

Fire Authorities (Miscellaneous Amendments) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 9 November 1994

(Brought in by Mr McNamara and Mrs Wade)

A BILL

to amend the **Country Fire Authority Act 1958**, the **Metropolitan Fire Brigades Act 1958**, the **Fire Authorities (Contributions) Act 1989** and for other purposes.

Fire Authorities (Miscellaneous Amendments) Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to extend the current funding arrangements for the **Country Fire Authority**;
- (b) to amend the **Country Fire Authority Act 1958** to simplify the procedures in relation to the clearing of fire hazards in the country area of Victoria;

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

Fire Authorities (Miscellaneous Amendments)

- (c) to amend the **Metropolitan Fire Brigades Act 1958** to introduce similar procedures in relation to the metropolitan fire district;
- (d) to make miscellaneous amendments to the **Country Fire Authority Act 1958** and the **Metropolitan Fire Brigades Act 1958**.

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2. Commencement

- (1) Parts 1 and 2 come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) has not come into operation before 1 September 1995 it comes into operation on that day.

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PART 2—CONTRIBUTIONS TO THE COUNTRY FIRE AUTHORITY**3. Extension of current funding arrangements**

Section 8 of the **Fire Authorities (Contributions Act) 1989** is repealed.

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PART 3—AMENDMENT OF THE COUNTRY FIRE AUTHORITY ACT 1958**4. New section 20AA inserted**

After section 20 of the **Country Fire Authority Act 1958** insert—

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‘20AA. General powers of Authority

- (1) Subject to this Act, the Authority has the power to do all things necessary or convenient to be done for or in

connection with the performance of its duties and functions.

5 (2) Without limiting or derogating from the generality of the powers of the Authority under this Act, the powers of the Authority include the power to—

10 (a) enter into agreements or arrangements with any person or body for the provision of goods or services to the Authority;

15 (b) subject to sub-section (3), enter into agreements or arrangements with any person or body for the provision of goods or services by the Authority;

20 (c) apply for, obtain and hold intellectual property rights (including patents, copyrights, trade marks and registered designs);

25 (d) enter into agreements or arrangements for the commercial exploitation of those intellectual property rights and ancillary services on any terms and conditions as to royalties, lump sum payments or otherwise as the Authority may see fit;

30 (e) subject to sub-section (3), form, participate in the formation of, or be a member of a body corporate, association, partnership, trust or other body;

35 (f) subject to sub-section (3), enter into a joint venture agreement, shareholders agreement or unitholders agreement with any other person or body;

(g) do all things necessary or convenient to give effect to any

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agreements or arrangements entered into by the Authority including power to appoint any person or body as the Authority’s agent for that purpose.

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(3) The Authority must obtain the written consent of the Minister before—

(a) entering into any agreement or arrangement with any person or body for the provision of goods or services by the Authority; or

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(b) forming, participating in the formation of, or becoming a member of a body corporate, association, partnership, trust or other body; or

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(c) entering into any joint venture agreement, shareholders agreement or unitholders agreement.

(4) Sub-section (3) (a) does not apply to an agreement or arrangement for the provision of goods or services by the Authority to a brigade or group of brigades or to a person acting on behalf of a brigade or group of brigades.

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(5) The Minister’s consent under sub-section (3) (a) or (b) may be given in respect of a particular case or a class of cases.’.

5. Fire prevention notices

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For sections 41 to 41C of the **Country Fire Authority Act 1958** substitute—

“41. Fire prevention notices

(1) In the country area of Victoria, the fire prevention officer of a municipal council

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5 may serve a fire prevention notice on the owner or occupier of land in the municipal district of that council (other than a public authority) in respect of anything—

(a) on that land, other than a building or in a building;

(b) on the adjacent half width of any private street that abuts that land—

10 (other than a prescribed thing or class of things) that by its nature, composition, condition or location constitutes or may constitute a danger to life or property from the threat of fire.

15 (2) A fire prevention notice may be served only if the fire prevention officer forms the opinion—

20 (a) that it is necessary, or may become necessary, to do so to protect life or property from the threat of fire; and

(b) that there is no procedure under any other Act or regulations made under any Act that is more appropriate in the circumstances to address that threat.

