

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Fire Brigade (Administration)
(Amendment) Bill 1991**

**A BILL
FOR**

**An Act to amend the *Fire Brigade (Administration)
Act 1974***

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

Short title

1. This Act may be cited as the *Fire Brigade (Administration) (Amendment) Act 1991*.

Commencement

5 2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

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(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 **Principal Act**

3. In this Act, "Principal Act" means the *Fire Brigade (Administration) Act 1974*.

Interpretation

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

" 'designated group' means any of the following classes of persons:

- (a) women;
- (b) members of the Aboriginal race of Australia or persons who are descendants of indigenous inhabitants of the Torres Strait Islands;
- (c) persons who have migrated to Australia and whose first language is a language other than English, and the children of such persons;
- (d) persons who are physically or mentally disabled;
- 20 (e) any other class of persons declared by the regulations to be a designated group for the purposes of this definition;

'employment matter', in relation to the Brigade, means—

- (a) the appointment of persons as members of the Brigade;
- (b) the promotion of members of the Brigade;
- 25 (c) the appointment of members to act temporarily in higher ranks for 3 months or longer;
- (d) training and staff development for members of the Brigade;
- (e) the conditions of service of members of the Brigade; or
- 30 (f) any other matter related to the employment of members of the Brigade;

'equal employment opportunity program', in relation to the Brigade, means a program designed to ensure that—

- 5
- (a) appropriate action is taken to eliminate unjustified discrimination against persons in designated groups in relation to employment matters; and
 - (b) measures are taken to enable members who are in designated groups to pursue careers in the Brigade as effectively as other persons and to have equal opportunities with others in relation to other employment matters;

'Merit Protection Act' means the *Merit Protection (Australian Government Employees) Act 1984* of the Commonwealth;

10 'Promotion Appeal Committee' means a Promotion Appeal Committee established, by virtue of section 34, in accordance with Subdivision B of Division 2 of Part II of the Merit Protection Act to hear appeals by members against provisional promotions under subsection 29 (1);

15 'staff organisation' means the organisation, within the meaning of the *Industrial Relations Act 1988* of the Commonwealth—

- (a) in which members of the Brigade are eligible for membership; and
 - (b) that is a party to the industrial award that applies in relation to the salaries payable to members;
- 20

'unjustified discrimination' includes—

- (a) discrimination that is unlawful under the *Human Rights and Equal Opportunity Act 1991*; and
 - (b) unjustified discrimination on the ground of age or social origin;
- 25

but does not include—

- (c) discrimination that is essential for the effective performance of the relevant duties, is not unlawful under the *Human Rights and Equal Opportunity Act 1991* and is prescribed; or
 - (d) discrimination that is not unlawful under the *Human Rights and Equal Opportunity Act 1991* and is in accordance with the equal employment opportunity program for the Brigade or a prescribed program."
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35 **Insertion**

5. After Division 1 of Part III of the Principal Act the following Division is inserted:

"Division 1A—Personnel management

Merit and equal opportunity principles to apply

"19A. (1) The Commissioner's powers in relation to employment matters shall be exercised—

- 5 (a) without patronage, favouritism or unjustified discrimination; and
(b) with regard to the equal employment opportunity program for the Brigade.

10 "(2) Without limiting the generality of paragraph (1) (a), and subject to paragraph (1) (b), the Commissioner's powers in relation to the appointment of persons as members, or the appointment of members to act temporarily in higher ranks for 3 months or longer, shall be exercised in accordance with procedures that ensure that—

- (a) all persons who are eligible for such appointment have, so far as practicable, a reasonable opportunity to apply for it; and
15 (b) the appointment is made on the basis of an assessment of the relative suitability of the applicants having regard to—
(i) the nature of the duties to be performed; and
(ii) the abilities, qualifications, experience, personal qualities and potential for development of each applicant that are
20 relevant to the performance of the duties.

"(3) A reference in this section to the exercise of a power shall be read as including a reference to the making of a report or recommendation in relation to the exercise of that power.

Equal opportunity program

25 "19B. (1) For the purposes of paragraph 19A (1) (b), the Commissioner shall, after consulting with the staff organisation and such other persons as the Commissioner considers appropriate—

- (a) develop an equal employment opportunity program for the
30 Brigade; and
(b) from time to time, review that program.

"(2) The Commissioner shall comply with paragraph (1) (a) as soon as practicable and, in any event, within 12 months after the commencement of this section.

35 "(3) As soon as practicable after the development or review of the equal employment opportunity program, the Commissioner shall provide the Head of Administration with written particulars of the program.

“(4) The Head of Administration may, by notice in writing given to the Commissioner, issue guidelines to the Commissioner on the provisions to be made by the equal employment opportunity program, and on the development, implementation or review of the program.

5 “(5) The Commissioner shall take any action necessary to give effect to the equal employment opportunity program and to comply with any guidelines issued under subsection (4).

“(6) The Commissioner shall furnish to the Minister a written report relating to the operation of this section during each financial year.

