

NORTHERN TERRITORY OF AUSTRALIA

FIRE SERVICE ACT
No. 29 of 1983
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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

To provide for the establishment of the Fire Service of the Northern Territory and for matters relating to the prevention, extinction and investigation of fires and the protection of life and property

[Assented to 28 July 1983]

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 I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Fire Service Act 1983*.

2. COMMENCEMENT

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

3. REPEAL AND SAVING

(1) The Ordinances specified in the Schedule are repealed.

(2) Notwithstanding the repeals effected by subsection (1), the Fire Hazards Regulations and the Inflammable Matter Regulations made under the repealed Ordinances and in force immediately before the commencement of this Act continue to apply to the same extent as if the repealed Ordinances had continued in operation but may be amended or repealed as if they were Regulations made under this Act.

4. INTERPRETATION

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

"Appeal Board" means the Northern Territory Fire Service Appeal Board established by section 28;

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"approved" means approved by the Director;

"auxiliary fire brigade" means an auxiliary fire brigade comprised of auxiliary members;

"auxiliary member" means a person appointed to be an auxiliary member of the Fire Service under section 80;

"Commissioner of Police" means the Commissioner of Police appointed under section 7 of the *Police Administration Act*;

"fire brigade" means -

- (a) a permanent fire brigade;
- (b) an auxiliary fire brigade; or
- (c) a volunteer fire brigade,

and includes personnel and fire-fighting equipment allocated by the Director to a fire brigade;

"Fire District" means - a Fire District determined under sub-section (2);

"fire-fighting equipment" includes engines, hoses, reels and appliances required for or ancillary to fire fighting;

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

"flammable material" includes -

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

"land" includes buildings on land;

"member" means a member of the Fire Service other than an auxiliary member or volunteer member;

"occupier", in relation to land, includes -

- (a) a person having, or being entitled to, the use or management of land; and

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- (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 own account or as agent for another person,

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

"owner", in relation to land, means the person for the time being 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 fire brigade" means a fire brigade comprised of members;

"Promotions Board" means the Northern Territory Fire Service Promotions Board established by section 27;

"senior member", in relation to -

- (a) rank - means the member who is most senior in rank in accordance with the prescribed order of seniority, and where members are equal in rank, the member who has held that rank for the longest time as prescribed is the senior member; and
- (b) attendance at a fire or an emergency at a location attended by a member or members - means the member or senior member in accordance with paragraph (a) in attendance at that location;

"vehicle" means a means of conveyance which runs on wheels but does not include a vehicle used on a railway;

"vessel" includes a ship, barge, punt, boat and floating vessel used for storing goods or for carrying goods or passengers;

"volunteer fire brigade" means a fire brigade comprised of volunteer members;

"volunteer member" means a person appointed to be a volunteer member of the Fire Service under section 81.

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(2) For the purposes of this Act, the Minister may, by notice in the *Gazette*, determine an area to be a Fire District.

PART II - FIRE SERVICE OF THE NORTHERN TERRITORY

Division 1 - Establishment of Fire Service

5. FIRE SERVICE OF THE NORTHERN TERRITORY

There is hereby established the Fire Service of the Northern Territory.

6. CONSTITUTION OF FIRE SERVICE

The Fire Service shall consist of the Commissioner of Police and the Director of the Fire Service and other members of prescribed ranks appointed and holding office under and in accordance with this Act.

7. DELEGATION, &c., BY COMMISSIONER OF POLICE

(1) The Commissioner of Police may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Commissioner of Police.

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

(4) For the purposes of this Act, the Commissioner of Police has and may exercise the powers and perform the functions of the Director.

Division 2 - Director and Chief Fire Officer, &c.

8. DIRECTOR, CHIEF FIRE OFFICER AND DEPUTY CHIEF FIRE OFFICER

The Minister may appoint a person to be -

- (a) the Director;
- (b) the Chief Fire Officer; and
- (c) the Deputy Chief Fire Officer.

9. REMUNERATION OF DIRECTOR, CHIEF FIRE OFFICER, &c.

(1) Subject to this Act, the Director, the Chief Fire Officer and the Deputy Chief Fire Officer -

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(a) shall be paid such remuneration and allowances;
and

(b) shall hold office on such terms and conditions,
as the Minister, from time to time, determines.

(2) In determining the matters referred to in sub-section (1), the Minister shall ensure that the remuneration, allowances, terms and conditions of service of the Director, Chief Fire Officer and Deputy Chief Fire Officer shall be not less advantageous than those of other members of the Fire Service below his respective rank.

10. RETIREMENT

(1) The Director, Chief Fire Officer or Deputy Chief Fire Officer, who has attained the age of 55 years, may retire from the Fire Service.

(2) The Director, Chief Fire Officer or Deputy Chief Fire Officer, who attains the age of 65 years, shall cease to hold office as a member.

11. RESIGNATION

(1) The Director, Chief Fire Officer or Deputy Chief Fire Officer may resign his office by writing signed by him and delivered to the Minister.

(2) A resignation under sub-section (1) shall not have effect until it is accepted by the Minister.

12. ACTING DIRECTOR, &c.

(1) The Minister may appoint a member to act from time to time as the Director, Chief Fire Officer or Deputy Chief Fire Officer, as the case may be, during the absence from the Territory or from duty of the Director, Chief Fire Officer or Deputy Chief Fire Officer or a vacancy in any of those offices.

(2) Subject to this section, a person appointed under sub-section (1) to act during a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) Where a person is, under sub-section (1), appointed to act in a position and that position becomes vacant while the person is so acting, the person may, notwithstanding that his appointment under sub-section (2) is expressed to be for a limited period, continue to act in that position until -

(a) the Minister otherwise directs;

(b) the position ceases to be vacant;

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- (c) the person resigns his appointment made under sub-section (1); or
- (d) a period of 12 months from the date on which the vacancy occurred expires,

whichever first occurs.

(4) A person may resign an appointment under sub-section (1) by writing signed by him and delivered to the Minister.

(5) A resignation under sub-section (4) shall not have effect until it is accepted by the Minister.

(6) The validity of anything done by a person acting as the Director, Chief Fire Officer or Deputy Chief Fire Officer in pursuance of an appointment under sub-section (1) shall not be called in question by reason of a defect or irregularity in or in connection with his appointment or on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

13. INTERIM VACANCIES

(1) Where there is an interval between the inability of the Director, Chief Fire Officer or Deputy Chief Fire Officer to carry out the duties of his office and an appointment by the Minister under section 12(1), the powers, functions and duties of the office to which the inability relates may be exercised by the member next senior to the member who held the office in respect of which the inability arose.

(2) An action taken by a member in accordance with sub-section (1) shall be deemed to be the action of the member appointed under section 12.

Division 3 - Powers and Functions of Director, &c.

