

NORTHERN TERRITORY OF AUSTRALIA

FIRE AND EMERGENCY ACT 1996

No. 14 of 1996

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NORTHERN TERRITORY OF AUSTRALIA

14 of 1996

AN ACT

to provide for the establishment of the Northern Territory Fire and Rescue Service, the operational and emergency response activities of the Service, the protection of life, property and the environment against fires and other emergencies and for related purposes

[Assented to 19 April 1996]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Fire and Emergency Act 1996*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"authorised" means authorised, in writing, by the Director;

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"auxiliary member" means a person appointed under section 13 to be an auxiliary member of the Fire and Rescue Service;

"Chief Executive Officer" means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Fire and Rescue Service and includes the person holding office under section 56(5);

"Chief Fire Officer" means the Chief Fire Officer of the Fire and Rescue Service referred to in section 7;

"Director" means the Director of the Fire and Rescue Service referred to in section 7;

"emergency" means an occurrence, where effective response is within the capacity and resources of the Fire and Rescue Service as determined by the Chief Executive Officer, that -

- (a) causes or threatens to cause -
 - (i) loss of life or property; or
 - (ii) injury to persons or property or distress to persons;
- (b) in any way endangers the safety of the public of the Territory; or
- (c) in any way causes or threatens to cause damage to the environment of the Territory;

"emergency response area" means an area declared under section 4, or deemed under section 56, to be an emergency response area;

"fire and emergency response group" means a fire and emergency response group established under section 11 or 56;

"Fire and Rescue Service" means the Northern Territory Fire and Rescue Service established by section 5;

"fire ban day" means a day declared a fire ban day under section 31;

"fire investigator" means a person appointed as a fire investigator under section 22;

"flammable or combustible material" includes -

- (a) a substance capable of ignition or combustion -

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- (i) by the application of heat;
- (ii) by means of a spark or flame; or
- (iii) by spontaneous causes; and

(b) a substance prescribed to be flammable or combustible material;

"hazardous material" means a substance or thing that is a dangerous good, within the meaning of the *Dangerous Goods Act*, or a product or substance that has the potential to harm life, health, property or the environment;

"incident" means a fire or other emergency;

"incident commander" means the member or person who, in accordance with section 19, is in command of a fire or other emergency, or the member to whom the powers and functions of the incident commander are transferred under that section;

"in the open air" means any place other than in a permanent structure;

"member" means -

- (a) an employee, within the meaning of the *Public Sector Employment and Management Act*, employed in the Fire and Rescue Service;
- (b) an auxiliary member; or
- (c) a volunteer member;

"occupier", in relation to land, includes -

- (a) a person having, or being entitled to, the use or management of land; and
- (b) where land is let in separate parts, a person receiving or entitled to receive the rent payable in respect of those separate parts, either on his or her own account or as agent for another person,

and includes a person in occupation of land belonging to the Territory, the Commonwealth or a State or another Territory of the Commonwealth, notwithstanding any want or defect of title to occupy the land;

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"owner", in relation to land, means the person in actual receipt of, or entitled to receive, the rents and profits of the land or who, if the land was let, would be entitled to receive the rents and profits whether as beneficiary, owner, trustee, executor or mortgagee in possession or as agent or attorney for another person;

"permanent structure" means a structure of a permanent kind consisting of a roof and fully or partly enclosed sides and includes a caravan but does not include a tent;

"permit" means a permit granted under section 30;

"vehicle" has the same meaning as in the *Motor Vehicles Act*;

"vessel" means a ship, barge, boat or other vessel designed to float on water;

"volunteer member" means a person appointed under section 14 to be a volunteer member of the Fire and Rescue Service.

(2) For the purposes of this Act, a person is taken to light a fire if the person -

- (a) lights, maintains or uses the fire;
- (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.

4. EMERGENCY RESPONSE AREAS

The Minister may, for the purposes of this Act, by notice in the *Government Gazette*, declare an area to be an emergency response area.

PART 2 - NORTHERN TERRITORY FIRE AND RESCUE SERVICE

Division 1 - Establishment of Northern Territory Fire and Rescue Service

5. NORTHERN TERRITORY FIRE AND RESCUE SERVICE

(1) There is established by this Act the Northern Territory Fire and Rescue Service.

(2) For the purposes of the *Public Sector Employment and Management Act*, the Fire and Rescue Service is an Agency within the meaning of that Act.

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6. ROLE OF FIRE AND RESCUE SERVICE

The role of the Fire and Rescue Service is, subject to any other Act -

- (a) to respond to all incidents in an emergency response area;
- (b) to respond to all hazardous material incidents and road accident rescues, wherever occurring, in the Territory;
- (c) to respond to incidents (other than those referred to in paragraph (b)) outside an emergency response area when requested by a member of the Police Force or a member of an organisation having responsibilities to respond to such incidents and where -
 - (i) sufficient resources of the Fire and Rescue Service remain available to respond to incidents referred to in paragraph (a);
 - (ii) a response is within the resources and capabilities of the Fire and Rescue Service; and
 - (iii) a response will materially contribute to extinguishing or controlling the fire or dealing with the emergency;
- (d) to conduct community education and awareness programs relating to fires and other emergencies and, in particular, relating to fire safety and prevention;
- (e) to develop and administer programs designed to promote safety in building structures; and
- (f) to exercise those powers and perform those functions that are imposed on it or a member by any other law in force in the Territory.

