



Western Australia

# **Fire and Emergency Services Authority of Western Australia Act 1998**

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# Fire and Emergency Services Authority of Western Australia Act 1998

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## CONTENTS

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### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Terms used in this Act	2
3A.	Meaning of owner of land	5
3B.	Act binds Crown	6

### **Part 2 — Fire and Emergency Services Authority of Western Australia**

4.	Fire and Emergency Services Authority of Western Australia	7
5.	Agent of Crown	7
6.	Board of management	7
7.	Appointed members	8
8.	Deputy chairman	8
9.	Constitution and proceedings of the board — Schedule 1	8
10.	Remuneration and allowances of members	8

### **Part 3 — Functions and powers**

11.	Functions of the Authority	9
12.	Powers of the Authority	9
13.	Authority may use certain names	11
14.	Requirement for Ministerial approval	11

Contents

---

15.	Delegation by Minister and Authority	11
16.	Subdelegation	12
17.	Minister may give directions	13
18.	Minister to have access to information	13
<b>Part 3A — State Emergency Service</b>		
18A.	Functions of the Authority	15
18B.	Powers of the Authority	15
18C.	Approval of SES Units	16
18D.	Register of members of SES Unit	17
18E.	Functions of an SES Unit	17
<b>Part 3B — Volunteer Marine Rescue Services</b>		
18F.	Functions of the Authority	19
18G.	Powers of Authority	19
18H.	Approval of VMRS Groups	20
18I.	Register of members of VMRS Group	20
18J.	Functions of a VMRS Group	21
<b>Part 3C — FESA Units</b>		
18K.	Functions of the Authority	22
18L.	Powers of the Authority	22
18M.	Approval of FESA Units	23
18N.	Register of members of FESA Unit	23
18O.	Functions of a FESA Unit	23
<b>Part 4 — Staff</b>		
19.	Chief executive officer	25
20.	Other staff	25
21.	Use of other government staff etc.	25
<b>Part 5 — Consultative committees</b>		
22.	Consultative committees	27
23.	Membership of consultative committees	27
24.	Chairman and deputy chairman	27
25.	Constitution and proceedings of consultative committees	28
26.	Functions and powers of consultative committees	28
27.	Support services	28

28.	Allowances	28
	<b>Part 6 — General financial provisions</b>	
29.	Funds of the Authority	29
30.	Fire and Emergency Services Authority Account	29
31.	Investment	30
32.	Borrowing from Treasurer	30
33.	Other borrowing	30
34.	Guarantee by Treasurer	31
35.	Effect of guarantee	31
35A.	Reserve funds	31
35B.	Annual estimates of expenditure by Authority	32
36.	Application of <i>Financial Management Act 2006</i> and <i>Auditor General Act 2006</i>	33
	<b>Part 6A — Emergency services levy</b>	
	<b>Division 1 — Annual estimates of expenditure</b>	
36A.	Annual estimates of expenditure by local governments and payments by Authority	34
	<b>Division 2 — Emergency services levy and ESL category areas</b>	
36B.	Annual levy payable to Authority on land in an ESL category area	35
36C.	Record of leviable land	35
36D.	Exemptions may be prescribed	35
36E.	Exemptions in other enactments not to apply	35
36F.	Declaration of ESL category areas	36
	<b>Division 3 — Determination and assessment of levy</b>	
36G.	Minister to determine levy	37
36H.	Determination of levy by reference to gross rental value etc.	38
36I.	Minimum and maximum amounts of levy	39
36J.	Assessment of levy and assessment notices	39
36K.	Authority to ensure local governments have information	40
36L.	Assessment of levy payable by the State, local governments and other persons	40
36M.	When levy becomes due and payable	41
36N.	Notice and payment of levy payable on State land	41

	<b>Division 4 — Payment of emergency services levy</b>	
36O.	Levy is a charge on land	42
36P.	Liability for levy	42
36Q.	Minister may approve payment of levy by instalments	42
36R.	Discounts, concessions and agreements	43
36S.	Accrual of interest on overdue levy	43
36T.	Levy may be apportioned	44
	<b>Division 5 — Local governments</b>	
36U.	Local government may credit levy to municipal fund or trust fund	44
36V.	Local government to pay levy and other amounts to Authority	45
36W.	Local governments to be paid certain fees	45
36X.	Interest payable on amounts not paid by due date to Authority	46
36Y.	Ministerial guidelines	46
	<b>Division 6 — Recovery of unpaid levy</b>	
36Z.	Recovery of unpaid levy	47
36ZA.	Question of title to land not to affect jurisdiction	47
	<b>Division 7 — Sale of land if levy is unpaid</b>	
36ZB.	Term used in this Division	48
36ZC.	Application for order for sale of land	48
36ZD.	Authority has interest in land on which levy is due and payable	49
	<b>Division 8 — Objections and review</b>	
36ZE.	Objection to determination of use of land	50
36ZF.	Application for review	50
36ZH.	Liability to pay levy not affected by objection	51
	<b>Division 9 — ESL agreements</b>	
36ZI.	Terms used in this Division	52
36ZJ.	Authority may enter into agreements with local governments	52
36ZK.	Modification of operation of Part 6A	53
	<b>Division 10 — Fees and charges</b>	
36ZL.	Emergency service fees and charges in certain cases	53

**Part 7 — Miscellaneous**

37.	Protection from liability	55
38.	Execution of documents by Authority	57
38A.	Offences in relation to SES and VMRS operations	57
38B.	Improper use of names, symbols etc.	58
38C.	Impersonation of member of staff or volunteer	59
39.	Confidentiality	59
40.	Regulations	60
41.	Review of Act	60
42.	Savings and transitional provisions — Schedule 2	60

**Schedule 1 — Constitution and proceedings of board**

**Division 1 — General provisions**

1.	Term of office	61
2.	Resignation, removal, etc.	61
3.	Leave of absence	62
4.	Chairman unable to act	62
5.	Member unable to act	62
6.	Chief executive officer unable to attend	62
7.	Saving	62
8.	Calling of meetings	63
9.	Presiding officer	63
10.	Quorum	63
11.	Voting	63
12.	Minutes	63
13.	Resolution without meeting	64
14.	Telephone or video meetings	64
15.	Board to determine own procedures	64

**Division 2 — Disclosure of interests, etc.**

16.	Disclosure of interests	64
17.	Voting by interested members	64
18.	Clause 17 may be declared inapplicable	65
19.	Quorum where clause 17 applies	65
20.	Minister may declare clauses 17 and 19 inapplicable	65

**Schedule 1A — Modification of  
operation of Part 6A**

**Schedule 2 — Savings and  
transitional provisions**

1.	Terms used in this Schedule	68
2.	Interpretation Act to apply	68
3.	Dissolution of Boards	69
4.	Devolution of assets and liabilities etc.	69
5.	Completion of things begun	69
6.	Continuing effect of things done	69
7.	Agreements and instruments	70
8.	Chief executive officer and staff	70
9.	Financial reporting of Bush Fires Board and Fire Brigades Board and department	71
10.	Further transitional provisions may be made	72
11.	Exemption from State tax	72
12.	Registration of documents	73
13.	Saving	73

**Notes**

	Compilation table	74
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**Defined Terms**



Western Australia

## **Fire and Emergency Services Authority of Western Australia Act 1998**

**An Act to establish an Authority with functions relating to the provision and management of emergency services, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Fire and Emergency Services Authority of Western Australia Act 1998*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

***Account*** means the account referred to in section 30;

***annual estimate***, in relation to expenditure, means an estimate of expenditure for a financial year;

***assessment notice*** means a notice served under section 36J(1) or 36L(2);

***assistance operation*** means an operation to provide assistance to —

- (a) the Authority;
- (b) a brigade (as defined in the *Fire Brigades Act 1942*);
- (c) a bush fire brigade (as defined in the *Bush Fires Act 1954*);
- (d) an SES Unit;
- (e) a VMRS Group;
- (f) the Police Service; or
- (g) any other agency, organisation or body that provides emergency services,

in performing its functions;

***Authority*** means the Fire and Emergency Services Authority of Western Australia established by section 4;

***board*** means the board of management referred to in section 6;

**chief executive officer** means the chief executive officer of the Authority appointed in accordance with section 19;

**consultative committee** means a committee appointed by the Minister under section 22;

**Crown land** has the same meaning as it has in the *Land Administration Act 1997*;

**ESL category area** means an area of Western Australia that is declared under section 36F(2);

**FESA activities** means —

- (a) the prevention, control and extinguishment of fires;
- (b) the prevention and control of other incidents;
- (c) the provision of emergency services in relation to incidents;
- (d) the protection and saving of life and property endangered by incidents;
- (e) the promotion of the safety of life and property from incidents;
- (f) the rendering safe of the sites of incidents;
- (g) the carrying out of —
  - (i) rescue operations;
  - (ii) search and rescue operations;
  - (iii) marine search and rescue operations;
  - (iv) assistance operations;
  - (v) monitoring activities;

**FESA Unit** means a group of persons approved by the Authority under section 18M;

**gross rental value**, in relation to land, has the same meaning as it has in the *Valuation of Land Act 1978*;

**hazardous material incident** means an actual or impending spillage or other escape of anything the spillage or escape of which causes or threatens to cause injury or death, or damage to property or to the environment;

**s. 3**

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***incident*** means —

- (a) a fire;
- (b) a hazardous material incident;
- (c) a natural disaster; or
- (d) an accident or other event that may require the carrying out of —
  - (i) a rescue operation;
  - (ii) a search and rescue operation;
  - (iii) a marine search and rescue operation;
  - (iv) an assistance operation;
  - (v) a monitoring activity;

***leviable land*** means land on which the levy is payable;

***levy*** means the emergency services levy determined under Part 6A and imposed under the *Emergency Services Levy Act 2002*;

***levy interest*** means interest that has accrued on the levy under section 36S;

***levy year***, in relation to the payment of the levy, means the financial year for which the levy is payable;

***marine search and rescue operation*** means a search and rescue operation that is carried out at sea or in, on or around any body of water;

***member*** means a member of the board other than the chief executive officer;

***member of staff*** means the chief executive officer or a person referred to in section 20(1) or 21;

***monitoring activity*** means an activity carried out for the purpose of finding out about the occurrence of events that might result in a marine search and rescue operation being required (such as monitoring marine radio frequencies or keeping watch for distress flares or signals);

***natural disaster*** means a flood, cyclone or other storm, earthquake, tsunami or other prescribed event;

**owner**, in relation to land, has the meaning given in section 3A;

**rescue operation** means an operation to rescue or recover a person or property endangered as a result of an accident, explosion or other similar event;

**search and rescue operation** means an operation to search for, and if necessary rescue or recover, a person or property who or which is lost or endangered as a result of a natural disaster, accident or other event;

**SES Unit** means a group of persons approved by the Authority under section 18C;

**the emergency services Acts** means this Act, the *Bush Fires Act 1954* and the *Fire Brigades Act 1942*;

**VMRS Group** means a group of persons approved by the Authority under section 18H.

[Section 3 amended by No. 38 of 2002 s. 4; No. 42 of 2002 s. 4.]

