

South Australia

## **Fire and Emergency Services Act 2005**

An Act to establish the South Australian Fire and Emergency Services Commission; to provide for the continuation of a metropolitan fire and emergency service, a country fire and emergency service, and a State emergency service; to provide for the prevention, control and suppression of fires and for the handling of certain emergency situations; and for other purposes.

---

### **Contents**

#### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Establishment of areas for fire and emergency services
- 5 Application of Act

#### Part 2—South Australian Fire and Emergency Services Commission

##### Division 1—Establishment of Commission

- 6 Establishment of Commission
- 7 Ministerial control

##### Division 2—Functions and powers of Commission

- 8 Functions and powers
- 9 Directions

##### Division 3—Constitution of board

- 10 Commission to be managed by a board
- 11 Constitution of the Board
- 12 Terms and conditions of membership
- 13 Vacancies or defects in appointment of members
- 14 Proceedings
- 15 Conflict of interest

##### Division 4—Chief Executive and staff

- 16 Chief Executive
- 17 Staff

##### Division 5—Advisory Board and committees

- 18 Advisory Board
- 19 Committees

**Division 6—Delegation**

20 Delegation

**Division 7—Accounts, audits and reports**

21 Accounts and audit

22 Annual reports

**Division 8—Common seal and execution of documents**

23 Common seal and execution of documents

**Part 3—The South Australian Metropolitan Fire Service**

**Division 1—Continuation of service**

24 Continuation of service

25 Constitution of SAMFS

**Division 2—Functions and powers**

26 Functions and powers

**Division 3—Chief Officer and staff**

27 Chief Officer

28 Deputy Chief Officer and Assistant Chief Officers

29 Other officers and firefighters

30 Employees

31 Staff

32 Workforce plans

33 Delegation

**Division 4—Fire brigades**

34 Fire brigades

**Division 5—Fire and emergency safeguards**

35 Interpretation and application

36 Power to enter and inspect a public building

37 Rectification where safeguards inadequate

38 Closure orders

39 Powers in relation to places at which danger of fire may exist

40 Related matters

**Division 6—Powers and duties relating to fires and emergencies**

**Subdivision 1—Exercise of control at scene of fire or other emergency**

41 Exercise of control at scene of fire or other emergency

**Subdivision 2—Exercise of powers at scene of fire or other emergency**

42 Powers

**Subdivision 3—Related matters**

43 Provision of water

44 Disconnection of gas or electricity

## Division 7—Discipline

### Subdivision 1—The Disciplinary Committee

45 The South Australian Metropolitan Fire Service Disciplinary Committee

### Subdivision 2—Disciplinary proceedings

46 Chief Officer may reprimand  
47 Proceedings before Disciplinary Committee  
48 Suspension pending hearing of complaint

### Subdivision 3—Appeals

49 Appeals  
50 Representation of parties and costs  
51 Participation of assessors in appeals

## Division 8—Related matters

52 Accounts and audit  
53 Annual reports  
54 Common seal and execution of documents  
55 UFU  
56 Fire prevention on private land

## Part 4—The South Australian Country Fire Service

### Division 1—Continuation of service

57 Continuation of service  
58 Constitution of SACFS

### Division 2—Functions and powers

59 Functions and powers

### Division 3—Chief Officer and staff

60 Chief Officer  
61 Deputy Chief Officer and Assistant Chief Officers  
62 Other officers  
63 Employees  
64 Staff  
65 Workforce plans  
66 Delegation

### Division 4—SACFS regions

67 SACFS regions

### Division 5—Organisational structure

68 Establishment of SACFS organisations  
69 South Australian Volunteer Fire-Brigades Association

### Division 6—Command structure

70 Command structure

## Division 7—Fire prevention authorities

### Subdivision 1—The South Australian Bushfire Prevention Advisory Committee

- 71 The South Australian Bushfire Prevention Advisory Committee
- 72 The Advisory Committee's functions

### Subdivision 2—Regional and district bushfire prevention committees

- 73 Regional bushfire prevention committees
- 74 Functions of regional committees
- 75 District bushfire prevention committees
- 76 Functions of district committees

### Subdivision 3—Fire prevention officers

- 77 Fire prevention officers

## Division 8—Fire prevention

### Subdivision 1—Fire danger season

- 78 Fire danger season
- 79 Fires during fire danger season

### Subdivision 2—Total fire ban

- 80 Total fire ban

### Subdivision 3—Permits

- 81 Permit to light and maintain fire

### Subdivision 4—Power of direction

- 82 Power to direct

### Subdivision 5—Duties to prevent fires

- 83 Private land
- 84 Council land
- 85 Crown land

### Subdivision 6—Miscellaneous precautions against fire

- 86 Fire safety at premises
- 87 Removal of debris from roads
- 88 Fire extinguishers to be carried on caravans
- 89 Restriction on the use of certain appliances etc
- 90 Burning objects and material
- 91 Duty to report unattended fires

### Subdivision 7—Supplementary provisions

- 92 Power of inspection
- 93 Delegation by councils
- 94 Failure by a council to exercise statutory powers
- 95 Endangering life or property

---

## Division 9—Powers and duties relating to fires and emergencies

### Subdivision 1—Exercise of control at scene of fire or other emergency

96 Exercise of control at scene of fire or other emergency

### Subdivision 2—Exercise of powers at scene of fire or other emergency

97 Powers

### Subdivision 3—Related matters

98 Provision of water

99 Disconnection of gas or electricity

## Division 10—Related matters

100 Accounts and audit

101 Annual reports

102 Common seal and execution of documents

103 Fire control officers

104 Giving of expiation notices

105 Appropriation of penalties

## Part 5—The South Australian State Emergency Service

### Division 1—Continuation of service

106 Continuation of service

107 Constitution of SASES

### Division 2—Functions and powers

108 Functions and powers

### Division 3—Chief Officer and staff

109 Chief Officer

110 Deputy Chief Officer and Assistant Chief Officers

111 Other officers

112 Employees

113 Staff

114 Workforce plans

115 Delegation

### Division 4—SASES units

116 SASES units

### Division 5—Powers and duties relating to emergencies

#### Subdivision 1—Exercise of control at scene of emergency

117 Exercise of control at scene of emergency

#### Subdivision 2—Exercise of powers at scene of emergency

118 Powers

#### Subdivision 3—Related matter

119 Disconnection of gas or electricity

**Division 6—Related matters**

- 120 Accounts and audit
- 121 Annual reports
- 122 Common seal and execution of documents
- 123 S.A.S.E.S. Volunteers' Association Incorporated

**Part 6—Miscellaneous**

- 124 Investigations
- 125 Obstruction etc
- 126 Impersonating an emergency services officer etc
- 127 Protection from liability
- 128 Exemption from certain rates and taxes
- 129 Power to provide sirens
- 130 Provision of uniforms
- 131 Protection of names and logos
- 132 Attendance by police
- 133 Disclosure of information
- 134 Unauthorised fire brigades
- 135 Interference with fire plugs, fire alarms etc
- 136 False or misleading statements
- 137 Continuing offences
- 138 Offences by bodies corporate
- 139 Onus of proof
- 140 Evidentiary
- 141 Insurance policies to cover damage
- 142 Payment of costs and expenses for certain vessels and property
- 143 Fees
- 144 Services
- 145 Acting outside the State
- 146 Recognised interstate organisations
- 147 Inquests
- 148 Regulations
- 149 Review of Act

**Schedule 1—Appointment and selection of assessors for appeals under Part 3**

**Schedule 2—Code of conduct to be observed by officers and firefighters for the purposes of Part 3**

**Schedule 3—Supplementary provisions relating to the South Australian Bushfire Prevention Advisory Committee**

- 1 Terms and conditions of office
- 2 Quorum etc
- 3 Validity of acts
- 4 Conflict of interest

**Schedule 4—Supplementary provisions relating to regional and district bushfire prevention committees**

- 1 Interpretation
- 2 Terms and conditions of office

- 3 Constitution
- 4 Quorum etc
- 5 Conflict of interest

### Schedule 5—Regulations

### Schedule 6—Transitional provisions

### Part 11—Transitional provisions

- 14 Special provisions relating to the repeal of the *Country Fires Act 1989*
- 15 Specific provisions relating to the repeal of the *South Australian Metropolitan Fire Service Act 1936*
- 16 Specific provisions relating to the repeal of the *State Emergency Service Act 1987*
- 17 Staff
- 18 Presiding member of Commission
- 19 Other provisions

### Legislative history

---





**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Fire and Emergency Services Act 2005*.

### **3—Interpretation**

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

***appointed member*** of the Board means a member of the Board appointed by the Governor under section 11(1)(e);

***award*** includes—

- (a) an award or order of the Industrial Relations Commission of South Australia; and
- (b) an award or order of the Australian Industrial Relations Commission;

***Board*** means the board established as the governing body of the Commission under Part 2 Division 3;

***CE of the Commission*** means the person holding the office of Chief Executive of the Commission under Part 2 Division 4 and includes a person for the time being acting in that office;

***Chief Officer*** of SACFS means the person holding the office of Chief Officer of SACFS under Part 4 Division 3 and includes a person for the time being acting in that office;

***Chief Officer*** of SAMFS means the person holding the office of Chief Officer of SAMFS under Part 3 Division 3 and includes a person for the time being acting in that office;

***Chief Officer*** of SASES means the person holding the office of Chief Officer of SASES under Part 5 Division 3 and includes a person for the time being acting in that office;

***Commission*** means the South Australian Fire and Emergency Services Commission established under Part 2 Division 1;

***council*** means a council constituted under the *Local Government Act 1999*;

***country*** means any part of the State outside an SAMFS fire district;

***department*** means the administrative unit designated from time to time by the Minister by notice in the Gazette as being the relevant department for the purposes of this Act;

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

***domestic partner*** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**emergency** means an event that causes, or threatens to cause—

- (a) the death of, or injury or other damage to the health of, any person; or
- (b) the destruction of, or damage to, any property; or
- (c) a disruption to essential services or to services usually enjoyed by the community; or
- (d) harm to the environment, or to flora or fauna;

**emergency services organisation** means—

- (a) SAMFS; or
- (b) SACFS; or
- (c) SASES;

**emergency services sector** comprises—

- (a) the Commission; and
- (b) SAMFS; and
- (c) SACFS; and
- (d) SASES;

**ex officio member** of the Board means a member of the Board who holds office *ex officio* under section 12(1);

**fire control officer** means a fire control officer appointed by the Chief Officer of SACFS under section 103;

**fire danger season**, in relation to a part of the State, means a fire danger season fixed for that part of the State under Part 4 Division 8;

**fire district** means a fire district established under section 4 for the purposes of the operations of SAMFS;

**firefighter** includes a control room operator;

**fire-fighting** means any activity directed towards—

- (a) preventing, controlling or extinguishing fires;
- (b) dealing with other emergencies that require SAMFS or SACFS to act to protect life, property or the environment;

**fire prevention officer** means a fire prevention officer appointed by a council under Part 4 Division 7 Subdivision 3 (and includes an assistant fire prevention officer);

**forest reserve** means a forest reserve under the *Forestry Act 1950*;

**industrial agreement** means—

- (a) an enterprise agreement in force under the *Fair Work Act 1994*; or
- (b) a certified agreement or an Australian workplace agreement in force under the *Workplace Relations Act 1996* of the Commonwealth as amended from time to time;

**Industrial Relations Commission** means the Industrial Relations Commission of South Australia;

**LGA** means the Local Government Association of South Australia;

**misconduct**, in relation to an officer or firefighter of SAMFS, means a contravention of or a failure to comply with the Code of Conduct set out in Schedule 2;

**officer** of an emergency services organisation means a person who is designated as an officer of that organisation within the command or organisational structure of the organisation;

**owner**—

- (a) in relation to land alienated from the Crown in fee simple—means the owner of an estate in fee simple in the land;
- (b) in relation to land held from the Crown by lease, licence or agreement to purchase—means the lessee, licensee or purchaser,

and includes the occupier;

**private land** means—

- (a) land alienated from the Crown in fee simple; or
- (b) land held from the Crown by lease, licence or agreement to purchase,

other than land under the care, control or management of a council or a Minister, agency or instrumentality of the Crown;

**public sector agency** means a public sector agency under the *Public Sector Management Act 1995*;

**relative**, in relation to a person, means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

**rescue** means the safe removal of persons or animals from actual or threatened danger of physical harm;

**rural council** means a council whose area lies wholly or partially outside a fire district;

**SACFS** means the South Australian Country Fire Service under Part 4;

**SACFS organisation** means—

- (a) an SACFS brigade; or
- (b) an SACFS group;

**SACFS region** means a region established under Part 4 Division 4;

**SAMFS** means the South Australian Metropolitan Fire Service under Part 3;

**SASES** means the South Australian State Emergency Service under Part 5;

**SASES unit** means an SASES unit established under Part 5 Division 4;

**spouse**—a person is the spouse of another if they are legally married;

**UFU** means—

- (a) the United Firefighters' Union of South Australia Incorporated; and
- (b) the United Firefighters' Union of Australia (South Australian Branch);

**vehicle** includes an aircraft or vessel.

- (2) For the purposes of this Act, bushfire prevention relates to any reasonable action that may be taken in the country areas of the State—
  - (a) to reduce or eliminate the risk of outbreak of bushfires; or
  - (b) to prevent or inhibit—
    - (i) the spread of any bushfire; or
    - (ii) any increase in the intensity or seriousness of any bushfire; or
  - (c) to mitigate the effect of any bushfire.
- (3) SACFS, the South Australian Bushfire Prevention Advisory Committee and any regional or district bushfire prevention committees constituted under Part 4 must, in the exercise and performance of powers and functions under this Act—
  - (a) have due regard to the impact of their actions on the environment; and
  - (b) seek to achieve a proper balance between bushfire prevention and proper land management in the country.
- (4) For the purposes of this Act, a person is an associate of another person if—
  - (a) the other person is a relative of the person or of the person's spouse or domestic partner; or
  - (b) the other person—
    - (i) is a body corporate; and
    - (ii) the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or
  - (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner, or a body corporate referred to in paragraph (b), is a beneficiary; or
  - (d) the person is declared by the regulations to be an associate of the other person.
- (5) To avoid doubt, a person cannot, at any particular time, be the Chief Officer of more than 1 emergency services organisation.

#### **4—Establishment of areas for fire and emergency services**

- (1) The Commission may, by notice in the Gazette, establish a fire district or fire districts for the purposes of the operations of SAMFS.
- (2) The Commission may, by notice in the Gazette—
  - (a) vary the boundaries of a fire district;
  - (b) abolish a fire district.
- (3) Those parts of the State that lie outside a fire district will be taken to be the areas of the State that apply for the purposes of the operations of SACFS.

- (4) In addition—
  - (a) SAMFS may act outside a fire district that applies under subsection (1), and SACFS may act outside an area that applies under subsection (3) (subject to any other provision made by this Act); and
  - (b) SAMFS and SACFS operations include acting in relation to any vessel.
- (5) SASES may act in any part of the State (subject to any other provision made by this Act).
- (6) Before a notice is published under subsection (1) or (2), the Commission must consult with—
  - (a) the Chief Officer of SAMFS; and
  - (b) the Chief Officer of SACFS.

## **5—Application of Act**

- (1) This Act is in addition to and does not limit, or derogate from, the provisions of any other Act.
- (2) This Act does not apply in relation to the taking of measures to bring an industrial dispute to an end or to control civil disorders (but may apply in relation to any fire or other emergency arising during the course of an industrial dispute or any civil disorder).



## **Part 2—South Australian Fire and Emergency Services Commission**

### **Division 1—Establishment of Commission**

#### **6—Establishment of Commission**

- (1) The *South Australian Fire and Emergency Services Commission* is established.
- (2) The Commission—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) The Commission is an agency of the Crown and holds its property on behalf of the Crown.

#### **7—Ministerial control**

- (1) The Commission is subject to the control and direction of the Minister.
- (2) A direction given to the Commission under this section must be in writing.
- (3) The Minister must, within 6 sitting days after giving a direction to the Commission under this section, have copies of the direction laid before both Houses of Parliament.
- (4) If the Minister gives a direction under this section, the Commission must cause a statement of the fact that the direction was given to be published in its next annual report.

### **Division 2—Functions and powers of Commission**

#### **8—Functions and powers**

- (1) The Commission has the following functions:
  - (a) to develop and maintain a strategic and policy framework across the emergency services sector;
  - (b) to develop and implement a framework of sound corporate governance across the emergency services sector;
  - (c) to ensure that appropriate strategic, administrative and other support services are provided to the emergency services organisations;
  - (d) to ensure that appropriate strategic and business plans are developed, maintained and implemented across the emergency services sector;
  - (e) to provide for the effective allocation of resources within the emergency services sector;

- (f) to ensure that the emergency services organisations have appropriate systems and practices in place—
    - (i) to provide for effective management and planning; and
    - (ii) to monitor management performance against plans and targets, and to take corrective action as necessary;
  - (g) to ensure that the emergency services organisations maintain appropriate risk-management systems and practices;
  - (h) to ensure that the emergency services organisations regularly review, and revise as necessary, their plans, structures, systems, targets and practices to address changing circumstances and to improve the provision of emergency services and business practices;
  - (i) to ensure that the emergency services organisations meet their statutory responsibilities and comply with the provisions of this or any other relevant Act;
  - (j) to ensure the observance of high ethical standards within the emergency services sector;
  - (k) to foster and support career development opportunities for officers and staff within the emergency services sector;
  - (l) to support and encourage voluntary participation in SACFS and SASES, and to foster and support personal development opportunities for members of the emergency services organisations;
  - (m) to recognise outstanding achievements of persons who are involved in the provision of fire and emergency services, or who take action or assist at the scene of any fire or emergency or who otherwise support the objectives or activities of the emergency services sector (or any part of that sector), within any part of the State;
  - (n) to ensure that there is effective consultation with the community in relation to the operation of this Act;
  - (o) to disseminate knowledge in the field of fire and emergency services in order to advance community safety;
  - (p) to maintain an appropriate level of strategic liaison with the peak body responsible for the management of emergencies in the State;
  - (q) to provide regular reports to the Minister on the activities and performance of the emergency services sector;
  - (r) to provide to the Minister reports or advice in relation to the operation of this Act or the provision of emergency services under this Act;
  - (s) to perform any other function assigned to the Commission by or under this or any other Act.
- (2) The Commission may, for the purpose of performing its functions, exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions.
- (3) The Commission must prepare a charter relating to its functions and operations.



- (4) The Commission must provide a copy of the charter to the Minister and ensure that it is publicly available.

## **9—Directions**

- (1) Subject to subsection (2), the Commission may, in performing its functions, give directions to SAMFS, SACFS or SASES.
- (2) The Commission may not give a direction in relation to any matter concerning the procedures that are relevant to responding to an emergency situation or to dealing with any matter that may arise at the scene of an emergency.

## **Division 3—Constitution of board**

### **10—Commission to be managed by a board**

- (1) The Commission is managed and administered by a board established as the governing body of the Commission under this Division.
- (2) An act done or decision made by the Board in the management or administration of the affairs of the Commission (including by exercising any power of the Commission under this or any other Act) is an act or decision of the Commission.

