



# Fire and Emergency Services Act 1990

Current as at [Not applicable]

## Indicative reprint note

This is an *unofficial* version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Crime and Corruption and Other Legislation Amendment Bill 2018. This indicative reprint has been prepared for information only—*it is not an authorised reprint of the Act*.

The point-in-time date for this indicative reprint is the introduction date for the Crime and Corruption and Other Legislation Amendment Bill 2018—15 February 2018

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Queensland

# Fire and Emergency Services Act 1990

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# Fire and Emergency Services Act 1990

**An Act to establish the Queensland Fire and Emergency Service, to establish a fund for particular purposes, to provide for the prevention of and response to fires and emergency**

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## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Fire and Emergency Services Act 1990*.

### 2 Objects of Act

The objects of this Act are—

- (a) to provide for the prevention of, and responses to, fires and other emergency incidents; and
- (b) to provide for rescue services and operations; and
- (c) to establish a framework for the management of—
  - (i) the Queensland Fire and Emergency Service; and
  - (ii) the State Emergency Service; and
  - (iii) emergency service units established for an emergency service area; and
  - (iv) the conduct of authorised rescue officers.

### **3 Definitions**

The dictionary in schedule 6 defines particular words used in this Act.

### **4 Act binds all persons**

- (1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

## **Chapter 2 Commissioner**

### **5 Appointment of commissioner**

- (1) The Governor in Council, acting on the recommendation of the Minister, shall appoint a commissioner.
- (2) The commissioner is to be appointed under this Act, and not under the *Public Service Act 2008*.

### **6 Salary and conditions**

The Governor in Council shall from time to time approve the salary, allowances, and conditions of employment of a person holding office as commissioner.

### **7 Acting commissioner**

- (1) The Minister may appoint a person, who is eligible for appointment as commissioner, to act in the office of commissioner during—
  - (a) any vacancy, or all vacancies, in the office; or

- (b) any period, or all periods, when the commissioner is absent from duty, or can not, for another reason, perform the functions of the office.
- (2) The Minister's power to appoint a person to act in the office of commissioner does not limit the Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v).

### **7A Functions of commissioner**

- (1) The main functions of the commissioner are as follows—
  - (a) to manage QFES in a way that ensures QFES performs its functions under this Act effectively and efficiently;
  - (b) to establish management and support services for the SES and ES units;
  - (c) to make recommendations to the Minister about any matter that—
    - (i) relates to the performance of functions or exercise of powers by the commissioner or QFES; and
    - (ii) may help the Minister in the proper administration of this Act.
- (2) The commissioner's functions also include any other function given to the commissioner under this Act or another Act.

### **7B Codes of practice**

- (1) The commissioner may from time to time issue codes of practice relating to—
  - (a) the functions, powers, conduct and appearance of fire service officers; or
  - (b) any functions imposed or powers conferred by or under this Act on any other person other than the Minister.
- (2) The commissioner may at any time amend or revoke a code of practice.

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- (3) A provision of a code of practice is of no effect if inconsistent with a provision of this Act.
- (4) Provisions of a code of practice may differ according to differences in time, place or circumstance or according to the fire service officers or classes of fire service officers to whom they are expressed to apply.
- (5) Evidence of any provision of a code of practice may be given by the production of a document purporting to be certified by the commissioner as being a true copy of the provision.

## **Chapter 3      Queensland Fire and Emergency Service**

### **Part 1            Establishment, membership and functions**

#### **8            Establishment of service**

The Queensland Fire and Emergency Service (*QFES*) is established.

#### **8A          Membership of service**

QFES consists of—

- (a) the commissioner; and
- (b) fire service officers.

#### **8B          Functions of QFES**

The functions of QFES are—

- (a) to protect persons, property and the environment from fire and hazardous materials emergencies; and

- (b) to protect persons trapped in a vehicle or building or otherwise endangered, to the extent that QFES's personnel and equipment can reasonably be deployed or used for the purpose; and
- (c) to provide an advisory service, and undertake other measures, to promote—
  - (i) fire prevention and fire control; and
  - (ii) safety and other procedures if a fire or hazardous materials emergency happens; and
- (d) to cooperate with any entity that provides an emergency service; and
- (e) to perform other functions given to QFES under this Act or another Act; and
- (f) to perform functions incidental to its other functions; and
- (g) to identify and market products and services incidental to its functions.

## **Part 3 Financial provisions**

### **20 Fund**

- (1) The Emergency Management Fund is established.
- (2) Accounts for the fund must be kept as part of the departmental accounts of the department.
- (3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department but may be deposited in an account used for depositing other amounts of the department.
- (4) Amounts received for the fund include the following received by the department—
  - (a) amounts received for prescribed property as contributions under part 10;

- (b) amounts received by the department from other sources for the fund or amounts that must be paid into the fund;
  - (c) amounts received for the disposal of an asset that the commissioner considers was purchased substantially with amounts paid from the fund or the QFRA Fund;
  - (d) interest from investment of the fund.
- (5) An amount is payable from the fund for—
- (a) the purposes of this Act; or
  - (b) the management, by QFES or another entity administered or funded wholly or partly by the State, of the adverse effects or potential adverse effects of an incident or event.

*Example of management for paragraph (b)—*

making arrangements for mitigating the effects of, preparing for, responding to and recovering from an event

- (6) The *Financial Accountability Act 2009* applies to the fund.
- (7) In this section—

***departmental accounts***, of the department, means the accounts of the department under the *Financial Accountability Act 2009*, section 69.

***departmental financial-institution account***, of the department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

***event*** see the *Disaster Management Act 2003*.

***other amounts***, of the department, means amounts received by the department other than amounts received for the fund.

***QFRA Fund*** means the QFRA Fund mentioned in the *Financial Administration and Audit Act 1977*, schedule 2, immediately before the commencement of the *Emergency Services Legislation Amendment Act 2001*.

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## **Part 4 Provisions affecting personnel**

### **Division 1 Appointments and conditions**

#### **25 Staff of QFES**

The commissioner may employ the persons the commissioner considers necessary to perform the service's functions.

#### **25A Fire service officers employed under this Act**

Fire service officers are to be employed under this Act, and not under the *Public Service Act 2008*.

#### **25B Requirement to disclose previous history of serious disciplinary action to commissioner**

- (1) If the commissioner proposes to employ a person under section 25, the commissioner may require the person to disclose to the commissioner particulars of any serious disciplinary action taken against the person.
- (2) The person must comply with the requirement before the employment takes effect and within the time and in the way stated by the commissioner.
- (3) The commissioner may have regard to information disclosed by the person under this section in deciding whether to employ the person under section 25.
- (4) The commissioner is not required to further consider the person for employment under section 25 if the person—
  - (a) fails to comply with the requirement; or
  - (b) gives false or misleading information in response to the requirement.

**25C Requirement to disclose previous history of serious disciplinary action to commissioner**

- (1) If the commissioner proposes to second a person to QFES, the commissioner may require the person to disclose to the commissioner particulars of any serious disciplinary action taken against the person.

*Note—*

See the following provisions in relation to secondments by the commissioner—

- (a) the *Public Service Act 2008*, sections 23 and 120;
  - (b) the *Public Service Regulation 2008*, section 5 and schedule 1, item 7.
- (2) The person must comply with the requirement before the secondment takes effect and within the time and in the way stated by the commissioner.
  - (3) The commissioner may have regard to information disclosed by the person under this section in deciding whether to second the person to QFES.
  - (4) The commissioner is not required to further consider the person for secondment if the person—
    - (a) fails to comply with the requirement; or
    - (b) gives false or misleading information in response to the requirement.

**26 Conditions of employment**

- (1) Subject to any applicable industrial instrument, persons employed under section 25 shall be paid salary, wages and allowances at such rates and shall be employed under such conditions of employment as the commissioner determines.
- (2) However, if a person mentioned in subsection (1) is employed on contract for a fixed term, the conditions of the person's employment are not subject to any industrial instrument.

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**27 Additional remuneration**

A fire service officer must not seek or accept on account of anything done in the course of employment in QFES any fee or reward not authorised by the commissioner.

**Division 2 Termination of office**

**28 Retirement**

- (1) A fire service officer—
  - (a) must retire from employment with QFES upon attaining the age of 65 years;
  - (b) may elect to retire from employment with QFES upon or at any time after attaining the age of 55 years.
- (2) If the commissioner suspects on reasonable grounds that a fire service officer, by reason of mental or physical infirmity, has not the capacity or is unfit—
  - (a) to discharge efficiently the duties of office; and
  - (b) to discharge efficiently any other duties that the commissioner might reasonably direct the officer to discharge;the commissioner must obtain medical opinion on the officer's condition.
- (3) The commissioner may appoint any medical practitioner or medical practitioners to examine the officer and report upon the officer's mental or physical condition or both and may direct the officer to submit to the examination.
- (4) If the commissioner believes on reasonable grounds that a fire service officer, by reason of mental or physical infirmity, has not the capacity or is unfit as prescribed by subsection (2), the commissioner may call upon the officer to retire within the time specified by the commissioner.
- (5) If the officer does not retire within the time specified, the commissioner may dismiss the officer.

## **29 Retrenchment**

Where the commissioner is satisfied that—

- (a) the services of a fire service officer can no longer be gainfully utilised in the office held by the officer because the office has become redundant; and
- (b) it is not practicable to retrain or redeploy the officer; and
- (c) the redundancy arrangements approved by the Governor in Council have been complied with in relation to the officer;

the commissioner may terminate the services of the officer by way of retrenchment in accordance with those redundancy arrangements.

## **29A Surrender of equipment**

- (1) A person, upon ceasing to be a fire service officer, must surrender to the commissioner—
  - (a) any form of identification; and
  - (b) anything issued to the person for official use;unless otherwise ordered by the commissioner.
- (2) A justice, acting upon the complaint of the commissioner, may issue a warrant authorising any person named in, or belonging to a class of person specified in, the warrant to search for and seize anything not surrendered in accordance with subsection (1).
- (3) A person authorised to execute a warrant may, for that purpose—
  - (a) enter any premises in which the person believes the thing sought may be located; and
  - (b) break open anything the person believes may contain the thing sought.

*Note—*

The content of this section was previously included in section 141.

## **29B Vacating premises**

- (1) A person, upon ceasing to be a fire service officer, must immediately vacate any premises the property of the State or to the possession of which the State is entitled, unless the commissioner otherwise orders.
- (2) If the premises are not vacated immediately or, as the case may be, within any period ordered by the commissioner, the commissioner may give the person a notice to quit.
- (3) If the premises are not vacated within 14 days after the notice to quit is given, a magistrate, acting upon the complaint of the commissioner, may issue a warrant authorising a police officer to enter the premises and remove all persons and property not authorised by the commissioner to be on the premises and to deliver possession of the premises to the State.

*Note—*

The content of this section was previously included in section 142.

## **Division 3 Disciplinary action**

### ***Subdivision 1A Interpretation***

#### **29C Definitions for division**

*In this division—*

***prescribed employee*** means a prescribed employee under the Public Service Act 2008, section 186A, other than a fire service officer.

***relevant employee*** means—

- (a) a public service employee; or
- (b) a prescribed employee.

**29D References to relevant employees**

- (1) *This section provides for the meaning of particular terms used in this division relating to a person who is or was a relevant employee.*
- (2) *A reference to the person's current or previous chief executive is a reference to—*
  - (a) *for a person who is or was a public service employee—the chief executive of the department in which the person is or was employed as a public service employee; or*
  - (b) *for a person who is or was a prescribed employee—the person's current or previous chief executive under the Public Service Act 2008, section 186B(2).*
- (3) *A reference to a relevant disciplinary law for the person is a reference to any of the following—*
  - (a) *the Public Service Act 2008, chapter 6;*
  - (b) *a law that is a relevant disciplinary law for the person under the Public Service Act 2008, section 186B(3).*

*Note—*

*The laws mentioned in this subsection also provide for disciplinary action against a person who was, but is no longer, a relevant employee.*

- (4) *In subdivision 2—*
  - (a) *a reference to a relevant disciplinary ground for the person is a reference to a disciplinary ground under a relevant disciplinary law for the person; and*
  - (b) *a reference to a disciplinary finding in relation to a relevant disciplinary ground for the person is a reference to a finding that a relevant disciplinary ground for the person exists.*

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## Subdivision 1      **Grounds and disciplinary action generally**

### 30      **Grounds for disciplinary action**

- (1) A fire service officer is liable to disciplinary action upon any of the following grounds shown to the satisfaction of the commissioner to exist—
- (a) incompetence or inefficiency in the discharge of duties;
  - (b) negligence, carelessness or indolence in the discharge of duties;
  - (c) wilful failure to comply, without reasonable excuse, with a provision of this Act or an obligation imposed on the officer under—
    - (i) a code of practice; or
    - (ii) a code of conduct—
      - (A) approved under the *Public Sector Ethics Act 1994*; or
      - (B) prescribed under a directive of the commission chief executive under the *Public Service Act 2008*; or
    - (iii) an industrial instrument;
  - (d) absence from duty except—
    - (i) upon leave duly granted; or
    - (ii) with reasonable cause;
  - (e) wilful failure to comply with a lawful direction of the commissioner or another person having authority over the officer;
  - (f) misconduct;
  - (g) use, without reasonable excuse, of a substance to an extent adversely affecting competent performance of duties;

- (h) contravention of a requirement of the commissioner under section 25B(1) or 25C(1) by, in response to the requirement—
  - (i) failing to disclose a serious disciplinary action; or
  - (ii) giving false or misleading information.
- (2) A disciplinary ground arises when the act or omission constituting the ground is done or made.
- (3) Also, the commissioner may—
  - (a) discipline a fire service officer under subdivision 2 as if a ground mentioned in subsection (1) exists; or
  - (b) discipline a former fire service officer under subdivision 3 or 4 on the same grounds mentioned in subsection (1).
- (4) If the commissioner is contemplating taking disciplinary action against a fire service officer on the ground of absence from duty, the commissioner may—
  - (a) appoint a medical practitioner to examine the officer and to give the chief executive a written report about the officer's mental or physical condition, or both; and
  - (b) direct the officer to submit to the medical examination.
- (5) In this section—
  - misconduct*** means—
    - (a) inappropriate or improper conduct in an official capacity; or
    - (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on QFES.

*Example of misconduct—*

victimising another fire service officer in the course of the other officer's employment in QFES

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**30A Disciplinary action that may be taken against a fire service officer generally**

- (1) In disciplining a fire service officer, the commissioner may take the action, or order the action be taken, (*disciplinary action*) that the commissioner considers reasonable in the circumstances.

*Examples of disciplinary action—*

- dismissal
  - reduction of classification level and a consequential change of duties
  - transfer or redeployment to other fire service employment
  - forfeiture or deferment of a remuneration increment or increase
  - reduction of salary level
  - imposition of a monetary penalty
  - if a penalty is imposed, a direction that the amount of the penalty be deducted from the officer's periodic salary payments
  - a reprimand
- (2) If the disciplinary action is taken following an agreement under section 30E(1) between the previous chief executive mentioned in the section and the commissioner, the previous chief executive and the commissioner must agree on the disciplinary action.
- (3) A monetary penalty can not be more than the total of 2 of the officer's periodic salary payments.
- (4) Also, an amount directed to be deducted from any particular periodic salary payment of the officer—
- (a) must not be more than half of the amount payable to or for the officer in relation to the payment; and
  - (b) must not reduce the amount of salary payable to the officer in relation to the period to less than—
    - (i) if the officer has a dependant—the guaranteed minimum wage for each week of the period; or
    - (ii) otherwise—two-thirds of the guaranteed minimum wage for each week of the period.

[s 30B]

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- (5) An order under subsection (1) is binding on anyone affected by it.

*Note—*

See the following provisions in relation to appeals against a decision of the commissioner to take disciplinary action against a person—

- (a) the *Public Service Act 2008*, sections 23 and 194;  
(b) the *Public Service Regulation 2008*, sections 5 and 7 and schedule 1, item 7.

### ***Subdivision 2      Disciplinary action against a fire service officer who was a relevant employee***

#### **30B      Application of sdiv 2**

- (1) *This subdivision applies if—*
- (a) *a person is a relevant employee and a relevant disciplinary ground arises in relation to the person; and*
- (b) *after the relevant disciplinary ground arises, the person changes employment from employment as a relevant employee to employment under section 25.*
- (2) *However, this subdivision does not apply if the person's previous chief executive has taken, is taking, or intends to take, disciplinary action against the person under a relevant disciplinary law in relation to the relevant disciplinary ground.*
- (3) *For this section, a person changes employment from employment as a relevant employee to employment under section 25 if—*
- (a) *the person's employment under section 25 starts after the person's employment as a relevant employee ends; or*
- (b) *the person is employed under section 25 following the person's transfer, redeployment or secondment from the department or the Queensland Ambulance Service.*

### **30D Action previous chief executive may take**

- (1) *The person's previous chief executive may make a disciplinary finding about the relevant disciplinary ground for this subdivision.*
- (2) *The previous chief executive may take disciplinary action about the relevant disciplinary ground as provided under section 30E(1).*
- (3) Despite subsection (1) and without limiting or being limited by any other power of delegation under any Act, the previous chief executive may delegate to the commissioner the authority under subsection (1) to make a disciplinary finding about the person.
- (4) The previous chief executive may give to the commissioner any information about the person or a relevant disciplinary ground relating to the person to help the commissioner to perform a function under section 30E(1) or (2) in relation to the person.

### **30E Action commissioner may take**

- (1) If—
  - (a) *the person's previous chief executive makes a disciplinary finding about the relevant disciplinary ground; and*
  - (b) *the previous chief executive and the commissioner agree that disciplinary action against the person is reasonable in the circumstances;*

the commissioner may take disciplinary action against the person under section 30A as if a disciplinary ground under section 30 exists.

- (2) If—
  - (a) *the person's previous chief executive delegates to the commissioner the authority under section 30D(1) to make a disciplinary finding about the person; and*

[s 30F]

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- (b) the commissioner makes a disciplinary finding about the person;

the commissioner may take disciplinary action against the person under section 30A without the agreement of the previous chief executive.

**30F Declaration if the commissioner is also the previous chief executive**

- (1) This section applies if, in relation to a person who is a fire service officer, the commissioner is also the previous chief executive under this subdivision.
- (2) This subdivision applies with necessary changes to allow the commissioner to take disciplinary action against the person as provided under this subdivision.

**Subdivision 3 Disciplinary action against a former fire service officer**

**30G Application of sdiv 3**

- (1) This subdivision applies if—
  - (a) a disciplinary ground arises in relation to a fire service officer (the *former fire service officer*); and
  - (b) after the disciplinary ground arises, the officer's employment as a fire service officer ends for any reason.
- (2) *However, this subdivision does not apply in relation to a person who is a former fire service officer if the commissioner is aware—*
  - (a) *the person is a relevant employee; and*
  - (b) *the person's current or previous chief executive has taken, is taking, or intends to take disciplinary action against the person, under a relevant disciplinary law, in relation to the disciplinary ground.*

### 30H Action commissioner may take

- (1) The commissioner may make a disciplinary finding or take or continue to take disciplinary action against the former fire service officer in relation to the disciplinary ground.
- (2) The disciplinary finding or disciplinary action must be made or taken within a period of 2 years after the end of the officer's employment.
- (3) However, subsection (2) does not stop disciplinary action being taken following an appeal or review.
- (4) Subsection (2) does not affect—
  - (a) an investigation of a suspected criminal offence; or
  - (b) an investigation of a matter for the purpose of notifying the Crime and Corruption Commission of suspected corrupt conduct under the *Crime and Corruption Act 2001*.
- (5) In disciplining the former fire service officer, the commissioner may make a disciplinary declaration and may not take any other disciplinary action.
- (6) The commissioner may only make a disciplinary declaration if the disciplinary action that would have been taken against the officer if the officer's employment had not ended would have been—
  - (a) dismissal; or
  - (b) reduction of classification level.
- (7) The making of the disciplinary declaration does not affect the way in which the officer's employment ended, or any benefits, rights or liabilities arising because the employment ended.
- (8) In this section—

***disciplinary declaration*** means a declaration of—

  - (a) the disciplinary finding against the former fire service officer; and

[s 30I]

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- (b) the disciplinary action that would have been taken against the officer if the officer's employment had not ended.

## Subdivision 4 Provisions about information about disciplinary action

### 30I Information about disciplinary action to be given by commissioner

- (1) This section applies if—
  - (a) *a relevant official asks the commissioner for disciplinary information that the commissioner has about a person who is or was a fire service officer; and*
  - (b) *the information is reasonably necessary for the relevant official to make a decision about—*
    - (i) *an appointment or continued appointment, or the employment or continued employment, of the person by the official; or*
    - (ii) *a disciplinary finding, disciplinary action or disciplinary declaration the official is considering in relation to the person under a relevant disciplinary law.*
- (2) *The commissioner must give the disciplinary information to the relevant official unless the commissioner is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.*
- (3) In this section—

***disciplinary information***, about a person, means information about the following made or taken against the person under this Act by commissioner—

  - (a) a current investigation into whether the person should be disciplined;

- (b) a finding that the person should be disciplined;
- (c) possible disciplinary action under consideration;
- (d) disciplinary action, including a disciplinary declaration.

**relevant official** means—

- (a) *the chief executive of a department; or*
- (b) *the chief executive (however described) of an entity whose employees are prescribed employees.*

### **30J Information about disciplinary action to be given to commissioner**

- (1) This section applies if—
  - (a) *the commissioner asks a relevant official for disciplinary information the official has about a person who is or was a relevant employee; and*
  - (b) the information is reasonably necessary for the commissioner to make a decision about—
    - (i) the employment or continued employment of the person under section 25; or
    - (ii) a disciplinary finding, disciplinary action or disciplinary declaration the commissioner is considering in relation to the person under this Act.
- (2) *The relevant official must give the disciplinary information to the commissioner unless the official is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.*
- (3) In this section—

**disciplinary information**, about a person, means information about the following made or taken against the person under a public sector disciplinary law by a relevant official or another entity—

  - (a) a current investigation into whether the person should be disciplined;

[s 30K]

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- (b) a finding that the person should be disciplined;
- (c) possible disciplinary action under consideration;
- (d) disciplinary action, including a disciplinary declaration.

*relevant official means—*

- (a) *the chief executive of a department; or*
- (b) *the chief executive (however described) of an entity whose employees are prescribed employees.*

**30K Use of particular information about disciplinary action obtained by commissioner in another capacity**

- (1) This section applies if—
  - (a) *under the Public Service Act 2008, the commissioner has or has access to disciplinary information about a person who is or was a public service employee; and*
  - (b) the information is reasonably necessary for the commissioner to make a decision about—
    - (i) the employment or continued employment of the person under section 25; or
    - (ii) a disciplinary finding, disciplinary action or disciplinary declaration the commissioner is considering in relation to the person under this Act.
- (2) Despite any other Act or law, the commissioner may use the disciplinary information for the purpose of making the decision mentioned in subsection (1)(b).
- (3) In this section—

***disciplinary information*** means information about the following made or taken against the person under a public sector disciplinary law—

  - (a) a current investigation into whether the person should be disciplined;
  - (b) a finding that the person should be disciplined;
  - (c) possible disciplinary action under consideration;

- (d) disciplinary action, including a disciplinary declaration.

## **Subdivision 5 Other provisions about disciplinary action**

### **31 Implementation of order**

An order about disciplinary action must not be implemented—

- (a) if an appeal about the disciplinary action is started—until after the determination or withdrawal of the appeal or the appeal lapses, whichever happens first; or
- (b) if an appeal about the disciplinary action is not started—until the time for starting an appeal has ended.

### **32 Suspension**

(1) Where—

- (a) it appears on reasonable grounds to the commissioner that a fire service officer is liable to disciplinary action or is suspected of involvement in circumstances such that the proper and efficient discharge of the functions of QFES might be prejudiced if the officer's services are continued; or
- (b) an officer is charged in Queensland with having committed an indictable offence or is charged elsewhere with having committed an offence which if it had been committed in Queensland would be an indictable offence;

the officer may be suspended from duty by the commissioner.

- (2) A suspension may be lifted at any time by the commissioner.
- (3) An officer suspended from duty is not entitled to receive salary for any period during which the officer does not perform that duty, unless the commissioner otherwise determines.

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- (4) An officer suspended from duty, who is not entitled to salary for the period of suspension and who resumes duty upon the lifting of the suspension, is entitled to receive a sum equivalent to the amount of salary payable had the officer not been suspended diminished by the amount of salary or fees (if any) to which the officer became entitled from any other source during the period of suspension, unless the commissioner otherwise determines.

### **33 Mode of dismissal or suspension**

- (1) Dismissal or suspension must be effected in accordance with this Act and the principles of natural justice.
- (2) Dismissal or suspension is effected by giving the officer concerned a written notice signed by the commissioner.

## **Part 4A Emergency Services Advisory Council**

### **34 Establishment of council**

The Emergency Services Advisory Council is established.

### **35 Functions of council**

- (1) The council's function is to advise the Minister about the following matters—
  - (a) the extent to which current service delivery by QFES—
    - (i) meets community needs; and
    - (ii) contributes to the achievement of the government's desired outcomes for the community; and
    - (iii) meets community expectations about the use of fire as a means of hazard reduction and sustainable land management; and
    - (iv) impacts on the environment;

- (b) preparing for, and responding to, fire in rural areas including the operation of rural fire brigades and the fire fighting or fire prevention function of emergency service units;
  - (c) fire safety, fire prevention and the reduction of fire danger in rural areas;
  - (d) using fire as a means of sustainable land management in rural areas;
  - (e) the functions, capacity and capability of the department in supporting disaster mitigation and response activity;
  - (f) anything else referred to it by the Minister—
    - (i) that is relevant to the functions of QFES; or
    - (ii) that relates to activities carried out or funded by the department.
- (2) The council also has the functions given to it under the *Ambulance Service Act 1991* and any other Act.

