

Western Australia

**Fire and Emergency Services Legislation
Amendment Act 2012**

As at 29 Aug 2012

No. 22 of 2012

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Fire and Emergency Services Legislation Amendment Act 2012

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Western Australia

Fire and Emergency Services Legislation Amendment Act 2012

No. 22 of 2012

An Act to amend —

- **the *Fire and Emergency Services Authority of Western Australia Act 1998*; and**
 - **the *Bush Fires Act 1954*; and**
 - **the *Fire Brigades Act 1942*; and**
 - **the *Fire and Emergency Services Superannuation Act 1985*; and**
 - **the *Emergency Management Act 2005*,**
- and to make consequential amendments to other Acts.**

[Assented to 29 August 2012]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Fire and Emergency Services Legislation Amendment Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**Part 2 — *Fire and Emergency Services Authority of
Western Australia Act 1998* amended**

3. Act amended

This Part amends the *Fire and Emergency Services Authority of Western Australia Act 1998*.

4. Long title amended

In the long title delete “**establish an Authority with**” and insert:

provide for

5. Section 1 (short title) amended

In section 1 delete “*Authority of Western Australia*”.

6. Section 3 amended

- (1) In section 3 delete the definitions of:

Account

Authority

board

chief executive officer

member

member of staff

- (2) In section 3 insert in alphabetical order:

Department means the department of the Public Service principally assisting in the administration of this Act;

employed in the Department means employed or engaged in the Department in accordance with section 20(1);

FES Commissioner means the Fire and Emergency Services Commissioner;

Fire and Emergency Services Commissioner means the chief executive officer of the Department;

member of staff means the FES Commissioner or a public service officer or other person employed in the Department;

operating account of the Department means an agency special purpose account established for the purposes of the operations of the Department under the *Financial Management Act 2006* section 16(1)(a);

- (3) In section 3 in the definition of ***assistance operation*** delete “its functions;” and insert:

functions relating to emergency services;

- (4) In section 3 in the definition of ***FESA activities*** delete “***FESA***” and insert:

FES

- (5) In section 3 in the definition of “***FESA Unit***” delete “***FESA***” and insert:

FES

7. Part 2 replaced

Delete Part 2 and insert:

Part 2 — Administration

Division 1 — The Minister

4. Term used: FES Ministerial body

In this Division —

FES Ministerial Body means the body corporate of that name established by section 5.

5. FES Ministerial Body

- (1) The FES Ministerial Body is established.
- (2) The FES Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the FES Ministerial Body in its corporate name.
- (4) The FES Ministerial Body is to be governed by the Minister.
- (5) The FES Ministerial Body has the status, immunities and privileges of the Crown.

6. Purpose and nature of FES Ministerial Body

- (1) The FES Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under the emergency services Acts that can more conveniently be performed by a body corporate than an individual.

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- (2) Any acts or things done through the FES Ministerial Body as described in subsection (1) are to be regarded as —
 - (a) services under the control of the Department for the purposes of the *Financial Management Act 2006* section 52; and
 - (b) operations of the Department for the purposes of Part 5 of that Act.
- (3) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the FES Ministerial Body, the FES Ministerial Body and those officers are not an organisation for the purposes of that Act.

7. Execution of documents by FES Ministerial Body

- (1) The FES Ministerial Body is to have a common seal.
- (2) A document is duly executed by the FES Ministerial Body if —
 - (a) the common seal of the FES Ministerial Body is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the FES Ministerial Body by the Minister; or
 - (c) it is signed on behalf of the FES Ministerial Body, as authorised under subsection (5), by the FES Commissioner or another person.
- (3) The common seal of the FES Ministerial Body is not to be affixed to a document except as authorised by the FES Ministerial Body.
- (4) The common seal of the FES Ministerial Body is to be affixed to a document in the presence of the Minister,

and the Minister is to sign the document to attest that the common seal was so affixed.

- (5) The FES Ministerial Body may, by writing under its seal, authorise the FES Commissioner or another person to execute deeds or other documents on behalf of the FES Ministerial Body, either generally or subject to any 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) A document executed by the FES Commissioner or another person under this section without the common seal of the FES Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).
- (8) When a document is produced bearing a seal purporting to be the common seal of the FES Ministerial Body, it is to be presumed that the seal is the common seal of the FES Ministerial Body until the contrary is shown.
- (9) For the purposes of this Act, a facsimile of —
 - (a) the FES Ministerial Body's seal; or
 - (b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

8. Powers of Minister relating to property

- (1) In this section —
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.
- (2) For the purposes of the emergency services Acts the Minister may —
- (a) acquire, hold, manage, improve, develop, dispose of, and otherwise deal in, real and personal property; and
 - (b) develop and turn to account any technology, software or other intellectual property that relates to the purposes of the emergency services Acts and, for those purposes, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.
- (3) The proceeds of —
- (a) the disposal of any real or personal property; or
 - (b) anything else done by the Minister under subsection (2),
- are to be credited to an operating account of the Department.

9. Power of Minister to borrow money

- (1) The Minister may, if the Treasurer approves, borrow sums of money from the Western Australian Treasury Corporation, or as otherwise approved by the Treasurer, for the purposes of the emergency services Acts.
- (2) All sums borrowed under subsection (1) are to be credited to an operating account of the Department.

8. Part 3 heading deleted and Part 2 Division 2 heading inserted

Delete the heading to Part 3 and insert:

Division 2 — The FES Commissioner

9. Section 11 amended

(1) Delete section 11(1) and insert:

(1) Subject to the control of the Minister, the FES Commissioner is responsible for the provision and management of emergency services in accordance with the functions given to the FES Commissioner by or under the emergency services Acts.

(2) In section 11(2) delete “Without limiting subsection (1), the Authority” and insert:

The FES Commissioner

(3) After section 11(2) insert:

(3) Nothing in this section or another provision of the emergency services Acts limits the functions of the FES Commissioner as a chief executive officer under the *Public Sector Management Act 1994*.

Note: The heading to amended section 11 is to read:

Functions of FES Commissioner

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10. Section 12 amended

- (1) In section 12(1) delete “its functions.” and insert:

the FES Commissioner’s functions.

- (2) In section 12(2):

- (a) delete paragraph (a);
(b) in paragraph (b) delete “its” and insert:

the FES Commissioner’s

- (c) in paragraph (c) delete “its” and insert:

the Department’s

- (d) in paragraph (ca) delete “it” (each occurrence) and insert:

the FES Commissioner

- (e) in paragraph (ca) delete “its” and insert:

the FES Commissioner’s

- (f) in paragraph (e) after “arrangement” insert:

on behalf of the State

- (g) delete paragraph (ea).

(h) after each of paragraphs (b) to (e) insert:

and

(3) Delete section 12(3).

11. Section 13 amended

(1) In section 13(1) delete “In performing any of its functions, the Authority” and insert:

For the purposes of the functions performed under the emergency services Acts, the Department

(2) Delete section 13(2)(d) and insert:

(d) Western Australia Fire and Rescue Service;

Note: The heading to amended section 13 is to read:

Department may use certain names

12. Section 14 deleted

Delete section 14.

13. Part 2 Division 3 heading inserted

Before section 15 insert:

Division 3 — Delegation

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14. Section 15 amended

(1) After section 15(1) insert:

(2A) Without limiting the things that may be delegated under subsection (1), they include things that are to be done in the course of governing the affairs of the FES Ministerial Body under section 5(4).

(2) In section 15(2):

(a) delete paragraph (a) and insert:

(a) to another member of staff, an advisory committee established under section 24(1) or a public service officer not employed in the Department — the performance of any of the FES Commissioner’s functions under the emergency services Acts; and

(b) in paragraphs (b), (c) and (d) delete “its powers” and insert:

the FES Commissioner’s powers

(3) In section 15(2) after paragraph (b) insert:

and

(4) In section 15(5) delete “the board,”.

Note: The heading to amended section 15 is to read:

Delegation by Minister and FES Commissioner

15. Section 16 amended

Delete section 16(1) and (2) and insert:

- (1) The Minister may, in an instrument by which a function is delegated under section 15(1), authorise the FES Commissioner to subdelegate that function to another member of staff.
- (2) The FES Commissioner may, in an instrument by which a function is delegated under section 15(2)(a) to a member of staff, authorise the member of staff to subdelegate that function to another member of staff.

