

FIRE BRIGADES.

No. 28 of 1982.

AN ACT to amend the Fire Brigades Act 1942-1979.

[Assented to 27 May 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 1982*. Short title and citation.

(2) In this Act the Fire Brigades Act 1942-1979 is referred to as the principal Act. Reprinted as approved 16 February 1972; amended by Acts Nos. 94 of 1972 (as amended by No. 42 of 1975), 107 of 1972, 76 and 85 of 1978 and 63 of 1979.

(3) The principal Act as amended by this Act may be cited as the Fire Brigades Act 1942-1982.

Commence-
ment.

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

Section 4
amended.

3. Section 4 of the principal Act is amended—

(a) by inserting, after “4.”, the following—

“ (1) ” ;

(b) by deleting the definition of “Chief Officer” and substituting the following definitions—

“ “Chief Officer” means the Chief Officer of Fire Brigades appointed under section 31 of this Act;

“Deputy Chairman” means the member of the Board appointed under section 18 (3) of this Act to be the Deputy Chairman of the Board; ” ;

(c) by inserting, after the definition of “District”, the following definition—

“ “Executive Chairman” means the Executive Chairman of the Board appointed under section 8A of this Act; ” ;

(d) by inserting, after the definition of “Private fire brigade”, the following definition—

“ “Secretary” means the employee to be called the Secretary to the Board appointed under section 29 (1) of this Act; ” ; and

(e) by inserting, after the existing section, the following subsection—

“ (2) A reference in this Act to an appointed or elected member of the Board is a reference to a member of the Board other than the Executive Chairman or the Chief Officer. ” .

Section 6
amended.

4. Section 6 of the principal Act is amended by repealing subsections (4) and (5) and substituting the following subsections—

“ (4) The Minister may from time to time give directions to the Board, either generally or in relation to particular matters, with respect to the functions, powers and duties conferred or imposed on the Board by this Act.

(5) The Board shall give effect to directions given to it under subsection (4) of this section. ” .

5. Section 7 of the principal Act is amended— Section 7
amended.

(a) by deleting “ten members” and substituting the following—

“ 11 members ” ;

(b) by deleting paragraph (a) and substituting the following paragraphs—

“ (a) One member shall be the Executive Chairman *ex officio*.

(aa) One member shall be appointed by the Governor. ” ; and

(c) by inserting, after paragraph (g), the following paragraph—

“ (h) One member shall be the Chief Officer *ex officio*. ” .

6. The principal Act is amended by inserting, Section 8A
inserted. after section 8, the following section—

“ 8A. (1) The Executive Chairman shall, in Executive
Chairman. addition to performing the functions of chairman of the Board—

(a) be the chief executive officer of the Board; and

(b) in his capacity as chief executive officer of the Board and subject to Part VII of this Act be responsible to the Board for the administration of this Act.

(2) Subject to this section, the Executive Chairman shall be—

(a) appointed by the Governor—

(i) for such term not exceeding 7 years as is specified in the instrument of his appointment; and

(ii) on such terms and conditions as are determined by the Minister after consultation with the Public Service Board;

and

(b) eligible for reappointment.

(3) A person shall not be eligible for appointment or reappointment as the Executive Chairman if he is of or over the age of 65 years.

(4) If a person appointed to be the Executive Chairman is, at the time of his appointment or reappointment, over the age of 58 years, the term of his appointment or reappointment, as the case requires, shall be for the period that will expire on his attaining the age of 65 years.

(5) The office of the Executive Chairman becomes vacant if—

(a) the term of his appointment or reappointment expires;

(b) he dies or resigns that office by writing delivered to the Governor or is removed from office by the Governor; or

(c) he engages directly or indirectly in any paid employment outside the duties of his office as the Executive Chairman without the leave of the Minister.

(6) The Executive Chairman is entitled to receive out of the funds of the Board such

salary and allowances as are from time to time determined by the Minister after consultation with the Public Service Board.

(7) The Executive Chairman does not hold office under the Public Service Act 1978.