7. DIRECTOR AND CHIEF FIRE OFFICER

(1) There is a Director and a Chief Fire Officer of the Fire and Rescue Service.

(2) The Chief Fire Officer shall be a person with substantial experience in the emergency response activities of a fire and rescue service.

8. POWERS AND FUNCTIONS OF DIRECTOR

(1) Subject to the directions of the Chief Executive Officer, the Director has general control and overall responsibility for the management of the Fire and Rescue Service.

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(2) Without limiting subsection (1), the functions of the Director are to -

- (a) make provision in every emergency response area, so far as the capacity and resources of the Fire and Rescue Service permits, for the effective response to all incidents, including preventing, suppressing and extinguishing fires or dealing with emergencies and for the safety of people and property endangered by fire or other emergencies;
- (b) ensure that the Fire and Rescue Service is maintained in accordance with this Act and in a state of operational readiness;
- (c) review the efficiency and effectiveness of the Fire and Rescue Service;
- (d) make provision for effective co-operation between the Fire and Rescue Service, the Bushfires Council established under the *Bushfires Act* and the Northern Territory Emergency Service established under the *Disasters Act*; and
- (e) enter into agreements and protocol arrangements with organisations, either within or outside the Territory, that can assist the Fire and Rescue Service in the performance of its role under this Act.

(3) The Director has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions and the exercise of his or her powers.

9. POWERS AND FUNCTIONS OF CHIEF FIRE OFFICER

(1) Subject to the directions of the Director, the Chief Fire Officer has operational responsibility for the Fire and Rescue Service.

(2) The Chief Fire Officer has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions and the exercise of his or her powers.

10. DELEGATION

(1) The Minister or the Director may, in writing, delegate to a person, including the person from time to time holding, acting in or performing the duties of an office, designation or position, any of his or her powers and functions under this Act, other than this power of delegation.

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(2) A power or function delegated under this section, when exercised or performed by the delegate shall, for the purpose of this Act, be deemed to have been exercised or performed by the Minister or the Director, as the case may be.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister or the Director.

(4) For the purposes of this Act, the Chief Executive Officer has and may exercise the powers and perform the functions of the Director.

Division 2 - Establishment of Fire and Emergency Response Groups

11. ESTABLISHMENT OF FIRE AND EMERGENCY RESPONSE GROUPS

(1) The Minister may, for the purposes of this Act, establish fire and emergency response groups.

(2) Where the Minister establishes a fire and emergency response group under subsection (1), the Minister shall determine -

- (a) the name of the fire and emergency response group; and
- (b) the area in which the fire and emergency response group will operate.

12. OPERATION OF FIRE AND EMERGENCY RESPONSE GROUP

(1) In respect of each fire and emergency response group, the Director shall determine -

- (a) the core functions of the fire and emergency response group;
- (b) the constitution under which the fire and emergency response group will operate; and
- (c) the relationship of the fire and emergency response group with other fire and emergency response groups and its obligations to other fire and emergency response groups.

(2) The constitution of a fire and emergency response group may be amended, with the approval of the Director, in the manner set out in the constitution.

(3) A fire and emergency response group shall consist of the members who, in accordance with the constitution, are the members of the group.

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(4) A fire and emergency response group shall be deemed, for the purposes of the *Associations Incorporation Act*, to be an association incorporated under that Act and the Director may give directions to a member of a fire and emergency response group to ensure that the provisions of that Act relating to the lodging of documents and other information are complied with.

(5) A member given a direction under subsection (4) shall comply with the direction.

Division 3 - Auxiliary Members and Volunteer Members

13. AUXILIARY MEMBERS

(1) The Director may appoint a person to be an auxiliary member of the Fire and Rescue Service.

(2) An auxiliary member shall be paid for his or her services in accordance with a scale of fees determined by the Minister.

(3) Subject to subsection (2), an auxiliary member shall be employed on such terms and conditions as are determined, from time to time, by the Director.

14. VOLUNTEER MEMBERS

(1) The Director may appoint a person to be a volunteer member of the Fire and Rescue Service.

(2) A volunteer member shall not be paid for his or her services.

15. PROTECTION OF EMPLOYMENT RIGHTS

An auxiliary member or volunteer member who, during or immediately after a fire or other emergency, is absent from his or her usual employment or duties in connection with the fire or emergency, shall not be liable for dismissal, loss of long service leave, sick leave, recreation leave or other benefits to which he or she may be entitled under the industrial award or agreement applicable to his or her usual employment, by reason only of his or her absence on those duties, whether or not his or her usual employer has consented to the absence.

Division 4 - Operation of Northern Territory Fire and Rescue Service

16. POWERS AND FUNCTIONS OF MEMBERS

(1) A member shall exercise such powers and perform such functions as are conferred or imposed on the member by or under this Act or any other law in force in the Territory.

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(2) A member shall promptly obey all lawful instructions given to the member by a member of a higher rank, or a member of the same rank, under whose control, direction or supervision the member is performing his or her duties.

17. GENERAL ORDERS

(1) The Director may, from time to time, in writing, issue such general orders and instructions as are necessary to ensure the effective and efficient operation of the Fire and Rescue Service.

