

# House of Assembly

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South Australia

## Fire and Emergency Services (Review) Amendment Bill 2009

A BILL FOR

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

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### Contents

#### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of long title
- 5 Amendment of section 3—Interpretation
- 6 Insertion of section 4A
  - 4A Areas of urban bushfire risk
- 7 Amendment of section 8—Functions and powers
- 8 Amendment of section 10—Establishment of Board
- 9 Amendment of section 11—Constitution of Board
- 10 Amendment of section 14—Proceedings
- 11 Repeal of section 15
- 12 Amendment of section 16—Chief Executive
- 13 Insertion of section 17A
  - 17A Workforce plans
- 14 Substitution of Part 2 Division 5
  - Division 5—Committees
    - 19 Committees
- 15 Amendment of section 42—Powers
- 16 Amendment of section 48—Suspension pending hearing of complaint
- 17 Amendment of section 49—Appeals
- 18 Amendment of section 50—Representation of parties
- 19 Amendment of section 51—Participation of assessors in appeals
- 20 Repeal of section 56
- 21 Amendment of section 68—Establishment of SACFS
- 22 Amendment of section 69—Country Fire Service Volunteers Association
- 23 Substitution of Part 4 Division 7
  - Division 7—Fire prevention authorities—country areas and urban bushfire risk areas
    - Subdivision 1—State Bushfire Coordination Committee
      - 71 State Bushfire Coordination Committee

## Fire and Emergency Services (Review) Amendment Bill 2009

### Contents

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	71A	Functions of State Bushfire Coordination Committee
	71B	Power of delegation
	71C	Use of facilities
	71D	Validity of acts
	71E	Annual reports
	71F	Specific reports
	Subdivision 2—Bushfire management committees	
	72	Establishment of bushfire management areas
	72A	Establishment of bushfire management committees
	72B	Functions of bushfire management committees
	72C	Power of delegation
	72D	Use of facilities
	72E	Validity of acts
	Division 7A—Bushfire management plans	
	73	State Bushfire Management Plan
	73A	Bushfire Management Area Plans
24	Amendment of section 78—Fire danger season	
25	Amendment of section 79—Fires during fire danger season	
26	Amendment of section 81—Permit to light and maintain a fire	
27	Repeal of Part 4 Division 8 Subdivision 5	
28	Repeal of section 88	
29	Amendment of section 89—Restriction on use of certain appliances etc	
30	Repeal of section 90	
31	Amendment of section 91—Duty to report unattended fires	
32	Repeal of section 92	
33	Insertion of section 95A	
	95A	Other regulatory provisions
34	Amendment of section 101—Annual reports	
35	Insertion of Part 4A	
	Part 4A—Fire prevention	
	Division 1—Interpretation	
	105A	Interpretation
	Division 2—Fire prevention officers	
	105B	Fire prevention officers
	105C	Functions of fire prevention officers
	105D	Delegations
	105E	Reports
	Division 3—Duties to prevent fires	
	105F	Private land
	105G	Council land
	105H	Crown land
	105I	Commonwealth land
	Division 4—Related provisions	
	105J	Additional provision in relation to powers of authorised persons
	105K	Review by Chief Officer
36	Amendment of section 116—SASES units	
37	Amendment of section 127—Protection from liability	
38	Amendment of section 148—Regulations	
39	Amendment of section 149—Review of Act	
40	Amendment of Schedule 1—Appointment and selection of assessors for appeals under Part 3	
41	Repeal of Schedule 3	
42	Repeal of Schedule 4	

43 Amendment of Schedule 5—Regulations

## Schedule 1—Transitional provisions

1 Transitional provisions

### 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 (Review) Amendment Act 2009*.

### 2—Commencement

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

### 3—Amendment provisions

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

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

### 4—Amendment of long title

Long title—after "Commission" insert:

and to provide for the Commission's role in the governance, strategic and policy aspects of the emergency services sector

### 5—Amendment of section 3—Interpretation

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

*designated urban bushfire risk area* means an area of urban bushfire risk designated under section 4A;

(2) Section 3(1), definition of *District Court*—delete the definition

(3) Section 3(1), definition of *fire prevention officer*—delete the definition and substitute:

*fire prevention officer* means a fire prevention officer appointed by a council under Part 4A Division 2;

(4) Section 3(1)—after the definition of *Industrial Relations Commission* insert:

*land* means, according to the context—

- (a) land as a physical entity, including any building or structure on, or improvement to, land;
- (b) a legal estate or interest in, or right in respect of, land;

(5) Section 3(1), definition of *officer*—delete "within the command or organisational structure" and substitute:

by the Chief Officer

- (6) Section 3(3)—delete "the South Australian Bushfire Prevention Advisory Committee and any regional or district bushfire prevention committees constituted under Part 4" and substitute:

the State Bushfire Coordination Committee and each bushfire management committee

## **6—Insertion of section 4A**

After section 4 insert:

### **4A—Areas of urban bushfire risk**

- (1) The Commission may, by notice in the Gazette, designate an area within a fire district as an area of urban bushfire risk (a *designated urban bushfire risk area*).
- (2) The Commission may, by notice in the Gazette—
  - (a) vary an area designated under subsection (1); or
  - (b) revoke the designation of an area under subsection (1).
- (3) 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; and
  - (c) any Minister designated by the Minister under this Act as being a Minister who has a significant interest in the matter; and
  - (d) any council whose area would be, or is, within the designated urban bushfire risk area.
- (4) The period for consultation with a council will be 6 weeks, or such longer period as the Commission considers reasonable in the circumstances.

