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Fire Service Act 1975

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Department of Internal Affairs.

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An Act to establish the New Zealand Fire Service and to consolidate and amend the law relating to the protection of life and property from fire and to certain other emergency services.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Fire Service Act 1975.

- (2) Except as otherwise provided herein, this Act shall come into force on the 1st day of April 1976.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Appointed member*[Repealed]*

Appointed member: this definition was repealed, as from 26 September 2000, by section 5(1) Fire Service Amendment Act 2000 (2000 No 36).

[Repealed]

building has the meaning given by the Building Act 2004

Building and Building code: these definitions were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

building: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

building code has the meaning given by section 7 of the Building Act 2004

Building and Building code: these definitions were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

building code: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Chief Executive means the Chief Executive appointed under section 17A or section 17I(3) of this Act

Chief Fire Officer means a Chief Fire Officer appointed under section 27 of this Act; and **Deputy Chief Fire Officer** means a Deputy Chief Fire Officer so appointed

Civil defence emergency*[Repealed]*

Civil defence emergency: this definition was repealed, as from 1 December 2002, by section 117 Civil Defence Emergency Management Act 2002 (2002 No 33). *See* sections 118 to 121 of that Act as to the transitional provisions.

[Repealed]

Commission means the New Zealand Fire Service Commission constituted under section 4 of this Act

Contaminant means any substance, whether gaseous, liquid, or solid that—

- (a) Is foreign to or alters the balance of the natural constituents of the environment into which it is introduced; and

- (b) Is or may be injurious to, or will or may adversely affect, the environment or the health or the safety of persons or property:

Contract of fire insurance means an agreement whereby any property is insured against loss or damage from fire, whether the agreement includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance

Co-ordination scheme means any co-ordination scheme established under section 17P of this Act

Defence area means a defence area as defined in section 2(1) of the Defence Act 1990

Defence fire brigade means a unit or other part of the Armed Forces established and trained by the authority of the Chief of Defence Force under the Defence Act 1990 for the prevention, suppression, and extinction of fire

Deputy National Commander means the Deputy National Commander appointed under section 17V of this Act

Emergency includes a hazardous substance emergency

Equipment means any plant, appliance, or equipment belonging to or in the possession of the Commission; and includes any personal equipment or clothing provided by the Commission

Executive officer means every member of the Fire Service who holds Fire Service rank and is classified as such by the Chief Executive in accordance with the policy of the Commission

Facultative reinsurance means the reinsurance of individual risks by offer and acceptance where the reinsurer retains the option to accept or reject the risk offered

fees framework has the same meaning as in section 10 of the Crown Entities Act 2004.

fees framework: this definition was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

financial year has the same meaning as in section 136 of the Crown Entities Act 2004.

financial year: this definition was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Fire Area means a Fire Area constituted under section 25 of this Act

Fire Authority means any fire authority within the meaning of the Forest and Rural Fires Act 1977

Fire brigade or brigade—

- (a) Means a group of persons organised and trained for the prevention, suppression, and extinction of fires, and responsible to the National Commander for discipline and duty; and
- (b) Includes a volunteer fire brigade; but
- (c) Does not include—
 - (i) A defence fire brigade; or
 - (ii) An industrial fire brigade:

Fire District or District means a Fire District declared or constituted under section 26 of this Act

Firefighter means every member of the Fire Service who holds Fire Service rank and is not an executive officer

fire hazard has the meaning given by section 7 of the Building Act 2004

Fire hazard: this definition was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

fire hazard: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Fire Region or Region means a Fire Region constituted under section 24 of this Act

Fire Service means the New Zealand Fire Service established under section 3 of this Act

Fire Service Commission means the Fire Service Commission constituted under section 3 of the Fire Services Act 1972 (as substituted by section 3 of the Fire Services Amendment Act 1974)

Forest has the same meaning as in the Forest and Rural Fires Act 1977

Forest: this definition was inserted, as from 2 September 1996, by section 2 Fire Service Amendment Act 1996 (1996 No 122).

Gratuities Fund means the Gratuities Fund established under section 57 of this Act

Hazardous substance means—

- (a) Any hazardous substance as defined in section 2 of the Hazardous Substances and New Organisms Act 1996; and
- (b) Any infectious or radioactive substance that may impair human, animal, or plant health:

Hazardous substance: this definition was substituted, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 1 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Hazardous substance emergency means the release or potential accidental release of any hazardous substance from any building or other premises, or from any receptacle, container, vessel, or pipe, or from any conveyance (whether motorised or not), where the release of that hazardous substance constitutes a contaminant

household unit has the meaning given by section 7 of the Building Act 2004

Household unit: this definition was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

household unit: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Industrial fire brigade means an industrial fire brigade established under section 36 of this Act

Insurance company—

- (a) Means any company, corporation, or partnership which, or person who,—
 - (i) Undertakes any liability under any contract of fire insurance (other than marine insurance), whether exclusively or in conjunction with any other business; or
 - (ii) Accepts a payment in respect of any property to provide indemnity or a reserve to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance; or

- (iii) Makes provision for the establishment of a fund to provide indemnity to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance; or
- (iv) Issues any cover note in respect of a contract of fire insurance or gives any information that insurance, which includes cover from fire, has been effected, or issues any receipt acknowledging the receipt of a premium in respect of a contract of fire insurance, or receives any premiums, proposals, or requests for insurance which includes cover from fire; and
- (b) Includes State Insurance Limited; and
- (c) Unless the context otherwise requires, includes the agent, attorney, or representative of any company, corporation, partnership, or person described or named in paragraph (a) or paragraph (b) of this definition, whether or not that company, corporation, partnership, or person is incorporated or resident in New Zealand; but
- (d) Does not include any company, corporation, partnership, or person associated with the owner of property, including any parent company, associate company, or subsidiary company of the owner, unless the said company, corporation, partnership, or person associated with the owner is engaged solely or principally in providing indemnity or a reserve or a fund to cover future loss or future damage from fire:

Levy—

- (a) Means the levy imposed under sections 48, 49, 49A, and 49B of this Act; and
- (b) Except where this Act otherwise provides, includes—
 - (i) All interest payable in terms of section 53(1) of this Act; and
 - (ii) Any penalty surcharge payable pursuant to section 53A of this Act:

Marine insurance means marine insurance as defined in section 3 of the Marine Insurance Act 1908

Provided that—

- (a) A contract of insurance in respect of any cargo shall be deemed not to be marine insurance from the time of delivery—
 - (i) To the consignee's or other final warehouse or place of storage at the destination named in the contract; or
 - (ii) To any other warehouse or place of storage, whether prior to or at the destination named in the contract, which the insured elects to use either for storage other than in the ordinary course of transit, or for allocation or distribution; or
 - (iii) On the expiry of 60 days after completion of discharge overseas of the goods insured from the overseas vessel at the final port of discharge,—whichever shall first occur:
- (b) A contract of insurance in respect of any ship or vessel normally or customarily removed from the water and transported or stored upon land when not in use shall be deemed not to be marine insurance:

means of escape from fire has the meaning given by section 7 of the Building Act 2004

Means of escape from fire: this definition was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

means of escape from fire: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

medical practitioner: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

Member of the Fire Service means every employee of the Commission ; and includes any person who holds office

by virtue of an appointment under any of the provisions of sections 17A, 17I(3), 17M, and 17W of this Act

Member of the Fire Service: this definition was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by omitting the words “appointed or deemed to be appointed under section 18 of this Act”.

Minister means the Minister of Internal Affairs

National Commander means the National Commander appointed under section 17M of this Act

National Rural Fire Authority means the National Rural Fire Authority constituted under section 14A of this Act

National Rural Fire Officer means the National Rural Fire Officer appointed under section 17W of this Act

Owner, in relation to any property, means the person for the time being entitled to receive the rack rent thereof, or who would be so entitled if the property were let at a rack rent

Principal Fire Officer means a Principal Fire Officer as defined in section 2(1) of the Forest and Rural Fires Act 1977

Private dwelling*[Repealed]*

Private dwelling: this definition was repealed, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

[Repealed]

regional council means a regional council within the meaning of the Local Government Act 2002

Regional council: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). See sections 273 to 314 of that Act as to the savings and transitional provisions.

Reinsurance company means any company, partnership, corporation, or person, who solely undertakes any liability under any contract of insurance entered into with an insurance company or other reinsurance company; and includes the agent, attorney, or representative of such company, partnership, corporation, or person, whether or not that company, partnership, corporation, or person is incorporated or resident in New Zealand

Reserve Fund means the Reserve Fund established under section 58 of this Act

Rural area means any area (including an urban area) not included in any Fire District

Rural fire control measures means any rural fire control measures that a Fire Authority is authorised to carry out under the Forest and Rural Fires Act 1977 (whether or not provided for in a fire plan prepared by that Fire Authority)

Rural Fire Fighting Fund means the fund of that name established under section 46A of this Act

sitework has the meaning given by section 7 of the Building Act 2004

Sitework: this definition was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

sitework: this definition was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

territorial authority means a territorial authority within the meaning of the Local Government Act 2002; and includes the Chatham Islands Council

Territorial authority: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Urban area means an area used mainly for commercial, industrial, or residential purposes

Volunteer fire brigade means a volunteer fire brigade as defined in section 34(1) of this Act.

- (2) For the purposes of this Act, the **functions and activities of the Fire Service** include the functions and activities of any member of the Fire Service.

Section 2 was substituted, as from 1 January 1991, by section 2(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

2A Act to bind Crown

- (1) Subject to subsection (2) of this section, and except as expressly provided in this Act, this Act binds the Crown.
- (2) Except as expressly provided in any agreement made under this Act, nothing in this Act applies to—
- (a) Any defence area; or
 - (b) Any defence fire brigade; or
 - (c) Any member of the New Zealand Defence Force within any defence area.

Section 2A was inserted, as from 1 January 1991, by section 3(1) Fire Service Amendment Act 1990 (1990 No 136).

Part 1

Establishment of New Zealand Fire Service

3 Establishment of New Zealand Fire Service

- (1) There shall be established a fire service to be known as the New Zealand Fire Service which shall be under the control of the New Zealand Fire Service Commission constituted under section 4 of this Act, and shall comprise the employees of the Commission, together with every volunteer fire brigade registered with the New Zealand Fire Service Commission pursuant to section 34 of this Act.

(1A)

(2)

Subsection (1) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “the employees of the Commission” for the words “persons employed under section 18 of this Act”.

Subsection (1A) was inserted, as from 22 October 1981, by section 2 Fire Service Amendment Act 1981 (1981 No 66).

Subsection (1A) was repealed, as from 17 May 2005, by section 3 Fire Service Amendment Act 2005 (2005 No 52).

Subsection (2) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

4 New Zealand Fire Service Commission

- (1) There is hereby constituted a commission to be known as the New Zealand Fire Service Commission.
- (2) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2A) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
- (3) The New Zealand Fire Service Commission is hereby declared to be the successor of the Fire Service Commission.
- (4) The Fire Service Commission is hereby abolished.
- (5) Every reference in any enactment or any document to the Fire Service Commission shall hereafter, unless the context other-

wise requires, be read as a reference to the New Zealand Fire Service Commission.

(6)

(7) The New Zealand Fire Service Commission shall be deemed to be a local authority for the purposes of Part 2 of the Public Works Act 1981, and the Reserves Act 1977,.

(8)

Compare: 1972 No 119 s 3; 1974 No 25 s 3

Subsection (2) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (2A) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (6) was repealed, as from 1 January 1991, by section 4 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (7) was substituted, as from 20 October 1978, by section 3 Fire Service Amendment Act 1978 (1978 No 49).

Subsection (7) was amended, as from 1 February 1982, by section 247(4) Public Works Act 1981 (1981 No 35) by inserting the words “Part 2 of the Public Works Act 1981”.

Subsection (7) was amended, as from 1 October 1991, by section 362 Resource Management Act 1991 (1991 No 69) by omitting the words “and the Town and Country Planning Act 1977”.

Subsection (7) was amended, as from 1 July 1998, by section 2(1) Fire Service Amendment Act 1998 (1998 No 13) by omitting the words “the Local Authorities Loans Act 1956,”.

Subsection (7) was amended, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10) by omitting the words “the Public Finance Act 1977,”.

Subsection (8) was inserted, as from 21 December 1992, by section 42 Public Finance Amendment Act 1992 (1992 No 142).

Subsection (8) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

5 Vesting of property in Commission

[Repealed]

Subsection (2)(a) was amended, as from 28 June 1988, by section 208(1) Rating Powers Act 1988 (1988 No 97) by substituting the words “the occupier of that land for all purposes including those of the Rating Powers Act 1988” for the words “the occupier of that land for all purposes, including those of the Rating Act 1967”.

Subsection (2)(b) was amended, as from 20 October 1978, by section 4(1) Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “enter into negotiations to”.

Subsection (4) was amended, as from 20 October 1978, by section 4(1) Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “and without payment of any fees”.

Subsections (10) to (12) were repealed, as from 1 July 1998, by section 2(2) Fire Service Amendment Act 1998 (1998 No 13).

Section 5 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

6 Members of Commission

- (1) The Commission must have 5 members.
- (1A) Members of the Commission are the board for the purposes of the Crown Entities Act 2004.
- (2) In appointing members of the Commission, the Minister shall have regard to—
 - (a) Their personal attributes; and
 - (b) The need for the members of the Commission to have between them experience in—
 - (i) Public administration; and
 - (ii) Business and economic management; and
 - (iii) Finance; and
 - (iv) Fire engineering and senior operational firefighting; and
 - (c) The need for at least one of the members to be experienced in fire engineering or senior operational firefighting.
- (2A) Subsection (2) does not limit section 29 of the Crown Entities Act 2004.
- (3)
- (4)
- (5)
- (6)
- (7)

Subsection (1) was substituted, as from 13 December 1979, by section 2(1) Fire Service Amendment Act 1979 (1979 No 89).

Subsection (3) was amended, as from 13 December 1979, by section 2(2) Fire Service Amendment Act 1979 (1979 No 89) by substituting the word “Commissioner” for the words “member of the Commission”.

Section 6 was substituted, as from 1 January 1991, by section 5(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1)(a) was amended, as from 26 September 2000, by section 3(1) Fire Service Amendment Act 2000 (2000 No 36), by substituting the expression “5” for the word “three”. See section 3(2) of that Act as to the terms of office of the 2 members of the Fire Service Commission first appointed after 26 September 2000.

Subsection (1)(b) was repealed, as from 26 September 2000, by section 3(3) Fire Service Amendment Act 2000 (2000 No 36).

Subsection (1) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (1A) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (2) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the word “appointing” for the words “recommending persons for appointment as”.

Subsection (2)(b) and (c) was amended, as from 26 September 2000, by section 5(2) Fire Service Amendment Act 2000 (2000 No 36), by omitting the word “appointed” wherever it occurred.

Subsection (2A) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsections (3), (4) and (5) were repealed, as from 26 September 2000, by section 3(3) Fire Service Amendment Act 2000 (2000 No 36).

Subsection (6) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (7) was repealed, as from 26 September 2000, by section 7(1) Fire Service Amendment Act 2000 (2000 No 36).

7 Term of office of appointed members of Commission

[Repealed]

Section 7 was substituted, as from 1 January 1991, by section 6 Fire Service Amendment Act 1990 (1990 No 136).

Section 7 was amended, as from 26 September 2000, by section 5(3) Fire Service Amendment Act 2000 (2000 No 36), by substituting the word “member” for the words “appointed members”.

The proviso to section 7 was repealed, as from 26 September 2000, by section 7(2) Fire Service Amendment Act 2000 (2000 No 36).

Section 7 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

8 Extraordinary vacancies

[Repealed]

Subsections (1), (2), and (3) were amended, as from 1 January 1991, by section 7 Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “appointed member” for the word “Commissioner”.

Subsections (1) and (2) were amended, as from 26 September 2000, by section 5(2) Fire Service Amendment Act 2000 (2000 No 36), by omitting the word “appointed”.

Subsection (1) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting the words “inability to perform the functions of the office” for the word “disability”.

Subsection (3) was amended by section 5(3) Fire Service Amendment Act 2000 (2000 No 36) by substituting the word “member” for the words “appointed member”.

Section 8 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

9 Deputies of members

- (1) If the Minister is satisfied that any member of the Commission is incapacitated or prevented by illness, absence, or other sufficient cause from performing his or her duties as a member, the Minister may designate a person qualified for appointment to the office of that member as a deputy member to act for that member while that member is so incapacitated or prevented.
- (2) A deputy member must, while the deputy member acts as a member of the Commission, be taken to be the member in whose place the deputy member acts.
- (3) For the avoidance of doubt, where the Minister designates a deputy member for the chairperson of the Commission, that deputy member is to be taken as the chairperson of the Commission, despite the fact that there may be a deputy chairperson appointed under clause 1 of Schedule 5 of the Crown Entities Act 2004.

Subsection (1A) was inserted, as from 13 December 1979, by section 3 Fire Service Amendment Act 1979 (1979 No 89).

Section 9 was substituted, as from 1 January 1991, by section 8(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) was amended, as from 26 September 2000, by section 5(3) Fire Service Amendment Act 2000 (2000 No 36), by substituting the word “member” for the words “appointed members” wherever they occurred.

Subsection (1) was amended, as from 26 September 2000, by section 5(4) Fire Service Amendment Act 2000 by substituting the word “member’s” for the words “appointed member’s”.

Subsection (2) was repealed, as from 26 September 2000, by section 6 Fire Service Amendment Act 2000 (2000 No 36).

Section 9 was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

10 Deputy Chairperson*[Repealed]*

Section 10 was substituted, as from 1 January 1991, by section 9 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) was amended, as from 26 September 2000, by section 5(2) Fire Service Amendment Act 2000 (2000 No 36), by omitting the word “appointed”.

Sections 10 to 13 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11 Meetings of Commission*[Repealed]*

Section 11 was substituted, as from 1 January 1991, by section 10 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was amended, as from 26 September 2000, by section 4 Fire Service Amendment Act 2000 (2000 No 36), by substituting the expression “3” for the expression “2”.

Sections 10 to 13 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

12 Committees*[Repealed]*

Subsection (2) was amended, as from 1 January 1991, by section 11 Fire Service Amendment Act 1990 (1990 No 136) by substituting the word “Chairperson” in 2 places for the word “Chairman”.

Sections 10 to 13 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

13 Directions by Minister*[Repealed]*

Sections 10 to 13 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

14 Functions of Commission

The Commission has the following functions under this Act:

- (a) the functions and activities expressed in this Act to be functions and activities of the Commission, including in its role as National Rural Fire Authority:
- (b) general control, within the framework of this Act, of the Fire Service and the functions and activities of the Fire Service:
- (c) efficient administration of this Act:

- (d) any other functions conferred on it by the Minister in accordance with section 112 of the Crown Entities Act 2004.

Section 14 was substituted, as from 1 January 1991, by section 12 Fire Service Amendment Act 1990 (1990 No 136).

Section 14 was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

14A Functions and powers of Commission as National Rural Fire Authority

- (1) The Commission shall be the National Rural Fire Authority for the purposes of the Forest and Rural Fires Act 1977.
- (2) The principal functions of the Commission, in its capacity as the National Rural Fire Authority, shall be—
 - (a) To advise the Minister of rural fire matters relating to—
 - (i) This Act; or
 - (ii) The Forest and Rural Fires Act 1977; or
 - (iii) Any other Act:
 - (b) To perform the functions conferred on the National Rural Fire Authority by this Act or the Forest and Rural Fires Act 1977 or any other Act:
 - (c) To consult with all national organisations (including Government Departments and Crown agencies) which function as Fire Authorities, and with those organisations which represent the interests of different classes of Fire Authorities:
 - (d) To co-ordinate all matters relating to national rural fire control:
 - (e)
 - (f) To co-ordinate the operation of a national rural fire weather index, and to co-ordinate a national and regional system of rural fire hazard prediction and warnings:
 - (g) To promote and encourage research in matters relating to rural fire control:
 - (h) To promote and encourage the training and education of persons engaged in rural fire control (including those so engaged as principal rural fire officers or rural fire officers under the Forest and Rural Fires Act 1977):

- (i) To make such grants or other assistance available, as the Commission thinks fit, to any Fire Authority:
- (j) To facilitate effective regional rural fire co-ordination.
- (k) to set, in consultation with Fire Authorities, minimum standards for Fire Authorities in relation to the following matters:
 - (i) the training, equipping, and clothing of Fire Officers (as defined in section 2 of the Forest and Rural Fires Act 1977) and any other persons required by a Fire Authority to attend a fire:
 - (ii) achieving timely responses to fires:
 - (iii) fire weather observation:
 - (iv) assessing fire hazards:
- (l) to audit Fire Authorities' compliance with the standards set under paragraph (k):
- (m) to monitor and evaluate the performance of Fire Authorities under the Forest and Rural Fires Act 1977.

Sections 14A and 14B were inserted, as from 1 January 1991, by section 12 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(e) was repealed, as from 17 May 2005, by section 4(1) Fire Service Amendment Act 2005 (2005 No 52).

Subsection (2)(j) was amended, as from 17 May 2005, by section 4(2) Fire Service Amendment Act 2005 (2005 No 52) by omitting the words "for the purpose of approval of rural fire plans prepared by Fire Authorities".

Subsection (2)(k) to (2)(m) were inserted, as from 17 May 2005, by section 4(3) Fire Service Amendment Act 2005 (2005 No 52).

14AB Duty to consult Fire Authority before finalising performance evaluation

In performing its function under section 14A(2)(m), the National Rural Fire Authority must, before finalising an evaluation of a Fire Authority's performance, consult with the Fire Authority by giving it—

- (a) a copy of the draft evaluation; and
- (b) a reasonable opportunity to make—
 - (i) written submissions on the draft evaluation; and
 - (ii) oral submissions on the draft evaluation through a representative.

Section 14AB was inserted, as from 17 May 2005, by section 5 Fire Service Amendment Act 2005 (2005 No 52).

14B Powers of Commission

[Repealed]

Sections 14A and 14B were inserted, as from 1 January 1991, by section 12 Fire Service Amendment Act 1990 (1990 No 136).

Section 14B was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

15 Restrictions on delegation

- (1) The Commission may delegate its functions and powers under this Act or the Forest and Rural Fires Act 1977 only to the Chief Executive.
- (2) Subsection (1) applies despite section 73(1) of the Crown Entities Act 2004.
- (3) The Commission may not delegate—
 - (a) The power to enter into an agreement under section 34 or section 36 or section 36A of this Act:
 - (b)
 - (c) The power to borrow money that it may have under sections 160 and 162 of the Crown Entities Act 2004:
 - (d)
 - (e)
 - (f)
- (4) In other respects, sections 73 to 76 of the Crown Entities Act 2004 apply.
- (5)
- (6)
- (7)
- (8)

Subsection (1) was amended, as from 20 October 1978, by section 5 Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “or of any defence fire brigade”.