(2) Without limiting the generality of subsection (1), the general orders and instructions may make provision for and in relation to -

- (a) the ranks in, and the command structure of, the Fire and Rescue Service;
- (b) methods of training of members;
- (c) the times and manner in which members are to undergo medical examinations;
- (d) the preparation, maintenance and availability of service records of members; and
- (e) the response by members to incidents outside an emergency response area.

PART 3 - FIRES AND OTHER EMERGENCIES

Division 1 - Dealing with Fires and Other Emergencies

18. MEMBERS TO ATTEND ALL INCIDENTS

When a call to an incident is received, whether orally, by automatic alarm or by other means, those members as are determined by the Director shall proceed promptly to the place where a fire or other emergency is, or is thought to be, with such equipment as is available to those members for the purpose of extinguishing or controlling the fire or dealing with the emergency, if any.

19. INCIDENT COMMANDER

- (1) At an incident, the incident commander -
 - (a) has responsibility for extinguishing or controlling the fire or dealing with the emergency;
 - (b) has command of the members at the fire or other emergency and the equipment available to those members; and

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- (c) shall exercise the powers and perform the functions that are conferred or imposed on an incident commander by or under this Act.
- (2) At an incident there shall be one incident commander who is, subject to subsection (3) -
 - (a) the member of the highest rank or designation within the command structure of the Fire and Rescue Service who first attends at a fire or other emergency;
 - (b) a member of a higher rank or designation who subsequently attends the fire or emergency and assumes command at the fire or emergency; or
 - (c) a member to whom the powers and functions of the incident commander are transferred.
- (3) The Director may appoint a person, including a person exercising powers or performing functions under a law of a State relating to dealing with fires or other emergencies in that State, to be an incident commander.
 - (4) An appointment under subsection (3) may be -
 - (a) for a particular fire or other emergency;
 - (b) for a class of fires or other emergencies;
 - (c) for all fires and/or other emergencies in a specified area; and/or
 - (d) for a specified period.
 - (5) An appointment under subsection (3) may be subject to such conditions, if any, as the Director thinks fit.
 - (6) A person appointed under subsection (3) is, subject to his or her appointment, the incident commander in relation to a fire or other emergency to which his or her appointment relates, but nothing in this subsection prevents the Director from appointing another person in place of the incident commander at a fire or other emergency.
- (7) Nothing -
 - (a) in subsection (2)(b) prevents a second or subsequent member assuming command at a fire or other emergency in accordance with that paragraph; or

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- (b) in subsection (2)(c) prevents a member to whom the powers and functions of the incident commander are transferred, transferring those powers and functions to another member.

20. POWERS OF INCIDENT COMMANDER

(1) The incident commander at a fire or other emergency shall -

- (a) try, by such practicable means as he or she thinks fit, to control and extinguish the fire or deal with the emergency and to protect and save life and property; and
- (b) control and direct those members who are at the fire or other emergency and any person who voluntarily places his or her services at the incident commander's disposal.

(2) Without limiting the generality of subsection (1), the incident commander, at or immediately after a fire or other emergency, may -

- (a) enter, or cause to be entered, and, if necessary, force open, or cause to be forced open, any land, building, vehicle or vessel on fire or which he or she considers may be on fire, menaced by fire, or in the vicinity of the fire or other emergency;
- (b) cause land, a building, vehicle or vessel to be taken possession of, pulled down, sunk, damaged, destroyed or removed;
- (c) take, or cause to be taken, equipment (including a vehicle) into, through, over or on land, a building, vehicle or vessel which he or she considers provides convenient access to the fire or other emergency;
- (d) take possession of, remove and keep in safe custody any property on land or in a building, vehicle or vessel on fire or in the vicinity of the fire or other emergency;
- (e) cause a street or thoroughfare in the vicinity of the fire or other emergency to be closed to traffic during the continuance of the fire or emergency;
- (f) order a person to vacate land, a building, vehicle or vessel on fire or in the vicinity of the fire or other emergency;

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- (g) remove, or order a member to remove, a person, vehicle, vessel or thing the presence of whom or which at or near the fire or other emergency might, in the incident commander's opinion, interfere with the work of the members, or create a danger;
- (h) pull down, destroy or shore up, or cause to be pulled down, destroyed or shored up, a wall or building which, in the incident commander's opinion, has, as a result of the fire or emergency, become damaged, insecure or dangerous to life or property;
- (j) use, without being liable to pay for it, any convenient supply of water to extinguish the fire;
- (k) cause water to be shut off from a main or pipe, or to be redirected, to obtain a greater pressure or supply of water;
- (m) cause the supply of electricity, gas or other fuel to land or a building -
 - (i) on fire;
 - (ii) adjacent to land or a building on fire; or
 - (iii) in the vicinity of the fire or other emergency,
to be shut off or disconnected;
- (n) administer, or cause to be administered, first aid and basic life support to persons injured by the fire or other emergency; or
- (p) direct or authorise the doing by a member or by a person who voluntarily places his or her services at the disposal of the incident commander, of an act or thing which the incident commander is, under this section, empowered to do.

(3) Subject to subsection (4), where at or immediately after a fire or other emergency, a member or a member of the Police Force is of the opinion that, for the purpose of protecting life or property or controlling or extinguishing the fire or dealing with the emergency, it is necessary or desirable to do an act or thing which the incident commander is empowered to do under subsection (2), not being an act or thing specified in paragraph (h) or (p) of that subsection, the member or a member of the Police Force may, without the authority of the incident commander, do that act or thing.