### **36 Membership of council**

- (1) The council consists of not more than 16 members appointed by the Governor in Council.
- (2) A member may be appointed at any time.
- (3) Nominees for appointment to the council must be persons who the Minister considers are competent to assist the council to perform its functions.

### **37 Chairperson of council**

- (1) The Governor in Council is to appoint a member as the chairperson of the council.
- (2) The chairperson is to preside at all council meetings at which the chairperson is present.

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- (3) If the chairperson is not present at a council meeting, a member chosen by the members present at the meeting is to preside.
- (4) If appointed a member of the council, the following are not eligible to be appointed chairperson—
  - (a) the commissioner;
  - (b) the commissioner of the Queensland Ambulance Service;
  - (c) a public service officer.

### **38 How appointments made**

- (1) An appointment under section 36 or 37 is to be by gazette notice.
- (2) The appointment starts on the day the notice is published in the gazette or, if a later day is stated in the notice, the later day.
- (3) A person's appointment as chairperson may be combined with the person's appointment as a member of the council.

### **39 Term of office**

The term of office of a member is not to exceed 3 years.

### **40 Removal from office**

- (1) The Governor in Council may remove a member from office at any time.
- (2) The removal takes effect on notice of the removal being given to the member by the Minister.
- (3) It is unnecessary for any reasons to be given for the removal.

**41 Quorum**

A quorum for the council is the number equal to one-half of the number of its members for the time being, and if one-half is not a whole number, the next higher whole number.

**42 Conduct of business**

Subject to this part, the council may conduct its meetings and other business in the way it considers appropriate.

**43 Minutes**

The council must keep minutes of its meetings.

**44 Remuneration of members**

A member is entitled to be paid the fees and allowances decided by the Governor in Council.

**Part 6 Powers of authorised fire officers**

**52 Authorised fire officers**

- (1) The commissioner may authorise a fire officer or fire officers belonging to a class of fire officer specified by the commissioner to exercise—
  - (a) all the powers conferred by this Act on an authorised fire officer; or
  - (b) any power or class of power conferred by this Act on an authorised fire officer.
- (2) A reference in this Act to an authorised fire officer is a reference to—
  - (a) the commissioner; and

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- (b) a fire officer authorised by the commissioner pursuant to this section.
- (3) A fire officer authorised by the commissioner immediately before the commencement of this section to exercise any power under this Act as an authorised fire officer is taken, on and from the commencement, to be authorised pursuant to this section.

### **53 Powers of authorised officer in dangerous situations**

- (1) An authorised fire officer may take any reasonable measure—
  - (a) to protect persons, property or the environment from danger or potential danger caused by a fire or a hazardous materials emergency; or
  - (b) to protect persons trapped in any premises or otherwise endangered.
- (2) Without limiting the measures that may be taken for a purpose described in subsection (1), an authorised fire officer may for that purpose do any of the following—
  - (a) enter any premises;
  - (b) open any receptacle, using such force as is reasonably necessary;
  - (c) bring any apparatus or equipment onto premises;
  - (d) destroy, damage, remove or otherwise deal with any vegetation or any other material or substance, flammable or not flammable;
  - (e) destroy (wholly or in part) or damage any premises or receptacle;
  - (f) shore up any building;
  - (g) close any road or access, whether public or private;
  - (h) shut off the supply of water from any main, pipe or other source to obtain a greater pressure or supply or take water from any source whether natural or artificial;

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- (i) cause to be shut off or disconnected the supply of gas, electricity or any other source of energy to any premises or area;
  - (j) require any person who, in the opinion of the authorised fire officer, is—
    - (i) the occupier of premises, being the site of or near to the site of the danger; or
    - (ii) in charge of anything that is the source of the danger or likely (in the opinion of the officer) to increase the danger;to take any reasonable measure for the purpose of assisting the officer to deal with the danger or answer any question or provide any information for that purpose;
  - (k) require any person not to enter or remain within a specified area around the site of the danger;
  - (l) remove from any place a person who fails to comply with an order given pursuant to paragraph (k) and use such force as is reasonably necessary for that purpose;
  - (m) if unable to identify the person entitled to possession of property found at or near the site of the danger, take possession of the property and retain it for safe custody.
- (3) The owner of any building shored up pursuant to an exercise of the power conferred by subsection (2)(f) must pay to the commissioner upon demand all reasonable expenses thereby incurred and those expenses may be recovered in a court of competent jurisdiction as a debt due to the State.
- (4) A local government, other authority or a person supplying water or any source of energy is not liable for any interruption of supply caused by the exercise of the power conferred by subsection (2)(h) or (i).

**54 Disposal of property**

- (1) Any property retained for safe custody pursuant to section 53(2)(m) must, as soon as is practicable, be delivered into the possession of a person authorised by, or a person belonging to a class of person authorised by, the commissioner for the purposes of this section.
- (2) The authorised person—
  - (a) must cause the property to be returned to the person the authorised person believes is entitled to possession of it; or
  - (b) if unable to form such a belief, must dispose of or otherwise deal with the property in accordance with any code of practice or any direction given by the commissioner.
- (3) Subject to subsection (4), any dealing with property pursuant to subsection (2) does not affect the right of any person to recover the property by action from any person who has possession of it as a result of that dealing.
- (4) An action referred to in subsection (3) must be commenced within 6 months of the date on which the property was dealt with pursuant to subsection (2).

**55 Powers of authorised fire officer for preventative or investigative purposes**

- (1) At any time an authorised fire officer may enter any premises or open (using such force as is reasonably necessary) any receptacle for any of the following purposes—
  - (a) to prevent, or reduce the likelihood of, the occurrence of a fire or a hazardous materials emergency;
  - (b) to investigate whether or not fire safety measures and fire prevention measures, including the implementation of a fire safety management plan as required under part 9A, have been taken or are being maintained;
  - (c) to ascertain the cause of a fire or hazardous materials emergency;

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- (d) to ascertain whether any provision of this Act or any notice, notification, order (written or verbal) or permit given under this Act has been or is being complied with;
  - (e) to ascertain whether a power conferred by this Act upon an authorised officer should be exercised, or to exercise a power under this Act.
- (2) The power of entry conferred by subsection (1) must not be exercised in respect of—
- (a) a building that is a dwelling or such part of a building as is a dwelling; or
  - (b) a vehicle or vessel used as a dwelling; or
  - (c) a tent or other structure used as a dwelling;
- unless the occupier has given approval to enter or unless entry is made during or in the aftermath of a fire or hazardous materials emergency occurring at the dwelling, for the purpose of ascertaining its cause.
- (2A) However, subsection (2)(a) does not apply to a budget accommodation building if the entry is made to investigate whether the owner of the building is implementing a fire safety management plan.
- (3) An authorised fire officer who enters premises under this section may—
- (a) for subsection (1)(a)—burn, remove or otherwise deal with any vegetation or other material or substance whether flammable or inflammable at the premises; or
  - (b) for subsection (1) generally—
    - (i) search any part of the premises; or
    - (ii) inspect, measure, test, photograph or film any part of the premises or anything at the premises; or
    - (iii) take a thing, or a sample of or from a thing, at the premises for analysis or testing; or
    - (iv) copy a document at the premises; or
    - (v) make inquiries or conduct surveys and tests; or

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- (vi) take into or onto the premises any persons, equipment and materials the authorised fire officer reasonably requires for exercising a power under this part.

## **56 Extent of power of entry**

The right of entry conferred by section 53(2)(a) or 55—

- (a) includes the right to enter all parts of the premises for which the right is exercised; and
- (b) authorises the person exercising the right to use a reasonable degree of force to ensure the proper exercise of the right.

## **56A Power to seize evidence etc.**

An authorised fire officer who enters premises under section 55 may seize a thing at the premises if the authorised fire officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; or
- (b) the thing has just been used in committing an offence against this Act; or
- (c) the seizure is necessary to prevent the thing being hidden, lost or destroyed; or
- (d) seizure of the thing is necessary for the purposes mentioned in section 55.

## **56B Powers supporting seizure**

- (1) Having seized a thing, an authorised fire officer may—
  - (a) move the thing from the premises where it was seized (the *premises of seizure*); or
  - (b) leave the thing at the premises of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted

- (2) If an authorised fire officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an authorised fire officer's approval.

Maximum penalty—40 penalty units.

- (3) To enable a thing to be seized, an authorised fire officer may require the person in control of it—
- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (4) The requirement—
- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.
- (5) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

- (6) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

## **56C Receipt for seized things**

- (1) As soon as practicable after an authorised fire officer seizes a thing, the authorised fire officer must give a receipt for it to the person from whom it was seized.

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- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised fire officer must leave the receipt in a conspicuous position and in a reasonably secure way at the premises of seizure.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by the section (given the thing's nature, condition and value).

#### **56D Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the authorised fire officer who seized the thing—
  - (a) can not find its owner after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) Subsection (1)(a) does not require the authorised fire officer to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1)(b) does not require the authorised fire officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) In deciding whether and, if so, what inquiries and efforts are reasonable about a thing, regard must be had to the thing's nature, condition and value.

#### **56E Return of seized things**

- (1) If a seized thing has not been forfeited, the authorised fire officer must return it to its owner at the end of—
  - (a) 6 months; or
  - (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.

- (2) Despite subsection (1), unless the thing has been forfeited, the authorised fire officer must immediately return a thing seized as evidence to its owner if the authorised fire officer stops being satisfied its continued retention as evidence is necessary.

#### **56F Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised fire officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

#### **57 Power to require name and address**

- (1) This section applies if an authorised fire officer—
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the officer to reasonably suspect a person has committed an offence against this Act.
- (2) The authorised fire officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised fire officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised fire officer may require the person to give evidence of the correctness of the stated name or address if the authorised fire officer reasonably suspects the stated name or address is false.

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- (5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (6) The person does not commit an offence against subsection (5) if—
- (a) the person was required to state the person's name and address by an authorised fire officer who suspected the person had just committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

#### **58A Reasonable assistance to be provided**

- (1) An authorised fire officer who enters any premises under this part may require any person having responsibilities in relation to the premises (whether as owner or occupier of the premises or as a person employed to work thereon or otherwise) to provide the officer with such facilities and assistance with respect to matters or things to which the person's responsibilities extend as are reasonably necessary to enable the officer to exercise the powers conferred upon the authorised officer by this Act.

- (2) A person who is required to provide facilities and assistance to an authorised fire officer under subsection (1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (3) It is not a reasonable excuse for the person to fail to comply with the requirement that complying with it might tend to incriminate the person.

- (4) However, if—

- (a) the person is an individual; and
- (b) the requirement is to give information or produce a document;

evidence of, or evidence directly or indirectly derived from, the information or document that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity or misleading nature of the information or document.

- (5) If a person is convicted of an offence against subsection (2), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.

### **58B Power to inquire into fire or hazardous materials emergency**

- (1) This section—
  - (a) applies if an authorised fire officer becomes aware, or reasonably suspects, that a fire or hazardous materials emergency (the *emergency*) has happened; and
  - (b) applies for section 55 and for this Act generally.
- (2) The authorised fire officer may inquire into the circumstances and probable causes of the emergency.
- (3) The authorised fire officer may require a person who has knowledge, or whom the authorised fire officer reasonably suspects to have knowledge, of the circumstances of the emergency to give the authorised fire officer reasonable help, as stated in the requirement, to inquire under subsection (2).
- (4) A requirement under subsection (3) may be given orally or in writing.
- (5) A person must comply with a requirement under subsection (3) unless the person has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

- (6) If the requirement is to be complied with by a person who is an individual giving information or producing a document, other than a document required to be kept by the person under this Act, it is a reasonable excuse for the person to fail to

comply with the requirement if complying with the requirement might tend to incriminate the person.

### **58C Power to require production of certain documents**

- (1) An authorised fire officer may require a person to make available for inspection by an authorised fire officer, or produce to the authorised fire officer for inspection, at a reasonable time and place stated by the authorised fire officer—
  - (a) a document issued to the person under this Act or required to be kept by the person under this Act; or
  - (b) a document about the person's obligations under this Act for fire safety, including about the maintenance of fire safety installations in a building or the fire safety systems for a building.

- (2) The person must comply with a requirement under subsection (1), unless the person has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

- (3) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement under subsection (1) if complying with the requirement might tend to incriminate the person.
- (4) The authorised fire officer may keep the document to copy it.
- (5) If the authorised fire officer copies the document, or an entry in the document, the authorised fire officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (6) The person responsible for keeping the document must comply with the requirement, unless the person has a reasonable excuse for not complying.

Maximum penalty—20 penalty units.

- (7) The authorised fire officer must return the document to the person as soon as practicable after copying it.

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**58D Power to require information about identity of occupier**

- (1) This section applies if a person alleges to an authorised fire officer, or an authorised fire officer reasonably suspects, a contravention of this Act or the *Building Act 1975*, chapter 7 or 7A has been committed in relation to premises.
- (2) An authorised fire officer may require any of the following persons to give the authorised fire officer information that will identify or help identify an occupier of the premises—
  - (a) a government entity;
  - (b) an occupier of the premises;
  - (c) a person who may reasonably be expected to give the information.
- (3) A person must comply with a requirement under subsection (2), unless the person has a reasonable excuse for not complying.  
Maximum penalty—20 penalty units.
- (4) If the person is an individual, it is a reasonable excuse for the person not to comply with a requirement under subsection (2) if complying with the requirement might tend to incriminate the person.

**59 Person acting at direction of authorised fire officer**

Any power conferred upon an authorised fire officer may be exercised by any person acting at the direction of an authorised fire officer and any power so exercised is taken to have been exercised by an authorised fire officer.

**60 Directions concerning exercise of powers**

The exercise of a power conferred by or under this part on an authorised fire officer or any other person must be in accordance with any direction given by the commissioner and with any code of practice.

## **60A Decontamination**

- (1) An authorised fire officer may ask a person the authorised fire officer is satisfied may be, is, or may have been affected by a chemical substance, to agree to undergo decontamination.
- (2) The person may agree or refuse to agree to the request.
- (3) If the person agrees, it is lawful for the authorised fire officer to take the steps the authorised fire officer considers reasonably necessary to decontaminate the person, including, for example, asking the person to stay where the person is or to move to a stated place for the purpose.
- (4) The authorised fire officer may not direct another person to perform the decontamination.
- (5) In this section—  
*decontaminate*, in relation to a chemical substance, means make the chemical substance harmless.

## **Part 6A Powers of investigation officers**

### **Division 1 Investigation officers**

#### **60B Appointment**

- (1) The commissioner may appoint any of the following persons as an investigation officer—
  - (a) a public service employee;
  - (b) a fire service officer;
  - (c) a person prescribed under a regulation.
- (2) However, the commissioner may appoint a person as an investigation officer only if the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

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**60C Appointment conditions and limit on powers**

- (1) An investigation officer holds office on any conditions stated in—
  - (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the investigation officer or a regulation may limit the officer's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the commissioner.

**60D When investigation officer ceases to hold office**

- (1) An investigation officer ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the officer ceases to hold office.
- (2) Subsection (1) does not limit the ways an investigation officer may cease to hold office.
- (3) In this section—  
*condition of office* means a condition on which the investigation officer holds office.

**60E Functions of investigation officers**

An investigation officer has the function of investigating offences against this part and section 150B.

**60F Issue of identity card**

- (1) The commissioner must issue an identity card to each investigation officer.

- (2) The identity card must—
  - (a) contain a recent photo of the investigation officer; and
  - (b) contain a copy of the investigation officer's signature; and
  - (c) identify the person as an investigation officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

#### **60G Production or display of identity card**

- (1) In exercising a power under this part in relation to a person, an investigation officer must—
  - (a) produce the officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the investigation officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an investigation officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 60I(1)(b) or (2).

#### **60H Return of identity card**

A person who ceases to be an investigation officer must return the person's identity card to the commissioner within 21 days after ceasing to be an investigation officer unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

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## Division 2 Powers of investigation officers

### 60I Power to enter places

- (1) An investigation officer may enter a place if—
  - (a) an occupier of the place consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public.
- (2) For the purpose of asking the occupier of a place for consent to enter, an investigation officer may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) In this section—

*public place* means—

  - (a) a place to which members of the public have access as of right, whether or not on payment of a fee and whether or not access to the place may be restricted at particular times or for particular purposes; or
  - (b) a part of a place that the occupier of the place allows members of the public to enter, but only while the place is ordinarily open to members of the public.

### 60J Entry with consent

- (1) This section applies if an investigation officer intends to ask an occupier of a place to consent to the officer or another investigation officer entering the place.
- (2) Before asking for the consent, the investigation officer must tell the occupier—
  - (a) the purpose of the entry; and

- (b) that the occupier is not required to consent.
- (3) If the consent is given, the investigation officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the investigation officer consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs an acknowledgement, the investigation officer must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **60K General powers after entering places**

- (1) This section applies to an investigation officer who enters a place.
- (2) However, if an investigation officer enters a place to get the occupier's consent to enter a place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this part or section 150B, the investigation officer may—

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- (a) copy a document at the place or take the document to another place to copy it; or
  - (b) require a person at the place, to give the officer reasonable help to exercise the officer's powers under paragraph (a); or
  - (c) require a person at the place, to answer questions by the officer to help the officer ascertain whether the person, or another person at the place, committed an offence against this Act.
- (4) When making a requirement mentioned in subsection (3)(b) or (c), the investigation officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
  - (5) If an investigation officer takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.
  - (6) To remove any doubt, it is declared that this section applies to an investigation officer who is also an authorised fire officer and enters a place for the purpose of exercising a power under part 6.
  - (7) Also, the powers an investigation officer mentioned in subsection (6) has under this section are in addition to, and do not limit, any powers the officer may have under part 6.

#### **60L Failure to help investigation officer**

- (1) A person required to give reasonable help under section 60K(3)(b) must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—10 penalty units.
- (2) It is a reasonable excuse for the person not to comply with the requirement because complying with the requirement might tend to incriminate the person.

**60M Failure to answer questions**

- (1) A person of whom a requirement is made under section 60K(3)(c) must, unless the person has a reasonable excuse, comply with the requirement.

Maximum penalty—10 penalty units.

- (2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

**60N Power to require name and address**

- (1) This section applies if an investigation officer—
  - (a) finds a person committing an offence against this part or section 150B; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed an offence against this part or section 150B; or
  - (c) has information that leads the officer to reasonably suspect a person has committed an offence against this part or section 150B.
- (2) The investigation officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the investigation officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The investigation officer may require the person to give the officer evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

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**60O Failure to give name or address**

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the person was required to state the person's name and residential address by an investigation officer who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence against this Act.

- (3) In this section—

*personal details requirement* means a requirement under section 60N(2) or (4).

**60P False or misleading statements**

A person must not state anything to an investigation officer the person knows is false or misleading in a material particular.

Maximum penalty—10 penalty units.

**60Q False or misleading documents**

- (1) A person must not give an investigation officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—10 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the investigation officer, to the best of the person's ability, how it is false or misleading; and

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- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## **Part 7                      Control and prevention of fires**

### **Division 1                  Powers of commissioner relating to fires**

#### **61                      Interpretation and application of division**

- (1) For the purposes of this division a person is taken to light a fire if the person—
  - (a) lights, maintains or uses the fire; or
  - (b) aids, procures or counsels another to light, maintain or use the fire; or
  - (c) being the owner or occupier of the land on which the fire is lit—permits another to light, maintain or use the fire.
- (2) This division does not apply in respect of the lighting of a fire inside any building in circumstances that prevent the escape from the building of fire or any material or substance that is likely to cause fire.
- (3) In this division—

*licence area* see the *Forestry Act 1959*, schedule 3.

*occupier of land* includes, if there is no person in actual occupation of the land—

- (a) the person charged by the owner or by law with the management of the land; and
- (b) if the land is a licence area—
  - (i) if there is a plantation sublicensee for the licence area—the plantation sublicensee; or
  - (ii) otherwise—the plantation licensee.

*plantation licensee* see the *Forestry Act 1959*, schedule 3.

*plantation officer* see the *Forestry Act 1959*, schedule 3.

*plantation operator* see the *Forestry Act 1959*, schedule 3.

*plantation sublicensee* see the *Forestry Act 1959*, schedule 3.

## 62 Offence to light unauthorised fire

A person who lights a fire that is not authorised by this division or by any notification, notice or permit given under this division commits an offence against this Act.

Maximum penalty—50 penalty units or 6 months imprisonment.

## 63 Authorisation of fires by commissioner

The commissioner may, by notification published in the gazette, authorise the lighting of fires for purposes and in circumstances specified in the notification.

## 64 Prohibition by commissioner against lighting of fires

- (1) Notwithstanding any notification under section 63 authorising the lighting of fires the commissioner may, by giving a notice to the occupier of land, prohibit the lighting on the land of all fires or all fires other than those lit for a purpose or in circumstances specified in the notice.
- (2) The commissioner must consider any request made by an occupier of land that a notice be given to the occupier of adjoining land prohibiting the lighting of fires on the adjoining land unless the commissioner believes the request is frivolous or vexatious.
- (3) In this section—

*occupier of adjoining land* means the occupier of land that—

  - (a) touches some part of the land in question; or
  - (b) would touch some part of that land but for the existence of a watercourse, road or firebreak, that is 10m or less in

width or, although wider than 10m, is not clear of vegetation or other flammable material for at least 10m in every direction.

## **65 Granting of permits**

- (1) A person may apply to the commissioner (orally or in writing) for a permit to light a fire on any land.
- (2) The commissioner may grant or refuse to grant an application.
- (3) Subject to subsection (4), the commissioner must refuse to grant a permit to light a fire on any land unless satisfied—
  - (a) that reasonable steps have been taken to notify every occupier of adjoining land (within the meaning of section 64) of the making of the application; and
  - (b) that a reasonable opportunity has been given to every occupier so notified to object (orally or in writing) to the granting of the permit.
- (4) The commissioner may grant a permit without complying with subsection (3) if satisfied that extraordinary circumstances exist for so doing.

## **66 Fires in State forests etc.**

- (1) The provisions of this division do not apply to the lighting of a fire—
  - (a) in a protected area by a person acting in the performance of duties under the *Nature Conservation Act 1992*; or
  - (b) in a State forest, timber reserve or forest entitlement area by a person acting in the performance of duties under the *Forestry Act 1959*.
- (2) The commissioner must not authorise the lighting of fires—
  - (a) in a protected area without the approval of the chief executive of the department that deals with matters arising under the *Nature Conservation Act 1992*; or

- (b) in a State forest (other than a licence area), timber reserve or forest entitlement area without the approval of the chief executive of the department that deals with matters arising under the *Forestry Act 1959*.
- (3) For subsection (1)(b), a person acting in the performance of duties under the *Forestry Act 1959* does not include—
  - (a) a plantation operator; or
  - (b) a plantation officer.

## **67 Occupier to extinguish fire**

Where a fire is burning on any land and the lighting of the fire is not authorised by or under this or any other Act, the occupier of the land, immediately upon becoming aware of the fire (regardless of who lit it)—

- (a) must take all reasonable steps to extinguish or control the fire; and
- (b) must, as soon as is practicable, report the existence and location of the fire to a fire officer, an officer of a rural fire brigade, a member of an emergency service unit, a chief fire warden or fire warden, a forest officer (within the meaning of the *Forestry Act 1959*), a conservation officer within the meaning of the *Nature Conservation Act 1992* or a police officer.

Maximum penalty—50 penalty units or 6 months imprisonment.

## **68 Powers of occupier of entry etc.**

- (1) Subject to subsections (2) and (3), an occupier of land, who believes on reasonable grounds that a grass fire (that is, a fire that predominantly consumes vegetation) burning within 1.6km of that land constitutes a fire risk to that land may, together with persons acting at the direction of the occupier—

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- (a) enter the land on which the fire is burning and any other land in order to gain access to the land on which the fire is burning; and
  - (b) take on to that land equipment for extinguishing or controlling the fire; and
  - (c) take all reasonable measures to extinguish or control the fire.
- (2) An occupier of land must not do or direct the doing of any act referred to in subsection (1) if prior notice (oral or written) of the intention to light the fire has been given to the occupier by the person lighting it or by a prescribed person unless the occupier believes on reasonable grounds that the fire has been unlawfully lit or is out of control.
- (3) If it is practicable to contact a prescribed person, an occupier of land—
- (a) must not do or direct the doing of any act referred to in subsection (1) unless the prescribed person has been notified of the situation; and
  - (b) must comply with any direction given by the prescribed person in respect of the doing of any act.
- (4) If the occupier of land, or an employee, agent or contractor of the occupier of land, is also a prescribed person, the references to a prescribed person in subsections (2) and (3) do not include the occupier of land, or an employee, agent or contractor of the occupier of land.
- (5) In this section—

***prescribed person*** means a fire officer, an officer of a rural fire brigade, a fire coordinator, a chief fire warden or fire warden, a forest officer (within the meaning of the *Forestry Act 1959*), a conservation officer within the meaning of the *Nature Conservation Act 1992* or a police officer.

## **69 Requisition by commissioner to reduce fire risk**

- (1) The commissioner may require any occupier of premises to take measures for the purpose of reducing the risk of a fire occurring on the premises or reducing potential danger to persons, property or the environment in the event of a fire occurring on the premises.
- (2) A requisition may be given—
  - (a) in a particular case—by giving a notice to the occupier concerned; or
  - (b) by notification published in the gazette in which case each occupier of land to whom the notification applies must comply with the requisition.

- (3) A person to whom a requisition is given must comply with the requisition.