25 (3) A fire prevention notice—

(a) must be in the prescribed form;

30 (b) may require the owner or occupier to take the steps specified in the notice to remove or minimise the threat of fire;

35 (c) must specify the time (not less than 7 days) within which the owner or occupier must comply with the notice;

(d) must comply with the regulations.

41A. Service of notices

- (1) A fire prevention notice may be served on an owner or occupier—
- (a) by giving it to or serving it personally on the owner or occupier; or 5
 - (b) by sending it by post to the owner or occupier at that person's usual or last known residential or business address; or 10
 - (c) by leaving it at the usual or last known residential or business address of the owner or occupier with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or 15
 - (d) in a manner prescribed by any other Act or law for service on a person or class of persons of the same type as the owner or occupier. 20
- (2) If the fire prevention officer—
- (a) does not know who the owner or occupier of any land is; or
 - (b) does not know the residential or business address of the owner or occupier; or 25
 - (c) believes that the owner or occupier is absent from Victoria and has no agent in Victoria known to the officer— 30
- the fire prevention notice may be served in accordance with sub-section (3).
- (3) If sub-section (2) applies, a fire prevention notice may be served— 35
- (a) by displaying it on the land; and

5 (b) by publishing a notice, in the prescribed form and containing the prescribed particulars, in a newspaper circulating generally in the municipal district.

(4) A notice served under sub-section (3) is sufficient notice to the owner or occupier from the date of display or publication, whichever is later.

10 (5) Unless a fire prevention notice is withdrawn or cancelled, the costs of serving the notice (including reasonable administrative, labour and overhead costs and expenses incurred) may be recovered from the person on whom it was served—

15 (a) if the notice was served by a fire prevention officer, by the relevant municipal council;

20 (b) if the notice was served by the Chief Officer, by the Authority.

41B. *Objection to notices*

25 (1) A person on whom a fire prevention notice has been served may lodge an objection with the fire prevention officer within 7 days of the service of the notice stating the grounds of objection.

30 (2) If a person lodges an objection the fire prevention officer and the person must genuinely attempt to resolve the matter by consultation.

(3) Within 14 days of the lodging of an objection the fire prevention officer must—

35 (a) confirm the notice; or

(b) vary the notice, if the fire prevention officer is satisfied that

- the variation will appropriately address the threat of fire; or
- (c) withdraw the notice, if the fire prevention officer is satisfied that there is no longer any case for the notice to be served. 5
- (4) If the fire prevention officer confirms or varies the notice he or she must specify a new time within which the person must comply with the notice. 10
- (5) In sections 41D and 41E, “**fire prevention notice**” includes a fire prevention notice as confirmed or varied in accordance with this section.
- 41C. Appeal against notices** 15
- (1) If a person has lodged an objection under section 41B and—
- (a) the fire prevention officer has failed to confirm, vary or withdraw the notice within 14 days; or 20
- (b) the person is not satisfied with the confirmation or variation of the notice—
- the person may appeal in writing to the Chief Officer within 7 days of the end of that 14 day period or the date of the confirmation or variation, whichever is earlier, stating the grounds of appeal. 25
- (2) The Chief Officer—
- (a) must consider the appeal within a reasonable time; and 30
- (b) must take into account all relevant circumstances, including the proper needs of conservation and alternative means of addressing the threat of fire. 35

(3) After considering the appeal, the Chief Officer must—

(a) confirm the notice; or

(b) vary the notice in any way the Chief Officer thinks fit; or

(c) cancel the notice.

(4) If the Chief Officer confirms or varies the notice he or she must specify a new time within which the person must comply with the notice.

(5) In sections 41D and 41E, “**fire prevention notice**” includes a fire prevention notice as confirmed or varied in accordance with this section.

41D. *Compliance with notices*

(1) Subject to sections 41B and 41C, a person on whom a fire prevention notice has been served must comply with the notice.

Penalty: 50 penalty units or imprisonment for 12 months.

(2) Proceedings for an offence under sub-section (1) may be taken—

(a) by a member of the police force;

(b) if the fire prevention notice was served by a fire prevention officer, in accordance with section 232 of the **Local Government Act 1989**;

(c) if the fire prevention notice was served by the Chief Officer, by a person appointed for the purpose by the Chief Officer.