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(4) A member or a member of the Police Force may only do an act or thing referred to in subsection (3) without the authority of the incident commander where it is not practicable for the authority for the doing of that act or thing to be obtained from the incident commander.

(5) A person supplying water or electricity shall not be liable to a penalty or damages as a result of an interruption of supply caused by the exercise of a power specified in subsection (2)(k) or (m).

(6) The expense of pulling down, destroying or shoring up a wall or building in the exercise of the power specified in subsection (2)(h) shall be borne by the owner of the wall or building and is a debt due and payable to the Territory.

(7) The exercise of a power or the performance of a function under this section by a person is conclusive evidence of his or her authority to do so, and no person shall be concerned to inquire whether the occasion requiring the person to do so had arisen or has ceased.

21. AUTHORITY OF INCIDENT COMMANDER TO BE RECOGNISED

(1) A person shall obey an instruction or order given, in accordance with a duty imposed or a power conferred by this Act or the Regulations, by -

- (a) the Director or the incident commander;
- (b) a member acting under the orders of the Director or the incident commander; or
- (c) a member or a member of the Police Force acting in accordance with section 20.

(2) A member of the Police Force shall give such assistance as is reasonably required to enable an incident commander to exercise his or her authority or enforce obedience to an instruction or order given by the incident commander or a member in the performance of a duty imposed or the exercise of a power conferred by this Act or the Regulations.

Division 2 - Investigations of Fires and Other Emergencies

22. FIRE INVESTIGATORS

(1) The Director may appoint a person to be a fire investigator for the purpose of investigating fires and other emergencies.

(2) A fire investigator may exercise such powers and perform such functions as are given by or under this or any other Act.

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(3) The Director shall issue to a fire investigator an identity card containing a photograph and the signature of the fire investigator verified by the signature of the Director.

(4) A fire investigator whose appointment is terminated shall surrender to the Director the identity card issued to the person under subsection (3).

(5) A fire investigator shall, when exercising or performing any of his or her powers or functions, produce the identity card issued to the fire investigator under subsection (3) to a person who questions the authority of the fire investigator to exercise the power or perform the function.

(6) The production by a fire investigator of an identity card issued under subsection (3) shall, until the contrary is proved, be sufficient authority for the fire investigator to do any thing which the fire investigator is permitted to do by or under this Act.

23. POWERS OF FIRE INVESTIGATORS

(1) A fire investigator may request a person to provide his or her name and address to the fire investigator where the fire investigator believes, on reasonable grounds, that the person may be able to assist the fire investigator in connection with the investigation of a fire or other emergency.

(2) A person to whom a request is made under subsection (1) shall not -

- (a) refuse or fail to comply with the request;
- (b) provide a name that is false in a material particular; or
- (c) provide an address other than the full and correct address of his or her ordinary place of residence.

(3) In addition to section 24, where a fire investigator suspects, on reasonable grounds, that an offence has been committed in relation to a fire or other emergency, the fire investigator may, for the purposes of investigating the offence -

- (a) enter any land, building, vehicle or vessel;
- (b) carry out a search of the land, building, vehicle or vessel; and
- (c) seize anything found on the land, building, vehicle or vessel that the fire investigator believes, on reasonable grounds, is connected with the commission of the offence.

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24. FIRE INVESTIGATIONS

(1) The Director, a fire investigator, a member or an authorised person may -

- (a) cause the debris of a fire and land or a building, vehicle or vessel where a fire has occurred to be searched; and
- (b) remove and keep possession of any material which, in his or her opinion, may tend to prove the origin of the fire.

(2) For the purposes of subsection (1), the Director, a fire investigator, a member or an authorised person may -

- (a) enter land, a building, vehicle or vessel and take possession of the land, building, vehicle or vessel or anything on the land or in the building, vehicle or vessel, where a fire or other emergency has occurred;
- (b) retain possession of the land, building, vehicle or vessel and of anything in or on it -
 - (i) until an inquest under the *Coroners Act* into the fire or other emergency has been held; or
 - (ii) if no inquest is held, for a reasonable time;
- (c) prevent a person from entering the land, building, vehicle or vessel;
- (d) remove a person from the land, building, vehicle or vessel; and
- (e) prevent a person from removing anything from the land, building, vehicle or vessel.

Division 3 - Prevention of Fires and Other Emergencies

25. HAZARD REDUCTION POWERS

(1) The Director or an authorised member may -

- (a) at any time enter any land, building, vehicle, vessel or other place used for public entertainment or public gathering, in order to ascertain whether the provisions of the law relating to the prevention of fire or the protection of the public from danger arising from fire has been complied with;

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- (b) at any time enter any land, building, vehicle or vessel where there is, or he or she suspects, on reasonable grounds, that there is, explosive or flammable or combustible material kept or stored, in order to ascertain whether the provisions of the law relating to the storage or keeping of explosives or flammable or combustible material has been complied with; and
- (c) at all reasonable times, enter any land, building, vehicle or vessel to inspect the land, building, vehicle or vessel, and the arrangement and condition of the contents of or on the land, building, vehicle or vessel, where he or she has reasonable grounds for believing that there is a danger by fire or other emergency to life or property.

