

Queensland



FIRE SERVICE ACT 1990

**Reprinted as in force on 26 April 1995
(includes amendments up to Act No. 11 of 1995)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 26 April 1995. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use gender neutral office names (s 25)
- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- use appropriate names for instruments and provision units (s 33A)
- insert references to schedule, appendix or body of law (s 33B)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 37, 38, 39 and 40)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

Also see Endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
 - **Table of changed names and titles**
 - **Table of changed citations and remade laws**
 - **Table of obsolete and redundant provisions**
 - **Table of renumbered provisions.**

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FIRE SERVICE ACT 1990

[as amended by all amendments that commenced on or before 26 April 1995]

An Act to provide for the constitution, functions and powers of the Commissioner of Fire Service and the Queensland Fire Service 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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Fire Service Act 1990*.

Commencement

- 2.(1) Section 1 and this section commence on the date of assent.
- (2) The other provisions commence on a day or days appointed by proclamation.

Savings and transitional

- 5.(1) In this section—

“board” means the Rural Fires Board constituted under the *Rural Fires Act 1946* or a fire brigade board constituted under the *Fire Brigades Act 1964*.

“repealed Act” means the *Fire Brigades Act 1964* or the *Rural Fires Act 1946*.

- (2) On and from the appointed day, any fund maintained under a repealed

Fire Service Act 1990

Act immediately before that day is taken to be maintained by the commissioner and, subject to any direction of the Minister, moneys in any such fund must as soon as is practicable after the appointed day be transferred to a fund established by the commissioner and may be used for any purpose for which moneys in that fund may be used.

(3) All moneys and liquidated or unliquidated claims that immediately before the appointed day are payable to or recoverable by a board, the Minister or the Crown pursuant to a repealed Act shall, on and from the appointed day, be payable to and recoverable by the commissioner in the same way as those moneys or claims were recoverable under that repealed Act.

(4) Any moneys in respect of contributions payable by owners of prescribed properties under the *Fire Brigades Act 1964* for any period preceding the commencement of the *Fire Brigades Act Amendment Act 1985* and paid after that commencement must, on the appointed day, be paid into the general fund maintained by the commissioner under this Act and may be used for any purpose for which moneys in that fund may be used.

(5) All agreements and undertakings entered into with and all securities given to or by a board pursuant to a repealed Act and in force immediately before the appointed day shall, on and from that day, be taken to be agreements or undertakings entered into with or securities given to or by the commissioner and may be enforced or realised accordingly.

(6) All actions, suits and proceedings, taken under a repealed Act, that are pending immediately before the appointed day at the suit of a board, the Minister or the Crown may, on and from that day, be continued, completed and enforced by the commissioner.

(7) All debts owing and moneys payable by, and all claims liquidated or unliquidated recoverable against, a board and subsisting immediately before the appointed day shall, on and from that day, be taken to be debts owing by and claims recoverable against the commissioner.

(8) On and from the appointed day a reference in any document or writing to a board shall be read as a reference to the commissioner.

(9) All property, real and personal, (including any interest in property) that, immediately before the appointed day, vested in or belonged to a board shall, on and from that day and by virtue of this subsection, be divested from or cease to belong to that board and vest in or belong to the

commissioner.

(10) All personal property that, immediately before the appointed day was the property of the Crown in right of the State as mentioned in section 38 of the *Rural Fires Act 1946* shall, on that day, vest in the commissioner.

(11) The registrar of titles, and all other persons charged with keeping registers with respect to dealings with property must make in the registers all recordings necessary to record any change in the ownership of property that occurs by virtue of subsection (9) or (10).

(12) Stamp duty and other fees and charges are not payable in respect of the recording of those changes.

(13) The transitional provisions set out in schedule 3 have effect for the purpose of the transition to the provisions of this Act from the provisions of the *Fire Brigades Act 1964* and the *Rural Fires Act 1946* in relation to the classes of persons dealt with in that schedule.

Interpretation

6. In this Act—

“**appointed day**” means the day of commencement of the provision in which the expression occurs.

“**building**” includes any wall, fence, bridge, dam, reservoir, wharf, jetty or other structure whether temporary or permanent.

“**chemical incident**” means a fire or other incident involving dangerous goods (within the meaning of section 94) whereby any person or property or the environment may be endangered.

“**code of practice**” means a code of practice issued under section 18.

“**commissioner**” means the corporation sole constituted under this Act by the name ‘The Commissioner of Fire Service’.

“**fire officer**” means a person employed in the Queensland Fire Service who has the functions of fire prevention and fire control, and includes a person employed in the service who is undergoing training as a fire officer.

“**flammable material**” means any material or substance capable of ignition

or combustion by the application of heat or fire or by spontaneous causes.

“land” means any land, whether improved or not.

“occupier”, used with reference to any premises, means the person in actual occupation or, if there is no such person, the owner.

“officer of the Queensland Fire Service” means a person appointed to or employed in the Queensland Fire Service, but does not include the person holding office as commissioner.

“owner”, used with reference to any premises, means the person who for the time being is entitled to receive the rent of the premises or would be so entitled if the premises were let.

“premises” means any land or building.

“protected area” means a protected area under the *Nature Conservation Act 1992*, and includes an area that is, or includes, a critical habitat identified in a conservation plan under that Act.

“Queensland Fire Service” means the Queensland Fire Service within the meaning of section 25.

“urban district” means a part of the State constituted as an urban district under section 106.

“vegetation” includes trees, plants, grass and any other vegetable growth, whether alive or dead, standing or not standing, or cultivated or not cultivated.

“vehicle” means a vehicle within the meaning of the *Traffic Act 1949* but also includes a tram or train.

“vessel” means a vessel within the meaning of the *Traffic Act 1949*.

Authorised fire officers

6A.(1) The commissioner may authorise a fire officer or fire officers belonging to a class of fire officer specified by the commissioner to exercise—

- (a) all the powers conferred by this Act on an authorised fire officer;
- or

(b) any power or class of power conferred by this Act on an authorised fire officer.

(2) A reference in this Act to an authorised fire officer is a reference to—

(a) the commissioner; and

(b) a fire officer authorised by the commissioner pursuant to this section.

(3) A fire officer authorised by the commissioner immediately before the commencement of this section to exercise any power under this Act as an authorised fire officer is taken, on and from the commencement, to be authorised pursuant to this section.

Extent to which Act binds the Crown

7. This Act binds the Crown not only in right of Queensland but also, so far as the legislative power of Parliament extends, the Crown in all its other capacities.

Administration of Act

8. This Act is administered by the commissioner, subject to any direction given by the Minister.

PART 2—COMMISSIONER OF FIRE SERVICE

Appointment of commissioner

9.(1) The Governor in Council, acting on the recommendation of the Minister, shall appoint a Commissioner of Fire Service.

(2) A person who does not have professional experience in fire prevention and firefighting is not eligible for appointment as commissioner.

(3) An appointment must be upon a tenure that is not limited by time.

(4) The *Public Service Management and Employment Act 1988* does not apply to a person holding office as Commissioner of Fire Service.

Salary and conditions

10. The Governor in Council shall from time to time approve the salary, allowances, and conditions of employment of a person holding office as Commissioner of Fire Service.

Retirement

11. A person holding office as Commissioner of Fire Service—

- (a) must retire from that office upon attaining the age of 65 years;
- (b) may elect to retire from that office upon or at any time after attaining the age of 55 years.

Resignation

12. A person holding office as Commissioner of Fire Service may resign by giving notice of resignation to the Minister.

Dismissal and suspension

13.(1) A person holding office as Commissioner of Fire Service may be dismissed or suspended from office by the Governor in Council for misconduct, incapacity (from mental or physical infirmity) to efficiently discharge the duties of office, incompetence or negligence in the discharge of those duties, or bankruptcy.

(2) In this section—

“misconduct” means—

- (a) disgraceful or improper conduct showing unfitness to be or continue as the holder of that office; or
- (b) behaviour that does not satisfy a standard of behaviour generally expected of the holder of that office.

Acting as Commissioner of Fire Service

14.(1) If at any time the person holding office as Commissioner of Fire Service is unable to discharge the responsibilities of the office because of

absence or incapacity or if at any time there is a vacancy in the office and the Minister thinks it expedient that someone assume those responsibilities, the Minister may, by instrument, authorise an officer of the Queensland Fire Service to discharge those responsibilities.

- (2) Where authorisation is given under subsection (1) to an officer—
- (a) it shall be given for a period not exceeding 6 months; and
 - (b) the Minister shall determine the remuneration payable to the officer for discharging the responsibilities, but in no case exceeding that payable for the time being to the person holding office as Commissioner of Fire Service or, in the case of a vacancy in office, to the last holder of the office; and
 - (c) while the authorisation continues, the officer has the same functions and powers as if appointed under section 9, subject to any limitation in the instrument of authorisation.

Constitution of Commissioner of Fire Service as corporation sole

15.(1) The Commissioner of Fire Service is constituted a corporation sole under the name ‘The Commissioner of Fire Service’ and under that name has perpetual succession and an official seal.

- (2) The commissioner—
- (a) is capable in law of suing and being sued and of acquiring, holding and disposing of land and other property and any interest in land and other property and of doing and suffering all acts and things that bodies corporate may in law do and suffer; and
 - (b) is capable of compounding or proving in any court of competent jurisdiction all debts and sums of money due to the commissioner.

(3) An officer of the Queensland Fire Service, if authorised in writing to do so by the commissioner, may execute documents on behalf of the commissioner and affix the seal of the commissioner to documents.

(4) All courts, Judges, justices and persons acting judicially must take judicial notice of the seal of the commissioner affixed to any document and, until the contrary is proved, must presume that it was duly affixed.

Commissioner responsible for Queensland Fire Service

16. The commissioner is responsible for the efficient and proper management and functioning of the Queensland Fire Service.

Other functions of commissioner

17. The functions of the commissioner are—

- (a) to protect persons, property and the environment from fire and from chemical incidents;
- (b) to protect persons trapped in any vehicle or building or otherwise endangered, to the extent that the personnel and equipment under the control of the commissioner can reasonably be deployed or used for that purpose;
- (c) to provide an advisory service and undertake other measures to promote—
 - (i) fire prevention and fire control; and
 - (ii) safety and other procedures in the event of a fire or chemical incident;
- (d) to cooperate with any organisation that provides an emergency service;
- (e) such other functions as the Minister may from time to time direct.

Codes of practice

18.(1) The commissioner may from time to time issue codes of practice relating to—

- (a) the functions, powers, conduct and appearance of officers of the Queensland Fire Service; or
- (b) any functions imposed or powers conferred by or under this Act on any other person other than the Minister.

(2) The commissioner may at any time amend or revoke a code of practice.

(3) A provision of a code of practice is of no effect if inconsistent with a

provision of this Act.

(4) Provisions of a code of practice may differ according to differences in time, place or circumstance or according to the officers or classes of officers to whom they are expressed to apply.

(5) Evidence of any provision of a code of practice may be given by the production of a document purporting to be certified by the commissioner as being a true copy of the provision.

Delegation of commissioner's responsibilities

19.(1) The commissioner may by instrument delegate to any person or to persons of any specified class all or any of the powers and functions of commissioner, except this power of delegation.

(2) A delegation of a power or function—

- (a) may be made either generally or otherwise as provided by the instrument of delegation;
- (b) may be made absolutely or subject to conditions and limitations and does not prejudice the making by the commissioner of other delegations of that power or function.

(3) A delegate may do and suffer such acts and things in accordance with the terms of the delegation as the delegate thinks necessary or expedient for the proper exercise or discharge of the delegated power or function.

(4) An act done or thing suffered by a delegate acting in accordance with the terms of the delegation has the same force and effect as if done or suffered by the commissioner.

(5) A delegation of a power or function does not—

- (a) affect the exercise or discharge of the power or function by the commissioner;
- (b) relieve the commissioner of the obligation to ensure that the responsibilities of commissioner are properly discharged.

PART 3—FINANCIAL PROVISIONS

General fund

20.(1) The commissioner must establish and keep a fund to be called the Queensland Fire Service General Fund.

(2) The commissioner must pay into the general fund all amounts received from the Consolidated Fund or from the owners of prescribed properties in respect of contributions and, unless the Minister otherwise directs, amounts received from any other source.

(3) The commissioner may make payments from the general fund for any of the purposes of this Act.

Other funds

21.(1) The commissioner may establish and keep such other funds as the Minister may authorise.

(2) Moneys for the time being forming a fund authorised to be kept pursuant to subsection (1) must be applied by the commissioner for purposes authorised by the Minister in respect of that fund.

Budget of commissioner

22.(1) As soon as is practicable after the appointed day, the commissioner must adopt and present to the Minister a budget showing the estimates of receipts and disbursements in respect of the balance of the financial year in which the budget is presented.

(2) Subject to subsection (1), the commissioner must, before the commencement of each financial year, adopt and present to the Minister a budget showing the estimates of receipts and disbursements in respect of that financial year.

(3) A budget is of no effect until it is approved by the Minister.

(4) The Minister may amend a budget submitted for approval.

Observance of budget

23.(1) Subject to subsection (2), the commissioner must confine disbursements throughout the period to which a budget relates within the items and amounts contained in the budget.

(2) If during the period to which a budget relates, the commissioner believes that an extraordinary circumstance has arisen requiring a disbursement not provided for in the budget or exceeding the amount estimated in the budget in respect of that item, the commissioner may approve that the disbursement be made and, subject to subsection (3), may make the disbursement.

(3) If the making of a disbursement referred to in subsection (2) would result in the total amount for all items of expenditure included in the budget being exceeded, the commissioner must not make the disbursement unless authorised to do so by the Minister.

Treatment of surplus and deficit

24.(1) If there is or is likely to be a surplus or deficit in the funds of the commissioner at the end of the period to which a budget relates, the commissioner must take that surplus or deficit into account in preparing the next budget.

(2) At the end of the period to which a budget relates all authorisations of expenditure for any item included in the budget lapse but such expenditure may be re-authorised.

PART 4—PROVISIONS AFFECTING PERSONNEL*Division 1—Appointments and conditions***Personnel of Queensland Fire Service**

25.(1) The commissioner shall appoint and employ such persons as are necessary or convenient for giving effect to this Act.

(2) An appointment may be made on the basis of full-time or part-time employment.

(3) The body of persons consisting of the person holding office as commissioner and the persons appointed and employed under subsection (1) shall be known as the Queensland Fire Service.

(4) The *Public Service Management and Employment Act 1988* does not apply to persons appointed to or employed in the Queensland Fire Service.

Conditions of employment

26. Subject to any applicable industrial award or industrial agreement, persons appointed or employed by the commissioner shall be paid salary, wages and allowances at such rates and shall be employed under such conditions of employment as the commissioner determines.

Additional remuneration

27. An officer of the Queensland Fire Service must not seek or accept on account of anything done in the course of employment in that service any fee or reward not authorised by the commissioner.

Division 2—Termination of office

Retirement

28.(1) An officer of the Queensland Fire Service—

- (a) must retire from employment with the service upon attaining the age of 65 years;
- (b) may elect to retire from employment with the service upon or at any time after attaining the age of 55 years.

(2) If the commissioner suspects on reasonable grounds that an officer, by reason of mental or physical infirmity, has not the capacity or is unfit—

- (a) to discharge efficiently the duties of office; and
- (b) to discharge efficiently any other duties that the commissioner might reasonably direct the officer to discharge;

the commissioner must obtain medical opinion on the officer's condition.

(3) The commissioner may appoint any medical practitioner or medical practitioners to examine the officer and report upon the officer's mental or physical condition or both and may direct the officer to submit to the examination.

(4) If the commissioner believes on reasonable grounds that an officer, by reason of mental or physical infirmity, has not the capacity or is unfit as prescribed by subsection (2), the commissioner may call upon the officer to retire within the time specified by the commissioner.

(5) If the officer does not retire within the time specified, the commissioner may dismiss the officer.

Retrenchment

29. Where the commissioner is satisfied that—

- (a) the services of an officer of the Queensland Fire Service can no longer be gainfully utilised in the office held by the officer because the office has become redundant; and
- (b) it is not practicable to retrain or redeploy the officer; and
- (c) the redundancy arrangements approved by the Governor in Council have been complied with in relation to the officer;

the commissioner may terminate the services of the officer by way of retrenchment in accordance with those redundancy arrangements.

Division 3—Discipline and appeals

Discipline

30.(1) An officer of the Queensland Fire Service is liable to disciplinary action upon any of the following grounds shown to the satisfaction of the commissioner to exist—

- (a) incompetence or inefficiency in the discharge of duties;
- (b) negligence, carelessness or indolence in the discharge of duties;
- (c) wilful failure to comply with a provision of a code of practice

approved by the commissioner for officers of the Queensland Fire Service;

- (d) absence from duty except—
 - (i) upon leave duly granted; or
 - (ii) with reasonable cause;
- (e) wilful failure to comply with a lawful direction of the commissioner or another person having authority over the officer;
- (f) misconduct.

(2) In subsection (1)(f)—

“misconduct” means—

- (a) disgraceful or improper conduct that shows unfitness to be or continue as an officer of the Queensland Fire Service; or
- (b) behaviour that does not satisfy a standard of behaviour generally expected of officers of the Queensland Fire Service.

(3) Where action against an officer is contemplated on the ground of absence from duty, the commissioner may appoint any medical practitioner or medical practitioners to examine the officer and to report upon the officer’s mental or physical condition or both, and may direct the officer to submit to the examination.

(4) An officer may be disciplined in any manner the commissioner believes to be warranted.