Maximum penalty—50 penalty units or 6 months imprisonment.

*Note—*

This provision is an executive liability provision—see section 151.

- (4) Without limiting the measures that may be required to be taken, an occupier may be required to do any of the following—
  - (a) make and maintain firebreaks in accordance with any directions contained in the notification or notice;
  - (b) remove, dispose of or otherwise deal with any vegetation or other flammable material in accordance with any directions contained in the notification or notice;
  - (c) obtain equipment and keep it available for use for fire fighting purposes;
  - (d) take measures to ensure an adequate supply of water or any other substance for fire fighting purposes;
  - (e) ensure that the means of escape from the premises in the event of fire can be safely and effectively used at all material times;

- (f) suspend such operations as may be specified for the period specified.
- (5) A notice under subsection (2)(a) must comply with the QCAT Act, section 157(2).
- (6) Where an occupier of premises fails to comply with a notification or notice an authorised fire officer and any assistant may enter the premises and take any of the measures directed by the notification or notice to be taken and any expenses incurred in taking those measures may be recovered by the commissioner in a court of competent jurisdiction from the occupier.
- (7) An authorised fire officer or an assistant who takes the measure of removing vegetation or other flammable material from premises, may take possession of and retain the material until it is disposed of pursuant to subsection (8) or until the person entitled to possession of it is determined.
- (8) Where the commissioner is satisfied that anything retained pursuant to subsection (7) is the property of the occupier who failed to comply with the notification or notice the commissioner may sell or otherwise dispose of the material and the proceeds of the disposal may be applied by the commissioner in payment of expenses incurred in consequence of the failure to comply.
- (9) Where the proceeds of the disposal of any material—
  - (a) are insufficient to cover the expenses incurred—the amount of the expenses that may be recovered under subsection (6) must be reduced by the amount of those proceeds;
  - (b) exceed the expenses incurred—the proceeds of the disposal must be applied in the following order—
    - (i) if there is an amount owing to an entity under a security interest registered against the property under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;

- (ii) in payment of any balance to the person whose property the commissioner believes the material to have been.

## **70 Restriction on sale of notified articles**

The commissioner may, by notification published in the gazette, prohibit or regulate the sale, use or possession of any article or substance that the commissioner believes may constitute a fire risk.

## **71 Notifications, notices and permits**

- (1) Any notification published in the gazette pursuant to this division—
  - (a) may be expressed so as to have effect either generally throughout the State or in part of the State only;
  - (b) may be expressed so as to apply differently in different circumstances;
  - (c) may, where it authorises or requires the doing of any act, specify conditions to be observed in respect of the doing of the act;
  - (d) may be expressed so as to be of unlimited duration or so as to have effect for a specified period or until the occurrence of a specified event;
  - (e) may be amended or revoked at any time by the commissioner by notification published in the gazette.
- (2) Any permit granted or notice given pursuant to this division to a person—
  - (a) may, where it authorises or requires the doing of any act, specify conditions to be observed in respect of the doing of the act;
  - (b) may be expressed so as to be of unlimited duration or so as to have effect for a specified period or until the occurrence of a specified event;

- (c) may be amended or revoked at any time by the commissioner by giving a notice to that effect to that person.

## **72 Offences re lighting fires**

- (1) A person commits an offence against this Act if the person does or, as the case may be, fails to do any of the following acts—
  - (a) fails to comply with any condition or direction contained in a notification, notice or permit given under this division in respect of the lighting of any fire;
  - (b) leaves unattended or fails to take reasonable measures to extinguish a fire in such circumstances as to cause or be likely to cause danger from fire to any person or property or to the environment;
  - (c) not acting in accordance with a notification, notice or permit given under this division, discards, propels or places any burning article or substance (or anything otherwise capable of causing fire)—
    - (i) thereby causing a fire that endangers or is likely to endanger any person or property or the environment; or
    - (ii) in such circumstances as to be likely to cause a fire that would be likely to endanger any person or property or the environment;
  - (d) wilfully and unlawfully destroys, damages, removes, covers or otherwise interferes with a notice relating to the lighting of fires displayed by the commissioner or by a rural fire brigade for the purposes of this Act;
  - (e) knowingly provides any false or misleading information in respect of an application for a permit under section 65;
  - (f) without the consent of the commissioner, alters any particular shown in a permit granted under section 65.

Maximum penalty—

- (a) if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies—250 penalty units or 1 year's imprisonment; or
  - (b) otherwise—50 penalty units or 6 months imprisonment.
- (2) In subsection (1)—
- property* does not include property of the person alleged to have committed the offence in question.

### **73 Liability of person for fire lit by agent or employee**

- (1) Notwithstanding the Criminal Code, sections 7 and 23 where any person commits an offence against this division in respect of the lighting of a fire as an agent or employee, the principal or employer of that person is taken to have committed the offence and may be prosecuted and punished for the offence unless it is proved that the agent or employee was acting contrary to instructions and that the principal or employer could not have prevented the commission of the offence by exercising reasonable supervision.
- (2) Subsection (1) applies without prejudicing any liability imposed under this division upon the person by whom an offence is actually committed.

### **74 Liability for damage caused by certain fires**

- (1) A person who lights a fire—
  - (a) authorised to be lit by notification given under section 63 or by a permit granted under section 65; or
  - (b) in order to comply with a notification or notice given under section 69;

and who, in lighting the fire, complies with any condition or direction contained in the notification, notice or permit and does not contravene any provision of this Act does not incur any liability at common law for any loss, injury or damage

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caused by the fire unless it is shown that the person acted recklessly or maliciously caused the loss, injury or damage.

- (2) Subsection (1) applies only in respect of a fire lit for the purpose of or likely to have the effect of burning off vegetation.

## **Division 2                      Fire wardens**

### **75            Chief fire wardens and fire wardens**

- (1) Such number of chief fire wardens and fire wardens may be appointed as the commissioner thinks necessary or expedient for the purposes of this Act.
- (2) Subject to subsection (3), appointments must be made in writing by the commissioner.
- (3) Where the appointee is a public service officer or a police officer, the appointment must be made by the Governor in Council by notification published in the gazette—
  - (a) specifying the name of the appointee; or
  - (b) specifying that the appointment is made to the holder of a specified office in which case each person who, for any period, holds or performs the duties of that office is, for that period, a chief fire warden or, as the case may be, a fire warden.
- (4) A person may hold an office under this section in conjunction with any office held with QFES, the public service or the police service.
- (5) The commissioner may, by giving a notice to an appointee, cancel the appointment, whether the appointment was made by the commissioner or the Governor in Council.
- (6) The Governor in Council may, by notification published in the gazette, amend or rescind any notification made under subsection (3)(b).

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**76 Powers and functions**

- (1) The powers of a chief fire warden or fire warden are the same as those of an authorised fire officer subject to any limitation imposed by the commissioner.
- (2) The commissioner may direct a chief fire warden or a fire warden to discharge functions in addition to those imposed by this Act.
- (3) In exercising a power or discharging a function a chief fire warden or fire warden must comply with any code of practice and with any direction of the commissioner.

**77 Expenses**

A chief fire warden or a fire warden may be paid such expenses as are approved by the Governor in Council.

**78 Appeals from decisions of fire wardens**

- (1) Where pursuant to a delegation of the commissioner's powers a chief fire warden or a fire warden is empowered to issue notices under section 64 or 69 or to determine applications for permits under section 65, any person aggrieved by a decision made by the chief fire warden or fire warden in the exercise of the power may appeal against the decision by notice in writing given to the commissioner.
- (2) The commissioner may allow or dismiss an appeal and may, where an appeal is allowed, make any order that appears just.

**Division 3 Rural fire brigades**

**79 Formation of rural fire brigade**

- (1) Any group of persons may apply to the commissioner for registration as a rural fire brigade.

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- (2) The commissioner may grant or refuse an application and, in the case of the granting of an application, must assign a registration number to the rural fire brigade.
- (3) The commissioner may at any time cancel the registration of a rural fire brigade.

**80 Rural fire brigade may make rules**

- (1) A rural fire brigade may make rules, not inconsistent with this Act, for the purpose of regulating its proceedings and the conduct of its operations including the acquisition, vesting and disposal of its property and funds.
- (2) A rule has no effect unless approved by the commissioner.
- (3) The commissioner may at any time direct a rural fire brigade to amend, revoke or make rules in the manner and for the purpose specified in the direction.

**81 Officers of rural fire brigade**

- (1) A rural fire brigade must elect a first officer to be in charge of the brigade.
- (2) A rural fire brigade may also elect such other officers as it considers necessary.
- (3) Any election must be conducted in accordance with the commissioner's directions and has no effect unless approved by the commissioner.
- (4) A person holds office for the period specified by the commissioner.
- (5) The commissioner may dismiss a person from any office held with a rural fire brigade or may disqualify a person from holding any office.

## 82 Functions of a rural fire brigade

- (1) The functions of a rural fire brigade are fire fighting and fire prevention and such other functions as the commissioner may direct.
- (2) The commissioner must notify a rural fire brigade of the area for which and the circumstances in which the brigade is in charge of fire fighting and fire prevention.
- (3) In this section—

*fire prevention* includes taking measures in readiness for fire so as to reduce potential danger to persons, property or the environment.

## 83 Powers of first officer

- (1) Where, pursuant to notification given under section 82(2), a rural fire brigade is in charge of operations for controlling and extinguishing a fire, the first officer of the brigade has, for that purpose—
  - (a) the powers of an authorised fire officer, subject to any limitation imposed by the commissioner; and
  - (b) the control and direction of any person (including any fire officer) whose services are available at the fire.
- (2) Any power exercisable by the first officer of a rural fire brigade may be exercised by any person acting at the direction of the first officer.
- (3) Any person exercising a power or discharging a function under this section must comply with any code of practice and with any direction of the commissioner.
- (4) In this section—

*first officer* includes, where the first officer of a rural fire brigade is unavailable to act, the next senior officer of the brigade who is available.

- (5) Where a rural fire brigade is assisting in operations for controlling or extinguishing a fire, the person who pursuant to this Act or any direction given by the commissioner is in

charge of those operations has the control and direction of the members of the rural fire brigade.

#### **84 Equipment for rural fire brigade**

- (1) The commissioner may provide any rural fire brigade with equipment for carrying out its responsibilities or may, for that purpose, subsidise the purchase of equipment by a rural fire brigade.
- (2) All equipment provided by, or the purchase of which is subsidised by, the commissioner is and remains the property of the State and may at any time be repossessed by the commissioner.
- (3) A justice, acting upon the complaint of the commissioner, may issue a warrant authorising any person named in it or belonging to a class of person specified in it to search for and seize any equipment that pursuant to subsection (2) is the property of the State.
- (4) A person authorised to execute a warrant may, for that purpose—
  - (a) enter any premises in which the person believes the equipment may be located;
  - (b) break open anything the person believes may contain the equipment.
- (5) In this section—

*equipment*, without limiting the meaning of the term, includes plant and any liquid or gaseous substance.

#### **85 Commissioner's role relating to rural fire brigades**

The commissioner is responsible for the efficiency of rural fire brigades and may provide training and other assistance to them.

**86 Powers of officers of other States to fight fires in Queensland**

(1) In this section—

*officer of another State* means an officer of any body or organisation that, pursuant to any law of another State, is responsible for extinguishing fires in rural areas in that State.

*State* means the State of New South Wales or the State of South Australia or the Northern Territory.

(2) Where an officer of another State determines in good faith—

- (a) that a fire burning in Queensland may continue burning into the other State; or
- (b) that a fire burning in the other State may continue burning into Queensland;

the officer may take measures in Queensland for extinguishing or controlling the fire.

(3) If an officer of another State, in Queensland for the purpose of taking measures authorised by subsection (2) to be taken, is the senior officer present of the relevant body or organisation, the officer may exercise, subject to subsection (4), any of the powers of a first officer of a rural fire brigade.

(4) Where, pursuant to this Act or any direction given by the commissioner, any person has control of operations at a fire in Queensland at which an officer of another State is present, that officer must obey any direction given by the person having control of operations.

## Part 8 Fire emergency

### Division 1 Local fire bans

#### 86A Imposing local fire ban

- (1) If the commissioner considers a fire emergency exists in a local government's area, the commissioner may impose a fire ban (a *local fire ban*) in the area.
- (2) A local fire ban may—
  - (a) be imposed for an entire local government area or part of a local government area; and
  - (b) prohibit the lighting of all, or only certain, types of fires.
- (3) The area to which a local fire ban applies is called the *fire ban area*.

#### 86B Publicising local fire ban

- (1) A local fire ban may be imposed—
  - (a) by notice (a *newspaper notice*) published in a newspaper circulating in the fire ban area; or
  - (b) by notice (a *broadcast notice*) transmitted by a broadcasting service generally able to be received by persons in the fire ban area.
- (2) However, a local fire ban may be imposed by a broadcast notice only if the commissioner considers—
  - (a) it is necessary because of urgent circumstances relating to the fire emergency; and
  - (b) imposing the ban by a newspaper notice would result in a delay that was undesirable, having regard to the urgent circumstances.
- (3) The newspaper or broadcast notice must—

- (a) state the local government area to which the ban applies and, if appropriate, describe the part of the local government area to which it applies; and
  - (b) state the fires the lighting of which is prohibited; and
  - (c) state the period of the ban (not longer than 14 days).
- (4) As well as using a newspaper or broadcast notice to impose a local fire ban, the commissioner may cause the ban to be publicised in any other way the commissioner considers appropriate.

### **86C Cancelling local fire ban**

- (1) If, while a local fire ban is in force, the commissioner considers the fire emergency for which the ban was imposed has ceased to exist, the commissioner must cancel the ban.
- (2) The cancellation may be made—
  - (a) by notice (a *newspaper notice*) published in a newspaper circulating in the fire ban area; or
  - (b) by notice (a *broadcast notice*) transmitted by a broadcasting service generally able to be received by persons in the fire ban area.
- (3) However, a local fire ban may be cancelled by a broadcast notice only if the commissioner considers a newspaper notice would unnecessarily delay the cancellation of the ban.
- (4) As well as using a newspaper or broadcast notice to cancel a local fire ban, the commissioner may cause the cancellation of the ban to be publicised in any other way the commissioner considers appropriate.

### **86D Period of local fire ban**

- (1) A local fire ban imposed by a notice published in a newspaper takes effect from the day the notice is published.

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- (2) A local fire ban imposed by a notice transmitted by a broadcasting service takes effect from the day and time stated in the notice.
- (3) For subsection (2), the day and time must not be before the notice is transmitted.
- (4) A local fire ban remains in force until 1 of the following events happens—
  - (a) the period of the ban stated in the notice imposing the ban ends;
  - (b) the ban is cancelled.

**86E Effect of local fire ban on other authorisations to light fires**

While a local fire ban remains in force, any authority given under this or another Act to light a fire in the fire ban area ceases to have effect, to the extent to which the authority applies to fires the lighting of which is prohibited under the ban.

**86F Contravening local fire ban**

While a local fire ban is in force, a person must not light a fire in the fire ban area if the lighting of the fire is prohibited under the ban.

Maximum penalty—50 penalty units or 6 months imprisonment.

**86G Evidentiary aid about local fire ban**

In a proceeding for an offence against section 86F, a certificate purporting to be signed by the commissioner stating the following matters is evidence of the matters—

- (a) on a stated day, or during a stated period, a local fire ban was in force at a stated place;

- (b) the types of fire the lighting of which was prohibited under the ban.

## **Division 2                      Declarations of state of fire emergency**

### **87                      Declaration of state of fire emergency**

- (1) The commissioner may, with the approval of the Minister, declare that a state of fire emergency exists within Queensland.
- (2) A declaration of a state of fire emergency—
  - (a) may have effect throughout the State or in part of the State, as specified in the declaration;
  - (b) may apply differently according to factors specified in the declaration;
  - (c) may, if it does not prohibit the lighting of all types of fires, prescribe conditions to be observed in lighting fires of any type not prohibited;
  - (d) may order that the lighting of any fire of a type not prohibited be subject to the granting of a permit under section 65 by the commissioner or by a person belonging to a class of person specified in the declaration;
  - (e) may order that any person finding a fire burning in the open air take all possible steps to extinguish it and, as soon as is practicable, report the existence and locality of the fire to any person belonging to a class of person specified in the declaration;
  - (f) may prohibit the use of any appliance, material or substance specified in the declaration that, in the opinion of the commissioner, is or is likely to cause a fire risk;
  - (g) may order the suspension of such operations as may be specified for the period specified;

- (h) may, with the approval of the Minister, be amended or revoked at any time.

## **88 Publication of declaration**

- (1) Every declaration of a fire emergency or amendment or revocation of a declaration must be notified in the gazette.
- (2) A declaration of a fire emergency or an amendment or revocation of a declaration takes effect from—
  - (a) the date on which it is notified in the gazette; or
  - (b) where it is notified throughout the area to which it applies by newspaper, radio or television, the date on which it is so notified;whichever date occurs sooner.
- (3) For the purpose of ensuring public knowledge of the declaration of a state of fire emergency in the area to which it applies, the commissioner must take measures to give widespread publicity to the declaration but any alleged failure to do so is not an excuse for failure to comply with the declaration.

## **89 Period of state of fire emergency**

A state of fire emergency declared by the commissioner remains in force—

- (a) where a period for which it is to remain in force is specified in the declaration, until that period expires unless the declaration is sooner amended by extending that period or revoked; or
- (b) where no period is specified, until the declaration is revoked.

## **90 Effect of emergency on existing authorities to light fires**

- (1) Upon the declaration of a state of fire emergency, any authority given under this or any other Act to light a fire,

whether given before or during the state of emergency, ceases to have effect while the state of emergency remains in force.

- (2) Subsection (1) applies subject to any authority to light a fire specified in the declaration or any permit granted after the commencement of the state of emergency in accordance with the declaration.

### **91 Commissioner's power during fire emergency**

- (1) While a state of fire emergency remains in force, the commissioner may take any reasonable measure to abate the fire emergency.
- (2) Without limiting those measures, they include requisitioning any premises, plant, equipment, materials or substance for fire fighting or fire prevention.

### **92 Failure to comply with declaration**

Any person who fails to comply with a declaration of a state of fire emergency or with any requisition made pursuant to section 91(2) commits an offence against this Act.

Maximum penalty—250 penalty units or 2 years imprisonment.

### **93 Certificate re declaration**

In any proceeding for—

- (a) an offence defined in section 92; or
- (b) any other offence against this Act where it is alleged as a circumstance of aggravation that the offence was committed during a state of fire emergency at a place to which the declaration of the emergency applied;

any certificate signed by the commissioner stating that a state of fire emergency declared under section 87 existed at a specified place and during a specified period and specifying

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any of the provisions of the declaration is evidence of the matters contained in the certificate.

## **Part 9                      Off-site plans for dangerous goods**

### **95            Application of part**

- (1) This part does not apply in respect of—
  - (a) persons or substances in or about a mine to which the *Mining and Quarrying Safety and Health Act 1999* applies;
  - (b) persons or substances in or about a mine to which the *Coal Mining Safety and Health Act 1999* applies;
  - (c) persons or substances in or about a well to which any of the following Acts apply—
    - *Petroleum Act 1923*
    - *Petroleum and Gas (Production and Safety) Act 2004*
    - *Geothermal Energy Act 2010*
    - *Greenhouse Gas Storage Act 2009*.
- (2) This part does not derogate from the provisions of the *Radiation Safety Act 1999*, the *Transport Operations (Marine Safety) Act 1994* or the *Work Health and Safety Act 2011* and where there is any conflict between the provisions of this and the provisions of those Acts, the provisions of those Acts prevail, to the extent of the inconsistency.

### **96            Occupier to provide information concerning dangerous goods**

- (1) Where a person—
  - (a) is an occupier of premises in or on which any dangerous goods are stored; or

(b) is to be the occupier of premises presently under construction, in or on which any dangerous goods are to be stored;

the commissioner may give a notice requiring the person to provide such information concerning the dangerous goods as is specified in the notice.

(2) A person to whom a notice is given must provide the information sought within the time specified in the notice.

## 97 Off-site emergency plans

- (1) In any case in which the commissioner has power to give a person a notice requiring information concerning any dangerous goods, the commissioner may by notice in writing require the person, within the time specified in the notice, to prepare and lodge with the commissioner a plan relating to those dangerous goods (an *off-site emergency plan*).
- (2) A notice may be given to a person under subsection (1) whether or not a notice has been given under section 96 or, where a notice has been given under that section, whether or not the person has complied with the notice.
- (3) A person required by notice given under subsection (1) to prepare and lodge an off-site emergency plan is referred to in this part as the *person responsible for the plan*.
- (4) An off-site emergency plan must provide for measures to be taken in preparation for a hazardous materials emergency or upon a hazardous materials emergency occurring so that danger that may thereby arise to any person who or property that is outside the premises to which the plan relates or to the environment is avoided or limited.

## 98 Assistance with plans

- (1) The commissioner must provide an advisory service and, to the extent practicable, assist in the preparation and implementation of off-site emergency plans.

- (2) A person responsible for a plan is liable to pay to the commissioner charges for any advice or other assistance provided.

## **99 Approval of plans**

Where an emergency plan is lodged, the commissioner—

- (a) may approve or refuse to approve the plan;
- (b) may, if approving the plan, subject approval to conditions;
- (c) must, if rejecting the plan, give the person responsible for the plan notice in writing specifying the manner in which the plan is deficient and requiring that a new or amended plan be lodged within the time specified in the notice.

## **100 Amendment of plan**

- (1) An off-site emergency plan may be amended with the approval of the commissioner.
- (2) The commissioner may give a notice to a person responsible for an off-site emergency plan requiring that the plan be amended and lodged with the commissioner for approval.

## **101 Duty to implement plan**

- (1) Where an off-site emergency plan has been approved by the commissioner, the person responsible for the plan must ensure that all measures provided for in the plan (and in any amendment approved to the plan) are taken.
- (2) A person who fails to discharge that duty commits an offence against this Act.
- (3) If the commissioner believes that any measure provided for in a plan has not been taken, the commissioner may give a notice to the person responsible for the plan requiring that the measure be taken within the time specified in the notice.

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**102 Notice of changed circumstances**

- (1) Where any change of circumstances occurs that substantially reduces the effectiveness of an off-site emergency plan or that renders the plan unnecessary, the person responsible for the plan must immediately give notice in writing of that fact to the commissioner.
- (2) The commissioner, if aware that an off-site emergency plan is no longer necessary because of any change of circumstances, must give approval to the person responsible for the plan to discontinue giving effect to the plan.

**103 Keeping copies of plans**

The commissioner must keep a copy of every off-site emergency plan lodged for approval and of every amendment to a plan.

**104 Punishment for certain offences against this part**

A person convicted of—

- (a) an offence defined in section 101(2); or
- (b) an offence consisting in a failure to notify a change of circumstances, as required by section 102(1), that substantially reduces the effectiveness of a plan; or
- (c) an offence consisting in a failure to comply with a notice given under this part;

is liable to a maximum penalty of 250 penalty units or 1 year's imprisonment.

## Part 9A Building fire safety

### Division 1 Interpretation

#### 104A Interpretation

In this part (other than division 5A) and in schedule 5—

**building** means a fixed structure that is wholly or partly enclosed by walls and is roofed and includes a floating building and any part of a building but does not include—

- (a) a single dwelling house, being either a detached dwelling house or a town, terrace, row, villa or like house attached to another such house or other such houses only by a wall on 1 or more of its sides; or
- (b) a building treated as part of a coal mine for the purposes of the *Coal Mining Safety and Health Act 1999* or as part of a mine for the purposes of the *Mining and Quarrying Safety and Health Act 1999*.

**fire safety installation** means a fire safety installation within the meaning of the *Building Act 1975*.

**ground level** has the same meaning for the purposes of this part as the term has as defined in the Queensland Appendix to the Building Code of Australia for the purposes specified therein.

**maintain** includes install or establish and maintain.

**prescribed fire safety installation** means a prescribed fire safety installation within the meaning of section 104D.

#### 104B Application to prisons

This part applies in relation to a building that is, or that is treated as part of, a prison for the purposes of the *Corrective Services Act 2006*, but an authorised fire officer is not competent to exercise a power conferred by sections 55 to 58C in relation to such a building without the consent of the

person in charge of the prison within the meaning of the *Corrective Services Act 2006*.

## **Division 2                    Obligations of persons for fire safety**

### **Subdivision 1            Means of escape and prescribed fire safety installations**

#### **104C    Occupier of building to maintain means of escape from building**

The occupier of a building must maintain at all times free from obstruction adequate means of escape in the event of fire threatening any part of the building.

Maximum penalty—

- (a) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
- (d) otherwise—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 151.

#### **104D    Occupier of building to maintain prescribed fire safety installations**

- (1) The occupier of a building must maintain at all times every prescribed fire safety installation to a standard of safety and reliability in the event of fire.

Maximum penalty—

[s 104D]

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- (a) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
- (d) if the contravention causes substantial property loss—500 penalty units or 6 months imprisonment; or
- (e) otherwise—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 151.

- (2) It is a defence to a charge made under this Act that an occupier of a building, in contravention of subsection (1), has failed to maintain in the building a prescribed fire safety installation for the defendant to prove—
  - (a) that the prescribed fire safety installation would not be required to be maintained in the building if the building were constructed at the time of the alleged offence and was unnecessary for the purposes of fire safety; or
  - (b) that in lieu of the prescribed fire safety installation there is maintained a fire safety installation of equivalent or greater effectiveness.
- (3) For the purposes of this section—

**Act** includes any Act and any proclamation, order in council, regulation, rule, local law or other instrument of subordinate legislation made under any Act, whenever passed or made whether or not it has ceased to exist.