(2) If, in the opinion of the Director, there is a direct or indirect danger by fire or other emergency to life or property arising from the state of repair of a building, vehicle or vessel or the arrangement or condition of the contents of, or flammable or combustible material or other material on or in land or that building, vehicle or vessel, the Director may serve notice in writing -

- (a) where the danger arises from the state of repair of a building, vehicle or vessel - on the owner of it; or
- (b) where the danger arises from the arrangement or condition of the contents of or flammable or combustible material in or on the land, building, vehicle or vessel - the occupier of the land, building, vehicle or vessel,

requiring the owner or occupier, as the case may be, to take the action specified in the notice, within the time specified in the notice, for eliminating or reducing the danger.

(3) Subject to section 26, a person who contravenes or fails to comply with the requirements of a notice under subsection (2) is guilty of an offence.

(4) Subject to section 26, if a person contravenes or fails to comply with the requirements of a notice under subsection (2), the Director may cause the action specified in the notice to be taken and, for that purpose, may enter on the land, building, vehicle or vessel, with such workers and machinery as are or is reasonably necessary, and do all things reasonably necessary to be done to eliminate or reduce the danger.

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(5) In addition to any penalty for which a person may become liable under subsection (3), the costs and expenses reasonably incurred by the Director in exercising his or her powers under subsection (4) are a debt due and payable to the Territory by the owner or occupier, as the case may be, of the land, building, vehicle or vessel.

(6) A cost or an expense due and payable under this section in relation to land or a building on land is a statutory charge, within the meaning of the *Real Property Act*, on the land.

26. APPEAL AGAINST NOTICE

(1) Where the danger to a person or property is not, in the opinion of the Director, imminent, or the Director has not taken action under section 25(4), a person aggrieved by a notice under section 25(2) may request the Chief Executive Officer to review the notice or a requirement specified in the notice.

(2) A request under subsection (1) shall -

(a) be in writing;

(b) state the grounds on which the request is based and the particulars which support those grounds; and

(c) be lodged with the Chief Executive Officer not later than 3 days after the person is served with the notice.

(3) The Chief Executive Officer shall, as soon as practicable after receiving a request under this section, consider the request and may -

(a) confirm that the requirement specified in the notice should be complied with; or

(b) substitute such requirement as the Chief Executive Officer thinks fit.

(4) If the Chief Executive Officer decides, after considering a request under subsection (1) that a requirement specified in the notice under section 25(2) should be complied with, the Chief Executive Officer shall fix a further time within which that requirement shall be complied with, and section 25(3) and (4) shall then apply as if that time were substituted for the time specified in the notice.

(5) A decision of the Chief Executive Officer under subsection (3) is final.

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27. LIABILITY WHERE NOTICE NOT COMPLIED WITH

(1) Where -

- (a) a person has failed to comply with the requirements of a notice under section 25(2); and
- (b) a fire or other emergency occurs on the land or in the building, vehicle or vessel to which the notice relates or to property adjacent thereto,

the person shall, subject to subsection (2), be liable to pay, in addition to any penalty provided by this Act -

- (c) the expense incurred in extinguishing or attempting to extinguish the fire or in dealing with or attempting to deal with the emergency; and
- (d) the amount of the damage done to any property by the fire or other emergency.

(2) A person referred to in subsection (1) is not liable for the expense or damages referred to in that subsection if the person proves that the fire was not a result of his or her failure to comply with the notice.

(3) Subsection (1) applies whether or not a request has been lodged under section 26.

PART 4 - RESTRICTIONS ON LIGHTING FIRES

Division 1 - Fires in Open Air

28. GENERAL PROHIBITION AGAINST LIGHTING FIRES IN OPEN AIR

A person shall not, in an emergency response area, light a fire, or cause a fire to be lit, in the open air unless permitted by or under this Act.

29. LAWFUL FIRES

Section 28 does not apply to a person who lights a fire -

- (a) in accordance with a permit;
- (b) for the purpose of meal preparation or personal comfort in accordance with the requirement specified in the Regulations; or
- (c) for a prescribed purpose in accordance with the requirements specified in the Regulations.

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30. GRANTING OF PERMITS

(1) A person requiring a permit to light a fire in the open air in an emergency response area shall apply, either orally or in writing, to the Director for the permit.

(2) The Director, on receiving an application under subsection (1), may grant or refuse to grant the permit.

(3) Subject to subsection (4), the Director shall not grant a permit unless satisfied that -

(a) reasonable steps have been taken to notify the occupiers of adjoining land of the making of the application; and

(b) a reasonable opportunity has been given to an occupier who has been notified under paragraph (a) to object, either orally or in writing, to the granting of the permit.

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

(5) A permit shall be in the prescribed form and may be subject to such conditions, if any, as the Director thinks fit and specifies in the permit.

(6) A person shall not -

(a) contravene or fail to comply with a permit or a condition to which a permit is subject;

(b) provide false or misleading information in respect of an application for a permit; or

(c) except with the consent of the Director, alter a particular or condition shown on a permit.

(7) 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 metres or less in width.

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Division 2 - Fire Ban Days

31. DECLARATION OF FIRE BAN DAYS

(1) The Director may, by written notice, declare a day in respect of an emergency response area specified in the notice to be a fire ban day.

(2) A declaration under subsection (1) may -

(a) specify fires that are not subject to the ban; and/or

(b) prohibit or restrict the use of specified machines or apparatus in the open air on the fire ban day.

