



ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 32 of 1991

An Act to amend the South Australian Metropolitan Fire Service Act 1936; and to make consequential amendments to the Expiation of Offences Act 1987.

[Assented to 24 April 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *South Australian Metropolitan Fire Service (Miscellaneous Powers) Amendment Act 1991*.

(2) The *South Australian Metropolitan Fire Service Act 1936* is referred to in this Act as “the principal Act”.

Commencement

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

Substitution of s. 4

3. Section 4 of the principal Act is repealed and the following section is substituted:

Act binds Crown

4. This Act binds the Crown.

Powers of Tribunal

4. Section 20 of the principal Act is amended—

(a) by striking out from subsection (3) “he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for three months” and substituting “he or she is guilty of an offence”;

and

(b) by inserting at the foot of subsection (3) “Penalty: Division 5 fine.”.

Insertion of Part V Division I heading

5. The following heading is inserted after the heading to Part V of the principal Act:

DIVISION I—APPOINTMENT AND RESPONSIBILITIES OF OFFICERS AND EMPLOYEES

Insertion of Part V Division II heading

6. The following heading is inserted before section 45 of the principal Act:

DIVISION II—POWERS AND DUTIES AT SCENE OF FIRE OR OTHER EMERGENCY

Powers of commanding officer at scene of fire or other emergency

7. Section 45 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) This section applies in respect of—

(a) an emergency constituted of or arising from—

(i) a fire;

or

(ii) the escape of a dangerous substance, or a situation that involves imminent danger of such escape,

that occurs—

(iii) in a fire district;

(iv) on a vessel whether at sea or anywhere not in a C.F.S. region (within the meaning of the *Country Fires Act 1989*);

or

(v) in a C.F.S. region at which neither the Chief Officer nor a C.F.S. officer has assumed command pursuant to the *Country Fires Act 1989*;

and

(b) any other emergency, wherever occurring, at which a person having legal authority to assume command has not done so.;

and

(b) by striking out subsection (4) and substituting the following subsections:

(4) Where a commanding officer, at the scene of a fire or other emergency, engages a contractor to demolish, contain, neutralize, dispose of or remove a dangerous structure, object or substance, the costs of engaging the contractor are recoverable by the Corporation as a debt from the owner of the dangerous structure, object or substance.

(5) In any proceedings under this section, a certificate apparently signed by the Chief Officer certifying the costs of engaging the contractor is, in the absence of proof to the contrary, to be accepted as proof of the costs of engaging the contractor.

Substitution of ss. 48, 49, 51, 51a and 52

8. Sections 48, 49, 51, 51a and 52 of the principal Act are repealed and the following sections are substituted:

Power to proceed beyond fire district

46. (1) A fire brigade or salvage corps maintained by the Corporation may attend at the scene of a fire or other emergency that occurs outside a fire district.

(2) Whenever a fire brigade or salvage corps attends at the scene of a fire or other emergency pursuant to this section, the costs and expenses incurred by the brigade or

salvage corps are recoverable by the Corporation as a debt from the owner of the property on which or in which the fire or other emergency occurred.

(3) Where costs and expenses are recovered under subsection (2), the owner of the property may (in turn) recover as a debt from the occupier of the property a proportion of those costs and expenses being the proportion that the value of the occupier's goods that were in or on the property at the time of the fire or other emergency bears to the total value of the property and all goods in or on the property at the time of the fire or other emergency.

(4) In any proceedings under this section, a certificate apparently signed by the Chief Officer certifying the cost of the attendance is, in the absence of proof to the contrary, to be accepted as proof of the costs and expenses incurred by the fire brigade or salvage corps.

Notice of fire or other emergency in C.F.S. region to be given to Chief Officer of Country Fire Service

47. Where a fire brigade is called to attend at the scene of a fire or other emergency occurring within a C.F.S. region (within the meaning of the *Country Fires Act 1989*), the commanding officer of the fire brigade must immediately inform the Chief Officer of the Country Fire Service—

- (a) of the fact that the fire brigade has been called to the fire or other emergency;
- (b) of the position of the fire or other emergency;
- and
- (c) whether or not the fire brigade is proceeding to the fire or other emergency in response to the call.

Police to recognize authority of Chief Officer and commanding officers

48. (1) The authority of the Chief Officer and commanding officers must be recognised by all members of the police force and other persons.

(2) The officer in charge of the members of the police force at the scene of a fire or other emergency must support and assist the Chief Officer or commanding officer in maintaining his or her authority and in enforcing his or her orders.