Section 15 was substituted, as from 1 January 1991, by section 13 Fire Service Amendment Act 1990 (1990 No 136).

The heading to section 15 was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsections (1) and (2) were substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (3) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “The Commission

may not delegate” for the words “Subject to subsection (4) of this section, no delegation under this section shall include”.

Subsection (3)(b) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (3)(c) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by inserting the words “that it may have under sections 160 and 162 of the Crown Entities Act 2004”.

Subsection (3)(d) to (f) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (4) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsections (5) to (8) were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

15A Revocation of delegations by Commission

[Repealed]

Sections 15A and 15B were inserted, as from 1 January 1991, by section 13 Fire Service Amendment Act 1990 (1990 No 136).

Section 15A was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

15B Restriction on power of Commission to direct staff

- (1) Except as provided in section 17K of this Act, the Commission may not give directions to any member of the Fire Service other than the Chief Executive.
- (2) Any direction given to the Chief Executive shall, subject to this Act, be in accordance with the conditions of employment of the Chief Executive.
- (3) This section applies despite section 25 of the Crown Entities Act 2004.

Sections 15A and 15B were inserted, as from 1 January 1991, by section 13 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

16 Co-ordination schemes

[Repealed]

Subsection (1) was amended, as from 20 October 1978, by section 6(1) Fire Service Amendment Act 1978 (1978 No 49), by inserting the words “defence fire brigades and”.

Subsection (2)(e) and (f) were inserted, as from 20 October 1978, by section 6(2) Fire Service Amendment Act 1978 (1978 No 49).

Section 16 was repealed, as from 1 January 1991, by section 14(1) Fire Service Amendment Act 1990 (1990 No 136).

17 Commission to make special provision for protection of Crown property, etc

- (1) The Minister may by notice in writing require the Commission to make special provision for the protection from fire of property of the Crown, for fire protection in or in connection with forests, or for fire protection in the event of war or state of emergency declared under the Civil Defence Emergency Management Act 2002, by the purchase, maintenance, or replacement of equipment, the employment of additional persons, or the provision of additional accommodation.
- (2) The Minister may, by notice in writing to the Commission, specify the standard of protection which may be required in any case under subsection (1) of this section.
- (3) Any expenditure which the Commission incurs under this section and which it could not be required to incur under any other provision of this Act shall be reimbursed by the Crown, and the amount to be so paid shall be determined by agreement or, in default of agreement, by the Audit Office.
- (4) Section 115 of the Crown Entities Act 2004 does not apply to a notice under this section.

Compare: 1972 No 119 s 14

Subsection (1) was amended, as from 1 December 2002, by section 117 Civil Defence Emergency Management Act 2002 (2002 No 33) by substituting the words “state of emergency declared under the Civil Defence Emergency Management Act 2002” for the words “civil defence emergency”. See sections 118 to 121 of that Act as to the transitional provisions.

Subsection (4) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17A Chief Executive

- (1) The Commission shall appoint a Chief Executive who shall be the administrative head of the Fire Service and a member of the Fire Service.
- (2) Where the person appointed as Chief Executive has had senior operational firefighting experience in an urban fire service, the Commission may appoint that person to be both the Chief Executive and the National Commander.

- (3) The Commission shall, in making any appointment under subsection (1) of this section, have regard to the need to appoint a person who—
- (a) Can discharge the specific responsibilities placed on the appointee; and
 - (b) Will imbue the employees of the Fire Service with a spirit of service to the community; and
 - (c) Will promote efficiency in the Fire Service; and
 - (d) Will be a responsible manager; and
 - (e) Will maintain appropriate standards of integrity and conduct among the employees of the Fire Service; and
 - (f) Will ensure that the Commission meets its obligation to be a good employer under section 118 of the Crown Entities Act 2004
 - (g)

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3)(f) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “the Commission meets its obligation to be a good employer under section 118 of the Crown Entities Act 2004” for the words “the Fire Service is a good employer; and”.

Subsection (3)(g) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17B Responsibilities of Chief Executive in respect of management

- (1) The Chief Executive shall be responsible to the Commission for—
- (a) The general conduct of the functions and activities of the Fire Service; and
 - (b) The efficient, effective, and economical management of the functions and activities of the Fire Service.
- (2) The functions, responsibilities, duties, and powers imposed on or given to the Chief Executive by this Act are in addition to those imposed on or given to the Chief Executive by or under any other Act.
- (3) The Chief Executive shall have the powers necessary to carry out the functions, responsibilities, and duties imposed on that Chief Executive by or under this Act, as well as the powers necessary to carry out the functions and responsibilities im-

posed on the Chief Executive or the Commission by or under any other Act.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17C Responsibility of Chief Executive in relation to employment of staff

- (1) The Chief Executive shall be responsible to the Commission for employing, on behalf of the Commission, staff of the New Zealand Fire Service and negotiating terms of employment.
- (2) In carrying out the Chief Executive's obligations under subsection (1), the Chief Executive must comply with any Order in Council under section 116 of the Crown Entities Act 2004 that relates to the Commission.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17CA Responsibility in regard to conduct

The Chief Executive is responsible to the Commission for ensuring that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

Section 17CA was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17D Obligation of Chief Executive to conduct certain consultations

The Chief Executive, acting in accordance with the policy of the Commission, shall—

- (a) Consult at least twice a year with representatives of the United Fire Brigades' Association of New Zealand on Fire Service matters:
- (b) Consult at least twice a year with representatives of the forestry industry and other groups with an interest in national rural fire co-ordination.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17E Obligation of Chief Executive to conduct review of efficiency and economy of Fire Service

The Chief Executive, acting in accordance with the policy of the Commission, shall from time to time review the efficiency and economy of the Fire Service.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17F Obligation of Chief Executive to consult with insurance industry on estimated expenditure of Fire Service

The Chief Executive, acting in accordance with the policy of the Commission, shall, at least once in each year, consult on the estimated expenditure of the Fire Service with representatives of—

- (a) The Insurance Council of New Zealand; and
- (b) Such other organisations representing the insurance industry as the Chief Executive thinks fit.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17G Delegation of functions or powers of Chief Executive

- (1) The Chief Executive may from time to time, either generally or particularly, delegate any of the functions or powers of the Chief Executive under this Act or any other Act, including, without the prior written consent of the Commission, functions or powers delegated to the Chief Executive under this Act or any other Act, to—
 - (a) Any member of the Fire Service, whether or not that member holds Fire Service rank; or
 - (b) Any member of any volunteer fire brigade or defence fire brigade or industrial fire brigade.
- (2) In any case where the Chief Executive has, pursuant to subsection (1) of this section, delegated any of the Chief Executive's functions or powers to any person, that person may, with the prior approval in writing of the Chief Executive, delegate such of those functions or powers as the Chief Executive approves to any other member of the Fire Service or to the holder for the time being of any specified office in the Fire Service.

- (3) Subject to any general or special directions given or conditions imposed by the Chief Executive, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (4) The power of the Chief Executive to delegate under this section—
 - (a) Is subject to any prohibitions, restrictions, or conditions contained in any other Act (except the Crown Entities Act 2004) in relation to the delegation of the Chief Executive's functions or powers; but
 - (b) Shall not limit any power of delegation conferred on the Chief Executive by any other Act.
- (5) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the Chief Executive, nor shall any such delegation affect the responsibility of the Chief Executive for the actions of any person acting under the delegation.
- (8) Sections 62 to 72 of the Crown Entities Act 2004 apply to a delegate under this section as if the delegate were a member and as if the disclosure must be made to the chief executive and with other necessary modifications.
- (9) This section applies despite sections 74 to 76 of the Crown Entities Act 2004.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by inserting the words “, without the prior written consent of the Commission,” after the word “including”.

Subsection (4)(a) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by inserting the words “(except the Crown Entities Act 2004)” after the words “other Act”.

Subsections (8) and (9) were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17H Revocation of delegations by Chief Executive

- (1) Every delegation under section 17G of this Act shall be revocable in writing at will.
- (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Chief Executive by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Chief Executive.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17I Conditions of employment of Chief Executive

- (1) The Chief Executive shall be appointed for a term not more than 5 years.
- (2) Every Chief Executive shall be eligible for reappointment from time to time.
- (3) This section applies in addition to section 117 of the Crown Entities Act 2004.
- (4)

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (4) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17J Removal from office of Chief Executive

[Repealed]

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17J was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17K Acting Chief Executive

- (1) In the case of absence from duty of the Chief Executive (from whatever cause arising) or on the occurrence from any cause of a vacancy in the position of Chief Executive (whether by

reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the functions, powers, and duties of the Chief Executive or pertaining to the position may be exercised and performed by any other member of the Fire Service, whether or not that member holds Fire Service rank, for the time being directed by the Commission to exercise and perform those functions, powers, and duties, whether the direction has been given before the absence or vacancy occurs or while it continues.

- (2) No such direction and no acts done by any member acting pursuant to any such direction under subsection (1) of this section shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the member had not been appointed to the position of Chief Executive.
- (3) The Commission shall determine the conditions of employment that are to apply to any member directed under subsection (1) of this section to exercise and perform any of the functions, powers, and duties of the Chief Executive.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17L Application of Labour Relations Act 1987 in respect of Chief Executive

[Repealed]

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17L was repealed, as from 15 May 1991, by section 155 Employment Contracts Act 1991 (1991 No 22).

17M National Commander

- (1) If the Chief Executive does not hold both the office of Chief Executive and the office of National Commander, the Chief Executive shall appoint a person with senior operational fire-fighting experience in an urban fire service to be the National Commander.
- (2) The National Commander shall be the operational head of the Fire Service, and shall be a member of the Fire Service with Fire Service rank.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17N Responsibilities of National Commander

- (1) The National Commander shall be responsible to the Chief Executive for the operational activities of the Fire Service, including—
 - (a) The issuing of operational instructions under section 27A of this Act; and
 - (b) The publishing of a Code of Practice under section 30(3) of this Act.
- (2) The National Commander may, in conjunction with Government departments and other authorities, make provision for the stabilising or rendering safe of hazardous substance emergencies, and the safety of persons and property endangered by hazardous substance emergencies.
- (3) The functions, responsibilities, duties, and powers imposed on or given to the National Commander by this Act are in addition to those imposed on or given to that National Commander by or under any other Act.
- (4) The National Commander shall have the powers necessary to carry out the functions, responsibilities, and duties imposed on the National Commander by or under this Act, as well as the powers necessary to carry out the functions, responsibilities, and duties imposed on the National Commander by or under any other Act.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (4) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by omitting the words “or the Commission”.

17O Specific responsibilities of National Commander

The National Commander shall—

- (a) Make provision in every Fire District for the prevention of fire, the suppression and extinction of fires, and the safety of persons and property endangered by fire;
- (b) Ensure that the Fire Service is maintained in a state of operational efficiency and conforms with the Act:

- (c) Make provision for effective co-operation between all fire services, whether or not established under this Act:
- (d) Make provision for co-operation between the Fire Service and territorial authorities and regional councils.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17P Co-ordination schemes for fire control

- (1) The National Commander shall, subject to such policy directions as may from time to time be given by the Commission and conveyed by the Chief Executive to the National Commander, continue to operate and from time to time review co-ordination schemes between fire brigades (including defence fire brigades and industrial fire brigades) and Fire Authorities under the Forest and Rural Fires Act 1977 for the purposes of—
 - (a) Reinforcement at serious fires; and
 - (b) Fire protection in rural areas; and
 - (c) fire protection in the event of war or a state of emergency declared under the Civil Defence Emergency Management Act 2002.
- (2) In establishing and operating any scheme under this section the National Commander, acting in accordance with the policy of the Commission, may from time to time—
 - (a) Provide for the use of any Fire Authority under the Forest and Rural Fires Act 1977 such buildings and equipment as it deems necessary for the purposes of the scheme:
 - (b) Enter into an agreement with the owner or occupier of any premises which an industrial fire brigade has been formed to protect regarding the role of that industrial fire brigade in the scheme:
 - (c) Determine the scope and activities in rural fire protection of individual fire brigades, including any industrial fire brigade where the owner or occupier of the premises which the industrial fire brigade was formed to protect agrees to co-operate in the scheme:
 - (d) Determine the persons responsible for assembly and operation of fire brigades and industrial fire brigades,

and appoint and empower the necessary persons for this duty:

- (e) Enter into an agreement with the Chief of Defence Force or with the owner or occupier of any premises which an industrial fire brigade has been formed to protect, regarding the training of the members of the Fire Service, or of any defence fire brigade, or of any industrial fire brigade registered with the Commission pursuant to section 36 of this Act, in the prevention, suppression, and extinction of fires:
 - (f) Enter into an agreement with the Chief of Defence Force regarding—
 - (i) The role of any defence fire brigade in the scheme; and
 - (ii) The scope and activities of any defence fire brigade in rural fire protection.
- (3) In establishing and operating any scheme under this section, the National Commander may also provide liaison and specialist assistance and advice to the Director of Civil Defence Emergency Management or to Civil Defence Emergency Management Groups established under the Civil Defence Emergency Management Act 2002.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1)(c) was substituted, as from 1 December 2002 by section 117 Civil Defence Emergency Management Act 2002 (2002 No 33). *See* sections 118 to 121 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 1 December 2002 by section 117 Civil Defence Emergency Management Act 2002 (2002 No 33). *See* sections 118 to 121 of that Act as to the transitional provisions.

17Q Delegation of functions or powers of National Commander

- (1) The National Commander may from time to time, either generally or particularly, delegate any of the functions or powers of the National Commander under this Act or any other Act, including functions or powers delegated to the National Commander under this Act or any other Act, to—
- (a) Any member of the Fire Service who holds Fire Service rank; or

- (b) Any member of a volunteer fire brigade or defence fire brigade or industrial fire brigade.
- (2) No delegation under this section shall include—
 - (a) The power to delegate under this section:
 - (b) The issuing of operational instructions under section 27A of this Act:
 - (c) The publishing of a Code of Practice under section 30(3) of this Act.
- (3) Subject to any general or special directions given or conditions imposed by the National Commander, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (4) The power of the National Commander to delegate under this section—
 - (a) Is subject to any prohibitions, restrictions, or conditions contained in any other Act (except the Crown Entities Act 2004) in relation to the delegation of the National Commander's functions or powers; but
 - (b) Shall not limit any power of delegation conferred on the National Commander by any other Act.
- (5) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the National Commander, nor shall any such delegation affect the responsibility of the National Commander for the actions of any person acting under the delegation.
- (8) Sections 62 to 72 of the Crown Entities Act 2004 apply to a delegate under this section as if the delegate were a member

and as if the disclosure must be made to the National Commander and with other necessary modifications.

- (9) This section applies despite sections 74 to 76 of the Crown Entities Act 2004.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (4)(a) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by inserting the words “(except the Crown Entities Act 2004)” after the words “other Act”.

Subsections (8) and (9) were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17R Revocation of delegations by National Commander

- (1) Every delegation under section 17Q of this Act shall be revocable in writing at will.
- (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the National Commander by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that National Commander.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17S Conditions of employment of National Commander

- (1) Every National Commander appointed by the Chief Executive shall be appointed for a term of not more than 5 years.
- (2) Every National Commander shall be eligible for reappointment from time to time.
- (3) Except where specific conditions of employment of the National Commander are provided for in this Act, the conditions of employment of the National Commander shall be determined in each case by agreement between the Chief Executive, acting in accordance with the policy of the Commission, and the National Commander.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by omitting the words “, but the Chief Executive shall consult the State Services Commission concerning the conditions of employment of the National Commander before finalising those conditions of employment”.

17T Removal from office of National Commander

[Repealed]

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17T was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17U Application of Labour Relations Act 1987 in respect of National Commander

[Repealed]

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17U was repealed, as from 15 May 1991, by section 155 Employment Contracts Act 1991 (1991 No 22).

17V Deputy National Commander

- (1) The Chief Executive may appoint a Deputy National Commander who shall be a member of the Fire Service holding Fire Service rank and the provisions of sections 17S to 17U of this Act shall, with any necessary modifications, apply accordingly.
- (2) In the case of absence from duty of the National Commander (from whatever cause arising) or on the occurrence from any cause of a vacancy in the position of National Commander (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the functions, duties, and powers of the National Commander or pertaining to the position may be exercised and performed by the Deputy National Commander.
- (3) In the case of absences from duty of the National Commander and the Deputy National Commander (from whatever cause arising) or on the occurrence from any cause of vacancies in the positions of National Commander and Deputy National Commander (whether by reason of death, resignation, or otherwise) and from time to time while the absences or vacancies continue, all or any of the functions, responsibilities, duties, and powers of the National Commander may be exercised and performed by a member of the Fire Service in charge of a Fire Region for the time being directed by the Chief Executive to exercise and perform those functions,

responsibilities, duties, and powers, whether the direction has been given before the absences or vacancies occur or while they continue.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17W National Rural Fire Officer

- (1) The Chief Executive shall appoint a National Rural Fire Officer.
- (2) The person appointed as the National Rural Fire Officer shall be a person who has qualifications and experience in forestry and rural fire management.
- (3) The National Rural Fire Officer shall be a member of the Fire Service but shall not have Fire Service rank.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17X Responsibilities of National Rural Fire Officer

- (1) The National Rural Fire Officer shall be responsible to the Chief Executive for—
 - (a) Ensuring the effective and efficient functioning of the Commission in its capacity as the National Rural Fire Authority;
 - (b) Advising the Commission, the Chief Executive, and the National Commander on national rural fire co-ordination and on all matters pertaining to the Forest and Rural Fires Act 1977;
 - (c) Discharging the responsibilities placed on the National Rural Fire Officer by this Act and the Forest and Rural Fires Act 1977 and, in particular,—
 - (i) Prescribing under that officer's hand such responsibilities or other matters as that officer is authorised under this Act or the Forest and Rural Fires Act 1977 to prescribe;
 - (ii) Appointing rural fire mediators in accordance with the Forest and Rural Fires Act 1977;
 - (iii) In the case of each serious regional rural fire emergency, taking charge of that emergency or

appointing some other person to take charge of that emergency:

- (d) Ensuring the effective regional co-ordination of Fire Authorities and, for that purpose, establishing regional committees of Principal Fire Officers.
- (2) The functions, responsibilities, duties, and powers imposed on or given to the National Rural Fire Officer by this Act are in addition to those imposed on or given to the National Rural Fire Officer by or under any other Act.
- (3) The National Rural Fire Officer shall have the powers necessary to carry out the functions, responsibilities, and duties imposed on the National Rural Fire Officer by or under this Act, as well as the powers necessary to carry out the functions, responsibilities, and duties imposed on the National Rural Fire Officer by or under any other Act.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1)(d) was amended, as from 17 May 2005, by section 6 Fire Service Amendment Act 2005 (2005 No 52) by omitting the words “which shall, among other things, approve, for the purpose of claims on the Rural Fire Fighting Fund, the fire plans of each Fire Authority (which plans shall be in accordance with the Rural Fire Management Code of Practice)”.

17Y Conditions of employment of National Rural Fire Officer

- (1) Every National Rural Fire Officer appointed by the Chief Executive shall be appointed for a term of not more than 5 years.
- (2) Every National Rural Fire Officer shall be eligible for reappointment from time to time.
- (3) Except where specific conditions of employment of the National Rural Fire Officer are provided for in this Act or in the Forest and Rural Fires Act 1977, the conditions of employment of the National Rural Fire Officer shall be determined in each case by agreement between the Chief Executive, acting in accordance with the policy of the Commission, and the National Rural Fire Officer.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by omitting the words “, but the Chief Executive shall consult the State Services Commission concerning the conditions

of employment of the National Rural Fire Officer before finalising those conditions of employment”.

17Z Delegation of functions or powers of National Rural Fire Officer

- (1) The National Rural Fire Officer may from time to time, either generally or particularly, delegate any of the functions or powers of the National Rural Fire Officer under this Act or any other Act, including functions or powers delegated to the National Rural Fire Officer under this Act or any other Act, to any member of the Fire Service who has qualifications and experience in forestry and rural fire management.
- (2) No delegation under this section shall include the power to delegate under this section.
- (3) Subject to any general or special directions given or conditions imposed by the National Rural Fire Officer, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (4) The power of the National Rural Fire Officer to delegate under this section—
 - (a) Is subject to any prohibitions, restrictions, or conditions contained in any other Act (except the Crown Entities Act 2004) in relation to the delegation of the National Rural Fire Officer’s functions or powers; but
 - (b) Shall not limit any power of delegation conferred on the National Rural Fire Officer by any other Act.
- (5) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the National Rural Fire Officer, nor shall any such delegation affect the responsibility of the National

Rural Fire Officer for the actions of any person acting under the delegation.

- (8) Sections 62 to 72 of the Crown Entities Act 2004 apply to a delegate under this section as if the delegate were a member and as if the disclosure must be made to the National Rural Fire Officer and with other necessary modifications.
- (9) This section applies despite sections 74 to 76 of the Crown Entities Act 2004.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (4)(a) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by inserting the words “(except the Crown Entities Act 2004)” after the words “other Act”.

Subsections (8) and (9) were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17ZA Revocation of delegations by National Rural Fire Officer

- (1) Every delegation under section 17Z of this Act shall be revocable in writing at will.
- (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the National Rural Fire Officer by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that National Rural Fire Officer.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

17ZB Removal from office of National Rural Fire Officer

[Repealed]

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17ZB was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

17ZC Acting National Rural Fire Officer

- (1) In the case of absence from duty of the National Rural Fire Officer (from whatever cause arising) or on the occurrence from any cause of a vacancy in the position of National Rural Fire Officer (whether by reason of death, resignation, or otherwise) and from time to time while the absence of vacancy continues,

all or any of the functions, powers, and duties of the National Rural Fire Officer or pertaining to the position may be exercised and performed by any other member of the Fire Service (being a member who has qualifications and experience in forestry and rural fire management) for the time being directed by the Chief Executive to exercise and perform those functions, powers, and duties, whether the direction has been given before the absence or vacancy occurs or while it continues.

- (2) No such direction and no acts done by any member acting pursuant to any such direction under subsection (1) of this section shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the member had not been appointed to the position of National Rural Fire Officer.
- (3) The Chief Executive shall determine the conditions of employment that are to apply to any member directed under subsection (1) of this section to exercise and perform any of the functions, powers, and duties of the National Rural Fire Officer.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was amended, as from 2 September 1996, by section 3 Fire Service Amendment Act 1996 (1996 No 122) by substituting the words “Chief Executive” for the words “National Rural Fire Officer”, where they first occur.

17ZD Application of Labour Relations Act 1987 in respect of National Rural Fire Officer

[Repealed]

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17ZD was repealed, as from 15 May 1991, by section 155 Employment Contracts Act 1991 (1991 No 22).

17ZE Register of delegations

Every person who makes a delegation under section 73 of the Crown Entities Act 2004 or section 17G or section 17Q or section 17Z of this Act or who revokes such a delegation shall record that delegation or revocation in a delegations register.