14. FUNCTIONS OF DIRECTOR

The functions of the Director are to -

- (a) make provision in every Fire District for the prevention of fire, the suppression and extinction of fires and the safety of persons and property endangered by fire;
- (b) ensure that the Fire Service is maintained in accordance with this Act and in a state of operational efficiency;
- (c) review the efficiency and economy of the Fire Service; and

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- (d) make provision for effective co-operation between the Fire Service and the Bushfires Council established under the *Bushfires Act*.

15. POWERS OF DIRECTOR

(1) The Director has such powers as are necessary to carry out his functions.

(2) Without limiting the generality of sub-section (1), the Director is responsible to the Commissioner of Police and, subject to this Act, the Director is charged and invested with the general control and management of the members, auxiliary members and volunteer members and may, in addition to those powers, exercise any powers conferred on the Chief Fire Officer, Deputy Chief Fire Officer or a member.

(3) The Director shall exercise and perform all the powers and functions of his office in accordance with the directions, if any, given to him by the Commissioner of Police.

16. DELEGATION BY DIRECTOR

(1) The Director may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

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

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

Division 4 - Appointment, Resignation and Dismissal of Members

17. ADMINISTRATOR MAY DETERMINE ESTABLISHMENT OF FIRE SERVICE

(1) Subject to this Act, the Administrator may determine the number of members of the Fire Service and the number of members who, at one time, may hold each of the ranks in the Fire Service.

(2) The establishment of the Fire Service shall be in ranks and have relative seniority as prescribed.

18. DIRECTOR MAY APPOINT OR PROMOTE MEMBERS

(1) Subject to this Act, the Director may -

- (a) appoint a person eligible for appointment to the Fire Service to be a member with the lowest rank;

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- (b) appoint a person eligible for appointment to the Fire Service to be a member with a rank other than the lowest rank; and
- (c) promote a member, being a member who is qualified for promotion, to the rank next above the rank which that member held on the day immediately preceding the day on which the promotion was made,

to serve in any part of the Territory as he directs.

(2) An appointment or promotion under sub-section (1) by the Director shall not be made so as to appoint a person or promote a member to the rank of Director, Chief Fire Officer or Deputy Chief Fire Officer.

(3) The Director may promote a member, being a member who is qualified for promotion, to any rank and position senior to the rank which that member held on the day immediately preceding the day on which the promotion was made where the Director is satisfied that there is no other member who is qualified for promotion and who has the skill and experience suitable to discharge the duties of the rank to which the promotion is to be made.

19. MEMBERS ON PROBATION

(1) A person appointed under section 18(1)(a) or (b) remains on probation until his appointment is confirmed or terminated in accordance with this section.

(2) On the expiration of the period of 12 months probation, or as soon as practicable thereafter, the Director shall confirm or terminate the appointment.

(3) The period of probation under sub-section (2) commences on the date on which the person commences duties in pursuance of his appointment.

(4) The Director may, at any time during a period of probation, if he is of the opinion that the person on probation -

- (a) had misconducted himself; or
- (b) is unlikely to become an efficient member,

give notice in writing to the person on probation of his decision to terminate the appointment after the expiration of a period of not less than 14 days specified in the notice.

(5) A person on probation who is aggrieved by a decision of the Director may, within 7 days after receipt of a notice referred to in sub-section (4), appeal to the Commissioner of Police.

Fire Service

(6) After consideration of an appeal under sub-section (5), the Commissioner of Police shall allow or refuse the appeal and his decision is final.

(7) The Commissioner of Police shall give notice in writing to the Director and the appellant of his allowance or refusal under sub-section (6), and where the appeal is allowed, the Director shall comply with the decision of the Commissioner.

20. PREFERENCE FOR MEMBERS, &c.

(1) Subject to this section, an appointment of a person to be a member under section 18(1)(b) shall not be made unless the position is notified in the *Fire Service Gazette* not less than 42 days before an appointment is to be made and the notification specifies the position, rank, duties and qualifications of the position.

(2) The Director may publish a notice in the *Fire Service Gazette* stating that, having received applications from members, he is of the opinion that there is not within the Fire Service a member who has the skill and efficiency suitable for the position notified under sub-section (1), and that he intends to appoint a person from outside the Fire Service to that position.

(3) The appointment of a person from outside the Fire Service shall not be made before the expiration of 28 days after -

- (a) the date of the notice under sub-section (2); or
- (b) the determination of an appeal, if any, under section 45,

whichever is the later, and is not subject to an appeal.

21. RESIGNATION

A member other than the Director, Chief Fire Officer or Deputy Chief Fire Officer shall not resign his office or relinquish the duties of his office unless -

- (a) he is authorized in writing by the Director to do so;
- (b) he has given to the Director 14 days notice of his intention to do so; or
- (c) his resignation is for the purpose of becoming a candidate for election as a member of a House of the Parliament of Australia or of a State, of the Legislative Assembly of the Northern Territory or of a prescribed legislative or advisory body of another Territory and -

Fire Service

- (i) he has, before resigning, given to the Director notice in writing of his intention to resign for that purpose; and
- (ii) he resigns on a date not earlier than 14 days before the date on which nominations for the election close.

22. REAPPOINTMENT OF PERSON WHO RESIGNED TO CONTEST ELECTIONS

(1) Where the Director is satisfied that a person who was a member -

- (a) resigned his office from the Fire Service for the purpose specified in section 21(1)(c) and after having given the notice required by that section;
- (b) was a candidate for election to a House of the Parliament or to another assembly or body referred to in that paragraph; and
- (c) failed to be elected,

the Director shall, upon application by that person within 2 months after the declaration of the result of the election, reappoint the person to a position in the Fire Service having a salary, or range of salary, applicable to the position occupied by the member before the date of his resignation.

(2) A person shall be reappointed under this section without being required to undergo a medical examination and whether or not he possesses the appropriate educational qualifications or meets the appropriate requirements.

(3) Subject to section 19, a person shall be reappointed under this section without probation.

(4) A person reappointed under this section shall be deemed to have continued in the Fire Service as if he had not resigned but had been on leave of absence without pay during the period from the day on which his resignation became effective to and including the day immediately preceding the day on which he was reappointed.

(5) The period referred to in sub-section (4) shall, for all purposes, be deemed to form part of the member's period of service in the Fire Service.

(6) This section does not authorize the reappointment of a person who has attained the age of 65 years.

23. RETIREMENT

(1) A member who has attained the age of 55 years may retire from the Fire Service.

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(2) A member who attains the age of 65 years ceases to be a member.

24. DIRECTOR MAY DEAL WITH MEMBERS

Where a member other than the Chief Fire Officer or Deputy Chief Fire Officer appears to the Director to be -

- (a) inefficient or incompetent in relation to;
- (b) unable to discharge or incapable of discharging;
or
- (c) unfit to discharge,

the duties of his position, the Director may -

- (d) transfer the member to another rank (whether in the same or a different locality) to which the same salary, or range of salary, is applicable as the salary or range of salary applicable to his rank;
- (e) reduce the rate of salary of the member to a rate of salary within the limits of salary fixed for the rank held by the member or reduce the member to a lower rank and salary;
- (f) retire the member from the Fire Service; or
- (g) direct the member to take sick leave for remedial purposes.

