

South Australia

**COUNTRY FIRES ACT 1989**

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An Act to provide for the prevention, control and suppression of fires; to provide for the protection of life and property in fire and other emergencies; and for other purposes.

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*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **18 December 2003**.*

*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.*

## COUNTRY FIRES ACT 1989

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Country Fires Act 1989 No. 38 of 1989  
[Assented to 4 May 1989]<sup>1</sup>

as amended by

Country Fires (Audit Requirements) Amendment Act 1996 No. 40 of 1996 [Assented 6 June 1996]

Emergency Services Funding Act 1998 No. 63 of 1998 [Assented to 10 September 1998]<sup>2</sup>

Electricity Corporations (Restructuring and Disposal) Regulations 1999 No. 159 of 1999 [Gaz. 29 July 1999, p. 626]<sup>3</sup>

Statutes Amendment (Local Government and Fire Prevention) Act 1999 No. 12 of 1999 [Assented to 18 March 1999]<sup>4</sup>

Country Fires (Incident Control) Amendment Act 2000 No. 89 of 2000 [Assented to 21 December 2000]<sup>5</sup>

**Statutes Amendment (Bushfire Summit Recommendations) Act 2003 No. 57 of 2003 [Assented to 4 December 2003]<sup>6</sup>**

<sup>1</sup> Came into operation (except s. 75(2)(g)) 18 September 1989: *Gaz.* 14 September 1989, p. 866; s. 75(2)(g) had not been brought into operation at the date of this reprint.

<sup>2</sup> Schedule 2 (cl. 1) came into operation 30 June 1999: *Gaz.* 13 May 1999, p. 2502.

<sup>3</sup> Came into operation 29 July 1999: reg. 2.

<sup>4</sup> Part 2 (s. 4) came into operation 7 October 1999: *Gaz.* 7 October 1999, p. 1416.

<sup>5</sup> Came into operation 8 March 2001: *Gaz.* 8 March 2001, p. 833.

<sup>6</sup> **Part 2 (ss. 4-10) came into operation 18 December 2003: *Gaz.* 11 December 2003, p. 4430.**

**NOTE:**

. *Asterisks indicate repeal or deletion of text.*

. *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*

. *For the legislative history of the Act see Appendix 1.*

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Country Fires Act 1989

The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### Short title

1. This Act may be cited as the *Country Fires Act 1989*.

### Commencement

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

### Preliminary

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

"**area**" means the area of a municipal or district council;

"**authorised officer**" means a person authorised by the Board to exercise the powers of an authorised officer under the provision in which the expression appears;

"**the Board**" means the Country Fire Service Board;

"**the Chief Officer**" means the person for the time being holding, or acting in, the office of Chief Officer of the Country Fire Service under this Act;

"**Corporation**" means *South Australian Forestry Corporation* established under the *South Australian Forestry Corporation Act 2000*;

"**council**" means a municipal council or district council;

"**the country**" means those parts of the State that lie outside the metropolitan fire service districts;

"**Country Fire Service**" or "**C.F.S.**" means the Country Fire Service constituted under this Act;

"**C.F.S. officer**" means an officer of the C.F.S. appointed under Division 4 of Part 2 (and includes any member of the C.F.S. acting in the position of C.F.S. officer);

"**C.F.S. organisation**" means—

- (a) a C.F.S. regional association; or
- (b) a C.F.S. group; or
- (c) a C.F.S. brigade;

"**equipment**" includes—

- (a) protective clothing;
- (b) materials and substances used in fire-fighting
- (c) buildings or other structures where equipment may be kept and meetings held;

"**fire alarm**" means a device for giving notice of a fire;

"**fire control officer**" means a fire control officer appointed by the Board under Part 7;

"**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 5;

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

- (a) preventing, controlling or extinguishing fires;
- (b) dealing with other emergencies that require the C.F.S. to act to protect life or property;

"**fire prevention officer**" means a fire prevention officer appointed by a council under Part 4 (and includes an assistant fire prevention officer);

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

"**the Fund**" means the Country Fire Service Fund established under Part 3;

"**insurer**" means any person carrying on the business of insurance;

"**metropolitan fire service district**" means a fire district constituted under the *South Australian Metropolitan Fire Service Act 1936* and includes any other part of the State where the South Australian Metropolitan Fire Service has responsibility for the provision of fire-fighting services;

"**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;
- (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;

"**region**" see *section 4*;

"**rural council**" means a council whose area lies wholly or partially outside the metropolitan fire service districts.

(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;
  - (ii) any increase in the intensity or seriousness of any bushfire; or
- (c) to mitigate the effect of any bushfire.

(3) The C.F.S. and 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.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.*

#### **C.F.S. regions**

4. (1) The Board may, by notice in the *Gazette*—

- (a) declare any specified part of the State to be a C.F.S. region; or
- (b) assign a name to any such region; or
- (c) vary or revoke any such notice.

(2) A C.F.S. region cannot comprise a metropolitan fire service district or any part of

a metropolitan fire service district.

**Non-derogation**

5. The provisions of this Act do not derogate from—

- (a) the provisions of the *Native Vegetation Management Act 1985*;
- (b) the provisions of any other Act that relate to—
  - (i) fire prevention or safety in the State;
  - (ii) the installation, maintenance or servicing of any fire-fighting, or fire prevention, equipment;
  - (iii) investigations into the cause of any fire.

## Part 2—The Country Fire Service

### Division 1—Constitution and responsibilities of the Country Fire Service

#### Establishment of C.F.S.

6. (1) The *Country Fire Service* (C.F.S.) is established.

(2) The C.F.S.—

- (a) is a body corporate;
- (b) has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate;
- (c) holds its property on behalf of the Crown.

(3) Where a document appears to bear the common seal of the C.F.S., it will be presumed, in the absence of proof to the contrary, to have been duly executed by the C.F.S.

#### Constitution of C.F.S.

7. The C.F.S. consists of—

- (a) the Board; and
- (b) all C.F.S. organisations that are formed or continue in existence under this Act; and
- (c) all officers, employees and voluntary workers of the C.F.S.

#### Responsibilities of the C.F.S.

8. Subject to this Act, the C.F.S. is responsible for—

- (a) the prevention, control and suppression of fires in the country;
- (b) the protection of life, property and environmental assets in fire and other emergencies occurring in the country.

### Division 2—The Country Fire Service Board

#### The C.F.S. Board

9. (1) The *Country Fire Service Board* is established.