(4A) Without limiting the range of disciplines that may be imposed, the disciplines may consist of any of the following—

- (a) dismissal;
- (b) reprimand;
- (c) forfeiture or deferment of a salary increment or increase;
- (d) reduction in the officer’s level of salary;
- (e) a deduction from the officer’s salary of an amount not exceeding 2 penalty units.

(5) Every order made pursuant to subsections (4) and (4A) shall take effect in law and shall be given effect.

Implementation of order

- 31.** An order relating to disciplinary action must not be implemented—
- (a) where an appeal is instituted pursuant to this Act in respect of the disciplinary action—until after the determination of the appeal or the withdrawal of the appeal, whichever event sooner occurs;
 - (b) where an appeal is not instituted—until the time in which an appeal may be instituted has expired.

Suspension**32.(1)** Where—

- (a) it appears on reasonable grounds to the commissioner that an officer of the Queensland Fire Service is liable to disciplinary action or is suspected of involvement in circumstances such that the proper and efficient discharge of the functions of the commissioner might be prejudiced if the officer's services are continued; or
- (b) an officer is charged in Queensland with having committed an indictable offence or is charged elsewhere with having committed an offence which if it had been committed in Queensland would be an indictable offence;

the officer may be suspended from duty by the commissioner.

(2) A suspension may be lifted at any time by the commissioner.

(3) An officer suspended from duty is not entitled to receive salary for any period during which the officer does not perform that duty, unless the commissioner otherwise determines.

(4) An officer suspended from duty, who is not entitled to salary for the period of suspension and who resumes duty upon the lifting of the suspension, is entitled to receive a sum equivalent to the amount of salary payable had the officer not been suspended diminished by the amount of salary or fees (if any) to which the officer became entitled from any other source during the period of suspension, unless the commissioner otherwise determines.

Mode of dismissal or suspension

33.(1) Dismissal or suspension must be effected in accordance with this Act and the principles of natural justice.

(2) Dismissal or suspension is effected by giving the officer concerned a notice under the seal of the commissioner.

Commissioner of Appeals

34.(1) The Governor in Council shall by notification published in the gazette appoint a person as Commissioner of Appeals.

(2) A person appointed as Commissioner of Appeals holds office for such period (not exceeding 3 years) as is specified in the notification of appointment.

(3) A person appointed as Commissioner of Appeals—

- (a) may resign by giving notice of resignation to the Minister;
- (b) may be removed from office at any time by the Governor in Council upon notice to that effect being given to the person by the Minister;
- (c) is entitled to such fees, allowances and expenses as are approved by the Governor in Council but in no case is an officer of the public service or the Queensland Fire Service entitled to fees and allowances for discharging the functions of Commissioner of Appeals during the ordinary hours of duty as an officer;
- (d) may hold that office in conjunction with any office held in the public service or the Queensland Fire Service.

Fire Service Appeal Board

35.(1) There shall be constituted from time to time as the occasion requires a tribunal to be known as the Fire Service Appeal Board consisting of 3 members appointed by the Minister, of whom—

- (a) 1 shall be the Commissioner of Appeals who shall be a member *ex officio* and the presiding officer;
- (b) 1 shall be a person nominated by the commissioner;

- (c) 1 shall be a person nominated by the industrial union of employees of which the appellant is a member or, if the appellant is not a member of a union, by an industrial union of employees of which the appellant is, in the opinion of the Minister, entitled to be a member by virtue of employment.

(2) If—

- (a) an industrial union fails to make a nomination in accordance with subsection (1)(c) within the time specified in a written request made by the Minister; or
- (b) in the case of an appellant who is not a member of a union—the appellant is not entitled in the opinion of the Minister to be a member of any industrial union by virtue of employment;

the Minister shall appoint as member a person the Minister considers suitable.

(3) A determination made by an appeal board must be by majority vote.

(4) A member of an appeal board, other than the Commissioner of Appeals, is entitled to such fees, allowances and expenses as are approved by the Governor in Council but in no case is an officer of the public service or the Queensland Fire Service entitled to fees and allowances for discharging the functions of member during the ordinary hours of duty as an officer.

Appeals against disciplinary action or suspension

36.(1) An officer—

- (a) against whom disciplinary action has been taken; or
- (b) suspended from duty without salary for the period of suspension;

may appeal against the decision in accordance with this section, and not otherwise.

(2) If disciplinary action taken against an officer consists of dismissal or reduction in level of salary, any appeal against that action must be to a fire service appeal board.

(3) In any other case, an appeal must be to the Commissioner of Appeals.

(4) An appeal in respect of disciplinary action may relate to the decision that resulted in the taking of the action or to the nature of the action or to both.

Appeals against promotional appointments

37.(1) Subject to subsection (3), an officer may appeal against any appointment to an office in the Queensland Fire Service that results in the appointee's promotion unless—

- (a) the appointment is made to an office involving part-time duties only; or
- (b) the appointment is declared, or is one of a class of appointment declared, by the Governor in Council as an appointment or class of appointment against which no appeal lies.

(2) Any appeal against a promotional appointment must be to the Commissioner of Appeals and must be determined in accordance with the relative merits of the parties to the appeal.

(3) An officer has no right of appeal against an appointment unless the officer satisfies such requirements as are prescribed by regulation in respect of appeals of the class of appeal in question.

Matters concerning appeals

38.(1) In this section and sections 39 and 40—

“appeal tribunal” means—

- (a) in the case of an appeal against a dismissal or reduction in level of salary—a fire service appeal board;
- (b) in the case of any other appeal—the Commissioner of Appeals.

(2) Jurisdiction is hereby conferred on an appeal tribunal to hear and determine all matters relevant to an appeal.

(3) The institution and conduct of an appeal shall be as prescribed by regulation and, to the extent to which those matters are not prescribed, as an appeal tribunal determines having regard to the principle that proceedings upon an appeal shall be informal and simple.

(4) A party to an appeal—

- (a) to the Commissioner of Appeals is not permitted legal or other representation;
- (b) to a fire service appeal board is not permitted legal representation but may be otherwise represented.

(5) A determination made by an appeal tribunal must be made known at the hearing of the appeal.

(6) No appeal lies from a finding or determination made by an appeal tribunal.

(7) The commissioner must appoint an officer of the Queensland Fire Service to act as secretary to an appeal tribunal.

Determination of appeal

39. An appeal tribunal may in respect of an appeal confirm or set aside the decision in issue and may make any determination and order that the commissioner could have made under this Act in the first instance in respect of the matter in question.

Reinstatement following dismissal

40. A person who, having been dismissed from office, is reinstated in an office within the Queensland Fire Service consequent upon a determination of a fire service appeal board shall not suffer loss of salary or other entitlements in respect of the period between dismissal and reinstatement, unless the appeal board directs to the contrary.

Division 4—Superannuation

Superannuation scheme

41.(1) On the appointed day—

- (a) the superannuation scheme approved under section 12 of the *Fire Brigades Act 1964* (the “**superannuation scheme**”) is continued in existence;

Fire Service Act 1990

- (b) the Fire Brigade Boards (constituted under the *Fire Brigades Act 1964*) and the Minister cease to have the responsibilities of subsidising, contributing to and making payment to the funds held in connection with the superannuation scheme;
- (c) the commissioner assumes the responsibilities described in paragraph (b);
- (d) a reference in the deed of trust, dated 13 April 1964, establishing the superannuation scheme, to a fire brigade board shall be read as a reference to the commissioner.

(2) The trustees, with the approval of the Governor in Council, may amend the superannuation scheme.

(2A) An amendment must not be made if it prejudices any right accrued or accruing under the scheme to any person unless the person has consented in writing to the amendment.

(3) Every person holding office as commissioner and every person employed full-time in the Queensland Fire Service must become a contributor to the superannuation scheme (if otherwise eligible under the terms of the scheme) and while so employed, continue to contribute to the scheme in accordance with its terms.

(4) A contributor referred to in subsection (3) who ceases to hold office as commissioner or ceases to be employed in the Queensland Fire Service upon being appointed as an officer of the public service under the *Public Service Management and Employment Act 1988* may continue to contribute to the superannuation scheme in accordance with its terms.

(4A) If the contributor does so, the superannuation scheme continues to apply to the contributor as if the contributor were employed full-time in the Queensland Fire Service.

(5) In respect of each contributor referred to in subsections (4) and (4A) who continues to contribute to the superannuation scheme upon being appointed as an officer of the public service, the Crown is to pay to the superannuation scheme such sums (if any) as would have been payable by the commissioner as employer by way of contribution to the superannuation scheme had the contributor been a full-time employee in the Queensland Fire Service and been paid salary at the rate paid to the contributor at the material time by the Crown.

Trustees of superannuation scheme

42.(1) The Governor in Council shall from time to time appoint persons to be trustees of the superannuation scheme by notification published in the gazette.

(2) The appointment of a trustee must be made on the recommendation of the Minister.

(3) There shall be 5 trustees, being—

- (a)** a person the Minister considers suitable for appointment (who must not be an officer of the Queensland Fire Service), who shall be the presiding officer at meetings of the trustees;
- (b)** 2 persons nominated by the commissioner;
- (c)** subject to subsection (5), a person nominated by the United Firefighters Union Queensland Branch Union of Employees;
- (d)** subject to subsection (5), a person nominated by any other union of employees of which officers of the Queensland Fire Service are members.

(4) Only persons who are contributors to the superannuation scheme are eligible for nomination under subsection (3)(c) or (d).

(5) If a nomination is not made in accordance with subsection (3)(c) or (d) within the time specified in a written request made by the Minister, the Minister may recommend for appointment as trustee a person who, in the opinion of the Minister, will competently represent the interests of contributors to the superannuation scheme.

Term of office of trustees

43.(1) A trustee must be appointed for a term of 3 years but if, by the expiration of the term, a successor has not been duly appointed the trustee may, subject to this Act, continue in office until a successor is duly appointed.

(2) The term of office of a trustee commences on the date notification of appointment appears in the gazette unless otherwise specified in the notification.

Powers and functions of trustees

44. Subject to this Act, the trustees may exercise the powers conferred and shall discharge the functions imposed upon trustees by the superannuation scheme.

Operation of trustees

45. The provisions of schedule 4 govern the operation of the trustees.

Employees of trustees may be contributors to scheme

46. For the purpose of securing to persons employed full-time by the trustees in connection with the administration of the superannuation scheme the benefits of the scheme, those employees are taken to be employed full-time in the Queensland Fire Service and the provisions of this Act relating to the scheme and the provisions of the deed of trust establishing the scheme shall be construed accordingly.

PART 5—THE RURAL FIRE COUNCIL**The Rural Fires Board continued in existence**

47.(1) The Rural Fires Board constituted under the *Rural Fires Act 1946* is hereby continued in existence under the name the Rural Fire Council.

(2) The Council shall consist of not more than 7 members appointed by the Governor in Council on the nomination of the Minister.

(3) Nominees shall be persons who, in the opinion of the Minister, will competently represent interests affected by rural fires.

(4) The Governor in Council shall appoint 1 of the members as presiding officer.

(5) The Governor in Council may appoint 1 of the members as deputy presiding officer to act as presiding officer during any absence of the presiding officer.

(6) Appointments must be made by notification published in the gazette and commence on the date of publication unless otherwise specified in the notification.

Term of office

48. The term of office of a member must not exceed 3 years.

Functions of council

49. The functions of the council are—

- (a) to provide advice to the Minister and the commissioner in respect of fires in rural areas and the operation of rural fire brigades;
- (b) to promote fire safety, fire prevention and the reduction of fire danger within rural areas;
- (c) such other functions as the commissioner may direct.

Quorum

50. A quorum of the council consists of 4 members.

Operation of council

51. The provisions of schedule 4 govern the operation of the council and its members.

PART 6—POWERS OF AUTHORISED FIRE OFFICERS

Powers of authorised officer in dangerous situations

53.(1) An authorised fire officer may take any reasonable measure—

- (a) to protect persons, property or the environment from danger or potential danger caused by a fire or a chemical incident; or

- (b) to protect persons trapped in any vehicle or building or otherwise endangered.

(2) Without limiting the measures that may be taken for a purpose described in subsection (1), an authorised fire officer may for that purpose do any of the following—

- (a) enter any premises, vehicle or vessel;
- (b) open any receptacle, using such force as is reasonably necessary;
- (c) bring any apparatus or equipment onto premises;
- (d) destroy, damage, remove or otherwise deal with any vegetation or any other material or substance, flammable or not flammable;
- (e) destroy (wholly or in part) or damage any premises, vehicle or receptacle;
- (f) shore up any building;
- (g) close any road or access, whether public or private;
- (h) shut off the supply of water from any main, pipe or other source to obtain a greater pressure or supply or take water from any source whether natural or artificial;
- (i) cause to be shut off or disconnected the supply of gas, electricity or any other source of energy to any premises or area;
- (j) require any person who, in the opinion of the authorised fire officer, is—
 - (i) the occupier of premises, being the site of or near to the site of the danger; or
 - (ii) in charge of anything that is the source of the danger or likely (in the opinion of the officer) to increase the danger;to take any reasonable measure for the purpose of assisting the officer to deal with the danger or answer any question or provide any information for that purpose;
- (k) require any person not to enter or remain within a specified area around the site of the danger;
- (l) remove from any place a person who fails to comply with an order given pursuant to paragraph (k) and use such force as is

reasonably necessary for that purpose;

- (m) if unable to identify the person entitled to possession of property found at or near the site of the danger, take possession of the property and retain it for safe custody.

(3) The owner of any building shored up pursuant to an exercise of the power conferred by subsection (2)(f) must pay to the commissioner upon demand all reasonable expenses thereby incurred by the commissioner and those expenses may be recovered in a court of competent jurisdiction as a debt due to the commissioner.

(4) A local government, other authority or a person supplying water or any source of energy is not liable for any interruption of supply caused by the exercise of the power conferred by subsection (2)(h) or (i).

Disposal of property

54.(1) Any property retained for safe custody pursuant to section 53(2)(m) must, as soon as is practicable, be delivered into the possession of a person authorised by, or a person belonging to a class of person authorised by, the commissioner for the purposes of this section.

(2) The authorised person—

- (a) must cause the property to be returned to the person the authorised person believes is entitled to possession of it; or
- (b) if unable to form such a belief, must dispose of or otherwise deal with the property in accordance with any code of practice or any direction given by the commissioner.

(3) Subject to subsection (4), any dealing with property pursuant to subsection (2) does not affect the right of any person to recover the property by action from any person who has possession of it as a result of that dealing.

(4) An action referred to in subsection (3) must be commenced within 6 months of the date on which the property was dealt with pursuant to subsection (2).

Powers of authorised officer for preventative or investigative purposes

55.(1) At any time an authorised fire officer may enter any premises, vehicle or vessel or open (using such force as is reasonably necessary) any receptacle for any of the following purposes—

- (a) to prevent, or reduce the likelihood of, the occurrence of a fire or a chemical incident;
- (b) to investigate whether or not fire safety measures and fire prevention measures have been taken or are being maintained;
- (c) to ascertain the cause of a fire or chemical incident;
- (d) to ascertain whether any provision of this Act or any notice, notification, order (written or verbal) or permit given under this Act has been or is being complied with;
- (e) to ascertain whether a power conferred by this Act upon an authorised officer should be exercised, or to exercise a power under this Act.

(2) The power of entry conferred by subsection (1) must not be exercised in respect of—

- (a) a building that is a dwelling or such part of a building as is a dwelling; or
- (b) a vehicle or vessel used as a dwelling; or
- (c) a tent or other structure used as a dwelling;

unless the occupier has given approval to enter or unless entry is made during or in the aftermath of a fire or chemical incident occurring at the dwelling, for the purpose of ascertaining its cause.

(3) An authorised fire officer who enters premises for the purpose referred to in subsection (1)(a) may, for that purpose—

- (a) bring any apparatus or equipment onto the premises; and
- (b) burn, remove or otherwise deal with any vegetation or other material or substance, flammable or not flammable.

Extent of power of entry

56. The right of entry conferred by section 53(2)(a) or 55—

- (a) includes the right to enter all parts of the premises, vehicle or vessel in respect of which the right is exercised; and
- (b) authorises the person exercising the right to use a reasonable degree of force to ensure the proper exercise of the right.

Power to require name and address

57.(1) An authorised fire officer may require a person—

- (a) to provide name and address if the authorised fire officer believes that the person may have committed an offence against this Act; and
- (b) to provide proof of any name or address given upon requisition made under paragraph (a) if the authorised fire officer believes that the name or address is false.

(2) A person who fails to comply with a requisition made under subsection (1) commits an offence against this Act.

Use of answer given under compulsion

58. Where pursuant to this part a person is required to answer a question or give information, it is not lawful excuse to fail to comply with the requisition on the ground that to do so may tend to incriminate the person but any answer given or information provided after objection on that ground is not admissible against the person in proceedings other than proceedings taken for giving an answer or providing information knowing it to be false or misleading.

Reasonable assistance to be provided

58A.(1) An authorised fire officer who enters any premises under this part may require any person having responsibilities in relation to the premises (whether as owner or occupier of the premises or as a person employed to work thereon or otherwise) to provide the officer with such facilities and assistance with respect to matters or things to which the

person's responsibilities extend as are reasonably necessary to enable the officer to exercise the powers conferred upon the authorised officer by this Act.

(2) A person who is required to provide facilities and assistance to an authorised fire officer under subsection (1) must comply with the requisition.

Person acting at direction of authorised fire officer

59. Any power conferred upon an authorised fire officer may be exercised by any person acting at the direction of an authorised fire officer and any power so exercised is taken to have been exercised by an authorised fire officer.

Directions concerning exercise of powers

60. The exercise of a power conferred by or under this part on an authorised fire officer or any other person must be in accordance with any direction given by the commissioner and with any code of practice.