41E. Fire prevention infringement notices

- (1) An authorised officer may serve a fire prevention infringement notice in a form approved by the Authority on a person the officer believes has committed an offence against section 41D, requiring that person to pay a penalty of 2 penalty units. 5
- (2) An infringement notice may be served in accordance with section 41A (1). 10
- (3) The authorised officer may withdraw the infringement notice within 28 days after serving it by sending a notice in a form approved by the Authority to the person on whom it was served. 15
- (4) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty.
- (5) If the person pays the penalty within 28 days of the date of the infringement notice or, if the authorised officer allows, before a summons is served on the person in respect of the offence to which it relates— 20
- (a) no further proceedings may be taken against the person in relation to the offence; and 25
- (b) no conviction may be recorded against that person for the offence. 30
- (6) If—
- (a) a person served with an infringement notice has not paid the penalty within 28 days of the date of the notice; or 35

(b) an infringement notice is withdrawn—

proceedings may still be taken or continued for the offence to which it relates.

(7) If the court—

(a) is satisfied that an infringement notice was served and not withdrawn; and

(b) finds the person guilty of the offence to which it relates—

that finding must not be treated as a conviction for any purpose except—

(c) the making of that finding of guilt; and

(d) any subsequent proceedings in respect of that finding, including proceedings by way of appeal or order to review.

(8) In this section, “**authorised officer**” means—

(a) if the fire prevention notice was served by a fire prevention officer, a person appointed for the purpose by the relevant municipal council;

(b) if the fire prevention notice was served by the Chief Officer, a person appointed for the purpose by the Chief Officer.

41F. Issue of notices by Chief Officer

(1) If—

(a) the Chief Officer forms the opinion required by section 41 (2); and

(b) upon request, the relevant fire prevention officer refuses or fails to issue a fire prevention notice within

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the time specified by the Chief Officer—

the Chief Officer may serve a fire prevention notice on the owner or occupier of the land. 5

(2) If the Chief Officer serves a fire prevention notice under sub-section (1)—

(a) the provisions of this Act (except this section) and the regulations apply as if, unless the contrary intention appears— 10

(i) references to the fire prevention officer were references to the Chief Officer; 15

(ii) references to the Chief Officer were references to the Authority;

(b) sections 225, 226, 227 and 227A of the **Local Government Act 1989** apply as if references to a Council were references to the Authority.’. 20

6. *Consequential amendments*

(1) In section 3 of the **Country Fire Authority Act 1958**, insert the following definitions— 25

“**private street**” means a road, other than—

(a) a declared road under the **Transport Act 1983**;

(b) a road vested in a public authority;

(c) a road that is under the care and management of a municipal council under section 205 of the **Local Government Act 1989**; 30

“**road**” has the meaning given in section 3 of the **Local Government Act 1989**;’. 35

(2) For section 28 (1) of the **Country Fire Authority Act 1958** substitute—

5 “(1) The Chief Officer may, by written instrument, delegate to any person by name or to the holder of an office or position approved by the Authority, either generally or as otherwise provided by the instrument, any power or authority conferred on the Chief Officer under this Act or the regulations or any other Act or regulations, except—

10 (a) the power to form an opinion as required by section 41F (1) (a);

15 (b) the power, under section 41 (3) (b), to determine the steps to be required of an owner or occupier by a fire prevention notice served under section 41F;

(c) this power of delegation.”.

(3) In section 94 (3) of the **Country Fire Authority Act 1958** omit “pursuant to section 41B or”.

20 (4) After section 110 (1) (z) of the **Country Fire Authority Act 1958** insert—

“(za) in relation to fire prevention notices, for—

25 (i) things or classes of things in respect of which notices may not be served;

(ii) the matters which may be dealt with in notices, including the steps that owners or occupiers may be required to take;

(iii) the form and content of notices;

30 (iv) the form of, and particulars to be included in, a notice under section 41A (3) (b);”.