## **7—Amendment of section 8—Functions and powers**

Section 8(1)(p)—delete paragraph (p) and substitute:

- (p) to undertake a leadership role from a strategic perspective with respect to emergency management within the State and to maintain an appropriate level of liaison with other bodies responsible for the management of emergencies in the State;

## **8—Amendment of section 10—Establishment of Board**

- (1) Section 10(1)—delete "managed and"
- (2) Section 10—after subsection (1) insert:
  - (1a) In acting under subsection (1), the Board is responsible for—
    - (a) establishing the strategic direction of the Commission; and

- (b) ensuring that the functions of the Commission are effectively exercised in accordance with this or any other Act; and
  - (c) developing an annual budget for the Commission and monitoring results against the Commission's budget on a regular basis; and
  - (d) monitoring and assessing the performance and outcomes of the Commission against its statutory, strategic and other responsibilities, goals and objectives.
- (3) Section 10(2)—delete "in the management or administration of the affairs of the Commission"

### **9—Amendment of section 11—Constitution of Board**

- (1) Section 11(1)(e)—delete "4" and substitute:  
5
- (2) Section 11(1)(e)(i)—delete "South Australian Volunteer Fire-Brigades Association" and substitute:  
Country Fire Service Volunteers Association
- (3) Section 11(1)(e)—after subparagraph (ii) insert:  
(iia) 1 must be a person appointed on the nomination of UFU; and

### **10—Amendment of section 14—Proceedings**

- (1) Section 14(2)—delete subsection (2) and substitute:  
(2) 5 members of the Board constitute a quorum of the Board.
- (2) Section 14(3)—delete "*ex officio*"
- (3) Section 14(4)—delete subsection (4)
- (4) Section 14(6)(b)—delete "*ex officio*"

### **11—Repeal of section 15**

Section 15—delete the section

### **12—Amendment of section 16—Chief Executive**

- (1) Section 16(3)(b)—delete "insofar as they relate to the management of the Commission"
- (2) Section 16(3)—after paragraph (b) insert:  
and
- (c) undertaking other executive management roles associated with the activities of the Commission; and
  - (d) performing other functions assigned to the CE by the Board.

### **13—Insertion of section 17A**

After section 17 insert:

#### **17A—Workforce plans**

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

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

### **14—Substitution of Part 2 Division 5**

Part 2 Division 5—delete Division 5 and substitute:

#### **Division 5—Committees**

##### **19—Committees**

- (1) The Commission must establish a committee to provide advice to the Commission in respect of—
  - (a) matters related to the employees of emergency services organisations; and
  - (b) matters related to volunteers with emergency services organisations; and
  - (c) other matters referred to the committee by the Commission, and may establish any other committees (including advisory committees) that 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.

### **15—Amendment of section 42—Powers**

- (1) Section 42—after subsection (4) insert:

- (4a) A member of SAMFS must, before taking any prescribed action with respect to prescribed land, or property on prescribed land—

- (a) consult with the owner or person in charge of the prescribed land if that person is in the presence of, or may be immediately contacted by, the member of SAMFS; 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.

- (4b) 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 SAMFS who might exercise powers under this section with respect to the reserve.

- (2) Section 42—after subsection (6) insert:

- (6a) 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 land of a kind brought within the ambit of this definition by the regulations;

- 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;

- prescribed land* means—

- (a) a government reserve; or
      - (b) any other land of a kind brought within the ambit of this definition by the regulations.

### **16—Amendment of section 48—Suspension pending hearing of complaint**

Section 48(2)—delete "District Court" and substitute:

Industrial Relations Commission

### **17—Amendment of section 49—Appeals**

Section 49(1)—delete "District Court" and substitute:

Industrial Relations Commission

**18—Amendment of section 50—Representation of parties**

- (1) Section 50(1)—delete "District Court" and substitute:  
Industrial Relations Commission
- (2) Section 50(2)—delete "District Court" and substitute:  
Industrial Relations Commission

**19—Amendment of section 51—Participation of assessors in appeals**

Section 51—delete "District Court" and substitute:  
Industrial Relations Commission

**20—Repeal of section 56**

Section 56—delete the section

**21—Amendment of section 68—Establishment of SACFS**

- (1) Section 68(2)—delete "prescribed by the regulations or"
- (2) Section 68(8) to (14)—delete subsections (8) to (14) (inclusive) and substitute:
  - (8) The Chief Officer must, before determining to dissolve an SACFS organisation, undertake the consultation, and comply with any other requirement, prescribed by the regulations.

**22—Amendment of section 69—Country Fire Service Volunteers Association**

Section 69(1)—delete "South Australian Volunteer Fire-Brigades Association" and substitute:  
Country Fire Service Volunteers Association

**23—Substitution of Part 4 Division 7**

Part 4 Division 7—delete Division 7 and substitute:

**Division 7—Fire prevention authorities—country areas and urban bushfire risk areas**

**Subdivision 1—State Bushfire Coordination Committee**

**71—State Bushfire Coordination Committee**

- (1) The *State Bushfire Coordination Committee* is established.
- (2) The State Bushfire Coordination Committee consists of—
  - (a) the Chief Officer of SACFS (*ex officio*) (who will be the presiding member of the committee); and
  - (b) the following members, appointed by the Governor:
    - (i) 1 officer of SAMFS, nominated by SAMFS;