### **11—Constitution of the Board**

- (1) The Board consists of the following members:
  - (a) the presiding member, being the person for the time being holding the position of Chief Executive of the Commission under Division 4; and
  - (b) the Chief Officer of SAMFS; and
  - (c) the Chief Officer of SACFS; and
  - (d) the Chief Officer of SASES; and
  - (e) 4 members appointed by the Governor of whom—
    - (i) 1 must be a person appointed on the nomination of the South Australian Volunteer Fire-Brigades Association; and
    - (ii) 1 must be a person appointed on the nomination of S.A.S.E.S. Volunteers Association Incorporated; and
    - (iii) 2 must be persons appointed on the nomination of the Minister, each being a person who, in the opinion of the Minister, is qualified for appointment to the board because of his or her knowledge of, or experience in, one or more of the fields of commerce, economics, finance, accounting, law or public administration and each being a person who has suitable volunteer experience as determined under regulations made for the purposes of this provision.
- (2) At least 1 member of the Board must be a woman and at least 1 member must be a man.
- (3) The Governor may appoint a suitable person to be the deputy of a member of the Board (including an *ex officio* member of the Board) and that person may, in the absence of that member, act as a member of the Board.

## **12—Terms and conditions of membership**

- (1) A member of the Board, other than an appointed member, holds office *ex officio*.
- (2) An appointed member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (3) The Governor may remove an appointed member of the Board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for being absent from 4 or more consecutive meetings of the Board without leave of the Board; or
  - (d) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of an appointed member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (3).

## **13—Vacancies or defects in appointment of members**

- (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (2) On the office of an appointed member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

## **14—Proceedings**

- (1) The presiding member will, if present at a meeting of the Board, preside at that meeting, and in the absence of that member, the members present (and voting) will decide who is to preside (and this person must be an *ex officio* member of the Board).
- (2) 3 of the 4 *ex officio* members of the Board constitute a quorum of the Board.
- (3) Each *ex officio* member of the Board present at a meeting of the Board has 1 vote on a matter arising for decision at the meeting and, if these votes are equal, the member of the Board presiding at the meeting does not have a second or casting vote.
- (4) An appointed member of the Board does not have a vote at a meeting of the Board.
- (5) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.

- (6) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
  - (b) a majority of the *ex officio* members of the Board express concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.
- (7) The Board must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Board may determine its own procedures.

### **15—Conflict of interest**

- (1) A member of the Board who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board—
  - (a) must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest; and
  - (b) must not take part in any discussion by the Board relating to that matter; and
  - (c) must not vote in relation to that matter; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) Without limiting the effect of this section, a member will be taken to have an interest in a matter for the purposes of this section if an associate of the member has an interest in the matter.
- (3) This section does not apply in relation to a matter in which a member has an interest by virtue of being a member of an emergency services organisation.
- (4) This section does not apply in relation to a matter in which a member has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (5) The Minister may, by notice published in the Gazette, exempt a member (conditionally or unconditionally) from the application of a provision of this section, and may, by further notice published in the Gazette, vary or revoke such an exemption.
- (6) Non-compliance by a member with a duty imposed by this section constitutes a ground for removal of the member from office.
- (7) If a member or former member is convicted of an offence for a contravention of this section, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Minister—
  - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

- (8) If a member or former member is guilty of a contravention of this section, the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

## **Division 4—Chief Executive and staff**

### **16—Chief Executive**

- (1) The office of Chief Executive (CE) of the Commission is established.
- (2) The CE—
- (a) unless otherwise determined by the Minister, must be a person with experience in the provision of fire or emergency services; and
  - (b) will be appointed by the Minister on conditions determined by the Minister for a term, not exceeding 5 years, specified in the instrument of appointment (and, at the expiration of a term of appointment, is eligible for reappointment).
- (3) The CE is responsible for—
- (a) managing the staff and resources of the Commission; and
  - (b) giving effect to the policies and decisions of the Board insofar as they relate to the management of the Commission.
- (4) The Minister may, while the CE is absent from the duties of office or while the position of CE is temporarily vacant, appoint a person to act in the office of CE (on conditions determined by the Minister).
- (5) A person appointed under subsection (4) will not act as a deputy member of the Board unless specifically appointed as a deputy of the CE under section 11(3).

### **17—Staff**

- (1) The staff of the Commission will comprise—
- (a) persons appointed by the Chief Executive of the Commission on terms and conditions determined by the Chief Executive and approved by the Commissioner for Public Employment (on the basis that the Chief Executive (and any successor) is the employer);
  - (b) persons employed in a public sector agency and made available to assist the Commission.
- (2) The Commission is responsible for any costs or expenses associated with the employment of a person under subsection (1)(a).

## Division 5—Advisory Board and committees

### 18—Advisory Board

- (1) The Minister must establish the Fire and Emergency Services Advisory Board (the *Advisory Board*).
- (2) The Advisory Board has the following functions:
  - (a) to provide to the Commission and the emergency service organisations advice on matters relating to prevention, preparedness, response and recovery as part of emergency management;
  - (b) to provide to the Minister, the Commission and the emergency service organisations advice on other matters within the emergency services sector, particularly in relation to matters affecting volunteers;
  - (c) to provide advice to—
    - (i) the Minister on any matter referred by the Minister;
    - (ii) the Commission on any matter referred by the Commission;
    - (iii) an emergency services organisation on any matter referred by the organisation.
- (3) The Advisory Board consists of the following members appointed by the Minister:
  - (a) 1 member appointed to be the presiding member of the Advisory Board; and
  - (b) 1 member appointed on the joint nomination of the Chief Officer of SAMFS and UFU, being a person who is, under the organisational structures of SAMFS, a *retained firefighter*; and
  - (c) 2 members appointed on the nomination of the South Australian Volunteers Fire-Brigades Association; and
  - (d) 2 members appointed on the nomination of S.A.S.E.S. Volunteers' Association Incorporated; and
  - (e) 1 member appointed on the nomination of the LGA; and
  - (f) 1 member appointed on the nomination of the UFU.
- (4) The presiding member must be a person who, in the opinion of the Minister, is independent of the Commission, the emergency services organisations, and the associations that represent the interests of members of the emergency services organisations.
- (5) At least 1 member of the Advisory Board must be a woman and at least 1 member must be a man.
- (6) A member of the Advisory Board will be appointed on conditions determined by the Minister for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (7) The Minister may remove a member of the Advisory Board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or

- (c) for being absent from 4 or more consecutive meetings of the Advisory Board without leave of the Board; or
  - (d) for failure or incapacity to carry out official duties satisfactorily.
- (8) The office of a member of the Advisory Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (7).
- (9) The Minister may appoint a suitable person to be the deputy of a member of the Advisory Board and that person may, in the absence of that member, act as a member of the Advisory Board.
- (10) The procedures to be observed in relation to the conduct of the business of the Advisory Board will be—
  - (a) as prescribed by the regulations;
  - (b) insofar as the procedure is not determined under paragraph (a)—as determined by the Minister;
  - (c) insofar as the procedure is not determined under paragraph (a) or (b)—as determined by the Advisory Board.
- (11) 4 members of the Advisory Board constitute a quorum of the Board.
- (12) However, the member of the Advisory Board appointed under subsection (3)(f) will not have a vote at a meeting of the Advisory Board.
- (13) If—
  - (a) the Advisory Board provides written advice to the Minister; and
  - (b) the Advisory Board, at the time of providing that advice or at some later time, by notice in writing to the Minister, requests that a copy of the advice be tabled in Parliament,then the Minister must, within 6 sitting days after receiving the request, have copies of the advice laid before both Houses of Parliament.
- (14) The Governor may, by regulation, provide for any other matter that may be relevant to the processes or activities of the Advisory Board.

## **19—Committees**

- (1) The Commission may establish such committees (including advisory committees) as the Commission thinks fit.
- (2) Subject to any direction of the Minister, the membership of a committee will be determined by the Commission.
- (3) A committee may, but need not, consist of, or include, members of the Board.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as prescribed by the regulations;

- (b) insofar as the procedure is not determined under paragraph (a)—as determined by the Commission;
- (c) insofar as the procedure is not determined under paragraph (a) or (b)—as determined by the relevant committee.

## **Division 6—Delegation**

### **20—Delegation**

- (1) The Commission may delegate a power or function under this or any other Act—
  - (a) to a member of the Board; or
  - (b) to a committee established by the Commission; or
  - (c) to a person for the time being holding or acting in a particular office or position; or
  - (d) to any other person or body.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Commission to act in any matter; and
  - (d) is revocable at will by the Commission.
- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 7—Accounts, audits and reports**

### **21—Accounts and audit**

- (1) The Commission must—
  - (a) keep proper accounting records in relation to its financial affairs, and have annual statements of account prepared in respect of each financial year; and
  - (b) cause consolidated statements of account for the emergency services sector to be prepared in respect of each financial year.
- (2) The Auditor-General may at any time audit the accounts of the Commission or of the emergency services sector and must audit the annual statements of account required under this section.

### **22—Annual reports**

- (1) The Commission must, on or before 31 October in each year, provide to the Minister a report on the activities of the emergency services sector during the preceding financial year (and need not provide a report under section 6A of the *Public Sector Management Act 1995*).

- (2) The report must—
  - (a) incorporate the information contained in the annual reports of the emergency services organisations for the relevant financial year; and
  - (b) include the audited statements of account required under this Division; and
  - (c) include any other information that would be required if the Commission were reporting under the *Public Sector Management Act 1995*; and
  - (d) comply with any other requirements prescribed by or under this Act or the regulations.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **Division 8—Common seal and execution of documents**

### **23—Common seal and execution of documents**

- (1) The common seal of the Commission must not be affixed to a document except in pursuance of a decision of the Board and the affixing of the seal must be attested by the signatures of 2 members of the Board.
- (2) The Commission may, by instrument under its common seal, authorise a member of the Board, a member of the staff of the Commission (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Commission subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of the Commission.
- (4) A document is duly executed by the Commission if—
  - (a) the common seal of the Commission is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of the Commission by a person or persons in accordance with an authority conferred under this section.
- (5) If an apparently genuine document purports to bear the common seal of the Commission, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Commission has been duly affixed to that document.



## **Part 3—The South Australian Metropolitan Fire Service**

### **Division 1—Continuation of service**

#### **24—Continuation of service**

- (1) The *South Australian Metropolitan Fire Service* (SAMFS) continues in existence.
- (2) SAMFS—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) SAMFS is an agency of the Crown and holds its property on behalf of the Crown.

#### **25—Constitution of SAMFS**

- (1) SAMFS consists of—
  - (a) the Chief Officer of SAMFS; and
  - (b) all other officers and firefighters of SAMFS; and
  - (c) all other employees of SAMFS.
- (2) The Chief Officer of SAMFS is responsible for the management and administration of SAMFS (and will, in undertaking this responsibility, also be the Chief Executive of SAMFS).
- (3) An act done or decision made by the Chief Officer in the management or administration of the affairs of SAMFS (including by exercising any power of SAMFS under this or any other Act) is an act or decision of SAMFS.

### **Division 2—Functions and powers**

#### **26—Functions and powers**

- (1) SAMFS has the following functions:
  - (a) to provide services with a view to preventing the outbreak of fires, or reducing the impact of fires, in any fire district;
  - (b) to provide efficient and responsive services in any fire district for the purpose of fighting fires, dealing with other emergencies or undertaking any rescue;
  - (c) to protect life, property and environmental assets from fire or other emergencies in any fire district;
  - (d) to develop and maintain plans to cope with the effects of fires or emergencies in any fire district;

- (e) to provide services or support to assist with recovery in the event of a fire or other emergency in a fire district;
  - (f) to perform any other function assigned to SAMFS by or under this or any other Act.
- (2) SAMFS may, for the purpose of performing its functions, exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions.
- (3) SAMFS may, for example—
- (a) enter into any form of contract or arrangement;
  - (b) acquire, hold, deal with and dispose of real and personal property;
  - (c) provide and maintain appliances and equipment for fire stations and fire brigades;
  - (d) establish, maintain or monitor alarm systems;
  - (e) make representations and provide advice relating to fire safety or fire prevention;
  - (f) publish or disseminate information.

## **Division 3—Chief Officer and staff**

### **27—Chief Officer**

- (1) The office of Chief Officer of SAMFS is established (and a reference in this Part to the "Chief Officer" will be a reference to the Chief Officer of SAMFS).
- (2) The Chief Officer will be appointed by the Minister after taking into account the recommendation of the CE of the Commission.
- (3) The Chief Officer will be appointed on terms and conditions determined by the Minister after consultation with the Commissioner for Public Employment.
- (4) In addition to the Chief Officer's responsibility for the management and administration of SAMFS, the Chief Officer has ultimate responsibility for the operations of SAMFS and may therefore—
  - (a) control all resources of SAMFS; and
  - (b) manage the staff of SAMFS and give directions to its members; and
  - (c) assume control of any SAMFS operations; and
  - (d) perform any other function or exercise any other power that may be conferred by or under this or any other Act, or that may be necessary or expedient for, or incidental to, maintaining, improving or supporting the operation of SAMFS.

### **28—Deputy Chief Officer and Assistant Chief Officers**

- (1) The Chief Officer may appoint a Deputy Chief Officer and 1 or more Assistant Chief Officers (on the basis that the Chief Officer (and any successor) is the employer).
- (2) The terms and conditions of an appointment under this section will be subject to the approval of the Commissioner for Public Employment after consultation with the Chief Officer and the Commission.

- (3) The Deputy Chief Officer (if appointed) or, if necessary, an Assistant Chief Officer designated by the Minister, may, while the Chief Officer is absent from the duties of office or while the position of Chief Officer is temporarily vacant, perform and exercise the functions and powers of the Chief Officer (but not so as to act as a deputy member of the Board unless specifically appointed as deputy of the Chief Officer under section 11(3)).

## **29—Other officers and firefighters**

- (1) SAMFS will have such other officers and firefighters as the Chief Officer thinks fit to appoint.
- (2) The following procedures will apply in relation to appointments under this section:
- (a) if the Chief Officer wishes to appoint a person to a position under this section, the Chief Officer must first nominate that person for appointment;
  - (b) the Chief Officer must then give notice of the nomination to all officers and firefighters who are of the same rank as, or of a lower rank than, the position to which the Chief Officer wishes to make the appointment;
  - (c) an officer or firefighter who is entitled to notice of the nomination under paragraph (b) may, within 14 days after the notice is given, appeal against the nomination to the Industrial Relations Commission;
  - (d) the Chief Officer may confirm the nomination if no appeal has been instituted under paragraph (c) but if an appeal is so instituted then the Chief Officer must comply with any direction given by the Industrial Relations Commission in the matter;
  - (e) in relation to an appeal instituted under paragraph (c)—
    - (i) the Industrial Relations Commission will sit with assessors selected in accordance with Schedule 1;
    - (ii) an appellant may appear personally or be represented by a member of an industrial association to which the appellant belongs or by a legal practitioner;
    - (iii) the Chief Officer may appear personally or be represented by another officer of SAMFS or, if an appellant is being represented by a legal practitioner, the Chief Officer may also be represented by a legal practitioner;
    - (iv) the Industrial Relations Commission may, on hearing the appeal, confirm the appointment of the person who has been nominated or direct the Chief Officer to revoke the nomination and direct that an appellant be appointed to the position;
    - (v) in making its decision on an appeal, the Industrial Relations Commission must have regard to the criteria (if any) relating to the appointment and promotion of officers or firefighters that are contained in an award or industrial agreement that applies in relation to the relevant position but, if no such criteria exist, the Commission must have regard to the qualifications, aptitude and conduct of the person nominated for the position and of the appellant or appellants;

- (vi) the Industrial Relations Commission may, in connection with the proceedings, award costs against SAMFS but may not award costs against an appellant.
- (3) For the purposes of subsection (2), notice of a nomination will be taken to have been given to an officer or firefighter if written notice of the nomination has been displayed for not less than 7 days in a prominent place in the fire station or workplace at which he or she is based.
- (4) Subsection (2) does not apply in relation to the appointment of a person to the lowest rank in SAMFS.
- (5) An appointment under this section will be on terms and conditions determined by the Chief Officer and approved by the Commission (on the basis that the Chief Officer (and any successor) is the employer and subject to the provisions of any award or industrial agreement).
- (6) Nothing in this section limits the ability of the Chief Officer to appoint a suitable person to act in an office or position while the person appointed to that office or position is absent or temporarily unable to act in that office or position, or while that office or position is temporarily vacant.

### **30—Employees**

- (1) The Chief Officer may appoint other persons as employees of SAMFS (on the basis that the Chief Officer (and any successor) is the employer).
- (2) An appointment under this section will be on terms and conditions determined by the Chief Officer and approved by the Commission (subject to the provisions of any award or industrial agreement).

### **31—Staff**

- (1) The staff of SAMFS will comprise all officers, firefighters and other employees of SAMFS.
- (2) A member of the staff of SAMFS must comply with a direction of—
  - (a) the Chief Officer; or
  - (b) an officer—
    - (i) to whom the member of staff is responsible by virtue of this Act; or
    - (ii) who is in a position of authority over the member of staff by virtue of a determination of the Chief Officer.
- (3) In addition, SAMFS may make use of the services of persons employed in any public sector agency made available to assist SAMFS.
- (4) SAMFS is responsible for any costs or expenses associated with the employment of a member of the staff of SAMFS.

### **32—Workforce plans**

For the purposes of appointments to the staff of SAMFS under this Division—

- (a) the Chief Officer must, at least once in every year, submit a workforce plan for approval by the Commission; and

- (b) the Commission may approve a workforce plan submitted by the Chief Officer without amendment, or with any amendments determined by the Commission after consultation with the Chief Officer; and
- (c) the Chief Officer must not make an appointment under this Division unless it accords with the workforce plan last approved by the Commission.

### 33—Delegation

- (1) The Chief Officer may delegate a power or function of the Chief Officer or SAMFS under this or any other Act—
  - (a) to a member of the staff of SAMFS or to a person made available to assist SAMFS; or
  - (b) to a committee established under this Act; or
  - (c) to a person for the time being holding or acting in a particular office or position; or
  - (d) to any other person or body.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Chief Officer to act in any matter; and
  - (d) is revocable at will by the Chief Officer.
- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

## Division 4—Fire brigades

### 34—Fire brigades

- (1) The Chief Officer may establish a fire brigade within any fire district.
- (2) A fire brigade established under this section will be under the command of—
  - (a) the Chief Officer; or
  - (b) a commanding officer who is responsible to the Chief Officer for the discipline and control of the fire brigade.
- (3) The Chief Officer may inspect any fire brigade established under this section at any time.

## Division 5—Fire and emergency safeguards

### 35—Interpretation and application

- (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;

*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;

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

- (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 a fire district.

### **36—Power to enter and inspect a public building**

- (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.
- (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
  - (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.

### **37—Rectification where safeguards inadequate**

- (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
  - (c) non-compliance with the requirements of this or any other Act,
- he or she 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;
  - (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.
- (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* for the area in which the building is situated.
- (5) If any matter or thing with respect to fire safety is regulated or required to be done under the *Development Act 1993*, 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 that Act.