16. Sections 17 and 18 deleted

Delete sections 17 and 18.

17. Section 18B amended

In section 18B(1) and (2) delete “its functions” and insert:

the FES Commissioner’s functions

18. Section 18C amended

In section 18C(1) delete “it considers” and insert:

the FES Commissioner considers

19. Section 18G amended

In section 18G(2) delete “its functions” and insert:

the FES Commissioner’s functions

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20. Section 18H amended

In section 18H(1) delete “it considers” and insert:

the FES Commissioner considers

21. Part 3C heading replaced

Delete the heading to Part 3C and insert:

Part 3 — FES Units

22. Section 18L amended

In section 18L(1) and (2) delete “its functions” and insert:

the FES Commissioner’s functions

23. Section 18M amended

In section 18M(1) delete “it considers” and insert:

the FES Commissioner considers

24. Parts 4 and 5 replaced

Delete Parts 4 and 5 and insert:

Part 4 — Staff

19. Terms used

In this Part —

operational staff means persons engaged under section 20(2);

PSMA means the *Public Sector Management Act 1994*.

20. Categories of staff

- (1) For the purposes of the emergency services Acts, persons are to be employed or engaged in the Department —
 - (a) as public service officers appointed or made available under the PSMA Part 3; or
 - (b) as operational staff; or
 - (c) as wages staff.
- (2) Operational staff may be engaged —
 - (a) as members or officers of a permanent fire brigade as defined in the *Fire Brigades Act 1942* section 4(1); or
 - (b) to perform other functions under the emergency services Acts; or
 - (c) for the purposes of both paragraphs (a) and (b).
- (3) The provisions of the PSMA prevail over the provisions of the emergency services Acts to the extent of any inconsistency in respect of a person who is engaged under subsection (2) and who is a member of the Senior Executive Service as defined in the PSMA section 3(1).

21. Terms and conditions of employment of operational staff and wages staff

- (1) The PSMA Part 3 does not apply to operational staff or wages staff.
- (2) The powers to engage, transfer, promote and otherwise manage operational staff and wages staff are vested in the FES Commissioner.

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- (3) The remuneration of, and other terms and conditions of service of, operational staff and wages staff are not to be less favourable than provided for in —
 - (a) an applicable award, order or industrial agreement under the *Industrial Relations Act 1979*; or
 - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Operational staff may be engaged —
 - (a) on a full-time or part-time basis; and
 - (b) for an indefinite period as permanent officers or for a period not exceeding 5 years.
- (5) Nothing in this section affects the operation of the *Industrial Relations Act 1979* Part VID.

22. Transfer of operational staff to another category

- (1) The FES Commissioner may, if he or she considers that it is in the interests of the Department to do so, determine that —
 - (a) a person who is a member of the operational staff is to become an officer of the class mentioned in section 20(1)(a); or
 - (b) a person who has been the subject of a determination under paragraph (a) is again to become a member of the operational staff.
- (2) A determination under subsection (1) is only to be made with the consent of the person concerned.
- (3) Regulations may be made in respect of the entitlement of persons who are the subject of a determination under subsection (1) to rights and benefits that had accrued or were accruing at the time when the determination took effect.

Part 5 — Advisory committees

23. Terms used

In this Part —

advisory committee means a committee established under section 24(1);

prescribed association means the association or other body of persons that is prescribed as a body that represents —

- (a) the bush fire brigades under the *Bush Fires Act 1954*; or
- (b) the volunteer brigades under the *Fire Brigades Act 1942*; or
- (c) the SES Units; or
- (d) the VMRS Groups; or
- (e) the FES Units.

24. Advisory committees

- (1) The Minister may establish committees to provide advice or assistance to the Minister or the FES Commissioner or both of them on matters relevant to the operation or administration of the emergency services Acts.
- (2) Subsection (1) does not authorise the Minister to establish a body corporate.
- (3) An advisory committee is to consist of the people the Minister thinks fit to appoint but, except as stated in section 25(4), at least one member is to be appointed from people nominated by the relevant prescribed association.

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- (4) In subsection (3) —
relevant prescribed association means the prescribed association the Minister considers has functions relevant to the particular duties and responsibilities of the advisory committee concerned.
- (5) An advisory committee is to be established by an instrument signed by the Minister that —
- (a) identifies the members of the committee and the length and conditions of each of their appointments; and
 - (b) sets out the duties and responsibilities of the committee, including whether the committee is established to provide advice or assistance only to the Minister or only to the FES Commissioner or to both of them; and
 - (c) sets out any other matters in relation to the operation and procedures of the committee the Minister considers appropriate.
- (6) The Minister may, by instrument signed by the Minister, amend or cancel an instrument made under subsection (5).
- (7) Except to the extent that its procedures are set out in the instrument made under subsection (5), an advisory committee may determine its own procedures.
- (8) The members of an advisory committee are entitled to any remuneration and allowances the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

25. Volunteer advisory committees

- (1) In this section —
relevant prescribed association means the prescribed association that has functions relevant to the particular

duties and responsibilities of the volunteer advisory committee concerned;

volunteer advisory committee means an advisory committee established in accordance with subsection (2).

- (2) Without limiting section 24(1), the Minister must establish at least one advisory committee under that provision in respect of each kind of brigade, unit or group referred to in a paragraph of subsection (3).
- (3) A volunteer advisory committee is to provide advice or assistance to the Minister or the FES Commissioner or both of them on matters relevant to the operation or administration of —
- (a) the bush fire brigades under the *Bush Fires Act 1954*; or
 - (b) the volunteer brigades under the *Fire Brigades Act 1942*; or
 - (c) the SES Units; or
 - (d) the VMRS Groups; or
 - (e) the FES Units,

according to the kind of brigade, unit or group in respect of which the volunteer advisory committee is established.

- (4) A volunteer advisory committee is to consist of the people the Minister thinks fit to appoint, but the majority of the members are to be appointed from people nominated by the relevant prescribed association.

25. Part 6 deleted

Delete Part 6.

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26. Section 36UA inserted

At the end of Part 6A Division 4 insert:

36UA. Levy to be credited to operating account

Any levy or levy interest paid to the FES
Commissioner under this Part is to be credited to an
operating account of the Department.

27. Section 36X amended

In section 36X(3):

(a) after “recovered” insert:

by the FES Commissioner

(b) delete “Authority.” and insert:

State.

28. Section 36Z amended

In section 36Z(2) delete “jurisdiction.” and insert:

jurisdiction as a debt due to the local government or the State, as
the case requires.

29. Section 36ZD amended

In section 36ZD:

- (a) delete “Authority has an interest in the land in respect of which it” and insert:

Minister has an interest in the land in respect of which
the FES Commissioner

- (b) delete “Authority may” and insert:

FES Commissioner may

Note: The heading to amended section 36ZD is to read:

Minister has interest in land on which levy is due and payable

30. Section 36ZJ amended

- (1) In section 36ZJ(1) after “written agreement” insert:

on behalf of the State

- (2) In section 36ZJ(3) delete “jurisdiction.” and insert:

jurisdiction as a debt due to the State.

31. Section 36ZL amended

In section 36ZL(6) delete “in a court of competent jurisdiction as a debt due to the Authority.” and insert:

by the FES Commissioner in a court of competent jurisdiction
as a debt due to the State.

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32. Section 37 amended

In section 37(3) delete “Crown and the Authority,” and insert:

Crown,

33. Section 38 replaced

Delete section 38 and insert:

38. Application of amounts credited to Department’s operating accounts

- (1) Any amounts credited to an operating account of the Department under section 8(3), 9(2) or 36UA, or otherwise as the result of the operation or administration of the emergency services Acts, may be applied only for the purposes of those Acts.
- (2) Without limiting subsection (1), amounts credited to an operating account of the Department as described in that subsection may from time to time be applied for the purposes of the emergency services Acts to purchase, construct, renew, maintain or replace —
 - (a) land, buildings, vehicles, vessels, plant or equipment; or
 - (b) any other property approved by the Minister.
- (3) The *Financial Management Act 2006* section 20(1) does not apply in relation to amounts credited to an operating account of the Department as described in subsection (1).

