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## FIRE AND EMERGENCY SERVICES

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FE301

Fire Brigades Act 1942

### Fire Brigades Amendment Regulations 2019

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Fire Brigades Amendment Regulations 2019*.

**2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

**3. Regulations amended**

These regulations amend the *Fire Brigades Regulations 1943*.

**4. Part VI Division 1 heading inserted**

At the beginning of Part VI insert:

#### Division 1 — Preliminary

**5. Regulation 96 amended**

- (1) In regulation 96 insert in alphabetical order:

*Appeal Board* means the Appeal Board constituted under regulation 137I;

*breach of discipline* means conduct of a kind described in regulation 134;

*disciplinary action*, in respect of an employee, means 1 or more of the following actions —

- (a) cautioning the employee;

- (b) imposing on the employee a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding that the conduct of the employee constitutes a disciplinary offence was made;
- (c) reducing the employee's rank, class or status;
- (d) transferring the employee to a district or workplace other than that in which the conduct constituting the disciplinary offence occurred;
- (e) terminating the employee's employment;

**disciplinary charge** means a charge of a breach of discipline;

**disciplinary finding** means a finding under regulation 137C(4)(a);

**improvement action**, in respect of an employee, means 1 or more of the following actions —

- (a) counselling;
- (b) training and development;
- (c) issuing a warning to the employee that certain conduct is unacceptable;
- (d) any other action of a similar nature;

**inquiry** means an inquiry under regulation 137C;

**operating account of the Department** has the meaning given in the *Fire and Emergency Services Act 1998* section 3;

**targeted drug** means any of the following —

- (a) a drug to which the *Misuse of Drugs Act 1981* applies;
- (b) a Schedule 2 poison as defined in the *Medicines and Poisons Act 2014* section 3;
- (c) a Schedule 3 poison as defined in the *Medicines and Poisons Act 2014* section 3;
- (d) a Schedule 4 poison as defined in the *Medicines and Poisons Act 2014* section 3;
- (e) a drug or substance declared to be a targeted drug under regulation 135(1).

- (2) In regulation 96 in the definition of **operational staff** delete “section 19 of the Act.” and insert:

the *Fire and Emergency Services Act 1998* section 19;

**6. Part VI Division 2 heading inserted**

After regulation 96 insert:

**Division 2 — General employment provisions**

**7. Regulation 132 amended**

In regulation 132(4) delete “Second Schedule of the *Workers’ Compensation and Injury Management Act 1981*.” and insert:

*Workers’ Compensation and Injury Management Act 1981*  
Schedule 2.

**8. Part VI Division 3 heading inserted**

After regulation 134A insert:

**Division 3 — Disciplinary matters**

**9. Regulation 134 amended**

In regulation 134:

- (a) delete “Any employee who —” and insert:

An employee commits a breach of discipline if the employee —

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

(d) is on duty while under the influence of or impaired by alcohol, a targeted drug or both; or

(da) while on duty, consumes, uses or possesses alcohol, a targeted drug or both; or

- (c) in paragraph (g) delete “Department,” and insert:

Department.

- (d) delete the passage that begins with “shall be guilty” and ends with “these regulations.”.

Note: The heading to amended regulation 134 is to read:

**Breach of discipline**

**10. Regulations 135 to 138 replaced**

Delete regulations 135 to 138 and insert:

**135. Targeted drugs**

- (1) The FES Commissioner may declare a drug or substance to be a targeted drug for the purpose of regulation 134.
- (2) A declaration is not effective unless it is published by the FES Commissioner in the *Gazette*.
- (3) The FES Commissioner may, by notice published in the *Gazette*, amend or revoke a declaration.

**136. Preliminary decision by FES Commissioner**

- (1) If the FES Commissioner is made aware, or becomes aware, that an employee may have committed a breach of discipline, the FES Commissioner must decide —
  - (a) to do 1 or more of the following —
    - (i) make a disciplinary charge against the employee;
    - (ii) subject to regulation 137(1), suspend the employee from duty on full pay, partial pay or without pay;
    - (iii) take improvement action with respect to the employee;
  - or
  - (b) to take no action with respect to the employee.
- (2) If the FES Commissioner decides to make a disciplinary charge against the employee, the FES Commissioner must —
  - (a) record the charge in writing; and
  - (b) comply with regulation 137A.
- (3) If the FES Commissioner decides to suspend the employee from duty or to take improvement action, the FES Commissioner must give the employee written notice of the decision.
- (4) The FES Commissioner may carry out any investigation that the FES Commissioner considers necessary or expedient for the purposes of making a decision under subregulation (1).
- (5) An employee is entitled to be represented during an investigation carried out under subregulation (4) by —
  - (a) an advocate from a trade union or other association of which the employee is a member;
  - or

- (b) if the employee is not a member of a trade union or other association, a person approved by the FES Commissioner.