25. DUTIES, &c., OF MEMBERS

(1) A member shall perform such duties and have such powers and privileges as are, by any law in force in the Territory, conferred or imposed on him.

(2) Subject to sub-section (4), a member shall comply with all lawful instructions and orders in connection with his duties as a member.

(3) Where a member is aggrieved by a lawful instruction or order in connection with his duties as a member, he may appeal to the Commissioner of Police by notice in writing setting out the grounds of his appeal.

(4) Where a member appeals under sub-section (3) against a lawful instruction or order relating to the permanent transfer of the member, the transfer of the member shall not be effected before consideration of the appeal under sub-section (5).

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(5) After consideration of the appeal, the Commissioner of Police shall allow or refuse the appeal and his decision is final.

(6) The Commissioner of Police shall give notice in writing to the appellant of his allowance or refusal under sub-section (5).

PART III - ESTABLISHMENT OF FIRE SERVICE BOARDS

Division 1 - General

26. DEFINITION

In this Part, "Board" means the Promotions Board or the Appeal Board.

27. ESTABLISHMENT OF PROMOTIONS BOARD

There is hereby established the Northern Territory Fire Service Promotions Board.

28. ESTABLISHMENT OF APPEAL BOARD

There is hereby established the Northern Territory Fire Service Appeal Board.

29. CONSTITUTION OF BOARD

- (1) The Board shall be constituted by -
 - (a) a Chairman, who shall be a Stipendiary Magistrate nominated by the Chief Magistrate;
 - (b) a person nominated by the Director; and
 - (c) the prescribed appropriate available nominated member or the prescribed substitute for that nominated member,

who shall be appointed by the Minister.

(2) For the purposes of this section "Stipendiary Magistrate" and "Chief Magistrate" have the same meaning as in the *Magistrates Act*.

30. TERM OF OFFICE

Subject to this Part, the Chairman or a member of a Board holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment and is eligible for reappointment.

Fire Service

31. FEES AND ALLOWANCES

A member who is attending or travelling to or from a meeting of a Board in his capacity as a member of that Board shall be regarded as performing the functions and duties of his office as a member of the Fire Service during that period.

32. TERMINATION OF APPOINTMENT

- (1) An appointment to a Board shall terminate upon -
- (a) the death or resignation of the member of the Board;
 - (b) the member of the Board ceasing to reside in the Territory; or
 - (c) in the case of a person appointed under section 29(1)(c) -
 - (i) his retirement or dismissal from the Fire Service;
 - (ii) his transfer to a station so distant from the place where the Board ordinarily sits that his continuing to act would, in the opinion of the Director, interfere with the efficient working of the Fire Service; or
 - (iii) the secretary of the relevant Federation or Association notifying the Minister, by notice in writing, that the member has ceased to be the available nominated member for that Federation or Association.

(2) The Chairman shall cease to be the Chairman of a Board upon his ceasing to hold the office of Stipendiary Magistrate.

33. DISCLOSURE OF INTEREST

Where a matter comes before a Board in which a member of the Board is directly concerned, that member shall notify his interest to the Minister and shall temporarily cease to act, and the Minister shall appoint a temporary substitute member in the manner prescribed in section 29.

Division 2 - Staff of Boards

34. STAFF OF BOARDS

(1) There shall be a Secretary to the Promotions Board and Appeal Board who shall be appointed by the Minister and who shall perform such duties and functions as are provided by this Act and the Regulations and such other duties and functions as the Chairman of each respective Board directs.

Fire Service

(2) The Secretary of a Board and the staff necessary to assist him shall be persons appointed or employed under the *Public Service Act*.

Division 3 - Procedure of Boards

35. FIXING OF HEARING DATE

Where a notice of appeal -

(a) under section 46 is served on the Promotions Board; or

(b) under section 50 is served on the Appeal Board,

the Chairman of the Promotions Board or Appeal Board, as the case may be, shall fix the date on which, at the time and place at which, the hearing of the appeal will commence.

36. PROCEDURES

(1) A Board may -

(a) take evidence on oath or affirmation;

(b) proceed in the absence of a person entitled to be present at a proceeding before the Board if the person has had reasonable notice of the proceeding;

(c) adjourn a proceeding before it from time to time;

(d) summon a person to appear before it to give evidence and to produce such documents, if any, as are referred to in the summons; and

(e) require a person appearing before it to give evidence either to take an oath or make an affirmation.

(2) For the purposes of this section, the oath or affirmation to be taken or made by a person is an oath or affirmation that the evidence he will give before the Board will be true.

(3) Where a person who is a party to a proceeding before a Board requests a member of the Board to do so, the member may summon a person to appear before the Board at the hearing of the proceedings to give evidence and to produce such documents, if any, as are referred to in the summons.

(4) A summons to a witness under this section may be served personally or by sending it by pre-paid post to the person to whom it is directed at his last-known place of residence or business.

Fire Service

(5) A person summoned to attend as a witness before a Board shall not -

- (a) without reasonable excuse, refuse or fail to attend, or to produce documents or books, in accordance with the summons; or
- (b) refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings before it.

Penalty: \$1,000.

(6) A person may, where he is of the opinion that his answer to a question put to him in proceedings before a Board would or would tend to incriminate him, advise the Board accordingly.

(7) Where a person advises the Board under sub-section (6) he is not excused from answering any relevant questions in proceedings before it but his answers shall not, except in relation to an offence under this Act, be admissible in evidence against him in any civil or criminal proceeding in a court.

37. DETERMINATION OF QUESTIONS

(1) A question of law arising in an appeal under this Part (including the question whether a particular question is one of law) shall be determined in accordance with the opinion of the Chairman of the Board.

(2) Subject to sub-section (1), a question arising in an appeal under this Part shall be determined in accordance with the opinion of a majority of the Board.

38. OBSTRUCTION OF MEMBERS

A person shall not obstruct the Chairman or a member of a Board in the exercise of the powers conferred on him under this Act.

Penalty: \$200.

39. COMMUNICATION OF BOARD MATTERS

A member of a Board shall not communicate any information which he has received in the performance of a duty connected with the exercise of the powers or performance of the functions of a Board to a person other than a member of a Board or to a person to whom that Board has authorized him to communicate the information.

Penalty: \$200.

40. HEARINGS

(1) Subject to sub-section (2), the hearing of a proceeding before a Board shall be in public.

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(2) Where the Board is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or in the public interest, it may, by order -

- (a) direct that the hearing, or a part of the hearing, of a proceeding shall take place in private and give directions as to the persons who may be present;
- (b) give directions restricting or prohibiting the publication of evidence given before the Board, whether in public or in private, or of any matters contained in documents or books lodged with the Appeal Board or received in evidence by it; and
- (c) give directions prohibiting or restricting the disclosure of evidence given before the Board, of the contents of a document or book lodged with it in relation to a proceeding or of a finding or decision of that Board in relation to a proceeding.