### 3A. Meaning of owner of land

In this Act —

**owner** —

- (a) in relation to Crown land, means —
  - (i) a lessee of the land or another person with a right to occupy the land otherwise than as an owner according to paragraph (b) or (c); or
  - (ii) a person with a right to acquire by purchase or otherwise the fee simple of the land;
- (b) in relation to Crown land that does not have an owner according to paragraph (a) and that —
  - (i) is vested in a person;
  - (ii) is dedicated to a purpose of a person; or

**s. 3B**

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- (iii) is placed under the control of a person, means that person or, if applicable, the management body within the meaning of the *Land Administration Act 1997* for the land;
- (c) in relation to Crown land that does not have an owner according to paragraph (a) or (b), means the State;
- (d) in relation to freehold land that is under the operation of the *Transfer of Land Act 1893*, means a proprietor within the meaning of that Act, except a mortgagee who is not a mortgagee in possession of the land;
- (e) in relation to land that is subject to the *Registration of Deeds Act 1856*, means the holder of an interest registered by memorial under that Act, except a mortgagee who is not a mortgagee in possession of the land; or
- (f) means a person who —
  - (i) under the *Mining Act 1978*, holds in respect of the land a mining tenement within the meaning of that Act;
  - (ii) in accordance with the *Mining Act 1978*, holds, occupies, uses, or enjoys in respect of the land a mining tenement within the meaning of the *Mining Act 1904*<sup>2</sup>; or
  - (iii) under the *Petroleum and Geothermal Energy Resources Act 1967*, holds in respect of the land a permit, drilling reservation, lease or licence within the meaning of that Act.

*[Section 3A inserted by No. 42 of 2002 s. 5; amended by No. 35 of 2007 s. 93.]*

**3B. Act binds Crown**

This Act binds the Crown.

*[Section 3B inserted by No. 42 of 2002 s. 5.]*

## **Part 2 — Fire and Emergency Services Authority of Western Australia**

### **4. Fire and Emergency Services Authority of Western Australia**

- (1) A body called the Fire and Emergency Services Authority of Western Australia is established.
- (2) The Authority is a body corporate with perpetual succession.
- (3) Proceeding may be taken by or against the Authority in its corporate name.

### **5. Agent of Crown**

The Authority is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

### **6. Board of management**

- (1) The Authority is to have a board of management that consists of —
  - (a) a chairman;
  - (b) the 4 chairmen of the consultative committees;
  - (c) one person who, in the Minister's opinion, represents members and officers of a private fire brigade or volunteer fire brigade, as those terms are defined in the *Fire Brigades Act 1942*;
  - (ca) one person who, in the Minister's opinion, represents volunteer fire fighters, within the meaning of the *Bush Fires Act 1954*;
  - (cb) one person who, in the Minister's opinion, represents members of SES Units;
  - (cc) one person who, in the Minister's opinion, represents members of VMRS Groups; and

**s. 7**

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- (cd) one person who, in the Minister's opinion, represents members of staff;
  - (d) one person who, in the Minister's opinion, represents local governments;
  - (e) the chief executive officer; and
  - (f) not more than 1 other member.
- (2) The board is the governing body of the Authority and, in the name of the Authority, is to perform the functions of the Authority under the emergency services Acts.

*[Section 6 amended by No. 38 of 2002 s. 5.]*

**7. Appointed members**

- (1) The Minister is to appoint the members referred to in section 6(1)(a), (c), (ca), (cb), (cc), (cd), (d) and (f).
- (2) The Minister is to ensure that each appointed member has expertise or experience that, in the Minister's opinion, is relevant to the functions of the Authority.

*[Section 7 amended by No. 38 of 2002 s. 6.]*

**8. Deputy chairman**

The members are to appoint a member to be the deputy chairman of the board.

**9. Constitution and proceedings of the board — Schedule 1**

Schedule 1 has effect.

**10. Remuneration and allowances of members**

A member is to be paid any remuneration and travelling and other allowances that are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.



## **Part 3 — Functions and powers**

### **11. Functions of the Authority**

- (1) The Authority has the functions relating to the provision and management of emergency services that are vested in it by or under the emergency services Acts.
- (2) Without limiting subsection (1), the Authority has the functions of —
  - (a) advising the Minister on all aspects of policy in relation to emergency services;
  - (b) developing plans for, and providing advice on, the management and use of emergency services;
  - (c) undertaking, coordinating, managing and providing practical and financial assistance to activities and projects relating to emergency services.

*[Section 11 amended by No. 38 of 2002 s. 7.]*

### **12. Powers of the Authority**

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1) or any other power conferred on the Authority by the emergency services Acts, the Authority may —
  - (a) subject to section 14, acquire, hold, manage, improve, develop, dispose of, and otherwise deal in, real and personal property;
  - (b) produce and publish information on matters related to its functions;
  - (c) require payment of rent, fees or other charges for the use of any of its facilities or services;
  - (ca) make such charges as it determines for anything done by it in the performance of its functions under section 26A of the *Fire Brigades Act 1942*;

**s. 13**

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- (d) fix the amount of rent, fees or other charges referred to in paragraph (c) or (ca) and may reduce or refund the amount payable in particular cases;
  - (e) enter into a contract or arrangement with a person or body (including a local government, or a department of the Public Service or other agency or instrumentality of the State or the Commonwealth) —
    - (i) for the performance by that person or body of any work or the supply of equipment or services; or
    - (ii) to provide consultancy or advisory services to that person or body;
  - (ea) develop and turn to account any technology, software or other intellectual property that relates to a function of the Authority and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
  - (f) act in conjunction with a person, a firm or a local government, or a department of the Public Service or other agency or instrumentality of the State or the Commonwealth.
- (2a) Subsection (2)(c) and (ca) do not apply in relation to any facility, service or other thing in respect of which rent, fees or charges may be prescribed under an emergency services Act.
- (3) In subsection (2) —
- acquire** includes taking on lease or licence or in any other manner in which property may be acquired;
- dispose of** includes disposing of by way of lease or licence or in any other manner in which property may be disposed of.
- [Section 12 amended by No. 38 of 2002 s. 8; No. 42 of 2002 s. 6.]

**13. Authority may use certain names**

- (1) In performing any of its functions, the Authority may use, and operate under, a name (an *operational name*) —
  - (a) set out in subsection (2); or
  - (b) approved or amended under subsection (3).
- (2) The following names are operational names —
  - (a) Bush Fire Service of Western Australia;
  - (b) FESA Fire and Emergency Services;
  - (c) FESA Fire Services;
  - (d) Fire and Rescue Service of Western Australia;
  - (e) State Emergency Service; and
  - (f) Volunteer Marine Rescue Services.
- (3) The Minister may by order published in the *Gazette* —
  - (a) approve other operational names; or
  - (b) amend, or cancel the use of, an operational name.
- (4) If a group of persons (a *brigade*) is both a bush fire brigade under the *Bush Fires Act 1954* and a volunteer brigade under the *Fire Brigades Act 1942*, the brigade may, with the approval of the Authority, operate under the name FESA Fire Services Brigade or any other name approved by the Authority.

*[Section 13 amended by No. 38 of 2002 s. 9.]*

**14. Requirement for Ministerial approval**

The Authority is to obtain the approval of the Minister before acquiring or disposing of real property under section 12(2)(a).

**15. Delegation by Minister and Authority**

- (1) The Minister may, in writing, delegate to the Authority the performance of any of the Minister's functions under the emergency services Acts, except the Minister's functions under Part 6A.

**s. 16**

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- (2) The Authority may, in writing, delegate —
  - (a) to the chief executive officer — the performance of any of the Authority's functions under the emergency services Acts;
  - (b) to a member of an SES Unit — any of its powers under section 18B;
  - (c) to a member of a VMRS Group — any of its powers under section 18G; and
  - (d) to a member of a FESA Unit — any of its powers under section 18L.
- (3) Performance by a delegate of a function delegated under subsection (1) or (2) —
  - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
  - (b) is to be treated as performance by the delegator.
- (4) Except as provided in section 16 a delegation under this section does not include the power to subdelegate.
- (5) Nothing in this section is to be read as limiting the ability of the Authority to act through the board, members of staff or agents in the normal course of business.

*[Section 15 inserted by No. 38 of 2002 s. 10; amended by No. 42 of 2002 s. 7.]*

**16. Subdelegation**

- (1) The Minister may, in an instrument by which a function is delegated under section 15(1), authorise the Authority to subdelegate that function to —
  - (a) the chief executive officer;
  - (b) a member; or
  - (c) a member of staff.

- (2) The Authority may, in an instrument by which a function is delegated under section 15(2)(a), authorise the chief executive officer to subdelegate that function to —
  - (a) a member;
  - (b) a member of staff; or
  - (c) a consultative committee.
- (3) A subdelegation under this section must be made in writing.
- (4) Performance by a subdelegate of a function subdelegated under subsection (1) or (2) —
  - (a) is taken to be in accordance with the terms of a subdelegation under this section, unless the contrary is shown; and
  - (b) is to be treated as performance by the delegator who made the original delegation under section 15.
- (5) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under this section in the same way as they apply to a delegation.

*[Section 16 inserted by No. 38 of 2002 s. 10.]*

**17. Minister may give directions**

- (1) The Minister may give directions in writing to the Authority with respect to the performance of its functions, either generally or in relation to a particular matter, and the Authority is to give effect to any such direction.
- (2) The text of a direction given under subsection (1) is to be included in the annual report submitted by the Authority under Part 5 of the *Financial Management Act 2006*.

*[Section 17 amended by No. 77 of 2006 s. 17.]*

**18. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the Authority; and

**s. 18**

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- (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1), the Minister may —
- (a) request the Authority to provide information to the Minister;
  - (b) request the Authority to give the Minister access to information;
  - (c) for the purposes of paragraph (b), make use of a member of staff to obtain the information and provide it to the Minister.
- (3) The Authority is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- document** includes any tape, disc, or other device or medium on which information is recorded or stored;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the Authority.

### **Part 3A — State Emergency Service**

*[Heading inserted by No. 38 of 2002 s. 11.]*

#### **18A. Functions of the Authority**

The functions of the Authority under this Part are —

- (a) to manage the provision of emergency services in relation to natural disasters;
- (b) to provide for the carrying out of search and rescue operations;
- (c) to promote the safety of life and property from natural disasters, accidents and other events that may require search and rescue operations to be carried out;
- (d) to provide for the carrying out of assistance operations; and
- (e) to have general responsibility for all SES Units.