7. New section 42 substituted

For section 42 of the **Country Fire Authority Act 1958** substitute—

“42. Brigades may carry out fire prevention work

- (1) The officers and members of any brigade, at the request of—
 - (a) the owner or occupier of any land;
 - (b) a Minister in whom any land is vested; 5
 - (c) a municipal council or public authority—
 - (i) in which any land is vested;
 - (ii) that has any land under its control or management; 10
 - (iii) that is responsible for the care and management of any road—

may carry out on that land or road any work (including burning) for the removal or abatement of any fire danger or for the prevention of the occurrence or spread of fire. 15
- (2) Any work carried out under sub-section (1) must be paid for by the owner, occupier, Minister, council or authority requesting the work and, if not paid, is recoverable in the Magistrates’ Court as a debt due to the Authority. 20
- (3) Subject to the general direction of the Authority and the Chief Officer, the officers and members of any brigade, with the consent of the relevant owner, occupier, Minister, council or authority, may carry out any work (including burning) that the officer in charge of the brigade thinks necessary or expedient for the prevention of the occurrence or spread of fire.”. 25

8. *New section 43 substituted*

For section 43 of the **Country Fire Authority Act 1958** substitute—

“43. *Duties and powers of councils and public authorities in relation to fire*

(1) In the country area of Victoria it is the duty of every municipal council and public authority to take all practicable steps (including burning) to prevent the occurrence of fires on, and minimise the danger of the spread of fires on and from—

(a) any land vested in it or under its control or management; and

(b) any road under its care and management.

(2) A municipal council or public authority may—

(a) acquire any equipment;

(b) do any thing;

(c) expend from its funds any amount—

that is necessary or expedient for the purpose of fulfilling its duty under sub-section (1).

(3) If the cost of maintenance of a road is apportioned between municipal councils or public authorities or both the cost of fulfilling the duty imposed by sub-section (1) must be apportioned in the same manner.”

9. *New section 49 substituted*

For section 49 of the **Country Fire Authority Act 1958** substitute—

“49. *Obligation of sawmillers*

A person who disposes of the by-products of sawmilling operations by burning must comply with the regulations.

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Penalty: 10 penalty units.”.

10. *New section 96A substituted*

For section 96A of the **Country Fire Authority Act 1958** substitute—

“96A. *Municipal fire prevention officers and assistants*

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(1) Each municipal council, the municipal district or part of the municipal district of which is in the country area of Victoria—

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(a) must appoint a person to be the fire prevention officer for that council for the purposes of this Act;

(b) may appoint any number of persons it thinks fit to be assistant fire prevention officers.

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(2) A fire prevention officer may, by written instrument, delegate to an assistant fire prevention officer, either generally or as otherwise provided in the instrument, any power or duty of the fire prevention officer under this Act or the regulations except this power of delegation.”.

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11. *New section 108A inserted*

After section 108 of the **Country Fire Authority Act 1958** insert—

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“108A. Evidence of ownership or occupancy

In any proceedings under this Act or the regulations, the following is evidence that a person is the owner or occupier of land—

- (a) evidence that the person is liable to be rated in respect of the land;
- (b) evidence by the certificate of the Registrar of Titles or an Assistant Registrar of Titles authenticated by the seal of the Office of Titles that the person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in the land;
- (c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that the person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of the land.”.

12. New section 109C substituted

For section 109C of the **Country Fire Authority Act 1958** substitute—

“109C. Application of penalties

(1) All penalties recovered for offences committed against section 41D, including penalties recovered under section 41E, are to be paid—

- (a) if the relevant fire prevention notice was issued by a fire prevention officer, to the relevant municipal council;

- (b) if the relevant fire prevention notice was issued by the Chief Officer, to the Authority.
- (2) All penalties recovered for any other offences against this Act are to be paid to the Authority.”. 5

13. *Statute law revision*

In the Country Fire Authority Act 1958—

- (a) in section 3—
- (i) for the definition of “Administrative unit” substitute— 10
- “**administrative unit**” means a Department within the meaning of the **Public Sector Management Act 1992**;” 15
- (ii) in paragraph (b) of the definition of “Insurance Company”, for “policies or” substitute “policies of”;
- (b) in section 9A—
- (i) in sub-section (1) for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8)”;
- (ii) in sub-section (2) for “Public Service Board” substitute “Public Service Commissioner”; 25
- (iii) in sub-section (2) for “some office” substitute “a position”;
- (c) in section 9B—
- (i) in sub-section (7) for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8)”;
- (ii) in sub-section (8) for “Public Service Board” substitute “Public Service Commissioner”; 35