34. Section 38A amended

In section 38A(2)(b) delete “Authority used for the performance of its” and insert:

Minister used for the performance of the FES Commissioner’s

35. Section 38B amended

(1) In section 38B(1):

(a) delete “chief executive officer,” and insert:

FES Commissioner,

(b) in paragraph (a) delete “Authority” and insert:

Department

(2) In section 38B(2):

(a) delete “chief executive officer,” and insert:

FES Commissioner,

(b) in paragraph (a) delete “Authority; or” and insert:

Department; or

(c) in paragraph (b) delete “Authority.” and insert:

Department.

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36. Section 39 amended

Delete section 39(1) and insert:

- (1) This section applies to a person who is or has been —
- (a) a member of staff; or
 - (b) a member of an advisory committee established under section 24(1).

37. Section 41 amended

- (1) In section 41(1) delete “this Act.” and insert:

the *Fire and Emergency Services Legislation Amendment Act 2012* section 37.

- (2) Delete section 41(2)(a) and (b) and insert:

- (a) whether there is a need for the emergency services Acts to continue; and

38. Section 42 deleted

Delete section 42.

39. Part 8 inserted

Before Schedule 1 insert:

**Part 8 — Savings and transitional provisions
relating to the *Fire and Emergency Services
Legislation Amendment Act 2012***

Division 1 — Interpretation

42. Terms used

In this Part —

amended Act means this Act as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 2;

amended Bush Fires Act means the *Bush Fires Act 1954* as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 3;

amended Fire Brigades Act means the *Fire Brigades Act 1942* as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 4;

amended Superannuation Act means the *Fire and Emergency Services Superannuation Act 1985* as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 5;

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description and includes money, securities, choses in action and documents;

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

board of management means the board of management referred to in section 6 of the former Act;

consultative committees means the committees appointed under section 22 of the former Act;

former Act means this Act as in force before the transfer time;

former Bush Fires Act means the *Bush Fires Act 1954* as in force before the transfer time;

former Fire Brigades Act means the *Fire Brigades Act 1942* as in force before the transfer time;

former Superannuation Act means the *Fire and Emergency Services Superannuation Act 1985* as in force before the transfer time;

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;

relevant successor means —

- (a) the Minister, in relation to the Authority and a function of the Authority that, at the transfer time, becomes a function of the Minister; and
- (b) the FES Commissioner, in relation to the Authority and a function of the Authority that, at the transfer time, becomes a function of the FES Commissioner; and
- (c) the State, in relation to assets and liabilities transferred to the State by section 45; and
- (d) the FES Ministerial Body, in relation to assets and liabilities transferred to the FES Ministerial Body by section 45;

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

statutory transition means the transition from the provisions of the former Act, former Bush Fires Act and former Fire Brigades Act to the provisions of the amended Act, amended Bush Fires Act and amended Fire Brigades Act, including the transition from the Authority to a relevant successor;

transfer order means an order under section 44;

transfer time means the time when the *Fire and Emergency Services Legislation Amendment Act 2012* section 7 comes into operation.

Division 2 — Transfer of Authority’s assets, liabilities, etc.

43. Authority abolished

At the transfer time the Authority is abolished and the members of the board of management go out of office.

44. Minister may make transfer orders

- (1) To facilitate the statutory transition, the Minister may make and publish in the *Gazette* an order that —
 - (a) specifies any assets and liabilities of the Authority that are to be assigned to the FES Ministerial Body by the operation of section 45; and
 - (b) specifies proceedings in which the FES Ministerial Body is to be substituted for the Authority as a party by the operation of section 45; and
 - (c) specifies any agreement or instrument that, by the operation of section 45, is to have effect as if references to the State or the FES Ministerial Body were substituted, in accordance with the order, for references in the agreement or instrument to the Authority.

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- (2) A transfer order may also deal with incidental or supplementary matters and has effect accordingly.
- (3) The transfer order may specify things by reference to schedules that —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection,and anything specified in a schedule is to be taken to be specified in the order.
- (4) A thing may be specified in a transfer order by describing the class to which it belongs.
- (5) Before a transfer order is made specifying anything by reference to a schedule, a copy of which will be required to be delivered to a relevant official under section 49(3), the Minister is to consult with the, or each, relevant official as to the form and content of the schedule.
- (6) To the extent to which a schedule to a transfer order relates to the functions of the Registrar of Titles, the schedule is to be in a form that meets the requirements of the Registrar.
- (7) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (5) or (6) was not complied with.
- (8) A transfer order can only be made before the transfer time.
- (9) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.
- (10) A transfer order, or a schedule to which it refers, may be amended by the Minister, by further order published

in the *Gazette*, but no such amendment may be made after the transfer time.

45. Transfer of assets and liabilities

- (1) If a transfer order is made, then —
 - (a) at the transfer time —
 - (i) the assets of the Authority specified in the transfer order are, by the operation of this section, assigned to the FES Ministerial Body; and
 - (ii) the rest of the assets of the Authority are, by the operation of this section, assigned to the State;and
 - (b) at the transfer time —
 - (i) the liabilities of the Authority specified in the transfer order are, by the operation of this section, assigned to and become the liabilities of the FES Ministerial Body; and
 - (ii) the rest of the liabilities of the Authority are, by the operation of this section, assigned to and become the liabilities of the State;and
 - (c) at the transfer time, the FES Ministerial Body is substituted for the Authority as a party to any proceedings specified in the transfer order, and the State is substituted for the Authority as a party to all other proceedings in which the Authority was a party immediately before the transfer time; and
 - (d) any agreement or instrument specified in the order has effect, by the operation of this

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section, as if references to the State or the FES Ministerial Body were, at the transfer time, substituted, in accordance with the order, for references in it to the Authority; and

- (e) any proceedings or remedy that might have been commenced by, or available against or to, the Authority in relation to the assets and liabilities assigned by paragraphs (a) and (b) may be commenced by, or are available against or to —
 - (i) the FES Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
 - (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii);

and

- (f) anything done or omitted to be done in relation to the assets and liabilities assigned by paragraphs (a) and (b) before the assignment, by, to or in respect of the Authority (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of —
 - (i) the FES Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
 - (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii).
- (2) As soon as is practicable after the transfer time, all records and data of the Authority are to be delivered to the FES Commissioner.

46. Fire and Emergency Services Authority Account

- (1) In this section —
former account means the Fire and Emergency Services Authority Account referred to in section 30 of the former Act.
- (2) At the transfer time, any moneys standing to the credit of the former account are to be credited to an operating account of the Department, and the former account is then to be closed.
- (3) Moneys referred to in subsection (2) may be applied —
 - (a) in the payment of any liabilities of the former account arising before the transfer time; and
 - (b) for the purposes of the emergency services Acts.
- (4) The operating account referred to in subsection (2) is to be credited with any money payable to the former account before the transfer time that is paid after that time.
- (5) If in an agreement, instrument or other document there is a reference to the former account, that reference is, unless the context otherwise requires, to be read or to have effect from the transfer time as if it were a reference to the operating account referred to in subsection (2).

47. Reserve funds

At the transfer time, any moneys in a reserve fund established under section 35A of the former Act are to be credited to an operating account of the Department.

48. Authority to complete necessary transactions

- (1) If an asset or liability of the Authority cannot be properly assigned to the State or the FES Ministerial

s. 39

Body by the operation of this Division (whether because the matter is governed otherwise than by the law of the State or for any other reason) —

- (a) the Authority is to be taken to continue to hold that asset or be liable for that liability until it is effectively assigned to the State or the FES Ministerial Body in accordance with this Division; and
 - (b) the Authority is to take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to the State or the FES Ministerial Body in accordance with this Division.
- (2) The fact that subsection (1)(a) applies to an asset or liability that is to be assigned to the State or the FES Ministerial Body under this Division does not affect the duty of the accountable authority of the Department under the *Financial Management Act 2006*.
 - (3) Despite section 43, the Authority continues in existence for the purpose of performing the functions described in subsection (1).
 - (4) The Authority is to perform those functions through a person appointed by the Minister.
 - (5) The person holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
 - (6) The Authority as continued by this section has the powers that are necessary or convenient for the purposes of this section.