(2) The Board consists of seven members of whom—

- (a) six will be appointed by the Governor as follows:

- (i) two (who must be suitable representatives of rural councils) will be chosen from a panel of five submitted by the Local Government Association; and
  - (ii) two will be chosen from a panel of five submitted by the South Australian Volunteer Fire-Brigades Association; and
  - (iii) two will be nominated by the Minister—
    - (A) one being a person with experience in financial administration and land management; or
    - (B) one being a person with experience in financial administration and the other being a person with experience in land management; and
- (b) one will be the Chief Executive Officer of the Board.
- (3) The Chief Executive Officer of the Board—
- (a) will be appointed by the Minister (on terms and conditions agreed between the Minister and the Chief Executive officer); and
  - (b) must be appointed on a full-time basis; and
  - (c) is responsible to the Board for the management and administration of the C.F.S.
- (4) One of the members of the Board will be appointed by the Governor to be its presiding member.
- (5) The Governor may appoint a suitable person to be a deputy of a member of the Board.
- (6) At least one member of the Board must be a man and at least one member a woman.

### **Responsibilities of the Board**

**10.** (1) The Board has the administration and control of the C.F.S.

(2) The Board has the following specific responsibilities—

- (a) to ensure that the C.F.S. carries out its responsibilities effectively and efficiently;
- (b) to manage the human and material resources of the C.F.S. so as to achieve the greatest possible efficiency in their deployment and use;

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- (c) to carry out the necessary planning and investigation (in consultation with appropriate authorities) in order to determine the nature and extent of the C.F.S. resources required in each region and area;
- (d) to promote the formation of C.F.S. organisations and promote voluntary membership of those organisations;
- (e) to keep a register of the members of C.F.S. organisations;
- (f) to take action (so far as may be reasonable) to promote the interests and welfare of members of C.F.S. organisations;
- (g) to provide or arrange for the training of members of C.F.S. organisations, fire prevention officers and fire control officers, and issue certificates of qualifications or proficiency;
- (h) to prepare and maintain plans for fighting fires and dealing with other emergencies in the country;
- (i) to ensure, so far as may be reasonably practicable—
  - that bushfire prevention plans are prepared, maintained and implemented; and
  - that, in the preparation, maintenance and implementation of those plans, proper land management principles are taken into account;
- (j) to provide, or arrange for the provision of, fire alarm systems and automatic fire suppression equipment;
- (k) to establish and maintain an efficient communication system;
- (l) to make provision for the use of aircraft in reconnaissance and fire suppression;
- (m) to advise the Minister on matters referred to the Board for advice;
- (n) to make representations relating to fire safety in the country to public authorities and agencies, and other appropriate bodies or persons;
- (o) to disseminate information on any matters falling within the sphere of the Board's responsibilities.

(3) The Board will be responsible to the Minister for the administration of this Act.

**Delegation**

**11.** (1) The Board may delegate any power or function under this Act.

(2) The Chief Executive Officer of the Board may delegate any power or function (including, as may be appropriate, a delegated power or function).

(3) A delegation under this section is revocable at will and does not derogate from the powers of the delegator.

### **Division 3—The organisational structure of the C.F.S.**

#### **Establishment of C.F.S. organisations**

12. (1) The Board may, by notice in the *Gazette*—

- (a) constitute a C.F.S. regional association in relation to a C.F.S. region;
- (b) constitute a C.F.S. group in relation to two or more C.F.S. brigades within a region;
- (c) constitute a C.F.S. brigade.

(2) Subject to any provision made by the regulations, every C.F.S. organisation will have a constitution determined by the Board.

(3) The constitution of a C.F.S. organisation may be amended, with the approval of the Board, in the manner set out in the constitution.

(4) A C.F.S. organisation—

- (a) has the powers and functions prescribed by the regulations or set out in its constitution; and
- (b) has such other powers and functions as may be assigned to it by the Board.

(5) A C.F.S. organisation must—

- (a) maintain such records as may be prescribed, specified by its constitution, or required by the Board; and
- (b) furnish to the Board, in a manner and form determined by the Board, any information required by the Board.

(6) The Board may, by notice in the *Gazette*, dissolve a C.F.S. organisation.

(7) The Board must, in determining whether or not to dissolve a C.F.S. organisation, consult with the members of the organisation.

(8) On dissolution of a C.F.S. organisation, its property, rights and liabilities vest in the C.F.S.

(9) The C.F.S. must, in dealing with any property vested under subsection (8), take

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into account the views (if any) of any council that provided the property to the C.F.S. organisation, or that contributed to the cost of the purchase of the property by the C.F.S. organisation.

**Organisational structure of the C.F.S.**

**13.** The mutual relationship of C.F.S. organisations and their obligations to each other will, subject to this Act, be defined by the Board.

**The South Australian Volunteer Fire-Brigades Association**

**14.** (1) The South Australian Volunteer Fire-Brigades Association is recognised as an association that represents the interests of members of C.F.S. organisations.

(2) The Association may take such steps as may be reasonably available to it to advance the interests of members of C.F.S. 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 4—The structure of the C.F.S. operational command****The Chief Officer of the Country Fire Service**

**15.** (1) The office of *Chief Officer of the Country Fire Service* is established.

(2) The Chief Officer has the ultimate responsibility for C.F.S. operations and may therefore assume command of any C.F.S. operations for the prevention, control or suppression of fire or the protection of life or property.

(3) The Chief Officer has the following ancillary functions—

(a) to inspect or arrange for the inspection of C.F.S. organisations and report to the Board on the state of their efficiency;

(b) to report to the Board on any other matter affecting the operational preparedness or efficiency of the C.F.S.;

(c) to arrange practice and training exercises for members of C.F.S. organisations;

(d) to carry out any other functions assigned by the Board.

(4) The Chief Officer will be appointed by the Board.

(5) The Board may also appoint a Deputy Chief Officer and one or more Assistant Chief Officers.

(6) An appointment under this section—

- (a) may only be made after the Board has complied with selection procedures approved by the Minister; and
- (b) cannot be made without the approval of the Minister.

(7) The Deputy Chief Officer (if appointed) will, while the Chief Officer is absent from the duties of office or while the position of Chief Officer is temporarily vacant, exercise and discharge the powers and functions of the Chief Officer.

(8) The Chief Officer, the Deputy Chief Officer and any Assistant Chief Officer may delegate powers or functions (including, as may be appropriate, delegated powers or functions).

(9) A delegation under subsection (8) is revocable at will and does not derogate from the powers of the delegator.

### **The command structure**

16. (1) There will be the following officers—

- (a) for each region there will be a regional officer;
- (b) for each group there will be a group officer;
- (c) for each brigade there will be a brigade captain.

(2) A regional officer will be appointed by the Board.

(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 the C.F.S.

(6) Subject to subsection (7), there will be such other officers of the C.F.S. as the regulations may prescribe or as the Board thinks fit to appoint.

(7) The Board, or the regulations, may provide for the election of persons to fill certain ranks in the C.F.S.

(8) An election to a rank in the C.F.S. cannot take effect until approved by the Board.