**137. Suspending employee from duty**

- (1) The FES Commissioner must not suspend an employee from duty under regulation 136(1)(a)(ii) unless the FES Commissioner considers that the employee's alleged breach of discipline is of such a nature that the employee should not continue in the performance of the employee's duty.
- (2) The FES Commissioner may at any time remove, or vary the terms of, a suspension from duty.
- (3) The FES Commissioner must remove a suspension from duty if —
  - (a) the FES Commissioner decides not to make a disciplinary charge against the employee; or
  - (b) a disciplinary charge made against the employee is withdrawn under regulation 137B; or
  - (c) the employee is found under regulation 137C(4)(b) not to have committed a breach of discipline.
- (4) Any pay withheld from an employee while suspended from duty is forfeited to the operating account of the Department if a disciplinary finding is made against the employee.
- (5) An employee is entitled to have any pay withheld from the employee restored to the employee if the suspension from duty is removed under subregulation (3).

**137A. Notification of disciplinary charge**

- (1) If the FES Commissioner decides to make a disciplinary charge against an employee, the FES Commissioner must give the employee a copy of the charge together with a written notice directing the employee to reply in writing to the charge, in accordance with subregulation (2), within 7 working days after receiving the copy of the charge.
- (2) The reply to the disciplinary charge must —
  - (a) state whether the employee admits or denies the charge; and
  - (b) be signed by the employee or the person acting for or on behalf of the employee.

- (3) If the employee does not reply to the disciplinary charge within 7 working days after receiving the copy of the charge, the employee is taken to deny the charge.

**137B. Withdrawal of disciplinary charge**

The FES Commissioner may at any time withdraw a disciplinary charge made against an employee by giving written notice to that effect to the employee.

**137C. Inquiry**

- (1) The FES Commissioner must conduct an inquiry in relation to a disciplinary charge made against an employee as soon as practicable.
- (2) The FES Commissioner must give the employee —
  - (a) written notice of the time and place at which the inquiry will be held at least 7 days before the commencement of the inquiry; and
  - (b) copies of all documents intended to be used at the inquiry.
- (3) If the employee fails to appear at the inquiry, and the FES Commissioner is satisfied that the employee was given notice of the inquiry in accordance with subregulation (2), the FES Commissioner may conduct the inquiry in the employee's absence.
- (4) At the conclusion of the inquiry, the FES Commissioner must make —
  - (a) a finding that the employee has committed a breach of discipline; or
  - (b) a finding that the employee has not committed a breach of discipline.
- (5) The FES Commissioner must give the employee written notice of the finding and, in the case of a disciplinary finding, of the FES Commissioner's decision under regulation 137D in relation to the finding.

**137D. Action if disciplinary finding made**

If, at the conclusion of an inquiry, the FES Commissioner makes a disciplinary finding, the FES Commissioner must decide, in respect of the employee —

- (a) to take disciplinary action; or
- (b) to take improvement action; or
- (c) to take both disciplinary action and improvement action; or
- (d) to take no action.

**137E. Expenses**

If, at the conclusion of an inquiry, the FES Commissioner makes a finding under regulation 137C(4)(b), the employee must be paid the reasonable expenses incurred by the employee in connection with defending the disciplinary charge at the inquiry, as fixed by the FES Commissioner.

**137F. Right of appeal: decision of delegate of FES Commissioner**

- (1) This regulation applies if a delegate of the FES Commissioner makes —
  - (a) a disciplinary finding against an employee; or
  - (b) a decision under regulation 137D in respect of an employee.
- (2) The employee may appeal to the FES Commissioner against the finding or decision.
- (3) An employee who decides to bring an appeal under this regulation must give written notice of the appeal to the FES Commissioner within 7 days after receiving notice of the finding or decision appealed against.

**137G. Right of appeal: decision of FES Commissioner**

- (1) In this regulation —

*appellable decision* means —

  - (a) a disciplinary finding made by the FES Commissioner; or
  - (b) a decision made by the FES Commissioner under regulation 137D; or
  - (c) a decision made by the FES Commissioner on an appeal under regulation 137F.
- (2) An employee may appeal to the Appeal Board against an appellable decision made in respect of the employee.
- (3) An employee who decides to bring an appeal under this regulation must give written notice of the appeal to the FES Commissioner within 7 days after receiving notice of the appellable decision.

**137H. Notice of appeal**

- (1) In this regulation —

*notice of appeal* means a notice given to the FES Commissioner under regulation 137F(3) or 137G(3).

- (2) A notice of appeal must —
  - (a) give details of the finding or decision appealed against; and
  - (b) set out the grounds of appeal; and
  - (c) be signed by the employee (or the person acting for or on behalf of the employee).
- (3) An employee must give a notice of appeal to the FES Commissioner personally or by registered post.