Sections 17A to 17ZE were inserted, as from 1 January 1991, by section 15 Fire Service Amendment Act 1990 (1990 No 136).

Section 17ZE was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “section 73 of the Crown Entities Act 2004” for the expression “section 15”.

18 Staff of Commission

(1)

(2) Any person who, immediately before the 1st day of April 1976, was an employee, employed solely on fire service duties, of—

- (a) The Fire Service Commission; or
- (b) The Public Service employed in the service of the Fire Service Commission; or
- (c) Any Fire Board; or
- (d) Any territorial authority acting in its capacity as an Urban Fire Authority—

shall be deemed to be appointed and employed by the New Zealand Fire Service Commission in accordance with subsection (1) of this section at that date:

Provided that, in the case of a person to whom paragraph (b) of this subsection applies, he may apply, on or before the 30th day of September 1976, to remain as an officer of the Public Service, in which case the State Services Commission shall endeavour to find him suitable employment in the Public Service.

(3)

(4) The Commission may organise its employees into a separate fire brigade, or may attach them for duty to any member of the Fire Service for the time being appointed in charge of a Fire Region or Fire Area, or to any volunteer fire brigade with which it has an agreement for service.

(5) For the purpose of ensuring a speedy response to an alarm of fire or other emergency, the Commission may require, as a condition of service of any employee, that the employee occupy such accommodation as the Commission may provide.

(6)

(7)

(8)

Compare: 1972 No 119 ss 15, 39; 1974 No 25 s 7

Subsections (1) and (3) were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (4) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “its employees” for the words “any staff so employed”.

Subsections (6) to (8) were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

19 Staff, etc, not in service of Crown

[Repealed]

The reference to the Government Superannuation Fund Act 1956 was substituted for a reference to the Superannuation Act 1956 by section 3(3) Government Superannuation Fund Amendment Act 1976 (1976 No 30), as from 1 November 1977.

The reference to the “State Sector Act 1988” was substituted for a reference to the “State Services Act 1962” or of the State Services Conditions of Employment Act 1977, as from 1 April 1988, by section 90(a) State Sector Act 1988 (1988 No 20). The State Services Conditions of Employment Act 1977 was itself substituted for the repealed State Services Remuneration and Conditions of Employment Act 1969 by section 84 State Services Conditions of Employment Act 1977 (1977 No 95).

Section 19 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Part 2

Fire safety

20 Commission to promote fire safety

- (1) It shall be a matter of prime importance for the Commission to take an active and co-ordinating role in the promotion of fire safety in New Zealand.
- (2) In so promoting fire safety, the Commission shall be concerned to—
 - (a) Reduce continually the incidence of fire and the attendant risk to life and property:
 - (b) Achieve unity and completeness of fire safety law and practice.

21 Functions of Commission in relation to the promotion of fire safety

- (1) The Commission shall seek to achieve co-ordination between territorial authorities, Government departments, the architectural profession, the engineering profession, the building in-

dustry, the chief executive of the department of State responsible for the administration of the Building Act 2004, the Standards Association of New Zealand, the Building Research Association of New Zealand, the Environmental Risk Management Authority, and other bodies and organisations in matters relating to the promotion of fire safety, whether by making contributions to their expenses or otherwise.

- (2) The functions of the Commission in relation to the promotion of fire safety shall include—
- (a) Establishing close and harmonious working relations with industry, commerce, Government departments, territorial authorities, and other bodies and organisations:
 - (b) Seeking to ensure that knowledge affecting fire safety gained by the Commission is applied throughout the community:
 - (c) Stimulating and maintaining interest in fire safety by means of education and publicity through all communications media:
 - (d) Publishing and disseminating fire safety literature:
 - (e) Sponsoring, assisting, and conducting fire safety campaigns and fire safety courses (whether general or particular):
 - (f) Research into methods and practices of fire safety, and making arrangements with any person, Government department, or body having appropriate facilities for the conduct of any such research:
 - (g) Seeking continuously for new ways to reduce the incidence of fire and the risk to life from fire.
- (3) The Commission may, after consultation with the chief executive of the department of State responsible for the administration of the Building Act 2004, if appropriate, the Standards Association of New Zealand, or any association of territorial authorities, or any other appropriate authorities, make recommendations to the Minister as to alterations of statutory responsibilities and reallocation of functions as between Government departments, territorial authorities, and other bodies, in respect of fire safety.

- (4) Without limiting the generality of subsection (3) of this section, but subject to subsection (5) of this section, the Commission may, after similar consultations, make recommendations to the Minister in respect of—
- (a) The issue of codes of practice or standards prescribing, in relation to proposed or existing buildings or additions or alterations to existing buildings,—
 - (i) Safeguards against fire:
 - (ii) Fire resisting construction and means of escape in the event of fire:
 - (iii) The protection of persons and property from the danger of fire or other emergency:
 - (iv) The installation and maintenance of hand-operated fire fighting equipment, riser mains for fire service use, fire detection systems, automatic sprinkler and other fixed fire extinguishing systems, and manual fire alarm systems:
 - (b) The fire safety provisions for any proposed building or for additions or alterations to any existing building:
 - (c) The packing, marking, handling, carriage, storage, and use of hazardous materials.
- (4A) The Commission, before making any recommendation under subsection (4) of this section that relates to a hazardous substance, shall consult with the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996 about the contents of such recommendation.
- (5) Where a code of practice or standard is submitted pursuant to subsection (4) of this section for the Minister's approval, the Minister may approve that code of practice or standard.
- (6) Notwithstanding the provisions of subsection (5) of this section, the Minister shall not approve any code of practice or standard, under that subsection, in relation to building matters if that code or standard purports to have the effect of requiring any building to achieve performance criteria additional to or more restrictive than those specified in the Building Act 2004 or in the building code.

Subsection (1) was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by inserting the words "Building Industry Authority".

Subsection (1) was amended, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30) by inserting, after the words “Building Research Association of New Zealand,” the words “the Environmental Risk Management Authority,”. *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Subsection (1) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “chief executive of the department of State responsible for the administration of the Building Act 2004” for the words “Building Industry Authority”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsection (3) was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by inserting the words “Building Industry Authority, where appropriate,”.

Subsection (3) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “chief executive of the department of State responsible for the administration of the Building Act 2004, if appropriate” for the words “Building Industry Authority, where appropriate”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsection (4) was amended, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30) by inserting, after the words “subsection (3) of this section,” the words “but subject to subsection (5) of this section,”. *See* Parts 1 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Subsection (4A) was inserted, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171). *See* now section 7 Fire Service Amendment Act 2005 (2005 No 52) as to this subsection being renumbered as (4A).

Subsections (5) and (6) were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

A second subsection (5) was inserted, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171). This subsection was renumbered as subsection (4A), as from 17 May 2005, by section 7 Fire Service Amendment Act 2005 (2005 No 52).

Subsection (6) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

21A Relevant building defined for purposes of sections 21B to 21H

- (1) In sections 21B to 21H, **relevant building** means a building or part of a building used for 1 or more of the following purposes:
- (a) the gathering together, for any purpose, of 100 or more persons:
 - (b) providing employment facilities for 10 or more persons:
 - (c) providing accommodation for more than 5 persons (other than in 3 or fewer household units):
 - (d) storing or processing hazardous substances in quantities exceeding the prescribed minimum amounts:
 - (e) providing early childhood facilities (other than in a household unit):
 - (f) providing nursing, medical, or geriatric care (other than in a household unit):
 - (g) providing specialised care for persons with disabilities (other than in a household unit):
 - (h) providing accommodation for persons under lawful detention (not being persons serving a sentence of home detention, or community detention, or serving a sentence of imprisonment on home detention, or on parole subject to residential restrictions imposed under section 15 of the Parole Act 2002).
- (2) However, in sections 21B to 21H, **relevant building** does not include—
- (a) a Crown building, or class of Crown building, that is specified by the Minister by notice in the *Gazette* ; or
 - (b) premises of the mission (as defined in Schedule 1 of the Diplomatic Privileges and Immunities Act 1968).

Section 21A was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Section 21A(1)(h): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3) was amended, as from 2 September 1996, by section 4(a) Fire Service Amendment Act 1996 (1996 No 122) by inserting the words “or section 47A of the Building Act 1991”.

Subsection (3) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “or section 118 of the Building Act 2004” for the words “or section 47A of the Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsection (8)(a) was amended, as from 2 September 1996, by section 4(b) Fire Service Amendment Act 1996 (1996 No 122) by substituting the words “at intervals of not more than 6 months” for the words “at not less than 6-monthly intervals”.

Subsection (11) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act 2004” for the words “Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsections (13) to (15) were inserted, as from 19 December 2002, by section 3 Fire Service Amendment Act 2002 (2002 No 65).

Section 21A was substituted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). See clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21B Owner must provide and maintain evacuation scheme for relevant building

- (1) The owner of a relevant building must provide and maintain an evacuation scheme that is designed to enable evacuation from the scene of a fire safely and within a reasonable time,—
 - (a) if the building has an automatic sprinkler system, to a place of safety inside or outside the building; and
 - (b) in every other case, to a place of safety outside the building.
- (2) However, the owner of a relevant building is not required to provide and maintain an evacuation scheme for the building if—
 - (a) the building is used for a purpose specified in section 21A(1)(b) or (c); and
 - (b) the building has an automatic sprinkler system.
- (3) Subsection (2) is subject to section 21E.
- (4) In this section,—

automatic sprinkler system means an automatic sprinkler system that satisfies the minimum standard required by regulations made under section 92(2)(ne)

evacuation scheme means an evacuation scheme that complies with regulations made under section 92(2)(nd)

owner, in relation to a building for which a unit plan within the meaning of section 2 of the Unit Titles Act 1972 has been deposited, means the body corporate.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21C Owner must apply to National Commander for approval of evacuation scheme

- (1) The owner of a relevant building must apply to the National Commander for approval of the evacuation scheme provided for the building under section 21B.
- (2) The application must be in writing in the prescribed form.
- (3) The National Commander must notify the owner of the building in writing of the outcome of the application.
- (4) If the application is rejected, the owner of the building must reapply to the National Commander for approval of an amended evacuation scheme, as if the application for approval were an application under subsection (1).

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21D National Commander may exempt from requirements

- (1) The National Commander may exempt an owner of a relevant building from complying with the requirements of section 21B.
- (2) The National Commander must not exempt the owner under this section unless satisfied that there are structures and systems in place for the building that will ensure that, if there is a fire within the building, people may safely evacuate from it.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21E Owner must notify National Commander if section 21B(2) applies to relevant building

- (1) The owner of a relevant building to which section 21B(2) applies must notify the National Commander that the building does not require an evacuation scheme.
- (2) The notification must be in writing in the prescribed form.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21F Powers of entry of National Commander

- (1) The National Commander may enter a relevant building for the purposes of ascertaining whether, or to what extent, the owner of the building is complying with the requirements of section 21B.
- (2) The National Commander must—
 - (a) give at least 24 hours' written notice to the owner and occupier of the building before entering the building; and
 - (b) identify himself or herself when entering the building and, if requested, at any later time.
- (3) If the owner or occupier of the building is not present at the time the National Commander enters and inspects the building, the National Commander must—
 - (a) leave in a prominent location on or in the building a written statement that includes the following information:
 - (i) the time and date of the entry; and
 - (ii) the name of the National Commander (and fact of his or her status); and
 - (iii) the reasons for the entry; and
 - (iv) the address of the National Commander to which enquiries should be made; and
 - (b) take all other reasonable steps to give the information in paragraph (a) to the owner or occupier of the building.
- (4) In this section and section 21G, **National Commander** includes any person authorised in writing by the National Commander.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21G District Court order closing relevant building

- (1) If the owner of a relevant building has failed to comply with the requirements of section 21B, the National Commander

may apply to a District Court Judge for an order that the building be closed until those requirements are met.

- (2) The National Commander must give the owner concerned at least 10 days' written notice before applying for an order.
- (3) Before making an order, the District Court Judge must—
 - (a) conduct a hearing, and give the National Commander and the owner of the building an opportunity to be heard; and
 - (b) be satisfied that the owner has failed to comply with the requirements of section 21B.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21H Voluntary application for approval of evacuation scheme

- (1) An owner of a building that is not a relevant building may apply to the National Commander for approval of an evacuation scheme for the building.
- (2) The application must be in writing in the prescribed form.
- (3) Section 21B applies, with all necessary modifications, to an application under this section as if the application were an application under section 21C.
- (4) No order under section 21G may be made in relation to a building to which this section applies.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

21I Previously approved evacuation schemes

An evacuation scheme is to be treated as having been approved under section 21C if—

- (a) the National Commander approved the evacuation scheme under any Act or regulations; and
- (b) the approval was given before the commencement of section 8 of the Fire Service Amendment Act 2005.

Sections 21B to 21I were inserted, as from 1 October 2006, by section 8 Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

22 Recommendation on fire safety may be sent to territorial authority

[Repealed]

Subsections (1), (2), and (3) were amended, as from 1 July 1986, by section 2(6)(a) Fire Service Amendment Act 1986 (1986 No 18) by substituting the words “Minister of Local Government” for the word “Minister”.

Subsection (2)(a) was amended, as from 1 April 1980, by section 8(3) Local Government Amendment Act 1979 (1979 No 59) by substituting the words “Minister of Local Government under section 649 of the Local Government Act 1974 (as enacted by section 2 of the Local Government Amendment Act 1979) or the corresponding provision of any former enactment” for the words “Minister under section 266 of the Municipal Corporations Act 1954 or under section 288 of the Counties Act 1956”.

Subsection (4) was amended, as from 1 July 1986, by section 2(6)(b) Fire Service Amendment Act 1986 (1986 No 18) by substituting the words “Minister of Internal Affairs” for the word “Minister”.

Subsection (4) was amended, as from 1 January 1991, by section 16 Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “the directions of the Minister of Local Government” for the words “the directions imposed by the Minister of Internal Affairs”.

Section 22 was repealed, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Part 3
Organisation of Fire Service

23 Command and operation of Fire Service

- (1) The National Commander shall, in accordance with the policy of the Commission, be charged with—
- (a) The direction of all technical matters, including training; and
 - (b) The operational command of the Fire Service; and
 - (c) Such other functions and duties as may from time to time be delegated to the National Commander by the Chief Executive for the purposes of this Act.
- (2) The National Commander shall have all the powers of the Commission as are necessary for the purpose of exercising the National Commander’s functions and duties, and, for the purposes of any of the matters set out in section 29 or any fire or other emergency, shall have all the powers of the Chief Fire Officer in any Fire District, whether or not that Fire District has a Chief Fire Officer, and the National Commander in so exercising the powers of a Chief Fire Officer shall be deemed to be

the Chief Fire Officer of that Fire District for the duration of time that those powers are exercised, and may delegate such powers to whomsoever the National Commander may deem appropriate.

- (3) The fact that the National Commander performs any function or duty or exercises any power of the Commission under this Act shall be sufficient evidence of the National Commander's authority to do so.

Section 23 was substituted, as from 1 January 1991, by section 17 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was amended, as from 19 December 2002, by section 3 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words "any of the matters set out in section 29 or" after the words "for the purposes of".

24 Fire Regions

- (1) For the purposes of this Act, the Commission may from time to time, by notice in the *Gazette*, declare New Zealand, or any part thereof, to be divided into Fire Regions, with such names or designations as it thinks fit, and in like manner may abolish, alter, or reconstitute any Fire Region or change or abolish any such name or designation.
- (2) In no case shall part only of a Fire Area be included in any Fire Region.

Sections 24 and 25 were substituted, and sections 24A and 25A were inserted, as from 1 January 1991, by section 18 Fire Service Amendment Act 1990 (1990 No 136).

24A Control of Fire Region

- (1) Every Fire Region shall be in the charge of a member of the Fire Service appointed as such by the Chief Executive, acting in accordance with the policy of the Commission, and after consultation with the National Commander.
- (2) Every member of the Fire Service in charge of a Fire Region—
- (a) Shall be a member of the Fire Service with Fire Service rank; and
 - (b) Shall perform such functions and duties as the Chief Executive directs; and
 - (c) Shall have, in relation to that Fire Region, all the powers of the National Commander as are necessary for the pur-

pose of performing that member's functions and duties;
and

- (d) For the purposes of any of the matters set out in section 29 or any fire or other emergency, shall have all the powers of a Chief Fire Officer in respect of any Fire District within that Fire Region, whether or not that Fire District has a Chief Fire Officer, and the member so exercising the powers of Chief Fire Officer shall be deemed to be the Chief Fire Officer of that Fire District for the duration of time that those powers are exercised, and may delegate such powers to whomsoever that member in charge of the Fire Region considers appropriate.
- (3) The member of the Fire Service in charge of a Fire Region may, with the prior approval of the National Commander, delegate to any member of the Fire Service in charge of any Fire Area in that Fire Region such of the powers conferred by subsection (2)(c) of this section on the member of the Fire Service in charge of that Fire Region as the National Commander approves.
- (4) The fact that any member of the Fire Service in charge of a Fire Region performs any function or duty or exercises any power of the National Commander shall be sufficient evidence of that member's authority to do so.
- (5) The appointment as the member of the Fire Service in charge of a Fire Region may be held in conjunction with any other appointment in the Fire Service.

Sections 24A and 25A were inserted, as from 1 January 1991, by section 18 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) was amended, as from 19 December 2002, by section 5(1) Fire Service Amendment Act 2002 (2002 No 65) by substituting the words "in the charge" for the words "in charge".

Subsection (2)(d) was amended, as from 19 December 2002, by section 5(2) Fire Service Amendment Act 2002 (2002 No 65) by inserting the words "any of the matters set out in section 29 or" after the words "for the purposes of".

25 Fire Areas

- (1) For the purposes of this Act, the Commission may from time to time, by notice in the *Gazette*, declare any Fire Region, or any part thereof, to be divided into Fire Areas, with such names or

designations as it thinks fit, and in like manner may abolish, alter, or reconstitute any Fire Area or change or abolish any such name or designation.

- (2) In no case shall part only of a Fire District be included in any Fire Area.

Sections 24 and 25 were substituted, as from 1 January 1991, by section 18 Fire Service Amendment Act 1990 (1990 No 136).

25A Control of Fire Area

- (1) Every Fire Area shall be in the charge of a member of the Fire Service appointed as such by the Chief Executive, acting in accordance with the policy of the Commission, and after consultation with the National Commander.
- (2) Every member of the Fire Service in charge of a Fire Service Area—
- (a) Shall be a member of the Fire Service with Fire Service rank; and
 - (b) Shall perform such functions and duties as may be delegated to that member by the member of the Fire Service in charge of the Fire Region of which the Fire Area forms part; and
 - (c) Shall have, in relation to that Fire Area, all the powers of the member of the Fire Service in charge of the Fire Region of which the Fire Area forms part as are necessary for the purpose of performing that member's functions and duties; and
 - (d) For the purposes of any of the matters set out in section 29 or any fire or other emergency, shall have all the powers of a Chief Fire Officer in any Fire District within that Fire Area, whether or not that Fire District has a Chief Fire Officer, and the member so exercising the powers of Chief Fire Officer shall be deemed to be the Chief Fire Officer of that district for the duration of time that those powers are exercised, and may delegate such powers to whomsoever that member in charge of the Fire Area may deem appropriate.
- (3) The member of the Fire Service in charge of a Fire Area may, with the prior approval of the member of the Fire Service in charge of the Fire Region in which that Fire Area is located,

delegate to any other member of the Fire Service with Fire Service rank such of the powers conferred by subsection (2)(c) of this section on the member of the Fire Service in charge of that Fire Area as the member of the Fire Service in charge of that Fire Region approves.

- (4) The fact that any member of the Fire Service in charge of a Fire Area performs any function or duty or exercises any power of a member of the Fire Service in charge of a Fire Region shall be sufficient evidence of that member's authority to do so.
- (5) The appointment as the member of the Fire Service in charge of a Fire Area may be held in conjunction with any other appointment in the Fire Service.

Sections 24A and 25A were inserted, as from 1 January 1991, by section 18 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(d) was amended, as from 19 December 2002, by section 6 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words "any of the matters set out in section 29 or" after the words "for the purposes of".

26 Fire Districts

- (1) Every united urban fire district, urban fire district, and secondary urban fire district which existed immediately before the commencement of this Act is hereby declared to be a Fire District under this Act.
- (2) Where the Commission is satisfied that the fire protection of any urban area can be more effectively carried out—
 - (a) By the inclusion of that urban area in an existing Fire District; or
 - (b) By the constitution of that urban area as a Fire District,—the Commission may by notice in the *Gazette*, at the request of a territorial authority or of its own motion, include that urban area in an existing Fire District or constitute it a Fire District accordingly. The same or any subsequent notice in the *Gazette* shall—
 - (c) Specify the date on which the area is to be included in or, as the case may be, constituted a Fire District;
 - (d) Assign a name or designation to the Fire District.
- (3) Any Fire District constituted under this section may include the whole or any part of any existing Fire District.

- (4) The Commission may, by notice in the *Gazette*, alter the boundaries of, or abolish, any existing Fire District. The same or any subsequent notice shall specify the date on which the boundaries are to be altered or, as the case may be, the Fire District is to be abolished.
- (5) Notwithstanding anything in the Local Government Act 2002, the Local Government Commission shall not prepare any scheme providing for the constitution or abolition or alteration of the boundaries of any Fire District.

Subsection (5) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84), by substituting the words “Local Government Act 2002” for the words “Local Government Act 1974”. See sections 273 to 314 of that Act as to the savings and transitional provisions.

27 Chief Fire Officer and Deputy Chief Fire Officer

- (1) The Chief Executive must appoint a Chief Fire Officer and a Deputy Chief Fire Officer for each Fire District, who must be either—
 - (a) a member of the Fire Service; or
 - (b) a member of a volunteer brigade that has entered into an agreement for service under section 34.
- (2) An appointment as Chief Fire Officer or Deputy Chief Fire Officer may be held separately or in conjunction with any other office in the Fire Service.

Section 27 was substituted, as from 20 October 1978, by section 7 Fire Service Amendment Act 1978 (1978 No 49).

Section 27 was substituted, as from 1 January 1991, by section 19(1) Fire Service Amendment Act 1990 (1990 No 136).

Section 27 was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

27A Operational instructions

- (1) The National Commander shall from time to time issue operational instructions in respect of the operational requirements, duties, and scope of the Fire Service, not inconsistent with this Act, and all members of the Fire Service who hold Fire Service rank, volunteer fire brigades, defence fire brigades, and industrial fire brigades shall obey and be guided by those instructions communicated to them.