PART 7—CONTROL AND PREVENTION OF FIRES

Division 1—Powers of commissioner relating to fires

Interpretation and application of division

61.(1) For the purposes of this division a person is taken to light a fire if the person—

- (a) lights, maintains or uses the fire; or
- (b) aids, procures or counsels another to light, maintain or use the fire; or
- (c) being the owner or occupier of the land on which the fire is lit—permits another to light, maintain or use the fire.

(2) This division does not apply in respect of the lighting of a fire inside any building in circumstances that prevent the escape from the building of fire or any material or substance that is likely to cause fire.

(3) In this division—

“**occupier of land**” includes, where there is no person in actual occupation of the land, the person charged by the owner or by law with the management of the land.

Offence to light unauthorised fire

62. A person who lights a fire that is not authorised by this division or by any notification, notice or permit given under this division commits an offence against this Act.

Commissioner may authorise certain fires

63. The commissioner may, by notification published in the gazette, authorise the lighting of fires for purposes and in circumstances specified in the notification.

Commissioner may prohibit lighting of fires

64.(1) Notwithstanding any notification under section 63 authorising the lighting of fires the commissioner may, by giving a notice to the occupier of land, prohibit the lighting on the land of all fires or all fires other than those lit for a purpose or in circumstances specified in the notice.

(2) The commissioner must consider any request made by an occupier of land that a notice be issued prohibiting the lighting of fires on any adjoining land unless the commissioner believes the request is frivolous or vexatious.

(3) In this section—

“**occupier of adjoining land**” means the occupier of land that—

- (a) touches some part of the land in question; or
- (b) would touch some part of that land but for the existence of a watercourse, road or firebreak, that is 10 m or less in width or,

although wider than 10 m, is not clear of vegetation or other flammable material for at least 10 m in every direction.

Granting of permits

65.(1) A person may apply to the commissioner (orally or in writing) for a permit to light a fire on any land.

(2) The commissioner may grant or refuse to grant an application.

(3) Subject to subsection (4), the commissioner must refuse to grant a permit to light a fire on any land unless satisfied—

- (a) that reasonable steps have been taken to notify every occupier of adjoining land (within the meaning of section 64) of the making of the application; and
- (b) that a reasonable opportunity has been given to every occupier so notified to object (orally or in writing) to the granting of the permit.

(4) The commissioner may grant a permit without complying with subsection (3) if satisfied that extraordinary circumstances exist for so doing.

Fires in State forests etc.

66.(1) The provisions of this division do not apply to the lighting of a fire—

- (a) in a protected area by a person acting in the performance of duties under the *Nature Conservation Act 1992*; or
- (b) in a State forest, timber reserve or forest entitlement area by a person acting in the performance of duties under the *Forestry Act 1959*.

(2) The commissioner must not authorise the lighting of fires—

- (a) in a protected area without the approval of the chief executive of the department that deals with matters arising under the *Nature Conservation Act 1992*; or
- (b) in a State forest, timber reserve or forest entitlement area without

the approval of the chief executive of the department that deals with matters arising under the *Forestry Act 1959*.

Occupier to extinguish fire

67. Where a fire is burning on any land and the lighting of the fire is not authorised by or under this or any other Act, the occupier of the land, immediately upon becoming aware of the fire (regardless of who lit it)—

- (a) must take all reasonable steps to extinguish or control the fire; and
- (b) must, as soon as is practicable, report the existence and location of the fire to a fire officer, an officer of a rural fire brigade, a chief fire warden or fire warden, a forest officer (within the meaning of the *Forestry Act 1959*), a conservation officer within the meaning of the *Nature Conservation Act 1992* or a police officer.

Powers of occupier of entry etc.

68.(1) Subject to subsections (2) and (3), an occupier of land, who believes on reasonable grounds that a grass fire (that is, a fire that predominantly consumes vegetation) burning within 1.6 km of that land constitutes a fire risk to that land may, together with persons acting at the direction of the occupier—

- (a) enter the land on which the fire is burning and any other land in order to gain access to the land on which the fire is burning; and
- (b) take on to that land equipment for extinguishing or controlling the fire; and
- (c) take all reasonable measures to extinguish or control the fire.

(2) An occupier of land must not do or direct the doing of any act referred to in subsection (1) if prior notice (oral or written) of the intention to light the fire has been given to the occupier by the person lighting it or by a prescribed person unless the occupier believes on reasonable grounds that the fire has been unlawfully lit or is out of control.

(3) If it is practicable to contact a prescribed person, an occupier of land—

- (a) must not do or direct the doing of any act referred to in

subsection (1) unless the prescribed person has been notified of the situation; and

- (b) must comply with any direction given by the prescribed person in respect of the doing of any act.

(4) In this section—

“prescribed person” means a fire officer, an officer of a rural fire brigade, a chief fire warden or fire warden, a forest officer (within the meaning of the *Forestry Act 1959*), a conservation officer within the meaning of the *Nature Conservation Act 1992* or a police officer.

Requisition by commissioner to reduce fire risk

69.(1) The commissioner may require any occupier of premises to take measures for the purpose of reducing the risk of a fire occurring on the premises or reducing potential danger to persons, property or the environment in the event of a fire occurring on the premises.

(2) A requisition may be given—

- (a) in a particular case—by giving a notice to the occupier concerned; or
- (b) by notification published in the gazette in which case each occupier of land to whom the notification applies must comply with the requisition.

(3) Without limiting the measures that may be required to be taken, an occupier may be required to do any of the following—

- (a) make and maintain firebreaks in accordance with any directions contained in the notification or notice;
- (b) remove, dispose of or otherwise deal with any vegetation or other flammable material in accordance with any directions contained in the notification or notice;
- (c) obtain equipment and keep it available for use for fire fighting purposes;
- (d) take measures to ensure an adequate supply of water or any other substance for fire fighting purposes;
- (e) ensure that the means of escape from the premises in the event of

fire can be safely and effectively used at all material times;

- (f) suspend such operations as may be specified for the period specified.

(4) Where an occupier of premises fails to comply with a notification or notice an authorised fire officer and any assistant may enter the premises and take any of the measures directed by the notification or notice to be taken and any expenses incurred by the commissioner in taking those measures may be recovered in a court of competent jurisdiction from the occupier.

(5) An authorised fire officer or an assistant who takes the measure of removing vegetation or other flammable material from premises, may take possession of and retain the material until it is disposed of pursuant to subsection (6) or until the person entitled to possession of it is determined.

(6) Where the commissioner is satisfied that anything retained pursuant to subsection (5) is the property of the occupier who failed to comply with the notification or notice the commissioner may sell or otherwise dispose of the material and the proceeds of the disposal may be applied by the commissioner in payment of expenses incurred in consequence of the failure to comply.

(7) Where the proceeds of the disposal of any material—

- (a) are insufficient to cover the expenses of the commissioner—the amount of the expenses that may be recovered under subsection (5) must be reduced by the amount of those proceeds;
- (b) exceed the expenses of the commissioner—the balance must be paid to the person whose property the commissioner believes the material to have been.

Restriction on sale of notified articles

70. The commissioner may, by notification published in the gazette, prohibit or regulate the sale, use or possession of any article or substance that the commissioner believes may constitute a fire risk.

Notifications, notices and permits

71.(1) Any notification published in the gazette pursuant to this division—

- (a) may be expressed so as to have effect either generally throughout the State or in part of the State only;
- (b) may be expressed so as to apply differently in different circumstances;
- (c) may, where it authorises or requires the doing of any act, specify conditions to be observed in respect of the doing of the act;
- (d) may be expressed so as to be of unlimited duration or so as to have effect for a specified period or until the occurrence of a specified event;
- (e) may be amended or revoked at any time by the commissioner by notification published in the gazette.

(2) Any permit granted or notice given pursuant to this division to a person—

- (a) may, where it authorises or requires the doing of any act, specify conditions to be observed in respect of the doing of the act;
- (b) may be expressed so as to be of unlimited duration or so as to have effect for a specified period or until the occurrence of a specified event;
- (c) may be amended or revoked at any time by the commissioner by giving a notice to that effect to that person.

Offences re lighting fires

72.(1) A person commits an offence against this Act if the person does or, as the case may be, fails to do any of the following acts—

- (a) fails to comply with any condition or direction contained in a notification, notice or permit given under this division in respect of the lighting of any fire;
- (b) leaves unattended or fails to take reasonable measures to extinguish a fire in such circumstances as to cause or be likely to cause danger from fire to any person or property or to the

environment;

- (c) not acting in accordance with a notification, notice or permit given under this division, discards, propels or places any burning article or substance (or anything otherwise capable of causing fire)—
 - (i) thereby causing a fire that endangers or is likely to endanger any person or property or the environment; or
 - (ii) in such circumstances as to be likely to cause a fire that would be likely to endanger any person or property or the environment;
- (d) wilfully and unlawfully destroys, damages, removes, covers or otherwise interferes with a notice relating to the lighting of fires displayed by the commissioner or by a rural fire brigade for the purposes of this Act;
- (e) knowingly provides any false or misleading information in respect of an application for a permit under section 65;
- (f) without the consent of the commissioner, alters any particular shown in a permit granted under section 65.

(2) In subsection (1)—

“**property**” does not include property of the person alleged to have committed the offence in question.

Liability of person for fire lit by agent or employee

73.(1) Notwithstanding sections 7 and 23 of the Criminal Code, where any person commits an offence against this division in respect of the lighting of a fire as an agent or employee, the principal or employer of that person is taken to have committed the offence and may be prosecuted and punished for the offence unless it is proved that the agent or employee was acting contrary to instructions and that the principal or employer could not have prevented the commission of the offence by exercising reasonable supervision.

(2) Subsection (1) applies without prejudicing any liability imposed under this division upon the person by whom an offence is actually committed.

Liability for damage caused by certain fires

74.(1) A person who lights a fire—

- (a) authorised to be lit by notification given under section 63 or by a permit granted under section 65; or
- (b) in order to comply with a notification or notice given under section 69;

and who, in lighting the fire, complies with any condition or direction contained in the notification, notice or permit and does not contravene any provision of this Act does not incur any liability at common law for any loss, injury or damage caused by the fire unless it is shown that the person acted recklessly or maliciously caused the loss, injury or damage.

(2) Subsection (1) applies only in respect of a fire lit for the purpose of or likely to have the effect of burning off vegetation.

Division 2—Fire wardens**Chief fire wardens and fire wardens**

75.(1) Such number of chief fire wardens and fire wardens may be appointed as the commissioner thinks necessary or expedient for the purposes of this Act.

(2) Subject to subsection (3), appointments must be made in writing by the commissioner.

(3) Where the appointee is an officer of the public service or a police officer, the appointment must be made by the Governor in Council by notification published in the gazette—

- (a) specifying the name of the appointee; or
- (b) specifying that the appointment is made to the holder of a specified office in which case each person who, for any period, holds or performs the duties of that office is, for that period, a chief fire warden or, as the case may be, a fire warden.

(4) A person may hold an office under this section in conjunction with any office held with the Queensland Fire Service, the public service or the Police Service.

(5) The commissioner may, by giving a notice to an appointee, cancel the appointment, whether the appointment was made by the commissioner or the Governor in Council.

(6) The Governor in Council may, by notification published in the gazette, amend or rescind any notification made under subsection (3)(b).

Powers and functions

76.(1) The powers of a chief fire warden or fire warden are the same as those of an authorised fire officer subject to any limitation imposed by the commissioner.

(2) The commissioner may direct a chief fire warden or a fire warden to discharge functions in addition to those imposed by this Act.

(3) In exercising a power or discharging a function a chief fire warden or fire warden must comply with any code of practice and with any direction of the commissioner.

Expenses

77. A chief fire warden or a fire warden may be paid such expenses as are approved by the Governor in Council.

Appeals from decisions of fire wardens

78.(1) Where pursuant to a delegation of the commissioner's powers a chief fire warden or a fire warden is empowered to issue notices under section 64 or 69 or to determine applications for permits under section 65, any person aggrieved by a decision made by the chief fire warden or fire warden in the exercise of the power may appeal against the decision by notice in writing given to the commissioner.

(2) The commissioner may allow or dismiss an appeal and may, where an appeal is allowed, make any order that appears just.

Division 3—Rural fire brigades**Formation of rural fire brigade**

79.(1) Any group of persons may apply to the commissioner for registration as a rural fire brigade.

(2) The commissioner may grant or refuse an application and, in the case of the granting of an application, must assign a registration number to the rural fire brigade.

(3) The commissioner may at any time cancel the registration of a rural fire brigade.

Rural fire brigade may make rules

80.(1) A rural fire brigade may make rules, not inconsistent with this Act, for the purpose of regulating its proceedings and the conduct of its operations including the acquisition, vesting and disposal of its property and funds.

(2) A rule has no effect unless approved by the commissioner.

(3) The commissioner may at any time direct a rural fire brigade to amend, revoke or make rules in the manner and for the purpose specified in the direction.

Officers of rural fire brigade

81.(1) A rural fire brigade must elect a first officer to be in charge of the brigade.

(2) A rural fire brigade may also elect such other officers as it considers necessary.

(3) Any election must be conducted in accordance with the commissioner's directions and has no effect unless approved by the commissioner.

(4) A person holds office for the period specified by the commissioner.

(5) The commissioner may dismiss a person from any office held with a rural fire brigade or may disqualify a person from holding any office.

Functions of a rural fire brigade

82.(1) The functions of a rural fire brigade are fire fighting and fire prevention and such other functions as the commissioner may direct.

(2) The commissioner must notify a rural fire brigade of the area for which and the circumstances in which the brigade is in charge of fire fighting and fire prevention.

(3) In this section—

“fire prevention” includes taking measures in readiness for fire so as to reduce potential danger to persons, property or the environment.

Powers of first officer

83.(1) Where, pursuant to notification given under section 82(2), a rural fire brigade is in charge of operations for controlling and extinguishing a fire, the first officer of the brigade has, for that purpose—

- (a) the powers of an authorised fire officer, subject to any limitation imposed by the commissioner; and
- (b) the control and direction of any person (including any fire officer) whose services are available at the fire.

(2) Any power exercisable by the first officer of a rural fire brigade may be exercised by any person acting at the direction of the first officer.

(3) Any person exercising a power or discharging a function under this section must comply with any code of practice and with any direction of the commissioner.

(4) In this section—

“first officer” includes, where the first officer of a rural fire brigade is unavailable to act, the next senior officer of the brigade who is available.

(5) Where a rural fire brigade is assisting in operations for controlling or extinguishing a fire, the person who pursuant to this Act or any direction given by the commissioner is in charge of those operations has the control and direction of the members of the rural fire brigade.

Equipment for rural fire brigade

84.(1) The commissioner may provide any rural fire brigade with equipment for carrying out its responsibilities or may, for that purpose, subsidise the purchase of equipment by a rural fire brigade.

(2) All equipment provided by, or the purchase of which is subsidised by, the commissioner is and remains the property of the commissioner and may at any time be repossessed by the commissioner.

(3) A justice, acting upon the complaint of the commissioner, may issue a warrant authorising any person named in it or belonging to a class of person specified in it to search for and seize any equipment that pursuant to subsection (2) is the property of the commissioner.

(4) A person authorised to execute a warrant may, for that purpose—

- (a) enter any premises in which the person believes the equipment may be located;
- (b) break open anything the person believes may contain the equipment.

(5) In this section—

“equipment”, without limiting the meaning of the term, includes plant and any liquid or gaseous substance.

Commissioner responsible for efficiency of rural fire brigades

85. The commissioner is responsible for the efficiency of rural fire brigades and may provide training and other assistance to them.

Powers of officers of other States to fight fires in Queensland

86.(1) In this section—

“officer of another State” means an officer of any body or organisation that, pursuant to any law of another State, is responsible for extinguishing fires in rural areas in that State.

“State” means the State of New South Wales or the State of South Australia or the Northern Territory.

(2) Where an officer of another State determines in good faith—

- (a) that a fire burning in Queensland may continue burning into the other State; or
- (b) that a fire burning in the other State may continue burning into Queensland;

the officer may take measures in Queensland for extinguishing or controlling the fire.

(3) If an officer of another State, in Queensland for the purpose of taking measures authorised by subsection (2) to be taken, is the senior officer present of the relevant body or organisation, the officer may exercise, subject to subsection (4), any of the powers of a first officer of a rural fire brigade.

(4) Where, pursuant to this Act or any direction given by the commissioner, any person has control of operations at a fire in Queensland at which an officer of another State is present, that officer must obey any direction given by the person having control of operations.

PART 8—FIRE EMERGENCY

Declaration of state of fire emergency

87.(1) The commissioner may, with the approval of the Minister, declare that a state of fire emergency exists within Queensland.

(2) A declaration of a state of fire emergency—

- (a) may have effect throughout the State or in part of the State, as specified in the declaration;
- (b) may apply differently according to factors specified in the declaration;
- (c) may, if it does not prohibit the lighting of all types of fires, prescribe conditions to be observed in lighting fires of any type not prohibited;
- (d) may order that the lighting of any fire of a type not prohibited be subject to the granting of a permit under section 65 by the

commissioner or by a person belonging to a class of person specified in the declaration;

- (e) may order that any person finding a fire burning in the open air take all possible steps to extinguish it and, as soon as is practicable, report the existence and locality of the fire to any person belonging to a class of person specified in the declaration;
- (f) may prohibit the use of any appliance, material or substance specified in the declaration that, in the opinion of the commissioner, is or is likely to cause a fire risk;
- (g) may order the suspension of such operations as may be specified for the period specified;
- (h) may, with the approval of the Minister, be amended or revoked at any time.

Publication of declaration

88.(1) Every declaration of a fire emergency or amendment or revocation of a declaration must be notified in the gazette.