*[Section 18A inserted by No. 38 of 2002 s. 11.]*

#### **18B. Powers of the Authority**

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing its functions under this Part the Authority may —
  - (a) provide equipment and training to SES Units; and
  - (b) carry out the functions of an SES Unit.
- (3) Without limiting subsection (1), for the purpose of —
  - (a) protecting and saving life and property endangered by a natural disaster;
  - (b) rendering safe the site of a natural disaster;
  - (c) carrying out a search and rescue operation; or

**s. 18C**

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- (d) carrying out an assistance operation,  
the Authority may —
- (e) enter any land, building, area of water or other place;
  - (f) take control of or make use of any land, building, vehicle, vessel or other thing;
  - (g) damage or destroy any building, vehicle, vessel or other thing;
  - (h) move any vehicle, vessel or other movable thing;
  - (i) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and
  - (j) restrict or prohibit the movement of persons and vehicles including, if necessary, by the closure of roads or any area of water.
- (4) In exercising a power under subsection (3) the Authority may use such force as is reasonably necessary.

*[Section 18B inserted by No. 38 of 2002 s. 11; amended by No. 42 of 2002 s. 8.]*

**18C. Approval of SES Units**

- (1) The Authority may, by notice in the *Gazette*, approve as an SES Unit any group of persons, however constituted and whether incorporated or not, that it considers to be appropriate for approval as an SES Unit.
- (2) The Authority may, by notice in the *Gazette*, cancel the approval of an SES Unit if the Authority considers that it is no longer appropriate for the Unit to be approved.
- (3) The Authority must keep a register of SES Units approved under subsection (1) and their members.

*[Section 18C inserted by No. 38 of 2002 s. 11.]*



**18D. Register of members of SES Unit**

An SES Unit must —

- (a) maintain a register of its members in accordance with the regulations; and
- (b) notify the Authority as soon as practicable after any change occurs in any of the details required by the regulations to be recorded in that register.

*[Section 18D inserted by No. 38 of 2002 s. 11.]*

**18E. Functions of an SES Unit**

(1) The functions of an SES Unit are —

- (a) to take all practicable measures —
  - (i) for protecting and saving life and property endangered by natural disasters; and
  - (ii) for rendering safe the site of natural disasters;
- (b) to carry out search and rescue operations;
- (c) to promote the safety of life and property from natural disasters, accidents and other events that may require search and rescue operations to be carried out; and
- (d) to carry out assistance operations.

(2) For the purposes of performing its functions an SES Unit may —

- (a) acquire and maintain equipment;
- (b) carry out training activities and exercises;
- (c) carry out demonstrations and other public education activities;
- (d) carry out fundraising and promotional activities;
- (e) organise and participate in competitions;
- (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and

**s. 18E**

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- (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

*[Section 18E inserted by No. 38 of 2002 s. 11.]*

## Part 3B — Volunteer Marine Rescue Services

*[Heading inserted by No. 38 of 2002 s. 11.]*

### 18F. Functions of the Authority

The functions of the Authority under this Part are —

- (a) to provide for the carrying out of monitoring activities and marine search and rescue operations;
- (b) to promote the safety of life and property from natural disasters, accidents and other events that may require marine search and rescue operations to be carried out;
- (c) to provide for the carrying out of assistance operations; and
- (d) to have general responsibility for all VMRS Groups.

*[Section 18F inserted by No. 38 of 2002 s. 11.]*

### 18G. Powers of Authority

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing its functions under this Part the Authority may —
  - (a) provide equipment and training to VMRS Groups; and
  - (b) carry out the functions of a VMRS Group.
- (3) Without limiting subsection (1), for the purpose of carrying out a marine search and rescue operation or an assistance operation the Authority may —
  - (a) enter any land, building, area of water or other place;
  - (b) take control of or make use of any land, area of water, building, vehicle, vessel or other thing;
  - (c) damage or destroy any building, vehicle, vessel or other thing;

**s. 18H**

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- (d) move any vehicle, vessel or other movable thing;
  - (e) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and
  - (f) restrict or prohibit the movement of persons, vehicles and vessels, including, if necessary, by the closure of roads or areas of water.
- (4) In exercising a power under subsection (3) the Authority may use such force as is reasonably necessary.

*[Section 18G inserted by No. 38 of 2002 s. 11.]*

**18H. Approval of VMRS Groups**

- (1) The Authority may, by notice in the *Gazette*, approve as a VMRS Group any group of persons, however constituted and whether incorporated or not, that it considers to be appropriate for approval as a VMRS Group.
- (2) The Authority may, by notice in the *Gazette*, cancel the approval of a VMRS Group if the Authority considers that it is no longer appropriate for the Group to be approved.
- (3) The Authority must keep a register of VMRS Groups approved under subsection (1) and their members.

*[Section 18H inserted by No. 38 of 2002 s. 11.]*

**18I. Register of members of VMRS Group**

A VMRS Group must —

- (a) maintain a register of its members in accordance with the regulations; and
- (b) notify the Authority as soon as practicable after any change occurs in any of the details required by the regulations to be recorded in that register.

*[Section 18I inserted by No. 38 of 2002 s. 11.]*

**18J. Functions of a VMRS Group**

- (1) The functions of a VMRS Group are —
  - (a) to carry out monitoring activities and marine search and rescue operations;
  - (b) to promote the safety of life and property from natural disasters, accidents and other events that may require marine search and rescue operations to be carried out; and
  - (c) to carry out assistance operations.
- (2) For the purposes of performing its functions a VMRS Group may —
  - (a) acquire and maintain equipment;
  - (b) carry out training activities and exercises;
  - (c) carry out demonstrations and other public education activities;
  - (d) carry out fundraising and promotional activities;
  - (e) organise and participate in competitions;
  - (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and
  - (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

*[Section 18J inserted by No. 38 of 2002 s. 11.]*

### **Part 3C — FESA Units**

*[Heading inserted by No. 38 of 2002 s. 11.]*

#### **18K. Functions of the Authority**

The functions of the Authority under this Part are —

- (a) to provide for the performance of FESA activities; and
- (b) to have general responsibility for all FESA Units.

*[Section 18K inserted by No. 38 of 2002 s. 11.]*

#### **18L. Powers of the Authority**

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing its functions under this Part the Authority may —
  - (a) perform FESA activities;
  - (b) authorise a FESA Unit to perform FESA activities; and
  - (c) provide equipment and training to FESA Units.
- (3) Without limiting subsection (1), for the purpose of performing FESA activities the Authority may —
  - (a) enter any land, building, area of water or other place;
  - (b) take control of or make use of any land, area of water, building, vehicle, vessel or other thing;
  - (c) damage or destroy any building, vehicle, vessel or other thing;
  - (d) move any vehicle, vessel or other movable thing;
  - (e) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and
  - (f) restrict or prohibit the movement of persons and vehicles including, if necessary, by the closure of roads or any area of water.

- (4) In exercising a power under subsection (3) the Authority may use such force as is reasonably necessary.
- (5) An authorisation under subsection (2)(b) may be made subject to any conditions, qualifications, limitations or exceptions the Authority considers appropriate.

*[Section 18L inserted by No. 38 of 2002 s. 11.]*

**18M. Approval of FESA Units**

- (1) The Authority may, by notice in the *Gazette*, approve as a FESA Unit any group of persons, however constituted and whether incorporated or not, that it considers to be appropriate for approval as a FESA Unit.
- (2) The Authority may, by notice in the *Gazette*, cancel the approval of a FESA Unit if the Authority considers that it is no longer appropriate for the Unit to be approved.
- (3) The Authority must keep a register of FESA Units approved under subsection (1) and their members.

*[Section 18M inserted by No. 38 of 2002 s. 11.]*

**18N. Register of members of FESA Unit**

A FESA Unit must —

- (a) maintain a register of its members in accordance with the regulations; and
- (b) notify the Authority as soon as practicable after any change occurs in any of the details required by the regulations to be recorded in that register.

*[Section 18N inserted by No. 38 of 2002 s. 11.]*

**18O. Functions of a FESA Unit**

- (1) The function of a FESA Unit is to perform those FESA activities that the Authority authorises the Unit to perform under section 18L(2)(b).

**s. 180**

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- (2) For the purposes of performing its functions a FESA Unit may —
- (a) acquire and maintain equipment;
  - (b) carry out training activities and exercises;
  - (c) carry out demonstrations and other public education activities;
  - (d) carry out fundraising and promotional activities;
  - (e) organise and participate in competitions;
  - (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and
  - (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

*[Section 180 inserted by No. 38 of 2002 s. 11.]*



## Part 4 — Staff

### 19. Chief executive officer

- (1) A chief executive officer of the Authority is to be appointed under Part 3 of the *Public Sector Management Act 1994*.
- (2) Subject to the control of the board, the chief executive officer is to administer the day to day operations of the Authority.

### 20. Other staff

- (1) The chief executive officer may appoint persons as officers and engage persons as wages staff as necessary to enable the Authority to perform its functions.
- (2) Persons referred to in subsection (1) are to be employed, subject to any relevant industrial award, order or agreement, on the terms and conditions determined by the chief executive officer.
- (3) Nothing in subsection (2) affects the operation of Part VID of the *Industrial Relations Act 1979*.
- (4) Division 3 of Part 3 of the *Public Sector Management Act 1994* does not apply to the Authority, but this section does not affect the power of the chief executive officer to engage a person under a contract for services or appoint a person on a casual employment basis under section 100 of that Act.

*[Section 20 amended by No. 20 of 2002 s. 27; amended in Gazette 15 Aug 2003 p. 3692.]*

### 21. Use of other government staff etc.

- (1) The Authority may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.

**s. 21**

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- (2) The Authority may by arrangement with —
- (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,
- make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be on the terms agreed to by the parties.

## **Part 5 — Consultative committees**

### **22. Consultative committees**

- (1) The Minister is to appoint 4 consultative committees with the names —
  - (a) Bush Fire Service Consultative Committee;
  - (b) Fire and Rescue Service Consultative Committee;
  - (c) State Emergency Service Consultative Committee; and
  - (d) Volunteer Marine Rescue Services Consultative Committee.
- (2) Each of the consultative committees is to be appointed in respect of certain emergency services, as determined by the Minister.
- (3) The Minister may, by order published in the *Gazette*, amend the name of a consultative committee.