(9) The relative authority of each officer of the C.F.S. will be in accordance with a

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command structure determined by the Board.

(10) Each officer or member of the C.F.S. must recognise the authority and obey the directions of an officer to whom that officer or member is subordinate.

(11) The Board may, on reasonable grounds—

- (a) demote a person who holds a particular rank in the C.F.S.;
- (b) disqualify a person from holding a rank in the C.F.S.;
- (c) disqualify a person from membership of the C.F.S.

(12) Before taking action against a person under subsection (11), the Board must give the person a reasonable opportunity to appear before the Board (either personally or through his or her representative) and to make submissions in relation to the proposed course of action.

## Part 3—Monetary and other resources of the C.F.S.

### Division 1—The C.F.S. Fund

#### The Country Fire Service Fund

17. (1) The *Country Fire Service Fund* is established.

(2) The Board must pay into the Fund—

- (a) any money appropriated by Parliament for the administration of this Act; and
- (b) any money received or recovered by the Board in the administration of this Act.

(3) The Fund must be applied by the Board in the administration of this Act.

(4) The Board may invest any money not immediately required for the administration of this Act in a manner approved by the Treasurer.

(5) The Board may borrow money for the purposes of the Fund on terms and conditions approved by the Treasurer.

#### Insurers' contributions

18. (1) Before the commencement of each financial year, the Treasurer will make an estimate of the total expenditure to be incurred in the administration of this Act for that financial year.

(2) The Board may, with the approval of the Treasurer, by notice published in the *Gazette*, recommend an amount (being not less than one-quarter and not more than one-half of the Treasurer's estimate made under subsection (1)) to be contributed by insurers towards the cost of the administration of this Act in that financial year.

(3) A prescribed association of insurers may apply to the Treasurer for a review of any such recommendation.

(4) If an application for review is made, the Treasurer may, after consideration of the recommendation of the Board and the representations of the applicant—

- (a) reduce the amount of the contribution recommended by the Board; or
- (b) confirm the amount of the contribution.

(5) A decision of the Treasurer under subsection (4) is final.

#### Apportionment of insurers' contribution

19. (1) An insurer is liable to pay to the C.F.S. a share of the total contribution to be made by insurers for each financial year determined in accordance with the following formula:

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$$A = B \times \frac{C}{D}$$

where—

- A = is the contribution to be made by the insurer
- B = is the total contribution to be made by all insurers
- C = is the premium income received by the insurer during the year ending on the thirty-first day of March in the previous financial year in respect of the insurance of property in the country
- D = is the total premium income received by all insurers during the year ending on the thirty-first day of March in the previous financial year in respect of the insurance of property in the country.

(2) The Board will determine the amount to be contributed by each insurer, and the Board's determination will be final and binding on the insurer.

(3) If an insurer fails to pay a contribution determined under subsection (2) within one month after the date on which the Board serves a notice personally or by post requiring the insurer to pay that contribution, the Board may proceed to recover that contribution, as a debt due to the C.F.S., in any court of competent jurisdiction.

(4) This section applies to any insurer who receives premium income in respect of the insurance of property in the country irrespective of whether or not the insurer carries on business in this State.

### **Application of sections 18 and 19**

**19A.** Sections 18 and 19 do not apply to, or in relation to, the 1999/2000 financial year or any subsequent financial year.

### **Provision of information to the Board**

**20.** (1) An insurer must, at the request of the Board, supply the Board with such information as it may require in order to assist it to determine the amount of the insurer's contribution under this Division.

Penalty: Division 6 fine.

(2) An authorised officer may, for the purpose of the Board's determination of an insurer's contribution—

- (a) enter any premises of the insurer at any reasonable time during ordinary office hours;
- (b) require a person who may be in a position to furnish information relevant to

the making of the determination—

- (i) to take reasonable steps to provide that information to the authorised officer;
  - (ii) to answer a question to the best of that person's knowledge, information and belief;
- (c) —
- (i) require a person to produce any books, documents or records in his or her possession or control;
  - (ii) require a person to produce any information stored by computer, microfilm or by any other process,
- (insofar as the books, documents, records or information may be relevant to the determination);
- (d) examine, copy and take extracts from any books, documents, records or information produced under paragraph (c) or require a person to provide a copy of any such book, document, record or information.

(3) Any person who is in a position to do so must at the request of an authorised officer provide such assistance as the authorised officer may reasonably require in the exercise of a power under subsection (2).

(4) A person who—

- (a) hinders an authorised officer in the exercise of powers under subsection (2); or
- (b) refuses or fails to comply with a requirement under subsection (2) or (3),

is guilty of an offence.

Penalty: Division 8 fine.

(5) A person is not obliged to answer a question under this section if the answer would tend to incriminate the person of an offence, or to produce a book, document or record, or information, under this section if it or its contents would tend to incriminate the person of an offence.

(6) A person must not divulge or communicate information that is acquired by him or her by reason of being, or having been, an authorised officer under this section except—

- (a) with the consent of the person from whom the information was obtained; or

(b) in connection with the operation of this Part or the administration of this Act; or

(c) as may be required by law.

Penalty: Division 6 fine.

**Accounts and audit**

**21.** (1) The Board must cause proper accounts to be kept of the financial affairs of the C.F.S.

(2) The accounts must distinguish between money applied in making grants or paying subsidies and money applied for other purposes.

(3) The Auditor-General may at any time, and must at least once in every calendar year, audit the accounts of the Board.

(3a) The accounts of a C.F.S. organisation are not required to be audited by the Auditor-General but must be audited in accordance with the regulations.

(4) A copy of the accounts, as audited by the Auditor-General, must be included in the annual report of the Board.

**Division 2—Obligation of councils to provide fire-fighting facilities**

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**Expenditure by Local Government**

**23.** A council may expend any portion of its revenue—

(a) in defraying the cost of any action taken by it under this Act; and

(b) in contributing to the expenses of any C.F.S. organisation that operates in its area; and

(c) in subsidising the purchase of equipment by the owners of land in its area that will be available for use by the C.F.S. in its area.

**Grants and payments by and to the Board**

**24.** (1) The Board may—

(a) make a grant out of the Fund to any council or C.F.S. organisation for the purpose of defraying wholly or in part—

(i) the cost incurred by the council or C.F.S. organisation in providing any equipment reasonably required for the purposes of the C.F.S.; or

(ii) any working expenses incurred by the council or C.F.S. organisation

in relation to providing fire-fighting services; and

- (b) use money from the Fund to provide a council or a C.F.S. organisation with any equipment reasonably required for the purposes of providing fire-fighting services.

(2) The Board may make a grant, or provide equipment, unconditionally or on condition that contributions determined by the Board be made to the Fund.

