

TASMANIA

**TASMANIA FIRE AND EMERGENCY SERVICE
BILL 2023**

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**TASMANIA FIRE AND EMERGENCY SERVICE
BILL 2023**

*(Brought in by the Minister for Police, Fire and Emergency
Management, the Honourable Felix Ashton Ellis)*

A BILL FOR

An Act to establish the Tasmania Fire and Emergency Service, to consolidate the Tasmania Fire Service and the State Emergency Service into a single service in order to respond better to fires and other emergency events and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Tasmania Fire and Emergency Service Act 2023*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

- (1) In this Act, unless the contrary intention appears –

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approved means approved by the TFES Commissioner;

authorised member, in relation to a function, means –

- (a) the TFES Commissioner; or
- (b) a member of the TFES who is authorised by the TFES Commissioner to perform the function;

Crown land has the same meaning as in the *Crown Lands Act 1976*;

day of total fire ban means a day declared under section 35 to be a day of total fire ban;

emergency has the same meaning as in the *Emergency Management Act 2006*;

emergency event means –

- (a) a fire; or
- (b) an emergency in relation to which the TFES has a role under an emergency management plan;

emergency management has the same meaning as in the *Emergency Management Act 2006*;

emergency management operations includes –

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-
- (a) fire-fighting operations; and
 - (b) operations, or actions, that are necessary, expedient or convenient for –
 - (i) the management of an emergency event and the performance of emergency management under this Act; and
 - (ii) protecting people or property, or rendering assistance, during an emergency event; and
 - (iii) carrying out activities for training, emergency safety or emergency prevention;
 - (c) such other operations, or actions, as are prescribed;

emergency management plan has the same meaning as in the *Emergency Management Act 2006*;

equipment includes –

- (a) appliances, buckets, engines, escapes, hoses, ladders, radio equipment, reels, tanks, tools and vehicles; and

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- (b) machines, tools or other things used for, or in connection with, emergency management operations; and
- (c) any prescribed machines, tools or other things;

fire-fighting operations includes any act that is necessary, expedient or convenient for –

- (a) extinguishing, or preventing the outbreak or spread of, a fire; or
- (b) preventing, or dealing with –
 - (i) a spill of petrol or other flammable liquids; or
 - (ii) an escape of flammable gas; or
- (c) assisting another person, or entity, that is engaging in fire-fighting operations;

fire permit means a permit issued under the regulations, for the purposes of Division 3 of Part 3, in respect of a fire permit period;

fire permit officer means a person appointed as a fire permit officer under Division 3 of Part 3;

fire permit period means a period declared to be a fire permit period under section 30;

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fire safety system has the same meaning as in the National Construction Code series published by the Australian Building Codes Board, as amended or substituted from time to time;

function includes power, responsibility and duty;

member, of the TFES, means –

- (a) the TFES Commissioner; and
- (b) a permanent member or volunteer member, regardless of whether appointed in a full-time or part-time capacity;

owner, in relation to premises, includes –

- (a) the person in whom the estate in fee simple is vested; and
- (b) the person who appears, from a folio of the Register kept under section 33 of the *Land Titles Act 1980*, to be the owner of the premises; and
- (c) a beneficial owner, trustee, executor, mortgagee in possession or other person with administration and control of the premises; and
- (d) a person or entity who has the legal authority, under an Act, to

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administer or control the premises; and

- (e) such other persons as may be prescribed;

permanent member means a person who is appointed, employed or engaged, under section 11, as a member of the TFES;

potential emergency event means circumstances where an emergency event is possible or may occur;

premises includes –

- (a) any land, place or structure; and
(b) any part of such premises;

protected area means an area which includes the whole of, or any part of –

- (a) a State forest; or
(b) an area of reserved land, within the meaning of the *Nature Conservation Act 2002*; or
(c) an area of Crown land;

public street has the same meaning as in the *Traffic Act 1925*;

regulations means the regulations made under this Act;

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scale of charges means the charges fixed by the TFES Commissioner in accordance with section 73;

SFESC means the State Fire and Emergency Service Committee established under section 17;

State forest has the same meaning as in the *Mineral Resources Development Act 1995*;

TASCAT means the Tasmanian Civil and Administrative Tribunal;

TFES means the Tasmania Fire and Emergency Service established under section 6;

TFES Commissioner means the Commissioner of Fire and Emergency Service appointed under section 13;

TFES Division means a part of the TFES as determined by the TFES Commissioner in accordance with section 15;

TFES officer means –

- (a) the TFES Commissioner; or
- (b) a person appointed as the head of a TFES Division; or
- (c) a person appointed to the rank of an officer within a TFES Division;

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vegetation includes all, or any part, of a tree, bush, plant and undergrowth of any kind, whether dead or alive, other than something that is prescribed as not being vegetation for the purposes of this Act;

vehicle has the same meaning as in the *Emergency Management Act 2006*;

volunteer member means a person who is registered, under section 12, as a member of the TFES.

- (2) In this Act, a reference to performing a function includes a reference to –
- (a) exercising a power; and
 - (b) performing a responsibility or duty.
- (3) For the avoidance of doubt, emergency management operations do not include any actions taken in respect of –
- (a) actual combat against an enemy; or
 - (b) a riot or other civil disturbance; or
 - (c) bringing an end to a strike or lock-out.

4. Application of Act

- (1) Unless the contrary intention appears, this Act does not apply to –
- (a) the lighting of a fire, in a fully enclosed premises –

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- (i) in a properly constructed fireplace; or
 - (ii) for the purpose of igniting an appliance; or
 - (b) the lighting of a fire in prescribed circumstances, prescribed locations or in a prescribed manner;
 - (c) the performance of a function under any other Act that has effect in relation to emergency management operations or emergency management generally.
- (2) Despite subsection (1) –
- (a) the *Emergency Management Act 2006* prevails to the extent of an inconsistency between this Act and that Act; and
 - (b) this Act prevails to the extent of an inconsistency between this Act and another Act other than the *Emergency Management Act 2006*.

5. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

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PART 2 – TASMANIA FIRE AND EMERGENCY SERVICE

Division 1 – Tasmania Fire and Emergency Service established

6. Tasmania Fire and Emergency Service

- (1) On the day on which this section commences, the Tasmania Fire and Emergency Service is established.
- (2) The TFES consists of –
 - (a) the Tasmania Fire Service, as continued under this Division; and
 - (b) the State Emergency Service, as continued under this Division; and
 - (c) such other entities and divisions as the TFES Commissioner considers appropriate.
- (3) The TFES has the functions imposed on it under this or any other Act.

7. Tasmania Fire Service continued

- (1) The fire service established by the *Fire Service Act 1979*, and called the Tasmania Fire Service, is continued as a division of the TFES.
- (2) For the avoidance of doubt, the TFES Commissioner may determine divisions, and assign actions to divisions, of the TFES that are

solely comprised of members of the Tasmania Fire Service.

8. State Emergency Service continued

- (1) The State Emergency Service continued under the *Emergency Management Act 2006* is continued as a division of the TFES.
- (2) For the avoidance of doubt, the TFES Commissioner may make divisions, and assign actions to divisions, of the TFES that are solely comprised of members of the State Emergency Service.

Division 2 – Operations of TFES

9. Objectives of TFES

- (1) The TFES has the following objectives:
 - (a) to preserve human life and to protect property and premises, if an emergency event occurs;
 - (b) to support community resilience, in respect of an emergency event, so as to enable communities –
 - (i) to participate actively in the prevention of, and the preparedness for and responses to, the event; and
 - (ii) to prevent, or limit as far as is practicable, the economic,

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environmental, social and
physical impacts of such an
event;

- (c) to recognise, when performing emergency management operations, that the environment has an inherent value for the Tasmanian community;
 - (d) to facilitate, and initiate if appropriate, effective interoperability between Agencies in this State, and in other jurisdictions, in respect of an emergency event, or potential emergency event, in either jurisdiction.
- (2) In performing a function under this Act, the TFES is to ensure that the performance of the function, as far as is practicable –
- (a) is in accordance with each applicable emergency management plan; and
 - (b) furthers the objectives of the TFES.

10. Functions of TFES

- (1) The TFES has the following functions:
- (a) to ensure that there is a consistent approach by the TFES in preventing, preparing for and responding to, and transitioning to recovery from, emergency events or potential emergency events;

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- (b) to implement plans, arrangements, agreements and directives in respect of the TFES as required under this Act and any other Act;
 - (c) to determine command, and control, arrangements during an emergency event, or potential emergency event, if required;
 - (d) to assist in the provision of medical assistance, and provide medical assistance, if required;
 - (e) to make decisions under this Act in respect of an emergency event, or potential emergency event, that, as far as is practicable, protect all persons responding to the event under this Act;
 - (f) to oversee other authorities and resources used, in respect of an emergency event, and ensure that those authorities are complying with this Act;
 - (g) to establish protocols for interagency and interjurisdictional emergency management operations;
 - (h) such other functions as are prescribed.
- (2) In addition to the functions specified in subsection (1), the TFES has the following functions in respect of the *Emergency Management Act 2006*:

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- (a) to provide advice and services, in respect of the TFES, in accordance with an emergency management plan;
- (b) to provide, or assist in, rescue and retrieval operations, within the meaning of the *Emergency Management Act 2006*;
- (c) to coordinate, or participate in, civil defence measures, within the meaning of the *Emergency Management Act 2006*, in time of enemy action or hostilities against the State.