*[Section 22 amended by No. 38 of 2002 s. 12.]*

### **23. Membership of consultative committees**

- (1) Subject to subsection (2), a consultative committee is to consist of the number of persons determined by the Minister.
- (2) A consultative committee is to have at least 8 members.
- (3) A person appointed by the Minister to be a member of a consultative committee is to have the experience, skills, attributes or qualifications that, in the Minister's opinion, are appropriate to the appointment.
- (4) A person who is a member of the board, other than a member referred to in section 6(1)(b), is not eligible to be a member of a consultative committee.

### **24. Chairman and deputy chairman**

- (1) The Minister is to appoint one of the members of a consultative committee to be the chairman of the committee.

**s. 25**

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- (2) The members of a consultative committee are to appoint a member to be the deputy chairman of the committee.

**25. Constitution and proceedings of consultative committees**

Subject to any direction in writing given to a consultative committee by the Authority, Schedule 1 has effect in respect of the constitution and proceedings of a consultative committee as if —

- (a) a reference in that Schedule to the board was a reference to the consultative committee; and
- (b) a reference in that Schedule to a member was a reference to a member of the consultative committee.

**26. Functions and powers of consultative committees**

- (1) The function of a consultative committee is to provide advice to the board and the chief executive officer in relation to all matters concerning the operation of the emergency services in respect of which the committee is appointed and otherwise as directed by the board or the chief executive officer.
- (2) A consultative committee may do all things necessary or convenient to be done for or in connection with the performance of its function.

**27. Support services**

The Authority is to provide a consultative committee with any support services that it may reasonably require.

**28. Allowances**

A member of a consultative committee is to be paid any travelling and other allowances that are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

## **Part 6 — General financial provisions**

*[Heading inserted by No. 42 of 2002 s. 9.]*

### **29. Funds of the Authority**

The funds available for the purpose of enabling the Authority to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament; and
- (b) other moneys lawfully provided for the purposes of the emergency services Acts or received by the Authority in the performance of its functions under those Acts.

*[Section 29 amended by No. 42 of 2002 s. 10.]*

### **30. Fire and Emergency Services Authority Account**

- (1) An account called the Fire and Emergency Services Authority Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds referred to in section 29 are to be credited.

- (2) The Account is to be charged with —
  - (a) the remuneration and allowances payable under sections 10 and 28;
  - (b) interest on and repayment of moneys borrowed by the Authority under section 32 or 33;
  - (ba) the amounts payable to local governments under section 36A(5); and
  - (c) subject to subsection (3), all other expenditure lawfully incurred by the Authority in the performance of its functions under the emergency services Acts.

**s. 31**

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- (3) The funds that are credited to the Account as a result of payments made to the Authority under Part 6A are not to be expended for services prescribed for the purposes of section 35B(2)(a).

*[Section 30 amended by No. 42 of 2002 s. 11; No. 77 of 2006 s. 17.]*

**31. Investment**

Unless section 30(1)(a) applies, any funds of the Authority that are not immediately required for the purposes of the emergency services Acts may, if approved by the Treasurer, be invested in any manner that moneys in the Public Bank Account may be invested under the *Financial Management Act 2006*.

*[Section 31 amended by No. 77 of 2006 s. 17.]*

**32. Borrowing from Treasurer**

The Authority may borrow from the Treasurer any amounts approved by the Treasurer on any terms and conditions relating to repayment and payment of interest imposed by the Treasurer.

**33. Other borrowing**

- (1) In addition to its powers under section 32, the Authority may, with the written approval of the Treasurer and on the terms and conditions approved by the Treasurer, borrow moneys for the purpose of performing its functions under the emergency services Acts.
- (2) Any moneys borrowed by the Authority under subsection (1) may be raised —
- (a) as one loan or as several loans; and
  - (b) in the manner approved by the Treasurer.
- (3) The total amount of the moneys so borrowed in any one financial year is not to exceed the amount approved by the Treasurer.

*[Section 33 amended by No. 42 of 2002 s. 12.]*

**34. Guarantee by Treasurer**

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Authority in respect of moneys borrowed by it under section 33.
- (2) A guarantee is to be in the form and contain the conditions determined by the Treasurer.
- (3) Before a guarantee is given, the Authority is to —
  - (a) give to the Treasurer any security required by the Treasurer; and
  - (b) execute all instruments that are necessary for the purpose of giving that security.

**35. Effect of guarantee**

- (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 34 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Account any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 34.

*[Section 35 amended by No. 77 of 2006 s. 4 and 5(1).]*

**35A. Reserve funds**

- (1) The Authority may establish reserve funds to which may be credited —
  - (a) amounts that are provided for in the annual estimates approved under section 35B; and
  - (b) any other amounts approved by the Minister.

**s. 35B**

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- (2) The Authority may from time to time apply any of the moneys in the reserve funds —
- (a) to purchase, construct, renew, maintain or replace —
    - (i) land, buildings, vehicles, vessels, plant or equipment; or
    - (ii) any other property approved by the Minister;
  - (b) to repay moneys borrowed by the Authority under this Part; or
  - (c) to any other purpose approved by the Minister.

*[Section 35A inserted by No. 42 of 2002 s. 13.]*

**35B. Annual estimates of expenditure by Authority**

- (1) The Authority is to cause an annual estimate of its expenditure in relation to the services to be provided under the emergency services Acts to be —
- (a) prepared in the manner and form approved by the Minister; and
  - (b) submitted for the approval of the Minister by the time determined by the Minister.
- (2) Without limiting subsection (1), an annual estimate of expenditure under this section is to identify the amount of that expenditure that is estimated —
- (a) to be attributable to prescribed services to be provided under the emergency services Acts; or
  - (b) to comprise the amounts payable to local governments under section 36A(5).
- (3) The Minister may give the approval referred to in subsection (1)(b) or may reject the estimate and require the Authority to prepare and submit an amended estimate for the approval of the Minister by the time determined by the Minister.
- (4) The Authority is to comply with a requirement under subsection (3).

*[Section 35B inserted by No. 42 of 2002 s. 13.]*



**36. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

Subject to section 35B, the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and its operations.

*[Section 36 amended by No. 42 of 2002 s. 14; No. 77 of 2006 s. 17.]*

## **Part 6A — Emergency services levy**

*[Heading inserted by No. 42 of 2002 s. 15.]*

### **Division 1 — Annual estimates of expenditure**

*[Heading inserted by No. 42 of 2002 s. 15.]*

#### **36A. Annual estimates of expenditure by local governments and payments by Authority**

- (1) Subject to subsection (2), a local government is to cause an annual estimate of its expenditure in relation to fire and emergency services to be —
  - (a) prepared in the manner and form approved by the Minister; and
  - (b) submitted for the approval of the Authority by the time determined by the Minister.
- (2) Subsection (1) does not apply to a local government in relation to a particular year if the Minister gives to the local government written notice that an estimate of its expenditure is not required for that year.
- (3) The Authority may give the approval referred to in subsection (1)(b) or may reject the estimate and require the local government to prepare and submit an amended estimate for the approval of the Authority by the time determined by the Minister.
- (4) A local government is to comply with a requirement under subsection (3).
- (5) The Authority is to pay to a local government, by the time, and in accordance with the procedures, determined by the Minister, an amount equal to the expenditure of the local government approved by the Authority under this section.

*[Section 36A inserted by No. 42 of 2002 s. 15.]*

**Division 2 — Emergency services levy and ESL category areas**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36B. Annual levy payable to Authority on land in an ESL category area**

Except as otherwise provided in this Part, the levy is payable each year to the Authority on all land that is located in an ESL category area.

*[Section 36B inserted by No. 42 of 2002 s. 15.]*

**36C. Record of leviable land**

The Authority is to ensure that, for each levy year, a record is compiled, at the time and in the manner approved by the Minister, of all leviable land.

*[Section 36C inserted by No. 42 of 2002 s. 15.]*

**36D. Exemptions may be prescribed**

The regulations may —

- (a) provide for kinds of land that are exempt or partially exempt from the levy; and
- (b) specify conditions to which an exemption, or partial exemption, from the levy is subject.

*[Section 36D inserted by No. 42 of 2002 s. 15.]*

**36E. Exemptions in other enactments not to apply**

- (1) An enactment passed before the commencement of this section that purports to exempt a person from liability to pay any rate, tax or imposition that could be taken to include the levy does not exempt the person from liability to pay the levy.
- (2) An enactment passed after the commencement of this section that purports to exempt a person from liability to pay —
  - (a) all rates, taxes or impositions under the laws of Western Australia; or

- (b) certain rates, taxes or impositions that could be taken to include the levy,

does not exempt the person from liability to pay the levy.

- (3) Subsection (2) does not apply to an enactment that expressly exempts a person from liability to pay the levy.

*[Section 36E inserted by No. 42 of 2002 s. 15.]*

**36F. Declaration of ESL category areas**

- (1) For the purposes of subsection (2), the regulations may prescribe different emergency services categories for different kinds of services that are provided under the emergency services Acts.
- (2) Having regard to the services that are provided under the emergency services Acts in an area of Western Australia, the Minister may, by notice published in the *Gazette* —
  - (a) declare that the area is in a prescribed emergency services category;
  - (b) declare that the area to which a declaration under paragraph (a) applies is in a different prescribed emergency services category; or
  - (c) revoke a declaration under this subsection.
- (3) A notice under subsection (2) cannot have effect in respect of the levy year in which the notice is published.
- (4) Before a notice is published under subsection (2) in relation to an area of Western Australia, the Minister is to consult with each local government whose local government district is, or is proposed to be, located in that area.

*[Section 36F inserted by No. 42 of 2002 s. 15.]*

**Division 3 — Determination and assessment of levy**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36G. Minister to determine levy**

- (1) Before the relevant day each year, the Minister, by notice published in the *Gazette*, is to determine the emergency services levy that is payable for the next levy year on all land that is located in an ESL category area.
- (2) In subsection (1) —  
***the relevant day*** means —
  - (a) a day declared by the Minister by notice published in the *Gazette* after consultation with persons who the Minister believes effectively represent the interests of local governments; or
  - (b) if no day is declared under paragraph (a), 31 May.
- (3) The Minister is to determine the levy that is payable for a levy year on land by reference to —
  - (a) the estimate of expenditure for the levy year approved by the Minister under section 35B, from which is to be deducted for the purposes of the determination —
    - (i) the amount of that expenditure identified under section 35B(2)(a); and
    - (ii) moneys appropriated by Parliament for the levy year for the purposes of the services provided under the emergency services Acts;
  - and
  - (b) any other matter the Minister considers relevant to a proper determination of the levy.
- (4) Different rates of levy may be determined under subsection (3) according to either or both of the following —
  - (a) the ESL category area in which the land is located;
  - (b) the purpose for which the land is used.