- (ii) 1 officer of SACFS (not being an officer who holds office as a volunteer member of SACFS), nominated by SACFS;
- (iii) 1 volunteer member of SACFS, nominated by the Country Fire Service Volunteers Association;
- (iv) 1 police officer, nominated by South Australia Police;
- (v) 1 officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of the *National Parks and Wildlife Act 1972*, nominated by the Chief Executive of that administrative unit;
- (vi) 1 officer of the South Australian Forestry Corporation, nominated by the South Australian Forestry Corporation;
- (vii) 1 officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of the *Highways Act 1926*, nominated by the Chief Executive of that administrative unit;
- (viii) 1 officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of the *Electricity Act 1996*, nominated by the Chief Executive of that administrative unit;
- (ix) 1 officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of the *Development Act 1993* with experience in development in bushfire prone areas, nominated by the Chief Executive of that administrative unit;
- (x) 1 officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of primary industry in the State, nominated by the Chief Executive of that administrative unit;
- (xi) 1 officer of the South Australian Water Corporation, nominated by the South Australian Water Corporation;
- (xii) 1 person nominated by the Bureau of Meteorology;
- (xiii) 1 person nominated by the LGA;
- (xiv) 1 person nominated by the Native Vegetation Council;

- (xv) 1 person nominated by the Outback Areas Community Development Trust;
  - (xvi) 1 person nominated by the Natural Resources Management Council;
  - (xvii) 1 person nominated by the South Australian Farmers Federation Incorporated;
  - (xviii) 1 person nominated by the Conservation Council of South Australia Incorporated.
- (3) Each member of the State Bushfire Coordination Committee must have experience in an area that is relevant to bushfire prevention or management.
  - (4) An appointed member of the State Bushfire Coordination Committee 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, is eligible for reappointment.
  - (5) The Governor may remove an appointed member 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.
  - (6) The office of an appointed 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 subsection (5).
  - (7) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.
  - (8) The Governor may appoint a suitable person to be a deputy of a member of the State Bushfire Coordination Committee.
  - (9) 10 members constitute a quorum of the State Bushfire Coordination Committee.
  - (10) The State Bushfire Coordination Committee must comply with any requirement of the Minister relating to the conduct of its business but otherwise may determine its own procedures.

### **71A—Functions of State Bushfire Coordination Committee**

- (1) The State Bushfire Coordination Committee has the following functions:
  - (a) to advise the Minister on bushfire prevention in the country and in designated urban bushfire risk areas;
  - (b) to advise the Minister on matters related to bushfire management;
  - (c) as far as is reasonably practicable—to promote the State-wide coordination and integration of policies, practices and strategies relating to bushfire management activities;
  - (d) to provide guidance, direction and advice to bushfire management committees and to resolve any issues that may arise between 2 or more bushfire management committees;
  - (e) to prepare, and to keep under review, the State Bushfire Management Plan and to keep under review the extent to which—
    - (i) Bushfire Management Area Plans; and
    - (ii) policies, practices and strategies adopted or applied by bushfire management committees,are consistent with the State Bushfire Management Plan;
  - (f) to oversee the implementation of the State Bushfire Management Plan and to report to the Minister on any failure or delay in relation to the implementation of the plan;
  - (g) to prepare, or initiate the development of, other plans, policies, practices, codes of practice or strategies to promote effective bushfire management within the State;
  - (h) to convene forums to discuss bushfire management issues, and to promote public awareness of the need to ensure proper bushfire management within the State;
  - (i) at the request of the Minister, or on its own initiative, to provide a report on any matter relevant to bushfire management;
  - (j) to carry out any other function assigned to the State Bushfire Coordination Committee under this or any other Act or by the Minister.
- (2) SACFS is responsible for providing an officer of SACFS to undertake the role of Executive Officer of the State Bushfire Coordination Committee.

- (3) The State Bushfire Coordination Committee is, in the performance of its functions, subject to the general direction and control of the Minister (but the Minister cannot give a direction with respect to any advice or recommendation that the State Bushfire Coordination Committee might give or make or with respect to the contents of any report).

### **71B—Power of delegation**

- (1) The State Bushfire Coordination Committee may delegate a function or power of the State Bushfire Coordination Committee under this or any other Act—
- (a) to a person for the time being holding or acting in a particular office or position; or
  - (b) 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 State Bushfire Coordination Committee to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **71C—Use of facilities**

The State Bushfire Coordination Committee may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of—

- (a) SACFS; or
- (b) SAMFS; or
- (c) a council; or
- (d) another public authority or entity.

### **71D—Validity of acts**

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

### **71E—Annual reports**

The State Bushfire Coordination Committee must, on or before 31 August in each year, provide to SACFS a report on the activities of the State Bushfire Coordination Committee and each bushfire management committee during the preceding financial year (and need not provide a report under section 6A of the *Public Sector Management Act 1995*).

### **71F—Specific reports**

- (1) The Minister or the Commission may, by written notice to the State Bushfire Coordination Committee, require the State Bushfire Coordination Committee to provide to the Minister or the Commission, within a period stated in the notice or at stated intervals, any report or reports relating to the performance, exercise or discharge of any aspect of its functions, powers or responsibilities, as the Minister or the Commission (as the case may be) thinks fit.
- (2) If a requirement is imposed under subsection (1), the State Bushfire Coordination Committee must cause a statement of the fact of the imposition of the requirement to be published in its next annual report.

### **Subdivision 2—Bushfire management committees**

#### **72—Establishment of bushfire management areas**

- (1) The Governor may, by proclamation made on the recommendation of the State Bushfire Coordination Committee, divide the State into *bushfire management areas*.
- (2) The State Bushfire Coordination Committee must, in formulating a recommendation for the purposes of subsection (1)—
  - (a) give attention to the nature and form of the natural environment; and
  - (b) take into account local government boundaries or areas and Natural Resources Management regions.
- (3) The Governor may, by subsequent proclamation made on the recommendation of the State Bushfire Coordination Committee—
  - (a) vary the boundaries of any bushfire management area;
  - (b) abolish a bushfire management area (on the basis that a new division is to occur).