10 **Notices relating to appointments, promotions etc.**

“19C. (1) The Commissioner may, by notice published in the *Gazette*, notify—

- (a) the manner of determining the order in which successful applicants will be appointed as members of the Brigade;
- 15 (b) the academic or other qualifications that are relevant for appointment as a member of the Brigade;
- (c) the academic or other qualifications that are relevant for promotion or acting appointment to a specified rank; or
- 20 (d) such other matters with respect to appointments or promotions as the Commissioner considers desirable.

“(2) A qualification set out in a notification made for the purposes of paragraph (1) (b) or (c) may be defined or expressed by reference to the opinion of the Commissioner, or a person specified in the notification, in relation to a particular matter.

25 **Tests, examinations etc.**

“19D. The Commissioner may, for the purposes of this Part, arrange for the taking of tests or examinations in connection with—

- (a) the selection of applicants for appointment as members of the Brigade; or
- 30 (b) the selection of members for the performance of particular duties (including the temporary performance of duties in higher ranks) or for promotion.”

Heading to Division 2, Part III

35 6. The heading to Division 2 of Part III of the Principal Act is omitted and the following heading substituted:

“Division 2—Appointment of members”.

Appointments

7. Section 20 of the Principal Act is amended—

- 5 (a) by omitting from subsection (1) “by instrument in writing under his hand, appoint such officers and firemen as he” and substituting “in writing, appoint such officers and firefighters as the Commissioner”; and
- (b) by omitting subsections (2), (3) and (4).

Repeal

10 8. Section 21 of the Principal Act is repealed.

Appointment on probation

9. Section 22 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Fireman” and substituting “Firefighter”; and
- 15 (b) by omitting paragraph (2) (a) and substituting the following paragraph:
- “(a) where the person’s conduct and service have been satisfactory—confirm the appointment; or”.

Repeal

20 10. Section 23 of the Principal Act is repealed.

Re-appointment of election candidates

11. Section 26 of the Principal Act is amended by omitting subsection (2).

Substitution

25 12. Division 3 of Part III of the Principal Act is repealed and the following Division substituted:

“Division 3—Promotions and acting appointments

Promotions—general

“29. (1) The Commissioner may, in writing—

- 30 (a) promote an officer to a higher rank; or
- (b) promote a firefighter to a higher rank of firefighter or to a rank of officer.

“(2) The Commissioner shall not promote a member under subsection (1) to a particular rank unless—

- (a) the Commissioner has published in the *Gazette* an invitation for members to apply for promotion to that rank; and
- 5 (b) the promotion is made within 6 months after the date of publication of the invitation in the *Gazette*.

“(3) A promotion under subsection (1)—

- (a) is provisional and without increased salary pending confirmation of the promotion;
- 10 (b) shall be notified in the *Gazette* by the Commissioner; and
- (c) is subject to appeal under section 33.

Selection of members for promotion

“29A. (1) For the purposes of subsection 29 (1), the Commissioner shall rank the applicants considered suitable for promotion according to their relative efficiency (with the most efficient being ranked first) and—

- (a) select the most efficient applicant; or
- (b) if more than one promotion is to be made—select the applicants concerned in the order in which they were so ranked.

“(2) In determining the relative efficiency of the applicants, the Commissioner shall have regard to their abilities, qualifications, experience, personal qualities and potential for development that are relevant to the performance of the duties.

Promotion in accordance with Joint Selection Committee advice

“29B. (1) The Commissioner may, in writing, promote a member under this section instead of under subsection 29 (1).

“(2) A promotion under this section shall be in accordance with the recommendation of a Joint Selection Committee.

“(3) Where the Commissioner proposes to make a promotion under this section to a particular rank, the Commissioner shall—

- 30 (a) by written notice given to the staff organisation, invite the organisation to lodge any objection, in writing, to the proposal with the Commissioner within 7 days after the date of the notice; and
- 35 (b) subject to subsections (4) and (5), arrange for the establishment of a Joint Selection Committee to advise the Commissioner in relation to the promotion.

“(4) The Commissioner shall not make a promotion under this section if the staff organisation objects in accordance with paragraph (3) (a).

“(5) The Commissioner shall not promote a member under this section to a particular rank unless—

- 5 (a) the Commissioner has published in the *Gazette* an invitation for members to apply for promotion under this section to that rank; and
- (b) the promotion is made within 6 months after the date of publication of the invitation in the *Gazette*.

10 “(6) A Joint Selection Committee shall be constituted by—

- (a) a convenor nominated by the Minister;
- (b) a nominee of the Commissioner; and
- (c) a nominee of the staff organisation.

“(7) A promotion under this section—

- 15 (a) shall be notified in the *Gazette* by the Commissioner;
- (b) is not subject to appeal; and
- (c) takes effect on the date of its notification in the *Gazette*.

“(8) Nothing in this section shall be taken to prevent the Commissioner from promoting a member under subsection 29 (1).

20 “(9) A promotion under this section is not invalid merely because of a defect or irregularity in connection with the nomination of a member of the Committee.

Procedure of Joint Selection Committee

25 “29C. (1) A Joint Selection Committee referred to in section 29B shall—

- (a) assess the claims of the applicants for promotion in such manner as the Committee considers necessary to establish their relative efficiency; and
- 30 (b) rank the applicants whom it considers suitable for promotion according to their relative efficiency, with the most efficient being ranked first.