(3) A person who contravenes or fails to comply with a direction under sub-section (2)(a) or (b) is guilty of an offence.

Penalty: \$200.

41. PARTIES MAY BE REPRESENTED

(1) At the hearing of a proceeding before a Board a party to the proceeding may appear in person or may be represented by a legal practitioner or, by leave of the Board, by some other person.

(2) The Director, or a person authorized by him for the purpose, shall be a party to all proceedings before a Board.

42. PROCEEDINGS

- (1) In a proceeding before a Board -
 - (a) the procedure of the Board is, subject to this Act and to the Regulations, at its discretion;
 - (b) the proceeding shall be conducted with as little formality and technicality and with as much expedition as the requirements of this Act and a proper consideration of the matter before it permit; and
 - (c) the Board is not bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Fire Service

(2) The Regulations may make provision, not inconsistent with this Act, for and in relation to -

- (a) the manner in which proceedings before a Board may be conducted;
- (b) the stay of proceedings in, or of decisions of, a Board;
- (c) the manner in which a Board may inform itself on any matter; and
- (d) the payment of costs and expenses in respect of proceedings before a Board and the assessment of those costs and expenses.

43. ADJOURNMENT BY CONSENT

Where an adjournment in a proceeding before a Board is sought, and the adjournment is consented to by all the parties to the proceeding, the Chairman or, where he is not available, a magistrate may, on the application of a party, order the adjournment of the proceeding on such terms and conditions as he thinks fit.

44. PROTECTION OF MEMBERS, PARTIES AND WITNESSES

(1) A member of a Board has, in the performance of his duty as such a member, the same protection as a Judge of the Supreme Court.

(2) A legal practitioner or other person appearing before a Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

(3) Subject to this Act, a person summoned to attend or a person appearing before a Board as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the Supreme Court.

Division 4 - Promotions Board

45. APPEALS TO PROMOTIONS BOARD

The Promotions Board shall have power to hear and determine an appeal relating to -

- (a) the promotion of a member under section 18 to a prescribed rank;
- (b) an appointment contrary to section 20; or
- (c) a transfer, reduction of salary, retirement or direction under section 24.

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46. APPEAL BY MEMBERS

(1) Subject to section 47, a member may, where he disputes a matter referred to in section 45, appeal to the Promotions Board.

(2) An appeal shall be instituted by serving on the Promotions Board a notice in writing -

- (a) setting out the grounds of the appeal; and
- (b) signed by the appellant.

47. TIME FOR INSTITUTING APPEAL

(1) A member who -

- (a) is qualified for promotion; and
- (b) subject to sub-section (2), has applied for promotion,

may, subject to sub-section (3), appeal against a promotion or appointment under section 18.

(2) The Promotions Board may, as it thinks fit, consider an appeal under sub-section (1) where the member has failed to apply for promotion or failed to comply with the requirements of an application for promotion.

(3) An appeal under sub-section (1) shall be made within 28 days after the date on which notice of the promotion or appointment in respect of which the appeal was made is published in the *Fire Service Gazette*.

(4) Where the Director has published a notice in the *Fire Service Gazette* pursuant to section 20, a member may, not later than 28 days after the notice is published, make an appeal to the Promotions Board against an appointment under that section.

(5) A member may, not later than 28 days after the date on which he received notice of a transfer, reduction in salary, retirement or direction under section 24, appeal against that transfer, reduction in salary, retirement or direction.

48. DECISION OF PROMOTIONS BOARD

(1) On an appeal under this Division, the Promotions Board may affirm or set aside the -

- (a) promotion under section 18;
- (b) appointment under section 20; or
- (c) transfer, reduction in salary, retirement or direction under section 24.

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(2) Where on an appeal relating to a promotion there is more than one successful appellant, the Promotions Board shall indicate to the Director the order of preference in relation to that promotion in which the successful appellants stand, and the Director shall promote the first appellant in that order to the position, subject to a medical examination.

(3) Where the appellant referred to in sub-section (2) fails to pass the medical examination, the Director shall promote the appellant next in the order of preference referred to in sub-section (2) on the same conditions.

(4) The decision of the Promotions Board on an appeal is final.

Division 5 - Appeal Board

49. APPEALS TO APPEAL BOARD

(1) The Appeal Board shall have power to hear and determine an appeal from a determination under Division 3 of Part IV.

(2) An appeal under this Part may be made on the ground that -

- (a) the Director's determination that the appellant committed a breach of discipline is wrong; or
- (b) the punishment imposed is unduly severe,

or on both of those grounds.

50. APPEAL BY MEMBERS

(1) Subject to sub-section (3), a member may, where he disputes a matter referred to in section 49, appeal to the Appeal Board:

(2) An appeal shall be instituted by serving on the Appeal Board a notice in writing -

- (a) setting out the grounds of the appeal; and
- (b) signed by the appellant.

(3) A notice under sub-section (2) shall be served before the expiration of 14 days after the date on which a copy of the determination is delivered under section 66(8) to the appellant or within such further time as the Appeal Board, on an application made by the member either before or after the expiration of that period of 14 days, allows.

51. HEARING

On an appeal under this Part the Appeal Board shall proceed by way of a review of the grounds of appeal.

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52. TRANSCRIPTS

The Appeal Board shall cause a record to be made of the evidence of a witness at the hearing of an appeal under this Part.

53. DECISION OF APPEAL BOARD

(1) On an appeal under this Part, the Appeal Board may -

- (a) affirm a determination of the Director;
- (b) where the determination of the Director was wrong - set aside that determination;
- (c) where it considers that the punishment imposed by the Director is -
 - (i) unduly severe - set the punishment aside, reprimand the member or impose a lesser penalty; or
 - (ii) inadequate or inappropriate - set the punishment aside and impose a more severe punishment; or
- (d) impose a fine appropriate to the circumstances.

(2) The Director shall give effect to a decision of the Appeal Board under sub-section (1).

(3) A decision of the Appeal Board on an appeal is final.

PART IV - DISCIPLINE

Division 1 - Duties and Obligations of Members

54. GENERAL ORDERS

The Director may from time to time, in writing, issue such general orders and instructions as are necessary to secure the good government and efficient working of the Fire Service.

55. OBLIGATIONS OF MEMBERS

A member shall -

- (a) during his hours of duty, devote himself exclusively to the discharge of his duties;
- (b) behave at all times with courtesy to the public;
- (c) give prompt attention to all matters that come within the scope of his duties;
- (d) promptly carry out all his duties; and

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- (e) comply with and give effect to such of the provisions of the laws in force in the Territory and of the general orders and instructions as are applicable to him in the performance of his duties.

56. ABSENCE FROM DUTY

A member shall not, without the permission of the member under whose control, direction or supervision he performs his duties, absent himself from duty during his hours of duty.