#### **72A—Establishment of bushfire management committees**

- (1) The State Bushfire Coordination Committee must establish a bushfire management committee for each bushfire management area.
- (2) The composition of a bushfire management committee will be determined by the State Bushfire Coordination Committee after consultation with the Minister (and the State Coordination Bushfire Committee will then make appointments to the committee).
- (3) A member of a bushfire management committee will be appointed for a term determined by the State Bushfire Coordination Committee on conditions approved by the Minister and, at the expiration of a term of appointment, is eligible for reappointment.
- (4) The State Bushfire Coordination Committee may remove a member of a bushfire management committee from office for any reasonable cause.

- (5) The office of a member of a bushfire management committee 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 State Bushfire Coordination Committee; or
  - (d) is removed from office under subsection (4).
- (6) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.
- (7) The State Bushfire Coordination Committee may appoint a suitable person to be a deputy of a member of a bushfire management committee.
- (8) The State Bushfire Coordination Committee will determine the quorum of a bushfire management committee.
- (9) A bushfire management committee must comply with any requirement of the State Bushfire Coordination Committee relating to the conduct of its business but otherwise may determine its own procedures.

**72B—Functions of bushfire management committees**

- (1) A bushfire management committee has the following functions:
  - (a) to advise the State Bushfire Coordination Committee on bushfire prevention in its area;
  - (b) to promote the coordination of policies, practices and strategies relating to bushfire management activities within its area;
  - (c) to prepare, and to keep under review, a Bushfire Management Area Plan for its area, and to ensure that this plan is consistent with the State Bushfire Management Plan;
  - (d) to oversee the implementation of its Bushfire Management Area Plan and to report to the State Bushfire Coordination Committee or, if it thinks fit, to the Minister, on any failure or delay in relation to the implementation of the plan;
  - (e) to prepare, or initiate the development of, other plans, policies, practices or strategies to promote effective bushfire management within its area;
  - (f) to convene local or regional forums to discuss issues associated with bushfire management within its area, and to work with local communities to promote and improve effective bushfire management;

- (g) at the request of the Minister or the State Bushfire Coordination Committee, or on its own initiative, to provide a report on any matter relevant to bushfire management within its area;
  - (h) to carry out any other function assigned to the bushfire management committee under this or any other Act, by the Minister or by the State Bushfire Coordination Committee.
- (2) SACFS is responsible for providing an officer of SACFS to undertake the role of Executive Officer of a bushfire management committee.
- (3) A bushfire management committee is, in the performance of its functions, subject to the control and direction of the State Bushfire Coordination Committee.

### **72C—Power of delegation**

- (1) A bushfire management committee may delegate a function or power of the bushfire management committee under this or any other Act—
- (a) to a person for the time being holding or acting in a particular office or position; or
  - (b) 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 regional bushfire management committee to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **72D—Use of facilities**

A bushfire management committee may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of—

- (a) SACFS; or
- (b) SAMFS; or
- (c) a council; or
- (d) another public authority or entity.

### **72E—Validity of acts**

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

## **Division 7A—Bushfire management plans**

### **73—State Bushfire Management Plan**

- (1) The State Bushfire Coordination Committee must prepare and maintain a plan to be called the *State Bushfire Management Plan*.
- (2) The plan is to set out principles, policies and standards for bushfire management in the State from a high-level or strategic perspective.
- (3) The primary purpose of the plan is to identify major bushfire risks in the State and recommend appropriate action that will provide protection to life, property and the environment from the effects of bushfires.
- (4) Without limiting subsection (2), the plan must—
  - (a) set out principles to be applied in achieving appropriate levels of hazard reduction for bushfire management; and
  - (b) outline strategies to achieve the State-wide coordination and integration of bushfire management activities; and
  - (c) set standards or requirements that must be applied or observed in the preparation and implementation of Bushfire Management Area Plans; and
  - (d) include or address other matters prescribed by the regulations or specified by the Minister after consultation with the Chief Officer of SACFS.
- (5) The State Bushfire Coordination Committee must review the plan at least once in every 4 years.
- (6) Subject to subsection (7), the State Bushfire Coordination Committee may amend the plan at any time.
- (7) The State Bushfire Coordination Committee must, in relation to any proposal to create or amend the plan—
  - (a) prepare a draft of the proposal; and
  - (b) take reasonable steps to consult with—
    - (i) the Chief Officer of SACFS; and
    - (ii) the Chief Officer of SAMFS; and
    - (iii) any Government Department or agency designated by the Minister from time to time for the purposes of this subsection; and
    - (iv) the LGA; and
    - (v) the Natural Resources Management Council; and
    - (vi) the South Australian Farmers Federation Incorporated; and
    - (vii) the Conservation Council of South Australia Incorporated; and



- (viii) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this subsection,  
in relation to the proposal; and
  - (c) by public notice, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within a period specified by the State Bushfire Coordination Committee.
- (8) Subsection (7) does not apply in relation to an amendment that is being made—
- (a) in order to ensure that the plan is consistent with any plan, policy or strategy—
    - (i) that has been prepared, adopted or applied under another Act; and
    - (ii) that falls within a class prescribed by the regulations for the purposes of this paragraph; or
  - (b) in order to remove or replace information in the plan that has been superseded by information that is more reliable or up-to-date; or
  - (c) in order to make a change in form; or
  - (d) in any other prescribed circumstance.
- (9) The plan, and any amendments to the plan, have no force or effect until approved by the Minister after consultation with the Chief Officer of SACFS and the Chief Officer of SAMFS.
- (10) The plan is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (11) A failure by the State Bushfire Coordination Committee to comply with a requirement of this section cannot be taken to affect the validity of the plan, or any other plan or instrument under this Act.

