

Fire Service Amendment Act 1978

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An Act to amend the Fire Service Act 1975

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

This Act may be cited as the Fire Service Amendment Act 1978, and shall be read together with and deemed part of the Fire Service Act 1975 (in this Act referred to as the principal Act).

2 Interpretation

- (1) Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Defence fire brigade’ means a unit or other part of the Armed Forces established and trained by the authority of the Defence Council under the Defence Act 1971 for the prevention, suppression, and extinction of fires; but does not include a fire fighting unit maintained by the Minister of Defence in his capacity as a Fire Authority under the Forest and Rural Fires Act 1977:

“‘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:

“‘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.”.

- (2) Section 2 of the principal Act is hereby further amended by inserting in the definition of the term “fire brigade”, after the words “does not include”, the words “a defence fire brigade or”.
- (3) Section 2 of the principal Act is hereby further amended by inserting in the definition of the term “insurance company”, after the words “any contract of fire”, the words “or motor vehicle comprehensive”.

- (4) Section 2(1) of the Forest and Rural Fires Act 1977 is hereby amended by adding to the definition of the term “brigade” the words “and a defence fire brigade (as defined in section 2(1) of that Act)”.

3 New Zealand Fire Service Commission

Section 4 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) The New Zealand Fire Service Commission shall be deemed to be a local authority for the purposes of the Local Authorities Loans Act 1956, the Public Finance Act 1977, the Reserves Act 1977, and the Town and Country Planning Act 1977.”

4 Vesting of property in Commission

- (1) Section 5(2)(b) of the principal Act is hereby amended, as from its commencement, by inserting, after the words “owner of the land”, the words “enter into negotiations to”.
- (2) Section 5(4) of the principal Act is hereby amended by inserting, after the words “New Zealand Fire Service Commission”, the words “and without payment of any fees”.

5 Delegation of functions, duties, and powers

Section 15(1) of the principal Act is hereby amended by inserting, after the words “Fire Service”, the words “or of any defence fire brigade”.

6 Co-ordination schemes

- (1) Section 16(1) of the principal Act is hereby amended by inserting after the word “including”, the words “defence fire brigades and”.
- (2) Section 16(2) of the principal Act is hereby amended by adding the following paragraphs:

“(e) Enter into an agreement with the Defence Council, 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 Defence Council 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.”

7 Chief Fire Officer

The principal Act is hereby amended by repealing section 27, and substituting the following section:

“27

There shall be appointed by the Commission, either under section 18 of this Act or, as the case may be, pursuant to an agreement for service with a volunteer fire brigade under section 34 of the Act, a Chief Fire Officer and a Deputy Chief Fire Officer for each Fire District, and every such appointment may be held separately or in conjunction with any other office in the Fire Service.”

8 Functions, duties, and powers of Chief Fire Officer

Section 28(4)(a) of the principal Act is hereby amended by inserting, after the words “all fire brigades”, the words “and defence fire brigades”.

9 Fire brigade to have use of water in mains, etc.

Section 30 of the principal Act is hereby amended—

- (a) By inserting in subsection (1), after the words “every fire brigade”, the words “, defence fire brigade, and industrial fire brigade”:
- (b) By omitting from the proviso to subsection (1)(a) the words “fire brigade”, and substituting the words “such brigade”:
- (c) By inserting in subsection (2), after the words “in any Fire District”, the words “or any rural area it is under an obligation to protect.”:
- (d) By inserting in subsection (2), after the words “of the Fire District”, the words “or the rural area”.

10 Power to erect fire alarms, etc.

The principal Act is hereby further amended by repealing section 31, and substituting the following section:

“31

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 automatic fire alarm system on, under, or over that place.”

11 Police to assist person in charge of fire brigade

Section 32 of the principal Act is hereby amended by inserting in subsection (1) and in subsection (2), before the words “or an industrial fire brigade” in both places where they occur, in each case the words “or a defence fire brigade”.

12 Volunteer fire brigades

Section 34(6) of the principal Act is hereby amended by repealing paragraph (b).

13 Defence fire brigades

The principal Act is hereby amended by inserting, after section 36, the following section:

“36a

- “(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 Defence Council and the Commission, a Firemaster shall, in relation to any defence area (as defined in section 2(1) of the Defence Act 1971), have all the functions, duties, and powers of a Chief Fire Officer.
- “(3) Every agreement entered into between the Defence Council and the Commission pursuant to section 16 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 Defence Council; 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 Defence Council, and that the members of the defence fire brigade concerned had complied with all relevant requirements and instructions of the Defence Council.”

14 Expenditure of Commission

- (1) Section 44(1)(h) of the principal Act is hereby amended by omitting the word “mileage”, and substituting the words “motor vehicle”.
- (2) Section 44(3) of the principal Act is hereby amended by omitting the expression “\$1,500”, and substituting the expression “\$3,000”.

15 Commission to submit estimate of expenditure to Minister

- (1) Section 45(1) of the principal Act is hereby amended by adding the following proviso:

“Provided that no amount shall be included in the estimate in respect of any expenditure to be made out of loan money or trust money or any Reserve Fund or any Gratuity Fund.”

