

Western Australia

**Fire and Emergency Services Legislation
Amendment Act 2002**

As at 20 Nov 2002

No. 38 of 2002

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Fire and Emergency Services Legislation Amendment Act 2002

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Western Australia

Fire and Emergency Services Legislation Amendment Act 2002

No. 38 of 2002

An Act to amend —

[Assented to 20 November 2002]

- **the *Fire and Emergency Services Authority of Western Australia Act 1998*;**
 - **the *Bush Fires Act 1954*;**
 - **the *Fire Brigades Act 1942*; and**
 - **the *Fire Brigades Superannuation Act 1985*,**
- to make consequential amendments to various other Acts, to repeal the *Fire Brigades Amendment Act (No. 2) 1982*, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Fire and Emergency Services Legislation Amendment Act 2002*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — Amendments to the *Fire and Emergency Services Authority of Western Australia Act 1998*

3. The Act amended

The amendments in this Part are to the *Fire and Emergency Services Authority of Western Australia Act 1998**.

[* *Act No. 41 of 1998.*

For subsequent amendments see Act No. 10 of 2001.]

4. Section 3 amended

- (1) Section 3 is amended by inserting the following definitions in the appropriate alphabetical positions —

“

“assistance operation” means an operation to provide assistance to —

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

in performing its functions;

“FESA activities” means —

- (a) the prevention, control and extinguishment of fires;
- (b) the prevention and control of other incidents;

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

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

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

“incident” means —

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

(v) a monitoring activity;

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

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

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

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

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

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

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

”.

(2) Section 3 is amended as follows:

- (a) by deleting the definition of “emergency services volunteers”;
- (b) at the end of the definition of “the emergency services Act” by deleting the full stop and inserting a semicolon instead.

5. Section 6 amended

Section 6(1) is amended as follows:

- (a) in paragraph (b) by deleting “3” and inserting instead —
“ 4 ”;
- (b) by deleting paragraph (c) and inserting the following paragraphs instead —
“
 - (c) one person who, in the Minister’s opinion, represents members and officers of a private fire brigade or volunteer fire brigade, as those terms are defined in the *Fire Brigades Act 1942*;
 - (ca) one person who, in the Minister’s opinion, represents volunteer fire fighters, within the meaning of the *Bush Fires Act 1954*;
 - (cb) one person who, in the Minister’s opinion, represents members of SES Units;
 - (cc) one person who, in the Minister’s opinion, represents members of VMRS Groups; and
 - (cd) one person who, in the Minister’s opinion, represents members of staff;”.

6. Section 7 amended

Section 7(1) is amended by inserting after “(c),” —

“ (ca), (cb), (cc), (cd), ”.

7. Section 11 amended

Section 11(1) is amended by inserting after “in it by” —

“ or under ”.

8. Section 12 amended

(1) After section 12(2)(c) the following paragraph is inserted —

“

- (ca) make such charges as it determines for anything done by it in the performance of its functions under section 26A of the *Fire Brigades Act 1942*;

”.

(2) Section 12(2)(d) is amended by inserting after “paragraph (c)” —

“ or (ca) ”.

(3) After section 12(2) the following subsection is inserted —

“

- (2a) Subsection (2)(c) and (ca) do not apply in relation to any facility, service or other thing in respect of which rent, fees or charges may be prescribed under an emergency services Act.

”.

9. Section 13 amended

(1) Section 13(2) is repealed and the following subsection is inserted instead —

“

(2) The following names are operational names —

- (a) Bush Fire Service of Western Australia;
- (b) FESA Fire and Emergency Services;
- (c) FESA Fire Services;
- (d) Fire and Rescue Service of Western Australia;
- (e) State Emergency Service; and
- (f) Volunteer Marine Rescue Services.

”.

s. 10

(2) After section 13(3) the following subsection is inserted —

“

- (4) If a group of persons (a “**brigade**”) is both a bush fire brigade under the *Bush Fires Act 1954* and a volunteer brigade under the *Fire Brigades Act 1942*, the brigade may, with the approval of the Authority, operate under the name FESA Fire Services Brigade or any other name approved by the Authority.

”.

10. Sections 15 and 16 replaced

Sections 15 and 16 are repealed and the following sections are inserted instead —

“

15. Delegation by Minister and Authority

- (1) The Minister may, in writing, delegate to the Authority the performance of any of the Minister’s functions under the emergency services Acts.
- (2) The Authority may, in writing, delegate —
- (a) to the chief executive officer — the performance of any of the Authority’s functions under the emergency services Acts;
 - (b) to a member of an SES Unit — any of its powers under section 18B;
 - (c) to a member of a VMRS Group — any of its powers under section 18G; and
 - (d) to a member of a FESA Unit — any of its powers under section 18L.

- (3) Performance by a delegate of a function delegated under subsection (1) or (2) —
 - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the delegator.
- (4) Except as provided in section 16 a delegation under this section does not include the power to subdelegate.
- (5) Nothing in this section is to be read as limiting the ability of the Authority to act through the board, members of staff or agents in the normal course of business.