### **73A—Bushfire Management Area Plans**

- (1) Each bushfire management committee must prepare and maintain a *Bushfire Management Area Plan* for its area.
- (2) The plan must set out a scheme for bushfire management within its area.
- (3) Without limiting subsection (2), the plan must—
  - (a) identify existing or potential risks to people and communities within its area from bushfire; and
  - (b) outline strategies to achieve appropriate hazard reduction associated with bushfire management within its area, especially through a coordinated and cooperative approach to bushfire prevention and mitigation; and

- (c) identify action that should be taken by persons, agencies and authorities to achieve appropriate standards of bushfire management within its area; and
    - (d) without limiting paragraphs (b) and (c), establish or adopt principles and standards to guide or measure the successful implementation of bushfire management strategies and initiatives; and
    - (e) include or address other matters prescribed by the regulations or specified by the State Bushfire Coordination Committee.
  - (4) The plan must be consistent with—
    - (a) the State Bushfire Management Plan; and
    - (b) such other plans, policies or strategies as may be prescribed by the regulations for the purposes of this paragraph.
  - (5) A bushfire management committee must review its plan—
    - (a) at least once in every 4 years; or
    - (b) at the direction of the State Bushfire Coordination Committee.
  - (6) Subject to subsection (7), a bushfire management committee may amend its plan at any time.
  - (7) A bushfire management committee must, in relation to a proposal to create or amend its plan—
    - (a) prepare a draft of its proposal; and
    - (b) take reasonable steps to consult with—
      - (i) the State Bushfire Coordination Committee; and
      - (ii) any SACFS organisation specified by the Chief Officer of SACFS; and
      - (iii) any Government Department or agency designated by the Minister from time to time for the purposes of this subsection; and
      - (iv) any council whose area is wholly or partly within the relevant bushfire management area; and
      - (v) any regional NRM board whose region is wholly or partly within the relevant bushfire management area; and
      - (vi) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this subsection,
- in relation to the proposal; and

- (c) by public notice, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within a period prescribed by the regulations.
- (8) Subsection (7) does not apply in relation to an amendment that is being made—
- (a) in order to ensure that the plan is consistent with a change to the State Bushfire Management Plan; or
  - (b) in order to remove or replace information in the plan that has been superseded by information that is more reliable or up-to-date; or
  - (c) in order to make a change in form; or
  - (d) in any other prescribed circumstance.
- (9) A plan, and any amendments to a plan, have no force or effect until approved by the State Bushfire Coordination Committee.
- (10) The State Bushfire Coordination Committee may, in connection with subsection (9)—
- (a) approve a plan or amendment when it is furnished to the State Bushfire Coordination Committee;
  - (b) consult the relevant bushfire management committee about any amendment to a proposed plan or amendment that the State Bushfire Coordination Committee considers necessary or appropriate and then approve the plan or amendment with amendment;
  - (c) refer a plan or amendment back to the relevant bushfire management committee for further consideration.
- (11) A plan is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (12) A failure by a bushfire management committee to comply with a requirement under this section cannot be taken to affect the validity of a plan, or any other plan or instrument under this Act.

#### **24—Amendment of section 78—Fire danger season**

Section 78(2)—delete "the appropriate regional bushfire prevention committee or committees" and substitute:

the appropriate bushfire management committee or committees

#### **25—Amendment of section 79—Fires during fire danger season**

- (1) Section 79(1), expiation fee provision—delete the expiation fee provision

- (2) Section 79(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:
- (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 circumstances prescribed by the regulations (and subject to any conditions or requirements that may be prescribed by the regulations).
- (3) Section 79(5)—delete "under subsection (2)" and substitute:
- in accordance with this section

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

- (1) Section 81(2)—delete subsection (2) and substitute:
- (2) An application for a permit—
- (a) must be made in a form determined by the Chief Officer; and
- (b) must be accompanied by such information as may be required—
- (i) under the terms of the form; or
- (ii) at the direction of an authorised officer.
- (2) Section 81(10), (11) and (12)—delete subsections (10) to (12) (inclusive) and substitute:
- (10) The regulations may establish a scheme for the review by the Commission of a decision to revoke a permit.

**27—Repeal of Part 4 Division 8 Subdivision 5**

Part 4 Division 8 Subdivision 5—delete Subdivision 5

**28—Repeal of section 88**

Section 88—delete the section

**29—Amendment of section 89—Restriction on use of certain appliances etc**

Section 89, expiation fee provision—delete the expiation fee provision

**30—Repeal of section 90**

Section 90—delete the section

**31—Amendment of section 91—Duty to report unattended fires**

- (1) Section 91(2)—before the definition of *government officer* insert:
- designated Act* means an Act designated by the Minister from time to time by notice in the Gazette for the purposes of this section;

- (2) Section 91(2), definition of *government officer*, (a)—delete paragraph (a) and substitute:

- (a) an officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of the *National Parks and Wildlife Act 1972*; or
- (ab) an officer of the administrative unit of the Public Service primarily responsible for assisting the relevant Minister in the administration of a designated Act; or

### **32—Repeal of section 92**

Section 92—delete the section

### **33—Insertion of section 95A**

After section 95 insert:

#### **95A—Other regulatory provisions**

Nothing in this Division limits or prevents any other requirements or prohibitions imposed by or under this Act (including by regulations made under section 148) applying—

- (a) outside the fire danger season; or
- (b) on days that are not total fire ban days; or
- (c) in circumstances that fall outside the contemplation of this Division.