**prescribed fire safety installation** means a fire safety installation—

- (a) that was at any time required to be maintained in the building in question by or under any Act, including as a prerequisite to the granting of any approval or the issue of any notice, certificate or instrument; and

- 
- (b) that was not at any time authorised by or under any Act to be no longer maintained.

### 104DA Additional requirement for monitored systems

- (1) The occupier of a building must maintain each monitored system for the building to ensure an unacceptable number of unwanted alarms are not signalled from the system.
- (2) For subsection (1), the number of unwanted alarms signalled from a monitored system is unacceptable if the number signalled since the end of the last financial year is—
  - (a) more than 4; and
  - (b) more than the average number for the last financial year published under subsection (4).
- (3) However, the commissioner may decide that, despite subsection (2), the number of unwanted alarms signalled from a monitored system is acceptable, having regard to—
  - (a) the size and other characteristics of the building; and
  - (b) how the building is used; and
  - (c) the number of detector heads in the building; and
  - (d) whether the system also relates to other buildings.
- (4) As soon as practicable after 30 June each year, the commissioner must calculate, and notify in the gazette, the average number of unwanted alarms for monitored systems for the last financial year.
- (5) The number must be calculated by dividing the total number of unwanted alarms signalled from all monitored systems during the last financial year by the total number of monitored systems in operation during the last financial year.
- (6) In this section—

***detector head*** means a part of a monitored system that detects smoke or heat and sends a signal to another part of the system.

**emergency** means a situation in which there is danger of harm to persons or property from a fire or hazardous materials emergency.

**emergency alarm** means an alarm, from a monitored system for a building, signalled to QFES to attend the building.

**maintain**, a monitored system, includes—

- (a) ensure the system is in good repair; and
- (b) ensure each part of the system is properly installed and appropriately located; and
- (c) ensure the system is able to distinguish between a fire and normal conditions in the building; and
- (d) implement measures for avoiding unwanted alarms from the system.

*Examples of implementing measures for paragraph (d)—*

- establishing requirements for persons working near the system to isolate the system while using tools that may cause an unwanted alarm
- giving information sheets to guests in the building about the sensitivity of the system and how to avoid causing an unwanted alarm
- for a building used to provide residential accommodation that has a high level of unwanted alarms, installing an alarm acknowledgement facility under AS1670.1—2004

**monitored system**, for a building, means an automatic smoke detection and alarm system—

- (a) that is a prescribed fire safety installation for the building; and
- (b) that is monitored by QFES.

**unwanted alarm** means an emergency alarm signalled at a time when the commissioner is satisfied there was no emergency requiring the attendance of QFES.

## Subdivision 2 Fire and evacuation plan

### 104E Fire and evacuation plan

- (1) The occupier of a building must—
  - (a) maintain at all times a plan of the action to be taken by persons within the building in the event of fire threatening the building adequate to ensure their own and other persons safety (a *fire and evacuation plan*); and
  - (b) provide adequate instructions to prescribed persons in the building concerning the action to be taken by them in the event of fire threatening the building in order to ensure their own and other persons safety.

Maximum penalty—

- (a) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
  - (b) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
  - (c) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
  - (d) otherwise—100 penalty units.
- (2) In this section—

*prescribed person* means a person who works or resides in or visits the building for more than a total time, during a period, prescribed under a regulation.

### 104F Assistance with plan

- (1) The commissioner may provide assistance to the occupier of a building in the preparation and implementation of the plan required to be maintained by the occupier pursuant to section 104E(1)(a) and any regulations made under this part in relation to such a plan.

- (2) An occupier to whom assistance is provided is liable to pay to the commissioner the amounts charged by the commissioner for the assistance.

### **Subdivision 3 Fire safety management plan**

#### **104FA Obligation to prepare fire safety management plan**

- (1) This section applies to a budget accommodation building only if—
  - (a) construction of the building started before the commencement of this section; or
  - (b) construction of the building was—
    - (i) approved under the repealed *Integrated Planning Act 1997* before the commencement; and
    - (ii) started on or after the commencement; or
  - (c) an application for approval to construct the building—
    - (i) was made under the repealed *Integrated Planning Act 1997* before the commencement; and
    - (ii) the approval is given on or after the commencement.
- (2) The owner of the budget accommodation building must prepare a fire safety management plan for the building within 1 year after the commencement.

#### Maximum penalty—

- (a) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
- (d) otherwise—100 penalty units.

### 104FB Other obligations about fire safety management plan

- (1) The owner of a budget accommodation building who is required, under section 104FA or the *Building Act 1975*, section 27, to prepare a fire safety management plan for the building must ensure the plan is updated as soon as practicable, but not later than 1 month, after a change in circumstances affecting the plan's compliance with the fire safety standard.

Maximum penalty—

- (a) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
  - (b) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
  - (c) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
  - (d) otherwise—100 penalty units.
- (2) A change in circumstances mentioned in subsection (1) includes, for example, a change in the fire safety standard.
  - (3) The owner must ensure the current fire safety management plan is implemented.

Maximum penalty for subsection (3)—

- (a) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
- (c) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
- (d) otherwise—100 penalty units.

### 104FC Meaning of *fire safety management plan*

- (1) A *fire safety management plan* for a building is a plan that states each of the following and complies with subsections (2) and (3)—

[s 104FD]

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- (a) the allowable number of occupants for the building;
  - (b) the proposed maintenance schedule for the building's prescribed fire safety installations;
  - (c) the evacuation plan for evacuating the building's occupants, including occupants with an intellectual or physical disability, in the event of a fire in the building;
  - (d) proposed training programs for occupants and persons employed in the building about—
    - (i) fire management and prevention; and
    - (ii) emergency evacuation;
  - (e) a list of the building's prescribed fire safety installations, together with the brand name and model number of each installation, if applicable.
- (2) The matters mentioned in subsection (1)(a) to (d) must comply with the fire safety standard.
  - (3) The fire safety management plan must have attached to it, or be accompanied by, a copy of the building plans, in a reasonable scale, identifying the location of the building's prescribed fire safety installations.

#### **104FD Guidelines for preparing fire safety management plans**

- (1) The commissioner may issue guidelines for preparing fire safety management plans.
- (2) Before issuing the guidelines, the commissioner must consult with any entity the commissioner considers appropriate.

#### **104FE Public notice of guidelines**

- (1) After issuing the guidelines, the commissioner must give notice of the guidelines.
- (2) The notice must—
  - (a) be published in a newspaper the commissioner considers appropriate; and

- (b) state the places where copies of the guidelines may be inspected or bought.

### **104FF Access to guidelines**

The commissioner must ensure a copy of the guidelines, and any document applied, adopted or incorporated by the guidelines, is available for inspection on QFES's website.

### **104FG Accessing fire safety management plan**

The owner of a budget accommodation building must ensure a copy of the building's current fire safety management plan is kept in the building and is available for inspection, free of charge, by the building's occupants and other members of the public whenever the building is open for business.

Maximum penalty—20 penalty units.

## **Subdivision 3A Matters relating to particular proceedings under this division**

### **104FGA Provisions applying for particular proceedings**

- (1) This section applies for sections 104C, 104D, 104E, 104FA and 104FB (each *the section*).
- (2) A person *causes* something mentioned in the section if the person's act or omission is a substantial or significant cause of the thing or substantially contributes to the thing.
- (3) The section applies despite the Criminal Code, sections 23(1) and 24.
- (4) It is a defence in a proceeding against a person for a contravention of the section for the person to prove the person took reasonable precautions and exercised proper diligence to prevent the contravention.
- (5) Also, it is a defence in a proceeding against a person for a contravention of the section for the person to prove the

contravention was due to causes over which the person had no control.

## **Subdivision 4      Obligations of entities about guidelines for fire safety standard and fire safety management plans**

### **104FH Obligations about guidelines for fire safety standard and fire safety management plans**

- (1) In carrying out a function or power conferred on an entity under this Act, the entity must have regard to—
  - (a) for a matter relating to the fire safety standard—the information in the fire safety standard guidelines; or
  - (b) for a matter relating to the fire safety management plan—the information in the fire safety management plan guidelines.
- (2) In ensuring a budget accommodation building conforms with the fire safety standard, the owner of the building must have regard to the information in the fire safety standard guidelines.
- (3) In preparing a fire safety management plan for a budget accommodation building, the owner of the building must have regard to the information in—
  - (a) the fire safety standard guidelines; and
  - (b) the fire safety management plan guidelines.
- (4) In this section—

*fire safety management plan guidelines* means the guidelines made under section 104FD.

*fire safety standard guidelines* means the guidelines made under the *Building Act 1975*, section 218.

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## **Subdivision 5      Commissioner's notice about occupier's and owner's obligations**

### **104G Notice by commissioner about occupier's or owner's obligations**

- (1) The commissioner may give the occupier or owner of a building written notice requiring the occupier or owner to remedy any matter in respect of which the commissioner is of the opinion that the occupier or owner has failed to comply with this division or with regulations made under this part.
- (1A) The notice under subsection (1) must state the following—
  - (a) that the commissioner has decided the occupier or owner has failed to comply with this division or with regulations made under this part;
  - (b) the action to be taken by the occupier or owner to remedy the failure mentioned in paragraph (a);
  - (c) the period within which the failure must be remedied;
  - (d) the reasons for the decision mentioned in paragraph (a);
  - (e) that the occupier may apply to QCAT for a review of the occupancy notice;
  - (f) how, and the period within which, the occupier may apply to QCAT for the review;
  - (g) any right the occupier has to have the operation of the occupancy notice stayed under the QCAT Act.
- (2) Also, to the extent that it specifies that an alteration is to be made to the structure of a building, notice under subsection (1) is not valid unless the commissioner first consults the local government in whose area the building is situated.
- (3) A person who is given a notice pursuant to subsection (1) must comply with the notice.
- (3A) In a case where such a person fails to comply with the notice within a time specified therein then—

[s 104H]

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- (a) notwithstanding that the time has passed, the person's obligation to comply continues until the person complies with the notice; and
  - (b) section 150 applies.
- (4) The giving of a notice under this section does not prejudice any other proceedings under this Act in respect of the noncompliance to which the notice relates, with the exception that the person to whom the notice is given is not liable, during the period afforded by the notice to comply and any further period during which that person is relieved by this part from any penalty for failure to comply with the notice, to any penalty prescribed by section 150 for continuing offences.

### **Division 3                      Prohibition on prescribed use without certificate of compliance**

#### **104H Prohibition on prescribed use without certificate of compliance**

- (1) A regulation may prohibit the use of a building as prescribed under the regulation unless there is in existence a certificate of compliance issued under section 104I in relation to that building use.
- (2) A regulation made under subsection (1)—
  - (a) must be expressed to apply in relation to a building use specified in schedule 5 unless the Governor in Council is satisfied that urgent action is required to reduce the risk of fire in relation to a building use not specified in schedule 5; and
  - (b) may be expressed to apply in relation to all buildings or any building of a description defined in the regulation.
- (3) A regulation may revoke a certificate of compliance or class thereof issued before the regulation is made that authorised a building use to which the regulation applies.

- (4) An occupier of a building who uses the building in contravention of a regulation made under subsection (1) commits an offence against this Act.
- (5) An occupier of a building is not liable to any penalty prescribed by this Act by reason of the building being used in contravention of subsection (4) on and from the date the occupier makes application for a certificate of compliance under section 104I to and including the date the occupier is issued a certificate of compliance or given a notice refusing the application pursuant to section 104I.
- (6) Subsection (5) does not apply in relation to an application made after a previous application has been refused.

#### **104I Certificate of compliance**

- (1) An occupier of a building to which a regulation made under section 104H(1) applies may apply to the commissioner to be issued a certificate of compliance under this section in relation to a building use to which the regulation applies.
- (2) An application must—
  - (a) be accompanied by the fee prescribed under a regulation; and
  - (b) provide the information prescribed under a regulation; and
  - (c) specify the building and the building use to which the certificate of compliance is to apply.
- (3) An application must be referred to an authorised fire officer for consideration and determination.
- (4) The authorised fire officer must then inspect the building.
- (5) An applicant is to provide to the commissioner or the authorised officer such information in relation to the application as either may require.
- (6) If the authorised fire officer who inspects the building, having regard to the building use specified in the application, is satisfied—

[s 104I]

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- (a) that sections 104C, 104D and 104E are being complied with; and
- (b) that the regulations made pursuant to this part that apply in relation to building use are being complied with; and
- (c) that adequate fire safety measures and fire prevention measures generally have been taken or are being maintained;

the authorised fire officer must issue a certificate of compliance in relation to the building authorising the building use specified in the application.

- (7) If the authorised officer who inspects the building is not satisfied of any matter prescribed by subsection (6)(a) to (c), the authorised officer must give notice to the applicant—
  - (a) specifying the steps required to be taken before the application will be granted; and
  - (b) allowing a reasonable period within which those steps may be taken before the application is refused.

(7A) The authorised officer may at any time extend the period so allowed.

- (8) If—
  - (a) the applicant declines to take the steps referred to in subsection (7)(a); or
  - (b) upon inspection of the building at the expiration of the period allowed to the applicant to take the steps referred to in subsection (7)(a), the authorised officer is not satisfied that those steps have been taken;

the authorised officer must refuse the application by notice given to the applicant.

- (8A) The notice under subsection (8) must state the following—
  - (a) the grounds of the refusal;
  - (b) any steps required to be taken by the applicant before any further application will be granted;

- (c) that the applicant may apply to QCAT for a review of the refusal;
  - (d) how, and the period within which, the applicant may apply to QCAT for the review.
- (9) A notice under subsection (7) or (8) to the extent that it specifies that an alteration is to be made to the structure of a building before an application will be granted is not valid unless the authorised fire officer who issues the notice first consults the local government in whose area the building is situated.
- (10) If an authorised officer—
- (a) fails to issue a certificate of compliance or any notice under this section before a date 30 days after the receipt by the commissioner of an application; or
  - (b) in a case where a notice under subsection (7) has been given to the applicant—fails to issue a certificate of compliance or a notice of refusal before a date 30 days after the expiration of the time allowed by the notice to take steps specified in the notice;

the provisions of part 9B apply as if the authorised officer had given to the applicant on that date a notice of refusal.

#### **104J Form of certificate of compliance**

A certificate of compliance—

- (a) subject to this Act, may be issued in any convenient form and if convenient be in respect of more than 1 building or building use;
- (b) must state specifically or by reference the fire safety installations the maintenance of which were required for the issue of the certificate.

#### **104K Certificate of compliance—limitations on requirements**

An authorised fire officer who inspects a building for the purposes of section 104I must not impose—

[s 104KA]

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- (a) more onerous requirements for the maintenance of fire safety installations than the occupier was required to maintain pursuant to section 104D immediately before the inspection; or
- (b) in relation to any particular matter provided for by the regulations—more onerous requirements than those imposed in relation to the matter by the regulations;

as a prerequisite to the officer being satisfied that adequate fire safety measures and fire prevention measures generally have been taken or are being maintained by the occupier.

## **Division 3A            Occupancy limits for particular licensed buildings**

### **Subdivision 1        Preliminary**

#### **104KA Definitions for div 3A**

In this division—

*clear floor surface area* means an area of floor on or above which there is nothing that would unduly restrict a person in going across the area.

*fire safety system*, for a building, means the building's features, and procedures established for the building, providing for all or any of the following—

- (a) warning the building's occupants about a fire emergency;
- (b) safe evacuation of the building's occupants;
- (c) extinguishing or restricting the spread of fire in the building.

*licensed building* means a building, or the part of a building, that comprises particular licensed premises under the *Liquor Act 1992*.

*occupancy notice* see section 104KF.

*occupancy number*, for a building, means the occupancy number stated in an occupancy notice in force for the building.

*risk of overcrowding*, for a building, means a risk that not all occupants of the building would be able to safely evacuate if a fire or hazardous materials emergency happened.

### **104KB Object of div 3A**

- (1) The object of this division is to help ensure the occupants of licensed buildings can safely evacuate if a fire or hazardous materials emergency happens.
- (2) The object is to be achieved by—
  - (a) identifying licensed buildings with an unacceptable risk of overcrowding; and
  - (b) for each of the identified buildings, establishing and implementing a safe limit on the number of persons who may be present in the building at any one time.

### **104KC Application of div 3A to a part of a licensed building**

Except where it states otherwise, this division applies to a part of a licensed building in the same way it applies to a whole licensed building.

*Example—*

Under section 104KD(1), the commissioner may decide a particular room in a licensed building is an at risk licensed building. In deciding the level of the risk of overcrowding for the room, the commissioner must have regard to the matters stated in section 104KD(2) as if a reference in that subsection to the building were a reference to the room.

## **Subdivision 2      Occupancy notices**

### **104KD Deciding if a building is an at risk licensed building**

- (1) The commissioner may decide a licensed building is an at risk licensed building if the commissioner is satisfied there is an unacceptable risk of overcrowding for the building.
- (2) In deciding the level of the risk of overcrowding, the commissioner must have regard to the following matters—
  - (a) the building's characteristics, including—
    - (i) the number and location of exits in the building; and
    - (ii) the clear floor surface areas in the building; and
    - (iii) the flammability of the fixtures and fittings in the building; and
    - (iv) the prescribed fire safety installations in the building; and
    - (v) whether occupants of the building can exit directly into open space or another place of safety;
  - (b) how the building is used, including its classification under the Building Code of Australia;
  - (c) the number of persons that use, or are likely to use, the building at any given time;
  - (d) the mobility and other characteristics of the persons who use, or are likely to use, the building;
  - (e) any fire safety system for the building.

### **104KE Deciding an occupancy number**

- (1) This section applies to a licensed building that the commissioner has decided is an at risk licensed building.
- (2) In deciding an occupancy number for the building, the commissioner must have regard to the building's characteristics and other matters stated in section 104KD(2).

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- (3) The occupancy number must not be more than—
- (a) the maximum number that may be accommodated under—
    - (i) for a budget accommodation building to which the *Building Act 1975*, chapter 7, part 3 applies—the Queensland Development Code, part 14, items P3 and A3; or
    - (ii) otherwise—the Building Code of Australia, part D1.13; or
  - (b) the maximum number that allows compliance with the Building Code of Australia, part D1.6.

#### **104KF Commissioner may give occupancy notice to occupier**

If the commissioner decides under section 104KD that a licensed building is an at risk licensed building, the commissioner may give the occupier of the building a notice (an *occupancy notice*) stating the following—

- (a) that the commissioner has decided the building is an at risk licensed building;
- (b) the occupancy number for the building decided under section 104KE;
- (c) the day, not less than 30 days after the occupancy notice is given, on which it takes effect;
- (d) the occupier's obligations under subdivision 3;
- (e) the reasons for the decisions mentioned in paragraphs (a) and (b);
- (f) that the occupier may apply to QCAT for a review of the occupancy notice;
- (g) how, and the period within which, the occupier may apply to QCAT for the review;
- (h) any right the occupier has to have the operation of the occupancy notice stayed under the QCAT Act.

### **104KG Occupancy number applying during particular uses or circumstances**

If the commissioner considers the risk of overcrowding for a building varies because of the different ways the building is used from time to time, the commissioner may give the occupier an occupancy notice stating—

- (a) an occupancy number for the building that applies only when the building is used in a stated way or in stated circumstances; or
- (b) 2 or more occupancy numbers for the building, each of which applies only when the building is used in a stated way or in stated circumstances.

*Example for paragraph (b)—*

A building used occasionally for concerts may be given an occupancy number that applies only for that use and another occupancy number that applies for its usual uses.

### **104KH Application and currency of occupancy notice**

An occupancy notice applies to the person stated in it, in relation to the licensed building stated in it, until the occupancy notice is revoked or the person stops being the occupier of the building.

### **104KI Re-assessment of risk of overcrowding**

- (1) This section applies to a licensed building for which an occupancy notice (the *current occupancy notice*) is in force.
- (2) At any time, on request by the occupier or on the commissioner's own initiative, the commissioner may carry out a re-assessment for the building.
- (3) The commissioner must carry out a re-assessment for the building if—
  - (a) since the current occupancy notice was given, any of the matters stated in section 104KD(2) has changed in a way that is relevant to the risk of overcrowding for the building; and

- 
- (b) the occupier gives the commissioner a written notice of the change and asks the commissioner to carry out the re-assessment.
- (4) If, on a request mentioned in subsection (3)(b), the commissioner carries out a re-assessment and decides not to revoke the current occupancy notice, the commissioner must give the occupier a notice (a *decision notice*) stating the following—
- (a) the decision not to revoke the current occupancy notice;
  - (b) the reason for the decision;
  - (c) that the occupier may apply to QCAT for a review of the occupancy notice;
  - (d) how, and the period within which, the occupier may apply to QCAT for the review.
- (5) In this section—
- carry out a re-assessment*, for the building, means—
- (a) re-assess the level of the risk of overcrowding for the building under this division; and
  - (b) decide whether to revoke the current occupancy notice and, if revoking the notice, whether to give another occupancy notice for the building.

### **Subdivision 3      Obligations of occupiers of at risk licensed buildings**

#### **104KJ Application of sdiv 3**

- (1) This subdivision applies if an occupancy notice is in force for a licensed building.
- (2) A reference in this subdivision to the occupier is a reference to each occupier of the building to whom the occupancy notice states it applies.

### **104KK Ensuring the occupancy number is not exceeded**

The occupier must ensure the number of persons in the building at any one time is not more than the occupancy number for the building.

Maximum penalty—50 penalty units.

### **104KL Ensuring staff are aware of the occupancy number**

- (1) The occupier must ensure each relevant staff member is aware of the occupancy number for the building.

Maximum penalty—50 penalty units.

- (2) In this section—

*relevant staff member* means an employee of the occupier who is present in the building when members of the public may enter the building.

### **104KM Implementing a counting system**

- (1) This section does not apply if—

- (a) the building is only a part of a licensed building; or
- (b) the occupancy number for the building is less than 200.

- (2) The occupier must ensure the required counting system is implemented at all times the building is open to the public.

Maximum penalty—50 penalty units.

- (3) The required counting system is—

- (a) if the occupancy number is at least 200 but less than 1,000—a manual counting system or an automatic counting system; or
- (b) if the occupancy number is at least 1,000—an automatic counting system.

- (4) In this section—

*automatic counting system* means a counting system capable of operating without human intervention.

*Example—*

a machine that counts the number of persons passing through an entrance after detecting them by way of a light beam across the doorway or a sensor under the floor

**counting system** means a system for counting the number of persons entering or leaving a building.

**manual counting system** means a counting system other than an automatic counting system.

*Examples of manual counting systems—*

- a staff member issuing a numbered ticket to each person entering the building and a pass out to each person leaving the building
- a staff member clicking a counting device once for each person entering or leaving the building

### **104KN Displaying signs stating the occupancy number**

- (1) This section does not apply if—
  - (a) the building is only a part of a licensed building; or
  - (b) the occupancy number for the building is less than 200.
- (2) The occupier must display conspicuously above each public entrance to the building a sign stating the occupancy number for the building.

Maximum penalty—50 penalty units.

### **104KO Including the occupancy number in the fire and evacuation plan**

The occupancy number must be stated in the occupier's fire and evacuation plan.

Maximum penalty—50 penalty units.

### **104KP Notifying the commissioner of relevant changes**

- (1) If any of the matters stated in section 104KD(2) changes in a way that may increase the risk of overcrowding for the

[s 104KQ]

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building, the occupier must immediately give written notice to the commissioner.

Maximum penalty—50 penalty units.

- (2) If a person stops being the occupier of the building, the person must immediately give written notice to the commissioner.

Maximum penalty—50 penalty units.

### **104KQ Action if an officer knows or suspects the occupancy number is being exceeded**

- (1) This section applies if, at any time, an authorised fire officer knows or reasonably suspects the number of persons in the building is more than the occupancy number for the building.
- (2) The officer may require the occupier to do, or stop doing, a stated thing for the purpose of reducing the number of persons in the building or reducing the risk to the safety of persons in the building.
- (3) The officer may, for example, ask the occupier to—
- (a) stop anyone else entering the building; or
  - (b) stop serving alcohol in the building; or
  - (c) turn on the lights in the building; or
  - (d) stop music being played or other entertainment happening in the building; or
  - (e) ask persons in the building to leave.
- (4) The requirement may be made orally or in writing.
- (5) If the requirement is made orally, the officer must confirm the requirement in writing as soon as practicable.
- (6) The occupier must comply with the requirement unless the occupier has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (7) This section does not limit another power of the officer under this Act.

(8) In this section—

*occupier* includes a person in charge, or apparently in charge, of the building.

## **Subdivision 4      Miscellaneous**

### **104KR Commissioner may give copies of notices to chief executive (liquor licensing)**

The commissioner may give copies of occupancy notices to the chief executive (liquor licensing).

### **104KS Commissioner may publish occupancy numbers**

For the performance of QFES's functions, the commissioner may publish the occupancy numbers for buildings to the public.

## **Division 5              Injunctions relating to high risk buildings**

### **104R Injunctions**

- (1) Where the commissioner is satisfied in relation to any building that the risk to persons in the event of fire, or in the event of a hazardous materials emergency, or the risk of spread of fire is so serious that the use of the building should be prohibited or restricted until steps have been taken to reduce the risk to a reasonable level, the commissioner, by action in the Supreme Court, may claim against the occupier of the building an injunction prohibiting or restricting the use of the building.
- (2) Jurisdiction is hereby conferred upon the Supreme Court and a judge thereof to hear and determine any such action and to grant an injunction to prohibit or restrict the use of the building.

- (3) An injunction may be—
  - (a) for a limited period of time specified in the order or for an indefinite period of time;
  - (b) in respect of every use of a building or for a use or uses specified in the order.
- (4) Unless the contrary intention appears in the terms of the injunction, an injunction against any occupier of a building is taken to be made against all the occupiers from time to time of the building.

