

WESTERN AUSTRALIA

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# **BUSH FIRES AMENDMENT ACT 1992**

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**No. 60 of 1992**

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**AN ACT to amend the *Bush Fires Act 1954* and the  
*Financial Administration and Audit Act 1985*.**

*[Assented to 11 December 1992.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Bush Fires Amendment Act 1992*.

### **Commencement**

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Part 2 shall come into operation on such day as is fixed by proclamation.

### **Principal Act**

3. In this Act, the *Bush Fires Act 1954*\* is referred to as the principal Act.

[\* *Reprinted as at 27 February 1992.*]

## PART 2 — BUSH FIRES BOARD RESTRUCTURED

### Section 7 amended

4. Section 7 of the principal Act is amended —

- (a) by deleting the definition of “Board”; and
- (b) by inserting in the appropriate alphabetical positions the following definitions —

“ **“Board”** means the Bush Fires Board constituted under section 8 (1); ”;

“ **“Chairman”** means the Chairman of the Board; ”;

“ **“Chief Executive Officer”** means the person holding, acting in, or otherwise discharging the duties of, the office of Chief Executive Officer of the Board referred to in section 15; ”;

“ **“Fund”** means the Bush Fires Board Fund referred to in section 16A (2); ”;

“ **“member of the Board”** means a regular member or an additional member as defined in section 8 (11); ”.

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**Section 8 amended****5.** Section 8 of the principal Act is amended —

(a) in subsection (2) —

(i) in paragraph (a), by deleting “16 members” and substituting the following —

“ the members referred to in subsection  
(3) ”;

and

(ii) in paragraph (b), by deleting “thereof” and substituting the following —

“ or an additional member ”;

(b) in subsection (2a), by inserting after “member of the Board” the following —

“ , other than an additional member, ”;

(c) in subsection (3), by deleting paragraphs (a) to (i) and substituting the following —

“ (a) the Chief Executive Officer *ex officio*;

(b) a person nominated by the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor;

(c) a person nominated by the Commissioner of Police;

- (d) the Executive Chairman of the Western Australian Fire Brigades Board constituted under the *Fire Brigades Act 1942*;
  - (e) a person nominated by the Minister to whom the administration of the *State Planning Commission Act 1985* is for the time being committed by the Governor;
  - (f) 4 persons nominated by the body known as the Western Australian Municipal Association, being persons actively engaged in organizations for the prevention, control and extinguishment of bush fires; and
  - (g) up to 3 persons having relevant specialized knowledge or experience as the Minister may from time to time appoint to the Board. ”;
- (d) by inserting after subsection (3) the following subsections —
- “ (3a) The Chairman of the Board shall be a regular member and shall be elected by the regular members.
- (3b) An additional member shall be appointed by the Minister for such term not exceeding one year as is specified in the member’s instrument of appointment and is eligible for reappointment. ”;
- (e) in subsection (5), by deleting “the Chairman and 6 other members” and substituting the following —
- “ 5 members of the Board (of whom at least 4 shall be regular members) ”;

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- (f) in subsection (7) (a), by inserting after “member of the Board,” the following —

“ other than an additional member, ”;

and

- (g) by inserting after subsection (10) the following subsection —

“ (11) In this section —

“**additional member**” means a  
person referred to in subsection  
(3) (g);

“**regular member**” means a person  
referred to in subsection (3) (a),  
(b), (c), (d), (e) or (f). ”.

**Section 9 amended and transitional**

- 6.** (1) Section 9 (1) of the principal Act is amended —

- (a) by deleting paragraph (a) and substituting the following —

“ (a) the Chief Executive Officer; or ”;

- (b) by deleting paragraph (b) and “or” after that paragraph and substituting the following paragraph —

“ (b) any other member of the Board  
nominated by the Board, ”;

and

- (c) by deleting paragraph (c).

(2) Where, immediately before the commencement of this Act, a delegation was in force under section 9 (1) (a) or (c) of the principal Act, the delegation shall, on and after that commencement, be deemed to be a delegation to the Chief Executive Officer under section 9 (1) (a) of the principal Act as in force after that commencement, and may be varied or revoked accordingly.

### **Section 11 repealed and sections 11 and 11A substituted**

7. Section 11 of the principal Act is repealed and the following sections are substituted —

#### **Minister may give directions**

“ 11. (1) The Minister may give directions in writing to the Board with respect to the performance of its functions, either generally or in relation to a particular matter, and the Board shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985* and published in the *Gazette* within 28 days and laid before each House within 14 sitting days of being published if Parliament is in session or within 14 sitting days of the commencement of the next ensuing sitting.

#### **Minister to have access to information**

11A. (1) For the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Board and to have and retain copies of documents.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Board to furnish information to the Minister;
- (b) request the Board to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff and facilities of the Board to obtain the information and furnish it to the Minister.