- (2) Every operational instruction shall remain in force until cancelled by the National Commander.
- (3) An operational instruction shall be deemed to have been communicated when the instruction has been published in the Fire Service Gazette or in any manual of operational instructions issued by the National Commander to members generally, or, in the case of a member of any particular group, when the instruction has been published in any manual of operational instructions issued by the National Commander to the members generally of that group, or, failing any such publication, when the instruction has been brought to the personal notice of the member.
- (4) The production at any inquiry or investigation under this Act of a copy of the Fire Service Gazette, or any manual purporting to be issued by the authority of the National Commander and purporting to contain a copy of any operational instruction, shall be sufficient evidence of the making, publication, and contents thereof.

Section 27A was inserted, as from 1 January 1991, by section 20 Fire Service Amendment Act 1990 (1990 No 136).

28 Functions, duties, and powers of Chief Fire Officer

- (1) Subject to this Act, the Chief Fire Officer shall be charged with the direction of all technical matters and with the operation of all fire brigades in the Fire District for which the Chief Fire Officer is appointed, and the Chief Fire Officer shall carry out those responsibilities in accordance with the policy of the Commission and the operational instructions of the National Commander under section 27A of this Act, so as to provide protection for that Fire District and within any area or concerning any property which the fire brigade of the Fire District is under an obligation to protect pursuant to section 38 or section 39 of this Act.
- (2) In the event of any alarm of fire or any fire happening, the Chief Fire Officer of the Fire District, or in his or her absence, the Deputy Chief Fire Officer, or, in the absence of both of them, the person for the time being in charge of the fire brigade, shall forthwith proceed, or direct some other member of the brigade to proceed forthwith, to the place to which the brigade has been

called, and endeavour by all practicable means to extinguish and prevent the spread of the fire (if any), and to save lives and property in danger.

- (3) If, in the event of any emergency occurring, other than an emergency involving fire or hazardous substances, at which the Chief Fire Officer of the Fire District, or, in the absence of the Chief Fire Officer, the Deputy Chief Fire Officer, or, in the absence of both of them, the person for the time being in charge of the fire brigade, considers that the brigade could render assistance, that officer or other person may proceed, or direct some other member of the brigade to proceed, forthwith to the emergency and shall take whatever action is necessary to save lives and property in danger.
- (3A) If, in the event of any hazardous substance emergency occurring, the Chief Fire Officer of the Fire District, or in the absence of the Chief Fire Officer, the Deputy Chief Fire Officer, or in the absence of both of them, the person for the time being in charge of the fire brigade, considers that the fire brigade could render assistance, that officer or other person may proceed, or direct some other person to proceed, forthwith to the place to which the brigade has been called, and endeavour by all practicable means to cause the stabilising or rendering safe of the hazardous substance emergency, and save lives and property in danger.
- (3B) For the purposes of subsection (3A) of this section, in the event of the attendance of the brigade, the Chief Fire Officer of the Fire District, or in the absence of the Chief Fire Officer, the Deputy Chief Fire Officer, or, in the absence of both of them, the person for the time being in charge of the fire brigade shall have the powers of an enforcement officer under the Hazardous Substances and New Organisms Act 1996 pertaining to that emergency until the arrival of such an enforcement officer.
- (4) In the event of fire or other emergency, the person for the time being in charge of the fire brigade so engaged—
 - (a) Shall control and direct all fire brigades and defence fire brigades and industrial fire brigades and all persons there who place their services at his disposal:

- (b) May enter upon any land, building, or structure and, if necessary, break into any building or structure which may be on fire or otherwise endangered or which is in the near neighbourhood of the emergency, for the purpose of taking any steps which he deems necessary in order to carry out his duties:
- (c) May take any equipment required to be used into, through, or upon any land, building, or structure where he deems it necessary for the purpose of carrying out his duties:
- (d) May remove from any building or structure which is on fire or otherwise endangered or which is in the near neighbourhood of the fire or emergency, without responsibility for any consequent loss or damage, any flammable, combustible, explosive, or dangerous material found therein:
- (e) May, for the purpose of extinguishing or preventing the spread of fire, cause any building or structure which is on fire or otherwise endangered, or which is adjacent to or in the vicinity of any building or structure which is on fire, to be pulled down, either wholly or partially, or otherwise:
- (f) May, for the purpose of extinguishing or preventing the spread of fire or for the purpose of reducing danger from any emergency, cause any tree or other plant which is on fire or otherwise endangered, or which is adjacent to or in the vicinity of any building or structure or tree or other plant which is on fire or otherwise endangered, to be cut or pulled down, either wholly or partially and removed if he considers it necessary:
- (g) May, subject to section 30(1) of this Act, cause water to be shut off from, or turned into, any main or pipe in order to obtain a greater pressure and supply of water:
- (h) May cause any motorway, highway, road, street, private road, right of way, service lane, access way, thoroughfare, railway, or tramway in the vicinity of the fire or other emergency to be closed for traffic during the continuance of the emergency:

- (i) May remove any vehicle impeding the operation of the fire brigades, and, where reasonably necessary for that purpose, he may use force or break into any such vehicle:
- (j) May remove, using reasonable force if necessary, any person who, by his presence or otherwise, interferes with operations to deal with the fire or emergency or who, in his opinion, is in danger:
- (k) May shut off or disconnect, or order any person having the control thereof to shut off or disconnect, the supply of gas, fuel oil, or electricity to any building which is on fire or otherwise endangered or which is in the vicinity of the emergency, or the supply of electricity to any electric tramway or trolley omnibus route in the vicinity of the emergency:
- (l) May, at the time of the fire or emergency or within a reasonable time thereafter, pull down or shore up any building or structure or any portion of any building or structure which, in his opinion, has been so damaged as to be or likely to become dangerous to life or property, after, in his discretion, first removing the contents thereof, and the expense of any such operation, so far as it relates to the pulling down or shoring up, shall be borne by the owner of the building or structure and, so far as it relates to the removal of the contents, shall be borne by the owner of the contents, and shall in either case be paid to the Commission:
- (m) May, at the time of the fire or emergency or within a reasonable time thereafter, cut or pull down any tree or other plant or any part of any tree or other plant which, in his opinion, has been so damaged as to be or likely to become dangerous to life or property and the expense of the operation shall be borne by the owner of the land on which the tree or other plant is or was situated, and shall be paid to the Commission:
- (n) May generally do all other things that are reasonably necessary for protecting life or property in dealing with the fire or other emergency:

- (na) May require the owner of the property, or the owner's agent, to provide such information pertaining to that incident as the person in charge of the fire brigade so engaged deems necessary in order to carry out that person's duties.
- (5) In the event of an emergency not involving fire or the risk of fire, the powers referred to in subsection (4) of this section shall not be exercised by the person for the time being in charge of the fire brigade without the authorisation of the person in charge of the operations at the scene of the emergency:
Provided that, where the person in charge of the fire brigade is of the opinion that lives or property are in imminent danger, he may exercise any of those powers notwithstanding that he has not been authorised to do so.
- (6) The fact that any person performs any function or duty or exercises any power under subsection (4) of this section shall be conclusive evidence of his authority to do so, and no person shall be concerned to enquire whether the occasion requiring or authorising him to do so has arisen or has ceased.
- (6A) This section shall be read subject to the Diplomatic Privileges and Immunities Act 1968 and to any regulations made pursuant to section 93(1) of the Defence Act 1990.
- (7)

Compare: 1972 No 119 s 41(2) to (5)

Subsections (1) to (3) were substituted and subsections (3A) and (3B) inserted, as from 1 January 1991, by section 21(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3B) was amended, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30) by substituting the words "enforcement officer under the Hazardous Substances and New Organisms Act 1996" for the words "Inspector of Dangerous Goods under the Dangerous Goods Act 1974 and an officer under the Toxic Substances Act 1979"

Subsection (3B) was amended, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30) by substituting the words "such an enforcement officer" for the words "Inspector of Dangerous Goods or an officer under the Toxic Substances Act 1979". See Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. See clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Subsection (3B) was amended, as from 17 May 2005, by section 9 Fire Service Amendment Act 2005 (2005 No 52) by omitting the word "an" in the second place where it occurs.

Subsection (4)(a) was amended, as from 20 October 1978, by section 8 Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “and defence fire brigades”.

Subsection (4)(h) was substituted, as from 1 January 1991, by section 21(2) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (4)(na) was inserted, as from 1 January 1991, by section 21(3) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (6A) was inserted, as from 1 January 1991, by section 21(4) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (7) was repealed, as from 1 January 1991, by section 3(2) Fire Service Amendment Act 1990 (1990 No 136).

28A Functions, duties, and powers of Chief Fire Officer outside of Fire District

- (1) In the event of any fire or other emergency (including a hazardous substance emergency) occurring outside any Fire District, the Chief Fire Officer of a Fire District, or, in the absence of the Chief Fire Officer, the Deputy Chief Fire Officer, or, in the absence of both of them, the person for the time being in charge of the fire brigade, if the officer or other person considers the brigade could render effective protection to life or property, may proceed, or direct some other member of the brigade to proceed, forthwith to the emergency, to take whatever action is necessary to save lives and property in danger.
- (2) In the event of the attendance of the brigade, the Chief Fire Officer of the Fire District, or, in the absence of the Chief Fire Officer, the Deputy Chief Fire Officer, or, in the absence of both of them, the person for the time being in charge of the fire brigade shall have all the functions, duties, and powers conferred on that officer or person by section 28 of this Act.

Section 28a was inserted, as from 1 January 1991, by section 22 Fire Service Amendment Act 1990 (1990 No 136).

29 Access to land and buildings (other than household units) for pre-incident planning and post-incident investigation

- (1) The Chief Fire Officer, the Deputy Chief Fire Officer, and any person authorised in writing by either of them shall have free access to all land and buildings (not including household units) at such times and under such conditions as are reasonable, having regard to any business carried on therein, in order to ob-

tain information required for fire fighting planning purposes or hazardous substance emergency planning purposes (including the planned evacuation of persons from the premises and other matters relating to the protection of human life), if the Chief Fire Officer reasonably believes that in the event of any fire or hazardous substance emergency occurring a brigade may be called upon to enter that land or buildings.

- (2) The provisions of subsection (1) of this section shall apply, with any necessary modifications, for the purposes of any post-incident investigation that may, from time to time, be required to be carried out to determine the cause of any fire or hazardous substance emergency.
- (3) Reasonable notice shall be given of any proposed entry, and identification shall be shown on entry and at any subsequent time if requested.
- (4) The provisions of this section shall not apply to any Crown land or building or any class or classes of Crown land or buildings that are, from time to time, specified by notice in the *Gazette* by the Minister or any land and buildings that are **premises of the mission** (as defined in Schedule 1 to the Diplomatic Privileges and Immunities Act 1968).
- (5) Where a person having access to land and buildings under this section believes that any building or sitework does not comply with the Building Act 2004, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.
- (6) For the purposes of subsection (5) of this section, the terms **building**, **sitework**, and **territorial authority** have the meanings ascribed to them by the Building Act 2004.

Section 29 was substituted, as from 1 January 1991, by section 23 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) was amended as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by substituting the words “household units” for the words “private dwellings”.

Subsections (5) and (6) were inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Subsections (5) and (6) were amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words “Building Act

2004” for the words “Building Act 1991”. See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

30 Fire brigade to have use of water in mains, etc

- (1) Subject to the overall requirements of the Controller under the Civil Defence Emergency Management Act 2002, while a state of emergency exists under that Act, every fire brigade, defence fire brigade, and industrial fire brigade shall, free of charge,—
 - (a) Have the use of all hydrants and control valves installed in any water mains and of all water in the water mains for the purpose of extinguishing any fire or stabilising or rendering safe any hazardous substance emergency or for the purpose of fire brigade drills conducted under the authority of the Chief Fire Officer:
Provided that no such brigade shall use for drills water supplied by any person or authority (except within its own Fire District) without the consent of that person or authority; and
 - (b) Have the use of all water in any river, creek, stream, watercourse, channel, lake, lagoon, well, tank, or other source of water supply whatsoever for the purpose of extinguishing any fire or stabilising or rendering safe any hazardous substance emergency.
- (2) The National Commander may from time to time cause to be made such checks as the National Commander considers necessary as to the adequacy of water supplies, including tests of water volume and pressure in any water main, in any Fire District or within any area concerning any property that the Fire Service is under an obligation to protect pursuant to section 38 or section 39 of this Act, and shall advise the territorial authority or authorities as to the sufficiency or otherwise of the water supply of the Fire District or the area available for fire fighting and for the effective operation of such fire protection systems that may from time to time be installed in buildings or property installations within the Fire District or the area.
- (3) In carrying out its duties pursuant to subsection (2) of this section the National Commander shall publish a Code of Practice specifying standards for water supply volume and pressure

which are required. This Code of Practice shall be notified by the National Commander in the *Gazette*.

Compare: 1972 No 119 s 37

Subsection (1) was amended, as from 20 October 1978, by section 9(a) Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “, defence fire brigade, and industrial fire brigade”.

A reference to the Civil Defence Act 1983 in subsection (1) was substituted for a reference to the repealed Civil Defence Act 1962 by section 84(1) Civil Defence Act 1983 (1983 No 46).

Subsection (1) was amended, as from 1 December 1983, by section 83 Civil Defence Act 1983 (1983 No) by substituting the words “Regional or Local Controller of Civil Defence, as the case may be,” for the words “Local Controller of Civil Defence”.

Subsection (1) was amended, as from 1 December 2002, by section 117 Civil Defence Emergency Management Act 2002 (2002 No 33) by substituting the words “Controller under the Civil Defence Emergency Management Act 2002, while a state of emergency exists under that Act” for the words “Regional or Local Controller of Civil Defence, as the case may be, while a state of civil defence emergency exists under the Civil Defence Act 1983”. See sections 118 to 121 of that Act as to the transitional provisions.

Subsection (1)(a) was amended, as from 1 January 1991, by section 24(1) Fire Service Amendment Act 1990 (1990 No 136), by inserting the words “or stabilising or rendering safe any hazardous substance emergency”.

Subsection (1)(a) proviso was amended, as from 20 October 1978, by section 9(b) Fire Service Amendment Act 1978 (1978 No 49) by substituting the words “such brigade” for the words “fire brigade”.

Subsection (1)(b) was amended, as from 1 January 1991, by section 24(1) Fire Service Amendment Act 1990 (1990 No 136), by inserting the words “or stabilising or rendering safe any hazardous substance emergency”.

Subsection (2) was amended, as from 20 October 1978, by section 9(c) and (d) Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “or any rural area it is under an obligation to protect,” and the words “or the rural area”.

Subsection (2) was substituted, as from 1 January 1991, by section 24(2) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was inserted, as from 1 January 1991, by section 24(2) Fire Service Amendment Act 1990 (1990 No 136).

31 Power to erect fire alarms, etc

It shall be lawful for the Commission, with the consent of the authority having control of any public place or with the consent of the owner of any other place, to erect and maintain fire alarms and fire equipment associated with any fire alarm system on, under, or over that place.

Section 31 was amended, as from 1 January 1991, by section 25 Fire Service Amendment Act 1990 (1990 No 136) by omitting the word “automatic”.

Section 31 was substituted, as from 20 October 1978, by section 10 Fire Service Amendment Act 1978 (1978 No 49).

32 Police to assist person in charge of fire brigade

- (1) The authority of every member of the Fire Service in charge of a Fire Region or Fire Area and every person in charge of a fire brigade or a defence fire brigade or an industrial fire brigade shall be recognised by all members of the Police, traffic officers, and all other persons present at any fire or suspected fire or other emergency.
- (2) All members of the Police present at any fire, suspected fire, or other emergency shall co-operate with the member of the Fire Service in charge of a Fire Region or Fire Area and the person in charge of a fire brigade or a defence fire brigade or an industrial fire brigade who is dealing with that fire, suspected fire, or other emergency in the performance of his duty and may, if called upon to do so by that member or that person, exercise any of the powers conferred on the person for the time being in charge of a fire brigade under section 28(4) of this Act.

Compare: 1972 No 119 s 43

Subsections (1) and (2) were amended, as from 20 October 1978, by section 11 Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “or a defence fire brigade”.

33 Volunteer fire police

- (1) With the consent of the senior officer of the Police in the district, any Chief Fire Officer, in accordance with the policy of the Commission, may establish a volunteer fire police unit and enrol any person as a member thereof and may in like manner disestablish such a unit or for just cause remove any person from the roll.
- (2) Every person enrolled under this section shall be sworn in before a Justice of the Peace, and during the period of his service as a member of the fire police and while so acting shall be deemed to be, and shall have all the power and authority and responsibility of, a constable.

- (3) In the performance of their duties at any fire or other incident to which a fire brigade is called, volunteer fire police shall carry out their duties under the direction of the person in charge of the fire brigade.

Compare: 1972 No 119 s 44

34 Volunteer fire brigades

- (1) For the purposes of this Act the term **volunteer fire brigade** means any group of persons associated by mutual consent as a fire brigade where—
- (a) Those persons have entered as a group into a binding agreement of service with the Commission; and
 - (b) That group of persons is registered as a volunteer fire brigade under this Act pursuant to subsection (3) of this section.
- (2) The member of the Fire Service in charge of any Fire Region may recommend to the Commission the establishment and maintenance of a volunteer fire brigade in that Region or the revocation of its registration.
- (3) Where any group of persons has entered into an agreement of service with the Commission for the purpose of becoming a volunteer fire brigade, the Commission may, if it is satisfied that the group is or will become reasonably efficient as to organisation, staffing, equipment, discipline, and training to operate as a volunteer fire brigade and meet the requirements of the area or property which it is intended to protect, and, on application signed by the principal officer of that group, register it as a volunteer fire brigade. In making any such registration, the Commission may impose any conditions which it considers necessary, but the imposition of conditions shall not affect the validity of the registration.
- (4) The Commission may revoke the registration of any volunteer fire brigade if—
- (a) It ceases for any reason to function, or to be authorised to function, as a volunteer fire brigade; or

- (b) It fails for 2 consecutive years to attain such reasonable standard of efficiency as the Commission may determine to be proper in the circumstances:

Provided that no such revocation shall take effect until written notice of the circumstances has been given to the United Fire Brigades' Association of New Zealand and the Commission has considered the representations, if any, made by that Association in the matter within a reasonable time.

- (5) In the event of any dispute arising between—
 - (a) The Commission, or any employee or employees of the Commission; and
 - (b) Any volunteer fire brigade or any volunteer member or members of any volunteer fire brigade,—the Commission shall give written notice of the circumstances of the dispute to the United Fire Brigades' Association of New Zealand and shall not make any final decision regarding the settling of the dispute until it has considered the representations, if any, made by that Association in the matter within a reasonable time:
Provided that, in any case where a mutually acceptable settlement of a dispute cannot be reached, either party may refer the matter for consideration by the Minister, whose decision shall be final.
- (6) No member of a fire brigade, other than a member who is an employee of the Commission attached to the brigade, shall be required to become a member of any service organisation by reason of his services with the brigade unless that member—
 - (a) Is a member of a volunteer fire brigade which, by a majority of the valid votes cast at a ballot taken in a manner approved by the Secretary of Labour, and under the supervision of a person appointed by the Secretary of Labour, has decided to join the appropriate service organisation; or
 - (b)
- (7) Any member of a volunteer fire brigade who is required to become a member of any service organisation shall be entitled to become a full financial member of the service organisation on payment of the appropriate entrance fee and on payment of

one-half of the subscription payable by any full time member of a brigade:

Provided that nothing in this subsection shall apply to any employee of the Commission who is attached for duty to a volunteer fire brigade.

Compare: 1972 No 119 s 45

Subsection (6)(b) was repealed, as from 20 October 1978, by section 12 Fire Service Amendment Act 1978 (1978 No 49).

35 Fire brigade auxiliary units

The Commission may authorise the establishment and maintenance of a fire brigade auxiliary unit in any rural area which the Commission is under an obligation to protect.

Compare: 1972 No 119 s 46

36 Industrial fire brigades

- (1) The owner or occupier of any commercial or industrial premises may, for the purpose of protecting those premises from fire, organise and maintain a group of persons as an industrial fire brigade and appoint a principal officer for the group.
- (2) In organising the group, the owner or occupier shall set out in writing the conditions of service of the group and those conditions shall be expressed in the instrument under which the group is organised, or in rules and regulations of the group, or in regulations which apply to the group.
- (3) Where any group of persons is proposed to be organised as an industrial fire brigade within any Fire District or in any area or on any premises which the fire brigade of the Fire District is under an obligation to protect, the owner or occupier who is organising the group shall enter into an agreement with the Commission for the co-ordination of the proposed industrial fire brigade and any fire brigade authorised or employed by the Commission in the event of a fire on the premises of that owner or occupier.
- (4) Notwithstanding anything in section 28 of this Act, any agreement made pursuant to subsection (3) of this section may make all necessary provision for the unified command of the proposed industrial fire brigade and any other fire brigade when

they are co-operating on the premises which the proposed industrial fire brigade has been organised to protect.

- (5) Where any group of persons has been organised in accordance with the foregoing provisions of this section, the owner or occupier of the premises which the group has been organised to protect may apply to the Commission for the group to be registered as an industrial fire brigade for the purposes of this Act.
- (6) On any application for registration the Commission shall satisfy itself—
 - (a) That the conditions of organisation of the group and the conditions of service under which the persons in the group will perform their duties are such as will ensure the maintenance of good conduct, discipline, and efficiency among them, and their speedy attendance with the necessary equipment on the occasion of an alarm of fire; and
 - (b) That the group is or will become reasonably efficient as to staffing, equipment, and training to operate as an industrial fire brigade and to meet the requirements of the premises which it is intended to protect.
- (7) Where the Commission is satisfied that the requirements of subsection (6) of this section have been met, it may register the group as an industrial fire brigade. In making any such registration the Commission may impose any conditions it considers necessary, but the imposition of conditions shall not affect the validity of the registration.
- (8) The Commission may revoke the registration of an industrial fire brigade if—
 - (a) It ceases to function as an industrial fire brigade; or
 - (b) It fails for 2 consecutive years to maintain such reasonable standard of efficiency as the Commission may determine to be proper in the circumstances.
- (9) The Commission may enter into an agreement with the owner or occupier of any premises protected by any industrial fire brigade providing for that industrial fire brigade to conform to any co-ordination scheme for the time being in force:
Provided that nothing in any such agreement shall require the utilisation outside those premises of any industrial fire brigade

or of any members or equipment of that industrial fire brigade deemed by the owner or occupier of those premises to be essential for the protection of those premises at the time when a call for assistance is received from any other place.