### 38—Closure orders

- (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 order the occupier of the building to close the building immediately and for such period as the Chief Officer or authorised officer considers necessary (but not exceeding 48 hours) for the alleviation of the danger; or
  - (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 for such period as the Chief Officer or authorised officer considers necessary (but not exceeding 48 hours) for the alleviation of the danger.
- (2) A closure order may be given orally or by notice in writing served on the occupier of the building.
- (3) 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.
- (4) 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.
- (5) The written notice containing a closure order must—
  - (a) describe the danger that, in the opinion of the Chief Officer or authorised officer, necessitates closure of the building; and
  - (b) state the period (not exceeding 48 hours) for which the building is to be closed.
- (6) 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* for the area in which the building is situated.
- (7) When the Chief Officer or authorised officer is satisfied that the danger has been alleviated, he or she may rescind the order.

- (8) If the Chief Officer or authorised officer is of the opinion that the danger cannot be, or has not been, alleviated within the period specified in the order, he or she may, after having given prior notice of his or her intention to do so to the occupier of the building, apply to the Magistrates Court for an order 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.
- (9) The Magistrates Court may, on an application made under subsection (8)—
- (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.
- (10) If an application is made under subsection (8) while a building is closed pursuant to this section, the closure of the building continues until the application is determined or withdrawn.
- (11) The Chief Officer or authorised officer, or the occupier or owner of a building to which an order under subsection (9) applies, may apply to the Magistrates Court, at any time, for the order to be rescinded.
- (12) The Magistrates Court may, on an application made under subsection (11), rescind or refuse to rescind the order to which that application relates and make such other orders as it thinks fit.

### **39—Powers in relation to places at which danger of fire may exist**

- (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 he or she 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 himself or herself 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.



#### **40—Related matters**

- (1) The Chief Officer or an authorised officer may, when exercising powers conferred by this Division, be accompanied by 1 or more members of SAMFS 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.

### **Division 6—Powers and duties relating to fires and emergencies**

#### **Subdivision 1—Exercise of control at scene of fire or other emergency**

##### **41—Exercise of control at scene of fire or other emergency**

- (1) This section applies in relation to any situation that may involve an emergency.
- (2) If—
  - (a) the situation—
    - (i) involves or arises from—
      - (A) a fire or a situation that involves imminent danger of fire; or
      - (B) the escape of any hazardous material or a situation that involves imminent danger of such an escape,  
that occurs—
        - (C) in a fire district; or
        - (D) on a vessel; or
        - (E) in the country in a situation where no member of SACFS has assumed control under Part 4; or
      - (ii) involves or arises from any other emergency or the imminent danger of any other emergency, wherever occurring, at which a person with lawful authority to assume control has not done so; and
    - (b) an SAMFS brigade has attended,  
then the highest ranking officer of SAMFS in attendance may assume control (and all members of the brigade, and all other persons present at the scene, will be subject to his or her control).
  - (3) Nothing in this section—
    - (a) derogates from the powers of the Chief Officer of SAMFS to assume control of any operations; or
    - (b) prevents a member of SAMFS who has taken control of any operations surrendering control of those operations to any other person or body; or

- (c) prevents another person or body with lawful authority to do so assuming control at the scene of any emergency.
- (4) This section operates subject to the provisions of the *Emergency Management Act 2004*.

## **Subdivision 2—Exercise of powers at scene of fire or other emergency**

### **42—Powers**

- (1) An officer of SAMFS may take, or cause to be taken, any action that appears necessary or desirable for the purpose of protecting the life, health or safety of any person or animal, or protecting property, relevant services or the environment, or for any other purpose associated with dealing with a fire or other emergency or the threat of a fire or other emergency (despite the fact that the action may result in damage to, or destruction of, property or any aspect of the environment or cause pecuniary loss to any person).
- (2) Without limiting or derogating from the operation of subsection (1), an officer under subsection (1), or any person acting under the command of an officer, may (to such extent as appears necessary or desirable in the circumstances)—
  - (a) enter and, if necessary, break into any land, building, structure or vehicle (using such force as is necessary);
  - (b) take possession of, protect or assume control over any land, body of water, building, structure, vehicle or other thing;
  - (c) remove or destroy, or order the destruction of, any building, structure, vehicle, vegetation or seriously injured animal;
  - (d) direct the owner of, or the person for the time being in charge of, any real or personal property to place it under the control or at the disposition of a specified person;
  - (e) remove, or cause to be removed, to such place as the officer or other person thinks fit, any person or animal, or direct the evacuation or removal of any person or animal;
  - (f) direct or prohibit the movement of persons, animals or vehicles;
  - (g) remove flammable material or any other hazardous material, or cause flammable material or any other hazardous material to be removed, from any place, building or structure;
  - (h) cause any supply of fuel or other flammable liquid, any gas or electricity, or any other hazardous material, to be shut off or disconnected;
  - (i) direct a person who is in a position to do so—
    - (i) to stop any work or operation; or
    - (ii) to close any premises or other place; or
    - (iii) to contain the escape of any hazardous material, or to nullify the effects of the escape of any hazardous material; or

- (iv) to shut off or remove any plant, equipment, apparatus or device or to perform any operation in relation to any plant, equipment, apparatus or device;
  - (j) take and use water or any other fire extinguishing material from any place;
  - (k) shut off, or cut off, the supply of water or any drainage facility;
  - (l) make use of the gratuitous services of any person;
  - (m) direct, insofar as may be reasonably necessary in the circumstances, any person to assist in the exercise of any power under this section;
  - (n) cause another fire to be lit (despite any other provision of this Act);
  - (o) exercise any prescribed power.
- (3) In the absence of an officer, the powers of an officer under subsection (1) or (2) may be exercised by a firefighter.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction of an officer of SAMFS or of any other person given in accordance with subsection (1) or (2).
- Maximum penalty:
- (a) if the offender is a body corporate—\$75 000;
  - (b) if the offender is a natural person—\$20 000.
- (5) If an officer of SAMFS in control at the scene of a fire or other 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 SAMFS as a debt from the owner of the dangerous structure, object, substance or materials in a court of competent jurisdiction.
- (6) In any proceedings under subsection (5), 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.
- (7) This section operates subject to the provisions of the *Emergency Management Act 2004*.

### Subdivision 3—Related matters

#### 43—Provision of water

- (1) A water authority for an area in which a fire or other emergency has occurred, or is in imminent danger of occurring, must, at the direction of a person who is lawfully dealing with the situation under this Division, send a competent person to assist in the provision of water.
- (2) In this section—  
**water authority** means a body brought within the ambit of this definition by the regulations.

#### **44—Disconnection of gas or electricity**

A person or company supplying gas or electricity to any premises or other place where a fire or other emergency has occurred, or is in imminent danger of occurring, must, at the direction of a person who is lawfully dealing with the situation under this Division, send a competent person to shut off or disconnect the supply of gas or electricity to the premises or other place, or to any adjacent premises or place (and the person so attending must then comply with any direction that may be given in the exercise of powers under this Division).

### **Division 7—Discipline**

#### **Subdivision 1—The Disciplinary Committee**

#### **45—The South Australian Metropolitan Fire Service Disciplinary Committee**

- (1) The *South Australian Metropolitan Fire Service Disciplinary Committee* continues in existence.
- (2) The Committee will consist of the following members appointed by the Governor:
  - (a) a legal practitioner of not less than 7 years standing who will be the presiding member and will be appointed on the nomination of the Minister;
  - (b) an officer appointed on the nomination of the Chief Officer of SAMFS;
  - (c) an officer appointed on the nomination of UFU;
  - (d) a firefighter appointed on the nomination of UFU.
- (3) The Minister must consult the Chief Officer and UFU before nominating the presiding officer.
- (4) For the purpose of hearing a complaint against a member of SAMFS the Committee will be constituted of—
  - (a) the presiding member; and
  - (b) the member nominated by the Chief Officer; and
  - (c) —
    - (i) if the person whose conduct is the subject of the complaint is an officer—the officer nominated by UFU; or
    - (ii) if the person whose conduct is the subject of the complaint is a firefighter—the firefighter nominated by UFU.
- (5) A question arising before the Committee will be determined in accordance with the opinion of a majority of the members constituting the Committee.
- (6) A person against whom a complaint has been made by the Chief Officer to the Committee may, if he or she wishes, be represented before the Committee by a member of the industrial association to which he or she belongs or, with approval of the Committee, by a legal practitioner.

- (7) If the person against whom a complaint has been made by the Chief Officer to the Committee is represented before the Committee by a legal practitioner, the Chief Officer may be represented in those proceedings by a legal practitioner but otherwise the Chief Officer will be represented by an officer of SAMFS.
- (8) The Committee may order SAMFS to pay such allowances and expenses as the Committee thinks fit to a person (other than a person who is a party to proceedings before the Committee) who has attended and given evidence in proceedings before the Committee and the amount ordered to be paid may be recovered from SAMFS as a debt.
- (9) A member of the Committee shall be entitled to such remuneration, allowances and expenses as are determined by the Governor.

## **Subdivision 2—Disciplinary proceedings**

### **46—Chief Officer may reprimand**

If, after making a full inquiry, the Chief Officer is satisfied that an officer or firefighter of SAMFS has been guilty of misconduct, the Chief Officer may reprimand the officer or firefighter.

### **47—Proceedings before Disciplinary Committee**

- (1) The Disciplinary Committee will, on complaint made by the Chief Officer, investigate any alleged misconduct on the part of an officer or firefighter of SAMFS or, if an officer or firefighter has been convicted of an offence punishable by imprisonment, determine what penalty (if any) should be imposed on the officer or firefighter in relation to the conduct that comprised the offence.
- (2) If the Committee finds that an officer or firefighter has been guilty of misconduct or has been convicted of an offence punishable by imprisonment, it may impose 1 or more of the following penalties:
  - (a) it may reprimand him or her;
  - (b) it may reduce him or her in rank for a period determined by the Committee;
  - (c) it may suspend him or her from office with, or without, pay;
  - (d) it may dismiss him or her.

### **48—Suspension pending hearing of complaint**

- (1) The Chief Officer may suspend from office an officer or firefighter against whom the Chief Officer has made a complaint to the Disciplinary Committee.
- (2) A person suspended under subsection (1) will be suspended on full pay and the suspension will not operate after the complaint has been finally determined by the Committee or the District Court.

## **Subdivision 3—Appeals**

### **49—Appeals**

- (1) An officer or firefighter who is aggrieved by a decision of the Disciplinary Committee or the Chief Officer pursuant to Subdivision 2 may appeal to the District Court.

- (2) An appeal must be instituted within 14 days of the decision appealed against.
- (3) The Chief Officer is entitled to appear and be heard on an appeal.

### **50—Representation of parties and costs**

- (1) In any proceedings before the District Court on an appeal—
  - (a) the appellant may appear personally or be represented by a member of an industrial association to which the appellant belongs or by a legal practitioner;
  - (b) the Chief Officer may appear personally or be represented by another officer of SAMFS or, if the appellant is represented by a legal practitioner, the Chief Officer may also be represented by a legal practitioner.
- (2) The District Court may, in proceedings before it under this Subdivision, award costs against SAMFS but may not award costs against the appellant.

### **51—Participation of assessors in appeals**

In any proceedings under this Subdivision, the District Court will sit with assessors selected in accordance with Schedule 1.

## **Division 8—Related matters**

### **52—Accounts and audit**

- (1) SAMFS must keep proper accounting records in relation to its financial affairs, and have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General must audit the annual statements of account required under this section.

### **53—Annual reports**

- (1) SAMFS must, on or before 30 September in each year, deliver to the Commission a report on the activities of SAMFS during the preceding financial year (and need not provide a report under section 6A of the *Public Sector Management Act 1995*).
- (2) The report must—
  - (a) include the audited statements of account required under this Division; and
  - (b) include any other information that would be required if SAMFS were reporting under the *Public Sector Management Act 1995*; and
  - (c) comply with any other requirements prescribed by or under this Act or the regulations.

### **54—Common seal and execution of documents**

- (1) The Chief Officer may—
  - (a) execute a document on behalf of SAMFS; and
  - (b) affix the common seal of SAMFS to a document.
- (2) The Chief Officer may, by instrument in writing, authorise another person to exercise a power under subsection (1) subject to conditions and limitations (if any) specified in the instrument for authority.

- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of SAMFS.
- (4) A document is duly executed by SAMFS if—
  - (a) the common seal of SAMFS is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of SAMFS by a person or persons in accordance with any authority conferred under this section.
- (5) Where an apparently genuine document purports to bear the common seal of SAMFS, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of SAMFS has been duly affixed to that document.

## 55—UFU

The associations comprising UFU are recognised as associations that represent the interests of career firefighters.

## 56—Fire prevention on private land

- (1) In this section—

*authorised person* means an authorised person under the *Local Government Act 1999*;  
*flammable undergrowth* includes undergrowth that is likely to become flammable.
- (2) If a council believes that conditions on private land in a fire district are such as to cause an unreasonable risk of the outbreak of fire on the land, or the spread of fire through the land, due to the presence of flammable undergrowth or other flammable or combustible materials or substances, the council may, by notice in writing that complies with any prescribed requirement, require the owner to take specified action to remedy the situation within such time as may be specified in the notice.
- (3) A notice under subsection (2) may include directions concerning the storage of flammable or combustible materials or substances on the land (or in a building on the land).
- (4) A person to whom a notice under subsection (2) is addressed must not fail to comply with the notice.

Maximum penalty:

- (a) in the case of a person who wilfully fails to comply with a notice—\$10 000;
- (b) in any other case—\$1 250.

Expiation fee: except in the case of a person who wilfully fails to comply with a notice—\$160.

- (5) The council may, by further notice in writing, vary or revoke a notice under this section.
- (6) A notice under subsection (2) or (5) may be given—
  - (a) personally; or
  - (b) by post; or
  - (c) if the council cannot, after making reasonable inquiries, ascertain the name and address of the person to whom the notice is to be given—

- (i) by publishing the notice in a newspaper circulating in the area of the land; and
  - (ii) by leaving a copy of the notice in a conspicuous place on the land.
- (7) If a notice under subsection (2) or (5) is directed to the occupier of land, the council must take reasonable steps to serve a copy of the notice on the owner.
- (8) Service under subsection (7) may be effected—
  - (a) personally; or
  - (b) by post.
- (9) An authorised person may, for purposes connected with the administration or enforcement of this section, after giving reasonable notice to the occupier of land, enter and inspect the land.
- (10) If a person fails to comply with the requirements of a notice under this section, the council may proceed to carry out those requirements and may recover the expenses incurred as a debt due to it from the person to whom the notice was addressed.
- (11) Any expenses recoverable under subsection (10) will be a charge against the land to which they relate and may be recovered as if they were rates in arrears.
- (12) A person to whom notice is addressed may appeal against a requirement of the notice to the District Court.
- (13) An appeal must be instituted within 14 days of the requirement being imposed.
- (14) The appellant must send a copy of the notice of appeal to the council that issued the notice to which the appeal relates.
- (15) If the District Court confirms, varies or substitutes a requirement, the person to whom the requirement is addressed must comply with the requirement within a period specified by the District Court.

Maximum penalty: \$10 000 or imprisonment for 2 years.



## **Part 4—The South Australian Country Fire Service**

### **Division 1—Continuation of service**

#### **57—Continuation of service**

- (1) The Country Fire Service continues in existence as the *South Australian Country Fire Service* (SACFS).
- (2) SACFS—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) SACFS is an agency of the Crown and holds its property on behalf of the Crown.

#### **58—Constitution of SACFS**

- (1) SACFS consists of—
  - (a) the Chief Officer of SACFS; and
  - (b) all other officers of SACFS; and
  - (c) all SACFS organisations and all members of SACFS organisations; and
  - (d) all employees of SACFS.
- (2) The Chief Officer of SACFS is responsible for the management and administration of SACFS (and will, in undertaking this responsibility, also be the Chief Executive of SACFS).
- (3) An act done or decision made by the Chief Officer in the management or administration of the affairs of SACFS (including by exercising any power of SACFS under this or any other Act) is an act or decision of SACFS.

### **Division 2—Functions and powers**

#### **59—Functions and powers**

- (1) SACFS has the following functions:
  - (a) to provide services with a view to preventing the outbreak of fires, or reducing the impact of fires, in the country;
  - (b) to provide efficient and responsive services in the country for the purpose of fighting fires, dealing with other emergencies or undertaking any rescue;
  - (c) to protect life, property and environmental assets from fire and other emergencies occurring in the country;

- (d) to develop and maintain plans to cope with the effects of fires or emergencies in the country;
  - (e) to provide services or support to assist with recovery in the event of a fire or other emergency in the country;
  - (f) to perform any other function assigned to SACFS by or under this or any other Act.
- (2) SACFS may, for the purpose of performing its functions, exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions.
- (3) SACFS may, for example—
- (a) enter into any form of contract or arrangement;
  - (b) acquire, hold, deal with and dispose of real and personal property;
  - (c) provide and maintain appliances and equipment for SACFS organisations;
  - (d) establish, maintain or monitor alarm systems;
  - (e) make representations and provide advice relating to fire safety or fire prevention;
  - (f) publish or disseminate information.

### **Division 3—Chief Officer and staff**

#### **60—Chief Officer**

- (1) The office of Chief Officer of SACFS is established (and a reference in this Part to the "Chief Officer" will be a reference to the Chief Officer of SACFS).
- (2) The Chief Officer will be appointed by the Minister after taking into account the recommendation of the CE of the Commission.
- (3) The Chief Officer will be appointed on terms and conditions determined by the Minister after consultation with the Commissioner for Public Employment.
- (4) In addition to the Chief Officer's responsibility for the management and administration of SACFS, the Chief Officer has ultimate responsibility for the operations of SACFS and may therefore—
  - (a) control all resources of SACFS; and
  - (b) manage the staff of SACFS and give directions to its members; and
  - (c) assume control of any SACFS operations; and
  - (d) perform any other function or exercise any other power that may be conferred by or under this or any other Act, or that may be necessary or expedient for, or incidental to, maintaining, improving or supporting the operation of SACFS.

#### **61—Deputy Chief Officer and Assistant Chief Officers**

- (1) The Chief Officer may appoint a Deputy Chief Officer and 1 or more Assistant Chief Officers (on the basis that the Chief Officer (and any successor) is the employer).

- (2) The terms and conditions of an appointment under this section will be subject to the approval of the Commissioner for Public Employment after consultation with the Chief Officer and the Commission.
- (3) The Deputy Chief Officer (if appointed) or, if necessary, an Assistant Chief Officer designated by the Minister, may, while the Chief Officer is absent from the duties of office or while the position of Chief Officer is temporarily vacant, perform and exercise the functions and powers of the Chief Officer (but not so as to act as a deputy member of the Board unless specifically appointed as deputy of the Chief Officer under section 11(3)).

