

1994

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

FIRE BRIGADE (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

Circulated by Authority of the Minister for Urban Services

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Outline

This Bill amends the *Fire Brigade Act 1957* (the Principal Act). The Principal Act deals with the powers, duties and functions of members of the Fire Brigade, as well as fire prevention measures.

The amending Bill amends the Principal Act for the purpose of controlling fire hazards on land in a built-up area. The amending provisions are designed to ensure that owners keep their premises free of any flammable material which could constitute a fire hazard. This would commonly include materials such as long, dry grass, leaf litter, overgrown vegetation and other debris or rubbish.

The main purpose of the amending Bill is to place an obligation on owners to keep their blocks of land free of flammable matter which could constitute a fire hazard. Where an owner fails to do so, the Fire Commissioner ("Chief Officer") or a person authorised by him or her in writing may issue a written direction to the owner requiring the owner to eliminate the fire hazard within a specified time. If the owner fails to comply with the direction, the Chief Officer may make arrangements to remove the fire hazard and bill the owner for the reasonable costs of the removal.

The Bill also provides for the Chief Officer to remove fire hazards from premises in an emergency situation such as during a total fire ban when the danger from fire is extremely high, or when fires are breaking out at random due to the prevailing conditions. In such a situation, the Chief Officer may enter premises without prior notice and direct the occupier to take action to eliminate the fire hazard or the Chief Officer may make other arrangements for removal of the fire hazard, such as directing members of the Fire Brigade to do so. In such a case the Chief Officer may bill the occupier for the reasonable costs of the removal.

Financial considerations

There are no direct costs associated with the Bill.

Details of the Bill follow.

Formal

Clauses 1, 2 and 3 provide for the method of citation of the Bill, state that the Bill will commence upon its notification in the Gazette and identify the Principal Act as being the *Fire Brigade Act 1957*.

Interpretation

Clause 4 is an interpretation provision. In particular, it defines "owner" as being the lessee of premises leased from the Commonwealth. This is so as to ensure that it is the actual owners of the land (and not tenants) who are made responsible for keeping their premises free of flammable matter which could be a fire hazard. Where the property is being cared for by an agent, the Brigade will be able to deal with either the owner or the agent.

The opportunity has also been taken to update the Principal Act by substituting references to "inflammable" with "flammable" as the word "flammable" is currently the accepted terminology to describe materials that are easily set on fire. This is consistent with recent amendments made to the *Bushfire Act 1936*.

References to the Chief Officer in sections 12C, 12D or 12F of the Bill include a person authorised in writing by the Chief Officer to act under those sections.

Control of bushfires

Clause 5 is consequential upon the amendment effected by clause 4(c) of the Bill.

Offences

Clause 6 amends section 12 of the Principal Act which deals with offences. New paragraph 12(la) makes it an offence for a property owner to keep flammable material on the property in such a manner that it would present a real fire risk to life or property should a fire occur. New subsection 12(3) has the effect of excluding from this new offence flammable material for which a direction has been given. This is because an owner is not to be under an obligation to clean up and also be liable to be prosecuted for an offence of having the flammable material on the premises.

Clause 6 also amends paragraph 12(1)(b) of the Principal Act so that failing to follow a direction under subsection 12C(1) of the Bill is not made an offence. This is because there is an alternative procedure provided under section 12D whereby failing to follow a direction results in the Chief Officer taking action to arrange a "clean-up" of the property and costs are recoverable from the owner.

Appeal

Clause 7 is a technical amendment to section 12B of the Principal Act to exclude a direction under subsection 12C(1) from being appellable to the Supreme Court. This is because the Bill provides for appeals to the Administrative Appeals Tribunal in respect of directions under subsection 12C(1).

Insertion

Clause 8 inserts new provisions into the Principal Act to enable hazardous flammable material to be removed from premises.

Elimination of fire hazard

New section 12C empowers the Chief Officer to direct an owner in writing to take such action as is necessary and reasonable to remove the material. It details various considerations which the Chief Officer must have regard to in deciding whether to issue a direction. The direction, which must be in writing, is required to include information relating to the removal of the material as well as advice of appeal rights and that the Chief Officer may remove the material at the owner's expense if it is not removed in the time allowed. The time allowed cannot be less than 14 days unless it is issued on a day or in a period of total fire ban when a lesser time may be allowed.

Contravention of a direction

New section 12D empowers the Chief Officer to enter premises and remove the flammable material where the owner has not complied with a direction to undertake the task. Not less than 24 hours notice is required to be given to the owner of the intention to enter but the Chief Officer is obliged not to stay on the premises if he or she does not produce identification at the request of the owner. The necessary and reasonable expenses incurred by the Chief Officer are recoverable from the owner.

Review of decisions

New section 12E enables a decision to give a direction to be reviewed by the ACT Administrative Appeals Tribunal.

Emergency elimination of fire hazards

New section 12F provides a regime for the removal of flammable material in cases of a fire emergency. A fire emergency exists where a day or a period of total fire ban has been declared or where there is an immediate and serious danger to life or property from the outbreak or spread of fire.

Where the Chief Officer believes that a fire emergency affects premises and flammable material on the premises constitutes an immediate and serious danger to life or property and it is impracticable to give a direction under new section 12C, the Chief Officer may enter the premises to eliminate the danger. The Chief Officer may give a direction to the occupier to eliminate the danger, or take action on the danger. The direction, which may be oral or in writing, is required to specify the action relating to the removal of the material which the Chief Officer considers necessary and reasonable and the time in which it must be undertaken. Where the Chief Officer has to arrange the action, the necessary and reasonable expenses incurred by the Chief Officer are recoverable from the occupier.

Because of the exigency of the situation contemplated under new section 12F the Chief Officer may deal with the occupier of the premises, if he or she is available, whereas in the case of the preventative action contemplated by new section 12C, the Chief Officer is required to inquire into and locate the owner (if the occupier is not the owner) and serve the direction on him or her.

Identity cards

Clause 9 inserts a new section 15A which is a standard provision relating to the issue of identity cards to Brigade personnel because of their need under the Bill to have entry to premises.

Regulations

Clause 10 is consequential upon the amendment effected by clause 4(c) of the Bill.

Clause 11 amends the Principal Act to remove gender specific terms from the provisions listed in the Schedule.