- (10) Where any industrial fire brigade operates either on the premises for the protection of which it is maintained or outside those premises under an agreement made pursuant to subsection (9) of this section—
- (a) The principal officer of that industrial fire brigade may perform all the functions and duties and exercise all the powers of the person for the time being in charge of a fire brigade under section 28(4) of this Act where—
- (i) No such person is present at the fire; or
- (ii) The principal officer is in charge of the unified command pursuant to subsection (4) of this section; and
- (b) Sections 42 and 43 of this Act shall apply as if the owner or occupier who organised the industrial fire brigade were a Chief Fire Officer, the industrial fire brigade were a fire brigade, and the members thereof were members of a fire brigade.
- (11) No member of an industrial fire brigade shall be required to become a member of any service organisation by reason of his services with the industrial fire brigade unless that member has entered into an agreement of service as a fulltime member of that industrial fire brigade.
- (12) The Crown may, in respect of any premises or property owned or occupied by it, organise and maintain a group of persons and appoint a principal officer to the group for the purposes of protecting those premises or that property from fire, and may apply for registration of that group as an industrial fire brigade, and in any such case the provisions of this section shall apply as though the Crown was an owner or occupier of commercial or industrial premises.

Compare: 1972 No 119 s 47

36A Defence fire brigades

- (1) For the purposes of this section the term **Firemaster** means the officer or non-commissioned officer of the Armed Forces

who is appointed to command a defence fire brigade; and includes any other officer or non-commissioned officer who by appointment or by custom of the Armed Forces acts on his behalf.

- (2) Subject to agreement between the Chief of Defence Force and the National Commander, a Firemaster shall, in relation to any defence area (as defined in section 2(1) of the Defence Act 1990), have all the functions, duties, and powers of a Chief Fire Officer.
- (3) Every agreement entered into between the Chief of Defence Force and the the National Commander pursuant to section 17P of this Act shall provide for the unified command of a defence fire brigade and any other fire brigade when they are operating together, whether in a defence area or otherwise.
- (4) Where a Firemaster has been vested with a unified command pursuant to subsection (3) of this section or a defence fire brigade is operating on its own outside a defence area, the Firemaster may perform all the functions and duties and exercise all the powers of the person in charge of a fire brigade under section 28(4) of this Act.
- (5) Sections 42 and 43 of this Act shall, in relation to a defence fire brigade, whether operating within or outside a defence area, be read as if—
 - (a) Every reference to the Commission were also a reference to the Chief of Defence Force; and
 - (b) Every reference to the Chief Fire Officer were also a reference to the Firemaster; and
 - (c) Every reference to a fire brigade were also a reference to a defence fire brigade; and
 - (d) Every reference to a member of a fire brigade were also a reference to a member of a defence fire brigade:

Provided that, in any action pursuant to section 43(2) of this Act it shall be a defence to show that the provisions were made in accordance with standards approved by the Chief of Defence Force, and that the members of the defence fire brigade concerned had complied with all relevant requirements and instructions of the Chief of Defence Force.

Section 36A was inserted, as from 20 October 1978, by section 13 Fire Service Amendment Act 1978 (1978 No 49).

Subsection (2): the Defence Act 1990 was substituted for the repealed Defence Act 1971 by section 105(2) Defence Act 1990 (1990 No 28), as from 1 April 1990.

Subsection (2) was amended, as from 1 April 1990, by section 102(5) Defence Act 1990 (1990 No 28) by substituting the references to “the Chief of Defence Force” for references to “the Defence Council”.

Subsection (2) was amended, as from 2 September 1996, by section 5(1) Fire Service Amendment Act 1996 (1996 No 122) by substituting the words “National Commander” for the word “Commission”.

Subsection (3) was amended, as from 1 April 1990, by section 102(5) Defence Act 1990 (1990 No 28) by substituting the references to “the Chief of Defence Force” for references to “the Defence Council”.

Subsection (3) was amended, as from 2 September 1996, by section 5(2) Fire Service Amendment Act 1996 (1996 No 122) by substituting the words “the National Commander pursuant to section 17P” for the words “the Commission pursuant to section 16”.

Subsection (5) was amended, as from 1 April 1990, by section 102(5) Defence Act 1990 (1990 No 28) by substituting the references to “the Chief of Defence Force” for references to “the Defence Council”.

37 Agreement for provision of administrative services

- (1) The Commission may from time to time enter into an agreement with any territorial authority or with any suitably qualified person providing for that authority or that person to supply such clerical and administrative services in respect of any Fire District or any fire brigade auxiliary unit as may be specified in the agreement.
- (2) The Commission may pay the territorial authority or the person for any service it or he has agreed to render pursuant to subsection (1) of this section. Any dispute arising as to the amount to be paid shall be determined by the Audit Office after such inquiry as it thinks fit and the decision of the Audit Office in any such dispute shall be final.
- (3) Any agreement under this section may, in the absence of any specific provision in the agreement, be revoked at any time on the giving of one month’s notice by any party to the agreement to any other party, or may be renewed or varied.

38 Commission may undertake to protect from fire property outside a Fire District

- (1) The Commission and the territorial authority of any rural area may from time to time enter into an agreement for the protec-

tion of that area from fire on terms and conditions to be agreed upon by the Commission and territorial authority:

Provided that no payment shall be made to the Commission by the territorial authority in respect of any such protection after the commencement of this Act, whether the agreement was entered into under this section or under the corresponding provisions of any previous enactment.

(2)

Compare: 1972 No 119 s 49

Subsection (2) was repealed, as from 1 January 1991, by section 26 Fire Service Amendment Act 1990 (1990 No 136).

39 Commission may undertake to give special protection to owner of property outside a Fire District

The Commission may from time to time enter into an agreement with the owner or occupier of property situated outside a Fire District with respect to any property in the possession or under the control of that owner or occupier to afford that property a greater measure of protection from fire than it would receive under this Act or under the Forest and Rural Fires Act 1977, otherwise than by maintaining or assisting in maintaining an industrial fire brigade.

The heading to section 39 was amended, as from 19 December 2002, by section 7(1) Fire Service Amendment Act 2002 (2002 No 65) by omitting the words “to Harbour Board or”.

The reference to the Forest and Rural Fires Act 1977 was substituted for the reference to the repealed Forest and Rural Fires Act 1955 by section 70(a) Forest and Rural Fires Act 1977 (1977 No 52), as from 1 April 1979.

Section 39 was amended, as from 19 December 2002, by section 7(2)(a) Fire Service Amendment Act 2002 (2002 No 65) by omitting the words “with a Harbour Board or”.

Section 39 was amended, as from 19 December 2002, by section 7(2)(b) Fire Service Amendment Act 2002 (2002 No 65) by omitting the words “Harbour Board or of that”.

40 Fires on vessels, etc

- (1) Any fire brigade may attend any fire or suspected fire or other emergency on any vessel or in any cargo, stores, or gear that has been jettisoned from the vessel on to any wharf or other landing place.

- (2) The Commission may charge fees for the attendance and services of any fire brigade in connection with any such fire or emergency, and such fees shall be payable by the owners of the vessel on which, or in the cargo, stores, or gear of which, the fire occurred.

Compare: 1972 No 119 s 51

41 Power to provide use of equipment, etc

The Commission, in its discretion, may—

- (a) Make any of its equipment available for the use of any territorial authority, local authority, body (whether incorporated or not), or person for any emergency or public service for which the equipment is specially suitable:
- (b) Provide services by members of its staff in connection with any such use of its equipment:
- (c) Make charges for any such use and for the provision of any such services:
- (d) Obtain an indemnity from the authority, body, or person, as the case may be, in respect of injury to any person or damage to any property arising during any such use or the provision of any such services:
- (e) Impose such other terms and conditions in respect of any such use or the provision of any such services as it thinks fit.

Compare: 1972 No 119 s 52

42 Damage in fire fighting to be damage by fire within meaning of fire policy

Where damage to property is caused by the Chief Fire Officer, or any other member of a fire brigade, or by any other person, in the performance in good faith of his functions or duties or the exercise in good faith of his powers at or in connection with any fire or suspected fire (including any fire or suspected fire occurring beyond the area in which the Chief Fire Officer has authority), the damage shall be deemed to be damage by fire within the meaning of any policy of insurance against fire covering the damaged property:

Provided that, where any fire or suspected fire is an earthquake fire within the meaning of the Earthquake and War Damage Act 1944

or within the meaning of any policy or contract of insurance against damage by earthquake, that damage shall be deemed to be damage by earthquake fire for the purposes of that Act, policy, or contract.

Compare: 1972 No 119 s 53

43 Limitation of liability

- (1) No action or proceeding shall be brought against the Crown, or the Commission, or any employee of any of them, or against any fire brigade, or member of a fire brigade, or any person whatsoever to recover damages for any damage to property occasioned by the Chief Fire Officer or any member of a fire brigade, or any other person, in the performance in good faith of his functions or duties or the exercise in good faith of his powers under this Act or under any other enactment:

Provided that nothing in this subsection shall relieve any of them against or in any way affect the liability of any of them for any damage to property caused by or in connection with the use of any fire engine or other motor vehicle for transport purposes.

- (1A) Subsection (1) applies despite section 121 of the Crown Entities Act 2004.
- (2) In any action or proceeding taken against the Commission or any fire brigade, or any employee or member of either of them, for their failure or neglect to make, or their negligence in making, adequate provision for the prevention of fire, the suppression and extinction of fires which may occur, and the protection of property endangered in fires, it shall be a defence to show that the provisions made were in accordance with standards approved by the Commission under this Act or the operational instructions of the National Commander under section 27A of this Act and that the employees or members had complied with all relevant requirements and instructions of the Commission.
- (3) Sections 120 to 126 of the Crown Entities Act 2004 apply to a member of a volunteer fire brigade as if that member were an employee of the Commission.

Compare: 1972 No 119 s 54(1), (5), (6)

Subsection (1A) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (2) was amended, as from 1 January 1991, by section 27 Fire Service Amendment Act 1990 (1990 No 136) by inserting the words “or the operational instructions of the National Commander under section 27A of this Act”.

Subsection (3) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Part 4

Financial provisions

44 Expenditure of Commission

- (1) In addition to the expenditure which the Commission may be required to incur pursuant to the functions and duties imposed on it under this Act, or which it may incur or be required to incur for any purpose authorised by this Act or by any other enactment, the Commission may, in any financial year, expend money for all or any of the following purposes:
- (a) The payment of premiums on policies of insurance issued by any insurance company to or in respect of its members or its employees or members of any fire brigade under its control, in respect of accident, incapacity, or death arising out of and in the course of the performance of their functions and duties and the exercise of their powers as its members or its employees or as members of the fire brigade, in so far as the Injury Prevention, Rehabilitation, and Compensation Act 2001 does not apply:
 - (b) The payment to any person appointed by the Minister in relation to an inquiry under this Act of remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the fees framework:
 - (c) The payment of grants to institutions, associations, and bodies connected with the Fire Service or with fire fighting or with fire safety:
 - (d) The provision in any of its buildings of means of recreation for members of any fire brigade under its control:
 - (e) The provision of grants for social purposes to fire brigades under its control:

- (f) The provision of special medals or other decorations or gifts to members of any fire brigade under its control for long and meritorious service:
 - (fa) the payment of gratuities under sections 55 and 56:
 - (g) The payment of remuneration and emoluments to the members of any volunteer fire brigade under its control:
 - (h) The payment of actual and reasonable travelling and accommodation expenses or allowances (including motor vehicle allowances) at the rates determined from time to time in respect of employees in the State Services to members of any volunteer fire brigade or industrial fire brigade attending any conference, demonstration, or course of training approved by the Commission:
 - (i) The payment of its subscriptions to and membership costs of any association of employers:
 - (j) Payments in connection with the holding of any annual conference of the United Fire Brigades' Association, and for the reception and entertainment of delegates and other persons attending the conference:
 - (k) Payments in connection with any agreement entered into with a person or persons acting as agent of the Commission in terms of sections 51 and 51A of this Act for the purposes of determining whether payment of the levy has been made in accordance with the provisions of this Act.
- (2) This section does not limit sections 16 and 17 of the Crown Entities Act 2004.
- (3)

Compare: 1972 No 119 ss 53, 64; 1974 No 25 s 10

In subsection (1)(a) the reference to “the Accident Rehabilitation and Compensation Insurance Act 1992” was substituted for the repealed Accident Compensation Act 1982 by section 179(1) Accident Rehabilitation and Compensation Insurance Act 1992 (1992 No 13).

Subsection (1)(a) was amended, as from 1 July 1999, by section 415(1) Accident Insurance Act 1998 (1998 No 114), by substituting the words “the Accident Insurance Act 1998 does not apply” for the words “the Accident Rehabilitation and Compensation Insurance Act 1992 does not apply thereto.”

Subsection (1)(a) was amended, as from 1 April 2002, by section 337(1) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by substituting the words “the Injury Prevention, Rehabilitation, and Compensation Act 2001” for the words “the Accident Insurance Act 1998”. See Part 10 of that Act for provisions relating to transition from competitive provision

of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1)(b) was amended, as from 19 December 2002, by section 8(1) Fire Service Amendment Act 2002 (2002 No 65) by substituting the words “any person appointed by the Minister in relation to an” for the words “the members of the Appeal Board and any”.

Subsection (1)(b) was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “fees framework” for the words “Fees and Travelling Allowances Act 1951”.

Subsection (1)(fa) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (1)(h) was amended, as from 20 October 1978, by section 14(1) Fire Service Amendment Act 1978 (1978 No 49) by substituting the words “motor vehicle” for the word “mileage”.

Subsection (1)(h) was amended, as from 19 December 2002, by section 8(2) Fire Service Amendment Act 2002 (2002 No 65) by substituting the word “Commission” for the word “Commissioner”.

Subsection (1)(k) was inserted, as from 1 January 1991, by section 38(2) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (3) was amended, as from 20 October 1978, by section 14(2) Fire Service Amendment Act 1978 (1978 No 49) by substituting the expression “\$3,000” for the expression “\$1,500”.

Subsection (3) was amended, as from 1 July 1991, by section 28(1) Fire Service Amendment Act 1990 (1990 No 136) by substituting the expression “\$12,000” for the expression “\$3,000”.

Subsection (3) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

45 Commission to submit financial forecasts and estimates to Minister

[Repealed]

The proviso to subsection (1) was inserted, as from 20 October 1978, by section 15(1) and (2) Fire Service Amendment Act 1978 (1978 No 49).

Subsection (2) and (3) were inserted, as from 20 October 1978, by section 15(1) and (2) Fire Service Amendment Act 1978 (1978 No 49).

Subsection (4) and (5) were amended by section 15(3) and (4) Fire Service Amendment Act 1978 by inserting the word “approved”.

The proviso to subsection (5) was inserted by section 15(5) Fire Service Amendment Act 1978.

Section 45 was substituted, as from 1 January 1991, by section 29(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (3) was amended, as from 1 July 1994, by section 3(1) Fire Service Amendment Act 1994 (1994 No 71) by inserting the words “and any expenditure from the Restructuring Fund established under section 62B(1) of this Act”.

Subsection (3) was amended, as from 19 December 2002, by section 9 Fire Service Amendment Act 2002 (2002 No 65) by omitting the words “and any expenditure from the Restructuring Fund established under section 62B(1) of this Act”.

Section 45 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

46 Accounts and annual report of Commission

[Repealed]

Subsection (3) was substituted, as from 1 July 1986, by section 3(1) Fire Service Amendment Act 1986 (1986 No 18).

Subsection (3) was substituted, as from 1 October 1988, by section 14(1) Trustee Amendment Act 1988 (1988 No 119).

Subsection (4A) was inserted, as from 21 December 1992, by section 42 Public Finance Amendment Act 1992 (1992 No 142).

Subsection (4A) was substituted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

Subsection (5) was substituted, as from 1 July 1986, by section 3(2) Fire Service Amendment Act 1986 (1986 No 18).

Subsection (5) was amended, as from 1 January 1991, by section 30 Fire Services Amendment Act 1990 (1990 No 136) by substituting the words “30th day of June” for the words “31st day of March”.

Subsection (5) was substituted, and subsection (5A) was inserted, as from 21 December 1992, by section 42 Public Finance Amendment Act 1992 (1992 No 142).

Subsection (6) was repealed, as from 1 July 1986, by section 3(3) Fire Service Amendment Act 1986 (1986 No 18).

Section 46 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

46A Rural Fire Fighting Fund

The Commission shall continue to operate a fund to be known as the Rural Fire Fighting Fund.

Sections 46A to 46C were inserted, as from 1 July 1986, by section 4 Fire Service Amendment Act 1986 (1986 No 18).

Sections 46A to 46C were substituted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46B Grants and expenditure from Rural Fire Fighting Fund

- (1) Subject to this section and to sections 46C and 46D of this Act and to any regulations made under this Act, the Commission—
- (a) Shall, in accordance with sections 46C to 46G of this Act, make grants from the Rural Fire Fighting Fund to Fire Authorities for the purpose of assisting Fire Authorities to meet the costs incurred by Fire Authorities in respect of the control, restriction, suppression, or extinction of fires:
 - (b) Shall expend money from the Rural Fire Fighting Fund to meet the cost of legal proceedings taken by the Commission or any Fire Authority against any person whom the Commission believes was responsible, by reason of arson or negligence or failure to observe permit conditions, for causing the lighting of any fire (being a fire in respect of which a grant has been paid under paragraph (a) of this subsection) or for permitting or causing any such fire to become out of control.
- (2) Where the whole or part of the costs of any legal proceedings are met by money expended from the Rural Fire Fighting Fund pursuant to subsection (1)(b) of this section, the Commission shall pay any money recovered by it in those proceedings either into the Rural Fire Fighting Fund or to a Fire Authority.
- (3) In this section and in sections 46C, 46F, and 46G of this Act, **Fire Authority** means any fire authority within the meaning of the Forest and Rural Fires Act 1977.

Sections 46A to 46C were inserted, as from 1 July 1986, by section 4 Fire Service Amendment Act 1986 (1986 No 18).

Sections 46A to 46C were substituted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46C Eligibility for grant assistance

- (1) Subject to sections 46D and 46E of this Act, the Commission may, under section 46B(1)(a) of this Act, make a grant to a Fire Authority in respect of a fire if—
- (a) Irrespective of cause, the fire originated in the district of the Fire Authority in an area other than—
 - (i) A defence area; or

- (ii) A commercial or semi-commercial forest area; and
- (b)
- (c) The Fire Authority has notified the National Rural Fire Officer of—
 - (i) The date of the fire; and
 - (ii) The point of origin or probable point of origin of the fire; and
 - (iii) The cause or likely cause of the fire; and
- (ca) at the time the fire occurred, the most recent evaluation of the Fire Authority's performance under section 14A(2)(m) was considered satisfactory by the National Rural Fire Authority; and
- (d) The Fire Authority has submitted to the National Rural Fire Officer, within 3 months after the date of the fire, a claim on the Rural Fire Fighting Fund in relation to the costs of the fire; and
- (e) The Fire Authority has given to the National Rural Fire Officer such evidence and other particulars as, in the opinion of the National Rural Fire Officer, are necessary to determine—
 - (i) The point of origin or the probable point of origin of the fire; and
 - (ii) The cause or the likely cause of the fire; and
- (f) The Fire Authority has submitted to the National Rural Fire Officer fully verified particulars of the costs of the fire; and
- (g) The costs shown by the particulars submitted under paragraph (f) of this subsection have been assessed as reasonable by the National Rural Fire Officer or by a Rural Fire Mediator; and
- (h) Where costs in respect of the control, restriction, suppression, or extinction of the fire have been incurred—
 - (i) By any other Fire Authority; or
 - (ii) By any fire brigade or fire brigade auxiliary unit; or
 - (iii) By the Commission; or
 - (iv) By any industrial fire brigade or defence fire brigade; or

- (v) by any council-controlled organisation within the meaning of the Local Government Act 2002; or
 - (vi) By any company, corporation, partnership, or person,—
- the Authority has made full reimbursement of those costs.
- (2) In this section, **commercial or semi-commercial forest area**—
 - (a) Means any area of land—
 - (i) On which trees are managed or harvested or both so that income is thereby gained; and
 - (ii) To which the public has no access as of right; and
 - (b) Includes any area of land that is the subject of a Crown forestry licence, whether or not there is a public right of access to that area; but
 - (c) Does not include—
 - (i) Any area of land on which trees are planted as a shelter belt to mitigate the effect of wind on adjoining pasture or crops or orchards; or
 - (ii) Any area of land on which trees, shrubs, plants, or grasses are maintained under section 134 of the Soil Conservation and Rivers Control Act 1941.

Sections 46A to 46C were inserted, as from 1 July 1986, by section 4 Fire Service Amendment Act 1986 (1986 No 18).

Sections 46A to 46C were substituted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1)(b) was repealed, as from 17 May 2005, by section 10(1) Fire Service Amendment Act 2005 (2005 No 52).

Subsection (1)(ca) was inserted, as from 17 May 2005, by section 10(2) Fire Service Amendment Act 2005 (2005 No 52).

Subsection (1)(h)(v) was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (2)(c)(i) was amended, as from 2 September 1996, by section 6 Fire Service Amendment Act 1996 (1996 No 122) by inserting the words “or orchards”.

46D Proportionate share of claim

- (1) Any grant payable under section 46B(1)(a) of this Act shall, subject to sections 46E and 46F of this Act, be for the purpose of meeting such percentage or proportionate share of each as—

sessed claim as may from time to time be determined by regulations made under this Act.

- (2) Notwithstanding subsection (1) of this section, any grant payable under section 46B(1)(a) of this Act before the 31st day of March 1991, shall, subject to sections 46E and 46F of this Act, be for the purpose of meeting 95 percent of each assessed claim.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46E Deduction from claim

- (1) The Commission shall, subject to section 46F of this Act, deduct from the amount of each grant payable under section 46B(1)(a) of this Act, being a grant determined after applying the provisions of section 46D of this Act, such amount as may from time to time be prescribed by regulations made under this Act in respect of each assessed claim.
- (2) Notwithstanding subsection (1) of this section, the amount deducted under that subsection in respect of each assessed claim made before the 31st day of March 1991 shall be \$5,000.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46F Claims in respect of minor fires

- (1) Notwithstanding anything in sections 46D and 46E of this Act,—
- (a) A Fire Authority may, on or before the 31st day of March 1991 or as soon as practicable after that date, submit, on the Rural Fire Fighting Fund, a minor fires claim in respect of all fires within the Fire Authority's district at any time in the period of 6 months ending on the 31st day of March 1991; and
- (b) A Fire Authority may, on or before the 31st day of March in any subsequent year or as soon as practicable after that 31st day of March, submit on the Rural Fire Fighting Fund, a minor fires claim in respect of all fires within the Fire Authority's district at any time in the period of 12 months ending with that 31st day of March.

