

Legislative Council—No 4

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South Australia

**Fire and Emergency Services (Miscellaneous)
Amendment Bill 2018**

A BILL FOR

An Act to amend the *Fire and Emergency Services Act 2005*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Fire and Emergency Services (Miscellaneous) Amendment Act 2018*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Fire and Emergency Services Act 2005*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of "Board" insert:

15 *business day* means a day other than a Saturday or a Sunday or other public holiday;

- (2) Section 3(1)—after the definition of *industrial agreement* insert:

industry brigade means a brigade registered under Part 4 Division 5A;

- (3) Section 3(1)—after the definition of *SACFS* insert:

SACFS brigade means a brigade established under section 68;

- 20 (4) Section 3—after subsection (1) insert:

(1a) A reference in this or any other Act to—

(a) an *officer* of SACFS includes a reference to a member of an industry brigade designated as an officer of that brigade by the Chief Officer of SACFS; and

25 (b) a *member* of SACFS includes a reference to a member of an industry brigade.

(1b) To avoid doubt, Part 4 Divisions 1 to 3 (inclusive) of this Act do not apply in relation to an officer or member of an industry brigade.

5—Amendment of section 26—Functions and powers

Section 26(3)—after paragraph (f) insert:

- (g) record, possess or use moving or still images for the purposes of its operations and activities, including for training purposes.

6—Amendment of section 37—Rectification where safeguards inadequate

(1) Section 37(4)—after "section 71(18) of the *Development Act 1993*" insert:

or section 157(16) of the *Planning, Development and Infrastructure Act 2016*

(2) Section 37(5)—after "the *Development Act 1993*" insert:

or the *Planning, Development and Infrastructure Act 2016*

(3) Section 37(5)—delete "that Act" and substitute:

the relevant Act

7—Amendment of section 38—Closure orders etc

(1) Section 38(1)(a)—delete paragraph (a) and substitute:

- (a) may issue a closure order requiring the occupier of the building to close the building immediately; or

(2) Section 38(1)(b)—delete "for such period as the Chief Officer or authorised officer considers necessary (but not exceeding 48 hours) for the alleviation of the danger" and substitute:

by giving all people present in the building an order to leave the building and, on being satisfied that all such persons have left the building, securing the building to prevent entry by any persons (other than persons authorised to enter the building by the Chief Officer or an authorised officer)

(3) Section 38(2)—delete subsection (2) and substitute:

(2) A closure order under subsection (1)(a)—

- (a) may be given orally or by notice in writing served on the occupier of the building; and
- (b) ceases to be in force on the expiration of 2 full business days after the day on which the order was given (or such shorter period as the Chief Officer or authorised officer may specify in the order).

(2a) An order given to people present in the building under subsection (1)(b)—

- (a) may be given by affixing a written notice containing the order in a prominent place near the main entrance to the building; and
- (b) ceases to be in force on the expiration of 2 full business days after the day on which the order was given (or such shorter period as the Chief Officer or authorised officer may specify in the order).

(4) Section 38(4)—after "building" second occurring insert:

(whether or not an order is also given to people present in the building under subsection (1)(b))

(5) Section 38(5)—delete subsection (5) and substitute:

(5) The written notice containing a closure order—

(a) must describe the danger that, in the opinion of the Chief Officer or authorised officer, necessitates closure of the building; and

(b) ceases to be in force on the expiration of 2 full business days after the day on which the order was given (or such shorter period as the Chief Officer or authorised officer may specify in the order).

(6) Section 38(6)—after "section 71(18) of the *Development Act 1993*" insert:

or section 157(16) of the *Planning, Development and Infrastructure Act 2016*

(7) Section 38(7)—after "order" insert:

(not being an order granted by the Magistrates Court under subsection (9))

(8) Section 38(8)—delete "specified in the order, he or she may, after having given prior notice of his or her" and substitute:

for which the order applies, the Chief Officer or authorised officer may, after having given prior notice of the

8—Amendment of section 42—Powers

(1) Section 42(5)—delete "in control at the scene of a fire or other emergency" and substitute:

, acting in relation to a fire or other emergency,

(2) Section 42—after subsection (5) insert:

(5a) The Chief Officer may determine that the powers of an officer under subsection (5) may only be exercised by officers of or above a certain rank.