(3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

**“document”** includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

**“information”** means documents or other information relating to the functions of the Board being information, as so defined, specified, or of a description specified, by the Minister.

”.

### **Section 14 amended**

8. Section 14 of the principal Act is amended by deleting “the executive officer of the Board and”.



**Section 15 repealed**

9. Section 15 of the principal Act is repealed.

**Part II, Divisions 3 and 4 inserted**

10. Part II of the principal Act is amended by inserting after Division 2 the following Divisions —

“ ***Division 3 — Staff***

**Appointment of Chief Executive  
Officer and other staff**

15. There shall be appointed under and subject to the *Public Service Act 1978* a Chief Executive Officer of the Board and such other officers as may be necessary to enable the Board to perform its functions.

**Use of staff and facilities of  
departments, agencies and  
instrumentalities**

16. The Board may, by arrangement made between it and the Minister concerned, and on such terms and conditions as are mutually arranged by it with that Minister and with the Public Service Commissioner, make use, either full-time or part-time, of —

- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency, authority or instrumentality or otherwise in the service of the Crown in right of the State; or

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- (b) any facilities of a department of the Public service of the State or of a State agency, authority or instrumentality.

*Division 4 — Financial provisions***Funds of Board**

**16A.** (1) The funds available to the Board to enable it to perform its functions under this Act are —

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the Board by way of contributions or donations;
- (c) moneys borrowed by the Board under section 16B or 16C; and
- (d) moneys otherwise lawfully received by, made available to, or payable to the Board.

(2) The funds referred to in subsection (1) shall be paid into and placed to the credit of an account at the Treasury to be called the “**Bush Fires Board Fund**”.

(3) All expenditure incurred by the Board for the purposes of performing its functions under this Act, including interest on and the repayment of moneys borrowed by the Board under section 16B or 16C, shall be paid from the Fund and moneys standing to the credit of the Fund shall be applied only for the purposes of this Act.

### **Borrowing by Board from Treasurer**

**16B.** (1) The Board may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment and payment of interest as the Treasurer imposes.

(2) By virtue of this subsection the Fund and the assets of the Board are charged with the due performance by the Board of all obligations arising from any advance made under this section.

### **Borrowing by Board generally**

**16C.** (1) The provisions of this section are in addition to, and not in derogation from, the provisions of section 16B.

(2) The Board may —

- (a) with the prior approval of the Treasurer in writing and on such terms and conditions as the Treasurer approves, borrow moneys for the purpose of exercising and performing its functions; and
- (b) borrow moneys under this subsection on the guarantee of the Treasurer given under section 16D.

(3) Any moneys borrowed by the Board under subsection (2) may be raised as one loan or as several loans and in such manner as the Treasurer approves, but the amount of the moneys so borrowed shall not in any one financial year exceed in the aggregate such amount as the Treasurer approves.

**Guarantee by Treasurer**

**16D.** (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee, in such form and subject to such terms as the Treasurer determines, the payment of any moneys payable by the Board in respect of moneys borrowed by it under section 16C.

(2) The due payment of moneys payable by the Treasurer under guarantee given under subsection (1) —

(a) is hereby guaranteed by the State; and

(b) shall be made by the Treasurer out of the Consolidated Revenue Fund, which to the necessary extent is appropriated accordingly.

(3) By virtue of this subsection the Fund and the assets of the Board are charged with the due repayment of any payment made by the Treasurer under a guarantee given under subsection (1) and with the performance and observance by the Board of any covenants and conditions which the Treasurer imposes as a term of that guarantee.

(4) The Treasurer shall cause any amounts received or recovered from the Board or otherwise in respect of any payment made by the Treasurer under a guarantee given under subsection (1) to be paid into the Consolidated Revenue Fund.

(5) Before a guarantee is given by the Treasurer under subsection (1), the Board shall give to the Treasurer such security as the Treasurer requires and shall execute all such instruments as are necessary for the purpose.

(6) Where a guarantee is given by the Treasurer under subsection (1) the Treasurer shall cause the text of such guarantee to be published in the *Gazette* within 28 days and laid before each House within 14 days of being published if Parliament is in session or within 14 sitting days of the commencement of the next ensuing session.

***Application of Financial Administration and Audit Act 1985***

**16E.** The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

**Section 35 amended**

**11.** Section 35 of the principal Act is amended in subsection (3) (b) by deleting “executive officer of the Board” and substituting the following —

“ Chief Executive Officer ”.

**Section 56 amended**

**12.** Section 56 of the principal Act is amended in subsections (1) (a) and (2) by deleting “employed by” and substituting in each case the following —

“ of ”.

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**13.** Section 57 of the principal Act is amended by deleting “employed by” and substituting the following —

“ of ”.