- (2) Each fire to which a claim under subsection (1) of this section relates shall be—
- (a) A fire that was controlled, restricted, suppressed, or extinguished at a cost of less than the amount of the deduction, prescribed or specified for the purposes of section 46E of this Act; and
 - (b) A fire that has been notified to the National Rural Fire Officer under section 46C(1)(c) of this Act as if it were a fire to which that section applied; and
 - (c) A fire in respect of which the Fire Authority has reimbursed costs within 3 months after the date of the fire as if it were a fire to which section 46C(1)(h) of this Act applied; and
 - (d) A fire that is not a petty fire (as defined in subsection (3) of this section).
- (3) A fire is a **petty fire** for the purposes of subsection (2)(c) of this section if the total cost of controlling, restricting, suppressing, or extinguishing that fire was less than the greater of \$1,000 or the sum prescribed, for the purposes of this subsection, by regulations made under this Act.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46G Condition of payment of grant

Where a grant is payable under section 46B(1)(a) of this Act to a Fire Authority, it shall be a condition of the payment of that grant, that the Fire Authority agrees to be joined with and represented by the Commission in any proceedings taken (whether by Court action or otherwise) by the Commission against any person or persons whom the Commission believes was responsible, by reason of arson or negligence or failure to observe permit conditions, for causing the lighting of the fire (being a fire in respect of which the grant is being paid) or for permitting or causing that fire to become out of control.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46H Funding of Rural Fire Fighting Fund

There shall be paid into the Rural Fire Fighting Fund, in any financial year,—

- (a) Such of the proceeds of the levy as the Minister determines; and
- (b) An annual Crown grant paid on behalf of the Minister of Conservation, the amount of which grant shall be determined by agreement between the Minister and the Minister of Conservation; and
- (c) Any money that, under section 46B(2) of this Act, is payable into the Rural Fire Fighting Fund, in that financial year.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46I Rural Fire Fighting Fund to be first charge on levy

Where the proceeds of the levy are insufficient to meet both the requirements of the Rural Fire Fighting Fund and the requirements of the Commission under section 47(1) of this Act, the requirements of the Rural Fire Fighting Fund, as determined by the Minister, shall be a first charge against the proceeds of the levy.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

Section 46I was amended, as from 1 July 1998, by section 3(3) Fire Service Amendment Act 1998 (1998 No 13) by substituting the expression “section 47(1)” for the expression “section 47(2)(b)”.

46J Loans from the Crown for payment into Rural Fire Fighting Fund

- (1) Notwithstanding section 46H of this Act, where the Commission considers that the amount in the Rural Fire Fighting Fund is insufficient to meet valid claims against the Fund, it shall notify the Minister who shall consult the Minister of Finance with a view to determining whether money, for payment into the Rural Fire Fighting Fund, should be advanced by way of loan by the Crown to the Commission, and the terms and conditions of any such loan.
- (2)

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

46K Balance to be maintained in Rural Fire Fighting Fund

The Rural Fire Fighting Fund shall be funded at such a level as will enable an end of financial year balance to be maintained in accrual terms equal to the greater of 20 percent of the level of claims that could reasonably be expected to be made in any one year or such other percentage of the level of those claims as may be determined from time to time by the Minister in consultation with the Minister of Conservation.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

46L Report in relation to Rural Fire Fighting Fund

- (1) The Minister, in the course of determining the amounts payable into the Rural Fire Fighting Fund in any financial year under paragraphs (a) and (b) of section 46H of this Act, shall cause the Commission to report to the Minister concerning—
 - (a) The total cost of claims in the preceding financial year which originated within the areas of responsibility of the Department of Conservation; and
 - (b) The total cost of claims in the preceding financial year which originated within the areas of responsibility of all other Fire Authorities under the Forest and Rural Fires Act 1977.
- (2) The Minister and the Minister of Conservation shall have due regard to the report made pursuant to subsection (1) of this section in determining, in relation to the financial year immediately following the financial year to which the report relates, the amount of the Crown grant that shall be paid under section 46H(b) of this Act.

Sections 46D to 46L were inserted, as from 1 October 1990, by section 31(1) Fire Service Amendment Act 1990 (1990 No 136).

47 Income of Commission

- (1) In each financial year there must be paid to the Commission such income from the proceeds of the levy (other than the portion of the proceeds required for the Rural Fire Fighting Fund) as is required to meet the actual net expenditure of the Commission.
- (2) Where in any financial year the levy income of the Commission under this section exceeds the actual net expenditure of the Commission, that excess is to be deemed to be an advance in the payment of the levy and is to be taken into account when the rate of the levy is next reviewed.
- (3) Where in any financial year the levy income of the Commission under this section is less than the actual net expenditure of the Commission, that shortfall is to be deemed to be a shortfall in the payment of the levy and must be taken into account when the rate of the levy is next reviewed.
- (4) The uncommitted surplus (if any) or the amount of the deficit (if any) of the Commission for any financial year must be taken into account in calculating the income and expenditure of the Commission for the next succeeding year.
- (5) For the purposes of this section, the amount of any financial surplus or deficit of the Commission at the end of the financial year is not to take into account any money contained in the Rural Fire Fighting Fund and any money required to be paid into that Fund.
- (6) For the purposes of this section, **actual net expenditure** means that portion of the Commission's expenditure to be funded from income in any financial year which is not funded from the proceeds of income earned by the Commission.

Subsection (1) was amended, as from 20 October 1978, by section 17(1) Fire Service Amendment Act 1978 (1978 No 49) by inserting the word "approved".

Subsection (2) was substituted, and subsection (3) was repealed, as from 20 October 1978, by section 17(2) Fire Service Amendment Act 1978 (1978 No 49).

Section 47 was substituted, as from 31 March 1986, by section 5(1) Fire Service Amendment Act 1986 (1986 No 18).

Section 47 was substituted, as from 1 July 1991, by section 32(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (9) of the previous section 47 was substituted, as from 1 July 1994, by section 3(2) Fire Service Amendment Act 1994 (1994 No 71).

Section 47 was substituted, and section 47A was repealed, as from 1 July 1998, by section 3(1) Fire Service Amendment Act 1998 (1998 No 13). *See* section 6 of that Act as to the Crown's contribution to the Commission's income for the financial year ending with 30 June 1998.

47A Appropriation by Parliament

[Repealed]

Section 47A was inserted, as from 1 July 1986, by section 6 Fire Service Amendment Act 1986 (1986 No 18).

Subsection (1)(c) was repealed, as from 1 July 1991, by section 32(2)(a) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was substituted, as from 1 April 1989, by section 33(1) Fire Service Amendment Act 1990 (1990 No 136). *See* section 33(2) to (4) of that Act.

Section 47 was substituted, and section 47A was repealed, as from 1 July 1998, by section 3(1) Fire Service Amendment Act 1998 (1998 No 13). *See* section 6 of that Act as to the Crown's contribution to the Commission's income for the financial year ending with 30 June 1998.

47B Definition of terms property and owner of property

- (1) For the purposes of this section and sections 48, 49, 49A, 49B, 50, 51, 51A, 51B, 51C, 52, 53, and 53A of this Act,—

Motor vehicle means a motor vehicle as defined in section 2(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; but does not include any motor vehicle with a gross laden weight (as defined in section 2(1) of the Road User Charges Act 1977) exceeding 3.5 tonnes

Subsection (1) was amended, as from 1 January 1994, by section 2 Fire Service Amendment Act 1993 (1993 No 85) by inserting the definition of “Motor vehicle”.

Property means any real or personal property situated in New Zealand; but does not include the categories of property set out in Schedule 3 to this Act, or any property which is the subject of cover under a contract of marine insurance as defined in this Act

Owner of property includes any company, corporation, partnership, or person who is entitled to legal or beneficial ownership of, or is entitled to any form of tenure, possession, or right to, any such property, and shall also include any company, corporation, partnership, or person, whether resident in New Zealand or not, who is entitled to any indemnity or bene-

fit under any contract of fire insurance, whether or not such company, corporation, partnership, or person is entitled to any form of legal or beneficial ownership or to any form of tenure, possession, or right as aforesaid.

(2)

(3)

Section 47B was inserted, as from 1 July 1986, by section 7(1) Fire Service Amendment Act 1986 (1986 No 18).

Subsection (1) was amended, as from 1 January 1991, by section 38(3) Fire Service Amendment Act 1990 (1990 No 136) by inserting the expression “, 51A, 51B, 51C”, and the expression “53, and 53A” was substituted for the expression “and 53” by section 39(2) Fire Service Amendment Act 1990 (1990 No 136), as from 1 April 1991.

Subsections (2) and (3) were repealed, as from 1 January 1991, by section 34(2)(a) Fire Service Amendment Act 1990 (1990 No 136).

47C Power to charge for services other than attendance at fire calls

- (1) The Commission, at its discretion, may charge for any service or function other than those provided for in section 17O(a) of this Act.
- (2) Notwithstanding subsection (1) of this section, the Commission, at its discretion, may charge for—
 - (a) Attendance at a hazardous substance emergency, whether or not that hazardous substance emergency involves actual or suspected fire; and
 - (b) Fire safety activities; and
 - (c) Firefighting involving commercial forestry in Fire Districts or areas which, under section 38 of this Act, the Fire Service is under an obligation to protect.
- (3) Where, pursuant to subsection (2) of this section, a charge is made for attendance at a hazardous substance emergency, the amount of the charge made shall include all costs incurred (including costs incurred in securing contractual assistance or in obtaining supplies of materials required) in stabilising or rendering safe the hazardous substance emergency, together with those costs that can be reasonably attributed by the Commission to its function of providing an emergency response service for hazardous substance emergencies.

- (4) Notwithstanding anything in subsection (1) of this section, the Commission, at its discretion, may charge for attendance of any brigade, where the reason for that attendance was the receipt of a false alarm of fire, and, where that alarm came from persons or equipment in any premises, the owner of the premises shall be liable to meet the charge.
- (5) In any case where subsection (4) of this section applies and the false alarm of fire was not the fault of the owner of the premises, the owner may, by authority of this subsection, recover the costs incurred from the person who caused the false alarm to be made or whose equipment was responsible for the false alarm.

Section 47C was inserted, as from 1 January 1991, by section 34(1) Fire Service Amendment Act 1990 (1990 No 136).

48 Levy

- (1) Subject to this Act, every insurance company with which any property is insured against fire under any contract of fire insurance made in New Zealand in respect of any period commencing on or after the 1st day of July 1986 shall pay a levy to the Commission.
- (2) The Governor-General may from time to time, by Order in Council, prescribe—
 - (a) The rate of the levy that shall be computed at a uniform rate per annum on every motor vehicle which is insured in terms of any contract of fire insurance, whether or not the contract specifies the sum insured; and
 - (b) The rate of the levy that shall be computed on all other property on—
 - (i) The amount for which the property is insured for the period of the contract of fire insurance; and
 - (ii) The period of the contract of fire insurance:Provided that where the period of the contract is in respect of any period other than a complete year, the levy shall be calculated as a pro rata proportion of the levy for a complete year.
- (2A) Every Order in Council made under subsection (2) of this section shall be deemed to be a regulation for the purposes

of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

- (3) The rate of the levy shall be reviewed annually by the Minister.
- (4) In reviewing the rate of the levy the Minister shall have regard to—
 - (a) The total amount for which all properties in respect of which the levy is payable are insured at the latest available date, and the likelihood of any increase or decrease in that total amount:
 - (b) The necessity of ensuring that the amounts received by the Commission in respect of the levy in that financial year are sufficient to meet—
 - (i) The requirements of the Rural Fire Fighting Fund; and
 - (ii) The actual net expenditure that, in the case of the Commission, is required to be met by way of the proceeds of levy in terms of section 47:
 - (c) The desirability of ensuring, as far as is reasonably practicable, that any increases or decreases in the rate of the levy are designed to maintain the overall level of stability of the levy in the long term.
- (5) For the purposes of subsection (4)(b)(ii) of this section, the Minister shall take into consideration any shortfall in the levy as determined in accordance with section 47(3) of this Act.
- (6) For the purposes of subsection (2)(b) of this section, the amount for which the property is insured for the contract of fire insurance shall be—
 - (a) In the case of residential building as defined in section 2(1) of the Earthquake Commission Act 1993, the amount for which that building is insured pursuant to section 18 of that Act:
 - (b) In the case of personal property as defined in section 2(1) of the Earthquake Commission Act 1993, the amount for which that property is insured pursuant to section 20 of that Act:
 - (c) In the case of other property, where the contract of fire insurance provides for the settlement of any claim for damage to or destruction of the property upon any basis more favourable to the insured person than its indem-

- nity value or where there is no sum insured in the contract, be computed on the basis of the indemnity value of the property as stated by either of the following:
- (i) A declaration signed by the owner to the effect that the indemnity value declared by the owner for the purposes of the levy is a fair and reasonable indemnity value in relation to the replacement value of the property:
 - (ii) A valuation certificate—
 - (A) Given by a registered architect, a valuer registered under the Valuers Act 1948, an engineer with qualifications suitable for the purposes of this Act, or a quantity surveyor possessing qualifications and experience suitable for the purposes of this Act, or a plant and machinery valuer possessing qualifications and experience suitable for the purposes of this Act, being in any case a person who is competent to give such a valuation; and
 - (B) Establishing clearly the indemnity value of the property for the purposes of the levy:
- (d) In any case where the indemnity value cannot be established under paragraph (c) of this subsection, be computed—
- (i) Where the contract specifies the sum insured, on that sum:
 - (ii) Where the contract does not specify the sum insured, in the manner determined by the Fire Service Commission.
- (6A) For the purpose of subsection (6) of this section, the insurance company shall hold for the purpose of audit under section 51 of this Act all declarations and certificates furnished to it under that subsection.
- (6B) Where the Commission considers that the indemnity value declared in respect of any property by the owner under subsection (6) of this section is not a fair and reasonable indemnity value in relation to the replacement value of the property, the following provisions shall apply:

- (a) The Commission shall, before the expiry of the contract, determine a fair and reasonable indemnity value and, subject to paragraph (d) of this subsection, the levy shall be computed on the basis of that determination:
 - (b) The Commission shall notify the owner in writing of—
 - (i) Its determination; and
 - (ii) The owner's right of objection under paragraph (c) of this subsection:
 - (c) Within 28 days after receiving the notice under paragraph (b) of this subsection, the owner may object in writing to the Commission's determination; and every such objection shall be supported by a valuation certificate that complies with subsection (6)(c)(ii) of this section:
 - (d) If the owner furnishes a valuation certificate under paragraph (c) of this subsection, the Commission shall be liable to pay 50 percent of the costs incurred in obtaining the valuation, and the levy shall be computed on the basis of that valuation.
- (7) This section shall not apply to any contract of fire insurance that is limited to an excess over the indemnity value of the property or to any portion thereof which is in excess of the indemnity value.
- (8) Upon the making of any contract of fire insurance to which this section applies, the levy at the rate then declared, computed in respect of the period of the contract of fire insurance, shall thereupon become a debt due by the insurance company to the Commission.
- (9) The amount of the levy for which any insurance company at any time becomes liable under this section in respect of any contract of fire insurance shall thereupon become a debt due by the insured person to the insurance company, and may be recovered by the company accordingly. If, at any time before the debt is fully discharged, any other person becomes an insured person under the contract of fire insurance, the amount remaining unpaid shall thereupon become a debt due by that other person to the insurance company, without prejudice to the liability of any other person. Where 2 or more persons are

liable for any amount under this subsection, their liability shall be joint and several.

- (10) Subject to any regulations made under this Act, the Commission may from time to time, upon and subject to such conditions as it thinks fit, release any insurance company wholly or partly from its liability in respect of the levy or part of the levy under this section which, in the opinion of the Commission, is irrecoverable by the insurance company from the insured person.
- (11) Every insurance company shall, when forwarding any statement of account or demand for premium to any insured person in respect of any contract of insurance to which the levy applies, provide in that statement of account or demand that the levy is shown in a separate distinct and identifiable fashion from any premium payable to the insurance company or any other premium, tax, or levy paid to any other person or persons including the Crown, and it shall not be lawful for any insurance company to make any payment of brokerage, agency, or commission to any person or persons whatsoever in respect of the levy.
- (12) All money received by the Commission in respect of the levy under this section shall be deemed to be income of the Commission in the financial year in which it is received, and the provisions of this Act, with any necessary modifications, shall apply accordingly.
- (13) Without limiting the general power to make regulations conferred by section 92 of this Act, regulations may be made under that section for all or any of the following purposes:
 - (a) Providing for and regulating the collection, receipt, and payment of money under this section:
 - (b) Requiring insurance companies to make returns and keep books and accounts for the purposes of this section:

Provided that in default of any such regulations and so far as such regulations do not extend, the Minister may give written directions in respect of any matter referred to in paragraph (a) or paragraph (b) of this subsection.

Subsection (5) was substituted, as from 17 December 1982, by section 2(1) Fire Service Amendment Act 1982 (1982 No 179).

Section 48 was substituted, as from 1 July 1986, by section 8(1) Fire Service Amendment Act 1986 (1986 No 18).

Subsection (2) was substituted, as from 1 January 1991, by section 35(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was substituted, as from 1 January 1994, by section 3(1) Fire Service Amendment Act 1993 (1993 No 85).

Subsection (2A) was inserted, as from 1 January 1991, by section 35(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (4)(b)(ii) was substituted, as from 1 July 1998, by section 4(1) Fire Service Amendment Act 1998 (1998 No 13) by substituting the expression “section 47(1)” for the expression “section 47(2)(b)”.

Subsection (5) was amended, as from 1 July 1998, by section 4(2) Fire Service Amendment Act 1998 (1998 No 13) by substituting the expression “section 47(3)” for the expression “section 47(6)”.

Subsection (6) was substituted, as from 18 December 1992, by section 2(1) Fire Service Amendment Act 1992 (1992 No 133).

Subsection (6) was substituted, as from 1 January 1994, by section 3(2) Fire Services Amendment Act 1993 (1993 No 85).

Subsection (6)(a) was amended, as from 19 December 2002, by section 10 Fire Service Amendment Act 2002 (2002 No 65) by substituting the word “building” for the word “property”.

Subsection (6)(c)(ii)(A) was amended, as from 1 January 2004, by section 76 Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17) by substituting the words “an engineer with qualifications suitable for the purposes of this Act,” for the words “an engineer registered under the Engineers Registration Act 1924,”.

Subsections (6A) and (6B) were inserted, as from 18 December 1992, by section 2(1) Fire Service Amendment Act 1992 (1992 No 133).

Subsections (6A) and (6B) were substituted, as from 1 January 1994, by section 3(2) Fire Services Amendment Act 1993 (1993 No 85).

49 Liability for levy where agents of owners of property negotiate contracts of fire insurance with insurance company not carrying on business in New Zealand

- (1) For the purposes of this Act, where any company, partnership, corporation, or person in New Zealand in the course of business negotiates, directly or indirectly (whether as a broker or otherwise), any contract of fire insurance between any owner of property and any insurance company that is not carrying on business in New Zealand or with an office or a branch outside New Zealand of an insurance company carrying on business in New Zealand,—

- (a) The company, partnership, corporation, or person shall be deemed to be the agent of the insurance company (whether or not the company, partnership, corporation, or person is also the agent of the owner of the property):
 - (b) The contract shall be deemed to be made in New Zealand whether the premium was paid within or beyond New Zealand:
 - (c) The agent shall be deemed to be an insurance company carrying on business in New Zealand and shall be subject jointly and severally with the insurance company with whom the contract has been made to all obligations and liabilities (including payment of the levy) imposed under this Act or under any regulations made under this Act:
 - (d) The agent may exercise all the rights, remedies, and powers conferred on the insurance company in relation to the contract under this Act or under any regulations made under this Act.
- (2) For the purposes of subsection (1) of this section, the agent shall include, together with the payment of the levy, a return in the prescribed form and shall include in that return the indemnity value in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the agent or by the agent's authorised representative stating that, to the best of that person's knowledge or belief, the payment is correct.
 - (3) For the purposes of this section, where any agent transfers or credits money to any company, corporation, partnership, or person outside of New Zealand for the purposes of providing payment for indemnity of any risk which includes risk of fire, that agent shall provide the Commission with a statutory declaration, in the form prescribed, that the levy payable under this section has been paid.
 - (4) Section 48 of this Act, to the extent that it is not inconsistent with this section, shall apply with respect to any payment of levy made under this section.

Section 49 was substituted, as from 1 July 1986, by section 9 Fire Service Amendment Act 1986 (1986 No 18).

Subsection (2) was amended, as from 19 December 2002, by section 11 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words “in the prescribed form” after the words “a return”.

49A Liability for levy where owners of property negotiate contracts of fire insurance with insurance company not carrying on business in New Zealand

- (1) For the purposes of this Act, where the owner of property negotiates a contract of fire insurance in respect of that property, either with an insurance company not carrying on business in New Zealand, or with an office or branch outside New Zealand of an insurance company carrying on business in New Zealand, the contract shall be deemed to be made in New Zealand and that owner of property, in respect of the amount insured (whether the premium was paid within or beyond New Zealand), shall accordingly be liable for the payment of the levy under this Act. The provisions of this section shall apply whether or not the negotiations for the contract of fire insurance were carried out by an overseas insurance broker or agent acting on behalf of the owner of property.
- (2) For the purposes of subsection (1) of this section, the owner of property shall include, together with the payment of the levy, a return in the prescribed form and shall include in that return the indemnity value in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the owner or by the owner's authorised representative stating, that to the best of that person's knowledge or belief, the payment is correct.
- (3) For the purposes of this section, where the owner of property transfers or credits money to any company, corporation, partnership, or person outside New Zealand for the purposes of providing payment for indemnity of any risk which includes risk of fire, that owner shall provide the Commission with a statutory declaration, in the form prescribed, that the levy payable in terms of this section has been paid.
- (4) The provisions of section 48 of this Act, to the extent that they are not inconsistent with the provisions of this section, shall apply with respect to any payment of levy made under this section.

- (5) Nothing in this section shall apply to any contract of fire insurance entered into on or before the 30th day of June 1986 except where such a contract is for a term exceeding 12 months. Where such a contract was entered into on or before the 30th day of June 1986 and is for a period exceeding 12 months the provisions of this section shall apply to that portion of the said contract that exceeds 12 months.

Section 49A was inserted, as from 1 July 1986, by section 10 Fire Service Amendment Act 1986 (1986 No 18).

Subsection (2) was amended, as from 19 December 2002, by section 12 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words “in the prescribed form” after the words “a return”.

49B Liability for levy by owner of property where cover for risk including fire is provided by any company, corporation, partnership, or person associated with owner of property

- (1) For the purposes of this Act, where an owner of property makes a payment to any company, partnership, corporation, or person (other than an insurance company) either within or beyond New Zealand, including any company, corporation, partnership, or person associated with the owner (including any parent company, associate company, or subsidiary company of the owner) and the payment is to provide in respect of that property for arrangements for indemnity or a reserve or a fund to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance, that owner in respect of that payment shall be liable for the payment of the levy under this Act. The provisions of this subsection shall apply whether or not the said arrangements are in the form of a contract of fire insurance.
- (2) For the purposes of subsection (1) of this section, the owner of property shall include, together with the payment of the levy, a return in the prescribed form and shall include in that return the indemnity value in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the owner or by the owner's authorised representative stating that, to the best of that person's knowledge or belief, the payment is correct.