- (iii) in sub-section (8) for “some office”
substitute “a position”;
- (d) in sections 18, 19 and 110 (1) for “employés”
(wherever occurring) **substitute** “employees”;
- 5 (e) in sections 18A, 19, 32 (1) and 74B (1) for
“employé” (wherever occurring) **substitute**
“employee”;
- (f) in sections 30 (1) (f), 31 (3) (a) and 44A (1) for
10 “street road lane or thoroughfare” (wherever
occurring) **substitute** “road”;
- (g) for section 38A (1) (d) **substitute**—
“(d) for the purpose of disposal of the
by-products of sawmilling operations if the
person complies with the regulations; or”;
- 15 (h) in sections 46 and 51 (aa) (ii) for “highway road
street lane or thoroughfare” **substitute** “road”;
- (i) in section 52 (2) (a) **omit** “the” where first
occurring;
- 20 (j) in section 74A (4) (a) for “United Fire Fighters
Union” **substitute** “United Firefighters’ Union”;
- (k) in section 77B (2) for “must take a
determination” **substitute** “must make a
determination”;
- 25 (l) in section 85 for “provided by Parliament”
substitute “available”;
- (m) for section 110 (1) (va) **substitute**—
“(va) for regulating the disposal by burning of
by-products of sawmilling operations;”;
- 30 (n) sections 2 and 110 (2B) and the Schedule are
repealed.

**PART 4—AMENDMENT OF THE METROPOLITAN FIRE
BRIGADES ACT 1958**

No. 6315.
Reprinted to
No. 91/1989
and
subsequently
amended by
Nos 94/1990,
5/1991,
39/1992,
47/1992,
83/1992 and
99/1993.

14. *New sections 5 and 5A inserted*

After section 4 of the **Metropolitan Fire Brigades
Act 1958 insert—**

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**“5. *Duties and powers of councils and public
authorities in relation to fire***

- (1) In the metropolitan district it is the duty of every municipal council and public authority to take all practicable steps (including burning) to prevent the occurrence of fires on, and minimise the danger of the spread of fires on and from— 10
- (a) any land vested in it or under its control or management; and 15
- (b) any road under its care and management.
- (2) A municipal council or public authority may— 20
- (a) acquire any equipment;
- (b) do any thing;
- (c) expend from its funds any amount—
- that is necessary or expedient for the purpose of fulfilling its duty under sub-section (1). 25
- (3) If the cost of maintenance of a road is apportioned between municipal councils or public authorities or both the cost of fulfilling the duty imposed by sub-section (1) must be apportioned in the same manner. 30

5A. *Municipal fire prevention officers and assistants*

5 (1) Each municipal council, the municipal district or part of the municipal district of which is in the metropolitan district—

(a) must appoint a person to be the fire prevention officer for that council for the purposes of this Act;

10 (b) may appoint any number of persons it thinks fit to be assistant fire prevention officers.

15 (2) A fire prevention officer may, by written instrument, delegate to an assistant fire prevention officer, either generally or as otherwise provided in the instrument, any power or duty of the fire prevention officer under this Act or the regulations except this power of delegation.”.

15. *Duties of the Metropolitan Fire Brigades Board*

20 In section 25 of the **Metropolitan Fire Brigades Act 1958** for “extinguishment” substitute “prevention and extinguishment”.

16. *New section 25A inserted*

25 After section 25 of the **Metropolitan Fire Brigades Act 1958** insert—

“25A. *General powers of Board*

30 (1) Subject to this Act, the Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its duties and functions.

(2) Without limiting or derogating from the generality of the powers of the Board

under this Act, the powers of the Board include the power to—

- (a) enter into agreements or arrangements with any person or body for the provision of goods or services to the Board; 5
- (b) subject to sub-section (3), enter into agreements or arrangements with any person or body for the provision of goods or services by the Board; 10
- (c) apply for, obtain and hold intellectual property rights (including patents, copyrights, trade marks and registered designs); 15
- (d) enter into agreements or arrangements for the commercial exploitation of those intellectual property rights and ancillary services on any terms and conditions as to royalties, lump sum payments or otherwise as the Board may see fit; 20
- (e) subject to sub-section (3), form, participate in the formation of, or be a member of a body corporate, association, partnership, trust or other body; 25
- (f) subject to sub-section (3), enter into a joint venture agreement, shareholders agreement or unitholders agreement with any other person or body; 30
- (g) do all things necessary or convenient to give effect to any agreements or arrangements entered into by the Board including power to appoint any person or body as the Board's agent for that purpose. 35

(3) The Board must obtain the written consent of the Minister before—

(a) entering into any agreement or arrangement with any person or body for the provision of goods or services by the Board; or

(b) forming, participating in the formation of, or becoming a member of a body corporate, association, partnership, trust or other body; or

(c) entering into any joint venture agreement, shareholders agreement or unitholders agreement.