(2) A declaration of a fire emergency or an amendment or revocation of a declaration takes effect from—

- (a) the date on which it is notified in the gazette; or
- (b) where it is notified throughout the area to which it applies by newspaper, radio or television, the date on which it is so notified;

whichever date occurs sooner.

(3) For the purpose of ensuring public knowledge of the declaration of a state of fire emergency in the area to which it applies, the commissioner must take measures to give widespread publicity to the declaration but any alleged failure to do so is not an excuse for failure to comply with the declaration.

Period of state of fire emergency

89. A state of fire emergency declared by the commissioner remains in force—

- (a) where a period for which it is to remain in force is specified in the declaration, until that period expires unless the declaration is sooner amended by extending that period or revoked; or
- (b) where no period is specified, until the declaration is revoked.

Effect of emergency on existing authorities to light fires

90.(1) Upon the declaration of a state of fire emergency, any authority given under this or any other Act to light a fire, whether given before or during the state of emergency, ceases to have effect while the state of emergency remains in force.

(2) Subsection (1) applies subject to any authority to light a fire specified in the declaration or any permit granted after the commencement of the state of emergency in accordance with the declaration.

Power of commissioner during fire emergency

91.(1) While a state of fire emergency remains in force, the commissioner may take any reasonable measure to abate the fire emergency.

(2) Without limiting those measures, they include requisitioning any premises, plant, equipment, materials or substance for fire fighting or fire prevention.

Failure to comply with declaration

92. Any person who fails to comply with a declaration of a state of fire emergency or with any requisition made pursuant to section 91(2) commits an offence against this Act and is liable—

- (a) if a body corporate—to a penalty of 1 000 penalty units;
- (b) if a natural person—to a penalty of 250 penalty units or 2 years imprisonment.

Certificate re declaration

93. In any proceeding for—

- (a) an offence defined in section 92; or
- (b) any other offence against this Act where it is alleged as a circumstance of aggravation that the offence was committed during a state of fire emergency at a place to which the declaration of the emergency applied;

any certificate under the seal of the commissioner stating that a state of fire emergency declared under section 87 existed at a specified place and during a specified period and specifying any of the provisions of the declaration is evidence, and in the absence of evidence to the contrary conclusive evidence, of the matters contained in the certificate.

PART 9—OFF-SITE PLANS FOR DANGEROUS GOODS

Interpretation of part

94. In this part—

“ADG Code” means the Australian Code for the Transport of Dangerous Goods by Road and Rail, published in the Commonwealth of Australia Gazette No. P15 on 7 April 1987, as amended from time to time by amendments published in the Commonwealth of Australia Gazette, and includes any code (as so amended from time to time) published in the Commonwealth of Australia Gazette in substitution for that code.

“dangerous goods” means—

- (a) any substance listed in the ADG Code as dangerous goods other than any substance declared by order in council not to be dangerous goods for the purposes of this part;
- (b) any substance declared by order in council to be dangerous goods for the purposes of this part.

Application of part

95.(1) This part does not apply in respect of—

- (a) persons or substances in or about a mine to which the *Mines Regulation Act 1964* applies;
- (b) persons or substances in or about a mine to which the *Coal Mining Act 1925* applies;
- (c) persons or substances in or about a well to which the *Petroleum Act 1923* applies.

(2) This part does not derogate from the provisions of the *Radioactive Substances Act 1958*, the *Transport Operations (Marine Safety) Act 1994* or the *Workplace Health and Safety Act 1989* and where there is any conflict between the provisions of this and the provisions of those Acts, the provisions of those Acts prevail, to the extent of the inconsistency.

Occupier to provide information concerning dangerous goods

96.(1) Where a person—

- (a) is an occupier of premises in or on which any dangerous goods are stored; or
- (b) is to be the occupier of premises presently under construction, in or on which any dangerous goods are to be stored;

the commissioner may give a notice requiring the person to provide such information concerning the dangerous goods as is specified in the notice.

(2) A person to whom a notice is given must provide the information sought within the time specified in the notice.

Commissioner may require off-site emergency plan

97.(1) In any case in which the commissioner has power to give a person a notice requiring information concerning any dangerous goods, the commissioner may by notice in writing require the person, within the time specified in the notice, to prepare and lodge with the commissioner a plan relating to those dangerous goods (an “**off-site emergency plan**”).

(2) A notice may be given to a person under subsection (1) whether or not a notice has been given under section 96 or, where a notice has been given under that section, whether or not the person has complied with the notice.

(3) A person required by notice given under subsection (1) to prepare and lodge an off-site emergency plan is referred to in this part as the “**person responsible for the plan**”.

(4) An off-site emergency plan must provide for measures to be taken in preparation for a chemical incident or upon a chemical incident occurring so that danger that may thereby arise to any person who or property that is outside the premises to which the plan relates or to the environment is avoided or limited.

Commissioner to assist with plans

98.(1) The commissioner must provide an advisory service and, to the extent practicable, assist in the preparation and implementation of off-site emergency plans.

(2) A person responsible for a plan is liable to pay to the commissioner charges for any advice or other assistance provided.

Approval of plans

99. Where an emergency plan is lodged, the commissioner—

- (a) may approve or refuse to approve the plan;
- (b) may, if approving the plan, subject approval to conditions;
- (c) must, if rejecting the plan, give the person responsible for the plan notice in writing specifying the manner in which the plan is deficient and requiring that a new or amended plan be lodged within the time specified in the notice.

Amendment of plan

100.(1) An off-site emergency plan may be amended with the approval of the commissioner.

(2) The commissioner may give a notice to a person responsible for an off-site emergency plan requiring that the plan be amended and lodged with the commissioner for approval.

Duty to implement plan

101.(1) Where an off-site emergency plan has been approved by the commissioner, the person responsible for the plan must ensure that all measures provided for in the plan (and in any amendment approved to the plan) are taken.

(2) A person who fails to discharge that duty commits an offence against this Act.

(3) If the commissioner believes that any measure provided for in a plan has not been taken, the commissioner may give a notice to the person responsible for the plan requiring that the measure be taken within the time specified in the notice.

Notice of changed circumstances

102.(1) Where any change of circumstances occurs that substantially reduces the effectiveness of an off-site emergency plan or that renders the plan unnecessary, the person responsible for the plan must immediately give notice in writing of that fact to the commissioner.

(2) The commissioner, if aware that an off-site emergency plan is no longer necessary because of any change of circumstances, must give approval to the person responsible for the plan to discontinue giving effect to the plan.

Commissioner to keep copies of plans

103. The commissioner must keep a copy of every off-site emergency plan lodged for approval and of every amendment to a plan.

Punishment for certain offences against this part

104. A person convicted of—

- (a) an offence defined in section 101(2); or
- (b) an offence consisting in a failure to notify a change of circumstances, as required by section 102(1), that substantially reduces the effectiveness of a plan; or

- (c) an offence consisting in a failure to comply with a notice given under this part;

is liable—

- (d) if a body corporate—to a penalty of 1 000 penalty units;
- (e) if a natural person—to a penalty of 250 penalty units or 12 months imprisonment.

PART 9A—BUILDING FIRE SAFETY

Division 1—Interpretation

Interpretation

104A. In this part and in schedule 5—

“building” means a fixed structure that is wholly or partly enclosed by walls and is roofed and includes a floating building and any part of a building but does not include—

- (a) a single dwelling house, being either a detached dwelling house or a town, terrace, row, villa or like house attached to another such house or other such houses only by a wall on 1 or more of its sides; or
- (b) a building treated as part of a coal mine for the purposes of the *Coal Mining Act 1925* or as part of a mine for the purposes of the *Mines Regulation Act 1964*; or
- (c) a building in which no prescribed fire installation is required to be maintained pursuant to section 104D.

“Building Advisory Committee” means the Building Advisory Committee established under the *Building Act 1975*.

“Building Code of Australia” means the Building Code of Australia within the meaning of the Standard Building Law.

“building surveyor” means a person appointed by a local government to

be a principal building surveyor, a deputy principal building surveyor or a building surveyor for the purposes of the Standard Building Law.

“fire safety installation” means a fire safety installation within the meaning of the Standard Building Law.

“ground level” has the same meaning for the purposes of this part as the term has as defined in the Queensland Appendix to the Building Code of Australia for the purposes specified therein.

“maintain” includes install or establish and maintain.

“prescribed fire safety installation” means a prescribed fire safety installation within the meaning of section 104D.

“Standard Building Law” means the *Standard Building Law* under the *Building Act 1975*.

Application to prisons

104B. This part applies in relation to a building that is, or that is treated as part of, a prison for the purposes of the *Corrective Services Act 1988*, but an authorised fire officer is not competent to exercise a power conferred by sections 55 to 57 in relation to such a building without the consent of the general manager of the prison within the meaning of the *Corrective Services Act 1988*.

Division 2—Duties of occupiers

Occupier of building to maintain means of escape from building

104C. The occupier of a building must maintain at all times free from obstruction adequate means of escape in the event of fire threatening any part of the building.

Occupier of building to maintain prescribed fire safety installations

104D.(1) The occupier of a building must maintain at all times every prescribed fire safety installation to a standard of safety and reliability in the event of fire.

(2) It is a defence to a charge made under this Act that an occupier of a building, in contravention of subsection (1), has failed to maintain in the building a prescribed fire safety installation for the defendant to prove—

- (a) that the prescribed fire safety installation would not be required to be maintained in the building if the building were constructed at the time of the alleged offence and was unnecessary for the purposes of fire safety; or
- (b) that in lieu of the prescribed fire safety installation there is maintained a fire safety installation of equivalent or greater effectiveness.

(3) For the purposes of this section—

“**Act**” includes any Act and any proclamation, order in council, regulation, rule, local law or other instrument of subordinate legislation made under any Act, whenever passed or made whether or not it has ceased to exist.

“**prescribed fire safety installation**” means a fire safety installation—

- (a) that was at any time required to be maintained in the building in question by or under any Act, including as a prerequisite to the granting of any approval or the issue of any notice, certificate or instrument; and
- (b) that was not at any time authorised by or under any Act to be no longer maintained.

Fire and evacuation plan

104E. The occupier of a building must—

- (a) maintain at all times a plan of the action to be taken by persons within the building in the event of fire threatening the building adequate to ensure their own and other persons safety; and
- (b) provide adequate instructions to persons working or residing in the building concerning the action to be taken by them in the event of fire threatening the building in order to ensure their own and other persons safety.

Commissioner may assist with plan

104F.(1) The commissioner may provide assistance to the occupier of a building in the preparation and implementation of the plan required to be maintained by the occupier pursuant to section 104E(a) and any regulations made under this part in relation to such a plan.

(2) An occupier to whom assistance is provided is liable to pay the commissioner's charges for the assistance.

Commissioner's notice to comply

104G.(1) The commissioner may give to the occupier of a building a notice in writing requiring the occupier to take steps as directed by or in accordance with the notice, within such time as is specified therein, in order to remedy any matter in respect of which the commissioner is of the opinion that the occupier has failed to comply with this division or with regulations made under this part.

(2) A notice under subsection (1) to the extent that it specifies that an alteration is to be made to the structure of a building is not valid unless the commissioner first consults the local government in whose area the building is situated.

(3) A person who is given a notice pursuant to subsection (1) must comply with the notice.

(3A) In a case where such a person fails to comply with the notice within a time specified therein then—

- (a) notwithstanding that the time has passed, the person's obligation to comply continues until the person complies with the notice; and
- (b) section 150 applies.

(4) The giving of a notice under this section does not prejudice any other proceedings under this Act in respect of the noncompliance to which the notice relates, with the exception that the person to whom the notice is given is not liable, during the period afforded by the notice to comply and any further period during which that person is relieved by this part from any penalty for failure to comply with the notice, to any penalty prescribed by section 150 for continuing offences.

Division 3—Prohibition on prescribed use without certificate of compliance

Prohibition on prescribed use without certificate of compliance

104H.(1) The Governor in Council, on the recommendation of the Minister, may make an order in council prohibiting the use of a building as prescribed in the order on and from a date prescribed in the order unless there is in existence a certificate of compliance issued under section 104I in relation to that building use.

(2) An order in council made under subsection (1)—

- (a)** must be expressed to apply in relation to a building use prescribed by schedule 5 unless the Governor in Council, upon the recommendation of the Minister, is satisfied that urgent action is required to reduce the risk of fire in relation to a building use not so prescribed; and
- (b)** may be expressed to apply in relation to all buildings or any building of a description defined in the order.

(3) An order in council made under subsection (1) may on and from a date specified in the order revoke a certificate of compliance or class thereof issued before the order is made that authorised a building use to which the order applies.

(4) An occupier of a building who uses the building in contravention of an order in council made under subsection (1) commits an offence against this Act.

(5) An occupier of a building is not liable to any penalty prescribed by this Act by reason of the building being used in contravention of subsection (4) on and from the date the occupier makes application for a certificate of compliance under section 104I to and including the date the occupier is issued a certificate of compliance or given a notice refusing the application pursuant to section 104I.

(6) Subsection (5) does not apply in relation to an application made after a previous application has been refused.

Certificate of compliance

104I.(1) An occupier of a building to which an order in council made under section 104H(1) applies may apply to the commissioner to be issued a certificate of compliance under this section in relation to a building use to which the order applies.

(2) An application must—

- (a) be accompanied by the fee prescribed by the regulations; and
- (b) provide the information prescribed by the regulations; and
- (c) specify the building and the building use to which the certificate of compliance is to apply.

(3) An application must be referred to an authorised fire officer for consideration and determination.

(4) The authorised fire officer must then inspect the building.

(5) An applicant is to provide to the commissioner or the authorised officer such information in relation to the application as either may require.

(6) If the authorised fire officer who inspects the building, having regard to the building use specified in the application, is satisfied—

- (a) that sections 104C, 104D and 104E are being complied with;
- (b) that the regulations made pursuant to this part that apply in relation to building use are being complied with; and
- (c) that adequate fire safety measures and fire prevention measures generally have been taken or are being maintained;

the authorised fire officer must issue a certificate of compliance in relation to the building authorising the building use specified in the application.

(7) If the authorised officer who inspects the building is not satisfied of any matter prescribed by subsection (6)(a) to (c), the authorised officer must give notice to the applicant—

- (a) specifying the steps required to be taken before the application will be granted; and
- (b) allowing a reasonable period within which those steps may be taken before the application is refused.

The authorised officer may at any time extend the period so allowed.

(8) If—

- (a) the applicant declines to take the steps referred to in subsection (7)(a); or
- (b) upon inspection of the building at the expiration of the period allowed to the applicant to take the steps referred to in subsection (7)(a), the authorised officer is not satisfied that those steps have been taken;

the authorised officer must refuse the application by notice given to the applicant.

(8A) The notice must state the grounds of the refusal and any steps required to be taken by the applicant before any further application will be granted.

(9) A notice under subsection (7) or (8) to the extent that it specifies that an alteration is to be made to the structure of a building before an application will be granted is not valid unless the authorised fire officer who issues the notice first consults the local government in whose area the building is situated.

(10) If an authorised officer—

- (a) fails to issue a certificate of compliance or any notice under this section before a date 30 days after the receipt by the commissioner of an application; or
- (b) in a case where a notice under subsection (7) has been given to the applicant—fails to issue a certificate of compliance or a notice of refusal before a date 30 days after the expiration of the time allowed by the notice to take steps specified in the notice;

the provisions of division 4 apply as if the authorised officer had given to the applicant on that date a notice of refusal.

Form of certificate of compliance**104J.** A certificate of compliance—

- (a) subject to this Act, may be issued in any convenient form and if convenient be in respect of more than 1 building or building use;
- (b) must state specifically or by reference the fire safety installations

the maintenance of which were required for the issue of the certificate.

Certificate of compliance—limitations on requirements

104K. An authorised fire officer who inspects a building for the purposes of section 104I must not impose—

- (a) more onerous requirements for the maintenance of fire safety installations than the occupier was required to maintain pursuant to section 104D immediately before the inspection; or
- (b) in relation to any particular matter provided for by the regulations—more onerous requirements than those imposed in relation to the matter by the regulations;

as a prerequisite to the officer being satisfied that adequate fire safety measures and fire prevention measures generally have been taken or are being maintained by the occupier.

Division 4—Objection to notices

Persons aggrieved by notice may object

104L.(1) A person who is aggrieved because the person has been given a notice under this part or by the terms of such a notice within 21 days may object in writing to the regional commander.

(2) An objection is not valid unless it is accompanied by the prescribed fee.

(3) For the purposes of this section the regional commander is the person who, pursuant to this Act, holds that office for the region in which is situated the building to which the notice in question relates or a person who is performing the duties of the office for the time being.

Panel of referees to be convened

104M. Upon receipt by a regional commander of an objection under this division, the commissioner or a person nominated by the commissioner must convene within 30 days a panel of referees to determine the objection.

Membership of panel of referees

104N.(1) A panel of referees is to consist of—

- (a) a chair referee who is to be a person nominated by the convenor of the panel; and
- (b) 1 person nominated by the local government in whose area is situated the building to which the notice objected to relates; and
- (c) 1 person nominated by the chairperson of the Building Advisory Committee.

(2) No objection is to be taken or allowed to the nomination of a chair referee on the ground that the person nominated is an officer of the Queensland Fire Service unless the person was involved in the decision to issue the notice in question.

(3) The referee nominated pursuant to subsection (1)(b)—

- (a) if the local government is not the person objecting—is to be a person appointed to be a building surveyor by the local government; and
- (b) if the local government is the person objecting—is to be a person appointed to be a building surveyor by a local government other than the objector.

(4) For the purposes of the nomination referred to in subsection (1)(c), the chairperson of the Building Advisory Committee must request 1 or more of the bodies represented on the committee to nominate a person for appointment.