9—Amendment of section 59—Functions and powers

Section 59(3)—after paragraph (f) insert:

(g) record, possess or use moving or still images for the purposes of its operations and activities, including for training purposes.

10—Amendment of section 68—Establishment of SACFS

Section 68(1)(b)—delete "SACFS" second occurring

11—Insertion of Part 4 Division 5A

After Part 4 Division 5 insert:

Division 5A—Industry Brigades

69A—Preliminary

In this Division—

designated area means an area of land designated by the Chief Officer in accordance with section 69B(1);

District Court means the Administrative and Disciplinary Division of the District Court;

prescribed person means—

- (a) an owner of land in a designated area; or
- (b) an occupier of land in a designated area; or
- (c) a person who holds a right to harvest forest vegetation (within the meaning of the *Forest Property Act 2000*) in a designated area; or
- (d) any other person or body with an interest in a designated area;

responsible person—the responsible person for an industry brigade is—

- (a) if the Chief Officer designates a person as the responsible person under this paragraph—that person; or
- (b) if no designation is made under paragraph (a)—the prescribed person required to establish the industry brigade under section 69C.

69B—Designated areas for industry brigades

- (1) The Chief Officer may, in accordance with the regulations, by notice in the Gazette, designate an area of land that is not within a fire district as an area of land in relation to which the Chief Officer considers an industry brigade should be established.
- (2) The Chief Officer may, by further notice in the Gazette, vary or revoke a notice under subsection (1).

69C—Establishment of industry brigades

- (1) The Chief Officer may, in accordance with the regulations, give a prescribed person a written notice relating to a designated area requiring the prescribed person, within a time specified in the notice—
 - (a) to establish an industry brigade for the designated area; and
 - (b) to apply to the Chief Officer for registration of the industry brigade; and

(c) to—

- (i) appoint members of the industry brigade; and
- (ii) supply such plant, equipment, apparatus and devices as are specified in the notice for use in the prevention or suppression of fires,

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in accordance with any requirements specified in the notice.

(2) The Chief Officer may, by written notice given to a prescribed person to whom a notice under this section has been given by the Chief Officer, vary or revoke the notice.

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(3) A prescribed person to whom a notice under this section has been given may, within 14 days after the notice was given to the person, appeal against the notice to the District Court.

(4) If a prescribed person to whom a notice under this section has been given fails to comply with the notice, the Chief Officer may—

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- (a) establish an industry brigade for the designated area; and
- (b) recover the costs of supplying and maintaining the plant, equipment, apparatus and devices specified in the notice from the prescribed person as a debt due to SACFS.

(5) The costs incurred in complying with a notice under this section will be borne by the responsible person.

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69D—Registration of industry brigades

(1) The Chief Officer may register an industry brigade.

(2) The Chief Officer may designate a member of an industry brigade as an officer of the brigade.

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(3) The Chief Officer may revoke the registration of an industry brigade by written notice to the responsible person if the Chief Officer is satisfied that there is no longer a need for the industry brigade.

69E—Chief Officer may give directions

(1) The Chief Officer may give directions to the responsible person for an industry brigade relating to—

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- (a) the supply of members of the industry brigade; and
- (b) the provision, operation, maintenance and inspection of any plant, equipment, apparatus or device of the industry brigade for use in the prevention or suppression of fires; and
- (c) the responsibilities of the industry brigade in relation to fire prevention and suppression in the designated area, including directions—

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- (i) requiring immediate reporting of a fire or other emergency; and
- (ii) requiring ongoing reporting of a fire or other emergency,

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in accordance with any procedures determined by the Chief Officer; and

- (d) the requirements applying to the industry brigade in attending a fire; and
- (e) the functions and duties of the industry brigade in relation to the prevention or mitigation of, or the means of dealing with, other emergencies; and
- (f) the operations of the industry brigade, and any related organisational or administrative matters, including directions relating to the relationship between the industry brigade and SACFS organisations; and
- (g) the training requirements that are appropriate for members of the industry brigade and the provision of reports on training provided; and
- (h) the submission to the Chief Officer on an annual basis (before the commencement of the fire danger season) of a fire management plan; and
- (i) any other matter the Chief Officer thinks fit.