### **34—Amendment of section 101—Annual reports**

Section 101(2)—after paragraph (a) insert:

- (ab) incorporate the annual report on the activities of the State Bushfire Coordination Committee and the bushfire management committees for the relevant financial year; and

### **35—Insertion of Part 4A**

After Part 4 insert:

## **Part 4A—Fire prevention**

### **Division 1—Interpretation**

#### **105A—Interpretation**

In this Part—

*authorised person*, in relation to particular land, means—

- (a) if the land is within a fire district—
  - (i) the Chief Officer of SAMFS;
  - (ii) the council;

- (iii) a fire prevention officer appointed by the council;
  - (iv) an authorised person appointed by the council under the *Local Government Act 1999* and authorised by the council for the purposes of this Part;
- (b) if the land is not within a fire district—
- (i) the Chief Officer of SACFS;
  - (ii) if the land is within a council area—
    - (A) the council;
    - (B) a fire prevention officer appointed by the council;
    - (C) an authorised person appointed by the council under the *Local Government Act 1999* and authorised by the council for the purposes of this Part;
  - (c) any other person declared by the regulations to be included within the ambit of this definition;

**council**, in relation to particular land, means the council constituted under the *Local Government Act 1999* for the area in which the land is situated;

**flammable undergrowth** includes undergrowth that is likely to become flammable.

## **Division 2—Fire prevention officers**

### **105B—Fire prevention officers**

- (1) Each council—
  - (a) that is a rural council; or
  - (b) that has within its area a designated urban bushfire risk area,must appoint at least 1 person as a fire prevention officer for its area.
- (2) A fire prevention officer must have qualifications or experience appropriate to the office.
- (3) A council must—
  - (a) in determining the number of fire prevention officers that it should appoint under subsection (1); and
  - (b) in assessing the qualifications or experience of a person for the purposes of subsection (2),take into account any policy developed by SACFS for the purposes of this section.
- (4) A Chief Officer may, on application by a council, exempt the council from the requirement to appoint a fire prevention officer under this section.

### **105C—Functions of fire prevention officers**

A fire prevention officer has the following functions:

- (a) to assess the extent of bushfire hazards within the relevant council area;
- (b) to assist the council in providing advice and information to any bushfire management committee whose area incorporates any part of the relevant council area in connection with the preparation or review of the committee's Bushfire Management Area Plan;
- (c) to provide advice to owners of property in respect of bushfire prevention and management;
- (d) to carry out any other functions assigned to the fire prevention officer by the regulations.

### **105D—Delegations**

- (1) A fire prevention officer may delegate any of his or her functions or powers under this or any other Act—
  - (a) to a member of SACFS; or
  - (b) to a member of SAMFS; or
  - (c) with the approval of the council—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 fire prevention officer to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) If a fire prevention officer delegates a function or power under this section, he or she must report that fact to the council.

### **105E—Reports**

The Commission, the State Bushfire Coordination Committee or a bushfire management committee in whose bushfire management area the relevant council area is wholly or partly located may, by written notice, require the council to provide to the Commission, the State Bushfire Coordination Committee or the bushfire management committee (within a period stated in the notice or at stated intervals) any report or reports relating to the performance, exercise or discharge of the functions, powers or responsibilities of the fire prevention officer or officers (if any) for the council's area, as the Commission, the State Bushfire Coordination Committee or the bushfire management committee (as the case may be) thinks fit.

## **Division 3—Duties to prevent fires**

### **105F—Private land**

- (1) An owner of private land must take reasonable steps—
  - (a) to prevent or inhibit the outbreak of fire on the land; and
  - (b) to prevent or inhibit the spread of fire through the land; and
  - (c) to protect property on the land from fire; and
  - (d) to minimise the threat to human life from a fire on the land.

Maximum penalty: \$5 000.

- (2) In determining the standard required to comply with subsection (1) (but subject to subsection (4)), the following matters are to be taken into account (insofar as may be relevant and without limiting any other relevant matter):
  - (a) the nature of the land;
  - (b) whether the land is in a country, metropolitan, township or other setting;
  - (c) the activities carried out on the land (including whether flammable or combustible materials or substances are used or stored on the land);
  - (d) other statutory standards or requirements that apply to or in relation to the land.
- (3) The regulations may prescribe 1 or more codes of practice for the purposes of subsection (1).
- (4) In proceedings for an offence against subsection (1)—
  - (a) if it is proved by the prosecution—
    - (i) that a code of practice under subsection (3) relates to land of the kind to which the proceedings relate; and
    - (ii) that the defendant is in breach of the code in 1 or more respects,



then the defendant is, in the absence of proof to the contrary, to be taken to have failed to exercise the standard required under subsection (1); and

- (b) if it is proved by the defendant—
  - (i) that a code of practice under subsection (3) relates to land of the kind to which the proceedings relate; and
  - (ii) that the defendant has complied with the code in all relevant respects,

then the defendant is to be taken to have exercised the standard required under subsection (1).

- (5) If an authorised person believes on reasonable grounds—
  - (a) that an owner of private land has failed to comply with subsection (1); or
  - (b) that measures should be taken in respect of particular private land for the purpose of—
    - (i) preventing or inhibiting the outbreak of fire on the land; or
    - (ii) preventing or inhibiting the spread of fire through the land; or
    - (iii) protecting property on the land from fire,

the authorised person may, by notice in writing that complies with any requirements set out in the regulations, require the owner of the private land to take specified action to remedy the default or to protect the land or property on the land, within such time as may be specified in the notice.

- (6) Without limiting the operation of subsection (5), a notice under that subsection may include directions—
  - (a) to trim or remove vegetation on the land; or
  - (b) to remove flammable or combustible materials or substances, or to store flammable or combustible materials or substances in a specified manner; or
  - (c) to eliminate a potential ignition source; or
  - (d) to create, establish or maintain fire breaks or fuel breaks.

(7) An authorised person must, in acting under subsection (5), apply any guidelines prepared or adopted by the Minister for the purposes of that subsection and published by the Minister in the Gazette.

(8) A person must not refuse or fail to comply with a notice under subsection (5).

Maximum penalty: \$10 000.

