promote fire prevention and fire control and safety and other procedures in the event of a fire or chemical incident; and to cooperate with any entity that provides an emergency service; and to identify and market products and services incidental to its other functions; and to

perform other functions given to the authority under this Act or another Act; and to perform functions incidental to its other functions.

Section 8E provides that the Authority has all the powers of an individual (with the limitation that the authority may acquire or dispose of land only with the written approval of the Minister) and gives examples of those powers, for instance the power to enter into contracts; appoint agents and attorneys and undertake fund-raising activities to benefit the authority financially. This section also specifies that the authority may exercise these powers inside and outside Queensland including outside Australia.

Section 8F establishes the Board of the Queensland Fire and Rescue Authority.

Section 8G describes the role and responsibilities of the board and specifically provides that the board is responsible for the way the authority performs its functions and exercises its powers. In particular the board's role is to decide the objectives, strategies and policies of the authority and to ensure the authority performs its functions in an appropriate, effective and efficient way.

Section 8H enables the Minister to give a written direction about the administration, management and control of the authority to the board if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances. However, before giving the direction the Minister must first consult with the board and ask it to advise whether, in its opinion, compliance with the direction would not be in the authority's financial interest. The board must ensure the direction is complied with. The Minister must cause a copy of the direction to be published in the *Queensland Government Gazette* within 21 days after it is given.

Section 8I provides for the membership of the board which is to be comprised of the Chief Commissioner of the Queensland Fire and Rescue Authority, the Commissioner of the Queensland Ambulance Service, the chief executive of the Department of Emergency Services, and five other members (the appointed members) appointed by the Governor in Council. A person may be appointed as an appointed member only if that person has

knowledge of, or experience in matters relevant to the functions of the authority. The Governor in Council is to appoint one of the members to be chairperson of the Board.

Section 8J outlines the conditions relevant to an appointed member's term of office, including when an appointed member's office becomes vacant, and when an appointed member may be removed from office.

Sub-section 8J.(1) specifies the term of office for an appointed member is for the term (not longer than three years) decided by the Governor in Council.

Sub-section 8J.(2) provides that the office of an appointed member becomes vacant if the member resigns by signed notice given to the Minister; or is absent from 3 consecutive meetings of the board without the board's leave and without reasonable excuse; or is convicted of an indictable offence ("conviction" includes a plea of guilty or a finding of guilt by a court even though a conviction may not be recorded); or becomes employed by, or a contractor of, the authority; or is removed from office by the Governor in Council under sub-sections (3) or (4).

Sub-section 8J.(3) enables the Governor in Council to remove an appointed member from office if the member engages in misbehaviour; or becomes incapable of performing the duties of a member because of physical or mental incapacity; or is incompetent; or does anything else that, in the Governor in Council's opinion is a reasonable justification for removal from office; or is convicted of an offence against this Act.

Sub-section 8J.(4) provides that the Governor in Council may remove all or any of the appointed members of the board from office if the board does not comply with a direction given to it by the Minister under this Act.

Section 8K provides that a member of the board is entitled to be paid remuneration and allowances fixed by the Governor in Council.

Section 8L enables the board to meet at places and times it decides but requires the Board to meet at least once every three months. The chairperson may at any time call a meeting of the board, but must call a meeting if asked by at least 4 members.

Section 8M provides for the conduct of proceedings for board meetings. The chairperson must preside at all board meetings but if the chairperson is absent the member chosen by those present must preside at that meeting. Five members form a quorum; questions are decided by a majority of the votes of the members present and the member presiding has a casting vote. The board may otherwise conduct its meetings as it considers appropriate. This section also deals with other minor procedural matters relevant to meetings of the board.

Section 8N provides that a document made by the board for the purposes of this Act is sufficiently made if signed by the chairperson, or a person so authorised by the board.

Section 8O applies to a member of the board who has a direct or indirect financial interest in a matter being considered or to be considered by the board and the interest could conflict with the proper performance of the member's duties about the consideration of the issue. The member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member's knowledge. The member must not be present when the board considers the issue or take part in any decision the board makes on the issue unless the board directs otherwise. In addition, the member, or a member with a similar interest in the issue, must not be present when the board is considering whether the member can take part in the board's deliberations on the issue. When a member is required to be absent from a meeting of the board in such circumstances, the remaining members are considered to form a quorum. Any such disclosures must be recorded in the board's minutes.

Section 8P requires the Board to keep minutes of its proceedings.

Clause 9 updates section 9 of the Act (and its heading) which previously provided for the appointment of the Commissioner of Fire Service by replacing the heading and omitting the words 'Commissioner of Fire

Service’ and inserting the words ‘chief commissioner for the authority’ to reflect the new title of the office.

Clause 10 omits sections 11 to 17. Sections 11 to 14 related to the salary and conditions, retirement, resignation, dismissal and suspension of the Commissioner. Sections 15 to 17 pertained to acting as Commissioner of Fire Service, constitution of Commissioner of Fire Service as corporation sole, responsibility for the Fire Service, and other functions of the Commissioner.

The provisions relating to the constitution of the commissioner of fire service as a corporation sole are no longer necessary. The Queensland Fire and Rescue Authority is established as the corporate entity.