11. Application of *State Service Act 2000* to certain members

- (1) Subject to and in accordance with the *State Service Act 2000*, a person may be appointed and employed as a member of the TFES.
- (2) In addition to subsection (1), the Secretary of the Department, or the TFES Commissioner, may make arrangements with a Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to the TFES and those officers and employees are to, in conjunction with State Service employment, serve the TFES in any capacity.

12. Volunteer members of TFES

- (1) The TFES Commissioner may register a person as a volunteer member, as prescribed, who is

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subject to the control and supervision of the TFES Commissioner while acting as such a member.

- (2) The TFES Commissioner is to ensure that a charter in respect of volunteer members, and volunteering within the TFES generally, is developed and maintained.
- (3) The regulations may prescribe –
 - (a) the process to apply for registration, and for registration itself, as a volunteer member; and
 - (b) the process for suspending, or deregistering, a volunteer member.

Division 3 – TFES Commissioner

13. Commissioner of Fire and Emergency Service

- (1) The Governor, on the recommendation of the Premier, may appoint a person as the Commissioner of Tasmania Fire and Emergency Service.
- (2) The Premier may only recommend a person for appointment under subsection (1) if the Premier is satisfied that the person has the technical expertise, and the management and professional skills, to perform the functions of the TFES Commissioner.
- (3) The TFES Commissioner is to be appointed to the position in accordance with the *State Service*

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Act 2000 and subject to the terms and conditions
as specified in the instrument of appointment.

14. Functions of TFES Commissioner

- (1) The TFES Commissioner is responsible for performing the following functions:
- (a) to manage and control the TFES in a manner that ensures that the TFES performs its functions efficiently and effectively;
 - (b) to establish and maintain, under this Act –
 - (i) the structure, and hierarchy, of the TFES; and
 - (ii) divisions of the TFES that may be entirely staffed by permanent members or volunteer members, or both; and
 - (iii) support services for the TFES;
 - (c) if an emergency event occurs –
 - (i) to be the head of the chain of command for the responses under this Act in respect of the emergency event; and
 - (ii) to establish the most appropriate chain of command for the emergency event;

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- (d) to fix charges –
- (i) specified under this Act as payable to the TFES; or
 - (ii) payable in respect of other services provided by the TFES, or by another person, under this Act;
- (e) to advise, and make recommendations to, the Minister in respect of –
- (i) any matter under this Act; or
 - (ii) the operation of the TFES; or
 - (iii) any matter that may assist the Minister, or any other person, in the administration of this Act;
- (f) to establish charters in respect of all, or specified parts, of the TFES;
- (g) such other functions –
- (i) as are prescribed; or
 - (ii) as are necessary or reasonable to perform the functions of the TFES Commissioner.

(2) The TFES Commissioner may –

- (a) issue such orders, directions, procedures and instructions as are necessary or reasonable for the TFES Commissioner to perform the functions of the TFES

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Commissioner under this Act or any other Act; and

- (b) take any other action necessary, or reasonable, for the efficient and effective management and control of the TFES, and any other entity established under this Act.

15. TFES Commissioner may determine structure and chain of command

- (1) The TFES Commissioner is responsible for determining –
 - (a) the chain of command within –
 - (i) the TFES; and
 - (ii) each TFES Division; and
 - (b) the number, type and location of TFES Divisions; and
 - (c) the allocation of functions, if required, to –
 - (i) the TFES or a specified TFES Division; and
 - (ii) the members of the TFES or a specified class of members; and
 - (iii) persons, other than the TFES, who are responsible for performing emergency

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management operations under
this Act.

- (2) For the avoidance of doubt –
 - (a) in determining the chain of command for the TFES, or a TFES Division, the TFES Commissioner may include individuals that do not form part of the TFES or Division, as the case may be; and
 - (b) a chain of command determined by the TFES Commissioner in accordance with this section is final and not subject to review by any other person.
- (3) A person must carry out such functions as the TFES Commissioner, from time to time, allocates or otherwise directs.

16. TFES Commissioner may delegate certain functions

- (1) The TFES Commissioner may delegate to any person –
 - (a) a function of the TFES Commissioner under this Act, or any other Act, other than this power of delegation; or
 - (b) a function of the TFES under this Act or any other Act.
- (2) For the avoidance of doubt, the performance by a person of any function, in good faith, delegated to the person under this section is as valid, and has the same consequences, as if it had been performed by the TFES Commissioner.

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Part 2 – Tasmania Fire and Emergency Service

Division 4 – Committees

17. State Fire and Emergency Service Committee established

- (1) The State Fire and Emergency Service Committee is established to advise the Minister in accordance with the terms of reference for the Committee.
- (2) The members of the SFESC are –
 - (a) the TFES Commissioner, who is the chair of the SFESC; and
 - (b) at least 8, and not more than 12, persons appointed by the Minister of which –
 - (i) at least one such person is nominated by the most relevant trade union, representing members of the TFES, as determined by the Minister; and
 - (ii) at least one such person is nominated by the most relevant association for volunteer members, as determined by the Minister.
- (3) The Minister is to provide the SFESC, in writing, with its terms of reference which may –
 - (a) broadly describe the functions of the SFESC; and

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- (b) specify matters to be taken into account, or not to be taken into account, by the SFESC; and
 - (c) include, or exclude, such matters from the scope of the SFESC as the Minister considers appropriate.
- (4) The Minister is to ensure that the members of the SFESC have –
- (a) the skills and expertise required by the terms of reference for the SFESC; and
 - (b) such other skills and expertise that the Minister considers relevant to the terms of reference for the SFESC.
- (5) Schedule 1 has effect in respect of the members of the SFESC.

18. Other committees

- (1) The TFES Commissioner may establish such other committees as the TFES Commissioner considers appropriate.
- (2) In the instrument establishing a committee under subsection (1), the TFES Commissioner is to specify –
 - (a) the purpose of the committee; and
 - (b) the terms of reference for the committee.
- (3) If requested to do so by the Minister, the TFES Commissioner is to provide the Minister with a

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copy of an instrument that establishes a committee under this section.

Consultation Draft

PART 3 – FUNCTIONS OF TFES AND OTHER PERSONS

Division 1 – General functions of TFES

19. Application of Part

For the avoidance of doubt, the functions specified in this Part in respect of a person are in addition to, and do not derogate from –

- (a) any other functions that have been determined by the TFES Commissioner in accordance with section 15 in respect of the person; or
- (b) any prescribed functions that apply in respect of the person; or
- (c) any relevant functions that have been specified in respect of the person under any other Act.

20. Powers of entry of TFES

- (1) The TFES may enter premises for the purposes of performing emergency management operations in respect of an emergency event, or potential emergency event, on the premises or in the vicinity of the premises.
- (2) An authorised member may –
 - (a) enter premises for the purposes of determining whether this Act is being, or

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- has been, complied with in respect of the premises; and
- (b) when entering such premises, take onto the premises such persons, and such equipment, as the member considers necessary to effect the purpose for which the member has entered the premises.
- (3) Before entering premises under this Act, an authorised member must produce identification, in an approved form, except where –
- (a) the premises are a public place within the meaning of the *Police Offences Act 1935*; or
- (b) the member has reasonable cause to believe that an emergency event is occurring on the premises; or
- (c) the member is dressed in an approved uniform for the TFES.
- (4) An authorised member who enters premises under this Act may make recommendations to the TFES Commissioner, in respect of the premises, in order to –
- (a) prevent, or minimise the risk of, an emergency event or potential emergency event; or
- (b) protect life and property.
- (5) After receiving recommendations under subsection (4) in respect of premises and if the

TFES Commissioner considers it in the public interest to do so, the TFES Commissioner may give an order to the owner or occupier of the premises specifying –

- (a) the recommendations of the authorised member; and
- (b) the steps to be taken by the owner or occupier, in respect of the premises, in respect of the recommendations.

21. TFES may regulate traffic

An authorised member may direct, or restrict, traffic if the member believes that it is necessary, or reasonable, due to an emergency event, or potential emergency event, in the area.

22. Powers of responsible officers

(1) In this section –

responsible officer includes –

- (a) a TFES officer; and
- (b) in the case of a State forest, an employee of the Forestry corporation, within the meaning of the *Forest Management Act 2013*; and
- (c) in the case of any other protected area, a person authorised by the Director, within the meaning of

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Part 3 – Functions of TFES and Other Persons

the *Nature Conservation Act 2002*, as a responsible officer for the area.

- (2) A responsible officer may order an occupier of premises to take, or assist another person to take, such steps as are specified in the order in respect of an emergency event on the premises if the responsible officer believes that –
- (a) the emergency event constitutes a danger to the premises or neighbouring premises; or
 - (b) the emergency event, if it is not promptly managed or controlled, is likely to constitute a danger to the premises or neighbouring premises.
- (3) A person who is given an order under subsection (2) must comply with the order.