## **Division 5A                      Smoke alarms for domestic dwellings**

### **104RA Definitions for div 5A**

- (1) In this division—

*class 1a building* means a building classified as a class 1a building under the Building Code of Australia.

*date of possession*, for residential land, means the date the transferee of the land enters into possession of the land.

*domestic dwelling* means—

- (a) a class 1a building; or
- (b) a sole-occupancy unit in a class 2 building.

*information statement*, in relation to a tenant, means the statement given to the tenant under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 67.

*lessor* means a lessor within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, but does not include a tenant who has given, or is to give, the right to occupy residential premises to a subtenant.

*manufacturer's instructions*, for a smoke alarm, means the instructions from the manufacturer, packaged with the alarm,

dealing with the operation, testing and maintenance of the alarm.

***operates when tested***, for a smoke alarm, see section 104RAA.

***residential land*** means land on which a domestic dwelling is constructed.

***smoke alarm information*** see section 104RL.

***sole-occupancy unit in a class 2 building*** means a sole-occupancy unit, as defined under the Building Code of Australia, in a building classified as a class 2 building under that Code.

***smoke alarm requirement provision*** means each of the following—

- (a) section 104RB;
- (b) section 104RBA.

***tenancy*** means the right to occupy residential premises given under a residential tenancy agreement to which the *Residential Tenancies and Rooming Accommodation Act 2008* applies.

***tenant*** means a person to whom the right to occupy residential premises is given under a residential tenancy agreement to which the *Residential Tenancies and Rooming Accommodation Act 2008* applies, and includes the subtenant of a tenant.

***transfer date***, for residential land, means the date the transferee of the land is entitled to possession of the land.

***transferee***, of residential land, means the person who, on becoming entitled to possession of the land, may lodge an application for registration—

- (a) under the *Land Act 1994*, as a lessee, or personal representative of a deceased lessee, of the land; or
- (b) under the *Land Title Act 1994*, as an owner, or personal representative of a deceased owner, of the land.

**transferor**, of residential land, means—

- (a) if, immediately before the transfer date for the residential land, a mortgagee in possession under the *Property Law Act 1974* is in possession of the land—the mortgagee in possession; or
  - (b) otherwise—the person registered, immediately before the transfer date for the land—
    - (i) under the *Land Act 1994*, as a lessee, or personal representative of a deceased lessee, of the land; or
    - (ii) under the *Land Title Act 1994*, as an owner, or the personal representative of a deceased owner, of the land.
- (2) Subsection (1), definition *smoke alarm requirement provision*, paragraph (a) and this subsection expire on 31 December 2026.

### **104RAA When smoke alarm *operates when tested***

- (1) A smoke alarm ***operates when tested*** if it operates when tested in a way required under subsection (3).
- (2) Also, a smoke alarm powered by a battery that is capable of being replaced ***operates when tested*** if—
  - (a) the battery in the smoke alarm is replaced; and
  - (b) after the battery is replaced, the smoke alarm operates when tested in the way required under subsection (3).
- (3) A smoke alarm installed in a domestic dwelling must be tested as follows—
  - (a) for an alarm that can be tested by pressing a button or other device to indicate whether the alarm is capable of detecting smoke—by pressing the button or other device;
  - (b) otherwise—
    - (i) by being tested by the owner of the dwelling in the way stated in the manufacturer’s instructions; or

- (ii) by being tested by a tenant of the dwelling in the way stated in the information statement.

### **104RB Owner must install smoke alarm—requirements being phased out by 31 December 2026**

*Note—*

The requirements in this section will not apply after 31 December 2026. However, before this section expires, these requirements are replaced by the requirements in section 104RBA in particular circumstances.

- (1) The owner of a domestic dwelling must install smoke alarms in the dwelling in compliance with this section.

Maximum penalty—5 penalty units.

- (1A) However, this section does not apply to a domestic dwelling if section 104RBA applies to the dwelling.
- (2) Each smoke alarm must comply with AS 3786–2014 (Australian standard for smoke alarms using scattered light, transmitted light or ionization) and must be installed in accordance with—
  - (a) for a sole-occupancy unit in a class 2 building—specification E 2.2a, clause 3(c)(i) of the Building Code of Australia; or
  - (b) for a class 1a building—specification 3.7.2.3 of the Building Code of Australia.
- (3) This section expires on 31 December 2026.

### **104RBA Owner must install smoke alarm**

- (1) This section applies to a domestic dwelling if—
  - (a) an application for a building development approval is made after 31 December 2016; and
  - (b) the building work to which the application relates is a substantial renovation; and
  - (c) a final inspection certificate or certificate of classification is issued for the building work.

- (2) This section also applies to a domestic dwelling if, after 31 December 2021—
  - (a) the owner of the residential land on which the dwelling is constructed enters into an agreement to transfer the land to another person; or
  - (b) a new tenancy for the dwelling starts or an existing tenancy for the dwelling is renewed.
- (3) The owner of a domestic dwelling must install smoke alarms in the dwelling in compliance with this section.  
Maximum penalty—5 penalty units.
- (4) A smoke alarm must be installed in each place in the domestic dwelling required by a regulation.
- (5) Each smoke alarm must—
  - (a) be powered in a way prescribed by regulation; and
  - (b) comply with other requirements prescribed by regulation; and
  - (c) have been manufactured less than 10 years before the smoke alarm is installed; and
  - (d) operate when tested; and
  - (e) be interconnected to every other smoke alarm installed in the domestic dwelling.
- (6) A smoke alarm (the *first smoke alarm*) is interconnected to another smoke alarm if—
  - (a) the first smoke alarm sounds an alert if the other smoke alarm is activated because its sensor detects smoke; and
  - (b) the other smoke alarm sounds an alert if the first smoke alarm is activated because its sensor detects smoke.
- (7) Subsections (1) and (2) and this subsection expire on 31 December 2026.
- (8) Building work is a *substantial renovation* if—

- (a) the building work is carried out under a building development approval for alterations to an existing building or structure; and
  - (b) the alterations, and any previous structural alterations approved or completed in the previous 3 years, represent more than half of the volume of the existing building or structure, measured over its roof and external walls.
- (9) In this section—

*building development approval* see the *Building Act 1975*, schedule 2.

*building work* see the *Building Act 1975*, section 5.

*certificate of classification* see the *Building Act 1975*, schedule 2.

*final inspection certificate* see the *Building Act 1975*, section 10(d)(ii).

### **104RBB Alternative compliance with smoke alarm requirement provision**

- (1) An owner of a sole-occupancy unit in a class 2 building is taken to comply with a smoke alarm requirement provision if a smoke detection system that complies with the Building Code of Australia, specification E2.2a, clause 4 is installed in the unit.
- (2) If it is impracticable for an owner of a domestic dwelling to put a smoke alarm at the location required under a smoke alarm requirement provision, the owner may put the alarm at another location that will provide a warning to occupants of the dwelling.

*Example—*

A smoke alarm that is regularly activated by steam from a bathroom or smoke or fumes from a kitchen may be moved to another appropriate location.

- (3) This section applies despite a smoke alarm requirement provision.

### **104RC Owner must replace smoke alarm**

- (1) The owner of a domestic dwelling must replace a smoke alarm in the dwelling under this section within 10 years after the day the smoke alarm was manufactured.

Maximum penalty—5 penalty units.

- (2) Also, if a smoke alarm in a domestic dwelling does not operate when tested, the owner of the dwelling must immediately replace the smoke alarm under this section.

Maximum penalty—5 penalty units.

- (3) If the smoke alarm being replaced was hardwired to the domestic dwelling's electricity supply, the replacement smoke alarm must be hardwired to the dwelling's electricity supply.

- (4) Also, the replacement smoke alarm must—

- (a) if section 104RB applies to the domestic dwelling—comply with section 104RBA(5)(b) to (d); or
- (b) if section 104RBA applies to the domestic dwelling—comply with section 104RBA(5).

- (5) Subsection (4)(a) and this subsection expire on 31 December 2026.

### **104RD Testing smoke alarms**

- (1) Within 30 days before the start of a tenancy in a domestic dwelling, the lessor must test each smoke alarm in the dwelling in compliance with section 104RAA(3).

Maximum penalty—5 penalty units.

- (2) During a tenancy in a domestic dwelling, the tenant must test each smoke alarm in the dwelling, in compliance with section 104RAA(3), at least once every 12 months.

Maximum penalty—5 penalty units.

### **104RE Replacing the batteries**

- (1) This section applies to batteries in smoke alarms installed in a domestic dwelling.
- (2) Within 30 days before the start of a tenancy in the dwelling, the lessor must replace, in accordance with the manufacturer's instructions, each battery that is spent or that the lessor is aware is almost spent.

Maximum penalty—5 penalty units.

- (3) During a tenancy in the dwelling, the tenant must replace, in accordance with the information statement, each battery that is spent or that the tenant is aware is almost spent.

Maximum penalty—5 penalty units.

*Note—*

A smoke alarm may emit a warning signal (for example, a chirping sound) when its battery is almost spent.

### **104RF Tenant must advise lessor if smoke alarm needs replacing**

- (1) This section applies during a tenancy in a domestic dwelling.
- (2) If the tenant is aware a smoke alarm in the dwelling has failed or is about to fail, other than because the battery is spent or almost spent, the tenant must advise the lessor as soon as practicable.

Maximum penalty—5 penalty units.

### **104RG Cleaning smoke alarms**

- (1) Within 30 days before the start of a tenancy in a domestic dwelling, the lessor must clean each smoke alarm in the dwelling in the way stated in the manufacturer's instructions.

Maximum penalty—5 penalty units.

- (2) During a tenancy in a domestic dwelling, the tenant must clean each smoke alarm in the dwelling, in the way stated in the information statement, at least once every 12 months.

Maximum penalty—5 penalty units.

*Example—*

The manufacturer's instructions or information statement may require cleaning with a vacuum cleaner to remove dust and other materials that may hinder smoke alarm performance.

### **104RH Person must not interfere with smoke alarm**

- (1) A person must not—
  - (a) remove a smoke alarm installed in a domestic dwelling;  
or
  - (b) remove the battery from a smoke alarm installed in a domestic dwelling; or
  - (c) do anything that would reduce the effectiveness of the warning provided by a smoke alarm installed in a domestic dwelling.

Maximum penalty—5 penalty units.

- (2) However, nothing in this section stops a person from doing any of the following—
  - (a) removing a smoke alarm to comply with section 104RC;
  - (b) removing a smoke alarm to put it in a location that complies with this division;
  - (c) removing the battery from a smoke alarm to comply with section 104RE.

### **104RI Division applies for all alarms**

- (1) This division, other than a smoke alarm requirement provision, applies in relation to a smoke alarm installed in a domestic dwelling even though the smoke alarm is not required to be installed under a smoke alarm requirement provision.
- (2) However, nothing in this division stops the owner of a domestic dwelling—

- (a) installing a smoke alarm in the dwelling, in addition to the smoke alarms required to be installed in the dwelling under a smoke alarm requirement provision, whether or not the additional smoke alarm complies with a smoke alarm requirement provision; or
- (b) removing a smoke alarm that is not required to be installed under a smoke alarm requirement provision.

### **104RJ Agent may act for owner**

- (1) A requirement imposed on an owner to comply with this division in relation to a smoke alarm at a domestic dwelling may be complied with for the owner by the owner's agent.
- (2) However, if the owner is a lessor, subsection (1) does not permit the lessor's tenant to be, and the lessor's tenant must not be, the lessor's agent for the purpose of complying with this division.

### **104RK Notice to transferee of residential land about smoke alarms**

- (1) The transferor of residential land must, on or before the date of possession for the land, give the transferee of the land written notice of whether smoke alarms complying with this division are installed in the domestic dwelling on the land.

Maximum penalty—5 penalty units.

- (2) However, subsection (1) does not apply if—
  - (a) the transferor became transferor of the residential land under an agreement to transfer the land; and
  - (b) the date of the agreement is before 1 July 2007.
- (3) The transferor must not state anything in the notice that the transferor knows is false or misleading in a material particular.

Maximum penalty for subsection (3)—5 penalty units.

**104RL Notice to commissioner about smoke alarms and other matters**

- (1) The transferor of residential land must, within 90 days after the date of possession for the land, give the commissioner a written notice stating the following information (*smoke alarm information*)—
- (a) the full names of the transferor and transferee;
  - (b) the addresses of the transferor and transferee immediately after the date of possession for the land;
  - (c) the property details of the land;
  - (d) the current use of the land;
  - (e) if there was an agreement for the transfer of the land—the date of the agreement;
  - (f) the date of possession for the land;
  - (g) whether smoke alarms complying with a smoke alarm requirement provision were installed in the domestic dwelling on the land at the date of possession;
  - (h) whether the transferor has given the transferee written notice of whether smoke alarms complying with a smoke alarm requirement provision were installed in the domestic dwelling on the land at the date of possession.

Maximum penalty—5 penalty units.

- (2) However, subsection (1) does not apply if—
- (a) the transferor became transferor of the residential land under an agreement to transfer the land; and
  - (b) the date of the agreement is before 1 July 2007.
- (3) Also, the transferor is not required to comply with subsection (1) if a properly completed property transfer information form, together with an application for registration, is given to—
- (a) for an application for registration under the *Land Act 1994*—the chief executive (land); or

- (b) for an application for registration under the *Land Title Act 1994*—the registrar.
- (4) If a property transfer information form is given under subsection (3), the commissioner may be given access to the form but may use only the smoke alarm information on the form.
- (5) In this section—
- chief executive (land)** means the chief executive of the department in which the *Land Act 1994* is administered.
- property transfer information form** means a form that—
- (a) gives smoke alarm information and information about a change of ownership required under other Acts; and
- (b) may be given to the chief executive (land) or the registrar.

**registrar** see the *Land Titles Act 1994*, schedule 2.

### 104RM Notice to buyer of manufactured home about smoke alarms

- (1) This section applies if the home owner for a site in a residential park (the **seller**) on which a manufactured home is positioned proposes—
- (a) to sell the home to a person (the **buyer**); and
- (b) to assign the seller's interest in the site agreement for the site to the buyer.
- (2) The seller must give the buyer a written notice in the form of assignment of whether smoke alarms complying with this division are installed in the manufactured home.
- Maximum penalty—5 penalty units.
- (3) However, the seller does not have to give written notice if the form of assignment is signed by the seller and the buyer before 1 July 2007.
- (4) The seller must not state anything in the notice that the seller knows is false or misleading in a material particular.

Maximum penalty for subsection (4)—5 penalty units.

(5) In this section—

**form of assignment** see the *Manufactured Homes (Residential Parks) Act 2003*, section 47(1).

**home owner** see the *Manufactured Homes (Residential Parks) Act 2003*, section 8.

**manufactured home** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

**residential park** see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.

**site** see the *Manufactured Homes (Residential Parks) Act 2003*, section 13.

**site agreement** see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.

## Division 6                      Regulations

### 104S Regulations relating to this part

The power of the Governor in Council to make regulations under section 154 includes the power to make regulations for or with respect to—

- (a) the maintenance free from obstruction of adequate means of escape in the event of fire threatening any part of a building;
- (b) the maintenance of fire safety installations in buildings including authorisation of the removal, replacement or substitution of any fire safety installation;
- (ba) regulating the installation and maintenance of smoke alarms;
- (c) regulating the presence or use within buildings of furniture, furnishings, fittings, equipment, paints or

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- finishes of any description in order to reduce the risk of fire;
- (d) requiring the maintenance of fire and evacuation plans in a specified form—
    - (i) setting forth the action to be taken in the event of fire threatening a building;
    - (ii) imposing obligations to provide instructions in preparation for the event of fire or to take specified action in the event of fire threatening a building;
  - (e) requiring a fire and evacuation plan or class of such a plan to be approved by the commissioner;
  - (f) requiring instruction or training of persons visiting, working in or inhabiting a building in relation to fire prevention and fire safety generally;
  - (g) imposing obligations to take specified action in the event of fire threatening a building;
  - (h) regulating the numbers of persons using a building at any one time;
  - (i) requiring the stationing of persons at places within a building under specified circumstances;
  - (j) the prevention, control or extinguishing of fires in buildings generally;
  - (k) matters necessary to protect persons, property and the environment from fire and hazardous materials emergencies;
  - (l) applying the provisions of this part, with adaptations or modifications, to any premises or class of premises other than buildings;
  - (m) imposing obligations for the purpose of the regulations not only upon occupiers of buildings but also other persons where necessary or convenient.

## **Part 9B**                      **Review of notices**

### **104SB Persons aggrieved by notice may apply for review**

A person who is aggrieved because the person has been given a notice under section 69(2)(a) or part 9A or by the terms of such a notice may apply, as provided under the QCAT Act, to QCAT for a review of the notice.

### **104SF Relief from penalty pending determination of review by QCAT**

- (1) This section applies if a person applies, as provided under the QCAT Act, to QCAT for a review of a notice given under section 104G or 104I(8) or an occupancy notice.
- (2) The person is not liable to a penalty under this Act—
  - (a) in the case of a notice given under section 104G or an occupancy notice—for any failure on the person’s part to comply with the notice on and before the date on which the person is given notice of the determination of the review by QCAT; and
  - (b) in the case of a notice given under section 104I(8)—for any use of a building, being a building use to which the notice relates, on and from the date the person is given the notice to and including the date the person is given notice of the determination of the review by QCAT.

### **104SG Assessors to help QCAT**

- (1) In conducting a proceeding that is a review of a notice given under section 69(2)(a) or part 9A or the terms of a notice, QCAT must be helped by the following chosen by the principal registrar from the list mentioned in section 104SI(3)—
  - (a) at least 1 assessor nominated under section 104SI(2)(b)(i);

- (b) at least 1 assessor nominated under section 104SI(2)(b)(ii);
  - (c) if the notice is an occupancy notice or a decision notice under section 104KI—at least 1 assessor nominated under section 104SI(2)(b)(iii).
- (2) A person chosen under subsection (1)(b) must have been nominated by the local government of the area in which the premises to which the notice relates are situated.
- (3) For subsection (2)—
- (a) if the local government is not the person seeking the review, the person nominated must be a person appointed to be a building certifier by the local government; and
  - (b) if the local government is the person seeking the review, the person nominated must be a person appointed to be a building certifier by another local government.
- (4) Subsection (2) does not apply to a review of a notice or the terms of a notice, given under section 69(2)(a), that relates to premises other than a building.
- (5) Despite subsection (1), a proceeding may be conducted without the help of assessors if the presiding member is satisfied it is necessary because of the urgency of the matter.
- (6) In this section—
- presiding member* see the QCAT Act, schedule 3.
- principal registrar* see the QCAT Act, schedule 3.
- proceeding* see the QCAT Act, schedule 3.

### 104SH Function and powers of assessors

- (1) The function of an assessor is to help QCAT decide questions of fact in a proceeding.
- (2) To enable an assessor to perform the assessor's function, the assessor may, during a proceeding—
  - (a) ask questions of a witness in the proceeding; and

- (b) discuss a question of fact with a person appearing for a party in the proceeding.

### **104SI Appointment of assessors**

- (1) The commissioner must, for each year, appoint persons as assessors for helping QCAT in proceedings mentioned in section 104SG(1).
- (2) A person is qualified to be appointed as an assessor only if—
  - (a) the commissioner is satisfied the person has the knowledge, expertise and experience relevant for helping QCAT in the proceedings; and
  - (b) the person is nominated by—
    - (i) the chief executive of the department in which the *Building Act 1975* is administered; or
    - (ii) a local government in the State; or
    - (iii) the chief executive (liquor licensing).
- (3) The commissioner must, at the beginning of each year, give the principal registrar a list of the persons appointed as assessors for the year.
- (4) The list must state, for each person appointed—
  - (a) the area in which the person has relevant knowledge, expertise and experience; and
  - (b) whether the person was nominated under subsection (2)(b)(i), (ii) or (iii).

### **104SJ Disqualification from appointment as assessor**

A person may not be appointed or continue as an assessor if the person is not qualified, or ceases to be qualified, under section 104SI(2).

## 104SK QCAT may have regard to assessor's view

In deciding a question of fact in a proceeding, the member or members constituting QCAT may, to the extent the member or members consider appropriate, have regard to the views of an assessor helping QCAT.

## Part 10 Funding

### Division 1 Interpretation

#### 105 Definitions

(1) In this part—

**owner**, used with reference to real property, means the person (other than the Crown) who is entitled to receive the rent of property or who, if the property were let, would be entitled to receive the rent, and includes—

- (a) any lessee or licensee from the Crown; and
- (b) a purchaser (including a purchaser from the Crown) under any agreement giving possession of the property; and
- (c) a statutory corporation (whether or not representing the Crown).

**prescribed property** means real property, whether or not occupied by any person, that is within a levy district and that is—

- (a) a parcel of land separately held by an owner except either a parcel to which paragraph (b) applies or a parcel on which is situated a building containing lots (within the meaning of the *Building Units and Group Titles Act 1980*); or
- (b) a portion of a parcel of land separately held by an owner, where the local government for the local government area in which the portion is situated determines that the

portion should be classed as a separate parcel for the purposes of this part; or

- (c) a lot within the meaning of the *Building Units and Group Titles Act 1980*;

the term does not include—

- (d) property vested in the Aboriginal and Islander Affairs Corporation; or
- (e) property belonging to any class of property prescribed under a regulation not to be prescribed property.

- (2) To avoid doubt, it is declared that, for the definition *prescribed property*, paragraph (a)—

*parcel of land* includes a lot under the *Land Title Act 1994* that is also a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997*.

## **Division 2                      Matters relating to fund contributions**

### **106      Constitution of levy districts**

- (1) A regulation may—
  - (a) constitute any portion of the State a levy district for this Act;
  - (b) assign a name to or alter the name of a levy district;
  - (c) abolish a levy district;
  - (d) alter the boundaries of a levy district;
  - (e) amalgamate 2 or more levy districts;
  - (f) divide a levy district into 2 or more levy districts.
- (2) In any proceeding the production of any map purporting to be certified by the commissioner as showing the boundary of any levy district or alteration of the boundary of any levy district is evidence of the matters shown or stated.

## 107 Liability to contribute

- (1) For each financial year the owners of prescribed properties must contribute in accordance with this part to the cost of—
  - (a) administering and giving effect to this Act; and
  - (b) managing the matters mentioned in section 20(5)(b).
- (2) If a parcel of farming land shares a boundary with 1 or more other parcels of farming land (each a *contiguous parcel*), and each of the contiguous parcels are owned by the same owner, the contiguous parcels are, for this part, taken to be 1 prescribed property.
- (3) Despite subsection (2), a portion of a contiguous parcel that is a separate parcel under section 105(1), definition *prescribed property*, paragraph (b) is a separate prescribed property for this part.
- (4) For each financial year there must be paid from the consolidated fund to the department, for the fund—
  - (a) an amount representing one-seventh of the estimates for the financial year in question of the amount to be received from the owners of prescribed properties other than prescribed properties owned by a Commonwealth public trading enterprise; and
  - (b) such further amount as the Treasurer may authorise.
- (5) If, for any financial year, the Treasurer believes that any anticipated reduction by the Commonwealth in financial assistance payments to the State (not including any grant related to the provision of fire services to properties owned by the Commonwealth) will be attributable to the amount payable under this part by Commonwealth public trading enterprises as owners of prescribed properties, the Treasurer may make a corresponding reduction in the amount payable under subsection (4)(a).
- (6) In this section—

*Commonwealth public trading enterprises* means instrumentalities of the Commonwealth liable to pay the taxes and other charges of the State.

*farming land* means land used for farming within the meaning of the *Land Valuation Act 2010*, section 48.

### **108 Annual contributions of owners of prescribed properties**

- (1) A regulation may prescribe the amounts of the contributions to be paid by owners of prescribed properties for a financial year.
- (2) A regulation under subsection (1) shall prescribe the amounts of the contributions by categorising prescribed properties and prescribing differing amounts of contributions in accordance with those categories.
- (3) Categorisation of prescribed properties is to be on the bases stated in the regulation.

*Examples of the bases on which prescribed properties may be categorised—*

- 1 the purposes for which properties are used
  - 2 the nature and availability of services supplied by fire service entities servicing properties
  - 3 the nature and availability of facilities of fire service entities servicing properties
  - 4 the levy district or class of levy districts in which properties are located
  - 5 a combination of all or any of examples 1, 2, 3 and 4
- (4) As soon as is practicable after a regulation is made under this section, the commissioner must give notice in writing to each local government of the amounts of contributions payable by owners of prescribed properties in respect of the financial year to which the regulation relates.

### **109 Annual returns by local governments**

- (1) To enable the amounts of contributions payable by owners of prescribed properties to be assessed in respect of each financial year, each local government must furnish to the commissioner a return disclosing the particulars prescribed under a regulation relating to properties that—

- (a) are within its area and within a levy district; and
  - (b) are or will be prescribed properties during the financial year to which the return relates.
- (2) A return must be furnished—
- (a) before the last day of April immediately preceding the financial year to which it relates; or
  - (b) before such other date as the commissioner appoints, by notification published in the gazette.

## 110 Discount for pensioners

- (1) In this section—
- pensioner* means a person in receipt of a pension under any law of the Commonwealth or of the State declared, or belonging to a class of pension declared, under a regulation for the purposes of this section.
- (2) The Governor in Council may by regulation declare that each pensioner, who is the owner of a prescribed property that is the principal place of residence of that pensioner, be granted a discount on the contributions payable pursuant to this part in respect of that property at such rate as is specified in the regulation.
- (3) If a pensioner entitled to a discount in respect of prescribed property is not the sole owner, the discount is an amount that bears to the amount of the discount to which the pensioner would have been entitled as the sole owner, the same proportion as the pensioner's interest in the property bears to the total of the interests of all owners of the property.
- (4) For the purposes of subsection (3)—
- (a) owners who hold interests in a property as joint tenants are taken to hold interests in the property as tenants in common in equal shares; and
  - (b) a pensioner who holds an interest in a property is taken to also hold any interest in the property held by the spouse of the pensioner.