- (2) The Chief Officer may give directions to a member of an industry brigade in connection with the member's performance of the member's functions and duties as a member of the industry brigade.
- (3) A person to whom a direction has been given under this section must not contravene or fail to comply with the direction.

Maximum penalty:

- (a) if the offender is a body corporate—\$75 000;
- (b) if the offender is a natural person—\$20 000.

69F—Exclusion of certain claims

A person cannot claim compensation from the Crown or SACFS in respect of a notice, direction or requirement given under this Division, or on account of any act or omission undertaken or made in good faith in the exercise (or purported exercise) of a power under this Division.

12—Amendment of section 70—Command structure

- (1) Section 70(3)—before "brigades" insert:

SACFS

- (2) Section 70—after subsection (7) insert:

- (7a) The regulations may make any provision with respect to the eligibility of employees of SACFS to be elected to an office.

13—Insertion of Part 4 Division 6A

After section 70 insert:

Division 6A—Fire and emergency safeguards

70A—Interpretation

5 (1) In this Division—

authorised officer means a person authorised by the Chief Officer to exercise the powers of an authorised officer under this Division;

10 *emergency* refers only to an emergency constituted of or arising from the escape of any hazardous material, or a situation that involves imminent danger of such escape;

occupier in respect of a public building, includes any person apparently in charge of, or having the control and management of, the building;

15 *public building* includes any structure or place (whether permanent or temporary or fixed or moveable) that is enclosed or partly enclosed—

- 20 (a) to which admission is open to members of the public or restricted to persons who are members of a club or who possess any other qualification or characteristic and whether admission is or is not procured by the payment of money or on any other condition; or
- (b) in which persons work under a contract of service.

(2) This Division applies only to a building, vehicle or place in the country.

70B—Power to enter and inspect a public building

25 (1) The Chief Officer or an authorised officer may enter and inspect a public building for the purpose of determining whether there are adequate safeguards against, or in the event of, fire or other emergency.

30 (2) The Chief Officer or authorised officer—

- (a) may exercise the powers conferred by subsection (1) at any reasonable time including any time when the building is open to the public; and
- 35 (b) may, if there is reason to believe that urgent action is required, use such force as is reasonable in the circumstances to enter and inspect the public building.

70C—Rectification where safeguards inadequate

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- (1) If, after having inspected a public building, the Chief Officer or authorised officer is of the opinion that there are not adequate safeguards against, or in the event of, fire or other emergency as a result of—
- (a) obstruction, closing or locking of an aisle, corridor, door, gangway, lobby, passage, exit, escape or any other means of egress from the building; or
- (b) overcrowding of the building; or
- 10 (c) noncompliance with the requirements of this or any other Act,
- the Chief Officer or authorised officer may do 1 or more of the following:
- (d) using such force as is reasonably necessary, cause the aisle, corridor, door, gangway, lobby, passage, exit, escape or other means of egress from the building to be cleared, opened or unlocked (as the case requires);
- (e) in the event of overcrowding, cause persons to be removed from the building;
- 20 (f) order the occupier to take specified action to rectify the situation within a specified period.
- (2) A rectification order may be given orally or by notice in writing served on the occupier of the building.
- (3) If a rectification order is given orally, the Chief Officer or authorised officer must as soon as practicable cause a written notice containing the order to be served on the occupier of the building.
- 25 (4) If a notice containing a rectification order is served on the occupier of the building, the Chief Officer or authorised officer must as soon as practicable cause a copy of the notice to be served on any authority established under section 71(18) of the *Development Act 1993* or section 157(16) of the *Planning, Development and Infrastructure Act 2016* for the area in which the building is situated.
- 30 (5) If any matter or thing with respect to fire safety is regulated or required to be done under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*, a person may not be ordered under this section to do anything in relation to that matter or thing beyond what is necessary to achieve compliance with the requirements under the relevant Act.
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70D—Closure orders etc