- (2) Section 45 of the principal Act is hereby further amended by repealing subsections (2) and (3).
- (3) Section 45(4) of the principal Act is hereby amended by inserting, before the words “estimated expenditure”, the word “approved”.
- (4) Section 45(5) of the principal Act is hereby amended by inserting, before the words “estimated expenditure”, wherever they occur, in each place the word “approved”.
- (5) Section 45(5) of the principal Act is hereby further amended by repealing the proviso, and substituting the following proviso:
“Provided that no variation shall be made in the amounts to be paid into the Reserve Fund or the Gratuities Fund.”
- (6) This section shall apply with respect to the financial year that commenced on the 1st day of April 1978, and to succeeding financial years.

16 Accounts and annual report of Commission

Section 46 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

- “(3) Notwithstanding subsection (2) of this section, the Commission may from time to time, in any case where it is deemed advisable that any sum of money at credit of any account (other than a separate account for a loan) should be placed on deposit at interest, deposit that sum of money with any bank or with any local authority or public body entitled by law to receive money on deposit.”

17 Liability to make contributions to meet approved estimated expenditure of Commission

- (1) Section 47(1) of the principal Act is hereby amended by inserting, before the words “estimated expenditure”, the word “approved”.
- (2) Section 47 of the principal Act is hereby further amended by repealing subsections (2) and (3), and substituting the following subsection:

- “(2) There shall be paid to the Commission in respect of the total approved estimated expenditure of the Commission in each financial year, out of money appropriated by Parliament for the purpose, a contribution which, when added to—
- “(a) The amount of the other contribution payable under this section in respect of that financial year; and
 - “(b) The estimated amount of the levy payable to the Commission in that financial year under section 48 of this Act; and
 - “(c) The estimated amount of other receipts of the Commission in respect of that financial year, other than special loan money and trust money and contributions under this section or section 48 of this Act; and
 - “(d) The amount of the uncommitted surplus (if any) of the Commission at the end of the last preceding financial year,—
- and after deducting the amount of the deficiency (if any) of the Commission at the end of the last preceding financial year, equals the amount of that total approved estimated expenditure:
- “Provided that where, during any financial year, the Commission is of the opinion that the amount referred to in paragraph (d) of this subsection is incorrect, the amount of the contribution in respect of that financial year may be redetermined and any remaining instalments payable under section 50(2) of this Act may be adjusted accordingly.”
- (3) This section shall apply with respect to the financial year that commenced on the 1st day of April 1978 and to succeeding financial years.

18 Amount to be contributed by each insurance company

The principal Act is hereby further amended by repealing section 51, and substituting the following section:

“51

- “(1) For the purpose of verifying the amount to be contributed by each insurance company under section 47 of this Act,—
- “(a) Every insurance company shall annually, at such time as the Commission may, by notice in the *Gazette*, from time to time prescribe, send to the Commission a return, certified by the auditors of the company, showing the total gross amount of premiums as prescribed received by or due to it during the year ended on the 31st day of December immediately preceding the time prescribed in respect of insurances held by the insurance company throughout New Zealand, after deducting the amount of reinsurance premium received (other than facultative reinsurance premiums) and the amount of premiums paid by it by way of facultative reinsurance to another insurance or reinsurance company in New Zealand in respect of the premiums so received by it, and excluding

any premiums received under the Earthquake and War Damage Act 1944, and the levy prescribed under section 48 of this Act:

“Provided that—

“(i) Every return by an insurance company which includes premiums in respect of motor vehicle comprehensive insurance shall include only 3 percent of the total gross amount of those premiums; and

“(ii) Every return by a rural insurance company shall include only 35 percent of the total gross amount of the premiums (other than premiums in respect of motor vehicle comprehensive insurance) which would, if it were not for this proviso, be included in the return:

“(b) Every reinsurance company shall annually, at such time as the Commission may, by notice in the *Gazette*, from time to time prescribe, send to the Commission a return certified by the auditors of the company, showing the total gross amount of premiums as prescribed received by or due to it during the year ended on the 31st day of December immediately preceding the time prescribed in respect of facultative reinsurance held in the reinsurance company throughout New Zealand, after deducting the amount of premiums paid by it by way of facultative reinsurance to another insurance or reinsurance company, and excluding any premiums received under the Earthquake and War Damage Act 1944 and the levy prescribed under section 48 of this Act:

“Provided that every return by a reinsurance company which includes premiums in respect of motor vehicle comprehensive insurance shall include only 3 percent of the total gross amount of those premiums:

“(c) Every return shall be accompanied by a statutory declaration by the manager, secretary, or agent of the insurance company that, according to the books thereof, and to the best of his knowledge and belief the return contains a true statement of the amount of the said premiums.

“(2) For the purposes of this section, every broker, agent, or other person who, on behalf of any company not carrying on insurance or reinsurance business in New Zealand, negotiates any contract insuring or reinsuring any property in New Zealand against fire or motor comprehensive risks, shall himself be deemed to be an insurance company or reinsurance company, as the case may be.