**111 Duties of owner of prescribed property and local government**

- (1) An owner of prescribed property must, in accordance with this part, pay to the local government in whose area the property is situated the annual contributions in respect of the property and any other amounts the local government is authorised to impose pursuant to this part.
- (2) Subject to this part a local government must collect those annual contributions and other amounts.

**112 Determinations and notifications of contributions**

- (1) In respect of each financial year, a local government as at the first day of the financial year—
  - (a) must determine the prescribed properties within its area; and
  - (b) must determine the annual contributions payable in respect of prescribed properties by reference to the categories prescribed under a regulation made under section 108.
- (2) After a local government makes its determinations for any financial year, it must give the owner of each prescribed property within its area a levy notice stating—
  - (a) the annual contribution in respect of the property; and
  - (b) the amount of any arrears (including interest and other charges) of annual contribution in respect of the property.

**113 Appeal against local government's determination**

- (1) An owner of property to whom a levy notice is given may appeal to the commissioner on any of the following grounds and on no other grounds—
  - (a) that the property is not prescribed property;

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- (b) that an amount shown in the notice is incorrect because of a typographical, mathematical or similar error, including a typographical or similar error incorrectly categorising the property;
  - (c) that, for determining the contributions payable under section 108—
    - (i) the local government has incorrectly categorised the property, other than because of an error mentioned in paragraph (b); or
    - (ii) the prescribed property should in the circumstances be taken to be within a category other than the category on which the local government based its determination.
- (2) A person wishing to appeal must lodge a notice to that effect with the commissioner setting out the grounds of the appeal within 30 days after the levy notice is given.
- (3) The commissioner may require an appellant or the local government concerned to provide information relevant to the determination of the appeal.
- (4) The commissioner may allow or reject an appeal.
- (5) However, the commissioner need not consider an appeal against a levy notice for the property if—
- (a) an appeal against a previous levy notice for the same property has been lodged under this section on a ground mentioned in subsection (1)(a) or (c); and
  - (b) the appeal was rejected; and
  - (c) since the appeal against the previous levy notice was lodged, there has not been a material change of use under the *Planning Act 2016* for the property.
- (6) If the commissioner allows an appeal, the relevant local government must—
- (a) amend the levy notice; or
  - (b) revoke the levy notice; or

- (c) revoke the levy notice and give a new levy notice;  
in accordance with the determination of the commissioner.
- (7) If the commissioner allows an appeal, the relevant local government must refund to the appellant any amount paid in respect of contributions, for the financial year to which the notice relates and for any previous financial year, in excess of the amount calculated in accordance with the commissioner's determination.
- (8) If the local government has already made payments to the State in respect of those contributions, the amount refundable must be paid to the appellant by the department.
- (9) The determination of the commissioner in respect of an appeal is final.

#### **114 Manner of giving notification**

- (1) A levy notice may be given to the owner of prescribed property—
  - (a) as an item on a rate notice given to the owner in respect of that property; or
  - (b) as a separate notice given before 1 January of the financial year to which the notice relates.
- (2) Where for any financial year a local government gives to the owner of prescribed property in respect of that property 2 or more rate notices, each relating to part of that financial year, a levy notice is taken to be given to the owner in accordance with subsection (1)(a) if each rate notice contains an item for the payment in respect of that property of—
  - (a) such amount as bears to the total of the annual contribution for the financial year the same proportion as the period (in months) for which the rate notice is given bears to 12; and
  - (b) the amount of any arrears of annual contribution.
- (3) Where notification is given as a separate notice, that notice is taken to be a rate notice under the *Local Government Act 2009*

or, in the case of Brisbane City Council, the *City of Brisbane Act 2010*.

- (4) A notification must not be given as an item on a rate notice unless—
- (a) where only 1 rate notice is given for a financial year—  
that rate notice is given before 1 January of that financial year;
  - (b) where 2 or more rate notices are given for a financial year—the first of those notices is given before 1 January of that financial year.

#### **115 Annual contribution etc. deemed to be rates**

- (1) An amount shown in a levy notice, whether given by way of a separate notice or an item on a rate notice, is taken to be a general rate levied by the local government and the relevant provisions relating to general rates apply with all necessary modifications.
- (2) In this section—  
*relevant provisions* means the provisions of the *Local Government Act 2009* or *City of Brisbane Act 2010* prescribed under a regulation.
- (3) Notwithstanding subsections (1) and (2), rates or charges made and levied under the *Local Government Act 2009* or *City of Brisbane Act 2010* are in priority to amounts that, pursuant to subsection (1), are taken to be general rates.

#### **116 Contribution to be paid into fund of local government**

An amount received or recovered by a local government under this part must be paid into its operating fund.

#### **117 Retention of administration fee by local governments**

- (1) For each financial year, a local government is entitled to an amount (an *administration fee*) for performing functions

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under this part, including determining the annual contributions payable for prescribed properties, giving levy notices and collecting contributions for prescribed properties.

- (2) The administration fee for a financial year may be kept from annual contributions for prescribed properties paid or payable for the financial year.
- (3) Each local government may decide the way in which it keeps the administration fee.
- (4) A regulation may prescribe the way in which the administration fee is to be calculated.

### **118 Payments by local governments to department**

- (1) A local government must from time to time make payments to the department, for the fund, out of its operating fund from moneys received or recovered by the local government pursuant to this part.
- (2) The amount of a payment shall be the total of the moneys received or recovered by the local government during the relevant financial year or declared period less the total of all amounts retained by the local government pursuant to section 117.
- (3) An amount payable under this section must be paid within 14 days after the expiration of the financial year or declared period to which the amount relates or within such further time as the commissioner may allow.
- (4) Every payment must be accompanied by a return in the approved form.
- (5) In this section—  
*declared period* means a period in a financial year declared under a regulation as a declared period.

### **119 Failure by local government to make payment**

- (1) Where a local government fails to pay an amount payable under section 118 within the required period, the local

government, from the day on which the period expires, is liable to pay to the department, for the fund, interest on the amount at the percentage prescribed under a regulation under the *City of Brisbane Act 2010* or the *Local Government Act 2009* for overdue rates.

- (2) Any interest not paid by a local government within the time specified in a written demand for payment given by the commissioner is recoverable, together with expenses of recovery, in a court of competent jurisdiction.

## **120 Payments and interest to be debt**

All payments required to be paid to the department pursuant to section 118 and all interest payable by a local government pursuant to section 119 constitute a debt due to the State and may be sued for and recovered by the State in any court of competent jurisdiction.

## **121 Payment of arrears**

- (1) Where any amount relating to contributions payable in respect of prescribed property is in arrears, the owner may apply in writing to the local government in whose area the property is situated for approval to pay the outstanding amount in instalments.
- (2) The local government may refuse the application or may grant it subject to any conditions it thinks fit.

## **122 Notices about contributions**

- (1) Where a local government—
  - (a) fails to notify the owner of prescribed property of any amount relating to contributions payable in respect of that property; or
  - (b) in the opinion of the commissioner has underestimated any amount so payable;

the commissioner may give a notice to the owner requiring payment of the amount specified in the notice within such time and in such instalments (if any) as are specified.

- (2) In a case referred to in subsection (1)(b), a notice may be given by the commissioner whether or not the amount as calculated by the local government has been paid.

### **123 Recovery of arrears**

- (1) Where any amount relating to contributions remains unpaid at the expiration of the period specified for payment in a levy notice or a notice given pursuant to section 122 and proceedings for recovery of the amount have not been instituted or have not been completed by the local government in whose area the relevant prescribed property is situated, the commissioner may take action in a court of competent jurisdiction to recover that amount and interest on that amount.
- (2) For subsection (1), the rate of the interest is the percentage decided by the local government, under the *City of Brisbane Act 2010* or the *Local Government Act 2009*, in relation to an overdue rate for the period for which the amount remains unpaid.
- (3) For the purpose of subsection (1), the commissioner may take any action (including the selling of land) that a local government may take to recover unpaid rates and for that purpose—
  - (a) the amount outstanding is taken to be rates unpaid to a local government and, notwithstanding section 115(3), to be in priority to any rates made and levied in respect of the prescribed property by the local government in whose area the property is situated; and
  - (b) the commissioner is taken to be the mayor of that local government; and
  - (c) any document signed by the commissioner is as effective as it would be if signed by the mayor of that local government.

- (4) Where a court makes an order against the owner of prescribed property for the recovery of any amount in an action referred to in subsection (1), it may also make an order for the recovery of any other outstanding amount relating to contributions payable in respect of that property that has not been paid in accordance with notification given under this part.

#### **124 Remitting contributions**

If the commissioner believes that it is not practicable to pursue the recovery of an amount relating to contributions, the commissioner may—

- (a) remit and wholly discharge the amount or any part of it; or
- (b) enter into an agreement with the person concerned for the payment of a composition in respect of the amount.

#### **125 Proof of amounts owing in relation to contributions**

In any proceeding for the recovery of any amount relating to contributions, a certificate signed by the commissioner stating in respect of property identified in the certificate—

- (a) that the property was, during a specified period, prescribed property; and
- (b) that during that period the property was within a specified levy district and within the area of a specified local government; and
- (c) that during that period a person was the owner of the property; and
- (d) that the person owes any specified amount in respect of contributions;

is evidence of the matters stated.

## **126 Where services of debt collector engaged**

- (1) Where the commissioner or a local government engages the services of a debt collector (authorised to perform a debt collection activity under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*) for the purpose of collecting any arrears of annual contribution payable by an owner of prescribed property, then, despite section 27 of that Act, the owner may be required by the commissioner or the local government by notice in writing to pay an amount, not exceeding an amount representing the prescribed per centum of the amount of arrears, by way of a collection fee.
- (2) The amount, if not paid as required, is recoverable by the commissioner or the local government, together with any expenses of recovery, in a court of competent jurisdiction.

## **127 Application of Crown Proceedings Act**

Any proceeding for the recovery of any amount (including costs) taken under this Act by a local government is taken to be a proceeding in respect of a claim by the Crown within the meaning of the *Crown Proceedings Act 1980* and the provisions of that Act apply accordingly.

## **128 Levies not revenue in determining remuneration of employees of local government**

Notwithstanding any industrial award providing for the classification or remuneration of any employee of a local government according to revenue received by it, in calculating revenue for that purpose—

- (a) money retained as a collection fee under section 117 is included;
- (b) all other money received or recovered under this part is excluded.

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## Division 3 Funding for rural fire brigades

### 128A Local government may make and levy certain rates or charges and contribute amounts raised to rural fire brigades

A local government may make and levy the following rates or charges and contribute amounts raised to rural fire brigades operating in its local government area—

- (a) for Brisbane City Council—special rates and charges, or separate rates and charges, under the *City of Brisbane Act 2010*;
- (b) for another local government—special rates and charges, or separate rates and charges, under the *Local Government Act 2009*.

## Part 11 Charges for services

### 128B Definitions for pt 11

In this part—

*attend to*, for a fire or other incident—

- (a) means take all reasonable measures to deal with danger that is or may be caused by the fire or incident to a person or property or the environment; and
- (b) includes being in attendance at a fire or incident in readiness to act.

*service* means a service provided under this chapter.

*Note*—

The content of part 11 was previously included in section 144.

### 128C Charges may be prescribed or fixed by commissioner

- (1) A charge for a service may be prescribed by a regulation.

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- (2) If a charge for a service is not prescribed by a regulation, the commissioner may fix a charge for the service.
- (3) The amount of a charge fixed by the commissioner under subsection (2) must be reasonable and not more than the actual cost of providing the service.

**128D Person for whose benefit service provided is liable for charge**

A person for whose benefit a service is provided is liable for a charge for the service prescribed by a regulation or fixed by the commissioner.

**128E Person who causes fire or other incident is liable for charge**

- (1) This section applies if—
  - (a) a service is provided that involves attending to a fire or another incident; and
  - (b) a charge for the service is prescribed by a regulation or fixed by the commissioner.
- (2) The person who caused the fire or incident is liable for the charge.
- (3) If the person mentioned in subsection (2) is an agent or employee of another person (the *principal*) and caused the fire or incident when acting within the scope of the agency or employment, the principal is also liable for the charge.

**128F Property owner etc. is liable for charge for particular service**

- (1) This section applies if—
  - (a) a service is provided that involves attending to a fire or a hazardous materials emergency that occurs in or on property or endangers property; and

- (b) a charge for the service is prescribed by a regulation or fixed by the commissioner.
- (2) The owner of the property is liable for the charge.
- (3) If the property is a seagoing ship, the ship's master is also liable for the charge.

**128G No charge for attending to authorised fire except in particular circumstances**

- (1) This section applies if—
  - (a) a service is provided that involves attending to a fire lit under the authority of an Act; and
  - (b) a charge for the service is prescribed by a regulation or fixed by the commissioner.
- (2) The only persons liable for the charge are—
  - (a) if the person who lit the fire acted recklessly or negligently in lighting, or failing to control, the fire—the person; and
  - (b) if the person mentioned in paragraph (a) is an agent or employee of another person (the *principal*) and lit the fire acting within the scope of the agency or employment—the principal.

**128H Owner of prescribed property liable only for unwanted alarm charge**

- (1) This section applies if—
  - (a) a service is provided that involves attending to a fire or other incident at or on prescribed property; and
  - (b) a charge for the service is prescribed by a regulation or fixed by the commissioner.
- (2) The owner of the prescribed property is not liable for the charge unless the service relates to attending to an unwanted alarm.

- (3) In this section—  
*prescribed property* see section 105(1).  
*unwanted alarm* see section 104DA(6).

**128I Property owner not liable for charge for attendance on grass fire**

- (1) This section applies if—
- (a) a service is provided that involves attending to a grass fire at or on, or endangering, property other than prescribed property; and
  - (b) a charge for the service is prescribed by a regulation or fixed by the commissioner.
- (2) The owner of the property is not liable for the charge unless the grass fire was lit by—
- (a) the owner; or
  - (b) an agent or employee of the owner acting within the scope of the agency or employment.

**128J Joint and several liability for charges**

If 2 or more persons are liable under this part for a charge for a service, the liability is joint and several.

**128K Liability for charge does not affect other liability**

The liability of a person to pay a charge for a service of attending to an unauthorised fire does not affect the person's liability to be proceeded against and punished for lighting the fire.

**128L Commissioner may waive charges**

The commissioner may waive all or part of a charge for which a person is liable under this part if the commissioner is

satisfied waiving the charge, or part of the charge, is reasonable in the circumstances.

## **Chapter 4 State Emergency Service, emergency service units and authorised rescue officers**

### **Part 1 State Emergency Service**

#### **Division 1 Continuation and functions**

##### **129 Establishment of SES**

The State Emergency Service (the *SES*) is established.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 81.

##### **130 Functions**

The functions of the SES are—

- (a) to perform rescue or similar operations in an emergency situation; and
- (b) to perform search operations in an emergency or similar situation; and

*Examples of search operations in situations similar to an emergency situation—*

- a search for a lost bush walker
- a search to find a weapon used in the commission of an alleged offence

- (c) to perform other operations in an emergency situation to—
  - (i) help injured persons; or
  - (ii) protect persons or property from danger or potential danger associated with the situation; and
- (d) to perform other activities to help communities prepare for, respond to and recover from an event or a disaster; and
- (e) to perform activities to raise the profile of the SES or raise funds to support the SES in the performance of its other functions.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 82.

## **Division 2                      Responsibilities of commissioner**

### **131      Commissioner’s responsibilities for SES**

The commissioner’s responsibilities for the SES are—

- (a) to establish management and support services for the SES; and
- (b) to develop policies to help the SES perform its functions effectively and efficiently including, for example, policies about training SES members; and
- (c) to ensure—
  - (i) the local controller of an SES unit performs the controller’s functions; and
  - (ii) the SES performs its functions safely and efficiently.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 83.

## **Division 3                      Membership and SES units**

### **132      Membership**

- (1) The SES consists of the persons appointed by the commissioner as SES members.
- (2) The commissioner may appoint a person as an SES member only if satisfied the person has the appropriate abilities to be an SES member.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 84.

### **133      Establishment of SES units**

- (1) The commissioner may establish an SES unit for a local government area if satisfied the local government area requires an SES unit to perform the functions mentioned in section 130.
- (2) Before establishing an SES unit for a local government area, the commissioner must consult with—
  - (a) the local government for the local government area; and
  - (b) other entities the commissioner is satisfied represent the interests of the community in the local government area.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 84A.

### **134      Local controller of SES unit**

- (1) The commissioner is to appoint a member of an SES unit as the local controller of the unit.
- (2) The member appointed as the local controller of an SES unit is to be nominated by the local government for the area for which the unit performs SES functions.

- (3) A person may be appointed as a local controller at the same time the person is appointed as an SES member.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 85.

### **135 Function of local controller**

The function of a local controller of an SES unit is to maintain the operational effectiveness of the unit by ensuring—

- (a) the unit's members have the necessary skills to competently perform their roles within the unit; and
- (b) the unit's equipment is maintained in an appropriate condition; and
- (c) the unit performs its functions and other activities in a way that is consistent with departmental or local government policies about the performance of the functions and activities.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 86.

### **136 SES coordinator**

- (1) This section applies if—
  - (a) local government areas are affected by a disaster; and
  - (b) the commissioner considers the nature of the disaster goes beyond the capacity or capability of the SES units or the relevant ES units in the local government areas.
- (2) The commissioner may appoint a person as an SES coordinator to coordinate the performance of SES functions in the local government areas.
- (3) The commissioner may act under subsection (2) either—
  - (a) on the commissioner's own initiative; or

- (b) on the request of a local government whose area is affected by the disaster.
- (4) The commissioner must, before making the appointment—
  - (a) consult with each local government affected by the disaster; and
  - (b) obtain the approval of the chairperson of the State group.
- (5) The appointment must be in writing.
- (6) The commissioner may only appoint a person as an SES coordinator if the commissioner is satisfied the person has the necessary expertise and experience to perform the functions of an SES coordinator.
- (7) The commissioner must advise the chairperson of each relevant local group and the relevant district disaster coordinator that an SES coordinator has been appointed.
- (8) The commissioner must terminate the appointment if the commissioner considers it is no longer necessary for an SES coordinator to be appointed.
- (9) The commissioner must advise the chairperson of each relevant local group and the relevant district disaster coordinator of the termination of the appointment.
- (10) In this section—

*district disaster coordinator* has the meaning given by the *Disaster Management Act 2003*.

*local group* has the meaning given by the *Disaster Management Act 2003*.

*relevant local group* means the local group for a local government area affected by a disaster.

*State group* has the meaning given by the *Disaster Management Act 2003*.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 86A.

### 137 Functions of SES coordinator

- (1) An SES coordinator has the following functions—
  - (a) to coordinate the performance of SES functions in the local government areas for which the coordinator is appointed in circumstances where SES or ES unit resources are made available within the local government areas from outside the local government areas;
  - (b) to provide advice to local controllers of the SES units and ES unit coordinators of the relevant ES units about—
    - (i) SES functions; and
    - (ii) managing the safety and fatigue of the members of the SES units and relevant ES units; and
    - (iii) logistical and financial matters;
  - (c) to perform other functions agreed between the SES coordinator and the local disaster coordinator for the relevant local group.
- (2) In performing the SES coordinator's functions, the coordinator must have regard to—
  - (a) the advice of the local disaster coordinator for a relevant local group; and
  - (b) any applicable disaster management plans.
- (3) The SES coordinator may perform a function in relation to the relevant ES unit only to the extent the function relates to the relevant ES unit's SES functions.
- (4) In this section—

*disaster management plan* has the meaning given by the *Disaster Management Act 2003*.

*local disaster coordinator* has the meaning given by the *Disaster Management Act 2003*.

*local group* has the meaning given by the *Disaster Management Act 2003*.

***relevant local group*** means the local group for a local government area affected by a disaster.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 86B.

## Division 4                      Functions of SES units

### 138      Functions of SES unit

- (1) The functions of an SES unit are the SES functions—
  - (a) the commissioner considers appropriate for the unit; and
  - (b) of which the unit has been advised under section 139.
- (2) To decide the functions of an SES unit, the commissioner must have regard to the following—
  - (a) the needs of the community in the relevant area;
  - (b) the needs of the community in other local government areas in which disaster operations need to be carried out;
  - (c) whether the members of the unit have the abilities to competently perform the functions;
  - (d) the resources available to the unit;
  - (e) whether the unit can appropriately maintain the equipment necessary for the unit to perform the functions.
- (3) Also, before deciding the functions of an SES unit, the commissioner must consult with the local government for the relevant area.
- (4) In this section—

***relevant area***, for an SES unit, means the area of local government in which the SES unit will perform its functions.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 87.

### **139 Notice of functions**

The commissioner must inform each SES unit of its functions in writing.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 88.

## **Division 5 Agreements**

### **140 Agreements between department and each local government to define responsibilities of each party**

The commissioner may enter into an agreement with a local government that sets out the responsibilities of each party in relation to the SES in the local government's area.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 88A.

## **Part 2 Emergency service units**

### **Division 1 Establishment and functions**

#### **141 Establishment of ES units**

- (1) The commissioner may establish an emergency service unit (an *ES unit*) for an area of the State (an *emergency service area*) if satisfied—
  - (a) the area is in a remote or rural location; and
  - (b) the establishment of the unit would help the community in the area to use resources available to it to provide for the effective and efficient performance of a function under section 142(1).

- (2) Before establishing an ES unit for an area, the commissioner must consult with—
  - (a) each local government whose area is completely or partly in the area; and
  - (b) other entities the commissioner is satisfied represent the interests of the community in the area.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 89.

## 142 Functions

- (1) The functions of an ES unit are any of the following functions the commissioner considers appropriate for the unit—
  - (a) an SES function;
  - (b) fire fighting or fire prevention.
- (2) In deciding the functions of an ES unit, the commissioner must have regard to the following—
  - (a) the needs of the community in the emergency service area for the unit;
  - (b) whether the members of the unit have the abilities to competently perform the function;
  - (c) the resources available to the unit;
  - (d) whether the unit can appropriately maintain the equipment necessary for the unit to perform the function.
- (3) Also, before deciding the functions of an ES unit, the commissioner must consult with each local government whose area is completely or partly in the emergency service area in which the unit performs its functions.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 90.

### **143 Notice of functions**

The commissioner must inform each ES unit of its functions in writing.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 91.

## **Division 2 Commissioner's responsibilities**

### **144 Commissioner's responsibilities for ES units**

The commissioner's responsibilities for an ES unit are—

- (a) to establish management and support services for the unit; and
- (b) to develop policies to help the unit perform its function effectively and efficiently, including, for example, policies about training for members of the unit.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 92.

## **Division 3 Membership**

### **145 Commissioner may appoint ESU members**

- (1) An ES unit consists of the persons appointed by the commissioner as members of the unit (each an *ESU member*).
- (2) The commissioner may appoint any of the following persons as an ESU member—
  - (a) an SES member;
  - (b) an honorary ambulance officer under the *Ambulance Service Act 1991*;
  - (c) a member of a group registered as a rural fire brigade under section 79;

- (d) another person the commissioner is satisfied has the abilities to be an ESU member.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 93.

## **146 ES unit coordinator**

- (1) The commissioner is to appoint a member of an ES unit as the ES unit coordinator of the unit.
- (2) The member appointed as an ES unit coordinator is to be nominated by the local governments whose areas are completely or partly in the emergency service area for which the ES unit is established.
- (3) A person may be appointed as an ES unit coordinator at the same time the person is appointed as an ESU member.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 94.

## **146A Function of ES unit coordinator**

The function of an ES unit coordinator of an ES unit is to maintain the operational effectiveness of the unit by ensuring—

- (a) the unit's members have the necessary skills to competently perform their roles within the unit; and
- (b) the unit's equipment is maintained in an appropriate condition; and
- (c) the unit performs its functions and other activities in a way that is consistent with departmental or local government policies about the performance of the functions and activities.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 95.

## **Division 4                      Matters about ES units with function of fire fighting or fire prevention**

### **147      Application of div 4**

This division applies to an ES unit that, under section 142(1), has the function of fire fighting or fire prevention.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 96.

### **147A    Appointment of fire coordinator**

- (1) The commissioner is to appoint a member of the unit as the fire coordinator for the unit.
- (2) The commissioner may appoint a person as the fire coordinator only if satisfied the person has the necessary expertise or experience to exercise the powers of the fire coordinator under section 147B.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 97.

### **147B    Powers of fire coordinator**

- (1) This section applies to a person appointed under section 147A(1) as a fire coordinator for an ES unit.
- (2) The person has, for controlling and extinguishing a fire in the unit's emergency service area, the powers of an authorised fire officer under this Act.
- (3) However—
  - (a) the commissioner may, by written notice, impose conditions on the exercise of the powers by the person; and



- (iv) ES units.
- (2) The commissioner must, as soon as practicable after issuing a code of practice, give a copy of the code to—
  - (a) for a code relating to the SES, SES members or SES units—each SES unit; and
  - (b) for a code relating to ESU members—each ES unit.
- (3) To remove any doubt, it is declared that a code of practice issued by the commissioner under this section is a statutory instrument.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 137.

## **Part 4                      Authorised rescue officers**

### **Division 1                Appointment**

#### **148      Appointment**

- (1) The commissioner may appoint any of the following persons as an authorised rescue officer—
  - (a) an SES member;
  - (b) an ESU member who is a member of an SES unit or an ES unit the commissioner considers has the necessary equipment to perform rescue or similar operations;
  - (c) a person who performs emergency-related functions or similar functions under a law of another State or country;
  - (d) a member of a class of persons prescribed by a regulation.
- (2) However, the commissioner may appoint a person as an authorised rescue officer only if satisfied the person has the

necessary expertise or experience to be an authorised rescue officer.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 100.