57. LAWFUL INSTRUCTIONS, &c.

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

(2) A member shall not be excused from answering a question concerning his duties as a member put to him by a member of senior rank or a member of the same rank under whose control, direction or supervision he is performing his duties on the ground that his answer would or would tend to incriminate him, and his answer shall not, except in relation to an offence under this Act, be admissible in evidence against him in a civil or criminal proceeding in a court.

58. INFLUENCE

A member shall not unreasonably seek the assistance of any person for the purpose of obtaining promotion, transfer or any other personal advantage.

59. GIFTS

A member shall not, either directly or indirectly, solicit or accept a gift or other reward from any person in connection with the performance of his duties.

60. MEMBERS NOT TO ENGAGE IN BUSINESS

(1) Except with the permission in writing of the Director, a member shall not, whether within or outside the Territory -

- (a) accept or continue to hold, discharge the duties of, or be employed in, a paid office in connection with a business whether carried on by a body corporate, partnership or an individual;
- (b) engage in business, whether as a principal or agent;

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- (c) engage, or continue in the private practice of, a profession, occupation or trade or enter into employment, whether remunerative or not, in a profession, occupation or trade with a body corporate, partnership or individual; or
- (d) accept or engage in remunerative employment other than in connection with his duties as a member.

(2) Sub-section (1) does not prevent a member from becoming a member or shareholder of an incorporated company or of an association or society of persons incorporated or registered under the law of the Territory or of a State or another Territory of the Commonwealth but, except as provided by sub-section (3), a member shall not take part in the conduct of the business of the company, association or society otherwise than in the exercise of his rights as a member or shareholder of the company, association or society.

(3) A member may, with the permission in writing of the Director, act as a director or member of the committee of a co-operative society or an association that is registered or incorporated under the law of the Territory or of a State or another Territory of the Commonwealth and which does not enter into contracts for the supply of goods or services to the Territory.

(4) The Director may, at any time, withdraw a permission granted under this section.

61. MISLEADING STATEMENTS

A member shall not wilfully make in the course of his duty a false, misleading or inaccurate statement.

62. ADVANTAGE

A member shall not use the fact that he is a member of the Fire Service for the purpose of obtaining a personal advantage.

Division 2 - Disciplinary Offences

63. DISCIPLINARY OFFENCES

A member who -

- (a) contravenes or fails to comply with Division 1;
- (b) contravenes or fails to comply with the general orders or lawful instructions;
- (c) is guilty of disgraceful or improper conduct in his capacity as a member;
- (d) is negligent or careless in the discharge of his duties;

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- (e) acts in a disorderly manner or in a manner unbecoming to a member;
- (f) acts in a manner that is prejudicial to the good order and discipline of the Fire Service;
- (g) acts in a manner that brings discredit to the reputation of the Fire Service; or
- (h) while on duty -
 - (i) is under the influence of; or
 - (ii) without the prior consent of the Director, consumes or has in his possession or on station premises,

intoxicating liquor or drugs,

is guilty of a disciplinary offence and is subject to punishment in accordance with Division 3.

Division 3 - Disciplinary Powers of Director

64. NOTICE OF ALLEGED OFFENCE

(1) Where it appears to the Director that a member may have committed a disciplinary offence which, in the opinion of the Director, is of a minor nature, and the Director considers that in the circumstances it is appropriate, he may cause to be served on the member -

- (a) a written notice stating that -
 - (i) the member may reply in writing within 14 days after the date of the notice to the statements and reports referred to in paragraph (b); and
 - (ii) the matter will not, subject to sub-section (2), be the subject of a hearing; and
- (b) copies of the statements and reports, if any, on which he intends to rely.

(2) Where, in a case to which sub-section (1) does not apply, it appears to the Director that a member may have committed a disciplinary offence, the Director may cause to be served on him a written notice -

- (a) stating briefly the particulars of the disciplinary offence;
- (b) stating that the member may, within 14 days after the service of the notice, deliver to the Director a written statement in connection with the alleged disciplinary offence;

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- (c) stating that the member is entitled to appear before the Director at any hearing of the matter; and
- (d) informing the member of the time, being not less than 14 days thereafter, at which the Director will hear and determine the matter.

65. DIRECTOR'S DETERMINATION

After the expiration of the time specified in the notice given under section 64(1), the Director shall -

- (a) with the consent of the member, determine the matter; or
- (b) where the matter cannot satisfactorily be dealt with by the Director, inform the member that, after the expiration of 7 days, the matter will be determined by a hearing in accordance with section 66.

66. DIRECTOR'S DETERMINATION ON HEARING

(1) After the expiration of the time specified in the notice given under section 64(2) the Director shall -

- (a) where he determines that, if the member were found guilty of the disciplinary offence with which he is charged, the member would be subject to a punishment specified in section 67(1)(a) - hear and determine whether the member has committed the disciplinary offence specified in the notice; and
- (b) where he determines that, if the member were found guilty of the disciplinary offence with which he is charged, the member would be subject to a punishment specified in section 67(1)(b) - refer the matter to the Appeal Board for hearing.

(2) The procedure to be adopted at a hearing under sub-section (1)(a) shall be at the discretion of the Director.

(3) For the purpose of determining at a hearing under sub-section (1)(a) whether a member has committed the disciplinary offence, the Director shall take into account the contents of any written statement delivered to him by the member, and if the member appears before the Director on the hearing, any oral statements made before him by the member, in relation to the question whether the member has committed that disciplinary offence.

(4) At a hearing under sub-section (1)(a), a member may appear in person but may not be represented by any other person.

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(5) At a hearing under sub-section (1)(a), a member shall answer truthfully any question put to him which is within his knowledge.

(6) An answer given by a member pursuant to sub-section (5) shall be used only for the purpose of determining the charge which is the subject of the hearing.

(7) Where, during the course of a hearing under sub-section (1)(a), the Director forms the opinion that the matter should be referred to the Appeal Board for determination, he shall discontinue the hearing and refer the matter to the Appeal Board.

(8) The Director shall cause to be served personally on the member to whom a determination under sub-section (1)(a) relates notice of the determination and of the punishment imposed.

(9) Where the Director has determined that a member has not committed the disciplinary offence with which he was charged, the Director shall dismiss the charge and notify the member in writing accordingly.

(10) The Director shall not give effect to a punishment imposed by him as the result of a determination under sub-section (1)(a) until the time during which the member may appeal against the determination has expired or when such an appeal has been lodged.

67. PUNISHMENT

(1) Where a member has committed a disciplinary offence -

(a) the Director may, as a punishment -

- (i) reprimand the member; or
- (ii) impose on the member a fine not exceeding 50% of the member's weekly salary; or

(b) the Appeal Board may, as a punishment -

- (i) reduce the member for a specified period to the rank below the rank which the member holds;
- (ii) reduce the member to the rank below the rank which the member holds;
- (iii) reduce the rate of salary of the member to a rate of salary within the limits of salary fixed for the rank which the member holds;
- (iv) suspend the member from the Fire Service for such time as the Appeal Board specifies;

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(v) dismiss the member from the Fire Service;
or

(vi) impose on the member a fine not exceeding
100% of the member's weekly salary.