16. Subdelegation

- (1) The Minister may, in an instrument by which a function is delegated under section 15(1), authorise the Authority to subdelegate that function to —
 - (a) the chief executive officer;
 - (b) a member; or
 - (c) a member of staff.
- (2) The Authority may, in an instrument by which a function is delegated under section 15(2)(a), authorise the chief executive officer to subdelegate that function to —
 - (a) a member;
 - (b) a member of staff; or
 - (c) a consultative committee.
- (3) A subdelegation under this section must be made in writing.

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- (4) Performance by a subdelegate of a function subdelegated under subsection (1) or (2) —
 - (a) is taken to be in accordance with the terms of a subdelegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the delegator who made the original delegation under section 15.
- (5) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under this section in the same way as they apply to a delegation.

”.

11. Parts 3A, 3B and 3C inserted

After section 18 the following Parts are inserted —

“

Part 3A — State Emergency Service

18A. Functions of the Authority

The functions of the Authority under this Part are —

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

18B. Powers of the Authority

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing its functions under this Part the Authority may —
 - (a) provide equipment and training to SES Units;
and
 - (b) carry out the functions of an SES Unit.
- (3) Without limiting subsection (1), for the purpose of —
 - (a) protecting and saving life and property endangered by a natural disaster;
 - (b) rendering safe the site of a natural disaster;
 - (c) carrying out a search and rescue operation; or
 - (d) carrying out an assistance operation,the Authority may —
 - (e) enter any land, building, area of water or other place;
 - (f) take control of or make use of any land, building, vehicle, vessel or other thing;
 - (g) damage or destroy any building, vehicle, vessel or other thing;
 - (h) move any vehicle, vessel or other movable thing;
 - (i) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and
 - (j) restrict or prohibit the movement of persons and vehicles including, if necessary, by the closure of roads.

- (4) In exercising a power under subsection (3) the Authority may use such force as is reasonably necessary.

18C. Approval of SES Units

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

18D. Register of members of SES Unit

An SES Unit must —

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

18E. Functions of an SES Unit

- (1) The functions of an SES Unit are —
 - (a) to take all practicable measures —
 - (i) for protecting and saving life and property endangered by natural disasters; and
 - (ii) for rendering safe the site of natural disasters;

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

Part 3B — Volunteer Marine Rescue Services

18F. Functions of the Authority

The functions of the Authority under this Part are —

- (a) to provide for the carrying out of monitoring activities and marine search and rescue operations;
- (b) to promote the safety of life and property from natural disasters, accidents and other events that

may require marine search and rescue operations to be carried out;

- (c) to provide for the carrying out of assistance operations; and
- (d) to have general responsibility for all VMRS Groups.

18G. Powers of Authority

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

- (f) restrict or prohibit the movement of persons, vehicles and vessels, including, if necessary, by the closure of roads or areas of water.
- (4) In exercising a power under subsection (3) the Authority may use such force as is reasonably necessary.

18H. Approval of VMRS Groups

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

18I. Register of members of VMRS Group

A VMRS Group must —

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

18J. Functions of a VMRS Group

- (1) The functions of a VMRS Group are —
 - (a) to carry out monitoring activities and marine search and rescue operations;

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

Part 3C — FESA Units

18K. Functions of the Authority

The functions of the Authority under this Part are —

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

18L. Powers of the Authority

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

- (5) An authorisation under subsection (2)(b) may be made subject to any conditions, qualifications, limitations or exceptions the Authority considers appropriate.

18M. Approval of FESA Units

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

18N. Register of members of FESA Unit

A FESA Unit must —

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

18O. Functions of a FESA Unit

- (1) The function of a FESA Unit is to perform those FESA activities that the Authority authorises the Unit to perform under section 18L(2)(b).
- (2) For the purposes of performing its functions a FESA Unit may —
 - (a) acquire and maintain equipment;
 - (b) carry out training activities and exercises;

- (c) carry out demonstrations and other public education activities;
- (d) carry out fundraising and promotional activities;
- (e) organise and participate in competitions;
- (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and
- (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

”.

12. Section 22 amended

Section 22(1) is amended as follows:

- (a) by deleting “3” and inserting instead —
“ 4 ”;
- (b) after paragraph (b) by deleting “and”;
- (c) at the end of paragraph (c) by deleting the full stop and inserting instead —
“ ; and ”;
- (d) after paragraph (c) by inserting the following paragraph —
“
 - (d) Volunteer Marine Rescue Services Consultative Committee.”.

”.

13. Section 37 amended

(1) After section 37(1) the following subsection is inserted —

“

(1a) Without limiting subsection (1) a person is taken to be performing a function under an emergency services Act if the person is —

(a) a member or officer of a private fire brigade or a volunteer fire brigade who is taking part in an activity carried out by the brigade for the purposes for which it was formed;

(b) a volunteer fire fighter who is carrying out normal brigade activities (within the meaning of the *Bush Fires Act 1954*);

(c) taking part in the performance by an SES Unit of its functions under Part 3A and is either —

(i) a member of the SES Unit; or

(ii) acting under the direction of a member of the SES Unit or a member of staff;

(d) taking part in the performance by a VMRS Group of its functions under Part 3B and is either —

(i) a member of the VMRS Group; or

(ii) acting under the direction of a member of the VMRS Group or a member of staff;

or

(e) taking part in the performance by a FESA Unit of its functions under Part 3C and is either —

(i) a member of the FESA Unit; or

(ii) acting under the direction of a member of the FESA Unit or a member of staff.