- (5) In determining the purpose for which any land is used for subsection (4)(b) or section 36I(2)(b), the Minister is to have regard to the advice of the Valuer-General and to any matters prescribed by the regulations.

*[Section 36G inserted by No. 42 of 2002 s. 15.]*

**36H. Determination of levy by reference to gross rental value etc.**

- (1) Except as otherwise provided in this section and section 36I, the levy payable for a levy year on land is to be determined as a rate in the dollar of the gross rental value of the land in force under the *Valuation of Land Act 1978* as at 1 July in the levy year.
- (2) If during a levy year the gross rental value of land in force under the *Valuation of Land Act 1978* as at 1 July in that year is amended as at that date as a result of —
- (a) an interim valuation made under that Act;
  - (b) a valuation coming into force under that Act as a result of the amendment of a valuation under that Act; or
  - (c) a new valuation made under that Act in the course of completing a general valuation that has previously come into force,

the gross rental value, as so amended and in force as at 1 July, is the gross rental value of the land for the purposes of subsection (1).

- (3) If, after the required consultation, the Minister considers that it is impracticable or otherwise inappropriate for the levy to be determined as a rate in the dollar of the gross rental value of any land, the Minister may determine the levy —
- (a) as a rate in the dollar of the gross rental value of a portion of the land; or
  - (b) on any other basis that, after the required consultation, the Minister considers appropriate.

- (4) In subsection (3) —

***the required consultation***, in relation to land, means consultation with the Valuer-General and with the local government for the district in which the land is located.

*[Section 36H inserted by No. 42 of 2002 s. 15.]*

**36I. Minimum and maximum amounts of levy**

- (1) Despite any other provision of this Part, the Minister may determine —
- (a) the minimum amount of levy payable on land; and
  - (b) the maximum amount of levy payable on land.
- (2) Different amounts may be determined under subsection (1) according to either or both of the following —
- (a) the ESL category area in which the land is located;
  - (b) the purpose for which the land is used.

*[Section 36I inserted by No. 42 of 2002 s. 15.]*

**36J. Assessment of levy and assessment notices**

- (1) Subject to sections 36L and 36N, a local government is to —
- (a) assess the amount of levy payable for a levy year by each person who owns leviable land in its local government district; and
  - (b) serve written notice of the assessment on the person.
- (2) The assessment notice is to —
- (a) state the date the notice was issued and, if section 36G(4)(b) or 36I(2)(b) applies to the determination of the levy payable on the land, the purpose for which the land is used as determined under section 36G(5); and
  - (b) include or be accompanied by any matters prescribed by the regulations.

**s. 36K**

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- (3) If leviable land is owned by 2 or more persons, service of the assessment notice on one of those persons is taken to be service of the notice on each of them.
- (4) The assessment notice is to be given by a local government —
  - (a) as part of the rate notice given under section 6.41 of the *Local Government Act 1995*; or
  - (b) if no rate notice is to be given — as a separate notice.
- (5) Without limiting sections 75 and 76 of the *Interpretation Act 1984*, an assessment notice is taken to have been served on the owner of land if it is posted to the address shown for the owner, at the time of posting, in the rate record kept by the local government under section 6.39 of the *Local Government Act 1995*.

*[Section 36J inserted by No. 42 of 2002 s. 15.]*

**36K. Authority to ensure local governments have information**

The Authority is to ensure that a local government is given any information relating to the levy and leviable land that the local government reasonably needs to perform its functions under section 36J.

*[Section 36K inserted by No. 42 of 2002 s. 15.]*

**36L. Assessment of levy payable by the State, local governments and other persons**

- (1) The Authority —
  - (a) except as provided in the regulations, is to assess the amount of levy payable for a levy year on land owned by the State, a State agency or instrumentality or a local government; and
  - (b) may assess the amount of levy payable for a levy year on land owned by any other person.
- (2) The Authority is to serve written notice of the assessment on —
  - (a) in the case of levy payable by the State — the Treasurer;



- (b) in the case of levy payable by a State agency or instrumentality — the Treasurer or the agency or instrumentality, as the Authority considers appropriate; or
  - (c) in the case of levy payable by a local government or another person — the local government or other person.
- (3) Subsections (2), (3) and (5) of section 36J apply to an assessment notice under this section in the same way as they apply to an assessment notice under that section.

*[Section 36L inserted by No. 42 of 2002 s. 15.]*

**36M. When levy becomes due and payable**

- (1) The levy becomes due and payable on the date determined by the Minister and stated in the assessment notice subject to —
- (a) subsection (2);
  - (b) any concession granted under section 36R(1)(b);
  - (c) any agreement made under section 36R(2); and
  - (d) the *Rates and Charges (Rebates and Deferrals) Act 1992*.
- (2) The date determined under subsection (1) must not be earlier than 35 days after the date stated in the assessment notice as the date the assessment notice was issued.

*[Section 36M inserted by No. 42 of 2002 s. 15.]*

**36N. Notice and payment of levy payable on State land**

Despite any other provision of this Part, the Authority may give notice of the assessment of, and may accept payment of, the levy payable on any land owned by the State, or a State agency or instrumentality, in accordance with arrangements agreed between the Treasurer and the Authority.

*[Section 36N inserted by No. 42 of 2002 s. 15.]*

**Division 4 — Payment of emergency services levy**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36O. Levy is a charge on land**

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, the levy, together with any costs of proceedings for the recovery of the levy and any levy interest, is a charge on the leviable land.

*[Section 36O inserted by No. 42 of 2002 s. 15.]*

**36P. Liability for levy**

- (1) A person who is the owner of leviable land is liable to pay the levy for a levy year.
- (2) The levy is payable —
  - (a) if an assessment notice is served on the person by a local government under section 36J(1) — to the local government; or
  - (b) if an assessment notice is served on the person by the Authority under section 36L(2) — to the Authority.
- (3) If leviable land is owned by 2 or more persons, they are jointly and severally liable to pay the levy.

*[Section 36P inserted by No. 42 of 2002 s. 15.]*

**36Q. Minister may approve payment of levy by instalments**

- (1) Subject to subsection (2), the levy is payable by a single payment.
- (2) The Minister may approve —
  - (a) arrangements for the levy to be paid by instalments; and
  - (b) the charges applicable to payment of the levy by instalments.

*[Section 36Q inserted by No. 42 of 2002 s. 15.]*

**36R. Discounts, concessions and agreements**

- (1) Without limiting the *Rates and Charges (Rebates and Deferments) Act 1992*, the Minister may —
  - (a) when determining the levy, grant a discount or other incentive for the early payment of the levy; or
  - (b) when determining the levy or at a later date, waive the levy or grant other concessions in relation to the levy.
- (2) A local government may accept payment of the levy that is due and payable by a person in accordance with an agreement made between the local government and the person.

*[Section 36R inserted by No. 42 of 2002 s. 15.]*

**36S. Accrual of interest on overdue levy**

- (1) Subject to subsection (5), interest accrues on the levy, or an instalment of the levy, that is not paid to a local government or the Authority, as the case requires, from the time it becomes due and payable.
- (2) For the purposes of this section, the Minister may, by notice published in the *Gazette* —
  - (a) declare a rate of interest that applies to any unpaid levy, or to any unpaid levy on land in one or more local government districts, as specified in the notice; or
  - (b) change or revoke a rate of interest declared under paragraph (a).
- (3) Different rates of interest may be declared under subsection (2) in relation to different local government districts.
- (4) For the purpose of its recovery, levy interest is taken to be an amount of levy that is due and payable.
- (5) No interest is to accrue on the levy, or an instalment of the levy, payable by —
  - (a) a person entitled under the *Rates and Charges (Rebates and Deferments) Act 1992* to a rebate or deferment in respect of the levy; or

(b) a person of a kind prescribed by the regulations.

*[Section 36S inserted by No. 42 of 2002 s. 15.]*

**36T. Levy may be apportioned**

- (1) The levy payable for a levy year on land —
  - (a) is apportionable between successive owners of the land in respect of time as if the levy accrued from day to day during the levy year; and
  - (b) is apportionable between owners of several portions of the land according to the respective values of the portions.
- (2) If any part of the levy payable on any land has been paid by a person other than the owner of the land, whether during or after the levy year, the owner is liable, if there is no agreement between them to the contrary, to reimburse that person the amount paid.
- (3) This section does not affect the liability of a person to pay the levy to a local government or to the Authority.
- (4) An unsatisfied judgment or order of a court for the recovery of the levy from a person is not a bar to the recovery of the levy from another person liable under this Part to pay it.

*[Section 36T inserted by No. 42 of 2002 s. 15.]*

**Division 5 — Local governments**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36U. Local government may credit levy to municipal fund or trust fund**

- (1) A local government may credit to its municipal fund or trust fund amounts of levy and levy interest paid to the local government.

- (2) Despite section 6.9(3) of the *Local Government Act 1995*, a local government may retain interest earned from investing amounts of levy and levy interest credited to its trust fund.

*[(3) deleted]*

*[Section 36U inserted by No. 42 of 2002 s. 15; amended by No. 8 of 2009 s. 57.]*

**36V. Local government to pay levy and other amounts to Authority**

A local government is to pay to the Authority at the times, and in accordance with the procedures, determined by the Minister after consultation with the local government —

- (a) the amounts of levy and levy interest paid to the local government; and
- (b) the amount of levy payable by the local government on any leviable land it owns.

*[Section 36V inserted by No. 42 of 2002 s. 15.]*

**36W. Local governments to be paid certain fees**

- (1) The Minister is to determine —
- (a) the fees to be paid by the Authority to a local government for the local government's performance of functions under this Part in relation to the assessment, collection and recovery of the levy and levy interest; and
  - (b) times and procedures for the payment of those fees.
- (2) In making a determination under subsection (1), the Minister may —
- (a) have regard to the costs reasonably incurred by the local government in making any administrative or other preparations necessary to perform the functions referred to in subsection (1)(a); and
  - (b) consult with persons who the Minister believes effectively represent the interests of local governments.

*[Section 36W inserted by No. 42 of 2002 s. 15.]*

**36X. Interest payable on amounts not paid by due date to Authority**

- (1) Interest accrues on an amount of levy or levy interest that is received by a local government and not paid to the Authority from the time it becomes due and payable as determined under section 36V.
- (2) For the purposes of this section, the Minister may, by notice published in the *Gazette* —
  - (a) declare a rate of interest that applies to any unpaid amount of levy or levy interest; or
  - (b) change or revoke a rate of interest declared under paragraph (a).
- (3) An unpaid amount of levy or levy interest, and interest payable on that amount, may be recovered from a local government in a court of competent jurisdiction as a debt due to the Authority.