## **62—Other officers**

- (1) SACFS will have such other officers (other than officers who hold office as volunteer members of SACFS organisations) as the Chief Officer thinks fit to appoint (on the basis that the Chief Officer (and any successor) is the employer).
- (2) An appointment under this section will be on terms and conditions determined by the Chief Officer and approved by the Commission (subject to the provisions of any award or industrial agreement).
- (3) Nothing in this section limits the ability of the Chief Officer to appoint a suitable person to act in an office or position while the person appointed to that office or position is absent or temporarily unable to act in that office or position, or while that office or position is temporarily vacant.

## **63—Employees**

- (1) The Chief Officer may appoint other persons as employees of SACFS (on the basis that the Chief Officer (and any successor) is the employer).
- (2) An appointment under this section will be on terms and conditions determined by the Chief Officer and approved by the Commission (subject to the provisions of any award or industrial agreement).

## **64—Staff**

- (1) The staff of SACFS will comprise all officers (being officers appointed to the staff of SACFS rather than being volunteer members of SACFS organisations) and other employees of SACFS.
- (2) A member of the staff of SACFS must comply with a direction of—
  - (a) the Chief Officer; or
  - (b) an officer—
    - (i) to whom the member of staff is responsible by virtue of this Act; or
    - (ii) who is in a position of authority over the member of staff by virtue of a determination of the Chief Officer.
- (3) In addition, SACFS may make use of persons employed in any public sector agency made available to assist SACFS.
- (4) SACFS is responsible for any costs or expenses associated with the employment of a member of the staff of SACFS.

## **65—Workforce plans**

For the purposes of appointments to the staff of SACFS under this Division—

- (a) the Chief Officer must, at least once in every year, submit a workforce plan for approval by the Commission; and
- (b) the Commission may approve a workforce plan submitted by the Chief Officer without amendment, or with any amendments determined by the Commission after consultation with the Chief Officer; and
- (c) the Chief Officer must not make an appointment under this Division unless it accords with the workforce plan last approved by the Commission.

## **66—Delegation**

- (1) The Chief Officer may delegate a power or function of the Chief Officer or SACFS under this or any other Act—
  - (a) to a member of the staff of SACFS or to a person made available to assist SACFS; or
  - (b) to a member of an SACFS organisation; or
  - (c) to a committee established under this Act; or
  - (d) to a person for the time being holding or acting in a particular office or position; or
  - (e) to any other person or body.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Chief Officer to act in any matter; and
  - (d) is revocable at will by the Chief Officer.
- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 4—SACFS regions**

### **67—SACFS regions**

The Chief Officer may, by notice in the Gazette—

- (a) declare any part of the country to be an SACFS region;
- (b) assign a name to any such region;
- (c) vary or revoke any such notice.

## Division 5—Organisational structure

### 68—Establishment of SACFS organisations

- (1) The Chief Officer may, by notice in the Gazette—
  - (a) establish an SACFS brigade;
  - (b) establish an SACFS group in relation to 2 or more SACFS brigades within a region.
- (2) An SACFS organisation will have a constitution that accords with any requirements prescribed by the regulations or determined by the Chief Officer.
- (3) The constitution of an SACFS organisation may be amended, with the approval of the Chief Officer, in the manner set out in the constitution.
- (4) An SACFS organisation—
  - (a) has the functions and powers prescribed by this Act or the regulations or set out in its constitution; and
  - (b) has such other functions or powers as may be assigned to it by the Chief Officer.
- (5) An SACFS organisation must—
  - (a) maintain such records as may be prescribed, specified by its constitution, or required by the Chief Officer; and
  - (b) furnish to the Chief Officer, in a manner and form determined by the Chief Officer, any information required by the Chief Officer.
- (6) The mutual relationship of SACFS organisations and their obligations to each other will, subject to this Act, be determined by the Chief Officer.
- (7) The Chief Officer may, by notice in the Gazette, dissolve an SACFS organisation.
- (8) The Chief Officer must, before determining to dissolve an SACFS organisation, consult with—
  - (a) the members of the organisation; and
  - (b) the local community; and
  - (c) the South Australian Volunteer Fire-Brigades Association,in relation to the matter.
- (9) For the purposes of subsection (8), the Chief Officer must—
  - (a) organise a meeting at which the Chief Officer, or a representative or representatives of the Chief Officer, can meet with the members of the organisation (or their representative or representatives); and
  - (b) organise a public meeting within the local community; and
  - (c) invite the South Australian Volunteer Fire-Brigades Association to—
    - (i) make written submissions to the Chief Officer in relation to the matter; or

- (ii) have a representative, or representatives, attend a meeting with the Chief Officer or a representative or representatives of the Chief Officer,

as the Association sees fit.

- (10) The Chief Officer must give notice of a public meeting under subsection (9)(b) by advertisement in a newspaper circulating throughout the local area.
- (11) The Chief Officer must also give notice of a public meeting to any member of the House of Assembly whose electoral district includes any part of the area in relation to which the SACFS organisation is constituted.
- (12) The Chief Officer, or a person appointed by the Chief Officer, must chair a public meeting.
- (13) If—
  - (a) a resolution expressing opposition to the dissolution of the SACFS organisation is passed (by majority vote) at a public meeting held under this section; but
  - (b) the Chief Officer determines to dissolve the SACFS organisation in any event,

then the Chief Officer must furnish to the Minister a written report in relation to the matter.

- (14) The Minister must, within 6 sitting days after receiving a report under subsection (13), have copies of the report laid before both Houses of Parliament.

## **69—South Australian Volunteer Fire-Brigades Association**

- (1) The South Australian Volunteer Fire-Brigades Association is recognised as an association that represents the interests of members of SACFS organisations.
- (2) The association may take such steps as may be reasonably available to it to advance the interests of members of SACFS organisations.
- (3) The association—
  - (a) is a body corporate; and
  - (b) has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

## **Division 6—Command structure**

### **70—Command structure**

- (1) There will be the following officers:
  - (a) for each SACFS region there will be a regional officer;
  - (b) for each SACFS group there will be a group officer;
  - (c) for each SACFS brigade there will be a brigade captain.
- (2) A regional officer will be appointed by the Chief Officer.

- (3) A group officer will be elected, in accordance with procedures prescribed by the regulations, by representatives of the various brigades that make up the group.
- (4) A brigade captain will be elected, in accordance with procedures prescribed by the regulations, by the members of the brigade.
- (5) A person is not eligible to be elected as a group officer or brigade captain if he or she is an employee of SACFS.
- (6) Subject to subsection (7), there will be such other officers within the SACFS command structure as the regulations may prescribe or as the Chief Officer thinks fit to appoint.
- (7) The Chief Officer, or the regulations, may provide for the election of persons to fill certain ranks in SACFS.
- (8) An election to a rank in SACFS cannot take effect until approved by the Chief Officer.
- (9) The relative authority of each officer and member of SACFS will be in accordance with a command structure determined by the Chief Officer.
- (10) Each officer or member of SACFS must recognise the authority and obey the directions of an officer to whom that officer or member is subordinate.
- (11) The Chief Officer may, on reasonable grounds—
  - (a) demote a person who holds a particular rank in SACFS;
  - (b) disqualify a person from holding a rank in SACFS;
  - (c) disqualify a person from membership of SACFS;
  - (d) exercise any other disciplinary power in accordance with the regulations.
- (12) Before taking action against a person under subsection (11), the Chief Officer must give the person a reasonable opportunity to appear before the Chief Officer (either personally or through his or her representative) and to make submissions in relation to the proposed course of action.

## **Division 7—Fire prevention authorities**

### **Subdivision 1—The South Australian Bushfire Prevention Advisory Committee**

#### **71—The South Australian Bushfire Prevention Advisory Committee**

- (1) The *South Australian Bushfire Prevention Advisory Committee* continues in existence.
- (2) The Advisory Committee consists of—
  - (a) the Chief Officer of SACFS; and
  - (b) the following members appointed by the Governor:
    - (i) 2 representatives of local government, at least 1 being a suitable person to represent rural councils, nominated by the LGA;
    - (ii) a nominee of the South Australian Volunteer Fire-Brigades Association;
    - (iii) a nominee of the South Australian Farmers Federation Incorporated;

- (iv) a nominee of the Conservation Council of South Australia;
  - (v) a nominee of the Minister, being a person with expertise in bushfire prevention;
  - (vi) a nominee of the Minister, being a person who is a practising pastoralist and who resides outside local government boundaries;
  - (vii) a nominee of the Minister responsible for the administration of the *National Parks and Wildlife Act 1972*, being an officer of the National Parks and Wildlife Service;
  - (viii) a nominee of the Minister with primary responsibility for forests;
  - (ix) a nominee of the Minister with primary responsibility for water resources;
  - (x) a nominee of the Minister with primary responsibility for agriculture;
  - (xi) a nominee of the Minister responsible for the administration of the *Electricity Act 1996*;
  - (xii) a nominee of SAMFS;
  - (xiii) a nominee of the Bureau of Meteorology.
- (3) The Governor may appoint a suitable person to be a deputy of a member of the Advisory Committee.
- (4) 1 of the members of the Advisory Committee will be appointed by the Governor to be its presiding member.
- (5) Schedule 3 applies in relation to the Advisory Committee.

## **72—The Advisory Committee's functions**

The Advisory Committee has the following functions:

- (a) to advise the Minister on bushfire prevention in the country;
- (b) to provide a forum for discussion of issues relating to bushfire prevention;
- (c) to advise the Minister on matters referred to the Advisory Committee for advice;
- (d) to carry out any other function assigned to the Advisory Committee by the regulations.

## **Subdivision 2—Regional and district bushfire prevention committees**

### **73—Regional bushfire prevention committees**

- (1) The Chief Officer may, by notice in the Gazette, establish a regional bushfire prevention committee in relation to an SACFS region.
- (2) A regional bushfire prevention committee will consist of—
- (a) the regional officer for that region; and
  - (b) the following members appointed by the Chief Officer:
    - (i) 2 representatives of SACFS groups in the region, selected in accordance with the regulations; and



- (ii) 2 representatives of the councils whose areas lie wholly or partially within the region, selected by those councils in accordance with the regulations; and
  - (iii) a nominee of the South Australian Farmers Federation Incorporated; and
  - (iv) a nominee of the Conservation Council of South Australia; and
  - (v) a nominee of the Minister responsible for the administration of the *National Parks and Wildlife Act 1972*, being an officer of the National Parks and Wildlife Service; and
  - (vi) if there is a forest reserve (or part of a forest reserve) within the region—a nominee of the Minister with primary responsibility for forests; and
  - (vii) any person nominated under subsection (3).
- (3) The Chief Officer may, at the request of a regional bushfire prevention committee, appoint to the committee a nominee of any other organisation or agency that, in the opinion of the committee, should be represented on the committee.
- (4) The Chief Officer may appoint a suitable person to be a deputy of a member of a regional bushfire prevention committee.
- (5) The Chief Officer may, by notice in the Gazette, dissolve a regional bushfire prevention committee established under this section.
- (6) Schedule 4 applies in relation to a regional bushfire prevention committee.

#### **74—Functions of regional committees**

- (1) A regional bushfire prevention committee has the following functions:
- (a) to assess the extent of fire hazards within its region;
  - (b) to co-ordinate bushfire prevention planning for its region;
  - (c) to make recommendations to the appropriate authorities in relation to the carrying out of works to prevent the outbreak or spread of bushfires in its region, or on land adjacent to its region;
  - (d) to consult with other committees in adjacent regions and to co-operate with district bushfire prevention committees in its region;
  - (e) to advise the Advisory Committee on any matters that should, in the opinion of the committee, be brought to the attention of the Advisory Committee;
  - (f) to carry out any other functions assigned to the committee by the regulations.
- (2) A regional bushfire prevention committee must, in the preparation of plans and the making of recommendations under subsection (1)(c), take into account proper land management principles.

#### **75—District bushfire prevention committees**

- (1) A rural council, or 2 or more rural councils acting together, must, by notice in the Gazette, establish a district bushfire prevention committee in relation to its area or their areas.

- (2) A district bushfire prevention committee will consist of—
  - (a) the fire prevention officer or officers of the council or councils; and
  - (b) the following persons appointed by the council or councils:
    - (i) 1 representative of each SACFS brigade operating in the area or areas, selected in accordance with the regulations; and
    - (ii) 2 representatives of the council, or of each council; and
    - (iii) if there is a reserve (or part of a reserve) administered under the *National Parks and Wildlife Act 1972* within the area or areas—an officer of the National Parks and Wildlife Service nominated by the Minister responsible for the administration of that Act; and
    - (iv) if there is a forest reserve (or part of a forest reserve) within the area or areas—a nominee of the Minister with primary responsibility for forests; and
    - (v) any person nominated under subsection (3).
- (3) The council or councils may, at the request of the district bushfire prevention committee, appoint to the committee a nominee of any other organisation or agency that, in the opinion of the committee, should be represented on the committee.
- (4) The council or councils may appoint a suitable person to be a deputy of a member of a district bushfire prevention committee.
- (5) A council may, by notice in the Gazette, dissolve a district bushfire prevention committee established under this section (but in that event the council must undertake, or participate in, the establishment of a new committee).
- (6) The Chief Officer may, after consultation with a rural council, exempt a council from a requirement of this section.
- (7) Schedule 4 applies in relation to a district bushfire prevention committee.

## **76—Functions of district committees**

- (1) A district bushfire prevention committee has the following functions:
  - (a) to assess the extent of fire hazards within its area;
  - (b) to advise the appropriate authorities of the existence of fire hazards within its area and to make recommendations in relation to their removal;
  - (c) to prepare plans for bushfire prevention within its area;
  - (d) to consult with other committees in adjacent areas and to co-operate with any regional bushfire prevention committee whose region includes its area;
  - (e) to advise the council or councils, the Chief Officer, the Advisory Committee, any regional bushfire prevention committee whose region includes its area, and any other appropriate authority, on bushfire prevention in its area;
  - (f) to carry out any other functions assigned to the committee by the regulations.
- (2) A district bushfire prevention committee must, in the preparation of bushfire prevention plans under subsection (1)(c), take into account proper land management principles.

### **Subdivision 3—Fire prevention officers**

#### **77—Fire prevention officers**

- (1) Subject to this section, each rural council must appoint a suitably qualified fire prevention officer for its area.
- (2) A rural council may appoint 1 or more assistant fire prevention officers.
- (3) The office of fire prevention officer or assistant fire prevention officer may be held in conjunction with any other office or position on the staff of the council.
- (4) A fire prevention officer may delegate powers or functions under this Act (including, as may be appropriate, delegated powers or functions).
- (5) A delegation under subsection (4) is revocable at will and does not derogate from the powers of the delegator to act in any matter.
- (6) The Chief Officer may, after consultation with a rural council, exempt a council from a requirement of this section.

### **Division 8—Fire prevention**

#### **Subdivision 1—Fire danger season**

##### **78—Fire danger season**

- (1) The Chief Officer may, by order—
  - (a) fix a fire danger season in relation to the whole, or any part, of the State; or
  - (b) revoke any such order previously made.
- (2) A fire danger season will only be fixed under subsection (1) after consultation with the appropriate regional bushfire prevention committee or committees (if any).
- (3) An order under this section must be published in the Gazette and in a newspaper circulating generally throughout the State, or in the locality to which the order relates.

##### **79—Fires during fire danger season**

- (1) Subject to subsection (2), a person must not light or maintain a fire in the open air during the fire danger season.  
Maximum penalty:
  - (a) for a first offence—\$5 000 or imprisonment for 1 year;
  - (b) for a second or subsequent offence—\$10 000 or imprisonment for 2 years.Expiation fee: if the offence is a prescribed offence—\$210.
- (2) A fire may, subject to any other restrictions imposed under this or any other Act, be lighted or maintained in the open air in the following circumstances:
  - (a) a fire for cooking or personal comfort may be lighted or maintained provided that—
    - (i) the fire is contained in a properly constructed fire place, a portable cooking appliance or a trench at least 30 cm deep; and

- (ii) the space immediately around and above the fire is cleared of all flammable material to a distance of at least 4 metres; and
    - (iii) the fire does not occupy an area in excess of one square metre; and
    - (iv) a person who is able to control the fire is present at the site of the fire from the time it is lighted to the time it is completely extinguished; and
    - (v) an appropriate agent adequate to extinguish the fire is at hand;
  - (b) a fire for the burning of refuse may be lighted or maintained provided that—
    - (i) the fire is contained within a properly constructed incinerator; and
    - (ii) the space immediately around and above the fire is cleared of all flammable material to a distance of at least 4 metres; and
    - (iii) a supply of water adequate to extinguish the fire is at hand; and
    - (iv) a person who is able to control the fire is present at the site of the fire from the time it is lighted to the time it is completely extinguished;
  - (c) a fire for heating bitumen, welding, gas-cutting, soldering, grinding or charring may be lighted or maintained provided that—
    - (i) a shield or guard of fire-resistant material is positioned around the fire to prevent the escape of sparks, hot metal or slag; and
    - (ii) the space immediately around and above the fire is cleared of all flammable material to a distance of at least 4 metres, or wetted sufficiently to prevent the spread of fire; and
    - (iii) a supply of water adequate to extinguish the fire is at hand; and
    - (iv) if any equipment is removed from the fire, the equipment is immediately placed in a fire-proof receptacle; and
    - (v) a person who is able to control the fire is present at the site of the fire from the time it is lighted to the time it is completely extinguished;
  - (d) a fire may be lighted and maintained in accordance with the conditions of a permit;
  - (e) a fire may be lighted and maintained in accordance with the regulations.
- (3) The Chief Officer may, by notice in the Gazette—
  - (a) prohibit or restrict the lighting and maintaining of fires under subsection (2)(a), (b) or (c) in the whole or a specified part of the State;
  - (b) vary or revoke any such prohibition or restriction.
- (4) A prohibition or restriction will not be imposed under subsection (3) except after consultation with the councils for the areas affected by it.
- (5) The fact that a person has lit and maintained a fire under subsection (2) does not of itself relieve the person from liability for any loss or damage caused by the fire.

## Subdivision 2—Total fire ban

### 80—Total fire ban

- (1) The Chief Officer may at any time of the year impose a ban (a *total fire ban*) on the lighting or maintaining of fires in the open air for any purpose on a specified day or days, or during any specified part or parts of a day or days, throughout the whole State, or any specified part of the State.
- (2) The Chief Officer must arrange to have a warning of the imposition of a total fire ban under this section broadcast from a radio station in the State.
- (3) Subject to subsection (4), a person must not light or maintain a fire in the open air contrary to the terms of a warning broadcast under this section.

Maximum penalty:

- (a) for a first offence—\$10 000 or imprisonment for 2 years;
  - (b) for a second or subsequent offence—\$20 000 or imprisonment for 4 years.
- (4) This section does not prevent the lighting or maintaining of a fire—
    - (a) in circumstances permitted by the regulations; or
    - (b) if the lighting or maintaining of the fire is authorised by a permit issued under this Act.
  - (5) The Chief Officer may, by further broadcast from a radio station in the State, vary or revoke a warning broadcast under this section.
  - (6) In any proceedings for an offence against this section, a document apparently signed by the Chief Officer, and certifying that a warning in the terms specified in the certificate was broadcast from a broadcasting station in this State on a date and at a time specified in the certificate, is, unless the contrary is proved, to be accepted as proof of the matters so certified.