(8) Whenever the Executive Chairman, immediately prior to his appointment, occupied an office in the Public Service under the Public Service Act 1978, he shall—

(a) if—

(i) he resigns his office by writing delivered to the Governor; or

(ii) his term of appointment or reappointment expires by effluxion of time, otherwise than by his attaining the age of 65 years, and he is not reappointed,

be entitled to be appointed to an office in the Public Service under that Act not lower in status than the office which he so occupied immediately prior to his appointment as the Executive Chairman and, if he then accepts an appointment in the Public Service under that Act, section 6 (4) of the Superannuation and Family Benefits Act 1938 does not apply to or in relation to him; and

(b) continue to retain his existing and accruing rights, including his rights under the Superannuation and Family Benefits Act 1938, as if his service as the Executive Chairman were service as an officer in the Public Service under the Public Service Act 1978. ” .

Section 9
amended.

7. Section 9 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) The term of office of the member of the Board appointed by the Governor shall be such period not exceeding 3 years as is specified in the instrument of his appointment. ” .

Section 9A
repealed.

8. Section 9A of the principal Act is repealed.

Section 13
amended.

9. Section 13 of the principal Act is amended by inserting, before “member”, the following—

“ appointed or elected ” .

Section 14
amended.

10. Section 14 of the principal Act is amended by deleting “a member of the Board:” and substituting the following—

“ an appointed or elected member of the Board: ” .

Section 15
amended.

11. Section 15 of the principal Act is amended in subsection (1) by deleting—

(a) “The seat of a” and substituting the following—

“ The seat of an appointed or elected ” ;

(b) paragraph (a) and substituting the following paragraphs—

“ (a) if the member is removed under section 13 of this Act;

(aa) if the member becomes disqualified under section 14 of this Act; ” ;

and

(c) “president of the Board” in paragraph (d) and substituting the following—

“ Executive Chairman ” .

12. Section 16 of the principal Act is amended in subsection (2) by deleting—

Section 16
amended.

(a) “has acted as a member” and substituting the following—

“ has acted as an appointed or elected member ” ; and

(b) “voted as a member” and substituting the following—

“ voted as such a member ” .

13. Section 17 of the principal Act is amended in subsection (1) by deleting “A member of the Board” and substituting the following—

Section 17
amended.

“ An appointed or elected member of the Board ” .

14. Section 18 of the principal Act is amended—

Section 18
amended

(a) in subsection (2) by deleting “president of the Board” and substituting the following—

“ Executive Chairman ” ;

(b) by repealing subsection (3) and substituting the following subsections—

“ (3) The Minister may appoint a member of the Board to be the Deputy Chairman of the Board for such term not exceeding 3 years as is specified in the instrument of his appointment.

(3a) The Deputy Chairman—

(a) is, on the expiry of his term of appointment or reappointment, eligible for reappointment; and

(b) has, while the office of the Executive Chairman is vacant or the Executive Chairman is absent from duty or for any reason unable to perform his duties, all the powers, duties and functions of the Executive

Chairman in his capacity as the chairman of the Board only.

(3b) The office of the Deputy Chairman becomes vacant if—

- (a) the term of his appointment or reappointment expires;
- (b) he ceases to be a member of the Board; or
- (c) he resigns his office as the Deputy Chairman by notice in writing given to the Minister. ” ;

and

(c) in subsection (4) by deleting “president and the deputy president” and substituting the following—

“ Executive Chairman and of the Deputy Chairman ” .

Section 19
amended.

15. Section 19 of the principal Act is amended in subsection (1) by deleting “president of the Board” and substituting the following—

“ Executive Chairman ” .

Section 20
amended.

16. Section 20 of the principal Act is amended in subsection (2) by deleting “president” and substituting the following—

“ Executive Chairman ” .

Section 22
amended.

17. Section 22 of the principal Act is amended—

(a) in subsection (1) by deleting “president or” and substituting the following—

“ Executive Chairman or by the ” ;

and

(b) in subsection (2) by deleting “president”, wherever it occurs, and substituting in each case the following—

“ Executive Chairman ” .