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### **Proceeds of sale of equipment**

**25.** (1) A council or C.F.S. organisation must not sell or otherwise dispose of any building or equipment constructed or purchased with the assistance of a grant provided by the Board, or sell or otherwise dispose of any equipment provided by the Board, without the consent of the Board.

(2) The Board may give its consent under this section on such conditions as it thinks fit.

(3) The Board may by conditions imposed under this section require that money realised from the sale of any building or equipment be applied towards the purchase of a building or equipment in substitution for it.

(4) A council may appeal to the Minister against any condition imposed under this section and the Minister may vary or revoke the condition.

## **Division 3—Exemption from certain rates and taxes**

### **Exemption from certain rates and taxes**

**26.** C.F.S. organisations are exempt from—

- (a) local government rates;
- (b) water and sewerage rates;
- (c) land tax.

## **Division 4—Supplementary provision**

### **Recovery of contributions from insurers outside the State**

**27.** (1) If the Board cannot, after taking reasonable steps, recover a contribution under Division 1 from an insurer located outside the State, the Board is entitled to recover the amount of the contribution from those persons who own property in the country that is insured with that insurer (the amount recoverable from a particular person being determined according to the extent to which the person has contributed to the insurer's premium income in respect of the insurance of property in the country).

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(2) For the purposes of exercising its power under subsection (1), the Board may, by notice in the *Gazette* and in a newspaper circulating generally throughout the State, require the persons referred to in subsection (1) to furnish to the Board specified information relating to the premiums that they have paid to the insurer.

(3) A person to whom a notice under subsection (2) applies must, in a manner and form specified by the notice, furnish the information required by the Board within one month of the publication of the notice.

Penalty: Division 8 fine.

(4) For the purpose of recovering from a person an amount under this section—

(a) the Board must serve on the person personally or by post a notice that sets out the amount payable to the Board (and if the person has failed to furnish information to the Board under subsection (3), or has furnished information that is deficient for the purposes of this section, the Board may determine the amount payable on the basis of estimates made by the Board); and

(b) if the person fails to pay the amount within one month after the date of service of the notice, the Board may proceed to recover the amount, as a debt due to the C.F.S., in any court of competent jurisdiction.

## Part 4—Fire prevention authorities

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

#### The South Australian Bushfire Prevention Advisory Committee

28. (1) The *South Australian Bushfire Prevention Advisory Committee* is established.

(2) The Advisory Committee consists of—

- (a) the Chief Executive Officer of the Board; and
- (b) the following members appointed by the Governor:
  - (i) two representatives of local government nominated by the Local Government Association;
  - (ii) a nominee of the South Australian Volunteer Fire-Brigades Association;
  - (iii) a nominee of the United Farmers and Stockowners Association;
  - (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 for Environment and Planning, being an officer of the National Parks and Wildlife Service;
  - (vii) a nominee of the Minister of Forests;
  - (viii) a nominee of the Minister of Water Resources;
  - (ix) a nominee of the Minister of Agriculture;
  - (x) a nominee of the South Australian Metropolitan Fire Service;
  - (xi) a nominee of the Minister responsible for the administration of the *Electricity Act 1996*;
  - (xii) 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) One of the members of the Advisory Committee will be appointed by the Governor to be its presiding member.

### **The Advisory Committee's responsibilities**

**29.** The Advisory Committee's functions are as follows:

- (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.

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

### **Regional bushfire prevention committees**

**30.** (1) The Board may, by notice in the *Gazette*, establish a regional bushfire prevention committee in relation to a C.F.S. 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 Board—
  - (i) two representatives of C.F.S. groups in the region, selected in accordance with the regulations; and
  - (ii) two 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 United Farmers and Stockowners Association; and
  - (iv) a nominee of the Minister for Environment and Planning, being an officer of the National Parks and Wildlife Service; and
  - (v) if there is a forest reserve (or part of a forest reserve) within the region—a nominee of the Minister of Forests; and
  - (vi) a nominee of the Conservation Council of South Australia; and
  - (vii) any person nominated under subsection (3).

(3) The Board 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 Board may appoint a suitable person to be a deputy of a member of a regional bushfire prevention committee.

(5) The Board may, by notice in the *Gazette*, dissolve a regional bushfire prevention committee established under this section.

### **The responsibilities of a regional committee**

**31.** (1) The functions of a regional bushfire prevention committee are as follows:

- (a) to assess the extent of fire hazards within its region; and
- (b) to co-ordinate bushfire prevention planning for its region; and
- (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; and
- (d) to consult with other committees in adjacent regions and to co-operate with district bushfire prevention committees in its region; and
- (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; and
- (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.

### **District bushfire prevention committees**

**32.** (1) A rural council, or two 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) one representative of each C.F.S. brigade operating in the area or areas, selected in accordance with the regulations; and
  - (ii) two 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

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officer of the National Parks and Wildlife Service nominated by the Minister for Environment and Planning; and

- (iv) if there is a forest reserve (or part of a forest reserve) within the area or areas—a nominee of the Minister of 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 the 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 Board may, after consultation with a rural council, exempt a council from a requirement of this section.

**The responsibilities of a district committee**

**33.** (1) The functions of a district bushfire prevention committee are as follows:

- (a) to assess the extent of fire hazards within its area; and
- (b) to advise the appropriate authorities of the existence of fire hazards within its area and to make recommendations in relation to their removal; and
- (c) to prepare plans for bushfire prevention within its area; and
- (d) to consult with other committees in adjacent areas and to co-operate with any regional bushfire prevention committee whose region includes its area; and
- (e) to advise the council or councils, the Board, the Advisory Committee, any regional bushfire prevention committee whose region includes its area, and any other appropriate authority, on bushfire prevention in its area; and
- (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.

**Division 3—Fire prevention officers****Fire prevention officers**

**34.** (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 one 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.

(6) The Board may, after consultation with a rural council, exempt a council from a requirement of this section.

## Part 5—Fire prevention

### Division 1—Fire danger season

#### Fire danger season

**35.** (1) The Board 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.

#### Fires during fire danger season

**36.** (1) Subject to subsection (2), a person must not light or maintain a fire in the open air during the fire danger season.

Penalty: For a first offence—Division 6 fine or division 6 imprisonment; for a subsequent offence—Division 5 fine or division 5 imprisonment.

Expiation fee: If the offence is a prescribed offence—Division 7 fee.

(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 four 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 four 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 four 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 Board 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.

## Division 2—Total fire ban

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**Total fire ban**

**37.** (1) The Board may determine to 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 Board 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.

Penalty: For a first offence—Division 5 fine or division 5 imprisonment; for a subsequent offence—Division 4 fine or division 4 imprisonment.

(4) This section does not prevent the lighting or maintaining of a fire—

(a) in circumstances permitted by the regulations; or

(b) where the lighting or maintaining of the fire is authorised by a permit issued under this Act.