- (9) A notice under subsection (5) may be given—
- (a) personally; or
  - (b) by post; or
  - (c) if the authorised person 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.
- (10) An authorised person may, by further notice in writing, vary or revoke a notice under this section.
- (11) If a notice under subsection (5) is directed to an occupier of land, the authorised person must take reasonable steps to serve (personally or by post) a copy of the notice on the owner.

### **105G—Council land**

- (1) A council that has the care, control or management of land—
- (a) in the country; or
  - (b) in a designated urban bushfire risk area,
- must take reasonable steps—
- (c) to prevent or inhibit the outbreak of fire on the land; and
  - (d) to prevent or inhibit the spread of fire through the land; and
  - (e) to protect property on the land from fire; and
  - (f) to minimise the threat to human life from a fire on the land.
- (2) In determining the standard required to comply with subsection (1), the following matters are to be taken into account (insofar as may be relevant and without limiting any other relevant matter):
- (a) the nature of the land;
  - (b) whether the land is in a country, metropolitan, township or other setting;
  - (c) the activities carried out on the land (including whether flammable or combustible materials or substances are used or stored on the land);
  - (d) other statutory standards or requirements that apply to or in relation to the land.
- (3) The regulations may prescribe 1 or more codes of practice for the purposes of subsection (1).
- (4) If, in the opinion of the relevant Chief Officer, a council has failed to comply with subsection (1), the Chief Officer may refer the matter to the Minister.

- (5) The Minister must, on the referral of a matter under subsection (4), consult with—
  - (a) the council; and
  - (b) the Minister to whom the administration of the *Local Government Act 1999* has been committed.
- (6) The Minister may then (if the Minister thinks fit), by notice in writing to the council after consultation with the relevant Chief Officer, require the council to take specified action (being action considered by the Minister to be reasonably necessary to comply with the requirements of subsection (1)).
- (7) A council must not fail to comply with a notice under subsection (6).
- (8) In this section—

**relevant Chief Officer**, in relation to particular land, means—

  - (a) if the land is within a fire district—the Chief Officer of SAMFS;
  - (b) if the land is outside a fire district—the Chief Officer of SACFS.

#### **105H—Crown land**

- (1) A Minister, agency or instrumentality of the Crown that has the care, control or management of land—
  - (a) in the country; or
  - (b) in a designated urban bushfire risk area,must take reasonable steps—
  - (c) to prevent or inhibit the outbreak of fire on the land; and
  - (d) to prevent or inhibit the spread of fire through the land; and
  - (e) to protect property on the land from fire; and
  - (f) to minimise the threat to human life from a fire on the land.
- (2) In determining the standard required to comply with subsection (1), the following matters are to be taken into account (insofar as may be relevant and without limiting any other relevant matter):
  - (a) the nature of the land;
  - (b) whether the land is in a country, metropolitan, township or other setting;
  - (c) the activities carried out on the land (including whether flammable or combustible materials or substances are used or stored on the land);
  - (d) other statutory standards or requirements that apply to or in relation to the land.
- (3) The regulations may prescribe 1 or more codes of practice for the purposes of subsection (1).

- (4) If in the opinion of the relevant Chief Officer, a Minister, agency or instrumentality of the Crown has failed to comply with subsection (1), the Chief Officer may refer the matter to the Minister.
- (5) The Minister may, on the referral of a matter under subsection (4), undertake such consultation or other action as the Minister thinks fit in connection with the matter.
- (6) If the Minister considers that he or she cannot resolve the matter the Minister may, after consultation with the relevant Chief Officer, request another Minister (being the responsible Minister in the circumstances of the particular case) to take action to ensure that a management or other plan is put in place to secure compliance with the requirements of subsection (1).
- (7) In this section—

*relevant Chief Officer*, in relation to particular land, means—

  - (a) if the land is within a fire district—the Chief Officer of SAMFS;
  - (b) if the land is outside a fire district—the Chief Officer of SACFS.

#### **105I—Commonwealth land**

- (1) If in the opinion of the relevant Chief Officer conditions existing on Commonwealth land—
  - (a) in the country; or
  - (b) in a designated urban bushfire risk area,present an undue risk to surrounding land (not being Commonwealth land) in the event of a bushfire on (or passing through) the Commonwealth land, the relevant Chief Officer must take reasonable steps to notify the person apparently in control of the Commonwealth land of the risk and the reasons for his or her opinion (and may provide advice as to the action that, in the opinion of the Chief Officer, should be taken in view of the risk).
- (2) In this section—

*Commonwealth land* means land occupied by the Commonwealth (including the Crown in right of the Commonwealth or a Commonwealth Minister), or by an agency or instrumentality of the Crown;

*relevant Chief Officer*, in relation to particular land, means—

  - (a) if the land is within a fire district—the Chief Officer of SAMFS;
  - (b) if the land is outside a fire district—the Chief Officer of SACFS.

## **Division 4—Related provisions**

### **105J—Additional provision in relation to powers of authorised persons**

- (1) An authorised person in relation to particular land, or any other person authorised by the Chief Officer of SAMFS or the Chief Officer of SACFS for the purposes of this section, may, for a purpose related to the administration, operation or enforcement of this Part—
  - (a) at any reasonable time, after giving reasonable notice to the occupier of the land, enter the land; or
  - (b) with the authority of a warrant issued by a magistrate, or in circumstances in which the authorised person reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on, the land.
- (2) A magistrate must not issue a warrant under subsection (1)(b) unless satisfied that the warrant is reasonably required in the circumstances.
- (3) An application for a warrant—
  - (a) may be made either personally or by telephone; and
  - (b) must be made in accordance with any procedures prescribed by the regulations.
- (4) In exercising a power under this Part, an authorised officer may—
  - (a) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;
  - (b) take photographs, films, audio, video or other recordings;
  - (c) give any other directions reasonably required in connection with the exercise of the power.
- (5) An authorised person may, in exercising a power under this Part, be accompanied by such assistants as may reasonably be required in the circumstances.
- (6) If an owner of land refuses or fails to comply with the requirements of a notice under section 105F(5), an authorised person may proceed to carry out those requirements.
- (7) Action taken by an authorised person under subsection (6) may be taken on the authorised person's behalf by a person authorised by the Chief Officer of SAMFS or the Chief Officer of SACFS, or by a council, for the purposes of this subsection.
- (8) The reasonable costs and expenses incurred by an authorised person in taking action under subsection (6) may be recovered by—
  - (a) if the relevant notice was given by a council, or a fire prevention officer or an authorised person appointed by a council and authorised for the purposes of this Part—the council; or