(2) For the purposes of sub-section (1), "member's weekly salary" means the amount of the gross weekly salary payable to the member in accordance with the appropriate determination or award that applies from time to time to that member.

Division 4 - Miscellaneous

68. SUSPENSION FOR BREACH OF DISCIPLINE

(1) Where -

(a) the Director causes a notice under section 64 to be served on a member; and

(b) the Director considers that the breach of discipline specified in the notice is of such a nature that the member should not continue to perform his duties until the question whether the member has committed a breach of discipline has been determined,

the Director may suspend the member from duty.

(2) The Director may, at any time, cancel the suspension of a member from duty under sub-section (1) or section 69.

(3) A member who has been suspended from duty under this section shall be paid the salary, allowances and penalty pay to which he would have been entitled had he not been suspended, during the period of the suspension.

69. MEMBER FACING CRIMINAL CHARGES MAY BE SUSPENDED

(1) Where a member is charged with having committed an offence against a law of the Territory or of the Commonwealth or of a State or another Territory of the Commonwealth the Director may suspend the member from duty.

(2) If, upon the hearing of a charge by a court, a member is found guilty of an offence, the Director may -

(a) dismiss the member from the Fire Service;

(b) reduce the member to a lower rank; or

(c) reduce the salary of the member.

(3) The Director may, at any time, revoke the suspension of a member suspended under this section, whether before or after the conviction of the member.

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(4) A member who is suspended under this section shall, unless the Minister otherwise directs, be paid the salary, allowances and penalty pay to which he would have been entitled had he not been suspended, during the period of the suspension.

(5) Where a person has been dismissed under sub-section (2) and -

- (a) the conviction or finding has subsequently been quashed;
- (b) the person has received a pardon;
- (c) the conviction or finding has otherwise been nullified; or
- (d) the person has been released from prison as a result of an inquiry into the conviction,

the Director shall reappoint the person as a member.

(6) Where a person is reappointed as a member under sub-section (5) -

- (a) the person shall be deemed to have been, during the period which commenced on the date of his dismissal and ended on the date of his re-appointment, on leave of absence without pay; and
- (b) that period shall be counted as a period of service as a member.

70. SERVICE

Where a member's whereabouts cannot reasonably be properly addressed and it is not possible for a notice under section 64 or 66 to be served on the member personally, service of the notice may be effected by posting it by prepaid post properly addressed to him at his last-known place of residence.

PART V - POWERS, &c., IN RELATION TO FIRES, &c.

71. DEFINITION

In this Part, "member" includes an auxiliary member and volunteer member.

72. DIRECTOR MAY DIRECT MEMBERS TO PROCEED TO LOCATION

(1) Subject to this section, where a fire or emergency occurs, the Director or a person authorized by him for that purpose, may direct one or more members from a brigade with such fire-fighting equipment as the Director or that person thinks fit, to proceed to the location of a fire or emergency to extinguish the fire or deal with the emergency.

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(2) Where the location of a fire or emergency is within a Fire District, the Director, or a person authorized by him for that purpose, shall issue a direction under sub-section (1) to the member or members of a fire brigade within that Fire District to proceed in accordance with that sub-section.

(3) Where the location of a fire or emergency is not within a Fire District, the Director or a person authorized by him for that purpose, may issue a direction under sub-section (1) as he thinks fit.

73. POWERS OF SENIOR MEMBER AT FIRE OR EMERGENCY

(1) The senior member who is directed under section 72 -

- (a) shall proceed promptly to the location and endeavour by such practicable means as he thinks fit to control and extinguish the fire or deal with the emergency and protect and save life and property; and
- (b) shall control and direct -
 - (i) so much of the fire brigade as has been dispatched to the location; and
 - (ii) any person who voluntarily places his services at the senior member's disposal.

(2) Without limiting the generality of sub-section (1), the senior member, at or immediately after a fire, may, for the purpose of protecting life or property or controlling or extinguishing the fire or dealing with the emergency -

- (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 considers may be on fire, menaced by fire, or in the vicinity of the fire;
- (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, fire-fighting equipment into, through, over or upon land, a building, vehicle or vessel which he considers provides convenient access to the fire;
- (d) take possession of, remove and keep in safe custody any property on land or and in a building, vehicle or vessel on fire or in the vicinity of the fire;

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- (e) cause a street or thoroughfare in the vicinity of the fire to be closed to traffic during the continuance of the fire;
 - (f) order a person to vacate land, a building, vehicle or vessel on fire or in the vicinity of the fire;
 - (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 might, in the senior member's opinion, interfere with the work of the fire brigade, 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 his opinion, has as a result of the fire 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 to obtain a greater pressure or supply of water;
 - (m) cause the supply of electricity to land or a building -
 - (i) on fire; or
 - (ii) adjacent to land or a building on fire, to be shut off or disconnected; or
 - (n) direct or authorize the doing by a member or by a person who voluntarily places his services at the disposal of the senior member, of an act or thing which the senior member is, under this section, empowered to do.
- (3) Where -
- (a) at or immediately after a fire, a member or a member of the Police Force is of opinion that, for the purpose of protecting life or property or controlling or extinguishing the fire, it is necessary or desirable to do an act or thing which the senior member is empowered to do under sub-section (2), not being an act or thing specified in paragraph (h) or (n) of that sub-section; and
 - (b) it is not practicable for the authority for the doing of that act or thing to be obtained from the senior member,

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the member or a member of the Police Force may, without the authority of the senior member, do that act or thing.

(4) 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 sub-section (2)(k) or (m).

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

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

74. AUTHORITY OF SENIOR MEMBER TO BE RECOGNIZED

(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 senior member;
- (b) a member acting under the orders of the Director or the senior member; or
- (c) a member or a member of the Police Force acting in accordance with section 73.

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

75. DAMAGE BY FIRE WITHIN INSURANCE POLICY

Any damage to property caused by the Director, a member or a member of the Police Force purporting in good faith to perform a duty imposed or to exercise a power conferred by this Act or the Regulations, shall be deemed to be a damage by fire within the meaning of a policy of insurance against fire covering the property damaged, notwithstanding a clause or condition to the contrary in the policy.

76. GENERAL POWERS OF DIRECTOR

(1) In addition to any other powers he has under this Act or the Regulations, or any other law in force in of the Territory, the Director, or a member authorized in writing by him to do so, may -

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

(2) If, in the opinion of the Director, a direct or indirect danger by fire to life or property arises from the state of repair of a building, vehicle or vessel or the arrangement or condition of the contents of, or flammable 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 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 of fire.

(3) Subject to section 77, a person who contravenes or fails to comply with the requirements of a notice under sub-section (2) is guilty of an offence.

Penalty: \$500 and \$100 for each day during which the offence continues.

(4) Subject to section 77, if a person contravenes or fails to comply with the requirements of a notice under sub-section (2), the Director may cause the action specified in the notice to be taken and for that purpose may enter upon the land, building, vehicle or vessel, with such workmen and machinery as are or is reasonably

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necessary, and do all things reasonably necessary to be done.