Penalty: Fine not exceeding 26 penalty units

- (4) It is a defence in proceedings for an offence under subsection (3) if the defendant establishes that –
- (a) the defendant took all reasonable steps to comply with the order; or
 - (b) it was reasonable in the circumstances that the defendant did not comply with the order; or
 - (c) the failure to comply with an order under subsection (2) in respect of premises was

a result of the defendant complying with the express directions given, to the defendant, by the owner or occupier of the premises.

- (5) For the avoidance of doubt, a person is not liable in respect of action, taken by the person in order to comply with an order under subsection (2), if the action is taken in respect of premises in a manner that is not contrary to the express directions given to the person by the owner or occupier of the premises.

23. TFES may take certain actions

- (1) An authorised member may take a prescribed action, or commence a prescribed process if, in the opinion of the member, the premises –
- (a) are in such a condition as to constitute a fire danger; or
 - (b) if no action were taken in respect of the premises, would become a fire danger.
- (2) The TFES Commissioner may, in the scale of charges, fix charges in respect of a prescribed action, or a prescribed process, that may be taken under subsection (1).

Division 2 – Functions of specific persons

24. Police officers at emergency events

- (1) In this section –

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Part 3 – Functions of TFES and Other Persons

appropriate TFES member, in relation to an emergency event, or potential emergency event, means the member of the TFES who –

- (a) is at the location of the emergency event; and
 - (b) is in charge of the emergency management operations at that location.
- (2) A police officer who is present at an emergency event, or at the location of a potential emergency event –
- (a) is to provide such assistance, to the TFES, as is requested by the appropriate TFES member; and
 - (b) may close, or regulate the use of, any public street in the vicinity of the event; and
 - (c) may enforce compliance with orders and directions of the appropriate TFES member in respect of the event; and
 - (d) may order a person to leave the vicinity of the event, if the person –
 - (i) interferes with emergency management operations in respect of the event; or
 - (ii) is not a member of the TFES; and

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- (e) may remove the person from the vicinity of the event, using such force as the police officer considers reasonable in the circumstances, if the person fails to comply with an order given to the person under paragraph (d).

25. Police officer may arrest without warrant in certain cases

A police officer may arrest a person without a warrant if the police officer believes, on reasonable grounds, that the person has committed, or is committing or is about to commit, a prescribed offence under this Act.

26. TFES Commissioner may authorise certain services

- (1) The TFES Commissioner may authorise –
 - (a) a TFES Division to provide services other than emergency management operations; and
 - (b) the use of the equipment of the TFES for services other than emergency management operations; and
 - (c) the hiring out, lending or otherwise making available of the equipment of the TFES for use outside of the TFES.
- (2) The TFES Commissioner may, in the scale of charges, fix charges in respect of the use, hiring out, lending or making available of equipment under subsection (1).

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- (3) If a member of the TFES is providing services authorised under subsection (1), the member is taken to be engaged, while performing those services, in fire-fighting operations for the purposes of –
- (a) the *Workers Rehabilitation and Compensation Act 1988*; and
 - (b) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

27. TFES Commissioner may install fire safety systems in public places

- (1) In this section –

public place includes –

- (a) a public place within the meaning of the *Police Offences Act 1935*; and
 - (b) such other premises, or place, as is prescribed for the purposes of this definition.
- (2) The TFES Commissioner may install and maintain such fire safety systems, in a public place, as the TFES Commissioner thinks necessary for the protection of life and property from fire.
- (3) Before installing a fire safety system in a public place under this section, the TFES Commissioner –

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- (a) is to consult with the Director, Environment Protection Authority appointed under section 18 of the *Environmental Management and Pollution Control Act 1994*; and
 - (b) may notify the authority which has management of the public place that the TFES Commissioner intends to install the system; and
 - (c) is to have regard to any reasonable objections made by or on behalf of the authority in respect of the installation of the system.
- (4) The decision of the TFES Commissioner in respect of the installation or location of a fire safety system installed under this section is final and is not subject to review or appeal by any other person.

28. TFES Commissioner may take action in respect of certain substances

- (1) In this section –

dangerous action, in respect of a substance, means the storage, transportation or use of the substance in such a place, and under such conditions, as to constitute a danger to life or property;

flammable substance has the same meaning as in the GHS;

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GHS has the same meaning as in the *Work Health and Safety Act 2012*;

hazardous substance has the same meaning as in the GHS.

- (2) If the TFES Commissioner is satisfied that a person is taking, or has taken or is about to take, a dangerous action in respect of a hazardous substance, or flammable substance, the TFES Commissioner may, by written notice, to the person –
- (a) require the person to take such measures as may be necessary to ensure the safe storage, transportation or use of the substance; or
 - (b) prohibit the storage, transportation or use of the substance by the person.
- (3) A person, given a notice under subsection (2) in respect of a hazardous substance, or flammable substance, must comply with the notice.

Penalty: Fine not exceeding 26 penalty units.

- (4) It is a defence in proceedings for an offence under subsection (3), in respect of a substance, if the defendant establishes that –
- (a) compliance with the notice under subsection (2) would have breached the *Work Health and Safety Act 2012*, the *Explosives Act 2012* or the *Dangerous Goods (Road and Rail Transport) Act 2010*; and

(b) the defendant took all reasonable steps to comply with the provisions of those Acts.

(5) For the avoidance of doubt, this section is in addition to, and does not derogate from, the *Work Health and Safety Act 2012*, the *Explosives Act 2012* and the *Dangerous Goods (Road and Rail Transport) Act 2010*.

29. Electricity entities taken to be occupier in respect of certain premises

(1) In this section –

electricity entity has the same meaning as in the *Electricity Wayleaves and Easements Act 2000*.

(2) For the purposes of this Act –

(a) the appropriate electricity entity is taken to be the occupier of such part of premises that is subject to a wayleave within the meaning of the *Electricity Wayleaves and Easements Act 2000*, including an easement created under section 10 of that Act; and

(b) that electricity entity may, if the entity thinks it necessary for the purpose of protecting any transmission lines, poles or other equipment or works of that electricity entity, cause any vegetation or flammable material on the premises to be burned off or removed.

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- (3) Nothing in subsection (2) removes an obligation imposed on an electricity entity under this Act or any other Act.

Division 3 – Fire permit periods

30. Fire permit periods

- (1) The TFES Commissioner may declare –
- (a) a day, or two or more consecutive days, specified in the declaration to be a fire permit period in all, or a specified part, of the State; or
 - (b) that a fire permit period has commenced throughout the State or in any specified parts of the State; and
 - (c) that a fire permit period has ended.
- (2) The TFES Commissioner is to ensure that each declaration made under subsection (1) is made available to the public, as soon as practicable –
- (a) in the prescribed manner; and
 - (b) in such other manner as the TFES Commissioner considers reasonable.

31. Powers of TFES Commissioner during fire permit periods

- (1) During a fire permit period, the TFES Commissioner may, in respect of such part of the State as the fire permit period applies –

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- (a) take all necessary steps to reduce the risk of fire including, but not limited to –
- (i) requisitioning the services of persons, animals, plant, machines, engines, articles, appliances or materials; and
 - (ii) prohibiting, or restricting, the use of any specified plant, machine, engine, article, appliance or material that the TFES Commissioner considers to be likely to cause a risk of fire; and
- (b) make such orders, give such notices and directions and take such other actions as the TFES Commissioner considers reasonable.
- (2) An order, notice or direction made or given under subsection (1)(b) –
- (a) may be made or given so as to apply in respect of –
 - (i) specified persons, fires, premises, animals, plant, machines, engines, articles, appliances or materials; or
 - (ii) specified classes of persons, fires, premises, animals, plant, machines, engines, articles, appliances or materials –

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as is specified in the order, notice or direction; and

(b) may be made or given so as to apply in respect of all, or any specified part, of the State; and

(c) may exempt from the operation of all or any of the provisions of the order, notice or direction –

(i) specified persons, fires, premises, animals, plant, machines, engines, articles, appliances or materials; or

(ii) specified classes of persons, fires, premises, animals, plant, machines, engines, articles, appliances or materials; and

(d) may contain such other provisions as the TFES Commissioner considers to be necessary or reasonable for the purposes of the order, notice or direction.

(3) An order, notice or direction made or given under subsection (1) may be made or given in the prescribed manner.

(4) A person must comply with an order, notice or direction made or given under this section.

Penalty: Fine not exceeding 26 penalty units.

32. Restrictions on lighting fires during fire permit periods

- (1) During a fire permit period, a person must not light or cause to be lit, or maintain or use, a fire –
- (a) in the open air on any premises for any purpose; or
 - (b) for a prescribed purpose; or
 - (c) in a protected area.

Penalty: Fine not exceeding 26 penalty units.

- (2) Subsection (1) does not apply to a person lighting, maintaining or using a fire if –
- (a) the person is acting in accordance with this Act; or
 - (b) the person –
 - (i) takes all reasonable precautions to prevent the fire from spreading to adjoining land; and
 - (ii) observes such precautions as are specified by a TFES officer; or
 - (c) the fire is lit, maintained and used under the authority of, and in accordance with, the conditions of a valid fire permit that is in force at the relevant time; or
 - (d) the fire is lit in a protected area in a place that has been specially designated for

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fires by the person with the responsibility
for the management of the area.