”.

- (2) Section 37(2) is amended by deleting “vehicle.” and inserting instead —

“

vehicle if, at the time of the death or bodily injury —

- (a) the vehicle was owned or was being driven by a person who, but for subsection (1), would incur liability in respect of the death or injury; and
- (b) there was in force in respect of the vehicle a contract of insurance in accordance with section 4 of the *Motor Vehicle (Third Party Insurance) Act 1943* or the corresponding legislation of a State or Territory prescribed for the purposes of section 3(4) of that Act.

”.

- (3) Section 37(5) is amended by deleting “the property damaged, lost or injured,” and inserting instead —

“ that property against damage by fire, ”.

- (4) Section 37(6) is amended as follows:

- (a) by inserting after paragraph (a) —
“ and ”;
- (b) at the end of paragraph (b) by deleting “; and” and inserting a full stop instead;
- (c) by deleting paragraph (c).

14. Sections 38A, 38B and 38C inserted

After section 38 the following sections are inserted —

“

38A. Offences in relation to SES and VMRS operations

- (1) A person must not obstruct or hinder a relevant officer in the performance of the officer's functions under Part 3A or 3B.

Penalty: \$5 000.

- (2) A person must not wilfully damage or interfere with —
- (a) the property of an SES Unit, a VMRS Group or a FESA Unit; or
 - (b) any property of the Authority used for the performance of its functions under Part 3A, 3B or 3C.

Penalty: \$5 000.

- (3) In this section —

“**relevant officer**” means —

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

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

38B. Improper use of names, symbols etc.

- (1) Unless authorised under an emergency services Act or in writing by the chief executive officer, a person must not use —

- (a) the name of the Authority or an operational name (within the meaning of section 13);
- (b) any abbreviation of any of those names;

- (c) a prescribed symbol; or
- (d) any symbol that so closely resembles a prescribed symbol that it is capable of being mistaken for it.

Penalty: \$5 000.

- (2) Unless authorised under an emergency services Act or in writing by the chief executive officer, a person must not —

- (a) use any name, title, description or symbol that expresses or implies an association with the Authority; or
- (b) otherwise represent that the person is associated with the Authority.

Penalty: \$5 000.

- (3) In this section —

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

38C. Impersonation of member of staff or volunteer

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

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

Penalty: \$5 000.

”.

Part 3 — Amendments to the *Bush Fires Act 1954*

15. The Act amended

The amendments in this Part, other than section 41, are to the *Bush Fires Act 1954**.

[* Reprinted as at 20 January 1997.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 48-9.]

16. Section 4 amended

Section 4(a) is amended by deleting “*Forests Act 1918*” and inserting instead —

“ *Conservation and Land Management Act 1984* ”.

17. Section 6 repealed

Section 6 is repealed.

18. Section 7 amended

Section 7 is amended as follows:

- (a) by inserting the following definition in the appropriate alphabetical position —

“

“**authorised CALM Act officer**” means a wildlife officer, forest officer, ranger or conservation and land management officer who is authorised for the purposes of section 45(3a) of the *Conservation and Land Management Act 1984*;

”;

- (b) by deleting the definition of “forest officer”.

19. Section 13 amended

- (1) Section 13(3) is amended by deleting “In” and inserting instead —
- “ Subject to subsection (4), in ”.
- (2) After section 13(3) the following subsections are inserted —
- “
- (4) Where a bush fire is burning in the district of a local government the Authority may, at the request of the local government, authorise a bush fire liaison officer to take control of all operations in relation to that fire.
- (5) If a bush fire liaison officer takes control of all operations in relation to a fire, all —
- (a) bush fire control officers; and
- (b) officers and members of a bush fire brigade,
- who are present at the fire are in all respects subject to, and are to act under, the bush fire liaison officer’s orders and directions.

”.

20. Section 14 amended

Section 14 is amended as follows:

- (a) at the beginning of the section by inserting the subsection designation “(1)”;
- (b) at the end of the section by inserting the following subsection —

“

- (2) A bush fire liaison officer or a member of the police force exercising the power conferred by subsection (1)(e) may remove from the land or building, and keep possession of, anything which may tend to prove the origin of the fire.

”.

s. 21

21. Section 17 amended

Section 17(12) is amended by deleting “\$2 000 or 6 months” and inserting instead —

“ \$10 000 or 12 months’ ”.

22. Section 18 amended

(1) After section 18(4) the following subsection is inserted —

“

(4a) In any year in which the Authority considers that seasonal conditions warrant a variation of the restricted burning times in a zone, or part of a zone, of the State the Authority may, by notice published in the *Gazette*, vary the restricted burning times in respect of that year in the zone or part of the zone by —

- (a) shortening, extending, suspending or reimposing a period of restricted burning times; or
- (b) imposing a further period of restricted burning times.

”.