(3) A member of the police force may, in his or her discretion, and must, at the request of the Chief Officer or commanding officer, remove to such place as is considered proper in the circumstances any person who is in any way threatening, obstructing or interfering with the operations of a fire brigade.

(4) In this section—

“emergency” refers only to an emergency constituted of or arising from the escape of a dangerous substance, or a situation that involves imminent danger of such escape.

DIVISION III—FIRE AND EMERGENCY SAFEGUARDS

Interpretation and application

49. (1) In this Division—

“authorized officer” means an officer authorized by the Chief Officer.

“emergency” refers only to an emergency constituted of or arising from the escape of a dangerous substance, or a situation that involves imminent danger of such escape:

“occupier” in respect of a public building, includes any person apparently in charge of, or having the control and management of, the building:

“public building” includes any structure or place (whether permanent or temporary or fixed or moveable) that is enclosed or partly enclosed—

(a) to which admission is open to members of the public or restricted to persons who are members of a club or who possess any other qualification or characteristic and whether admission is or is not procured by the payment of money or on any other condition;

or

(b) in which persons work under a contract of service.

(2) This Division applies only to a building, vessel, vehicle or place in a fire district.

Power to enter and inspect a public building

50. (1) The Chief Officer or an authorized officer may enter and inspect a public building to determine whether there are adequate safeguards against, or in the event of, fire or other emergency.

(2) The Chief Officer or authorized officer—

(a) may exercise the powers conferred by subsection (1) at any reasonable time including any time when the building is open to the public;

and

(b) may, if there is reason to believe that urgent action is required, use such force as is reasonable in the circumstances to enter and inspect the public building.

Rectification where safeguards inadequate

51. (1) Where, after having inspected a public building, the Chief Officer or authorized officer is of the opinion that there are not adequate safeguards against, or in the event of, fire or other emergency as a result of—

(a) obstruction, closing or locking of an aisle, corridor, door, gangway, lobby, passage, exit, escape or any other means of egress from the building;

(b) overcrowding of the building;

or

(c) non-compliance with the requirements of this or any other Act,

he or she may do one or more of the following:

(d) using such force as is reasonably necessary, cause the aisle, corridor, door, gangway, lobby, passage, exit, escape or other means of egress from the building to be cleared, opened or unlocked, as the case requires;

(e) in the event of overcrowding, cause persons to be removed from the building;

(f) order the occupier to take specified action to rectify the situation within a specified period.

(2) A rectification order may be given orally or by notice in writing served on the occupier of the building.

(3) Where a rectification order is given orally, the Chief Officer or authorized officer must as soon as practicable cause a written notice containing the order to be served on the occupier of the building.

(4) Where a notice containing a rectification order is served on the occupier of the building, the Chief Officer or authorized officer must as soon as practicable cause a copy of the notice to be served on the Building Fire Safety Committee established under the *Building Act 1971* for the area in which the building is situated.

(5) Where any matter or thing with respect to fire safety is regulated or required to be done under the *Building Act 1971*, a person may not be ordered under this section to do anything in relation to that matter or thing beyond what is necessary to achieve compliance with the requirements under that Act.

Closure orders

51a. (1) Where, after having inspected a public building, the Chief Officer or authorized officer is satisfied that the safety of persons in the public building cannot reasonably be ensured by other means, the Chief Officer or authorized officer—

(a) may order the occupier of the building to close the building immediately and for such period as the Chief Officer or authorized officer considers necessary (but not exceeding 48 hours) for the alleviation of the danger;

or

(b) may, if a closure order cannot for any reason be given to the occupier, or if a closure order, having been given to the occupier, is not immediately obeyed, close the building for such period as the Chief Officer or authorized officer considers necessary (but not exceeding 48 hours) for the alleviation of the danger.

(2) A closure order may be given orally or by notice in writing served on the occupier of the building.

(3) Where a closure order is given orally, the Chief Officer or authorized officer must as soon as practicable cause a written notice containing the order to be served on the occupier of the building.

(4) Where a closure order cannot for any reason be given to the occupier of the building, the Chief Officer or authorized officer must cause a written notice containing the order to be affixed in a prominent place near the main entrance to the building.

(5) The written notice containing a closure order must—

(a) describe the danger that, in the opinion of the Chief Officer or authorized officer, necessitates closure of the building;

and

(b) state the period (not exceeding 48 hours) for which the building is to be closed.