### **148A Appointment conditions and limit on powers**

- (1) An authorised rescue officer holds office on any conditions stated in—
  - (a) the officer’s instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the officer or a regulation may limit the officer’s powers under this Act.
- (3) In this section—

***signed notice*** means a notice signed by the commissioner.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 101.

### **148B Issue of identity card**

- (1) The commissioner must issue an identity card to each authorised rescue officer.
- (2) The identity card must—
  - (a) contain a recent photo of the officer; and
  - (b) contain a copy of the officer’s signature; and
  - (c) identify the person as an authorised rescue officer under this Act; and
  - (d) state an expiry date for the card.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 102.

### **148C Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an authorised rescue officer must—
  - (a) before exercising the power, produce the officer's identity card for the person's inspection; or
  - (b) when exercising the power, have the identity card displayed so it is clearly visible to the person.
- (2) However, subsection (1) does not apply if, having regard to the circumstances in which the power is exercised, it is not practicable for the authorised rescue officer to comply with the subsection.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 103.

### **148D Resignation**

An authorised rescue officer may resign by signed notice given to the commissioner.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 105.

### **148E Return of identity card**

A person who stops being an authorised rescue officer must return the person's identity card to the commissioner within 21 days after the person stops being an authorised rescue officer, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 106.

## **Division 2                      Powers of authorised rescue officers**

### **149      General provision about powers**

- (1) In performing an emergency-related function, an authorised rescue officer may take reasonable steps to protect—
  - (a) a person who is trapped, or endangered in another way, in a place; or
  - (b) the officer or another person from danger, potential danger or assault.
- (2) Without limiting subsection (1), each of the following is a reasonable step for subsection (1)—
  - (a) entering a place using reasonable force;
  - (b) searching any part of a place;
  - (c) opening, using reasonable force, a container or other thing;
  - (d) removing any thing from a place;
  - (e) destroying or damaging premises, a vehicle, container or other thing;
  - (f) taking into or onto a place the equipment, persons or materials the authorised rescue officer reasonably requires to exercise a power under this section;
  - (g) directing a person to leave, or not to enter, an area in or near a place if the authorised rescue officer reasonably considers the direction is necessary to protect a person's life or health;

- (h) requiring a person at or near the place to give the authorised rescue officer reasonable help to exercise the officer's powers under paragraphs (a) to (f).
- (3) When giving a direction or making a requirement mentioned in subsection (2)(g) or (h), the authorised rescue officer must warn the person it is an offence to fail to comply with the direction or requirement unless the person has a reasonable excuse.

*Notes—*

For offences about failing to comply with a direction or requirement under section 149(2)(g) or (h), see sections 150C and 150D.

The content of this section was previously included in the *Disaster Management Act 2003*, section 107.

#### **149A Power of entry**

- (1) An authorised rescue officer may enter a place under section 149(2) without a warrant or the consent of the owner or occupier of the place.
- (2) However, if the occupier is present at the place, the authorised rescue officer must do, or make a reasonable attempt to do, the following things before entering the place—
  - (a) tell the occupier the purpose of the entry;
  - (b) seek the consent of the occupier to the entry;
  - (c) tell the occupier the authorised rescue officer is permitted under this Act to enter the place without the occupier's consent.
- (3) Subsection (2) does not require the authorised rescue officer to take a step the officer reasonably believes may frustrate or otherwise hinder the officer's ability to give the protection mentioned in section 149(1).

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 108.

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### **149B Exercise of powers subject to direction**

- (1) This section applies to an authorised rescue officer who is not an SES member or an ESU member.
- (2) In exercising a power under this division, the officer is subject to the directions of an authorised rescue officer who is an SES member or an ESU member.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 109.

## **Chapter 5      General**

### **Part 1            Offences**

#### **150      Lighting of grass fire prohibited**

A person must not light, or attempt to light, a grass fire with the intention of injuring a person or property.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

The content of this section was previously included in section 146.

#### **150A    Interference with fire apparatus etc.**

A person must not wilfully and unlawfully—

- (a) destroy, damage, remove, cover or otherwise interfere with an apparatus designed for—
  - (i) warning of fire, including an alarm; or
  - (ii) the prevention of fire; or
  - (iii) use in the event of fire; or

[s 150B]

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- (b) enclose a fireplug so that it is difficult to locate or use;  
or
- (c) obliterate or cover a mark or sign used for locating a fireplug.

Maximum penalty—

- (a) if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies—250 penalty units or 1 year's imprisonment; or
- (b) otherwise—50 penalty units or 6 months imprisonment.

*Note—*

The content of this section was previously included in section 147(d) and (e).

### **150B False calls**

- (1) A person must not—
  - (a) ask QFES to provide a fire and emergency service at a place unless the service is required at the place; or
  - (b) give a false alarm of fire.

Maximum penalty—

- (a) if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies—250 penalty units or 1 year's imprisonment; or
  - (b) otherwise—100 penalty units or 1 year's imprisonment.
- (2) For subsection (1), a request may be made orally, in writing or by conduct.

*Example of conduct being a request for QFES to provide a fire and emergency service at a place—*

activation of a break-glass alarm

- (3) An infringement notice under the *State Penalties Enforcement Act 1999* may be issued to a person for a contravention of

subsection (1) only if a fire investigation officer is satisfied, having investigated, the person does not have a lawful excuse.

(4) In this section—

***fire and emergency service*** means protection or rescue by QFES of—

- (a) persons, property and the environment from fire and hazardous materials emergencies; or
- (b) persons trapped in a vehicle or building or otherwise endangered.

*Note—*

The content of this section was previously included in section 146A.

### **150C Obstruction of persons performing functions**

(1) A person must not obstruct another person (an ***authorised person***) in the performance of a function under this Act unless the person has a reasonable excuse.

Maximum penalty—100 penalty units or 6 months imprisonment.

(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the performance of the function, the authorised person must warn the person that—

- (a) it is an offence to obstruct the authorised person unless the person has a reasonable excuse; and
- (b) the authorised person considers the person's conduct to be an obstruction.

(3) In this section—

***function*** includes power.

***obstruct*** includes abuse, assault, hinder, resist, threaten and attempt or threaten to obstruct.

*Note—*

The content of this section was previously included in section 147(a) and the *Disaster Management Act 2003*, section 115.

**150D Failure to assist or give reasonable help**

A person who is required to assist under section 53(2)(j) or give reasonable help under 149(2)(h) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

**150E Failure to comply with requisition etc.**

A person must not fail to comply with a requisition made, or a direction, notification or notice given, under this Act, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units or 6 months imprisonment.

*Note—*

The content of this section was previously included in section 147(b) and the *Disaster Management Act 2003*, section 116.

**150F Failure to answer question or provide information**

A person who is required under this Act to answer a question or provide information must not, unless the person has a reasonable excuse—

- (a) fail to answer the question or provide the information; or
- (b) give an answer, or provide information, the person knows is false or misleading.

Maximum penalty—30 penalty units.

*Note—*

The content of this section was previously included in section 147(c).

**150G Impersonating authorised rescue officer etc.**

A person must not pretend to be—

- (a) a fire service officer; or
- (b) an authorised rescue officer; or

- (c) an ESU member; or
- (d) an SES coordinator; or
- (e) an SES member.

Maximum penalty—

- (a) 100 penalty units; or
- (b) if the person pretends to be a fire service officer during a state of fire emergency to which the declaration of emergency applies—250 penalty units or 1 year's imprisonment.

*Note—*

The content of this section was previously included in section 147(g) and the *Disaster Management Act 2003*, section 114.

### **150H Using restricted expressions etc.**

- (1) A person must not, unless the person has a reasonable excuse—
  - (a) use a restricted expression without the commissioner's written approval—
    - (i) in, or as, the name of a business carried on by the person; or
    - (ii) to advertise or otherwise promote goods or services provided by the person; or
  - (b) use the expressions 'State Emergency Service' or 'SES', or a similar expression, in a way that suggests the person is an SES member if the person is not an SES member; or
  - (c) use the expressions 'emergency service unit' or 'ESU', or a similar expression, in a way that suggests the person is an ESU member if the person is not an ESU member.

Maximum penalty—40 penalty units.

- (2) In this section—

*restricted expression* means any of the following expressions—

- (a) ‘emergency service unit’;
- (b) ‘ESU’;
- (c) ‘ES unit’;
- (d) ‘Queensland Fire Service’;
- (e) ‘Queensland Fire and Rescue Service’;
- (f) ‘Queensland Fire and Emergency Service’;
- (g) ‘State Emergency Service’;
- (h) ‘SES’;
- (i) ‘Queensland Fire and Rescue Authority’;
- (j) ‘QFS’;
- (k) ‘QFRA’;
- (l) ‘QFRS’;
- (m) ‘QFES’;
- (n) another expression that includes an expression mentioned in paragraphs (a) to (m).

*Note—*

The content of this section was previously included in section 143 and the *Disaster Management Act 2003*, section 118.

### **150I Warning device or lights on SES or ES vehicle**

- (1) A person, other than an SES member or an ESU member, must not activate a warning device or warning lights fitted to an SES vehicle or ES vehicle.

Maximum penalty—40 penalty units.

- (2) An SES member or an ESU member must not activate a warning device or warning lights fitted to an SES vehicle or ES vehicle unless—

- (a) the warning device or warning lights are activated by the member in relation to the performance of an SES function or an ES function; and
- (b) the member considers it necessary to activate the warning device or warning lights to ensure a person's safety.

Maximum penalty—40 penalty units.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 139.

### **150J Liability of executive officer—particular offences committed by corporation**

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation commits an offence against an executive liability provision; and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
  - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
  - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
  - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not

the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.

- (4) This section does not affect—
- (a) the liability of the corporation for the offence against the executive liability provision; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.

- (5) In this section—

*executive liability provision* means any of the following provisions—

- section 69(3)
- section 104C
- section 104D(1).

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

*Note—*

The content of this section was previously included in section 151.

### **150K Indictable and summary offences**

- (1) Subject to subsections (2) and (3), an offence against this Act is a summary offence.
- (2) If the maximum penalty for an offence against this Act is imprisonment for 2 years or more, the offence is an indictable offence that is a misdemeanour.
- (3) An offence against section 150 is a crime.

*Note—*

The content of this section was previously included in section 148.

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## Part 2 Proceedings

### Division 1 Offence proceedings

#### 151 Proceedings for indictable offences

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

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*Note—*

The content of this section was previously included in section 148A.

### **151A Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

*Note—*

The content of this section was previously included in section 148B.

### **151B Proceeding for offences**

A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886*.

*Note—*

The content of this section was previously included in section 148C and the *Disaster Management Act 2003*, section 135(1).

### **151C When proceeding must start**

A proceeding for a summary offence against this Act must start within the end of whichever of the following periods ends later—

- (a) 1 year after the commission of the offence;

- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

*Note—*

The content of this section was previously included in section 148D and the *Disaster Management Act 2003*, section 135(2).

### **151D Allegations of false or misleading information or document**

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state the information or document was 'false or misleading', without specifying which.

*Note—*

The content of this section was previously included in section 148E.

### **151E Forfeiture on conviction**

- (1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; and
  - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

*Note—*

The content of this section was previously included in section 148F.

### **151F Dealing with forfeited thing**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the State as it considers appropriate.
- (2) Without limiting subsection (1), the State may destroy the thing.

*Note—*

The content of this section was previously included in section 149.

### **151G Court may order costs of rehabilitation etc. of protected area**

On conviction of a person for an offence against section 62 in relation to a protected area, the court may order the person to pay to the State an amount it considers appropriate for, or towards—

- (a) the costs of controlling and extinguishing the fire in relation to which the offence was committed; and
- (b) the costs of rehabilitating or restoring the area.

*Note—*

The content of this section was previously included in section 149A.

### **151H Order for payment if guilty of false call**

- (1) If a person is convicted by a court of an offence against section 150B, the court may order the person to pay QFES a reasonable amount for the expenses of, or incidental to, the provision of the fire and emergency service that was requested by the person.
- (2) The court may make an order under subsection (1) in addition to imposing a penalty for the offence.
- (3) An amount ordered to be paid under subsection (1) may be recovered by QFES as a debt owing to it by the person.
- (4) Subsection (1) does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

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*Note—*

The content of this section was previously included in section 150.

## **Division 2                      Evidence**

### **151I    Appointments and authority**

- (1) In a proceeding under an Act, the appointment of each of the following is presumed unless a party to the proceeding gives reasonable notice that the party requires the appointment to be proved—
- (a) the commissioner;
  - (b) a fire service officer;
  - (c) an investigation officer;
  - (d) a chief fire warden;
  - (e) a fire warden;
  - (f) a field officer;
  - (g) a forest officer;
  - (h) an SES member;
  - (i) a local controller of an SES unit;
  - (j) an SES coordinator;
  - (k) an ESU member;
  - (l) an ES unit coordinator;
  - (m) a fire coordinator for an ES unit.
- (2) The authority of each person mentioned in subsection (1) to do anything under this Act is also presumed in the proceeding unless a party to the proceeding gives reasonable notice the party requires the person's authority to be proved.

*Note—*

The content of this section was previously included in section 153(1)(a) and (b) and the *Disaster Management Act 2003*, section 132.

## 151J Signatures

A signature purporting to be the signature of a person mentioned in section 151I(1) is evidence of the signature it purports to be.

*Note—*

The content of this section was previously included in section 153(1)(c) and the *Disaster Management Act 2003*, section 133.

## 151K Other evidentiary aids

A certificate purporting to be signed by the commissioner stating any of the following matters is evidence of the matter—

- (a) a stated document is an approval, authorisation, decision, direction, notice or requirement given or made under this Act;
- (b) a stated document is a copy of a document mentioned in paragraph (a);
- (c) a document mentioned in paragraph (a), or a copy of it, was given under this Act to a stated person on a stated day;
- (d) the commissioner or the State is or was at a stated time the owner of stated property;
- (e) no consent has been given for a stated act or breach of duty alleged to have been committed in respect of property mentioned in paragraph (d);
- (f) a stated service was provided under this Act to a stated person on a stated day;
- (g) a stated person was charged a stated amount for a stated service provided under this Act;
- (h) a stated amount mentioned in paragraph (g) has not been paid.

*Note—*

The content of this section was previously included in section 153(1)(e) to (h) and the *Disaster Management Act 2003*, section 134.

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## Part 3 Provisions about performance of functions under this Act

### 152 Exemption from toll

- (1) This section applies to—
  - (a) a fire officer driving a fire engine or similar vehicle; or
  - (b) an SES member or an ESU member travelling, in the member's capacity as an SES member or ESU member, in an SES vehicle or an ES vehicle fitted with a warning device that is, or warning lights that are, activated.
- (2) Each person and vehicle mentioned in subsection (1) is exempt from payment of a toll for the use of a road, bridge or ferry.

*Note—*

The content of this section was previously included in section 135 and the *Disaster Management Act 2003*, section 140.

### 152A Right of way to fire officers

- (1) A driver of a vehicle must, to the extent practicable, give clear and uninterrupted passage to—
  - (a) a fire officer who is, or appears to be, doing an act for the purpose of controlling or extinguishing a fire or dealing with another emergency; and
  - (b) a person acting under the direction of a fire officer mentioned in paragraph (a).
- (2) A person who fails to comply with subsection (1) commits an offence.
- (3) In this section—

**vehicle** does not include a train.

*Note—*

The content of this section was previously included in section 134.

## **152B Use of unregistered vehicles on roads**

- (1) This section applies if—
  - (a) an unregistered vehicle (the *vehicle*) is being used on a road by a rural fire brigade or an ES unit—
    - (i) for carrying persons or equipment for the purpose of preventing, controlling or extinguishing a fire; or
    - (ii) for the purpose of training relating to fire fighting or fire prevention; or
    - (iii) for another purpose authorised in writing by the commissioner; and
  - (b) the vehicle is clearly identified as a vehicle of a rural fire brigade or ES unit; and  
*Example for paragraph (b)—*

a vehicle carrying a sign with the words ‘emergency service unit vehicle’
  - (c) an insurance policy of the kind mentioned in the *Motor Accident Insurance Act 1994*, section 23(1) is in force for the vehicle.
- (2) The provisions of the *Transport Operations (Road Use Management) Act 1995* that prohibit the use on a road of an unregistered vehicle, unless the use is authorised by a permit under that Act, do not apply in relation to the vehicle.

*Note—*

The content of this section was previously included in section 138.

## **152C Inspection of records of local governments and building certifiers**

- (1) A person authorised by the commissioner for this section (the *authorised person*) may, during ordinary business hours, enter premises in which a local government or building certifier carries on business.
- (2) At the premises, the authorised person may—

- 
- (a) make inquiries for the purpose of this Act; and
  - (b) examine, make copies of or take extracts from a document or record relating to—
    - (i) if the premises are premises in which a local government carries on business—a function of the commissioner or of the local government under this Act; or
    - (ii) if the premises are premises in which a building certifier carries on business—something done by the building certifier under the *Building Act 1975*, the repealed *Integrated Planning Act 1997*, the repealed *Sustainable Planning Act 2009* or the *Planning Act 2016*.
- (3) However, the authorised person may only examine, make copies of or take extracts from a document or record under subsection (2)(b)(ii) if the document or record is not available from a local government.
- (4) A person who has control of a document or record of a type mentioned in subsection (2)(b), must, if required by the authorised person—
- (a) produce the document or record to the authorised person; or
  - (b) give the authorised person information relating to the document or record; or
  - (c) otherwise assist the authorised person.
- Maximum penalty—10 penalty units.
- (5) Nothing in this section authorises an authorised fire officer to enter part of premises that are a dwelling if the part is not also a workplace within the *Work Health and Safety Act 2011*.

*Note—*

The content of this section was previously included in section 137.

## 152D Interstate assistance at fires

- (1) This section applies to a person who is—
  - (a) a member (an *interstate member*) of a fire brigade (the *interstate fire brigade*) from outside Queensland; and
  - (b) present at a fire in Queensland to assist at the fire.
- (2) The interstate member, and plant and equipment under the member's control, are—
  - (a) at the disposal of the person in charge at the fire; and
  - (b) taken to be under the control and direction of that person.
- (3) However, if there is no person in charge at the fire and an interstate member (the *chief interstate member*) is in charge of other members of the interstate fire brigade present at the fire, the chief interstate member—
  - (a) has the control and direction of all persons assisting at the fire; and
  - (b) has all the powers conferred under this Act on an authorised fire officer.
- (4) In this section—

*fire brigade* includes an entity similar to a fire brigade that has the function of extinguishing fire.

*person in charge*, for a fire, means the person who, under any of the following, is in charge at the fire—

- (a) this Act;
- (b) direction of the commissioner;
- (c) a code of practice.

*Note—*

The content of this section was previously included in section 139.

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## Part 4                      Miscellaneous

### 153      Delegation

- (1) The commissioner may delegate a function of the commissioner under this Act to an appropriately qualified person.
- (2) A delegation of a function may permit the subdelegation of the function.
- (3) In this section—  
*function* includes power or responsibility.

### 153A   Confidentiality

- (1) A person must not disclose, use or make a record of information the person has acquired—
  - (a) in performing a function, or exercising a power, under this Act; or
  - (b) because of an opportunity provided by the performance of the person's function, or exercise of the person's power, under this Act.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply if the information is disclosed or used, or a record of the information is made—
  - (a) for a purpose of this Act; or
  - (b) as permitted or required under another Act; or
  - (c) in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal.
- (3) Also, subsection (1) does not apply to the disclosure of information relating to fire safety at particular premises if the disclosure is to a person with an interest in the premises, including the owner or occupier of the premises.

*Note—*

The content of this section was previously included in section 142A.

**153B Protection from liability—acts or omissions under chapter 3**

- (1) No liability attaches to any person for an act done, or omission made, honestly and without negligence under chapter 3.
- (2) A person who uses reasonable force on or against a person when performing a function under chapter 3 to avoid or reduce danger or harm to any person or property or the environment is not liable to be charged or proceeded against for an offence in relation to the use of force.
- (3) If a question arises in a proceeding as to whether subsection (1) prevents liability for an act or omission attaching to a person, the party alleging that subsection (1) does not prevent liability attaching to the person bears the onus of proving the person did not do the act, or make the omission, honestly and without negligence.
- (4) In this section—

*function* includes power or responsibility.

*Note—*

The content of this section was previously included in section 129.

**153C Protection from civil liability—acts or omissions under chapter 4**

Civil liability does not attach to any of the following entities because of an act done, or omission made, honestly and without negligence by the entity under chapter 4—

- (a) the State;
- (b) a local government;
- (c) the Minister;
- (d) an SES member;

- (e) an ESU member;
- (f) an authorised rescue officer;
- (g) a person helping an authorised rescue officer under section 149(2)(h).

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 144.

### **153D Ownership of property**

For this Act and a proceeding under any Act, the State is taken to be the owner of—

- (a) premises occupied in an official capacity by a fire service officer; and
- (b) anything (whether animate or inanimate) appropriated to the use of QFES; and
- (c) anything, not being the private property of a person, used by the commissioner or a fire service officer in performing duties.

*Note—*

The content of this section was previously included in section 140.

### **154 Representation of commissioner at inquiries**

At an inquiry concerning a fire, an authorised representative of the commissioner may appear and adduce evidence, cross-examine a witness and address the tribunal conducting the inquiry.

*Note—*

The content of this section was previously included in section 131.

### **154A Construction of policies of fire insurance**

- (1) This section applies if—

[s 154B]

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- (a) a person (the *insured person*) has insured an interest in property (the *insured property*) against loss or damage by fire; and
- (b) because of an act done, or omitted to be done, in relation to a fire by a person performing a function or exercising a power under this Act—
  - (i) the insured property is damaged and the insured person suffers a loss; or
  - (ii) the insured person incurs a charge or expense, other than a charge or expense incurred as a punishment.
- (2) The loss suffered, or the charge or expense incurred, by the insured person is taken to be loss or damage by fire under the insurance policy (the *policy*) taken out by the insured person in relation to the insured property.
- (3) Subsection (2) applies despite anything to the contrary in the policy.

*Note—*

The content of this section was previously included in section 132.

### **154B Report of fire**

The commissioner may, if asked by an insurer, give the insurer details of a report in the commissioner's possession relating to the attendance at a fire or other emergency incident by—

- (a) a fire service officer; or
- (b) another person who is subject to the direction of the commissioner.

*Note—*

The content of this section was previously included in section 133.

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### 154C Commissioner to insure SES members etc.

- (1) The commissioner must enter into a contract of insurance with WorkCover or another entity to insure the following persons—
  - (a) ESU members;
  - (b) SES coordinators;
  - (c) SES members.
- (2) The contract of insurance must cover the persons mentioned in subsection (1) while they are—
  - (a) performing a function under this Act in their capacity as an ESU member, SES coordinator or SES member; or
  - (b) involved in another activity related to the carrying out of disaster or emergency operations, an ESU function or an SES function.

*Example for paragraph (b)—*

training for disaster or emergency operations

- (3) In this section—

**WorkCover** means WorkCover Queensland established under the *Workers' Compensation and Rehabilitation Act 2003*.

*Note—*

The content of this section was previously included in the *Disaster Management Act 2003*, section 142.

### 154D Approval of forms

The commissioner may approve forms for use under this Act.

*Note—*

The content of this section was previously included in section 153B.

### 154E Regulation-making power

- (1) The Governor in Council may make regulations under this Act.

- (2) Without limiting subsection (1), a regulation may provide for any of the following—
- (a) the records required to be kept under this Act and the way in which the records are to be kept;
  - (b) matters relating to the entitlements, powers, responsibilities and liabilities of—
    - (i) authorised rescue officers; or
    - (ii) ESU members; or
    - (iii) ES units; or
    - (iv) fire service officers; or
    - (v) SES members; or
    - (vi) SES units;
  - (c) matters relating to appeals about disciplinary action;
  - (d) fees and charges payable under this Act, including the matters for which they are payable;
  - (e) a maximum penalty of not more than 30 penalty units for contravention of the regulation;
  - (f) fees payable for—
    - (i) the assessment and inspection of special fire services within the meaning of the *Building Act 1975*; or
    - (ii) the assessment of proposed alternative solutions within the meaning of the Building Code of Australia.

*Note—*

The content of this section was previously included in section 154.

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## Part 5 Savings and transitional provisions

### Division 1 Provisions for Act before commencement of Emergency Services Legislation Amendment Act 1998

#### 155 Definitions

In this division—

*amendment Act* means the *Fire Service Amendment Act 1996*.

*commencement* means the commencement of section 8 of the amendment Act.

*commissioner* means the corporation sole under this Act as in force immediately before the commencement.

*fire service* means the Queensland Fire Service in existence immediately before the commencement.

*transferred officer* means a person taken to be employed as a fire authority officer under section 160.

#### 157 References to commissioner

A reference in an Act or document in existence immediately before the commencement to the corporation sole of the commissioner is a reference to the authority.

#### 158 Vesting of assets

On the commencement, the assets, rights and liabilities of the commissioner or the fire service vest in the authority.

**159 Legal or disciplinary proceedings**

- (1) A legal proceeding that could have been started or continued by or against the commissioner or the fire service before the commencement may be started or continued by or against the authority.
- (2) A disciplinary proceeding that could have been started or continued by the commissioner before the commencement may be started or continued by the chief commissioner.

**160 Fire authority officers**

A person who, immediately before the commencement, was employed as a fire service officer of the fire service is, on the commencement, taken to be employed as an equivalent class of fire authority officer.