49. Registration of documents

(1) In this section —

relevant official means —

- (a) the Registrar of Titles; or
- (b) the Registrar of Deeds and Transfers; or
- (c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,

according to which, if any, of them has responsibility for a register relating to the relevant property;

relevant property means property of a kind affected by this Part, whether it is an estate or interest in land or other property.

- (2) The relevant officials are to take notice of this Part and any transfer order, including a schedule to which the order refers, and are to record and register in the appropriate manner the documents necessary to show the effect of this Part and the transfer order.
- (3) The Minister is to cause a copy of each transfer order and any schedule to which it refers to be delivered to each relevant official.

50. Exemption from State tax

(1) In this section —

State tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge, under a law of the State.

(2) State tax is not payable in relation to —

- (a) anything that occurs by the operation of this Part; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind

made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.

- (3) The Minister may certify in writing that —
- (a) a specified thing occurred by the operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

51. Rectifying error in transfer order

- (1) The Minister may, by order published in the *Gazette*, make any provision that is necessary to correct any error in a transfer order or a schedule to which a transfer order refers.
- (2) An order under this section may be made so as to have effect from the transfer time.
- (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 45 does not, as a result of that provision, operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect

of anything done or omitted to be done before
the day of publication.

**Division 3 — Chief executive officer and certain
other persons**

**52. Chief executive officer of Authority becomes FES
Commissioner**

- (1) The person holding office as the chief executive officer of the Authority in accordance with section 19 of the former Act immediately before the transfer time is to be taken to have been appointed as the FES Commissioner on the same terms and conditions.
- (2) Except as otherwise agreed by the person, the operation of subsection (1) does not —
 - (a) affect the person's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3(1); or
 - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the person's service.
- (3) For the purposes of subsection (2)(d), the person's service with the Authority is to be taken to have been with the Department.

**53. Bush fire liaison officers and Chief Bush Fire
Control Officers**

- (1) The appointment of a person as a bush fire liaison officer in accordance with section 12 of the former Bush Fires Act that has effect immediately before the

transfer time continues to have effect as the designation of the person as a bush fire liaison officer under section 12 of the amended Bush Fires Act.

- (2) The appointment of a person by the Authority as the Chief Bush Fire Control Officer for the district of a local government under section 38A of the former Bush Fires Act that has effect immediately before the transfer time continues to have effect as the designation of the person by the FES Commissioner as the Chief Bush Fire Control Officer for that district under section 38A of the amended Bush Fires Act.

54. Certain members of Fire and Emergency Services Superannuation Board

The appointment of a person by the Authority as a member or alternate member of the Fire and Emergency Services Superannuation Board under the former Superannuation Act section 4(4)(a) or (5) that has effect immediately before the transfer time continues to have effect as the appointment of the person by the FES Commissioner as a member or alternate member of that Board under that provision of the amended Superannuation Act.

Division 4 — Consultative committees

55. Members of consultative committees

At the transfer time the members of the consultative committees go out of office.

56. Records of consultative committees

As soon as is practicable after the transfer time all records and data of the consultative committees are to be delivered to the FES Commissioner.

Division 5 — Continuing effect of things done

57. Completion of things commenced

Anything commenced to be done by the Authority before the transfer time may be continued by the relevant successor so far as the doing of that thing is within the functions of the relevant successor.

58. Continuing effect of things done

Anything done or omitted to be done before the transfer time by, to or in respect of the Authority, to the extent that it —

- (a) has any force or significance; and
- (b) is not governed by another provision of this Part,

is to be taken to have been done or omitted by, to or in respect of the relevant successor.

59. Agreements and instruments generally

Any agreement or instrument subsisting immediately before the transfer time —

- (a) to which the Authority was a party; or
- (b) which contains a reference to the Authority,

has effect on and after transfer time, to the extent to which the agreement or instrument relates to the functions of a relevant successor, as if —

- (c) the relevant successor were substituted for the Authority as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the Authority were, unless the context otherwise requires, amended to be or include a reference to the relevant successor.

Division 6 — Other transitional provisions

60. Continuing duty of confidentiality

Despite the amendment of section 39 by the *Fire and Emergency Services Legislation Amendment Act 2012* section 36, section 39 continues to apply to a person who has been a member of the Authority, a member of a consultative committee or a member of staff (as defined in section 3 of the former Act).

61. Investments

- (1) Despite the deletion of Part 6 of the former Act by the *Fire and Emergency Services Legislation Amendment Act 2012* section 25, the investment of any funds of the Authority that is authorised under section 31 of the former Act immediately before the transfer time continues to be authorised as if that section had not been deleted.
- (2) Any funds referred to in subsection (1) that cease to be invested as described in that subsection are to be credited to an operating account of the Department.

62. Transitional regulations

- (1) In this section —
specified means specified or described in the regulations;
transitional matter means a matter that needs to be dealt with for the purpose of effecting the statutory transition.
- (2) If there is no sufficient provision in this Part or in a transfer order for dealing with a transitional matter, regulations made under this Act may prescribe all matters that are necessary or convenient to be prescribed for dealing with the matter.

- (3) Regulations referred to in subsection (2) may provide that a specified provision of this Act does not apply, or applies with specified modifications, to or in relation to any matter.
- (4) If regulations referred to in subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement of the relevant provision of the *Fire and Emergency Services Legislation Amendment Act 2012*, the regulations have effect according to their terms.
- (5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the regulations were published in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.
- (6) Regulations cannot be made for the purposes of this section after the end of 24 months after the day on which the *Fire and Emergency Services Legislation Amendment Act 2012* receives the Royal Assent.

63. Saving

The operation of any provision of this Part is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or

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- (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; or
- (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; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

40. Schedule 1 deleted

Delete Schedule 1.

41. Schedule 1A amended

- (1) In Schedule 1A in the item relating to s. 36S(1) delete “Authority,” and insert:

FES Commissioner,

- (2) In Schedule 1A in the items relating to s. 36T(3) and s. 36Z(1) delete “Authority” and insert:

FES Commissioner”

- (3) In Schedule 1A delete the item relating to s. 36Z(2) and insert:

- s. 36Z(2) (a) “or the FES Commissioner” is deleted;
- (b) “or the State, as the case requires” is deleted.

- (4) In Schedule 1A in the item relating to s. 36ZC(1) and (2) delete ““Authority”” and insert:

“FES Commissioner”

- (5) In Schedule 1A delete the item relating to s. 36ZD and insert:

- s. 36ZD (a) “Minister” is deleted and the following is inserted instead —
“ local government ”;
- (b) “FES Commissioner” is deleted in both places where it occurs and the following is inserted instead —
“ local government ”.

42. Schedule 2 deleted

Delete Schedule 2.

43. Various references to “Authority” amended

In the provisions listed in the Table delete “Authority” (each occurrence) and insert:

FES Commissioner

Table

s. 3 def. of <i>assistance operation</i> , <i>FESA Unit</i> , <i>SES Unit</i> and <i>VMRS Group</i>	s. 12(1) and (2)
s. 13(4)	s. 15(1), (2) and (5)
s. 18A	s. 18B(1), (2), (3) and (4)

Fire and Emergency Services Legislation Amendment Act 2012

Part 2 Fire and Emergency Services Authority of Western Australia
Act 1998 amended

s. 43

s. 18C(1), (2) and (3)	s. 18D(b)
s. 18F	s. 18G(1), (2), (3) and (4)
s. 18H(1), (2) and (3)	s. 18I(b)
s. 18K	s. 18L(1), (2), (3), (4) and (5)
s. 18M(1), (2) and (3)	s. 18N(b)
s. 18O(1)	s. 36A(1)(b), (3) and (5)
s. 36B	s. 36C
s. 36K	s. 36L(1) and (2)
s. 36N	s. 36P(2)(b)
s. 36S(1)	s. 36T(3)
s. 36V	s. 36W(1)(a)
s. 36X(1)	s. 36Y(1) and (4)
s. 36Z(1), (2) and (3)(b)	s. 36ZC(1) and (2)
s. 36ZI def. of <i>leviable land</i>	s. 36ZJ(1), (2) and (3)
s. 36ZL(1) and (2)(b)	