(4A) The person nominated by the chairperson for the appointment must be a person nominated by 1 of the bodies represented on the committee.

(5) In the event of a failure of a local government or the chairperson of the Building Advisory Committee for any reason to nominate a person to be a referee for the purposes of subsection (1)(b) or (c), in the stead of that person the convenor of the panel may appoint any person to be a referee.

(6) Referees are entitled to such fees and expenses for attendance at meetings of a panel as may be approved by the Governor in Council, with the exception that an officer of the public service of the State is not to receive fees for attendance as a referee during ordinary hours of duty.

Determination of objection

104O.(1) A person who convenes a panel of referees pursuant to section 104M, as soon as practicable thereafter and upon consultation with the chair referee, must give a notice in writing to each referee and the objector appointing a time and place when and where the panel is to consider the objection and any further representations.

(2) At the time and place so appointed, or at any time and place to which the matter is adjourned from time to time, the panel must consider and determine the objection.

(3) A panel is not bound by the rules or the practice of any court or tribunal as to evidence or procedure in the consideration and determination of an objection, but, subject to this Act, may inform itself on any matter and conduct its proceedings in such manner as it thinks proper.

(4) A panel may authorise a person to be represented before it by an agent with the exception that a person is not to be represented by counsel or solicitor.

(5) A determination of the panel is to be decided by majority vote of its members.

(6) In determining the objection, a panel may—

- (a) confirm, cancel or vary the notice to which objection is made in such a manner and to such an extent as it thinks fit; and
- (b) give such directions as are necessary to give effect to its determination.

(7) If the panel confirms or varies a notice it may extend any period for compliance with the notice.

(8) The convenor of the panel must give written notification of the determination of the panel to the objector within 7 days of the determination being made.

Relief from penalty pending determination of objection

104P. If an objection is validly made pursuant to section 104L to a notice given under this part, the objector is not liable to a penalty under this Act—

- (a) in the case of a notice given under section 104G—for any failure

on the objector's part to comply with the notice on and before the date on which the objector is given notice of the determination of the objection; and

- (b) in the case of a notice given under section 104I(8)—for any use of a building, being a building use to which the notice relates, on and from the date the objector is given the notice to and including the date the objector is given notice of the determination of the objection.

Appeal from panel of referees

104Q.(1) A person aggrieved by a determination of a panel of referees notified to the person pursuant to section 104O, may appeal against the determination within 7 days of being so notified to a Stipendiary Magistrate sitting as a Magistrates Court in the district appointed for such courts under the *Justices Act 1886* within which is situated the building to which the determination relates.

(2) In order to institute an appeal, an aggrieved person must file a notice of appeal specifying the grounds of appeal in the office of the registrar of the Magistrates Court and give a copy of the notice to the convenor of the panel of referees.

(3) An appeal is to be limited to 1 or both of the grounds of—

- (a) denial of natural justice; or
- (b) error of law.

(4) The Stipendiary Magistrate has jurisdiction—

- (a) to hear and determine the appeal, to dismiss or allow it, or to strike it out for want of prosecution;
- (b) upon allowing the appeal—
 - (i) to remit the matter to the panel of referees, or to the convenor of the panel of referees for rehearing by another panel, in either case with such directions as the magistrate thinks fit; and
 - (ii) to make such other orders, including relating to costs, as are necessary to dispose of the appeal.

(5) The power of the Governor in Council to make rules of court under section 14 of the *Magistrates Courts Act 1921* includes the power to make rules for or in respect of appeals under this section.

(6) To the extent that those rules do not provide sufficiently for appeals under this section, a Stipendiary Magistrate may give such directions as are necessary.

Division 5—Injunctions relating to high risk buildings

Injunctions

104R.(1) Where the commissioner is satisfied in relation to any building that the risk to persons in the event of fire or the risk of spread of fire is so serious that the use of the building should be prohibited or restricted until steps have been taken to reduce the risk to a reasonable level, the commissioner, by action in the Supreme Court, may claim against the occupier of the building an injunction prohibiting or restricting the use of the building.

(2) Jurisdiction is hereby conferred upon the Supreme Court and a Judge thereof to hear and determine any such action and to grant an injunction to prohibit or restrict the use of the building.

(3) An injunction may be—

- (a) for a limited period of time specified in the order or for an indefinite period of time;
- (b) in respect of every use of a building or for a use or uses specified in the order.

(4) Unless the contrary intention appears in the terms of the injunction, an injunction against any occupier of a building is taken to be made against all the occupiers from time to time of the building.

Division 6—Regulations

Regulations relating to this part

104S. The power of the Governor in Council to make regulations under section 154 includes the power to make regulations for or with respect to—

- (a) the maintenance free from obstruction of adequate means of escape in the event of fire threatening any part of a building;
- (b) the maintenance of fire safety installations in buildings including authorisation of the removal, replacement or substitution of any fire safety installation;
- (c) regulating the presence or use within buildings of furniture, furnishings, fittings, equipment, paints or finishes of any description in order to reduce the risk of fire;
- (d) requiring the maintenance of fire and evacuation plans in a specified form—
 - (i) setting forth the action to be taken in the event of fire threatening a building;
 - (ii) imposing obligations to provide instructions in preparation for the event of fire or to take specified action in the event of fire threatening a building;
- (e) requiring a fire and evacuation plan or class of such a plan to be approved by the commissioner;
- (f) requiring instruction or training of persons visiting, working in or inhabiting a building in relation to fire prevention and fire safety generally;
- (g) imposing obligations to take specified action in the event of fire threatening a building;
- (h) regulating the numbers of persons using a building at any one time;
- (i) requiring the stationing of persons at places within a building under specified circumstances;
- (j) the prevention, control or extinguishing of fires in buildings generally;
- (k) the institution and determination of objections under division 4 and appeals from determinations;

- (l) applying the provisions of this part, with adaptations or modifications, to any premises or class of premises other than buildings;
- (m) imposing obligations for the purpose of the regulations not only upon occupiers of buildings but also other persons where necessary or convenient.

PART 10—FUNDING

Division 1—Interpretation

Definitions

105. In this part—

“component local government” means a local government whose area, or part of whose area, comprises an urban district or part of an urban district.

“owner”, used with reference to real property, means the person (other than the Crown) who is entitled to receive the rent of property or who, if the property were let, would be entitled to receive the rent, and includes—

- (a) any lessee or licensee from the Crown; and
- (b) a purchaser (including a purchaser from the Crown) under any agreement giving possession of the property; and
- (c) a statutory corporation (whether or not representing the Crown).

“prescribed property” means real property, whether or not occupied by any person, that is within an urban district and that is—

- (a) a parcel of land separately held by an owner except either a parcel to which paragraph (b) applies or a parcel on which is situated a building containing lots (within the meaning of the *Building Units and Group Titles Act 1980*); or
- (b) a portion of a parcel of land separately held by an owner, where the local government for the local government area in which the

portion is situated determines that the portion should be classed as a separate parcel for the purposes of this part; or

- (c) a lot within the meaning of the *Building Units and Group Titles Act 1980*;

the term does not include—

- (d) property vested in the Aboriginal and Islander Affairs Corporation; or
- (e) property belonging to any class of property prescribed by order in council not to be prescribed property.

Division 2—Funding for urban fire brigades

Constitution of urban districts

106.(1) The Governor in Council may, by order in council—

- (a) constitute any portion of the State an urban district for the purposes of this Act;
- (b) assign a name to or alter the name of an urban district;
- (c) abolish an urban district;
- (d) alter the boundaries of an urban district;
- (e) amalgamate 2 or more urban districts;
- (f) divide an urban district into 2 or more urban districts.

(2) In any proceeding the production of any map purporting to be certified by the commissioner as showing the boundary of any urban district or alteration of the boundary of any urban district is evidence, and in the absence of evidence to the contrary conclusive evidence, of the matters shown or stated.

(3) Each district constituted under the *Fire Brigades Act 1964* and in existence immediately before the appointed day shall, on that day, be taken to be an urban district constituted under subsection (1).

Liability to contribute

107.(1) For each financial year the owners of prescribed properties must contribute in accordance with this part to the cost of administering and giving effect to this Act.

(1A) An owner of prescribed property is not liable to contribute unless a fire brigade operated by fire officers provides services to prescribed properties in the urban district in which that prescribed property is situated or provided those services at the time when the liability to contribute arose.

(2) For each financial year there must be paid from the Consolidated Fund to the commissioner—

- (a) an amount representing one-seventh of the estimates for the financial year in question (as established by the budget of the commissioner approved for that year) of the amount to be received from the owners of prescribed properties other than prescribed properties owned by a Commonwealth public trading enterprise; and
- (b) such further amount as the Treasurer may authorise.

(3) If, for any financial year, the Treasurer believes that any anticipated reduction by the Commonwealth in financial assistance payments to the State (not including any grant related to the provision of fire services to properties owned by the Commonwealth) will be attributable to the amount payable under this part by Commonwealth public trading enterprises as owners of prescribed properties, the Treasurer may make a corresponding reduction in the amount payable under subsection (2)(a).

(4) In this section—

“Commonwealth public trading enterprises” means instrumentalities of the Commonwealth liable to pay the taxes and other charges of the State.

Annual contributions of owners of prescribed properties

108.(1) The amounts of the contributions to be paid by owners of prescribed properties in respect of any financial year shall be prescribed by the Governor in Council by order in council made during the month of May preceding the financial year or as soon after May as is practicable.

(2) The Governor in Council shall prescribe the amounts of the contributions by categorising prescribed properties and prescribing differing amounts of contributions in accordance with those categories.

(3) Categorisation of prescribed properties may be on such bases as the Governor in Council considers appropriate.

(4) As soon as is practicable after an order in council is made under this section, the commissioner must give notice in writing to each component local government of the amounts of contributions payable by owners of prescribed properties in respect of the financial year to which the order in council relates.

Annual returns by component local governments

109.(1) To enable the amounts of contributions payable by owners of prescribed properties to be assessed in respect of each financial year, each component local government must furnish to the commissioner a return disclosing the prescribed particulars relating to properties that—

- (a) are within its area and within an urban district; and
- (b) are or will be prescribed properties during the financial year to which the return relates.

(2) A return must be furnished—

- (a) before the last day of April immediately preceding the financial year to which it relates; or
- (b) before such other date as the commissioner appoints, by notification published in the gazette.

Discount for pensioners

110.(1) In this section—

“**pensioner**” means a person in receipt of a pension under any law of the Commonwealth or of the State declared, or belonging to a class of pension declared, by order in council for the purposes of this section.

(2) The Governor in Council may from time to time by order in council declare that each pensioner, who is the owner of a prescribed property that is the principal place of residence of that pensioner, be granted a discount on

the contributions payable pursuant to this part in respect of that property at such rate as is specified in the order in council.

(3) If a pensioner entitled to a discount in respect of prescribed property is not the sole owner, the discount is an amount that bears to the amount of the discount to which the pensioner would have been entitled as the sole owner, the same proportion as the pensioner's interest in the property bears to the total of the interests of all owners of the property.

(4) For the purposes of subsection (3)—

- (a) owners who hold interests in a property as joint tenants are taken to hold interests in the property as tenants in common in equal shares; and
- (b) a pensioner who holds an interest in a property is taken to also hold any interest in the property held by the spouse of the pensioner.

Duties of owner of prescribed property and component local government

111.(1) An owner of prescribed property must, in accordance with this part, pay to the component local government in whose area the property is situated the annual contributions in respect of the property and any other amounts the local government is authorised to impose pursuant to this part.

(2) Subject to this part a component local government must collect those annual contributions and other amounts.

Determinations and notifications of contributions

112.(1) In respect of each financial year, a component local government as at the first day of the financial year—

- (a) must determine the prescribed properties within its area; and
- (b) must determine the annual contributions payable in respect of prescribed properties by reference to the categories prescribed by the relevant order in council made under section 108.

(2) After a local government makes its determinations for any financial year, it must give the owner of each prescribed property within its area a fire

levy notice stating—

- (a) the annual contribution in respect of the property; and
- (b) the amount of any arrears (including interest and other charges) of annual contribution in respect of the property.

Appeal against local government's determination

113.(1) An owner of property to whom a fire levy notice is given may appeal to the commissioner on any of the following grounds and on no other grounds—

- (a) that the property is not prescribed property;
- (b) that an amount shown in the notice is incorrect because of typographical or similar error, mathematical error or because the local government wrongly categorised the property in terms of the relevant order in council made under section 108;
- (c) that, for the purpose of determining the contributions payable, the prescribed property should in the circumstances be taken to be within a category (prescribed by order in council made under section 108) other than that on which the local government based its determination.

(2) A person wishing to appeal must lodge a notice to that effect with the commissioner setting out the grounds of the appeal within 30 days after the fire levy notice is given.

(3) The commissioner may require an appellant or the local government concerned to provide information relevant to the determination of the appeal.

(4) The commissioner may allow or reject an appeal.

(5) If the commissioner allows an appeal, the relevant local government must—

- (a) amend the levy notice; or
- (b) revoke the levy notice; or
- (c) revoke the levy notice and give a new levy notice;

in accordance with the determination of the commissioner.

(6) If the commissioner allows an appeal, the relevant local government

must refund to the appellant any amount paid in respect of contributions, for the financial year to which the notice relates and for any previous financial year, in excess of the amount calculated in accordance with the commissioner's determination.

(6A) If the local government has already made payments to the commissioner in respect of those contributions, the amount refundable must be paid to the appellant by the commissioner.

(7) The determination of the commissioner in respect of an appeal is final.

Manner of giving notification

114.(1) A fire levy notice may be given to the owner of prescribed property—

- (a) as an item on a rate notice given to the owner in respect of that property; or
- (b) as a separate notice given before 1 January of the financial year to which the notice relates.

(2) Where for any financial year a component local government gives to the owner of prescribed property in respect of that property 2 or more rate notices, each relating to part of that financial year, a fire levy notice is taken to be given to the owner in accordance with subsection (1)(a) if each rate notice contains an item for the payment in respect of that property of—

- (a) such amount as bears to the total of the annual contribution for the financial year the same proportion as the period (in months) for which the rate notice is given bears to 12; and
- (b) the amount of any arrears of annual contribution.

(3) Where notification is given as a separate notice, that notice is taken to be a rate notice under the *Local Government Act 1993* or, in the case of Brisbane City Council, the *City of Brisbane Act 1924*.

(4) A notification must not be given as an item on a rate notice unless—

- (a) where only 1 rate notice is given for a financial year—that rate notice is given before 1 January of that financial year;
- (b) where 2 or more rate notices are given for a financial year—the

first of those notices is given before 1 January of that financial year.

Annual contribution etc. deemed to be rates

115.(1) An amount shown in a fire levy notice, whether given by way of a separate notice or an item on a rate notice, is taken to be a general rate levied by the local government and the relevant provisions relating to general rates apply with all necessary modifications.

(2) In this subsection—

“relevant provisions” means—

- (a) the *Local Government Act 1993*, chapter 10 (Rates and charges) other than the following provisions—
- section 560 (Making of rates and charges)
 - section 593 (Resolution to remove valueless land from land record)
 - section 604(3) (Levying rates)
 - part 5 (Levying and payment of rates), division 4 (Discounts and other benefits for prompt payment of rates)
 - section 623 (Change in unimproved value of land)
 - section 624 (Land becomes or ceases to be rateable land)
 - section 626 (Entitlement to occupy land is ended)
 - part 6 (Concessions)
 - part 7 (Recovery of rates), division 4 (Acquisition by local government of valueless land); and
- (b) for the Brisbane City Council—any corresponding provisions of the *City of Brisbane Act 1924*, part 3 (Rates and charges).

(3) Notwithstanding subsections (1) and (2), rates made and levied under either Act mentioned in subsection (2) are in priority to amounts that, pursuant to subsection (1), are taken to be general rates.

Contribution to be paid into fund of component local government

116. An amount received or recovered by a component local government under this part must be paid into—

- (a) for the Brisbane City Council—the City Fund; or
- (b) for any other local government—its operating fund.

Collection fee

117. Where a component local government gives an owner of prescribed property a fire levy notice in the form of—

- (a) a separate notice or an annual rate notice for the financial year; or
- (b) a rate notice that is the last of the rate notices to be given in respect of that property for the financial year;

it may retain from moneys received in respect of the property for that financial year a prescribed amount by way of a collection fee.

Payments by component local government's to commissioner

118.(1) A component local government must from time to time make payments to the commissioner out of its general fund (or, in the case of Brisbane City Council, out of the City Fund) from moneys received or recovered by the local government pursuant to this part.

(2) The amount of a payment shall be the total of the moneys received or recovered by the local government during the relevant financial year or declared period less the total of all amounts retained by the local government pursuant to section 117.

(3) An amount payable under this section must be paid within 30 days after the expiration of the financial year or declared period to which the amount relates or within such further time as the commissioner may allow.

(4) Every payment must be accompanied by the prescribed return.

(5) In this section—

“declared period” means a period declared by order in council but not more than 4 periods may be declared for any financial year.

Failure by component local government to make payment

119.(1) Where a component local government fails to pay to the commissioner any amount payable pursuant to section 118 within the required period, the local government, from the day on which the period expires, is liable to pay to the commissioner interest on the amount at a rate declared by order in council, but not exceeding in any case the maximum rate of interest for the time being prescribed under the *Local Government Act 1993* in respect of unpaid rates.

(2) Any interest not paid by a component local government to the commissioner within the time specified in a written demand for payment given by the commissioner is recoverable, together with expenses of recovery, in a court of competent jurisdiction.