(4) Sub-section (3) (a) does not apply to an agreement or arrangement for the provision of goods or services by the Board to a brigade or group of brigades or to a person acting on behalf of a brigade or group of brigades.

(5) The Minister's consent under sub-section (3) (a) or (b) may be given in respect of a particular case or a class of cases."

17. *New section 72 inserted*

After section 71 of the **Metropolitan Fire Brigades Act 1958** insert—

"72. Board or brigades may carry out fire prevention work

(1) The Board, at the request of—

(a) the owner or occupier of any land;

(b) a Minister in whom any land is vested;

(c) a municipal council or public authority—

(i) in which any land is vested;

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(ii) that has any land under its control or management;

(iii) that is responsible for the care and management of any road—

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may carry out on that land or road any work (including burning) for the removal or abatement of any fire danger or for the prevention of the occurrence or spread of fire.

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(2) Any work carried out under sub-section (1) must be paid for by the owner, occupier, Minister, council or authority requesting the work and, if not paid, is recoverable in the Magistrates' Court as a debt due to the Board.

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(3) Subject to the general direction of the Board and the Chief Fire Officer, the officers and members of any brigade, with the consent of the relevant owner, occupier, Minister, council or authority, may carry out any work (including burning) that the officer in charge of the brigade thinks necessary or expedient for the prevention of the occurrence or spread of fire.”.

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18. *Fire prevention notices*

After section 86 of the **Metropolitan Fire Brigades Act 1958** insert—

'Fire Prevention Notices

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87. *Fire prevention notices*

(1) In the metropolitan district, the fire prevention officer of a municipal council may serve a fire prevention notice on the

owner or occupier of land in the municipal district of that council (other than a public authority) in respect of anything—

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(a) on that land, other than a building or in a building;

(b) on the adjacent half width of any private street that abuts that land—

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(other than a prescribed thing or class of things) that by its nature, composition, condition or location constitutes or may constitute a danger to life or property from the threat of fire.

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(2) A fire prevention notice may be served only if the fire prevention officer forms the opinion—

(a) that it is necessary, or may become necessary, to do so to protect life or property from the threat of fire; and

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(b) that there is no procedure under any other Act or regulations made under any Act that is more appropriate in the circumstances to address that threat.

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(3) A fire prevention notice—

(a) must be in the prescribed form;

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(b) may require the owner or occupier to take the steps specified in the notice to remove or minimise the threat of fire;

(c) must specify the time (not less than 7 days) within which the owner or occupier must comply with the notice;

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(d) must comply with the regulations.

88. Service of notices

- (1) A fire prevention notice may be served on an owner or occupier—
 - (a) by giving it to or serving it personally on the owner or occupier; or 5
 - (b) by sending it by post to the owner or occupier at that person's usual or last known residential or business address; or 10
 - (c) by leaving it at the usual or last known residential or business address of the owner or occupier with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or 15
 - (d) in a manner prescribed by any other Act or law for service on a person or class of persons of the same type as the owner or occupier. 20
- (2) If the fire prevention officer—
 - (a) does not know who the owner or occupier of any land is; or
 - (b) does not know the residential or business address of the owner or occupier; or 25
 - (c) believes that the owner or occupier is absent from Victoria and has no agent in Victoria known to the officer— 30

the fire prevention notice may be served in accordance with sub-section (3).
- (3) If sub-section (2) applies, the fire prevention notice may be served— 35
 - (a) by displaying it on the land; and

(b) by publishing a notice, in the prescribed form and containing the prescribed particulars, in a newspaper circulating generally in the municipal district.

(4) A notice served under sub-section (3) is sufficient notice to the owner or occupier from the date of display or publication, whichever is later.

(5) Unless a fire prevention notice is withdrawn or cancelled, the costs of serving the notice (including reasonable administrative, labour and overhead costs and expenses incurred) may be recovered from the person on whom it was served—

(a) if the notice was served by a fire prevention officer, by the relevant municipal council;

(b) if the notice was served by the Chief Fire Officer, by the Board.