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 12	Powers of FES Commissioner
s. 18A	Functions of FES Commissioner
s. 18B	Powers of FES Commissioner

Amended section	Section heading
s. 18F	Functions of FES Commissioner
s. 18G	Powers of FES Commissioner
s. 18K	Functions of FES Commissioner
s. 18L	Powers of FES Commissioner
s. 36A	Annual estimates of expenditure by local governments and payments by FES Commissioner
s. 36B	Annual levy payable to FES Commissioner on land in an ESL category area
s. 36K	FES Commissioner to ensure local governments have information
s. 36V	Local government to pay levy and other amounts to FES Commissioner
s. 36X	Interest payable on amounts not paid by due date to FES Commissioner
s. 36ZJ	FES Commissioner may enter into agreements with local governments

44. Various references to “FESA” amended

In the provisions listed in the Table delete “FESA” (each occurrence) and insert:

FES

Table

s. 13(2)(b) and (c) and (4)	s. 15(2)(d)
s. 18K	s. 18L(2) and (3)
s. 18M(1), (2) and (3)	s. 18N
s. 18O(1) and (2)	s. 37(1a)(e)
s. 38A(2)(a) and (3)	s. 38C(d)

Fire and Emergency Services Legislation Amendment Act 2012

Part 2 Fire and Emergency Services Authority of Western Australia
Act 1998 amended

s. 44

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 18M	Approval of FES Units
s. 18N	Register of members of FES Units
s. 18O	Functions of FES Units

Part 3 — *Bush Fires Act 1954* amended

45. Act amended

This Part amends the *Bush Fires Act 1954*.

46. Section 7 amended

- (1) In section 7(1) delete the definitions of:

Authority

Chief Executive Officer

member of the Authority

the FESA Act

- (2) In section 7(1) insert in alphabetical order:

Department has the meaning given in the FES Act section 3;

employed in the Department means employed or engaged in the Department in accordance with the FES Act section 20(1);

FES Act means the *Fire and Emergency Services Act 1998*;

FES Commissioner has the meaning given in the FES Act section 3;

- (3) In section 7(1) in the definition of *restricted burning time* paragraph (b) delete “situated;” and insert:

situated.

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47. Section 10 amended

- (1) In section 10(1)(a), (b) and (e) delete “it” and insert:

the FES Commissioner

- (2) Delete section 10(2)(a).

Note: The heading to amended section 10 is to read:

Powers of FES Commissioner

48. Section 12 replaced

Delete section 12 and insert:

12. Bush fire liaison officers

- (1) In this section —
departmental officer means a person employed in the Department;
designation means a designation under subsection (2).
- (2) The FES Commissioner may designate a departmental officer to be a bush fire liaison officer.
- (3) There are to be as many bush fire liaison officers as are necessary to perform the functions conferred on bush fire liaison officers by this Act or any other written law.
- (4) A person ceases to be a bush fire liaison officer if the designation of the person is revoked or ceases to have effect.
- (5) The power to make a designation includes —
(a) the power to revoke a designation previously made; and

- (b) the power to designate a person to perform functions of another person who has that designation when it is impractical for that other person to perform the functions.
- (6) A designation ceases to have effect if the person designated ceases to be a departmental officer.
- (7) These are to be in writing —
 - (a) a designation;
 - (b) a revocation of a designation.

49. Section 14B amended

- (1) In section 14B(2) after “authorised person” insert:

or a member of the Police Force

- (2) In section 14B(4) delete “officer” and insert:

officer, a member of the Police Force

Note: The heading to amended section 14B is to read:

Powers of authorised persons and police officers during authorised periods

50. Section 14 amended

In section 14(1):

- (a) delete “A member of the Authority, an officer who is authorised by the Authority” and insert:

A person employed in the Department who is authorised by the FES Commissioner

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(b) after “control officer,” insert:

designated or

Note: The heading to amended section 14 is to read:

Certain persons may enter land or building for purposes of Act

51. Section 17 amended

(1) In section 17(4) delete “it thinks” (each occurrence) and insert:

the FES Commissioner thinks

(2) In section 17(5) delete “appointed by it” and insert:

employed in the Department

52. Section 22C amended

In section 22C(1):

(a) delete “Chief Executive Officer that,” and insert:

FES Commissioner that,

(b) delete “Chief Executive Officer,” and insert:

FES Commissioner,

53. Section 24B amended

In section 24B(1) delete “An officer of the Authority authorised by the Authority” and insert:

A person employed in the Department authorised by the FES Commissioner

54. Section 24E amended

In section 24E(2) delete “Chief Executive Officer” and insert:

FES Commissioner

55. Section 24G amended

In section 24G(1) delete “Chief Executive Officer” and insert:

FES Commissioner

56. Section 25A amended

In section 25A(1):

(a) delete “Chief Executive Officer that,” and insert:

FES Commissioner that,

(b) delete “Chief Executive Officer,” and insert:

FES Commissioner,

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57. Section 27B amended

- (1) In section 27B(1) delete “member, employee or agent, of the Authority, or” and insert:

person employed in the Department, an agent of the FES Commissioner or an employee or agent

- (2) In section 27B(2) delete “authority,” and insert:

FES Commissioner, local government,

58. Section 28 amended

- (1) In section 28(4) delete “Authority,” and insert:

State,

- (2) In section 28(5) delete “Authority,” and insert:

FES Commissioner (on behalf of the State),

59. Section 35 amended

- (1) In section 35(2) delete “Authority may by its servants or agents” and insert:

FES Commissioner may authorise persons employed in the Department or agents of the FES Commissioner to

- (2) In section 35(3) delete “on it” and insert:

on the FES Commissioner

- (3) Delete section 35(3B) and insert:

- (3B) A certificate signed by the FES Commissioner is evidence of the amount referred to in subsection (3), and the FES Commissioner may recover the amount in a court of competent jurisdiction as a debt due to the State from the local government or from the owner or occupier of the land in respect of which the notice has been given, as the FES Commissioner may at the FES Commissioner’s option elect.

- (4) In section 35(5) delete “it deems” and insert:

the FES Commissioner deems

- (5) In section 35(6):

- (a) delete “Authority” (first occurrence) and insert:

FES Commissioner

- (b) delete “Authority.” and insert:

State.

Note: The heading to amended section 35 is to read:

Powers of FES Commissioner on default by local government

60. Section 38 amended

In section 38(2D) delete “Authority may appoint a person who is not a member of staff (as defined in the FESA Act)” and insert:

FES Commissioner may appoint a person who is not employed in the Department

61. Section 38A amended

- (1) In section 38A(1) delete “Authority may appoint a member of staff (as defined in the FESA Act) to be” and insert:

FES Commissioner may designate a person employed in the Department as

- (2) In section 38A(2) delete “appointed” and insert:

designated

- (3) In section 38A(3) and (4) delete “appointed under this section” and insert:

designated under this section

Note: The heading to amended section 38A is to read:

FES Commissioner may designate person employed in Department as Chief Bush Fire Control Officer

62. Section 39 amended

In section 39(1)(a) delete “Director of Operations” and insert:

FES Commissioner

63. Section 51 amended

In section 51(3) delete “FESA Act.” and insert:

FES Act.

64. Section 55 deleted

Delete section 55.