**Section 63 amended**

**14.** Section 63 of the principal Act is amended in subsection (1) (a) by deleting “officer appointed by the Board” and substituting the following —

“ officer of the Board ”.

**Section 65 amended**

**15.** Section 65 of the principal Act is amended in subsection (2) (c) by deleting “executive officer of the Board” and substituting the following —

“ Chief Executive Officer ”.

**Section 69 added**

**16.** After section 68 of the principal Act the following section is added —

**Review of Act**

“ **69.** (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from the commencement of Part 2 of the *Bush Fires*

*Amendment Act 1992*, and in the course of that review the Minister shall consider and have regard to —

- (a) the effectiveness of the operations of the Board;
- (b) the need for the continuation of the functions of the Board; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

”.

**Consequential amendment of *Financial Administration and Audit Act 1985***

17. Schedule 1 to the *Financial Administration and Audit Act 1985*\* is amended by inserting in the appropriate alphabetical position the following item —

“ Bush Fires Board ”.

[\* *Reprinted as at 1 July 1991.*

*For subsequent amendments see 1991 Index to Statutes of Western Australia, pp. 72-3.]*

**PART 3 — INSURANCE FOR VOLUNTEERS****Section 35A inserted**

18. Part IV, Division 1 of the principal Act is amended by inserting before section 36 the following section —

**Interpretation**

“ **35A.** In this Division, and in section 41 —

“**bush fire**” means a fire or potential fire, however caused, and includes a fire in a building;

“**loss or damage**” does not include loss or damage that is caused by or results from theft, reasonable wear or tear, mechanical or electrical breakdown, failure or breakage;

“**normal brigade activities**” means the following activities when carried out by a volunteer fire fighter —

- (a) the prevention, control or extinguishment of bush fires;
- (b) any act or operation at or about the scene of a bush fire, or in connection with a bush fire, which is necessary for, directed towards, or incidental to, the control or suppression of the fire or the prevention of spread of the fire, or in any other way necessarily associated with the fire including travelling and support services such as meals and communication systems;



- (c) any bush fire prevention activity including the burning, ploughing or clearing of firebreaks or any other operation, including but without being limited to, the inspection of firebreaks or other works and the survey of areas for the purpose of detecting fire or ascertaining the need for precautions against the outbreak of fire, but not including the activities of an owner or occupier providing a firebreak or fire prevention works on his own property in order to comply with a notice given under section 33 (1) or a by-law made under section 33 (5a);
- (d) demonstrations, exercises, fundraising, promotions, public education, competitions or a training process for volunteers;
- (e) examination, preparation, maintenance, adjustment or repair of any vehicle, equipment, building or thing used or intended to be used by a bush fire brigade for the purpose of fighting fires or for carrying out fire prevention operations including activities associated with administration of a bush fire brigade;
- (f) travelling in aircraft for the purposes of inspection of firebreaks, fire hazards and bush fires;
- (g) erection, removal or maintenance of radio masts used for fire related purposes;

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- (h) attending an incident where the skills of a volunteer fire fighter or the operation of fire fighting equipment may reduce or remove a perceived threat to life or property;
- (i) attending an incident subsequently found to be a false alarm;

**“volunteer fire fighter”** means a bush fire control officer, a person who is a registered member of a bush fire brigade established under this Act or a person working under the direction of that officer or member. ”.

### **Section 36 amended**

**19.** Section 36 (ea) of the principal Act is amended by deleting “or a fire in a building”.

### **Section 37 repealed and a section substituted**

**20.** Section 37 of the principal Act is repealed and the following sections are substituted —

#### **Local authority to insure certain persons**

“ **37.** (1) A local authority that maintains a bush fire brigade shall obtain and keep current —

- (a) a policy of insurance that insures volunteer fire fighters for compensation, payable in accordance with subsection (2) for injury caused to them while they are engaged under this Act in normal brigade activities;

and

- (b) a policy of insurance that, subject to subsection (10), insures against loss or damage all appliances, equipment, and apparatus of the bush fire brigade and any privately owned appliance, equipment, or apparatus that is used under the direction of a bush fire control officer, or an officer or a member of a bush fire brigade for the purposes of this Act.

(2) For the purposes of a policy of insurance referred to in subsection (1) (a), the compensation that is payable for an injury and the purposes for which it is payable are the amounts and purposes that would apply if a volunteer fire fighter were a worker and suffered that injury under the *Workers' Compensation and Rehabilitation Act 1981*, and where a reference to weekly earnings is necessary for calculating those amounts, the volunteer fire fighter is deemed to have earned —

- (a) if the volunteer fire fighter is a self-employed or unemployed person — either the actual weekly earnings received by that volunteer fire fighter or the weekly earnings of an officer of the Department of Conservation and Land Management at Level 2, Year 5, whichever is the greater;
- (b) if the volunteer fire fighter is employed other than self-employed — either the weekly earnings calculated in accordance with the *Workers' Compensation and Rehabilitation Act 1981*, or the weekly earnings of an officer of the Department of Conservation and Land Management at Level 2, Year 5, whichever is the greater.