(5) The Board 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 a member of the Board, 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, proof of the matters so certified.

**Division 3—Permits**

**Permit to light and maintain fire**

**38.** (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 Act.

(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 Board 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 Board—

- (a) if the permit holder fails to comply with a condition of the permit; or
- (b) if the authorised officer or Board considers that sufficient reasons exist to justify the revocation of the permit.

(10) A person whose permit is revoked may appeal to the Minister 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 Minister 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 Board; or
- (b) a person authorised by a council, with the approval of the Board, to issue permits under this section.

## **Division 4—Power of direction**

### **Power to direct**

**39.** (1) Subject to this section, if a C.F.S. officer 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 a C.F.S. officer 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.

Penalty: For a first offence—Division 6 fine or division 6 imprisonment; for a subsequent offence—Division 5 fine or division 5 imprisonment.

(4) The Board may determine that the powers of a C.F.S. officer under this section may only be exercised by C.F.S. officers of or above a certain rank.

(5) Notwithstanding subsection (4), if no C.F.S. officer who is able to exercise the powers conferred by this section is present, any member of the C.F.S. or, in the absence of any such member, any fire prevention officer, officer of the South Australian Metropolitan Fire Service or member of the police force, may exercise those powers.

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

### **Private land**

**40.** (1) In this section—

"the 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—the Board,

(but where powers or functions under this section are withdrawn from a council and vested in a C.F.S. officer under Division 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, 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.

(4a) A notice under subsection (4) may include directions concerning the storage of inflammable materials on the land (or in any building on the land).

(5) 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.

(6) The responsible authority may, by further notice in writing, vary or revoke a notice under this section.

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(7) A notice under subsection (4) or (6) 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.

(7a) If a notice under subsection (4) or (6) is directed to an occupier of land, the responsible authority must take reasonable steps to serve a copy of the notice on the owner.

(7b) Service under subsection (7a) may be effected—

- (a) personally; or
- (b) by post.

(8) 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.

(9) If a person fails to comply with the requirements of a notice under this section, the responsible authority will 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.

(10) Any expenses recoverable under subsection (9) will be a charge against the land to which they relate and may be recovered as if they were rates in arrears.

(11) A person to whom notice is addressed may appeal against a requirement of the notice.

(12) An appeal under subsection (11) must be made—

- (a) where the notice was issued by a council—to the Board;
- (b) in any other case—to the Minister.

(13) 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.

(14) The appellant must send a copy of the notice of appeal to the responsible authority that issued the notice to which the appeal relates.

(15) 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.

(16) For the purposes of dealing with an appeal, the appellate authority may adopt such procedures as it thinks fit.

(17) 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.

(18) Where 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.

### **Council land**

**41.** (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.

### **Crown land**

**42.** (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).

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

### **Fire safety at premises**

**43.** (1) An authorised officer may require the owner of premises of a prescribed kind, 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 Board.

(3) The Board must consider any such objection and may vary the requirement in any manner it thinks fit.

(4) A person who fails to comply with a requirement under this section is guilty of an offence.

Penalty: Division 5 fine.

### **Removal of debris from roads**

**44.** (1) If as a result of any work flammable debris is left on or in the vicinity of a road, the person that carried out the work must remove the debris from the road—

- (a) upon being required to do so by the Board or a council; or
- (b) where no such requirement is made, upon the completion of the work (insofar as to do so is reasonably practicable).

Penalty: Division 6 fine.

(2) If a person fails to comply with subsection (1), the Board 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.

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

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

Penalty: Division 8 fine.

Expiation fee: Division 8 fee.

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

**46.** 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.

Penalty: For a first offence—Division 6 fine; for a subsequent offence—  
Division 5 fine.

Expiation fee: If the offence is a prescribed offence—Division 7 fee.

### **Burning objects and material**

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

Penalty: Division 8 fine.

Expiation fee: Division 8 fee.

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

Penalty: Division 6 fine.

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

Penalty: Division 6 fine.

(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.

Penalty: Division 6 fine.

### **Duty to report unattended fires**

**48. (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 the C.F.S., a member of the South Australian Metropolitan Fire Service, a government officer or a member of the police force of the existence and location of the fire.

Penalty: Division 8 fine.

(2) In this section—

"**government officer**" means—

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- (a) an officer or employee of the Corporation; or
- (b) an officer of the National Parks and Wildlife Service; or
- (c) any other person of a class prescribed for the purposes of this definition.

**Division 7—Supplementary provisions****Delegation by councils**

**49.** (1) A council may, by instrument in writing, delegate to a fire prevention officer any of its powers or functions under this Part.

(2) A delegation under this section is revocable at will and does not derogate from the powers of the council.

**Failure by a council to exercise statutory powers**

**50.** (1) If, in the opinion of the Board, a council fails to exercise or discharge any of its powers or functions under this Part, the Board may take such action as appears necessary on account of that failure.

(2) Without limiting the generality of subsection (1), the Board may recommend to the Minister that the powers and functions of the council under this Act be withdrawn.

(3) Before taking action under subsection (2), the Board must consult with the council in relation to the matter.

(4) If the Board 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.

(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 the C.F.S. nominated by the Board.

(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 Board—

- (a) appoint another officer of the C.F.S. 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 the C.F.S. in exercising or discharging powers and functions vested under this section may be recovered as a debt due to the C.F.S. from the council in any court of competent jurisdiction.

### **Agreements to clear land**

**51.** (1) A C.F.S. brigade may undertake by agreement with the owner or occupier of land to clear bush, grass or other flammable material from the land for the purposes of preventing or inhibiting the outbreak of fire on the land, or the spread of fire through the land.

(2) Any money received by a brigade pursuant to an agreement under subsection (1) must (after deducting expenses) be used by the brigade for the purpose of providing fire-fighting services in its area.

### **Endangering life or property**

**52.** (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.

Penalty: Division 5 fine or division 5 imprisonment.

(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—

— on land owned or occupied by the defendant; or

— 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.

## Part 6—Powers to deal with fires and other emergencies

### Exercise of control at a fire etc

53. (1) This section applies in relation to—

- (a) fire or a situation that involves imminent danger of fire;
- (b) emergencies involving the escape of a dangerous substance or a situation that involves imminent danger of such an escape;
- (c) all other emergencies endangering, or likely to endanger, life or property and at which no other person having lawful authority to assume command has done so,

that occur in the country or that occur inside a metropolitan fire service district but at which a metropolitan fire brigade is not in attendance.

(2) All fire brigades and all persons present at the scene of the fire or other emergency to which this section applies will be subject to the control of the incident controller or, where an incident controller has not been appointed, the most senior member of the C.F.S. in attendance.