65. Section 56 amended

In section 56(1)(a) and (2):

- (a) delete “member of the Authority, an officer of the Authority,” and insert:

person employed in the Department for the purposes of this Act,

- (b) after “appointed” insert:

or designated

66. Section 57 amended

In section 57:

- (a) delete “member of the Authority, or an officer of the Authority,” and insert:

person employed in the Department for the purposes of this Act,

- (b) after “appointed” insert:

or designated

67. Section 59 amended

In section 59(1) delete “member of the Authority, an officer of the Authority,” and insert:

person employed in the Department for the purposes of this Act,

68. Section 65 amended

- (1) In section 65(1):

- (a) delete paragraph (a);
(b) in paragraph (c) delete “appointment of an officer of the Authority or” and insert:

designation or appointment of a person employed in the Department or of an officer

(2) In section 65(2):

(a) in paragraph (b) delete “under the seal of the Authority;”
and insert:

by the FES Commissioner; or

(b) in paragraph (c) after “appointment” insert:

or designation

(c) in paragraph (c) delete “Chief Executive Officer; or”
and insert:

FES Commissioner; or

(d) after “due appointment” insert:

or designation

(3) In section 65(2) after paragraph (a) insert:

or

69. Various references to “Authority” amended

In the provisions listed in the Table delete “Authority” (each occurrence) and insert:

FES Commissioner

s. 69

Table

s. 7(1) def. of <i>restricted burning times</i>	s. 10(1) and (2)
s. 13(1), (2), (4) and (5)	s. 14B def. of <i>authorisation</i>
s. 14C(3)	s. 17(4), (5), (6), (8)(a)(ii) and (b) and (9)
s. 18(2) and (4a)	s. 27B(2)
s. 27C(1) and (2)	s. 34(1a)
s. 35(1), (3), (4) and (5)	s. 38(2C), (2E), (6), (7) and (13)
s. 38A(4)(b)	s. 41(2a)
s. 45A(2)(a)(i)	s. 45(7)(a)
s. 50(2)(b)	s. 54
s. 58(3A)	

Note: The heading to amended section 18 is to read:

Restricted burning times may be declared by FES Commissioner

Part 4 — *Fire Brigades Act 1942* amended

70. Act amended

This Part amends the *Fire Brigades Act 1942*.

71. Section 4 amended

- (1) In section 4(1) delete the definitions of:

Authority

Chief Executive Officer

Director

member of the Authority

the FESA Act

- (2) In section 4(1) insert in alphabetical order:

Department has the meaning given in the FES Act section 3;

employed in the Department means employed or engaged in the Department in accordance with the FES Act section 20(1);

FES Act means the *Fire and Emergency Services Act 1998*;

FES Commissioner has the meaning given in the FES Act section 3;

property of the Department means property vested in the Minister that is under the control of the FES Commissioner;

- (3) Delete section 4(2).

72. Part VI heading amended

In the heading to Part VI delete “**Authority**” and insert:

Minister and FES Commissioner

73. Section 24 amended

(1) In section 24(1):

(a) delete “Authority may purchase,” and insert:

Minister may, under the FES Act section 8, purchase,

(b) delete “Authority may think” and insert:

Minister may think

(c) delete “to time” insert:

to time, under that section,

(d) delete “in the Authority” and insert:

in the Minister

(2) In section 24(2):

(a) delete “Authority” (first occurrence) and insert:

Minister

- (b) delete “Authority” (second occurrence) and insert:

Department

- (c) delete “Authority.” and insert:

Department.

- (3) In section 24(3):

- (a) delete “Authority, or a body corporate to which the Authority is” and insert:

Minister or the former Authority, or a body corporate to which the former Authority was

- (b) delete “Authority” (last occurrence) and insert:

Minister

- (4) After section 24(3) insert:

- (4) In subsection (3) —

former Authority means the Fire and Emergency Services Authority of Western Australia established by the FES Act section 4, as in force immediately before the commencement of the *Fire and Emergency Services Legislation Amendment Act 2012* section 7.

s. 74

74. Section 25 amended

In section 25(e) delete “it” and insert:

the FES Commissioner

75. Section 26A amended

- (1) In section 26A(1) delete “its functions under this Act the Authority” and insert:

the FES Commissioner’s functions under this Act the FES Commissioner

- (2) In section 26A(2):

- (a) delete “Authority” (first occurrence) and insert:

FES Commissioner

- (b) delete paragraph (c) and insert:

- (c) utilise the apparatus, plant and other property of the Department and use the persons employed in the Department to promote public awareness of the functions of the FES Commissioner under this Act or to enhance the Department’s public image; and

- (c) in paragraph (f) delete “Authority” (each occurrence) and insert:

FES Commissioner

- (d) in paragraph (h) delete “by the Authority” and insert:

in the Department
 - (e) in paragraph (h) delete “Authority;” and insert:

FES Commissioner; and
 - (f) in paragraph (i) delete “its functions;” and insert:

the FES Commissioner’s functions; and
 - (g) in paragraph (k) delete “on it” and insert:

on the FES Commissioner
- (3) In section 26A(2) after each of paragraphs (a), (b), (d), (f) and (g) insert:

and

Note: The heading to amended section 26A is to read:

Further powers of FES Commissioner

76. Part VII heading amended

In the heading to Part VII delete “**other employees**” and insert:

others

s. 77

77. Section 29 deleted

Delete section 29.

78. Section 31 replaced

Delete section 31 and insert:

31. Brigades are under control of FES Commissioner

Every brigade and all the officers and members of a brigade are under the immediate order and control of the FES Commissioner.

79. Section 33 amended

In section 33(1):

- (a) delete the passage that begins with “The Director” and ends with “to say —” and insert:

The FES Commissioner, or a person employed in the Department who is authorised by the FES Commissioner for the purposes of this section, is to perform or exercise, in addition to any other duties, the following general duties and powers —

- (b) in paragraph (c) delete “and report to the Authority” and insert:

and, in the case of a person other than the FES Commissioner, report to the FES Commissioner

- (c) in paragraph (d) delete “Authority” and insert:

Department

(d) delete paragraph (g) and insert:

(g) in the case of a person other than the FES Commissioner, the person is to make any inquiries and reports as directed by the FES Commissioner.

Note: The heading to amended section 33 is to read:

General duties and powers of FES Commissioner and authorised persons

80. Section 33A amended

(1) In section 33A(1):

(a) delete “Director or an officer of the Authority authorised by the Authority in that behalf” and insert:

FES Commissioner, or a person employed in the Department who is authorised by the FES Commissioner for the purposes of this section,

(b) in paragraph (b) delete “Director or officer” and insert:

FES Commissioner or person

(2) In section 33A(3), (4), (5), (6), (9), (11) and (14)(a) and (c) delete “Director” (each occurrence) and insert:

FES Commissioner

s. 81

- (3) In section 33A(15) in the definition of *authorised officer* delete “an officer of the Authority authorised by the Authority” and insert:

a person employed in the Department who is authorised by the FES Commissioner

- (4) In section 33A(15) in the definition of *presumed occupier* delete “Director” and insert:

FES Commissioner

Note: The heading to amended section 33A is to read:

**Duties and powers of FES Commissioner and authorised officers
in relation to public buildings**

81. Section 34 amended

In section 34:

- (a) delete “Director or, in his absence” and insert:

FES Commissioner or

- (b) delete “an officer of the Authority authorised by the Authority in that behalf,” and insert:

a person employed in the Department who is authorised by the FES Commissioner for the purposes of this section,

Note: The heading to amended section 34 is to read:

Duties and powers of FES Commissioner and others at fires

82. Section 34A amended

- (1) Delete section 34A(3) and insert:
- (3) An authorised officer other than the FES Commissioner must not specify a period of more than 3 hours under subsection (1)(a) or (b) unless the FES Commissioner has given written authorisation for a longer period to be specified in relation to the person exposed to the hazardous material.
- (2) Delete section 34A(10) and insert:
- (10) In this section —
authorised officer, in relation to a hazardous material incident, means the FES Commissioner or the officer or any member of the brigade who for the time being is in charge.

83. Section 35 amended

In section 35(2):

- (a) in paragraph (d) delete “employees,” and insert:
- persons employed or engaged for the purposes of this Act in accordance with the FES Act section 20(1)(b) or (c),
- (b) in paragraph (d) delete “employees;” and insert:
- persons;

s. 84

- (c) in paragraph (e) delete “employees;” and insert:

persons employed or engaged for the purposes of this Act in accordance with the FES Act section 20(1)(b) or (c);

- (d) in paragraph (g) delete “employees of the Authority” and insert:

persons employed or engaged for the purposes of this Act in accordance with the FES Act section 20(1)(b) or (c)

- (e) after paragraph (x) delete “and”.

84. Section 47A deleted

Delete section 47A.

85. Section 49 amended

In section 49 delete “member or officer of the Authority.” and insert:

person employed in the Department who is authorised by the FES Commissioner for the purposes of this section.