(3) The provisions contained in clauses 8, 10, 11, 16, 17, 18, 18A and 19 of Schedule 1 to the *Workers' Compensation and Rehabilitation Act 1981* apply, with any necessary adaptations, to a policy of insurance under subsection (1) (a) as if they were set out in the policy.

(4) The limitation in section 56 of the *Workers' Compensation and Rehabilitation Act 1981* does not apply to a policy of insurance under subsection (1) (a) if the volunteer fire fighter insured —

- (a) is a self-employed person; and
- (b) produces sufficient evidence of his or her income, earned prior to the injury.

(5) A volunteer fire fighter who has suffered a specified injury while engaged in normal brigade activities is entitled to payment of an amount in addition to the amount referred to in subsection (2), so that the total amount received by or in respect of that volunteer fire fighter in relation to that injury is the prescribed amount multiplied by 2.36.

(6) In subsection (5) —

**“prescribed amount”** means the prescribed amount as defined in section 5 (1) of the *Workers' Compensation and Rehabilitation Act 1981* determined as at the date on which the injury was caused;

**“specified injury”** means —

- (a) death;
- (b) total loss of sight of both eyes;
- (c) total loss of sight of an only eye;

- (d) permanent and incurable loss of mental capacity resulting in total inability to work;
- (e) total and incurable paralysis of the limbs or of mental powers;
- (f) loss of both hands;
- (g) loss of a hand and foot;
- (h) loss of both feet;
- (i) severe facial scarring or disfigurement (including scarring or disfigurement as a result of burns);
- (j) severe bodily, other than facial, scarring or disfigurement (including scarring or disfigurement as a result of burns).

(7) Any additional amount payable under subsection (5) shall be paid out of moneys appropriated by Parliament for that purpose.

(8) The amount referred to in subsection (2) and the additional amount referred to in subsection (5) are payable to the person or persons who would be entitled to receive them if a volunteer fire fighter were a worker and suffered a compensable injury under the *Workers' Compensation and Rehabilitation Act 1981* and, in addition to those persons, shall extend —

- (a) to a spouse irrespective of dependency upon the volunteer fire fighter; or
- (b) to a child of the volunteer fire fighter if the child is dependent upon the volunteer fire fighter.

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(9) A volunteer fire fighter making a claim under a policy of insurance referred to in subsection (1) (a) is subject to the same time limitation periods as would apply if the volunteer fire fighter were a worker and suffered a compensable injury under the *Workers' Compensation and Rehabilitation Act 1981*.

(10) Under a policy of insurance referred to in subsection (1) (b) a local authority is not required to insure for loss or damage that —

(a) in respect of any one bush fire, exceeds —

(i) \$2 000 for any one appliance or item of equipment or apparatus; or

(ii) \$4 000 to any one person or partnership;

or

(b) in any one insurance year, exceeds a total amount of \$10 000 to any one person or partnership for all loss or damage.

(11) A policy of insurance referred to in subsection (1) (a) or (1) (b) shall provide reasonable conditions for the procedure of establishing claims and arbitrating differences arising out of the policy.

(12) A local authority may insure against injury of the kind referred to in subsection (1) (a) or against loss or damage of the kind referred to in subsection (1) (b) for amounts greater than those specified in subsections (2) and (10).

”.

**Section 38 amended**

**21.** Section 38 (4) of the principal Act is amended by deleting paragraphs (a), (b) and (c) and substituting the following paragraph —

“ (a) carrying out normal brigade activities; ”.

**Section 41 amended**

**22.** Section 41 (1) of the principal Act is amended by deleting “taking measures and conducting operations for the control and extinguishment of bush fires” and substituting the following —

“ carrying out normal brigade activities ”.

**PART 4 — GAS COOKING FIRES****Section 25 amended**

**23.** Section 25 of the principal Act is amended —

- (a) in subsection (1) by inserting after “Subject to” the following —

“ subsection (1aa) and ”; and

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

“ (1aa) For the purposes of this section a gas appliance, comprising a fire the flame of which is encapsulated by the appliance and which does not consume solid fuel, shall not be taken to be a fire in the open air and may be used at any time for the purpose of camping or cooking if that gas appliance is used —

- (a) at a person’s home; or

- (b) in an area which —

- (i) is set aside for that purpose by the State Authority or local authority responsible for the care, control or management of the land;

and

- (ii) bears the State Authority’s or local authority’s sign denoting that purpose,



and all combustible material is cleared  
from within a 5 metre radius of the  
appliance.

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