## Subdivision 3—Permits

### 81—Permit to light and maintain fire

- (1) An authorised officer may issue a permit authorising a person to light or maintain a fire in the open air in circumstances in which the lighting or maintaining of the fire would otherwise be unlawful by virtue of this Part.
- (2) An application for a permit must be made in the prescribed manner and form.
- (3) A permit must not be issued under this section unless the authorised officer is satisfied that—
  - (a) the lighting or maintaining of the fire is, in all the circumstances of the case, justified; and
  - (b) adequate precautions will be taken to prevent the spread of fire.
- (4) A permit issued under this section will include—
  - (a) the prescribed conditions; and
  - (b) such other conditions as the authorised officer thinks fit to include in the permit.

- (5) A permit issued under this section will be in a form prescribed by the regulations.
- (6) Unless issued in accordance with an authorisation granted under subsection (7), a permit does not authorise a person to light or maintain a fire contrary to the terms of a total fire ban.
- (7) The Chief Officer may, by instrument in writing, authorise (subject to stipulated restrictions and conditions) the issue of permits for the lighting and maintaining of fires in the open air, on days on which a total fire ban has been imposed, in parts of the State designated in the authorisation.
- (8) Notice of the issue of a permit under this section must be given in the manner provided by the regulations to such persons and authorities as may be stipulated by the regulations.
- (9) A permit may be revoked by an authorised officer or by the Chief Officer—
  - (a) if the permit holder fails to comply with a condition of the permit; or
  - (b) if the authorised officer or Chief Officer considers that sufficient reasons exist to justify the revocation of the permit.
- (10) A person whose permit is revoked may appeal to the Commission against that revocation.
- (11) An appeal must be instituted by written notice of appeal setting out in detail the grounds of appeal.
- (12) On an appeal, the Commission may—
  - (a) confirm the revocation;
  - (b) direct that a new permit be issued.
- (13) The fact that the holder of a permit has complied with the conditions of the permit does not of itself relieve the holder from liability for any loss or damage caused by a fire lit under the authority of a permit.
- (14) In this section—

*authorised officer* means—

  - (a) a person authorised by the Chief Officer; or
  - (b) a person authorised by a council, with the approval of the Chief Officer, to issue permits under this section.

## **Subdivision 4—Power of direction**

### **82—Power to direct**

- (1) Subject to this section, if an officer of SACFS is satisfied that a fire has been lit on any land contrary to this Act, or that a fire on any land (whether lit lawfully or not) is out of control, or is likely to get out of control, the officer may—
  - (a) direct the person who lit the fire, or the owner of the land, to extinguish the fire or to take such other steps in relation to the fire as appear necessary to prevent it from getting out of control; or
  - (b) extinguish the fire, or take such other steps in relation to the fire as appear necessary to prevent it from getting out of control.

- (2) If an officer of SACFS is satisfied—
- (a) that a person proposes to light a fire; and
  - (b) that because of weather conditions the fire, if lighted, might get out of control,
- the officer may direct that person to refrain from lighting a fire during a period specified in the direction.
- (3) A person who contravenes, or fails forthwith to comply with, a direction under this section is guilty of an offence.
- Maximum penalty:
- (a) for a first offence—\$5 000 or imprisonment for 1 year;
  - (b) for a second or subsequent offence—\$10 000 or imprisonment for 2 years.
- (4) The Chief Officer may determine that the powers of an officer under this section may only be exercised by officers of or above a certain rank.
- (5) Despite subsection (4), if no officer of SACFS who is able to exercise the powers conferred by this section is present, any member of the SACFS or, in the absence of any such member, any fire prevention officer, member of SAMFS or member of the police force, may exercise those powers.

## **Subdivision 5—Duties to prevent fires**

### **83—Private land**

- (1) In this section—
- responsible authority* means—
- (a) in relation to land within the area of a council—the council for that area;
  - (b) in relation to land outside the area of a council—SACFS,
- (but where powers or functions under this section are withdrawn from a council and vested in an officer of SACFS under Subdivision 7, a reference to the responsible authority in relation to those powers or functions is a reference to that officer rather than that council).
- (2) The owner of private land in the country must take reasonable steps to protect property on the land from fire and to prevent or inhibit the outbreak of fire on the land, or the spread of fire through the land.
- Maximum penalty: \$5 000.
- (3) An owner of private land must, in acting under subsection (2), take into account proper land management principles.
- (4) If—
- (a) an owner of private land fails to comply with subsection (2); or
  - (b) a responsible authority believes that conditions on private land are such as to cause an unreasonable risk of the outbreak of fire on the land, or the spread of fire through the land,

the responsible authority may, by notice in writing that complies with any prescribed requirement, require the owner to take specified action to remedy the default, or eliminate or reduce the risk, within such time as may be specified in the notice.

- (5) A notice under subsection (4) may include directions concerning the storage of flammable or combustible materials or substances on the land (or in any building on the land).
- (6) A person to whom a notice under subsection (4) is addressed must not fail to comply with the notice.

Maximum penalty:

- (a) in the case of a person who wilfully fails to comply with a notice—\$10 000;
- (b) in any other case—\$1 250.

Expiation fee: except in the case of a person who wilfully fails to comply with a notice—\$160.

- (7) The responsible authority may, by further notice in writing, vary or revoke a notice under this section.
- (8) A notice under subsection (4) or (7) may be given—
  - (a) personally; or
  - (b) by post; or
  - (c) if the responsible authority cannot, after making reasonable inquiries, ascertain the name and address of the person to whom the notice is to be given—
    - (i) by publishing the notice in a newspaper circulating in the locality of the land; and
    - (ii) by leaving a copy of the notice in a conspicuous place on the land.
- (9) If a notice under subsection (4) or (7) is directed to an occupier of land, the responsible authority must take reasonable steps to serve a copy of the notice on the owner.
- (10) Service under subsection (9) may be effected—
  - (a) personally; or
  - (b) by post.
- (11) A fire prevention officer, or any other authorised officer, may, for purposes connected with the enforcement of this section, after giving reasonable notice to the occupier of land, enter and inspect the land.
- (12) If a person fails to comply with the requirements of a notice under this section, the responsible authority may proceed to carry out those requirements and may recover the expenses incurred as a debt due to it from the person to whom the notice was addressed.
- (13) Any expenses recoverable under subsection (12) will be a charge against the land to which they relate and may be recovered as if they were rates in arrears.
- (14) A person to whom notice is addressed may appeal against a requirement of the notice.



- (15) An appeal under subsection (14) must be made—
- (a) where the notice was issued by a council—to the Chief Officer;
  - (b) in any other case—to the Commission.
- (16) An appeal—
- (a) is instituted by written notice of appeal setting out in detail the grounds of appeal; and
  - (b) must be instituted within 14 days of the requirement being imposed unless the appellate authority, in its discretion, allows an extension of time for instituting the appeal.
- (17) The appellant must send a copy of the notice of appeal to the responsible authority that issued the notice to which the appeal relates.
- (18) Subject to a determination of the appellate authority, where an appeal is instituted, the requirement being appealed against is suspended until the appeal is determined or withdrawn.
- (19) For the purposes of dealing with an appeal, the appellate authority may adopt such procedures as it thinks fit.
- (20) On hearing an appeal, the appellate authority may—
- (a) confirm the requirement; or
  - (b) vary the requirement in such manner as it thinks fit; or
  - (c) cancel the requirement; or
  - (d) substitute a new requirement; or
  - (e) refer the matter back to the responsible authority for further consideration.
- (21) If the appellate authority confirms, varies or substitutes a requirement, the person to whom the requirement is addressed must comply with the requirement within a period specified by the appellate authority.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (22) In this section—
- authorised officer* means a person authorised by the Chief Officer to exercise the powers of an authorised officer under this section.

## 84—Council land

- (1) A rural council that has the care, control or management of land in the country must take reasonable steps to protect property on the land from fire and to prevent or inhibit the outbreak of fire on the land, or the spread of fire through the land.
- (2) A rural council must, in acting under subsection (1), take into account proper land management principles.
- (3) If, in the opinion of the Chief Officer, a rural council has failed to comply with subsection (1), the Chief Officer may refer the matter to the Minister to whom the administration of the *Local Government Act 1999* has been committed (with a view to that Minister taking action in relation to the council under that Act).

## **85—Crown land**

- (1) A Minister, agency or instrumentality of the Crown that has the care, control or management of land in the country must take reasonable steps to protect property on the land from fire and to prevent or inhibit the outbreak of fire on the land, or the spread of fire through the land.
- (2) A Minister, agency or instrumentality of the Crown must, in acting under subsection (1), take into account proper land management principles.
- (3) A Minister, agency or instrumentality of the Crown to which subsection (1) applies must appoint an appropriate person to be responsible to ensure compliance with subsection (1).

## **Subdivision 6—Miscellaneous precautions against fire**

### **86—Fire safety at premises**

- (1) An authorised officer may require the owner of premises of a prescribed kind in the country, or a person proposing to build any such premises, to take specified steps to prevent the outbreak of fire at the premises, or the spread of fire from the premises.
- (2) A person to whom such a requirement is directed may, within 14 days after the date of the requirement, lodge a written notice of objection with the Chief Officer.
- (3) The Chief Officer must consider any such objection and may vary the requirement in any manner the Chief Officer thinks fit.
- (4) A person who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$10 000.

- (5) In this section—

*authorised officer* means a person authorised by the Chief Officer to exercise the powers of an authorised officer under this section.

### **87—Removal of debris from roads**

- (1) If as a result of any work flammable debris is left on or in the vicinity of a road in the country, the person that carried out the work must remove the debris from the road—
  - (a) on being required to do so by the Chief Officer or a council; or
  - (b) if no such requirement is made, on the completion of the work (insofar as to do so is reasonably practicable).

Maximum penalty: \$5 000.

- (2) If a person fails to comply with subsection (1), the Chief Officer or the council of the area may—
  - (a) burn or remove the flammable debris; and
  - (b) recover the cost of so doing as a debt due to it from the person in default.

### **88—Fire extinguishers to be carried on caravans**

A person must not use a caravan in the country unless an efficient fire extinguisher that complies with the regulations is carried in the caravan.

Maximum penalty: \$1 250.

Expiation fee: \$210.

### **89—Restriction on the use of certain appliances etc**

A person must not, during the fire danger season, operate an engine, vehicle or appliance of a prescribed kind in the open air, or use any flammable or explosive material of a prescribed kind, or carry out any prescribed activity, except in accordance with the relevant regulations.

Maximum penalty:

- (a) for a first offence—\$5 000;
- (b) for a second or subsequent offence—\$10 000.

Expiation fee: if the offence is a prescribed offence—\$210.

### **90—Burning objects and material**

- (1) A person must not smoke in the open air in the country within 2 metres of flammable bush or grass (but this prohibition does not operate within a municipality or township).

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (2) A person must not, without lawful excuse, drop or throw a burning object or material from a vehicle.

Maximum penalty: \$5 000.

- (3) A person must not, without lawful excuse, drop or throw a burning object or material in circumstances in which it may come into contact with flammable material and cause a fire in the country.

Maximum penalty: \$5 000.

- (4) A person must not, without lawful excuse, drop or throw any material capable of causing a fire in circumstances in which it may cause a fire in the country.

Maximum penalty: \$5 000.

### **91—Duty to report unattended fires**

- (1) A person who finds an unattended fire on land in the country must immediately take such steps as are reasonably practicable to notify a member of SACFS, a member of SAMFS, a government officer or a police officer of the existence and location of the fire.

Maximum penalty: \$1 250.

- (2) In this section—

*government officer* means—

- (a) an officer of the National Parks and Wildlife Service; or
- (b) an officer or employee of the South Australian Forestry Corporation; or

- (c) any other person of a class prescribed for the purposes of this definition.

## **Subdivision 7—Supplementary provisions**

### **92—Power of inspection**

- (1) An officer of SACFS, an authorised officer, a fire prevention officer or a fire control officer may at any reasonable time, after giving reasonable notice to the occupier of the land or premises, enter any land or premises for the purpose of determining what measures have been taken on that land or in those premises for the prevention, control or suppression of fire or for the prevention of, or for dealing with, the escape of any hazardous materials.
- (2) An officer of SACFS, an authorised officer, a fire prevention officer or a fire control officer exercising a power under this section must, at the request of a person affected by the exercise of the power, produce his or her certificate of identity or other authority to exercise the power.
- (3) In this section—  
*authorised officer* means a person authorised by the Chief Officer to exercise the powers of an authorised officer under this section.

### **93—Delegation by councils**

- (1) A council may, by instrument in writing, delegate to a fire prevention officer a power or function under this Division.
- (2) A delegation under this section is revocable at will and does not derogate from the powers of the council to act in any matter.
- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **94—Failure by a council to exercise statutory powers**

- (1) If, in the opinion of the Chief Officer, a council fails to exercise or discharge any of its powers or functions under this Division, the Chief Officer may take such action as appears necessary on account of that failure.
- (2) Without limiting the generality of subsection (1), the Chief Officer may recommend to the Minister that the powers and functions of the council under this Part be withdrawn.
- (3) Before taking action under subsection (2), the Chief Officer must consult with the council in relation to the matter.
- (4) If the Chief Officer makes a recommendation to the Minister under subsection (2)—
- (a) the Minister must give the council a reasonable opportunity to make written submissions to the Minister in relation to the matter; and
  - (b) if the council so requests at the time that it makes such written submissions—the Minister must discuss the matter with a delegation representing the council; and
  - (c) the Minister must consult with the South Australian Bushfire Prevention Advisory Committee in relation to the matter.

- (5) If, after complying with subsection (4), the Minister is satisfied that it is appropriate to do so, the Minister may, by notice in the Gazette, withdraw the powers and functions of the council and vest them in an officer of SACFS nominated by the Chief Officer.
- (6) The Minister must, within 14 days of publishing a notice under subsection (5), furnish the council with written reasons for his or her decision.
- (7) The Minister may, by subsequent notice in the Gazette made on the recommendation of the Chief Officer—
  - (a) appoint another officer of SACFS in substitution for an officer previously appointed under this section;
  - (b) revoke the notice that withdrew the council's powers and functions.
- (8) Any expenses reasonably incurred by an officer of SACFS in exercising or discharging powers and functions vested under this section may be recovered as a debt due to the SACFS from the council in a court of competent jurisdiction.

## **95—Endangering life or property**

- (1) A person who, during the fire danger season, without lawful excuse, lights a fire in circumstances where the fire endangers, or is likely to endanger, the life or property of another, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) It is a defence to a charge of an offence against this section for the defendant to prove—
  - (a) —
    - (i) that the fire was lit—
      - (A) on land owned or occupied by the defendant; or
      - (B) at the direction of, or with the permission of, the owner or occupier of the land on which the fire was lit; or
    - (ii) that the danger was caused by unforeseen weather conditions; and
  - (b) that the defendant took all reasonable precautions to prevent the spread of the fire.

## **Division 9—Powers and duties relating to fires and emergencies**

### **Subdivision 1—Exercise of control at scene of fire or other emergency**

#### **96—Exercise of control at scene of fire or other emergency**

- (1) This section applies in relation to any situation that may involve an emergency.
- (2) If—
  - (a) the situation—
    - (i) involves or arises from—
      - (A) a fire or a situation that involves imminent danger of fire; or

(B) the escape of any hazardous material or a situation that involves imminent danger of such an escape,

that occurs—

(C) in the country; or

(D) at any other place in a situation where no member of SAMFS has assumed control under Part 3; or

(ii) involves or arises from any other emergency or the imminent danger of any other emergency, wherever occurring, at which a person with lawful authority to assume control has not done so; and

(b) an SACFS brigade has attended,

then an incident controller or, if an incident controller has not been appointed, the most senior member of SACFS in attendance, may assume control (and all members of SACFS, and all other persons present at the scene, will be subject to his or her control).

(3) Nothing in this section—

(a) derogates from the powers of the Chief Officer of SACFS to assume control of any operations; or

(b) prevents a member of SACFS who has taken control of any operations surrendering control of those operations to any other person or body; or

(c) prevents another person or body with lawful authority to do so assuming control at the scene of any emergency.

(4) This section operates subject to the provisions of the *Emergency Management Act 2004*.

(5) In this section—

**incident controller** for a fire or other emergency means the person for the time being appointed to be the incident controller for the fire or other emergency in accordance with procedures determined by the Chief Officer.

## **Subdivision 2—Exercise of powers at scene of fire or other emergency**

### **97—Powers**

(1) An officer of SACFS may take, or cause to be taken, any action that appears necessary or desirable for the purpose of protecting the life, health or safety of any person or animal, or protecting property, relevant services or the environment, or for any other purpose associated with dealing with a fire or other emergency or the threat of a fire or other emergency (despite the fact that the action may result in damage to, or destruction of, property or any aspect of the environment or cause pecuniary loss to any person).

(2) Without limiting or derogating from the operation of subsection (1), an officer under subsection (1), or any person acting under the command of an officer, may (to such extent as appears necessary or desirable in the circumstances)—

(a) enter and, if necessary break into any land, building, structure or vehicle (using such force as is necessary);

- (b) take possession of, protect or assume control over any land, body of water, building, structure, vehicle or other thing;
  - (c) remove or destroy, or order the destruction of, any building, structure, vehicle, vegetation or seriously injured animal;
  - (d) direct the owner of, or the person for the time being in charge of, any real or personal property to place it under the control or at the disposition of a specified person;
  - (e) remove, or cause to be removed, to such place as the officer or other person thinks fit, any person or animal, or direct the evacuation or removal of any person or animal;
  - (f) direct or prohibit the movement of persons, animals or vehicles;
  - (g) remove flammable material or any other hazardous material, or cause flammable material or any other hazardous material to be removed, from any place, building or structure;
  - (h) cause any supply of fuel or other flammable liquid, any gas or electricity, or any other hazardous material to be shut off or disconnected;
  - (i) direct a person who is in a position to do so—
    - (i) to stop any work or operation; or
    - (ii) to close any premises or other place; or
    - (iii) to contain the escape of any hazardous material, or to nullify the effects of the escape of any hazardous material; or
    - (iv) to shut off or remove any plant, equipment, apparatus or device or to perform any operation in relation to any plant, equipment, apparatus or device;
  - (j) take and use water or any other fire extinguishing material from any place;
  - (k) shut off, or cut off, the supply of water or any drainage facility;
  - (l) cause firebreaks to be ploughed or cleared on any land;
  - (m) make use of the gratuitous services of any person;
  - (n) direct, insofar as may be reasonably necessary in the circumstances, any person to assist in the exercise of any power under this section;
  - (o) exercise any prescribed power.
- (3) In the absence of an officer, the powers of an officer under subsections (1) and (2) may be exercised by any member of SACFS.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction of an officer of SACFS or of any other person given in accordance with subsection (1) or (2).