(3) With the view of ensuring general public knowledge of a declaration under subsection (1), the Director shall cause the declaration to be published in such a manner as he or she thinks fit, and without limiting the generality of this subsection, the Director may cause an announcement of the declaration to be -

(a) transmitted by a radio or television station; or

(b) published in a newspaper circulating in the Territory.

32. FIRES PROHIBITED ON FIRE BAN DAYS

Notwithstanding section 29 but subject to section 31, a person shall not light a fire in the open air or allow a fire in the open air to remain alight in an emergency response area on a day declared to be a fire ban day in that emergency response area.

PART 5 - RESPONSIBILITIES OF OCCUPIERS
OF LAND IN RELATION TO FIRES

33. OCCUPIER TO EXTINGUISH FIRE

Where a fire is burning on land in an emergency response area and the lighting of the fire is not permitted by or under this or any other Act, the occupier of the land, shall, immediately on becoming aware of the fire, regardless of who lit it -

(a) take all reasonable steps to extinguish or control the fire; and

(b) as soon as is practicable, report the existence and location of the fire to a member or a member of the Police Force.

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34. POWER OF OCCUPIER TO ENTER LAND, &c.

(1) Subject to subsections (2) and (3), an occupier of land in an emergency response area who believes on reasonable grounds that a grass or bush fire which is burning on land in the emergency response area and within 1 kilometre of the land constitutes a fire risk to the 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 in which the fire is burning;
- (b) take on to that land a vehicle or equipment for extinguishing or controlling the fire; and
- (c) take all reasonable measures to extinguish or control the fire.

(2) An occupier of land shall not do or direct the doing of an act referred to in subsection (1) if notice, either orally or written, of the intention to light the fire has been given to the occupier by the person lighting it or by a member or a member of the Police Force 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 member or a member of the Police Force, an occupier of land -

- (a) shall not do or direct the doing of any act referred to in subsection (1) unless a member or a member of the Police Force has been notified of the situation; and
- (b) shall comply with any direction given by the member or the member of the Police Force in respect of the doing of any act.

PART 6 - OFFENCES

Division 1 - Offences Relating to Fires

35. GENERAL OFFENCES

- (1) A person who -
 - (a) except in accordance with a permit, drops, discards, throws down or otherwise disposes of any burning article or substance (or anything otherwise capable of causing fire) -
 - (i) thereby causing a fire; or
 - (ii) in such circumstances as to be likely to cause a fire;

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- (b) destroys, damages, removes, covers or otherwise interferes with a notice relating to the lighting of fires displayed by the Director or by a member for the purposes of this Act;
- (c) obstructs or interferes with a member acting in the performance of a duty or the exercise of a power under this Act;
- (d) drives a vehicle over a fire hose;
- (e) drives a vehicle so near a fire or other emergency or equipment in use at a fire or other emergency as to interfere with the operation of a member, or the equipment;
- (f) destroys, damages or interferes with -
 - (i) equipment used by a member to extinguish a fire or deal with an emergency; or
 - (ii) a building used by a fire and emergency response group, being the property of the Territory;
- (g) covers up, damages, encloses, conceals or interferes with a fire hydrant, fire extinguisher, hose reel or other fire fighting equipment;
- (h) covers up, damages, conceals, obliterates or removes a mark, sign or letter indicating the position of or distinguishing a fire hydrant;
- (j) tampers with a fire alarm or signalling apparatus for giving notice of fire; or
- (k) gives a false alarm of a fire or other emergency,

is guilty of an offence.

(2) A person who stores or deposits flammable or combustible material of such a nature and in such a manner, position or quantity that it is or may become a direct or an indirect danger to life or property is guilty of an offence.

36. FIRES TO BE EXTINGUISHED

(1) A person shall not leave a fire in the open air in an emergency response area which he or she has lit or used unless it has been thoroughly extinguished.

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(2) It is a defence to a prosecution for an offence against subsection (1) that the person had, before leaving the fire, arranged with a responsible person who also used the fire to remain at the place where the fire is and not leave it unless that person has -

- (a) thoroughly extinguished the fire; or
- (b) made a similar arrangement with another responsible person who used the fire.

(3) A person who, before the commencement of a fire ban day, lit or used a fire in the emergency response area in respect of which the fire ban day is declared shall -

- (a) thoroughly extinguish the fire; or
- (b) if the person is unable to thoroughly extinguish the fire, without delay notify a member of that fact.

(4) A member who is notified of a fire under subsection (3) may give to the person such directions, for the purpose of controlling the fire, as the member thinks fit.

(5) A person to whom a direction is given under subsection (4) shall comply with and not contravene the direction.

Division 2 - Offences in Relation to Fire and Rescue Service

37. DELIVERY OF PROPERTY

A person, on ceasing to be a member, shall return to the Director, or to such person, and at such time and place, as the Director directs, all property which has been supplied to the person for the execution of the person's duty or which is in the person's custody by virtue of having been a member.

38. COMMUNICATION OF INFORMATION

(1) A member shall not, without reasonable cause, publish or communicate a fact or document to any other person which comes to the knowledge or into the possession of the member in the course of his or her duties as a member and which the member has not been authorised to disclose.

(2) A person, after ceasing to be a member, shall not publish or communicate a fact or document which, if the person had still been a member, the person would not have been entitled to disclose.