86. Section 51 amended

In section 51:

- (a) delete “Director certifying” and insert:

FES Commissioner being satisfied

(b) delete “Authority may, in its discretion,” and insert:

FES Commissioner may, in his or her discretion,

(c) delete “Authority thinks” and insert:

FES Commissioner thinks

(d) delete “Authority may by resolution” and insert:

FES Commissioner may

87. Section 52 amended

(1) In section 52(1) delete “regulations, the Authority” and insert:

the regulations, the FES Commissioner

(2) In section 52(2) delete “in that behalf by the Authority” and insert:

under subsection (1) by the FES Commissioner

88. Section 54 amended

(1) In section 54(4):

(a) delete “On and after the proclaimed day, the Authority” and insert:

The FES Commissioner

s. 88

- (b) delete “Authority” (second occurrence) and insert:

FES Commissioner

- (2) In section 54(5) delete “Authority” (first and second occurrences) and insert:

FES Commissioner

- (3) In section 54(9):

- (a) delete “Authority” (first occurrence) and insert:

FES Commissioner

- (b) delete “Authority” (second occurrence) and insert:

State

- (4) In section 54(10):

- (a) delete “shall vest in the Authority” and insert:

vests, or is to be taken to have vested, in the Minister

- (b) in the Table item 3 Column 1 delete “Authority.” and insert:

FES Commissioner.

89. Section 58 amended

In section 58 delete “Director” (each occurrence) and insert:

FES Commissioner

Note: The heading to amended section 58 is to read:

Police and others to aid FES Commissioner

90. Section 59 amended

In section 59(b) delete “Authority;” and insert:

Department;

91. Section 66 amended

In section 66:

(a) delete “by the Authority” and insert:

in the Department for the purposes of this Act

(b) delete “belonging to the Authority,” and insert:

of the Department,

(c) delete “Authority” (third, fourth and fifth occurrences) and insert:

FES Commissioner

92. Section 67 amended

(1) Delete section 67(1) and insert:

(1A) In this section —

authorised officer means —

- (a) the FES Commissioner; or
- (b) a person employed in the Department, or an agent of the FES Commissioner, who is authorised in writing by the FES Commissioner for the purposes of this section.

(1) An authorised officer may enter, and, if necessary, break into any place where any property of the Department is detained contrary to the order of the FES Commissioner, and may remove that property.

(2) In section 67(2) delete “the Director or any such officer, employee, or agent” and insert:

an authorised officer

Note: The heading to amended section 67 is to read:

Detention of property of the Department

93. Section 73 deleted

Delete section 73.

94. Various references to “Authority” amended

In the provisions listed in the Table delete “Authority” (each occurrence) and insert:

FES Commissioner

Table

s. 4(1) def. of <i>permanent fire brigade, private fire brigade</i> and <i>volunteer fire brigade</i>	s. 25
s. 25A(1) and (4)	s. 26
s. 27(1) and (2)	s. 30
s. 34(h)	s. 48
s. 50	s. 55
s. 56(b)	s. 57
s. 61	

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 25	Functions of FES Commissioner
s. 25A	FES Commissioner may require certain fire fighting appliances
s. 27	FES Commissioner's proposals to be submitted to local government
s. 48	FES Commissioner to furnish information to Commissioner of Public Health

Part 5 — *Fire and Emergency Services Superannuation Act 1985* amended

95. Act amended

This Part amends the *Fire and Emergency Services Superannuation Act 1985*.

96. Long title amended

In the long title:

- (a) delete “*Authority of Western Australia*”;
- (b) before “**Western Australian**” insert:

**Fire and Emergency Services Authority of Western
Australia and the**

97. Section 3 amended

- (1) In section 3(1) delete the definitions of:

chief executive officer

eligible Authority employee

- (2) In section 3(1) insert in alphabetical order:

eligible FES employee means a firefighter, or a person holding a prescribed office or of a prescribed class employed in the department principally assisting in the administration of the *Fire and Emergency Services Act 1998*;

FES Commissioner has the same meaning as in the *Fire and Emergency Services Act 1998* section 3;

former Authority employee means a person to whom section 5(4)(a) applied immediately before the coming into operation of the *Fire and Emergency Services Legislation Amendment Act 2012* section 99(2);

- (3) In section 3(1) in the definition of **Authority** delete “*Fire and Emergency Services Authority of Western Australia Act 1998*,” and insert:

Fire and Emergency Services Act 1998, as in force immediately before the coming into operation of the *Fire and Emergency Services Legislation Amendment Act 2012* section 7;

- (4) In section 3(1) in the definition of **Fire Brigades Board** delete “*Authority of Western Australia*”.

98. Section 4 amended

- (1) In section 4(4)(a) delete “Authority; and” and insert:

FES Commissioner; and

- (2) In section 4(5) delete “Authority” and insert:

FES Commissioner

99. Section 5 amended

- (1) In section 5(2)(a) delete “chief executive officer” and insert:

FES Commissioner

- (2) In section 5(4):

- (a) in paragraph (a) delete “Authority employees;” and insert:

FES employees; and

s. 100

(b) after paragraph (c) insert:

(da) former Authority employees; and

(c) in paragraph (d) delete “(b) and (c).” and insert:

(b), (c) and (da).

(3) In section 5(4) after paragraph (b) insert:

and

100. Section 6 amended

In section 6(3)(e) delete “Authority” and insert:

FES Commissioner

101. Section 17 amended

In section 17(4) delete “Authority” and insert:

FES Commissioner

102. Section 27 amended

In section 27(1) and (2) delete “chief executive officer” (each occurrence) and insert:

FES Commissioner

103. Section 28 amended

In section 28(1) delete “chief executive officer” and insert:

FES Commissioner

104. Section 31 amended

In section 31 delete “Authority” (each occurrence) and insert:

FES Commissioner

Note: The heading to amended section 31 is to read:

Assistance from FES Commissioner

105. Section 32 amended

In section 32(b) delete “chief executive officer” and insert:

FES Commissioner

106. Schedule 2 amended

- (1) In Schedule 2 clause 1 in the definition of *appointed member* delete “Authority” and insert:

FES Commissioner

- (2) In Schedule 2 clause 6(2) delete “Authority” and insert:

FES Commissioner

Fire and Emergency Services Legislation Amendment Act 2012

Part 5 Fire and Emergency Services Superannuation Act 1985
amended

s. 106

(3) In Schedule 2 clause 7(2) and (3) delete “Authority” and insert:

FES Commissioner

Part 6 — *Emergency Management Act 2005* amended

107. Act amended

This Part amends the *Emergency Management Act 2005*.

108. Section 50 amended

(1) Before section 50(1) insert:

(1A) The State Emergency Coordinator may, in writing, declare that an emergency situation exists in an area of the State in respect of any hazard.

(2) In section 50(2):

(a) after “The” insert:

State Emergency Coordinator or the

(b) delete “it is”.

(3) In section 50(4) after “this section” insert:

the State Emergency Coordinator or

(4) After section 50(4) insert:

(5A) If a declaration under this section is made by the State Emergency Coordinator in respect of a hazard, the State Emergency Coordinator must notify the hazard management agency for emergency management of the hazard as soon as practicable after the declaration is made.

s. 109

- (5) In section 50(5) delete “The” and insert:

If a hazard management agency makes a declaration under this section, the

- (6) After section 50(5) insert:

- (6A) If a hazard management agency is notified under subsection (5A) of a declaration under this section made by the State Emergency Coordinator, the hazard management agency —

- (a) must notify each district emergency coordinator and local emergency coordinator for a local government district to which the emergency situation declaration applies as soon as practicable after the notification is given; and
- (b) is taken to have made the declaration for the purposes of any provision of this Act other than this section.

- (7) In section 50(6) after “notify under subsection” insert:

(5A) or

Note: The heading to amended section 50 is to read:

State Emergency Coordinator or hazard management agency may make emergency situation declaration

109. Section 71 amended

In section 71(1) and (2) delete “the most senior police officer present in the emergency area” and insert:

a police officer

Part 7 — Other Acts amended

Division 1 — *Constitution Acts Amendment Act 1899* amended

110. Act amended

This Division amends the *Constitution Acts Amendment Act 1899*.