*[Section 36X inserted by No. 42 of 2002 s. 15.]*

**36Y. Ministerial guidelines**

- (1) The Minister may, for the assistance of the Authority and local governments, issue guidelines, not inconsistent with this Part, setting out the times and procedures that are determined by the Minister for the purposes of this Part.
- (2) The Minister may amend the guidelines or revoke them and issue new guidelines.
- (3) Before the Minister issues or amends guidelines that apply to functions performed by local governments, the Minister is to consult with persons who the Minister believes effectively represent the interests of local governments.
- (4) The Minister is to ensure that guidelines issued or amended under this section are given to the Authority and to each local government that performs functions to which the guidelines apply.

*[Section 36Y inserted by No. 42 of 2002 s. 15.]*

**Division 6 — Recovery of unpaid levy**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36Z. Recovery of unpaid levy**

- (1) Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, the levy that is payable for a levy year on land is recoverable by the local government for the district in which the land is located or by the Authority from —
  - (a) the owner of the land on the date the assessment notice was served; or
  - (b) a person who becomes the owner of the land while the levy is unpaid.
- (2) If the levy remains unpaid after it becomes due and payable, the local government or the Authority may recover it and any levy interest, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction.
- (3) This section applies —
  - (a) to a local government, if the assessment notice was served by the local government; and
  - (b) to the Authority, whether the assessment notice was served by the Authority or by a local government.

*[Section 36Z inserted by No. 42 of 2002 s. 15.]*

**36ZA. Question of title to land not to affect jurisdiction**

A jurisdiction otherwise competent to entertain proceedings to recover the levy, or consequent on the recovery of the levy, or to review a decision relating to the payment of the levy is not affected on the ground that a question of title to land is raised in the proceedings or review, but an order or judgment in the proceedings or review is not evidence of title.

*[Section 36ZA inserted by No. 42 of 2002 s. 15; amended by No. 55 of 2004 s. 360.]*

**Division 7 — Sale of land if levy is unpaid**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36ZB. Term used in this Division**

In this Division —

*levy* includes levy interest.

*[Section 36ZB inserted by No. 42 of 2002 s. 15.]*

**36ZC. Application for order for sale of land**

- (1) If an amount of levy that is due and payable on any land has been unpaid for 3 years or more, the Authority may apply to the Supreme Court for an order for the sale of the land, or part of the land, so that the proceeds of sale may be applied towards satisfaction of the outstanding amount of levy.
- (2) At least 6 months before the Authority makes an application to the Supreme Court under this section, the Authority is to —
  - (a) have notice of the intended application published in 2 newspapers —
    - (i) one circulating generally throughout the State; and
    - (ii) one circulating generally throughout Australia;
  - (b) if the whereabouts of the owner of the land is known to the Authority — give written notice of the intended application to that person; and
  - (c) give written notice of the intended application to the holder of any registered encumbrance over the land whose whereabouts is known to the Authority.
- (3) On an application under this section, the Supreme Court may order the sale of the land and make incidental orders —
  - (a) about how the sale is to be conducted;
  - (b) authorising an officer of the Court to execute documents, and to do anything else necessary, for the sale and transfer or conveyance of the land;



- (c) authorising the Registrar of Titles to do anything necessary to register the purchaser's title despite a duplicate certificate of title or other document not being produced;
  - (d) directing, subject to subsection (4), how the proceeds of sale are to be dealt with; and
  - (e) dealing with the costs of the proceedings and other matters.
- (4) A sale by order of the Supreme Court discharges the land from any mortgage or other encumbrance securing a monetary obligation, but the land remains subject to any lease, easement or other encumbrance.
- (5) The proceeds of sale are to be applied —
- (a) firstly, in payment of the costs of the sale;
  - (b) secondly, in payment of the costs of the proceedings so far as those costs are, by order of the Court, to be paid out of the proceeds of sale;
  - (c) thirdly, in payment of the outstanding amount of levy; and
  - (d) fourthly, in discharging any outstanding monetary liability secured, immediately before the sale, by a mortgage or encumbrance referred to in subsection (4),

and any remaining balance is to be applied as directed by the Court.

*[Section 36ZC inserted by No. 42 of 2002 s. 15.]*

**36ZD. Authority has interest in land on which levy is due and payable**

If the levy that is due and payable on any land is unpaid, the Authority has an interest in the land in respect of which it may lodge a caveat to preclude dealings in relation to the land, and the Authority may withdraw a caveat so lodged.

*[Section 36ZD inserted by No. 42 of 2002 s. 15.]*

**Division 8 — Objections and review**

*[Heading inserted by No. 42 of 2002 s. 15; amended by No. 55 of 2004 s. 361.]*

**36ZE. Objection to determination of use of land**

- (1) If section 36G(4)(b) or 36I(2)(b) applies to the determination of the levy payable on any land, the owner of the land may object to the determination under section 36G(5) of the purpose for which the land is used.
- (2) An objection is to be made to the Minister and is to —
  - (a) be in writing;
  - (b) identify the leviable land;
  - (c) set out fully and in detail the grounds of the objection, including particulars of the purpose for which, in the opinion of the person making the objection, the land is used; and
  - (d) be served on the Minister within 60 days after the date the assessment notice was served.
- (3) The Minister may, on an application by a person proposing to make an objection, and whether or not the time for doing so has expired, extend the time for making the objection for any period the Minister thinks fit.
- (4) The Minister is to consider an objection and may determine either to disallow it or allow it.
- (5) After making a determination on the objection, the Minister is to give the person who made the objection written notice of the Minister's determination and a statement of the reasons for that determination.

*[Section 36ZE inserted by No. 42 of 2002 s. 15.]*

**36ZF. Application for review**

A person who is dissatisfied with the determination of the Minister on an objection by the person under section 36ZE may

apply to the State Administrative Tribunal for a review of the determination under section 36G(5) of the purpose for which the land is used.

*[Section 36ZF inserted by No. 42 of 2002 s. 15; amended by No. 55 of 2004 s. 362.]*

*[36ZG. Deleted by No. 55 of 2004 s. 363.]*

**36ZH. Liability to pay levy not affected by objection**

- (1) Pending determination of the objection, the liability to pay the levy on any land is not affected by —
  - (a) an objection to the valuation of the land under the *Valuation of Land Act 1978*; or
  - (b) an objection under this Division.
- (2) If an objection referred to in subsection (1) or a review by the State Administrative Tribunal results in an amendment of the valuation of the land or a determination of the purpose for which the land is used that is different from the determination of that purpose that was the subject of the objection or review, the Minister —
  - (a) is to make any necessary adjustment of the levy payable on the land; and
  - (b) is to give written notice of the adjusted levy to the person by whom it is payable.
- (3) If the levy is adjusted —
  - (a) an amount by which, because of its adjustment, the levy was overpaid is to be refunded;
  - (b) an amount by which, because of its adjustment, the levy was underpaid is recoverable under section 36Z, but no action to recover that amount is to be taken until at least 30 days after the notice referred to in subsection (2) is given to the person by whom the amount is payable; and

- (c) interest accrues on an amount to be refunded under paragraph (a), or recoverable in accordance with paragraph (b), as prescribed by the regulations.

*[Section 36ZH inserted by No. 42 of 2002 s. 15; amended by No. 55 of 2004 s. 364.]*

### **Division 9 — ESL agreements**

*[Heading inserted by No. 42 of 2002 s. 15.]*

#### **36ZI. Terms used in this Division**

In this Division —

***ESL agreement*** means an agreement entered into under section 36ZJ;

***leviable land*** does not include leviable land in relation to which the Authority serves or gives a notice under section 36L(2) or 36N.

*[Section 36ZI inserted by No. 42 of 2002 s. 15.]*

#### **36ZJ. Authority may enter into agreements with local governments**

- (1) The Authority may, with the approval of the Minister, enter into a written agreement with a local government that provides for the local government to pay to the Authority an amount equal to the total amount of levy payable for a levy year on all leviable land in the local government's district.
- (2) An ESL agreement may provide for the amount that is to be paid to the Authority under the agreement to be paid by instalments.
- (3) If an amount (including an instalment) remains unpaid after it becomes due and payable under an ESL agreement, the Authority may recover the amount, and interest on the amount at the rate prescribed by the regulations, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction.

*[Section 36ZJ inserted by No. 42 of 2002 s. 15.]*

**36ZK. Modification of operation of Part 6A**

If a local government enters into an ESL agreement this Part is to be read, for the purposes of the levy payable on leviable land in the local government's district for the levy year to which the agreement applies, as if the provisions mentioned in column 1 of Schedule 1A were amended or repealed as set out in column 2 of that Schedule.

*[Section 36ZK inserted by No. 42 of 2002 s. 15.]*

**Division 10 — Fees and charges**

*[Heading inserted by No. 42 of 2002 s. 15.]*

**36ZL. Emergency service fees and charges in certain cases**

- (1) Subject to subsection (2), the fees and charges prescribed by the regulations are payable to the Authority for the provision of services under the emergency services Acts that consist of —
  - (a) services provided in respect of land that, under regulations referred to in section 36D, is exempt or partially exempt from the levy;
  - (b) services provided in respect of a vessel in a port;
  - (c) services provided in respect of confining or ending a hazardous material incident and rendering the site of the incident safe; or
  - (d) an attendance in response to a false alarm by —
    - (i) a permanent fire brigade, or a volunteer fire brigade, within the meaning of the *Fire Brigades Act 1942*; or
    - (ii) a bush fire brigade within the meaning of the *Bush Fires Act 1954*.
- (2) A fee or charge for a service referred to in subsection (1) provided in respect of land is payable —
  - (a) by the owner or occupier of the land; but

- (b) only if the Authority serves the owner or occupier with written notice of the fee or charge within 21 days after the service is provided.
- (3) In subsection (2) —  
**occupier**, in relation to land, means the person in or entitled to possession of the land.
- (4) A fee or charge for a service referred to in subsection (1) provided otherwise than in respect of land is payable as prescribed by the regulations.
- (5) A notice under subsection (2) is to —
- (a) state the date on which the service was provided;
  - (b) give details of the service provided; and
  - (c) specify when payment of the fee or charge for the service is due and payable.
- (6) A fee or charge payable under this section, notice of which has been given under subsection (2) if that subsection applies, may be recovered in a court of competent jurisdiction as a debt due to the Authority.