Maximum penalty:

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

- (5) An officer of SACFS may, for the purpose of controlling a fire, light another fire, or cause another fire to be lit (despite any other provision of this Act).
- (6) A member of SACFS must, before taking any prescribed action with respect to private land or a government reserve, or property on private land or a government reserve—
- (a) consult with the owner or person in charge of the land or reserve if that person is in the presence of, or may be immediately contacted by, the member of SACFS; and
  - (b) if the prescribed action would affect a government reserve, take into account any relevant provisions of a management plan for the reserve that have been brought to the attention of the member.
- (7) The Chief Officer must take steps to have any relevant provisions of a management plan for a government reserve brought to the attention of members of SACFS who might exercise powers under this section with respect to the reserve.
- (8) If there is a fire on a forest reserve, and the person who is in charge of the reserve, being an officer or employee of the South Australian Forestry Corporation, is present at the scene of the fire, a member of SACFS (other than the Chief Officer or a delegate of the Chief Officer) must not exercise a power conferred by this section on the reserve except with the approval, and subject to any directions, of that person.
- (9) The power of the Chief Officer to delegate under subsection (8) is subject to the following qualifications:
- (a) the delegation must be to an officer of SACFS of or above the rank of group officer, or to an officer or employee of the South Australian Forestry Corporation; and
  - (b) the delegation may only be made in relation to a specific fire or other emergency.
- (10) If an officer of SACFS in control at the scene of a fire or other 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 SACFS as a debt from the owner of the dangerous structure, object, substance or materials in a court of competent jurisdiction.
- (11) In any proceedings under subsection (10), 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.
- (12) In this section—
- government reserve** means—
- (a) a forest reserve; or
  - (b) a reserve administered under the *National Parks and Wildlife Act 1972*; or
  - (c) any other prescribed land;
- prescribed action** means the exercise of a power under this section that would result in damage to, or destruction of, property or cause pecuniary loss to any person.
- (13) This section operates subject to the provisions of the *Emergency Management Act 2004*.



### **Subdivision 3—Related matters**

#### **98—Provision of water**

- (1) A water authority for an area in which a fire or other emergency has occurred, or is in imminent danger of occurring, must, at the direction of a person who is lawfully dealing with the situation under this Division, send a competent person to assist in the provision of water.
- (2) In this section—

*water authority* means a body brought within the ambit of this definition by the regulations.

#### **99—Disconnection of gas or electricity**

A person or company supplying gas or electricity to any premises or other place where a fire or other emergency has occurred, or is in imminent danger of occurring, must, at the direction of a person who is lawfully dealing with the situation under this Division, send a competent person to shut off or disconnect the supply of gas or electricity to the premises or other place, or to any adjacent premises or place (and the person so attending must then comply with any direction that may be given in the exercise of powers under this Division).

### **Division 10—Related matters**

#### **100—Accounts and audit**

- (1) SACFS must keep proper accounting records in relation to its financial affairs, and have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General must audit the annual statements of account required under subsection (1).
- (3) The accounts of an SACFS organisation are not required to be audited by the Auditor-General but must be audited in accordance with the regulations.

#### **101—Annual reports**

- (1) SACFS must, on or before 30 September in each year, deliver to the Commission a report on the activities of SACFS during the preceding financial year (and need not provide a report under section 6A of the *Public Sector Management Act 1995*).
- (2) The report must—
  - (a) include the audited statements of account required under this Division; and
  - (b) include any other information that would be required if SACFS were reporting under the *Public Sector Management Act 1995*; and
  - (c) comply with any other requirements prescribed by or under this Act or the regulations.

#### **102—Common seal and execution of documents**

- (1) The Chief Officer may—
  - (a) execute a document on behalf of SACFS; and

- (b) affix the common seal of SACFS to a document.
- (2) The Chief Officer may, by instrument in writing, authorise another person to exercise a power under subsection (1) subject to conditions and limitations (if any) specified in the instrument for authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of SACFS.
- (4) A document is duly executed by SACFS if—
  - (a) the common seal of SACFS is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of SACFS by a person or persons in accordance with any authority conferred under this section.
- (5) If an apparently genuine document purports to bear the common seal of SACFS, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of SACFS has been duly affixed to that document.

### **103—Fire control officers**

- (1) The Chief Officer may, on his or her initiative or at the request of a council, appoint a person as a fire control officer for a designated area of the State (whether inside or outside a council area).
- (2) Before the Chief Officer on his or her own initiative appoints a person as a fire control officer for a designated area of the State that is inside (or partially inside) a council area, the Chief Officer must consult with the council in relation to the proposed appointment.
- (3) The functions of a fire control officer are—
  - (a) to assist in the preparation of fire prevention plans for the designated area;
  - (b) to take steps to protect property in the designated area from fire and to prevent the outbreak and spread of fire in the designated area;
  - (c) to fight any fire, or to act in any other emergency, until an SACFS brigade arrives;
  - (d) to carry out any other function assigned by the Chief Officer.
- (4) Subject to any limitation determined by the Chief Officer, a fire control officer may, pending the arrival of an SACFS brigade, for the purpose of fire-fighting or for the purpose of protecting life, property or the environment in any other emergency, exercise the powers of an officer of SACFS under this Act.
- (5) The Chief Officer may, as the Chief Officer thinks fit, terminate the appointment of a person as a fire control officer.

### **104—Giving of expiation notices**

A council may not authorise a person (under section 6(3)(b) of the *Expiation of Offences Act 1996*) to give expiation notices for alleged offences under this Part unless the person is a fire prevention officer.

### **105—Appropriation of penalties**

If a summary offence against this Part is committed in the area of a council and the complaint is laid by the council for the area (or an officer of the council), any fine recovered from the defendant will be paid into the general revenue of the council (rather than into the Consolidated Account).



## **Part 5—The South Australian State Emergency Service**

### **Division 1—Continuation of service**

#### **106—Continuation of service**

- (1) The State Emergency Service continues in existence as the *South Australian State Emergency Service* (SASES).
- (2) SASES—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) SASES is an agency of the Crown and holds its property on behalf of the Crown.

#### **107—Constitution of SASES**

- (1) SASES consists of—
  - (a) the Chief Officer of SASES; and
  - (b) all other officers of SASES; and
  - (c) all SASES units and all members of SASES units; and
  - (d) all SASES employees.
- (2) The Chief Officer of SASES is responsible for the management and administration of SASES (and will, in undertaking this responsibility, also be the Chief Executive of SASES).
- (3) An act done or decision made by the Chief Officer in the management or administration of the affairs of SASES (including by exercising any power of SASES under this or any other Act) is an act or decision of SASES.

### **Division 2—Functions and powers**

#### **108—Functions and powers**

- (1) SASES has the following functions:
  - (a) to assist the Commissioner of Police in dealing with any emergency;
  - (b) to assist the State Co-ordinator, in accordance with the State Emergency Management Plan, in carrying out prevention, preparedness, response or recovery operations under the *Emergency Management Act 2004*;
  - (c) to assist SAMFS and SACFS in dealing with any emergency;
  - (d) to deal with any emergency—

- (i) where the emergency is caused by flood or storm damage; or
    - (ii) where there is no other body or person with lawful authority to assume control of operations for dealing with the emergency;
  - (e) to deal with any emergency until such time as any other body or person that has lawful authority to assume control of operations for dealing with the emergency has assumed control;
  - (f) to respond to emergency calls and, where appropriate, provide assistance in any situation of need whether or not the situation constitutes an emergency;
  - (g) to undertake rescues;
  - (h) to perform any other function assigned to SASES by or under this or any other Act.
- (2) SASES may, for the purpose of performing its functions, exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions.
- (3) SASES may, for example—
- (a) enter into any form of contract or arrangement;
  - (b) acquire, hold, deal with and dispose of real and personal property;
  - (c) provide and maintain equipment for SASES units;
  - (d) make representations and provide advice relating to dealing with emergencies;
  - (e) publish or disseminate information.

## **Division 3—Chief Officer and staff**

### **109—Chief Officer**

- (1) The office of Chief Officer of SASES is established (and a reference in this Part to the "Chief Officer" will be a reference to the Chief Officer of SASES).
- (2) The Chief Officer will be appointed by the Minister after taking into account the recommendation of the CE of the Commission.
- (3) The Chief Officer will be appointed on terms and conditions determined by the Minister after consultation with the Commissioner for Public Employment.
- (4) In addition to the Chief Officer's responsibility for the management and administration of SASES, the Chief Officer has ultimate responsibility for the operations of SASES and may therefore—
  - (a) control all resources of SASES; and
  - (b) manage the staff of SASES and give directions to its members; and
  - (c) assume control of any SASES operations; and
  - (d) perform any other function or exercise any other power that may be conferred by or under this or any other Act, or that may be necessary or expedient for, or incidental to, maintaining, improving or supporting the operation of SASES.

### **110—Deputy Chief Officer and Assistant Chief Officers**

- (1) The Chief Officer may appoint a Deputy Chief Officer and 1 or more Assistant Chief Officers (on the basis that the Chief Officer (and any successor) is the employer).
- (2) The terms and conditions of an appointment under this section will be subject to the approval of the Commissioner for Public Employment after consultation with the Chief Officer and the Commission.
- (3) The Deputy Chief Officer (if appointed) or, if necessary, an Assistant Chief Officer designated by the Minister, may, while the Chief Officer is absent from the duties of office or while the position of Chief Officer is temporarily vacant, perform and exercise the functions and powers of the Chief Officer (but not so as to act as a deputy member of the Board unless specifically appointed as deputy of the Chief Officer under section 11(3)).

### **111—Other officers**

- (1) SASES will have such other officers (other than officers who hold office as volunteer members of SASES units) as the Chief Officer thinks fit to appoint (on the basis that the Chief Officer (and any successor) is the employer).
- (2) An appointment under this section will be on terms and conditions determined by the Chief Officer and approved by the Commission (subject to the provisions of any award or industrial agreement).
- (3) Nothing in this section limits the ability of the Chief Officer to appoint a suitable person to act in an office or position while the person appointed to that office or position is absent or temporarily unable to act in that office or position, or while that office or position is temporarily vacant.

### **112—Employees**

- (1) The Chief Officer may appoint other persons as employees of SASES (on the basis that the Chief Officer (and any successor) is the employer).
- (2) An appointment under this section will be on terms and conditions determined by the Chief Officer and approved by the Commission (subject to the provisions of any award or industrial agreement).

### **113—Staff**

- (1) The staff of SASES will comprise all officers (being officers appointed to the staff of SASES rather than being volunteer members of SASES units) and other employees of SASES.
- (2) A member of the staff of SASES must comply with a direction of—
  - (a) the Chief Officer; or
  - (b) an officer—
    - (i) to whom the member of staff is responsible by virtue of this Act; or
    - (ii) who is in a position of authority over the member of staff by virtue of a determination of the Chief Officer.
- (3) In addition, SASES may make use of persons employed in any public sector agency made available to assist SASES.

- (4) SASES is responsible for any costs or expenses associated with the employment of a member of the staff of SASES.

### **114—Workforce plans**

For the purposes of appointments to the staff of SASES under this Division—

- (a) the Chief Officer must, at least once in every year, submit a workforce plan for approval by the Commission; and
- (b) the Commission may approve a workforce plan submitted by the Chief Officer without amendment, or with any amendments determined by the Commission after consultation with the Chief Officer; and
- (c) the Chief Officer must not make an appointment under this Division unless it accords with the workforce plan last approved by the Commission.

### **115—Delegation**

- (1) The Chief Officer may delegate a power or function of the Chief Officer or SASES under this or any other Act—
- (a) to a member of the staff of SASES or to a person made available to assist SASES; or
  - (b) to a member of an SASES unit; or
  - (c) to a committee established under this Act; or
  - (d) to a person for the time being holding or acting in a particular office or position; or
  - (e) to any other person or body.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Chief Officer to act in any matter; and
  - (d) is revocable at will by the Chief Officer.
- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 4—SASES units**

### **116—SASES units**

- (1) The Chief Officer may, by notice in the Gazette—
- (a) establish an SASES unit;
  - (b) assign a name to an SASES unit.
- (2) If—
- (a) the Chief Officer is establishing an SASES unit to take over the activities of an organisation; and



- (b) the organisation is a body corporate; and
- (c) the organisation seeks its dissolution under this provision in the manner prescribed by the regulations,

then the Chief Officer may, by notice in the Gazette, dissolve the body corporate (and that dissolution will have effect by force of this subsection).

- (3) On dissolution of an organisation under subsection (2), its property, rights and liabilities vest in SASES.
- (4) An SASES unit will have a constitution that accords with any requirements prescribed by the regulations or determined by the Chief Officer.
- (5) The constitution of an SASES unit may be amended, with the approval of the Chief Officer, in the manner set out in the constitution.
- (6) An SASES unit—
  - (a) has the functions and powers prescribed by this Act or the regulations or set out in its constitution; and
  - (b) has such other functions or powers as may be assigned to it by the Chief Officer.
- (7) An SASES unit must—
  - (a) maintain such records as may be prescribed, specified by its constitution, or required by the Chief Officer; and
  - (b) furnish to the Chief Officer, in a manner and form determined by the Chief Officer, any information required by the Chief Officer.
- (8) The Chief Officer may, by notice in the Gazette, dissolve an SASES unit.
- (9) The Chief Officer must, before determining to dissolve an SASES unit, consult with—
  - (a) the members of the unit; and
  - (b) the local community; and
  - (c) S.A.S.E.S. Volunteers' Association Incorporated,in relation to the matter.
- (10) For the purposes of subsection (9), the Chief Officer must—
  - (a) organise a meeting at which the Chief Officer, or a representative or representatives of the Chief Officer, can meet with the members of the unit (or their representative or representatives); and
  - (b) organise a public meeting within the local community; and
  - (c) invite S.A.S.E.S. Volunteers' Association Incorporated to—
    - (i) make written submissions to the Chief Officer in relation to the matter; or
    - (ii) have a representative, or representatives, attend a meeting with the Chief Officer or a representative or representatives of the Chief Officer,as the Association sees fit.

- (11) The Chief Officer must give notice of a public meeting under subsection (10)(b) by advertisement in a newspaper circulating throughout the local area.
- (12) The Chief Officer must also give notice of a public meeting to any member of the House of Assembly whose electoral district includes any part of the area in relation to which the SASES unit is constituted.
- (13) The Chief Officer, or a person appointed by the Chief Officer, must chair a public meeting.
- (14) If—
  - (a) a resolution expressing opposition to the dissolution of the SASES unit is passed (by majority vote) at a public meeting held under this section; but
  - (b) the Chief Officer determines to dissolve the SASES unit in any event,then the Chief Officer must furnish to the Minister a written report in relation to the matter.
- (15) The Minister must, within 6 sitting days after receiving a report under subsection (14), have copies of the report laid before both Houses of Parliament.

## **Division 5—Powers and duties relating to emergencies**

### **Subdivision 1—Exercise of control at scene of emergency**

#### **117—Exercise of control at scene of emergency**

- (1) This section applies in relation to any situation that may involve an emergency.
- (2) If—
  - (a) an emergency has arisen or is imminent; and
  - (b) no other body or person has lawful authority to assume control, or a body or person with lawful authority to assume control has not done so; and
  - (c) an SASES unit has attended,then the most senior member of SASES in attendance may assume control (and all members of SASES, and all other persons present at the scene, will be subject to his or her control).
- (3) Nothing in this section—
  - (a) derogates from the powers of the Chief Officer of SASES to assume control of any operations; or
  - (b) prevents a member of SASES who has taken control of any operations surrendering control of those operations to any other body or person who has lawful authority to act in relation to the particular emergency; or
  - (c) prevents another person or body with lawful authority to do so assuming control at the scene of an emergency.
- (4) This section operates subject to the provisions of the *Emergency Management Act 2004*.

## Subdivision 2—Exercise of powers at scene of emergency

### 118—Powers

- (1) An officer of SASES may take, or cause to be taken, any action that appears necessary or desirable for the purpose of protecting the life, health or safety of any person or animal, or protecting property, relevant services or the environment, or for any other purpose associated with dealing with an emergency or the threat of an emergency (despite the fact that the action may result in damage to, or destruction of, property or any aspect of the environment or cause pecuniary loss to any person).
- (2) Without limiting or derogating from the operation of subsection (1), an officer under subsection (1), or any person acting under the command of an officer, may (to such extent as appears necessary or desirable in the circumstances)—
  - (a) enter and, if necessary, break into any land, building, structure or vehicle (using such force as is necessary);
  - (b) take possession of, protect or assume control over any land, body of water, building, structure, vehicle or thing;
  - (c) remove or destroy, or order the destruction of, any building, structure, vehicle, vegetation or seriously injured animal;
  - (d) direct the owner of, or the person for the time being in charge of, any real or personal property to place it under the control or at the disposition of a specified person;
  - (e) remove, or cause to be removed, to such place as the authorised person may determine, any person or animal, or direct the evacuation or removal of any person or animal;
  - (f) direct or prohibit the movement of persons, animals or vehicles;
  - (g) remove flammable material or any other hazardous material, or cause flammable material or any other hazardous material to be removed, from any place, building or structure;
  - (h) cause any supply of fuel or other flammable liquid, any gas or electricity, or any other hazardous material to be shut off or disconnected;
  - (i) direct a person who is in a position to do so—
    - (i) to stop any work or operation; or
    - (ii) to close any premises or other place; or
    - (iii) to contain the escape of any hazardous material, or to nullify the effects of the escape of any hazardous material; or
    - (iv) to shut off or remove any plant, equipment, apparatus or device or to perform any operation in relation to any plant, equipment, apparatus or device;
  - (j) shut off, or cut off, the supply of water or any drainage facility;
  - (k) make use of the gratuitous services of any person;
  - (l) direct, insofar as may be reasonably necessary in the circumstances, any person to assist in the exercise of any power under this section;

- (m) exercise any prescribed power.
- (3) In the absence of an officer, the powers of an officer under subsection (1) or (2) may be exercised by any member of SASES.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction of an officer of SASES or of any other person given in accordance with subsection (1) or (2).

Maximum penalty:

- (a) if the offender is a body corporate—\$75 000;
  - (b) if the offender is a natural person—\$20 000.
- (5) This section operates subject to the provisions of the *Emergency Management Act 2004*.

### **Subdivision 3—Related matter**

#### **119—Disconnection of gas or electricity**

A person or company supplying gas or electricity to any premises or other place where an emergency has occurred, or is in imminent danger of occurring, must, at the direction of a person who is lawfully dealing with the situation under this Division, send a competent person to shut off or disconnect the supply of gas or electricity to the premises or other place, or to any adjacent premises or place (and the person so attending must then comply with any direction that may be given in the exercise of powers under this Division).

### **Division 6—Related matters**

#### **120—Accounts and audit**

- (1) SASES must keep proper accounting records in relation to its financial affairs, and have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General must audit the annual statements of account required under subsection (1).
- (3) The accounts of an SASES unit are not required to be audited by the Auditor-General but must be audited in accordance with the regulations.

#### **121—Annual reports**

- (1) SASES must, on or before 30 September in each year, deliver to the Commission a report on the activities of SASES during the preceding financial year (and need not provide a report under section 6A of the *Public Sector Management Act 1995*).
- (2) The report must—
  - (a) include the audited statements of account required under this Division; and
  - (b) include any other information that would be required if SASES were reporting under the *Public Sector Management Act 1995*; and
  - (c) comply with any other requirements prescribed by or under this Act or the regulations.