- (3) For the purposes of any payment under subsection (1) of this section, where any company, corporation, partnership, or person, whether acting as the owner of property or otherwise, transfers money out of New Zealand, that company, corporation, partnership, or person shall provide the Commission with a statutory declaration in the form prescribed, that the levy payable in terms of this section has been paid.
- (4) Section 48 of this Act, to the extent that it is not inconsistent with this section, shall apply to any payment of levy made under this section.
- (5) Nothing in this section shall apply to any arrangement for cover for risk including fire entered into on or before the 30th day of June 1986 except where such an arrangement is for a term exceeding 12 months. Where such an arrangement was entered into on or before the 30th day of June 1986 and is for a period exceeding 12 months the provisions of this section shall apply to that portion of the said arrangement that exceeds 12 months.

Section 49B was inserted, as from 1 July 1986, by section 11 Fire Service Amendment Act 1986 (1986 No 18).

Subsection (2) was amended, as from 19 December 2002, by section 13 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words “in the prescribed form” after the words “a return”.

50 Payment of levy

- (1) The amount of the levy for which any insurance company or agent or owner of property becomes liable in any month shall be received by the Commission by the 15th day of the second month following the end of the month in which the contract of fire insurance or other arrangement was made.
- (2) Every such payment shall be accompanied by a certificate in the prescribed form by the company, or by an officer of the company, or by an agent or other representative of the company (whether or not that person is an agent of the company for the purposes of section 49 of this Act), or by the owner of property or the owner’s authorised representative, stating that, according to the records and books thereof, and to the best of that person’s knowledge and belief, the payment is correct.

- (3) Subsections (1) and (2) of this section shall apply with respect to any unpaid Fire Service levy due and payable in respect of any contract of fire insurance on or before the 30th day of June 1986.

Section 50 was substituted, as from 1 July 1986, by section 12(1) Fire Service Amendment Act 1986 (1986 No 18).

Subsection (1) was amended, as from 1 January 1991, by section 36 Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “received by” for the words “paid to”.

Subsection (2) was amended, as from 19 December 2002, by section 14 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words “in the prescribed form” after the words “a certificate”.

51 Audit of contracts of fire insurance, etc

- (1) Every insurance company and any agent or other representative of the company (whether or not that person is an agent for the company for the purposes of section 49 of this Act) shall at all times keep in safe custody all records of contracts of fire insurance, including full particulars of each contract and the amount of the levy and the date of its payment to the Commission.
- (2) For the purpose of ascertaining whether the levy for which any insurance company or its agent is liable has been paid and whether the provisions of this Act have been complied with, the Commission or its authorised officer or agent may from time to time examine the records (including records of contracts of fire insurance) and the books and accounts of the company or of its agent, and it shall be the duty of the said duly authorised officer or agent of the Commission to report the result thereof to the Commission, and the company or, as the case may be, its agent shall forthwith on demand submit its records, books and accounts accordingly to the said duly authorised officer or agent of the Commission.
- (3) Where any owner of property is liable for the payment of the levy in terms of sections 49A or 49B of this Act, subsections (1) and (2) of this section, shall, with any necessary modifications, apply to the records, books, and accounts of that person.

Section 51 was substituted, as from 1 July 1986, by section 13(1) Fire Service Amendment Act 1986 (1986 No 18).

Subsection (2) was amended, as from 1 January 1991, by section 37(a)(i) and (ii) Fire Service Amendment Act 1990 (1990 No 136) by inserting the words

“the records (including records of contracts of fire insurance) and” and the word “records,”.

Subsection (3) was amended, as from 1 January 1991, by section 37(b) Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “subsections (1) and (2) of this section” for the words “subsections (1) and (2) of this Act”.

51A Companies, corporations, partnerships, and local and public authorities to supply evidence of insurance arrangements

- (1) The Commission may require any company, corporation, or partnership, or any local or public authority, to make a statutory declaration in the prescribed form concerning the details of its insurance arrangements (if any) so that the Commission may determine whether or not that company, corporation, or partnership, or that local or public authority is liable, as owner of property or otherwise, for the payment of the levy.
- (2) Where the Commission determines, pursuant to subsection (1) of this section that a company, corporation, or partnership, or any local or public authority shall make a statutory declaration, the provisions of section 51 of this Act shall apply, whether or not that statutory declaration is made.

Sections 51A to 51C were inserted, as from 1 January 1991, by section 38(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) was amended, as from 19 December 2002, by section 15 Fire Service Amendment Act 2002 (2002 No 65) by inserting the words “in the prescribed form” after the words “a statutory declaration”.

51B Secrecy

All returns, all extracts made in order to verify the returns, and all information received pursuant to sections 48, 49, 49A, 49B, 51, and 51A of this Act shall be kept secret by the Commission, its agents, and by every member of the Fire Service:

Provided that nothing in this section shall prohibit publication of the gross amount of the levy received by the Commission during or in respect of any period.

Sections 51A to 51C were inserted, as from 1 January 1991, by section 38(1) Fire Service Amendment Act 1990 (1990 No 136).

51C Commission may enter into agreements for auditing information received pursuant to sections 48, 49, 49A, 49B, 51, and 51A

The Commission may, at its discretion, from time to time enter into agreements with any person or persons for the purpose of enabling that person or those persons to act as agent of the Commission in terms of sections 51 and 51A of this Act to determine whether payment of the levy has been made in accordance with the provisions of this Act.

Sections 51A to 51C were inserted, as from 1 January 1991, by section 38(1) Fire Service Amendment Act 1990 (1990 No 136).

52 Protection of commercial information

[Repealed]

Section 52 was substituted, as from 1 July 1986, by section 14 Fire Service Amendment Act 1986 (1986 No 18).

Section 52 was repealed, as from 1 April 1987, by section 25(1) Official Information Amendment Act 1987 (1987 No 8).

53 Failure to pay levy

- (1) If any insurance company liable to pay the levy fails to pay that levy by the date specified in section 50 of this Act, the amount of that levy, together with interest thereon at the rate of one and a half percent per month calculated from the date payment is due, may be recovered as a debt due from that insurance company to the Commission. Interest will be calculated in monthly instalments for each month, or part thereof, that the payment is due.
- (2) Where any person is liable for the payment of the levy as an agent of an insurance company in terms of section 49 of this Act, subsection (1) of this section shall apply to that person.
- (3) Where any owner of property is liable for the payment of the levy in terms of section 49A or section 49B of this Act, subsection (1) of this section shall apply to that person.

Section 53 was amended, as from 20 October 1978, by section 19 Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “or reinsurance”.

Section 53 was substituted, as from 1 July 1986, by section 15(1) Fire Service Amendment Act 1986 (1986 No 18).

53A Penalty surcharge for non-payment of levy

- (1) Where any levy payment has not been made within 6 months of the date specified in section 50 of this Act, a penalty surcharge shall be made in accordance with the provisions of subsection (2) of this section, and this penalty surcharge shall be additional to any interest that the Commission may determine should be payable under section 53(1) of this Act.
- (2) The penalty surcharge shall be as follows:
 - (a) On the amount of so much, if any, of the levy as remains unpaid at the expiry of the day on which there expires the period of 6 months immediately following the due date of payment of that levy, a penalty surcharge of 10 percent:
 - (b) On the amount of so much, if any, of the levy (being the levy referred to in paragraph (a) of this subsection and the penalty surcharge added thereto in accordance with the provisions of paragraph (a) of this subsection) as remains unpaid at the expiry of the day on which there expires the period of 6 months immediately following the day referred to in paragraph (a) of this subsection, a penalty surcharge of 10 percent:
 - (c) On the amount of so much, if any, of the levy (being the levy referred to in paragraph (a) of this subsection, the penalty surcharge added thereto in accordance with the provisions of paragraphs (a) and (b) of this subsection, and the penalty surcharge, if any, theretofore added thereto in accordance with the provisions of this paragraph) as remains unpaid at the expiry of any of the periods of 6 months that, consecutively, succeed the period of 6 months referred to in paragraph (b) of this subsection, a penalty surcharge of 10 percent.
- (3) Where any insurance company is liable for the payment of the levy under section 48 of this Act, subsections (1) and (2) of this section shall apply to that company.
- (4) Where any person is liable for the payment of the levy as an agent of an insurance company under section 49 of this Act, subsections (1) and (2) of this section shall apply to that person.

- (5) Where any owner of property is liable for the payment of the levy under section 49A or section 49B of this Act, subsections (1) and (2) of this section shall apply to the owner of property.
- Section 53A was inserted, as from 1 April 1991, by section 39(1) Fire Service Amendment Act 1990 (1990 No 136).

54 Provision of superannuation for members of Fire Service

- (1)
- (2) Notwithstanding anything in this Act any person, being a person to whom section 18(2)(b) of this Act applies, who was a contributor to the Government Superannuation Fund under Part 2 of the Government Superannuation Fund Act 1956, shall be deemed to be, for the purposes of that Act, employed in the Government service so long as he continues in the service of the Commission; and the provisions of that Act shall apply to him in all respects as if his service with the Commission were Government service.
- (3) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (2) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after he has ceased to be a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (2) of this section, to a person to whom that subsection applies, the term **controlling authority**, in relation to that person, means the Commission.

Subsection (1) was substituted, as from 10 July 1987, by section 2 Fire Service Amendment Act (No 5) 1987 (1987 No 141).

Subsection (1) was amended, as from 1 January 1991, by section 40 Fire Service Amendment Act 1990 (1990 No 136) by omitting the words “the Fire Commissioners and”.

Subsection (1) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

In subsections (2), (3), and (4) the reference to the Government Superannuation Fund Act 1956 was substituted for a reference to the Superannuation Act 1956 by section 3(3) Government Superannuation Fund Amendment Act 1976 (1976 No 30), as from 1 November 1976.

55 Gratuities on retirement or death of members of Fire Service

- (1) On the retirement from the Fire Service of any member who has not had less than 10 years continuous service the Chief Executive may pay to that member, and shall not unreasonably withhold, an amount by way of gratuity not exceeding an amount equal to 6 months' pay at the rate payable to that member at the time of that member's retirement.
- (2) On the death of any member of the Fire Service (whether before or after that member's retirement, but before the member has received a gratuity under subsection (1) of this section) the Chief Executive may, irrespective of the length of that member's continuous service, pay the member's dependants or any of them, and shall not unreasonably withhold, an amount by way of gratuity not exceeding an amount equal to 6 months' pay at the rate payable to the member at the time of the member's retirement or, if the member died before retirement, at the time of the member's death.
- (3) For the purposes of this section, service in the Fire Service shall include service with any predecessor of the Commission or with any Urban Fire Authority declared or constituted under the Fire Services Act 1972 or with the predecessor of any such Authority or in the Public Service.
- (4) Not more than one gratuity shall be paid under this section in respect of the employment in the Fire Service of any one person.

Sections 55 and 56 were substituted, as from 1 January 1991, by section 41(1) Fire Service Amendment Act 1990 (1990 No 136).

56 Gratuities on retirement or death of members of volunteer fire brigades

- (1) On the retirement from service as a member of a volunteer fire brigade of any person (other than a member of the Fire Service attached to a volunteer fire brigade pursuant to section 18(4) of this Act) who has had not less than 10 years service with the volunteer fire brigade (whether before or after the commencement of this Act), the Chief Executive may pay to that person, and shall not unreasonably withhold, an amount

- by way of gratuity at the rate of \$120 for each year of service, being a year commencing on or after the 1st day of April 1976.
- (2) On the death of any member of a volunteer fire brigade (whether before or after the member's retirement but before the member has received a gratuity under subsection (1) of this section) the Chief Executive may, irrespective of the length of service, pay the member's dependants or any of them, and shall not unreasonably withhold, an amount by way of gratuity at the rate of \$120 for each full year of service, being a year commencing on or after the 1st day of April 1976.
- (3) For the purposes of this section—
- (a) Service as a member of a volunteer fire brigade shall be deemed to include service as a member of any volunteer fire brigade, whether that service is continuous or not, during the period of which the member concerned has attended two-thirds of musters, including practices, meetings, and alarms:
- (b) A certificate from the United Fire Brigades' Association of New Zealand shall be accepted by the Chief Executive as sufficient evidence and verification of the service of the member concerned.
- (4) Not more than one gratuity shall be paid under this section in respect of the service of a member of a volunteer fire brigade, and any gratuity paid shall not exceed \$3,000.
- (5) The Governor-General may from time to time, by Order in Council, alter any or all of the rates of gratuity specified in subsections (1) and (2) of this section in respect of such years of service as may be prescribed and may also alter the maximum amount of gratuities specified in subsection (4) of this section.
- (6) Any person who considers that the Chief Executive has unreasonably withheld the payment of a gratuity to that person under this section may request a review of the decision through the United Fire Brigades' Association of New Zealand.

Subsections (1) and (2) were amended, as from 1 June 1988, by regulation 2(a) and (b) Fire Service (Volunteer Fire Brigade Member's Gratuities) Order 1988 (SR 1988/86) by substituting the expression "\$80" for the expression "\$40".

Subsection (4) was amended by regulation (2)(b) Fire Service (Volunteer Fire Brigade Member's Gratuities) Order 1988 (SR 1988/86) by substituting the expression "\$2,000" for the expression "\$1,000".

Subsection (4A) was inserted, as from 20 October 1978, by section 20 Fire Service Amendment Act 1978 (1978 No 49).

Sections 55 and 56 were substituted, as from 1 January 1991, by section 41(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (1) and (2) were amended, as from 1 January 1994, by section 2(1) and (2) Fire Service Amendment Act 1995 (1995 No 37) by substituting the expression "\$120" for the expression "\$80".

Subsection (4) was amended, as from 1 January 1994, by section 2(3) Fire Service Amendment Act 1995 (1995 No 37) by substituting the expression "\$3,000" for the expression "\$2,000".

57 Gratuities Fund

[Repealed]

Subsection (3) was amended, as from 20 October 1978, by section 21 Fire Service Amendment Act 1978 (1978 No 49) by inserting in 2 places the words "or the Public Trustee".

Subsection (3) was amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the words "Public Trust" for the words "the Public Trustee" wherever they occur. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Sections 57 to 60 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

58 Reserve Fund

[Repealed]

Subsection (1)(a) was amended, as from 20 October 1978, by section 22(1) Fire Service Amendment Act 1978 (1978 No 49) by inserting the words "Capital expenditure allowed for in any approved estimated expenditure and".

Subsection (3) was amended, as from 20 October 1978, by section 22(2) Fire Service Amendment Act 1978 (1978 No 49) by inserting, in 2 places, the words "or the Public Trustee".

Subsection (5) was amended, as from 20 October 1978, by section 22(3) Fire Service Amendment Act 1978 (1978 No 49) by substituting the words "section 72 of the Fire Services Act 1972" for the words "section 73 of the Fire Service Act 1972".

Subsection (5A) was inserted, as from 20 October 1978, by section 22(4) Fire Service Amendment Act 1978 (1978 No 49).

Section 58 was substituted, as from 1 January 1991, by section 42(1) Fire Service Amendment Act 1990 (1990 No 136).

Sections 57 to 60 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

58A Commission may establish special funds

[Repealed]

Section 58A was inserted, as from 30 March 1987, by section 2 Fire Service Amendment Act 1987 (1987 No 29).

Subsection (6) was amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the words “Public Trust” for the words “the Public Trustee”. See clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Sections 57 to 60 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

58B General power to be involved in business and other ventures

[Repealed]

Section 58B was inserted, as from 1 January 1991, by section 43 Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was amended, as from 26 September 2000, by section 5(5) Fire Service Amendment Act 2000 (2000 No 36), by substituting the word “a” for the words “an appointed”.

Sections 57 to 60 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

59 Borrowing powers

[Repealed]

Section 59 was substituted, as from 1 January 1991, by section 44 Fire Service Amendment Act 1990 (1990 No 136).

Section 59 was substituted, as from 1 July 1998, by section 5 Fire Service Amendment Act 1998 (1998 No 13).

Sections 57 to 60 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

60 Acquisition of housing for use of employees

[Repealed]

Subsections (1), (2), and (4) were amended, as from 30 March 1987, by section 3 Fire Service Amendment Act 1987 (1987 No 29) by substituting the references to “the Minister of Internal Affairs” for references to “the Minister of Finance”.

Sections 57 to 60 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

61 Power to take and hold property

(1)

- (2) The Commission shall have power to take in the manner provided by the Public Works Act 1981 any land that may be necessary for the purposes of any work which the Commission is empowered to undertake pursuant to this Act, or for carrying out any of the purposes of this Act, and in like manner the Commission may take any particular estate or interest in land (whether for the time being subsisting separately or not) or any easement over land.
- (3) Any land, any particular estate or interest in land, or any easement over land taken pursuant to subsection (2) of this section shall vest in the Commission.

Compare: 1972 No 119 s 74

Subsection (1) was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

In subsection (2) the Public Works Act 1981 was substituted for the repealed Public Works Act 1928, as from 1 February 1982, pursuant to section 248(1) Public Works Act 1981 (1981 No 35).

62 Power to dispose of property

[Repealed]

Subsection (3) was inserted, as from 20 October 1978, by section 23 Fire Service Amendment Act 1978 (1978 No 29).

Section 62 was substituted, as from 1 January 1991, by section 45(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2) was amended, as from 1 July 1998, by section 2(3) Fire Service Amendment Act 1998 (1998 No 13) by omitting the words “, unless the provisions of section 104 of the Local Authorities Loans Act 1956 otherwise apply,”.

Section 62 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

62A Exemption from income tax

The Commission is exempt from income tax.

Section 62A was inserted, as from 1 January 1991, by section 46 Fire Service Amendment Act 1990 (1990 No 136).

62B Fire Service Restructuring Fund

[Repealed]

Sections 62B to 62F were inserted, as from 1 July 1994, by section 2 Fire Service Amendment Act 1994 (1994 No 71).

Sections 62B to 62F were repealed, as from 19 December 2002, by section 17(1) Fire Service Amendment Act 2002 (2002 No 65).

62C Operation of Restructuring Fund in 1994/95

[Repealed]

Sections 62B to 62F were inserted, as from 1 July 1994, by section 2 Fire Service Amendment Act 1994 (1994 No 71).

Sections 62B to 62F were repealed, as from 19 December 2002, by section 17(1) Fire Service Amendment Act 2002 (2002 No 65).

62D Operation of Restructuring Fund in 1995/96

[Repealed]

Sections 62B to 62F were inserted, as from 1 July 1994, by section 2 Fire Service Amendment Act 1994 (1994 No 71).

Sections 62B to 62F were repealed, as from 19 December 2002, by section 17(1) Fire Service Amendment Act 2002 (2002 No 65).

62E Commission to report on expenditure proposals

[Repealed]

Sections 62B to 62F were inserted, as from 1 July 1994, by section 2 Fire Service Amendment Act 1994 (1994 No 71).

Sections 62B to 62F were repealed, as from 19 December 2002, by section 17(1) Fire Service Amendment Act 2002 (2002 No 65).

62F Unexpended money to revert to Levy in Advance Account

[Repealed]

Sections 62B to 62F were inserted, as from 1 July 1994, by section 2 Fire Service Amendment Act 1994 (1994 No 71).

Sections 62B to 62F were repealed, as from 19 December 2002, by section 17(1) Fire Service Amendment Act 2002 (2002 No 65).

Part 5

Personnel administration

63 Obligation to constitute brigades or to attach executive officers and firefighters to operational brigades

- (1) For the purposes of this Part of this Act, the Chief Executive shall, after consultation with the National Commander, constitute into brigades all executive officers and firefighters who do not form part of an operational brigade, or may attach any such executive officers, or firefighters to any operational brigade.
- (2) The Chief Executive shall designate an executive officer to act as Chief Fire Officer of any brigade constituted under subsection (1) of this section.

Section 63 was substituted, as from 1 January 1991, by section 47 Fire Service Amendment Act 1990 (1990 No 136).

64 General instructions

[Repealed]

Section 64 was repealed, as from 1 January 1991, by section 48 Fire Service Amendment Act 1990 (1990 No 136).

65 Appointments to vacancies

- (1) The Chief Executive, in making an appointment under this Act, shall give preference to the person who is best suited to the position.
- (2) Where the Chief Executive intends to fill a position that is vacant or is to become vacant in the Fire Service, the Chief Executive shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.
- (3) The Chief Executive shall notify to the members of the Fire Service every appointment (other than that of an acting, temporary, or casual employee) made by the Chief Executive to an office or position in the Fire Service.

Section 65 was amended, as from 1 August 1987, by section 3 Fire Service Amendment Act (No 4) 1987 (1987 No 120) by inserting a subsection (8).

Section 65 was substituted, as from 1 January 1991, by section 49(1) Fire Service Amendment Act 1990 (1990 No 136).

66 Provision in case of absence from duty

- (1) In the case of the absence from duty of any member of the Fire Service (whether by reason of illness or appointment to special duties or for any other reason whatever) or in the case of a vacancy (whether by reason of death, resignation, or otherwise), and from time to time while the absence or vacancy continues, or for any other special purpose, the Chief Executive, acting in accordance with the policy of the Commission, may authorise any member of the Fire Service to perform all the functions and duties and exercise all the powers, whether under this Act, or any other Act, of any rank or position higher than his own, or may appoint any member of the Fire Service temporarily to any higher rank or position.

- (2) Any authority or appointment under this section may be given or made before the occasion arises or while it continues; and no such authority or appointment, and nothing done by any member of the Fire Service acting pursuant to any such authority or appointment, shall be questioned in any proceedings on the ground that the occasion had not arisen or had ceased, or on the ground that the member had not been appointed to any rank or position to which the authority relates.
- (3) The Chief Executive, acting in accordance with the policy of the Commission, may at any time revoke any authority given or any appointment made under this section.
- (4) Nothing in section 65 of this Act shall apply to any appointment under this section.

Subsections (1) and (3) were amended, as from 1 January 1991, by section 50 Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “Chief Executive, acting in accordance with the policy of the Commission,” for the word “Commission”.

67 Review of appointments

- (1) The Chief Executive shall put into place for the Fire Service a procedure for reviewing those appointments made within the Fire Service that are the subject of any complaint by a member of the Fire Service.
- (2) The procedure shall comply with the guidelines prescribed by the State Services Commission for such review procedures.
- (3) Nothing in this section relates to an acting appointment or to an appointment to the position of Chief Executive, National Commander, Deputy National Commander, or to any person appointed as a member of the Fire Service in charge of a Fire Region.

Section 67 was substituted, as from 1 January 1991, by section 51 Fire Service Amendment Act 1990 (1990 No 136).

68 Appeal against transfers

[Repealed]

Sections 68 and 69 were repealed, as from 1 January 1991, by section 52(1) Fire Service Amendment Act 1990 (1990 No 136).

69 Appeal against withholding of gratuity*[Repealed]*

Sections 68 and 69 were repealed, as from 1 January 1991, by section 52(1) Fire Service Amendment Act 1990 (1990 No 136).