18. (1) Section 29 of the principal Act is Section 29 amended. amended—

(a) in subsection (1)—

(i) by inserting, after “such other employees”, the following—

“ , including an employee to be called the Secretary to the Board, ” ; and

(ii) by deleting “or industrial agreement” and substituting the following—

“ under the Industrial Arbitration Act 1979 or of any relevant award or agreement under the Public Service Arbitration Act 1966 ” ;

(b) by inserting, after subsection (1), the following subsection—

“ (1a) In addition to performing the functions assigned to him by the Board, the Secretary has, while the office of the Executive Chairman is vacant or the Executive Chairman is absent from duty or for any reason unable to perform his duties, all the powers, duties and functions of the Executive Chairman in his capacity as the chief executive officer of the Board only. ” ; and

(c) in subsection (2) by deleting “or industrial agreement” and substituting the following—

“ under the Industrial Arbitration Act 1979 or of any relevant award or agreement under the Public Service Arbitration Act 1966 ” .

(2) The person who was, immediately before the coming into operation of this Act, the Chief Executive Officer of the Board appointed under the principal Act and the regulations made thereunder shall, on that coming into operation and subject to

the principal Act as amended by this Act and to the regulations made thereunder, be deemed to have been appointed as the Secretary to the Board.

Section 31
amended.

19. (1) Section 31 of the principal Act is amended—

(a) in subsection (1) by deleting “Board”, wherever it occurs, and substituting in each case the following—

“ Governor ” ; and

(b) in subsection (2) by deleting “Brigades.” and substituting the following—

“ Brigades, but the Chief Officer of Fire Brigades does not have the powers, duties and functions of the Executive Chairman in his capacity as the chief executive officer of the Board. ” .

(2) The person who, immediately before the coming into operation of this Act, occupied the office of Chief Officer of Fire Brigades shall, notwithstanding this section and subject to the principal Act as amended by this Act and to the regulations made thereunder, continue to occupy that office as if he had been appointed thereto by the Governor.

Section 33A
inserted.

20. The principal Act is amended by inserting, after section 33, the following section—

“ 33A. (1) If, after having inspected a public building, the Chief Officer or an officer authorized by the Board in that behalf considers that the safety of persons in the public building may be endangered in the event of fire therein, he may—

(a) using such force as is reasonably necessary for the purpose, cause any aisle, corridor, door, gangway, lobby or passage connected with any exit or escape from the public building or any such exit or escape itself, the obstruction, closing or locking of which aisle, corridor, door, gangway, lobby, passage, exit or escape is or

Powers and
duties of
Chief
Officer
and others
in relation
to public
buildings.

reasonably appears to be in breach of any requirement of any Act, or of any proclamation, regulation, rule, by-law, order, notice, resolution or other instrument—

- (i) made under an Act or under any other such proclamation, regulation, rule, by-law, order, notice, resolution or instrument; and
 - (ii) having legislative effect, to be cleared, opened or unlocked, as the case requires;
- (b) being satisfied that the safety of persons in the public building cannot reasonably be ensured by other means, order the occupier or presumed occupier of the public building forthwith to close the public building for such period not exceeding 48 hours as is specified in that order and as the Chief Officer or officer so authorized considers necessary for the alleviation of the danger in question; or
- (c) if an order referred to in paragraph (b) of this subsection cannot for any reason be given to the occupier or presumed occupier of the public building or if such an order, having been given to that occupier or presumed occupier, is not forthwith obeyed, himself, being satisfied that the safety of persons in the public building cannot reasonably be ensured by other means, close the public building for such period not exceeding 48 hours as he considers necessary for the alleviation of the danger in question, using such force as is reasonably necessary for the removal from the public building of persons therein without doing them bodily harm.

(2) The occupier or presumed occupier of a public building may in complying with an order given to him under subsection (1) of this section use such force as is reasonably necessary for the removal from the public building of persons therein without doing them bodily harm.

(3) The Chief Officer or authorized officer giving an order under subsection (1) of this section shall do so—

(a) in writing served on the occupier or presumed occupier of the public building in question;
or

(b) orally, in which case he shall as soon as is practicable thereafter serve on the occupier or presumed occupier of the public building in question confirmation in writing of the contents of that order and of the time and place at which that order was so given,

and shall cause a copy of that order or confirmation, as the case requires, to be affixed to that public building in a conspicuous position.