(3) 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 approved by the Board.

(4) The appointment of an incident controller will end or be superseded by a subsequent appointment in circumstances defined by the Board.

### Power of C.F.S. member

54. (1) A C.F.S. officer may take, or cause to be taken, any action that appears necessary or desirable for the purpose of fire-fighting or for the purpose of protecting life or property in any other emergency (notwithstanding that that action may result in damage to, or destruction of, property or cause pecuniary loss to any person) and, in particular, the C.F.S. officer may—

- (a) enter or break into any land or building; and
- (b) remove flammable material or any other dangerous substance, or cause flammable material or any other dangerous substance to be removed from any land or building; and
- (c) take possession of, protect, remove or destroy any structure; and
- (d) cause any supply of fuel or other flammable liquid, any gas or electricity, or any other dangerous substance to be shut off or removed; and

- (e) cause firebreaks to be ploughed or cleared on any land; and
- (f) subject to the directions (if any) of a member of the police force, prohibit, direct or regulate the movement of persons, vehicles or animals; and
- (g) take and use water or any other fire extinguishing material from any land; and
- (h) with the consent of the owner or person in charge of any vehicle or machine, use that vehicle or machine for the purpose of fire-fighting; and
- (i) remove or cause to be removed to such place as the officer thinks fit any person who obstructs or interferes with, or threatens to obstruct or interfere with, any operations under this section; and
- (j) make use of the gratuitous services of any person; and
- (k) exercise any prescribed power.

(1a) The powers of a C.F.S. officer under subsection (1) may be exercised in the absence of such an officer by any other member of the C.F.S.

(2) Notwithstanding any other provision of this Act, a C.F.S. officer may, for the purpose of controlling an existing fire, light another fire, or cause another fire to be lit.

(3) A C.F.S. officer or other member 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 C.F.S. officer or other member; 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 officer or other member.

(4) The Board must take steps to have any relevant provisions of a management plan for a government reserve brought to the attention of the C.F.S. members who might exercise powers under this section with respect to the reserve.

(5) Where 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 Corporation, is present at the scene of the fire, a C.F.S. officer or other member (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.

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(7) The power of the Chief Officer to delegate under subsection (5) is subject to the following qualifications—

- (a) the delegation must be to a C.F.S. officer of or above the rank of group officer, or to an officer or employee of the Corporation; and
- (b) the delegation may only be made in relation to a specific fire or other emergency.

(8) 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.

## Part 7—Miscellaneous

### Power of entry and search

**55.** (1) A C.F.S. officer, an authorised officer or a member of the police force may (with or without assistance)—

- (a) enter and inspect any land, premises or object for the purpose of determining the cause of a fire or other emergency; or
- (b) remove any object or material that may tend to prove the cause of a fire or other emergency; or
- (c) retain possession of any such object or material for the purpose of any investigation or inquiry into the cause of the fire or other emergency.

(2) A person must not hinder a C.F.S. officer, an authorised officer or a member of the police force acting in pursuance of this section.

Penalty: Division 5 fine or division 5 imprisonment.

(3) A C.F.S. officer, an authorised officer or a member of the police force 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.

### Power of inspection

**56.** (1) A C.F.S. officer, 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 dangerous substances.

(2) A C.F.S. officer, 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.

### Disclosure of information

**57.** (1) A C.F.S. officer, an authorised officer, a fire prevention officer, a fire control officer or a member of the police force who has reasonable cause to believe that a person has committed an offence against this Act may require that person to disclose his or her name and address.

(2) A person to whom a requirement is addressed under subsection (1) must forthwith disclose his or her name and address.

Penalty: Division 8 fine.

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**Hindering officers**

**58.** (1) A person must not hinder a C.F.S. officer, a member of a C.F.S. organisation or other person in the exercise of any power or function under this Act.

Penalty: Division 5 fine or division 5 imprisonment.

(2) A person must not falsely pretend to be a C.F.S. officer, a member of a C.F.S. brigade, or any other person acting under the authority of this Act.

Penalty: Division 7 fine.

**Power to provide sirens**

**59.** A council or a C.F.S. organisation may erect a siren in a suitable place for the purpose of giving warning of the outbreak of a fire, and may test and use the siren.

**Interference with fire plugs etc**

**60.** A person must not—

- (a) cover up or conceal a fire plug or hydrant; or
- (b) remove or obliterate any mark, sign or letter used to indicate the position of a fire plug or hydrant.

Penalty: Division 7 fine.

**Misuse of fire alarms etc**

**61.** (1) A person must not—

- (a) destroy, damage or interfere with a fire alarm; or
- (b) give a false alarm of fire or other emergency.

Penalty: Division 6 fine.

(2) If a C.F.S. brigade attends at any premises or place at which there is no fire in response to a fire alarm, and it appears that the alarm operated because of incorrect adjustment or functioning, the C.F.S. may recover the cost of the attendance, as a debt due to the C.F.S., from the owner of the premises or place.

(3) In proceedings under this section, a certificate apparently signed by an officer of the C.F.S. certifying the cost of the attendance will, in the absence of proof to the contrary, be accepted as proof of the costs incurred by the C.F.S.

**Fire control officers**

**62.** (1) The Board may, on its 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 Board on its 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 Board must consult with the council in relation to the proposed appointment.

(3) The role of a fire control officer is as follows:

- (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 a C.F.S. brigade arrives;
- (d) to carry out any other function assigned to him or her by the Board.

(4) Subject to any limitation determined by the Board, a fire control officer may, pending the arrival of a C.F.S. brigade, for the purpose of fire-fighting or for the purpose of protecting life or property in any other emergency, exercise the powers of a C.F.S. officer under this Act.

(5) The Board may, as it thinks fit, terminate the appointment of a person as a fire control officer.

### **Giving of expiation notices**

**62A.** 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 Act unless the person is a fire prevention officer.

### **Recognised interstate fire-fighting organisations**

**63.** (1) Where there is a fire in the vicinity of a border of the State, a member of a recognised interstate fire-fighting organisation who is present at the scene of the fire may, if there is no C.F.S. officer in charge of the fire-fighting operations, exercise the powers of a C.F.S. officer under this Act.

(2) In this section—

**"recognised interstate fire-fighting organisation"** means an organisation formed outside this State and declared by the Board, by notice publishing in the *Gazette*, to be a recognised interstate fire-fighting organisation.

### **Immunity of officers etc**

**64.** A person incurs no civil or criminal liability for an honest act or omission in the exercise or performance, or purported exercise or performance, of a power or function under this Act.

### **Immunity in relation to bushfire prevention**

**65.** No liability attaches to the Board, the South Australian Bushfire Prevention

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Advisory Committee, a regional or district bushfire prevention committee or a council (or the members of any of them) by virtue only of the fact that a bushfire prevention plan—

- (a) has not been prepared under this Act in relation to a particular part of the State; or
- (b) has been so prepared but has not been implemented, or fully implemented.