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- (1) If, after having inspected a public building, the Chief Officer or authorised officer is satisfied that the safety of persons in the public building cannot reasonably be ensured by other means, the Chief Officer or authorised officer—
- (a) may issue a closure order requiring the occupier of the building to close the building immediately; or
- 10 (b) may, if a closure order cannot for any reason be given to the occupier, or if a closure order, having been given to the occupier, is not immediately obeyed, close the building by giving all people present in the building an order to leave the building and, on being satisfied that all such persons have left the building, securing the building to prevent entry by any persons (other than persons authorised to enter the building by the Chief Officer or an authorised officer).
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- (2) A closure order under subsection (1)(a)—
- (a) may be given orally or by notice in writing served on the occupier of the building; and
- 20 (b) ceases to be in force on the expiration of 2 full business days after the day on which the order was given (or such shorter period as the Chief Officer or authorised officer may specify in the order).
- (3) An order given to people present in the building under subsection (1)(b)—
- 25 (a) may be given by affixing a written notice containing the order in a prominent place near the main entrance to the building; and
- (b) ceases to be in force on the expiration of 2 full business days after the day on which the order was given (or such shorter period as the Chief Officer or authorised officer may specify in the order).
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- (4) If a closure order is given orally, the Chief Officer or authorised officer must as soon as practicable cause a written notice containing the order to be served on the occupier of the building.
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- (5) If a closure order cannot for any reason be given to the occupier of the building, the Chief Officer or authorised officer must cause a written notice containing the order to be affixed in a prominent place near the main entrance to the building (whether or not an order is also given to people present in the building in accordance with subsection (1)(b)).
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- (6) The written notice containing a closure order—
- (a) must describe the danger that, in the opinion of the Chief Officer or authorised officer, necessitates closure of the building; and

(b) ceases to be in force on the expiration of 2 full business days after the day on which the order was given (or such shorter period as the Chief Officer or authorised officer may specify in the order).

- 5 (7) If a notice containing a closure order is served on the occupier of the building, the Chief Officer or authorised officer must as soon as practicable cause a copy of the notice to be served on any authority established under section 71(18) of the *Development Act 1993* or
- 10 section 157(16) of the *Planning, Development and Infrastructure Act 2016* for the area in which the building is situated.
- (8) When the Chief Officer or authorised officer is satisfied that the danger has been alleviated, the Chief Officer or authorised officer may rescind the order (not being an order granted by the Magistrates Court under subsection (10)).
- 15 (9) If the Chief Officer or authorised officer is of the opinion that the danger cannot be, or has not been, alleviated within the period for which the order applies, the Chief Officer or authorised officer may, after having given prior notice of the intention to do so to the occupier of the building, apply to the Magistrates Court for an order
- 20 directing the occupier to close or keep closed, as the case requires, the building for such period as the Court considers necessary for the alleviation of the danger.
- (10) The Magistrates Court may, on an application made under subsection (9)—
- 25 (a) grant the order, subject to such conditions as the Court sees fit to impose; or
- (b) refuse to grant the order,
- and make such other orders as it thinks fit.
- (11) If an application is made under subsection (9) while a building is closed pursuant to this section, the closure of the building continues until the application is determined or withdrawn.
- (12) The Chief Officer or authorised officer, or the occupier or owner of a building to which an order under subsection (10) applies, may apply to the Magistrates Court, at any time, for the order to be rescinded.
- 35 (13) The Magistrates Court may, on an application made under subsection (12), rescind or refuse to rescind the order to which that application relates and make such other orders as it thinks fit.