“(2) The Committee shall conduct its proceedings with as little formality and technicality, and as quickly, as a proper consideration of the applications permits.

“(3) Where, before a Committee completes its deliberations, a member ceases to be available for the purpose of those deliberations, the Committee shall be reconstituted by the remaining members and another member nominated in accordance with subsection 29B (6).

5 “(4) If the members of a Committee are divided in opinion about the advice to be given to the Commissioner in respect of a promotion—

(a) if the majority of members concur in the advice—the advice of the majority is to be taken to be the advice of the Committee; and

10 (b) in any other case—the advice of the convenor is to be taken to be the advice of the Committee.

“(5) Where a Committee is reconstituted under subsection (3), the Committee may have regard to the evidence given, the arguments adduced and the reasons for any decision given during proceedings before the Committee as previously constituted.

15 “(6) A member of a Committee, while acting as such, is not subject to direction by any other person or body other than a court.

Acting appointments

“30. The Commissioner may appoint a member to act temporarily in a higher rank.”

20 Repeal

13. Section 32 of the Principal Act is repealed.

Appeals against provisional promotions

14. Section 33 of the Principal Act is amended—

25 (a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Subject to subsection (2), a member may appeal to a Promotion Appeal Committee against the provisional promotion of another member under subsection 29 (1) on the ground of greater efficiency.

30 “(2) An appeal shall be made by giving written notice of the appeal to the Merit Protection Review Agency of the Commonwealth, in Canberra, within 14 days after the day on which the provisional promotion is notified in the *Gazette* in accordance with paragraph 29 (3) (b).”;

35 (b) by omitting from subsection (4) “sub-section 29 (3)” and substituting “paragraph 29 (3) (b)”;

(c) by adding “or” at the end of paragraph (6) (a);

- (d) by omitting "or" from the end of paragraph (6) (b); and
- (e) by omitting paragraph (6) (c).

Substitution

5 15. Section 34 of the Principal Act is repealed and the following section substituted:

Promotion Appeal Committees established under Merit Protection Act

"34. (1) Section 15 of the Merit Protection Act applies as if—

- (a) the Territory were a Commonwealth authority; and
- 10 (b) members of the Brigade were Commonwealth employees.

"(2) Section 10 of the Merit Protection Act, in its application to an appeal against the provisional promotion of a member under subsection 29 (1), is modified by omitting paragraphs (1) (b) and (c) and substituting the following paragraphs:

- 15 '(b) a nominee of the Commissioner of the Australian Capital Territory Fire Brigade; and
- (c) a nominee of the staff organisation representing the members of the Australian Capital Territory Fire Brigade.'

20 "(3) Section 11 of the Merit Protection Act, in its application to an appeal against the provisional promotion of a member under subsection 29 (1), is modified by omitting 'officer' and substituting 'member of the Australian Capital Territory Fire Brigade'.

25 "(4) Section 12 of the Merit Protection Act, in its application to an appeal against the provisional promotion of a member under subsection 29 (1), is modified by omitting from subsection (4) 'officer' and substituting 'member of the Australian Capital Territory Fire Brigade'."

Repeal

16. Section 82 of the Principal Act is repealed.

References to fireman etc.

30 17. (1) Each of the following provisions of the Principal Act is amended by omitting "fireman" (wherever occurring) and substituting "firefighter":

Subsections 24 (1) and 27 (1), (2), (3) and (4) and section 76.

35 (2) Each of the following provisions of the Principal Act is amended by omitting "Fireman" (wherever occurring) and substituting "Firefighter":

Paragraphs 18 (a) to (f) (inclusive).

(3) Each of the following provisions of the Principal Act is amended by omitting "firemen" (wherever occurring) and substituting "firefighters":

Subsection 16 (3) and sections 18 and 19.

5 **Transitional**

18. (1) Notwithstanding the amendments of the Principal Act effected by this Act—

10 (a) section 22 of the Principal Act, and the Regulations, as in force immediately before the commencement day, continue to apply on and after that day in relation to an appointment that was probationary immediately before that day; and

15 (b) Division 5 of the Principal Act, and the Regulations, as in force immediately before the commencement day, continues to apply on and after that day in relation to a promotion that was provisional immediately before that day.

(2) In subsection (1), "commencement day" means—

(a) in paragraph (a)—the day on which section 22 of the Principal Act, as amended by this Act, commences; and

20 (b) in paragraph (b)—the day on which section 34 of the Principal Act, as amended by this Act, commences.

NOTE

1. Ordinance No. 52, 1974 as amended by Nos. 4, 10 and 38, 1975; No. 46, 1978; No. 38, 1980; No. 21, 1982; Nos. 3, 21 and 38, 1989; Act No. , 1991.

**NOTE ABOUT SECTION
HEADING**

On the day on which section 18 of the *Fire Brigade (Administration) Act 1974* is amended by this Act, the heading to section 18 is omitted and the following heading substituted:

"Firefighters".