## **122—Common seal and execution of documents**

- (1) The Chief Officer may—
  - (a) execute a document on behalf of SASES; and
  - (b) affix the common seal of SASES to a document.
- (2) The Chief Officer may, by instrument in writing, authorise another person to exercise a power under subsection (1) subject to conditions and limitations (if any) specified in the instrument for authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of SASES.
- (4) A document is duly executed by SASES if—
  - (a) the common seal of SASES is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of SASES by a person or persons in accordance with any authority conferred under this section.
- (5) If an apparently genuine document purports to bear the common seal of SASES, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of SASES has been duly affixed to that document.

## **123—S.A.S.E.S. Volunteers' Association Incorporated**

- (1) S.A.S.E.S. Volunteers' Association Incorporated is recognised as an association that represents the interests of members of SASES units.
- (2) The association may take such steps as may be reasonably available to it to advance the interests of members of SASES units.



## Part 6—Miscellaneous

### 124—Investigations

- (1) An authorised officer may, with or without assistance—
  - (a) enter and inspect any land, building, structure, vehicle or other place for the purpose of determining the cause of a fire or other emergency;
  - (b) take possession of any land, building, structure, vehicle or other thing for the purpose of any investigation or inquiry into the cause of a fire or other emergency;
  - (c) remove any object, material or other thing that may tend to establish the cause of a fire or other emergency;
  - (d) retain possession of any object, material or other thing for the purpose of any investigation or inquiry into the cause of a fire or other emergency.
- (2) In this section—

*authorised officer* means—

  - (a) an officer or other member of an emergency services organisation, authorised by the Chief Officer of the emergency services organisation to act as an authorised officer under this section; or
  - (b) a police officer; or
  - (c) some other person authorised by the Commission to act as an authorised officer under this section.

### 125—Obstruction etc

- (1) A person must not hinder or obstruct a member of an emergency services organisation or any other person in the exercise or performance of any power or function under this Act (including a person acting under the authority of, or complying with an order given by, a person or a court under this Act).

Maximum penalty: \$10 000.
- (2) If—
  - (a) a person is given a direction by a person exercising a power or function under this Act; and
  - (b) the person, without lawful excuse, fails to comply with the direction; and
  - (c) no other offence is specifically prescribed with respect to such a failure,then the person is guilty of an offence under this subsection.

Maximum penalty: \$5 000.

### 126—Impersonating an emergency services officer etc

- (1) A person must not falsely represent that he or she is a member of an emergency services organisation or other person with responsibilities under this Act.

Maximum penalty: \$10 000.

- (2) A person must not, without lawful authority—
- (a) wear any insignia or special apparel issued to a member of an emergency services organisation for the purposes of this Act; or
  - (b) use any special equipment issued to a member of an emergency services organisation for the purposes of this Act,
- in circumstances where to do so would lead to a reasonable belief that he or she was a member of an emergency services organisation.
- Maximum penalty: \$10 000.

### 127—Protection from liability

- (1) No civil or criminal liability will attach to a member of an emergency services organisation, a person appointed or authorised to act under this Act by the Commission, or other person for an honest act or omission—
- (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or
  - (b) in the carrying out of any direction or requirement given or imposed at the scene of a fire or other emergency.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.
- (3) A person (the *injured person*) who suffers injury, loss or damage as a result of the act or omission of a member of an emergency services organisation who is a volunteer may not sue the member personally unless—
- (a) it is clear from the circumstances of the case that the immunity conferred by subsection (1) does not extend to the case; or
  - (b) the injured person brings an action in the first instance against the Crown but the Crown then disputes, in a defence filed to the action, that it is liable for the act or omission of the member.
- (4) Without limiting subsection (1), no liability attaches to SACFS, the South Australian Bushfire Prevention Advisory Committee, a regional or district bushfire prevention committee or a council (or the members of any of them) by virtue of the fact that a bushfire prevention plan—
- (a) has not been prepared under this Act in relation to a particular part of this State; or
  - (b) has been so prepared but has not been implemented, or fully implemented.

### 128—Exemption from certain rates and taxes

All emergency services organisations are exempt from—

- (a) water and sewerage rates;
- (b) land tax;
- (c) the emergency services levy.



### 129—Power to provide sirens

An emergency services organisation or a council may erect a siren in a suitable place for the purpose of giving warning of the outbreak or threat of a fire or the occurrence or threat of an emergency, and may test and use the siren.

### 130—Provision of uniforms

A body within the emergency services sector may furnish its officers, members and employees with such uniforms and insignias as it thinks suitable.

### 131—Protection of names and logos

(1) In this section—

*official insignia* means—

- (a) any logo declared by the Commission by notice in the Gazette to be a logo for the purposes of this section; and
  - (b) any of the following (whether appearing or used in full or in an abbreviated form or alone or in combination with other words or symbols):
    - (i) "South Australian Fire and Emergency Services Commission", "SAFECOM" and "SAFESC";
    - (ii) "South Australian Metropolitan Fire Service", "SAMFS" or "MFS";
    - (iii) "South Australian Country Fire Service", "SACFS" or "CFS";
    - (iv) "South Australian State Emergency Service", "SASES" or "SES";
    - (v) any other name, title or expression declared by the Commission by notice in the Gazette to be an official title for the purposes of this section; and
  - (c) any combination of a logo under paragraph (a) and a name, title or expression under paragraph (b).
- (2) The Commission must not make a declaration under subsection (1) without the consent of the Minister.
- (3) A person must not, without the consent of the Commission, assume a name or description that consists of, or includes, official insignia.  
Maximum penalty: \$10 000.
- (4) A consent under this section—
  - (a) may be given with or without conditions (including conditions requiring payment to the Commission);
  - (b) may be given generally by notice in the Gazette or by notice in writing addressed to an applicant for the consent;
  - (c) may be revoked by the Commission for breach of a condition, or for any other reasonable cause, by notice in writing given personally or by post to a person who has the benefit of the consent.
- (5) The Supreme Court may, on the application of the Commission, grant an injunction to restrain a breach of this section.

- (6) The court by which a person is convicted of an offence against this section may, on the application of the Commission—
- (a) order the convicted person to pay compensation of an amount fixed by the court to the Commission;
  - (b) order the convicted person to surrender any item that bears any official insignia to the Commission.
- (7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Commission, or any emergency services organisation, apart from those subsections.

### 132—Attendance by police

- (1) Police must, at the request of SAMFS, SACFS or SASES, attend at the scene of a fire or other emergency in order to preserve order or to assist at the scene.
- (2) A police officer attending at the scene of a fire or other emergency may—
- (a) remove to such place as the police officer thinks fit any person who obstructs or threatens to obstruct any operations under this Act; and
  - (b) act to co-ordinate operations at the scene of the fire or other emergency; and
  - (c) exercise any other power or function that appears to be necessary or desirable in the circumstances.

### 133—Disclosure of information

- (1) A member of an emergency services organisation, a fire prevention officer, a fire control officer, a police officer or an authorised officer may direct a person who he or she reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.
- (2) A person to whom a direction is given under subsection (1) must immediately comply with the direction.  
Maximum penalty: \$5 000.
- (3) In this section—  
*authorised officer* means a person authorised by the Commission (either personally or by the designation of a class of persons) to exercise the powers of an authorised officer under this section.

### 134—Unauthorised fire brigades

- (1) A person must not, without the approval of the Commission or the Chief Officer of SACFS, be a member of a fire brigade in the country that is not an SACFS organisation.  
Maximum penalty: \$1 250.
- (2) In this section—  
*fire brigade* means a group of people equipped to deal with fires on behalf of a local community.

### **135—Interference with fire plugs, fire alarms etc**

A person must not without reasonable excuse—

- (a) conceal, remove, damage, interfere with or obstruct access to—
  - (i) a fireplug, hydrant, booster or suction point; or
  - (ii) a mark or sign used for the purpose of indicating the presence or position of a fireplug, hydrant, booster or suction point; or
  - (iii) a fire alarm or signalling device for giving notice of fire or other emergency; or
- (b) give a false alarm of fire or other emergency.

Maximum penalty: \$5 000.

### **136—False or misleading statements**

A person must not, in furnishing information under this Act, make a statement that is false or misleading in a material particular.

Maximum penalty: \$5 000.

### **137—Continuing offences**

- (1) If a person is convicted of an offence against this Act and after that conviction the act or omission of that person that constituted the offence continues, the person is guilty of a further offence, and is liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.
- (2) For the purposes of subsection (1), an obligation to do something is to be regarded as continuing until the act is done, notwithstanding that any period within which, or time before which, the act is required to be done, has expired or passed.

### **138—Offences by bodies corporate**

- (1) If a body corporate commits an offence against this Act, any director or manager of the body corporate is also guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless it is proved that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence by the body corporate.
- (2) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

### **139—Onus of proof**

In any proceedings for an offence against this Act in which it is established that the defendant lit or maintained a fire during the fire danger season or on a day on which a total fire ban was imposed, the onus lies on the defendant to prove some lawful authorisation to light or maintain the fire.

### **140—Evidentiary**

An allegation in any proceedings under this Act that on a particular date or during a particular period—

- (a) a specified person was or was not the owner or occupier of specified land; or
- (b) a specified person was the holder of a specified delegation or authority under this Act; or
- (c) a specified person was or was not a member of an emergency services organisation, a fire prevention officer, a fire control officer or another officer appointed under this Act; or
- (d) a specified order, direction or requirement under this Act was in force; or
- (e) a specified person was not the holder of a specified permit under this Act,

must, in the absence of proof to the contrary, be accepted as proved.

### **141—Insurance policies to cover damage**

- (1) A policy of insurance against damage or loss of property caused by a specified kind of emergency will be taken to extend to damage or loss arising from measures taken by a person acting in pursuance of an authority conferred by or under this Act at the scene of an emergency of the specified kind.
- (2) A term of a policy of insurance that purports to vary or exclude the operation of subsection (1) is void.

### **142—Payment of costs and expenses for certain vessels and property**

- (1) If an SAMFS fire brigade 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) are recoverable by the relevant entity as a debt from the owner of the vessel and the owner of any personal property that is in the vessel at the time of the fire or other emergency.
- (2) If the owners of personal property are liable under subsection (1), the relevant entity—
  - (a) must apportion the costs and expenses between the owner of the personal property and the owner of the vessel; and
  - (b) must cause a written notice indicating the apportionment to be served on the owner of the personal property and the owner of the vessel.
- (3) A notice under subsection (2)(b) is final and binding on all parties.
- (4) The Crown is not, under any circumstances, liable to pay the costs and expenses referred to in this section or any part of such costs and expenses.
- (5) In any proceedings under this section, a certificate apparently signed by the Chief Officer of the relevant entity certifying the cost of the attendance is, in the absence of proof to the contrary, to be accepted as proof of the costs and expenses incurred by the fire brigade.
- (6) The Chief Officer of the relevant entity or an authorised officer may, without any warrant or authority other than this Act, distrain a vessel or the tackle or goods of a vessel in respect of which any costs and expenses are owed to the relevant entity pursuant to this section.

- 
- (7) If the costs and expenses owed to the relevant entity pursuant to this section are not paid with 7 days after the distress, the relevant entity may cause the property distrained or any part of the property distrained to be sold, and out of the proceeds of the sale may pay the amount of the costs and expenses and the costs and expenses of the distress, keeping and sale to the relevant entity.
- (8) If the owner of the vessel or the owner of the personal property evades or attempts to evade the payment of the costs and expenses owed to the relevant entity, he or she is guilty of an offence.
- Maximum penalty: \$5 000.

- (9) In this section—

*authorised officer* means a person authorised by the Chief Officer of SAMFS or the Chief Officer of SACFS;

*prescribed vessel* means any vessel other than a vessel for which an emergency services levy under the *Emergency Services Funding Act 1998* has been paid;

*relevant entity* means—

- (a) in relation to an SAMFS fire brigade—SAMFS;
- (b) in relation to an SACFS brigade—SACFS.

### 143—Fees

- (1) An organisation within the emergency services sector may impose prescribed fees and charges in connection with the provision of any service of a prescribed kind undertaken in the performance of its functions.
- (2) The regulations may, for example, prescribe a fee or charge in connection with any of the following:
- (a) the attendance at any premises or place in response to a false alarm;
  - (b) the monitoring of any alarm or situation;
  - (c) the provision of any advice or report;
  - (d) the provision, inspection, testing, servicing or repairing of any plant or equipment;
  - (e) the provision of assistance to clean-up any place after an accident or other incident involving the spillage or escape of any substance or material;
  - (f) the performance of any recovery operations;
  - (g) the conducting of any training course.
- (3) A fee or charge may be fixed by reference to any factor prescribed by the regulations.

### 144—Services

- (1) An emergency services organisation may permit any fire brigade, brigade or unit within the organisation (as the case may be) to be engaged on special service at such remuneration and on such terms as the emergency services organisation may determine.

- (2) Without limiting subsection (1), a fire brigade, brigade or unit may undertake by agreement with the owner or occupier of land to clear bush, grass or other flammable material from the land, or to undertake any other work on the land, for the purpose of preventing or inhibiting the outbreak of fire on the land, or the spread of fire through the land, or for the purpose of dealing with any other emergency on the land.
- (3) Any money received by a fire brigade, brigade or unit in undertaking any activity under this section must (after deducting expenses) be used for the purposes of this Act (and, in the case of an SACFS brigade, for the purpose of its operations in its local area).

### **145—Acting outside the State**

- (1) An organisation within the emergency services sector may make any of its staff or members, and any equipment or facilities, available to assist in dealing with any fire or other emergency, or the threat of any fire or other emergency, at a place outside the State.
- (2) An organisation may act under subsection (1) on such terms and conditions as the organisation may determine.

### **146—Recognised interstate organisations**

- (1) A member of a recognised interstate organisation who is present at the scene of a fire or other emergency in this State may, if there is no officer of an emergency services organisation in control of operations to deal with the fire or other emergency, exercise any power vested in an officer of an emergency services organisation under this Act.
- (2) In this section—

*recognised interstate organisation* means an organisation formed outside this State and declared by the Commission or a Chief Officer of an emergency services organisation, by notice published in the Gazette, to be a recognised interstate organisation.

### **147—Inquests**

- (1) The Commission or any emergency services organisation is entitled to be heard at any inquest into the causes of a fire or other emergency and may be represented at the inquest by counsel or by one of its officers.
- (2) For the purposes of subsection (1), an officer of the Commission will be a person designated as an officer by the Commission.

### **148—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made with respect to any of the matters specified in Schedule 5.
- (3) A regulation under this Act—
  - (a) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - (b) may be of general or limited application;

- 
- (c) may provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or any other person or body prescribed by the regulations;
  - (d) may—
    - (i) exempt, or empower the Minister to exempt, a person, or a person of a class, from the operation of any provision of this Act;
    - (ii) declare that this Act, or any provision of this Act, does not apply, or applies with prescribed variations, to, or in relation to—
      - (A) a circumstance or situation (or circumstance or situation of a prescribed class); or
      - (B) a place or area within the State,  
specified in the regulation.
  - (4) A regulation under subsection (3)(d) may operate subject to such limitations and conditions as may be specified in the regulation.

#### **149—Review of Act**

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the results of the review to be submitted to him or her.
- (2) The Minister must ensure that a review under this section is conducted by a person who has, in the opinion of the Minister, appropriate knowledge and experience to undertake the review but who is not a member or former member of an emergency services organisation.
- (3) The review must include—
  - (a) an assessment of the extent to which the enactment of this Act has led to improvements in the management and administration of organisations within the emergency services sector and to increased efficiencies and effectiveness in the provision of fire and emergency services within the community; and
  - (b) an assessment of the extent to which owners of land, and other persons who are not directly involved in an emergency services organisation, should be able to take action to protect life or property from a fire that is burning out of control,and may address other matters determined by the Minister, or by the person conducting the review, to be relevant to a review of the operation of this Act.
- (4) The review must be undertaken after the second anniversary of the commencement of this Act and the report must be submitted to the Minister within 6 months after that second anniversary.
- (5) The Minister must, within 12 sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.





## **Schedule 1—Appointment and selection of assessors for appeals under Part 3**

- 1 The Minister must establish the following panels of persons from which persons are to be selected to sit as assessors in an appeal under Part 3 to the District Court or the Industrial Relations Commission:
  - (a) a panel appointed from persons nominated by the Chief Officer of SAMFS;
  - (b) a panel appointed from officers nominated by UFU;
  - (c) a panel appointed from firefighters nominated by UFU.
- 2 A member of a panel is to be appointed by the Minister for a term of office not exceeding 3 years and on conditions determined by the Minister and specified in the instrument of appointment.
- 3 A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- 4 Subject to clause 5, in any proceedings where the District Court, or the Industrial Relations Commission, is to sit with assessors, the judicial officer presiding at the proceedings must select—
  - (a) 1 member from the panel made up of persons nominated by the Chief Officer of SAMFS; and
  - (b) —
    - (i) if the appellant is an officer—1 member from the panel made up of officers nominated by UFU; or
    - (ii) if the appellant is a firefighter—1 member from the panel made up of firefighters nominated by UFU.
- 5 A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter is disqualified from participating in the hearing of the matter.
- 6 If an assessor dies or is for any reason unable to continue with any proceedings, the District Court or the Industrial Relations Commission (as the case requires) constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## **Schedule 2—Code of conduct to be observed by officers and firefighters for the purposes of Part 3**

An officer or a firefighter—

- (a) must not, without proper excuse, be absent from, or late in attending, any place at which he or she is required to attend in the course of his or her duty;
- (b) must not, without proper excuse, disobey an order of an officer or firefighter who is of superior rank and must not be guilty of insubordination;
- (c) must not neglect his or her duty—
  - (i) by failing to carry out duties promptly and diligently;

- (ii) by failing to report to the Chief Officer of SAMFS or other proper authority any matter that is relevant to the administration of this Act and of which he or she has knowledge;
  - (iii) in any other manner;
- (d) must not be negligent in the performance of his or her duty under this Act;
- (e) must not exercise his or her authority under this Act in an unnecessarily oppressive manner;
- (f) must not, without proper excuse, damage or destroy, or permit the damage or destruction of, property belonging to SAMFS;
- (g) must not, without proper excuse, fail to report to the Chief Officer of SAMFS or other proper authority any damage to, or loss or destruction of, any property belonging to SAMFS;
- (h) must not, without proper authority, alter or remove an entry in a book, document or other record belonging to SAMFS;
- (i) must not, without proper excuse, use property belonging to SAMFS for an unauthorised purpose;
- (j) must not knowingly make a false or misleading statement in the course of his or her duty under this Act;
- (k) must not fail to account for money or property of SAMFS that comes into his or her possession;
- (l) must not use his or her position as an officer or firefighter to obtain an ulterior pecuniary or material benefit;
- (m) must not, without proper excuse, render himself or herself unfit, by the consumption of alcohol or the use of any other drug, to carry out any duty under this Act;
- (n) must not consume alcohol or use a drug (other than alcohol or a drug prescribed by a medical practitioner) in the course of performing any duty under this Act;
- (o) must not, while on duty, engage in gambling;
- (p) must not, while on duty, act in a disorderly manner or in a manner that is likely to be prejudicial to the maintenance of discipline in the fire service conducted by SAMFS;
- (q) must not, without proper excuse, fail to be of clean and tidy appearance and of courteous demeanour when in uniform in a public place;
- (r) must not divulge to the public confidential information acquired by him or her in the course of his or her duty;
- (s) must not, without proper authority, make a public statement purporting to be made on behalf of the Chief Officer or SAMFS.