33. Duties of occupiers of premises during fire permit periods

- (1) If a fire is burning on any premises during a fire permit period, the occupier of the premises must, immediately after becoming aware of the fire –
 - (a) take all reasonable steps to extinguish the fire or to prevent it from spreading; and
 - (b) report the fire to the TFES, on the telephone number used in emergency situations, to a police officer or to any member of the TFES.

Penalty: Fine not exceeding 26 penalty units.

- (2) Subsection (1) does not apply to –
 - (a) a fire lit under the authority of, and in accordance with, a fire permit; or
 - (b) a fire to which section 62 applies if that section is complied with in relation to the fire.

34. Fire permits

- (1) The TFES Commissioner may appoint a person, in the prescribed manner, as a fire permit officer.
- (2) A fire permit officer may issue a fire permit, in the prescribed manner, in respect of the area for

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which the officer was appointed as a fire permit officer.

- (3) A person who lights and controls a fire in accordance with the conditions of a fire permit issued to that person –
- (a) is exempt from the *Environmental Management and Pollution Control Act 1994* in respect of that fire; and
 - (b) is not liable for any loss, injury or damage caused by that fire unless it is proven that the person acted maliciously or recklessly in respect of the fire.

Division 4 – Total fire bans

35. Days of total fire ban

- (1) The TFES Commissioner may declare –
- (a) a day, or two or more consecutive days, specified in the declaration to be a day of total fire ban in all, or a specified part, of the State; or
 - (b) that a day of total fire ban has commenced throughout the State or in any specified parts of the State; or
 - (c) that the declaration of a day of total fire ban has been revoked.
- (2) A declaration of a day of total fire ban under subsection (1) may do either or both of the following:

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- (a) specify fires, or specified classes of fires, that are exempt from the operation of the declaration;
 - (b) prohibit or restrict the use of specified machines or apparatus, or specified classes of machines or apparatus, in the open air on that day.
- (3) The TFES Commissioner is to ensure that each declaration made under subsection (1) is made available to the public, as soon as practicable –
- (a) in the prescribed manner; and
 - (b) in such other manner as the TFES Commissioner considers reasonable.

36. Effect of declaration of day of total fire ban

- (1) Subject to subsection (2), if a day of total fire ban is declared under section 35 –
- (a) all fire permits in force in respect of the day of total fire ban, in relation to premises in any part of the State to which the declaration relates, are revoked; and
 - (b) no fire permits are to be issued in respect of the day of total fire ban in relation to premises in any part of the State to which the declaration relates.
- (2) Subsection (1) does not apply to –
- (a) a fire exempt from the day of total fire ban by virtue of section 35(2)(a); or

- (b) a fire permit in so far as it authorises the lighting of a fire so exempt from the day of total fire ban.

37. Power of TFES on days of total fire ban

If a TFES officer finds a fire burning on a day of total fire ban that applies in the part of the State where the fire is located, the officer may, for the purpose of extinguishing the fire or preventing it from spreading –

- (a) perform such functions, or take such actions, as the officer thinks necessary or reasonable; and
- (b) make or give, either orally or in writing, any order, notice or direction, that may be made or given by the TFES Commissioner, under this Act, in the circumstances.

38. Power to enter neighbouring lands to extinguish fires

- (1) A person who finds a fire burning within 1.5 kilometres of any premises of which the person is the owner or occupier may enter onto the premises on which the fire is burning, with such persons and equipment, and do all such acts, as may reasonably be necessary for extinguishing the fire or preventing it from spreading, if –

- (a) the fire –

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- (i) is burning on a day of total fire ban in the part of the State where those premises are situated; and
 - (ii) is not exempt from the ban; or
- (b) the person believes, on reasonable grounds, that the fire has been lit or is burning in contravention of this Act.
- (2) A person must not enter onto premises under the authority of subsection (1) on a day other than a day of total fire ban, which applies in the part of the State where the premises are situated, unless the person first notifies the TFES of the person's intention to do so, if it is reasonably practicable for that notice to be given.

Penalty: Fine not exceeding 26 penalty units.
- (3) On receipt of a notice given by a person under subsection (2), a member of the TFES may give to the person such directions as the member considers desirable to –
 - (a) prevent unnecessary damage; and
 - (b) properly extinguish the fire; and
 - (c) prevent the fire from spreading.

39. Prohibition on fires, &c., on days of total fire ban

Subject to this Division, a person must comply with a declaration of a day of total fire ban if the person is in the area of the State in respect of which the declaration is in force.

Penalty: Fine not exceeding 200 penalty units.

40. Duties of occupiers of premises during days of total fire ban

- (1) If a fire occurs on premises on a day on which a day of total fire ban is in force in respect of the area of the State in which the premises are located, the occupier of the premises must, immediately after becoming aware of the existence of the fire –
- (a) take all reasonable steps to extinguish the fire or to prevent it from spreading; and
 - (b) report the fire to the TFES, on the telephone number used in emergency situations, to a police officer or to any member of the TFES.

Penalty: Fine not exceeding 50 penalty units.

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that the defendant did not know, and could not reasonably have been expected to know, that a day of total fire ban had been declared.

Division 5 – Firebreaks

41. TFES Commissioner or council may form firebreaks

- (1) In this section –

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formation of a firebreak includes, but is not limited to, the clearing of the means of access to a firebreak that has been formed or is to be formed.

- (2) The TFES Commissioner may cause the formation of such firebreaks as the TFES Commissioner considers necessary or reasonable –
 - (a) to arrest the spread of fires that may occur in any part of the State; or
 - (b) to facilitate the suppression of any such fires.
- (3) A council may, in its municipal area, cause the formation of such firebreaks as it considers necessary or reasonable to arrest the spread, or to facilitate the suppression, of fires.
- (4) Before causing the formation of a firebreak under this section on premises, the TFES Commissioner or council may serve a notice on the occupier of the premises that requires the occupier to form a firebreak on the premises in such manner, and within such time, as is specified in the notice.
- (5) If an occupier of premises refuses to comply with a notice served on the occupier under subsection (4) in respect of those premises, the person who served the notice –
 - (a) may enter onto the premises and do such things as are necessary to form the firebreak; and

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- (b) in taking an action under paragraph (a), may not destroy, injure or remove any living trees that –
- (i) are required for the purposes of shade, shelter or a windbreak; or
 - (ii) are required for the production of food for human beings or animals; or
 - (iii) have been grown for the commercial value of the timber they contain.
- (6) The TFES Commissioner may, in the scale of charges, fix charges in respect of an action that may be taken by the TFES under subsection (5).
- (7) A person who serves a notice under subsection (4) in respect of premises may –
- (a) recover all, or part, of a charge that is payable in respect of an action taken by the person under subsection (5) in respect of the premises; or
 - (b) waive all or part of a charge so payable.

42. Firebreaks on Crown land

- (1) Subject to this section, a person who occupies premises that are adjacent to Crown land may take, or cause to be taken, such steps as are necessary to form a firebreak on the Crown land –

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- (a) that is designed to arrest fires that may spread onto the premises; or
 - (b) to otherwise facilitate the suppression of fires that are likely to spread onto the premises.
- (2) Subsection (1) does not authorise the entry onto, or the formation of a firebreak on, Crown land –
 - (a) if the Minister administering the *Crown Lands Act 1976* has not given consent to the formation of the firebreak on the Crown land; or
 - (b) that is occupied or being used or managed by, or on behalf of, a department or instrumentality of the State; or
 - (c) that is subject to an estate, interest or right under which the holder of the estate, interest or right has the right –
 - (i) to occupy or use the Crown land; or
 - (ii) to carry out any operations on the Crown land; or
 - (iii) to take any products of the materials in the Crown land, including materials beneath the surface.
- (3) For the purpose of taking such steps as are referred to in subsection (1), a person may enter

onto Crown land with such vehicles and other equipment as may be required for the purpose.

Division 6 – Bushfire hazard documents

43. Interpretation of Division

In this Division –

bushfire hazard document, in respect of land, means a document required under the *Land Use Planning and Approvals Act 1993* to be prepared, approved, issued or otherwise provided by an accredited person under that Act.

44. Accreditation required to prepare certain documents under *Land Use Planning and Approvals Act 1993*

- (1) For the purposes of the *Land Use Planning and Approvals Act 1993*, the following persons are prescribed as accredited persons:
 - (a) an authorised member;
 - (b) a person holding accreditation under this Part.
- (2) Except in accordance with the *Land Use Planning and Approvals Act 1993*, a person must not prepare a bushfire hazard document if the person is not prescribed under this section as an accredited person.

Penalty: Fine not exceeding 26 penalty units.

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45. Accreditation to prepare bushfire hazard documents

- (1) The TFES Commissioner may issue accreditation to a person, in the prescribed manner, which authorises the person to prepare, approve, issue or otherwise provide bushfire hazard documents.
- (2) A person granted accreditation under this Division must comply with the conditions of, or restrictions on, the accreditation.