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39. PERSONATION

A person shall not, without lawful excuse, personate a member.

40. OFFERING BRIBE

A person shall not directly or indirectly -

- (a) offer or give a bribe or reward to;
- (b) enter into an agreement with; or
- (c) seek an undertaking from,

a member for the purpose of that member performing his or her duties as a member in a particular manner or forgoing any of his or her duty as a member.

PART 7 - MISCELLANEOUS

41. RESTRICTIONS ON SALE OF NOTIFIED ARTICLES

(1) The Minister may, by notice in the *Government Gazette*, prohibit or regulate the sale, use or possession of an article or substance that the Director considers may constitute a risk of fire.

(2) A person who sells, uses or possesses an article or substance in contravention of a notice under subsection (1) is guilty of an offence.

(3) Where the Director or an authorised member suspects that an article or substance the sale, use or possession of which is prohibited or regulated by a notice under subsection (1) is being sold, used or possessed in contravention of the notice, the Director or authorised member may seize the article or substance and, for that purpose, may enter any land, building, vehicle, vessel or other place in or on which the article or substance is, or is thought to be, situated.

42. DAMAGE WITHIN INSURANCE POLICY

Where, as a consequence of the Director, a member or a member of the Police Force exercising powers or performing functions under this Act at a fire or other emergency, damage is caused to property which, if caused by the fire or emergency, would be covered by a policy of insurance held by the owner of the property, the damage shall be deemed to be damage covered by the policy, notwithstanding a clause or condition to the contrary in the policy.

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43. FEES AND CHARGES

(1) Subject to this section, where a member, with or without equipment, has, as required by or under this Act, attended a fire or other emergency, such of the fees as are determined by the Minister under this section, as are relevant in the circumstances, shall be -

- (a) payable in accordance with this section; and
- (b) recoverable from the person or persons liable (liability being joint and several where there are 2 or more such persons) as a debt due and payable to the Territory.

(2) The persons liable for the fee or fees determined under this section are -

- (a) in the case of a fire or other emergency which affected land or buildings - the owner or owners and occupier or occupiers of the land or buildings affected, or of any land, building or part of a building forming part of the land or buildings affected; and
- (b) in any other case - the owner or owners of, and any other person or persons having an interest in, the property, or any part of the property, which was affected by the fire or emergency or to which the emergency related.

(3) Subject to this section, where -

- (a) a member, with or without equipment, has attended land or a building in response to an alarm installed for the protection of the land or building; and
- (b) there is in fact no fire or other emergency,

such of the fees determined under this section as are relevant in the circumstances are payable by the occupier of the land or building or, if there is no occupier, by the owner of the land or building, and shall be recoverable as a debt due and payable to the Territory.

(4) Subject to this section, where -

- (a) a member, with or without equipment, has responded to a call to attend at a place where a fire or other emergency is stated to be; and
- (b) there is in fact no fire or other emergency,

such of the fees determined under this section as are relevant in the circumstances are payable by the person who made the call, and shall be recoverable as a debt due and payable to the Territory.

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(5) A fee due and payable under this section in relation to land or a building on land is a statutory charge, within the meaning of the *Real Property Act*, on the land.

(6) The Minister may, by notice in the *Government Gazette*, determine the fees payable for the purposes of this section.

(7) The Director may, for and on behalf of the Territory, waive the fees that would otherwise be payable under this section in such cases, classes of cases or circumstances as the Director considers reasonable.

44. COMMISSIONED RANKS

The Administrator may issue his or her commission to a member appointed or promoted to a prescribed rank or a rank above a prescribed rank, whether the appointment or promotion was made before or after the commencement of this Act.

45. *FIRE AND RESCUE SERVICE GAZETTE*

The Director may authorise the publication of a document to be known as the *Fire and Rescue Service Gazette* containing such orders, instructions, determinations, directions, notices and other things as the Director thinks fit.

46. SERVICE OF NOTICES

A notice or other document required or permitted to be served on a person under this Act may be served -

- (a) by delivering it to the person;
- (b) by posting it to the person's last-known place of business or residence;
- (c) by leaving it at the person's last-known place of business or residence with a person who is apparently over the age of 16 years and living or working there; or
- (d) in the case of a corporation, by delivering or posting it to its registered office in the Territory or otherwise as provided by the Corporations Law.

47. PROTECTION OF MEMBERS

An action or proceeding shall not be brought against a member to recover damages in respect of damage to property or injury to a person arising out of anything done or omitted to be done by the member in good faith in the

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exercise of a power of the performance of a function under this Act or the Regulations or done or omitted by the member in good faith in the purported exercise of a power or the performance of a function under this Act or the Regulations.

48. LIABILITY OF PERSON FOR FIRE LIT BY AGENT OR EMPLOYEE

Where a person commits an offence against this Act in respect of the lighting of a fire as an agent or employee of another person, that other person may be prosecuted and found guilty of the offence unless it is proved that the agent or employee was acting contrary to instructions and the other person could not have prevented the commission of the offence by exercising reasonable supervision.

49. LIABILITY OF DIRECTORS

Where a corporation is convicted of an offence against this Act, each person who, at the time of the commission of the offence, was a director of the corporation shall be guilty of the offence and punishable as if the offence had been committed by a person other than the corporation, unless the person proves that the offence was committed without the person's knowledge or that the person took reasonable steps to prevent the commission of the offence.