(2) Section 18(5)(b) is amended by deleting “declared by the Authority in respect of that zone by declaration published in the *Gazette*.” and inserting instead —

“

that would, in the absence of the variation under this subsection, be part of the restricted burning times for that zone in that year.

”.

- (3) Section 18(12) is amended by deleting the penalty clause and inserting the following clause instead —

“

Penalty: For a first offence \$4 500.

For a second or subsequent offence \$10 000.

”.

23. Section 21 amended

Section 21(2)(a) is amended by deleting “\$2 000 or 6 months’ ” and inserting instead —

“ \$20 000 or 12 months’ ”.

24. Sections 24C to 24G inserted

After section 24B the following sections are inserted —

“

24C. Interpretation for sections 24C to 24G

In this section and sections 24D to 24G —

“**burn garden refuse**” means light or use a fire in the open air for the purpose of destroying garden refuse or rubbish or for any like purpose;

“**limited burning times**”, in respect of a place, means —

- (a) the restricted burning times; and
- (b) the prohibited burning times,

for that place but excluding any time when there is in force a fire danger forecast issued for that place by the Bureau of Meteorology in Perth of “extreme” or “very high”;

“**rubbish tip**” means a landfill site of a kind that is prescribed for the purposes of Part V of the *Environmental Protection Act 1986*;

“**specified**”, in relation to a notice, means specified in the notice.

24D. Burning garden refuse prohibited if fire danger is extreme or very high

A person must not burn garden refuse at any place at any time when there is in force a fire danger forecast issued for that place by the Bureau of Meteorology in Perth of “extreme” or “very high”.

Penalty: \$3 000.

24E. Burning of garden refuse at rubbish tips

- (1) A person must not burn garden refuse at a rubbish tip during the limited burning times for the area in which the tip is located unless it is burned in accordance with a notice published under subsection (2).

Penalty: \$10 000.

- (2) On the recommendation of the Chief Executive Officer the Minister may, by notice published in the *Gazette*, permit the burning of garden refuse at a rubbish tip during the limited burning times for the area in which the tip is located.
- (3) In a notice under subsection (2) the Minister —
- (a) must specify —
 - (i) the person or class of persons to whom;
 - (ii) the area in which; and
 - (iii) the period during which, the notice applies; and
 - (b) may impose such conditions on the burning of garden refuse as the Minister considers appropriate.
- (4) The Minister may vary or cancel a notice under this section by publishing a further notice.

24F. Burning garden refuse during limited burning times

- (1) A person must not burn garden refuse at a place (other than a rubbish tip) during the limited burning times for that place unless it is burned —
- (a) in an incinerator in accordance with subsection (2); or
 - (b) on the ground in accordance with subsection (3).

Penalty: \$3 000.

- (2) Garden refuse burned in an incinerator is burned in accordance with this subsection if —
- (a) the incinerator is designed and constructed so as to prevent the escape of sparks or burning material;
 - (b) either —
 - (i) the incinerator is situated 2 metres or more away from any building or fence; or
 - (ii) if the incinerator is within 2 metres of a building or fence, the local government has given written permission for the incinerator to be used;
 - (c) there is no inflammable material within 2 metres of the incinerator while it is in use;
 - (d) at least one person is present at the site of the fire at all times until it is completely extinguished; and
 - (e) when the fire is no longer required, the person ensures that the fire is completely extinguished by the application of water or earth.

- (3) Garden refuse burned on the ground is burned in accordance with this subsection if —
 - (a) there is no inflammable material (other than that being burned) within 5 metres of the fire at any time while the fire is burning;
 - (b) the fire is lit between 6 p.m. and 11 p.m. and is completely extinguished before midnight on the same day;
 - (c) at least one person is present at the site of the fire at all times until it is completely extinguished; and
 - (d) when the fire is no longer required, the person ensures that the fire is completely extinguished by the application of water or earth.
- (4) A local government must not give permission under subsection (2)(b)(ii) unless it is satisfied that the use of the incinerator is not likely to create a fire hazard.

24G. Minister or local government may further restrict burning of garden refuse

- (1) On the recommendation of the Chief Executive Officer the Minister may, by notice published in the *Gazette*, prohibit or impose restrictions on the burning of garden refuse that is otherwise permitted under section 24F.
- (2) A local government may, by notice published in the *Gazette* and a newspaper circulating in its district, prohibit or impose restrictions on the burning of garden refuse within its district that is otherwise permitted under section 24F.
- (3) A person must not burn garden refuse contrary to a prohibition or restriction imposed under this section.
Penalty: \$3 000.

- (4) In a notice under this section the Minister or a local government must specify —
- (a) the person or class of persons to whom;
 - (b) the area in which; and
 - (c) the period during which,
- the notice applies.
- (5) The Minister or a local government may vary or cancel a notice under subsection (1) or (2) by publishing a further notice under the relevant subsection.

”.

25. Section 25 amended

Section 25(1) is amended as follows:

- (a) by deleting “sections 25A and 25B” and inserting instead —
“ section 25A ”;
- (b) by deleting paragraphs (d) and (e).

