

FIRE BRIGADES (No. 2).

No. 111 of 1982.

AN ACT to amend the Fire Brigades Act 1942-1982.

[Assented to 8 December 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Fire Brigades Amendment Act (No. 2) 1982*. Short title and citation.

(2) In this Act the Fire Brigades Act 1942-1982 is referred to as the principal Act. Reprinted as approved on 16 February 1972 and amended by Acts Nos. 107 of 1972, 42 of 1975, 76 and 85 of 1978, 63 of 1979 and 28 of 1982.

(3) The principal Act as amended by this Act may be cited as the Fire Brigades Act 1942-1982. Reprinted as approved on 16 February 1972 and amended by Acts Nos. 107 of 1972, 42 of 1975, 76 and 85 of 1978, 63 of 1979 and 28 of 1982.

Commence-
ment.

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

Section 2
repealed.

3. Section 2 of the principal Act is repealed.

Section 4
amended.

4. Section 4 of the principal Act is amended in subsection (1) by inserting after the definition of "Deputy Chairman" the following definition—

“ “Discipline Code” means the code set out in the Fifth Schedule to this Act; ” .

Section 29
amended.

5. Section 29 of the principal Act is amended—

(a) in subsection (1) by deleting “, and, subject to the provisions of any relevant award under the Industrial Arbitration Act 1979 or of any relevant award or agreement under the Public Service Arbitration Act 1966 and to the regulations, the Board shall have the power of suspension and removal of all such officers and members and employees”;

(b) by inserting after subsection (1a) the following subsections—

“ (1b) Subject to any relevant award or agreement and to the regulations the Board may suspend from duty or dismiss any officer, member or other employee appointed under subsection (1) of this section.

(1c) Notwithstanding any award or agreement an officer, member or other employee appointed under subsection (1) of this section to whom the Discipline Code applies may be suspended from duty, dismissed or otherwise dealt with under and in accordance with the Discipline Code.

(1d) The powers conferred on persons by the Discipline Code are additional to, and do not derogate from, the powers conferred on the Board by subsection (1b) of this section. ” ;

- (c) in subsection (2) by deleting “award under the Industrial Arbitration Act 1979 or of any relevant award or agreement under the Public Service Arbitration Act 1966” and substituting the following—

“ relevant award or agreement ” ;
and

- (d) by inserting after subsection (2) the following subsection—

“ (3) In this section—

“agreement” means an agreement under the Public Service Arbitration Act 1966;

“award” means an award under the Industrial Arbitration Act 1979 or the Public Service Arbitration Act 1966.

6. After section 31 of the principal Act the following section is inserted—

Section 32
inserted.

“ 32. The Chief Officer may, with the approval of the Board, make and issue written standing orders for the management and good order of permanent fire brigades and officers and members thereof and employees of the Board. ” .

Chief Officer
may issue
standing
orders.

Section 35
amended.

7. Section 35 of the principal Act is amended—

(a) in paragraph (d) by deleting “, appointment, suspension, and removal” and substituting the following—

“ and appointment ” ; and

(b) by inserting after paragraph (x) the following paragraph—

“ (xa) for regulating matters relating to the laying, hearing and determination of charges, and the institution, hearing and determination of appeals, under the Discipline Code; ” .

Fifth
Schedule
added.

8. After the Fourth Schedule to the principal Act the following Schedule is added—

“ **THE FIFTH SCHEDULE.**

Discipline Code.

Interpreta-
tion
of this Code.

1. (1) In this code unless the contrary intention appears—

“appeal tribunal” means an appeal tribunal constituted under clause 9;

“clause” means a clause of this code;

“employee” means an employee of the Board;

“member” means a member of a permanent fire brigade;

“officer” means an officer of a permanent fire brigade;

“stipendiary magistrate” and “Chief Stipendiary Magistrate” have the same respective meanings as those expressions have in the Stipendiary Magistrates Act 1957;

“subclause” means a subclause of the clause in which the term is used;

“union” means an industrial union of workers or trade union;

“weekly earnings” in relation to an officer, member or employee, means the amount that would be calculated as the weekly earnings of the officer, member or employee using the method of calculation set out in clauses 11, 12, 13, 14, 15 and 16 of Schedule 1 to the Workers’ Compensation and Assistance Act 1981.

