



AUSTRALIAN CAPITAL TERRITORY

Fire Brigade (Amendment) Act 1994

No. 109 of 1994

An Act to amend the *Fire Brigade Act 1957*

[Notified in ACT Gazette S288: 16 December 1994]

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

Short title

1. This Act may be cited as the *Fire Brigade (Amendment) Act 1994*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, “Principal Act” means the *Fire Brigade Act 1957*.¹

Interpretation

4. Section 4 of the Principal Act is amended—
 - (a) by omitting from subsection (1) the definition of “inflammable matter”;
 - (b) by omitting from subsection (1) the definition of “owner” and substituting the following definition:
 - “ ‘owner’, in relation to premises leased from the Commonwealth, means—
 - (a) the lessee in respect of the lease; or

- (b) any agent acting on behalf of the lessee in respect of the lease;”;
- (c) by inserting in subsection (1) the following definitions:
 - “ ‘built-up area’ has the same meaning as in the *Bushfire Act 1936*;
 - ‘flammable matter’ includes matter declared by the Regulations to be flammable matter;
 - ‘occupier’, in relation to premises, includes a person who is, or appears to be, in charge of the premises;”;
- (d) by adding at the end the following subsection:
 - “(3) A reference in section 12C, 12D or 12F to the Chief Officer shall be read as including a reference to a person authorised in writing by the Chief Officer to exercise a power or perform a function of the Chief Officer under that section.”.

Control of bushfires

5. Section 8 of the Principal Act is amended by omitting from subsection (2) the definition of “built-up area”.

Offences

6. Section 12 of the Principal Act is amended—
- (a) by inserting in paragraph (1) (b) “(other than a direction under subsection 12C (1))” after “Act”;
 - (b) by omitting from paragraph (1) (j) “inflammable” and substituting “flammable”;
 - (c) by inserting after paragraph (1) (l) the following paragraph:
 - “(la) being the owner of premises in a built-up area, so keep flammable matter on the premises as to cause, directly or indirectly, a danger by fire to life or property;” and
 - (d) by adding at the end the following subsection:
 - “(3) Paragraph (1) (la) does not apply in respect of flammable matter to which a direction under subsection 12C (1) relates.”.

Appeal

7. Section 12B of the Principal Act is amended by inserting in subsection (1) “(other than a direction under subsection 12C (1)) or the Regulations” after “Act”.

Insertion

8. After section 12B of the Principal Act the following sections are inserted:

Elimination of fire hazard

“12C. (1) Where the Chief Officer believes on reasonable grounds that flammable matter is so kept on particular premises in a built-up area as to cause, directly or indirectly, a danger to life or property in the event of fire, he or she may direct the owner of the premises to take specified action to eliminate the danger.

“(2) In the exercise of the power under subsection (1), the matters to which the Chief Officer is to have regard include the following:

- (a) the amount and type of any litter, timber or vegetation on the premises;
- (b) the amount and type of other flammable matter on the premises;
- (c) the prevailing and projected weather conditions;
- (d) the nature, location and use of the premises and nearby premises;
- (e) the possible effect of any fire on the premises and nearby premises;
- (f) the availability of fire-fighting facilities;
- (g) the action that the Chief Officer believes on reasonable grounds is necessary and reasonable to eliminate the danger;
- (h) the period within which the Chief Officer believes it is necessary and reasonable for the action to be taken.

“(3) A direction—

- (a) shall be given in writing;
- (b) shall specify the action which the owner is to take to eliminate the danger;
- (c) shall specify the period within which the action is to be taken;
- (d) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*;
- (e) shall indicate that, if the owner fails to comply with the direction, the Chief Officer may arrange for the elimination of the danger at the owner’s expense; and
- (f) if it requires the burning of matter—shall indicate that the burning must take place in accordance with the *Air Pollution Act 1984*.

“(4) The period referred to in paragraph (3) (c) shall not be less than 14 days commencing on the day on which the direction is given, except where it is given on a day or during a period in respect of which a warning about the spread of fires has been given under section 7A of the *Bushfire Act 1936*.