- (b) in any other case—the Minister,  
as a debt from the person who failed to comply with the requirements of the relevant notice.
- (9) If an amount is recoverable from a person by a council or the Minister under subsection (8)—
  - (a) in the case of amount recoverable by a council—the council may recover the amount as if it were rates in arrears; or
  - (b) in the case of an amount recoverable by the Minister—
    - (i) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
    - (ii) the amount together with any interest charge so payable is, until paid, a charge in favour of the Minister on the land to which the notice under section 105F(5) relates.
- (10) A person cannot claim compensation from the Minister, the Crown, a council, an authorised person or any person acting under subsection (7) in respect of any action taken under this section.

### **105K—Review by Chief Officer**

- (1) In this section—
  - compliance notice* means a notice under section 105F(5);
  - relevant Chief Officer* means—
    - (a) in relation to a compliance notice that relates to land within a fire district—the Chief Officer of SAMFS;
    - (b) in relation to a compliance notice that relates to land outside a fire district—the Chief Officer of SACFS.
- (2) A person to whom a compliance notice is issued may apply to the relevant Chief Officer for a review of the notice under this section.
- (3) The application must be made within 14 days after the notice is served on the person unless the relevant Chief Officer, in his or her discretion, allows an extension of time.
- (4) Subject to a determination of the relevant Chief Officer to the contrary in relation to the particular matter, the operation of a notice subject to a review is suspended until the review has been determined or withdrawn.

- (5) The relevant Chief Officer must review the notice and, after taking into account such matters as the Chief Officer thinks fit, may—
  - (a) confirm, vary or revoke any requirement under the notice and, if appropriate, discharge the notice;
  - (b) substitute any requirement or notice that could have been made or given in the first instance;
  - (c) dismiss the matter;
  - (d) make any consequential or ancillary direction.
- (6) If the relevant Chief Officer—
  - (a) confirms or varies a notice; or
  - (b) substitutes a requirement or notice,

the person to whom the notice or requirement is addressed must comply with the notice or requirement within a period specified by the Chief Officer.

Maximum penalty: \$10 000.

### **36—Amendment of section 116—SASES units**

- (1) Section 116(4)—delete "prescribed by the regulations or"
- (2) Section 116(9) to (15)—delete subsections (9) to (15) (inclusive) and substitute:
  - (9) The Chief Officer must, before determining to dissolve an SASES unit, undertake the consultation, and comply with any other requirement, prescribed by the regulations.

### **37—Amendment of section 127—Protection from liability**

Section 127(4)—delete "the South Australian Bushfire Prevention Advisory Committee, a regional or district bushfire prevention committee" and substitute:

the State Bushfire Coordination Committee, a bushfire management committee

### **38—Amendment of section 148—Regulations**

Section 148—after subsection (4) insert:

- (5) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body or person, either as in force at the time the regulations are made or as in force from time to time.
- (6) Where the regulations refer to or incorporate a code, standard or other document, then—
  - (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

- (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

### **39—Amendment of section 149—Review of Act**

- (1) Section 149(1)—delete subsection (1) and substitute:
  - (1) The Minister must cause a review of the operation of this Act to be conducted.
  - (1a) The review must relate to the period between the commencement of the *Fire and Emergency Services (Review) Amendment Act 2009* and 30 March 2013.
- (2) Section 149(3) and (4)—delete subsections (3) and (4) and substitute:
  - (3) The review must be commenced as soon as is reasonably practicable after 30 March 2013 and the report must be submitted to the Minister by 30 September 2013.

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

- (1) Schedule 1, clause 1—delete "the District Court or"
- (2) Schedule 1, clause 4—delete "District Court, or the Industrial Relations Commission," and substitute:

the Industrial Relations Commission
- (3) Schedule 1, clause 6—delete "the District Court or the Industrial Relations Commission (as the case requires)" and substitute:

the Industrial Relations Commission

### **41—Repeal of Schedule 3**

Schedule 3—delete the Schedule

### **42—Repeal of Schedule 4**

Schedule 4—delete the Schedule

### **43—Amendment of Schedule 5—Regulations**

- (1) Schedule 5, clause 7(a)—after "fire" insert:

, including so as to regulate or prohibit any activity, practice or act, or the use of any plant, equipment, apparatus or device (either absolutely or in prescribed circumstances and including so as to provide for the imposition of any conditions or requirements)
- (2) Schedule 5, clause 14—after "against the" insert:

Act or



- (3) Schedule 5, clause 16—delete "\$5 000" and substitute:

\$10 000

- (4) Schedule 5—after clause 16 insert:

17       The making of provisions of a saving or transitional nature  
consequent on the amendment of this Act by any other Act.

## **Schedule 1—Transitional provisions**

### **1—Transitional provisions**

- (1) The amendment of sections 49, 50 and 51 of the *Fire and Emergency Services Act 2005* by this Act does not affect any proceedings instituted under those sections before the commencement of this clause.
- (2) A right of appeal in existence before the commencement of this clause under the sections referred to in subclause (1) not exercised before that commencement will be taken to be a right of appeal under those sections as amended by this Act.