**137I. Appeal Board**

- (1) The Appeal Board must consist of a chairperson and 2 members appointed by the FES Commissioner.
- (2) The chairperson of the Appeal Board must be —
  - (a) a magistrate; or
  - (b) if a magistrate is unable or unwilling to act, a person who has the necessary qualifications for appointment as a magistrate.
- (3) One of the members of the Appeal Board must be a person —
  - (a) nominated by the trade union or other association of which the appellant is a member; or
  - (b) if the appellant is not a member of a trade union or other association, nominated by the appellant.
- (4) The FES Commissioner is authorised to pay to the chairperson and members of the Appeal Board such fees as are agreed.

**138. Provisions about appeals**

- (1) In this regulation —

***appeal body*** means —

  - (a) in relation to an appeal brought under regulation 137F — the FES Commissioner; or
  - (b) in relation to an appeal brought under regulation 137G — the Appeal Board.
- (2) In the case of an appeal brought under regulation 137F or 137G the following provisions apply —
  - (a) the appeal body must appoint a time for the determination of the appeal;
  - (b) the time appointed must be within 28 days of the receipt of the notice of appeal by the FES Commissioner;



- (c) the parties to the appeal must be given at least 7 days' written notice of the time appointed;
- (d) subject to paragraph (e), the appeal body may —
  - (i) confirm, vary or set aside the finding or decision the subject of the appeal; and
  - (ii) if it sets aside the finding or decision, substitute its own finding or decision;
- (e) the appeal body must set aside a decision made under regulation 137D in respect of the appellant if the appeal body sets aside the finding to which the decision relates;
- (f) the appeal body must give the appellant written notice of its decision on the appeal;
- (g) the appeal body may fix and award to the appellant reasonable expenses of conducting the appellant's case;
- (h) the appeal may be brought on the grounds of innocence of the disciplinary charge or excessive severity of the action taken under regulation 137D.

**11. Regulation 139 amended**

- (1) Delete regulation 139(1A) and insert:
  - (1A) The following provisions apply in respect of an inquiry or an appeal brought under regulation 137F or 137G.
- (2) In regulation 139(4):
  - (a) delete "Chairman" and insert:

chairperson
  - (b) delete the passage that begins with "hearing of — " and ends with "shall" and insert:

hearing of the inquiry or appeal must
- (3) In regulation 139(5) delete "The Secretary or a person" and insert:

A person
- (4) Delete regulation 139(8).

**12. Regulation 140 amended**

In regulation 140:

- (a) delete “regulations 135, 137,” and insert:  
  
regulation 136, 137, 137A, 137C, 137F, 137G, 137H,
- (b) delete “Chairman” and insert:  
  
chairperson
- (c) renumber paragraphs (i), (ii) and (iii) as paragraphs (a), (b) and (c).

Note: The heading to amended regulation 140 is to read:

**Remedial power of chairperson of Appeal Board**

**13. Regulations 141, 142 and 142A inserted**

After regulation 140 insert:

**141. Action that may be taken if employee convicted of serious offence**

- (1) In this regulation —  
*serious offence* means —
  - (a) an indictable offence against a law of the State (whether or not the offence is or may be dealt with summarily), another State or a Territory of the Commonwealth or the Commonwealth; or
  - (b) an offence against the law of another State or a Territory of the Commonwealth that would be an indictable offence against a law of this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or
  - (c) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or
  - (d) an offence, or an offence of a class, prescribed under the *Public Sector Management Act 1994* section 108.

- (2) Despite the *Sentencing Act 1995* section 11, if an employee is convicted or found guilty of a serious offence, the FES Commissioner may decide, with respect to the employee —
  - (a) to take disciplinary action; or
  - (b) to take improvement action; or
  - (c) to take both disciplinary action and improvement action; or
  - (d) to take no action.
- (3) Before the FES Commissioner takes action with respect to an employee under subregulation (2), the FES Commissioner must give the employee an opportunity to make a submission in relation to the proposed action.

**142. Payment and recovery of fine**

- (1) An employee must pay to the FES Commissioner the amount of any fine imposed on the employee by way of disciplinary action under this Division.
- (2) If an employee fails to comply with subregulation (1), the FES Commissioner may recover the amount in a court of competent jurisdiction as a debt owing to the State.

**142A. Giving documents to employee**

A requirement in this Division to give a written notice or other document to an employee is a requirement to give the notice or other document to the employee (or the person acting for or on behalf of the employee) personally or by registered post.

**14. Part VI Division 4 heading inserted**

Before regulation 143 insert:

**Division 4 — Indemnity**

**15. Regulation 158 amended**

In regulation 158 in the definition of *Association* delete “1987;” and insert:

*2015;*

**16. Regulation 190 amended**

In regulation 190(1) in the proviso paragraph (c) delete “Second Schedule of the above Act.” and insert:

*Workers’ Compensation and Injury Management Act 1981*  
Schedule 2.

M. INGLIS, Clerk of the Executive Council.

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