89. *Objection to notices*

(1) A person on whom a fire prevention notice has been served may lodge an objection with the fire prevention officer within 7 days of the service of the notice stating the grounds of objection.

(2) If a person lodges an objection the fire prevention officer and the person must genuinely attempt to resolve the matter by consultation.

(3) Within 14 days of the lodging of an objection the fire prevention officer must—

(a) confirm the notice; or

(b) vary the notice, if the fire prevention officer is satisfied that

the variation will appropriately address the threat of fire; or

(c) withdraw the notice, if the fire prevention officer is satisfied that there is no longer any case for the notice to be served. 5

(4) If the fire prevention officer confirms or varies the notice he or she must specify a new time within which the person must comply with the notice. 10

(5) In sections 91 and 92, “**fire prevention notice**” includes a fire prevention notice as confirmed or varied in accordance with this section.

90. Appeal against notices 15

(1) If a person has lodged an objection under section 41B and—

(a) the fire prevention officer has failed to confirm, vary or withdraw the notice within 14 days; or 20

(b) the person is not satisfied with the confirmation or variation of the notice—

the person may appeal in writing to the Chief Fire Officer within 7 days of the end of that 14 day period or the date of the confirmation or variation, whichever is earlier, stating the grounds of appeal. 25

(2) The Chief Fire Officer—

(a) must consider the appeal within a reasonable time; and 30

(b) must take into account all relevant circumstances, including the proper needs of conservation and alternative means of addressing the threat of fire. 35

- 5
- (3) After considering the appeal, the Chief Fire Officer must—
- (a) confirm the notice; or
 - (b) vary the notice in any way the Chief Fire Officer thinks fit; or
 - (c) cancel the notice.
- 10
- (4) If the Chief Fire Officer confirms or varies the notice he or she must specify a new time within which the person must comply with the notice.
- (5) In sections 91 and 92, “**fire prevention notice**” includes a fire prevention notice as confirmed or varied in accordance with this section.

15

91. *Compliance with notices*

Subject to sections 89 and 90, a person on whom a fire prevention notice has been served must comply with the notice.

20

Penalty: 50 penalty units or imprisonment for 12 months.

92. *Fire prevention infringement notices*

- 25
- (1) An authorised officer may serve a fire prevention infringement notice in a form approved by the Board on a person the officer believes has committed an offence against section 91, requiring that person to pay a penalty of 2 penalty units.
- 30
- (2) An infringement notice may be served in accordance with section 88 (1).
- 35
- (3) The authorised officer may withdraw the infringement notice within 28 days after serving it by sending a notice in a form approved by the Board to the person on whom it was served.

- (4) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty.
- (5) If the person pays the penalty within 28 days of the date of the infringement notice or, if the authorised officer allows, before a summons is served on the person in respect of the offence to which it relates— 5
- (a) no further proceedings may be taken against the person in relation to the offence; and 10
- (b) no conviction may be recorded against that person for the offence. 15
- (6) If—
- (a) a person served with an infringement notice has not paid the penalty within 28 days of the date of the notice; or 20
- (b) an infringement notice is withdrawn—
- proceedings may still be taken or continued for the offence to which it relates. 25
- (7) If the court—
- (a) is satisfied that an infringement notice was served and not withdrawn; and
- (b) finds the person guilty of the offence to which it relates— 30
- that finding must not be treated as a conviction for any purpose except—
- (c) the making of that finding of guilt; and 35
- (d) any subsequent proceedings in respect of that finding, including

proceedings by way of appeal or order to review.

(8) In this section, “**authorised officer**” means—

- (a) if the fire prevention notice was served by a fire prevention officer, a person appointed for the purpose by the relevant municipal council;
- (b) if the fire prevention notice was served by the Chief Fire Officer, a person appointed for the purpose by the Chief Fire Officer.

93. Issue of notices by Chief Fire Officer

(1) If—

- (a) the Chief Fire Officer forms the opinion required by section 87 (2); and
- (b) upon request, the relevant fire prevention officer refuses or fails to issue a fire prevention notice within the time specified by the Chief Fire Officer—

the Chief Fire Officer may serve a fire prevention notice on the owner or occupier of the land.