69A Rights of appeal in respect of enterprise units and positions for which range of rates of remuneration is prescribed*[Repealed]*

Section 69A was inserted, as from 1 August 1987, by section 4 Fire Service Amendment Act (No 4) 1987 (1987 No 120), and repealed, as from 1 January 1991, by section 52(1) Fire Service Amendment Act 1990 (1990 No 136). *See* section 65(3) of that Act for a savings provision notwithstanding the repeal of the Fire Service Amendment Act (No 4) 1987.

70 Dismissal*[Repealed]*

Sections 70 and 71 were repealed, as from 1 January 1991, by section 52(1) Fire Service Amendment Act 1990 (1990 No 136).

71 Appeal against dismissal*[Repealed]*

Sections 70 and 71 were repealed, as from 1 January 1991, by section 52(1) Fire Service Amendment Act 1990 (1990 No 136).

71A Member of Fire Service on probation*[Repealed]*

Section 71A was inserted, as from 20 October 1978, by section 24 Fire Service Amendment Act 1978 (1978 No 49), and repealed, as from 1 January 1991, by section 52(1) Fire Service Amendment Act 1990 (1990 No 136).

72 Retirement of medically unfit

- (1) Any member of the Fire Service who is certified by 2 medical practitioners, nominated by the Chief Executive, to be substantially medically unfit to perform any specified duties in the Fire Service which the Chief Executive considers suitable for him may be required by the Chief Executive, by notice in writing, to retire from the Fire Service within such time, being not less than one month, as may be specified in the notice.

- (2) Any member required under this section to retire from the Fire Service shall, on the expiration of the time specified in that behalf in the notice, cease to be a member:
- Provided that where an appeal is commenced under subsection (3) of this section, the appellant shall not cease to be a member until he has been notified in writing by the Chief Executive of the result of the appeal.
- (3) Any member who is required under this section to retire from the Fire Service may appeal against the requirement.
- (4) Every appeal shall be commenced by notice of appeal delivered to the Chief Executive within 14 days after the receipt of the notice referred to in subsection (1) of this section.
- (5) Any appeal under this section shall be determined by 3 medical practitioners of whom one shall be appointed by the Chief Executive and one by the appellant and the third by agreement between the medical practitioners already appointed or, failing agreement, by the Director-General of Health. Any decision of a majority of the medical practitioners appointed as aforesaid shall be the decision in the appeal.
- (6) Subject to subsection (5) of this section the medical practitioners appointed under that subsection after full inquiry may dismiss the appeal or allow the appeal subject to the appellant complying with any conditions specified by them.

Subsections (1), (2), (4), and (5) were amended, as from 1 January 1991, by section 53 Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “Chief Executive” for the word “Commission”.

Subsection (5) was amended, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48) by omitting the word “registered”. See sections 178 to 227 of that Act as to the transitional provisions.

72A Standards of physical competence

- (1) For the purpose of section 72C of this Act, the Chief Executive shall from time to time, after consultations with the appropriate union or unions, prescribe standards of physical competence required of the National Commander and other members of the Fire Service who hold Fire Service rank to ensure that they are physically competent to perform the duties that may reasonably be required of them from time to time.

- (2) Any such standards may be expressed to apply to all categories of persons referred to in subsection (1) of this section or to any particular class of those persons, whether designated by reference to rank, duties, or age, or otherwise.

Sections 72A to 72C were inserted, as from 1 January 1991, by section 54 Fire Service Amendment Act 1990 (1990 No 136).

72B Application of section 72C

Section 72C of this Act shall apply in respect of every person who is a member of the New Zealand Fire Service Commission Superannuation Scheme, or who was eligible to join, either at the time of the inception of the scheme, or when that person first became a member of the Fire Service holding Fire Service rank.

Sections 72A to 72C were inserted, as from 1 January 1991, by section 54 Fire Service Amendment Act 1990 (1990 No 136).

72C Compulsory disengagement of unfit

- (1) If any person to whom this section applies is unable to meet the standards of physical competence prescribed under section 72A of this Act and, following further attempts to meet those physical standards not later than 6 months following the first testing, still fails to meet the prescribed standards, the Chief Executive may require that person, by notice in writing, to leave the Fire Service within such time, being not less than one month, as may be specified in the notice.
- (2) In any case to which subsection (1) of this section applies, the person may, with the consent of the Chief Executive, waive the right to notice and leave the Fire Service immediately.
- (3) A person who is required under this section to leave the Fire Service shall cease to be a member of the Fire Service on the expiration of the time specified in that behalf in the notice or (where the person waives the right to notice with the consent of the Chief Executive under subsection (2) of this section) on the date on which the Chief Executive gives to the person written notice of consent to the waiver.

Sections 72A to 72C were inserted, as from 1 January 1991, by section 54 Fire Service Amendment Act 1990 (1990 No 136).

Discipline

73 Standards of conduct

- (1) The Chief Executive may from time to time prescribe the standards of conduct that are to apply to members of the Fire Service, whether or not those members hold Fire Service rank.
- (2) The Chief Executive shall consult the State Services Commission before issuing standards of conduct.

Section 73 was substituted, as from 1 January 1991, by section 55 Fire Service Amendment Act 1990 (1990 No 136).

74 Action to be taken by Chief Fire Officer if executive officer or fireman alleged to be in breach of good conduct
[Repealed]

Sections 74 to 78 were repealed, as from 1 January 1991, by section 56(1) Fire Service Amendment Act 1990 (1990 No 136).

75 Certain offences to be reported to Commission
[Repealed]

Sections 74 to 78 were repealed, as from 1 January 1991, by section 56(1) Fire Service Amendment Act 1990 (1990 No 136).

76 Offences by senior officers
[Repealed]

Sections 74 to 78 were repealed, as from 1 January 1991, by section 56(1) Fire Service Amendment Act 1990 (1990 No 136).

77 Action to be taken by Commission when alleged breach of good conduct referred to it
[Repealed]

Sections 74 to 78 were repealed, as from 1 January 1991, by section 56(1) Fire Service Amendment Act 1990 (1990 No 136).

78 Appeal following inquiry into breach of good conduct
[Repealed]

Sections 74 to 78 were repealed, as from 1 January 1991, by section 56(1) Fire Service Amendment Act 1990 (1990 No 136).

79 Suspension pending hearing of criminal charge*[Repealed]*

Section 79 was substituted, as from 1 January 1991, by section 57 Fire Service Amendment Act 1990 (1990 No 136).

Section 79 was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

80 Appeal Board*[Repealed]*

Sections 80 to 82 were repealed, as from 1 January 1991, by section 58(1) Fire Service Amendment Act 1990 (1990 No 136).

81 Nominated members of Appeal Board*[Repealed]*

Sections 80 to 82 were repealed, as from 1 January 1991, by section 58(1) Fire Service Amendment Act 1990 (1990 No 136).

82 Procedure of Appeal Board*[Repealed]*

Sections 80 to 82 were repealed, as from 1 January 1991, by section 58(1) Fire Service Amendment Act 1990 (1990 No 136).

Part 6

Remuneration and conditions of employment

83 Application of State Sector Act 1988*[Repealed]*

Section 83 was substituted, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

Section 83 was substituted, as from 1 January 1991, section 59 Fire Service Amendment Act 1990 (1990 No 136).

Section 83 was substituted, as from 15 May 1991, by section 156(1) Employment Contracts Act 1991 (1991 No 22).

Sections 83 to 83B were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

83A General principles*[Repealed]*

Section 83A was inserted, as from 16 December 1983, by section 2 Fire Service Amendment Act 1983 (1983 No 109).

Section 83A was substituted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83A to 83C were substituted, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

Subsections (1) and (3) were amended, as from 1 January 1991, by section 60 Fire Service Amendment Act 1990 (1990 No 136) by substituting the words “Chief Executive” for the word “Commission”.

Sections 83 to 83B were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

83B Equal employment opportunities

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83A to 83C were substituted, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

Sections 83 to 83B were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

83C Choice of procedure

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83A to 83C were substituted, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

Section 83C was substituted, as from 1 January 1991, by section 61 Fire Service Amendment Act 1990 (1990 No 136).

Section 83C was repealed, as from 15 May 1991, by section 157 Employment Contracts Act 1991 (1991 No 22).

83D Implementation of ballot where awards and agreements do not contain service organisation membership clause

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83E Power to make consequential amendments to determination*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83F Explanatory note in relation to expiry of service organisation membership clause*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83G Insertion of service organisation membership clause in determination to which 2 or more service organisations are parties*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83H Notice to Registrar*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83I Conduct of ballot*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83J Restriction on issue of certificates

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83K Offences in relation to ballots

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83L Applications for inquiries

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83M Action by Registrar of Industrial Unions

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83N Ballot papers, etc, to be preserved

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83O Enforcement of service organisation membership clauses

[Repealed]

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83P Application for exemption from membership of service organisation*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83Q Intervention by other service organisations or unions or central organisation of workers*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83R Discrimination*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

83S Right to become member of service organisation*[Repealed]*

Sections 83B to 83S were inserted, as from 1 July 1985, by section 4 Fire Service Amendment Act 1985 (1985 No 106).

Sections 83D to 83S were repealed, as from 1 April 1988, by section 3 Fire Service Amendment Act 1988 (1988 No 26).

84 New Section inserted in Industrial Relations Act 1973*[Repealed]*

Sections 84 and 85 were repealed, as from 1 August 1987, by section 12 Fire Service Amendment Act (No 2) 1987 (1987 No 79).

85 Application of this Part*[Repealed]*

Sections 84 and 85 were repealed, as from 1 August 1987, by section 12 Fire Service Amendment Act (No 2) 1987 (1987 No 79).

Part 7

Miscellaneous provisions

86 Inquiries as to fires

- (1) The Minister may, at the request of the Commission or the National Commander or of the Minister's own motion, appoint any person or persons to hold an inquiry into and report upon the circumstances of, and the steps taken to deal with, any fire and any other matter which the Minister may consider appropriate to the inquiry.
- (2) The person or persons holding any such inquiry shall for the purposes thereof be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this section, the provisions of that Act shall apply accordingly.
- (3) In any case where, pursuant to subsection (1) of this section, a request has been made to the Minister to order an inquiry into any fire or the Minister has ordered an inquiry into any fire and, in either case, any property has been damaged or destroyed by the fire, the Commission may take and retain possession of the damaged property or the remains of the destroyed property, and, where the fire occurred on any premises, take and retain possession of those premises, until such time as the inquiry has been completed or the Minister has declined to hold the inquiry.
- (4) At any such inquiry—
 - (a) The Commission may be represented by a member thereof or by any other person authorised by the Commission; and
 - (b) The National Commander may be represented by a person authorised by the National Commander.
- (5) Any person so representing the Commission or the National Commander may appear and be heard and may adduce evidence and examine and cross-examine witnesses.

Compare: 1972 No 119 s 94

Subsection (1) was substituted, as from 1 January 1991, by section 62(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (4) was substituted, and subsection (5) was inserted, as from 1 January 1991, by section 62(2) Fire Service Amendment Act 1990 (1990 No 136).

87 Service of notices

- (1) If a notice or other document must be served on a person for the purposes of this Act, it may be served—
- (a) by delivering it personally to the person; or
 - (b) by delivering it at the usual or last known place of residence or business of the person, including by facsimile; or
 - (c) by sending it by prepaid post addressed to the person at the usual or last known place of residence or business of the person.
- (2) If a notice or other document is to be served on a body (whether incorporated or not), service on an officer of the body in accordance with subsection (1) is service on the body.
- (3) If a notice or other document is to be served on a partnership, service on any 1 of the partners in accordance with subsection (1) or subsection (2) is service on the partnership.
- (4) If a notice or other document is sent by post to a person in accordance with subsection (1)(c), it must be treated as having been received by the person at the time at which the letter would have been delivered in the ordinary course of post.

Section 87 was substituted, as from 19 December 2002, by section 16 Fire Service Amendment Act 2002 (2002 No 65).

88 Offences

- (1) Every person commits an offence who—
- (a) Resists, deceives, or knowingly obstructs the Commission, or any member of the Fire Service or any member of a defence fire brigade or any member of an industrial fire brigade, or any other person in the exercise or attempted exercise of any power, or the performance or attempted performance of any function or duty, conferred or imposed by this Act;
 - (b) Unlawfully interferes with any equipment at or in the vicinity of any fire or suspected fire or other emergency;
 - (c) Knowingly gives or causes to be given any false alarm of fire;
 - (d) Unlawfully interferes with any fire alarm;
 - (e) Knowingly covers up, encloses, or conceals any hydrant so as to render its position difficult to ascertain:

- (f) Knowingly obliterates or removes any mark, sign, or letter used for the purpose of indicating the position of or distinguishing any hydrant.
 - (g) With intent to deceive, impersonates a member of the Fire Service or a member of a volunteer fire brigade or defence fire brigade or industrial fire brigade.
- (2) Every member of the Police who on reasonable and probable grounds believes that any person has committed an offence under any of the provisions of paragraphs (a) to (c) of subsection (1) of this section may arrest that person without warrant.
- (3) The Commission may offer a reward, not exceeding \$500, for information leading to the conviction of any person committing an offence under any of the provisions of paragraphs (b) to (g) of subsection (1) of this section within any Fire District or within any rural area in which it has authority, and may pay the reward out of its revenues.

Compare: 1972 No 119 s 96

Subsection (1)(a) was amended, as from 20 October 1978, by section 28 Fire Service Amendment Act 1978 (1978 No 49) by inserting the words “or any member of a defence fire brigade”.

Subsection (1)(a) was amended, as from 13 December 1979, by section 8(3) Fire Service Amendment Act 1979 (1979 No 89) by omitting the words “any Commissioner”.

Subsection (1)(g) was inserted, as from 2 September 1996, by section 7(1) Fire Service Amendment Act 1996 (1996 No 122).

Subsection (3) was amended, as from 2 September 1996, by section 7(2) Fire Service Amendment Act 1996 (1996 No 122) by substituting the expression “\$500” for the expression “\$50”, and by substituting the expression “(g)” for the expression “(f)”.

89 Penalties

- (1) Every person who commits an offence under any of the provisions of paragraphs (a) to (c) of section 88(1) of this Act shall be liable on summary conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding \$500 or both.
- (2) Every person who commits an offence under any other provision of this Act, being a provision in respect of which no penalty is otherwise provided for, shall be liable on summary conviction to a fine not exceeding \$200 and, if the offence is

a continuing one, to a further fine not exceeding \$20 for every day during which the offence continues.

Compare: 1972 No 119 s 97

90 Fines

- (1) All fines recovered under this Act shall be paid to the Commission and form part of the revenue of the Commission.
- (2) The amount of any fine or other sum ordered to be paid by a member of the Fire Service, pursuant to this Act, may be deducted from any money due or thereafter becoming due from the Commission to that member by way of salary or otherwise.

91 Restriction on public use of words “fire engineer” in certain cases

[Repealed]

Section 91 was repealed, as from 1 January 2004, by section 76 Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17).

92 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general power hereinbefore conferred, regulations may be made under this section for all or any of the following purposes namely:
 - (a)
 - (b) Providing for the administration, maintenance, duties, discipline, and control of the Fire Service:
 - (c) Prescribing the ranks in the Fire Service, and providing for the appointment of any person to any such rank:
 - (d)
 - (da) Prescribing the conditions under which, and circumstances when, medical examinations of employees may be carried out:
 - (e) Prescribing the retiring ages of members of the Fire Service, or of any class or classes of such members:
 - (f)

- (g) Prescribing the procedure at and regulating the conduct of inquiries under this Act and enabling the taking of evidence on commission for the purposes of any such inquiry:
- (h)
- (i) Prescribing the form of any return or certificate or statutory declaration under sections 49, 49A, 49B, 50, and 51A of this Act:
- (j)
- (k)
- (l) Prohibiting or restricting the sale for domestic use of any apparatus or equipment that may cause injury to persons by burning, or the ignition of clothing or fabrics, by contact with heating elements or flames:
- (m) Controlling the sale and use of fire extinguishers:
- (n) Prescribing standards of fire safety:
- (na) Prescribing the design, siting, installation, dimensions, markings, and recommended distance from buildings of fire hydrants, whether by reference to a New Zealand Standard or otherwise:
- (nb) Prescribing the design, installation, dimensions, and markings of riser mains, whether by reference to a New Zealand Standard or otherwise:
- (nc) prescribing, for the purposes of section 21A, the minimum amounts of hazardous substances stored or processed in a relevant building:
- (nd) prescribing, for the purposes of section 21B, the matters to be included in an evacuation scheme:
- (ne) prescribing, for the purposes of section 21B, the minimum standards required for automatic sprinkler systems:
- (nf) prescribing the form of—
 - (i) applications under sections 21C and 21H; and
 - (ii) notifications under section 21E:
- (o) Prescribing offences for breaches of any such regulations, or for failure to comply with any lawful direction thereunder, and prescribing, on summary conviction, a fine not exceeding \$200 in respect of any such offence, and, if the offence is a continuing one, to a further fine

not exceeding \$20 for every day during which the offence continues:

- (p) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(3)

(4)

- (5) Any regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date on which they are made), and if no such date is specified shall come into force on the date of the making thereof.

(6)

- (7) Regulations made under this Act may be so made as to apply generally throughout New Zealand or within any specified part or parts thereof, or within the whole of New Zealand except such part or parts as may be specified in the regulations.

Compare: 1972 No 119 s 98; 1974 No 25 s 16

Subsection (2)(a) was repealed, as from 1 January 1991, by section 63(1) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(d) was repealed, as from 1 January 1991, by section 63(2) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(da) was inserted, as from 1 January 1991, by section 63(3) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(f) was repealed, as from 1 January 1991, by section 63(4) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(g) was substituted, as from 1 January 1991, by section 63(5) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(h) was repealed, as from 1 January 1991, by section 34(2)(b) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(i) was substituted, as from 1 July 1986, by section 16 Fire Service Amendment Act 1986 (1986 No 18).

Subsection (2)(i) was amended, as from 1 January 1991, by section 38(4) Fire Service Amendment Act 1990 (1990 No 136) by substituting the expression “50, and 51A” for the expression “and 50”

Subsection (2)(h) and (2)(k) were repealed, as from 1 January 1991, by section 34(2)(b) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(na) and (nb) were inserted, as from 1 January 1991, by section 63(6) Fire Service Amendment Act 1990 (1990 No 136).

Subsection (2)(nc) to (nf) was inserted, as from 1 October 2006, by section 11(1) Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

Subsection (3) was substituted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Subsection (3) was repealed, as from 1 October 2006, by section 11(2) Fire Service Amendment Act 2005 (2005 No 52). *See* clause 2 Fire Service Amendment Act Commencement Order 2006 (SR 2006/122).

Subsection (4) was repealed, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Subsection (6) was repealed, as from 10 December 1976, by section 2 Fire Service Amendment Act 1976 (1976 No 90).

93 Repeals and amendments

- (1) The enactments specified in Schedule 1 to this Act are hereby repealed.
- (2)
- (3) The enactments specified in Schedule 2 to this Act are hereby consequentially amended.
- (4) Unless the context otherwise requires, every reference in any other Act or in any regulation, rule, order, instrument, notice, or other document whatsoever to an Urban Fire Authority or to a Fire Board shall, after the commencement of this Act, be read as a reference to the New Zealand Fire Service Commission.
- (5) Unless the context otherwise requires, every reference in any other Act or in any regulation, rule, order, instrument, notice, or other document whatsoever to the fire service established under the Fire Services Act 1972 shall, on and after the commencement of this Act, be read as a reference to the New Zealand Fire Service established under this Act.
- (6) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of section 99 of the Fire Services Act 1972 shall not affect the amendments made by that section.

Subsection (2) was repealed, as from 20 May 1999, by section 7 Stamp Duty Abolition Act 1999 (1999 No 61).

Subsections (5) and (6) were inserted, as from 10 December 1976, by section 3 Fire Service Amendment Act 1976 (1976 No 90).

Schedule 1

Enactments repealed

Section 93(1)

- 1968, No 35—The Estate and Gift Duties Act 1968: Section 73(2)(g).
- 1971, No 26—The Estate and Gift Duties Amendment Act 1971: Section 6.
- 1972, No 119—The Fire Services Act 1972.
- 1974, No 25—The Fire Services Amendment Act 1974.
- 1974, No 85—The Fire Services Amendment Act (No 2) 1974
- 1975, No 6—The Fire Services Amendment Act 1975.

Schedule 2

Enactments amended

Section 93(3)

[Repealed]

Schedule 2 is completely repealed. The item relating to the Forest and Rural Fires Act 1955 (1955 No 44) was repealed, as from 1 April 1979, by section 70(e) Forest and Rural Fires Act 1977 (1977 No 52). The item relating to the Local Government Act 1974 (1974 No 66) was impliedly repealed, as from 25 November 1976, by section 2(1) Local Government Amendment Act 1976 (1976 No 55).

Schedule 3

Categories of property exempted from Fire Service levy

Section 47B

Schedule 3 was inserted, as from 1 July 1986, by section 7(2) Fire Service Amendment Act 1986 (1986 No 18).

1

Any ship or anything in a ship, except while the ship is on land:

2

Any standing bush or forest:

3

Any road, street, or path:

4

Any railway track or pole, or any tramway track or pole:

- 5 Any bridge or viaduct either completed or in course of construction, or any boxing or falsework used in construction of any bridge or viaduct:
- 6 Any tunnel or cutting:
- 7 Any retaining wall, dam, breakwater, mole, groyne, fence, or wall:
- 8 Any drain or channel:
- 9 Any reservoir, swimming bath, water tank (other than a water tank installed as part of the water supply system of any dwelling or farm building), water tower, or septic tank:
- 10 Any water reticulation pipe (other than a water reticulation pipe which in the opinion of the Earthquake and War Damage Commission, constitutes a structural part of any building):
- 11 Any electric supply, telegraph, or telephone pole, line, or cable:
- 12 Any mine or quarry:
- 13 Any aircraft or anything in an aircraft except while insured under a contract which is substantially a contract of fire insurance:
- 14 Any goods in transit, except while insured under a contract which is substantially a contract of fire insurance:
- 15 Any hazardous substance (as defined in section 2 of the Hazardous Substances and New Organisms Act 1996:
Item 15 was substituted, as from 1 January 1991, by section 34(3) Fire Service Amendment Act 1990 (1990 No 136).

Item 15 was substituted, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

16

Any livestock:

17

Any growing crops (including fruit trees and vines):

18

Any ensilage insured in the open field:

19

Any hay or other cut crops insured in the open field:

20

Any offshore installation for petroleum mining operations as defined in the Petroleum Act 1937:

21

Any pipeline, electricity cable, or telecommunications cable which is located on the sea floor.

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Notes

1 General

This is an eprint of the Fire Service Act 1975. It incorporates all the amendments to the Fire Service Act 1975 as at 1 October 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 18 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Sentencing Amendment Act 2007 (2007 No 27): section 58