*[Section 36ZL inserted by No. 42 of 2002 s. 15.]*

## Part 7 — Miscellaneous

### 37. Protection from liability

- (1) Subject to subsection (2), a person does not incur civil liability for anything that the person has done, in good faith, in the performance or purported performance of a function under the emergency services Acts.
- (1a) Without limiting subsection (1) a person is taken to be performing a function under an emergency services Act if the person is —
  - (a) a member or officer of a private fire brigade or a volunteer fire brigade who is taking part in an activity carried out by the brigade for the purposes for which it was formed;
  - (b) a volunteer fire fighter who is carrying out normal brigade activities (within the meaning of the *Bush Fires Act 1954*);
  - (c) taking part in the performance by an SES Unit of its functions under Part 3A and is either —
    - (i) a member of the SES Unit; or
    - (ii) acting under the direction of a member of the SES Unit or a member of staff;
  - (d) taking part in the performance by a VMRS Group of its functions under Part 3B and is either —
    - (i) a member of the VMRS Group; or
    - (ii) acting under the direction of a member of the VMRS Group or a member of staff;

or

  - (e) taking part in the performance by a FESA Unit of its functions under Part 3C and is either —
    - (i) a member of the FESA Unit; or
    - (ii) acting under the direction of a member of the FESA Unit or a member of staff.

**s. 37**

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- (2) Subsection (1) does not affect any right to recover damages in respect of the death of or bodily injury to any person directly caused by, or by the driving of, a motor vehicle if, at the time of the death or bodily injury —
- (a) the vehicle was owned or was being driven by a person who, but for subsection (1), would incur liability in respect of the death or injury; and
  - (b) there was in force in respect of the vehicle a contract of insurance in accordance with section 4 of the *Motor Vehicle (Third Party Insurance) Act 1943* or the corresponding legislation of a State or Territory prescribed for the purposes of section 3(4) of that Act.
- (3) The Crown and the Authority, a local government and any other person are also relieved of any civil liability that any of them might otherwise have had for another person having done anything as described in subsection (1).
- (4) The protection given by this section applies even though the thing done in the performance or purported performance of a function under the emergency services Acts may have been capable of being done whether or not those Acts had been enacted.
- (5) Any damage, loss or injury to property that results from anything done, in good faith, in the performance or purported performance of a function under the emergency services Acts is taken to be damage by fire within the meaning of any policy of insurance covering that property against damage by fire, despite any clause or condition to the contrary contained in the policy.
- (6) In this section —
- (a) a reference to the doing of anything includes a reference to the omission to do anything; and
  - (b) **motor vehicle** has the meaning given in section 3(1) of the *Motor Vehicle (Third Party Insurance) Act 1943*.

*[Section 37 amended by No. 38 of 2002 s. 13.]*



**38. Execution of documents by Authority**

- (1) The Authority is to have a common seal.
- (2) A document is duly executed by the Authority if —
  - (a) the common seal of the Authority is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Authority by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Authority is not to be affixed to any document except as authorised by the board.
- (4) The common seal of the Authority is to be affixed to a document in the presence of 2 members, and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Authority may, by writing under its seal, authorise a member or members or a member or members of staff to sign documents on behalf of the Authority, either generally or subject to the conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Authority, it is to be presumed that the seal is the common seal of the Authority until the contrary is shown.

**38A. Offences in relation to SES and VMRS operations**

- (1) A person must not obstruct or hinder a relevant officer in the performance of the officer's functions under Part 3A, 3B or 3C.  
Penalty: \$5 000.
- (2) A person must not wilfully damage or interfere with —
  - (a) the property of an SES Unit, a VMRS Group or a FESA Unit; or

**s. 38B**

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- (b) any property of the Authority used for the performance of its functions under Part 3A, 3B or 3C.

Penalty: \$5 000.

- (3) In this section —

*relevant officer* means —

- (a) a member of staff; or
- (b) a member of an SES Unit, a VMRS Group or a FESA Unit,

who is performing a function under Part 3A, 3B or 3C.

*[Section 38A inserted by No. 38 of 2002 s. 14; amended by No. 42 of 2002 s. 16.]*

**38B. Improper use of names, symbols etc.**

- (1) Unless authorised under an emergency services Act or in writing by the chief executive officer, a person must not use —
  - (a) the name of the Authority or an operational name (within the meaning of section 13);
  - (b) any abbreviation of any of those names;
  - (c) a prescribed symbol; or
  - (d) any symbol that so closely resembles a prescribed symbol that it is capable of being mistaken for it.

Penalty: \$5 000.

- (2) Unless authorised under an emergency services Act or in writing by the chief executive officer, a person must not —
  - (a) use any name, title, description or symbol that expresses or implies an association with the Authority; or
  - (b) otherwise represent that the person is associated with the Authority.

Penalty: \$5 000.

- (3) In this section —

**symbol** includes a logo, insignia, emblem, design or other identifying mark.

*[Section 38B inserted by No. 38 of 2002 s. 14.]*

**38C. Impersonation of member of staff or volunteer**

A person must not falsely represent, by words or conduct, that he or she is —

- (a) a member of staff;
- (b) a member or officer of a private fire brigade or volunteer fire brigade, as those terms are defined in the *Fire Brigades Act 1942*;
- (c) a volunteer fire fighter, within the meaning of the *Bush Fires Act 1954*; or
- (d) a member of an SES Unit, a VMRS Group or a FESA Unit.

Penalty: \$5 000.

*[Section 38C inserted by No. 38 of 2002 s. 14.]*

**39. Confidentiality**

- (1) This section applies to a person who is or has been —

- (a) a member;
- (b) a member of a consultative committee; or
- (c) a member of staff.

- (2) A person to whom this section applies must not, directly or indirectly, record, disclose, or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under the emergency services Acts;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or

**s. 40**

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(d) in prescribed circumstances.

Penalty: \$10 000 or imprisonment for 12 months.

**40. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**41. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of the emergency services Acts as soon as practicable after the expiry of 5 years from the commencement of this Act.
- (2) In the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Authority;
  - (b) the need for the continuation of the functions of the Authority; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of the emergency services Acts.
- (3) The Minister is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

**42. Savings and transitional provisions — Schedule 2**

Schedule 2 has effect with respect to savings and transitional provisions.

## **Schedule 1 — Constitution and proceedings of board**

[Sections 9 and 25]

### **Division 1 — General provisions**

#### **1. Term of office**

- (1) Subject to clause 2, a member holds office for the term, not exceeding 3 years, specified in the instrument of his or her appointment, but may from time to time be re-appointed.
- (2) A member whose term of office expires by the passage of time continues in office until that member is re-appointed or the successor of that member comes into office.

#### **2. Resignation, removal, etc.**

- (1) The office of a member becomes vacant if the member —
  - (a) resigns the office by written notice addressed to the Minister;
  - (b) holds office under section 6(1)(b) and ceases to be the chairman of a consultative committee;
  - (c) is an insolvent under administration, as that expression is defined in the *Corporations Act 2001* of the Commonwealth;
  - (d) is convicted of an indictable offence; or
  - (e) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a member from office if the Minister is satisfied that the member —
  - (a) has neglected his or her duty;
  - (b) has misbehaved;
  - (c) is incompetent;
  - (d) is suffering from mental or physical incapacity impairing the performance of his or her functions under this Act; or
  - (e) has been absent, without leave or reasonable excuse, from 3 consecutive meetings of the board of which the member has had notice.

*[Clause 2 amended by No. 10 of 2001 s. 220.]*

**3. Leave of absence**

The board may grant leave of absence to a member on any terms and conditions that it thinks fit.

**4. Chairman unable to act**

If the chairman is unable to act because of illness, absence or other cause, or during any vacancy in that office, the deputy chairman is to perform the functions of the chairman.

**5. Member unable to act**

- (1) If a member other than the chairman is unable to act because of illness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is taken to be a member of the board.
- (2) If the member who is the deputy chairman is performing the functions of the chairman, the Minister may, under subclause (1), appoint another person to act in his or her place as member.
- (3) The Minister may terminate the appointment of a person under subclause (1) at any time.

**6. Chief executive officer unable to attend**

- (1) The chief executive officer may, in writing delivered to the person presiding at a meeting of the board, nominate a senior officer of the Authority to represent him or her at that meeting if he or she is unable to attend because of illness, absence or other cause.
- (2) Clause 11(2) applies to an officer who attends a meeting of the board under subclause (1) as if the officer were the chief executive officer.

**7. Saving**

No act or omission of a person acting in place of another under clause 4 or 5 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

**8. Calling of meetings**

- (1) Subject to this clause, meetings are to be held at the times and places that the board determines.
- (2) The chairman may at any time convene a special meeting of the board.
- (3) The first meeting of the board is to be convened by the chairman.

**9. Presiding officer**

- (1) The chairman is to preside at any meeting of the board at which he or she is present.
- (2) If neither the chairman nor the deputy chairman is present at a meeting, the members present are to elect one of those members to preside at the meeting.

**10. Quorum**

A quorum for a meeting of the board is 5 members.

**11. Voting**

- (1) Subject to subclause (2), at any meeting of the board each member present has a deliberative vote.
- (2) The chief executive officer may participate in the discussion of any matter at a meeting of the board but is not entitled to vote.
- (3) Subject to subclause (4), if the votes cast on a question are equally divided, the question remains unresolved until a subsequent meeting of the board.
- (4) If the votes cast on a question at a meeting of the board were equally divided, and the votes cast on the question at a subsequent meeting of the board are again equally divided, the question is taken to have been resolved in the negative.

**12. Minutes**

The board is to cause accurate minutes to be kept of the proceedings at its meetings.

**13. Resolution without meeting**

A resolution in writing signed by each member, or assented to by each member by letter or facsimile, is as effectual as if it had been passed at a meeting of the board.

**14. Telephone or video meetings**

A communication between not less than 5 members by telephone or audio-visual or other electronic means is a valid meeting of the board if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

**15. Board to determine own procedures**

Subject to this Act, the board is to determine its own procedures.

**Division 2 — Disclosure of interests, etc.**

**16. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$2 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**17. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the board —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member;

and



- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.

**18. Clause 17 may be declared inapplicable**

Clause 17 does not apply if the board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**19. Quorum where clause 17 applies**

- (1) Despite clause 10, if a member of the board is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 4 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter to the extent that the board cannot deal with it because of subclause (1).

**20. Minister may declare clauses 17 and 19 inapplicable**

- (1) The Minister may by writing declare that clause 17 or 19 does not, or both of those clauses do not, apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister is to cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament within 14 sitting days of that House after the declaration is made.