26. Section 25A amended

Section 25A is amended as follows:

- (a) by deleting “Authority” in the 2 places where it occurs and inserting in each place instead —
“ Chief Executive Officer ”;
- (b) by deleting “for the purpose of burning any trade refuse from or in connection with an industry, trade, process or operation (including the burning during testing operations of gas or oil during the operation of drilling for petroleum and the burning of gas or oil in connection with the testing, operation, maintenance or repair of a gas or oil pipeline)”.

27. Section 25B repealed and transitional

- (1) Section 25B is repealed.
- (2) Despite the repeal effected by subsection (1) a rubbish tip notice that is in force immediately before the commencement day continues in force until the day 5 years after the day on which the notice was published in the *Gazette*, subject to the *Bush Fires Act 1954* (as amended by this Act), as if it were a notice issued under section 24E of that Act, permitting the specified local government to burn garden refuse at the specified place in accordance with the specified conditions (if any).
- (3) In subsection (2) —
 - “**commencement day**” means the day on which this section comes into operation;
 - “**rubbish tip notice**” means —
 - (a) the *Bush Fires (Section 25B) Notice 2000 — Shire of Broome* issued by the Minister under section 25B of the *Bush Fires Act 1954* and published in the *Gazette* on 28 April 2000;
 - (b) the *Bush Fires (Section 25B) Notice 2000 — Shire of Williams* issued by the Minister under section 25B of the *Bush Fires Act 1954* and published in the *Gazette* on 18 August 2000; or
 - (c) the *Bush Fires (Section 25B) Notice 2000 — Shire of Pingelly* issued by the Minister under section 25B of the *Bush Fires Act 1954* and published in the *Gazette* on 18 August 2000;
 - “**specified**”, in relation to a rubbish tip notice, means specified in the notice.

28. Section 33 amended

Section 33(2a) is amended by deleting “section 31 of the *Interpretation Act 1918*” and inserting instead —

“ sections 75 and 76 of the *Interpretation Act 1984* ”.

29. Section 38 amended

Section 38(1) is amended by inserting after “officers shall” —

“ subject to section 38A(2) ”.

30. Section 38A inserted

After section 38 the following section is inserted —

“

38A. Authority may appoint Chief Bush Fire Control Officer

- (1) At the request of a local government the Authority may appoint a member of staff (as defined in the FESA Act) to be the Chief Bush Fire Control Officer for the district of that local government.
- (2) Where a Chief Bush Fire Control Officer has been appointed under subsection (1) for a district the local government is not to appoint a Chief Bush Fire Control Officer under section 38(1).
- (3) The provisions of this Act, other than section 38(3), (4) and (5) apply to and in relation to the Chief Bush Fire Control Officer appointed under this section as if he or she were a Chief Bush Fire Control Officer appointed under section 38 by the local government.

s. 31

- (4) Section 38(3), (4) and (5) apply to and in relation to the Chief Bush Fire Control Officer appointed under this section as if —
- (a) he or she were a Chief Bush Fire Control Officer appointed under section 38 by the local government; and
 - (b) the references in those subsections to the local government were references to the Authority.

31. Section 39 amended

Section 39(1)(a) is amended by deleting “Chief Officer of Fire Brigades” and inserting instead —

“ Director of Operations ”.

32. Section 41 amended

(1) Section 41(2) is amended as follows:

- (a) by inserting after “brigades” —
“ and their members ”;
- (b) by inserting after “subsection (1)” —
“ and each member of each such brigade ”.

(2) After section 41(2) the following subsection is inserted —

“

- (2a) A local government is to notify the Authority as soon as practicable after any changes occur in any of the details required to be recorded in the register under subsection (2).

33. Section 42 amended

Section 42(2) is amended by inserting after “brigade” —

“ and its members ”.

34. Section 42A inserted

After section 42 the following section is inserted —

“

42A. Constitution of bush fire brigade

Any group of persons, however constituted and whether incorporated or not, may be established as a bush fire brigade under section 41(1) or 42(1).

”.

35. Section 48 replaced

Section 48 is repealed and the following section is inserted instead —

“

48. Delegation by local governments

- (1) A local government may, in writing, delegate to its chief executive officer the performance of any of its functions under this Act.
- (2) Performance by the chief executive officer of a local government of a function delegated under subsection (1) —
 - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the local government.
- (3) A delegation under this section does not include the power to subdelegate.
- (4) Nothing in this section is to be read as limiting the ability of a local government to act through its council, members of staff or agents in the normal course of business.

”.

s. 36

36. Section 59 amended

Section 59(3) is amended by deleting “chief executive officer.”.

37. Section 59A amended

Section 59A(5) is amended by deleting “28 days” and inserting instead —

“ 60 days ”.

38. Section 64 amended

Section 64 is amended by inserting after “section 21(2),” —

“ section 24A(2), section 24B(3), ”.

39. Various sections amended — penalties

The provisions listed in the first column of the Table to this section are amended by deleting the amount set out in the second column of that Table opposite that provision and inserting instead the amount set out in the third column of that Table.