**Unauthorised fire brigades**

**66.** (1) A person must not, without the approval of the Board, be a member of a fire brigade in the country that is not a C.F.S. organisation.

Penalty: Division 8 fine.

- (2) In this section—

"**fire brigade**" means a group of people equipped to deal with fires on behalf of a local community.

**Offences by corporate bodies**

**67.** Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved—

- (a) that the member exercised reasonable care in the exercise of his or her responsibilities as a member of the governing body; and
- (b) that the offence is not attributable to any intentional act or omission on his or her part.

**Onus of proof**

**68.** 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.

**Evidence**

**69.** An allegation in a complaint that a specified person is or was the owner or occupier of specified land will, in the absence of proof to the contrary, be accepted as proof of that fact.

**Summary offences**

**70.** An offence against this Act is a summary offence.

**Minimum penalty**

**71.** A court, in imposing a monetary penalty for an offence against this Act, must impose a penalty of not less than one-quarter of the maximum penalty prescribed for that offence unless, in the opinion of the court, there are special circumstances justifying

a lesser penalty.

### **Appropriation of penalties**

**72.** (1) Subject to subsection (2), all money recovered as fines for offences against this Act will be paid into the general revenue of the State.

(2) Where an offence was committed within an area, and the complaint was laid by the council of that area (or an officer of that council), any fine recovered from the defendant will be paid into the general revenue of that council.

### **Water supplies**

**73.** The Engineering and Water Supply Department must (where practicable), at the request of a C.F.S. officer, send to the scene of a fire or other emergency a person who is competent to assist in the provision of water to the persons who are dealing with the fire or other emergency.

### **Control of dangerous substances etc**

**74.** (1) Where there is a fire or other emergency in the country and a C.F.S. officer considers that action should be taken—

- (a) to shut off or disconnect the supply of any fuel or other flammable liquid, any gas or electricity, or any other dangerous substance;
- (b) to remove any fuel or other flammable liquid, any flammable material, or any other dangerous substance;
- (c) to shut off or remove any plant, equipment or apparatus;
- (d) to stop any work or operation;
- (e) to close any premises or other place;
- (f) to contain the escape of any dangerous substance, or to nullify the effects of the escape of any dangerous substance,

the C.F.S. officer may require any competent person who is in a position to do so to take appropriate action specified by the C.F.S. officer.

(2) A person who fails forthwith to comply with any reasonable requirement of a C.F.S. officer under subsection (1) is guilty of an offence.

Penalty: Division 5 fine.

### **Regulations<sup>1</sup>**

**75.** (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of the foregoing, those regulations may—

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- (a) make any provision with respect to the formation, constitution, rules and operations of C.F.S. organisations, or any class of C.F.S. organisations, and any related organisational or administrative matters;
- (b) make any provision with respect to—
  - (i) the eligibility of persons to be members of C.F.S. organisations;
  - (ii) the registration, training, functions and duties of the members of C.F.S. organisations;
  - (iii) management matters relating to membership of C.F.S. organisations;
- (c) make any provision with respect to—
  - (i) the determination of complaints against members of C.F.S. organisations;
  - (ii) the disciplining, in appropriate cases, of members of C.F.S. organisations;
- (d) require councils to furnish the Board with periodic returns containing information relevant to fire-fighting within their respective areas;
- (e) provide for the holding of coronial inquests at the request of the Board in prescribed circumstances;
- (f) prescribe the design and regulate the use of uniforms and badges issued to C.F.S. officers and C.F.S. brigade members;
- (g) *provide for the clearing of firebreaks and the clearing or burning-off of land and provide that failure to clear a firebreak or to clear or burn-off land in accordance with the regulations constitutes evidence of negligence in any action for recovery of damages, or compensation, in respect of destruction of, or damage to, property by fire;*
- (h) provide for the operation, maintenance and inspection of fire-fighting equipment by C.F.S. organisations, members of the C.F.S., or councils;
- (i) regulate the design, construction, maintenance and use of fire alarms;
- (j) make any other provision necessary or expedient for preventing, controlling or suppressing the outbreak of fire, or for dealing with any other emergency;
- (k) prescribe any form, and regulate any procedure, for the purposes of this Act;

(l) provide that any specified persons, or that persons of a specified class, are, subject to the conditions (if any) stipulated in the regulations, exempt from any specified provision or provisions of this Act.

(3) Regulations under this Act—

(a) may be of general or restricted application;

(b) may—

(i) leave any matter or thing to be determined, varied, dispensed with or regulated according to the discretion of the Board;

(ii) confer other forms of discretionary powers;

(c) may impose a penalty (not exceeding a division 7 fine) for breach of, or non-compliance with, the regulations.

<sup>1</sup> S. 75(2)(g) had not been brought into operation at the date of this reprint.

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## Schedule 1—Supplementary provisions relating to the Board and the South Australian Bushfire Prevention Advisory Committee

### Terms and conditions of office

1. (1) A member to be appointed by the Governor will be appointed for a term not exceeding three years and on such conditions as the Governor determines and, at the expiration of a term of office, will be eligible for reappointment.

(2) The Governor may remove a member appointed by the Governor from office for—

- (a) a breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out official duties satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(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 by the Governor under subsection (2).

(4) On the office of a member becoming vacant, a person will be appointed in accordance with this Act to the vacant office.

### Quorum etc

2. (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) Four members constitute a quorum of the Board and eight members constitute a quorum of the Advisory Committee.

(3) Subject to this section, each member present at a meeting has one vote on any matter arising for decision at that meeting.

(4) A decision carried by a majority of members present at a meeting of the Board or Advisory Committee is a decision of the Board or Advisory Committee.

(5) In the event of an equality of votes on any 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 Board or Advisory Committee will be conducted in such manner as the Board or Advisory Committee determines.

### Validity of acts

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

### Disclosure of interest

4. (1) A member of the Board who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Board—

- (a) must disclose the nature of the interest; and
- (b) must not take part in any deliberation or decision of the Board with respect to the matter.

Penalty: Division 6 fine.

(2) A disclosure under this section must be recorded in the minutes of the Board.

## Schedule 2—Supplementary provisions relating to regional and district bushfire prevention committees

### Interpretation

1. In this Schedule—

"the responsible authority" means—

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

### Terms and conditions of office

2. (1) A person appointed to a committee will be appointed for a term not exceeding two years and on such conditions as the responsible authority determines after consultation with the Minister and, at the expiration of a term of office, 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.

### Constitution

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

### Quorum etc

4. (1) A committee must, on an annual basis, elect one 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 subsection (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 subsection (4), the prescribed number is a number ascertained by dividing the total number of members of the committee by two, ignoring any fraction resulting from the division, and adding one.