(2) A reference in this code to an Assistant Chief Officer, superintendent or district officer is a reference to a person holding or acting in an office so designated in a permanent brigade.

2. This code applies to—

Application.

- (a) officers and members other than the Chief Officer and Assistant Chief Officers; and
- (b) employees to whom this code is for the time being declared to apply pursuant to clause 3.

3. The Governor may by order—

Code may be applied to employees.

- (a) declare that this code applies to employees specified in the order or of a class specified in the order;
- (b) vary or revoke any order previously made under this clause.

4. Where an officer, member or employee to whom this code applies—

Disciplinary offences.

- (a) commits a breach of a duty or responsibility imposed on him by this Act or by standing orders made and issued by the Chief Officer;
- (b) without lawful or reasonable excuse, disobeys or disregards an order made or given to him by an officer having authority to make or give such an order;
- (c) is negligent or careless in the performance of his duties; or
- (d) commits an act of misconduct that relates to the performance of his duties or his fitness to hold office as an officer, member or employee,

he is guilty of a disciplinary offence for the purposes of this code.

Laying of charges.

5. (1) A charge of a disciplinary offence against an officer, member or employee may be laid—

- (a) before the Chief Officer by an Assistant Chief Officer after investigation by him or after report to him by another officer; or
- (b) before an Assistant Chief Officer by a superintendent, district officer, or officer in charge of a fire station, who has authority or control over the officer, member or employee alleged to have committed the offence.

(2) The Chief Officer or Assistant Chief Officer shall—

- (a) make a record of the charge laid before him under subclause (1) and, if the officer, member or employee charged so requests, cause a written copy of the charge to be supplied to the officer, member or employee; and
- (b) take all such steps as he considers necessary to ensure that the officer, member or employee charged understands the nature of the charge.

(3) It is the intention of this code that a charge of a disciplinary offence shall be laid and dealt with as expeditiously as is practicable.

(4) Where a charge of a disciplinary offence is laid under subclause (1) (a)—

- (a) any charge previously laid under subclause (1) (b) in respect of the same alleged act or omission shall thereupon lapse; and
- (b) no charge shall thereafter be laid under subclause (1) (b) in respect of the same alleged act or omission.

Hearings before Assistant Chief Officer.

6. (1) Where a charge of a disciplinary offence is laid under clause 5 (1) (b) the Assistant Chief Officer before whom the charge is laid shall—

- (a) if satisfied after conducting a hearing of the charge that the offence was committed—
 - (i) reprimand the officer, member or employee charged; or

- (ii) impose a fine on the officer, member or employee charged of not more than the equivalent of the weekly earnings of the officer, member or employee;
- (b) if not satisfied after conducting a hearing of the charge that the offence was committed—dismiss the charge; or
- (c) refer the charge to the Chief Officer with or without suspending the officer, member or employee charged from duty until the charge is dealt with under clause 7.

(2) A reference may be made under subclause (1) (c) before the hearing of the charge is commenced or at any time thereafter prior to the issue of a reprimand or the imposition of a fine under subclause (1) (a) or the dismissal of the charge under subclause (1) (b).

(3) Where, under subclause (1) (c), an Assistant Chief Officer suspends an officer, member or employee from duty the Assistant Chief Officer shall report the suspension to the Chief Officer forthwith.

7. (1) Where a charge of a disciplinary offence laid under clause 5 (1) (a) is referred under clause 6 (1) (c) the Chief Officer shall—

Hearings
before
Chief
Officer.

- (a) if satisfied after conducting a hearing of the charge that the offence was committed—
 - (i) dismiss the officer, member or employee charged;
 - (ii) reduce the officer, member or employee charged in rank or grade for such period as he thinks fit;
 - (iii) reprimand the officer, member or employee charged; or
 - (iv) impose a fine on the officer, member or employee charged of not more than the equivalent of the weekly earnings of the officer, member or employee;

or

- (b) if not satisfied after conducting a hearing of the charge that the offence was committed—dismiss the charge.

(2) Upon the hearing by the Chief Officer of a charge of a disciplinary offence the officer, member or employee charged is entitled to appoint another person who is an officer, member or employee or a person who is an official of a union of which the officer, member or employee charged is a member, and no other person, to represent him before the Chief Officer and the person so appointed (if one is) may examine witnesses and address the Chief Officer on behalf of the person charged.