111. Schedule V amended

In Schedule V Part 3 delete the item relating to the Fire and Emergency Services Authority of Western Australia.

Division 2 — *Country Areas Water Supply Act 1947* amended

112. Act amended

This Division amends the *Country Areas Water Supply Act 1947*.

113. Section 37 amended

- (1) In section 37(1) delete the definition of *Authority*.
- (2) In section 37(1) insert in alphabetical order:

FES Commissioner has the meaning given in the *Fire and Emergency Services Act 1998* section 3;

- (3) In section 37(3) and (7) delete “Authority” (each occurrence) and insert:

FES Commissioner

- (4) In section 37(9) delete “Authority or the local government to whom the statement is rendered” and insert:

State or the local government, according to whether the statement is rendered to the FES Commissioner or the local government,

- (5) In section 37(10)(a) delete “Authority” and insert:

Minister responsible for the administration of the *Fire and Emergency Services Act 1998*

- (6) In section 37(11)(a) delete “Authority” and insert:

FES Commissioner

- (7) In section 37(15):

- (a) delete “Authority” (first occurrence) and insert:

Minister referred to in that subsection

- (b) delete “Authority” (second occurrence) and insert:

the FES Commissioner

- (c) delete “as the case may be, in which the property in the fire hydrant is vested” and insert:

according to whether the property in the fire hydrant is vested in the Minister referred to in subsection (10) or the local government,

Division 3 — *The Criminal Code* amended

114. Act amended

This Division amends *The Criminal Code*.

115. Section 297 amended

In section 297(4)(d)(ii):

- (a) delete “FESA Unit” and insert:

FES Unit

- (b) delete “*Authority of Western Australia*”.

116. Section 318 amended

In section 318(1)(h)(ii):

- (a) delete “FESA Unit,” and insert:

FES Unit,

- (b) delete “*Authority of Western Australia*”.

Division 4 — *Dangerous Goods Safety Act 2004* amended

117. Act amended

This Division amends the *Dangerous Goods Safety Act 2004*.

118. Section 40 amended

In section 40(1) in the definition of ***unauthorised person*** paragraph (a) delete “of the Fire and Emergency Services Authority of Western Australia; or” and insert:

in the department of the Public Service that principally assists the Minister with the administration of the *Fire and Emergency Services Act 1998*; or

Division 5 — *Emergency Services Levy Act 2002* amended

119. Act amended

This Division amends the *Emergency Services Levy Act 2002*.

120. Long title amended

In the long title delete “*Authority of Western Australia*”.

121. Section 3 amended

In section 3 delete “*Authority of Western Australia*”.

Division 6 — *Environmental Protection Act 1986* amended

122. Act amended

This Division amends the *Environmental Protection Act 1986*.

123. Schedule 6 amended

In Schedule 6 item 12 delete “Fire and Emergency Services Authority of Western Australia established under the *Fire and Emergency Services Authority of Western Australia Act 1998*.” and insert:

FES Commissioner as defined in the *Fire and Emergency Services Act 1998* section 3.

Division 7 — *Financial Management Act 2006* amended

124. Act amended

This Division amends the *Financial Management Act 2006*.

125. Schedule 1 amended

In Schedule 1 delete “Fire and Emergency Services Authority of Western Australia”.

Division 8 — *Litter Act 1979* amended

126. Act amended

This Division amends the *Litter Act 1979*.

127. Third Schedule amended

In the Third Schedule in column 2 delete “Fire and Emergency Services Authority of Western Australia” and insert:

The FES Commissioner as
defined in the *Fire and
Emergency Services
Act 1998* section 3

**Division 9 — *Metropolitan Water Supply, Sewerage, and
Drainage Act 1909* amended**

128. Act amended

This Division amends the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*.

129. Section 45 amended

(1) In section 45(1) delete the definition of ***Authority***.

(2) In section 45(1) insert in alphabetical order:

FES Commissioner has the meaning given in the *Fire and Emergency Services Act 1998* section 3;

(3) In section 45(3) and (7) delete “Authority” (each occurrence) and insert:

FES Commissioner

- (4) In section 45(9) delete “Authority or the local government to whom the statement is rendered” and insert:

State or the local government, according to whether the statement is rendered to the FES Commissioner or the local government,

- (5) In section 45(10)(a) delete “Authority” and insert:

Minister responsible for the administration of the *Fire and Emergency Services Act 1998*

- (6) In section 45(11)(a) delete “Authority” and insert:

FES Commissioner

Division 10 — *Pay-roll Tax Assessment Act 2002* amended

130. Act amended

This Division amends the *Pay-roll Tax Assessment Act 2002*.

131. Section 40 amended

In section 40(2)(p)(i):

- (a) delete “FESA Unit,” and insert:

FES Unit,

- (b) delete “*Authority of Western Australia*”.

Division 11 — *Public Sector Management Act 1994* amended

132. Act amended

This Division amends the *Public Sector Management Act 1994*.

133. Schedule 2 amended

Delete Schedule 2 item 10A.

Division 12 — *Rates and Charges (Rebates and Deferments) Act 1992* amended

134. Act amended

This Division amends the *Rates and Charges (Rebates and Deferments) Act 1992*.

135. Section 3 amended

- (1) In section 3(1) in the definition of *emergency services levy* delete “*Authority of Western Australia*”.
- (2) In section 3(1a) delete “*Authority of Western Australia*”.

136. Section 17 amended

- (1) In section 17(1b) delete “Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*.” and insert:

FES Commissioner as defined in the *Fire and Emergency Services Act 1998* section 3.

- (2) In section 17(1c) delete “*Authority of Western Australia*”.

Division 13 — Road Traffic Act 1974 amended

137. Act amended

This Division amends the *Road Traffic Act 1974*.

138. Section 64A amended

In section 64A(4A)(b) delete “*Authority of Western Australia*”.

139. Section 64AAA amended

In section 64AAA(2A)(b) delete “*Authority of Western Australia*”.

Division 14 — Sentencing Act 1995 amended

140. Act amended

This Division amends the *Sentencing Act 1995*.

141. Schedule 1 amended

In Schedule 1 delete the item relating to the *Bush Fires Act 1954*.

Division 15 — Swan and Canning Rivers Management Act 2006 amended

142. Act amended

This Division amends the *Swan and Canning Rivers Management Act 2006*.

143. Schedule 5 amended

- (1) In Schedule 5 item 1(f) delete “*Authority of Western Australia*”.
- (2) Delete Schedule 5 item 6.

**Division 16 — *Volunteers and Food and Other Donors*
(*Protection from Liability*) Act 2002 amended**

144. Act amended

This Division amends the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*.

145. Section 4 amended

In section 4(1) in the definition of *volunteer* paragraph (a) delete “*Authority of Western Australia*”.

Division 17 — *Water Boards Act 1904* amended

146. Act amended

This Division amends the *Water Boards Act 1904*.

147. Section 63 amended

- (1) In section 63(1) delete the definition of *Authority*.
- (2) In section 63(1) insert in alphabetical order:

FES Commissioner has the meaning given in the *Fire and Emergency Services Act 1998* section 3;

- (3) In section 63(3) and (7) delete “*Authority*” (each occurrence) and insert:

FES Commissioner

- (4) In section 63(9) delete “*Authority or the local government to whom the statement is rendered*” and insert:

State or the local government, according to whether the statement is rendered to the *FES Commissioner* or the local government,

Fire and Emergency Services Legislation Amendment Act 2012

Part 7 Other Acts amended

Division 17 Water Boards Act 1904 amended

s. 147

- (5) In section 63(10)(a) delete “Authority” and insert:

Minister responsible for the administration of the *Fire and Emergency Services Act 1998*

- (6) In section 63(11)(a) delete “Authority” and insert:

FES Commissioner

- (7) In section 63(15):

- (a) delete “Authority” (first occurrence) and insert:

Minister referred to in that subsection

- (b) delete “Authority” (second occurrence) and insert:

FES Commissioner

- (c) delete “as the case may be, in which the property in the fire hydrant is vested” and insert:

according to whether the property in the fire hydrant is vested in the Minister referred to in subsection (10) or the local government,

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