(5) In addition to any penalty for which he may become liable under sub-section (3), the costs and expenses reasonably incurred by the Director in exercising his powers under sub-section (4) shall be 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.

77. 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 76(4), a person aggrieved by a notice under section 76(2) may request the Minister to review the notice or a requirement specified in the notice.

(2) A request under sub-section (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 Minister within 3 days after the person has been served with the notice.

(3) The decision of the Minister after considering a request under sub-section (1) is final.

(4) If the Minister decides, after considering a request under sub-section (1) that a requirement specified in the notice under section 76(2) should be complied with, he shall fix a further time within which that requirement shall be complied, and section 76(3) and (4) shall then apply as if that time were substituted for the time specified in the notice.

78. LIABILITY WHERE NOTICE NOT COMPLIED WITH

(1) Where -

(a) a person has failed to comply with the requirements of a notice under section 76(2); and

(b) a fire occurs on the land or in the building, vehicle or vessel to which the notice relates or to property adjacent thereto,

he shall, subject to sub-section (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; and

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(d) the amount of the damage done to any property by the fire.

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

(3) Sub-section (1) applies whether or not a request has been lodged under section 77.

PART VI - FIRE BRIGADES

79. FIRE BRIGADES

The Minister may authorize the establishment of -

- (a) permanent fire brigades;
- (b) auxiliary fire brigades; and
- (c) volunteer fire brigades.

80. AUXILIARY MEMBERS

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

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

81. VOLUNTEER MEMBERS

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

(2) A volunteer member is not entitled to be paid for his services.

82. PROTECTION OF EMPLOYMENT RIGHTS

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

83. COMPENSATION FOR PERSONAL INJURY

The Territory shall be liable in respect of the loss of life of, or injury to, an auxiliary member or volunteer member, that occurs while that member is -

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- (a) engaged in activities under the authority of the Director, the Chief Fire Officer, Deputy Chief Fire Officer or other member who, under this Act, has the direction, control or supervision of the activity in which that member is engaged; or
- (b) participating in training under the control of -
 - (i) the Director or a person acting under the authority of the Director; or
 - (ii) the Chief Fire Officer or Deputy Chief Fire Officer,

as if that member were a person to whom the *Compensation (Australian Government Employees) Act 1971* of the Commonwealth applies.

PART VII - OFFENCES IN RELATION TO FIRE SERVICE

84. DELIVERY OF PROPERTY

A person who ceases to be a member or an auxiliary member or volunteer member who, without reasonable excuse, fails to deliver up to the Director, or to such person, and at such time and place, as the Director directs, all property which has been supplied to him for the execution of his duty or which is in his custody by virtue of his having been a member or an auxiliary member or volunteer member, is guilty of an offence.

Penalty: \$500 or imprisonment for 3 months.

85. NEGLIGENCE OF DUTY

A member shall not wilfully and without reasonable cause depart from the Territory with the intention of not returning to the Territory to return for duty, without the approval of the Director or of a person authorized by the Director to give such approval and before the resignation, if any, of that member has taken effect.

Penalty: \$500 or imprisonment for 3 months.

86. FALSE REPRESENTATION

(1) A person shall not knowingly make a false representation in connection with an application for appointment to the Fire Service.

Penalty: \$500 or imprisonment for 3 months.

(2) A prosecution for an offence against subsection (1) shall not be brought except with the written consent of the Director.

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87. 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 duties as a member and which the member has not been authorized to disclose.

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

Penalty for an offence against this section: \$500 or imprisonment for 3 months.

88. PERSONATION

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

Penalty: \$500 or imprisonment for 3 months.

89. OFFERING BRIBES

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 forgoing any of his duty as a member.

Penalty: \$2,000 or imprisonment for 12 months.

PART VIII - MISCELLANEOUS

90. ACTIONS TO BE BROUGHT WITHIN 2 MONTHS

An action or prosecution against a person for anything done in pursuance of this Act shall not be commenced later than 2 months after the act complained of was committed.

91. VICARIOUS LIABILITY OF THE CROWN

(1) In this section "member" includes an auxiliary member and volunteer member.

(2) Subject to sub-section (4), the Territory is liable in respect of a tort committed by a member in the performance or purported performance of his duties as a member in the same manner as a master is liable in respect of a tort committed by his servant in the course of the employment of that servant and shall, in respect of that

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tort, be treated for all purposes as a joint tortfeasor with the member.

(3) In proceedings by way of a claim for damages in respect of a tort, the acts done by a member in the performance or purported performance of his duties as a member may be relied on as constituting contributory negligence by the Territory if the acts could have been so relied on if they had been done by an employee of the Territory in the course of his employment.

(4) The liability of the Territory under sub-section (2) in respect of a tort committed by a member does not extend to a liability to pay damages in the nature of punitive damages in respect of the tort.

(5) Where damages or costs, other than damages in the nature of punitive damages, are awarded against a member in proceedings in respect of a tort committed by him in the performance or purported performance of his duties as a member, the Territory may pay the whole or a part of the damages or costs awarded against him and any costs incurred, and not recovered, by him in the proceedings.

(6) Where a member is liable to pay an amount under a settlement agreed to by him of a claim that has, or might have, given rise to proceedings of the kind referred to in sub-section (4), the Territory may pay the whole or a part of that amount.

(7) Where the Territory -

(a) pays an amount by way of damages or costs in respect of a tort committed by a member, being an amount that the Territory is liable to pay by virtue of sub-section (2) or pays in accordance with sub-section (5); or

(b) pays an amount in accordance with sub-section (6),

it may recover, in a court of competent jurisdiction, contribution from the member in respect of the payment.

(8) In proceedings for contribution under sub-section (7), the amount of the contribution recoverable is such amount as is found by the court to be just and equitable.

(9) For the purposes of this section, an act done, or purported to have been done, by a member acting in his capacity as a member shall be taken to have been done in the performance, or purported performance, as the case may be, of his duties as a member.

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92. CERTIFICATE OF APPOINTMENT

(1) The Director may issue to a member, auxiliary member or volunteer member a certificate in writing certifying that, on a specified date, the member was appointed to be a member or an auxiliary member or volunteer member, as the case may be.

(2) The production, in any proceedings, of a certificate purporting to be a certificate issued under sub-section (1) is prima facie evidence that the certificate is what it purports to be, that it was duly issued and of the facts stated in the certificate.

93. FIRE SERVICE GAZETTE

(1) The Director may authorize the publication of a document to be known as the *Fire Service Gazette* containing such orders, instructions, determinations, directions, notices and other things -

(a) as are required to be published in it by this Act or by the Regulations; or

(b) as the Director thinks fit.

(2) No liability, civil or criminal, shall attach to the Territory, the Commissioner of Police, the Director or any person acting under the direction of the Director, for anything contained in the *Fire Service Gazette*.