Payments and interest to be debt

120. All payments required to be paid to the commissioner pursuant to section 118 and all interest payable by a local government pursuant to section 119 constitute a debt due to the commissioner and may be sued for and recovered by the commissioner in any court of competent jurisdiction.

Payment of arrears

121.(1) Where any amount relating to contributions payable in respect of prescribed property is in arrears, the owner may apply in writing to the component local government in whose area the property is situated for approval to pay the outstanding amount in instalments.

(2) The local government may refuse the application or may grant it subject to any conditions it thinks fit.

Commissioner may issue levy notice or amended levy notice

122.(1) Where a component local government—

- (a) fails to notify the owner of prescribed property of any amount relating to contributions payable in respect of that property; or
- (b) in the opinion of the commissioner has underestimated any amount so payable;

the commissioner may give a notice to the owner requiring payment of the amount specified in the notice within such time and in such instalments (if any) as are specified.

(2) In a case referred to in subsection (1)(b), a notice may be given by the commissioner whether or not the amount as calculated by the local government has been paid.

Recovery of arrears

123.(1) Where any amount relating to contributions remains unpaid at the expiration of the period specified for payment in a fire levy notice or a notice given pursuant to section 122 and proceedings for recovery of the amount have not been instituted or have not been completed by the component local government in whose area the relevant prescribed property is situated, the commissioner may take action in a court of competent jurisdiction to recover that amount and interest on that amount at the prescribed rate.

(2) In subsection (1)—

“prescribed rate” means the rate declared by order in council, but not exceeding in any case the maximum rate of interest for the time being prescribed under the *Local Government Act 1993* in respect of unpaid rates.

(3) For the purpose of subsection (1), the commissioner may take any action (including the selling of land) that a local government may take to recover unpaid rates and for that purpose—

- (a) the amount outstanding is taken to be rates unpaid to a local government and, notwithstanding section 115(3), to be in priority to any rates made and levied in respect of the prescribed property by the component local government in whose area the property is situated; and
- (b) the commissioner is taken to be the mayor of that local government; and
- (c) any document under the seal of the commissioner is taken to be under the common seal of that local government.

(4) Where a court makes an order against the owner of prescribed property for the recovery of any amount in an action referred to in

subsection (1), it may also make an order for the recovery of any other outstanding amount relating to contributions payable in respect of that property that has not been paid in accordance with notification given under this part.

Commissioner may remit contributions

124. If the commissioner believes that it is not practicable to pursue the recovery of an amount relating to contributions, the commissioner may—

- (a) remit and wholly discharge the amount or any part of it; or
- (b) enter into an agreement with the person concerned for the payment of a composition in respect of the amount.

Proof of amounts owing re contributions

125. In any proceeding for the recovery of any amount relating to contributions, a certificate under the seal of the commissioner stating in respect of property identified in the certificate—

- (a) that the property was, during a specified period, prescribed property; and
- (b) that during that period the property was within a specified urban district and within the area of a specified component local government; and
- (c) that during that period a person was the owner of the property; and
- (d) that the person owes any specified amount in respect of contributions;

is evidence, and in the absence of evidence to the contrary conclusive evidence, of the matters stated.

Where services of commercial agent engaged

126.(1) Where the commissioner or a component local government engages the services of a commercial agent (licensed as such under the *Auctioneers and Agents Act 1971*) for the purpose of collecting any arrears

of annual contribution payable by an owner of prescribed property, then, notwithstanding section 52 of that Act, the owner may be required by the commissioner or the local government by notice in writing to pay an amount, not exceeding an amount representing the prescribed per centum of the amount of arrears, by way of a collection fee.

(2) The amount, if not paid as required, is recoverable by the commissioner or the local government, together with any expenses of recovery, in a court of competent jurisdiction.

Application of Crown Proceedings Act

127. Any proceeding for the recovery of any amount (including costs) taken under this Act by a local government is taken to be a proceeding in respect of a claim by the Crown within the meaning of the *Crown Proceedings Act 1980* and the provisions of that Act apply accordingly.

Fire levies not revenue in determining remuneration of employees of local government

128. Notwithstanding any industrial award providing for the classification or remuneration of any employee of a local government according to revenue received by it, in calculating revenue for that purpose—

- (a) money retained as a collection fee under section 117 is included;
- (b) all other money received or recovered under this part is excluded.

Division 3—Funding for rural fire brigades

Local government may make and levy certain rates or charges and contribute amounts raised to rural fire brigades

128A.(1) A local government may make and levy the following rates or charges and contribute amounts raised to rural fire brigades operating in its local government area—

- (a) a special rate or charge under section 567 of the *Local Government Act 1993*;

- (b) a separate rate or charge under section 568 of the *Local Government Act 1993*.

PART 11—GENERAL

Protection for acts done pursuant to Act

129.(1) No matter or thing done or omitted to be done by any person pursuant to this Act or bona fide and without negligence for the purposes of this Act subjects that person to any liability.

(2) A person (and any assistant) who discharges a function or exercises a power under this Act in order to avert or reduce actual danger to any person or property or to the environment may use force to a person that is reasonable in the circumstances and that does not cause and is not likely to cause death or grievous bodily harm and is not liable to be charged with any offence in respect of the use of that force.

(3) Where any question arises as to whether a person's liability for any act or omission, the subject of any proceedings, is negated under subsection (1) and the person claims to have acted pursuant to or for the purposes of this Act, the burden of proof of negligence and the absence of good faith lies upon the person alleging to the contrary.

(4) If a person against whom proceedings are taken in any court for an act or omission alleges that the act was done or omission made for the purposes of this Act, the court may, on application, order a stay of proceedings if satisfied—

- (a) that there is no reasonable ground for alleging either negligence or want of good faith; or
- (b) that the proceedings are frivolous or vexatious.

(5) This section does not take away any defence a person has independently of this section.

Inquiries into fires

130.(1) The Minister may order an inquiry into the origin, causes and circumstances of any fire.

(2) An inquiry into a fire must be held by a coroner within the meaning of the *Coroners Act 1958* and the provisions of that Act apply with all necessary modifications and, for the purpose of applying those provisions, the term “**Minister**” in section 8 of that Act is taken to mean the Minister within the meaning of this Act.

Representation of commissioner at inquiries

131. At an inquiry concerning any fire, whether an inquiry referred to in section 130 or not, an authorised representative of the commissioner may appear and adduce evidence, cross-examine any witness and address the tribunal conducting the inquiry.

Construction of policies of fire insurance

132. Where a person has insured an interest in property against loss by fire—

- (a) any loss incurred by the person arising from damage to the property; or
- (b) any charge or expense (other than one incurred as a punishment) incurred by the person;

by reason of the doing of an act in relation to a fire or suspected fire by a person in the exercise of a power or the performance of a function under this Act is taken to be loss or damage by fire within the meaning of the relevant policy of fire insurance which shall, notwithstanding its provisions, be construed accordingly.

Report of fire

133. The commissioner may, upon a request by or on behalf of an insurance company, furnish to the company details of any report in the possession of the commissioner relating to the attendance at a fire or other incident of an officer of the Queensland Fire Service or any other person

who is subject to the direction of the commissioner.

Right of way to fire officers

134.(1) A driver of a vehicle (other than a train) must, to the extent practicable, give clear and uninterrupted passage to any fire officer or any person acting under the direction of a fire officer who appears to be doing any act for the purpose of controlling or extinguishing a fire or dealing with any other emergency.

(2) A person who fails to comply with subsection (1) commits an offence against this Act.

Exemption from tolls

135. A fire officer driving a fire engine or similar vehicle, and that vehicle, are exempt from payment of any toll in passing any tollgate or in respect of the use of any road, bridge or vehicular ferry.

Duty of police to assist commissioner

136.(1) Upon receiving information of the occurrence of a fire or chemical incident requiring the attendance of officers of the Queensland Fire Service, the Commissioner of the Police Service or the police officer in charge, at the time, of the police station nearest to the location of the fire or chemical incident must immediately send police officers in sufficient number to preserve order and to assist at the fire or chemical incident.

(2) It is the duty of every police officer present at a fire or chemical incident to assist any officer of the Queensland Fire Service who is discharging functions and exercising powers under this Act.

Inspection of records of local governments

137.(1) A person authorised by the commissioner for the purpose of this section (an “**authorised officer**”) may—

- (a) enter any premises in which a local government carries on business, during the ordinary hours of business;
- (b) examine, make copies of or take extracts from any document or

record (in whatever form it is kept) relating to a function of the local government under this Act or a function of the commissioner;

(c) make inquiries for the purposes of this Act.

(2) A person who has custody of or control over documents or records of the type described in subsection (1)(b) must, when required to do so by an authorised officer—

(a) produce any of those documents or records to the officer;

(b) furnish information to the officer concerning any of those documents or records and otherwise assist the officer.

(3) A person who fails to comply with any requirement made by an authorised officer pursuant to subsection (2) commits an offence against this Act.

Use of brigade equipment on roads while unregistered

138.(1) The provisions of the *Transport Infrastructure (Roads) Act 1991* that prohibit the use on a road of an unregistered vehicle unless the use is authorised by a permit under that Act do not apply in respect of a vehicle used on a road where—

(a) it is being used by a rural fire brigade to carry persons or equipment for the purpose of preventing, controlling or extinguishing a fire or for training purposes or is being used for any other purpose authorised in writing by the commissioner; and

(b) it bears a clear identification as a vehicle of a rural fire brigade; and

(c) there is in force a contract of insurance providing an indemnity, such as is prescribed by section 23(1) of the *Motor Accident Insurance Act 1994*, in respect of injury caused by, through or in connection with the vehicle.

Interstate assistance at fire

139.(1) In this section—

“**officer in charge**”, used with reference to a fire, means the person who

pursuant to this Act or any direction of the commissioner or any code of practice is in charge at that fire.

(2) Every member of a fire brigade (or similar body having the function of extinguishing fire) from outside Queensland who is present at a fire in Queensland to assist at the fire and any plant and equipment in the member's charge is at the disposal of the person in charge at the fire and is taken to be under the control and direction of that person.

(3) If there is no person in charge at a fire, the member of the brigade or similar body from outside Queensland who is in charge of other members of that brigade or body in attendance, has the control and direction of all persons assisting at the fire and has all the powers conferred by or pursuant to this Act on an authorised fire officer.

Commissioner taken to be the owner of property

140. For the purpose of this Act and any proceeding (whether under this Act or not), the commissioner is taken to be the owner of—

- (a) any premises occupied in an official capacity by the commissioner or by any officer of the Queensland Fire Service;
- (b) anything (whether animate or inanimate) appropriated to the use of the commissioner or anything, not being the private property of any person, used by the commissioner or an officer of the Queensland Fire Service in performing duties.

Surrender of equipment

141.(1) A person, upon ceasing to be an officer of the Queensland Fire Service, must surrender to the commissioner—

- (a) any form of identification; and
- (b) anything issued to the person for official use;

unless otherwise ordered by the commissioner.

(2) A justice, acting upon the complaint of the commissioner, may issue a warrant authorising any person named in it or belonging to a class of person specified in it to search for and seize anything not surrendered in accordance with subsection (1).

- (3) A person authorised to execute a warrant may, for that purpose—
- (a) enter any premises in which the person believes the thing sought may be located;
 - (b) break open anything the person believes may contain the thing sought.

Vacating premises

142.(1) A person, upon ceasing to be an officer of the Queensland Fire Service, must immediately vacate any premises the property of the commissioner or to the possession of which the commissioner is entitled, unless the commissioner otherwise orders.

(2) If the premises are not vacated immediately or, as the case may be, within any period ordered by the commissioner, the commissioner may give the person a notice to quit.

(3) If the premises are not vacated within 14 days after the notice to quit is given, a Stipendiary Magistrate, acting upon the complaint of the commissioner, may issue a warrant authorising all police officers to enter the premises and remove all persons and property not authorised by the commissioner to be on the premises and to deliver possession of the premises to the commissioner.

Confidentiality

142A.(1) A person who discloses information that has come to the person's knowledge because the person is concerned in the administration of this Act commits an offence against this Act unless—

- (a) the information is not of a confidential or privileged nature or would normally be available to any member of the public on request; or
- (b) the disclosure is made in the course of the administration of this Act; or
- (c) the disclosure occurs in accordance with a requirement imposed or authorisation granted by or under a law of the State or the Commonwealth.

(2) For the purposes of this section—

- (a) a person is concerned in the administration of this Act if the person holds office, is appointed or employed, exercises a power or discharges a function pursuant to this Act;
- (b) the circumstances under which information is taken to come to a person's knowledge because the person is concerned in the administration of this Act includes where—
 - (i) information known to the person is confirmed; or
 - (ii) information comes to the knowledge of the person because of an opportunity provided;

because the person is concerned in the administration of this Act.

Protection of name

143.(1) A person must not—

- (a) have the expression 'Queensland Fire Service' or 'Queensland Fire Services' or an expression containing either of those expressions as the name under which the person carries on any business; or
- (b) use such an expression in any advertisement, sign or document relating to a business, whether carried on by that person or another;

unless authorised to do so by the commissioner.

(3) Where a person carrying on business under a name registered under any Act requests any person charged with keeping the register to cancel or alter the registration of the name for the purpose of complying with subsection (1), no fees or charges are payable in respect of the making of the request or compliance with it.

Charges for services

144.(1) Charges for any service provided by the commissioner may be prescribed by order in council.

(2) If no charge is prescribed for a service, the commissioner may fix a

charge.

(3) The person for whose benefit a service is provided is liable for any charge for the service.

(4) If a service involves attending to any incident that endangers or may endanger any person or property or the environment—

- (a) the person who caused the incident is liable for any charge for the service; and
- (b) if that person caused the incident while acting in the course of employment or as an agent—the employer or principal is also liable for any charge.

(5) If a service involves attending to a fire or chemical incident occurring in or on any property (real or personal) or endangering the property, each of the following persons is liable for any charge for the service—

- (a) the owner of the property;
- (b) in the case of a seagoing ship—the owner and the master.

(6) If a service involves attending to a fire lit under the authority of this or any other Act, no charge is payable by any person except in the following circumstances—

- (a) the person who lit the fire is liable for any charge if that person acted recklessly or negligently in lighting the fire or in failing to control it;
- (b) if that person lit the fire while acting in the course of employment or as an agent—the employer or principal is also liable for any charge.

(7) The owner of prescribed property is not liable for any charge for a service of attending to a fire in or on that property or endangering that property.

(8) The owner of property other than prescribed property is not liable for any charge for a service of attending to a grass fire (that is, a fire that predominantly consumes vegetation) if it is shown that the fire was not lit by the owner nor by an employee or agent of the owner acting in the course of that employment or agency.

(9) If a service involves attending to an incident caused by a person while

acting in the course of employment or as an agent, the employer or principal is not liable for any charge for the service if it is proved that—

- (a) the person who caused the incident was acting contrary to instructions; and
- (b) the employer or principal could not have prevented the incident by exercising reasonable supervision.

(10) If 2 or more persons are liable under this section for any charge, liability is joint and several.

(11) The liability of a person to pay any charge for a service of attending to an unauthorised fire does not affect the person's liability to be proceeded against and punished for lighting the fire.

(11A) In subsection(11)—

“unauthorised” means not authorised by or under this or any other Act.

(12) In this section—

“attending to”, used with reference to a fire or other incident, means taking all reasonable measures to deal with danger that is or may be caused by the incident to any person or property or the environment, and includes being in attendance at an incident in readiness to act.

(13) In any proceeding to recover charges payable under this section, a certificate under the seal of the commissioner stating—

- (a) that an amount is owing to the commissioner on that account; or
- (b) that any person is or was the owner of the property concerned or, in the case of a seagoing ship, the master; or
- (c) that any person is the person for whose benefit a service was rendered;

is evidence, and in the absence of evidence to the contrary conclusive evidence, of the matters stated.

Service of documents

145.(1) Where, by or under any Act, any notice or other document is required or authorised to be served on the commissioner, the notice or other document is taken to be properly served if served on a person authorised by

the commissioner in that behalf, either generally or in a particular case.

(2) Any notice or other document required or authorised by or under this Act to be served may be served in the same manner as a summons may be served under the *Justices Act 1886*.

When unauthorised grass fire a crime

146. A person who wilfully and unlawfully lights or attempts to light a grass fire (that is, a fire that predominantly consumes vegetation) with intent to injure any person or property is guilty of a crime and is liable on conviction on indictment to imprisonment for 5 years or a penalty of 500 penalty units.

Offences

147.(1) A person commits an offence against this Act if the person does or, as the case may be, fails to do any of the following acts—

- (a) abuses or threatens or wilfully obstructs a person in the exercise of a power or the discharge of a function under this Act;
- (b) fails to comply with any requisition made or any notification or notice given pursuant to this Act;
- (c) when required pursuant to this Act to answer any question or provide any information, fails to give an answer or provide information or gives an answer or provides information knowing it to be false or misleading;
- (d) wilfully and unlawfully destroys, damages, removes, covers or otherwise interferes with an alarm or other apparatus for the warning of fire or any apparatus for the prevention of fire or for use in the event of fire;
- (e) wilfully and unlawfully encloses any fireplug thereby rendering difficult the locating or use of the fireplug or wilfully and unlawfully obliterates or covers any mark or sign used for locating a fireplug;
- (f) wilfully gives a false alarm of fire;
- (g) impersonates a fire officer or any person having authority under

this Act for the purpose of that person or another obtaining either access to premises or any benefit.

(2) A person who fails to comply with any provision of this Act commits an offence against this Act.

Prosecutions

148.(1) A prosecution for an offence against this Act is by way of summary proceedings under the *Justices Act 1886* on complaint of a person authorised by the commissioner in that behalf, either generally or in the particular case.