**Schedule 1A — Modification of operation of Part 6A**

[s. 36ZK]

<b>column 1: provision</b>	<b>column 2: amendment or repeal</b>
s. 36P	Subsection (2) is repealed and the following subsection is inserted instead — “ (2) The levy is payable to the local government for the district in which the leviable land is located. ”.
s. 36S(1)	“or the Authority, as the case requires,” is deleted.
s. 36T(3)	“or to the Authority” is deleted.
s. 36U	The section is repealed.
s. 36V	The section is repealed.
s. 36X	The section is repealed.
s. 36Z(1)	“or by the Authority” is deleted.
s. 36Z(2)	“or the Authority” is deleted.
s. 36Z	Subsection (3) is repealed and the following subsection is inserted instead — “ (3) In subsection (1) — “ <b>land</b> ” has the same meaning as “leviable land” has in Division 9. ”.
s. 36ZB	The following definitions are inserted in the appropriate alphabetical positions — “ “ <b>land</b> ” has the same meaning as “leviable land” has in Division 9; “ <b>the local government</b> ”, in relation to land, means the local government for the district in which the land is located. ”.

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<b>column 1: provision</b>	<b>column 2: amendment or repeal</b>
s. 36ZC(1) and (2)	“Authority” is deleted in each place where it occurs and the following is inserted instead — “ local government ”.
s. 36ZD	“Authority” is deleted in both places where it occurs and the following is inserted instead — “ local government ”.
s. 36ZH(2)(b)	After “payable” the following is inserted — “ and to the local government ”.

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*[Schedule 1A inserted by No. 42 of 2002 s. 17.]*

## **Schedule 2 — Savings and transitional provisions**

[Section 42]

### **1. Terms used in this Schedule**

In this Schedule —

**assets** means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting this definition, includes —

- (a) choses in action;
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**Bush Fires Board** means the Bush Fires Board constituted under section 8(1) of the *Bush Fires Act 1954*, as in force immediately before the commencement day;

**commencement day** means the day on which this Act comes into operation;

**Fire Brigades Board** means the Western Australian Fire Brigades Board constituted under section 6 of the *Fire Brigades Act 1942*, as in force immediately before the commencement day;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

**right** means any right, power, privilege or immunity whether actual, contingent or prospective;

**the department** means the department of the Public Service designated as the Department of Fire and Emergency Services (or as it may be re-designated) and includes any department of the Public Service to which the department is a successor.

### **2. Interpretation Act to apply**

This Schedule does not limit the operation of the *Interpretation Act 1984*.

**3. Dissolution of Boards**

- (1) The Bush Fires Board is dissolved and its members go out of office.
- (2) The Fire Brigades Board is dissolved and its members go out of office.

**4. Devolution of assets and liabilities etc.**

On the commencement day —

- (a) the assets and rights of the Fire Brigades Board that were immediately before that day vested in that body vest in the Authority;
- (b) the assets of the Crown that were immediately before that day under the care, control or management of the department or the Bush Fires Board are transferred to the care, control or management of the Authority;
- (c) the liabilities of the Fire Brigades Board immediately before that day become the liabilities of the Authority;
- (d) the liabilities incurred on behalf of the department or the Bush Fires Board become the liabilities of the Authority;
- (e) any proceedings or remedy that, immediately before that day, might have been brought or continued by or available against or to the Fire Brigades Board may be brought or continued and are or is available by or against or to the Authority; and
- (f) all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the respective operations of the department, the Bush Fires Board and the Fire Brigades Board are to be delivered to the Authority.

**5. Completion of things begun**

Anything begun before the commencement day by the department, the Bush Fires Board or the Fire Brigades Board may be continued after that day by the Authority so far as the doing of that thing is within the functions of the Authority.

**6. Continuing effect of things done**

Any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of the department, the Bush Fires Board or the Fire Brigades Board, to the extent that that act,

**cl. 7**

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matter or thing has any force or effect after that day, is taken to have been done or omitted to be done by, to or in respect of the Authority.

**7. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the Fire Brigades Board was a party, or to which a person was a party on behalf of or for the purposes of the department or the Bush Fires Board; or
- (b) that contains a reference to the department, the Bush Fires Board or the Fire Brigades Board,

has effect on and after that day as if —

- (c) the Authority were substituted for the Fire Brigades Board or that person as a party to the agreement or instrument; or
- (d) any reference in the agreement or instrument to the department, the Bush Fires Board or the Fire Brigades Board were (unless the context otherwise requires) amended to be or include a reference to the Authority.

**8. Chief executive officer and staff**

- (1) The person who immediately before the commencement day was appointed and holding office as the chief executive officer of the department continues to hold office, on and after that day, as if the person had been appointed as the chief executive officer of the Authority in accordance with section 19.
- (2) An agreement made at any time and in effect immediately before the commencement day between the Fire Brigades Board and a person for the employment of that person on the staff of the Fire Brigades Board has effect on and after that day as if the person had been appointed or engaged, as the case requires, under section 20(1).
- (3) An agreement made at any time and in effect immediately before the commencement day between the employing authority of the department and a person for the employment of that person on the staff of the department has effect on and after that day as if the person had been appointed or engaged, as the case requires, under section 20(1).

- (4) A person who immediately before the commencement day was appointed and holding office —
- (a) under section 12 of the *Bush Fires Act 1954*; or
  - (b) in accordance with section 15 of that Act,
- continues to hold office, on and after that day, as if the person had been appointed under section 20(1).
- (5) Except as otherwise agreed by a person to whom this clause applies, the operation of this clause does not —
- (a) affect the person's pay, as that term is defined in regulation 3 of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*;
  - (b) prejudice the person's existing or accruing rights in respect of annual leave, long service leave, sick leave, parental leave or any other kind of leave;
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt continuity of service.

**9. Financial reporting of Bush Fires Board and Fire Brigades Board and department**

- (1) Despite section 54 of the *Financial Administration and Audit Act 1985*, the accountable authority of the Authority is to be the accountable authority of the Bush Fires Board and Fire Brigades Board for the purposes of the reports required by section 66 of that Act with respect to the period from 1 July in a financial year to a day that —
- (a) occurs in the same financial year; and
  - (b) immediately precedes the commencement day,
- and Division 14 of Part II of that Act applies to that person as the accountable authority of the Bush Fires Board and Fire Brigades Board as if that period were a full financial year.
- (2) Despite section 52 of the *Financial Administration and Audit Act 1985*, the accountable authority of the Authority is to be the accountable officer of the department for the purposes of the report required by section 62 of that Act with respect to the period from 1 July in a financial year to a day that —
- (a) occurs in the same financial year; and

**cl. 10**

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(b) immediately precedes the commencement day,

and Division 13 of Part II of that Act applies to that person as the accountable officer of the department as if that period were a full financial year.

**10. Further transitional provisions may be made**

- (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the Bush Fires Board, the Fire Brigades Board or the department to the Authority, that provision may be made by regulations under section 40.
- (2) Any such regulation may be made so as to have effect from the commencement day.
- (3) To the extent that any such regulation has effect on a day that is earlier than the day of its publication in the *Gazette*, the regulation does not operate so as —
  - (a) to affect, in a manner prejudicial to any person (other than the State or the Authority), the rights of that person existing before the day of its publication; or
  - (b) to impose liabilities on any person (other than the State or the Authority), in respect of anything done or omitted to be done before the day of its publication.

**11. Exemption from State tax**

- (1) In this clause —

**State tax** includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a written law.
- (2) State tax is not payable in relation to —
  - (a) anything that occurs by the operation of this Schedule; or
  - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of giving effect to this Schedule.
- (3) Nothing in this clause affects any liability of the Authority to pay pay-roll tax.



**12. Registration of documents**

The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Schedule.

**13. Saving**

The operation of this Schedule is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

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## Notes

<sup>1</sup> This is a compilation of the *Fire and Emergency Services Authority of Western Australia Act 1998* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Fire and Emergency Services Authority of Western Australia Act 1998</i>	41 of 1998	4 Nov 1998	s. 1 and 2: 4 Nov 1998; Act other than s. 1 and 2: 1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2 and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Fire and Emergency Services Legislation Amendment Act 2002</i> Pt. 2	38 of 2002	20 Nov 2002	30 Nov 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651-2)
<i>Fire and Emergency Services Legislation (Emergency Services Levy) Amendment Act 2002</i> Pt. 2	42 of 2002	11 Dec 2002	1 Jan 2003 (see s. 2 and <i>Gazette</i> 30 Dec 2002 p. 6635)
<b>Reprint 1: The <i>Fire and Emergency Services Authority of Western Australia Act 1998</i> as at 4 Apr 2003</b> (includes amendments as listed above)			
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 21 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 47 <sup>3,4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Petroleum Amendment Act 2007</i> s. 93	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<b>Reprint 2: The <i>Fire and Emergency Services Authority of Western Australia Act 1998</i> as at 14 Mar 2008</b> (includes amendments as listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 57	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

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<sup>2</sup> Repealed by the *Mining Act 1978*.

<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>4</sup> The *State Administrative Tribunal Regulations 2004* r. 49 reads as follows:

“

**49. *Fire and Emergency Services Authority of Western Australia Act 1998***

- (1) In this regulation —  
**commencement day** means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 47 comes into operation.
- (2) If the Minister receives, before the commencement day, a written notice in accordance with the *Fire and Emergency Services Authority of Western Australia Act 1998* section 36ZF (as in force when the notice was received by the Minister) but does not before the commencement day refer the objection referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the Minister must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the determination under the *Fire and Emergency Services Authority of Western Australia Act 1998* section 36G(5) of the purpose for which the land is used.

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**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
Account .....	3
acquire .....	12(3)
annual estimate .....	3
assessment notice .....	3
assets .....	Sch. 2 cl. 1
assistance operation .....	3
Authority .....	3
board .....	3
brigade .....	13(4)
Bush Fires Board.....	Sch. 2 cl. 1
chief executive officer.....	3
commencement day .....	Sch. 2 cl. 1
consultative committee .....	3
Crown land.....	3
dispose of.....	12(3)
document.....	18(4)
ESL agreement.....	36ZI
ESL category area .....	3
FESA activities .....	3
FESA Unit.....	3
Fire Brigades Board .....	Sch. 2 cl. 1
gross rental value .....	3
hazardous material incident .....	3
incident.....	3
information.....	18(4)
leviable land.....	3, 36ZI
levy .....	3, 36ZB
levy interest.....	3
levy year.....	3
liability .....	Sch. 2 cl. 1
marine search and rescue operation .....	3
member .....	3
member of staff.....	3
monitoring activity.....	3
motor vehicle .....	37(6)(b)
natural disaster .....	3
occupier.....	36ZL(3)
operational name .....	13(1)

**Defined Terms**

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owner .....	3, 3A
relevant officer .....	38A(3)
rescue operation .....	3
right .....	Sch. 2 cl. 1
search and rescue operation .....	3
SES Unit .....	3
State tax.....	Sch. 2 cl. 11(1)
symbol.....	38B(3)
the department.....	Sch. 2 cl. 1
the emergency services Acts .....	3
the relevant day .....	36G(2)
the required consultation.....	36H(4)
VMRS Group.....	3