(6) Subject to this section, each member present at a meeting has one vote on any matter arising for decision at that 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 any 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.

## Schedule 3—Transitional provisions

### Interpretation

1. In this Schedule—

"**the former board**" means the *Country Fire Services Board* established under the repealed Act;

"**the new board**" means the *Country Fire Service Board* established under this Act;

"**the repealed Act**" means the *Country Fires Act 1976* repealed by this Act.

### Establishment of new board

2. (1) The real and personal property of the former board become, on the commencement of this Act, property of the new board.

(2) All rights and liabilities of the former board (whether vested or contingent) become, on the commencement of this Act, rights and liabilities of the new board.

(3) A reference in an instrument to the former board will, where the context admits, be construed as a reference to the new board.

(4) Any employee or officer of the former board, employed or holding office immediately before the commencement of this Act, will, on the commencement of this Act, become an employee or officer of the new board.

(5) The transfer of the employment of a person under subsection (4) will be effected without reduction in salary or status, and without loss of accrued or accruing leave entitlements.

### Membership of new board

3. (1) Notwithstanding any other provision of this Act, the following members of the former board (as constituted immediately before the commencement of this Act) will be members of the new board (as first constituted under this Act):

(a) the person who was appointed to the former board to represent the interests of councils, who will be taken to be one of the representatives of rural councils on the new board; and

(b) the person who was appointed to the former board to represent the interests of members of C.F.S. fire brigades, who will be taken to be one of the persons nominated by the South Australian Volunteer Fire-Brigades Association.

(2) The members of the former board appointed to the new board under subsection (1) hold office for the balance of the term for which they had been appointed to the former board (and, at the expiration of that term of office, will be eligible for reappointment).

### C.F.S. brigades

4. (1) A C.F.S. fire brigade registered under the repealed Act immediately before the commencement of this Act becomes, on the commencement of this Act, a C.F.S. brigade constituted under this Act (with a constitution determined by the Board).

(2) The members of a C.F.S. fire brigade registered under the repealed Act immediately before the commencement of this Act, become, on the commencement of this Act, the members of the relevant C.F.S. brigade constituted under this Act (without loss of rank or continuity of service).

### Country Fire Service Fund

5. All money standing to the credit of the *Country Fire Service Fund* under the repealed Act must be transferred to the Fund established under this Act.

**Fire control officers and fire party leaders**

6. The Governor may, by proclamation made on the recommendation of the Board, in order to facilitate the introduction of an interim command structure pending the repeal of the *Country Fires Act 1976*, revoke the appointments by councils of fire control officers and fire party leaders under that Act (and such a proclamation will have effect according to its terms).

## APPENDIX 1

### LEGISLATIVE HISTORY

#### Repeals

The *Country Fires Act 1989* repealed the following:

*Country Fires Act 1976*

#### Transitional Provisions

(*Transitional provision from Emergency Services Funding Act 1998, Sched. 2, cl. 4*)

Reimbursement by insurers to policy holders

4. (1) Subject to subclause (2), any amount that an insurer receives or recovers from a policy holder in respect of the insurer's purported liability under Part 3 of the *Country Fires Act 1989* or Part 6 of the *South Australian Metropolitan Fire Service Act 1936* for a period occurring after 30 June 1999 must be reimbursed by the insurer to the policy holder.

(2) Subclause (1) does not apply to an amount that is less than ten dollars.

(3) The amounts that an insurer does not reimburse to policy holders by reason of subclause (2) must be paid by the insurer into the Community Emergency Services Fund.

(4) A policy holder may recover an amount due by an insurer under this clause as a debt.

(5) In this clause—

"insurer" means—

- (a) in relation to the *Country Fires Act 1989*—an insurer for the purposes of Part 3 of that Act;
- (b) in relation to the *South Australian Metropolitan Fire Service Act 1936*—an insurance company for the purposes of Part 6 of that Act.

#### Legislative History

(*entries in bold type indicate amendments incorporated since the last reprint*)

Long title:	amended under <i>Legislation Revision and Publication Act 2002</i> 18.12.2003
Section 3(1):	definition of "Corporation" inserted by 89, 2000, s. 3(a) definition of "forest reserve" inserted by 89, 2000, s. 3(b) definitions of "government officer" and "government reserve" repealed by 89, 2000, s. 3(c)
Section 8:	amended by 89, 2000, s. 4
Section 19A:	inserted by 63, 1998, Sched. 2 (cl. 1(a))
Section 21(3):	amended by 40, 1996, s. 2(a)
Section 21(3a):	inserted by 40, 1996, s. 2(b)
Section 22:	repealed by 63, 1998, Sched. 2 (cl. 1(b))
Section 24(3):	repealed by 63, 1998, Sched. 2 (cl. 1(c))
Section 28(2):	amended by Regulation No. 159 of 1999, reg. 4(a) (Sched. 1 cl. 1)
<b>Section 34(4):</b>	<b>amended by 57, 2003, s. 4</b>
<b>Section 36(1):</b>	<b>amended by 57, 2003, s. 5</b>
Section 40(2):	amended by 12, 1999, s. 4(a)

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<b>Section 40(4):</b>	<b>substituted by 57, 2003, s. 6(1)</b>
Section 40(4a):	inserted by 12, 1999, s. 4(b)
<b>Section 40(5):</b>	<b>amended by 12, 1999, s. 4(c); 57, 2003, s. 6(2), (3)</b>
Section 40(7a) and (7b):	inserted by 12, 1999, s. 4(d)
Section 40(18):	amended by 12, 1999, s. 4(e)
<b>Section 45:</b>	<b>amended by 57, 2003, s. 7</b>
<b>Section 46:</b>	<b>amended by 57, 2003, s. 8</b>
<b>Section 47(1):</b>	<b>amended by 57, 2003, s. 9</b>
Section 48:	redesignated as s. 48(1) by 89, 2000, s. 5
Section 48(2):	inserted by 89, 2000, s. 5
Section 53(2):	amended by 89, 2000, s. 6(a)
Section 53(3) and (4):	inserted by 89, 2000, s. 6(b)
Section 54(1a):	inserted by 89, 2000, s. 7(a)
Section 54(3) - (5):	substituted by 89, 2000, s. 7(b)
Section 54(6):	repealed by 89, 2000, s. 7(b)
Section 54(7):	amended by 89, 2000, s. 7(c), (d)
Section 54(8):	substituted by 89, 2000, s. 7(e)
<b>Section 62A:</b>	<b>inserted by 57, 2003, s. 10</b>
Section 76:	omitted under <i>Legislation Revision and Publication Act 2002</i> 18.12.2003

## APPENDIX 2

### DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*