50. EVIDENCE IN PROCEEDINGS

(1) In proceedings in respect of an offence against this Act, a certificate purporting to be signed by the Director to the effect that, on a date specified in the certificate -

- (a) a permit was or was not in force;
- (b) a fire ban day was or was not in force in respect of an emergency response area;
- (c) a notice required to be served under this Act was or was not served;
- (d) a place specified in the certificate was or was not in an emergency response area; or
- (e) a person was or was not a member,

is, in the absence of proof to the contrary, evidence of the matter stated in the certificate.

51. COMMENCEMENT OF PROSECUTIONS

(1) A prosecution for an offence against this Act shall not be commenced except by the Director or an authorised person.

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(2) An averment in a complaint that a person is an authorised person is evidence that the person is an authorised person for the purposes of subsection (1).

52. GENERAL PENALTY

A person who contravenes or fails to comply with a provision of this Act for which no penalty is provided other than by this section, is guilty of an offence.

Penalty: In the case of an individual - \$10,000 or imprisonment for 2 years.

In the case of a corporation - \$50,000.

53. CONTINUING OFFENCES

Where a person is convicted of an offence against this Act or the Regulations, the person is guilty of a further offence if the offence continues after the conviction and is punishable, on conviction for the further offence, of a penalty not exceeding, in the case of an individual, \$500, and, in the case of a corporation, \$5,000, for each day during which the offence continues.

54. REGULATIONS

(1) The Administrator may make regulations not inconsistent with this Act, prescribing all matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may provide for -

- (a) matters relevant or incidental to fire safety and prevention on land, buildings, vehicles, or vessels, and appropriate to the training or education of persons and the community;
- (b) measures necessary for ensuring effective fire safety in building structures;
- (c) measures for minimising the danger of fires and other emergencies;
- (d) measures for the protection of land, buildings, vehicles, vessels and persons from fires and other emergencies;
- (e) measures for handling flammable or combustible material and the manner of stacking, storing and keeping it;

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- (f) matters incidental to administration and control of fire and emergency response groups;
- (g) the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or the Regulations;
- (h) the service of notices on persons alleged to have infringed this Act and particulars to be included in such notices;
- (j) offences, including regulatory offences, against the Regulations and the imposition of penalties, not exceeding \$10,000, for breaches of the Regulations.

(3) The Regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether -

- (a) wholly or partly or as amended by the Regulations;
- (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
- (c) as amended after the making of the Regulations, but only where the Minister has published in the *Government Gazette* a notice that the particular amendment is to be incorporated in the Regulations.

55. REPEALS

The *Fire Service Act*, comprising Acts No. 29, 1983 and No. 14, 1988, is repealed.

56. SAVINGS AND TRANSITIONAL

(1) In this section, "repealed Act" means the *Fire Service Act* as repealed by section 55.

(2) A person who was, immediately before the commencement of this Act, a member of the Fire Service, within the meaning of the repealed Act, shall, on that commencement, be a member of the Fire and Rescue Service as if appointed under this Act with the same rank or designation that the member held, or with an equivalent rank or designation to that held by the member, under the repealed Act.

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(3) A person who was, immediately before the commencement of this Act, an auxiliary member, within the meaning of the repealed Act, shall, on that commencement, be an auxiliary member as if appointed under this Act and shall be paid for his or her services in accordance with the scale of fees determined under the repealed Act until such time as a determination is made under this Act.

(4) A person who was, immediately before the commencement of this Act, a volunteer member, within the meaning of the repealed Act, shall, on that commencement, be a volunteer member as if appointed under this Act.

(5) The Commissioner of Police is, on the commencement of this Act, the Chief Executive Officer of the Fire and Rescue Service as if the person holding that office were appointed under section 19(2) of the *Public Sector Employment and Management Act* on that commencement and, in all other respects, that Act applies to and in relation to the Chief Executive Officer.

(6) The person who was, immediately before the commencement of this Act, the Director or the Chief Fire Officer, within the meaning of the repealed Act, shall, on that commencement, be the Director and the Chief Fire Officer, respectively, of the Fire and Rescue Service.

(7) A fire district determined under the repealed Act and in force immediately before the commencement of this Act shall, on that commencement, be an emergency response area as if declared under this Act.

(8) Subject to this section, a volunteer fire brigade established under the repealed Act and existing immediately before the commencement of this Act shall, on that commencement, continue to exist as a volunteer fire brigade comprising the same volunteer members as if this Act had not come into operation.

(9) A volunteer fire brigade referred to in subsection (8) shall, on the commencement of this Act, be deemed, for the purposes of the *Associations Incorporation Act*, to be an association incorporated under that Act and the Director may give directions to a member of the brigade to ensure that the provisions of that Act relating to the lodging of documents and other information are complied with.

(10) The Director may declare a volunteer fire brigade referred to in subsection (8) or more than one of those volunteer fire brigades to be a fire and emergency response group.

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(11) Where the Director makes a declaration under subsection (9), Part 2 Division 2 (other than section 11(1)) applies to and in relation to the fire and emergency response group except that the power of the Minister under section 11(2) shall be exercised by the Director.

(12) The Regulations made under the repealed Act and in force immediately before the commencement of this Act shall, on that commencement, continue in force as Regulations under this Act but may be amended or repealed by regulations made under this Act.