94. SERVICE OF NOTICES

A notice or other document which by this Act is required or permitted to be served on a person may be served on him personally or by post or by leaving it, with a person who has apparently attained the age of 16 years, at the usual or last-known place of abode or business, whether in the Territory or not, of the person to be served.

95. OWNER AND OCCUPIER TO PAY CHARGES

Where, pursuant to section 72, a member, with or without fire-fighting equipment, has attended a fire, the owner and the occupier of the land, building, vehicle or vessel where the fire occurred are jointly and severally liable to pay the prescribed charge in respect of that attendance which shall be a debt due and payable to the Territory if demanded by the Minister or a person authorized by the Minister for the purpose.

96. OFFENCES

(1) No person shall -

(a) wilfully obstruct or interfere with -

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- (i) the Director; or
- (ii) a member, an auxiliary member or volunteer member,
acting in the performance of a duty or the exercise of a power under this Act;
- (b) drive a vehicle over a fire hose;
- (c) drive a vehicle so near a fire or fire-fighting equipment in use at a fire as to interfere with the operation of a member, auxiliary member or volunteer member or the fire-fighting equipment;
- (d) wilfully destroy, damage or interfere with -
 - (i) fire-fighting equipment; or
 - (ii) a building used by a fire brigade, being the property of the Territory;
- (e) wilfully cover up, damage, enclose, conceal or interfere with a fire hydrant;
- (f) wilfully cover up, damage, conceal, obliterate or remove a mark, sign or letter indicating the position of or distinguishing a fire hydrant;
- (g) tamper with a fire alarm or signalling apparatus for giving notice of fire;
- (h) give a false alarm of fire; or
- (j) light a fire where it is or may become a direct or indirect danger to life or property without having first obtained the consent in writing of the Director.

Penalty for an offence against this sub-section:
\$1,000 or imprisonment for 6 months.

(2) A person who stores or deposits flammable 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.

Penalty: \$5,000 or imprisonment for 12 months.

97. DEBRIS OF FIRE MAY BE SEARCHED

The Director, the senior member within the meaning of Part V or a member of the Police Force 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

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- (b) remove and keep possession of any material which, in his opinion, may tend to prove the origin of the fire.

98. DIRECTOR MAY TAKE POSSESSION OF PREMISES AFTER FIRE

The Director, a person authorized in writing by him to do so or a member 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 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 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.

99. LIMITATION OF LIABILITY

(1) Subject to sub-section (2), no action or proceeding shall be brought against the Territory or any person to recover damages in respect of damage to property occasioned by the Director, or any other person, in the performance in good faith of his functions or duties or the exercise in good faith of his powers under this Act or the Regulations.

(2) This section shall not relieve the Territory or a person from liability in respect of damage to property caused by or in connection with the use of a fire engine or other motor vehicle used for transport purposes.

(3) In an action or proceeding taken against the Director or a member or an auxiliary member or volunteer member for their failure or neglect to make, or their negligence in making, adequate provision for the prevention of fire, the suppression and extinction of fires which may occur, and the protection of property endangered in fires, it shall be a defence to show that the provisions made were in accordance with standards approved by the Director under this Act and that the member, auxiliary member or volunteer member had complied

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with all relevant requirements and instructions of the Director.

100. GENERAL PENALTY

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

Penalty: \$1,000 or imprisonment for 6 months.

101. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of sub-section (1), the Regulations may prescribe -

- (a) the method of notifying the establishment and strength of the Fire Service to members;
- (b) the ranks in, and seniority of, members of the Fire Service;
- (c) the conditions of eligibility for appointment to the Fire Service;
- (d) methods of training of members;
- (e) examinations for qualification for promotion;
- (f) procedure for promotion of members;
- (g) the times and manner in which the Director may direct members to undergo medical examinations;
- (h) the general government, management and discipline of the Fire Service;
- (j) procedure for instituting and conducting appeals;
- (k) measures for minimizing the danger of fire;
- (m) measures for the protection of land, buildings, vehicles, vessels and persons from fire;
- (n) measures for handling flammable material and the manner of stacking, storing and keeping it;

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- (p) fees to be charged and the recovery of fees for services rendered, whether at the request of a person or in pursuance of the Regulations, in connection with the attendance at a fire or inspection and maintenance of fire alarms and other implements or things for use in the prevention or extinguishing of fire;
- (q) the formation, powers and duties of volunteer fire brigades;
- (r) the terms and conditions of employment of auxiliary members and volunteer members;
- (s) the rates of pay for auxiliary members; and
- (t) the imposition of penalties, not exceeding \$5,000, for breaches of the Regulations.

(3) The Regulations may adopt wholly or partly or by reference any of the standards, rules, codes or specifications specified in the Regulations that have been recommended or adopted by the Standards Association of Australia relating to the matter dealt with by the Regulations.

PART IX - TRANSITIONAL

102. TRANSITIONAL PROVISIONS

(1) In this section, "the repealed Act" means the Ordinances specified in the Schedule.

(2) Where, immediately before the commencement of this Act -

- (a) a permanent fire brigade or auxiliary fire brigade was established and maintained; or
- (b) a volunteer fire brigade was authorized to be formed,

under the repealed Act, that permanent fire brigade, auxiliary fire brigade or volunteer fire brigade shall be deemed to be an equivalent fire brigade established under this Act.

(3) Where, immediately before the commencement of this Act, a person was -

- (a) the Chief Fire Officer;
- (b) a Station Officer; or
- (c) a member of a fire brigade,

under the repealed Act he continues under this Act to be the Chief Fire Officer, Station Officer or a member with

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the same rank and seniority as if appointed under this Act.

(4) Notwithstanding anything in this Act, the terms and conditions of employment of the Chief Fire Officer, a Station Officer or a member referred to in sub-section (3) and those applying to a person appointed or promoted as a member of equivalent rank after the commencement of this Act but before a determination or award in substitution for the relevant determination or other means by which those terms and conditions were established is first made after that commencement, shall, until that determination or award in substitution is made, be the relevant terms and conditions applying immediately before the commencement of this Act.

(5) For the purposes of sub-section (3), where there is no rank of Station Officer or equivalent rank to the rank held by a member immediately before the commencement of this Act prescribed under this Act, that member shall hold the rank declared by the Director, by notice in the *Fire Service Gazette*, to be the rank under this Act equivalent to Station Officer or other rank, as the case may be.

(6) Where, immediately before the commencement of this Act, a person was -

- (a) a member of an auxiliary fire brigade; or
- (b) a member of a volunteer fire brigade,

under the repealed Act, he shall continue to be an auxiliary member or a volunteer member under this Act as if appointed under this Act.

SCHEDULE

Section 3

REPEALED ORDINANCES

No. 9 of 1956	<i>Fire Brigades Ordinance</i>	1956
No. 67 of 1963	<i>Fire Brigades Ordinance</i>	1963
No. 88 of 1973	<i>Fire Brigades Ordinance</i>	1973
No. 50 of 1976	<i>Fire Brigades Ordinance</i>	1976