Clause 10 inserts new sections 11 and 12 which provide for appointment of an acting chief commissioner and outline the role of the chief commissioner.

Section 11 provides that the Governor in Council may appoint a person, who is eligible for appointment as chief commissioner, to act in the office during any vacancy in the office or while the chief commissioner is absent from duty or cannot perform the functions of the office.

Section 12 provides that the role of the chief commissioner is to be responsible for managing the authority’s operations in accordance with its objectives, strategies and policies. This new section also provides that the chief commissioner is to prepare an annual corporate plan incorporating performance targets developed in consultation with the board and approved by the Minister. The section provides wide ranging powers to the chief commissioner to do anything necessary or convenient to be done for, or in connections with, the management of the authority’s operations.

Clause 11 inserts a new heading ‘*Division 4—Other matters about the authority*’ together with new sections 19A, 19B and 19C.

Section 19A specifies that the authority is a unit of public administration under the *Criminal Justice Act 1989*; an agency under the *Equal Opportunity in Public Employment Act 1992*; a public authority under the *Libraries and Archives Act 1988*; and a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

Section 19B provides that judicial notice must be taken of the

imprint of the authority's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Section 19C enables the authority to delegate its powers to the chief commissioner or an appropriately qualified fire authority officer. The meaning of 'appropriately qualified' for the purposes of this section includes having the qualifications, experience or standing appropriate to exercise the power.

Clause 12 replaces Section 22 with a new Section 22 to provide for the preparation and approval of the budget of the authority. The chief commissioner is required to prepare the budget for the board's consideration. The board may request amendments prior to consideration by the Minister. The budget has no effect until it is approved by the Minister.

Clause 13 replaces Section 25 of the Act which relates to the employment of the personnel of the Queensland Fire Service with a new section 25 which enables the authority to employ the persons it considers necessary to perform its functions. The commissioner previously held these powers.

Clause 14 omits the existing section 41(1) which ensured the continuation of the superannuation scheme approved under the previous Act and vested responsibilities with the commissioner and replaces it with a provision to continue the scheme in existence but under the responsibility of the authority. "Commissioner" is further defined as the corporation sole which is replaced by the authority, which this Act defines as the new body corporate.

Clause 15 updates section 143(1)(a) to add the term 'Queensland Fire and Rescue Authority' to the list of names protected from unauthorised use by a person in a business name or in advertising.

Clause 16 provides definitions of "commissioner" and "fire service" for evidentiary purposes.

Clauses 17, 18 and 19 deal with the amendment of part 12, the transitional provisions of the existing Act.

Clause 17 omits the existing heading and a new heading 'PART 12—SAVINGS AND TRANSITIONAL PROVISIONS' is inserted.

Clause 18 replaces the existing heading of section 155 with the new heading ‘Definitions’ in accordance with current drafting practice. Definitions are provided for the purposes of this Part and include “amendment Act”, “commencement”, “commissioner”, “fire service” and “transferred officer”.

Clause 19 deals with individual transitional provisions and inserts new sections 157 to 169. The provisions of each new section are explained below.

Section 157 provides that a previous reference to the commissioner as corporation sole is now to be a reference to the authority.

Section 158 provides that all the assets previously vested in the commissioner or the fire service are now vested in the authority.

Section 159 provides for the continuation of any legal or disciplinary proceedings by or against the commissioner or the fire service, which may now be continued by or against the authority.

Section 160 provides for continuation of employment of fire officers in the new authority, with current classification.

Section 161 provides that the conditions of employment of officers transferring from the employ of the commissioner to the authority will be no less favourable than the conditions that applied to the officer prior to transfer. This includes all rights accrued or accruing to the officer as an employee of the fire service; including annual, sick and long service leave and any similar entitlements; and recognition of previous service.

Section 162 provides that any property which was held on trust by the fire service or the commissioner vests in the authority on the same trusts.

Section 163 deals with the duty of relevant officers to assist in the transfer of property to the authority and exempts such transfers from fees or stamp duty.

Section 164 provides that any reference in the trust deed dated 13

April 1964, establishing the fire service superannuation scheme, to a fire brigade board or the commissioner is a reference to the authority.

Section 165 provides that any existing suspension from duty of a fire officer is to continue in force.

Section 166 provides that any appeal to the commissioner started, but not decided, before the commencement of this Act, may be continued and decided by the chief commissioner.

Sections 167 and 168 similarly ensure that any matters declared, done, given, granted, made or issued by the commissioner are taken to be declared, done, given, granted, made or issued by the chief commissioner or authority as the case may be. The sections do not extend any associated time limits.

Section 169 provides for the making of transitional regulations within the next year about matters which are necessary or convenient to assist in the transition from the previous governance structure with its associated functions to the new structure and its associated functions, and where this Act does not make adequate provision.

Clause 20 specifies that various section headings of the Act be amended as detailed in SCHEDULE 1 of the Amendment Bill.

Clause 21 specifies that “commissioner” be amended throughout the Act in accordance with SCHEDULE 2. In those instances detailed in part 1, the amendment will be to insert “chief commissioner” in its stead. In those instances detailed in part 2, the amendment will be to insert “authority” in its stead.

SCHEDULE 3 of the Amendment Bill details a number of minor amendments to be effected to sections of the Act.