(2) The authority of a person to make a complaint must be presumed until the contrary is proved.

(3) Proceedings for an offence against this Act may be instituted within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

General penalty

149.(1) Subject to any other provision of this Act, a person who is convicted of an offence against this Act is liable—

- (a) if a body corporate—to a penalty of 200 penalty units;
- (b) if a natural person—to a penalty of 50 penalty units or 6 months imprisonment.

(2) However, if an offence defined in section 72 or 147(1)(d), (e), (f) or (g) is committed during a state of fire emergency at a place to which the declaration of the emergency applies, the offender is liable—

- (a) if a body corporate—to a penalty of 1 000 penalty units;
- (b) if a natural person—to a penalty of 250 penalty units or 12 months imprisonment.

Court may order costs of rehabilitation etc. of protected area

149A. On conviction of a person for an offence against section 62 in

relation to a protected area, the court may order the person to pay to the State such amount as it considers appropriate for, or towards—

- (a) the costs of controlling and extinguishing the fire in relation to which the offence is committed; and
- (b) the costs of rehabilitation or restoration of the area.

Continuing offences

150.(1) Where a person is convicted of an offence against this Act (whether an offence to which section 149 applies or an offence for which a specific penalty is provided) of such a nature that the act or omission by which it is constituted continues from day to day, the person is liable, in addition to any other punishment to which the person is liable under this Act, to a penalty of 5 penalty units for each day the act or omission continues, from (but excluding) the day it first occurs to (but excluding) the day on which the person is convicted of the offence.

(2) A person who, having been convicted of an offence of the kind described in subsection (1), continues to do the act or make the omission by which that offence was constituted may from time to time be prosecuted for the same offence and is liable to a penalty of 10 penalty units for each day the act or omission continues, from (and including) the day on which the person was last convicted of the offence to (but excluding) the day on which the person is again convicted of the offence pursuant to this subsection.

Offence by body corporate

151.(1) Where an offence against this Act is committed by a body corporate, every person who is an executive officer of the body corporate is taken to have committed the offence and may be prosecuted and punished for the offence unless it is proved that the offence was committed without the person's knowledge and that the person could not have prevented its commission by exercising a reasonable degree of diligence.

(2) In subsection (1)—

“executive officer of the body corporate” means any person, by whatever name called and whether or not a director of the body corporate, who is concerned or takes part in the management of the body corporate.

(3) The provisions of subsection (1) do not affect the liability of a body corporate to be prosecuted and punished for any offence.

Power of police to arrest without warrant

152. Where a police officer believes on reasonable grounds that a person—

- (a) has failed to comply with a requisition made pursuant to section 53(2)(j) or (k); or
- (b) has failed to comply with a requisition made pursuant to section 57(1) in respect of name or address; or
- (c) has committed an offence defined in section 92 or 147(1)(a);

the officer may arrest the person without warrant and take the person before a justice to be dealt with according to law.

Evidentiary

153. In any proceeding, whether under this Act or not—

- (a) it is not necessary to prove the appointment of the commissioner or of any officer of the Queensland Fire Service or of any chief fire warden, fire warden, forest officer or field officer but this does not prejudice the right of any person to prove an appointment has not been properly made;
- (b) it is not necessary to prove the authority of a person referred to in paragraph (a) to do any act or take any proceeding for the purposes of this Act but this does not prejudice the right of any person to prove the absence of authority;
- (c) a signature purporting to be that of a person referred to in paragraph (a) is presumed to be genuine unless the contrary is proved;
- (d) a person who purports to do or to have done anything for the purposes of this Act pursuant to the authority of an instrument of delegation made under this Act shall, if the person purported to have made the delegation could have done that thing pursuant to this Act, be presumed to act or to have acted in accordance with a

- valid instrument of delegation unless the contrary is proved;
- (e) a notice, permit or other document purporting to have been made under this Act is taken to have been validly made unless the contrary is proved;
 - (f) a certificate under the seal of the commissioner and purporting to set out any determination of the commissioner is evidence, and in the absence of evidence to the contrary conclusive evidence, of the matters stated;
 - (g) a certificate under the seal of the commissioner stating—
 - (i) that the commissioner is or was at any specified time or during any specified period the owner of property described in the certificate; and
 - (ii) that no consent has been given to the act or breach of duty specified in the certificate alleged to have been committed in respect of the property;is evidence, and in the absence of evidence to the contrary conclusive evidence, of the matters stated.

References to fire safety officer

153A. A reference in an Act or document to a fire safety officer within the meaning of the *Fire Safety Act 1974* is taken to be a reference to an authorised fire officer within the meaning of this Act.

Regulations

154.(1) The Governor in Council may make regulations, not inconsistent with this Act, prescribing any matter that this Act requires or permits to be prescribed (other than any matter required or permitted to be prescribed otherwise than by regulation) or any matter that it is necessary or convenient to prescribe to give effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may be made prescribing for or with respect to—

- (a) the forms to be used for the purposes of this Act and particulars to be furnished in those forms;

- (b) the records required for the purposes of this Act;
- (c) all matters relating to the entitlements, authorities, responsibilities and liabilities of officers of the Queensland Fire Service;
- (d) the institution and conduct of appeals under part 4, division 3;
- (e) offences against the regulations and the amount of any penalty for an offence, not exceeding 30 penalty units in any case.

(3) Regulations may be of general or limited application and may differ according to differences in time, place or circumstance or according to the person or classes of persons or premises or class of premises to whom or to which they are expressed to apply.

(5) Regulations under this Act may adopt wholly or partly and specifically or by reference, a code of practice issued by the commissioner and any of the standard rules, codes, specifications or methods of Standards Australia, the British Standards Institute or any other body identified by the regulations.

SCHEDULE 3

section 5(13) of the Act

TRANSITIONAL PROVISIONS**Certain officers of public service to become officers of the Queensland Fire Service**

1.(1) On the appointed day a person who, immediately before that day, was an officer of the public service—

- (a) appointed, employed or continued in office pursuant to section 24 of the *Fire Brigades Act 1964*; or
- (b) appointed or employed pursuant to section 9 of the *Rural Fires Act 1946*;

ceases to be an officer of the public service and becomes an officer of the Queensland Fire Service.

(2) On the appointed day a person who, immediately before that day, was an officer employed by the Minister pursuant to section 24 of the *Fire Brigades Act 1964* and was not an officer of the public service ceases to be employed by the Minister and becomes an officer of the Queensland Fire Service.

(3) A person who, pursuant to subsection (1) or (2), becomes an officer of the Queensland Fire Service must be paid salary at a rate not less than that appropriate to the salary classification applicable to the person immediately before the appointed day and, to the extent practicable, must be employed subject to the same conditions of employment as were applicable immediately before that day until any alteration of the salary or the conditions by the commissioner or by an applicable industrial award or industrial agreement.

(4) A person who, pursuant to subsection (1) or (2), becomes an officer of the Queensland Fire Service shall, while employed full-time in the service, retain all leave entitlements accrued or accruing immediately before the appointed day and—

- (a) may claim against the commissioner in respect of those

SCHEDULE 3 (continued)

entitlements; and

- (b) for the purpose of the accrual of long service leave—service with the Queensland Fire Service and as an officer of the public service or, as the case may be, as an officer employed by the Minister, is taken to be continuous service as an officer of the Queensland Fire Service.

(5) A person who, pursuant to subsection (1), becomes an officer of the Queensland Fire Service and who continues in the full-time employment of the service shall, for a period of 5 years commencing on the appointed day, be taken to continue to be an officer of the public service for the purposes of—

- (a) any appointment to a position in the public service; and
- (b) any provision of the *Public Service Management and Employment Act 1988* relating to a right of appeal against promotion;

and shall for that period be taken to be employed in the Department of Police or in such other department as the Governor in Council may declare by notification published in the gazette.

Employees of fire brigade boards to become officers of Queensland Fire Service

2.(1) On the appointed day a person who, immediately before that day, was employed full-time by a fire brigade board ceases to be an employee of that board and becomes an officer of the Queensland Fire Service.

(2) A person who, pursuant to subsection (1), becomes an officer of the Queensland Fire Service must be paid salary at a rate not less than that appropriate to the salary classification applicable to the person immediately before the appointed day and, to the extent practicable, must be employed subject to the same conditions of employment as were applicable immediately before that day until any alteration of the salary or the conditions by the commissioner or by an applicable industrial award or industrial agreement.

- (3) A person who, pursuant to subsection (1), becomes an officer of the

SCHEDULE 3 (continued)

Queensland Fire Service shall, while employed full-time in the Service, retain all leave entitlements accrued or accruing immediately before the appointed day and—

- (a) may claim against the commissioner in respect of those entitlements; and
- (b) for the purpose of the accrual of long service leave, service with the Queensland Fire Service and with the fire brigade board is taken to be continuous service as an officer of the Queensland Fire Service.

Discipline and appeals

3.(1) Every appeal against promotion duly instituted under the *Fire Brigades Act 1964* before the appointed day and not determined as at that day or duly instituted after that day pursuant to subsection (2) must be heard and determined under that Act as if this Act had not been enacted.

(2) Where—

- (a) before the appointed day a right of appeal exists against an appointment made under the *Fire Brigades Act 1964* to any position; and
- (b) the time within which the right of appeal may be exercised has not expired as at that day;

the provisions of that Act continue to apply in respect of that right of appeal.

(3) Where a person, who on the appointed day becomes an officer of the Queensland Fire Service pursuant to section 1(1), was before that day liable to disciplinary action on any ground under the *Public Service Management and Employment Act 1988*, the officer may be proceeded against and punished in accordance with that Act as if this Act had not been enacted.

(4) Where a person, who on the appointed day becomes an officer of the Queensland Fire Service pursuant to section 2(1), was before that day liable to disciplinary action on any ground under the *Fire Brigades Act 1964*, the officer may be proceeded against and punished in accordance with that Act as if this Act had not been enacted.

SCHEDULE 3 (continued)

(5) Where—

- (a) before the appointed day a decision has been made that an officer of the public service suffer disciplinary punishment in accordance with the *Public Service Management and Employment Act 1988* and the person becomes an officer of the Queensland Fire Service pursuant to section 1(1); or
- (b) before the appointed day a decision has been made that an employee of a fire brigade board suffer disciplinary punishment under the *Fire Brigades Act 1964* and the person becomes an officer of the Queensland Fire Service pursuant to section 2(1); or
- (c) after the appointed day, a decision is made pursuant to subsection (3) or (4) that a person suffer disciplinary punishment under the *Public Service Management and Employment Act 1988* or the *Fire Brigades Act 1964*;

and in respect of the decision the person has, immediately before the appointed day a right of appeal under the relevant Act, or would have had such a right had the decision been made before the appointed day, the person may institute and pursue any appeal (or pursue any appeal instituted before the appointed day) in accordance with the relevant Act as if this Act had not been enacted.

Superannuation**4.(1)** In this section and section 5—

“**superannuation scheme**” means the superannuation scheme referred to in section 41.

(2) Every person—

- (a) who pursuant to section 1(2) or 2 becomes an officer of the Queensland Fire Service on the appointed day; and
- (b) who, immediately before the appointed day, was a contributor to the superannuation scheme;

shall, while employed full-time in the service, continue to contribute to the scheme in accordance with its terms.

SCHEDULE 3 (continued)

(3) Subject to this Act, the obligations and rights, vested or contingent, had by persons before the appointed day under the *Fire Brigades Act 1964* in respect of the superannuation scheme are not affected by the repeal of that Act or the commencement of this Act.

Trustees of superannuation scheme

5. The persons who, immediately before the appointed day, held office under the *Fire Brigades Act 1964* as trustees of the superannuation scheme shall, on and from that day, continue to hold office until trustees are appointed pursuant to this Act at which time, whether or not the terms of their appointments under that Act have expired, they shall cease to be trustees but without affecting any liability incurred by them in the course of acting as trustees before or after the appointed day.

Superannuation rights of officers previously officers of public service

6.(1) A person who, on the appointed day, becomes an officer of the Queensland Fire Service pursuant to section 1(1) and who, immediately before that day was an officer within the meaning of a State superannuation Act shall, while employed full-time in the Queensland Fire Service—

- (a) retain all entitlements that, immediately before the appointed day, had accrued or were accruing in respect of that person under that Act; and
- (b) be taken to continue to be an officer within the meaning of that State superannuation Act and the provisions of that Act apply accordingly.

(2) In this section—

“**State superannuation Act**” means the *Public Service Superannuation Act 1958* or the *State Service Superannuation Act 1972*.

(3) Nothing in this section shall be construed so as to prevent a person to whom subsection (1) applies from participating in any superannuation scheme in respect of which an officer of the public service may be a contributor.

SCHEDULE 3 (continued)

(4) On and after the appointed day, the responsibilities of subsidising, contributing to and making payment to the funds held in connection with a superannuation scheme concerning which an officer of the Queensland Fire Service referred to in subsection (1) has or obtains entitlements must be discharged by the commissioner, to the extent that those responsibilities relate to that officer's entitlements.

Members of the rural fires board

7.(1) Each member of the rural fires board holding office immediately before the appointed day shall, on that day, continue in office as a member of the rural fire council for the balance of the term of appointment under the *Rural Fires Act 1946* as if appointed for that period under this Act, unless the member sooner vacates office or is removed from office.

(2) The member who was chairperson of the board immediately before the appointed day becomes the presiding officer of the council on that day and shall continue in that office as provided in subsection (1) of the Act.

Chief fire wardens and fire wardens

8.(1) On the appointed day, a person who, immediately before that day, was a chief fire warden or fire warden within the meaning of the *Rural Fires Act 1946* is taken to be appointed under this Act as a chief fire warden or, as the case may be, fire warden.

(2) Where a person would, but for the commencement of this Act, have become a chief fire warden or fire warden pursuant to a notification made by the Governor in Council under section 9(3) of the *Rural Fires Act 1946* by virtue of holding a particular office, any person who, after the appointed day, becomes the holder of or performs the duties of that office for any period shall for that period be a chief fire warden or, as the case may be, fire warden.

(3) The Governor in Council may amend or rescind any notification made under section 9(3) of the *Rural Fires Act 1946*.

SCHEDULE 3 (continued)

Rural fire brigades

9. On the appointed day, the persons who immediately before that day constituted a bush fire brigade under the *Rural Fires Act 1946*, are taken to constitute a rural fire brigade under this Act and the commissioner must assign a registration number to that brigade.

SCHEDULE 4

sections 45 and 51 of the Act

**MATTERS CONCERNING OPERATION OF THE
RURAL FIRE COUNCIL AND THE TRUSTEES OF
THE SUPERANNUATION SCHEME****Interpretation**

1. In this schedule—

“**board**” means the rural fire council or the body constituted by the trustees of the superannuation scheme mentioned in section 41 of the Act.

“**member**” means a member of the rural fire council or a trustee of the superannuation scheme.

Reappointment

2. A member, if otherwise qualified, is eligible for reappointment.

Removal from office

3. The Governor in Council may at any time remove a member from office and the removal takes effect upon notice of the decision being given to the member by the Minister.

Vacancy in office

4.(1) A casual vacancy is taken to arise in the membership of a board if a member—

- (a) dies;
- (b) resigns office by giving notice to the Minister;
- (c) is absent without prior leave granted by the board from 3 consecutive ordinary meetings of the board of which due notice

SCHEDULE 4 (continued)

has been given;

- (d) ceases to be qualified for appointment;
- (e) is removed from office.

(2) Attendance of a member of a board at the time and place appointed for a meeting of the board is taken to constitute presence at a meeting notwithstanding that, because a quorum is not present, the meeting scheduled is not held and the secretary to the board must enter in the minutes the name of any member in attendance.

Filling casual vacancy

5.(1) Where a casual vacancy arises in the office of member, the Governor in Council, acting on the recommendation of the Minister, may, by notification published in the gazette, appoint a person to fill the vacancy.

(2) A person appointed to fill a casual vacancy, unless sooner resigning office or removed from office, holds office for the balance of his or her predecessor's term of office and, if otherwise qualified, is eligible for reappointment.

Meetings and procedure

6. A board shall meet at such times and conduct its meetings and business in such manner as may be prescribed and, to the extent to which those matters are not prescribed, at such times and in such manner as it determines.

When presiding officer absent

7. In the absence of the presiding officer (and, where a deputy has been appointed, if that person is also absent) the members present at a meeting of a board must elect one of their number as presiding officer for the day.

SCHEDULE 4 (continued)

Validation of proceedings

8. Subject to there being the quorum prescribed for meetings, no proceedings of a board are invalidated by reason of any defect in the appointment of any person as member or by reason of any vacancy existing in the membership of the board.

Disclosure of interest

9.(1) If any member of a board present at a meeting of the board has any pecuniary interest, direct or indirect, in any matter to be considered at that meeting the person must, as soon as is practicable after the meeting commences, disclose the fact of that interest and must not participate in consideration of or vote concerning the matter.

(2) For the purpose of this section, a person is taken to have an indirect pecuniary interest in a matter if that person—

- (a) is, personally or through a nominee, a member of a company or other body that has a direct pecuniary interest in the matter; or
- (b) is the partner of a person who has a direct pecuniary interest in the matter; or
- (c) is employed by a person who has a direct pecuniary interest in the matter unless the employer is a statutory body established for a public purpose; or
- (d) has a spouse, or lives in a de facto relationship with a person, who has a direct pecuniary interest in the matter or an indirect pecuniary interest of the kind described in paragraph (a), (b) or (c); or
- (e) is lineally related to a person, or has a brother or sister, who has a direct pecuniary interest in the matter or an indirect pecuniary interest of the kind described in paragraph (a), (b) or (c).