(2) If the Chief Fire Officer serves a fire prevention notice under sub-section (1)—

- (a) the provisions of this Act (except this section) and the regulations apply as if, unless the contrary intention appears—
 - (i) references to the fire prevention officer were references to the Chief Fire Officer;

- (ii) references to the Chief Fire Officer were references to the Board;
- (b) sections 225, 226, 227 and 227A of the **Local Government Act 1989** apply as if references to a Council were references to the Board.’ 5

19. *Consequential amendments*

- (1) In section 3 (1) of the **Metropolitan Fire Brigades Act 1958**, insert the following definitions— 10
 - “**fire prevention officer**” means a fire prevention officer appointed under section 5A;
 - “**private street**” means a road, other than—
 - (a) a declared road under the **Transport Act 1983**; 15
 - (b) a road vested in a public authority;
 - (c) a road that is under the care and management of a municipal council under section 205 of the **Local Government Act 1989**; 20
 - “**road**” has the meaning given in section 3 of the **Local Government Act 1989**;’.
- (2) In section 31A of the **Metropolitan Fire Brigades Act 1958**, for sub-section (1) substitute— 25
 - “(1) The Chief Fire Officer may, by written instrument, delegate to any person by name or to the holder of an office or position approved by the Board, either generally or as otherwise provided by the instrument, any power or authority conferred on the Chief Fire Officer under this Act or the regulations or under any other Act or regulations, except — 30
 - (a) the power to form an opinion as required by section 93 (1) (a);
 - (b) the power, under section 87 (3) (b), to determine the steps to be required of an 35

owner or occupier by a fire prevention notice served under section 93;

(c) this power of delegation.”.

5 (3) In section 31A of the **Metropolitan Fire Brigades Act 1958** sub-sections (2), (3) and (4) are repealed.

(4) After section 34 (1) (g) of the **Metropolitan Fire Brigades Act 1958** insert—

“(h) in relation to fire prevention notices, for—

10 (i) things or classes of things in respect of which notices may not be served;

(ii) the matters which may be dealt with in notices, including the steps that owners or occupiers may be required to take;

(iii) the form and content of notices;

15 (iv) the form of, and particulars to be included in, a notice under section 88 (3) (b);”.

20. New section 76A inserted

After section 76 of the **Metropolitan Fire Brigades Act 1958** insert—

20 “**76A. Evidence of ownership or occupancy**

In any proceedings under this Act or the regulations, the following is evidence that a person is the owner or occupier of land—

25 (a) evidence that the person is liable to be rated in respect of the land;

30 (b) evidence by the certificate of the Registrar of Titles or an Assistant Registrar of Titles authenticated by the seal of the Office of Titles that the person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in the land;

- (c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that the person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of the land.”. 5

21. *New section 77 substituted*

For section 77 of the **Metropolitan Fire Brigades Act 1958** substitute— 10

“77. Recovery and application of penalties

- (1) Subject to section 92, any penalty for an offence committed against section 91 may be recovered— 15
 - (a) if the fire prevention notice was served by a fire prevention officer, in accordance with section 232 of the **Local Government Act 1989**;
 - (b) if the fire prevention notice was served by the Chief Fire Officer, by any officer of, or any person authorised by, the Board. 20
- (2) Any penalty for an offence committed against any other provision of this Act or the regulations may be recovered by any officer of, or any person authorised by, the Board. 25
- (3) All penalties recovered for offences committed against section 91, including penalties recovered under section 92, are to be paid— 30
 - (a) if the fire prevention notice was issued by a fire prevention officer, to the relevant municipal council; 35

(b) if the fire prevention notice was issued by the Chief Fire Officer, to the Board.

(4) All penalties recovered for any other offences against this Act or the regulations are to be paid to the Board.”.

22. Statute law revision

In the Metropolitan Fire Brigades Act 1958—

(a) in sections 3, 7, 15, 16A, 80, 81, 81A, 83 and 84 for “employé” (wherever occurring) substitute “employee”;

(b) in sections 7, 14, 15, 33A, 34, 82 and 85 for “employés” (wherever occurring) substitute “employees”;

(c) in section 11 (1) for “Public Service Act 1974” substitute “Public Sector Management Act 1992 (except Part 9 or in accordance with Part 8)”;

(d) in section 11 (2)—

(i) for “Public Service Board” substitute “Public Service Commissioner”;

(ii) for “some office” substitute “a position”;

(e) in section 32B (3) (c) (iv) for “street thoroughfare” substitute “road”;

(f) section 2 and the First Schedule are repealed.