(3) A penalty of dismissal imposed under subclause (1) (a) (i) on an officer, member or employee shall not take effect—

(a) in the case of an officer, member or employee who appeals under clause 9, until the penalty is confirmed upon determination of the appeal or the appeal is withdrawn or discontinued; or

(b) in any other case, until 7 days after the decision to impose the penalty is given,

and, in every case where a penalty of dismissal is so imposed, the officer, member or employee shall, by operation of this subclause, be suspended from duty until the determination, or the withdrawal or discontinuance, of his appeal or the expiration of the period of 7 days, as the case may require.

Withholding
of and
deductions
from pay.

8. (1) In this clause "pay" means salary or wages.

(2) Where an officer, member or employee is suspended under clause 6 (1) (c) the Chief Officer, upon the suspension being reported to him under clause 6 (3), may direct all or part of the pay that would otherwise accrue to the officer, member or employee during the period of suspension to be withheld from him, and the Board shall give effect to that direction.

(3) Where pay is withheld from an officer, member or employee pursuant to subclause (2)—

(a) if after hearing the charge concerned the Chief Officer—

(i) dismisses the charge; or

(ii) finds that a disciplinary offence was committed but does not dismiss or impose a fine on the officer, member or employee,

any pay so withheld shall be paid to the officer, member or employee;

(b) if after hearing the charge concerned the Chief Officer dismisses the officer, member or employee, subclause (5) shall apply to that pay as if it was pay withheld pursuant to subclause (4);

(c) if after hearing the charge concerned the Chief Officer imposes a fine on the officer, member or employee the amount of the fine may be deducted from the pay so withheld and the balance (if any) of that pay remaining after that deduction shall be paid to the officer, member or employee.

(4) Where an officer, member or employee is suspended from duty by operation of clause 7 (3) all pay that would otherwise accrue to him during the period of suspension shall be withheld from him by the Board.

(5) Where pay is withheld from an officer, member or employee pursuant to subclause (4)—

(a) if after rehearing the charge concerned an appeal tribunal—

(i) dismisses the charge; or

(ii) finds that a disciplinary offence was committed but does not confirm the penalty of dismissal imposed by the Chief Officer or impose a fine on the officer, member or employee,

any pay so withheld shall be paid to the officer or employee;

- (b) if the penalty of dismissal imposed by the Chief Officer takes effect in accordance with clause 7 (3) (a) or (b) the pay so withheld shall be forfeited to the Board;
- (c) if after rehearing the charge concerned an appeal tribunal imposes a fine on the officer, member or employee the amount of the fine may be deducted from the pay so withheld and the balance (if any) of that pay remaining after that deduction shall be paid to the officer, member or employee.

(6) Subject to subclause (7), where after the hearing or rehearing of a charge of disciplinary offence a fine is imposed on the officer, member or employee charged the amount of the fine may be deducted from the pay to be received thereafter by the officer, member or employee.

(7) If a deduction from pay withheld has been made pursuant to subclause (3) (c) or (5) (c) in respect of a fine, subclause (6) applies if, only if, and only to the amount by which, the amount of the fine exceeds that deduction.

Appeal to
tribunal.

9. (1) An officer, member or employee who is aggrieved by—

- (a) a decision of the Chief Officer or an Assistant Chief Officer that he has committed a disciplinary offence; or
- (b) a decision of an Assistant Chief Officer under clause 6 (1) (a) to reprimand or impose a fine on him; or
- (c) a decision of the Chief Officer under clause 7 (1) (a) to dismiss him, reduce him in rank or grade, reprimand him or impose a fine on him,

may appeal against the decision to an appeal tribunal constituted under this clause.

(2) The Board shall appoint an employee of the Board to be the Secretary of appeal tribunals (in this clause referred to as "the Secretary").

(3) For the purpose of hearing an appeal under this clause an appeal tribunal shall be constituted consisting of 3 members of whom—

- (a) one, who shall be the chairman of the appeal tribunal, shall be a stipendiary magistrate nominated by the Chief Stipendiary Magistrate;
- (b) one shall be a person nominated by the Board; and
- (c) one shall be—
 - (i) a person who is a member of, and is nominated by the union of which the appellant is a member; or
 - (ii) if the appellant is not a member of a union or the union of which he is a member has not made the nomination required by subparagraph (i) of this paragraph before the commencement of the period of 7 days immediately preceding the date set down by the Secretary for the hearing of the appeal—a person nominated by the appellant.