Table

Provision	Delete	Insert
s. 18(11)	\$100	\$10 000
s. 25(2)	\$1 000	\$3 000
s. 25A(4)	\$1 000	\$10 000
s. 25A(7)	\$1 000	\$10 000
s. 26(4)	\$400	\$2 000
s. 26A(2)	\$400	\$2 000
s. 27(1)	\$500	\$5 000
s. 27(5)	\$500	\$5 000
s. 27(7)(d)	\$500	\$5 000
s. 27A(1)(b)	\$500	\$10 000

Provision	Delete	Insert
s. 27B(1)	\$500	\$5 000
s. 27C(1)	\$500	\$5 000
s. 28(2)	\$1 000	\$10 000
s. 30	\$500	\$5 000
s. 33(3)	\$1 000	\$5 000
s. 46(2)	\$1 000	\$10 000
s. 50(2)(d)	\$200	\$1 000
s. 53(2)	\$200	\$10 000
s. 56(3)	\$500	\$1 000
s. 57	\$1 000	\$5 000
s. 58(1)	\$200	\$2 000
s. 58(3)(b)	\$400	\$1 000
s. 59A(8)(b)	\$200	\$1 000
s. 61(2)	\$500	\$5 000

40. Various sections amended — authorised CALM Act officers

- (1) The provisions listed in the Table to this subsection are amended by deleting “a forest officer” and inserting instead —
 “ an authorised CALM Act officer ”.

Table

s. 17(7)(a)	s. 45(a), (b)
s. 18(5)(a)	s. 46(1)(b) (in 2 places)
s. 25(1)(g)	s. 56(1)(a), (2)
s. 27D(2)(b), (3)(b)	s. 57
s. 28(3)	s. 58(3) (in 2 places)
s. 39(2)(a)	s. 59(2)(a)

- (2) The provisions listed in the Table to this subsection are amended by deleting “forest officer” and inserting instead —
 “ authorised CALM Act officer ”.

s. 41

Table

s. 25(1)(b), (h)	s. 28(4)(a) (in 2 places)
s. 27A(1)(aa)	s. 39(2)(a) (in the 2 nd place)
s. 27B(1)	

41. Consequential amendment to *Conservation and Land Management Act 1984*

- (1) The amendments in this section are to the *Conservation and Land Management Act 1984**.

[* Reprinted as at 26 March 1999.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 73-5.]

- (2) After section 45(3) the following subsection is inserted —

“

- (3a) In addition, wildlife officers, forest officers, rangers and conservation and land management officers who are authorised by the Executive Director for the purposes of this subsection have the functions conferred on them by the *Bush Fires Act 1954*.

”.

- (3) Section 48(1) is amended by deleting “or the *Wildlife Conservation Act 1950*.” and inserting instead —

“

, the *Bush Fires Act 1954* or the *Wildlife Conservation Act 1950*, as the case requires.

”.

Part 4 — Amendments to the *Fire Brigades Act 1942*

42. The Act amended

The amendments in this Part, other than section 62, are to the *Fire Brigades Act 1942*.*

[* *Reprinted as at 18 February 2000.*

For subsequent amendments see Act No. 10 of 2001.]

43. Section 3 repealed

Section 3 is repealed.

44. Section 4 amended

- (1) Section 4(1) is amended by deleting the definition of “Chief Officer” and inserting the following definition instead —

“

“Director” means the Director of Operations referred to in section 31;

”.

- (2) Section 4(1) is amended in the definition of “policy of insurance” by deleting “by order in council” and inserting instead —

“ by notice under section 35A(1) ”.

45. Section 5 amended, and transitional

- (1) Section 5(2) is amended as follows:

- (a) by deleting “Governor may from time to time, by order in council — ” and inserting instead —

“

Minister may, by notice published in the *Gazette* —

”;

s. 46

- (b) after paragraph (g), by deleting “and”;
- (c) by deleting the full stop at the end of paragraph (h) and inserting instead —
“ ; and ”;
- (d) after paragraph (h), by inserting the following paragraph —
“
(i) vary or revoke a notice under this subsection.
”.

(2) Section 5(3) is repealed.

(3) Section 5(5) is amended as follows:

- (a) by deleting “an order” and inserting instead —
“ a notice ”;
- (b) by deleting “on behalf of the Governor”;
- (c) by deleting “the order” in the 2 places where it occurs and inserting in each place instead —
“ the notice ”.

(4) An order made by the Governor under section 5 of the *Fire Brigades Act 1942* that is in force immediately before the day on which this section comes into operation, continues in force on and after that day, subject to the *Fire Brigades Act 1942* (as amended by this Act), as if it were a notice made by the Minister under that section as amended by this Act.

46. Section 5A amended

Section 5A(2) is amended by deleting “Subject to section 6(4), this” and inserting instead —

“ This ”.

47. Section 25 amended

After section 25(c) the following paragraph is inserted —

“

- (ca) to promote the safety of life and property from fire, hazardous material incidents, accidents, explosions or other incidents requiring rescue operations;

”.