(6) Where a notice containing a closure order is served on the occupier of the building, the Chief Officer or authorized officer must as soon as practicable cause a copy of the notice to be served on the Building Fire Safety Committee established under the *Building Act 1971* for the area in which the building is situated.

(7) When the Chief Officer or authorized officer is satisfied that the danger has been alleviated, he or she may rescind the order.

(8) Where the Chief Officer or authorized officer is of the opinion that the danger cannot be, or has not been, alleviated within the period specified in the order, he or

she may, after having given prior notice of his or her intention to do so to the occupier of the building, apply to a local court for an order directing the occupier to close or keep closed, as the case requires, the building for such period as the court considers necessary for the alleviation of the danger.

(9) The court may, on an application made under subsection (8)—

(a) grant the order, subject to such conditions as the court sees fit to impose;

or

(b) refuse to grant the order,

and make such other orders as it thinks fit.

(10) If an application is made to a court under subsection (8) while a building is closed pursuant to this section, the closure of the building continues until the application is determined or withdrawn.

(11) The Chief Officer or authorized officer or the occupier or owner of a building to which an order under subsection (9) applies, may apply to the court, at any time, for that order to be rescinded.

(12) The court may, on an application made under subsection (11), rescind or refuse to rescind the order to which that application relates and make such other orders as it thinks fit.

Powers in relation to places at which danger of fire may exist

51b. (1) The Chief Officer or an authorized officer may, at any time and using such force as is reasonably required in the circumstances, enter and inspect any building, vessel, vehicle or place at or in which he or she has reason to believe explosives or any dangerous combustible or inflammable materials or substances are being kept or any conditions exist that are likely to be a source of danger to life or property in the event of fire, or likely to cause an outbreak of fire.

(2) Where the Chief Officer or authorized officer finds explosives or any dangerous combustible or inflammable materials or substances that are being kept in an unsafe manner or finds any conditions that are likely to be a source of danger to life or property in the event of fire, or likely to cause an outbreak of fire, the Chief Officer or authorised officer may—

(a) take action himself or herself to alleviate the danger;

(b) order the occupier or person apparently in charge of the building, vessel, vehicle or place to take specified action within a specified period to alleviate the danger.

(3) An order under this section may be given orally or by notice in writing served on the occupier or person apparently in charge of the building, vessel, vehicle or place.

(4) Where an order under this section is given orally, the Chief Officer or authorized officer must as soon as practicable cause a written notice containing the order to be served on the occupier or person apparently in charge of the building, vessel, vehicle or place.

Chief Officer, etc., may be accompanied by police

52. The Chief Officer or an authorized officer may, when exercising powers conferred by this Division, be accompanied by one or more officers of the Corporation or members of the police force as the Chief Officer or authorized officer thinks fit.

Returns by insurance companies

9. Section 58 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsection:

(3) If a contributory company makes default in any year in furnishing a return or declaration under this section, the Corporation may, until the return and declaration are furnished, treat the then latest return of the company as the company's return and act on that accordingly.

Inspection of books

10. Section 59 of the principal Act is amended—

(a) by striking out from subsection (2) "shall be guilty of an offence against this Act and liable to a penalty not exceeding ten dollars" and substituting "is guilty of an offence";

and

(b) by inserting at the foot of the subsection "Penalty: Division 7 fine."

Returns by councils

11. Section 60 of the principal Act is amended by striking out subsections (2) and (3).

Contributions where insurer is outside the State

12. Section 60a of the principal Act is amended by striking out subsections (6) and (7).

Substitution of ss. 66, 67 and 68

13. Sections 66, 67 and 68 of the principal Act are repealed and the following sections are substituted:

Hindering or obstructing officers, etc.

66. A person must not hinder or obstruct—

(a) an officer or employee of the Corporation acting pursuant to this Act;

(b) a person accompanying or assisting an officer or employee of the Corporation pursuant to this Act;

or

(c) any person acting under the authority of, or complying with orders given by, the Corporation or an officer of the Corporation pursuant to this Act.

Penalty: Division 6 fine.

Failure to comply with orders

67. A person must not fail to comply with—

(a) a closure order granted by a local court;

or

(b) an order given by an officer,

pursuant to this Act.

Penalty: Division 6 fine.

Interference with fire plugs, fire alarms, etc.

68. A person must not without reasonable excuse—

(a) conceal, remove, interfere with or obstruct access to—

(i) a fireplug, hydrant, booster or suction point;

(ii) a mark or sign used for the purpose of indicating the presence of a fireplug, hydrant, booster or suction point;

or

(iii) a fire alarm or signalling device for giving notice of fire or other emergency;

or

(b) give a false alarm of fire or other emergency.