Penalty: Fine not exceeding 26 penalty units.

- (3) If, for any period, a person accredited under this section is not covered by the type, and level, of prescribed insurance for accredited persons, the person's accreditation under this section is suspended for that period.

PART 4 – TFES FUNDING

Division 1 – General

46. Funding of TFES

- (1) The Treasurer is to ensure that the following amounts are only to be used for the purposes of the TFES, its functions under this Act and for any other prescribed function or purpose relating to emergency management:
 - (a) any amount paid in respect of the TFES under this Act including, but not limited to, the charges and levies paid under this Act or any other Act;
 - (b) any debts due and owing to the TFES under this Act or any other Act;
 - (c) any other prescribed amounts.
- (2) The annual report for the Department, prepared in respect of a financial year under the *State Service Act 2000*, is to include, in the manner determined by the Treasurer, a reconciliation of the finances of the TFES for that financial year including –
 - (a) the amounts specified in subsection (1); and
 - (b) the functions, or purposes, for which those amounts have been applied.
- (3) If requested to do so by the Treasurer, the accountable authority of the Department, within

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the meaning of the *Financial Management Act 2016*, is to provide such information in respect of the finances of the TFES in such manner as the Treasurer specifies in the request.

Division 2 – TFES – vehicle levy

47. TFES – vehicle levy

(1) In this section –

CPI figure for Hobart means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

eligible motor vehicle means a motor vehicle, within the meaning of the *Vehicle and Traffic Act 1999*, that is not an exempt motor vehicle;

exempt motor vehicle means a vehicle that is exempt from the requirement to pay the fee for registration that is prescribed, under the *Vehicle and Traffic Act 1999*, for that vehicle;

Registrar has the same meaning as in the *Vehicle and Traffic Act 1999*;

TFES – vehicle levy means the levy chargeable under subsection (2) in respect of an eligible motor vehicle.

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- (2) The Registrar is to charge the levy, calculated under this section, in respect of each eligible motor vehicle registered in the relevant financial year.
- (3) The TFES – vehicle levy chargeable in respect of the 2024-25 financial year, and for each subsequent financial year, is to be calculated in accordance with the following formula and rounded off in accordance with subsection (4):

$$A = B \times \frac{C}{D}$$

where –

A is the value in dollars of the levy for the relevant financial year;

B is \$21;

C is the value of the CPI figure for Hobart for the December quarter immediately preceding the financial year in which the levy is chargeable;

D is the value of the CPI figure for Hobart for the December quarter 2022.

- (4) If the amount calculated in accordance with the formula specified in subsection (3) results in an amount which is dollars and a number of cents, the amount is to be rounded to the nearest whole dollar.
- (5) The Registrar –

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- (a) is to provide the TFES Commissioner with the TFES – vehicle levy, collected by the Registrar, in the prescribed manner and at the prescribed intervals; and
- (b) by 1 February in any calendar year, is to provide the TFES Commissioner with –
 - (i) an estimate of the TFES – vehicle levy likely to be payable in the financial year commencing on 1 July in that calendar year; and
 - (ii) such other information in respect of the TFES – vehicle levy as the TFES Commissioner requests.
- (6) The regulations may prescribe –
 - (a) the manner in which the TFES – vehicle levy is to be collected; and
 - (b) a concessional amount of TFES – vehicle levy payable under this section; and
 - (c) the circumstances in which the concessional amount is so payable.

Division 3 – TFES – property levy

48. Interpretation of Division

In this Division –

AAV, in respect of an eligible property, means the assessed annual value, as defined in

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the *Valuation of Land Act 2001*, for the eligible property;

AAV rate, in relation to a land classification in a financial year, means the rate determined by the Treasurer under section 50 in respect of the land classification for the financial year;

eligible property means –

- (a) all areas of land other than exempt property; and
- (b) exempt property if all, or any part, of the exempt property is let, or sublet, to a private tenant;

exempt property means land, or classes of land, prescribed as exempt property for the purposes of this Division;

land classification means the prescribed classes, or categories, of land;

private tenant, in respect of land, means a tenant other than –

- (a) the Crown in right of the Commonwealth, or in right of any State or Territory; or
- (b) a prescribed entity or person;

TFES – property levy means the levy chargeable under section 49(1) in respect of an eligible property.

49. TFES – property levy

- (1) A council is to charge the levy, calculated under this section, in respect of each eligible property in the municipal area of the council for a financial year.
- (2) The TFES – property levy chargeable under this section in respect of an eligible property in the municipal area of the council for a financial year (the *relevant financial year*) is to be calculated in accordance with the following formula and rounded off in accordance with subsection (3):

$$A = B \times C$$

where –

A is the value in dollars of the levy for the eligible property in the relevant financial year;

B is the most recent AAV, in respect of the eligible property, as last provided by the Valuer-General before the commencement of the relevant financial year;

C is the AAV rate determined, for the relevant financial year, in respect of the land classification that applies in respect of the eligible property.

- (3) If the amount calculated in accordance with the formula specified in subsection (2) results in an amount which is dollars and a number of cents,

the amount is to be rounded to the nearest whole dollar.

50. Treasurer to determine AAV rates

- (1) Before 31 May in any year, the Treasurer is to publish in the *Gazette* the AAV rate determined in respect of each land classification for the financial year starting on 1 July in that year.
- (2) A rate determined under subsection (1) in respect of a land classification for a financial year –
 - (a) is to be determined by the Treasurer after taking into account such matters, and factors, as the Treasurer considers relevant; and
 - (b) may be determined differently based on such factors as the Treasurer considers appropriate in the circumstances.
- (3) Before making a determination under subsection (1) in respect of a financial year –
 - (a) the Valuer-General, within the meaning of the *Valuation of Land Act 2001*, is to provide the Treasurer with the prescribed information, or such other information as the Treasurer requires to make a determination under this section for the financial year; and
 - (b) the Treasurer may require such other persons to provide information, as the

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Treasurer requires to make a determination under this section for the financial year.

- (4) If the Treasurer does not publish an AAV rate for a financial year before 31 May as required under subsection (1), the AAV rate that applies for that financial year is the AAV rate that applied in the immediately preceding financial year.

51. Administration of TFES – property levy

- (1) In each financial year, a council –
- (a) is to provide the TFES Commissioner with the TFES – property levy, collected by the council, in the prescribed manner and at the prescribed intervals; and
 - (b) may retain such amount of a TFES – property levy, collected by the council in that financial year, as is prescribed.
- (2) A council must provide the TFES Commissioner with such information, in respect of the TFES – property levy payable for the relevant municipal area, as is prescribed.
- (3) The regulations may prescribe –
- (a) the method for reconciling the TFES – property levy payable by the council in any financial year; and
 - (b) the period during which such a reconciliation may occur; and

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- (c) information that may be required to be provided, or required to be retained, in respect of the TFES – property levy or a reconciliation of the levy; and
- (d) a concessional amount of TFES – property levy payable under this Division; and
- (e) the circumstances in which the concessional amount is so payable.

Consultation Draft

PART 5 – OFFENCES

Division 1 – Offences

52. TFES may request name and address

- (1) An authorised member may request that a person give the person’s full name and residential address if the authorised member believes, on reasonable grounds, that the person has committed an offence against this Act.
- (2) A person must comply with a request made of the person under subsection (1).

Penalty: Fine not exceeding 26 penalty units.

53. TFES may request assistance

- (1) An authorised member may request that a person provide assistance –
 - (a) to the authorised member or the TFES;
or
 - (b) as part of emergency management operations.
- (2) A person must not fail, without reasonable excuse, to provide assistance that has been requested from the person under subsection (1).

Penalty: Fine not exceeding 26 penalty units.

- (3) A person must not, either directly or indirectly, prevent, hinder, impede or obstruct another person from providing assistance that has been

requested from the other person under subsection (1).

Penalty: Fine not exceeding 26 penalty units.

54. Failure to follow directions

A person must not fail, without reasonable excuse, to comply with an order, notice, direction or requirement that is given to the person in accordance with this Act.

Penalty: Fine not exceeding 26 penalty units.

55. Obstruction of members of TFES

A person must not obstruct or hinder, or interfere with, a member of the TFES while the member is performing a function under this Act.

Penalty: Fine not exceeding 26 penalty units.

56. False or misleading information or actions

- (1) A person must not knowingly provide false or misleading information, under this Act, to a member of the TFES.

Penalty: Fine not exceeding 26 penalty units.

- (2) A person must not trigger an alarm for an emergency event, or report an alleged emergency event, under false pretences.

Penalty: Fine not exceeding 26 penalty units.

57. Offences relating to TFES equipment

(1) A person must not injure, damage or interfere with –

- (a) any building, premises or equipment of the TFES; or
- (b) any building, premises or equipment being used by, or on behalf of, the TFES.

Penalty: Fine not exceeding 26 penalty units.

(2) A person must not take any action in respect of a fire hydrant that would result in –

- (a) the covering up, or closing, of the hydrant so as to obscure or hide the position of the hydrant; or
- (b) damage or injury to the hydrant; or
- (c) the obliteration, or removal, of any mark used to indicate the position of the hydrant.

Penalty: Fine not exceeding 26 penalty units.

(3) A person must not destroy, damage or interfere with any works executed or carried out by the TFES Commissioner, the TFES or any other person under, or for the purposes of, this Act.

Penalty: Fine not exceeding 26 penalty units.

(4) A person must not drive a vehicle –

- (a) over a fire hose or other equipment of the TFES; or
- (b) so as to interfere with, or obstruct, the operations of the TFES or the use of equipment of the TFES.

Penalty: Fine not exceeding 26 penalty units.

- (5) A person must return any equipment of the TFES that is in the person's possession, or control, if the person is requested to do so by the TFES Commissioner.

Penalty: Fine not exceeding 26 penalty units.

58. Offences relating to fire safety systems

- (1) Unless otherwise approved in writing, a person must not tamper, or interfere, with a fire safety system or systems for the detection of other emergency events.

Penalty: Fine not exceeding 26 penalty units.

- (2) A person must not install, maintain or repair fire safety systems, or other equipment for fire protection, other than in accordance with this Act.

Penalty: Fine not exceeding 26 penalty units.

59. Offences by owners or occupiers of premises

- (1) In this section –

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owner, in relation to premises, includes each person having possession, control or occupation of the property.

- (2) An owner of one of the following premises must comply with a request of an authorised officer to provide information:
- (a) premises that have been destroyed, or damaged, by an emergency event;
 - (b) premises in, or at which, an emergency event occurred;
 - (c) premises in, on or attached to –
 - (i) any structure in which an emergency event occurred; or
 - (ii) premises on which an emergency event occurred.

Penalty: Fine not exceeding 26 penalty units.

- (3) If an owner or occupier of premises becomes aware of a fire on the premises, the owner, or occupier, of the premises must not fail to take all reasonable measures to prevent the fire from escaping from the premises.

Penalty: Fine not exceeding 26 penalty units.

60. Offences relating to fires

- (1) A person must not take any of the following actions if the action endangers any premises:

- (a) ignite any matter or material;
- (b) use or carry any matter, or material, that is alight.

Penalty: Fine not exceeding 26 penalty units.

(2) A person must not –

- (a) light a fire, or cause a fire to be lit, in the open air; or
- (b) leave a fire in the open air –
 - (i) unextinguished; or
 - (ii) unsupervised by a person who is aged at least 14 years or older.

Penalty: Fine not exceeding 26 penalty units.

(3) Subsection (2) does not apply to person, in respect of a fire, if the person has taken all prescribed precautions and all other reasonable precautions to prevent the fire from spreading.

61. Offences relating to fire permit periods

- (1) A person must not light a fire or cause a fire to be lit, during a fire permit period, on premises –
 - (a) without the authorisation of the owner or occupier of the premises; or
 - (b) if all or part of the premises are unoccupied Crown land, in accordance with the conditions of a fire permit granted to the person under this Act.

Penalty: Fine not exceeding 26 penalty units.

- (2) A person must not, during a fire permit period, cause there to be any ignited matter, or material, within 6 metres of prescribed material, prescribed vegetation or prescribed items.

Penalty: Fine not exceeding 26 penalty units.

- (3) A person must not, during a fire permit period or a day of total fire ban, drop, throw down or leave, in an open space, any match, tobacco, cigar or cigarette, if it has been lit and has not been extinguished.

Penalty: Fine not exceeding 26 penalty units.

62. Offences relating to specified fires

- (1) In this section –

utility fire means a fire, other than a fire within a fully enclosed building –

- (a) for cooking or warmth; or
- (b) for the burning of a carcass; or
- (c) for a prescribed purpose.

- (2) A person must not light a utility fire –

- (a) in, or on, peat, humus or marram grass; or
- (b) within 3 metres of any stump, log or standing tree.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not leave a utility fire –
- (a) unextinguished; or
 - (b) unsupervised by a person who is aged at least 14 years or older.

Penalty: Fine not exceeding 50 penalty units.

- (4) During a fire permit period a person must not light a utility fire unless all flammable material has been moved to a place that is at least 3 metres from the site of the fire.

Penalty: Fine not exceeding 50 penalty units.

63. Groups for salvage or private emergency management operations must be approved

- (1) A person must not, without the approval of the TFES Commissioner, constitute or maintain a group of people for the purpose of –
- (a) salvaging property at emergency events; or
 - (b) performing emergency management operations, other than on premises –
 - (i) owned, or occupied, by the person; or
 - (ii) where the person is employed, or engaged, to work.

Penalty: Fine not exceeding 26 penalty units.

- (2) For the avoidance of doubt, subsection (1) does not apply in respect of a group of persons if the group of persons is acting under the authority of the *Emergency Management Act 2006*.

Division 2 – Offence proceedings generally

64. TFES may bring proceedings

For the avoidance of doubt, the TFES may commence proceedings, and participate in proceedings, in its own name.

65. Additional penalties under this Act

In addition to any other penalty or sanction imposed in respect of an offence under this Act, the court determining proceedings for the offence may do one or more of the following:

- (a) impose an additional fine or term of imprisonment of –
- (i) if the offence occurred on a day of total fire ban – a fine not exceeding 100 penalty units or a term of imprisonment of 12 months, or both; or
 - (ii) if the offence occurred during a fire permit period – a fine not exceeding 50 penalty units or a term of imprisonment of 6 months, or both; or

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- (iii) if the defendant has a previous conviction in respect of the same offence – impose a penalty for the subsequent offence that is not more than double the fine or double the term of imprisonment, or both;
 - (b) order the defendant, in respect of the offence, to pay an amount, in accordance with the scale of charges, for any emergency management operations performed by the TFES as a result of –
 - (i) the offence; or
 - (ii) the defendant’s actions that made up one or more elements of the offence.

66. Infringement notices

- (1) In this section –

infringement offence means an offence under this Act that is prescribed to be an infringement offence.

- (2) The TFES Commissioner may issue and serve an infringement notice on a person if the TFES Commissioner reasonably believes that the person has committed an infringement offence.
- (3) An infringement notice may not be served on an individual who has not attained the age of 14 years.

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- (4) An infringement notice –
 - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to 4 or more offences.
- (5) The regulations may prescribe –
 - (a) for infringement offences, the penalties payable under infringement notices; and
 - (b) different penalties for bodies corporate and individuals.

67. Offences by employers

- (1) If an employee or agent commits an offence under this Act, the employer of the employee, or the principal of the agent, is taken to have committed the same offence.
- (2) Despite subsection (1), it is a defence in proceedings against an employer, or principal, for an offence taken to have been committed under that subsection, if the employer or principal proves that –
 - (a) the employer, or principal, did not know, and could not reasonably be expected to know, that the employee or agent was committing the offence; or
 - (b) the employer or principal took all reasonable precautions, and exercised all

due diligence, to prevent the commission of the offence.

- (3) An employer or principal may be proceeded against and convicted for an offence pursuant to this section whether or not the relevant employee, or relevant agent, has been proceeded against or convicted for that offence.

68. Offences by employees or agents

- (1) It is not a defence in proceedings for an offence under this Act that the defendant was, at the time of the commission of the offence, an employee or agent of another person and was acting for, or on behalf of, the other person.
- (2) Despite subsection (1), it is a defence in proceedings for an offence under this Act if the defendant establishes that –
- (a) at the time of the commission of the offence, the defendant was acting under the direction or supervision of –
- (i) the owner of, or the person in charge of, the premises where the offence occurred; or
- (ii) the person who employed, or engaged, the defendant to perform the act that, either directly or indirectly, was the act that constituted the offence; and

- (b) the defendant's actions were a direct result of that direction or supervision; and
- (c) the defendant could not have reasonably known that those actions would constitute an offence under this Act.

69. Offences by bodies corporate

- (1) If a body corporate contravenes, whether by act or omission, a provision of this Act, each person who is a member of the government authority of the body corporate, or who is concerned in the management of the body corporate, is taken to have contravened the same provision if the person knowingly or negligently authorised or permitted the contravention.
- (2) A person may be proceeded against for, and convicted of, an offence pursuant to this section whether or not the body corporate, or any other relevant person, has been proceeded against for, or convicted of, the offence.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed under this Act by the body corporate.

Division 3 – Evidentiary provisions, defences and appeals

70. Orders, notices, &c., made under this Act

- (1) An order or notice made, or direction given, by the TFES Commissioner under this Act, that is

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signed by or on behalf of the TFES Commissioner –

- (a) is admissible in legal proceedings as evidence of the matters specified in the order, notice or direction; and
 - (b) in the absence of evidence to the contrary, is proof of those matters.
- (2) If the TFES Commissioner certifies, in writing, that a specified day was declared to be a day of total fire ban, or that a specified period was declared to be a fire permit period, the certificate is –
- (a) admissible in legal proceedings as evidence of the matters so certified; and
 - (b) in the absence of evidence to the contrary, is proof of those matters.
- (3) If a report, or recommendation, was made to or by the TFES Commissioner in accordance with this Act, a copy of the report or recommendation –
- (a) is admissible in legal proceedings as evidence of the matters specified in the report or recommendation; and
 - (b) in the absence of evidence to the contrary, is proof of –
 - (i) those matters; and

- (ii) the date on which the report or recommendation was made to, or by, the TFES Commissioner.

71. Evidence as to certain other matters

- (1) In this section –

relevant proceedings means proceedings for –

- (a) an offence alleged to have been committed under this Act; or
 - (b) the recovery of any amount, or charge, alleged to be due to the TFES under this Act.
- (2) In proceedings for a relevant proceeding, a statement in the document, commencing the relevant proceedings, in respect of the following matters is, in the absence of evidence to the contrary, proof of those matters:
 - (a) that premises are, or were at a specified time, situated inside or outside of a specified area for the purposes of this Act;
 - (b) that a person is, or was at a specified time, the owner or occupier of premises for the purposes of one or more provisions of this Act;
 - (c) that a person is, or was at a specified time, an agent of the owner or occupier of premises;

- (d) that a person is, or was at a specified time, the person in charge of premises for the purposes of one or more provisions of this Act.

72. Appeals under this Act

- (1) Unless otherwise specified, an appeal or review of a prescribed decision, or prescribed matter, under this Act is to be made to TASCAT.
- (2) The regulations may prescribe such matters as are necessary, or reasonable, to ensure that an appeal or review may occur in respect of this Act.

Consultation Draft

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Division 1 – Fees, charges and debts

73. Charges for services

- (1) The TFES Commissioner may, by notice published in the *Gazette*, fix a scale of charges for the services rendered under this Act.
- (2) For the avoidance of doubt, a scale of charges under subsection (1) may include a charge –
 - (a) for damages to TFES equipment or other TFES assets; or
 - (b) to recover the cost of consumable items if the TFES Commissioner is satisfied that the use of the items –
 - (i) was required due to a fire that was deliberately lit; or
 - (ii) was at the direct request of an owner of premises and the TFES Commissioner is satisfied that the use of the items was not required as part of standard emergency management operations.
- (3) If a person provides services under this Act in respect of which a charge is published under subsection (1), the charge for the service is payable to the TFES, unless otherwise specified in the scale of charges.

- (4) The TFES Commissioner may waive all, or any part, of a charge payable in respect of a service under this Act if the TFES Commissioner considers it reasonable to do so.

74. Charges for actions taken in respect of certain premises

- (1) The TFES Commissioner may recover a charge for a service provided by the TFES, determined in accordance with the scale of charges, from the owner of premises if –
- (a) an abatement notice has been served by a council under section 200 of the *Local Government Act 1993* in respect of the premises; and
 - (b) the services have been provided by the TFES at a fire on that premises; and
 - (c) the abatement notice had not been complied with immediately before the rendering of those services by the TFES at that fire.
- (2) In any proceedings to recover a charge under subsection (1), the relevant court may decline to make an order for the recovery of the charge if the court is satisfied that –
- (a) the person, against whom the proceedings were brought, took all reasonable steps to comply with the relevant abatement notice; or

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- (b) it was reasonable in all the circumstances that the person, against whom the proceedings were brought, did not comply with the abatement notice.

75. Charges for false alarms

- (1) In this section –

automatic, in relation to a fire safety system, means that the system is designed to operate when activated by a device that senses heat, smoke or fire;

false alarm includes –

- (a) the activation of an automatic fire alarm system that is caused by reasons other than fire; or
 - (b) a request for the TFES to attend at premises where there is no reasonable suspicion that a fire is present on the premises.
- (2) The TFES Commissioner may fix a charge for the TFES attending at premises in response to a call arising out of a false alarm.
 - (3) If an authorised member determines that a call is a false alarm, the member must provide a written report, in an approved form, to the TFES Commissioner, if the member is satisfied that the false alarm –
 - (a) has been caused by –

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- (i) a person failing to notify the TFES of testing, or maintenance work, being performed or about to be performed on the automatic fire alarm system that caused the false alarm; or
 - (ii) the owner of the premises, at which the automatic fire alarm system that caused the false alarm is installed, failing to notify the TFES of works being performed on the premises that may result in a false alarm being transmitted by the system; or
- (b) is the result of a person, who has been employed or engaged to monitor the premises, in respect of which the false alarm was made, not inspecting the premises to determine what triggered the alarm; or
- (c) is the third false alarm, transmitted by the same automatic fire alarm system within a period of 60 days, regardless of the reason for the false alarm.

76. Power to use water without charge

- (1) In this section –

regulated entity has the same meaning as in the *Water and Sewerage Industry Act 2008*.

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- (2) The TFES has, at all times, the right –
- (a) to use, free of charge, for the purpose of extinguishing any fire, all reticulated water mains, water hydrants, valves, pipes, and works or water supply vested in, or under the control of, any regulated entity, council or other public body, and all water in any dam, tank or well belonging to any person; and
 - (b) to the reasonable use, free of charge, of any of those reticulated water mains, water hydrants, valves, pipes and works or water supply for the purpose of any drill, demonstration, practice or competition carried out by the TFES.

77. Recovery of debts

- (1) The TFES, or the TFES Commissioner, may recover in a court of competent jurisdiction a debt that is due to the TFES, or TFES Commissioner, under this Act.
- (2) All debts recoverable under this Act are to be applied in, and towards, defraying the expenses of the TFES under this Act or any other Act.

Division 2 – Liabilities and immunities

78. Certain actions taken to be fire-fighting operations

- (1) For the purposes of the following Acts, all actions taken by a member of the TFES under the authority of this Act, including but not

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limited to all emergency management operations, are taken to be actions taken as part of fire-fighting operations:

- (a) the *Workers Rehabilitation and Compensation Act 1988*;
 - (b) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.
- (2) For the avoidance of doubt, administrative actions taken, or maintenance performed, by a member of the TFES for and on behalf of the TFES are taken to be actions taken under the authority of this Act.

79. TFES member not liable in certain circumstances

- (1) A member of the TFES does not incur any civil or criminal liability in respect of any act done, or omitted to be done, by the member in good faith –
- (a) in performing emergency management operations; or
 - (b) in performing, or purportedly performing, a function imposed under, or conferred by, this Act; or
 - (c) in the administration or execution, or the purported administration or execution, of this Act.

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- (2) A member of the TFES is not liable in respect of an action taken, or not taken, by the member under this Act or any other Act if –
- (a) the member –
 - (i) fails to perform properly a function under this Act, including a function conferred on, or delegated to, the member under this Act; or
 - (ii) contravenes a provision of this Act; and
 - (b) no penalty is specified, under this Act or any other Act, for the failure to perform the function or for a contravention of this Act.
- (3) Nothing in this section affects the application of the *State Service Act 2000* to a member for a failure to perform a function or for a contravention of this Act.

80. Liability for death or injury in certain circumstances

- (1) The Crown may be liable in tort in respect of the death of, or injury to, a person other than a member of the TFES, subject to the defences and other incidences that ordinarily apply in proceedings in tort, if the death or injury is the result of –

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- (a) a member of the TFES or another person –
- (i) failing to perform a function imposed under, or conferred by, this Act; or
 - (ii) improperly performing a function imposed under, or conferred by, this Act; or
 - (iii) performing a function imposed under, or conferred by, this Act; or
- (b) a member of the TFES contravening a provision of this Act while acting as such a member.
- (2) An award of damages against the Crown under subsection (1) is payable out of money provided by Parliament for the purpose.

81. Compensation payable in certain circumstances

- (1) The Crown may be liable to pay compensation in respect of property that is lost, destroyed or damaged as a result of an act, or omission, performed by a member of the TFES in the performance, or purported performance, of –
- (a) a function of the TFES under this Act; or
 - (b) emergency management operations under this Act.

- (2) A claim for compensation under subsection (1) is to be made to the TFES Commissioner at first instance.

82. Damage caused by members of TFES

For the purposes of any policy of insurance that provides cover in respect of damage to premises by an emergency event, any damage to the premises caused by one of the following persons during such an emergency event is taken to be damage caused by the emergency event:

- (a) a member of the TFES in the lawful performance of any function conferred by this Act;
- (b) a person lawfully assisting, under this Act, a member of the TFES in the lawful performance of any function conferred by this Act.

83. Application of Division to certain persons

- (1) If an interagency or interjurisdictional agreement exists in relation to emergency management operations, a person is taken to be a member of the TFES for the purposes of this Division –
- (a) while the person performs emergency management operations in accordance with such an agreement; and
 - (b) unless the agreement provides otherwise.

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- (2) If a person is responsible for performing functions, or emergency management operations, under this Act, the TFES Commissioner may determine that the person is taken to be a member of the TFES, for the purposes of this Division, while the person performs those functions or emergency management operations.
- (3) A determination under subsection (2) is to be in writing and in an approved form.

Division 3 – General

84. Service of directions, orders, notices, &c.

A direction, order or notice under this Act is taken to be given to, or served on, a person if –

- (a) the direction, order or notice is delivered to –
- (i) the person; or
 - (ii) a nominee or agent of the person; or
- (b) the direction, order or notice is sent by certified mail to the address of the person, or a nominee or agent of the person; or
- (c) if the direction, order or notice is to be given to, or served on, the owner of premises and the owner cannot be ascertained or found, the direction, order or notice is displayed in a prominent position on those premises.