“(3) For the purposes of this section, where an owner of property within a Fire District makes a payment in respect of that property to any fund established for insurance purposes either within or beyond New Zealand, the person in possession of the fund shall be deemed to be an insurance company, and every amount paid to the fund shall be deemed to be a premium.

“(4) Where the owner of property within any Fire District insures that property against fire, either with a 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, that owner shall, in respect of the premium paid for the insurance (whether the premium was paid within or beyond New Zealand), be liable for the contribution of that company in respect of that premium.

“(5) Every such owner shall, within 14 days after effecting any such insurance, notify the Commission thereof, giving such particulars as may be prescribed.

“(6) If any insurance or reinsurance company or owner liable to contribute under this Act makes default in sending a return and declaration at or before the time prescribed by the Commission, or furnishes an incorrect or incomplete return, the insurance or reinsurance company or owner commits an offence against this Act.

“(7) Any insurance or reinsurance company or owner who discovers that a mistake has inadvertently been made in any return for any year under this section, shall forthwith send an amended return to the Commission. In any such case, or in the case of any default under subsection (6) of this section, the Commission, in its discretion, may make an appropriate adjustment in the contribution payable by that insurance or reinsurance company or owner in that year or in any subsequent year. Any refund due as a result of the adjustment shall be made as soon as practicable after the adjustments have been made.”

19 Failure to pay contributions

Section 53 of the principal Act is hereby amended by inserting, after the word “insurance”, in both places where it occurs, in each case the words “or reinsurance”.

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

Section 56 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4a) 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.”

21 Gratuities Fund

Section 57(3) of the principal Act is hereby amended by inserting, after the words “the National Provident Fund Board” in both places where they occur, in each case the words “or the Public Trustee”.

22 Reserve Fund

(1) Section 58(1)(a) of the principal Act is hereby amended by inserting, before the words “The renewal”, the words “Capital expenditure allowed for in any approved estimated expenditure and”.

- (2) Section 58(3) of the principal Act is hereby amended by inserting, after the words “the National Provident Fund Board” in both places where they occur, in each case the words “or the Public Trustee”.
- (3) Section 58(5) of the principal Act is hereby amended by omitting the words “section 73 of the Fire Service Act 1972”, and substituting the words “section 72 of the Fire Services Act 1972”.
- (4) Section 58 of the principal Act is hereby further amended by adding, after subsection (5), the following subsection:

“(5a) The Minister may from time to time, either generally or particularly, in writing, delegate any or all of his powers under this section to the Secretary for Internal Affairs.”

23 Power to dispose of property

Section 62 of the principal Act is hereby amended by adding, after subsection (2), the following subsection:

- “(3) The Minister may from time to time, either generally or particularly, in writing, delegate all or any of his powers under this section to the Secretary for Internal Affairs.”

24 Member of Fire Service on probation

The principal Act is hereby further amended by inserting, after section 71, the following section:

“71a

Notwithstanding anything in this Part of this Act, the annulment of the appointment of a member of the Fire Service during the period of his probationary service is deemed not to be a dismissal of that member for the purposes of sections 70 and 71 of this Act.”

25 Action to be taken by Chief Fire Officer if executive officer or fireman alleged to be in breach of good conduct

- (1) Section 74(2) of the principal Act is hereby amended by adding the words “If the Chief Fire Officer is satisfied with the explanation (if any) given, or by other information he receives, he shall withdraw the allegation of the said breach and inform the alleged offender accordingly.”
- (2) Section 74 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

“(3) Unless the alleged offender elects to have the alleged offence referred to the Commission, the Chief Fire Officer shall, as soon as practicable after the expiration of the period defined in subsection (2) of this section, fix a time and date when and a place where the allegations are to be inquired into, and shall notify the alleged offender accordingly. The date of the inquiry shall be not

later than 14 days from the date on which the notice under subsection (1) of this section was served on the alleged offender.”

- (3) Section 74 of the principal Act is hereby further amended by omitting from subsections (5), (6), and (7) the words “counsel or agent” wherever they occur, and substituting in each place the word “advocate”.
- (4) Section 74(11) of the principal Act is hereby amended by inserting, after the words “pursuant to this section”, the words “, but before making any formal finding as to whether any allegations are well founded in any case where the alleged offender denies the allegations”.

26 Appeal Board

- (1) Section 80(2) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) One, to be Chairman, who shall be a barrister or solicitor of the Supreme Court of New Zealand of not less than 7 years’ standing, whether or not he holds or has held any judicial office, appointed by the Minister:”.
- (2) Section 80(11) of the principal Act is hereby amended by omitting the words “Magistrate or some other”, and substituting the words “suitably qualified”.

27 Procedure of Appeal Board

Section 82(11) of the principal Act is hereby amended by omitting the words “The Department of Labour”, and substituting the words “The Department of Justice”.

28 Offences

Section 88(1)(a) of the principal Act is hereby further amended by inserting, after the words “any member of the Fire Service”, the words “or any member of a defence fire brigade”.

This Act is administered in the Department of Internal Affairs.