48. Section 26A replaced

Section 26A is repealed and the following section is inserted instead —

“

26A. Further powers of the Authority

- (1) Without limiting sections 25 and 26, for the purpose of carrying out its functions under this Act the Authority may, anywhere in the State, do any of the things it is authorised to do under subsection (2).
- (2) Under this subsection the Authority may —
 - (a) establish and operate premises or mobile facilities for the dissemination of information, and sell or grant to any person the right to sell educational materials, souvenirs and refreshments on such premises or from such mobile facilities;
 - (b) create and distribute educational materials in any medium;
 - (c) utilise the apparatus, plant and other property of the Authority and use the employees of the Authority to promote public awareness of the functions of the Authority under this Act or to enhance its public image;

- (d) provide a maintenance and inspection service for fire and hazardous material detection and protection systems and equipment and rescue equipment, and deal in fire-fighting, hazardous material control and rescue equipment to which such service relates;
- (e) turn to account, on its own or jointly with any other person or body, any tangible or intangible resource which the Authority has acquired or developed in the performance of its functions under this Act, and where applicable apply for patents, patent rights, copyrights or similar rights in relation thereto;
- (f) provide any service for which the equipment or skills under the control of the Authority are especially suited, and supply any specialist equipment under the control of the Authority to any person or body;
- (g) enter into financial arrangements with any other party, and receive payment under such arrangements, in relation to the exercise of any power conferred by this paragraph;
- (h) establish facilities or courses of instruction to provide training to any person not employed by the Authority in the skills required to perform a function of the Authority;
- (i) receive gifts of money, by way of sponsorship or otherwise, towards the cost of, and accept by way of gift equipment and other property for use in, the performance of its functions;
- (j) charge and receive the prescribed fees for —
 - (i) the examination of plans and specifications of buildings, and for related advisory and inspection services,

where the examination is made for the purpose of ensuring the safety of life and property from fire or hazardous materials;

- (ii) the confining or ending of a hazardous material incident and rendering the site of the incident safe; and
- (iii) the carrying out of rescue operations; and
- (k) do anything that is incidental to, or is necessary or convenient to be done for, the exercise of any power conferred on it by this section.

”.

49. Section 31 amended, and consequential amendments

- (1) Section 31(1) is repealed and the following subsection is inserted instead —

“

- (1) The Chief Executive Officer shall appoint in accordance with section 29 an officer to be designated as the Director of Operations.

”.

- (2) Section 31(2) is amended by deleting “Chief Officer of Fire Brigades” in the 2 places where it occurs and inserting in each place instead —

“ Director ”.

s. 50

- (3) The provisions listed in the Table to this subsection are amended by deleting “Chief Officer” in each place where it occurs and inserting in each place instead —

“ Director ”.

Table

s. 33	s. 34
s. 33A(1), (1)(b), (3), (4), (5) (in 3 places), (6), (9), (11), (14)(a) and (c), (15) (definition of “presumed occupier”)	s. 36(2) s. 51 s. 58 (in 2 places) s. 67(1) (in 2 places), (2)

50. Section 33 amended

Section 33 is amended by inserting after “any officer” —

“ of the Authority ”;

51. Section 33A amended

- (1) Section 33A(1) is amended by inserting after “an officer” —

“ of the Authority ”;

- (2) Section 33A(15) is amended in the definition of “authorised officer” by deleting “means officer” and inserting instead —

“ means an officer of the Authority ”.

52. Section 34 amended

Section 34 is amended by inserting after “is in charge,” —

“

or an officer of the Authority authorised by the
Authority in that behalf,

”.

53. Section 35 amended

- (1) Section 35(j) is amended by inserting after “fires,” —
“ hazardous material incidents or rescue operations, ”.
- (2) Section 35(pa) is amended by deleting “section 26A(c)” and inserting instead —
“ section 26A(2)(j) ”.

54. Section 35A amended and transitional

- (1) Section 35A(1) is amended as follows:
 - (a) by deleting “Governor may, by Order in Council,” and inserting instead —
“ Minister may, by notice published in the *Gazette*, ”;
 - (b) by deleting “Order so made.” and inserting instead —
“ such notice. ”.
- (2) Section 35A(2) is repealed and the following subsection is inserted instead —
“
 - (2) The Minister may, by notice published in the *Gazette* —
 - (a) declare any district to be a district served by a permanent fire brigade; and
 - (b) vary or cancel a notice under paragraph (a).”.
- (3) An order made by the Governor under section 35A of the *Fire Brigades Act 1942* that is in force immediately before the day on which this section comes into operation, continues in force on and after that day, subject to the *Fire Brigades Act 1942* (as amended by this Act), as if it were a notice made by the Minister under that section as amended by this Act.

55. Section 36 amended

Section 36(1) is amended by deleting “Governor” in the first place where it occurs and inserting instead —

“ Minister ”.

56. Section 39 amended

Section 39(1) is amended in the definition of “declared percentage” by deleting “Order in Council made under this Act” and inserting instead —

“ notice under section 35A(1) ”.

57. Section 44 amended

Section 44(3) is repealed and the following subsection is inserted instead —

“

(3) Such charges shall not exceed the amounts prescribed for the purposes of this section.

”.

58. Section 47A amended

Section 47A is amended as follows:

- (a) after paragraph (a) by inserting —
“ or ”;
- (b) after paragraph (b) by deleting “; or” and inserting a comma instead;
- (c) by deleting paragraph (c).