(4) A nomination under subclause (3) shall be made by notice in writing forwarded to the Secretary.

(5) An appeal under this clause shall be instituted by notice in writing, in a form approved by the Board, lodged with the Secretary by the aggrieved person within 7 days of the decision being given.

(6) Subject to clause 7 (3) (a), the institution of an appeal under this clause does not stay or otherwise affect the operation of the decision appealed against.

(7) An appeal under this clause shall be by way of rehearing by the appeal tribunal of the charge in respect of which the decision appealed against was made, and the appeal tribunal may confirm the decision appealed against or substitute for that decision any decision provided for by—

- (a) clause 6 (1) (a) or (b), in the case of an appeal against a decision of an Assistant Chief Officer; or

(b) clause 7 (1), in the case of an appeal against a decision of the Chief Officer,

and may make any other order that the appeal tribunal considers appropriate for giving effect to its decision.

Decisions of
appeal
tribunals.

10. (1) At any meeting of an appeal tribunal the decision of any 2 members shall be the decision of the appeal tribunal, but the chairman alone shall determine any question of law.

(2) An act, decision or order of an appeal tribunal is final and conclusive and is not open to question or review in any court, and proceedings by or before an appeal tribunal may not be restrained by injunction, prohibition or other process or proceedings in any court or by removal by *certiorari* or otherwise in any court, nor may any action be maintained or brought against an appeal tribunal or any member of an appeal tribunal in respect of any act, decision or order done or made in the honest belief that it was within the jurisdiction of the appeal tribunal.

(3) In subclause (2) "court" includes The Western Australian Industrial Commission constituted in any manner under the Industrial Arbitration Act 1979.

(4) Nothing in subclause (2) prevents an appeal tribunal from reconsidering any matter that has been dealt with by it or from rescinding, altering, or amending any decision or order previously made, all of which the appeal tribunal has authority to do.

(5) A document purporting to record a decision or order of an appeal tribunal and to be signed by the chairman of the appeal tribunal shall, in all courts of law and before all persons acting judicially, be *prima facie* evidence of such decision or order and of the making thereof.

Appeal to be
decided on
substantial
merits.

11. In the hearing and determination of an appeal under clause 9 an appeal tribunal and the chairman and any member thereof shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and is not bound by legal precedent or its or his own decisions and rulings in any other question, nor by any rules of evidence, but may inform its or his mind on any matter in such a way as it or he regards as just.

12. (1) A party to an appeal under clause 9 may appear— Representa-
tion.

- (a) in person;
- (b) by an agent duly appointed in writing for that purpose; or
- (c) with the permission of the appeal tribunal by a legal practitioner authorized to practice as such by the Legal Practitioners Act 1893,

and a party appearing by a representative is bound by the acts of his representative.

(2) An appeal tribunal shall not permit a party to an appeal under clause 9 to appear by a legal practitioner unless—

- (a) a question of law arises or in the opinion of the chairman of the appeal tribunal is likely to arise in the proceedings; or
- (b) the other party to the appeal expressly consents to that permission being given.

(3) For the purposes of this clause the parties to an appeal under clause 9 are—

- (a) the appellant; and
- (b) the officer who laid the charge that is reheard in the appeal.

13. An appeal tribunal has like powers to a stipendiary magistrate sitting as a court of summary jurisdiction and, except where this Act otherwise prescribes, the practice and procedure of such a court applies to and in relation to the exercise of the powers and jurisdiction of an appeal tribunal. Powers and
procedure.

14. An Assistant Chief Officer, or the Chief Officer or an appeal tribunal by whom or which a charge of a disciplinary offence is being, or is to be, heard or reheard may direct any person other than— Power to
exclude
persons from
hearings.

- (a) the person charged or a person representing him under clause 7 (2) or 12; or

(b) the officer who laid the charge or a person representing him under clause 12,

to leave the place where the hearing or rehearing is being, or is to be, held.

Costs.

15. (1) Subject to subclause (2) no costs shall be allowed in respect of any proceedings under this code.

(2) Where an appeal tribunal considers an appeal to it to be trivial, frivolous or vexatious the appeal tribunal shall fix the costs of the appeal and award them against the appellant.