(4) The Chief Officer or an authorized officer may, if he considers that the danger to which an order given under subsection (1) of this section relates has been alleviated, rescind that order.

(5) The Commissioner of Police may, if requested by the Chief Officer or an authorized officer to do so, assist the Chief Officer or authorized officer in the exercise of any power conferred on the Chief Officer or authorized officer by subsection (1) of this section.

(6) If the Chief Officer or an authorized officer considers that a danger in relation to which he has exercised the power conferred on him by paragraph (b) or (c) of subsection (1) of this section cannot be, or has not been,

alleviated within the period of 48 hours referred to in that paragraph, he shall, having given such prior notice of his intention to do so to the occupier of the public building in question as is practicable in the circumstances, apply to a stipendiary magistrate for an order directing that occupier to close or keep closed, as the case requires, that public building for such period as the stipendiary magistrate considers necessary for the alleviation of that danger.

(7) A stipendiary magistrate may on an application made to him under subsection (6) of this section grant, subject to such conditions as he thinks fit to impose, or refuse to grant the order sought by that application.

(8) If an application is made to a stipendiary magistrate under subsection (6) of this section while—

- (a) an order given under subsection (1) of this section in relation to the public building in question is in force, that order continues in force; or
- (b) the public building in question is closed under subsection (1) (c) of this section, that closure continues,

until the application is finally determined or is withdrawn.

(9) The Chief Officer or an authorized officer or the owner or occupier of a public building to which an order granted under subsection (7) of this section relates may apply to a stipendiary magistrate for that order to be rescinded.

(10) A stipendiary magistrate may on an application made to him under subsection (9) of this section rescind or refuse to rescind the order to which that application relates.

(11) The Chief Officer shall exercise general supervision over the exercise or performance by an authorized officer of any power or duty conferred or imposed by this section on the authorized officer.

(12) A person shall—

- (a) not hinder or obstruct a person to whom this subsection applies in the exercise of any power or the performance of any duty conferred or imposed on him by this section or by an order given or granted thereunder; or
- (b) if he is the occupier of the public building in question, comply with an order given or granted under this section in respect of that public building.

Penalty: \$3 000 and, if the offence in question is a continuing one, \$200 for each day or part thereof during which that offence continues and, in addition to or as an alternative to the foregoing penalties, imprisonment for 6 months.

(13) A person to whom this subsection applies is not liable, and the Crown in right of the State is not liable, for any act or omission by that person in good faith and in the exercise or purported exercise of the powers or in the performance or purported performance of the duties conferred or imposed on him by this section or by an order given or granted thereunder.

(14) Subsections (12) and (13) of this section apply to—

- (a) the Chief Officer;
- (b) an authorized officer;
- (c) a member of the Police Force assisting the Chief Officer or an authorized officer as a result of

compliance by the Commissioner of Police with a request made under subsection (5) of this section; and

- (d) the occupier or presumed occupier of a public building complying with an order given or granted under this section in respect of the public building.

(15) In this section—

“alleviation” means alleviation by compliance with the relevant requirements of any provision of an Act, or of a proclamation, regulation, rule, by-law, order, notice, resolution or other instrument—

- (a) made under an Act or under any other such proclamation, regulation, rule, by-law, order, notice, resolution or instrument; and

- (b) having legislative effect,

which provision relates to the prevention of fire in public buildings or to ensuring the safety of persons in public buildings in the event of fire therein, and cognate words shall be construed accordingly;

“authorized officer” means officer authorized by the Board within the meaning of subsection (1) of this section;

“occupier”, in relation to a public building, means person in charge of, or having the control and management of, the public building;

“presumed occupier”, in relation to a public building, means person who appears to the Chief Officer or to an authorized officer, as the case requires, to be the occupier of the public building;

“public building” has the meaning given
by section 173 of the Health Act
1911. ”.

Section 35
amended.

21. Section 35 of the principal Act is amended
in paragraph (b) by deleting “president of the
Board” and substituting the following—

“ Executive Chairman ” .

Section 71
amended.

22. Section 71 of the principal Act is amended by
deleting “president of the Board” and substituting
the following—

“ Executive Chairman ” .