59. Section 65 amended

- (1) Section 65(1)(a) is amended by deleting “, an amount to be determined by the Authority but not exceeding the fees and charges set out in the Third Schedule.” and inserting instead —
- “
- the fees and charges prescribed for the purposes of this paragraph.
- ”.
- (2) Section 65(2) is amended by deleting “, an amount to be determined by the Authority, but not exceeding the fees and charges mentioned in the Third Schedule.” and inserting instead —
- “
- the fees and charges prescribed for the purposes of this subsection.
- ”.
- (3) Section 65(3) is amended by deleting “the Third Schedule.” and inserting instead —
- “ this section. ”.

60. First Schedule repealed

The First Schedule is repealed.

61. Third Schedule repealed

The Third Schedule is repealed.

62. *Fire Brigades Amendment Act (No. 2) 1982* repealed

The *Fire Brigades Amendment Act (No. 2) 1982* is repealed.

Part 5 — Amendments to the *Fire Brigades Superannuation Act 1985*

63. The Act amended

The amendments in this Part, other than section 74, are to the *Fire Brigades Superannuation Act 1985**.

[* *Act No. 87 of 1985.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 164-5.]

64. Long title amended

The long title is amended by inserting after “bodies,” —

“ **and for certain other persons,** ”.

65. Section 1 amended

Section 1 is amended by deleting “*Brigades*” and inserting instead —

“ *and Emergency Services* ”.

66. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definition of “Commonwealth Act” and inserting the following definition instead —

“

“**Commonwealth Act**” means —

- (a) the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (b) if another Act of the Commonwealth is prescribed for the purposes of this definition, that prescribed Act;

”;

- (b) in the definition of “Commonwealth standards”, by deleting “regulation” and inserting instead —
“ or ”;
- (c) in the definition of “Superannuation Board” by deleting “Western Australian Fire Brigades” and inserting instead —
“ Fire and Emergency Services ”;
- (d) in the definition of “Superannuation Fund” by deleting “Western Australian Fire Brigades” and inserting instead —
“ Fire and Emergency Services ”.

67. Heading to Part II replaced

The heading to Part II is deleted and the following heading is inserted instead —

“

**Part II — The Fire and Emergency Services
Superannuation Board and Fund**

”.

68. Section 4 amended

- (1) Section 4(1) is amended by deleting “Western Australian Fire Brigades” and inserting instead —

“ Fire and Emergency Services ”.

- (2) After section 4(1) the following subsection is inserted —

“

- (1a) The Fire and Emergency Services Superannuation Board is a continuation of, and the same legal entity as, the Western Australian Fire Brigades Superannuation Board established by this section as in force before the commencement of Part 5 of the *Fire and Emergency Services Legislation Amendment Act 2002*.

”.

69. Section 5 amended

- (1) Section 5(1) is repealed and the following subsections are inserted instead —

“

- (1) For the purpose of providing superannuation and other benefits in accordance with this Act there shall be a fund called the Fire and Emergency Services Superannuation Fund.

- (1a) The Fire and Emergency Services Superannuation Fund is a continuation of, and the same fund as, the Western Australian Fire Brigades Superannuation Fund established by this section as in force before the commencement of Part 5 of the *Fire and Emergency Services Legislation Amendment Act 2002*.

”.

- (2) After section 5(3) the following subsection is inserted —

“

- (4) Regulations under section 32 may provide for all or any of the following people to be members of the Superannuation Fund —

- (a) current and former eligible Authority employees;
- (b) current and former associated employees;
- (c) former Fire Brigades Board employees; and
- (d) current and former spouses or de facto partners of the persons referred to in paragraphs (a), (b) and (c).

”.

70. Section 6 amended

Section 6(3)(e) is amended by inserting after “the Superannuation Fund” —

“

, the Superannuation Board, members of the Superannuation Board, or persons provided by the Authority under section 31 to assist the Superannuation Board,

”.

71. Section 7 amended

Section 7(1) is repealed and the following subsection is inserted instead —

“

- (1) The Superannuation Board may invest the assets of the Superannuation Fund in any form of investment that it considers suitable.

”.

72. Section 32 amended

Section 32(a) is deleted and the following paragraph is inserted instead —

“

- (a) providing for all or any of the people referred to in section 5(4) to be members of the Superannuation Fund, and for continuity and cessation of membership;

”.

s. 73

73. Schedule 1 replaced

Schedule 1 is repealed and the following Schedule is inserted instead —

“

**Schedule 1 — Bodies that may be
associated employers**

[s. 3]

United Fire Fighters Union of Western Australia

Western Australian Volunteer Fire and Rescue Services
Association (Inc.)

Fire and Emergency Services Superannuation Board

”.

74. Consequential amendments

Schedule 1 to the *Financial Administration and Audit Act 1985** is amended as follows:

- (a) by inserting the following item in the appropriate alphabetical position —

“

Fire and Emergency Services Superannuation Board

”;

- (b) by deleting the item “Western Australian Fire Brigades Superannuation Board”.

[* *Reprinted as at 24 November 2000.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 150-8, and Act No. 10 of 2001.]

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