**161 Conditions of employment of transferred officers**

- (1) The conditions of employment applying to a transferred officer must be no less favourable than the conditions that applied to the officer immediately before the commencement.
- (2) A transferred officer remains entitled to all rights accrued or accruing to the officer as an employee of the fire service.
- (3) Without limiting subsection (2), a transferred officer is entitled to receive annual, sick and long service leave and any similar entitlements accrued or accruing to the officer as an employee of the fire service.
- (4) The recognised service of a transferred officer is taken to be service as an employee of the authority for the purpose of any law dealing with rights or entitlements mentioned in this section.
- (5) In subsection (4)—

*recognised service* of a transferred officer means the officer's service as an employee of the fire service, and includes any previous service of the officer taken to be service with the fire service.

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**162 Trusts**

On the commencement, any property that, immediately before the commencement, was held in trust by the fire service or the commissioner vests in the authority on the same trusts to which the property was subject immediately before the vesting.

**163 Duty to assist transfer of property**

- (1) The registrar of titles and all persons who keep registers of dealings in property must, if asked by the authority, make in the register all entries necessary to record the vesting of property in the authority by this division.
- (2) A request under this section is not liable to fees or stamp duty.

**164 Superannuation scheme**

A reference in the trust deed dated 13 April 1964, establishing the fire service superannuation scheme, to a fire brigade board or the commissioner is a reference to the authority.

**165 Suspension**

The suspension of a fire officer in force immediately before the commencement is taken to continue in force under this Act.

**166 Appeals**

An appeal to the commissioner started, but not decided, before the commencement may be continued and decided by the chief commissioner after the commencement.

**167 Things taken to have been done etc. by chief commissioner**

- (1) Anything declared, done, given, granted, made or issued by the commissioner under a chief commissioner's section and in

force, or having effect, immediately before the commencement is, on the commencement, taken to have been declared, done, given, granted, made or issued by the chief commissioner.

(2) If the action mentioned in subsection (1) involves a period of time, the subsection must not be construed as extending or otherwise affecting the period.

(3) In this section—

*chief commissioner's section* means a section that, immediately before the commencement, referred to action of the commissioner and after the commencement refers to action of the chief commissioner.

#### **168 Things taken to have been done etc. by the authority**

(1) Anything declared, done, given, granted, made or issued by the commissioner under an authority's section and in force, or having effect, immediately before the commencement is, on the commencement, taken to have been declared, done, given, granted, made or issued by the authority.

(2) If the action mentioned in subsection (1) involves a period of time, the subsection must not be construed as extending or otherwise affecting the period.

(3) In this section—

*authority's section* means a section that, immediately before the commencement, referred to action of the commissioner and after the commencement refers to action of the authority.

#### **170 Previous fund**

(1) The State Fire Services Trust Fund is closed.

(2) The amount standing at credit in the State Fire Services Trust Fund immediately before the commencement of this section must be transferred by the Treasurer to a fund established by the Treasurer under the *Financial Administration and Audit Act 1977*, section 11, for the purposes of the authority.

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## Division 2                      Provision for Emergency Services Legislation Amendment Act 1998

### 171      Board members go out of office

- (1) On the commencement of this section the members of the board go out of office.
- (2) In this section—

*board* means the authority's board under this Act as in force immediately before the commencement of the *Emergency Services Legislation Amendment Act 1998*.

## Division 3                      Provisions for Emergency Services Legislation Amendment Act 2001

### 172      Definitions for div 3

In this division—

*Act after amendment* means the *Fire and Rescue Authority Act 1990* as in force immediately after the commencement.

*Act before amendment* means the *Fire and Rescue Authority Act 1990* as in force immediately before the commencement.

*amendment Act* means the *Emergency Services Legislation Amendment Act 2001*.

*authority* means the authority under this Act immediately before the commencement.

*commencement* means the commencement of the amendment Act.

*QFRA Fund* means the QFRA Fund that was a continuing fund under the *Financial Administration and Audit Act 1977* immediately before the commencement.

*transferred officer* means a person taken to be employed as a fire service officer under section 179.

**173 Authority dissolved**

The corporate entity that is the authority is dissolved.

**174 Superannuation entitlements**

The amendment Act does not—

- (a) affect the continuation of a transferred officer as an employed member for the purposes of the *Superannuation (State Public Sector) Deed 1990*; or
- (b) otherwise affects any superannuation of a transferred officer.

**175 References to authority**

A reference in an Act or document in existence immediately before the commencement to the authority is, if the context permits, taken to be a reference to the State.

**176 Vesting of assets**

On the commencement, the assets, rights and liabilities of the authority vest in the State.

**177 Legal or disciplinary proceedings**

- (1) A legal proceeding relating to something that happened before the commencement that could have been started or continued by or against the authority if the Amendment Act had not been passed may from the commencement be started or continued by or against the State.
- (2) A disciplinary proceeding relating to something that happened before the commencement that could have been started or continued by the authority if the Amendment Act had not been passed may from the commencement be started or continued by the chief executive.

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**178 Suspension**

The suspension of a fire authority officer in force immediately before the commencement is taken, from the commencement, to continue in force under this Act.

**179 Fire service officers**

A person who, immediately before the commencement, was employed as a fire authority officer is, on the commencement, taken to be employed as a fire service officer of an equivalent class.

**180 Conditions of employment of transferred officers**

- (1) The conditions of employment applying to a transferred officer must be no less favourable than the conditions that applied to the officer immediately before the commencement.
- (2) A transferred officer remains entitled to all rights accrued or accruing to the officer as an employee of the authority.
- (3) Without limiting subsection (2), a transferred officer is entitled to receive annual, sick and long service leave and any similar entitlements accrued or accruing to the officer as an employee of the authority.
- (4) Subsection (1) does not limit section 26.

**181 Trusts**

Any property that, immediately before the commencement, was held in trust by the authority, on the commencement, vests in the State on the same trusts to which the property was subject immediately before the vesting.

**182 Duty to help transfer of property**

- (1) The registrar of titles and all persons who keep registers of dealings in property must, if asked by the chief executive,

make in the register all entries necessary to record the vesting of property in the State by this division.

- (2) A request under this section is not liable to fees or stamp duty.

### **183 Appeals**

An appeal to the commissioner under section 113 started, but not decided, before the commencement may, from the commencement, be continued and decided by the chief executive after the commencement.

### **184 Things taken to have been done etc. by commissioner**

- (1) Anything declared, done, given, granted, made or issued by the commissioner under a commissioner's section and in force, or having effect, immediately before the commencement is, from the commencement, taken to have been declared, done, given, granted, made or issued by the commissioner.
- (2) If the action mentioned in subsection (1) involves a period of time, the subsection must not be taken to extend or otherwise affect the period.
- (3) In this section—

*commissioner's section* means a section that, immediately before the commencement, referred to action of the commissioner as commissioner of the authority and after the commencement refers to action of the commissioner of the service.

### **185 Things taken to have been done etc. by chief executive**

- (1) Anything declared, done, given, granted, made or issued by the commissioner under a chief executive's section and in force, or having effect, immediately before the commencement is, from the commencement, taken to have been declared, done, given, granted, made or issued by the chief executive.

(2) If the action mentioned in subsection (1) involves a period of time, the subsection must not be taken to extend or otherwise affect the period.

(3) In this section—

*chief executive's section* means a section that, immediately before the commencement, referred to action of the commissioner and after the commencement refers to action of the chief executive.

**186 Other things taken to have been done etc. by chief executive**

(1) Anything declared, done, given, granted, made or issued by the authority under a chief executive's section and in force, or having effect, immediately before the commencement is, from the commencement, taken to have been declared, done, given, granted, made or issued by the chief executive.

(2) If the action mentioned in subsection (1) involves a period of time, the subsection must not be taken to extend or otherwise affect the period.

(3) In this section—

*chief executive's section* means a section that, immediately before the commencement, referred to action of the authority and after the commencement refers to action of the chief executive.

**187 Other things taken to have been done etc. by the State**

(1) Anything declared, done, given, granted, made or issued by the authority under a State's section and in force, or having effect, immediately before the commencement is, from the commencement, taken to have been declared, done, given, granted, made or issued by the State.

(2) If the action mentioned in subsection (1) involves a period of time, the subsection must not be taken to extend or otherwise affect the period.

- (3) In this section—

*State's section* means a section that, immediately before the commencement, referred to action of the authority and after the commencement refers to action by the State.

## **188 Closure of QFRA Fund**

- (1) On the commencement—

- (a) the QFRA Fund is closed; and
- (b) the chief executive must record the closing balance of the accounts for the QFRA Fund as the opening balance of the accounts for the new fund.

- (2) An entry that, apart from subsection (1), would need to be made in the accounts for the QFRA Fund must be made in the accounts for the new fund.

- (3) In this section—

*new fund* means the Queensland Fire and Rescue Service Fund established under section 20.

*QFRA Fund* means the QFRA Fund mentioned in the *Financial Administration and Audit Act 1977*, schedule 2, immediately before the commencement of this section.

## **Division 4 Provision for Disaster Management Act 2003**

### **189 Existing council members to remain in office**

- (1) This section applies to a person who, immediately before the commencement of this section, was a member of the Rural Fire Council.
- (2) On the commencement, the person is taken to be a member of the Rural Fire Advisory Council.
- (3) The person's term of appointment ends on the earlier of the following days—

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- (a) the day the appointment would have ended under the person's instrument of appointment if the *Disaster Management Act 2003* had not commenced;
  - (b) if the person vacates office other than under paragraph (a), the day of that vacation.

## **Division 5                      Provisions for Integrity Reform (Miscellaneous Amendments) Act 2010**

### **190      Definition for div 5**

In this division—

*commencement* means the commencement of this section.

### **191      Particular disciplinary grounds only apply to acts or omissions happening after commencement**

The following disciplinary grounds apply a fire service officer only in relation to acts or omissions happening after the commencement—

- (a) the ground mentioned in section 30(1)(c) other than to the extent it applies to failures to comply with a code of practice;
- (b) the ground mentioned in section 30(1)(g).

### **192      Disciplinary action against former public service employee or ambulance service officer**

Part 4, division 3, subdivision 2 only applies to a fire service officer who commenced employment under section 25 after the commencement.

[s 193]

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**193 Disciplinary action against former fire service officer**

Part 4, division 3, subdivisions 3 and 4 apply to a person who was a fire service officer only if the person's employment under section 25 ends after the commencement.

**Division 6 Provisions for Revenue Amendment and Trade and Investment Queensland Act 2013**

**194 Definition for div 6**

In this division—

*commencement* means the day this section commences.

**195 Amounts in Queensland Fire and Rescue Service Fund at commencement**

On the commencement, amounts in the Queensland Fire and Rescue Service Fund immediately before the commencement form part of the Emergency Management, Fire and Rescue Fund.

**196 References to fire levy notices and urban districts**

If the context permits, a reference in an Act or document—

- (a) to a fire levy notice under this Act before the commencement includes a reference to a levy notice; and
- (b) to an urban district under this Act before the commencement includes a reference to a levy district; and
- (c) to the Queensland Fire and Rescue Service Fund includes a reference to the Emergency Management, Fire and Rescue Fund.

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**197 Appeals against fire levy notices**

- (1) This section applies if—
  - (a) immediately before the commencement, an owner of property could have lodged an appeal against a fire levy notice under section 113; and
  - (b) on the commencement, the owner has not lodged the appeal.
- (2) Section 113, as in force immediately before the commencement, continues to apply in relation to an appeal about the fire levy notice.

**198 Application of s 112 for local governments**

Despite section 112, for the financial year ending 30 June 2014, a local government may make the determinations mentioned in section 112(1) on any day during that financial year.

**199 Application of s 114 for local governments**

- (1) This section applies to a local government for the financial year ending 30 June 2014 (the *relevant financial year*).
- (2) Despite section 114(1)(b), if a local government gives to the owner of a prescribed property a levy notice as a separate notice, the notice may be given at any time during the relevant financial year.
- (3) Also, despite section 114(4), if a local government gives to the owner of a prescribed property a levy notice as an item on 1 or more rate notices, the notices may be given at any time during the relevant financial year.

**Division 7**                      **Transitional and validation provisions for Public Safety Business Agency Act 2014**

**200**      **Definitions for div 7**

In this division—

*amended Act* means this Act as amended by the *Public Safety Business Agency Act 2014*.

*commencement* means the commencement of this section.

*pre-amended Act* means this Act as in force before the commencement.

**201**      **Validation of things done by former commissioner**

- (1) This section applies if, before the commencement, a person holding office under this Act as commissioner was also appointed as the chief executive of the department.
- (2) To remove any doubt, it is declared that—
  - (a) the appointment of the person as chief executive is taken to be, and to have always been, valid; and
  - (b) anything done, or omitted to be done, by the person before the commencement in the person's capacity as chief executive is taken to be, and to have always been, as valid and lawful as it would have been if the person did not also hold office as commissioner.

**202**      **Legal proceedings**

A legal proceeding that, before the commencement, could have been or has been started in the name of the Queensland Fire and Rescue Service may be started or continued by QFES.

**203 References to, and acts etc. by, the chief executive**

- (1) In an Act or other document, a reference to the chief executive under the pre-amended Act may be taken, if the context permits, to be a reference to the commissioner under the amended Act.
- (2) A thing done, or omitted to be done, by the chief executive under the pre-amended Act may be taken, if the context permits, to be a thing done, or omitted to be done, by the commissioner under the amended Act.

**204 Transition of Emergency Management, Fire and Rescue Fund to fund**

- (1) An amount in the former fund immediately before the commencement becomes part of the fund.
- (2) In an Act or other document, a reference to the former fund may be taken, if the context permits, to be a reference to the fund.
- (3) In this section—  
*former fund* means the Emergency Management, Fire and Rescue Fund established under the pre-amended Act, section 20(1).

**Division 8 Transitional provisions for Crime and Corruption and Other Legislation Amendment Act 2018**

**205 Disciplinary action against a fire service officer who was a relevant commission officer**

- (1) *This section applies to a person who is a fire service officer and was a relevant commission officer.*
- (2) *The person may be disciplined under chapter 3, part 4, division 3, subdivision 2 in relation to a relevant disciplinary ground arising when the person was a relevant commission officer only if the ground arose after the commencement.*

- (3) *However, if the relevant disciplinary ground arising after the commencement relates to conduct that is a part of a course of conduct that also includes conduct giving rise to a relevant disciplinary ground arising before the commencement, the person may be disciplined under chapter 3, part 4, division 3, subdivision 2 in relation to all of the grounds as if they all arose after the commencement.*
- (4) *Subsection (3) does not apply in relation to a relevant disciplinary ground arising before the commencement if disciplinary action has been, or is being, taken in relation to the ground under this Act or a relevant disciplinary law for the person within the meaning of section 29D(3).*
- (5) *In this section—*  
*relevant commission officer see the Crime and Corruption Act 2001, section 273A.*

## **206 Sharing disciplinary information**

*Sections 30I and 30J apply in relation to a request for information made by or to the chief executive officer under the Crime and Corruption Act 2001 only if the request is made after the commencement.*

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**Schedule 5**      **Uses of buildings**

## section 104H

- 1 a building in which there is a room at a level other than ground level used for the purpose of the sale of food or drink to the public or the provision of cabaret entertainment or dance facilities to the public
- 2 a building used to provide residential accommodation at a floor level other than ground level
- 3 a building used to provide residential accommodation within an educational institution, a children's hostel or children's welfare institution
- 4 a building used to provide residential accommodation for medical, psychiatric or geriatric care
- 5 a building used to sell goods or services to the public in which there is a sales area—
  - (a) below ground level; or
  - (b) at a floor level more than 1 floor above ground level; or
  - (c) exceeding 1,000m<sup>2</sup> at any floor level
- 6 a building used to accommodate a shop or shops selling goods or services to the public from which the only means of escape is through an enclosed arcade, mall or like structure
- 7 a building other than a drive-in picture theatre used to accommodate more than 200 persons attending for a public meeting or for recreational, cultural or conference purposes
- 8 a building used as a workplace within the meaning of the *Work Health and Safety Act 2011* in which persons are employed to work in a room or rooms—
  - (a) below ground level; or
  - (b) at a floor level more than 1 floor level above ground level

Schedule 5

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- 9 a building used to provide office accommodation at a floor level more than 6 floor levels above ground level
- 10 a building used for educational or research purposes and containing—
  - (a) a laboratory or machinery or trade equipment operated for training or research purposes; or
  - (b) a classroom, canteen or recreational facilities on a floor level below ground level or a floor level more than 2 floors above ground level

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**Schedule 6      Dictionary**

## section 6

***ADG Code*** means the Australian Code for the Transport of Dangerous Goods by Road and Rail approved by the Australian Transport Council, as in force from time to time.

***appointed day*** means the day of commencement of the provision in which the expression occurs.

***AS 1940*** means Australian Standard AS 1940 The Storage and Handling of Flammable and Combustible Liquids made by Standards Australia, as in force from time to time.

***assessor*** means an assessor appointed under section 104SI.

***authorised fire officer*** see section 52.

***authorised rescue officer*** means a person appointed as a rescue officer under section 148.

***bodily harm*** see the Criminal Code, section 1.

***broadcasting service*** means a service that delivers television or radio programs to persons having equipment appropriate for receiving the service.

***budget accommodation building*** see the *Building Act 1975*, section 216.

***building*** includes any wall, fence, bridge, dam, reservoir, wharf, jetty or other structure whether temporary or permanent.

***building certifier*** see the *Building Act 1975*, section 8.

***Building Code of Australia*** see the *Building Act 1975*, section 12.

***chemical*** see the *Environmental Protection Regulation 1998*, schedule 9.

**chief executive (liquor licensing)** means the chief executive of the department in which the *Liquor Act 1992* is administered.

**class 1a building**, for chapter 3, part 9A, division 5A, see section 104RA.

**clear floor surface area**, for chapter 3, part 9A, division 3A, see section 104KA.

**code of practice** means a code of practice issued under section 7B or 147D.

**combustible liquid** means a combustible liquid under the flammable and combustible liquids standard.

**commissioner** means the commissioner appointed under section 5.

**conviction** includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

**dangerous goods** means goods defined under the ADG Code as dangerous goods or goods too dangerous to be transported.

**date of possession**, for residential land, for chapter 3, part 9A, division 5A, see section 104RA.

**disciplinary action** see section 30A(1).

**disciplinary declaration**, in relation to a person, means—

- (a) for a disciplinary declaration made under a public sector disciplinary law—
  - (i) a disciplinary declaration made under—
    - (A) the *Public Service Act 2008*, section 188A(6); or
    - (B) the *Police Service Administration Act 1990*, section 7A.2(2); or
    - (C) the repealed *Misconduct Tribunals Act 1997* or the QCAT Act; or
    - (D) the *Ambulance Service Act 1991*, section 18I(5); or

(E) *the Crime and Corruption Act 2001, section 273D; or*

(ii) a declaration under a public sector disciplinary law (other than a public sector disciplinary law mentioned in subparagraph (i)) that states the disciplinary action that would have been taken against the person if the person's employment had not ended; or

(b) otherwise, a disciplinary declaration made under section 30H(5).

***disciplinary finding*** means a finding that a disciplinary ground exists.

***disciplinary ground*** means a ground for disciplining a fire service officer under section 30.

***disciplinary law*** means—

- (a) *this Act; or*
- (b) *a law of another State that provides for the same, or substantially the same, matters as this Act; or*
- (c) *a code of practice or other instrument under a law mentioned in paragraph (b) providing for disciplinary matters; or*
- (d) *a public sector disciplinary law.*

***domestic dwelling***, for chapter 3, part 9A, division 5A, see section 104RA.

***emergency-related function*** means a function mentioned in section 130(a), (b) or (c) for the SES.

***emergency service area*** see section 141(1).

***environment*** includes—

- (a) ecosystems and their constituent parts; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed

scientific value or interest, amenity, harmony and sense of community; and

- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

**ESU function** means a function of an ES unit under section 142(1).

**ESU member** means a member of an ES unit.

**ES unit** means an emergency service unit established under section 141(1).

**ES unit coordinator** means a person appointed as an ES unit coordinator under section 146(1).

**ES vehicle** means a vehicle of an ES unit.

**fire and evacuation plan** see section 104E(1)(a).

**fire ban area** see section 86A.

**fire coordinator** means a fire coordinator under the *Disaster Management Act 2003*.

**fire officer** means a person employed in the service who has the functions of fire prevention and fire control, and includes a person employed under this Act who is undergoing training as a fire officer.

**fire safety management plan** see section 104FC.

**fire safety standard** see the *Building Act 1975*, section 217(1).

**fire safety system** see section 104KA.

**fire service officer** means a person employed under section 25.

**flammable and combustible liquids standard** means—

- (a) if a standard is prescribed under a regulation under the *Work Health and Safety Act 2011*—that standard; or
- (b) otherwise—AS 1940.

***flammable material*** means any material or substance capable of ignition or combustion by the application of heat or fire or by spontaneous causes.

***former fire service officer***, for part 4, division 3, subdivision 3, see section 30G(1)(a).

***fund*** means the Emergency Management Fund established under section 20(1).

***grass fire*** means a fire that predominantly consumes vegetation.

***grievous bodily harm*** see the Criminal Code, section 1.

***hazardous material*** means—

- (a) all dangerous goods, combustible liquids and chemicals;  
or
- (b) any other substance with potential to cause harm to persons, property or the environment because of 1 or more of the following—
  - (i) the chemical properties of the substance;
  - (ii) the physical properties of the substance;
  - (iii) the biological properties of the substance.

***hazardous materials emergency*** means a situation involving hazardous materials or suspected hazardous materials that includes a loss of control, or an imminent risk of loss of control, of the materials or a loss of control of anything that may impact on the materials if the loss of control causes, or the loss of control or imminent risk of loss of control has the potential to cause, material harm to persons, property or the environment.

***information statement***, in relation to a tenant, for chapter 3, part 9A, division 5A, see section 104RA.

***land*** means any land, whether improved or not.

***lessor***, for chapter 3, part 9A, division 5A, see section 104RA.

***levy district*** means a part of the State constituted as a levy district under section 106.

**licensed building**, for part 9A, division 3A, see section 104KA.

**local controller**, of an SES unit, means the person appointed as the local controller of the unit under section 134(1).

**local fire ban** see section 86A.

**manufacturer's instructions**, for a smoke alarm, for chapter 3, part 9A, division 5A, see section 104RA.

**occupancy notice** see section 104KF.

**occupancy number**, for part 9A, division 3A, see section 104KA.

**occupier**, of premises, means—

- (a) the owner, lessee or person apparently in charge of the premises; or
- (b) a person who has the care, management or supervision of the premises or who is conducting a business at the premises.

**operates when tested**, for a smoke alarm, see section 104RAA(1) and (2).

**owner**, of premises—

- (a) generally—means the person who is entitled to receive rent for the premises, or would be entitled to receive rent for the premises if the premises were leased; and
- (b) for part 10—see section 105(1).

**premises**—

- (a) means any land or building; and
- (b) for part 6, includes a vehicle or vessel.

**premises of seizure** see section 56B.

**prescribed employee**, for chapter 3, part 4, division 3, see section 29C.

**prescribed property** see section 105.

**presiding member** see section 104SG.

***principal registrar*** see section 104SG.

***proceeding*** see section 104SG.

***protected area*** means a protected area under the *Nature Conservation Act 1992*, and includes an area that is, or includes, a critical habitat identified in a conservation plan under that Act.

***public sector disciplinary law*** means—

- (a) a public sector disciplinary law under the *Public Service Act 2008*; or
- (b) the *Ambulance Service Act 1991*, part 2, division 4 or a disciplinary provision of a code of practice under that Act (including a code of practice as in force from time to time under that Act before the commencement of this definition).

***QFES*** means the Queensland Fire and Emergency Service established under section 8.

***relevant employee***, for chapter 3, part 4, division 3, see section 29C.

***relevant ES unit*** means an ES unit the functions of which include an SES function.

***residential land***, for chapter 3, part 9A, division 5A, see section 104RA.

***risk of overcrowding***, for part 9A, division 3A, see section 104KA.

***serious disciplinary action*** means—

- (a) *disciplinary action under a disciplinary law involving—*
  - (i) dismissal; or
  - (ii) reduction of classification level or rank; or
  - (iii) transfer or redeployment to other employment; or
  - (iv) reduction of remuneration level; or
- (b) a disciplinary declaration under a public sector disciplinary law that states a disciplinary action mentioned in paragraph (a)(i) or (ii) as the disciplinary

action that would have been taken against the person if the person's employment had not ended.

**SES** means the State Emergency Service established under section 129.

**SES coordinator** means a person appointed as an SES coordinator under section 136(2).

**SES function** means a function of the SES under section 130.

**SES member** means a person who is appointed as an SES member under section 132(1).

**SES unit** means an SES unit established under section 133(1).

**SES vehicle** means a vehicle of the SES.

**sole-occupancy unit in a class 2 building**, for chapter 3, part 9A, division 5A, see section 104RA.

**tenant**, for chapter 3, part 9A, division 5A, see section 104RA.

**transfer date**, for residential land, for chapter 3, part 9A, division 5A, see section 104RA.

**transferee**, for residential land, for chapter 3, part 9A, division 5A, see section 104RA.

**transferor**, for residential land, for chapter 3, part 9A, division 5A, see section 104RA.

**vegetation** includes trees, plants, grass and any other vegetable growth, whether alive or dead, standing or not standing, or cultivated or not cultivated.

**vehicle** means a vehicle within the meaning of the *Transport Operations (Road Use Management) Act 1995* but also includes a tram or train.

**vessel** means a vessel within the meaning of the *Transport Operations (Road Use Management) Act 1995*.