(3) A person who, in respect of a matter before a board for consideration, fails to comply with subsection (1) commits an offence against this Act unless it is proved that the person did not know of the pecuniary interest in the matter.

SCHEDULE 4 (continued)

(4) Any disclosure by a member of a board of a pecuniary interest in a matter before the board must be recorded by the secretary to the board.

(5) A board may by resolution exclude from its meeting a member who has a pecuniary interest in a matter while the matter is being considered by the board.

Fees, allowances and expenses

10. A member is entitled to such fees, allowances and expenses as are approved by the Governor in Council but in no case is an officer of the public service, the Queensland Fire Service or the Police Service entitled to fees and allowances for discharging functions as member during ordinary hours of duty as an officer.

SCHEDULE 5

section 104H of the Act

PRESCRIBED USES OF BUILDINGS

1. A building in which there is a room at a level other than ground level used for the purpose of the sale of food or drink to the public or the provision of cabaret entertainment or dance facilities to the public.

2. A building used to provide residential accommodation at a floor level other than ground level.

3. A building used to provide residential accommodation within an educational institution, a children's hostel or children's welfare institution.

4. A building used to provide residential accommodation for medical, psychiatric or geriatric care.

5. A building used to sell goods or services to the public in which there is a sales area—

(a) below ground level; or

(b) at a floor level more than 1 floor above ground level; or

(c) exceeding 1000 m² at any floor level.

6. A building used to accommodate a shop or shops selling goods or services to the public from which the only means of escape is through an enclosed arcade, mall or like structure.

7. A building other than a drive-in picture theatre used to accommodate more than 200 persons attending for a public meeting or for recreational, cultural or conference purposes.

8. A building used as a workplace within the meaning of the *Workplace Health and Safety Act 1989* in which persons are employed to work in a room or rooms—

(a) below ground level; or

(b) at a floor level more than 1 floor level above ground level.

SCHEDULE 5 (continued)

9. A building used to provide office accommodation at a floor level more than 6 floor levels above ground level.

10. A building used for educational or research purposes and containing—

- (a) a laboratory or machinery or trade equipment operated for training or research purposes; or
- (b) a classroom, canteen or recreational facilities on a floor level below ground level or a floor level more than 2 floors above ground level.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 26 April 1995. Future amendments of the Fire Service Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Fire Service Act 1990 No. 10

date of assent 25 May 1990

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1990 (proc pubd gaz 16 June 1990
p 964)

as amended by—

Fire Service Act Amendment and Fire Safety Act Repeal Act 1991 No. 51 pts 1, 3

date of assent 10 September 1991

ss 1.1–1.2 commenced on date of assent

remaining provisions commenced 1 January 1992 (1991 SL No. 186)

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 sch 1

date of assent 17 December 1991

commenced 1 January 1992 (see s 3 sch 1 and 1991 SL No. 186)

Primary Industries Corporations Act 1992 No. 15 s 13 sch

date of assent 13 May 1992

commenced 30 September 1992 (1992 SL No. 271)

Nature Conservation Act 1992 No. 20 s 159 sch 2

date of assent 22 May 1992

commenced 19 December 1994 (1994 SL No. 472)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 s 3 sch 2

date of assent 7 December 1992

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 sch 1

date of assent 3 June 1993

commenced on date of assent

Local Government Act 1993 No. 70 s 804 sch

date of assent 7 December 1993

commenced 26 March 1994 (see s 2(5))

Building Units and Group Titles Act 1994 No. 69 s 229 sch 2

date of assent 1 December 1994

not yet proclaimed into force**Fire Service Legislation Amendment Act 1994 No. 71 pts 1–2**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 2

date of assent 1 December 1994

commenced on date of assent

Local Government Legislation Amendment Act 1995 No. 11 pts 1, 3

date of assent 5 April 1995

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
ch	=	chapter
def	=	definition
div	=	division
exp	=	expires/expired
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
pt	=	part
R1	=	Reprint No. 1
RA	=	Reprints Act 1992
renum	=	renumbered
sdiv	=	subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Repeals

s 3 om R1 (see RA s 40)

Amendments of Acts

s 4 om R1 (see RA s 40)

Savings and transitional

s 5 amd R1 (see RA s 37)

Interpretation

s 6 def **“authorized fire officer”** om 1991 No. 51 s 3.2
 def **“Local Authority”** om 1993 No. 70 s 804 sch
 def **“Minister”** om R1 (see RA s 39)
 def **“protected area”** ins 1992 No. 20 s 159 sch 2

Authorised fire officers

s 6A ins 1991 No. 51 s 3.3

Superannuation scheme

s 41 amd 1991 No. 51 s 3.4

Authorized fire officer

s 52 om 1991 No. 51 s 3.5

Powers of authorised officer for preventative or investigative purposes

s 55 amd 1991 No. 51 s 3.6

Reasonable assistance to be provided

s 58A ins 1991 No. 51 s 3.7

Fires in State forests etc.

s 66 amd 1992 No. 15 s 13 sch; 1992 No. 20 s 159 sch 2; 1992 No. 68 s 3 sch 2;
1993 No. 32 s 3 sch 1

Occupier to extinguish fire

s 67 amd 1991 No. 51 s 3.8; 1992 No. 20 s 159 sch 2

Powers of occupier of entry etc.

s 68 amd 1991 No. 51 s 3.9; 1992 No. 20 s 159 sch 2

PART 9A—BUILDING FIRE SAFETY

pt hdg ins 1991 No. 51 s 3.10

Division 1—Interpretation

div hdg ins 1991 No. 51 s 3.10

Interpretation

s 104A ins 1991 No. 51 s 3.10

Application to prisons

s 104B ins 1991 No. 51 s 3.10

Division 2—Duties of occupiers

div hdg ins 1991 No. 51 s 3.11

Occupier of building to maintain means of escape from building

s 104C ins 1991 No. 51 s 3.11

Occupier of building to maintain prescribed fire safety installations

s 104D ins 1991 No. 51 s 3.11

Fire and evacuation plan

s 104E ins 1991 No. 51 s 3.11

Commissioner may assist with plan

s 104F ins 1991 No. 51 s 3.12

Commissioner's notice to comply

s 104G ins 1991 No. 51 s 3.12

Division 3—Prohibition on prescribed use without certificate of compliance

div hdg ins 1991 No. 51 s 3.13

Prohibition on prescribed use without certificate of compliance

s 104H ins 1991 No. 51 s 3.13

Certificate of compliance

s 104I ins 1991 No. 51 s 3.13
amd 1991 No. 97 s 3 sch 1

Form of certificate of compliance

s 104J ins 1991 No. 51 s 3.14

Certificate of compliance—limitations on requirements

s 104K ins 1991 No. 51 s 3.14

Division 4—Objection to notices

div hdg ins 1991 No. 51 s 3.15

Persons aggrieved by notice my object

s 104L ins 1991 No. 51 s 3.15
amd 1991 No. 97 s 3 sch 1

Panel of referees to be convened

s 104M ins 1991 No. 51 s 3.15

Membership of panel of referees

s 104N ins 1991 No. 51 s 3.15

Determination of objection

s 104O ins 1991 No. 51 s 3.16

Relief from penalty pending determination of objection

s 104P ins 1991 No. 51 s 3.16

Appeal from panel of referees

s 104Q ins 1991 No. 51 s 3.16

Division 5—Injunctions relating to high risk buildings

div hdg ins 1991 No. 51 s 3.17

Injunctions

s 104R ins 1991 No. 51 s 3.17

Division 6—Regulations

div hdg ins 1991 No. 51 s 3.18

Regulations relating to this part

s 104S ins 1991 No. 51 s 3.18

Division 1—Interpretation

div hdg ins 1994 No. 71 s 4

Definitions

prov hdg sub 1994 No. 71 s 5

s 105 amd 1993 No. 70 s 804 sch; 1994 No. 69 s 229 sch 2

Division 2—Funding for urban fire brigades

div hdg ins 1994 No. 71 s 6

Determinations and notifications of contributions

s 112 amd 1991 No. 51 s 3.19

Manner of giving notification

s 114 amd 1993 No. 70 s 804 sch

Annual contribution etc. deemed to be rates

s 115 amd 1993 No. 70 s 804 sch

Contribution to be paid into fund of component local government

s 116 sub 1993 No. 70 s 804 sch

Division 3—Funding for rural fire brigades

div hdg ins 1994 No. 71 s 7

Local government may make and levy certain rates or charges and contribute amounts raised to rural fire brigades

s 128A ins 1994 No. 71 s 7
amd 1995 No. 11 s 7

Confidentiality

s 142A ins 1991 No. 51 s 3.20

Protection of name

s 143 amd R1 (see RA s 38)

Offences

s 147 amd 1991 No. 51 s 3.21

Court may order costs of rehabilitation etc. of protected area

s 149A ins 1992 No. 20 s 159 sch 2

References to fire safety officer

s 153A ins 1994 No. 87 s 3 sch 2

Regulations

s 154 amd 1991 No. 51 s 3.22; R1 (see RA s 39)

SCHEDULE 1

om R1 (see s 40 RA)

SCHEDULE 2

om R1 (see s 40 RA)

SCHEDULE 5—PRESCRIBED USES OF BUILDINGS

ins 1991 No. 51 s 3.23
amd 1993 No. 32 s 3 sch 1

5 Table of changed names and titles

TABLE OF CHANGED NAMES AND TITLES
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
area (of a local authority) (or a local authority area)	area (of a local government) (or local government area)	Local Government Act 1993 s 772(1)(b)
by-law (of a local authority)	local law (of a local government)	Local Government Act 1993 s 772(1)(1)
chairman (of a local authority)	mayor (of a local government)	Local Government Act 1993 s 772(1)(e)
Commissioner (of Police)	Commissioner (of the Police Service)	Police Service Administration Act 1990 s 11.1(1)(b)

Consolidated Revenue Corporation (of the Under Secretary for Community Services) (established under Community Services (Aborigines) Act 1984))	Consolidated Fund (Aboriginal and Islander Affairs) Corporation	Financial Administration and Audit Act 1977 s 112 Community Services (Aborigines) Act 1984 s 8A
local authority	local government	Local Government Act 1993 s 772(1)(a)
member (of the police force)	police (officer)	Police Service Administration Act 1990 s 11.1(1)(c) (see also s 1.4)
ordinance (of a local authority)	local law (of a local government)	Local Government Act 1993 s 772(1)(1)
Police Force	Police Service	Police Service Administration Act 1990 s 11.1(1)(a)
registrar (of dealings)	registrar (of titles)	see Lands Legislation Amendment Act 1991 (rep) s 119(b)

6 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Local Government Act 1936	Local Government Act 1993	Local Government Act 1993 s 772(1)(o)
Main Roads Act 1920	Transport Infrastructure (Roads) Act 1991	Transport Infrastructure Act 1994 s 147
Motor Vehicles Insurance Act 1936	Motor Accident Insurance Act 1994	—
Queensland Marine Act 1958	Transport Operations (Marine Safety) Act 1994	Transport Operations (Marine Safety) Act 1994 s 220(a)
Standard Building By-laws 1991	Standard Building Law	Building Act 1975 s 78

7 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
def “Minister”	Acts Interpretation Act 1954 s 36, def “Minister” and ss 33(1) to (4) and 24B(8)(b) (see also Reprints Act 1992 s 39, example 2)
definitions to be read in context	Acts Interpretation Act 1954 s 32A
penalty provision permitting fine or imprisonment permits both	Penalties and Sentences Act 1992 s 180A
reference to provisions of a law inclusive	Acts Interpretation Act 1954 s 35D
statutory instrument may prohibit	Statutory Instruments Act 1992 s 27

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
5(11), 2nd sentence	5(12)
6A, 1st sentence	6A(1)
13, 1st sentence	13(1)
13, 2nd sentence	13(2)
30(4), 2nd sentence	30(4A)
41(2), 2nd sentence	41(2A)
41(4), 2nd sentence	41(4A)
64(2), 2nd sentence	64(3)
92, 1st unnum para	92(a)
92, 2nd unnum para	92(b)
104, 1st unnum para	104(d)
104, 2nd unnum para	104(e)
104G(3), 2nd sentence	104G(3A)
104H(5), 2nd sentence	104H(6)
104I(8), 2nd sentence	104I(8A)

104L, 1st sentence	104L(1)
104L, 2nd sentence	104L(2)
104L, 3rd sentence	104L(3)
104N(4), 2nd sentence	104N(4A)
104Q(5), 2nd sentence	104Q(6)
107(1), 2nd sentence	107(1A)
113(6), 2nd sentence	113(6A)
126, 1st sentence	126(1)
126, 2nd sentence	126(2)
144(11), 2nd sentence	144(11A)
149(1), 1st unnum para	149(1)(a)
149(1), 2nd unnum para	149(1)(b)
149(2), 1st unnum para	149(2)(a)
149(2), 2nd unnum para	149(2)(b)

9 Transitional and Savings Provisions

Fire Service Act Amendment and Fire Safety Act Repeal Act 1991 No. 51 pt 4 provides—

Application of repealed Fire Safety Act in relation to transitional building applications

4.1.(1) The repealed Fire Safety Act, notwithstanding its repeal by this Act, continues to apply in relation to premises the subject of a transitional building application or approval as if this Act had not been passed for the purposes of the application or approval.

When such an application or approval ceases to be effective or a certificate of approval is issued under section 10 of the repealed Fire Safety Act in relation to the premises in question, that Act ceases to apply and the *Fire Service Act 1990* as amended by this Act thereafter applies in relation to those premises.

(2) For the purposes of this section, a reference to premises the subject of a transitional building application or approval is a reference to—

- (a) new premises;
- (b) additions to existing premises; or
- (c) a part of any existing premises affected by alterations;

the construction of which is sought to be approved or is approved by a local

government upon an application made under the provisions of the *Building Act 1975* as amended from time to time before its amendment by the *Building Act Amendment Act 1991* including those provisions as continued in existence for transitional purposes in relation to such an application or approval consequent upon the provisions of the lastmentioned Act.

Transition of certificates of approval

4.2.(1) For the purposes of part 9A of the *Fire Service Act 1990*, a certificate of approval issued under section 10 or 16 of the repealed Fire Safety Act is taken to be a certificate of compliance issued under the Part—

- (a) if issued before the repeal of the repealed Fire Safety Act—on and from the repeal;
- (b) if issued after the repeal of the repealed Fire Safety Act by virtue of a continuation of its provisions deemed by law for the purposes of the issue—on and from the issue.

(2) A building use covered by such a certificate of approval is taken to be a building use authorised under a certificate of compliance under part 9A of the *Fire Service Act 1990*.

(3) A requirement imposed by such a certificate of approval to maintain an installation that is a fire safety installation within the meaning of part 9A of the *Fire Service Act 1990* is taken to be a prerequisite to the issue of the certificate.

The installation is taken to be a prescribed fire safety installation within the meaning of that part.

Transition of various applications and notices

4.3 Notwithstanding the repeal of the repealed Fire Safety Act, the provisions of the Act relating to—

- (a) applications made under section 15 or any notice given under section 24 (1) or 25 (1) to the fire authority within the meaning of the Act; and
- (b) notices given under section 17 (1), 26 (1) or 46 (2) by a fire safety officer within the meaning of the Act;

continue to apply to such an application or notice made or given before the repeal until those provisions cease to have effect in accordance with their tenor.

Cessation of effect of interim certificate of approval

4.4 It is hereby declared—

- (a) that upon the issue of a certificate of approval under section 10 of the repealed Fire Safety Act (whether before its repeal or thereafter by virtue of a continuation of its provisions deemed by law for the purposes of the issue), the interim certificate of approval issued under section 7 of that Act pending the issue of that final certificate is taken to have ceased or, as the case may be, ceases to have effect; and
- (b) that where a building application or approval made or granted pursuant to the *Building Act 1975* or that Act as amended ceased to be of effect before the repeal of the repealed Fire Safety Act, any interim certificate of approval issued pursuant to section 7 of that Act before its repeal in relation to the building application ceases to be of effect upon that repeal; and
- (c) that where a building application or approval made or granted pursuant to the *Building Act 1975* or that Act as amended ceases to be of effect after the repeal of the repealed Fire Safety Act, any interim certificate of approval issued under section 7 of that Act (whether before its repeal or thereafter by virtue of a continuation of its provisions deemed by law for the purposes of the issue) in relation to the building application also ceases to be of effect.

Transitional regulations

4.5 The power to make regulations conferred by section 154 of the *Fire Service Act 1990* includes power to make regulations prescribing with respect to any matter for which—

- (a) it becomes necessary or convenient to prescribe to facilitate the transition from the operation of the *Fire Safety Act 1974* to the

- operation of Part 9A of the *Fire Service Act 1990*; and
- (b) this part does not make any or sufficient provision.

Acts Interpretation Act preserved

4.6 This part does not limit the generality of section 20 of the *Acts Interpretation Act 1954*.

10 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992 s 5(c)).

Building Units and Group Titles Act 1994 No. 69 s 229 sch 2 reads as follows—

1. Section 105, definition of “prescribed property”—

omit, insert—

- ‘ **“prescribed property”** means land (whether or not occupied) that is within an urban district and is—
- (a) a parcel of land separately held by an owner (other than a parcel divided by a plan under the *Building Units and Group Titles Act 1994* or a parcel of which a portion is classified by the local government as a separate parcel for this Part); or
 - (b) if the land is divided by a plan under the *Building Units and Group Titles Act 1994*—a lot created by the division of the land but not the common property; or
 - (c) if portion of a parcel of land separately held by an owner is classified by the local government for the area in which the land is situated as a separate parcel for this Part—the portion of the land classified as a separate parcel;

but does not include land vested in the Corporation of the Under Secretary for Community Services or property prescribed under the regulations.’.