70E—Powers in relation to places at which danger of fire may exist

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- (1) The Chief Officer or an authorised officer may, at any time and using such force as is reasonably required in the circumstances, enter and inspect any building, vehicle or place at or in which the Chief Officer or authorised officer has reason to believe explosives or any hazardous, combustible or flammable materials or substances are being kept or any conditions exist that are likely to be a source of danger to life or property in the event of fire, or are likely to cause an outbreak of fire.
 - (2) If the Chief Officer or authorised officer finds explosives or any hazardous, combustible or flammable materials or substances that are being kept in an unsafe manner or finds any conditions that are likely to be a source of danger to life or property in the event of fire, or likely to cause an outbreak of fire, the Chief Officer or authorised officer may—
 - (a) take action to alleviate the danger;
 - (b) order the occupier or person apparently in charge of the building, vehicle or place to take specified action within a specified period to alleviate the danger.
 - (3) An order under this section may be given orally or by notice in writing served on the occupier or person apparently in charge of the building, vehicle or place.
 - (4) If an order under this section is given orally, the Chief Officer or authorised officer must as soon as practicable cause a written notice containing the order to be served on the occupier or person apparently in charge of the building, vehicle or place.

70F—Related matters

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- (1) The Chief Officer or an authorised officer may, when exercising powers conferred by this Division, be accompanied by 1 or more members of SACFS or police officers as the Chief Officer or authorised officer thinks fit.
 - (2) A person must not fail to comply with—
 - (a) an order given by the Chief Officer or an authorised officer under this Division; or
 - (b) an order of the Magistrates Court under this Division.

Maximum penalty: \$5 000.

14—Amendment of section 71—State Bushfire Coordination Committee

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- (1) Section 71(2)(b)—before subparagraph (i) insert:
 - (i1) 1 person, not being from the emergency services sector;
 - (2) Section 71(9)—delete "10 members" and substitute:

11 members

15—Amendment of section 80—Total fire ban

- (1) Section 80(2)—delete "from a radio station in the State" and substitute:

, published or otherwise made available (in such manner as the Chief Officer thinks fit) in the State or the part of the State to which the total fire ban applies

- (2) Section 80(3)—after "broadcast" insert:

, published or made available

- (3) Section 80(5)—delete subsection (5) and substitute:

(5) If the Chief Officer wishes to vary or revoke a total fire ban under this section, the Chief Officer must arrange to have the variation or revocation broadcast, published or otherwise made available (in such manner as the Chief Officer thinks fit) in the State or the part of the State to which the total fire ban applies.

- (4) Section 80(6)—delete "from a broadcasting station in this State" and substitute:

, published or otherwise made available in the State or a specified part of the State in accordance with this section

16—Amendment of section 81—Permit to light and maintain a fire

Section 81—after subsection (13) insert:

(13a) Each council—

(a) that is a rural council; or

(b) that has within its area a designated urban bushfire risk area, must appoint at least 1 person as an authorised officer for the purpose of issuing permits under this section.

(13b) The Chief Officer may, on application by a council to which subsection (13a) applies, exempt the council from the requirement under that subsection.

17—Amendment of section 82—Power to direct

- (1) Section 82(2)(a)—delete "a fire" and substitute:

or maintain a fire (whether or not pursuant to a permit under section 81)

- (2) Section 82(2)(b)—after "lighted" insert:

or maintained

- (3) Section 82(2)—after "lighting" insert:

or maintaining

18—Amendment of section 94—Failure by a council to exercise statutory powers

Section 94(4)(c)—delete "South Australian Bushfire Prevention Advisory Committee" and substitute:

State Bushfire Coordination Committee

23—Insertion of Part 5 Division 4A

After section 116 insert:

Division 4A—Command structure

116A—Command structure

- 5 (1) There will be such officers within the SASES command structure as the regulations may prescribe or as the Chief Officer thinks fit to appoint.
- 10 (2) The Chief Officer, or the regulations, may provide that an employee of SASES is not eligible for appointment to a specified rank or ranks within the SASES.
- (3) The relative authority of each officer and member of SASES will be in accordance with a command structure determined by the Chief Officer.
- 15 (4) Each officer or member of SASES must recognise the authority and obey the directions of an officer to whom that officer or member is subordinate.
- (5) The Chief Officer may, on reasonable grounds—
- 20 (a) demote a person who holds a particular rank in SASES;
- (b) disqualify a person from holding a rank in SASES;
- (c) disqualify a person from membership of SASES;
- (d) exercise any other disciplinary power in accordance with the regulations.
- 25 (6) Before taking action against a person under subsection (5), the Chief Officer must give the person a reasonable opportunity to appear before the Chief Officer (either personally or through the person's representative) and to make submissions in relation to the proposed course of action.

24—Amendment of section 118—Powers

Section 118—after subsection (4) insert:

- 30 (4a) If an officer of SASES, acting in relation to an emergency, engages a contractor to demolish, contain, neutralise, dispose of or remove any dangerous or hazardous structure, object, substance or materials, the costs of engaging the contractor are recoverable by SASES as a debt from the owner of the dangerous structure, object, substance or materials in a court of competent jurisdiction.
- 35 (4b) The Chief Officer may determine that the powers of an officer under subsection (4a) may only be exercised by officers of or above a certain rank.

- (4c) In any proceedings under subsection (4a), a certificate apparently signed by the Chief Officer certifying the costs of engaging the contractor is, in the absence of proof to the contrary, to be accepted as proof of the costs so certified.

5 **25—Insertion of section 127A**

After section 127 insert:

127A—Employment

10 A person who is absent from employment on official duties as a member of an emergency services organisation, in connection with a fire or other emergency, is not liable to be dismissed or prejudiced in employment by reason of that absence.

26—Amendment of section 142—Payment of costs and expenses for certain vessels and property

- 15 (1) Section 142(1)—delete "or an SACFS brigade attends at the scene of a fire or other emergency occurring on a prescribed vessel, the costs and expenses incurred by the fire brigade or brigade (as the case may be)" and substitute:

, an SACFS brigade or an SASES unit attends at the scene of a fire or other emergency occurring on a prescribed vessel, the costs and expenses incurred in attending

- 20 (2) Section 142(5)—delete "by the fire brigade" and substitute:

in attending

- (3) Section 142(9), definition of *authorised officer*—delete "or the Chief Officer of SACFS" and substitute:

, the Chief Officer of SACFS or the Chief Officer of SASES

- 25 (4) Section 142(9), definition of *relevant entity*—after paragraph (b) insert:

(c) in relation to an SASES unit—SASES.

27—Amendment of section 143—Fees

- (1) Section 143(2)(a)—after "false" insert:

or unwanted

- 30 (2) Section 143—after subsection (3) insert:

(4) The regulations may prescribe an additional fee, or a method for the calculation of an additional fee, for the late payment of prescribed fees and charges generally, or of any particular prescribed fees or charges.

35 **28—Amendment of Schedule 5—Regulations**

Schedule 5—after item 7 insert:

7A Any matter relevant to the establishment or operations of industry brigades.

Schedule 1—Transitional provisions

1—SASES unit constitution

- (1) The constitution of a SASES unit is revoked on the commencement of section 22.
- (2) Any process for dissolution of a SASES unit that has been commenced but not completed before the commencement of section 22 is not affected by the revocation of the SASES unit's constitution under subclause (1) (and may be continued and completed by the Chief Officer in accordance with the regulations).

2—SASES command structure

A person who, immediately before the commencement of section 23, holds an office or rank within SASES continues to hold that office or rank as if they had been appointed in accordance with Part 5 Division 4A of the *Fire and Emergency Services Act 2005* (as inserted by section 23).