## **Schedule 3—Supplementary provisions relating to the South Australian Bushfire Prevention Advisory Committee**

### **1—Terms and conditions of office**

- (1) A member of the Advisory Committee to be appointed by the Governor will be appointed for a term not exceeding 3 years and on such conditions as the Governor determines and, at the expiration of a term of appointment, will be eligible for reappointment.
- (2) The Governor may remove a member appointed by the Governor from office—
  - (a) for a breach of, or non-compliance with, a condition of appointment; or
  - (b) for mental or physical incapacity to carry out official duties satisfactorily; or
  - (c) for neglect of duty; or
  - (d) for misconduct.
- (3) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subclause (2).
- (4) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

### **2—Quorum etc**

- (1) The presiding member will, if present at a meeting, preside at that meeting, and in the absence of that member, a member chosen by those present will preside.
- (2) 8 members constitute a quorum of the Advisory Committee.
- (3) Subject to this clause, each member present at a meeting has 1 vote on a matter arising for decision at the meeting.
- (4) A decision carried by a majority of members present at a meeting of the Advisory Committee is a decision of the Advisory Committee.
- (5) In the event of an equality of votes on a matter arising for the decision, the person presiding at the meeting has a second or casting vote.
- (6) Subject to this Act, the business of the Advisory Committee will be conducted in such manner as the Advisory Committee determines.

### **3—Validity of acts**

An act or proceeding of the Advisory Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

#### **4—Conflict of interest**

- (1) A member of the Advisory Committee who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Advisory Committee—
  - (a) must, as soon as reasonably practicable, disclose in writing to the Advisory Committee full and accurate details of the interest; and
  - (b) must not take part in any discussion by the Advisory Committee relating to that matter; and
  - (c) must not vote in relation to that matter; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) Without limiting the effect of this clause, a member will be taken to have an interest in a matter for the purposes of this clause if an associate of the member has an interest in the matter.
- (3) This clause does not apply in relation to a matter in which a member has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (4) The Minister may, by notice published in the Gazette, exempt a member (conditionally or unconditionally) from the application of a provision of this clause, and may, by further notice published in the Gazette, vary or revoke such an exemption.
- (5) Non-compliance by a member with a duty imposed by this clause constitutes a ground for removal of the member from office.
- (6) If a member or former member is convicted of an offence for a contravention of this clause, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Minister—
  - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (7) If a member or former member is guilty of a contravention of this clause, the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
  - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

## **Schedule 4—Supplementary provisions relating to regional and district bushfire prevention committees**

### **1—Interpretation**

In this Schedule—

*committee* means—

- (a) a regional bushfire prevention committee; or
- (b) a district bushfire prevention committee;

*responsible authority* means—

- (a) in relation to a regional bushfire prevention committee—the Chief Officer of SACFS;
- (b) in relation to a district bushfire prevention committee—the council, or councils, that established the committee.

### **2—Terms and conditions of office**

- (1) A person appointed to a committee will be appointed for a term not exceeding 2 years and on such conditions as the responsible authority determines after consultation with the Minister and, at the expiration of a term of appointment, will be eligible for reappointment.
- (2) The responsible authority may remove a member from office for any reasonable cause.
- (3) The responsible authority may appoint a suitable person to any vacancy in the membership of a committee.

### **3—Constitution**

The responsible authority may, if it thinks fit, provide that a committee will have a constitution determined by the responsible authority.

### **4—Quorum etc**

- (1) A committee must, on an annual basis, elect 1 of its members to be its presiding member.
- (2) The presiding member will, if present at a meeting, preside at that meeting, and in the absence of that member, a member chosen by those present will preside.
- (3) Subject to subclause (4), a committee may act notwithstanding vacancies in its membership.
- (4) The prescribed number of members of a committee constitutes a quorum of the committee.
- (5) In subclause (4), the prescribed number is a number ascertained by dividing the total number of members of the committee by 2, ignoring any fraction resulting from the division, and adding 1.
- (6) Subject to this clause, each member present at a meeting has 1 vote on a matter arising for decision at the meeting.

- (7) A decision carried by a majority of members present at a meeting of a committee is a decision of the committee.
- (8) In the event of an equality of votes on a matter arising for the decision, the person presiding at the meeting has a second or casting vote.
- (9) Subject to this Act and the committee's constitution (if any), the business of a committee will be conducted in such manner as the responsible authority determines or, in the absence of a determination of the responsible authority in relation to the matter, in such manner as the committee itself determines.

## **5—Conflict of interest**

- (1) A member of a committee who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the committee—
  - (a) must, as soon as reasonably practicable, disclose in writing to the committee full and accurate details of the interest; and
  - (b) must not take part in any discussion by the committee relating to that matter; and
  - (c) must not vote in relation to that matter; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) Without limiting the effect of this clause, a member will be taken to have an interest in a matter for the purposes of this clause if an associate of the member has an interest in the matter.
- (3) This clause does not apply in relation to a matter in which a member has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (4) The Minister may, by notice published in the Gazette, exempt a member (conditionally or unconditionally) from the application of a provision of this clause, and may, by further notice published in the Gazette, vary or revoke such an exemption.
- (5) Non-compliance by a member with a duty imposed by this clause constitutes a ground for removal of the member from office.
- (6) If a member or former member is convicted of an offence for a contravention of this clause, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Minister—
  - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

- (7) If a member or former member is guilty of a contravention of this clause, the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

## Schedule 5—Regulations

- 1 The giving of notice to a prescribed person or body in prescribed circumstances.
- 2 The provision of reports, documents or other forms of information to any person or body that performs a function under this Act.
- 3 The payment of fees and charges for any service rendered by an organisation within the emergency services sector or other body under this Act.
- 4 With respect to SAMFS—
  - (a) provide for the discipline of fire brigades, and of the officers and other members of fire brigades;
  - (b) provide for the practice and procedure of the Disciplinary Committee under Part 3 Division 7.
- 5 With respect to SACFS—
  - (a) make any provision with respect to the formation, constitution, rules and operations of SACFS organisations, and any related organisational or administrative matters;
  - (b) make any provision with respect to—
    - (i) the eligibility of persons to be members of SACFS organisations;
    - (ii) the registration, training, functions and duties of the members of SACFS organisations;
    - (iii) management matters relating to membership of SACFS organisations;
  - (c) make any provision with respect to—
    - (i) the determination of complaints against members of SACFS organisations;
    - (ii) the disciplining, in appropriate cases, of members of SACFS organisations.
- 6 With respect to SASES—
  - (a) make any provision with respect to the formation, constitution, rules and operations of SASES units, and any related organisational or administrative matters;
  - (b) make any provision with respect to—
    - (i) the eligibility of persons to be members of SASES units;

- (ii) the registration, training, functions and duties of the members of SASES units;
    - (iii) management matters relating to membership of SASES units;
  - (c) make any provision with respect to—
    - (i) the determination of complaints against members of SASES units;
    - (ii) the disciplining, in appropriate cases, of members of SASES units.
- 7 Any matter relevant to—
  - (a) the prevention, control, suppression, containment, mitigation or extinction of fire; or
  - (b) the prevention or mitigation of, or the means of dealing with, other emergencies; or
  - (c) the safety of life or property in the event of a fire or other emergency.
- 8 Any matter relevant to the operation, maintenance or inspection of equipment by a body within the emergency services sector, the members of such a body, or councils.
- 9 Regulate the design, construction, maintenance and use of fire alarms and other equipment or facilities associated with dealing with any fire or other emergency.
- 10 The prescription of any form for the purposes of this Act.
- 11 The procedures associated with any process under this Act, including the service of any notice or other document.
- 12 The design or use of any uniform, badge or insignia.
- 13 The holding of coronial inquests at the request of the Commission or an emergency services organisation in prescribed cases.
- 14 Fixing expiation fees, not exceeding \$500, for alleged offences against the regulations.
- 15 Evidence in proceedings for an offence against the regulations.
- 16 The imposition of penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.

## Schedule 6—Transitional provisions

### Part 11—Transitional provisions

#### 14—Special provisions relating to the repeal of the *Country Fires Act 1989*

- (1) In this clause—

*relevant Act* means the *Country Fires Act 1989*.
- (2) Any real or personal property of the Country Fire Service Board become, on the commencement of this clause, property of SACFS.
- (3) Any rights or liabilities of the Country Fire Service Board (whether vested or contingent) become, on the commencement of this clause, rights and liabilities of SACFS.
- (4) A decision or determination of the Country Fire Service Board that has any force or effect immediately before the commencement of this clause will be taken to be a decision or determination of the Chief Officer of SACFS.



- (5) The person holding the office of Chief Officer of the Country Fire Service immediately before the commencement of this clause continues as the Chief Officer of SACFS under this Act with the same conditions of employment (and, if relevant, for the balance of his or her term of appointment).
- (6) All C.F.S. organisations under the relevant Act become, on the commencement of this clause, SACFS organisations under this Act without affecting any office or position held in that organisation.
- (7) All C.F.S. regions under the relevant Act become, on the commencement of this clause, SACFS regions under this Act.
- (8) All money standing to the credit of the Country Fire Service Fund will, after the commencement of this clause, be managed by SACFS.
- (9) All committees under Part 4 of the relevant Act become, on the commencement of this clause, committees established under this Act (and all members will be members of the relevant committees under this Act).
- (10) A person holding an appointment as a fire prevention officer, authorised officer or fire control officer under the relevant Act will become, on the commencement of this clause, a person holding the corresponding appointment under this Act.
- (11) Any permit or other authorisation in force under the relevant Act immediately before the commencement of this Act will continue to have force and effect as if it were a permit or authorisation issued under the corresponding provision of this Act.

**15—Specific provisions relating to the repeal of the *South Australian Metropolitan Fire Service Act 1936***

- (1) In this clause—  
*relevant Act* means the *South Australian Metropolitan Fire Service Act 1936*.
- (2) The person holding the office of Chief Officer of the South Australian Metropolitan Fire Service immediately before the commencement of this clause continues as the Chief Officer of SAMFS under this Act with the same conditions of employment (and, if relevant, for the balance of his or her term of appointment).
- (3) All fire brigades under the relevant Act become, on the commencement of this clause, fire brigades under this Act without affecting any office or position held in that fire brigade.
- (4) All fire districts under the relevant Act become, on the commencement of this clause, SAMFS fire districts under this Act.
- (5) A person holding an appointment as an authorised officer under the relevant Act will become, on the commencement of this clause, a person holding the corresponding appointment under this Act.
- (6) A panel established under Schedule 1 of the relevant Act will become, on the commencement of this clause, the corresponding panel under Schedule 1 of this Act.

**16—Specific provisions relating to the repeal of the *State Emergency Service Act 1987***

- (1) In this clause—  
*relevant Act* means the *State Emergency Service Act 1987*.

- (2) The person holding the office of Director of State Emergency Service South Australia immediately before the commencement of this clause continues as the Chief Officer of SASES under this Act with the same conditions of employment (and, if relevant, for the balance of his or her term of appointment).
- (3) All S.E.S. units under the relevant Act become, on the commencement of this clause, SASES units under this Act without affecting any office or position held in the unit.

## **17—Staff**

- (1) The Minister may, by notice in the Gazette, transfer a person who is employed in the Emergency Services Administrative Unit immediately before the commencement of this subclause to—
  - (a) the staff of the Commission; or
  - (b) the staff of an emergency services organisation,(so that the person will then be an employee of the Commission or organisation (as the case may be)).
- (2) A person transferred under subclause (1) will have rights, obligations and liabilities in respect of his or her employment with the Commission or organisation that are the same as or equivalent to those that would have applied had the person remained as an employee within the Public Service.
- (3) Subclause (2) applies to a person subject to any industrial or enterprise award, determination or agreement that may become binding on the Commission or the organisation (as the case may be).
- (4) The Minister must consult with—
  - (a) the Commissioner for Public Employment; and
  - (b) any registered association that represents the interests of any person who is being transferred,before acting under subclause (1).
- (5) The Minister may, by notice in the Gazette, transfer a person who is employed in the South Australian Metropolitan Fire Service, the Country Fire Service or the State Emergency Service immediately before the commencement of this subclause to—
  - (a) the staff of the Commission; or
  - (b) the staff of another emergency services organisation,(so that the person will then be an employee of the Commission or the other organisation (as the case may be)).
- (6) The Minister must consult with—
  - (a) the Commissioner for Public Employment; and
  - (b) any registered association that represents the interests of any person who is being transferred,before acting under subclause (5) and the conditions of employment that will apply to a person on his or her transfer under that subclause will be determined by the Commissioner for Public Employment.

- (7) Despite a preceding subclause, a person transferred under this clause will be taken to have continuity of employment without any termination of service and any transfer will not affect any accrued or accruing right to leave.

### **18—Presiding member of Commission**

- (1) Despite section 11(1)(a) of this Act, the person first appointed to be the presiding member of the Board of the South Australian Fire and Emergency Services Commission need not hold the position of Chief Executive of the Commission.
- (2) The following provisions will apply if a person is appointed pursuant to subclause (1):
- (a) the person will be appointed on conditions determined by the Governor and for a term specified in the instrument of appointment;
  - (b) the person will be taken to be an *ex officio* member of the Board for the purposes of the other provisions of this Act.

### **19—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply to any amendment or repeal effected by this Schedule.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.6.2007
Part 2	1.4.2007
Part 3	1.4.2007
Part 4	1.4.2007
Part 5	1.4.2007
Part 6	18.1.2007
Schedules	18.1.2007
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Fire and Emergency Services Act 2005* repealed the following:

*Country Fires Act 1989*

*South Australian Metropolitan Fire Service Act 1936*

*State Emergency Service Act 1987*

### Legislation amended by principal Act

The *Fire and Emergency Services Act 2005* amended the following:

*Development Act 1993*

*Electricity Act 1996*

*Emergency Services Funding Act 1998*

*Essential Services Act 1981*

*Gas Act 1997*

*Local Government Act 1999*

*Private Parking Areas Act 1986*

*Summary Offences Act 1953*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2005	40	<i>Fire and Emergency Services Act 2005</i>	14.7.2005	1.10.2005 ( <i>Gazette</i> 29.9.2005 p3547)
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 12 (ss 46—58)—1.4.2007 ( <i>Gazette</i> 29.3.2007 p930)
<b>2006</b>	<b>43</b>	<b><i>Statutes Amendment (Domestic Partners) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 35 (s 103)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)</b>
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 14 (ss 22—25)—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	18.1.2007
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>18.1.2007</i>
s 3		
s 3(1)		
<b>domestic partner</b>	<b>inserted by 43/2006 s 103(1)</b>	<b>1.6.2007</b>
Industrial Relations Commission	inserted by 44/2006 s 22	18.1.2007
<b>spouse</b>	<b>substituted by 43/2006 s 103(2)</b>	<b>1.6.2007</b>
<b>s 3(4)</b>	<b>amended by 43/2006 s 103(3)—(5)</b>	<b>1.6.2007</b>
Pt 2		
s 17		
s 17(1)	s 17 amended and redesignated as s 17(1) by 41/2006 s 46(1)—(3)	1.4.2007
s 17(2)	inserted by 41/2006 s 46(3)	1.4.2007
s 28		
s 28(1)	amended by 41/2006 s 47	1.4.2007
s 29		
s 29(2)	amended by 44/2006 s 23(1)—(3)	18.1.2007
s 29(5)	amended by 41/2006 s 48	1.4.2007
s 30		
s 30(1)	amended by 41/2006 s 49	1.4.2007
s 31		
s 31(4)	inserted by 41/2006 s 50	1.4.2007
Pt 4		

s 61		
s 61(1)	amended by 41/2006 s 51	1.4.2007
s 62		
s 62(1)	amended by 41/2006 s 52	1.4.2007
s 63		
s 63(1)	amended by 41/2006 s 53	1.4.2007
s 64		
s 64(4)	inserted by 41/2006 s 54	1.4.2007
Pt 5		
s 110		
s 110(1)	amended by 41/2006 s 55	1.4.2007
s 111		
s 111(1)	amended by 41/2006 s 56	1.4.2007
s 112		
s 112(1)	amended by 41/2006 s 57	1.4.2007
s 113		
s 113(4)	inserted by 41/2006 s 58	1.4.2007
Sch 1		
cl 1	amended by 44/2006 s 24(1)	18.1.2007
cl 4	amended by 44/2006 s 24(2), (3)	18.1.2007
cl 5	amended by 44/2006 s 24(4)	18.1.2007
cl 6	amended by 44/2006 s 24(5)	18.1.2007
Sch 6		
<i>Pts 1—10</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.1.2007

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (Justice Portfolio) Act 2006***

#### **25—Transitional provision**

An amendment made by this Act to the *Fire and Emergency Services Act 2005* applies only in relation to proceedings commenced after the commencement of this section.

### ***Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions***

#### **Note—**

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

#### **1—Interpretation**

In this Part, unless the contrary intention appears—

***Commonwealth Act*** means the *Workplace Relations Act 1996* of the Commonwealth;

***employing authority*** means—

- (a) subject to paragraph (b)—the person who is the employing authority under a relevant Act;
- (b) in a case that relates to employment under the *Fire and Emergency Services Act 2005*—the Chief Executive of the South Australian Fire and Emergency Services Commission, or the Chief Officer of an emergency services organisation under that Act, as the case requires;

***Industrial Commission*** means the Industrial Relations Commission of South Australia;

***prescribed body*** means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;
- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;
- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;



- 
- (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

*relevant Act* means—

- (a) in a case that relates to employment with a prescribed body established under an Act being amended by this Act—that Act;
- (b) in a case that relates to employment with a prescribed body who is a Minister to whom the administration of an Act being amended by this Act is committed—that Act;
- (c) in a case that relates to employment with a body constituted under the *Fire and Emergency Services Act 2005*—that Act.

## 2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
- (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
- (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
- (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
- (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
- (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and

- (b) will not affect—
  - (i) existing conditions of employment or existing or accrued rights to leave; or
  - (ii) a process commenced for variation of those conditions or rights.
- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
  - (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
  - (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day, subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
  - (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
  - (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and
  - (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

### **3—Superannuation**

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
  - (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

- (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,

and subclause (1) may have effect despite any other Act or law.

- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

#### **4—Interpretative provision**

- (1) The Governor may, by proclamation, direct that a reference in any instrument (including a statutory instrument) or a contract, agreement or other document to a prescribed body, or other specified agency, instrumentality or body, will have effect as if it were a reference to an employing authority under a relevant Act, the Minister to whom the administration of a relevant Act is committed, or some other person or body designated by the Governor.
- (2) A proclamation under subclause (1) may effect a transfer of functions or powers.

#### **5—Related matters**

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

#### **6—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

## **Historical versions**

18.1.2007

1.4.2007