



AUSTRALIAN CAPITAL TERRITORY

Careless Use of Fire (Amendment) Act 1990

No. 52 of 1990

An Act to amend the *Careless Use of Fire Act 1936*

[Notified in ACT Gazette S89: 11 December 1990]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Careless Use of Fire (Amendment) Act 1990*.

Principal Act

2. In this Act, “Principal Act” means the *Careless Use of Fire Act 1936*.¹

Insertion

3. After section 2 of the Principal Act the following section is inserted:

Application to the Crown

“2A. (1) This Act binds the Crown.

“(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.”.

Interpretation

4. Section 3 of the Principal Act is amended by inserting the following definitions:

“ ‘bushfire brigade’ means an organisation established under paragraph 5M (1) (b);

‘bushfire brigade member’ means a person recruited as such in accordance with subsection 5M (3);

‘emergency volunteer’ means a person recruited as such in accordance with subsection 5M (3);

‘fire control officer’ means a person appointed under paragraph 5M (1) (a);

‘Manual’ means the Rural Fire Control Manual prepared under section 5KA, as varied and in effect from time to time;

‘Service’ means the Rural Firefighting Service established by this Act;

‘Tribunal’ means the Australian Capital Territory Administrative Appeals Tribunal.”.

Inspectors

5. Section 5 of the Principal Act is amended—

(a) by inserting “or she” after “he”; and

(b) by adding at the end the following subsections:

“(2) The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

“(3) A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister upon ceasing to be an inspector.

Penalty for contravention of subsection (3): \$100.”.

Insertion

6. After section 5 of the principal Act the following sections are inserted:

Power of entry

“5AA. (1) An inspector may enter land outside a built-up area in accordance with a notice under subsection (2) where he or she believes, on reasonable grounds, that it is necessary to do so—

- (a) for the purposes of section 5AC; or
- (b) for the purposes of ensuring compliance with section 5S.

“(2) At least 24 hours before an inspector proposes to enter land under subsection (1), he or she shall give written notice to the owner of the land stating the time and purpose of entry.

Display of identity cards

“5AB. An inspector who enters land in accordance with section 5AA is not authorised to remain on that land if, on the request of the owner of that land, the inspector does not show his or her identity card to the owner.

Directions

“5AC. (1) If an inspector believes on reasonable grounds that the owner of land outside a built-up area is in breach of subsection 5S (1) with respect to the land, the inspector shall give the owner written directions requiring the owner to take such action as is reasonable in the circumstances to prevent and inhibit the outbreak and spread of fire on that land and to protect property from fire on that land or spreading from that land.

“(2) In giving directions under subsection (1), the matters to be considered by an inspector include the following:

- (a) the amount and type of litter, timber or vegetation on the land (whether that timber or vegetation is alive or dead);
- (b) the amount and type of other inflammable materials on the land;
- (c) climatic conditions affecting the land;
- (d) the location and use of the land and nearby land;
- (e) the possible effect of fire on the land and nearby land.

“(3) Directions given under subsection (1) shall include—

- (a) a statement of the period for compliance, and the amount of the penalty for non-compliance; and

- (b) statements to the effect that—
- (i) subject to the *Administrative Appeals Tribunal Act 1989* an application may be made to the Tribunal for a review of the decision to give directions; and
 - (ii) except where section 26 (11) of that Act applies—a person whose interests are affected by such a decision may request a statement pursuant to section 26 of that Act.

“(4) The validity of a decision to give directions is not affected by a failure to comply with paragraph (3) (b).

“(5) The period for compliance with directions referred to in paragraph (3) (a) shall be not less than 14 days, except where the directions are given on a day or during a period referred to in subsection 7A (1).

“(6) A person shall not, without reasonable excuse, fail to comply with a direction under subsection (1) within the period specified under paragraph (3) (a).

Penalty for contravention of subsection (6): \$1,000 or imprisonment for 3 months, or both.

Administrative review of directions

“5AD. Application may be made to the Tribunal for a review of a decision by an inspector to give directions under subsection 5AC (1).”.

Members of the Bush Fire Council

7. Section 5B of the Principal Act is amended—
- (a) by omitting subsections (2) and (3) and substituting the following subsection:

“(2) The Minister shall appoint from the Council members a Chairperson and Deputy Chairperson of the Council.”;
 - (b) by omitting from subsections (4), (6) and (7) “Chairman” (wherever occurring) and substituting “Chairperson”; and
 - (c) by inserting in subsection (6) “or she” after “he”.

Council meetings

8. Section 5C of the Principal Act is amended by omitting from subsection (1) “Chairman” and substituting “Chairperson”.

Term of appointment

9. Section 5D of the Principal Act is amended—
- (a) by omitting from subsection (1) “Subject to this section, each” and substituting “Each”;
 - (b) by omitting from subsection (1) “one year” and substituting “3 years”; and
 - (c) by inserting in subsection (2) “or her” after “his”.

Powers of the Council

10. The section 5H which was inserted in the Principal Act by the *Careless Use of Fire Act 1940* is amended—
- (a) by inserting “or control” after “prevent”;
 - (b) by inserting “and control” after “prevention” (wherever occurring); and
 - (c) by adding at the end the following subsection:
“(2) The Council shall exercise its powers and perform its duties in accordance with the Manual.”.

Remuneration and allowances

11. The section 5H which was inserted in the Principal Act by the *Remuneration (Miscellaneous Amendments) Act 1989* is renumbered as section 5J.

Insertion

12. Before section 5L of the Principal Act the following sections are inserted:

Rural Firefighting Service

“5K. (1) The Rural Firefighting Service is established by this Act.

“(2) The Service consists of the Chief Fire Control Officer and such numbers, respectively, of—

- (a) fire control officers; and
- (b) bushfire brigades;

as are determined by the Minister by notice in the *Gazette*.

“(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“(4) The Service has the organisation and structure set out in the Manual.

Fire Control Manual

“5KA. (1) Within 6 months after the commencement of the *Careless Use of Fire (Amendment) Act 1990*, the Council shall prepare a Rural Fire Control Manual containing particulars of all aspects of the operation and organisation of the Service.

“(2) The particulars in the Manual are to include the following:

- (a) the organisation and structure of the Service;
- (b) the powers and duties of fire control officers, bushfire brigade members and emergency volunteers;
- (c) standards and requirements for the recruitment and training of fire control officers and bushfire brigade members;
- (d) procedures and conditions for the recruitment of emergency volunteers;
- (e) equipment requirements and communication specifications for the Service.

“(3) The Council may prepare variations to the Manual.

“(4) Upon the written direction of the Minister, the Council shall prepare a variation to the manual.

“(5) The Council shall, within 7 days after the Manual or a variation is prepared, submit a copy of the proposed Manual or variation to the Minister.

“(6) Upon the written direction of the Minister, the Council shall revise the proposed manual, or a proposed variation, submitted under subsection (5).

“(7) After the proposed Manual or a proposed variation is submitted under subsection (5), the Minister may approve the proposed manual or variation.

“(8) The Manual and each variation are disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“(9) The Council shall make the Manual available for inspection by the public at the offices of the Council and the Chief Fire Control Officer when those offices are open for business.

“(10) In this section—
‘variation’, in relation to the Manual, includes the revocation of the Manual and its substitution with a new Manual.”.

Substitution

13. Section 5M of the Principal Act is repealed and the following section substituted:

Firefighters—appointment and powers

“5M. (1) The Council may, in writing—

- (a) appoint such number of fire control officers; and
- (b) establish such number of bushfire brigades;

as the Minister determines under subsection 5K (2).

“(2) The Council may, in accordance with the manual, appoint fire control officers of various ranks.

“(3) Bushfire brigade members and emergency volunteer firefighters shall be recruited in accordance with the Manual.

“(4) In accordance with the Manual, fire control officers, bushfire brigade members and emergency volunteers may exercise such powers, and shall perform such duties, as are specified in the Manual.”.

Chief Fire Control Officer—appointment and powers

14. Section 5N of the Principal Act is amended—

- (a) by inserting before subsection (1) the following subsection:

“(1A) The Council may appoint a Chief Fire Control Officer.”; and

- (b) by omitting subsection (2) and substituting the following subsection:

“(2) The Chief Fire Control Officer shall exercise his or her powers and shall perform his or her duties in accordance with the Manual.”.

Substitution

15. Section 5O of the Principal Act is repealed and the following sections are substituted:

Indemnity for firefighters

“5P. The Territory shall indemnify a person against liability for damage or personal injury caused either directly or indirectly by—

- (a) the exercise or purported exercise, in good faith, by that person of a power conferred by or under this Act; or
- (b) the performance or purported performance, in good faith, by that person of a duty imposed by or under this Act.

Damage by fire

“5Q. Any damage referred to in section 5P shall be taken to be damage by fire within the meaning of any policy of insurance against fire covering the property so damaged notwithstanding any clause or condition in any such policy.

Firefighters from outside the Territory

“5R. (1) Where a member of an interstate fire brigade is present at a fire outside a built-up area for the purposes of the control and suppression of that fire, that member shall—

- (a) obey any orders given for the purpose of the control or suppression of the fire by a person who, by or under this Act, is in charge of the firefighting operations at the fire;
- (b) place any firefighting equipment in his or her charge at the disposal of that person; and
- (c) where that member has charge of other members of the interstate fire brigade at the fire and no other person present at the fire is, by or under this Act, in charge of the firefighting operations—have all the powers and duties conferred or imposed by or under this Act on a fire control officer in charge of firefighting operations at such a fire.

“(2) In this section—

‘interstate fire brigade’ means a firefighting organisation, by whatever name called, established for any area in a State or another Territory.

Prevention of fires

“5S. (1) The owner of land outside a built-up area shall take such measures as are reasonable in the circumstances to prevent and inhibit the outbreak and spread of fire on that land and to protect property from fire on that land or spreading from that land.

Penalty: \$1,000 or imprisonment for 3 months, or both.

“(2) The circumstances referred to in subsection (1) include the following:

- (a) the amount and type of litter, timber or vegetation on the land (whether that timber or vegetation is alive or dead);
- (b) the amount and type of other inflammable material on the land;
- (c) climatic conditions affecting the land;
- (d) the location and use of the land and nearby land;
- (e) the possible effect of fire on the land and nearby land.”.

Transitional

16. (1) Notwithstanding the amendments of the Principal Act effected by sections 7, 8 and 9, a person who was the Chairman or Deputy Chairman of the Council, or a Council member, immediately before the commencement of this Act holds office, subject to the Principal Act as otherwise amended by this Act, for the remainder of the period for which he or she was appointed.

(2) Notwithstanding the amendment of the Principal Act effected by section 13, the person who was the Chief Fire Control Officer immediately before the commencement of this Act continues to hold office, subject to the Principal Act as amended by this Act, as if he or she were appointed as the Chief Fire Control Officer under subsection 5N (1A) of the Principal Act as amended by this Act.

NOTE

1. Ordinance No. 20, 1936 as amended by No. 22, 1937; No. 7, 1940; No. 1, 1942; No. 1, 1943; No. 1, 1945; No. 11, 1946; No. 1, 1952; No. 6, 1954; No. 21, 1959; No. 19, 1966 (as amended by No. 36, 1967); No. 11, 1967; No. 27, 1971; No. 53, 1974; No. 64, 1977; Nos. 13 and 86, 1982; No. 48, 1983; No. 60, 1984; No. 67, 1985; Nos. 21, 38 and 50, 1989; Act No. 23, 1989.

[Presentation speech made in Assembly on 25 October 1990.]

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