85. Removal of debris after emergency event

- (1) If an emergency event occurs on or in any premises, the owner of the premises must remove, when safe to do so, any debris or flammable material which may be in or on such premises and which constitutes a fire hazard or a danger to life or property.
- (2) If an owner of premises fails to comply with the requirements of subsection (1), the TFES Commissioner may, by notice in writing to the owner, require the owner to remove the debris, or flammable material, specified in the notice within the period specified in the notice.
- (3) If an owner of premises fails to comply with a notice given to the owner under subsection (2), the TFES Commissioner may –
 - (a) cause the debris or flammable material, specified in the notice, to be removed; and
 - (b) recover in any court of competent jurisdiction, as a debt due to the TFES, the expenses actually incurred –
 - (i) in removing the debris or flammable material; and
 - (ii) if necessary, in employing persons to protect the premises until the debris or flammable material is removed.

86. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) specify the process for –
 - (i) applying for, issuing, suspending, varying or cancelling a fire permit, including the imposition of conditions on a fire permit; and
 - (ii) appointing, suspending or cancelling the appointment of a fire permit officer, including the imposition of conditions or restrictions on such an appointment; and
 - (iii) applying for, issuing, suspending, varying or cancelling a permit, approval or other matter under this Act; and
 - (b) provide for the application process, granting process or review process for any permit or other matter under this Act, including the imposition of conditions; and
 - (c) provide for the installation of equipment, including equipment for fire detection or fire prevention; and

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- (d) provide for the regulation, or prohibition, of –
 - (i) the use of certain equipment without a specified device, or equipment, installed; and
 - (ii) the lighting, maintenance or use of fires in specified circumstances, or for a specified purpose, including, but not limited to, the requirement to give notice in certain circumstances; and
 - (iii) the operation of specified engines, motors, machines, equipment, apparatus or devices, either generally or during fire permit periods or days of total fire ban; and
 - (iv) the disposal of specified substances; and
- (e) provide for the inspection of specified premises and things by specified persons; and
- (f) provide for any matter relating to the prevention, minimisation, control or management of an emergency event or potential emergency event; and
- (g) provide for –

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- (i) fees and charges payable in respect of any matter under this Act; and
 - (ii) the liability of certain persons to pay the fees and charges under this Act; and
 - (iii) the method of calculating levies, fees, charges and other costs under this Act; and
 - (iv) the recovery of fees, charges and other costs under this Act; and
 - (v) the payment of levies, fees, charges and other costs under this Act, other than into the Public Account; and
- (h) provide for the payment of special allowances or gratuity by the TFES Commissioner to members of the TFES in prescribed circumstances or to a class of members of the TFES; and
- (i) specify –
 - (i) the qualifications, functions, identification or other matters that are required, or desirable, in respect of persons under this Act, including the issuing of identification to such persons; and

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- (ii) the requirements for, and information to be contained in, advice, reports, schemes, plans, permits and any other document or information under this Act; and
- (j) provide for the destruction, disposal or appropriation of any matter, structure or thing under this Act; and
- (k) prescribe additional functions that may be performed by persons under this Act; and
- (l) specify evidentiary presumptions in respect of any matter or thing under this Act; and
- (m) specify that a person or class of persons is exempt from a provision of this Act or the regulations, in specified circumstances or completely; and
- (n) specify the requirements –
 - (i) for existing premises to provide for the reasonable means of prevention of fire, minimising of fire risk, protection of life and property from fire and the prescribed ways and means of escape; and
 - (ii) that premises or a room with prescribed characteristics within

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- premises are not to be used for a prescribed purpose; and
- (iii) for the maintenance and testing in premises of specified infrastructure and equipment, including the ability for persons to inspect and test the infrastructure and equipment; and
- (o) prohibit the interference with or removal or obstruction of any fire protection or fire prevention device installed in premises, except where an authorised member isolates, or causes to be isolated, an alarm system or part of an alarm system that contains a fault for the purpose of enabling that fault to be rectified; and
- (p) require that a petrol tank vehicle, acid tank vehicle or vehicle carrying liquefied energy gas or cylinders of flammable gas in cities and towns –
- (i) be parked only as prescribed; and
- (ii) may only travel on routes as prescribed; and
- (q) prescribe any other matter that is required, permitted or necessary to be prescribed under this Act.
- (3) The regulations may be made so as to apply differently according to matters, limitations or

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restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

- (4) Without limiting subsection (3), the regulations may be made so as to apply –
 - (a) throughout the whole of Tasmania or in a region, place or area specified in the regulations; and
 - (b) differently according to such other factors as are specified in the regulations.
- (5) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (6) The regulations may authorise any matter to be from time to time approved, determined, applied or regulated by any person or body as specified in the regulations.
- (7) The regulations may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any standard, rule, code or specification, whether the standard, rule, code or specification is published or issued before or after the commencement of this section.

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- (8) A reference in subsection (7) to a standard, rule, code or specification includes a reference to an amendment of that standard, rule, code or specification, whether the amendment is published or issued before or after the commencement of this section.
- (9) The regulations may –
- (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

87. Further amendment of regulations not prevented

If an Act amending this Act also amends a provision of any regulations made under this Act, the amendment of the provision of the regulation does not prevent that provision, or any other provision, of the regulations from being amended or rescinded by a subsequent regulation.

88. Review of Act

- (1) In this section –

independent review means a review carried out by persons who –

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- (a) in the Minister's opinion, are appropriately qualified for that task; and
 - (b) include one or more persons who are not members of the Department or the TFES.
- (2) The Minister is to cause an independent review of the operation of this Act to be completed before the 5th anniversary of the commencement of this section.
- (3) As soon as practicable after an independent review is completed under subsection (2), the persons who undertake the independent review are to give the Minister a written report on the outcome of the review.
- (4) The Minister is to cause a copy of the report given to the Minister under subsection (3) to be tabled in each House of Parliament within 10 sitting-days of that House after the report is so received by the Minister.
- (5) This section does not apply if a committee of either House of Parliament, or a joint committee of both Houses of Parliament –
 - (a) has reviewed the operation of this Act; or
 - (b) has started such a review –after a provision of this Act has commenced but before the 5th anniversary of the commencement of this section.

89. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of –
 - (i) this Act, other than Part 4, is assigned to the Minister for Police, Fire and Emergency Management; and
 - (ii) Part 4 of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Minister for Police, Fire and Emergency Management in relation to the administration of this Act is the Department of Police, Fire and Emergency Management; and
- (c) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

90. Legislation repealed

The legislation specified in Schedule 2 is repealed.

SCHEDULE 1 – MEMBERSHIP OF SFESC

Section 17

1. Term of office

A member of the SFESC is appointed for the period, not exceeding 3 years, as is specified in the member's instrument of appointment and, if eligible, may be reappointed.

2. State Service employment

For the avoidance of doubt, a person may hold the office of member of the SFESC in conjunction with State Service employment.

3. Remuneration and conditions of appointment

- (1) A member of the SFESC is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member of the SFESC who is a State Service employee, or State Service officer, is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member of the SFESC holds office on such conditions in respect of matters not provided for by this Act as are specified in the member's instrument of appointment.

4. Vacation of office

- (1) A member of the SFESC vacates the office of member if the member –
- (a) dies; or
 - (b) resigns by notice given to the Minister; or
 - (c) holds the office of member by virtue of a qualification or role held by the member, and the member ceases to hold that qualification or role; or
 - (d) is removed from office under subclause (2).
- (2) The Minister may remove a member from office if –
- (a) the member is absent from 3 consecutive meetings of the SFESC without the permission of the chair; or
 - (b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) the member is convicted, in Tasmania or elsewhere, of a crime or an indictable offence; or

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- (d) the member fails to disclose a pecuniary interest, or other interest, in respect of a matter being considered by SFESC; or
 - (e) the Minister is satisfied that the member is unable to perform adequately or competently the duties of the office of member.
- (3) A member of the SFESC must not be removed from the office of member otherwise than in accordance with this clause.

5. Filling of vacancies

If the office of a member of the SFESC becomes vacant, the Minister may appoint a person to the vacant office for any period up to the remainder of that member's term of office.

SCHEDULE 2 – LEGISLATION REPEALED

Section 90

Fire Service Act 1979 (No. 35 of 1979)

Fire Service Amendment Act 1997 (No. 40 of 1997)

Fire Service Amendment Act 1999 (No. 72 of 1999)

Fire Service Amendment Act 2001 (No. 37 of 2001)

Fire Service Amendment Act 2005 (No. 36 of 2005)

Fire Service Amendment Act (No. 2) 2005 (No. 79 of 2005)

Fire Service (Continuity of Regulatory Arrangements) Act 2006 (No. 41 of 2006)

Fire Service Amendment (Bushfire-Prone Areas) Act 2011 (No. 32 of 2011)

Fire Service Amendment (Fire Infringement Notices) Act 2016 (No. 8 of 2016)

Fire Service (Extension of Regulations) Act 2017 (No. 27 of 2017)