“(5) A direction shall not be inconsistent with the *Air Pollution Act 1984*.

Contravention of direction

“12D. (1) Where the Chief Officer believes on reasonable grounds that a person has contravened a direction under subsection 12C (1), the Chief Officer may—

- (a) enter the premises with such force and assistance as is necessary and reasonable; and
- (b) arrange for such action to be taken as is necessary and reasonable to eliminate the danger.

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

“(3) Where the Chief Officer enters premises in accordance with subsection (1), he or she is not authorised to remain on those premises if, on the request of the occupier, the Chief Officer does not show his or her identity card to the occupier.

“(4) The amount of any expenses necessarily and reasonably incurred by or on behalf of the Territory in respect of action taken in accordance with paragraph (1) (b) is a debt due to the Territory by the owner of the premises.

“(5) If there are 2 or more owners of the premises, their liability for the debt is joint and several.

Review of decisions

“12E. Application may be made to the Administrative Appeals Tribunal for review of a decision by the Chief Officer, or a person authorised in writing by the Chief Officer, to give a direction under subsection 12C (1).

Emergency elimination of fire hazard

“12F. (1) In this section—

‘fire emergency’ means—

- (a) a period in respect of which a warning about the spread of fires has been given under section 7A of the *Bushfire Act 1936*; or

- (b) a situation in which there is an immediate and serious danger to life or property from the outbreak or spread of fire.

“(2) Where the Chief Officer believes on reasonable grounds that—

- (a) a fire emergency affects particular premises in a built-up area;
- (b) flammable matter kept on the premises constitutes an immediate and serious danger to life or property in the event of fire; and
- (c) it is impracticable to give a direction under section 12C to eliminate the danger;

the Chief Officer may enter the premises with such force and assistance as is necessary and reasonable and—

- (d) direct the occupier to take specified action to eliminate the danger; or
- (e) arrange for such action to be taken otherwise.

“(3) A direction under paragraph (2) (d)—

- (a) may be given orally or in writing;
- (b) shall specify the action which the Chief Officer believes on reasonable grounds is necessary and reasonable for the occupier to take in the emergency; and
- (c) specify the period within which the occupier is to act.

“(4) The amount of any expenses necessarily and reasonably incurred by or on behalf of the Territory in respect of action taken in accordance with paragraph (2) (e) is a debt due to the Territory by the occupier of the premises.

“(5) If there are 2 or more occupiers of the premises, their liability for the debt is joint and several.”.

Insertion

9. After section 15 of the Principal Act the following section is inserted:

Identity cards

“15A. (1) The Chief Executive shall issue to the Chief Officer an identity card that specifies the name and appointment of the Chief Officer and bears a recent photograph of the Chief Officer.

“(2) The Chief Officer shall, on ceasing to be a member of the Brigade, return his or her identity card to the Chief Executive.

“(3) The Chief Officer shall issue to each other member of the Brigade an identity card that specifies the name and appointment of the member and bears a recent photograph of the member.

“(4) A member of the Brigade shall, on ceasing to be a member, return his or her identity card to the Chief Officer.

“(5) A person who, without reasonable excuse, contravenes subsection (2) or (4) is guilty of an offence punishable, on conviction, by a fine not exceeding 1 penalty unit.”.

Regulations

10. Section 16 of the Principal Act is amended by omitting from paragraph (c) “inflammable” and substituting “flammable”.

Further amendments

11. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 11

Subsection 7 (1)—

- (a) Insert “or her” after “his”.
- (b) Insert “or she” after “he”.

Paragraph 7 (2) (e)—

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “his”.

Paragraph 7 (2) (i)—

Insert “or her” after “his”.

Paragraph 12 (1) (a)—

Insert “or her” after “his” (wherever occurring).

NOTE

1. Reprinted as at 31 January 1994. See also Act No. 81, 1994.

[Presentation speech made in Assembly on 1 December 1994]

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