Penalty: Division 6 fine.

Continuing offences

68a. (1) Where a person is convicted of an offence against this Act and after that conviction the act or omission of that person that constituted the offence continues, the person is guilty of a further offence, and is liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(2) For the purposes of subsection (1), an obligation to do something is to be regarded as continuing until the act is done, notwithstanding that any period within which, or time before which, the act is required to be done, has expired or passed.

False or misleading statements

68b. A person must not, in furnishing information under this Act, make a statement that is false or misleading in a material particular.

Penalty: Division 6 fine.

Default in furnishing a return or declaration

68c. A person who fails to furnish a return or declaration as required under this Act is guilty of an offence.

Penalty: Division 7 fine.

Default in payment of contribution

68d. A person who fails to pay a contribution as required under this Act is guilty of an offence.

Penalty: Division 7 fine.

Offences by corporate bodies

68e. Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved—

(a) that the member exercised reasonable care in the exercise of his or her responsibilities as a member of the governing body;

and

(b) that the offence is not attributable to any intentional act or omission on his or her part.

Substitution of s. 69

14. Section 69 of the principal Act is repealed and the following section is substituted:

Payment of costs and expenses where vessel or property uninsured

69. (1) Whenever a fire brigade or salvage corps maintained by the Corporation attends at the scene of a fire or other emergency occurring on an uninsured vessel whether at sea or elsewhere, the costs and expenses incurred by the fire brigade or salvage corps are recoverable by the Corporation as a debt from the owner of the vessel and the owner of any uninsured personal property that is in the vessel at the time of the fire or other emergency.

(2) Where the owners of personal property are liable under subsection (1), the Corporation—

(a) must apportion the costs and expenses between the owner of the personal property and the owner of the vessel;

and

(b) must cause a written notice indicating the apportionment to be served on the owner of the personal property and the owner of the vessel.

(3) The Corporation's written notice pursuant to subsection (2) is final and binding on all parties.

(4) The Crown is not, under any circumstances, liable to pay the costs and expenses referred to in this section or any part of such costs and expenses.

(5) In any proceedings under this section, a certificate apparently signed by the Chief Officer of the Corporation certifying the cost of the attendance is, in the absence of proof to the contrary, to be accepted as proof of the costs and expenses incurred by the fire brigade or salvage corps.

(6) The Chief Officer or an authorized officer may, with the approval of the Corporation, without any warrant or authority other than this Act, distrain a vessel or the tackle or goods of a vessel in respect of which any costs and expenses are owed to the Corporation pursuant to this section.

(7) Where the costs and expenses owed to the Corporation pursuant to this section are not paid within seven days after the distress, the Corporation may cause the property distrained or any part of the property distrained to be sold, and out of the proceeds of the sale may pay the amount of the costs and expenses and the costs and expenses of the distress, keeping and sale to the Corporation.

(8) If the owner of the vessel or the owner of the personal property evades or attempts to evade the payment of the costs and expenses owed to the Corporation, he or she is guilty of an offence.

Penalty: Division 6 fine.

(9) In this section—

“authorized officer” means an officer authorized by the Chief Officer:

“uninsured personal property” means personal property not insured with a contributory company:

“uninsured vessel” means a vessel not insured with a contributory company.

Duty to give information as to insurance

15. Section 70 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A person who fails to comply with a request of an officer of the Corporation made under subsection (1) is guilty of an offence.

Penalty: Division 7 fine.

Power of Chief Officer, etc., to enter premises and search debris, etc.

16. Section 73 of the principal Act is amended by striking out subsection (2).

Regulations

17. Section 77 of the principal Act is amended—

(a) by inserting after paragraph (d) of subsection (1a) the following paragraph:

(e) prescribe fines not exceeding a division 6 fine for contravention of, or non-compliance with, a regulation;

and

(b) by striking out subsection (2).

SCHEDULE

Consequential Amendments to the *Expiation of Offences Act 1987*

The *Expiation of Offences Act 1987* is amended by striking out from the schedule the entry relating to the *South Australian Metropolitan Fire Services Act 1936* and substituting the following entry:

South Australian Metropolitan Fires Services Act 1936

Section 58—Failing to furnish a return or document	\$500
Section 59—Failing to allow an inspection of books	\$500
Section 60a—Failing to furnish a return	\$500
Section 70—Failing to give information	\$500.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor